# UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

# FORM S-8

**REGISTRATION STATEMENT Under The Securities Act of 1933** 

# **POLYONE CORPORATION**

(Exact Name of Registrant as Specified in Its Charter)

OHIO

(State or Other Jurisdiction of Incorporation or Organization)

34-1730488 (I.R.S. Employer Identification No.)

33587 Walker Road, Avon Lake, Ohio 44012 (Address of Principal Executive Offices Including Zip Code)

#### POLYONE RETIREMENT SAVINGS PLAN DH COMPOUNDING COMPANY SAVINGS AND RETIREMENT PLAN AND TRUST (Full Title of the Plan)

Wendy C. Shiba Senior Vice President, Chief Legal Officer and Secretary PolyOne Corporation 33587 Walker Road Avon Lake, Ohio 44012 (440) 930-1000 (Name, Address and Telephone Number of Agent For Service)

#### CALCULATION OF REGISTRATION FEE

Title of		Proposed Maxi-	Proposed Maxi-	Amount of
Securities to	Amount to be	mum Offering	mum Aggregate	Registration
be Registered	Registered (1)(2)	Price Per Share (3)	Offering Price (3)	Fee
Common Shares, \$0.01par value	2,800,000	\$6.83	\$19,124,000	\$587.11

(1) Represents the maximum number of common shares of the Registrant, \$0.01 par value ("Common Shares"), issuable pursuant to the PolyOne Retirement Savings Plan and the DH Compounding Company Savings and Retirement Plan and Trust (together, the "Plans") being registered hereon.

(2) Pursuant to Rule 416(c) of the Securities Act of 1933, as amended (the "Securities Act"), this Registration Statement also covers an indeterminate number of interests to be offered or sold pursuant to the Plans.

(3) Estimated solely for calculating the amount of the registration fee, pursuant to paragraphs (c) and (h) of Rule 457 of the General Rules and Regulations under the Securities Act, on the basis of the average of the high and low sale prices of such securities on the New York Stock Exchange on February 27, 2007, within five business days prior to filing.

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#### PART II

# INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

#### Item 3. Incorporation of Documents by Reference.

The following documents have been filed by PolyOne Corporation, an Ohio corporation (the "Registrant"), with the Securities and Exchange Commission (the "Commission") and are incorporated herein by reference:

- The Registrant's Annual Report on Form 10-K, filed March 1, 2007;
- Annual Report on Form 11-K for the year ended December 31, 2005, filed by the PolyOne Retirement Savings Plan on June 29, 2006;
- Annual Report on Form 11-K for the year ended December 31, 2005, filed by the DH Compounding Company Savings and Retirement Plan and Trust on June 26, 2006;
- The Registrant's Current Report on Form 8-K, filed January 25, 2007; and
- The description of the Registrant's Common Shares contained in the registration statement on Form 8-A filed August 31, 2000, including any subsequently filed amendments and reports updating such description.

All documents filed by the Registrant with the Commission pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act") subsequent to the date of this registration statement and prior to the filing of a post-effective amendment that indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, will be deemed to be incorporated by reference in this registration statement and to be part hereof from the date of filing of such documents. Any statement contained in any document incorporated or deemed to be incorporated by reference herein will be deemed to be modified or superseded for purposes of this registration statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded will not be deemed, except as modified or superseded, to constitute a part of this registration statement.

# Item 4. Description of Securities.

Not applicable.

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

Not applicable.

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

PolyOne Corporation is an Ohio corporation. Under Section 1701.13 of the Ohio General Corporation Law ("Ohio Law"), Ohio corporations are permitted to indemnify directors, officers,

employees and agents within prescribed limits and must indemnify them under certain circumstances. Ohio Law does not authorize the payment by a corporation of judgments against a director, officer, employee or agent after a finding of negligence or misconduct in a derivative suit absent a court order determining that such person succeeds on the merits. In all other cases, if it is determined that a director, officer, employee or agent acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interest of the corporation, indemnification is discretionary except as otherwise provided by a corporation's articles of incorporation, code of regulations or contract, and except with respect to the advancement of expenses of directors.

With respect to the advancement of expenses, Ohio Law provides that a director (but not an officer, employee or agent) is entitled to mandatory advancement of expenses, including attorney's fees, incurred in defending any action, including derivative actions, brought against the director, provided that the director agrees to cooperate with the corporation concerning the matter and to repay the amount advanced if it is proven by clear and convincing evidence that his or her act or failure to act was done with deliberate intent to cause injury to the corporation or with reckless disregard for the corporation's best interests.

Article Sixth of PolyOne Corporation's articles of incorporation provides for indemnification of directors and officers. The provision provides that a director of PolyOne Corporation will not be personally liable to PolyOne Corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, except to the extent that an exemption from liability or limitation is not permitted under Ohio Law. Article Sixth provides that each director and officer will, to the fullest extent permitted by applicable law, be indemnified except as may be otherwise provided in PolyOne Corporation's code of regulations.

We have entered into indemnification agreements ("Indemnification Agreements") with each of our directors and each of our executive officers, including the named executive officers ("Indemnitees").

In general, the Indemnification Agreements provide that, subject to the procedures, limitations and exceptions set forth therein, (i) we will indemnify the Indemnitee for all expenses, judgments, fines and amounts paid in settlement actually incurred by the Indemnitee in connection with any threatened, pending or completed action, suit, proceeding or claim, by reason of the fact that the Indemnitee is or was a director and/or officer of Polyone or is or was serving at the request of Polyone at another entity, or by reason of any action alleged to have been taken or omitted in any such capacity, including any appeal of or from any judgment or decision; (ii) we will indemnify the Indemnitee against any amount that the Indemnitee is or becomes obligated to pay relating to or arising out of any claim made against the Indemnitee because of any act, failure to act or neglect or breach of duty, including any actual or alleged error, misstatement or misleading statement, that the Indemnitee commits, suffers, permits or acquiesces in while acting in his capacity as a director and/or officer of Polyone or at the request of Polyone at another entity; (iii) we will advance expenses as they are actually and reasonably incurred in connection with defending a claim in advance of the final disposition of a claim; and (iv) we will maintain an insurance policy or policies providing directors' and officers' liability insurance that covers the Indemnitee.

#### Item 7. Exemption from Registration Claimed.

Not applicable.

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Item 8. Exhibits.			
	Exhibit Number	Description	
	4.1	Articles of Incorporation of the Registrant, previously filed as Exhibit 3.1 to the Registrant's Form 10-K for the year ended December 31, 2000, SEC File No. 1-16091	
	4.2	Amendment to the second article of the Articles of Incorporation of the Registrant, previously filed as Exhibit 3.1a to the Registrant's Form 10-K for the year ended December 31, 2003, SEC File No. 1-16091	

- 4.3 Regulations of the Registrant, previously filed as Exhibit 3.2 to the Registrant's Form 10-K for the year ended December 31, 2000, SEC File No. 1-16091
- 4.4 Polyone Retirement Savings Plan
- 4.5 DH Compounding Company Savings and Retirement Plan and Trust
- 23.1 Consent of Independent Registered Public Accounting Firm Ernst & Young LLP
- 23.2 Consent of Independent Registered Public Accounting Firm KPMG LLP
- 23.3 Consent of Independent Registered Public Accounting Firm Ernst & Young LLP
- 23.4 Consent of Independent Registered Public Accounting Firm Coulter & Justus, P.C.
- 24 Power of Attorney

The Registrant will submit or has submitted the Plans and any amendment thereto to the Internal Revenue Service ("IRS") in a timely manner and has made or will make all changes required by the IRS to qualify the Plans.

#### Item 9. Undertakings.

(a) The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are 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 this 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 the 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 Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement.

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

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provided, however, that paragraphs (1)(i) and (1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in this registration statement.

(2) That, for the purpose of determining any liability under the Securities Act, 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.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act of (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act of y 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 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 Act 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 Act and will be governed by the final adjudication of such issue.

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#### SIGNATURES

*The Registrant.* 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 the city of Avon Lake, State of Ohio on March 2, 2007.

# POLYONE CORPORATION

By: /s/ W. David Wilson W. David Wilson Senior Vice President and Chief Financial Officer

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

Date: March 2, 2007	/s/ Stephen D. Newlin
	Stephen D. Newlin
	Chairman of the Board, President, Chief Executive Officer and
	Director (Principal Executive Officer)
Date: March 2, 2007	/s/ W. David Wilson
Dute. Multin 2, 2007	W. David Wilson
	Senior Vice President and Chief Financial Officer (Principal
	Financial Officer)
	,
Date: March 2, 2007	*
	Michael J. Meier
	Corporate Controller and Assistant Treasurer
	(Principal Accounting Officer)
Date: March 2, 2007	*
	J. Douglas Campbell
	Director
Date: March 2, 2007	*
	Carol A. Cartwright
	Director
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Date: March 2, 2007		*
	Gale Duff-Bloom Director	
Date: March 2, 2007		*
	Wayne R. Embry Director	
Date: March 2, 2007		*
	Richard H. Fearon Director	
Date: March 2, 2007		*
	Robert A. Garda Director	
Date: March 2, 2007		*
	Gordon D. Harnett Director	
Date: March 2, 2007	/s/ Edward J. Mooney Edward J. Mooney	
	Director	
Date: March 2, 2007	Farah M. Walters	*
	Director	

\* This registration statement has been signed on behalf of the above officers and directors by W. David Wilson, as attorney-in-fact pursuant to a power of attorney filed as Exhibit 24 to this registration statement.

DATED: March 2, 2007

By: /s/ W. David Wilson W. David Wilson Attorney-in-Fact

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*The Plans.* Pursuant to the requirements of the Securities Act, the trustees (or other persons who administer the employee benefit plans) have duly caused this registration statement to be signed on their behalf by the undersigned, thereunto duly authorized, in the city of Avon Lake, State of Ohio (in the case of Mr. Wilson) and in the city of Clinton, State of Tennessee (in the case of Ms. Myers), on March 2, 2007.

#### POLYONE RETIREMENT SAVINGS PLAN

By: PolyOne Retirement Plan Committee

By: /s/ W. David Wilson

W. David Wilson Plan Administrator

# DH COMPOUNDING COMPANY SAVINGS AND RETIREMENT PLAN AND TRUST

By: /s/ Theressa Myers

Theressa Myers Plan Administrator

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# EXHIBIT INDEX

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23.3	Consent of Independent Registered Public Accounting Firm - Ernst & Young LLP
23.4	Consent of Independent Registered Public Accounting Firm - Coulter & Justus, P.C.

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# POLYONE RETIREMENT SAVINGS PLAN (Effective June 1, 2003)

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#### ARTICLE ONE—DEFINITIONS

For purposes of the Plan, unless the context or an alternative definition specified within another Article provides otherwise, the following words and phrases shall have the definitions provided:

- 1.1 "ACCOUNT" shall mean the individual bookkeeping accounts maintained for a Participant under the Plan which shall record (a) the Participant's allocations of Employer contributions and forfeitures, (b) amounts of Compensation deferred to the Plan pursuant to the Participant's election, (c) any amounts transferred to this Plan under Section 4.3 from another qualified retirement plan, or from another qualified plan in connection with a plan merger, (d) any after-tax contributions made to the Plan under Section 4.5, (e) any cash dividends on Employer Stock held in the Employer Stock fund which are reinvested in the Plan at the election of the Participant and (f) the allocation of Trust investment experience.
- **1.2** "ADMINISTRATOR" shall mean the Plan Administrator appointed from time to time in accordance with the provisions of Article Nine hereof.
- **1.3 "BENEFICIARY"** shall mean any person, trust, organization, or estate entitled to receive payment under the terms of the Plan upon the death of a Participant.
- **<u>1.4</u> "BREAK IN SERVICE"** shall have the meaning set forth in Article Two.
- 1.5 "CODE" shall mean the Internal Revenue Code of 1986, as amended from time to time.
- **1.6 "COMPENSATION"** shall mean the regularly scheduled rate of compensation of a Participant, plus overtime, holiday pay (including pay in lieu of holiday pay), vacation pay, commissions, special rate payments, reporting-for-work pay, gainsharing, bonus or incentive compensation paid by the Employer to a Participant for services rendered by the Participant to the Employer, payments for the Employer's individual and team achievement awards, severance retention payments under an Employer sponsored severance program, and payments for the Employer's Arrow Award of Excellence or Chairman's Award of Excellence paid by the Employer effective for earnings paid on or after January 1, 2003. Earnings for a particular period shall consist of the Compensation paid in that period regardless of when the services giving rise to the Compensation were provided by a Participant. In addition, "Compensation" shall also include any amounts deferred under a salary reduction agreement in accordance with Section 4.1 or under a Code Section 125 plan maintained by the Employer.

- (a) The term "Compensation" shall not include:
  - (1) foreign service allowances, foreign premiums and foreign incentive payments;
  - (2) long-term incentive compensation under any plan of the Employer which provides bonus or incentive compensation based upon performance over a period in excess of one year;
  - (3) deferred compensation, whether in the year deferred or in the year received;
  - (4) amounts arising from or related to the transfer of restricted stock (or property) or when restricted stock (or property) either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;
  - (5) amounts arising from or related to stock awards, stock options, stock appreciation rights, limited stock appreciation rights, or similar arrangements, and any amounts realized in connection therewith;
  - (6) Employer contributions to this Plan, and, except as set forth above, employer contributions to any other benefit plans on behalf of a Participant;
  - (7) pay in lieu of vacation (including vacation sold by an hourly employee under the Employer's Paid Time Off Policy);
  - (8) pension, profit-sharing or other retirement plan payments made under any plan or other arrangement of the Employer, regardless of whether such plan or arrangement is qualified under any applicable provisions of the Code;
  - (9) amounts paid under the Employer's Long Term Disability Plan or any other similar plan of the Employer;
  - (10) severance payments under any plan, program, arrangement, or agreement (not including severance retention payments);
  - (11) irregular lump sum payments, special awards (including "You Make a Difference Awards"), and other forms of extraordinary or special compensation (not including a payment under the Employer's "gain sharing" program or the Employer's individual or team achievement awards or a payment that makes the recipient eligible for the Employer's Arrow Award of Excellence or Chairman's Award of Excellence); or

(12) payments made under any successor to any plan, program, arrangement, or agreement described in (1) through (11) above, and any payments made under any other similar plan, program, arrangement, or agreement, in accordance with such rules or guidelines as are established by the Administrator.

In addition to other applicable limitations set forth in the Plan, and notwithstanding any other provision of the Plan to the contrary, the annual Compensation of each Participant taken into account under the Plan shall not exceed \$200,000, as adjusted by the Secretary of the Treasury or his delegate for increases in the cost of living in accordance with Section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding twelve (12) months, over which Compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than twelve (12) months, the OBRA '93 annual compensation limit shall be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is twelve (12).

For purposes of determining who is a Highly-Compensated Employee, Compensation shall mean compensation as defined in Code Section 414(q)(4).

For purposes of applying the limitations described in Section 11.1, and for purposes of defining compensation under Section 1.14 and Article Thirteen of the Plan, compensation paid or made available during such limitations years (or Plan Years) shall include elective amounts that are not includible in the gross income of the Employee by reason of Section 132(f)(4) of the Code.

**1.7 "DISABILITY"** shall mean a "permanent and total" disability incurred by a Participant while in the employ of the Employer. For this purpose, a permanent and total disability shall mean suffering from a physical or mental condition which, in the opinion of the Administrator and based upon appropriate medical advice and examination will result in the: (a) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months, as determined by the Administrator on the basis of a written determination by the Social Security Administration that disability benefits under the Social Security Act have been approved, (b) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months, as determined by the Administrator on the basis of a written determination by the Social Security Administration that disability determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months, as determined by the Administrator on the basis of a written determination by a physician selected or accepted by the Administrator; or (c) eligibility for benefits under the long-term disability benefits plan(s) identified by the Administrator as sponsored under an Employer program as determined under the rules of the Plan.

- **<u>1.8</u> "EFFECTIVE DATE."** The Effective Date of this Plan, on and after which it supersedes the terms of the Merged Plans, is June 1, 2003. The rights of any Participant who separated from the Employer's Service prior to such date shall be established under the terms of the Merged Plan in effect at the time of the Participant's separation from Service, unless the Participant subsequently returns to Service with the Employer. Rights of spouses and Beneficiaries of such Participants shall also be governed by those documents.
- **<u>1.9</u> "EMPLOYEE"** shall mean a common law employee of the Employer.
- **1.10 "EMPLOYER"** shall mean PolyOne Corporation and any subsidiary or affiliate which is a member of its "related group" (as defined in Section 2.5(b)) which has adopted the Plan (a "Participating Affiliate"), and shall include any successor(s) thereto which adopt this Plan. Any such subsidiary or affiliate of PolyOne Corporation may adopt the Plan with the approval of its board of directors (or noncorporate counterpart) subject to the approval of PolyOne Corporation. The provisions of this Plan shall apply equally to each Participating Affiliate and its Employees except as specifically set forth in the Plan; provided, however, notwithstanding any other provision of this Plan, the amount and timing of contributions under Article 4 to be made by any Employer which is a Participating Affiliate shall be made subject to the approval of PolyOne Corporation. For purposes hereof, each Participating Affiliate shall be deemed to have appointed PolyOne Corporation as its agent to act on its behalf in all matters relating to the administration, amendment, termination of the Plan and the investment of the assets of the Plan. For purposes of the Code and the Employee Retirement Income Security Act of 1974, as amended from time to time, the Plan as maintained by PolyOne Corporation and the Participating Affiliates shall constitute a single plan rather than a separate plan of each Participating Affiliate. All assets in the Trust shall be available to pay benefits to all Participants and their Beneficiaries.
- **<u>1.11</u>** "EMPLOYER STOCK" shall mean common stock of PolyOne Corporation.
- **<u>1.12</u> "EMPLOYMENT DATE"** shall mean the first date as of which an Employee is credited with an Hour of Service, provided that, in the case of a Break in Service, the Employment Date shall be the first date thereafter as of which an Employee is credited with an Hour of Service.
- **1.13 "FAIL-SAFE CONTRIBUTION"** shall mean a qualified nonelective contribution which is a contribution (other than a matching contribution or a "Qualified Matching Contribution", within the meaning of Section 10.2(a)) made by the Employer and allocated to Participants' accounts that the Participants may not elect to receive in cash until distribution from the Plan; that are nonforfeitable when made; and that are

distributable only in accordance with the distribution provisions that are applicable to elective deferrals and Qualified Matching Contributions.

#### **<u>1.14</u>** "HIGHLY-COMPENSATED EMPLOYEE" shall mean, any Employee of the Employer who:

- (a) was a five percent (5%) owner of the Employer (as defined in Code Section 416(i)(1)) at any time during the "determination year" or "look-back year"; or
- (b) earned more than \$85,000 of Compensation from the Employer during the "look-back year". The \$85,000 amount shall be adjusted at the same time and in the same manner as under Section 415(d) of the Code.

An Employee who separated from Service prior to the "determination year" shall be treated as a Highly-Compensated Employee for the "determination year" if such Employee was a Highly-Compensated Employee when such Employee separated from Service, or was a Highly-Compensated Employee at any time after attaining age fifty-five (55).

For purposes of this Section, the "determination year" shall be the Plan Year for which a determination is being made as to whether an Employee is a Highly-Compensated Employee. The "look-back year" shall be the twelve (12) month period immediately preceding the "determination year".

#### **1.15 "HOUR OF SERVICE"** shall have the meaning set forth below:

- (a) An Hour of Service is each hour for which an Employee is paid, or entitled to payment, for the performance of duties for the Employer, during the applicable computation period.
- (b) An Hour of Service is 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 (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty, or leave of absence. Notwithstanding the preceding sentence,
  - No more than five hundred and one (501) Hours of Service shall be credited under this paragraph (b) to any Employee on account of any single continuous period during which the Employee performs no duties (whether or not such period occurs in a single computation period). Hours under this paragraph will be calculated and credited pursuant to Section

2530.200b-2 of the Department of Labor Regulations which is incorporated herein by reference;

- (ii) An hour for which an Employee is directly or indirectly paid, or entitled to payment, on account of a period during which no duties are performed shall not be credited to the Employee if such payment is made or due under a plan maintained solely for the purpose of complying with applicable workers' compensation, or unemployment compensation or disability insurance laws; and
- (iii) Hours of Service shall not be credited for a payment which solely reimburses an Employee for medical or medically related expenses incurred by the Employee.

For purposes of this paragraph (b), a payment shall be deemed to be made by or due from the Employer regardless of whether such payment is made by or due from the Employer directly, or indirectly through, among others, a trust fund, or insurer, to which the Employer contributes or pays premiums and regardless of whether contributions made or due to the trust fund, insurer or other entity are for the benefit of particular Employees or are on behalf of a group of Employees in the aggregate.

(c) An Hour of Service is 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). Thus, for example, an Employee who receives a back pay award following a determination that he was paid at an unlawful rate for Hours of Service previously credited shall not be entitled to additional credit for the same Hours of Service. 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.

In crediting Hours of Service for Employees who are paid on an hourly basis, the "actual" method shall be utilized. For this purpose, the "actual" method shall mean the determination of Hours of Service from records of hours worked and hours for which the Employer makes payment or for which payment is due from the Employer, subject to the limitations enumerated above. In crediting Hours of Service for Employees who are not paid on an hourly basis, the "weeks of employment" method shall be utilized. Under this method, an Employee shall be credited with forty-five (45) Hours of Service for each week for which the Employee would be required to be credited with at least one (1) Hour of Service pursuant to the provisions enumerated above.

**1.16 "LEASED EMPLOYEE"** shall mean any person who, pursuant to an agreement between the Employer and any other person or organization, has performed services for the Employer (determined in accordance with Code Section 414(n)(6)) on a substantially

full-time basis for a period of at least one (1) year and where such services are performed under the primary direction and control of the Employer. A person shall not be considered a Leased Employee if the total number of Leased Employees does not exceed twenty percent (20%) of the Nonhighly-Compensated Employees employed by the Employer, and if any such person is covered by a money purchase pension plan providing (a) a nonintegrated employer contribution rate of at least ten percent (10%) of compensation, as defined in Section 11.1(b)(2) of the Plan but including amounts contributed pursuant to a salary reduction agreement which are excludable from the employee's gross income under Code Sections 125, 402(g) or 403(b), and shall also include elective amounts that are not includible in the gross income of the Employee by reason of Section 132(f) of the Code, (b) immediate participation, and (c) full and immediate vesting.

- **1.17** "MERGED PLANS" shall mean the M.A. Hanna Company Capital Accumulation Plan, the M.A. Hanna Company 401(k) and Retirement Plan, and/or the O'Sullivan Corporation Retirement Savings Plan in effect as of May 31, 2003.
- 1.18 "NONHIGHLY-COMPENSATED EMPLOYEE" shall mean an Employee of the Employer who is not a Highly-Compensated Employee.
- **1.19 "NORMAL RETIREMENT DATE"** shall mean the Participant's sixty-fifth (65<sup>th</sup>) birthday, or for Participants who were participants in the Polymer Group Retirement Savings Plan or the 401(k) Savings and Retirement Plan for Polymer Associates as of January 1, 1998, the Participant's fifty-fifth (55<sup>th</sup>) birthday. The date on which the Participant attains age sixty-five (65), or fifty-five (55) as the case may be, shall be the Participant's Normal Retirement Age.
- **1.20 "PARTICIPANT"** shall mean any Employee who has satisfied the eligibility requirements of Article Three and who is participating in the Plan.
- 1.21 "PLAN" shall mean the PolyOne Retirement Savings Plan, as set forth herein and as may be amended from time to time.
- **1.22 "PLAN YEAR"** shall mean the twelve (12)-consecutive month period beginning January 1 and ending December 31.
- **1.23 "TRUST"** shall mean the Trust Agreement entered into between the Employer and the Trustee forming part of this Plan, together with any amendments thereto. "Trust Fund"

shall mean any and all property held by the Trustee pursuant to the Trust Agreement, together with income therefrom.

- **<u>1.24</u> "TRUSTEE"** shall mean the Trustee or Trustees appointed by the Employer, and any successors thereto.
- **1.25 "VALUATION DATE"** shall mean the date or dates established by the Administrator for the valuation of the assets of the Plan. In no event shall the assets of the Plan be valued less frequently than once each Plan Year.
- **<u>1.26</u> "YEAR OF SERVICE" or "SERVICE"** and the special rules with respect to crediting Service are in Article Two of the Plan.

#### ARTICLE TWO—SERVICE DEFINITIONS AND RULES

Service is the period of employment credited under the Plan. Definitions and special rules related to Service are as follows:

2.1 YEAR OF SERVICE. For purposes of determining an Employee's nonforfeitable right to that portion of his Account attributable to Employer contributions under the schedule set forth in Section 6.1, except for periods of Service which may be disregarded on account of the "rule of parity" described in Section 2.4, an Employee shall receive credit for the aggregate of all time period(s) commencing on his Employment Date (or re-employment date) and ending on the date a "period of severance" (within the meaning of Section 2.2) commences. However, an Employee shall also receive credit for any period of severance of less than twelve (12)-consecutive months; provided, however that if an Employee is absent from Service for any reason other than quit, discharge, retirement or death, and during the absence the Employee quits, is discharged, or retires, the period of time between the date the Employee quits, is discharged, or retires and the first anniversary of the date on which the Employee was first absent shall be credited hereunder if the Employee returns to Service on or before such first anniversary date. An Employee who completes a one (1)-year period of Service as of the anniversary of his Employment Date shall be credited with a Year of Service on that date. Fractional periods of Service shall be aggregated so that a Year of Service shall be completed as of the date the Employee completes twelve (12) months of Service (thirty (30) days shall be deemed to be a month in the case of the aggregation of fractional months) or three hundred and sixty-five (365) days of Service.

Any Participant who was a participant in a Merged Plan as of May 31, 2003 shall be credited with any prior "Years of Service" credited under the Merged Plan as of such date. In addition, for any Participant who was a participant in the O'Sullivan Corporation Retirement Savings Plan as of May 31, 2003, the provisions of Section 1.410(a)-7(f)(1)(i) of the Income Tax Regulations shall apply.

- 2.2 BREAK IN SERVICE. Subject to Section 2.3, a Break in Service is a "period of severance" of at least twelve (12) consecutive months. For this purpose, a period of severance shall be a continuous period in which an Employee is not employed by the Employer. Such period shall begin on the date the Employee retires, quits, is discharged or dies or, if earlier, the twelve (12)-month anniversary of the date on which the Employee is otherwise absent from Service.
- **2.3 MATERNITY/PATERNITY LEAVE OF ABSENCE.** For any individual who is absent from work for any period by reason of the individual's pregnancy, birth of the individual's child, placement of a child with the individual in connection with the individual's adoption of the child, or by reason of the individual's caring for the child for a period beginning immediately following such birth or placement, the twelve (12)-

consecutive month period beginning on the first anniversary of the first date of such absence shall not constitute a Break in Service.

- 2.4 RULE OF PARITY ON RETURN TO EMPLOYMENT. An Employee who returns to employment after a Break in Service shall retain credit for his pre-Break Years of Service, subject to the following rules:
  - (a) If a Participant incurs five (5) or more consecutive one (1)-year Breaks in Service, any Years of Service performed thereafter shall not be used to increase the nonforfeitable interest in his Account accrued prior to such five (5) or more consecutive one (1)-year Breaks in Service.
  - (b) If when a Participant incurred a Break in Service, he was not vested in any portion of his Account derived from Employer contributions, his pre-Break Years of Service shall be disregarded if his consecutive one (1)-year Breaks in Service equal or exceed five (5).

Subject to the preceding paragraphs of this Section, an Employee's pre-Break Years of Service and post-Break Years of Service shall count in determining the vested percentage of the Employee's Account derived from all Employer contributions (i.e., Employer contributions attributable to employment before and after the Employee's Break in Service).

#### 2.5 SERVICE IN EXCLUDED JOB CLASSIFICATIONS OR WITH RELATED COMPANIES

- (a) <u>Service while a Member of an Ineligible Classification of Employees</u>. An Employee who is a member of an ineligible classification of Employees shall not be eligible to participate in the Plan while a member of such ineligible classification. However, if any such Employee is transferred to an eligible classification, such Employee shall be credited with any periods of Service completed while a member of such an ineligible classification both for purposes of determining his Years of Service under Section 2.1 and in determining his eligibility to participate in the Plan under Section 3.1. For this purpose, an Employee shall be considered a member of an ineligible classification of Employees for any period during which he is employed in a job classification which is excluded from participating in the Plan under Section 3.1 below.
- (b) <u>Service with Related Group Members</u>. Subject to Section 2.1, for each Plan Year in which the Employer is a member of a "related group", as hereinafter defined, all Service of an Employee or Leased Employee (hereinafter collectively referred to as "Employee" solely for purposes of this Section 2.5(b)) with any one or more members of such related group shall be treated as employment by the Employer for purposes of determining the Employee's Years of Service under Section 2.1

and his eligibility to participate in the Plan under Section 3.1. The transfer of employment by any such Employee to another member of the related group shall not be deemed to constitute a retirement or other termination of employment by the Employee for purposes of this Section, but the Employee shall be deemed to have continued in employment with the Employer for purposes of determining the Employee's Years of Service and in determining his eligibility to participate in the Plan. For purposes of this subsection (b), "related group" shall mean the Employer and all corporations, trades or businesses (whether or not incorporated) which constitute a controlled group of corporations with the Employer, a group of trades or businesses under common control with the Employer, or an affiliated service group which includes the Employer, within the meaning of Section 414(b), Section 414(c), or Section 414(m), respectively, of the Code or any other entity required to be aggregated under Code Section 414(o).

(c) <u>*Construction*</u>. This Section is included in the Plan to comply with the Code provisions regarding the crediting of Service, and not to extend any additional rights to Employees in ineligible classifications other than as required by the Code and regulations thereunder.

#### ARTICLE THREE—PLAN PARTICIPATION

3.1 PARTICIPATION. Any Employee participating in a Merged Plan as of May 31, 2003 shall become a Participant in the Plan as of June 1, 2003.

Each other Employee shall become a Participant under the Plan as soon as administratively practicable following his Employment Date.

In no event, however, shall any Employee (or other individual) participate under the Plan while he is: (i) included in a unit of Employees covered by a collective bargaining agreement between the Employer and the Employee representatives under which retirement benefits were the subject of good faith bargaining, unless the terms of such bargaining agreement expressly provides for the inclusion in the Plan; (ii) regularly employed outside of the United States and not paid in United States dollars; (iii) classified by the Employer as anything other than an Employee (regardless of any subsequent reclassification by the Employer, any governmental agency or court); (iv) employed as a Leased Employee; (v) employed as a nonresident alien who receives no earned income (within the meaning of Section 911(d)(2) of the Code) from the Employer which constitutes income from sources within the United States (within the meaning of Section 861(a)(3) of the Code); or (vi) participating in the PolyOne Retirement Savings Plan A.

Notwithstanding the foregoing provisions, any Employee who:

- (i) is employed as an intern or a co-op student; or
- (ii) is employed on a "temporary basis", that is, employed for less than a four (4) month period; and
- (iii) is not in an excluded class of Employees described in the preceding paragraph,

shall become a Participant in the Plan as soon as administratively practicable following his completion of a twelve (12)-month period of employment with the Employer during which he is credited with at least one thousand (1,000) Hours of Service. The first twelve (12)-month period shall be measured from the Employee's Employment Date. Any subsequent twelve (12)-month period shall be a Plan Year, beginning with the Plan Year after his Employment Date.

3.2 **RE-EMPLOYMENT OF FORMER PARTICIPANT.** A vested Participant (or a nonvested Participant whose prior Service cannot be disregarded) whose participation ceased because of termination of employment with the Employer shall resume participating upon his reemployment as an eligible Employee; provided, however, that

such an individual shall be entitled to commence elective deferrals as soon as administratively possible following his return to participation in the Plan.

**3.3 TERMINATION OF ELIGIBILITY.** In the event a Participant is no longer a member of an eligible class of Employees and he becomes ineligible to participate, such Employee shall resume participating upon his return to an eligible class of Employees; provided, however, that such an individual shall be entitled to commence elective deferrals as soon as administratively possible following his return to participation in the Plan.

In the event an Employee who is not a member of an eligible class of Employees becomes a member of an eligible class, such Employee shall participate upon becoming a member of an eligible class of Employees, if such Employee has otherwise satisfied the eligibility requirements of Section 3.1 and would have otherwise previously become a Participant; provided, however, that such an individual shall be entitled to commence elective deferrals as soon as administratively possible following his becoming a Participant.

**3.4 COMPLIANCE WITH USERRA.** Notwithstanding any provision of this Plan to the contrary, Participants shall receive service credit and be eligible to make deferrals and receive Employer contributions with respect to periods of qualified military service (within the meaning of Section 414(u)(5) of the Code) in accordance with Section 414(u) of the Code.

#### ARTICLE FOUR—ELECTIVE DEFERRALS, EMPLOYER CONTRIBUTIONS, ROLLOVERS AND AFTER-TAX CONTRIBUTIONS

# 4.1 ELECTIVE DEFERRALS.

- (a) <u>Elections</u>. A Participant may elect to defer from one percent (1%) to fifteen percent (15%) (in whole percentages) of his Compensation for a Plan Year. The amount of a Participant's Compensation that is deferred in accordance with the Participant's election shall be withheld by the Employer from the Participant's Compensation on a ratable basis throughout the Plan Year. The amount deferred on behalf of each Participant shall be contributed by the Employer to the Plan and allocated to the portion of the Participant's Account consisting of elective deferrals.
- (b) <u>*Changes in Election.*</u> A Participant may prospectively elect to change or revoke the amount (or percentage) of his elective deferrals during the Plan Year by making an election at such time and in such manner as is determined by the Administrator.
- (c) *Limitations on Deferrals*. No Participant shall defer on a pre-tax basis an amount which exceeds the applicable dollar limit as determined under Section 402(g)(1)(B) of the Code for any calendar year ending with or within the Plan Year.
- (d) <u>Administrative Rules</u>. All elections made under this Section 4.1, including the amount and frequency of deferrals, shall be subject to the rules of the Administrator which shall be consistently applied and which may be changed from time to time.
- (e) <u>*Catch-Up Contributions*</u>. All Participants who have attained age fifty (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 requirements 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 shall not be subject to a Company match.

#### 4.2 EMPLOYER CONTRIBUTIONS.

(a) *Employer Matching Contributions*. For each payroll period, the Employer shall contribute to the Plan, on behalf of each Participant, a matching contribution

equal to 100% of the first 3%, and 50% of the next 3%, of the Participant's Compensation contributed to the Plan as elective deferrals and/or aftertax contributions under Section 4.1 and Section 4.5, respectively.

The Employer's board of directors may also determine to suspend or reduce its contributions under this Section for any Plan Year, or any payroll period, or for any group of Participants. Allocations under this Section shall be subject to the special rules of Section 13.3 in any Plan Year in which the Plan is a Top-Heavy Plan (as defined in Section 13.2(b)).

Notwithstanding the foregoing provisions of this Section 4.2(a), if a Participant's elective deferrals for a Plan Year reach the maximum amount set out in Section 4.1(c) (or such other Plan imposed limit) and, as a result, the Participant is not eligible to make elective deferrals to the Plan for the balance of such year, or if the Participant varies the rate of his elective deferrals and/or after-tax contributions during a Plan Year and, as a result, fails to receive the full available matching contribution for the year, such Participant shall be entitled to receive a supplemental Employer matching contribution to the extent required to ensure that such Participant receives the same rate of matching contribution for the Plan Year as any other Participant with the same rate of elective deferrals and/or after-tax contributions for such Plan Year. The supplemental Employer matching contributions received by any such Participant for the Plan Year shall, however, be limited to the extent required to comply with the requirements of applicable Federal law. To be eligible for this supplemental Employer matching contribution, the Participant must be employed by the Employer on the last day of the period for which the supplemental matching contribution is made.

- (b) <u>Employer Retirement Contributions</u>. Each payroll period the Employer shall make a retirement contribution on behalf of each Participant. Such contribution shall be in an amount equal to no less than two percent (2%) of the Participant's Compensation for such payroll period. Provided, however, that for any Participant in the Plan on June 1, 2003, who was not a participant in either The Geon Pension Plan or The Geon Wage Employees' Pension Plan on May 31, 2003, a one-time retirement contribution adjustment shall be made in July 2003 in an amount equal to two percent (2%) of the Participant's Compensation for the period January 1, 2003 to May 31, 2003.
- **4.3 ROLLOVERS AND TRANSFERS OF FUNDS FROM OTHER PLANS.** With the approval of the Administrator, there may be paid to the Trustee amounts which have been held under other plans qualified under Code Section 401, including after-tax contributions, either (a) maintained by the Employer which have been discontinued or terminated with respect to any Employee, or (b) maintained by another employer with respect to which any Employee has ceased to participate. Any such transfer or rollover may also be made by means of an Individual Retirement Account qualified under Section 408 of the Code, where the Individual Retirement Account was used as a conduit from

the former plan. Finally, a transfer or rollover may also be made from an annuity contract described in Section 403(b) of the Code or, from 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. Any amounts so transferred on behalf of any Employee shall be nonforfeitable and shall be maintained under a separate Plan account, to be paid in addition to amounts otherwise payable under this Plan. The amount of any such account shall be equal to the fair market value of such account as adjusted for income, expenses, gains, losses, and withdrawals attributable thereto.

- **4.4 TIMING OF CONTRIBUTIONS.** Employer contributions shall be made to the Plan no later than the time prescribed by law for filing the Employer's federal income tax return (including extensions) for its taxable year ending with or within the Plan Year. Elective deferrals under Section 4.1 shall be paid to the Plan as soon as administratively possible, but no later than the fifteenth (15<sup>th</sup>) business day of the month following the month in which such deferrals would have been payable to the Participant in cash, or such later date as permitted or prescribed by the Department of Labor.
- **4.5 EMPLOYEE AFTER-TAX CONTRIBUTIONS.** A Participant shall be permitted to make after-tax contributions to the Plan in accordance with procedures established by the Administrator which shall be consistently applied and which may be changed from time to time. A Participant may prospectively elect to change or revoke the amount (or percentage, from one percent (1%) to fifteen percent (15%)) of his after-tax contributions during the Plan Year in accordance with procedures established by the Administrator.

Total Contributions under Section 4.1(a) and this Section 4.5 cannot exceed 15% of the Participant's Compensation for a Plan Year.

Employee after-tax contributions shall be subject to the limitations under Section 10.3 and Section 11.1.

Any after-tax contributions made by a Participant shall be contributed by the Employer to the Plan and allocated to the portion of the Participant's Account consisting of after-tax contributions. A Participant shall have a nonforfeitable interest at all times in that portion of his Account attributable to any after-tax contributions. Any such after-tax contributions shall be distributed at the same time as other vested benefits would be distributed under the Plan.

#### ARTICLE FIVE—ACCOUNTING RULES

#### 5.1 INVESTMENT OF ACCOUNTS AND ACCOUNTING RULES

(a) <u>Investment Funds</u>. The investment of Participants' Accounts shall be made in a manner consistent with the provisions of the Trust. In this regard, the Trust shall provide for separate funds for the directed investment of each Participant's Account, including a separate Employer Stock fund a portion of which shall be invested in cash and cash equivalents for liquidity purposes.

Notwithstanding the foregoing, however, any Employer matching contributions initially invested in the Employer Stock fund other than by the Participant's direction, shall remain invested in such fund until such date as is designated by the Employer but not later than September 30, 2003.

- (b) Participant Direction of Investments. Each Participant (including, for this purpose, any former Employee, Beneficiary, or alternate payee (within the meaning of Section 414(p)(8) of the Code) with an Account balance may direct how his Account (or such portion thereof which is subject to his investment direction) is to be invested among the available investment funds in the percentage multiples established by the Administrator. In the event a Participant fails to make an investment election, with respect to the portion of his Account which is subject to his investment direction, the Trustee shall invest all or such portion of his Account in the investment fund to be designated by the Administrator. To the extent subject to the Participant's investment direction, the Participant may change his investment election, with respect to future contributions and, if applicable, forfeitures, and/or amounts previously accumulated in the Participant's Account in accordance with procedures established by the Administrator. Any such change in a Participant's investment election shall be effective at such time as may be prescribed by the Administrator. If the Plan's recordkeeper or investments are changed, the Administrator may apply such administrative rules and procedures as are necessary to provide for the transfer of records and/or assets, including without limitation, the suspension of Participant's investment directions, withdrawals and distributions for such period of time as is necessary, and the transfer of Participants' Accounts to designated funds or an interest bearing account until such change has been completed.
- (c) <u>Allocation of Investment Experience</u>. As of each Valuation Date, the investment fund(s) of the Trust shall be valued at fair market value, and the income, loss, appreciation and depreciation (realized and unrealized), and any paid expenses of the Trust attributable to such fund shall be apportioned among Participants' Accounts within the fund based upon the value of each Account within the fund as of the preceding Valuation Date.

The Employer Stock fund under the Plan shall constitute a separate "employee stock ownership plan" (within the meaning of Section 4975(e)(7) of the Code and Section 407(d)(6) of the Employee Retirement Income Security Act of 1974, as amended). Any cash dividends on shares of Employer Stock held in the Employer Stock fund which would otherwise be allocated to a Participant's Account shall, at the election of the Participant, be paid to the Plan and distributed in cash to the Participant (or in the event of the Participant's death, his Beneficiary) not later than 90 days after the close of the Plan Year in which paid or be paid to the Plan and reinvested in the Employer Stock fund. Any such election shall be made in accordance with rules and procedures as may be established by the Administrator from time to time.

- (d) <u>Allocation of Contributions</u>. Employer contributions shall be allocated to the Account of each eligible Participant as of the last day of the period for which the contributions are made.
- (e) <u>Manner and Time of Debiting Distributions</u>. For any Participant who is entitled to receive a distribution from his Account, such distribution shall be made in accordance with the provisions of Section 7.1 and Section 7.2. The amount distributed shall be based upon the fair market value of the Participant's vested Account as of the Valuation Date preceding the distribution.
- 5.2 PARTICIPANTS OMITTED IN ERROR. In the event a Participant is not allocated a share of the Employer contribution and/or forfeitures as a result of an administrative error in any Plan Year, the Employer may elect to either (a) make an additional contribution on behalf of such omitted Participant in an appropriate amount, or (b) deduct the appropriate amount from the next succeeding Employer contribution and/or forfeitures and allocate such amount to the Participant's Account prior to making the allocations set forth under Section 5.1(d).

#### ARTICLE SIX—VESTING AND RETIREMENT BENEFITS

**6.1 VESTING.** A Participant shall at all times have a nonforfeitable (vested) right to his Account derived from elective deferrals, after-tax contributions, Employer matching contributions, Fail-Safe Contributions and Qualified Matching Contributions as defined in Section 10.2, any dividends paid on Employer Stock credited to his Account, any rollovers from other plans, and any other contributions made on his behalf, other than retirement contributions made under Section 4.2(b) or any Employer retirement contributions transferred from a Merged Plan, as adjusted for investment experience. Except as otherwise provided with respect to Normal Retirement, Disability, or death, a Participant shall have a nonforfeitable (vested) right to a percentage of the value of his Account derived from Employer retirement contributions under Section 4.2(b) and, except as otherwise provided below, any Employer retirement contributions transferred from a Merged Plan, as follows:

Years of Service	Vested Percentage
Less than 3 years	0%
3 years and thereafter	100%

Notwithstanding the foregoing, any Participant who was a Participant in the M.A. Hanna Company Capital Accumulation Plan and/or the M.A. Hanna Company 401(k) and Retirement Plan as of May 31, 2003, and who was credited with two (2) years of service (for vesting purposes) under either such plan as of such date, shall have at least a twenty percent (20%) vested interest in any employer contributions transferred from such plan(s) and in any Employer retirement contributions under Section 4.2(b).

**6.2 FORFEITURE OF NONVESTED BALANCE.** The nonvested portion of a Participant's Account, as determined in accordance with Section 6.1, shall be forfeited as of the earlier of (i) as soon as administratively practical following the date on which the Participant receives distribution of his vested Account or (ii) as soon as administratively practical after the last day of the Plan Year in which the Participant incurs five (5) consecutive one (1)-year Breaks in Service. However, no forfeiture shall occur solely as a result of a Participant's withdrawal of Employee after-tax contributions. The amount forfeited shall be used to pay Plan administrative expenses and/or used to reduce Employer contributions under Section 4.2 or used to reduce Employer contributions under Section 5.2 or to restore previously forfeited amounts under this Section 6.2.

If the Participant returns to the employment of the Employer prior to incurring five (5) consecutive one (1)-year Breaks in Service, and prior to receiving distribution of his vested Account, the nonvested portion shall be restored. However, if the nonvested portion of the Participant's Account was allocated as a forfeiture as the result of the Participant receiving distribution of his vested Account balance, the nonvested portion shall be restored if:

- (a) the Participant resumes employment prior to incurring five (5) consecutive one (1)-year Breaks in Service; and
- (b) the Participant repays to the Plan, as of the earlier of (i) the date which is five (5) years after his reemployment date or (ii) the date which is the last day of the period in which the Participant incurs five (5) consecutive one (1)-year Breaks in Service, an amount equal to the total distribution derived from Employer contributions.

Upon repayment, the Employer-derived benefit required to be restored by this Section shall not be less than in the account balance of the Employee, both the amount distributed and the amount forfeited, unadjusted by any subsequent gains or losses. The amount required to be restored shall be made by a special Employer contribution or from the next succeeding Employer contribution and forfeitures, as appropriate.

Any Years of Service for which a Participant received a cash-out shall be recognized for purposes of vesting and eligibility under the Plan.

- **6.3 NORMAL RETIREMENT.** A Participant who is in the employment of the Employer at his Normal Retirement Age shall have a nonforfeitable interest in one hundred percent (100%) of his Account, if not otherwise one hundred percent (100%) vested under the vesting schedule in Section 6.1. A Participant who continues employment with the Employer after his Normal Retirement Age shall continue to participate under the Plan.
- **6.4 DISABILITY.** If a Participant incurs a Disability, the Participant shall have a nonforfeitable interest in one hundred percent (100%) of his Account, if not otherwise one hundred percent (100%) vested under the vesting schedule in Section 6.1. Payment of such Participant's Account balance shall be made at the time and in the manner specified in Article Seven, following receipt by the Administrator of the Participant's written distribution request.

#### ARTICLE SEVEN—MANNER AND TIME OF DISTRIBUTING BENEFITS

- **7.1 MANNER OF PAYMENT.** Subject to the provisions of Section 7.4 and/or Section 7.8, the Participant's vested Account shall be distributed to the Participant (or to the Participant's Beneficiary in the event of the Participant's death) by any of the following methods, as elected by the Participant or, when applicable, the Participant's Beneficiary:
  - (a) in a single lump-sum payment; or
  - (b) if the Participant's vested Account (excluding any rollover contributions) exceeds \$5,000, in monthly installments subject to the provisions of this Article Seven.

If the Participant's vested Account (excluding any rollover contributions) exceeds \$5,000, and the Participant elects to defer distribution of his vested Account pursuant to the provisions of Section 7.2 below, the Participant may, from time to time, elect to withdraw amounts from his vested Account, subject to rules and procedures established by the Administrator.

Notwithstanding the foregoing, any portion of a Participant's vested Account invested in the Employer Stock fund may, at the Participant's election, be distributed in a single payment in the form of whole shares of Employer Stock, with any fractional shares, and the cash and cash equivalent portions of the underlying stock fund, being distributed in cash.

**<u>7.2</u> TIME OF COMMENCEMENT OF BENEFIT PAYMENTS.** Distribution of the Participant's Account balance for a Participant who terminates employment on or after his Normal Retirement Date, or as a result of his Disability, shall be made or commence no later than one (1) year following the close of the Plan Year in which such event occurred; provided, however, that if the amount required to be distributed cannot be ascertained by such date, distribution shall be made no later than sixty (60) days after the earliest date on which such amount can be ascertained; and provided, further, that, subject to the last paragraph of this Section, if the Participant's vested Account balance (excluding any rollover contributions) exceeds \$5,000, distribution shall not be made or commence, unless the Participant otherwise requests in writing. In such event, distribution shall commence as soon as administratively practical following receipt by the Administrator of the Participant's written request.

If a Participant terminates employment for any reason other than Normal Retirement, Disability or death, distribution of his vested Account balance shall be made or commence no later than the close of the sixth Plan Year following the Plan Year in which he terminated employment. However, if the vested balance of a Participant's Account exceeds \$5,000 (without regard to any rollover contributions), subject to the last paragraph of this Section, distribution of his vested Account shall not be made or commence unless the Participant otherwise requests in writing.

Notwithstanding any provision contained herein to the contrary, a Participant who is not vested in any portion of his Account balance attributable to Employer contributions shall be deemed to have received distribution of such portion of his Account as of the end of the Plan Year following the Plan Year in which he separates from Service.

In no event shall distribution of the Participant's vested Account be made or commence later than the April 1st following the end of the calendar year in which the Participant attains age seventy and one-half ( $70^{1/2}$ ), or, except for a Participant who is a five percent (5%) owner of the Employer (within the meaning of Section 401(a)(9)(C) of the Code), if later, the April 1st following the calendar year in which the Participant retires from employment with the Employer. In this regard, the Plan will apply the minimum distribution requirements of Section 401(a)(9) of the Code in accordance with the regulations under Section 401(a)(9) that were proposed on January 17, 2001, notwithstanding any provisions of the Plan to the contrary. This paragraph shall continue in effect until the end of the last calendar year beginning before the effective date of final regulations under Section 401(a)(9) or such other date as may be specified in guidance published by the Internal Revenue Service.

- **7.3 FURNISHING INFORMATION.** Prior to the payment of any benefit under the Plan, each Participant or Beneficiary may be required to complete such administrative forms and furnish such proof as may be deemed necessary or appropriate by the Employer, Administrator, and/or Trustee.
- **<u>7.4</u> JOINT AND SURVIVOR ANNUITY.** This Section shall apply if any portion of a Participant's vested Account is derived from funds transferred from a plan subject to the provisions of Code Sections 401(a)(11) and 417, which provisions may not be limited via an amendment under the Employee Retirement Income Security Act of 1974.
  - (a) Annuity Form of Payment: If distribution of a Participant's vested Account balance commences during his lifetime, the portion of his vested Account derived from funds transferred from a plan subject to the provisions of Code Sections 401(a)(11) and 417 shall be applied to the purchase of a "single life annuity" for a Participant who is unmarried as of his benefit commencement date, or if the Participant is married as of his benefit commencement date, applied to the purchase of a "qualified joint and survivor annuity".

A "*qualified joint and survivor annuity*" is an immediate annuity for the life of the Participant with a survivor annuity for the life of the spouse which is not less than fifty percent (50%), and not more than one hundred percent (100%), of the amount of the annuity which is payable during the joint lives of the Participant and his spouse.

A *"single life annuity"* is an annuity for the life of the Participant.

(b) *Waiver of Annuity:* The Participant may, at any time during the *"election period"*, elect to waive the annuity form of payment described above and elect an optional form of payment set forth under Section 7.1.

The *"election period"* under this Section shall be the ninety (90)-day period prior to the "annuity starting date," which date shall be the first day of the first period in which an amount is payable as an annuity.

An election to waive the applicable annuity form of payment under the Plan must be made in writing in a form acceptable to the Administrator. In addition, an election by a married Participant to waive the qualified joint and survivor annuity shall not take effect unless (1) the Participant's spouse consents in writing to the election, (2) the election designates a specific alternate Beneficiary, if applicable, including any class of Beneficiaries or any contingent Beneficiaries, which may not be changed without spousal consent (unless the Participant's spouse expressly permits designations by the Participant without any further spousal consent), (3) the spouse's consent acknowledges the effect of the election, and (4) the spouse's consent is witnessed by a notary public. In addition, the Participant's waiver of a qualified joint and survivor annuity shall not be effective unless the election designates a form of benefit payment which may not be changed without spousal consent (or the Participant's spouse expressly permits designation by the Participant without any further spousal consent). Notwithstanding the foregoing, spousal consent hereunder shall not be required if it is established to the satisfaction of the Administrator that the spouse's consent cannot be obtained because such spouse cannot be located, or because of such other circumstances as may be prescribed in regulations pursuant to Section 417 of the Code.

Any consent by a spouse obtained under this Section (or establishment that the consent of such spouse cannot be obtained) shall be effective only with respect to such spouse. A consent that permits designations by the Participant without any requirement of further consent by such spouse must acknowledge that the spouse has the right to limit consent to a specific Beneficiary, and a specific form of benefit where applicable, and that the spouse voluntarily elects to relinquish either or both of such rights. No consent obtained under this provision shall be valid unless the Participant has received notice as provided below. In addition, any waiver made in accordance with this Section may be revoked at any time prior to the commencement of benefits under the Plan. A Participant is not limited to the number of revocations or elections that may be made hereunder.

(c) *Notice Requirement:* The Administrator shall provide to each Participant, not less than thirty (30) days, and not more than ninety (90) days, prior to the commencement of benefits, a written explanation of:

- (1) the terms and conditions of the qualified joint and survivor annuity or life annuity;
- (2) the Participant's right to waive such applicable annuity and the effect of such waiver;
- (3) the rights of the Participant's spouse regarding the required consent to an election to waive the qualified joint and survivor annuity; and
- (4) the right to make, and the effect of, a revocation of an election to waive the applicable annuity.
- (d) Restrictions: Notwithstanding anything contained herein to the contrary, if the portion of the vested balance of the Participant's Account derived from funds transferred from a plan subject to the provisions of Code Sections 401(a)(11) and 417 (excluding any rollover contributions) does not exceed \$5,000, distribution of the portion of the Participant's vested Account derived from funds transferred from a plan subject to the provisions of Code Sections 401(a)(11) and 417 (excluding any rollover contributions) does not exceed \$5,000, distribution of the portion of the Participant's vested Account derived from funds transferred from a plan subject to the provisions of Code Sections 401(a)(11) and 417 shall be made in the form of a lump-sum payment. However, no distribution shall be made pursuant to this subsection after the first day of the first period for which an amount is payable as an annuity unless the Participant's Account" shall mean the aggregate value of a Participant's vested Account balance attributable to Employer contributions, Employee contributions and rollover contributions, if applicable, whether vested before or upon the death of a Participant.

# 7.5 AMOUNT OF DEATH BENEFIT.

- (a) <u>Death Before Termination of Employment</u>. In the event of the death of a Participant while in the employ of the Employer, vesting in the Participant's Account shall be one hundred percent (100%), if not otherwise one hundred percent (100%) vested under Section 6.1, with the credit balance of the Participant's Account being payable to his Beneficiary.
- (b) <u>Death After Termination of Employment</u>. In the event of the death of a former Participant after termination of employment, but prior to the complete distribution of his vested Account balance under the Plan, the undistributed vested balance of the Participant's Account shall be paid to the Participant's Beneficiary.
- **7.6 DESIGNATION OF BENEFICIARY.** Each Participant shall file with the Administrator a designation of Beneficiary to receive payment of any death benefit payable hereunder if such Beneficiary should survive the Participant. However, subject to Section 7.4(b), no Participant who is married shall be permitted to designate a

Beneficiary other than his spouse unless the Participant's spouse has signed a written consent witnessed by a notary public, which provides for the designation of an alternate Beneficiary.

Subject to the above, Beneficiary designations may include primary and contingent Beneficiaries, and may be revoked or amended at any time in similar manner or form, and the most recent designation shall govern. A designation of a Beneficiary made by a Participant shall cease to be effective upon his marriage or remarriage. In the absence of an effective designation of Beneficiary, or if no designated Beneficiary is surviving as of the date of the Participant's death, any death benefit shall be paid to the surviving spouse of the Participant, or, if no surviving spouse, to the Participant's surviving issue, by right of representation, or, if none, to the Participant's surviving parents, or, if none, to the Participant's surviving brothers and sisters, or, if none, to the Participant's estate. Notification to Participants of the death benefits under the Plan and the method of designating a Beneficiary shall be given at the time and in the manner provided by regulations and rulings under the Code.

In the event a Beneficiary survives the Participant, but dies before receipt of all payments due that Beneficiary hereunder, any benefits remaining to be paid to the Beneficiary shall be paid to the Beneficiary's estate.

- **7.7 DISTRIBUTION OF DEATH BENEFITS.** Subject to the provisions of Section 7.2 and 7.8 below, if applicable, the Beneficiary shall be allowed to designate the mode of receiving benefits in accordance with Section 7.1, unless the Participant had designated a method in writing and indicated that the method was not revocable by the Beneficiary.
  - (a) <u>Distribution Beginning Before Death</u> If the Participant dies after distribution of his vested Account has commenced, any survivor's benefit must be paid at least as rapidly as under the method of payment in effect at the time of the Participant's death.
  - (b) <u>Distribution Beginning After Death</u> If the Participant dies before distribution of his vested Account has commenced, distribution of the Participant's vested Account shall be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death, except as provided below:
    - (i) if any portion of the Participant's vested Account is payable to a designated Beneficiary, and if distribution is to be made over the life or over a period certain not greater than the life expectancy of the designated Beneficiary (if permitted under Section 7.1 above and Section 7.8 below) such payments shall commence on or before December 31 of the calendar year immediately following the calendar year in which the Participant died;

(ii) if the designated Beneficiary is the Participant's surviving spouse, the date distribution is required to begin shall not be earlier than the later of
(A) December 31 of the calendar year immediately following the calendar year in which the Participant died and (B) December 31 of the
calendar year in which the Participant would have attained age seventy and one-half (70<sup>1</sup>/<sub>2</sub>).

For purposes of this paragraph (b), if the surviving spouse dies after the Participant, but before payments to such spouse begin, the provisions of this paragraph, with the exception of paragraph (ii) herein, shall be applied as if the surviving spouse were the Participant.

Notwithstanding the foregoing, if the Participant has no designated Beneficiary (within the meaning of Section 401(a)(9) of the Code and the regulations thereunder), distribution of the Participant's vested Account must be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

- **<u>7.8</u> QUALIFIED PRE-RETIREMENT SURVIVOR ANNUITY.** The provisions of this Section shall apply to any Participant subject to the provisions of Section 7.4.
  - (a) If a Participant dies before distribution of benefits has commenced and is survived by his spouse, his vested Account shall be applied to the purchase of an annuity for the life of the Participant's surviving spouse.
  - (b) The Participant may elect to waive such survivor annuity death benefit and/or revoke any such election at any time during the period commencing on the first day of the Plan Year in which the Participant attains age thirty-five (35) (or the date he terminates employment, if earlier) and ending on the date of his death. Any election to waive the survivor annuity death benefit, however, shall not take effect unless it is accompanied by the written consent of the Participant's spouse, which consent acknowledges the effect of such election and is witnessed by a notary public. A Participant who will not yet attain age thirty-five (35) as of the end of any current Plan Year may make a special qualified election to waive the qualified preretirement survivor annuity for the period beginning on the date of such election and ending on the first day of the Plan Year in which the Participant will attain age thirty-five (35). Such election shall not be valid unless the Participant receives a written explanation of the qualified pre-retirement survivor annuity in such terms as are comparable to the explanation required under Section 7.8(c). Qualified pre-retirement survivor annuity coverage shall be reinstated automatically as of the first day of the Plan Year in which the Participant attains age thirty-five (35). Any new waiver on or after such date shall be subject to the full requirements of this Section.

The election to waive such survivor annuity death benefit must be made in writing in a form acceptable to the Administrator and must include the Participant's designation of a Beneficiary. The designation of a Beneficiary may not be changed unless a new consent is signed by the Participant's spouse.

In the event of such an election, hereunder, any death benefit (otherwise payable in accordance with this Section) shall be paid to the Participant's Beneficiary in a manner selected by the Beneficiary or Participant subject to the provisions of Section 7.7.

(c) The Administrator shall furnish to each Participant, subject to the provisions of this Section 7.8, a written explanation of: (1) the terms and conditions of the survivor annuity death benefit; (2) the Participant's right to make, and the effect of, an election to waive the survivor annuity death benefit, and to revoke such election; and (3) the right of the Participant's spouse to prevent such an election by withholding the necessary consent. Such explanation shall be provided to the Participant within the period beginning on the later of the first day of the Plan Year in which the Participant attains age thirty-two (32) and ending on the last day of the Plan Year preceding the Plan Year in which the Participant attains age thirty-five (35), or within a reasonable period after the Participant commences participation in the Plan, or after the Participant separates from Service if the Participant has not attained age thirty-five (35) at the time of his separation from Service.

For purposes of the preceding paragraph, a "reasonable period" shall mean the end of the two (2)-year period beginning one (1) year prior to the date the applicable event occurs, and ending one (1) year after that date. In the case of a Participant who separates from Service before the Plan Year in which age thirty-five (35) is attained, notice shall be provided within the two (2) year period beginning one (1) year prior to separation and ending one (1) year after separation. If such a Participant thereafter returns to employment with the Employer, the applicable period for such Participant shall be redetermined.

Following the Participant's death, if such death benefit is to be paid to the Participant's surviving spouse in the form of a survivor annuity, the surviving spouse may elect to waive the survivor annuity and receive any optional form of death benefit available under the Plan.

Notwithstanding the foregoing, the provisions of this Section shall not apply if the vested balance of the Participant's Account (excluding any rollover contributions) does not exceed \$5,000).

**7.9 VALUATION OF EMPLOYER STOCK.** The Administrator or Trustee shall ascertain the value of Employer Stock in accordance with applicable Treasury Regulations under Section 4975 of the Code. All valuations relied upon for purposes of any purchase,

exchange or distribution by the Plan of Employer Stock not readily tradable on an established securities market shall be made by an independent appraiser meeting requirements similar to those contained in Treasury Regulations pursuant to Section 170(a)(1) of the Code. The Administrator's records shall reflect the tax cost or adjusted basis of all shares of Employer Stock acquired pursuant to the Plan.

- **7.10 PRIVILEGES OR RESTRICTIONS ON EMPLOYER STOCK; IN GENERAL.** Any shares of Employer Stock contributed to or otherwise acquired by the Trust or distributed to a Participant, former Participant or Beneficiary pursuant to the Plan may be made subject to such lawful rights, privileges or restrictions as the Employer may, from time to time, confer or impose, including, without limitation, a right on the part of the distributee to cause the Employer to purchase the securities or any portion thereof, a right of first refusal in the Employer or the Trust to purchase all or any portion of the securities thereof from the distributee, and restrictions on transfer whether arising under applicable securities laws or otherwise; provided, however, that the Employer shall not confer any such rights or privileges or impose any such restrictions in a manner that discriminates in favor of Participants who are Highly-Compensated Employees. The Employer shall from time to time notify the Administrator and the Trustee of any rights, privileges or restrictions that will be applicable to shares of securities contributed to, acquired by, or distributed from the Trust.
- **7.11 VOTING EMPLOYER STOCK.** Each Participant (or Beneficiary) shall be entitled to direct the Trustee as to the manner in which shares of Employer Stock then allocated to his Account shall be voted on all matters presented for a vote to shareholders. Each Participant (or Beneficiary) who is so entitled shall be provided with a proxy statement and other materials provided to the applicable shareholders in connection with each shareholder meeting, together with a form upon which voting instructions may be given to the Trustee. Any allocated Employer Stock with respect to which voting instructions are not given (by the Participant or Beneficiary) and any shares of Employer Stock which are not then allocated to Participant's Accounts, shall be voted proportionately in the same manner as the shares for which the Trustee receives direction. In the event of a tender offer for Employer Stock, each Participant (or Beneficiary) who is so entitled shall be provided with materials provided to the applicable shareholders in connection with such tender offer, together with a form upon which tender instructions may be given to the Trustee. Any allocated Employer Stock with respect to which tender instructions are not given (by the Participant or Beneficiary) and any shares of Employer Stock which are not then allocated to Participant's Accounts, shall be provided with materials provided to the applicable shareholders in connection with such tender offer, together with a form upon which tender instructions may be given to the Trustee. Any allocated Employer Stock with respect to which tender instructions are not given (by the Participant or Beneficiary) and any shares of Employer Stock which are not then allocated to Participant's Accounts, shall not be tendered.
- 7.12 ELIGIBLE ROLLOVER DISTRIBUTIONS. Notwithstanding the foregoing provisions of this Article Seven, the provisions of this Section 7.12 shall apply to distributions made under the Plan.

- (a) A "distributee" (as hereinafter defined) may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an "eligible rollover distribution" (as hereinafter defined) paid directly to an eligible retirement plan specified by the distributee in a direct rollover.
- (b) Definitions:
  - (i) <u>Eligible Rollover Distribution</u>. An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated Beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; any hardship distribution; and the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).
  - (ii) <u>Eligible Retirement Plan</u>. An eligible retirement plan is 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, a qualified defined contribution plan that meets the requirements of Section 401(a) of the Code and accepts rollovers, an annuity contract described in Section 403(b) of the Code, or an eligible plan under Section 457(b) of the Code which is maintained by a state or political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state which agrees to separately account for amounts transferred into such plan, or any other type of plan that is included within the definition of "eligible retirement plan" under Section 401(a)(31)(E) of the Code.
  - (iii) <u>Distributee</u>. A distribute includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse, and the Employee's or former Employee's spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.
  - (iv) *Direct Rollover*. A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.
- (c) If a distribution is one to which Sections 401(a)(11) and 417 of the Code do not apply, such distribution may commence less than thirty (30) days after the notice

required under Section 1.411(a)-11(c) of the Income Tax Regulations is given, provided that:

- (i) the Administrator clearly informs the Participant that the Participant has a right to a period of at least thirty (30) days after receiving the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular distribution option), and
- (ii) the Participant, after receiving the notice, affirmatively elects a distribution.
- (d) If a distribution is one to which Sections 401(a)(11) and 417 of the Code applies, the distribution may commence less than thirty (30) days, but not less than seven (7) days, after the notice required under Section 1.411(a)-11(c) of the Income Tax Regulations is given, provided that the requirements of paragraphs (c)(i) and (c)(ii) above are satisfied with respect to both the Participant and the Participant's spouse, if applicable.

## ARTICLE EIGHT-LOANS AND IN-SERVICE WITHDRAWALS

### <u>8.1</u> LOANS

- (a) <u>Permissible Amount and Procedures</u>. Upon the application of a Participant, the Administrator may, in accordance with a uniform and nondiscriminatory policy, direct the Trustee to grant a loan to the Participant, which loan shall be secured by the Participant's vested Account balance. The Participant's signature shall be required on a promissory note. In addition, if the Participant is married, and if the Participant is subject to the provisions of Section 7.4, such Participant's spouse shall be required to consent in writing to the making of the loan. Such written consent must (1) be obtained within the ninety (90)-day period preceding the granting of the loan, (2) acknowledge the effect of the loan, and (3) be witnessed by a notary public. Such consent shall thereafter be binding with respect to the consenting spouse or any subsequent spouse with respect to that loan. The rate of interest on loans shall be the prime rate as published in *The Wall Street Journal* plus 1%. Participant loans shall be treated as segregated investments, and interest repayments shall be credited only to the Participant's Account.
- (b) *Limitation on Amount of Loans*. A Participant's loan shall not exceed the lesser of:
  - (1) \$50,000, which amount shall be reduced by the highest outstanding loan balance during the preceding twelve (12)-month period; or
  - (2) one-half (1/2) of the vested value of the Participant's Account, determined as of the Valuation Date preceding the date of the Participant's loan.

Provided, however, that in no event shall any portion of a Participant's loan be derived from amounts transferred directly from a money purchase pension plan, Employer retirement contributions made on behalf of the Participant, or any Employer matching contributions made on behalf of the Participant which are invested in the Employer Stock fund other than by the Participant's investment direction.

Any loan must be repaid within five (5) years, unless made for the purpose of acquiring the primary residence of the Participant, in which case such loan may be repaid over a longer period of time not to exceed fifteen (15) years. The repayment of any loan must be made in at least quarterly installments of principal and interest; provided, however, that this requirement shall not apply for a period, not longer than one year, that a Participant is on a leave of absence ("Leave"), either without pay from the Employer or at a rate of pay (after income and employment tax withholding) that is less than the amount of the installment payments required under the terms of the loan. However, the loan must be repaid by the latest date permitted under Section 72(p)(2)(B) of the Code and the

installments due after the Leave ends (or, if earlier, upon the expiration of the first year of the Leave) must not be less than those required under the terms of the original loan.

If a Participant defaults on any outstanding loan, the unpaid balance, and any interest due thereon, shall become due and payable in accordance with the terms of the underlying promissory note; provided, however, that such foreclosure on the promissory note and attachment of security shall not occur until a distributable event occurs in accordance with the provisions of Article Seven.

If a Participant terminates employment while any loan balance is outstanding, the unpaid balance, and any interest due thereon, shall become due and payable in accordance with the terms of the underlying promissory note. If such amount is not paid to the Plan, it shall be charged against the amounts that are otherwise payable to the Participant or the Participant's Beneficiary under the provisions of the Plan.

In the case of a Participant who has loans outstanding from other plans of the Employer (or a member of the Employer's related group (within the meaning of Section 2.5(b)), the Administrator shall be responsible for reporting to the Trustee the existence of said loans in order to aggregate all such loans within the limits of Section 72(p) of the Code.

**8.2 HARDSHIP DISTRIBUTIONS.** In the case of a financial hardship resulting from a proven immediate and heavy financial need, a Participant may receive a distribution not to exceed the lesser of (i) the vested value of the Participant's Account attributable to his elective deferrals, without regard to earnings thereon after December 31, 1988, any rollover contributions, including earnings thereon, and any after-tax contributions, including earnings thereon, or (ii) the amount necessary to satisfy the financial hardship. The amount of any such immediate and heavy financial need may include any amounts necessary to pay Federal, state or local income taxes reasonably anticipated to result from the distribution. Such distribution shall be made in accordance with nondiscriminatory and objective standards consistently applied by the Administrator.

Hardship distributions under this Section shall be deemed to be the result of an immediate and heavy financial need if such distribution is to (a) pay expenses for medical care (as described in Section 213(d) of the Code) previously incurred by the Participant, the Participant's spouse, or any dependents of the Participant (as defined in Section 152 of the Code), or to permit the Participant, the Participant's spouse, or any dependents of obtain such medical care, (b) purchase the principal residence of the Participant (excluding mortgage payments), (c) pay tuition and related educational fees for the next twelve (12) months of post-secondary education for the Participant, Participant's principal residence. Distributions paid pursuant to this Section shall be deemed to be made as of the Valuation Date immediately preceding the hardship distribution, and the Participant's Account shall be reduced accordingly.

A distribution shall be deemed necessary to satisfy an immediate and heavy financial need of a Participant if all of the following requirements are satisfied:

- (1) The distribution is not in excess of the amount of the immediate and heavy financial need of the Participant;
- (2) The Participant has obtained all distributions, other than hardship distributions (including the distribution of any dividends pursuant to the second paragraph of Section 5.1(c)), and all nontaxable (at the time of the loan) loans currently available under all plans maintained by the Employer;
- (3) The Participant is prohibited, under the terms of the Plan or an otherwise legally enforceable agreement, from making elective deferrals to the Plan and all other plans maintained by the Employer (or reinvesting any dividends in the Plan pursuant to the second paragraph of Section 5.1(c)), for six (6) months after receipt of the hardship distribution. For this purpose the phrase "all other plans maintained by the Employer" means all qualified and nonqualified plans of deferred compensation maintained by the Employer. The phrase also includes a stock option, stock purchase, or similar plan, or a cash or deferred arrangement that is part of a cafeteria plan within the meaning of Section 125 of the Code. However, it does not include the mandatory employee contribution portion of a defined benefit plan. It also does not include a health or welfare benefit plan, including one that is part of a cafeteria plan within the meaning of Section 125 of the Code.

Notwithstanding the foregoing provisions of this Section, if the Participant is married, and if the Participant is subject to the provisions of Section 7.4, the Participant must obtain the written consent of the Participant's spouse, which consent must be notarized.

**8.3** WITHDRAWALS AFTER AGE 59<sup>1</sup>/2. After attaining age fifty-nine and one-half (59<sup>1</sup>/2), a Participant, by giving written notice to the Administrator, may withdraw from the Plan a sum (a) not in excess of the credit balance of his vested Account, excluding, prior to the Participant attaining age seventy and one-half (70<sup>1</sup>/2), any Employer retirement contributions made on his behalf, any Employer matching contributions made on behalf of the Participant which are invested in the Employer Stock fund other than by the Participant's investment direction, and excluding any portion of the Participant's Account subject to the provisions of Section 7.4, and (b) not less than such minimum amount as the Administrator may establish from time to time to facilitate administration of the Plan. Any such withdrawals shall be made in accordance with nondiscriminatory and objective standards consistently applied by the Administrator.

If any portion of the amount to be withdrawn is invested in the Employer Stock fund, the Participant may elect to have such portion distributed in the form of whole shares of Employer Stock, with any fractional shares, and the cash and cash equivalent portions of the underlying stock fund, being distributed in cash.

Notwithstanding the foregoing provisions of this Section, if the Participant is married, and if the Participant is subject to the provisions of Section 7.4, the Participant must obtain the written consent of the Participant's spouse, which consent must be notarized.

**8.4** WITHDRAWALS OF AFTER-TAX CONTRIBUTIONS. A Participant, by giving written notice to the Administrator, may withdraw from the Plan a sum (a) not in excess of the credit balance of the Participant's Account attributable to any after-tax contributions and (b) not less than such minimum amount as the Administrator may establish from time to time to facilitate administration of the Plan. Any such withdrawals shall be made in accordance with nondiscriminatory and objective standards consistently applied by the Administrator.

If any portion of the amount to be withdrawn is invested in the Employer Stock fund, the Participant may elect to have such portion distributed in the form of whole shares of Employer Stock, with any fractional shares, and the cash and cash equivalent portions of the underlying stock fund, being distributed in cash.

Notwithstanding the foregoing provisions of this Section, if the Participant is married, and if the Participant is subject to the provisions of Section 7.4, the Participant must obtain the written consent of the Participant's spouse, which consent must be notarized.

**8.5 WITHDRAWALS OF ROLLOVER CONTRIBUTIONS.** A Participant, by giving written notice to the Administrator, may withdraw from the Plan a sum (a) not in excess of the credit balance of the Participant's Account attributable to any rollover contributions and (b) not less than such minimum amount as the Administrator may establish from time to time to facilitate administration of the Plan. Any such withdrawals shall be made in accordance with nondiscriminatory and objective standards consistently applied by the Administrator.

If any portion of the amount to be withdrawn is invested in the Employer Stock fund, the Participant may elect to have such portion distributed in the form of whole shares of Employer Stock, with any fractional shares, and the cash and cash equivalent portions of the underlying stock fund, being distributed in cash.

Notwithstanding the foregoing provisions of this Section, if the Participant is married, and if the Participant is subject to the provisions of Section 7.4, the Participant must obtain the written consent of the Participant's spouse, which consent must be notarized.

#### **ARTICLE NINE — ADMINISTRATION OF THE PLAN**

**9.1 PLAN ADMINISTRATION.** The Employer shall be the Plan Administrator, hereinbefore and hereinafter called the Administrator, and "named fiduciary" (for purposes of Section 402(a)(1) of the Employee Retirement Income Security Act of 1974, as amended from time to time) of the Plan, unless the Employer, by action of its board of directors, shall designate a person or committee of persons to be the Administrator and named fiduciary. The administration of the Plan, as provided herein, including a determination of the payment of benefits to Participants and their Beneficiaries, shall be the responsibility of the Administrator; provided, however, that the Administrator may delegate any of its powers, authority, duties or responsibilities to any person or committee of persons. The Administrator shall have full discretion to interpret the terms of the Plan, to determine factual questions that arise in the course of administering the Plan, to adopt rules and regulations regarding the administrator believes are necessary and advisable for the administration of the Plan. Any determination made by the Administrator shall be final and binding on all parties subject to the Plan's Claims Procedures under Section 9.2. To the extent that the Administrator delegates any of its duties under this Section 9.1.

In the event more than one party shall act as Administrator, all actions shall be made by majority decisions. In the administration of the Plan, the Administrator may (a) employ agents to carry out nonfiduciary responsibilities (other than Trustee responsibilities), (b) consult with counsel, who may be counsel to the Employer, and (c) provide for the allocation of fiduciary responsibilities (other than Trustee responsibilities) among its members. Actions dealing with fiduciary responsibilities shall be taken in writing and the performance of agents, counsel and fiduciaries to whom fiduciary responsibilities have been delegated shall be reviewed periodically.

The expenses of administering the Plan and the compensation of all employees, agents, or counsel of the Administrator, including accounting fees, recordkeeper's fees, and the fees of any benefit consulting firm, shall be paid by the Plan, or shall be paid by the Employer if, and to the extent, the Employer so elects. To the extent required by applicable law, compensation may not be paid by the Plan to full-time Employees of the Employer.

The Administrator shall obtain from the Trustee, not less often than annually, a report with respect to the value of the assets held in the Trust Fund, in such form as may be required by the Administrator.

The Administrator shall administer the Plan and adopt such rules and regulations as, in the opinion of the Administrator, are necessary or advisable to implement and administer the Plan and to transact its business.

# 9.2 CLAIMS PROCEDURE.

(a) Pursuant to procedures established by the Administrator, claims for benefits under the Plan made by a Participant or Beneficiary (the "claimant") must be submitted in writing to the Administrator. Approved claims shall be processed and instructions issued to the Trustee or custodian authorizing payment as claimed.

If a claim, other than for a Disability claim, is denied in whole or in part, the Administrator shall notify the claimant within ninety (90) days after receipt of the claim (or within one hundred eighty (180) days if special circumstances require an extension of time for processing the claim, and provided written notice indicating the special circumstances and the date by which a final decision is expected to be rendered is given to the claimant within the initial ninety (90) day period).

If a Disability claim is denied in whole or in part, the Administrator shall notify the claimant within forty-five (45) days after receipt of the claim (or within seventy-five (75) days if the Administrator determines that an extension is necessary due to matters beyond the control of the Plan (or one hundred five (105) days if, prior to the end of the seventy-five (75) day period, the Administrator determines that, due to matters beyond the control of the Plan, a decision cannot be rendered within the first extension period), if special circumstances require an extension of time for processing the claim, and provided written notice indicating the special circumstances and the date by which a final decision is expected to be rendered is given to the claimant within the initial forty-five (45) or seventy-five (75) day period, as the case may be). The notice of extension shall specifically explain the standards on which entitlement to a benefit is based, the unresolved issues that prevent a decision on the claim, and the additional information needed to resolve those issues, and the claimant shall be afforded at least forty-five (45) days within which to provide the specified information. In the event that a period of time is extended as permitted pursuant to this paragraph due to a claimant's failure to submit information necessary to decide a claim, the period for making the benefit determination shall be tolled from the date on which the notification of the extension is sent to the claimant until the date on which the claimant responds to the request for additional information.

The notice of the denial of the claim shall be written in a manner calculated to be understood by the claimant and shall set forth the following:

- (i) the specific reason or reasons for the denial of the claim;
- (ii) the specific references to the pertinent Plan provisions on which the denial is based;

- (iii) a description of any additional material or information necessary to perfect the claim, and an explanation of why such material or information is necessary;
- (iv) a statement that any appeal of the denial must be made by giving to the Administrator, within sixty (60) days (or one hundred eighty (180) days in the case of a Disability claim) after receipt of the denial of the claim, written notice of such appeal, such notice to include a full description of the pertinent issues and basis of the claim;
- (v) a description of the Plan's review procedures and the time limits applicable to such procedures, including a statement of the claimant's right to bring a civil action under Section 502(a) of the Employee Retirement Income Security Act of 1974, as amended from time to time, following a denial of a claim on review; and
- (vi) if an internal rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination, either the specific rule, guideline, protocol, or other similar criterion, or a statement that such a rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination and that a copy of such rule, guideline, protocol, or other criterion will be provided free of charge to the claimant upon request.
- (b) Upon denial of a claim in whole or in part, the claimant (or his duly authorized representative) shall have the right to submit a written request to the Administrator for a full and fair review of the denied claim, to be permitted, upon request and free of charge, to review and receive copies of documents, records and other information pertinent to the denial, and to submit issues and comments in writing, documents, records, and other information relating to the claim for benefits. Any appeal of the denial must be given to the Administrator within the period of time prescribed under (a)(iv) above. The appeal of a Disability claim shall be conducted by an appropriate named fiduciary of the Plan, appointed by the Administrator, who is neither the individual who made the adverse benefit determination that is the subject of the appeal, nor the subordinate of such individual (the "Named Fiduciary"). In deciding an appeal on a Disability claim based in whole or in part on medical judgment, the Named Fiduciary shall consult with a health care professional who has appropriate training and experience in the field of medicine involved in the medical judgment, who was not involved with the initial claims determination, and who is not a subordinate of such an individual. The full and fair review shall take into account all comments, documents, records and other information submitted by the claimant relating to the claims, without regard to whether such information was submitted or considered in the initial benefit determination, and provide a review that does not afford deference to the initial benefit determination. In addition, any medical or vocational experts whose advice was obtained on behalf of the Plan in connection

with the claimant's adverse benefit determination, without regard to whether the advice was relied upon in making the determination, will be identified by the Named Fiduciary. If the claimant (or his duly authorized representative) fails to appeal the denial to the Administrator within the prescribed time, the Administrator's adverse determination shall be final, binding and conclusive, to the extent permitted by law.

The Administrator or Named Fiduciary, as the case may be, may hold a hearing or otherwise ascertain such facts as it deems necessary and shall render a decision which shall be binding upon both parties, to the extent permitted by law. The Administrator or Named Fiduciary, as the case may be, shall advise the claimant of the results of the review within sixty (60) days (or forty-five (45) days in the case of a Disability claim) after receipt of the written request for the review, unless special circumstances require an extension of time for processing, in which case a decision shall be rendered as soon as possible but not later than one hundred twenty (120) days, or ninety (90) days in the case of a Disability claim, after receipt of the request for review. If such extension of time is required, written notice of the extension shall be furnished to the claimant prior to the commencement of the extension that indicates the special circumstances requiring the extension of time and the date by which the Plan expects to render the determination on review. In the event that a period of time is extended as permitted pursuant to this paragraph due to a claimant's failure to submit information necessary to decide a claim, the period for making the benefit determination on review shall be tolled from the date on which the notification of the extension is sent to the claimant until the date on which the claimant responds to the request for additional information. The decision of the review shall be written in a manner calculated to be understood by the claimant and shall include:

- (i) specific reasons for the decision;
- (ii) specific references to the pertinent Plan provisions on which the decision is based;
- (iii) a statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits;
- (iv) a statement of the claimant's right to bring an action under Section 502(a) of the Employee Retirement Income Security Act of 1974, as amended from time to time, following a denial of a claim on review; and
- (V) if an internal rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination, either the specific rule, guideline, protocol, or other similar criterion, or a statement that such rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination and that a copy of the rule, guideline,

protocol, or other similar criterion will be provided free of charge to the claimant upon request.

The decision of the Administrator or Named Fiduciary, as the case may be, shall be final, binding and conclusive to the extent permitted by law. In performing the duties under this Section 9.2 of the Plan, the Named Fiduciary shall have the same powers to interpret the Plan and make factual findings with respect thereto as are granted to the Administrator under Section 9.1 of the Plan.

**9.3 TRUST AGREEMENT.** The Trust Agreement entered into by and between the Employer and the Trustee, including any supplements or amendments thereto, or any successor Trust Agreement, is incorporated by reference herein.

#### ARTICLE TEN—SPECIAL COMPLIANCE PROVISIONS

**10.1 DISTRIBUTION OF EXCESS ELECTIVE DEFERRALS.** Notwithstanding any other provision of the Plan, "Excess Elective Deferrals" (as defined below) (and income or loss allocable thereto, including all earnings, expenses and appreciation or depreciation in value, whether or not realized) shall be distributed no later than each April 15 to Participants who claim Excess Elective Deferrals for the preceding calendar year.

"Excess Elective Deferrals" shall mean the amount of Elective Deferrals (as defined below) for a calendar year that the Participant designates to the Plan pursuant to the following procedure. The Participant's designation: shall be submitted to the Administrator in writing no later than March 1; shall specify the Participant's Excess Elective Deferrals for the preceding calendar year; and shall be accompanied by the Participant's written statement that if the Excess Elective Deferrals is not distributed, it will, when added to amounts deferred under other plans or arrangements described in Section 401(k), 408(k) or 403(b) of the Code, exceed the limit imposed on the Participant by Section 402(g) of the Code for the year in which the deferral occurred. Excess Elective Deferrals shall mean those Elective Deferrals that are includible in a Participant's gross income under Section 402(g) of the Code to the extent such Participant's Elective Deferrals for a taxable year exceed the dollar limitation under such Code section.

An Excess Elective Deferral, and the income or loss allocable thereto, may be distributed before the end of the calendar year in which the elective deferrals were made. A Participant who has an Excess Elective Deferral for a taxable year, taking into account only his elective deferrals under the Plan or any other plans of the Employer (including any member of the Employer's related group (within the meaning of Section 2.5(b)), shall be deemed to have designated the entire amount of such Excess Elective Deferral.

For purposes of this Article Ten, "Elective Deferrals" shall mean any Employer contributions made to the Plan at the election of the Participant, in lieu of cash compensation, and shall include contributions made pursuant to a salary deferral reduction agreement or other deferral mechanism. With respect to any taxable year, a Participant's Elective Deferrals is the sum of all Employer contributions made on behalf of such Participant pursuant to an election to defer under any qualified cash or deferred arrangement described in Section 401(k) of the Code, any salary reduction simplified employee pension described in Code Section 408(k)(6), and SIMPLE IRA Plan described in Code Section 408(p), any eligible deferred compensation plan under Code Section 457, any plan described under Code Section 501(c)(18), and any Employer contributions made on behalf of a Participant for the purchase of an annuity contract under Code Section 403(b) pursuant to a salary reduction agreement. Elective Deferrals shall not include any deferrals properly distributed as excess annual additions.

# 10.2 LIMITATIONS ON 401(k) CONTRIBUTIONS.

(a) <u>Actual Deferral Percentage Test ("ADP Test"</u>). Amounts contributed as Elective Deferrals under Section 4.1(a) and, if so elected by the Employer, "Qualified Matching Contributions" (as defined below) and any Fail-Safe Contributions made under this Section, are considered to be amounts deferred pursuant to Section 401(k) of the Code. For purposes of this Section, these amounts are referred to as the "deferred amounts." For purposes of the "actual deferral percentage test" described below, (i) such deferred amounts must be made before the last day of the twelve (12)-month period immediately following the Plan Year to which the contributions relate, and (ii) the deferred amounts relate to Compensation that either (A) would have been received by the Participant in the Plan Year but for the Participant's election to make deferrals, or (B) is attributable to services performed by the Participant in the Plan Year, and, but for the Participant's election to make deferrals, would have been received by the Participant within two and one-half (2<sup>1</sup>/<sub>2</sub>) months after the close of the Plan Year. The Employer shall maintain records sufficient to demonstrate satisfaction of the actual deferral percentage test and the deferred amounts used in such test.

For purposes of this Section, "Qualified Matching Contributions" shall mean matching contributions which are subject to the distribution and nonforfeitability requirements under Section 401(k) of the Code when made.

Any Qualified Matching Contributions and Fail-Safe Contributions treated as Elective Deferrals for purposes of this Section shall be immediately and fully vested when made and shall not be distributable prior to the Participant's separation from service, Disability, or death, the termination of the Plan without establishment or maintenance of a "successor plan" within the meaning of Section 1.401(k)-1(d)(3) of the IRS Treasury Regulations, or the sale or disposition of stock or assets of the Employer. Further, any Qualified Matching Contributions and Fail-Safe Contributions shall satisfy the requirements of Section 401(a)(4) of the Code.

As of the last day of each Plan Year, the deferred amounts for the Participants who are Highly-Compensated Employees for the Plan Year shall satisfy either of the following tests:

- (1) The actual deferral percentage for the eligible Participants who are Highly-Compensated Employees for the Plan Year shall not exceed the actual deferral percentage for eligible Participants who are Nonhighly-Compensated Employees for the Plan Year multiplied by 1.25; or
- (2) The actual deferral percentage for eligible Participants who are Highly-Compensated Employees for the Plan Year shall not exceed the actual deferral percentage of eligible Participants who are Nonhighly-Compensated Employees for the Plan Year multiplied by two (2),

provided that the actual deferral percentage for eligible Participants who are Highly-Compensated Employees for the Plan Year does not exceed the actual deferral percentage for eligible Participants who are Nonhighly-Compensated Employees by more than two (2) percentage points.

For purposes of the above tests, the "actual deferral percentage" shall mean for a specified group of Participants for a Plan Year, the average of the ratios (calculated separately for each Participant in such group) of (1) deferred amounts actually paid over to the Trust on behalf of such Participant for the Plan Year to (2) the Participant's compensation (within the meaning of Section 1.6 of the Plan or Section 415(c)(3) of the Code) for such Plan Year. Deferred amounts on behalf of any Participant shall include (1) any Elective Deferrals made pursuant to the Participant's deferral election (including Excess Elective Deferrals of Highly Compensated Employees), but excluding (a) Excess Elective Deferrals of Nonhighly-Compensated Employees that arise solely from Elective Deferrals made under the Plan or plans of this Employer and (b) Elective Deferrals that are taken into account in the actual contribution percentage test (provided the actual deferral percentage test is satisfied both with and without exclusion of these Elective Deferrals); and (2) Qualified Matching Contributions and Fail-Safe Contributions. For purposes of computing Actual Deferral Percentages, an Employee who would be a Participant but for failure to make Elective Deferrals shall be treated as a Participant on whose behalf no Elective Deferrals are made.

For purposes of this Section 10.2, the actual deferral percentage for any eligible Participant who is a Highly-Compensated Employee for the Plan Year and who is eligible to have Elective Deferrals allocated to his account under two (2) or more plans or arrangements described in Code Section 401(k) that are maintained by the Employer or any employer who is a related group member (within the meaning of Section 2.5(b)) shall be determined as if all such deferrals were made under a single arrangement. In the event that this Plan satisfies the requirements of Code Section 401(k), 401(a)(4) or 410(b) only if aggregated with one (1) or more other plans, or if one (1) or more other plans satisfy the requirements of such Sections of the Code only if aggregated with this Plan, then the provisions of this Section 10.2 shall be applied by determining the actual deferral percentage of eligible Participants as if all such plans were a single plan. Plans may be aggregated in order to satisfy Section 401(k) of the Code only if they have the same Plan Year and use the same actual deferral percentage testing method.

The determination and treatment of deferred amounts and the actual deferral percentage of any Participant shall be subject to the prescribed requirements of the Secretary of the Treasury.

In the event the actual deferral percentage test is not satisfied for a Plan Year, the Employer, in its discretion, may make a Fail-Safe Contribution for eligible Participants who are Nonhighly-Compensated Employees and who are employed on the last day of the Plan Year ("Eligible Nonhighly-Compensated Employees and who are employed on the last day of the Plan Year ("Eligible Nonhighly-Compensated Employees and who are employed on the last day of the Plan Year ("Eligible Nonhighly-Compensated Employees and who are employed on the last day of the Plan Year ("Eligible Nonhighly-Compensated Employees and who are employed on the last day of the Plan Year ("Eligible Nonhighly-Compensated Employees and who are employed on the last day of the Plan Year ("Eligible Nonhighly-Compensated Employees and who are employees are employees and who are employees are employees are employees and who are employees are employees are employees are employees are employeed on the last day of the Plan Year ("Eligible Nonhighly-Compensated") are employees are employeed on the last day of the Plan Year ("Eligible Nonhighly-Compensated") are employees are employeed on the last day of the Plan Year ("Eligible Nonhighly-Compensated") are employees are employeed on the last day of the Plan Year ("Eligible Nonhighly-Compensated") are employees are employeed on the last day of the Plan Year ("Eligible Nonhighly-Compensated") are employees are employees are employeed on the last day of the Plan Year ("Eligible Nonhighly-Compensated") are employees are employees are employeed on the last day of the Plan Year ("Eligible Nonhighly-Compensated") are employees are empl

Employee(s)"). The Fail-Safe Contribution shall be allocated first to the Eligible Nonhighly-Compensated Employee whose compensation is the lowest of all Eligible Nonhighly-Compensated Employees in an amount that does not exceed twenty-five percent (25%) of his compensation (within the meaning of Section 11.1) reduced by any contributions made on his behalf for the Plan Year pursuant to Sections 4.1 and 4.2; then to the Eligible Nonhighly-Compensated Employee with the second lowest compensation of all Eligible Nonhighly-Compensated Employees in the same manner as set forth above, and continuing to be allocated to Eligible Nonhighly-Compensated Employees in the order of ascending compensation until the actual deferral percentage test is satisfied. For purposes of this paragraph, "compensation," unless specified otherwise, shall mean compensation used for the actual deferral percentage test.

- (b) **Distributions of Excess Contributions**.
  - (1) In General. If the actual deferral percentage test of Section 10.2(a) is not satisfied for a Plan Year, then the "excess contributions", and income allocable thereto, shall be distributed, to the extent required under Treasury regulations, no later than the last day of the Plan Year following the Plan Year for which the excess contributions were made. However, if such excess contributions are distributed later than two and one-half (2<sup>1</sup>/<sub>2</sub>) months following the last day of the Plan Year in which such excess contributions were made, a ten percent (10%) excise tax shall be imposed upon the Employer with respect to such excess contributions.
  - (2) <u>Excess Contributions</u>. For purposes of this Section, "excess contributions" shall consist of the excess of the aggregate amount of deferred amounts made by or on behalf of the Highly- Compensated Employees for such Plan Year over the maximum amount of all such contributions permitted under the test under Section 10.2(a), determined by reducing the actual deferral percentage of the Highly-Compensated Employees taken into account in calculating the actual deferral percentage test for the year in which the excess arose, beginning with the Highly-Compensated Employee with the highest actual deferral percentage and continuing in descending order until the test under Section 10.2(a) is satisfied. In order to comply with Section 401(k)(8)(C) of the Code (as amended by the Small Business Job Protection Act of 1996), excess contributions shall be allocated to the Highly-Compensated Employees with the largest dollar amounts of contributions taken into account in calculating the actual deferral percentage test arose, beginning with the Highly-Compensated Employee test for the year in which the excess arose, beginning the actual deferral percentage test for the year state dollar amounts of contributions taken into account in calculating the actual deferral percentage test for the year in which the excess contributions taken into account in calculating the actual deferral percentage test for the year in which the excess contributions have been allocated.
  - (3) <u>Determination of Income</u>. The income allocable to excess contributions allocated to each Participant shall be determined by multiplying the

income allocable to the Participant's deferred amounts for the Plan Year by a fraction, the numerator of which is the excess contributions made on behalf of the Participant for the Plan Year, and the denominator of which is the sum of the Participant's Account balances attributable to the Participant's deferred amounts on the last day of the Plan Year.

- (4) <u>Maximum Distributable Amount</u>. The excess contributions to be distributed to a Participant shall be adjusted for income and, if there is a loss allocable to the excess contribution, shall in no event be less than the lesser of the Participant's Account under the Plan or the Participant's deferred amounts for the Plan Year. Excess contributions shall be distributed from that portion of the Participant's Account attributable to such deferred amounts to the extent allowable under Treasury regulations.
- (c) <u>ADP Test Safe Harbor Rules</u>. The actual deferral percentage test (as set forth in subsection (a) above) shall be deemed to have been met for the Plan Year in which the Plan satisfies both the notice requirement and the contribution requirement described below. The safe-harbor contribution requirement must be satisfied without regard to Section 401(l) of the Code. Further, the safe-harbor contribution requirement shall be satisfied for a Plan Year if the Plan satisfies the matching contribution requirement of subsection (ii) below. Under the matching contribution requirement, the enhanced match shall be made on behalf of each Participant.
  - (i) Notice Requirement At least thirty (30) days, and no more than ninety (90) days, prior to the beginning of each Plan Year, the Plan Administrator shall provide each Employee eligible to participate in the Plan with notice in writing in a manner calculated to be understood by the average eligible Employee, or through an electronic medium reasonably accessible to such Employee, of the contribution requirement described below, any other contributions under the Plan, and the conditions under which such contributions are made, the type and amount of Compensation that may be deferred under the Plan, the procedures for making salary deferrals and the administrative and timing requirements that apply, the periods available under the Plan for making cash or deferred elections, the plan to which safe-harbor contributions will be made (if different than the Plan containing the cash or deferred arrangement), and the withdrawal and vesting provisions applicable to contributions under the Plan. With respect to the election periods referenced in the preceding sentence, an eligible Employee may make and/or modify his elective deferral election on a daily basis; provided, however, that an eligible Employee may make or modify a deferral election during the thirty (30)-day period immediately following receipt of the notice requirement. During the ninety (90) day period ending with the day an Employee becomes eligible to participate in the Plan, the same notice shall be provided to that Employee. Notwithstanding the foregoing, the notice shall satisfy both the content requirement and timing requirement of IRS Notice 98-52 and IRS Notice 2000-3, and any subsequent guidance issued by the IRS, or any regulations issued under Section 401(k)(12) of the Code.

## (ii) Safe-Harbor Basic Matching Contribution - The Employer shall make a basic matching

contribution on behalf of each Employee participating in the Plan in an amount equal to:

- (A) one hundred percent (100%) of the sum of elective deferrals and after-tax contributions of such Participant, to the extent such elective deferrals and after-tax contributions do not exceed three percent (3%) of the Participant's Compensation, and
- (B) fifty percent (50%) of the sum of elective deferrals and after-tax contributions of such Participant to the extent that such elective deferrals and after-tax contributions exceed three percent (3%), but do not exceed six percent (6%), of the Participant's Compensation.

## 10.3 NONDISCRIMINATION TEST FOR EMPLOYER MATCHING CONTRIBUTIONS AND AFTER-TAX CONTRIBUTIONS.

(a) <u>Actual Contribution Percentage Test ("ACP Test"</u>). The provisions of this Section shall apply if Employer matching contributions are made in any Plan Year under Section 4.2(a) and such matching contributions are not used to satisfy the actual deferral percentage test of Section 10.2 and/or in the event Employee after-tax contributions are made to the Plan under Section 4.5. Any Employee after-tax contributions that are used to satisfy the actual contribution percentage test shall satisfy the requirements of Section 1.401(m)-1(b)(5) of the IRS Treasury Regulations.

As of the last day of each Plan Year, the average contribution percentage for Highly-Compensated Employees for the Plan Year shall satisfy either of the following tests:

- (1) The average contribution percentage for eligible Participants who are Highly-Compensated Employees for the Plan Year shall not exceed the average contribution percentage for eligible Participants who are Nonhighly-Compensated Employees for the Plan Year multiplied by 1.25; or
- (2) The average contribution percentage for eligible Participants who are Highly-Compensated Employees for the Plan Year shall not exceed the average contribution percentage for eligible Participants who are Nonhighly-Compensated Employees for the Plan Year multiplied by two (2), provided that the average contribution percentage for eligible Participants who are Highly-Compensated Employees for the Plan Year does not exceed the average contribution percentage for eligible

Participants who are Nonhighly-Compensated Employees by more than two (2) percentage points.

For purposes of the above tests, the "average contribution percentage" shall mean the average (expressed as a percentage) of the contribution percentages of the "eligible Participants" in each group. The "contribution percentage" shall mean the ratio (expressed as a percentage) that the sum of Employer matching contributions, and, if applicable, Employee after-tax contributions, and elective deferrals (to the extent such elective deferrals are not used to satisfy the actual deferral percentage test of Section 10.2) under the Plan on behalf of the eligible Participant for the Plan Year bears to the eligible Participant's compensation (within the meaning of Section 1.6 of the Plan or Section 415(c)(3) of the Code) for the Plan Year. Such average contribution percentage shall be determined without regard to matching contributions that are used either to correct excess contributions hereunder or because contributions to which they relate are excess deferrals under Section 10.1 or excess contributions under Section 10.2. "Eligible Participant" shall mean each Employee who is eligible to receive Employer matching contributions or make after-tax contributions.

For purposes of this Section 10.3, the contribution percentage for any eligible Participant who is a Highly-Compensated Employee for the Plan Year and who is eligible to have Employer matching contributions, elective deferrals and/or after-tax contributions allocated to his account under two (2) or more plans described in Section 401(a) of the Code or under arrangements described in Section 401(k) of the Code that are maintained by the Employer or any member of the Employer's related group (within the meaning of Section 2.5(b)), shall be determined as if all such contributions were made under a single plan.

In the event that this Plan satisfies the requirements of Section 401(m), 401(a)(4) or 410(b) of the Code only if aggregated with one (1) or more other plans, or if one (1) or more other plans satisfy the requirements of such Sections of the Code only if aggregated with this Plan, then the provisions of this Section 10.3 shall be applied by determining the contribution percentages of eligible Participants as if all such plans were a single plan. Plans may be aggregated in order to satisfy Section 401(m) of the Code only if they have the same Plan Year and use the same actual contribution percentage testing method.

The determination and treatment of the contribution percentage of any Participant shall satisfy such other requirements as may be prescribed by the Secretary of the Treasury.

# (b) <u>Distribution of Excess Employer Matching Contributions</u>.

(1) In General. If the nondiscrimination tests of Section 10.3(a) are not satisfied for a Plan Year, then the "excess aggregate contributions", and

any income allocable thereto, shall be forfeited, if otherwise forfeitable, no later than the last day of the Plan Year following the Plan Year for which the nondiscrimination tests are not satisfied, and shall be used either to reduce Employer contributions under Section 4.2(a) or to pay administrative expenses of the Plan. To the extent that such "excess aggregate contributions" are nonforfeitable, such excess contributions shall be distributed to the Participant on whose behalf the excess contributions were made no later than the last day of the Plan Year following the Plan Year for which such "excess aggregate contributions" were made. However, if such excess aggregate contributions are distributed later than two and one-half (2<sup>1</sup>/<sub>2</sub>) months following the last day of the Plan Year in which such excess aggregate contributions were made, a ten percent (10%) excise tax shall be imposed upon the Employer with respect to such excess aggregate contributions. For purposes of the limitations of Section 11.1(b)(1) of the Plan, excess aggregate contributions shall be considered annual additions.

- (2) Excess Aggregate Contributions. For purposes of this Section, "excess aggregate contributions" shall consist of the excess of the amount of Employer matching contributions and, if applicable, Employee after-tax contributions, and elective deferrals (to the extent not used to satisfy the actual deferral percentage test of Section 10.2) made on behalf of the Highly-Compensated Employees for such Plan Year over the maximum amount of all such contributions permitted under the nondiscrimination tests under Section 10.3(a), determined by reducing the actual contribution percentage of the Highly-Compensated Employees taken into account in calculating the actual contribution percentage and continuing in descending order until the test under Section 10.3(a) is satisfied. In order to comply with Section 401(m)(6)(C) of the Code (as amended by the Small Business Job Protection Act of 1996), excess contributions shall be allocated to the Highly-Compensated Employee with the largest dollar amount of Employer matching contributions and, if applicable, Employee after-tax contributions, and elective deferrals (to the extent not used to satisfy the actual deferral percentage test of Section 10.2) taken into account in calculating the average contribution percentage test for the year in which the excess arose, beginning with the Highly-Compensated Employee after-tax contributions, and elective deferrals (to the extent not used to satisfy the actual deferral percentage test of Section 10.2) taken into account in calculating the average contribution percentage test for the year in which the excess arose, beginning with the Highly-Compensated Employee with the largest dollar amount of Employer matching contributions and, if applicable, Employee after-tax contributions, and elective deferrals (to the extent not used to satisfy the actual deferral percentage test of Section 10.2) and continuing in descending order until all the excess aggregate contributions have been allocated.
  - (3) <u>Determination of Income</u>. The income allocable to excess contributions allocated to each Participant shall be determined by

multiplying the income allocable to the Employer matching contributions and, if applicable, Employee after-tax contributions, and such elective deferrals (to the extent not used to satisfy the actual deferral percentage test of Section 10.2) by a fraction, the numerator of which is the excess aggregate contributions on behalf of the Participant for the Plan Year, and the denominator of which is the sum of the Participant's Account balances attributable to Employer matching contributions and, if applicable, Employee after-tax contributions, and such elective deferrals (to the extent not used to satisfy the actual deferral percentage test of Section 10.2), on the last day of the Plan Year.

Notwithstanding the foregoing, to the extent otherwise required to comply with the requirements of Section 401(a)(4) of the Code and the regulations thereunder, vested matching contributions may be forfeited.

(c) <u>ACP Test Safe Harbor Rules</u>. The average contribution percentage test (as set forth in subsection (a) above) shall be deemed to have been met for the Plan Year in which the Plan satisfies both the notice and contribution requirements of Section 10.2(c). Provided, however, that in the event matching contributions are made to the Plan: (i) matching contributions are not made with respect to elective deferrals or after-tax contributions that in the aggregate exceed six percent (6%) of the Participant's Compensation; (ii) the rate of matching contributions for Highly-Compensated Employees is not greater than the rate of matching contributions for Nonhighly-Compensated Employees at any rate of elective deferrals and/or after-tax contributions. In addition, the Employer shall be permitted to impose restrictions on election periods, amount of elective deferrals, types of compensation that may be deferred, and restrictions due to limitations under the Code only to the extent permitted under IRS Notice 98-52, IRS Notice 2000-3 and any subsequent guidance or regulations issued by the Internal Revenue Service.

The Plan automatically satisfies the average contribution percentage test if the Plan utilizes the safe-harbor enhanced matching contribution formula under Section 10.2(c) under which matching contributions are only made with respect to elective deferral contributions that do not exceed six percent (6%) of the Participant's Compensation, and no other matching contributions are provided under the Plan.

The average contribution percentage test shall apply with respect to matching contributions under the Plan that fail to satisfy the ACP test safeharbor and with respect to after-tax contributions.

Matching contributions shall be taken into account for a Plan Year under the average contribution percentage test safe-harbor provided such matching contributions are allocated to the Participant's account under the terms of the Plan

as of any date within the Plan Year, are actually paid to the Trust no later than twelve (12) months after the close of the Plan Year, and are made on behalf of a Participant on account of the Participant's elective deferrals or after-tax contributions for the Plan Year.

#### ARTICLE ELEVEN—LIMITATION ON ANNUAL ADDITIONS

## **11.1** RULES AND DEFINITIONS.

- (a) <u>Rules</u>. The following rules shall limit additions to Participants' Accounts:
  - (1) If the Participant does not participate, and has never participated, in another qualified plan maintained by the Employer, the amount of annual additions which may be credited to the Participant's Account for any limitation year shall not exceed the lesser of the "maximum permissible" amount (as hereafter defined) or any other limitation contained in this Plan. If the Employer contribution that would otherwise be allocated to the Participant's Account would cause the annual additions for the limitation year to exceed the maximum permissible amount, the amount allocated shall be reduced so that the annual additions for the limitation year shall equal the maximum permissible amount.
  - (2) Prior to determining the Participant's actual compensation for the limitation year, the Employer may determine the maximum permissible amount for a Participant on the basis of a reasonable estimation of the Participant's compensation for the limitation year, uniformly determined for all Participants similarly situated.
  - (3) As soon as is administratively feasible after the end of the limitation year, the maximum permissible amount for the limitation year shall be determined on the basis of the Participant's actual compensation for the limitation year.
  - (4) If, as a result of the allocation of forfeitures, a reasonable error in estimating a Participant's annual Compensation, a reasonable error in determining elective deferrals, the limitations of Section 415 of the Code are exceeded, such excess amount shall be disposed of as follows:
    - (A) Any nondeductible Employee after-tax contributions (plus attributable earnings) and, to the extent elected by the Administrator pursuant to a nondiscriminatory procedure, elective deferrals under Section 4.1(a) (plus attributable earnings), to the extent they would reduce the excess amount, shall be returned to the Participant.
    - (B) If an excess amount still exists after the application of subparagraph (A), and the Participant is covered by the Plan at the end of the limitation year, the excess amount in the Participant's Account shall be used to reduce Employer contributions (including any allocation of forfeitures, if applicable) for such Participant

in the next limitation year, and each succeeding limitation year if necessary.

- (C) If an excess amount still exists after the application of subparagraph (A), and the Participant is not covered by the Plan at the end of the limitation year, the excess amount shall be held unallocated in a suspense account and applied to reduce future Employer contributions (including allocation of any forfeitures) for all remaining Participants in the next limitation year, and each succeeding limitation year if necessary. Excess amounts may not be distributed to Participants or former Participants.
- (D) If a suspense account is in existence at any time during the limitation year pursuant to this Section 11.1(a)(4), it shall not participate in the allocation of the Trust's investment gains and losses. In addition, all amounts held in the suspense account shall be allocated and reallocated to Participants' Accounts before any Employee or Employee contributions may be made for the limitation year.
- (5) If, in addition to this Plan, the Participant is covered under another defined contribution plan maintained by the Employer, or a welfare benefit fund, as defined in Code Section 419(e), maintained by the Employer, or an individual medical account, as defined in Code Section 415(1)(2), maintained by the Employer which provides an annual addition, the annual additions which may be credited to a Participant's account under all such plans for any such limitation year shall not exceed the maximum permissible amount. Benefits shall be reduced under any discretionary defined contribution plan before they are reduced under any defined contribution plans. If both plans are discretionary contribution plans, they shall first be reduced under this Plan. Any excess amount attributable to this Plan shall be disposed of in the manner described in Section 11.1(a)(4).
- (b) <u>Definitions</u>.
  - (1) <u>Annual additions</u>: The following amounts credited to a Participant's Account for the limitation year shall be treated as annual additions:
    - (A) Employer contributions;
    - (B) Elective deferrals;
    - (C) Employee after-tax contributions, if any;
    - (D) Forfeitures, if any; and

(E) Amounts allocated after March 31, 1984 to an individual medical account, as defined in Section 415(1)(2) of the Code, which is part of a pension or annuity plan maintained by the Employer. Also, amounts derived from contributions paid or accrued after December 31, 1985 in taxable years ending after such date which are attributable to post-retirement medical benefits allocated to the separate account of a Key Employee, as defined in Section 419A(d)(3), and amounts under a welfare benefit fund, as defined in Section 419(e), maintained by the Employer, shall be treated as annual additions to a defined contribution plan.

Employer and employee contributions taken into account as annual additions shall include "excess contributions" as defined in Section 401(k)(8) (B) of the Code, "excess aggregate contributions" as defined in Section 401(m)(6)(B) of the Code, and "excess deferrals" as defined in Section 402(g) of the Code, regardless of whether such amounts are distributed, recharacterized or forfeited, unless such amounts constitute excess deferrals that were distributed to the Participant no later than April 15 of the taxable year following the taxable year of the Participant in which such deferrals were made.

For this purpose, any excess amount applied under Section 11.1(a)(4) in the limitation year to reduce Employer contributions shall be considered annual additions for such limitation year.

- (2) <u>Compensation</u>: For purposes of determining maximum permitted benefits under this Section, compensation shall include all of a Participant's earned income, wages, salaries, and fees for professional services, and other amounts received for personal services actually rendered in the course of employment with the Employer, including, but not limited to, commissions paid to salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips and bonuses, and including also any elective deferrals (as defined in Section 402(g)(3) of the Code) made by an Employee to the Plan and any amount contributed or deferred by an Employee on an elective basis and not includable in the gross income of the Employee under Section 125 of the Code or Section 132(f) of the Code. Notwithstanding the foregoing, Compensation for purposes of this Section shall exclude the following:
  - (A) Except as provided in the preceding paragraph of this Section 11.1(b)(2), Employer contributions to a plan of deferred compensation which are not included in the Employee's gross income for the taxable year in which contributed, or Employer contributions under a simplified employee pension plan (funded with individual retirement accounts or annuities) to the extent such

contributions are deductible by the Employee, or any distributions from a plan of deferred compensation;

- (B) Amounts realized from the exercise of a nonqualified stock option, or when restricted stock (or property) held by the 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 qualified stock option; and
- (D) Other amounts which received special tax benefits, or contributions made by the Employer (whether or not under a salary reduction agreement) toward the purchase of an annuity described in Section 403(b) of the Code (whether or not the amounts are actually excludable from the gross income of the Employee).

Compensation shall be measured on the basis of compensation paid in the limitation year.

- (3) <u>Defined contribution dollar limitation</u>: This shall mean \$40,000, as adjusted under Section 415(d) of the Code.
- (4) <u>Employer</u>: This term refers to the Employer that adopts this Plan, and all members of a controlled group of corporations (as defined in Section 414(b) of the Code, as modified by Section 415(h)), commonly-controlled trades or businesses (as defined in Section 414(c), as modified by Section 415(h)), or affiliated service groups (as defined in Section 414(m)) of which the Employer is a part, or any other entity required to be aggregated with the Employer under Code Section 414(o).
- (5) <u>Limitation year</u>: This shall mean the Plan Year, unless the Employer elects a different twelve (12) consecutive month period. The election shall be made by the adoption of a Plan amendment by the Employer. If the limitation year is amended to a different twelve (12) consecutive month period, the new limitation year must begin on a date within the limitation year in which the amendment is made.
- (6) <u>Maximum permissible amount</u>: Except to the extent permitted under Section 4.1(e) of the Plan and Section 414(v) of the Code, this shall mean an mount equal to the lesser of the defined contribution dollar limitation or one hundred percent (100%) of the Participant's compensation for the limitation year. If a short limitation year is created because of an amendment changing the limitation year to a different twelve (12)-consecutive month period, the maximum permissible amount shall not

exceed the defined contribution dollar limitation, multiplied by the following fraction:

Number of months in the short limitation year

12

#### ARTICLE TWELVE—AMENDMENT AND TERMINATION

- **12.1 AMENDMENT.**The Employer, by resolution of its board of directors, (or, to the extent permitted by resolution of such board of directors, by action of a duly authorized officer of the Employer) shall have the right to amend, alter or modify the Plan at any time, or from time to time, in whole or in part. Any such amendment shall become effective under its terms upon adoption by the Employer. However, no amendment affecting the duties, powers or responsibilities of the Trustee may be made without the written consent of the Trustee. No amendment shall be made to the Plan which shall:
  - (a) make it possible (other than as provided in Section 14.3) for any part of the corpus or income of the Trust Fund (other than such part as may be required to pay taxes and administrative expenses) to be used for or diverted to purposes other than the exclusive benefit of the Participants or their Beneficiaries;
  - (b) decrease a Participant's account balance or eliminate an optional form of payment (unless permitted by applicable law) with respect to benefits accrued as of the later of (i) the date such amendment is adopted, or (ii) the date the amendment becomes effective; or
  - (c) alter the schedule for vesting in a Participant's Account with respect to any Participant with three (3) or more Years of Service for vesting purposes without his consent or deprive any Participant of any nonforfeitable portion of his Account.

Notwithstanding the other provisions of this Section or any other provisions of the Plan, any amendment or modification of the Plan may be made retroactively if necessary or appropriate within the remedial amendment period to conform to or to satisfy the conditions of any law, governmental regulation, or ruling, and to meet the requirements of the Employee Retirement Income Security Act of 1974, as it may be amended.

**12.2 TERMINATION OF THE PLAN.** The Employer, by resolution of its board of directors, reserves the right at any time and in its sole discretion to discontinue payments under the Plan and to terminate the Plan. In the event the Plan is terminated, or upon complete discontinuance of contributions under the Plan by the Employer, the rights of each Participant to his Account on the date of such termination or discontinuance of contributions, to the extent of the fair market value under the Trust Fund, shall become fully vested and nonforfeitable. The Employer shall direct the Trustee to distribute the Trust Fund in accordance with the Plan's distribution provisions to the Participants and their Beneficiaries, each Participant or Beneficiary receiving a portion of the Trust Fund equal to the value of his Account as of the date of distribution. Upon distribution of the Trust Fund, the Trustee shall be discharged from all obligations under the Trust and no Participant or Beneficiary shall have any further right or claim therein. In the event of the partial termination of the Plan, the Accounts of all affected Participants shall become

fully vested and nonforfeitable and the provisions of the preceding paragraph shall apply with respect to such Participants' Accounts.

In the event of the termination of the Plan, any amounts to be distributed to Participants or Beneficiaries who cannot be located shall be handled in accordance with the provisions of applicable law (which may include the establishment of an account for such Participant or Beneficiary).

### ARTICLE THIRTEEN—TOP-HEAVY PROVISIONS

- **13.1 APPLICABILITY.** The provisions of this Article shall become applicable only for any Plan Year in which the Plan is a Top-Heavy Plan (as defined in Section 13.2(c)). The determination of whether the Plan is a Top-Heavy Plan shall be made each Plan Year by the Administrator.
- 13.2 DEFINITIONS. For purposes of this Article, the following definitions shall apply:
  - (a) 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 (limited to no more than 50 Employees or, if lesser, the greater of 3 Employees or 10% of the Employees) 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. Key Employee shall also include such Employee's Beneficiary in the event of his death. The determination of who is a Key Employee shall be made in accordance with Section 416(i)(1) of the Code and the applicable regulations and other guidance of general applicability issued thereunder.

### (b) **"Top-Heavy Plan":**

- (1) The Plan shall constitute a "Top-Heavy Plan" if any of the following conditions exist:
  - (A) The top-heavy ratio for the Plan exceeds sixty percent (60%) and the Plan is not part of any required aggregation group or permissive aggregation group of plans; or
  - (B) The Plan is part of a required aggregation group of plans (but is not part of a permissive aggregation group) and the top-heavy ratio for the group of plans exceeds sixty percent (60%); or
  - (C) The Plan is a part of a required aggregation group of plans and part of a permissive aggregation group and the top-heavy ratio for the permissive aggregation group exceeds sixty percent (60%).
- (2) If the Employer maintains one (1) or more defined contribution plans (including any simplified employee pension plan funded with individual retirement accounts or annuities) and the Employer maintains or has

maintained one (1) or more defined benefit plans which have covered or could cover a Participant in this Plan, the top-heavy ratio is a fraction, the numerator of which is the sum of account balances under the defined contribution plans for all Key Employees and the actuarial equivalents of accrued benefits under the defined benefit plans for all Key Employees, and the denominator of which is the sum of the account balances under the defined contribution plans for all Participants and the actuarial equivalents of accrued benefits under the defined benefit plans for all Participants. Both the numerator and denominator of the top-heavy ratio shall include any distribution of an account balance or an accrued benefit made in the one (1)-year period ending on the determination date and any contribution due to a defined contribution pension plan but unpaid as of the determination date. In the case of a distribution made for reason other than separation from Service, death or Disability, the preceding sentence shall be applied by substituting a "five (5)-year period" for a "one (1)-year period". In determining the accrued benefit shall be either (i) in accordance with the method, if any, that uniformly applies for accrual purposes under all plans maintained by the Employer or any member of the Employer's related group (within the meaning of Section 2.5(b)), or (ii) if there is no such method, as if such benefit accrued not more rapidly than the slowest accrual rate permitted under the fractional accrual rate of Code Section 411(b)(1)(C).

- (3) For purposes of (1) and (2) above, the value of account balances and the actuarial equivalents of accrued benefits shall be determined as of the most recent Valuation Date that falls within or ends with the twelve (12)-month period ending on the determination date. The account balances and accrued benefits of a Participant who is not a Key Employee but who was a Key Employee in a prior year shall be disregarded. The accrued benefits and account balances of Participants who have not performed services for the Employer for the one (1)-year period ending on the determination date shall be disregarded. The calculations of the top-heavy ratio, and the extent to which distributions, rollovers, and transfers are taken into account shall be made under Section 416 of the Code and regulations issued thereunder. Deductible Employee contributions shall not be taken into account for purposes of computing the top-heavy ratio. When aggregating plans, the value of account balances and accrued benefits shall be calculated with reference to the determination dates that fall within the same calendar year.
- (4) <u>Definition of terms for Top-Heavy status</u>:
  - (A) "Top-heavy ratio" shall mean the following:

- (1) If the Employer maintains one or more defined contribution plans (including any simplified employee pension plan funded with individual retirement accounts or annuities) and the Employer has never maintained any defined benefit plans which have covered or could cover a Participant in this Plan, 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 (including any part of any account balance distributed in the one (1)-year period ending on the determination date), and the denominator of which is the sum of the account balances (including any part of any account balance distributed in the one (1)-year period ending on the determination date. In the case of a distribution made for reason other than separation from Service, death or Disability, the provisions of this paragraph shall be applied by substituting a "five (5)-year period" for a "one (1)-year period". Both the numerator and the denominator shall be increased by any contributions due but unpaid to a defined contribution pension plan as of the determination date.
- (B) "Permissive aggregation group" shall mean the required aggregation group of plans plus any other plan or plans of the Employer which, when considered as a group with the required aggregation group, would continue to satisfy the requirements of Sections 401(a) (4) and 410 of the Code.
- (C) **"Required aggregation group"** shall mean (i) each qualified plan of the Employer (including any terminated plan) in which at least one Key Employee participates, and (ii) any other qualified plan of the Employer which enables a plan described in (i) to meet the requirements of Section 401(a)(4) or 410 of the Code.
- (D) **"Determination date"** shall mean, for any Plan Year subsequent to the first Plan Year, the last day of the preceding Plan Year. For the first Plan Year of the Plan, "determination date" shall mean the last day of that Plan Year.
- (E) "Valuation Date" shall mean the last day of the Plan Year.
- (F) Actuarial equivalence shall be based on the interest and mortality rates utilized to determine actuarial equivalence when benefits are paid from any defined benefit plan. If no rates are specified in said plan, the following shall be utilized: pre- and post-retirement interest five percent (5%); post-retirement mortality based on the

Unisex Pension (1984) Table as used by the Pension Benefit Guaranty Corporation on the date of execution hereof.

### 13.3 ALLOCATION OF EMPLOYER CONTRIBUTIONS AND FORFEITURES FOR A TOP-HEAVY PLAN YEAR.

- (a) Except as otherwise provided below, in any Plan Year in which the Plan is a Top-Heavy Plan, the Employer contributions and forfeitures allocated on behalf of any Participant who is a non-Key Employee shall not be less than the lesser of three percent (3%) of such Participant's compensation (as defined in Section 11.1(b)(2) and as limited by Section 401(a)(17) of the Code) or the largest percentage of Employer contributions, elective deferrals, and forfeitures as a percentage of the Key Employee's compensation (as defined in Section 11.1(b)(2) and as limited by Section 401(a)(17) of the Code) or the largest percentage of Employer contributions, elective deferrals, and forfeitures as a percentage of the Key Employee's compensation (as defined in Section 11.1(b)(2) and as limited by Section 401(a) (17) of the Code), allocated on behalf of any Key Employee for that Plan Year. This minimum allocation shall be made even though, under other Plan provisions, the Participant would not otherwise be entitled to receive an allocation or would have received a lesser allocation for the Plan Year because of insufficient Employer contributions under Section 4.2, or the Participant's failure to make elective deferrals under Section 4.1.
- (b) The minimum allocation under this Section shall not apply to any Participant who was not employed by the Employer on the last day of the Plan Year.
- (c) Employer matching contributions may be taken into account for the purpose of satisfying the minimum allocation. Elective deferrals, however, may not be used for such purpose.
- (d) For purposes of the Plan, a non-Key Employee shall be any Employee or Beneficiary of such Employee, any former Employee, or Beneficiary of such former Employee, who is not or was not a Key Employee during the Plan Year ending on the determination date.
- (e) If no defined benefit plan has ever been part of a permissive or required aggregation group of plans of the Employer, the contributions and forfeitures under this step shall be offset by any allocation of contributions and forfeitures under any other defined contribution plan of the Employer with a Plan Year ending in the same calendar year as this Plan's Valuation Date.
- (f) There shall be no duplication of the minimum benefits required under Code Section 416. Benefits shall be provided under defined contribution plans before under defined benefit plans. If a defined benefit plan (active or terminated) is part of the permissive or required aggregation group of plans, the allocation method of subparagraph (a) above shall apply, except that "3%" shall be increased to "5%."

**13.4 VESTING.** The provisions contained in Section 6.1 relating to vesting shall continue to apply in any Plan Year in which the Plan is a Top-Heavy Plan, and apply to all benefits within the meaning of Section 411(a)(7) of the Code except those attributable to Employee contributions and elective deferrals under Section 4.1, including benefits accrued before the effective date of Section 416 and benefits accrued before the Plan became a Top-Heavy Plan. Further, no reduction in vested benefits may occur in the event the Plan's status as a Top-Heavy Plan changes for any Plan Year and the vesting schedule is amended. In addition, if a Plan's status changes from a Top-Heavy Plan to that of a non-Top-Heavy Plan, a Participant with three (3) Years of Service for vesting purposes shall continue to have his vested rights determined under the schedule which he selects, in the event the vesting schedule is subsequently amended.

Payment of a Participant's vested Account balance under this Section shall be made in accordance with the provisions of Article Seven.

### ARTICLE FOURTEEN—MISCELLANEOUS PROVISIONS

- **14.1 PLAN DOES NOT AFFECT EMPLOYMENT.** Neither the creation of this Plan, any amendment thereto, the creation of any fund nor the payment of benefits hereunder shall be construed as giving any legal or equitable right to any Employee or Participant against the Employer, its officers or Employees, or against the Trustee. All liabilities under this Plan shall be satisfied, if at all, only out of the Trust Fund held by the Trustee. Participation in the Plan shall not give any Participant any right to be retained in the employ of the Employer, and the Employer hereby expressly retains the right to hire and discharge any Employee at any time with or without cause, as if the Plan had not been adopted, and any such discharged Participant shall have only such rights or interests in the Trust Fund as may be specified herein.
- **14.2 SUCCESSOR TO THE EMPLOYER.** In the event of the merger, consolidation, reorganization or sale of assets of the Employer, under circumstances in which a successor person, firm, or corporation shall carry on all or a substantial part of the business of the Employer, and such successor shall employ a substantial number of Employees of the Employer and shall elect to carry on the provisions of the Plan, such successor shall be substituted for the Employer under the terms and provisions of the Plan upon the filing in writing with the Trustee of its election to do so.
- 14.3 REPAYMENTS TO THE EMPLOYER. Notwithstanding any provisions of this Plan to the contrary:
  - (a) Any monies or other Plan assets attributable to any contribution made to this Plan by the Employer because of a mistake of fact shall be returned to the Employer within one (1) year after the date of contribution.
  - (b) Any monies or other Plan assets attributable to any contribution made to this Plan by the Employer shall be refunded to the Employer, to the extent such contribution is predicated on the deductibility thereof under the Code and the income tax deduction for such contribution is disallowed. Such amount shall be refunded within one (1) taxable year after the date of such disallowance or within one (1) year of the resolution of any judicial or administrative process with respect to the disallowance. All Employer contributions hereunder are expressly conditioned upon such contributions' deductibility under the Code.
- **14.4 BENEFITS NOT ASSIGNABLE.** Except as provided in Section 414(p) of the Code with respect to "qualified domestic relations orders," or except as provided in Section 401(a)(13)(C) of the Code with respect to certain judgments and settlements, the rights of any Participant or his Beneficiary to any benefit or payment hereunder shall not be subject to voluntary or involuntary alienation or assignment.

With respect to any "qualified domestic relations order" relating to the Plan, the Plan shall permit distribution to an alternate payee under such order at any time, irrespective of whether the Participant has attained his "earliest retirement age" (within the meaning of Section 414(p)(4)(B) of the Code) under the Plan. A distribution to an alternate payee prior to the Participant's attainment of his earliest retirement age shall, however, be available only if the order specifies distribution at that time or permits an agreement between the Plan and the alternate payee to authorize an earlier distribution. Nothing in this paragraph shall, however, give a Participant a right to receive distribution at a time otherwise not permitted under the Plan nor does it permit the alternate payee to receive a form of payment not otherwise permitted under the Plan or under said Section 414(p) of the Code.

- **14.5 MERGER OF PLANS.** In the case of any merger or consolidation of this Plan with, or transfer of the assets or liabilities of the Plan to, any other plan, the terms of such merger, consolidation or transfer shall be such that each Participant would receive (in the event of termination of this Plan or its successor immediately thereafter) a benefit which is no less than what the Participant would have received in the event of termination of this Plan immediately before such merger, consolidation or transfer.
- **14.6 INVESTMENT EXPERIENCE NOT A FORFEITURE.** The decrease in value of any Account due to adverse investment experience shall not be considered an impermissible "forfeiture" of any vested balance.
- **14.7 CONSTRUCTION.** Wherever appropriate, the use of the masculine gender shall be extended to include the feminine and/or neuter or vice versa; and the singular form of words shall be extended to include the plural; and the plural shall be restricted to mean the singular.
- **14.8 GOVERNING DOCUMENTS.** A Participant's rights shall be determined under the terms of the Plan as in effect at the Participant's date of separation from Service.
- **14.9 GOVERNING LAW.** The provisions of this Plan shall be construed under the laws of the state of the situs of the Trust, except to the extent such laws are preempted by Federal law.
- 14.10 HEADINGS. The Article headings and Section numbers are included solely for ease of reference. If there is any conflict between such headings or numbers and the text of the Plan, the text shall control.

- **14.11 COUNTERPARTS.** This Plan may be executed in any number of counterparts, each of which shall be deemed an original; said counterparts shall constitute but one and the same instrument, which may be sufficiently evidenced by any one counterpart.
- **14.12 LOCATION OF PARTICIPANT OR BENEFICIARY UNKNOWN.** In the event that all or any portion of the distribution payable to a Participant or to a Participant's Beneficiary hereunder shall, at the expiration of five (5) years after it shall become payable, remain unpaid solely by reason of the inability of the Administrator to ascertain the whereabouts of such Participant or Beneficiary, after sending a registered letter, return receipt requested, to the last known address, and after further diligent effort, the amount so distributable shall be forfeited and used to pay Plan administrative expenses and/or used to reduce future Employer contributions. In the event a Participant or Beneficiary is located subsequent to the forfeiture of his Account balance, such Account balance shall be restored.
- **14.13 DISTRIBUTION TO MINOR OR LEGALLY INCAPACITATED.** In the event any benefit is payable to a minor or to a person deemed to be incompetent or to a person otherwise under legal disability, or who is by sole reason of advanced age, illness, or other physical or mental incapacity incapable of handling the disposition of his property, the Administrator, may direct the Trustee to apply all or any portion of such benefit directly to the care, comfort, maintenance, support, education or use of such person or to pay or distribute the whole or any part of such benefit to (a) the spouse of such person, (b) the parent of such person, (c) the guardian, committee, or other legal representative, wherever appointed, of such person, (d) the person with whom such person shall reside, (e) any other person having the care and control of such person, or (f) such person. The receipt of any such payment or distribution shall be a complete discharge of liability for Plan obligations.

IN WITNESS WHEREOF, the Employer, by its duly authorized officer, has caused this Plan to be executed on the 12th day of September, 2003.

# POLYONE CORPORATION

By /s/ Thomas Waltermire

Authorized Officer

### AMENDMENT NO. 1 TO THE POLYONE RETIREMENT SAVINGS PLAN (Effective June 1, 2003)

PolyOne Corporation (the "Company") hereby adopts this Amendment No. 1 to the PolyOne Retirement Savings Plan (Effective June 1, 2003) (the "Plan") effective January 1, 2004. Words and phrases used herein with initial capital letters that are defined in the Plan are used herein as so defined.

I.

Section 1.8 of the Plan is hereby amended in its entirety to read as follows:

"<u>1.8</u> 'EFFECTIVE DATE.' The Effective Date of this Plan is June 1, 2003. This Plan supercedes the terms of the Merged Plans as of June 1, 2003 and the terms of the Subsequently Merged Plans as of January 1, 2004. The rights of any Participant who separated from the Employer's Service prior to such dates shall be established under the terms of the Merged Plan or the Subsequently Merged Plan, as applicable, in effect at the time of the Participant's separation from Service, unless the Participant subsequently returns to Service with the Employer. Rights of spouses and Beneficiaries of such Participants shall also be governed by those documents."

II.

Article I of the Plan is hereby amended by the addition of the following new Sections immediately following Section 1.22 to read as follows:

- "<u>1.22A</u> 'PREDECESSOR PLAN' shall mean The Geon Retirement Savings Plan.
- " <u>1.22B</u> 'SUBSEQUENTLY MERGED PLANS' shall mean the PolyOne Retirement Savings Plan A and the Synergistics Industries (NJ), Inc. Employees 401(k) Plan as of December 31, 2003."

The first sentence of the second paragraph of Section 2.1 of the Plan is hereby amended to read as follows:

"Any Participant who was a participant in a Merged Plan as of May 31, 2003 or a Subsequently Merged Plan as of December 31, 2003 shall be credited with any prior 'Years of Service' credited under the Merged Plan or the Subsequently Merged Plan, as applicable, as of such date."

IV.

Section 3.1 of the Plan is hereby amended by the addition of the following new sentence immediately following the first sentence thereof to read as follows:

"Any Employee participating in a Subsequently Merged Plan as of December 31, 2003 shall become a Participant as of January 1, 2004."

V.

# The third sentence of Section 3.1 of the Plan is hereby amended to read as follows:

"In no event, however, shall any Employee (or other individual) participate under the Plan while he is: (i) included in a unit of Employees covered by a collective bargaining agreement between the Employer and the Employee representatives under which retirement benefits were the subject of good faith bargaining, unless the terms of such bargaining agreement expressly provides for the inclusion in the Plan; (ii) regularly employed outside of the United States and not paid in United States dollars; (iii) classified by the Employer as anything other than an Employee (regardless of any subsequent reclassification by the Employer, any governmental agency or court); (iv) employed as a Leased Employee; or (v) employed as a nonresident alien who receives no earned income (within the meaning of Section 911(d)(2) of the Code) from the Employer which constitutes income from sources within the United States (within the meaning of Section 861(a)(3) of the Code)."

VI.

The first sentence of Section 4.2(a) of the Plan is hereby amended to read as follows:

"Effective prior to January 1, 2004, for each payroll period, the Employer shall contribute to the Plan, on behalf of each Participant, a matching contribution equal to 100% of the first 3%, and 50% of the next 3%, of the Participant's Compensation contributed to the Plan as elective deferrals and/or after-tax contributions under Section 4.1 and Section 4.5, respectively and on and after January 1, 2004, for each payroll period, the Employer shall contribute to the Plan, on behalf of each Participant, a matching contribution equal to 50% of the first 3%, and 25% of the next 3%, of the Participant's Compensation contributed to the Plan as elective deferrals and/or after-tax contributed to the Plan as elective deferrals and/or after-tax contributions under Section 4.1 and Section 4.5, respectively."

VII.

Section 4.2 of the Plan is hereby amended by the addition of the following new Subsection at the end thereof to read as follows:

"(c) <u>Employer Transition Contributions</u>. For each payroll period, the Employer shall also make a transition contribution on behalf of each Participant who is a participant in that portion of the PolyOne Merged Pension Plan comprised of the plan document for The Geon Pension Plan, and whose age plus 'Benefit Service' under such pension plan as of December 31, 2002 equaled forty-five (45) or more. Such contribution shall be equal to a percentage of each such eligible Participant's Compensation for the payroll period in which the contribution is made as follows:

Age Plus Benefit Service as of 12/31/02	Transition Contribution
45 but less than 50	1.00%
50 but less than 55	1.75%
55 but less than 60	2.5%
60 but less than 65	3.25%
65 or more	4.00%%."

#### VIII.

Section 6.1 of the Plan is hereby amended in its entirety to read as follows:

"6.1 VESTING. A Participant shall at all times have a nonforfeitable (vested) right to his Account derived from elective deferrals, after-tax contributions, Employer matching contributions, Employer transition contributions under Section 4.2(c), Fail-Safe Contributions and Qualified Matching Contributions as defined in Section 10.2, any dividends paid on Employer Stock credited to his Account, any rollovers from other plans, and any other contributions made on his behalf, other than retirement contributions made under Section 4.2(b) or any Employer retirement contributions transferred from a Merged Plan or a Subsequently Merged Plan, as adjusted for investment experience. Except as otherwise provided with respect to Normal Retirement, Disability or death, a Participant shall have a nonforfeitable (vested) right to a percentage of the value of his Account derived from Employer retirement contributions under Section 4.2(b) and, except as otherwise provided below, any Employer retirement contributions transferred from a Merged Plan or a Subsequently Merged Plan, as follows:

Years of Service	Vested Percentage
Less than 3 years	0%
3 years and thereafter	100%

Notwithstanding the foregoing, any Participant who was a Participant in the M.A. Hanna Company Capital Accumulation Plan and/or the M.A. Hanna Company 401(k) and Retirement Plan as of May 31, 2003, and who was credited with two (2) years of service (for vesting purposes) under either such plan as of such date, shall have at least a twenty percent (20%) vested interest in any employer contributions transferred from such plan(s) and in any Employer retirement contributions under Section 4.2(b)."

IX.

The second sentence of Section 8.1(b) of the Plan is hereby amended to read as follows:

"Provided, however, that in no event shall any portion of a Participant's loan be derived from amounts transferred directly from a money purchase pension plan, Employer retirement and/or transition contributions made on behalf of the Participant, or any Employer matching contributions made on behalf of the Participant which are invested in the Employer Stock fund other than by the Participant's investment direction." The first sentence of Section 8.2 of the Plan is hereby amended to read as follows:

"In the case of a financial hardship resulting from a proven immediate and heavy financial need, a Participant may receive a distribution not to exceed the lesser of (i) the vested value of the Participant's Account attributable to his elective deferrals, without regard to earnings thereon after December 31, 1988, any rollover contributions (excluding any rollover contributions transferred to the Predecessor Plan from the Occidental Petroleum Corporation Savings Plan), including earnings thereon, and any after-tax contributions, including earnings thereon, or (ii) the amount necessary to satisfy the financial hardship."

# XI.

The first sentence of Section 8.3 of the Plan is hereby amended to read as follows:

"After attaining age fifty-nine and one-half (59 1/2), a Participant, by giving written notice to the Administrator, may withdraw from the Plan a sum (a) not in excess of the credit balance of his vested Account, excluding, prior to the Participant attaining age seventy and one-half (70 1/2), any Employer retirement and/or transition contributions made on his behalf, any Employer matching contributions made on behalf of the Participant which are invested in the Employer Stock fund other than by the Participant's investment direction, and excluding any portion of the Participant's Account subject to the provisions of Section 7.4, and (b) not less than such minimum amount as the Administrator may establish from time to time to facilitate administration of the Plan."

### XII.

Article VIII of the Plan is hereby amended by the addition of the following new Section at the end thereof to read as follows:

"8.6 WITHDRAWAL OF CERTAIN PREDECESSOR PLAN CONTRIBUTIONS. A Participant, by giving written notice to the Administrator, may withdraw from the Plan any 'B.F. Goodrich/Occidental matching contributions' transferred to the Predecessor Plan, and, after attaining age fifty-five (55), a sum not in excess of the credit balance of his vested Account derived from matching contributions made on his behalf under the Predecessor Plan prior to January 1, 2001, and any 'success sharing contributions' made under the Predecessor Plan prior to January 1, 1995, including earnings thereon. Any amount withdrawn hereunder shall not be less than such minimum amount as the Administrator may establish from time to time to facilitate administration of the Plan. Any such withdrawals shall be made in accordance with nondiscriminatory and objective standards applied by the Administrator.

If any portion of the amount to be withdrawn is invested in the Employer Stock fund, the Participant may elect to have such portion distributed in the form of whole shares of Employer Stock, with any fractional shares, and the cash and cash equivalent portions of the underlying stock fund, being distributed in cash."

POLYONE CORPORATION

By: /s/ Kenneth M. Smith

Title: Vice President

# AMENDMENT NO. 2 TO THE POLYONE RETIREMENT SAVINGS PLAN (Effective June 1, 2003)

PolyOne Corporation (the "Company") hereby adopts this Amendment No. 2 to the PolyOne Retirement Savings Plan (Effective June 1, 2003) (the "Plan") effective January 1, 2004. Words and phrases used herein with initial capital letters that are defined in the Plan are used herein as so defined.

I.

The first sentence of Section 4.1(a) of the Plan is hereby amended to read as follows:

"A Participant may elect to defer from one percent (1%) to fifty percent (50%) (in whole percentages) of his Compensation for a Plan Year."

EXECUTED this <u>31st</u> day of <u>December</u>, 2003.

# POLYONE CORPORATION

By: /s/ Kenneth M. Smith

Title: Vice President

#### AMENDMENT NO. 3 TO

### POLYONE RETIREMENT SAVINGS PLAN

WHEREAS, PolyOne Corporation (the "Employer") heretofore adopted the PolyOne Retirement Savings Plan (the "Plan"); and

WHEREAS, the Employer reserved the right to amend the Plan; and

**WHEREAS**, the Employer desires to amend the Plan to adopt the model amendments set forth in Revenue Procedure 2002-29 for purposes of complying with the requirements of Section 401(a)(9) of the Internal Revenue Code and the final regulations thereunder;

**NOW, THEREFORE**, the Plan is hereby amended, effective as of January 1, 2003, as follows:

1. The Plan shall be amended by the addition of the following Article 7A:

# ARTICLE SEVEN A-MINIMUM DISTRIBUTION REQUIREMENTS

### 7A.1 GENERAL RULES.

- (a) *Effective Date*. The provisions of this Article will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.
- (b) *Precedence*. The requirements of this Article will take precedence over any inconsistent provisions of the Plan; provided, however, that this Article shall not require the Plan to provide any form of benefit, or any option, not otherwise provided under the Plan.
- (c) *Requirements of Treasury Regulations Incorporated*. All distributions required under this Article will be determined and made in accordance with the Treasury regulations under Section 401(a)(9) of the Code.
- (d) **TEFRA Section 242(b)(2) Elections.** Notwithstanding the other provisions of this Article, distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act ("TEFRA") and the provisions of the Plan that relate to Section 242(b)(2) of TEFRA.

# 7A.2 TIME AND MANNER OF DISTRIBUTION.

(a) *Required Beginning Date*. The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's required beginning date.

- (b) *Death of Participant Before Distributions Begin*. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
  - (i) If the Participant's surviving spouse is the Participant's sole designated Beneficiary, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70<sup>1</sup>/<sub>2</sub>, if later.
  - (ii) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, and if distribution is to be made over the life or over a period certain not exceeding the life expectancy of the designated Beneficiary (if permitted under Section 7.1 of the Plan), distribution to the designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
  - (iii) If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, or if the provisions of subsection (i) and (ii) do not otherwise apply, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
  - (iv) If the Participant's surviving spouse is the Participant's sole designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this subsection (b), other than Section (b)(i), will apply as if the surviving spouse were the Participant.

For purposes hereof, unless subsection (b)(iv) applies, distributions are considered to begin on the Participant's required beginning date. If subsection (b)(iv) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under subsection (b)(i). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's required beginning date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under Section (b)(i), the date distributions are considered to begin is the date distributions actually commence.

(c) *Forms of Distribution*. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year, distributions will be made in accordance with

Sections 7A.3 and 7A.4 of this Article. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Code and the Treasury regulations.

# 7A.3 REQUIRED MINIMUM DISTRIBUTIONS DURING PARTICIPANT'S LIFETIME.

- (a) *Amount of Required Minimum Distribution for Each Distribution Calendar Year*. During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:
  - the quotient obtained by dividing the Participant's Account balance by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's age as of the Participant's birthday in the distribution calendar year; or
  - (ii) if the Participant's sole designated Beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's Account balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.
- (b) *Lifetime Required Minimum Distributions Continue Through Year of Participant's Death*. Required minimum distributions will be determined under this Section 7A.3 beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

# 7A.4 REQUIRED MINIMUM DISTRIBUTIONS AFTER PARTICIPANT'S DEATH.

- (a) Death On or After Date Distributions Begin.
  - (i) <u>Participant Survived by Designated Beneficiary</u>. Subject to the provisions of this Article, if the Participant dies on or after the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated Beneficiary, determined as follows:

- (1) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
- (2) If the Participant's surviving spouse is the Participant's sole designated Beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.
- (3) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, the designated Beneficiary's remaining life expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.
- (ii) <u>No Designated Beneficiary</u>. If the Participant dies on or after the date distributions begin and there is no designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

### (b) Death Before Date Distributions Begin.

- (i) <u>Participant Survived by Designated Beneficiary</u>. If the Participant dies before the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the remaining life expectancy of the Participant's designated Beneficiary, determined as provided in subsection (a)
- (ii) <u>No Designated Beneficiary</u>. If the Participant dies before the date distributions begin and there is no designated Beneficiary as of September 30 of the year following the year of the Participant's

death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(iii) **Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin**. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Section 7A.2(b)(i), this Section 7A.4 will apply as if the surviving spouse were the Participant.

# 7A.5 DEFINITIONS.

- (a) **Designated Beneficiary**. The individual who is designated as the Beneficiary under Section 7.6 of the Plan and is the designated Beneficiary under Section 401(a)(9) of the Code and Section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.
- (b) Distribution Calendar Year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under Section 7A.2(b). The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.
- (c) *Life Expectancy*. Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury regulations.
- (d) Participant's Account Balance. The Account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the Account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The Account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

# (e) *Required Beginning Date*. The date specified in Section 7.2 of the Plan.

**IN WITNESS WHEREOF**, the Employer, by its duly authorized officer, has caused this Amendment to be executed as of the <u>31st</u> day of <u>December</u>, 2003.

POLYONE CORPORATION

By: /s/ Wendy C. Shiba V.P., Chief Legal Officer and Secretary

### AMENDMENT NO. 4 TO THE POLYONE RETIREMENT SAVINGS PLAN (<u>Effective June 1, 2003</u>)

PolyOne Corporation (the "Company") hereby adopts this Amendment No. 4 to the PolyOne Retirement Savings Plan (Effective June 1, 2003) (the "Plan") effective August 1, 2004. Words and phrases used herein with initial capital letters that are defined in the Plan are used herein as so defined.

# I.

Section 4.2 of the Plan is hereby amended by the addition of the following new Subsection at the end thereof to read as follows:

"(c) <u>Employer Service Provider Contributions</u>. Any amounts contributed to the Plan by the Employer pursuant to an agreement between the Employer and a service provider ("Employer Service Provider Contributions") shall be used to pay Plan administrative expenses. To the extent that Employer Service Provider Contributions for a Plan Year exceed Plan administrative expenses for such Plan Year, the excess Employer Service Provider Contributions shall be allocated to the Accounts of all Participants who are employed by the Employer on the last day of the Plan Year. As of the last day of the Plan Year, the Account of each Participant who is eligible to receive an Employer Service Provider Contributions shall be credited with an Employer Service Provider Contributions equal to the total excess Employer Service Provider Contributions multiplied by a fraction, the numerator of which is the Participant's Account balance as of the last day of the Plan Year and the denominator of which is the sum of the Account balances of all Participants who are eligible to receive Employer Service Provider Contributions."

EXECUTED this 16th day of August, 2004.

POLYONE CORPORATION

By: /s/ Kenneth M. Smith

Title:

# AMENDMENT NO. 5 TO THE POLYONE RETIREMENT SAVINGS PLAN (<u>Effective June 1, 2003</u>)

PolyOne Corporation (the "Company") hereby adopts this Amendment No. 5 to the PolyOne Retirement Savings Plan (Effective June 1, 2003) (the "Plan") effective as of June 1, 2003. Words and phrases used herein with initial capital letters that are defined in the Plan are used herein as so defined.

# I.

The last paragraph of Section 6.1 of the Plan is hereby amended to read as follows:

"Notwithstanding the foregoing, for purposes of any Participant who was a participant in the M.A. Hanna Company Capital Accumulation Plan and/or the M.A. Hanna Company 401(k) and Retirement Plan as of May 31, 2003, such Participant shall have a nonforfeitable (vested) right to a percentage of the value of his Account derived from such transferred employer retirement contributions and in any Employer retirement contributions under Section 4.2(b), as follows:

Years of Service	Vested Percentage
Less than 1	0%
1, but less than 2	20%
2, but less than 3	40%
3 or more	100%"
EXECUTED this 16th day of August, 2004.	

#### POLYONE CORPORATION

By: /s/ Kenneth M. Smith

Title:

#### AMENDMENT NO. 6 TO THE POLYONE RETIREMENT SAVINGS PLAN (<u>Effective June 1, 2003</u>)

PolyOne Corporation (the "Company") hereby adopts this Amendment No. 6 to the PolyOne Retirement Savings Plan (Effective June 1, 2003) (the "Plan") effective, except as otherwise set forth below, December 1, 2004. Words and phrases used herein with initial capital letters that are defined in the Plan are used herein as so defined.

I.

Article I of the Plan is hereby amended by the addition of the following new Section immediately following Section 1.6 to read as follows:

**\*1.6A \*DECEMBER 1, 2004 MERGED PLANS'** shall mean the PolyOne Retirement Savings Plan for Collective Bargaining Employees, the PolyOne Retirement Savings Plan for Collective Bargaining Employees A and the Plast-O-Meric Thrift and Savings Plan, each as of November 30, 2004."

II.

Section 1.8 of the Plan is hereby amended in its entirety to read as follows:

**"1.8 'EFFECTIVE DATE.'** The Effective Date of this Plan is June 1, 2003. This Plan supercedes the terms of the Merged Plans as of June 1, 2003, the terms of the Subsequently Merged Plans as of January 1, 2004 and the December 1, 2004 Merged Plans as of December 1, 2004. The rights of any Participant who separated from the Employer's Service prior to such dates shall be established under the terms of the Merged Plan, the Subsequently Merged Plan or the December 1, 2004 Merged Plan, as applicable, in effect at the time of the Participant's separation from Service, unless the Participant subsequently returns to Service with the Employer. Rights of spouses and Beneficiaries of such Participant shall also be governed by those documents."

III.

Section 1.19 of the Plan is hereby amended in its entirety to read as follows:

**"1.19 'NORMAL RETIREMENT DATE'** shall mean the Participant's sixty-fifth (65<sup>th</sup>) birthday, or for Participants who were participants in the Polymer Group Retirement Savings Plan or the 401(k) Savings and Retirement Plan for Polymer Associates as of January 1, 1998, the Participant's fifty-fifth (55<sup>th</sup>) birthday or for Participants who were participants in the Plast-O-Meric Thrift and Savings Plan on November 30, 2004, the Participant's attainment of age fifty-nine and one-half (59 <sup>1</sup>/<sub>2</sub>). The date on which the Participant attains age sixty-five (65), fifty-five (55) or fifty-nine and one-half (59 <sup>1</sup>/<sub>2</sub>) as the case may be, shall be the Participant's Normal Retirement Age."

# IV.

The first sentence of the second paragraph of Section 2.1 of the Plan is hereby amended to read as follows:

"Any Participant who was a participant in a Merged Plan as of May 31, 2003, a Subsequently Merged Plan as of December 31, 2003 or a December 1, 2004 Merged Plan as of November 30, 2004 shall be credited with any prior 'Years of Service' credited under the Merged Plan, the Subsequently Merged Plan or the December 1, 2004 Merged Plan, as applicable, as of such date."

#### V.

The first paragraph of Section 3.1 of the Plan is hereby amended to read as follows:

"**PARTICIPATION**. Any participant in a Merged Plan as of May 31, 2003 shall become a Participant in the Plan as of June 1, 2003. Any participant in a Subsequently Merged Plan as of December 31, 2003 shall become a Participant in the Plan as of January 1, 2004. Any participant in a December 1, 2004 Merged Plan as of November 30, 2004, to the extent that such participant is not

already a Participant in the Plan, shall become a Participant in the Plan as of December 1, 2004."

#### VI.

The third paragraph of Section 3.1 of the Plan is hereby amended to read as follows:

"In no event, however, shall any Employee (or other individual) participate under the Plan while he is: (i) included in a unit of Employees covered by a collective bargaining agreement between the Employer and the Employee representatives under which retirement benefits were the subject of good faith bargaining, unless such Employee (or other individual) is employed at the Employer's Louisville, Kentucky facility or the terms of such bargaining agreement expressly provide for the inclusion in the Plan; (ii) regularly employed outside of the United States and not paid in United States dollars; (iii) classified by the Employer as anything other than an Employee (regardless of any subsequent reclassification by the Employer, any governmental agency or court); (iv) employed as a Leased Employee; or (v) employed as a nonresident alien who receives no earned income (within the meaning of Section 911(d)(2) of the Code) from the Employer which constitutes income from sources within the United States (within the meaning of Section 861(a)(3) of the Code)."

#### VII.

Effective January 1, 2005, Section 4.1(a) of the Plan is hereby amended in its entirety to read as follows:

"(a) <u>Elections</u>. A Participant who is not a Highly Compensated Employee may elect to defer from one percent (1%) to fifty percent (50%) (in whole percentages) of his Compensation for a Plan Year. A Participant who is a Highly Compensated Employee may elect to defer from one percent (1%) to fifteen percent (15%) (in whole percentages) of his Compensation for a Plan Year. The amount of a Participant's Compensation that is deferred in accordance with the Participant's election shall be withheld by the Employer from the Participant's Compensation on a ratable basis throughout the Plan Year. The amount deferred on behalf of each Participant shall be contributed by the Employer to the Plan and allocated

to the portion of the Participant's Account consisting of such elective deferrals."

#### VIII.

Effective January 1, 2004, Section 4.1(e) of the Plan is hereby amended by the addition of the following new paragraph at the end thereof to read as follows:

"In furtherance thereof, but without limiting the foregoing, effective January 1, 2004, (a) the percentage limitations on elective deferrals described in Section 4.1(a) of the Plan shall not apply to catch-up contributions, (b) elective deferrals for a Plan Year which exceed (i) the percentage limits described in Section 4.1(a) of the Plan or (ii) the statutory limits described in Section 4.1(c) shall be treated as catch-up contributions; and (c) catch-up contributions shall be permitted to be made on a payroll-by-payroll basis; provided, however, that an elective deferral may only be characterized as a catch-up contribution on a Plan Year basis."

# IX.

Effective January 1, 2004, the first two paragraphs of Section 4.5 of the Plan are hereby amended to read as follows:

"A Participant shall be permitted to make after-tax contributions to the Plan in accordance with procedures established by the Administrator which shall be consistently applied and which may be changed from time to time. A Participant may prospectively elect to change or revoke the amount (or percentage, from one percent (1%) to fifty percent (50%)) of his after-tax contributions during the Plan Year in accordance with the procedures established by the Administrator.

Total Contributions under Section 4.1(a) and this Section 4.5 cannot exceed 50% of the Participant's Compensation for a Plan Year."

# Х.

Effective January 1, 2005, the first two paragraphs of Section 4.5 of the Plan are hereby amended to read as follows:

"A Participant shall be permitted to make after-tax contributions to the Plan in accordance with procedures established by the Administrator which shall be consistently applied and which may be changed from time to time. A Participant who is not a Highly Compensated Employee may prospectively elect to change

or revoke the amount (or percentage, from one percent (1%) to fifty percent (50%)) of his after-tax contributions during the Plan Year in accordance with the procedures established by the Administrator. A Participant who is a Highly Compensated Employee may prospectively elect to change or revoke the amount (or percentage, from one percent (1%) to fifteen percent (15%)) of his after-tax contributions during the Plan Year in accordance with the procedures established by the Administrator.

For Participants who are not Highly Compensated Employees, total Contributions under Section 4.1(a) and this Section 4.5 cannot exceed 50% of the Participant's Compensation for a Plan Year. For Participants who are Highly Compensated Employees, total Contributions under Section 4.1(a) and this Section 4.5 cannot exceed 15% of the Participant's Compensation for a Plan Year."

# XI.

The second paragraph of Section 5.1(a) of the Plan is hereby amended to read as follows:

"Notwithstanding the foregoing, (i) for purposes of any Participant who was not a participant in the PolyOne Retirement Savings Plan for Collective Bargaining Employees on November 30, 2004, any Employer matching contributions initially invested in the Employer Stock fund other than by the Participant's direction, shall remain invested in such fund until such date as is designated by the Employer but not later than September 30, 2003 and (ii) for purposes of any Participant who was a participant in the PolyOne Retirement Savings Plan for Collective Bargaining Employees on November 30, 2004, any Employer matching contributions initially invested in the Employer Stock fund other than by the Participant's direction prior to December 1, 2004, shall remain invested in such fund until December 1, 2004."

XII.

Section 6.1 of the Plan is hereby amended in its entirety to read as follows:

**"6.1 VESTING**. A Participant shall at all times have a nonforfeitable (vested) right to his Account derived from elective deferrals, after-tax contributions, Employer matching contributions, Fail-Safe Contributions and Qualified Matching Contributions as defined in Section 10.2, any dividends paid on Employer Stock credited to his Account, any rollovers or transfers from other plans, and any other contributions made on his behalf, or transferred

to the Plan on his behalf, other than retirement contributions made under Section 4.2(b) or any Employer retirement contributions transferred from a Merged Plan, a Subsequently Merged Plan or a December 1, 2004 Merged Plan, as adjusted for investment experience. Except as otherwise provided with respect to Normal Retirement, Disability or death, a Participant shall have a nonforfeitable (vested) right to a percentage of the value of his Account derived from Employer retirement contributions under Section 4.2(b) and, except as otherwise provided below, any Employer retirement contributions transferred from a Merged Plan, a Subsequently Merged Plan or a December 1, 2004 Merged Plan, as follows:

Years of Service	Vested Percentage
Less than 3 years	0%
3 years and thereafter	100%

Notwithstanding the foregoing, for purposes of any Participant who was a Participant in the M.A. Hanna Company Capital Accumulation Plan and/or the M.A. Hanna Company 401(k) and Retirement Plan as of May 31, 2003, such Participant shall have a nonforfeitable (vested) right to a percentage of the value of his Account derived from such transferred employer retirement contributions and in any Employer retirement contributions under Section 4.2(b), as follows:

Years of Service	Vested Percentage
Less than 1 year	0%
1, but less than 2	20%
2, but less than 3	40%
3 or more	100%"

XIII.

Section 7.1 of the Plan is hereby amended by the addition of the following new paragraph at the end thereof to read as follows:

"Notwithstanding the foregoing, for purposes of distributions commencing earlier than the ninetieth day after the Participants described in this sentence have been given notice pursuant to Section 1.411(d)-4(e) of the Treasury Regulations of the elimination of the optional form of benefit described in this sentence (the "Notice Date"), if any portion of the Participant's vested Account consists of amounts transferred to the Predecessor Plan from the Occidental Petroleum Corporation Savings Plan or the Occidental Chemical Corporation Savings and Investment Plan, and if the Participant's vested Account exceeds \$5,000, the Participant may elect to receive distribution of his vested Account in the form of an annuity, subject to the provisions of Section 7.4."

#### XIV.

The first sentence of Section 7.4 of the Plan is hereby amended to read as follows:

"This Section shall apply if any portion of a Participant's vested Account is derived from funds transferred from a plan subject to the provisions of Code Sections 401(a)(11) and 417, which provisions may not be limited via an amendment under the Employee Retirement Income Security Act of 1974 or, prior to the Notice Date (as defined in Section 7.1), if any portion of a Participant's vested Account consists of amounts transferred to the Predecessor Plan from the Occidental Petroleum Corporation Savings Plan or the Occidental Chemical Corporation Savings and Investment Plan and if the Participant elects the annuity option under Section 7.1."

#### XV.

The first sentence of Section 7.8 of the Plan is hereby amended to read as follows:

"The provisions of this Section shall apply if any portion of a Participant's vested Account is derived from funds transferred from a plan subject to the provisions of Code Sections 401(a)(11) and 417, which provisions may not be limited via an amendment under the Employee Retirement Income Security Act of 1974."

# XVI.

ARTICLE SEVEN of the Plan is hereby amended by the addition of the following new Section immediately following Section 7.8 of the Plan to read as follows:

**\*7.8A QUALIFIED PRE-RETIREMENT SURVIVOR ANNUITY FOR CERTAIN OCCIDENTAL PARTICIPANTS.** The provisions of this Section shall apply if any portion of a Participant's vested Account consists of amounts transferred to the Predecessor Plan from the Occidental Petroleum Corporation Savings Plan or the Occidental Chemical Corporation Savings and Investment Plan and if the Participant elects the annuity option under Section 7.1.

If a married Participant dies after electing the 'qualified joint and survivor annuity' (as defined in Section 7.4), and prior to the annuity starting date,

such Participant's vested Account balance shall be applied to the purchase of an annuity for the life of the Participant's surviving spouse; provided, however, that the Participant's surviving spouse may elect to waive such annuity and receive such death benefit in the form of a lump-sum payment. The Administrator must furnish to the surviving spouse, within a reasonable amount of time after a written request has been made by such surviving spouse, a written explanation of the terms and conditions of the qualified pre-retirement survivor annuity and any other form of payment which may be selected. The Participant's surviving spouse may commence the payment of his qualified pre-retirement survivor annuity under this Section within a reasonable period following the Participant's death."

### XVII.

The third sentence of the first paragraph of Section 8.1 of the Plan is hereby amended to read as follows:

"In addition, if the Participant is married, and if any portion of the Participant's Account is derived from funds transferred from a plan subject to the provisions of Code Sections 401(a)(11) and 417, which provisions may not be limited via an amendment under the Employee Retirement Income Security Act of 1974, such Participant's spouse shall be required to consent in writing to the making of the loan."

# XVIII.

The first sentence of Section 8.2 of the Plan is hereby amended to read as follows:

"In the case of a financial hardship resulting from a proven immediate and heavy financial need, a Participant may receive a distribution not to exceed the lesser of (i) the vested value of the Participant's Account attributable to his elective deferrals, without regard to earnings thereon after December 31, 1988, any rollover contributions (excluding any rollover contributions transferred from the Occidental Petroleum Corporation Savings Plan to a December 1, 2004 Merged Plan), including earnings thereon, and any after-tax contributions, including earnings thereon or (ii) the amount necessary to satisfy the financial hardship."

XIX.

The last paragraph of each of Sections 8.2, 8.3, 8.4 and 8.5 of the Plan are hereby amended to read as follows:

"Notwithstanding the foregoing provisions of this Section, if the Participant is married, and if any portion of the Participant's Account is derived from funds transferred from a plan subject to the provisions of Code Sections 401(a)(11) and 417, which provisions may not be limited via an amendment under the Employee Retirement Income Security Act of 1974, the Participant must obtain the written consent of the Participant's spouse, which consent must be notarized."

# XX.

ARTICLE EIGHT of the Plan is hereby amended by the addition of the following new Section at the end thereof to read as follows:

**"8.7 WITHDRAWAL OF CERTAIN PLAST-O-MERIC THRIFT AND SAVINGS PLAN CONTRIBUTIONS**. A Participant, by giving notice to the Administrator, may withdraw from the Plan any 'Plast-O-Meric Thrift and Savings Plan Transfer Contributions' transferred to this Plan from the Plast-O-Meric Thrift and Savings Plan. Any such withdrawal shall be made in accordance with nondiscriminatory and objective standards consistently applied by the Administrator.

If any portion of the amount to be withdrawn is invested in the Employer Stock fund, the Participant may elect to have such portion distributed in the form of whole shares of Employer Stock, with any fractional shares, and the cash and cash equivalent portions of the underlying stock fund, being distributed in cash."

EXECUTED this 29th day of November, 2004.

POLYONE CORPORATION

By: /s/ Kenneth M. Smith

Title: Chief Information and Human Resources Officer

### AMENDMENT NO. 7 TO THE POLYONE RETIREMENT SAVINGS PLAN (<u>Effective June 1, 2003</u>)

PolyOne Corporation (the "Company") hereby adopts this Amendment No. 7 to the PolyOne Retirement Savings Plan (Effective June 1, 2003) (the "Plan") effective April 1, 2005. Words and phrases used herein with initial capital letters that are defined in the Plan are used herein as so defined.

# I.

The first sentence of Section 4.2(a) of the Plan is hereby amended to read as follows:

"Effective prior to January 1, 2004, for each payroll period, the Employer shall contribute to the Plan, on behalf of each Participant, a matching contribution equal to 100% of the first 3%, and 50% of the next 3%, of the Participant's Compensation contributed to the Plan as elective deferrals and/or after-tax contributions under Section 4.1 and Section 4.5, respectively; effective on and after January 1, 2004 and prior to April 1, 2005, for each payroll period, the Employer shall contribute to the Plan, on behalf of each Participant, a matching contribution equal to 50% of the first 3%, and 25% of the next 3%, of the Participant's Compensation contributions under Section 4.1 and Section 4.5, respectively; and effective on and after tax contributions under Section 4.1 and Section 4.5, respectively; and effective on and after April 1, 2005, for each payroll period, the Employer shall contribute to the Plan, on behalf of each Participant's Compensation contributed to the Plan as elective deferrals and/or after tax contributions under Section 4.1 and Section 4.5, respectively; and effective on and after April 1, 2005, for each payroll period, the Employer shall contribute to the Plan, on behalf of each Participant, a matching contribution equal to 100% of the first 3%, and 25% of the next 3%, of the Participant's Compensation contributed to the Plan as elective deferrals and/or after-tax contributions under Section 4.1 and Section 4.5, respectively."

EXECUTED this 1st day of March, 2005.

#### POLYONE CORPORATION

/s/ Kenneth M. Smith By: Kenneth M. Smith Vice President and Chief Human Resources Officer

### AMENDMENT NO. 8 TO THE POLYONE RETIREMENT SAVINGS PLAN (<u>Effective June 1, 2003</u>)

PolyOne Corporation (the "Company") hereby adopts this Amendment No. 8 to the PolyOne Retirement Savings Plan (Effective June 1, 2003) (the "Plan") effective March 28, 2005. Words and phrases used herein with initial capital letters that are defined in the Plan are used herein as so defined.

# I.

The second paragraph of Section 7.1 of the Plan is hereby amended to read as follows:

"If the Participant's vested Account (excluding any rollover contributions) exceeds \$1,000, and the Participant elects to defer distribution of his vested Account pursuant to the provisions of Section 7.2 below, the Participant may, from time to time, elect to withdraw amounts from his vested Account, subject to rules and procedures established by the Administrator."

### II.

The first two paragraphs of Section 7.2 of the Plan are hereby amended to read as follows:

**"TIME OF COMMENCEMENT OF BENEFIT PAYMENTS**. Distribution of the Participant's Account balance for a Participant who terminates employment on or after his Normal Retirement Date, or as a result of his Disability, shall be made or commence no later than one (1) year following the close of the Plan Year in which such event occurred; provided, however, that if the amount required to be distributed cannot be ascertained by such date, distribution shall be made no later than sixty (60) days after the earliest date on which such amount can be ascertained; and provided, further, that, subject to the last paragraph of this Section, if the Participant's vested Account balance (excluding any rollover contributions) exceeds \$1,0000, distribution shall not be made or commence, unless the Participant otherwise requests in writing. In such event, distribution shall commence as soon as administratively practical following receipt by the Administrator of the Participant's written request.

If a Participant terminates employment for any reason other than Normal Retirement, Disability or death, distribution of his vested Account balance shall be made or commence no later than the close of the sixth Plan Year following the Plan Year in which he terminated employment. However, if the vested balance of a Participant's Account exceeds \$1,000 (without regard to any rollover contributions), subject to the last paragraph of this Section, distribution of his vested Account shall not be made or commence unless the Participant otherwise requests in writing."

#### III.

The first sentence of Section 7.4(d) of the Plan is hereby amended to read as follows:

"Notwithstanding anything contained herein to the contrary, if the portion of the vested balance of the Participant's Account derived from funds transferred from a plan subject to the provisions of Code Sections 401(a)(11) and 417 (excluding any rollover contributions) does not exceed \$1,000, distribution of the portion of the Participant's vested Account derived from funds transferred from a plan subject to the provisions of Code Sections 401(a)(11) and 417 (excluding any rollover contributions) does not exceed \$1,000, distribution of the portion of the Participant's vested Account derived from funds transferred from a plan subject to the provisions of Code Sections 401(a)(11) and 417 shall be made in the form of a lump-sum payment."

# POLYONE CORPORATION

/s/ Kenneth M. Smith By: Kenneth M. Smith Vice President and Chief Human Resources Officer

#### AMENDMENT NO. 9 TO THE POLYONE RETIREMENT SAVINGS PLAN (<u>Effective June 1, 2003</u>)

PolyOne Corporation (the "Company") hereby adopts this Amendment No. 9 to the PolyOne Retirement Savings Plan (Effective June 1, 2003) (the "Plan") effective January 1, 2006. Words and phrases used herein with initial capital letters that are defined in the Plan are used herein as so defined.

### I.

The first paragraph of Section 4.2(a) of the Plan is hereby amended to read as follows:

"Effective prior to January 1, 2004, for each payroll period, the Employer shall contribute to the Plan, on behalf of each Participant, a matching contribution equal to 100% of the first 3%, and 50% of the next 3%, of the Participant's Compensation contributed to the Plan as elective deferrals and/or after-tax contributions under Section 4.1 and Section 4.5, respectively; effective on and after January 1, 2004 and prior to April 1, 2005, for each payroll period, the Employer shall contribute to the Plan, on behalf of each Participant, a matching contribution equal to 50% of the first 3%, and 25% of the next 3%, of the Participant's Compensation contributed to the Plan as elective deferrals and/or after tax contributions under Section 4.1 and Section 4.5, respectively; effective on and after tax contributions under Section 4.1 and Section 4.5, respectively; effective on and after April 1, 2005 and prior to January 1, 2006, for each payroll period, the Employer shall contribute to the Plan, on behalf of each Participant, a matching contributions under Section 4.1 and Section 4.5, respectively; effective on and after April 1, 2005 and prior to January 1, 2006, for each payroll period, the Employer shall contribute to the Plan as elective deferrals and/or after-tax contributions under Section 4.1 and Section 4.5, respectively; and 25% of the next 3%, of the Participant's Compensation contributed to the Plan as elective deferrals and/or after-tax contributions under Section 4.1 and Section 4.5, respectively; and effective on and after January 1, 2006, for each payroll period, the Employer shall contribute to the Plan, on behalf of each Participant, a matching contribution equal to 100% of the next 3%, of the next 3%, of the Participant's Compensation contributed to the Plan as elective deferrals and/or after-tax contributions under Section 4.1 and Section 4.5, respectively; and effective on and after January 1, 2006, for each payroll period, the Employer shall contribute to the Plan, on behalf of each Participant, a

II.

The last sentence of the fourth paragraph of Section 4.2(a) of the Plan is hereby deleted.

# POLYONE CORPORATION

/s/ Kenneth M. Smith By: Kenneth M. Smith Vice President and Chief Human Resources Officer

#### AMENDMENT NO. 10 TO THE POLYONE RETIREMENT SAVINGS PLAN (<u>Effective June 1, 2003</u>)

PolyOne Corporation (the "Company") hereby adopts this Amendment No. 10 to the PolyOne Retirement Savings Plan (Effective June 1, 2003) (the "Plan") effective March 28, 2005. Words and phrases used herein with initial capital letters that are defined in the Plan are used herein as so defined.

### I.

The second paragraph of Section 7.1 of the Plan is hereby amended to read as follows:

"If the Participant's vested Account (including any rollover contributions) exceeds \$1,000, and the Participant elects to defer distribution of his vested Account pursuant to the provisions of Section 7.2 below, the Participant may, from time to time, elect to withdraw amounts from his vested Account, subject to rules and procedures established by the Administrator."

#### II.

The first two paragraphs of Section 7.2 of the Plan are hereby amended to read as follows:

"TIME OF COMMENCEMENT OF BENEFIT PAYMENTS. Distribution of the Participant's Account balance for a Participant who terminates employment on or after his Normal Retirement Date, or as a result of his Disability, shall be made or commence no later than one (1) year following the close of the Plan Year in which such event occurred; provided, however, that if the amount required to be distributed cannot be ascertained by such date, distribution shall be made no later than sixty (60) days after the earliest date on which such amount can be ascertained; and provided, further, that, subject to the last paragraph of this Section, if the Participant's vested Account balance (including any rollover contributions) exceeds \$1,0000, distribution shall not be made or commence, unless the Participant otherwise requests in writing. In such event, distribution shall commence as soon as administratively practical following receipt by the Administrator of the Participant's written request.

If a Participant terminates employment for any reason other than Normal Retirement, Disability or death, distribution of his vested Account balance shall be made or commence no later than the close of the sixth Plan Year following the Plan Year in which he terminated employment. However, if the vested balance of a Participant's Account (including any rollover contributions) exceeds \$1,000, subject to the last paragraph of this Section, distribution of his vested Account shall not be made or commence unless the Participant otherwise requests in writing."

III.

The first sentence of Section 7.4(d) of the Plan is hereby amended to read as follows:

"Notwithstanding anything contained herein to the contrary, if the portion of the vested balance of the Participant's Account derived from funds transferred from a plan subject to the provisions of Code Sections 401(a)(11) and 417 (including any rollover contributions) does not exceed \$1,000, distribution of the portion of the Participant's vested Account derived from funds transferred from a plan subject to the provisions of Code Sections 401(a)(11) and 417 (including any rollover contributions) does not exceed \$1,000, distribution of the portion of the Participant's vested Account derived from funds transferred from a plan subject to the provisions of Code Sections 401(a)(11) and 417 shall be made in the form of a lump-sum payment."

EXECUTED this 29th day of December, 2005.

POLYONE CORPORATION

/s/ Kenneth M. Smith By: Kenneth M. Smith Vice President and Chief Human Resources Officer

#### AMENDMENT NO. 11 TO THE POLYONE RETIREMENT SAVINGS PLAN (<u>Effective June 1, 2003</u>)

PolyOne Corporation (the "Company") hereby adopts this Amendment No. 11 to the PolyOne Retirement Savings Plan (Effective June 1, 2003), as previously amended (the "Plan"), effective August 15, 2006. Words and phrases used herein with initial capital letters that are defined in the Plan are used herein as so defined.

I.

Article I of the Plan is hereby amended by the addition of the following new Section immediately following Section 1.6A to read as follows:

"1.6B 'DENNIS CHEMICAL PLAN' shall mean the Dennis Chemical Company, Inc. 401(k) Plan, as of the effective date of the merger of the Dennis Chemical Plan with and into the Plan."

II.

Section 1.8 of the Plan is hereby amended in its entirety to read as follows:

"1.8 'EFFECTIVE DATE.' The Effective Date of this Plan is June 1, 2003. This Plan supersedes the terms of the Merged Plans as of June 1, 2003; the terms of the Subsequently Merged Plans as of January 1, 2004; the December 1, 2004 Merged Plans as of December 1, 2004; and the terms of the Dennis Chemical Plan and the Wilflex Plan as of the effective date(s) of the mergers of those plans with and into this Plan. The rights of any Participant with respect to the Merged Plan, the Subsequently Merged Plan, the December 1, 2004 Merged Plan, the Dennis Chemical Plan, or the Wilflex Plan who separated from the Employer's Service prior to such dates shall be established under the terms of the Merged Plan, the Subsequently Merged Plan, the Dennis Chemical Plan, or the Wilflex Plan, the December 1, 2004 Merged Plan, the Dennis Chemical Plan, or the Farticipant's separation from Service, unless the Participant subsequently returns to Service with the Employer. Rights of spouses and Beneficiaries of such Participant shall also be governed by those documents."

III.

The first sentence of the second paragraph of Section 2.1 of the Plan is hereby amended to read as follows:

"Any Participant who was a participant in a Merged Plan as of May 31, 2003, a Subsequently Merged Plan as of December 31, 2003, a December 1, 2004 Merged Plan as of November 30, 2004, or the Dennis Chemical Plan or Wilflex Plan as of the effective date(s) of the mergers of such plans with and into the Plan shall be credited with any prior 'Years of Service' credited under the Merged Plan, the Subsequently Merged Plan, the December 1, 2004 Merged Plan, the Dennis Chemical Plan or the Wilflex Plan, as applicable, as of such date."

### V.

The first paragraph of Section 3.1 of the Plan is hereby amended to read as follows:

"**PARTICIPATION**. Any participant in a Merged Plan as of May 31, 2003 shall become a Participant in the Plan as of June 1, 2003. Any participant in a Subsequently Merged Plan as of December 31, 2003 shall become a Participant in the Plan as of January 1, 2004. Any participant in a December 1, 2004 Merged Plan as of November 30, 2004, to the extent that such participant is not already a Participant in the Plan, shall become a Participant in the Plan as of December 1, 2004. Any participant in the Plan as of December 1, 2004. Any participant in the Plan as of December 1, 2004. Any participant in the Dennis Chemical Plan or the Wilflex Plan as of the effective date(s) of the mergers of such plans with and into the Plan, to the extent that such participant in the Plan on such date, shall become a Participant in the Plan as of that date."

VI.

The first sentence of Section 6.1 of the Plan is hereby amended to read as follows:

"A Participant shall at all times have a nonforfeitable (vested) right to his Account derived from elective deferrals, after-tax contributions, Employer matching contributions, Fail-Safe Contributions and Qualified Matching Contributions as defined in Section 10.2, any dividends paid on Employer Stock credited to his Account, any rollovers or transfers from other plans, and any other contributions made on his behalf, or transferred to the Plan on his behalf (including amounts transferred from the Dennis Chemical Plan and the Wilflex Plan), other than retirement contributions made under Section 4.2(b) or any Employer retirement contributions transferred from a Merged Plan, a Subsequently Merged Plan or a December 1, 2004 Merged Plan, as adjusted for investment experience.

EXECUTED this 29th day of June, 2006.

POLYONE CORPORATION

By: /s/ Kenneth M. Smith

Title:

#### AMENDMENT NO. 12 TO THE POLYONE RETIREMENT SAVINGS PLAN (<u>Effective June 1, 2003</u>)

PolyOne Corporation (the "Company") hereby adopts this Amendment No. 12 to the PolyOne Retirement Savings Plan (Effective June 1, 2003), as previously amended (the "Plan"), effective November 1, 2006. Words and phrases used herein with initial capital letters that are defined in the Plan are used herein as so defined.

I.

Article I of the Plan is hereby amended by the addition of the following new Section immediately following Section 1.25 to read as follows:

"1.25A 'WILFLEX PLAN' shall mean the Wilflex Savings Plan, as of the effective date of the merger of the Wiflex Savings Plan with and into the Plan."

II.

Section 1.8 of the Plan is hereby amended in its entirety to read as follows:

"1.8 'EFFECTIVE DATE.' The Effective Date of this Plan is June 1, 2003. This Plan supercedes the terms of the Merged Plans as of June 1, 2003; the terms of the Subsequently Merged Plans as of January 1, 2004; the December 1, 2004 Merged Plans as of December 1, 2004; and the terms of the Dennis Chemical Plan and the Wilflex Plan as of the effective date(s) of the mergers of those plans with and into this Plan. The rights of any Participant with respect to the Merged Plan, the Subsequently Merged Plans, the December 1, 2004 Merged Plan, the Dennis Chemical Plan, or the Wilflex Plan who separated from the Employer's Service prior to such dates shall be established under the terms of the Merged Plan, the Subsequently Merged Plan, the Dennis Chemical Plan, or the Wilflex Plans, the December 1, 2004 Merged Plan, or the Wilflex Plans, the December 1, 2004 Merged Plan, the Subsequently Merged Plans, the Dennis Chemical Plan, or the Wilflex Plan who separated from the Employer's Service prior to such dates shall be established under the terms of the Merged Plan, the Subsequently Merged Plans, the December 1, 2004 Merged Plan, or the Wilflex Plan, as applicable, in effect at the time of the Participant's separation from Service, unless the Participant subsequently returns to Service with the Employer. Rights of spouses and Beneficiaries of such Participants shall also be governed by those documents."

III.

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The first sentence of the second paragraph of Section 2.1 of the Plan is hereby amended to read as follows:

"Any Participant who was a participant in a Merged Plan as of May 31, 2003, a Subsequently Merged Plan as of December 31, 2003, a December 1, 2004 Merged Plan as of November 30, 2004, or the Dennis Chemical Plan or Wilflex Plan as of the effective date(s) of the mergers of such plans with and into the Plan shall be credited with any prior 'Years of Service' credited under the Merged Plan, the Subsequently Merged Plan, the December 1, 2004 Merged Plan, the Dennis Chemical Plan or the Wilflex Plan, as applicable, as of such date."

#### IV.

### The first paragraph of Section 3.1 of the Plan is hereby amended to read as follows:

"**PARTICIPATION.** Any participant in a Merged Plan as of May 31, 2003 shall become a Participant in the Plan as of June 1, 2003. Any participant in a Subsequently Merged Plan as of December 31, 2003 shall become a Participant in the Plan as of January 1, 2004. Any participant in a December 1, 2004 Merged Plan as of November 30, 2004, to the extent that such participant is not already a Participant in the Plan, shall become a Participant in the Plan as of December 1, 2004. Any participant in the Plan as of December 1, 2004. Any participant in the Plan as of December 1, 2004. Any participant in the Dennis Chemical Plan or the Wilflex Plan as of the effective date(s) of the mergers of such plans with and into the Plan, to the extent that such participant in the Plan on such date, shall become a Participant in the Plan as of that date."

#### V.

#### The first sentence of Section 6.1 of the Plan is hereby amended to read as follows:

"A Participant shall at all times have a nonforfeitable (vested) right to his Account derived from elective deferrals, after-tax contributions, Employer matching contributions, Fail-Safe Contributions and Qualified Matching Contributions as defined in Section 10.2, any dividends paid on Employer Stock credited to his Account, any rollovers or transfers from other plans, and any other contributions made on his behalf, or transferred to the Plan on his behalf (including amounts transferred from the Dennis Chemical Plan and the Wilflex Plan), other than retirement contributions made under Section 4.2(b) or any Employer retirement contributions transferred from a Merged Plan, a Subsequently Merged Plan or a December 1, 2004 Merged Plan, as adjusted for investment experience."

EXECUTED this 29th day of September, 2006.

POLYONE CORPORATION

By: /s/ Kenneth M. Smith

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#### AMENDMENT NO. 13 TO THE POLYONE RETIREMENT SAVINGS PLAN (<u>Effective June 1, 2003</u>)

PolyOne Corporation (the "Company") hereby adopts this Amendment No. 12 to the PolyOne Retirement Savings Plan (Effective June 1, 2003), as previously amended (the "Plan"), effective November 1, 2006. Words and phrases used herein with initial capital letters that are defined in the Plan are used herein as so defined.

I.

The second sentence of Section 8.1(b) of the Plan is hereby amended to read as follows:

"Provided, however, that in no event shall any portion of a Participant's loan be derived from amounts transferred directly from a money purchase pension plan, Employer retirement and/or transition contributions made on behalf of the Participant, any Employer matching contributions made on behalf of the Participant which are invested in the Employer Stock fund other than by the Participant's investment direction, or Employer Profit Sharing Contributions (as such term is defined in the Wilflex Plan) made to the Wilflex Plan on behalf of the Participant."

#### II.

The first sentence of Section 8.2 of the Plan is hereby amended to read as follows:

"In the case of a financial hardship resulting from a proven immediate and heavy financial need, a Participant may receive a distribution not to exceed the lesser of (i) the vested value of the Participant's Account attributable to (A) his elective deferrals (excluding any elective deferrals contributed by the Participant to the Wilflex Plan in excess of the amount reflected in the "hardship accumulator" in the records of the Wilflex Plan as of the date of the merger of the Wilflex Plan into the Plan), without regard to earnings thereon after December 31, 1988, (B) any rollover contributions (excluding any rollover contributions transferred from the Occidental Petroleum Corporation Savings Plan to a December 1, 2004 Merged Plan), including earnings thereon, and (C) any after-tax contributions, including earnings thereon or (ii) the amount necessary to satisfy the financial hardship."

EXECUTED this 1st day of November, 2006.

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### POLYONE CORPORATION

By: /s/ Kenneth M. Smith

#### AMENDMENT NO. 14 TO THE POLYONE RETIREMENT SAVINGS PLAN (<u>Effective June 1, 2003</u>)

PolyOne Corporation (the "Company") hereby adopts this Amendment No. 14 to the PolyOne Retirement Savings Plan (Effective June 1, 2003), as previously amended (the "Plan"), effective January 1, 2006. Words and phrases used herein with initial capital letters that are defined in the Plan are used herein as so defined.

I.

The last sentence of the first paragraph of Section 4.1(e) of the Plan is hereby deleted from the Plan.

II.

The first sentence of the second paragraph of Section 8.2 of the Plan is hereby amended to read as follows:

"Hardship distributions under this Section shall be deemed to be the result of an immediate and heavy financial need if such distribution is to (a) pay expenses for (or necessary to obtain) medical care that would be deductible under Section 213(d) of the Code (determined without regard to whether the expenses exceed 7.5% of adjusted gross income), (b) purchase the principal residence of the Participant (excluding mortgage payments), (c) pay tuition and related educational fees for up to the next twelve months of post-secondary education for the Participant, the Participant's spouse, children or dependents (as defined in Section 152 of the Code, and, for taxable years beginning on or after January 1, 2005, without regard to Section 152(b)(1), (b) (2) or (d)(1)(B) of the Code), (d) prevent the eviction of the Participant's deceased parent, spouse, children or dependents (as defined in Section 152(b)(1), z) of the Code, and, for taxable years beginning on or after January 1, 2005, without regard to Section 152 of the Code, and, for taxable years beginning on or after January 1, 2005, without regard to Section 152(d)(1)(B) of the Code), (f) pay expenses for the repair of damage to the Participant's principal residence that would qualify for the casualty deduction under Section 165 of the Code (determined without regard to whether the loss exceeds 10% of adjusted gross income) or (g) any other financial need which the Commissioner of Internal Revenue, through the publication or revenue rulings, notices and other documents of general applicability, may from time to time designate as a deemed immediate and heavy financial need." III.

Clauses (2) and (3) of the third paragraph of Section 8.2 of the Plan are hereby amended to read as follows:

- "(2) The Participant has obtained all distributions, other than hardship distributions (including the distribution of any ESOP dividends under Section 404(k) of the Code, including distributions pursuant to the second paragraph of Section 5.1(c)), and all nontaxable (at the time of the loan) loans currently available under all plans maintained by the Employer (including, without limitation, any qualified and non-qualified deferred compensation plan and any cash or deferred arrangement that is part of a cafeteria plan (other than mandatory employee contributions under a welfare plan or pension plan));
- (3) The Participant is prohibited, under the terms of the Plan or an otherwise legally enforceable agreement, from making elective deferrals to the Plan and all other plans maintained by the Employer (or reinvesting any dividends in the Plan pursuant to the second paragraph of Section 5.1(c)), for six (6) months after receipt of the hardship distribution. For this purpose, the phrase "all other plans maintained by the Employer" means all qualified and nonqualified plans of deferred compensation maintained by the Employer. The phrase also includes a stock option, stock purchase, or similar plan, or a cash or deferred arrangement that is part of a cafeteria plan within the meaning of Section 125 of the Code (other than mandatory employee contributions under a welfare plan or pension plan)."

IV.

Section 10.2 of the Plan is hereby amended to read as follows:

"10.2 LIMITATIONS ON 401(K) CONTRIBUTIONS. The nondiscrimination requirements of Code Section 401(k) will be met by the Plan pursuant to the ADP safe harbor provisions of Code Section 401(k)(12) and Section 1.401(k)-3 of the IRS Treasury Regulations. The safe harbor contribution will be the matching safe harbor contribution."

V.

Section 10.3 of the Plan is hereby amended to read as follows:

"<u>10.3</u> NONDISCRIMINATION TEST FOR EMPLOYER MATCHING CONTRIBUTIONS AND AFTER-TAX CONTRIBUTIONS. The nondiscrimination requirements of Code Section 401(m) will be met by the Plan pursuant to the ACP safe harbor provisions of Code Section 401(m)(11) and

Section 1.401(m)-3 of the IRS Treasury Regulations. The safe harbor contribution will be the matching safe harbor contribution." EXECUTED this 14th day of December, 2006.

# POLYONE CORPORATION

By: /s/ Kenneth M. Smith Title:

# DH COMPOUNDING COMPANY SAVINGS AND RETIREMENT PLAN AND TRUST

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#### DH COMPOUNDING COMPANY SAVINGS AND RETIREMENT PLAN AND TRUST Amended and Restated

DH COMPOUNDING COMPANY, a Tennessee partnership (the "Employer"), has adopted this amended and restated Profit Sharing and Retirement Savings Plan to allow its Employees who are eligible to participate in the Plan to share in the growth of the Employer in accordance with the terms and conditions set forth below, in order to (i) promote in the Employees an interest in the successful operation of the Employer's business and in the increased efficiency of their work; (ii) provide the participating Employees with benefits upon their retirement; and (iii) provide their Beneficiaries with death benefits.

### I. PLAN SPECIFICATIONS

A. <u>Name</u>.

This Profit Sharing and Retirement Savings Plan shall be known as the "DH COMPOUNDING COMPANY SAVINGS AND RETIREMENT PLAN AND TRUST."

### B. Exclusive Benefit.

This Plan shall be maintained for the exclusive benefit of the Participants and their Beneficiaries and is intended to qualify as a defined contribution plan under the appropriate provisions of ERISA and the Code.

#### C. Effective Date.

"Effective Date" means September 9, 1991.

"Amended Effective Date" means January 1, 2003, unless otherwise stated herein. For purposes of Safe Harbor Matching Contributions or Safe Harbor

ARTICLE I

Nonelective Employer Contributions, the Amended Effective Date means January 1, 2004.

D. Plan Year.

"Plan Year" means each 12 consecutive month period ending on December 31st.

E. Limitation Year.

"Limitation Year" means each 12 consecutive month period ending on the last day of the Plan Year.

#### ELIGIBILITY AND PARTICIPATION

# F. Eligible Employee.

"Eligible Employee" means, with respect to any Plan Year, every Employee of the Employer who meets the following requirements:

1. Minimum Age:

None.

2. Service:

He or she has completed three (3) consecutive months of service having worked at least 0 Hours of Service in each such month; provided, however, that he or she shall become an Eligible Employee no later than upon the completion of 1000 Hours of Service within a 12 consecutive month period and the attainment of the minimum age requirement, if any.

### 3. Years of Service - Break-in-Service.

Notwithstanding Paragraph A.2 of Article III, a non-vested Participant shall be readmitted as a Participant as of his or her date of re-employment.

This Plan shall use the elapsed time method for crediting Years of Service for eligibility purposes.

### 4. Service with the Predecessor Employer or Predecessor Plan.

Service with a Predecessor Employer is not applicable.

### ARTICLE I

### 5. Subsequent Eligibility Computation Period.

"Subsequent Eligibility Computation Period" means the 12 consecutive month period commencing on any anniversary of the Employee's Employment Commencement Date.

6. Class Exclusions.

Notwithstanding the above, any Employee who is a member of any of the following class(es) is specifically excluded from participation under the Plan:

His or her compensation and conditions of employment are established by the terms of a collective bargaining agreement where retirement benefits are bargained for in good faith between the Employer and such Employee's lawful representative or bargaining agent; provided, however, that any otherwise Eligible Employee whose compensation and conditions of employment are established by the terms of a collective bargaining agreement shall be an Eligible Employee if his or her coverage under this Plan is specifically provided for under such collective bargaining agreement.

7. Exclusion By Name.

Notwithstanding the above, the following individual[s] shall be excluded: Co-operative Students.

G. <u>Entry Date</u>.

"Entry Date" means the first day of each month coincident with or next following the day he or she becomes an Eligible Employee.

### **CONTRIBUTIONS**

### H. Types of Employer Contributions.

### 1. Nonelective Employer Contributions.

For each Plan Year, the Employer may make contributions to the Trust in one (1) or more installments without regard to its Net Profits for such year in such amounts as the Board may determine in its sole discretion.

### ARTICLE I

### 2. Elective Contributions With Safe Harbor Provisions.

The safe harbor provisions of this Plan shall apply. The Safe Harbor Contributions pursuant to Section 401(k)(12) of the Code shall be made to this Plan as set forth in Paragraph H of this Article I. Each Participant may elect, by completing the appropriate forms acceptable to the Committee, to reduce and defer the receipt of up to 15% of his or her Compensation. In no event shall any Participant be permitted to make Elective Contributions in excess of the limitation on Elective Deferrals described in Paragraph H of Article IV. The Employer shall contribute the amount so deferred subject to the limitations described in Articles IV and V, to the Plan.

#### 3. Qualified Nonelective Employer Contributions.

The Employer may make Qualified Nonelective Employer Contributions. The Employer may contribute on behalf of all eligible Non-Highly Compensated Participants eligible for an allocation, a contribution equal to the amount, if any, as necessary to satisfy the Actual Deferral Percentage limitation and/or Contribution Percentage limitation.

The Employer may designate that portion of its Nonelective Employer Contributions made to the Trust for such Plan Year as Qualified Nonelective Employer Contributions under Section 401(k) of the Code and/or as Qualified Nonelective Employer Contributions under Section 401(m) of the Code.

#### 4. Matching Contributions.

The Employer may designate, by resolution of its Board, a portion of its contributions made to the Trust for such Plan Year as a contribution to match each Participant's Elective Contribution. Matching Contributions shall be as follows:

<u>Payroll Period Matching Contributions</u> of 25% of each eligible participant's Elective Contributions up to 6% of his or her pay for the period shall be made. Both the percentage of match and the percentage of Elective Contributions considered for match may be changed by the Board with sufficient notice prior to the match period for which the new percentages apply.

<u>Annual Matching Contributions</u> of 30% of each eligible participant's Elective Contributions up to 6% of his or her pay for the plan year shall be made. These percentages may be changed by the Board prior to the deadline for payment of the match.

### 5. Qualified Matching Contributions.

The Employer shall not make Qualified Matching Contributions.

#### ARTICLE I

### 6. Safe Harbor Matching Contributions.

The Employer shall not make Safe Harbor Matching Contributions.

# 7. Safe Harbor Nonelective Employer Contributions.

Subject to the procedural notice requirements provided in IRS Notice 2000-3, the Employer may make Safe Harbor Nonelective Employer Contributions.

# 8. <u>Simple 401(k)</u> Contributions.

The Employer shall not make Simple 401(k) Contributions.

# I. <u>Reserved</u>.

# J. Required Minimum Benefits.

The top-heavy minimum benefit shall be the lesser of three percent (3%) of Section 415 Compensation or the highest percentage allocated to any Key Employee.

Key Employees shall be entitled to top-heavy minimum benefits under this Plan.

# K. Compensation.

"Compensation" means wages, not to exceed the Compensation Limitation, paid by the Employer to an Employee during a Plan Year, as defined in Section 3401(a) of the Code and all other payments of Compensation to an Employee by the Employer (in the course of the Employer's trade or business) for which the Employer is required to furnish the Employee a written statement (Form W-2) under Sections 6041(d), 6051(a)(3) and 6052 of the Code. Compensation must be determined without regard to any rules under Section 3401(a) of the Code that limit the remuneration included in wages based on the nature or location of the employment or the services performed, and further modified by the following:

# ARTICLE I

### Modifications of Compensation

Excluding reimbursement of other expense allowances, fringe benefits, (cash or in kind), moving expenses, deferred compensation and welfare benefits regardless whether these items are includable in taxable income.

Including wages which are not currently includable in the Participant's gross income by reason of the application of Sections 125, 402(e)(3), 402(h)(1)(B), 403(b), 408(p)(2)(A)(i) and 457 of the Code.

L. Highly Compensated Employees and Current or Prior Testing Methods.

For purposes of identifying Highly Compensated Employees, the Employer has elected the following:

1. For Plan Years beginning after December 31, 1996, a Highly Compensated Employee shall be determined based upon the calendar year beginning with or within the Look-Back Year.

2. For Plan Years beginning after December 31, 1996, a Highly Compensated Employee need not be a member of the Top-Paid Group.

3. For Plan Years beginning after December 31, 1996, the determination of the Actual Deferral Percentage and the Average Contribution Percentage, if applicable, for the group of Eligible Participants who are Non-Highly Compensated Employees shall be based upon the current Plan Year data.

#### ALLOCATIONS TO CONTRIBUTION ACCOUNTS

M. Allocation of Employer Contributions.

Subject to the provisions of Articles IV, V and X:

1. Qualified Nonelective Employer Contributions.

<u>Ratio of Compensation</u>. Qualified Employer Nonelective Contributions for each Plan Year shall be allocated to the Qualified Nonelective Employer Contribution Accounts in the proportion that each Non-Highly Compensated Eligible Participant's Compensation bears to the Compensation of all such Non-Highly Compensated Eligible Participants for the Plan Year.

### ARTICLE I

2. Matching Contributions.

Each Participant shall receive an allocation of Matching Contributions as provided in the formula elected in Paragraph H of this Article I.

3. Qualified Matching Contributions.

Not Applicable.

4. Nonelective Employer Contributions.

# Ratio of Compensation Formula

Nonelective Employer Contributions for each Plan Year shall be allocated to the Nonelective Employer Contribution Accounts of each Participant eligible for an allocation in the proportion that each such Participant's Compensation bears to the Compensation of all such Participants for the Plan Year.

5. <u>Safe Harbor Matching Contributions</u>

Not applicable.

6. Safe Harbor Nonelective Employer Contributions

Safe Harbor Nonelective Employer Contributions shall be made and allocated in accordance with Paragraph H of this Article I.

7. <u>Simple 401(k)</u> Contributions

Not applicable.

N. Excess Compensation.

Not Applicable.

O. Participant Forfeitures.

1. Not Applicable.

# ARTICLE I

### P. <u>Allocation Requirements – Last Day Employment and Service Requirements</u>.

#### 1. Hours of Service Not Required.

Allocations of Nonelective Employer Contributions and Annual Matching Contributions shall be made to the appropriate Accounts of those Participants who were credited with a Year of Service. A Year of Service for Allocation Accrual purposes is a 12 month period that is the same as the Plan Year in which the employee was employed by the Employer at the beginning of the period and at the end of the period.

If the allocation requirements of this paragraph result in an allocation that does not satisfy the coverage requirements of Section 410(b)(1)(B) of the Code in any Plan Year then additional Nonelective Employer Contributions and Matching Contributions shall be made no later than the due date of the Employer's tax return and shall be allocated retroactively to the last day of that Plan Year to otherwise eligible Participants to the extent necessary to satisfy coverage requirements of Section 410(b)(1)(B) of the Code. In determining the extent to which such allocations to such Participants are necessary, allocations shall first be made to Participants beginning with the Participant with the smallest number of Hours of Service and allocations shall continue to be made to Participants with increasing Hours of Service until the coverage requirements of the ratio percentage test of Section 410(b)(1)(B) of the Code are satisfied. Terminated Participants must have been credited with more than 500 Hours of Service prior to termination to be eligible for an allocation pursuant to this provision.

#### 2. Retirement, Death and Disability.

The last day of employment requirement of this Paragraph P shall not apply to a Participant who terminates employment during the Plan Year by reason of retirement at or after Normal Retirement Age or death or Total Disability.

#### Q. Allocation of Excess Annual Additions.

If an allocation to a Participant would result in an excess Annual Addition, such excess Annual Addition shall be allocated to remaining Participants' Accounts with any remaining unallocable Annual Additions held in a suspense account and applied to reduce Employer contributions for the next succeeding Limitation Year.

### R. Adjustment to the Rule of 1.0.

If an adjustment under Section 415(e) of the Code is necessary to prevent the sum of the Defined Benefit Plan Fraction and the Defined Contribution Plan Fraction from exceeding 1.0 for a Limitation Year, the Annual Additions in the defined contribution plan shall be reduced first.

### ARTICLE I

For Limitation Years beginning after December 31, 1999, the preceding paragraph shall no longer apply.

### S. Employee After-Tax Contributions.

Employee After-Tax Contributions are not allowed.

T. Rollover Contributions and Transferred Benefits.

Rollover Contributions are allowed.

Transferred Benefits are allowed.

### U. Normal Retirement Age

Normal Retirement Age means the Participant's 62nd birthday. A Participant who continues in the employ of the Employer after he or she attains Normal Retirement Age shall remain a Participant while so employed, and be entitled to all Plan benefits to the extent he or she would be entitled thereto if he or she had not yet attained Normal Retirement Age, including allocation of any type of Employer contribution and forfeiture, if any.

#### VESTING

### V. Vesting.

A Participant shall be fully vested in his or her Elective Contribution, Qualified Nonelective Employer Contribution, Nonelective Employer Contribution, Matching Contribution, Safe Harbor Nonelective Employer Contribution and Transferred Benefits Account(s) at all times.

### W. Required Top-Heavy Minimum Vesting.

If the Plan is a Top-heavy Plan, the 3-year cliff vesting schedule set forth in Paragraph D.1 of Article VIII shall replace the vesting schedule adopted in this Article I, unless the vesting schedule set forth in Paragraph V of this Article I provides for a faster rate of vesting during any relevant year.

#### X. Years of Vesting Service.

"Years of Vesting Service" means all of an Employee's Years of Service subject to the provisions of Article VI.

### ARTICLE I

### Y. <u>Years of Service – Break-in-Service</u>.

This Plan shall not use the elapsed time method for crediting Years of Service for vesting purposes.

### Z. Vesting at Death or Total Disability.

A Participant shall become fully vested at death. A Participant shall become fully vested at Total Disability.

#### **DISTRIBUTION OF BENEFITS**

#### AA. Participant Loans.

Loans to Participants are available. Loans are available from Elective Contributions and Rollover Contributions. Loans will be treated as directed investments of Participants' Accounts. The \$50,000 limit and 50% limit under Paragraph H of Article VII shall apply. Loans shall be repaid by payroll deductions. Loans to Inactive Participants are not available. The minimum loan amount shall be \$500. Loan repayments shall not be suspended by reason of Section 414(u) of the Code.

#### BB. Hardship Withdrawals.

Hardship withdrawals of Elective contributions shall be allowed. For these purposes, an "event of hardship" means:

Payment of medical expenses described in Section 213(d) of the Code which are incurred by the Employee, the Employee's Spouse, or any dependents of the Employee as defined in Section 152(d) of the Code or necessary for these persons to obtain medical care as described in Section 213(d) of the Code.

Purchase of a principal residence, but not including mortgage payments, by the Employee.

Payment of tuition, room and board, and related educational fees for the next 12 months of post-secondary education for the Employee, the Employee's Spouse, children or dependents.

The need to prevent eviction of the Employee from his or her principal residence or foreclosure on the mortgage of the Employee's principal residence.

### ARTICLE I

### CC. In-Service Distributions Other Than Hardship.

In-service distributions of a Participant's Nonelective Employer Contribution Account, Matching Contribution Account and Transferred Benefits Account not subject to Section 401(k) of the Code or Paragraph D of Article XVI shall be allowed at the following times:

attainment of age 591/2 or later

In-service distributions of a Participant's Elective Contribution Account, Qualified Nonelective Contribution Account, Safe Harbor Nonelective Employer Contribution Account and Transferred Benefits Account subject to only Section 401(k) of the Code shall be allowed at age 59<sup>1</sup>/<sub>2</sub> or later.

In-service distributions of a Participant's Transferred Benefits Account subject to Paragraph D of Article XVI **shall** be allowed at or after Normal Retirement Age.

In-service distributions of a Participant's Rollover Contribution Account shall be allowed at any time.

DD. Cash-Out Options.

1. Effective for Plan Years beginning after August 5, 1997, the \$3,500 involuntary cash-out distribution limit shall be increased to \$5,000.

2. An immediate forfeiture of a partial cash-out as provided in Paragraph B.4 of Article VI shall not apply until the Participant either has received his or her entire vested Accrued Benefit; or if earlier, has incurred five (5) consecutive one-year Breaks-in-Service.

3. If a Participant is rehired prior to five (5) consecutive one year Breaks-in-Service, he or she shall not be required to repay the Plan the amounts previously distributed to the Participant for the Participant's non-vested Accrued Benefits to be restored.

4. The alternative separate account formula X=P(AB + (RxD)) – (RxD) as stated in Paragraph C of Article VI shall not apply.

EE. <u>Time of Distribution Upon Employment Termination</u>.

#### ARTICLE I

Distributions of vested Accounts to Participants upon employment termination prior to Normal Retirement Age shall be made as soon as administratively feasible after employment termination date.

#### FF. Right to Defer Receipt of Benefits After Normal Retirement Age and Age 70<sup>1</sup>/<sub>2</sub>.

1. Upon separation from service, a Participant shall not have the right to defer receipt of benefits after Normal Retirement Age or age 62, if later.

2. The required beginning date for minimum required distributions for a non-5%-Owner is the April 1 of the calendar year following the later of the calendar year in which such Participant attains age 70<sup>1</sup>/<sub>2</sub> or the calendar year in which such Participant retires.

(a) Effective 01/01/2003, any non-5%-Owner who attains age 70<sup>1</sup>/<sub>2</sub>, is not currently required to receive minimum required distributions, and who is still employed by the Employer may elect to defer receiving minimum required distributions until the calendar year following retirement. Such election must be made by the April 1 of the calendar year following the calendar year in which the Participant attained age 70<sup>1</sup>/<sub>2</sub>.

#### GG. Accrued Benefits Not Subject to REACT Annuity Requirements.

Participants' Accrued Benefits other than Transferred Benefits shall not be subject to the Qualified Joint and Survivor Annuity and Qualified Preretirement Survivor Annuity requirements of REACT as provided in Paragraphs A, B and C of Article VII. The survivor portion of the Qualified Joint and Survivor Annuity in regard to the Participant's Transferred Benefits shall equal 50%. The Qualified Preretirement Survivor Annuity in regard to the Participant's Transferred Benefits shall equal 100% of the actuarial equivalent of the sum of the Participant's Transferred Benefits and any other death benefits attributable to such Transferred Benefits. The one-year marriage requirement shall not apply to a Surviving Spouse in regard to the Preretirement death benefit or the Qualified Preretirement Survivor Annuity, if applicable.

### HH. Alternate Forms of Benefits Payments.

The following alternate forms of benefit payment are available:

Single Sum. The payment of the Participant's vested Accrued Benefit in a single sum in cash .

Installments. The payment of the Participant's vested Accrued Benefit in a series of installments payable annually.

### ARTICLE I

Partial Withdrawals. A portion paid in a lump sum and a second payment of the remainder paid at a later date.

### II. Reserved.

JJ. Total Disability.

"Total Disability" shall have the same meaning as defined in Article II .

#### **MISCELLANEOUS**

#### KK. Participant Directed Accounts.

Each Participant shall be entitled to direct the investment of his or her Accrued Benefits in accordance with Article XII. Except that contributions to the Payroll Period Matching Contribution Account and the Annual Matching Contribution Account shall be made as follows:

50% of the matching contribution for each period shall be made in common shares of PolyOne Corporation and

50% of the matching contribution for each period shall be made in common shares of the Dow Chemical Company.

Participant balances in these accounts are immediately eligible for transfer.

#### LL. Valuation Date.

"Valuation Date" means the Anniversary Date and any other date that the Committee designates.

For Accounts that are self-directed by Participants, Valuation Date(s) shall mean the end of each "business" day unless the investment option or the per share value of a particular investment is not valued daily. If the particular investment is not valued daily, then Valuation Date shall mean the date(s), upon which such investment is actually valued or any other date that the Committee designates. However, in no event shall a Valuation Date occur less frequently than annually, with the last day of each Plan Year serving as a Valuation Date (or one of the Valuation Dates).

#### MM. Look-Back Year.

"Look-Back Year" means, for Plan Years beginning after December 31, 1996, the 12-month period immediately preceding any relevant Plan Year. However, for

### ARTICLE I

the Plan Year beginning in 1997, the Look-Back Year means the calendar year ending with or within the Plan Year.

"Look-Back Year" means, For Plan Years beginning prior to January 1, 1997, the calendar year ending with or within the Plan Year.

NN. Co-Trustees

If there is more than one (1) Trustee, any one of such Trustees shall have the right to make any decision, undertake any action or execute any documents affecting this Trust without the approval of the remaining Trustees. Any directions to any person or organization shall be executed by any one of the co-Trustees. For purposes of this Plan and Trust, "directions" shall mean any certification, notice, authorization, application or instruction of the Trustee.

#### OO. Correction of Multiple Use.

If a multiple use of the alternative limitations occurs with respect to this Plan or with respect to this Plan and one or more other plans or arrangements maintained by the Employer:

1. Reduction shall be made to all Highly Compensated Employees in order to prevent such multiple use.

2. The Actual Deferral Percentage shall be reduced.

#### PP. Model Amendment.

1. Paragraph K of Article I is amended to add the following as a modification to Compensation:

For Plan Years beginning on and after 01/01/2001, Compensation shall include elective amounts that are not includible in the gross income of the Employee under Section 125, 132(f)(4), 402(e)(3), 402(h) or 403(b) of the Code.

2. Paragraph A.76 of Article II is amended to add the following:

For Plan Years beginning on and after 01/01/2001, the definition of Section 415 Compensation for purposes of this Plan shall also include elective amounts that are not includible in the gross income of the Employee by reason of Section 132(f)(4) of the Code. This modification shall also apply to the definition of compensation for purposes of Paragraphs A.30 and A.41 of Article II and Paragraphs A.2 and E of Article VIII.

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3. Paragraph E.1 of Article V is amended to add the following subparagraph (c):

(c) For Limitation Years beginning on and after 01/01/2001, for purposes of applying the limitations described in this Paragraph E, Section 415 Compensation paid or made available during such Limitation Years shall include elective amounts that are not includible in the gross income of the Employee by reason of Section 132(f)(4) of the Code.

4. Paragraph B.9 of Article VII is amended to add the following paragraph:

With respect to distributions under the Plan made for calendar years beginning on and after January 1, 2002, the Plan will apply the minimum distribution requirements of Section 401(a)(9) of the Code in accordance with the regulations under Section 401(a)(9) of the Code that were proposed on January 17, 2001, notwithstanding any provision of the Plan to the contrary. This amendment shall continue in effect until the end of the last calendar year beginning before the effective date of final regulations under Section 401(a)(9) of the Code or such other date as may be specified in guidance published by the Internal Revenue Service.

### ARTICLE I

### II. DEFINITIONS

A. Terms Defined In This Article II. As used in this Plan, the following terms have the following meanings.

1. "<u>Account(s)</u>" means, where applicable, a Participant's Nonelective Employer Contribution Account, Elective Contribution Account, Employee After-Tax Contribution Account, Qualified Nonelective Employer Contribution Account, Matching Contribution Account, Qualified Matching Contribution Account, Rollover Contribution Account, Safe Harbor Matching Contribution Account, Safe Harbor Nonelective Employer Contribution Account, Simple 401(k) Contribution Account and/or Transferred Benefits Account.

2. "Accrued Benefit" means, where applicable at any date, the value of a Participant's Accounts.

3. "<u>Actual Deferral Percentage</u>" means with respect to (i) the group of Highly Compensated Employees who are Eligible Participants; and (ii) the group of all other Eligible Participants, the average of the actual deferral ratios of each group, calculated separately for each Eligible Participant in each group, of the amount of the Qualifying Section 401(k) Contributions made on behalf of each Eligible Participant for the Plan Year divided by the Eligible Participant's Compensation for the Plan Year. The actual deferral ratio of an Eligible Participant who did not make or receive any Qualifying Section 401(k) Contribution is zero (0).

For Plan Years beginning after December 31, 1988, the actual deferral ratio for each Eligible Participant shall be calculated to the nearest onehundredth (.01) of one percent (1%). Unless otherwise elected in Paragraph K of Article I, Compensation includes Compensation received for the entire Plan Year regardless of whether the Eligible Participant was a Participant for the entire Plan Year.

A Highly Compensated Employee who is either a 5%-Owner or one (1) of the 10 most Highly Compensated Employees shall have his or her actual deferral ratio aggregated with other eligible Family Members to form one (1) actual deferral ratio as if there was one (1) Highly Compensated Employee. The combined actual deferral ratio shall be determined by combining the Qualifying Section 401(k) Contributions and Compensation of all eligible Family Members. Except as provided in the preceding sentence, Family Members, with respect to such Highly Compensated Employees, shall be disregarded as separate Employees in determining the Actual Deferral Percentage for Participants who are Non-Highly Compensated Employees and for Participants who are Highly Compensated Employees.

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If an Employee is required to be aggregated as a member of more than one (1) family group in a plan, all Eligible Participants who are members of the family groups that include such Employee are aggregated as one (1) family group in accordance with the preceding paragraph.

For Plan Years beginning after December 31, 1996, the preceding two (2) paragraphs shall no longer apply.

4. "<u>Anniversary Date</u>" means the last day of the Plan Year.

5. "Annual Addition" means the amounts allocated to a Participant's Accounts during any relevant Limitation Year that constitute:

(a) Employer contributions;

(b) Employee contributions;

(c) Forfeitures;

(d) Excess Contributions and Excess Aggregate Contributions are Annual Additions whether or not corrected by distribution or recharacterization. Furthermore, Excess Deferrals are Annual Additions; provided, however, that Excess Deferrals which are distributed in accordance with Section 1.402(1)-1(e)(2) or (3) of the Treasury Regulations are not Annual Additions. Additionally, Elective Deferrals which are returned pursuant to Section 415 of the Code are not Annual Additions and are disregarded for purposes of Sections 401(k), 401(m)(2) and 402(g) of the Code;

(e) Amounts allocated after March 31, 1984, to an individual medical account, as described in Section 415(l)(2) of the Code, which is part of a pension or annuity plan maintained by the Employer;

(f) Amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after such date, which are attributable to postretirement medical benefits, allocated to separate accounts of a Key Employee, as defined in Section 419A(d)(3) of the Code, under a welfare benefit fund, as defined in Section 419(e) of the Code, maintained by the Employer; and

(g) Amounts allocated under a simplified employee pension plan pursuant to Section 408(k) of the Code.

Notwithstanding the above, Employee After-Tax Contributions not in excess of the greater of (i) six percent (6%) of Section 415 Compensation or (ii) one-half  $\binom{1}{2}$  of the Employee After-Tax Contributions shall not be considered as

#### ARTICLE II

Annual Additions for any Limitation Year beginning before January 1, 1987. Furthermore, Employer contributions or prior forfeited amounts which are used to restore the non-vested portion of a Participant's Accrued Benefit that was previously cashed-out and forfeited shall not be considered an Annual Addition.

6. "<u>Average Contribution Percentage</u>" means with respect to (i) the group of Highly Compensated Employees who are Eligible Participants; and (ii) the group of all other Eligible Participants, the average of the contribution ratios of each group, calculated separately for each Eligible Participant in each group, of the amount of Qualifying Section 401(m) Contributions made on behalf of each Eligible Participant for the Plan Year divided by the Eligible Participant's Compensation. For Plan Years beginning after December 31, 1988, the Average Contribution Percentage shall be calculated to the nearest one-hundredth (.01) of one percent (1%). The determination of Compensation for an Eligible Participant during the Plan Year shall be made in the same manner as for the Actual Deferral Percentage limitation.

A Highly Compensated Employee who is either a 5%-Owner or one (1) of the 10 most Highly Compensated Employees shall have his or her Contribution Percentage aggregated with other eligible Family Members to form one (1) Contribution Percentage as if there was one (1) Highly Compensated Employee. The combined Contribution Percentage shall be determined by combining the Qualifying Section 401(m) Contribution and Compensation of all eligible Family Members. Except as provided in the preceding sentence, Family Members, with respect to such Highly Compensated Employees, shall be disregarded as separate Employees in determining the Average Contribution Percentage for Participants who are Non-Highly Compensated Employees and for Participants who are Highly Compensated Employees.

If an Employee is required to be aggregated as a member of more than one (1) family group in a plan, all Eligible Participants who are members of the family groups that include such Employee are aggregated as one (1) family group in accordance with the preceding paragraph.

For Plan Years beginning after December 31, 1996, the preceding two (2) paragraphs shall no longer apply.

7. "<u>Board</u>" means the Board of Directors of the Employer, if a corporation. If such corporation is later dissolved, Board continues to mean such Board of Directors of the Employer if empowered to continue to act as a board in settling the affairs of the dissolved corporation under local law. If no such power exists, then in the case of a corporation that is dissolved, Board means the Trustee of the Trust, until such time as a new employer adopts and sponsors the Plan or until all assets are distributed. If the Employer is not a corporation, Board means the managing partner(s) of a partnership, the manager of a limited liability company, the trustee(s) of a trust, the sole proprietor of

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an unincorporated business or the elected or designated representative(s) of an unincorporated association.

8. "<u>Break-in-Service</u>" means that an Employee did not complete more than 500 Hours of Service, or such lesser amount if elected in Article I, in the applicable Computation Period. For purposes of determining whether a Break-in-Service has occurred in a Computation Period, an Employee who is granted a Maternity or Paternity Leave of Absence shall receive credit for eight (8) Hours of Service per day of such absence. To the extent provided in Paragraph A.46 of this Article II and Paragraph B of Article III, Leaves of Absence shall not cause a Break-in-Service. Unless otherwise elected in Article I, if the Plan Year is less than 12 months, no Break-in-Service shall occur in such Plan Year. For purposes of the elapsed time method, Break-in-Service means a "One-Year Period of Severance."

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

10. "Committee" means the administrative committee appointed by the Sponsoring Employer's Board.

11. "Compensation Limitation" means the limitation imposed by Section 401(a)(17) of the Code, as described below.

(a) For Plan Years beginning after December 31, 1988 and before January 1, 1994, Compensation shall not exceed \$200,000 as adjusted after 1989 by the Secretary of the Treasury at the same time and in the same manner as adjusted under Section 415(d) of the Code, except that such adjustment for a calendar year shall take effect on the first day of the Plan Year beginning in such calendar year.

(b) For Plan Years beginning on and after January 1, 1994, the annual Compensation of each Employee taken into account under the Plan shall not exceed \$150,000. The \$150,000 Compensation Limitation shall be adjusted by the Secretary annually at the same time and in the same manner as adjusted under Section 415(d) of the Code; except that the base period shall be the calendar quarter beginning October 1, 1993, and any increase which is not a multiple of \$10,000 shall be rounded to the next lowest multiple of \$10,000. The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which Compensation is determined (determination period) beginning in such calendar year.

If a determination period is less than 12 months, the Compensation Limitation described in the preceding subparagraphs (a) and (b) above will by multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

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12. "<u>Contribution Percentage</u>" means the ratio (expressed as a percentage) of the Qualifying Section 401(m) contributions under the Plan on behalf of the Eligible Participant for the Plan Year to the Eligible Participant's Compensation for the Plan Year.

13. "<u>Controlled Group</u>" means the Employer and all members of its controlled or affiliated group of trades or businesses whether or not incorporated (including an affiliated service group) as defined in Section 414(b), (c), (m) or (o) of the Code. For Plan Years beginning before January 1, 1997, if the Employer is an Unincorporated Entity, then Controlled Group shall be as defined in Section 401(d)(1) of the Code; provided, however, that any member of a Controlled Group shall be disregarded for all purposes under the Plan for any period when such member was not a member of the Controlled Group unless expressly provided to the contrary herein.

14. "<u>Defined Benefit Dollar Limitation</u>" means \$90,000, as adjusted each January 1 by Section 415(d) of the Code for years beginning after December 31, 1987.

15. "Defined Benefit Plan Fraction" means a fraction, the numerator of which is the projected annual benefit of a Participant under the Plan and any other defined benefit plan maintained by the Employer or its Controlled Group, whether or not terminated, and the denominator of which is the lesser of:

(a) 1.25 multiplied by the Defined Benefit Dollar Limitation in effect for such Limitation Year; or

(b) 1.4 multiplied by the Participant's average Section 415 Compensation for his or her highest three (3) consecutive years including such Limitation Year, determined under Section 415(b)(1)(B) of the Code.

Notwithstanding the above, if an Employee was a Participant as of the first day of the first Limitation Year beginning after December 31, 1986, in one (1) or more defined benefit plans maintained by the Employer which were in existence on May 6, 1986, the denominator of the Defined Benefit Plan Fraction will not be less than 125% of the sum of the annual benefits of such Plans which the Participant had accrued as of the close of the last Limitation Year beginning before January 1, 1987, disregarding any changes in the terms and conditions of the Plan after May 5, 1986. The preceding sentence applies only if the defined benefit plans individually and in the aggregate satisfy the requirements of Section 415 of the Code for all Limitation Years beginning before January 1, 1987.

16. "Defined Contribution Dollar Limitation" means \$30,000 or, if greater, one-fourth (1/4) of the Defined Benefit Dollar Limitation in effect on the last day of the

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Limitation Year. If a Limitation Year is less than 12 months, the Defined Contribution Dollar Limitation for that year shall be multiplied by one-twelfth (1/12) of the number of months in such year. Effective for Limitation Years beginning after December 31, 1994, Defined Contribution Dollar Limitation means \$30,000 as adjusted by Section 415(d) of the Code.

17. "Defined Contribution Plan Fraction" means a fraction, the numerator of which is the sum of the Annual Additions to a Participant's Accounts under all defined contribution plans maintained by the Employer or its Controlled Group, whether or not terminated, including Employee After-Tax Contributions to any defined benefit plan maintained by the Employer and Annual Additions attributed to all welfare plans, simplified employee pension plans, and individual medical accounts maintained by the Employer as of the end of the Limitation Year, and the denominator of which is the sum of the lesser of the following amounts determined for such Limitation Year and for all prior Limitation Years with the Employer:

(a) 1.25 multiplied by the Defined Contribution Dollar Limitation in effect for such Limitation Year, but without regard to Section 415(c)(6) of the Code; or

(b) 1.4 multiplied by 25% of the Participant's Section 415 Compensation for such Limitation Year determined under Section 415(c)(1)(B) or Section 415(c)(7) of the Code, if applicable.

Notwithstanding the above, if an Employee was a Participant as of the first day of the first Limitation Year beginning after December 31, 1986, in one (1) or more defined contribution plans maintained by the Employer which were in existence on May 6, 1986, the numerator of the Defined Contribution Plan Fraction will be adjusted if the sum of this fraction and the Defined Benefit Plan Fraction would otherwise exceed 1.0 under the terms of this Plan. Under the adjustment, an amount equal to the product of (i) the excess of the sum of the fractions over 1.0, times (ii) the denominator of the Defined Contribution Plan Fraction, will be permanently subtracted from the numerator of this fraction. The adjustment is calculated using fractions as they would be computed as of the end of the last Limitation Year beginning before January 1, 1987, disregarding any changes in the terms and conditions of the Plan made after May 5, 1986, but using the Section 415 limitation applicable to the first Limitation Year beginning on or after January 1, 1987.

18. "DEFRA" means the Deficit Reduction Act of 1984, as amended from time to time.

19. "Designated Beneficiary" or "Beneficiary" means the person(s) or entity(ies) designated by the Participant or, in the absence thereof, the person(s) or

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entity(ies) entitled under the provisions of this Plan to receive benefits as a result of the death of the Participant.

20. "Direct Rollover" means a payment by the Plan to an Eligible Retirement Plan specified by a Distributee.

21. "<u>Distributee</u>" means an Employee, former Employee, an Employee's or former Employee's Surviving Spouse or an Employee's or former Employee's Spouse or former Spouse who is an Alternate Payee under a Qualified Domestic Relations Order.

22. "<u>Earned Income</u>" means the net earnings of a Self-Employed Individual from self-employment (as defined in Section 1402(a) of the Code), determined after taking into account (i) deductible contributions to the Plan and any other qualified plans maintained by the Employer; and (ii) all other adjustments required by Section 401(c)(2) of the Code; but (iii) only if the services of the Self-Employed Individual to the Employer's business are a material income-producing factor as determined in accordance with Section 1.401-10(c) of the Treasury Regulations. For taxable years beginning after 1989, net earnings shall be further reduced by the deductions allowed to the taxpayer by Section 164(f) of the Code.

23. "<u>Elective Contributions</u>" means in any Plan Year the amount of a Participant's Compensation elected by him or her to be reduced and deferred pursuant to Article I. Any amount that the Employee could not have elected to receive in cash or any amount that has become currently available to a Participant or that is designated or treated at the time of the deferral or contribution as an Employee After-Tax Contribution shall not be treated as an Elective Contribution. For Plan Years beginning after August 8, 1988, Matching Contributions made on behalf of a partner or Self-Employed Individual under a partnership or Individual plan shall be treated as Elective Contributions. For Plan Years beginning after December 31, 1997, Matching Contributions made on behalf of a partner or Self-Employed Individual shall not be treated as Elective Contributions.

24. "Elective Contribution Account" means the account maintained to record the Participant's Elective Contributions and any other adjustments as required under Article IV, V or X of the Plan.

25. "Elective Deferrals" means the sum of an individual's election to defer income for a taxable year pursuant to the following:

(a) Elective Contributions under any qualified cash or deferred arrangements as defined in Section 401(k) of the Code which are not includable in the

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individual's gross income for the taxable year on account of Section 402(e)(3) of the Code.

(b) Any Employer contribution to a simplified employee pension plan as defined in Section 408(k) of the Code and which is not includable in the individual's income for the taxable year on account of Section 402(h)(1)(B) of the Code.

(c) Any Employer contribution to an annuity contract under Section 403(b) of the Code under a salary reduction agreement within the meaning of Section 312(a)(5)(D) of the Code which is not includable in the individual's gross income for the taxable year on account of Section 403(b) of the Code. For purposes of the preceding sentence, a contribution to a Section 403(b) annuity made pursuant to a one-time irrevocable election to contribute at time of eligibility to participate shall not be included.

(d) Any Employee contribution designated as deductible in a trust described in Section 501(c)(18) of the Code which is deducted from such individual's income for the taxable year on account of Section 501(c)(18) of the Code.

(e) Any elective Employer contribution made under Section 408(p)(2)(A)(i) of the Code.

26. "Eligibility Computation Period" means the initial 12 consecutive month period commencing on an Employee's Employment Commencement Date and the Subsequent Eligibility Computation Period as elected in Article I.

27. "Eligible Participant" means any Employee who is directly or indirectly eligible to make an election to reduce and defer his or her Compensation under the Plan during all or a portion of a Plan Year, including (i) any Employee who would be a Participant but for the failure to make any Elective Contributions or other required contributions; (ii) any Employee whose eligibility to make Elective Contributions has been suspended due to a hardship distribution, other distribution, a loan, or an election not to participate, other than a one-time election not to be eligible to make a cash or deferred election or to have contributions equal to a specified amount or percentage of Compensation (including no amount of Compensation) made by the Employer to this Plan and any other plan maintained by the Employer (including plans not yet established) for the duration of the Employee's employment; (ii) any Employee who is unable to receive an additional Annual Addition on account of Sections 415(c)(1) and 415(e) of the Code; and (iv) any Employee who is unable to make an Elective Contribution because his or her Compensation is less than a stated dollar amount, shall be considered as an Employee for purposes of computing the Actual Deferral Percentage.

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For purposes of computing the Average Contribution Percentage, Eligible Participant means any Employee who is directly or indirectly eligible to make an Employee After-Tax Contribution or to receive an allocation of Matching Contributions, including Matching Contributions derived from forfeitures under the Plan during all or a portion of a Plan Year including any Employee who is unable to make an Employee After-Tax Contribution or receive an allocation of Matching Contributions or receive an allocation of Matching Contributions merely because his Compensation is less than a stated amount; any Employee who would be eligible to make Employee After-Tax Contributions or receive Matching Contributions except for a suspension due to a hardship distribution or other distribution, loan or election not to participate in the Plan, other than a one-time election not to be eligible to make a cash or deferred election or to have contributions equal to a specified amount or percentage of Compensation (including no amount of Compensation) made by the Employer to this Plan and any other plan maintained by the Employer (including plans not yet established) for the duration of the Employee's employment; and any Employee who is unable to receive additional Annual Additions because of Sections 415(c)(1) and 415(e) of the Code shall be considered as an Employee for purposes of computing the Contribution Percentage limitation.

28. "<u>Eligible Retirement Plan</u>" means 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 Distributee's Eligible Rollover Distribution. However, in case of an Eligible Rollover Distribution to a Surviving Spouse, an Eligible Retirement Plan is an individual retirement account or individual retirement annuity.

29. "<u>Eligible Rollover Distribution</u>" means any distribution of \$200 or more of the Distributee's vested Accrued Benefit except that an Eligible Rollover Distribution does not include (i) any distribution that is one of a series of substantially equal periodic payments (made not less frequently than annually) for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's Designated Beneficiary, or for a specified period of 10 years or more; (ii) any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; (iii) the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and (iv) hardship distributions of salary deferrals within the meaning of Section 401(k)(2)(B)(i)(IV) of the Code made after December 31, 1998 or such later date as administered by the Committee but no later than December 31, 1999.

If a Participant would have been entitled to receive his or her Elective Contributions regardless of hardship (i.e., age 59<sup>1</sup>/<sub>2</sub>), then such deferral shall qualify as an Eligible Rollover Distribution.

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If a portion of a distribution that includes a hardship distribution is not includible in gross income, the portion of the distribution that is not includible in gross income is first allocated to the hardship distribution and then any remaining portion not includible in gross income is allocated to the portion of the distribution that is not a hardship distribution.

30. "<u>Employee</u>" means every person employed by the Employer whose income is subject to withholding of income tax or for whom Social Security contributions are made by the Employer. Unless the Plan is amended to provide otherwise, the transitional rule of Section 410(b)(6)(C) of the Code shall apply. If the Employer is an Unincorporated Entity, Employee also means a Self-Employed Individual.

Employee shall include Leased Employees; provided, however, that a Leased Employee shall not be considered an Employee if:

(a) The Leased Employee is covered by a money purchase pension plan providing (i) a nonintegrated employer contribution rate of at least 10% of compensation, as defined in Section 415(c)(3) of the Code, but including amounts contributed by the employer pursuant to a salary reduction agreement which are excludable from the Leased Employee's gross income under Section 125, 402(e)(3), 402(h)(1)(B), 403(b), 408(p)(2)(A)(i) or 457 of the Code; (ii) immediate participation; and (iii) full and immediate vesting; and

(b) Leased Employees do not constitute more than 20% of the Employer's non-highly compensated workforce.

Employees who are Leased Employees may become Eligible Employees unless excluded in Article I.

31. "Employee After-Tax Contribution" means any contributions made to a plan that are designated or treated at the time of deferral or contributions as employee after-tax contributions and are allocated to a separate account to which the attributed earnings and losses are allocated. Such term includes (i) Employee contributions to a defined contribution plan described in Section 414(k) of the Code; (ii) Employee contributions made to a defined benefit plan which provides for a cost of living arrangement as described in Section 415(k)(2)(B) of the Code; (iii) Employee contributions applied to the purchase of whole life insurance protection, or survivor benefits protection under a defined contribution plan; (iv) amounts attributed to Excess Contributions within the meaning of Section 401(k)(8)(B) of the Code which are recharacterized as Employee contributions; and (v) and Employee contributions to a contract described in Section 403(b) of the Code. Employee After-Tax Contributions do not include repayment of loans, buy-backs of benefits previously forfeited, or Employee

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After-Tax Contributions which were transferred to this Plan and are held pursuant to Article XVI.

32. "Employee After-Tax Contribution Account" means the Account maintained to record a Participant's allocation of Employee Contributions and other adjustments as required under Article IV, V or X of the Plan.

33. "<u>Employer</u>" means the entity or entities adopting the Plan, and any other members of the Controlled Group which have adopted the Plan in accordance with the provisions of Paragraph D of Article XIV, and any successor thereto. Employer also means any other entities that have adopted this Plan that are not members of a Controlled Group, and any successor thereto. The "<u>Sponsoring Employer</u>" shall be the Employer who is responsible for the administration of the Plan. Each other entity which adopts this Plan as provided herein shall be a "<u>Participating Employer</u>"; provided, however, that only members of a Controlled Group may be Participating Employers unless the preamble of Article I designates a non-Controlled Group as a Participating Employer.

34. "Employment Commencement Date" means the date upon which an Employee first completes one (1) Hour of Service.

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

36. "Excess Aggregate Contributions" means, with respect to any Plan Year, the excess of the aggregate amount of Qualifying Section 401(m) Contributions actually made on behalf of Highly Compensated Employees for such Plan Year over the maximum amount of such contributions permitted under the Contribution Percentage limitation.

37. "Excess Contributions" means, with respect to any Plan Year, the excess of the aggregate amount of Qualifying Section 401(k) Contributions actually made on behalf of Highly Compensated Employees for the Plan Year over the maximum amount of such contributions permitted under the Actual Deferral Percentage limitation.

38. "<u>Excess Deferrals</u>" means those Elective Deferrals made by an individual during his or her taxable year which exceed \$7,000 (\$6,000 if a Simple 401(k) Plan) or such other amount that is adjusted under Section 415(d) of the Code. The special adjustments for Section 403(b) Annuity Contracts and other rules concerning Section 402(g) of the Code are incorporated herein by reference.

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39. "Family Member" means an Employee or former Employee's Spouse and lineal ascendants or descendants and the spouses of such lineal ascendants or descendants.

40. "<u>5%-Owner</u>" means any person who owns directly or indirectly as defined in Section 416(i)(1)(B) of the Code (i) more than five percent (5%) of the outstanding stock of the Employer; or (ii) stock possessing more than five percent (5%) of the total combined voting power of all stock of the Employer. If the Employer is not a corporation, 5%-Owner means any person who owns more than five percent (5%) of the capital or profits interests in the Employer.

For purposes of Section 401(a)(9) of the Code, a Participant shall be considered a 5%-Owner if such Participant is a 5%-Owner at any time during the Plan Year ending with or within the calendar year in which such 5%-Owner attains age 70<sup>1</sup>/<sub>2</sub>.

#### 41. "Highly Compensated Employee" means:

(a) For Plan Years beginning prior to January 1, 1997:

(i) Any Employee who performs services during the Plan Year; and

Was a 5%-Owner during the Plan Year or Look-Back Year; or

Received Section 415 Compensation from the Employer in excess of \$75,000 (as adjusted pursuant to Section 415(d) of the Code in effect as of the first day of any relevant Plan Year) during the Look-Back Year; or

Received Section 415 Compensation from the Employer in excess of \$50,000 (as adjusted pursuant to Section 415(d) of the Code in effect as of the first day of any relevant Plan Year) during the Look-back Year and was in the top 20% of Employees ranked on the basis of Section 415 Compensation during the Look-Back Year. Employees described in Section 414(q)(8) of the Code and Q&A 9(b) of Section 1.414(q)-1T of the Regulations are excluded to the extent provided in Article I; or

Was an officer of the Employer, as defined in Section 416(i) of the Code and received Section 415 Compensation during the Look-Back Year that is greater than 50% of the Defined Benefit Dollar Limitation for the calendar year in which the Look-Back Year began. If no officer has received Section 415 Compensation in excess of 50% of the Defined Benefit Dollar Limitation

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during the Plan Year or the Look-Back Year, the highest paid officer for such year shall be treated as a Highly Compensated Employee. The number of officers is limited to 50 or if less, the greater of three (3) Employees or 10% of all Employees. Employees described in Section 414(q)(8) of the Code and Q&A 9(b) of Section 1.414(q)-1T of the Regulations are excluded to the extent provided in Article I; or

Any Employee who is both (i) described in (B) or (D) above, when such paragraphs are modified to substitute the Plan Year for the Look-Back Year; and (ii) one (1) of the 100 Employees who received the greatest Section 415 Compensation from the Employer during the Plan Year.

(ii) Any former Employee who separated from service prior to the Plan Year, who performs no services for the Employer during the Plan Year and was a Highly Compensated Employee who performed services for the Employer during either the year the Employee separated from service or any Plan Year on or after the Employee's 55<sup>th</sup> birthday.

For Plan Years beginning before January 1, 1997, if an Employee is, during a Plan Year or Look-Back Year, a Family Member of either a 5%-Owner who is an Employee or former Employee or a Highly Compensated Employee who is one (1) of the 10 most Highly Compensated Employees ranked on the basis of Section 415 Compensation paid by the Employer during such year, then the Family Member and the 5%-Owner or the top 10 Highly Compensated Employee shall be treated as a single Employee receiving Compensation and plan contributions or benefits equal to the sum of such Compensation and contributions or benefits of the Family Member and 5%-Owner or top 10 Highly Compensated Employee. For purposes of Section 401(1) of the Code, the required aggregation of Family Members shall not apply in determining the amount of Compensation earned by Family Members who are required to be aggregated, and the resulting benefits and/or contributions, shall be determined by Article I.

For purposes of identifying a Highly Compensated Employee, Section 415 Compensation shall also include elective or salary reduction contributions to a cafeteria plan, cash or deferred arrangement or tax sheltered annuity.

For purposes of identifying a Highly Compensated Employee, the determinations of (i) the number and identity of Employees in the top 20% or highest paid group; (ii) the top 100 Employees; (iii) the number of Employees treated as officers; and (iv) the Compensation that is to be considered, will be made according to Section 414(q) of the Code and the regulations thereunder.

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(b) For Plan Years beginning after December 31, 1996:

(i) Any Employee who performs services during the Plan Year; and

Was a 5%-Owner during the Plan Year or Look-Back Year; or

Received Section 415 Compensation from the Employer in excess of \$80,000 (as adjusted pursuant to Section 415(d) of the Code, except that the base period shall be the calendar quarter ending September 30, 1996, in effect on the first day of any relevant Plan Year) during the Look-Back Year or if elected in Article I, the calendar year beginning with or within the Look-Back Year and, if elected in Article I, was also in the Top Paid Group.

(ii) Any former Employee who separated from service prior to the Plan Year, who performs no services for the Employer during the Plan Year and was a Highly Compensated Employee who performed services for the Employer during either the year the Employee separated from service or any Plan Year on or after the Employee's 55<sup>th</sup> birthday.

For purposes of determining if an Employee is a Highly Compensated Employee in 1997, subparagraphs (b)(i) and (b)(ii) of this Paragraph A.41 shall be treated as having been in effect in 1996.

For purposes of identifying a Highly Compensated Employee, Section 415 Compensation shall also include elective or salary reduction contributions to a cafeteria plan, cash or deferred arrangement or tax sheltered annuity.

For purposes of this Paragraph A.41, all entities which are members of a Controlled Group with the Employer shall be treated as a single Employer.

42. "Hour of Service" means:

(a) Each hour for which an Employee is directly or indirectly paid, or entitled to payment. These hours shall be credited to the Employee for the computation period(s) in which the services are performed and not when paid, if different; and

(b) Each hour for which an Employee is directly or indirectly paid, or entitled to payment, by the Employer for a period of time during which no services are performed (without regard to whether the employment relationship between the Employee and the Employer has terminated) due to vacation, holiday, illness,

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incapacity, disability, layoff, jury duty, military duty, or Leave of Absence with pay. The hours shall be credited to the Employee in the computation period to which non-performance of duties relates and not in which paid, if different; and

(c) Each hour for which an Employee has been awarded or for which the Employer has agreed to pay, directly or indirectly, back pay (without regard to damages). These hours shall be credited to the Employee in the computation period to which the award or agreement pertains, not the period in which paid, if different.

Notwithstanding the foregoing, (i) no more than 501 Hours of Service shall be credited to an Employee under subparagraph (b) or (c) of this Paragraph A.42 for any single continuous period of time during which no services are performed; (ii) an hour for which an Employee is directly or indirectly paid for a period during which no services are performed shall not constitute an Hour of Service, if such payment is paid or due under a plan maintained solely for the purpose of complying with applicable worker's compensation, unemployment compensation, or disability insurance laws; (iii) Hours of Service shall not be credited for payments which solely reimburse an Employee for medical or medically related expenses; (iv) the same Hours of Service shall not be credited to an Employee both under subparagraph (a) or (b) and subparagraph (c); and (v) Hours of Service to be credited under subparagraph (b) above shall be determined based upon the number of regularly scheduled working hours included in the units of time on the basis of which payment is calculated.

The Committee may determine Hours of Service based upon days of employment in a computation period by crediting an Employee with 10 Hours of Service for each day for which the Employee would be required to be credited with at least one (1) Hour of Service under subparagraphs (a), (b) and (c) of this Paragraph A.42. Alternatively, the Committee may adopt such other equivalency rule as permitted under Section 2530.200b-3 of the Department of Labor Regulations (as amended from time to time), which are incorporated herein by this reference.

The Committee shall determine Hours of Service to be credited to an Employee under the foregoing rules in a uniform and non-discriminatory manner and in accordance with Section 2530.200b-2 of the Department of Labor Regulations (as amended from time to time), which are incorporated herein by this reference.

43. "<u>Inactive Participant</u>" means a Participant whose participation in the Plan is suspended because of a change of employment status, including (i) terminating employment; (ii) incurring a Break-in-Service; or (iii) becoming a member of a class of Employees which has been excluded from participation, but whose total benefits have not been distributed.

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44. "<u>Investment Manager</u>" means a fiduciary designated by the Employer or the Committee, to whom has been delegated the responsibility and authority to manage, acquire or dispose of the Trust assets, and (i) who is (A) registered as an investment advisor under the Investment Advisors Act of 1940; (B) a bank, as defined in that Act; or (C) an insurance company qualified to perform investment advisory services under the laws of more than one (1) state; and (ii) who has acknowledged in writing that he or she is a fiduciary with respect to the management, acquisition and control of the Trust assets.

45. "Leased Employee" means any person (other than an Employee of the Employer) who, pursuant to an agreement between the Employer and any other person ("leasing organization"), has performed services for the Employer (or for related persons determined in accordance with Section 414(n)(6) of the Code) on a substantially full-time basis for a period of at least one (1) year, and such services are of a type historically performed by employees in the business field of the Employer. For Plan Years beginning on and after January 1, 1997, a person will be a Leased Employee only if the services he or she performs are under the primary direction or control of the Employer. Contributions or benefits provided to a Leased Employee by the leasing organization which are attributable to services performed for the Employer shall be treated as provided by the Employer.

46. "Leave of Absence" means a leave granted by the Employer, in its sole discretion, in accordance with rules uniformly applied to all Employees, for reasons of health or public service or for reasons determined by the Employer to be in its best interests.

Effective December 12, 1994, contribution, benefit and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Code. If elected in Article I, the Committee shall suspend loan repayments during any Participant's periods of qualified military service.

47. "Look-Back Year" means the 12-month period immediately preceding any relevant Plan Year or the calendar year ending with or within the Plan Year, as elected in Article I.

For Plan Years beginning on and after January 1, 1997, Look-Back Year means the 12-month period immediately preceding any relevant Plan Year. However, if elected in Article I, for the Plan Year beginning in 1997, the Look-Back Year may be the calendar year ending with or within the Plan Year.

48. "Matching Contribution" means an Employer contribution made to the Plan or a defined contribution plan maintained by the Employer on account of an Employee After-Tax Contribution or an Elective Contribution, and any reallocated

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forfeiture allocated on the basis of an Employee After-Tax Contribution, Matching Contribution or Elective Contribution. For Plan Years beginning after December 31, 1988, any contributions used to satisfy Top-Heavy minimum benefits shall not be treated as Matching Contributions.

49. "Matching Contribution Account" means the account maintained separately to record each Participant's Matching Contributions and other adjustments as required under Article V or X of the Plan.

50. "<u>Maternity or Paternity Leave of Absence</u>" means an absence (i) because of the Employee's pregnancy; (ii) because of the birth of a child of the Employee; (iii) because of the adoption of a child by, and placement of the child with, the 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 A.50 shall be credited (i) in the Eligibility Computation Period and/or Vesting Computation Period in which the absence begins if the crediting is necessary to prevent a Break-in-Service in that computation period; or (ii) in all other cases, in the following Eligibility Computation Period and/or Vesting Computation Service for Maternity Leave of Absence shall be credited to a Participant unless he or she timely furnishes to the Committee such information as the Committee may request to establish that the absence is for a Maternity or Paternity Leave of Absence and the number of days of such absence. The total Hours of Service to be credited for Maternity or Paternity Leave of Absence shall not exceed 501 in any computation period.

51. "<u>Net Profits</u>" means the net income of the Employer as determined for federal income tax purposes without any deduction for taxes based upon income or for contributions made by the Employer under this Plan or any other qualified plan maintained by the Employer. For a Self-Employed Individual, Net Profits mean Earned Income, as determined under Section 404(a)(8) of the Code.

52. "<u>Nonelective Employer Contributions</u>" means Employer contributions other than Matching Contributions with respect to which the Employee may not elect to have the contributions paid to the Employee in cash or other benefits.

53. "<u>Nonelective Employer Contribution Account</u>" means the Account maintained to record a Participant's allocations of Nonelective Employer Contributions, forfeitures, if any, and other adjustments as required under Article V of the Plan.

54. "Non-Highly Compensated Employee" means an Employee of the Employer who is neither a Highly Compensated Employee nor a Family Member of a Highly Compensated Employee.

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For Plan Years beginning after December 31, 1996, Non-Highly Compensated Employee means an Employee who is not a Highly Compensated Employee.

55. "One-Year Period of Service" means each 12 month Period of Service beginning on the Employee's Employment Commencement Date.

56. "One-Year Period of Severance" means each 12 consecutive month Period of Severance, beginning on the Severance from Service Date.

57. "<u>Owner-Employee</u>" means a Self-Employed Individual who owns the entire interest of an Unincorporated Entity, or a partner who owns more than a 10% capital or profits interest in a partnership.

If this Plan provides contributions or benefits for one (1) or more Owner-Employees who control both the business for which this Plan is established and one (1) or more other trades or businesses, this Plan and any plans established for such other trades or businesses must, when looked at as a single plan, satisfy Sections 401(a) and 401(d) of the Code for the employees of this and all other such trades or businesses.

If the Plan provides contributions or benefits for one (1) or more Owner-Employees who control one (1) or more other trades or businesses, the employees of the other trades or businesses must be included in a plan which satisfies Sections 401(a) and 401(d) of the Code and which provides contributions and benefits not less favorable than provided for Owner-Employees under this Plan.

If an individual is covered as an Owner-Employee under the plans of two (2) or more trades or businesses which are not controlled and the individual controls a trade or business, then the contributions or benefits of the employees under the plan of the trade or business which are controlled must be as favorable as those provided for him or her under the most favorable plan of the trade or business which is not controlled.

For purposes of the preceding paragraphs, an Owner-Employee, or two (2) or more Owner-Employees, will be considered to control a trade or business if the Owner-Employee, or two (2) or more Owner-Employees together:

(a) Own the entire interest in an unincorporated trade or business; or

(b) In the case of a partnership, own more than 50% of either the capital interest or the profits interest in the partnership.

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For purposes subparagraph (b) of this Paragraph A.57, an Owner-Employee or two (2) or more Owner-Employees shall be treated as owning any interest in a partnership which is owned, directly or indirectly, by a partnership which such Owner-Employee, or such two (2) or more Owner-Employees, are considered to control within the meaning of such subparagraph (b).

For Plan Years beginning on or after January 1, 1997, the preceding controlled group provisions relating to Section 401(d) of the Code shall no longer apply.

58. "Participant" means any Eligible Employee who enters the Plan and who has not received payment of his or her total vested Accrued Benefit.

59. "<u>Period of Service</u>" means a period beginning on the Employment Commencement Date or, for a former Employee, the date on which he or she first performs an Hour of Service after re-hire and ending with the Severance from Service Date.

60. "<u>Period of Severance</u>" means a period during which an Employee does not perform an Hour of Service, beginning on the Severance from Service Date and ending when an Employee again performs an Hour of Service.

61. "Plan" means this 401(k) Plan as identified in Article I.

62. "Qualified Domestic Relations Order" means a judgment, decree or order (including approval of a property settlement agreement) that (i) relates to the provision of child support, alimony payments or marital property rights to an alternate payee; (ii) is made pursuant to a state domestic relations law (including community property law); (iii) creates or recognizes the existence of an alternate payee's right, or assigns to an alternate payee the right, to receive all or a portion of the benefits payable to the Participant under the Plan; (iv) specifies the information required by Section 414(p) of the Code; (v) does not alter the amount or form of Plan benefits; and (vi) complies with all other relevant provisions of Section 414(p) of the Code. For such purposes, an "<u>Alternate Payee</u>" is a Spouse, former Spouse, child or other dependent of a Participant who is recognized by a domestic relations order as having a right to receive all or a portion of the benefits payable with respect to a Participant under the Plan.

63. "<u>Qualified Matching Contributions</u>" means Matching Contributions, other than Safe Harbor Matching Contributions or Simple 401(k) Contributions, that satisfy the vesting and distribution requirements of Elective Contributions.

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64. "<u>Qualified Matching Contribution Account</u>" means the account maintained to record separately a Participant's allocation of a Qualified Matching Contribution, and other adjustments as required under Article IV, V or X of the Plan.

65. "Qualified Nonelective Employer Contributions" means Employer contributions, other than Elective Contributions, Matching Contributions, Safe Harbor Nonelective Employer Contributions, Safe Harbor Matching Contributions or Simple 401(k) Contributions, that satisfy the vesting and distribution requirements of Elective Contributions.

66. "Qualified Nonelective Employer Contribution Account" means the account maintained to record a Participant's allocation of Qualified Nonelective Employer Contributions, and other adjustments as required under Article IV, V or X of the Plan.

67. "Qualifying Section 401(k) Contributions" means Elective Contributions in combination with Qualified Nonelective Employer Contributions and Qualified Matching Contributions that are treated as Elective Contributions to satisfy the Actual Deferral Percentage limitation.

68. "<u>Qualifying Section 401(m) Contributions</u>" means Employee After-Tax Contributions and Employer Matching Contributions in combination with Qualified Nonelective Employer Contributions and Elective Contributions that are treated as Employee After-Tax Contributions to satisfy the Contribution Percentage limitation.

69. "<u>REACT</u>" means the Retirement Equity Act of 1984, as amended from time to time.

70. "Rollover Contributions" means contributions within the meaning of Section 402(c), 403(a)(4) or 408(d)(3) of the Code.

71. "Rollover Contribution Account" means the account maintained to record a Participant's Rollover Contribution and other adjustments as required in Article X of the Plan.

72. "<u>Safe Harbor Matching Contributions</u>" means Matching Contributions made to this Plan, or to another defined contribution plan maintained by the Employer, to satisfy the Average Deferred Percentage limitation or Average Contribution limitation that are (i) fully vested; (ii) subject to the withdrawal restrictions of Elective Contributions but not available to hardship withdrawals; and (iii) used to satisfy the allocation requirements of Section 401(k)(12)(B) of the Code and the notice requirements of Section 401(k)(12)(D) of the Code without regard to Section 401(l) of the Code. For

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Plan Years beginning after December 31, 1999, if Safe Harbor Matching Contributions are made to another defined contribution plan maintained by the Employer, such plan must have the same Plan Year as this Plan.

The rate of Safe Harbor Matching Contributions allocated to Participants can not increase as a Participant's rate of Elective Contributions increase. The rate of Safe Harbor Matching Contributions allocation to Non-Highly Compensated Participants must at all times be equal to the rate of Matching Contributions, including Safe Harbor Matching Contributions, allocated to Highly Compensated Participants.

73. "Safe Harbor Matching Contribution Account" means the account maintained to record the Participant's Safe Harbor Matching Contributions and any other adjustments as required under Article IV, V or X of the Plan.

74. "<u>Safe Harbor Nonelective Employer Contributions</u>" means Nonelective Employer Contributions made to this Plan, or to another defined contribution plan maintained by the Employer, to satisfy the Actual Deferred Percentage limitation, that are (i) fully vested; (ii) subject to the withdrawal restrictions of Elective Contributions but not available for hardship withdrawals; and (iii) used to satisfy the allocation requirements of Section 401(k)(12)(C) of the Code and the notice requirements of Section 401(k)(12)(D) of the Code without regard to Section 401(l) of the Code. For Plan Years beginning after December 31, 1999, if Safe Harbor Nonelective Employer Contributions are made to another defined contribution plan maintained by the Employer, such plan must have the same Plan Year as this Plan.

75. "Safe Harbor Nonelective Employer Contribution Account" means the account maintained to record the Participant's Safe Harbor Nonelective Employer Contributions and any other adjustments as required under Article IV, V or X of the Plan.

76. "Section 415 Compensation" means, with respect to any Participant, the greatest of (a), (b) or (c) below:

(a) Information required to be reported under Sections 6041, 6051, and 6052 of the Code (wages, tips and other compensation as reported on form W-2). Compensation is defined as wages within the meaning of Section 3401(a) of the Code and all other payments of compensation to an Employee by the Employer (in the course of the Employer's trade or business) for which the Employer is required to furnish the Employee a written statement under Sections 6041(d), 6051(a)(3), and 6052 of the Code. Compensation must be determined without regard to any rules under Section 3401(a) of the Code that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Section 3401(a)(2) of the Code).

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(b) Wages as defined in Section 3401(a) of the Code for the purpose of income tax withholding but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Section 3401(a)(2) of the Code).

(c) A Participant's wages, salaries, and fees for professional services, and other amounts received for personal services actually rendered in the course of employment with the Employer maintaining the Plan (including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursement or other expense allowances under a nonaccountable plan. The following items are excluded from Section 415 Compensation under this subparagraph (c):

(i) Employer contributions to a plan of deferred compensation which are not included in the Employee's gross income for the taxable year in which contributed or Employer contributions under a simplified employee pension plan to the extent such contributions are deductible by the Employee, or any distributions from a plan of deferred compensation;

(ii) Amounts realized from the exercise of a nonqualified stock option, or when restricted stock (or property) held by the Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;

(iii) Amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option; and

(iv) Other amounts which received special tax benefits, or contributions made by the Employer (whether or not under a salary reduction agreement) towards the purchase of an annuity described in Section 403(b) of the Code (whether or not the amounts are actually excludable from the gross income of the Employee).

If the Employee is a Self-Employed Individual, his or her Section 415 Compensation includes his or her Earned Income derived from the trade or business for which the Plan is established.

Effective for years beginning after December 31, 1997, Section 415 Compensation shall include any Elective Deferrals and any amount deferred by an Employee which is not includable in gross income by reasons of Section 125 or 457 of the Code.

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77. "Self-Employed Individual" means a person who has Earned Income for the taxable year from the trade or business for which the Plan is established and includes an individual who would have had Earned Income but for the fact that the trade or business had no Net Profits for the taxable year.

78. "Severance from Service Date" means the date which is the earlier of the date on which an Employee voluntarily leaves (quits) employment, retires, is discharged or dies, or the first anniversary of the first date the Employee is absent for any other reason. However, for purposes of Maternity or Paternity Leave of Absence, Severance from Service Date of an Employee who is absent beyond the first anniversary of such absence means the second anniversary of the first date of such absence. The period between the first and second anniversary of a Maternity or Paternity Leave of Absence is neither a Period of Service nor a Period of Severance.

79. "<u>Shareholder-Employee</u>" means an employee of a subchapter S corporation (Section 1361, <u>et seq</u>., of the Code) who owns more than five percent (5%) of the outstanding stock of such corporation.

80. "Simple 401(k) Contributions" means Matching Contributions that satisfy the allocation requirements of Section 401(k)(11)(B)(i)(II) of the Code or Nonelective Employer Contributions that satisfy the allocation requirements of Section 401(k)(11)(B)(ii) of the Code. Simple 401(k) Contributions must satisfy the administrative and notice requirements of Section 401(k)(11)(B)(iii) of the Code and the fully vested requirements of Section 408(p)(3) of the Code.

81. "Simple 401(k) Contribution Account" means the account maintained to record the Participant's Simple 401(k) Contributions and any other adjustments as required under Article IV, V or X of the Plan.

82. "<u>Simple 401(k) Plan</u>" means a plan intended to satisfy the requirements of Section 401(k)(11) of the Code. If the Employer elects in Article I that this Plan is intended to satisfy the requirements of a Simple 401(k) Plan, Employees covered under this Plan shall not be eligible to participate under any other plan maintained by the Employer. Except as stated below, if an Employer employs more than 100 Employees who earn at least \$5,000 of Section 415 Compensation during the prior year, such Employer shall not be eligible to maintain a Simple 401(k) Plan. A Simple 401(k) Plan must have a calendar year as its Plan Year.

An eligible Employer that maintains a Simple 401(k) Plan and later fails to be an eligible Employer for any subsequent year, shall be treated as an eligible Employer for the two (2) years following the last year the Employer was an eligible Employer. If the failure is due to any acquisition, disposition, or similar transaction

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involving an eligible Employer, the preceding sentence applies only if the provisions of Section 410(b)(6)(C)(i) of the Code are satisfied.

If this Plan is a Simple 401(k) Plan as elected in Article I, the Employer shall be required to make Simple 401(k) Contributions as described in Article I. No other contributions may be made to the Plan other than Elective Contributions and Simple 401(k) Contributions and to the extent that any other provision of the Plan is inconsistent with the provision of a Simple 401(k) Plan, the provisions of the Simple 401(k) Plan shall apply.

83. "<u>Single Employer Plan</u>" means a plan maintained by one (1) Employer, or a plan maintained by more than one (1) Employer, all of which are members of a Controlled Group, and which is designed to comply with the provisions of Sections 413(c), 414(b), 414(c) and 414(m) of the Code and the Treasury Regulations promulgated thereunder.

84. "Social Security Retirement Age" means age 65 for a Participant born before January 1, 1938; age 66 for a Participant born after December 31, 1937 and before January 1, 1955; and age 67 for a Participant born after December 31, 1954.

85. "<u>Social Security Wage Base</u>" means, with respect to any Plan Year, the maximum amount of earnings which may be considered wages under Section 3121(a) of the Code for the calendar year in which falls the beginning of such Plan Year as in effect on the first day of such Plan Year.

86. "TEFRA" means the Tax Equity and Fiscal Responsibility Act of 1982, as amended from time to time.

87. "<u>Top Paid Group</u>" means the group consisting of the top 20% of the Employees when ranked on the basis of Section 415 Compensation during either the Look-Back Year or the calendar year beginning with or within the Look-Back Year as selected in Article I.

Employees described in Section 414(q)(5) of the Code and Q&A 9(b) of Section 1.414(q)-1T of the Regulations are included or excluded to the extent provided in Article I.

88. "TRA '86" means the Tax Reform Act of 1986, as amended from time to time.

89. "<u>Total Disability</u>" means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last

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for a continuous period of not less than 12 months, as determined by a licensed physician selected or approved by the Committee, or such other definition as elected in Article I.

90. "Transferred Benefits Account" means the Account maintained to record a Participant's Transferred Benefit, forfeitures, if any, and other adjustments required under Article IV, V or X of the Plan.

91. "Trust" means the Trust Agreement entered into between the Employer and the Trustee. A Trust may include a custodial agreement or insurance contract, if applicable.

92. "Trustee" means the trustee(s) named under the Trust or any successor Trustee named in a written instrument of the Board.

93. "Unincorporated Entity" means a sole proprietorship or a partnership.

94. "<u>Vesting Computation Period</u>" means the 12 consecutive month period ending on the last day of the Plan Year that includes an Employee's Employment Commencement Date and the last day of each subsequent Plan Year.

If elected in Article I or if the elapsed time method is selected in Article I, Vesting Computation Period means each 12 consecutive month period beginning on the Employee's Employment Commencement Date and any subsequent 12 consecutive month period commencing on any anniversary date of the Employee's Employment Commencement Date.

95. "Year of Service" means an Eligibility Computation Period or Vesting Computation Period during which an Employee completes 1,000 or more Hours of Service or such lesser amount, if elected in Article I, with the Employer. With respect to any Eligibility Computation Period and any Vesting Computation Period, Hours of Service with any member of a Controlled Group shall be credited to the relevant Computation Period. Unless elected otherwise in Article I, for purposes of eligibility and vesting, if a Plan Year is less than 12 months and an Employee has less than 1,000 Hours of Service during such short Plan Year but has completed 1,000 Hours of Service or such lesser amount, if elected in Article I, during the 12 consecutive month period ending on the last day of such short Plan Year, the Employee will be credited with one (1) Year of Service for the Plan Year. If such Plan Year is not an Eligibility Computation Period for an Employee, the preceding sentence shall not apply for eligibility purposes.

For purposes of the elapsed time method, a "Year of Service" means a One-Year Period of Service with the Employer. An Employee will receive

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credit for the aggregate of all time period(s) commencing with the Employee's Employment Commencement Date or the date such Employee is credited with an Hour of Service upon re-employment and ending on the date a One-Year Period of Severance begins. An Employee will also receive credit for any Period of Severance of less than 12 consecutive months. Fractional portions of a year will be expressed in terms of days.

B. Terms Not Defined in Article I and II of this Plan. The following terms are defined in the Paragraphs and Articles specified below.

- 1. <u>Annuity Starting Date</u> See Paragraph A.1 of Article VII.
- 2. <u>Determination Date</u> See Paragraph A.1 of Article VIII.
- 3. <u>Election Period</u> See Paragraph A.2 of Article VII.
- 4. <u>Key Employee</u> See Paragraph A.2 of Article VIII.
- 5. <u>Non-Key Employee</u> See Paragraph A.3 of Article VIII.
- 6. <u>Qualified Joint and Survivor Annuity</u> See Paragraph A.3 of Article VII.
- 7. <u>Qualified Preretirement Survivor Annuity</u> See Paragraph A.4 of Article VII.
- 8. <u>Required and Permissive Aggregation Groups</u> See Paragraphs A.6 and B of Article VIII.
- 9. <u>Spouse or Surviving Spouse</u> See Paragraph A.5 of Article VII.
- 10. <u>Top-heavy Group</u> See Paragraph A.5 of Article VIII.
- 11. <u>Top-heavy Plan</u> See Paragraph A.4 of Article VIII.
- 12. <u>Transferred Benefits</u> See Paragraph A.6 of Article VII.
- 13. <u>Waiver Election</u> See Paragraph A.7 of Article VII.

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#### III. PARTICIPATION AND MEMBERSHIP

A. Participation Date. Each Eligible Employee shall become a Participant on the Entry Date specified in Article I if he or she is employed on such Entry Date.

1. <u>Vested Participants</u>. Any vested Participant who terminates employment and who is subsequently re-employed, shall be readmitted as a Participant as of the first day or his or her re-employment.

2. <u>Non-Vested Participants</u>. Any non-vested Participant who terminates employment and who is subsequently re-employed shall be considered a new Employee, and must again satisfy the requirements to become an Eligible Employee if his or her period of consecutive one-year Breaks-in-Service equals or exceeds the greater of (i) five (5); or (ii) the aggregate number of Years of Service completed before such termination of employment. If such former Participant is not considered a new Employee pursuant to this Paragraph A.2, such former Participant shall participate in the Plan immediately upon his or her re-employment.

3. <u>Employee Not a Participant</u>. Any Employee who terminates employment prior to his or her Entry Date, but after satisfying the eligibility requirements of Article I, and who is re-hired prior to incurring five (5) consecutive Breaks-in-Service shall become a Participant on the later of (i) his or her date of reemployment; or (ii) the first Entry Date following the date he or she becomes an Eligible Employee. If this Plan provides for immediate full vesting of all Accounts, then an Employee who did not satisfy the Plan's service requirement and has incurred a one-year Break-in-Service shall have his or her prior service disregarded. Any Employee who terminates employment prior to his or her Entry Date and who is re-hired after incurring five (5) consecutive Breaks-in-Service shall be considered a new Employee.

4. <u>Change in Employment Status</u>. Any Employee who is not a member of an eligible class of employees and becomes a member of an eligible class will participate immediately if such Employee would have otherwise previously become a Participant.

If a Participant becomes an Inactive Participant and has not incurred a one-year Break-in-Service, such Employee will participate immediately upon returning to an eligible class of employees. If such Participant incurs a one-year Break-in-Service, eligibility will be determined under the Break-in-Service rules of this Article III.

B. Leave of Absence. For purposes of eligibility, no Employee shall be deemed to have suffered a Break-in-Service if his or her employment is interrupted because such Employee has been on a Leave of Absence. For purposes of eligibility, a Break-in-Service

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shall not be deemed to have occurred while an Employee is a member of the armed forces of the United States, provided that he or she returns to the service of the Employer within 90 days (or such longer period as may be prescribed by law) from the date he or she first became entitled to his or her discharge.

C. <u>Enrollment</u>. The Employee shall, from time to time as requested by the Committee, provide a list of all of its Employees, their names and ages, the number of Hours of Service completed by each during the current Plan Year or other applicable Computation Period, their dates of hire, and any additional information the Committee may require. The Committee shall determine from such lists which Employees are Eligible Employees and their Entry Dates for participation under the Plan.

D. <u>Omission of Eligible Employee</u>. If, in any Plan Year, any Employee who should be included as a Participant in the Plan is erroneously omitted or an error caused a Participant to be credited with less than his or her full allocation, the Committee shall determine the amounts (or additional amounts) which should have been credited to such Participant's Account. To correct any such error or omission, the correct amount may be deducted from forfeitures and/or earnings prior to allocating such amounts to other Participants in lieu of adjusting Accounts of other Participants. In addition to (or instead of) the preceding adjustment, the Employer may make a special contribution including earnings to correct any such error or omission.

E. <u>Inclusion of Ineligible Employee</u>. If, in any Plan Year, any person who should not have been included as a Participant in the Plan is erroneously included and discovery of such incorrect inclusion is not made until after an Employer contribution for the relevant Plan Year(s) has been made, the amount contributed, as adjusted with earnings or losses if necessary, with respect to the ineligible person shall constitute a forfeiture for the Plan Year in which the discovery is made. Any Employee After-Tax Contributions or Elective Contributions made by an ineligible Employee adjusted with earnings or losses, if necessary, shall be returned to the Employee.

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## DH COMPOUNDING COMPANY SAVINGS AND RETIREMENT PLAN AND TRUST

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### IV. EMPLOYER CONTRIBUTIONS

A. <u>In General</u>. For each Plan Year in which this Plan is in effect, the Employer shall make contributions to the Trust in one (1) or more installments in such amounts, if any, as provided in Article I; provided that (i) the Plan Year for which each contribution is made shall be designated at the time of the contribution or upon the income tax return of the Employer for any relevant Plan Year; (ii) no contribution to this Plan for any Plan Year shall exceed an amount which the Employer estimates will be deductible under Sections 404(a) and 404(j) of the Code; (iii) no contribution for any Plan Year shall cause the limitations on the Annual Addition of any Participant to be exceeded for such Plan Year; and (iv) no contribution shall be made for any Participant who did not complete a Year of Service during the relevant Plan Year unless Article I provides otherwise.

For Plan Years beginning after December 31, 1996, contributions made to an Owner-Employee may be made only from such Owner-Employee's Earned Income derived from the trade or business for which the Plan is established.

B. Special Make-up Contribution. A previously forfeited Account Balance shall be restored in accordance with Article I.

C. <u>Corrective Contributions</u>. Subject to all applicable limitations of the Code, the Employer may make additional contributions to the Plan as needed to correct any errors in administration which may occur from time to time. Such corrective contributions shall be limited to the extent necessary (including earnings as applicable) to place affected Participants in the position they would have been in but for such error or errors, and shall be allocated to the account or accounts from which the error was made, subject to all rules and procedures otherwise applicable to such Accounts.

D. <u>Profit Sharing and Retirement Savings (401(k)) Contributions</u>. The provisions of this Paragraph D shall apply to contributions made pursuant to the cash or deferred feature of the Plan.

1. <u>Qualifying Section 401(k) Contributions</u>. The Employer intends that all Qualifying Employer Contributions shall satisfy all of the requirements of Section 401(k) of the Code and the Treasury Regulations promulgated thereunder as constituting a qualified cash or deferred arrangement. Each Participant shall be fully vested in his or her Qualifying Section 401(k) Contributions at all times.

2. <u>Participant Elective Contributions</u>. As permitted in Paragraph H.2 of Article I, a Participant may elect to reduce and defer the receipt of his or her Compensation, the Employer shall reduce such Participant's Compensation in the elected amount through payroll withholding and contribute to the Plan on behalf of each such electing Participant an amount equal to the Compensation to be reduced and

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deferred. A Participant's Elective Contributions shall be credited to his or her Elective Contribution Account, and generally will be paid by the Employer to the Plan no later than the 15<sup>th</sup> business day following the month in which the amount was withheld from the Participant's payroll.

3. <u>Changes in Elective Contributions</u>. A Participant may suspend his or her Elective Contributions at any time. The rules and procedures for allowing Participants to defer and reduce their Compensation under Paragraph H.2 of Article I and this Paragraph D.3 and to decrease (or increase) such reductions and deferrals shall be established by the Committee, in its sole discretion; provided, however, that the Committee shall exercise its discretion in a uniform and nondiscriminatory manner. If this Plan provides for Safe Harbor Matching Contributions, a Participant shall have a reasonable opportunity and a reasonable period of time to increase, decrease, or resume his or her Elective Contributions. A 30 day period shall be deemed a reasonable period of time.

4. <u>Simple 401(k) Plans</u>. If this is a Simple 401(k) Plan, in addition to any other election periods, each Employee may make or modify his or her salary reduction election during the 60-day period immediately preceding each January 1. If the Employee elects to suspend his or her Elective Contributions during the Plan Year, the Committee may require the Employee to wait until the beginning of the next Plan Year before he or she may resume his or her Elective Contributions. The Employee shall notify each Eligible Employee of his or her election rights prior to the 60-day election period and shall indicate the type and amount of the Simple 401(k) Contribution to be made.

E. <u>Actual Deferral Percentage Limitation</u>. For Plan Years beginning prior to January 1, 1997, the amount of Qualifying Section 401(k) Contributions made on behalf of the group consisting of Highly Compensated Employees shall not result in an Actual Deferral Percentage that exceeds the greater of:

1. The Actual Deferral Percentage limitation for the group of Eligible Participants who are Highly Compensated Employees for the Plan Year shall not exceed the Actual Deferral Percentage for the group of Eligible Participants who are Non-Highly Compensated Employees for the Plan Year multiplied by 1.25; or

2. The Actual Deferral Percentage for the group of Eligible Participants who are Highly Compensated Employees for the Plan Year shall not exceed the Actual Deferral Percentage for Eligible Participants who are Non-Highly Compensated Employees for the Plan Year multiplied by two (2), and provided that the Actual Deferral Percentage for the group of Eligible Participants who are Highly Compensated Employees does not exceed the Actual Deferral Percentage for the group of Eligible Participants who are Highly Compensated Employees does not exceed the Actual Deferral Percentage for the group of Eligible Participants who are Employees by more than two (2)

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percentage points or such lesser amounts as prescribed to prevent the multiple use of this alternative limitation with respect to any Highly Compensated Employee.

For Plan Years, beginning after December 31, 1996, the amount of Qualifying Section 401(k) Contributions made on behalf of the group consisting of Highly Compensated Employees shall not result in an Actual Deferral Percentage that exceeds the greater of the following:

(a) The Actual Deferral Percentage limitation for the group of Eligible Participants who are Highly Compensated Employees for the current Plan Year shall not exceed the Actual Deferral Percentage for the group of Eligible Participants who are Non-Highly Compensated Employees for the current or preceding Plan Year as elected in Article I multiplied by 1.25; or

(b) The Actual Deferral Percentage for the group of Eligible Participants who are Highly Compensated Employees for the current Plan Year shall not exceed the Average Deferral Percentage for Eligible Participants who are Non-Highly Compensated Employees for the current or preceding Plan Year as elected in Article I, multiplied by two (2), and provided that the Actual Deferral Percentage for the group of Eligible Participants who are Non-Highly Compensated Employees does not exceed the Actual Deferral Percentage for the group of Eligible Participants who are Non-Highly Compensated Employees for the current or preceding Plan Year, as elected in Article I, by more than two (2) percentage points or such lesser amount as prescribed to prevent the multiple use of this alternative limitation with respect to any Highly Compensated Employee.

For the first Plan Year in which the Plan (other than a successor plan) provides for a cash or deferred arrangement, the Actual Deferral Percentage of eligible Non-Highly Compensated Employees under the prior year testing method shall be the greater of three percent (3%) or the Actual Deferral Percentage of the Non-Highly Compensated Employees for the first Plan Year.

If the Plan provides for the prior year testing method, the Actual Deferral Percentage shall be determined without regard to changes in the group of Non-Highly Compensated Employees who are Eligible Participants during the testing year.

An Elective Contribution, Safe Harbor Nonelective Employer Contribution or Safe Harbor Matching Contribution will be taken into account under the Actual Deferral Percentage limitation for the Plan Year only if it is allocated to the Employee as of any date within the Plan Year. An Elective Contribution, Safe Harbor Nonelective Contribution and Safe Harbor Matching Contribution is considered allocated as of any date within a Plan Year if the allocation is not contingent on participation or performance of services after such date and the Elective Contribution is actually paid to

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the Trust no later than 12 months after the close of the Plan Year to which such contributions relate. Additionally, an Elective Contribution must relate to Compensation that either would have been received by the Employee during the Plan Year, except for the Employee election to defer, or is attributable to the performance of services during the Plan Year that would have become payable within 2<sup>1</sup>/<sub>2</sub> months after the close of the Plan Year, except for the Employee election to defer.

F. <u>Safe Harbor Contributions</u>. For Plan Years beginning after December 31, 1998, if the Employer provides for Safe Harbor Matching Contributions or Safe Harbor Nonelective Employer Contributions during a Plan Year that satisfy the requirements of Section 401(k)(12) of the Code, the Actual Deferral Percentage limitation shall be deemed satisfied for such Plan Year provided that:

1. If Safe Harbor Nonelective Employer Contributions or Safe Harbor Matching Contributions are made to the Plan to satisfy the Actual Deferral Percentage limitation or the Average Contribution Percentage for a Plan Year, such Plan shall be required to use the current year testing method for Non-Highly Compensated Participants in any Plan Year in which Safe Harbor Nonelective Employer Contributions or Safe Harbor Matching Contributions are made. Such contributions, like Elective Contributions and Matching Contributions, shall be subject to rules relating to changes from current year testing to prior year testing, and the anti-abuse provisions of Section VIII of IRS Notice 98-1.

2. Any Compensation definition elected in Article I must state a uniform definition of Compensation and comply with Section 414(s) of the Code and Section 1.414(s)-1 of the Treasury Regulations; provided, however, the last sentence of Section 1.414(s)-1(d)(2)(iii) of the Treasury Regulations pertaining to compensation above a specified dollar amount shall not apply to a Non-Highly Compensated Employee.

3. A plan year must be a 12 consecutive month period or if the Plan is a newly established plan (other than a successor plan within the meaning of IRS Notice 98-1), a period of at least three (3) consecutive months (or, a shorter period if the Employer is a newly established Employer and this Plan is established as soon as administratively feasible after the establishment of the Employer). Notwithstanding the preceding sentence, in the case of a cash or deferred arrangement that is added to an existing profit-sharing, stock bonus, or pre-ERISA money purchase pension plan for the first time during a plan year, the requirements of Section V of Notice 98-52 will be treated as being satisfied for the entire plan year and the cash or deferred arrangement will not be treated as failing to satisfy the requirements of Section X of Notice 98-52, provided (i) the plan is not a successor plan (within the meaning of IRS Notice 98-1), (ii) the cash or deferred arrangement is made effective no later than three (3) months prior to the end of the plan year, and (iii) the requirements of Safe Harbor Nonelective

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Contributions or Safe Harbor Matching Contributions are satisfied for the period from the effective date of the cash or deferred arrangement to the end of the plan year.

4. To satisfy the notice requirements in regard to Safe Harbor Matching Contributions or Safe Harbor Nonelective Employer Contributions, the notice given by the Committee to Employees must be sufficiently accurate and comprehensive to inform the Employee of his or her rights and obligations under the Plan and must be written in a manner that can be understood by the average Employee eligible to participate in the Plan.

The notice must accurately describe (i) the Safe Harbor Matching Contribution formula or Safe Harbor Nonelective Employer Contribution formula used under the Plan (including a description of the level of Matching Contributions, if any, available under the Plan); (ii) any other contributions under the Plan (including Nonelective Employer Contributions and discretionary Matching Contributions), the condition and allocation requirements to receive such contributions; (iii) the Plan to which safe harbor contributions will be made if other than this Plan; (iv) the type and amount of Compensation that may be deferred under the Plan; (v) how to make a cash deferred election, including any administrative requirements that apply to Elective Contributions; (vi) the periods available under the Plan for making cash or deferred elections; and (vii) withdrawal and vesting provisions pertaining to each contribution made under the Plan.

A plan will not fail to satisfy the content requirement of (ii), (iii), (iv) and (vii) of the preceding paragraph if the notice instead cross-references the relevant portions of an up-to-date summary plan description that has been provided (or concurrently is provided) to the Employee. However, the notice must still accurately describe (i) the Safe Harbor Matching Contribution or Safe Harbor Nonelective Contribution formula used under the Plan (including a description of the levels of Matching Contributions, if any, available under the Plan) and state that these contributions (as well as Elective Contributions) are fully vested when made and (ii) how to make Elective Contributions (including any administrative requirements that apply to such elections) and the periods available under the Plan for making such elections. In addition, the notice must also provide information that makes it easy for Eligible Employees to obtain additional information about the Plan (including an additional copy of the summary plan description) such as telephone numbers, addresses and, if applicable, electronic addresses, of the individuals or offices from whom Employees can obtain such plan information.

Such notice may be given through an electronic medium if reasonably accessible to the Employee, provided that (i) the system under which the electronic notice is provided is reasonably designed to provide the notice in a manner no less understandable to the Employee than a written paper document, and (ii) at the

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time the electronic notice is given, the Employee is advised that he or she may request and obtain a written paper document at no charge.

For Plan Years beginning prior to January 1, 2000, a Plan shall not fail the notice requirements because all items listed above are not included, provided that such notice satisfies a good faith interpretation of the requirements of Sections 401(k)(12) and 401(m)(11) of the Code.

The notice requirements must be given within a reasonable time before the beginning of each Plan Year (or, if an Employee becomes eligible after the preceding notice has been given, within a reasonable period before the Employee is eligible). If the notice is given at least 30 days and no more than 90 days before the beginning of each Plan Year, the notice requirements shall be deemed timely. If an Employee became eligible to participate after the 90<sup>th</sup> day before the beginning of the Plan Year, notice shall be deemed timely if given to such Employee no more than 90 days before he or she becomes eligible to participate and no later than the Employee's Entry Date. The preceding sentence shall also apply for a new established 401(k) Plan.

If the Plan provides safe harbor contributions for the first time for the Plan Year beginning after December 31, 1999 but before June 2, 2000, the notice shall be deemed timely if given by May 1, 2000. For the Plan Year beginning on or before April 1, 1999, the notice shall be deemed timely if given on or before March 1, 1999, provided that all other safe harbor provisions are complied with for the entire Plan Year.

5. Any Safe Harbor Matching Contribution formula elected in Article I must, at any rate of Elective Contributions, provide an aggregate amount of Safe Harbor Matching Contributions to Non-Highly Compensated Participants at least equal to the aggregate amount of Safe Harbor Matching Contributions that would have been provided under Section 401(k)(12)(B)(i) of the Code.

6. For Plan Years beginning after December 31, 2001, safe harbor provisions under Section 401(k)(12) of the Code must be adopted prior to the first day of the Plan Year in which such provisions became effective. For the Plan Year beginning in the year 2000, such safe harbor provisions must be adopted on or before the last day of such Plan Year.

Notwithstanding the preceding paragraph, if the Plan provides for the current year testing method for the Actual Deferral Percentage and the Average Contribution Percentage, if applicable, the Plan may be amended to provide Safe Harbor Nonelective Employer Contributions as late as 30 days prior to the last day of the Plan Year if Eligible Employees receive notice prior to the beginning of such Plan Year that the Employer may provide Safe Harbor Nonelective Employer Contributions of

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at least three percent (3%) of Compensation. If the Employer does provide for Safe Harbor Nonelective Employer Contributions, the notice requirements of subparagraph F.4 above shall apply and Eligible Employees must be given a supplemental notice at least 30 days before the end of the Plan Year that Safe Harbor Nonelective Employer Contributions of at least three percent (3%) of Compensation will be made.

7. Safe Harbor Matching Contributions and Safe Harbor Nonelective Employer Contributions shall not be used as Qualified Nonelective Employer Contributions or Qualified Matching Contributions.

8. If Safe Harbor Matching Contributions or Safe Harbor Nonelective Employer Contributions are provided in another defined contribution plan maintained by the Employer, any Eligible Employee under the plan that provides for a cash or deferred arrangement must be an Eligible Employee under the plan that provides for Safe Harbor Matching Contributions or Safe Harbor Nonelective Employer Contributions. Safe Harbor Matching Contributions and Safe Harbor Nonelective Employer Contributions cannot be used to satisfy the safe harbor requirements of Notice 98-52 Section V.B with respect to more than one plan.

G. <u>Simple 401(k) Plans</u>. If this Plan is a Simple 401(k) Plan, the Actual Deferral Percentage limitation shall be deemed satisfied provided that the following additional notice requirements are satisfied:

1. Each Participant may elect, during the 60 day period immediately preceding each January 1<sup>st</sup> (and 60 days before the first day an Employee is first eligible to participate), to increase, decrease, or resume his or her Elective Contributions.

2. The Committee shall notify each Participant within a reasonable period of time prior to the 60-day election period that an Employee can modify his or her election to defer and the Employee's rights to participate under the Plan. If an Employee becomes eligible after the 60-day election period, the 60-day election period shall be deemed satisfied if the Employee may make or modify a salary reduction election during a 60-day period that includes either the date the Employee becomes eligible to participate or the day before the Employee's Entry Date.

3. If the Employer maintained this Plan during 1997, prior to adopting Simple 401(k) Plan provisions, then contributions made prior to the adoption of Simple 401(k) Plan provisions shall be treated as Simple 401(k) Contributions only if (i) the Employer adopts the Simple 401(k) Plan provisions by July 1, 1997, effective as of January 1, 1997; (ii) the salary reduction contributions for the year made prior to adoption of the amendment do not total more than \$6,000 for any Employee; (iii) the other contributions set forth in Article I are of inherently equal or greater value than the

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contributions required under the Plan prior to the amendment; and (iv) for 1997, the 60-day election period requirement described above is deemed satisfied if the Employee may make or modify a salary reduction election during a 60-day election period that begins no later than 30 days after the adoption of Simple 401(k) Plan provisions but in no event later than July 1, 1997.

4. If this Plan is a newly established 401(k) plan containing Simple 401(k) Plan provisions as elected in Article I, the Employer may make it effective as of any date during the Plan Year, but in no event later than October 1<sup>st</sup> of the year in which adopted. Except as described in Paragraph G.3 above, an Employer amending an existing 401(k) plan to provide for Simple 401(k) Plan provisions must make such provisions effective as of the following January 1<sup>st</sup>.

H. <u>Limitation on Elective Deferrals</u>. The Trust shall not receive any Elective Deferrals made by an Employee to this Plan and all other plans, contracts or arrangements of the Employer in any calendar year which exceed \$7,000 (\$10,000 for 1999) for the Employee's taxable year beginning in such calendar year. If this is a Simple 401(k) Plan the limitation is \$6,000 (including 1999) and the amount of Elective Contributions must be expressed as a percentage of Compensation. If Elective Deferrals in excess of the permitted amounts are mistakenly deposited into the Trust, the correction procedures of Paragraph M of this Article IV shall apply.

The above dollar limitations shall be adjusted at the same time and in the same manner as Section 415(d) of the Code, except the base period is the calendar quarter ending September 30, 1996, and any increase under this Paragraph H which is not a multiple of \$500 shall be rounded to the next lowest multiple of \$500.

### I. Reserved.

#### J. Correction of Excess Contributions.

1. <u>Return of Excess Contributions</u>. If the Committee determines that for any Plan Year the maximum aggregate Actual Deferral Percentage of Qualifying Section 401(k) Contributions made by or on behalf of the group consisting of Highly Compensated Employees has been exceeded, the Committee may reduce by corrective distribution to the extent necessary the amount of Excess Contributions made to the group consisting of Highly Compensated Employees to satisfy the Actual Deferral Percentage limitation. The Committee shall designate such distributions to Highly Compensated Employees as Excess Contributions and allowable income thereof which shall be distributed to the appropriate Highly Compensated Employees after the close of the Plan Year but not later than 12 months after the close of the Plan Year.

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For Plan Years beginning prior to January 1, 1997, the determination of corrective distributions shall be made in accordance with this paragraph. The Committee shall reduce to the extent necessary the amount of the Excess Contributions for each member of the Highly Compensated Group by reducing the actual deferral ratios of the Highly Compensated Employees who have the highest actual deferral ratios to the maximum acceptable level. This is accomplished by the following reduction. First, the actual deferral ratio of the Highly Compensated Employee with the highest actual deferral ratio is reduced to the extent necessary to satisfy the Actual Deferral Percentage limitation or cause such ratio to equal the actual deferral ratio of the Highly Compensated Employee with the next highest ratio. Second, this process is repeated until the Actual Deferral Percentage limitation is satisfied. The amount of Excess Contributions for each Highly Compensated Employee is equal to the total of Elective Contributions and other contributions taken into account for the Actual Deferral Percentage limitation prior to reduction minus the product of the Employee's actual deferral ratio, after reduction as determined above, multiplied by his or her Compensation.

2. <u>Application of Family Aggregation Rules</u>. If a Highly Compensated Employee's actual deferral ratio is determined under the family aggregation rules, then the reduction of the amount of his or her Excess Contributions shall be made in accordance with this paragraph. The actual deferral ratio shall be reduced in accordance with the same leveling method described in Paragraph J.1 of this Article IV. The resulting Excess Contributions for the family group shall be allocated among the Family Members in proportion to the Elective Contributions of each Family Member that are combined to determine the actual deferral ratio.

For Plan Years beginning after December 31, 1996, the determination of corrective distributions shall be made as follows:

<u>Step 1</u>. The Committee shall calculate the dollar amount of Excess Contributions for each affected Highly Compensated Employee in the same manner as the ratio leveling method described in the second paragraph of Paragraph J.1 of this Article IV.

Step 2. The Committee shall determine the total of the dollar amounts calculated in step 1 ("total Excess Contributions").

<u>Step 3</u>. The Elective Contributions of the Highly Compensated Employee with the highest dollar amount of Elective Contributions are reduced by the amount required to cause such Highly Compensated Employee's Elective Contributions to equal the dollar amount of the Elective Contributions of the Highly Compensated Employee with the next highest dollar amount of Elective Contributions. This amount is then distributed to the Highly Compensated Employee

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with the highest dollar amount of Excess Contributions. However, if a lesser reduction, when added to the total dollar amount already described under this step, would equal the total Excess Contributions, the lesser reduction amount is distributed.

Step 4. If the total amount distributed is less than the total Excess Contributions, step 3 is repeated.

If the above distributions are made, the cash or deferred arrangement is treated as meeting the non-discrimination test of Section 401(k)(3) of the Code regardless of whether the Actual Deferral Percentage, if recalculated after such distributions, would satisfy Section 401(k)(3) of the Code.

3. <u>Corrections by Additional Contributions</u>. The Employer may in its sole discretion and subject to the limitation contained in Article V of the Plan, make additional Qualified Nonelective Employer Contributions or Qualified Matching Contributions that are treated as Elective Contributions and which in combination with the Elective Contributions, satisfy the Actual Deferral Percentage limitation. Such Nonelective Employer Contributions and Qualified Matching Contributions must be nonforfeitable as of the date made and subject to the same distribution restrictions that apply to Elective Contributions. Qualified Nonelective Employer Contributions and Qualified Matching Contributions which are treated as Elective Contributions must satisfy these requirements without regard to whether they are actually taken into account as Elective Contributions. A Qualified Matching Contribution to which it relates is an Excess Deferral, or Excess Contribution thereby causing forfeiture of such Qualified Matching Contribution.

4. <u>Additional Requirements</u>. Qualified Nonelective Employer Contributions and Qualified Matching Contributions which are treated as Elective Contributions must satisfy the following additional requirements:

(a) The Nonelective Employer Contributions, including Qualified Nonelective Employer Contributions, must satisfy the requirements of Section 401(a) (4) of the Code and, for Plan Years beginning after December 31, 1993, must satisfy Section 1.401(a)(4)-1(b)(2) of the Treasury Regulations.

(b) The Nonelective Employer Contributions, excluding Qualified Nonelective Employer Contributions treated as Elective Contributions for purposes of the Actual Deferral Percentage limitation and Qualified Nonelective Employer Contributions treated as Matching Contributions for purposes of the Contribution Percentage limitation, must satisfy the requirements of Section 401(a)(4) of the Code and, for Plan Years beginning after December 31, 1993, must satisfy Section 1.401(a)(4)-1(b)(2) of the Treasury Regulations.

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(c) Qualified Nonelective Employer Contributions and Qualified Matching Contributions made for the Plan Year must satisfy the allocation requirements of Elective Contributions.

(d) For Plan Years beginning after December 31, 1988, the plan that takes Qualified Nonelective Employer Contributions and Qualified Matching Contributions into account in determining whether Elective Contributions satisfy the Actual Deferral Percentage limitation must have the same Plan Year as the plan or plans to which the Qualified Matching Contributions and Qualified Nonelective Employer Contributions were made. If the Plan Year is changed to satisfy this requirement, such contributions may be taken into account during the short Plan Year if they satisfy the allocation requirements of Elective Contributions.

(e) If the Employer has elected to apply the prior year testing method to calculate the Actual Deferral Percentage limitation, Qualified Matching Contributions or Qualified Nonelective Employer Contributions must be made no later than twelve (12) months following the last day of the Plan Year preceding the current Plan Year to satisfy the Actual Deferral Percentage limitation. If the Employer has elected to apply the current year testing method to calculate the Actual Deferral Percentage limitation, Qualified Matching Contributions or Qualified Nonelective Employer Contributions must be made no later than twelve (12) months following the close of the current Plan Year to satisfy the Actual Deferral limitation.

5. <u>Recharacterization of Excess Contributions</u>. If Article I allows for Employee After-Tax Contributions, the Committee may recharacterize Excess Contributions as Employee After-Tax Contributions. Such recharacterized contributions shall remain subject to the nonforfeitable requirements and distribution limitations that apply to Elective Contributions. The Committee cannot recharacterize any Excess Contributions after 2<sup>1</sup>/<sub>2</sub> months after the close of the Plan Year. Further Excess Contributions will not be recharacterized with respect to a Highly Compensated Employee to the extent that the recharacterized amounts, in combination with Employee After-Tax Contributions actually made by the Employee, exceeds a maximum amount of Employee After-Tax Contributions that the Employee is permitted to make under the Plan in the absence of Recharacterization determined prior to the application of the Contribution Percentage limitation. Such recharacterized amounts will be considered as Annual Additions under the limitations imposed by Section 415 of the Code and shall be subject to Section 401(m) of the Code. The same leveling method and family aggregation rules as described with respect to the return of Excess Contributions to Highly Compensated Employees shall apply to this corrective procedure.

The amount of Excess Contributions to be recharacterized for a Plan Year shall not exceed the amount of Elective Contributions made on behalf of such Highly Compensated Employee.

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6. <u>Correction of Excess Contributions by Reduction Prior to the End of the Plan Year</u>. If the Committee determines that the Actual Deferral Percentage limitation is being exceeded during a Plan Year, the Committee may suspend the group of Highly Compensated Employees' future Elective Deferrals of Qualifying 401(k) Contributions for such Plan Year to enable the Plan to satisfy the Actual Deferral Percentage limitation. The Committee shall give notice to such Employees of the amount to be suspended.

For Plan Years beginning after December 31, 1996, the determination of the reduction shall be made either in accordance with the dollar leveling method used for reduction of Excess Contributions or on a pro rata basis if elected in Article I.

For Plan Years beginning prior to January 1, 1997, the determination of the reduction shall be made either in accordance with the same leveling method and family aggregation rules used for the reduction of Excess Contributions or on a pro rata basis as elected in Article I.

K. <u>Coordination of Excess Contributions with Excess Deferrals</u>. The amount of Excess Contributions to be distributed or recharacterized with respect to Highly Compensated Employees shall be reduced by any Excess Deferrals previously distributed to such Employee for the Employee's taxable year ending in such Plan Year.

L. <u>Income Allowable to Excess Contribution</u>. The distribution of Excess Contributions shall include the income allocated thereto. The income allocable to Excess Contributions is determined by applying the same method as used for the correction of Excess Aggregate Contributions described in Paragraph J of Article X.

M. <u>Correction of Excess Deferrals</u>. Not later than the first April 15<sup>th</sup> after the close of the Employee's taxable year, the Employee must notify the Committee of each Plan under which deferrals were made, how much Excess Deferrals were received by such plan and each plan may distribute to the Employee the amount of Excess Deferrals plus any earnings thereof. An Employee may receive a corrective distribution of Excess Deferrals during the same taxable year. A corrective distribution may be made only if all of the following conditions are satisfied:

1. The Employee designates the distribution as an Excess Deferral. An Employee is deemed to have designated the distribution as an Excess Deferral to the extent the Employee has Excess Deferrals for the taxable year, taking into account only Elective Deferrals under this Plan and any other plan maintained by the Employer.

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2. The corrective distribution is made after the date in which the plan received the Excess Deferral.

3. The plan designates the distribution as a distribution of Excess Deferrals.

N. <u>Income Allowable to Excess Deferrals</u>. The distribution of Excess Deferrals shall include the income allocated thereto. The income allocable to Excess Deferrals for the taxable year is determined by applying the same method as used for correction of Excess Aggregate Contributions described in Paragraph J of Article X.

O. <u>Coordination of Excess Deferrals with Distribution or Recharacterization of Excess Contributions</u>. The amount of Excess Deferrals that may be distributable with respect to an Employee for a taxable year shall be reduced by any Excess Contributions previously distributed or recharacterized with respect to such Employee for the Plan Year beginning with or within such taxable year. In the event of reduction under this Paragraph O, the amount of Excess Contributions included in the gross income of the Employee and reported by the Employer as a distribution of Excess Contributions shall be reduced by the amount of the reduction under this paragraph. The amount of the reduction under this Paragraph O shall be reported as a distribution of Excess Deferrals. In no case may an Employee receive from the Plan as a corrective distribution for a taxable year an Excess Deferral which exceeds the Employee's total Elective Deferrals under the Plan for the Employee's taxable year.

P. <u>Distribution of Amounts Attributed to Elective Contributions</u>. Except for the correction of Excess Contributions, Excess Aggregate Contributions and Excess Deferrals, Elective Contributions, Qualified Nonelective Employer Contributions, and Qualified Matching Contributions and earnings resulting from these contributions may not be distributed earlier than upon one (1) of the following events:

1. The Employee's retirement, death, disability or separation from service;

2. The termination of the Plan without establishment or maintenance of another defined contribution plan (other than an employer stock ownership plan, a simple IRA plan or a simple employer plan);

3. The Employee's attainment of age 59<sup>1</sup>/<sub>2</sub>;

4. Distributions on account of hardship. For Plan Years after December 31, 1988 only amounts deferred by the Employee as Elective Contributions, disregarding any gains or losses, may be distributed; provided, however, that in no event shall the amount of such hardship distribution result in a value less than zero (0)

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in a Participant's Elective Contribution Account determined as of the immediately preceding Valuation Date;

5. The sale or disposition by a corporation to an unrelated corporation, which does not maintain the Plan, of substantially all of the assets used in a trade or business but only with respect to Employees who continue employment with the acquiring corporation; and

6. The sale or other dispositions by a corporation of its interest in a subsidiary to an unrelated corporate entity which does not maintain the Plan, but only with respect to Employees who continue employment with a subsidiary.

For purposes of (5) and (6) above, distributions may also be made on account of certain dispositions of assets or subsidiaries other than sales. These distributions on account of dispositions or sales may be made only if the transferor corporation continues to maintain the Plan after disposition. The distribution must be a lump-sum distribution in order for the exceptions for disposition of assets or subsidiaries or for termination of the Plan to apply. Lump-sum, for these purposes, is a lump-sum under Section 402(d)(4) of the Code but without regard to (i) the attainment of age  $59^{1}/_{2}$ ; (ii) the election requirement; or (iii) the minimum period of a plan participation requirement.

These lump-sum rules apply to distributions occurring after March 31, 1988.

Q. <u>Hardship Withdrawals</u>. If allowed under Article I of this Plan, the Participant may apply for a hardship withdrawal of his or her Elective Contributions or Nonelective Employer Contributions, if applicable, by filing a written application with the Committee. In granting a hardship withdrawal, the Committee shall follow nondiscriminatory and objective standards in determining whether a Participant is entitled to a hardship withdrawal.

1. <u>General Rule</u>. Any hardship withdrawal may only be made if it is necessary to satisfy an immediate and heavy financial need of the Participant. A hardship withdrawal shall not exceed the amount necessary to relieve the need nor shall such hardship withdrawal be made to the extent the need may be satisfied from other financial resources reasonably available to the Employee.

2. <u>Determination of Financial Need</u>. A withdrawal on account of hardship may be treated as necessary to satisfy a financial need if the Committee reasonably relies upon the Employee's representation that the need cannot be relieved by:

(a) Reimbursement or compensation by insurance or otherwise;

#### ARTICLE IV

(b) Reasonable liquidation of the Employee's assets to the extent such liquidation would not itself cause any immediate and heavy financial need;

(c) Cessation of Elective Contributions or Employee Contributions under the Plans of the Employer; or

(d) Other distributions or nontaxable loans from plans maintained by the Employer, or by any other Employer, or by borrowing from commercial sources on reasonable commercial terms. An Employee's resources shall be deemed to include those assets of his or her Spouse and minor children that are reasonably available to the Employee.

3. Determination of Necessity for Hardship Withdrawal. A hardship withdrawal will be deemed necessary to satisfy the financial need if it meets the following conditions:

(a) The hardship withdrawal is not in excess of the amount of the immediate and heavy financial need of the Employee. The amount of an immediate and heavy financial need may include amounts necessary to pay any federal, state or local income taxes or penalties reasonably anticipated to result from such hardship withdrawal.

(b) The Employee has obtained all distributions, other than hardship withdrawals of Elective Contributions, and all nontaxable loans currently available under all plans maintained by the Employer.

(c) The Employee's Elective Contributions and Employee After-Tax Contributions, other than mandatory Employee contributions made to a defined benefit plan, will be suspended for at least 12 months after receipt of the hardship withdrawal under this Plan and all other qualified and non-qualified plans of deferred compensation, including the cash and deferred arrangement that is part of a cafeteria plan and excluding any health or welfare plans, including one that is part of a cafeteria plan, maintained by the Employer.

(d) The Employee may not make Elective Contributions and Employee After-Tax Contributions, other than mandatory Employee contributions made to a defined benefit plan, to this Plan and all other qualified and non-qualified plans of deferred compensation, including the cash and deferred arrangement that is part of a cafeteria plan and excluding any health or welfare plans, including one that is part of a cafeteria plan, maintained by the Employee for the Employee's taxable year immediately following the taxable year of the hardship withdrawal in excess of the applicable limit under Section 402(g) of the Code for such next taxable year less the amount of such Elective Contributions for the taxable year of the hardship withdrawal. With respect to

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hardship withdrawals made on or before March 31, 1989, operation in accordance with the IRS Regulations proposed on November 10, 1981 is a reasonable interpretation of Section 401(k) of the Code.

R. <u>Aggregation of Employer's Plans</u>. Elective Contributions that are made under two (2) or more plans of the Employer that are aggregated for purposes of Section 401(a)(4) or Section 410(b) of the Code, other than Section 410(b)(2)(A)(ii) of the Code, are to be treated as made under a single plan and if two (2) or more plans are permissibly aggregated for purposes of Section 401(k) of the Code, the aggregated plans must satisfy Sections 401(a)(4), 401(k) and 410(b) of the Code as though such aggregated plans were a single plan. Whenever a Highly Compensated Employee is eligible under two (2) or more plans of the Employer which are subject to Section 401(k) of the Code, in calculating the Actual Deferral Percentage limitation, the actual deferral ratio of such Highly Compensated Employee will be determined by treating all such plans in which such Highly Compensated Employee is an Eligible Participant as a single plan.

Except for certain plans in existence on November 1, 1977, for Plan Years beginning after December 31, 1988, contributions allocated under a plan described in Section 4975(e)(7) of the Code cannot be combined with contributions or allocations under any plan not described in Section 4975(e)(7) of the Code including required aggregation of a Highly Compensated Employee. However, a plan described in Section 4975(e)(7) of the Code may provide for contributions as described in Section 401(k)(12) of the Code. Mandatory disaggregation shall also apply to plans described under Sections 1.401(k)-1(b)(3)(ii)(B) and 1.401(k)-1(g)(11)(iii) of the Treasury Regulations. However, for Plan Years beginning after December 31, 1990, for purposes of the average benefit percentage test under Section 410(b)(2)(A)(ii) of the Code, a plan described in Section 4975(e)(7) of the Code shall be aggregated. For Plan Years beginning before January 1, 1991, the Employer shall have the option to aggregate such plans for purposes of the average benefit percentage test. Plans that are to be aggregated may only be aggregated if they have the same plan year.

The rules regarding aggregation and disaggregation of cash or deferred arrangements and plans shall also apply for purposes of Sections 401(k)(12) and 401(m)(11) of the Code.

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#### V. ALLOCATIONS TO PARTICIPANTS' ACCOUNTS

A. <u>Maintenance of Accounts</u>. The Committee shall, where applicable, establish and maintain a Nonelective Employer Contribution Account, Elective Contribution Account, Employee After-Tax Contribution Account, Qualified Nonelective Employer Contribution Account, Matching Contribution Account, Rollover Contribution Account, Safe Harbor Matching Contribution Account, Safe Harbor Nonelective Employer Contribution Account, Simple 401(k) Account and/or Transferred Benefits Account in the name of each Participant.

#### B. Valuation of Trust.

1. Date for Valuation. As soon as administratively feasible after any Valuation Date, the Trustee shall value the Trust assets and liabilities on the basis of fair market values as of such Valuation Date.

2. <u>Instructions for Valuation</u>. If the Trustee, in making such valuations, shall determine that the Trust consists, in whole or in part, of property not traded freely on a recognized market, or that information necessary to ascertain the fair market value of any Trust assets or liabilities is not readily available to the Trustee, the Trustee may request the Committee to instruct the Trustee as to such fair market value for all purposes under the Plan; and in such event the fair market value determined by the Committee shall be binding and conclusive. If the Committee fails or refuses to instruct the Trustee as to such fair market value within a reasonable time after receipt of the Trustee's request, the Trustee shall take such action as it deems necessary or advisable to ascertain such fair market value, including the retention of such counsel and independent appraisers as it considers necessary; and in such event the fair market value determined by the Trustee shall be binding such counsel and/or independent appraisers shall be paid by the Trust.

#### C. Allocation of Trust Earnings.

1. <u>General</u>. As of each Valuation Date and prior to the allocation of Employer contributions, Employee After-Tax Contributions and, if applicable, forfeitures for the Plan Year, the Committee shall allocate the increment of Trust net income to or charge Trust net losses against, as the case may be, the respective Accounts of the Participants in proportion to the balances (minus any distributions made to the Participant and any forfeitures declared in such Account after the immediately preceding Valuation Date) of such Accounts as of the immediately preceding Valuation Date.

2. Segregated and Directed Accounts. Notwithstanding the foregoing, segregated Accounts of a Participant held in accordance with the provisions of

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Paragraph B.4(a) of Article VII and Paragraph B of Article XII, if provided for in Article I, shall be valued separately on each Valuation Date, and the increment of Trust net income shall be allocated to or Trust net loss shall be charged against, as the case may be, such Accounts on a segregated basis.

3. <u>Elective Contribution Accounts</u>. Unless otherwise elected in Paragraph LL, Elective Contributions made by a Participant and deposited periodically throughout a Plan Year to his or her Elective Contribution Account shall have allocated to them a proportionate share of Trust net income or net losses attributable to all such Elective Contribution Accounts on the basis of one-half (1/2) of the total amount of periodic payment Elective Contributions made by all Participants and deposited during the Plan Year determined as if such Elective Contributions were deposited on the first day of the Plan Year. For purposes of this Paragraph C.3, periodic payments shall mean substantially equal payments made throughout the Plan Year not less frequently than quarterly. A single-sum deposit made by a Participant as an Elective Contribution to his or her Elective Contribution Account during the first quarter of the Plan Year will receive an allocation of Trust net income and net losses for the entire Plan Year as if such deposit were made on the first day of the Plan Year. Lump-sum deposits made in the second, third or fourth quarter of a Plan Year shall not be entitled to receive an allocation of Trust net income or net losses. The frequency or method with which Trust net income and net losses are allocated to the Elective Contribution Accounts may be changed in the discretion of the Committee, but only in a uniform and nondiscriminatory manner.

### D. Allocation to Contribution Accounts.

1. <u>General</u>. Amounts contributed by the Employer for any Plan Year (and, if applicable, any previously unallocated forfeitures) shall be allocated to the appropriate Accounts in accordance with the manner provided in Article I as of each Anniversary Date.

If this Plan provides for permitted disparity, then for Plan Years beginning on or after January 1, 1995, the number of years credited to the Participant for allocation or accrual purposes under this Plan, any other qualified plan or simplified employee pension plan (whether or not terminated) ever maintained by the Employer shall be limited to a total cumulation of permitted disparity of 35 years. For purposes of determining the participant's cumulative permitted disparity limit, all years ending in the same calendar year are treated as the same year. If the Participant has not benefited under a defined benefit or target benefit plan for any year beginning on or after January 1, 1994, the Participant has no cumulative disparity limit.

2. <u>Allocations on Retirement, Total Disability or Death</u>. An individual whose participation ceased during the year because of termination of employment on or

#### ARTICLE V

after Normal Retirement Age, death or Total Disability may be entitled to an allocation of Employer contributions without regard to service or employment date requirements as provided in Article I.

3. <u>Allocation of Elective, Employee After-Tax, Safe Harbor Matching, Safe Harbor Nonelective Employer, and Simple 401(k) Contributions</u>. Allocation of Elective Contributions, Employee After-Tax Contributions, Safe Harbor Matching Contributions, Safe Harbor Nonelective Employer Contributions and/or Simple 401(k) Contributions shall be allocated to those Eligible Participants described in Article I of the Plan without regard to service or employment date requirements provided in Article I in regard to the allocation requirements of other Employer contributions.

4. <u>Suspension of Benefits if Participant Changes Employee Status</u>. If a Participant continues in the employ of the Employer, but changes his or her employment status to a class of employees that is ineligible for participation, such termination of participation shall not constitute a termination of employment for purposes of this Plan. An otherwise eligible Participant shall accrue benefits in the Plan for the Plan Year in which he or she changes his or her employment status based on his or her Compensation received before the change in status. However, such Inactive Participant shall not accrue further benefits under the Plan until the date he or she again becomes a Participant; provided, however, that Compensation received prior to his or her again becoming a Participant shall be disregarded.

5. <u>Amendments to The Plan – Preservation of Accrued Benefit</u>. Notwithstanding anything to the contrary contained in this Plan, no amendment to the Plan shall be effective to the extent that it has the effect of (i) decreasing a Participant's Accrued Benefit derived from Employer contributions; or (ii) except as provided by Treasury Regulations, eliminating an optional form of benefit, with respect to benefits attributable to Years of Service before the amendment; provided, however, that a Participant's Accrued Benefit may be reduced to the extent required as a condition of meeting the standards for qualification of the Plan. Furthermore, no amendment to the Plan shall have the effect of decreasing a Participant's vested interest in his or her Accrued Benefit determined without regard to such amendment as of the later of the date such amendment was adopted, or becomes effective.

E. Limitation on Allocation of Employer Contributions and Forfeitures.

1. <u>Dollar Amount and Percentage Limitations</u>. The Annual Addition to a Participant's Employer Contribution Account and Employee After-Tax Contribution Account shall not exceed the lesser of:

(a) The Defined Contribution Dollar Limitation; or

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(b) 25% of the Participant's Section 415 Compensation for the Limitation Year; provided, however, that this compensation limitation shall not apply to:

(i) Any contribution for medical benefits (within the meaning of Section 419A(f)(2) of the Code) after separation from service which is otherwise treated as an Annual Addition; or

(ii) Any amount otherwise treated as an Annual Addition under Section 415(l)(1) of the Code.

2. <u>Multiple Defined Contribution Plans and Welfare Benefit Fund Limitation</u>. If, in a Plan Year, a Participant also participates in a defined contribution plan or a welfare benefit fund maintained by the Employer or by another member of the Controlled Group, the limitations set forth in this Article V with respect to such Participant shall apply as if the Annual Additions accrued to such Participant under all defined contribution plans and welfare benefit funds in which the Participant has participated were derived from one Plan.

3. <u>Rule of 1.0</u>. Notwithstanding anything to the contrary contained in this Plan, the following additional limitations shall apply to any Participant who is or was covered by a defined benefit pension plan, whether or not terminated, maintained by the Employer (or a member of a Controlled Group): (i) the amount of the Annual Addition to such Participant's Employer Contribution Account shall be reduced by the Committee to the extent necessary to prevent the sum of the Defined Benefit Plan Fraction and the Defined Contribution Plan Fraction for such Plan Year from exceeding 1.0 (profit sharing plans shall be reduced first, then other defined contribution plans and, finally, defined benefit pension plan(s) unless Article I designates the defined benefit pension plan(s) to be reduced first); and (ii) for the purpose of applying the limitation of this Rule of 1.0, the Defined Benefit Plan Fraction and the Defined Contribution Plan Fraction 415 of the Code and the Treasury Regulations promulgated thereunder; provided, however, that for any Plan Year ending after December 31, 1982, the Employer may elect to have the transitional rule of Section 415 (e)(6) of the Code applied in computing the Defined Contribution Plan Fraction; provided, further, however, that if the Plan satisfied the requirements of Section 415 of the Code for the last Plan Year beginning before January 1,1983, the Plan shall satisfy this Paragraph E.3 to the extent necessary by complying with Treasury Regulations promulgated under Section 235(g)(3) of TEFRA.

If the Plan satisfied the applicable requirements of Section 415 of the Code as in effect for all Limitation Years beginning before January 1, 1987, an amount shall be subtracted from the numerator of the Defined Contribution Plan Fraction (not exceeding such numerator) as prescribed by the Secretary of the Treasury so that the sum of the Defined Benefit Plan Fraction and Defined Contribution Plan

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Fraction computed under Section 415(e)(1) of the Code does not exceed 1.0 for such Limitation Year.

For Limitation Years beginning after December 31, 1999, the Rule of 1.0 described above shall no longer apply.

F. <u>Allocation Priorities if Limitations Exceeded</u>. If the Annual Addition for a Participant is exceeded due to the allocation of forfeitures, a reasonable error in estimating a Participant's Compensation, or a reasonable error in determining the amount of Elective Deferrals with respect to any Plan Year, then compliance with such limitation shall be accomplished as follows. First, the amount of the Participant's Employee After-Tax Contributions for that Plan Year which were included in the Annual Addition shall be refunded to him or her; second, any Elective Deferrals shall be refunded to the Participant to the extent the distribution would reduce the excess amount in the Participant's Account; third, the excess of Employer contributions which cannot be allocated to any Participant for such Plan Year shall either be (i) allocated to the remaining Participants' Accounts with any remaining unallocable Annual Additions held in a suspense account to reduce Employer Contributions for the subsequent Limitation Year; or (ii) held in suspense accounts and applied to reduce future Employer contributions during the next Limitation Year, as elected in Article I.

G. <u>Key Man Insurance Proceeds</u>. Any proceeds of key man insurance received by the Trust during any Plan Year shall be allocated to the Employer Contribution Accounts of the Participants who are otherwise eligible to receive an allocation of Employer contributions on the Anniversary Date of the Plan Year in which the insured died. Such proceeds shall be allocated to each Participant in the ratio that each Participant's Employer Contribution Account as of the first day of the Plan Year in which the proceeds are received bears to the value of all such Participants' Employer Contribution Accounts. The allocation of such amounts shall be treated as an investment gain of the Trust.

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### VI. VESTING AND BENEFIT ENTITLEMENT

A. <u>Vesting</u>. The Accrued Benefit credited to any Participant shall vest in him or her as follows:

1. <u>Full Vesting</u>. A Participant's Accrued Benefit shall be fully vested at his or her Normal Retirement Age. A Participant will become fully vested no later than the later of the Participant's 65<sup>th</sup> birthday or the fifth anniversary commencing the participation under the Plan. Such Accrued Benefit shall also be fully vested upon a complete discontinuance of Employer Contributions or complete or partial termination of the Plan to the extent provided in Paragraph B of Article XIV.

2. <u>Qualifying Section 401(k) Contributions</u>. A Participant shall be fully vested in his or her Elective Contribution, Qualifying Matching Contribution and Qualifying Nonelective Contribution Accounts at all times.

3. <u>Safe Harbor Contributions</u>. A Participant shall be fully vested in his or her Safe Harbor Matching Contribution and Safe Harbor Nonelection Employer Contribution Accounts at all times.

4. <u>Simple 401(k) Contributions</u>. A Participant shall be fully vested in his or her Simple 401(k) Account at all times.

5. <u>Partial Vesting</u>. The Nonelective Employer Contributions and Matching Contributions of a Participant whose employment terminates, or who suffers a Break-in-Service prior to his or her Normal Retirement Age for reasons other than death or Total Disability, shall vest in him or her in accordance with the vesting provisions contained in Article I.

6. <u>Vesting with the Controlled Group</u>. If the Employer is a member of a Controlled Group, then Vesting credit shall be granted to an Employee for each Year of Service completed with the Employer and each other member of the Controlled Group.

B. Forfeitures. Non-vested Accrued Benefits shall be forfeited in accordance with the following provisions:

1. <u>Cash-Out of \$5,000 or Less</u>. Subject to Paragraph B.3 of this Article VI, effective for Plan Years beginning after August 5, 1997, a Participant who terminates employment with the Employer in any Plan Year with a vested Accrued Benefit equal to or less than \$5,000, will be paid a distribution of the value of his or her entire vested Accrued Benefit as soon as administratively feasible after the event elected in Article I and the non-vested Accrued Benefit will be immediately forfeited unless a later date for the forfeiture of non-vested Accrued Benefits is elected in

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Article I. For purposes of this Paragraph B.1, if the value of a Participant's vested Accrued Benefit is zero (0), the Participant shall be deemed to have received a distribution of such zero (0) vested Accrued Benefit immediately upon employment termination or, if later, at the time the forfeiture occurs as elected in Article I.

2. <u>Cash-Out of More Than \$5,000</u>. Subject to Paragraph B.3 of this Article VI, effective for Plan Years beginning after August 5, 1997, a Participant who terminates employment with the Employer with a vested Accrued Benefit greater than \$5,000, may elect to receive the entire value of his or her vested Accrued Benefit as soon as administratively feasible after the event elected in Article I, and the non-vested Accrued Benefit will be immediately forfeited unless a later date for the forfeiture of non-vested Accrued Benefits is elected in Article I.

3. <u>\$3,500 Cash-Out</u>. If and to the extent elected in Article I, the involuntary cash-out limit of \$5,000 described above shall be \$3,500.

4. <u>Partial Cash-Outs of Vested Benefits</u>. If the Participant receives a distribution of less than his or her entire vested Accrued Benefit during a Plan Year, the portion of the non-vested Accrued Benefit that will be immediately forfeited (unless Article I does not provide for a forfeiture of a partial cash-out distribution or a later date for the forfeiture of non-vested Accrued Benefits is elected in Article I) is the total non-vested Accrued Benefit multiplied by a fraction, the numerator of which is the amount of the vested Accrued Benefit that was distributed and the denominator of which is the total vested Accrued Benefit.

5. <u>Rehire After Cash-Out</u>. If a Participant receives a distribution pursuant to Paragraphs B.1, B.2, or B.3 of this Article VI, resumes employment covered under this Plan and, if required by Article I, repays to the Plan the full amount distributed to the Participant before the earlier of five (5) years after the first date on which the Participant is subsequently re-employed by the Employer, or the date on which the Participant incurs five (5) consecutive one-year Breaks-in-Service following the date of the previous distribution, then the amount that was forfeited shall be restored. If a terminated Participant incurs five (5) consecutive one-year Breaks-in-Service, the amount that was previously forfeited by such Participant will be restored to his or her account.

6. <u>Delayed Forfeiture</u>. If the Employer elects in Article I to delay forfeiture of non-vested Accrued Benefits until after the Plan Year of distribution, the separate account rule in Paragraph C of this Article VI shall apply until the forfeiture actually occurs. If the forfeiture occurs prior to five (5) consecutive one-year Breaks-in-Service, then the above rules of this Paragraph B will apply after Paragraph C of this Article VI no longer applies.

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7. <u>Separate Account on In-Service Distribution</u>. If this Plan allows for a distribution on account of hardship or other in-service distributions at any time when a Participant has a non-forfeitable right to less than 100% of the Accrued Benefit, and the Participant may increase the non-forfeitable percentage in his or her Account, a separate account as provided in Paragraph C of this Article VI will be established for the non-vested portion of the Accrued Benefit of the Participant who receives an in-service distribution.

8. <u>Accumulated Deductible Contributions</u>. For Plan Years beginning after December 31, 1988, a Participant's vested Accrued Benefit shall include accumulated deductible employee contributions within the meaning of Section 72(o)(5)(B) of the Code for purposes of the cash-out provisions of this Article VI.

C. <u>Re-Vesting in Forfeitures Upon Re-Employment</u>. If a Participant receives a distribution of his or her vested Accrued Benefit at a time when such Participant's vested interest is less than 100% and if, at the time of payment to the Participant, the Participant's non-vested benefit has not been forfeited, a separate account shall be established for the non-vested portion of the Participant's interest in the Plan as of the time of the distribution, and if he or she returns to the employ of the Employer prior to the time he or she suffers five (5) consecutive one-year Breaks-in-Service or an earlier forfeitable event as elected in Article I, then at any "Relevant Time" the Participant's vested portion of the separate account shall be an amount ("X") determined by the formula X = P(AB + D) - D or if elected in Article I determined by the formula X=P(AB+(RxD))-(RxD). For purposes of applying either formula, P is the vested percentage at the Relevant Time; AB is the account balance at the Relevant Time; D is the amount of the distribution; and R is the ratio of the account balance at the Relevant Time to the account balance after distribution. If a Participant returns to the employ of the Employer prior to incurring five (5) consecutive one-year Breaks-in-Service, or an earlier forfeitable event, he or she shall continue on the vesting schedule set forth in Paragraph A.5 of this Article VI as if he or she had not left, and he or she shall be a Participant as of his or her date of rehire.

D. <u>Limitation on Vesting Upon Re-Employment</u>. If a terminated Participant is re-employed by the Employer, then, except as provided for in this Article VI, all of the Participant's Years of Service before his or her re-employment shall be considered as Years of Service after his or her re-employment for the purpose of determining the Participant's Accrued Benefit under the Plan derived from Employer contributions allocated to the Participant subsequent to his or her date of re-employment.

E. <u>Vesting Upon Change of Employment Status</u>. If a Participant becomes an Inactive Participant, his or her Accrued Benefit shall continue to vest as long as he or she is an Employee of the Employer or its Controlled Group and has not incurred a Break-in-Service.

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F. <u>Vested Interest Not Distributed</u>. If a terminated Participant has not received a distribution or a deemed distribution of his or her vested Accrued Benefit, then his or her Accrued Benefit shall be credited with its share of Trust net earnings, gains, or losses and changes in the fair market value of the Trust assets through the Valuation Date next preceding actual distribution and forfeitures, if any.

G. <u>Break-in-Service While Still Employed</u>. If a Participant incurs a Break-in-Service but does not terminate employment with the Employer, his or her Accrued Benefit shall remain in the Trust and shall be credited with its share of Trust net earnings, gains, or losses and changes in the fair market value through the Valuation Date next preceding distribution and forfeitures, if any.

H. <u>Effect of Break-in-Service – Vested Participant</u>. If a Participant has five (5) consecutive one-year Breaks-in-Service, he or she shall not have credited to him or her Years of Service accrued subsequent to such Break-in-Service for purposes of determining his or her vested interest in his or her Accrued Benefit derived from Employer contributions credited prior to such Break-in-Service.

I. <u>Reserved</u>.

J. <u>Effect of Break-in-Service – Non-Vested Participant</u>. If a Participant does not have a vested interest in any portion of his or her Accrued Benefit at the time a Break-in-Service occurs, Years of Service prior to the Break-in-Service shall not be taken into account in determining the Participant's vested interest in his or her Accrued Benefit if the number of consecutive one-year Breaks-in-Service equals or exceeds the greater of five (5) or the aggregate number of Years of Service prior to the Break-in-Service.

If a former Participant has five (5) or more consecutive one-year Breaks-in-Service, his or her Years of Service prior to such Breaks-in-Service shall be taken into account in determining the former Participant's vested interest in his or her Accrued benefit only if either:

1. Such former Participant had a vested interest in his or her Accrued Benefit at the time of his or her termination of employment; or

2. Upon his or her re-employment, the number of consecutive one-year Breaks-in-Service is less than the number of Years of Service completed prior to the Break-in-Service.

Separate Accounts shall be maintained for the Participant's pre-Break and post-Break Accrued Benefit and both Accounts shall share in the allocation of Trust earnings and losses as provided in Article V of the Plan.

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With respect to any former Participant whose prior service is not disregarded under the break-in-service rules in effect prior to the first Plan Year beginning after December 31, 1984, whether the Plan may subsequently disregard the years of service is governed by the provisions of this Paragraph J.

K. Limitation on Right to Amend Vesting Schedule. Any amendment changing the vesting schedule shall:

1. Not cause any Participant's vested interest in such Participant's Accrued Benefit to be less than such Participant's vested interest on the day before such amendment becomes effective; and

2. Permit any Participant having at least three (3) Years of Service the option to elect, irrevocably, within a reasonable period after the adoption of such amendment, to have such Participant's vested interest determined without regard to said amendment (that is, in accordance with the vesting schedule in effect prior to such amendment). The election period shall begin on the date the amendment is adopted and end not earlier than 60 days after the latest of (i) the adoption date; (ii) the effective date; or (iii) the date written notice of the right of election is given to the Participant.

3. If a Participant does not elect a vesting schedule, then he or she will vest in accordance with the most favorable vesting schedule.

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#### VII. DISTRIBUTION OF BENEFITS

#### A. Definitions.

1. "<u>Annuity Starting Date</u>" means the first day of the first period for which an amount is payable as an annuity to a Participant, or in the case of a benefit not payable in the form of an annuity, the first day on which all events have occurred which entitle the Participant to a benefit. For purposes of the preceding sentence, the first day of the first period for which a benefit is to be received on account of separation from service by reason of disability shall be treated as the Annuity Starting Date only if such disability benefit is not an auxiliary benefit.

2. "Election Period" means, with respect to a Qualified Joint and Survivor Annuity, the 90-day period ending on the Annuity Starting Date. With respect to a Qualified Preretirement Survivor Annuity, Election Period means the period beginning on the first day of the Plan Year in which Participant attains age 35 and ending on the date of the Participant's death. If a Participant separates from service prior to age 35, the Election Period shall begin on the date of separation from service with respect to benefits accrued as of that date.

A Participant who has not attained age 35 as of the end of any Plan Year may make a special Waiver Election to waive the Qualified Preretirement Survivor Annuity for the period beginning on the date of such election and ending on the first day of the Plan Year in which the Participant will attain age 35. Such election will not be valid unless the Participant receives a written explanation of the Qualified Preretirement Survivor Annuity. The Qualified Preretirement Survivor Annuity coverage will be automatically reinstated as of the first day of the Plan Year in which the Participant attains age 35. Any new Waiver Election on or after such date shall be subject to the full requirements of this Article VII.

3. "Qualified Joint and Survivor Annuity" means, with respect to a married Participant, an immediate annuity for the life of the Participant with a survivor annuity for the life of his or her Spouse which is 50%, or a greater percentage as elected in Article I, of the amount of the annuity paid for the joint lives of the Participant and his or her Spouse and which is the actuarial equivalent of a single annuity for the life of the Participant.

With respect to an unmarried Participant, a Qualified Joint and Survivor Annuity means an annuity for the life of the Participant.

4. "<u>Qualified Preretirement Survivor Annuity</u>" means an immediate annuity for the life of the Participant's Spouse, the payment under which is equal to 50%, or a greater percentage as elected in Article I, of the sum of the Participant's

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Accrued Benefit and any insurance proceeds payable upon death of the Participant; any security interest held by the Plan by reason of an outstanding loan to the Participant shall be taken into account in determining the amount of the Qualified Preretirement Survivor Annuity.

5. "<u>Spouse</u>" or "<u>Surviving Spouse</u>" means a person who has been married to the Participant throughout the one-year period (unless otherwise elected in Article I) ending on the earlier of the date of the Participant's death or such Participant's Annuity Starting Date; provided, however, that a former Spouse shall be treated as the Spouse or Surviving Spouse to the extent required under a Qualified Domestic Relations Order. The one-year marriage requirement does not apply to the payment of a Qualified Joint and Survivor Annuity.

6. "<u>Transferred Benefits</u>" mean the benefits of a Participant derived from another qualified plan that are involuntarily transferred to this Plan subject to the requirements of Section 414(l) of the Code and, where applicable, the annuity and survivor annuity requirements of Sections 401(a)(11) and 417 of the Code. A Participant shall vest in his or her Transferred Benefits Account in accordance with Article I, but subject to the vesting requirements of Section 411(a)(10) of the Code. A rollover and voluntary transfer described in Q&A 3 of Section 1.411(d)-4 of the Treasury Regulations will not be deemed a transfer of benefits.

7. "<u>Waiver Election</u>" means a written election by a Participant during the Election Period to receive the payment of the Participant's vested Accrued Benefit in a manner other than a Qualified Joint and Survivor Annuity or a Qualified Preretirement Survivor Annuity. A Waiver Election must be consented to by the Participant's Spouse. The Spouse's consent must acknowledge the effect of the waiver and must be witnessed by either the Plan representative or a notary public as required at the sole discretion of the Committee. The Spouse's consent will be deemed made if the Participant establishes to the satisfaction of the Committee that (i) there is no Spouse; or (ii) the Spouse cannot be located. If the Spouse is legally incompetent to give consent, the Spouse's legal guardian, even if the guardian is the Participant, may give consent. Also, if the Participant is legally separated or the Participant has been abandoned (within the meaning of local law) and the Participant has a court order to such effect, spousal consent is not required unless a Qualified Domestic Relations Order provides otherwise. Similar rules apply to a plan subject to the requirements of Section 401(a)(11)(B)(iii)(l) of the Code. Any consent made or deemed made hereunder shall be valid only with respect to the Spouse who signs, or is deemed to have signed, the consent. The Waiver Election of a Qualified Preretirement Survivor Annuity shall identify the Beneficiary or class of Beneficiaries or any contingent Beneficiaries. The Waiver Election of a Qualified Joint and Survivor Annuity shall identify the Beneficiary or class of Beneficiaries or contingent Beneficiaries, if applicable, and the method of payment. Any change in the Waiver Election shall require a new

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spousal consent, unless the original consent of the Spouse expressly permits designations by the Participant without any requirement of further consent by the Spouse and acknowledges that the more restrictive consent could have been given. A revocation of a prior waiver may be made by a Participant without the consent of the Spouse at any time before the Annuity Starting Date. The Participant may revoke a Waiver Election at any time, but any new Waiver Election must comply with the requirements of this Paragraph A.7. A former Spouse's consent to a Waiver Election shall not be binding on a new Spouse.

B. <u>Distribution With Annuity Option – Other Than Death</u>. If this Plan provides for an annuity option as selected in Article I, the Committee shall direct the Trustee to distribute to a Participant the amount of his or her vested Accrued Benefit as a result of the Participant's termination of employment, including (i) termination of employment for any reason other than death; (ii) Total Disability before Normal Retirement Age; or (iii) retirement on or after Normal Retirement Age in accordance with this Paragraph B. Such Accrued Benefit shall be determined as of the Valuation Date preceding the date of the Participant's distribution.

1. <u>Payment of Qualified Joint and Survivor Annuity</u>. A Participant shall automatically receive his or her vested Accrued Benefit in the form of a Qualified Joint and Survivor Annuity unless the Participant makes a Waiver Election during the applicable Election Period.

2. <u>Notice Requirements</u>. The Committee shall provide to each Participant within a period of time of no less than 30 days and no more than 90 days prior to the Annuity Starting Date, a written explanation of (i) the terms and conditions of a Qualified Joint and Survivor Annuity; (ii) the Participant's right to make, and the effect of, a Waiver Election waiving the Qualified Joint and Survivor form of benefit; (iii) the rights of a Spouse to consent to any Waiver Election which waives his or her rights to such form of Annuity; and (iv) the right to make, and the effect of, a revocation of a previously made Waiver Election.

The Participant shall be furnished with a general description of all the eligibility conditions and other material features of the optional forms of benefits and information explaining the relative values of the various optional forms of benefits that are available under the terms of the Plan in a like manner and within the time period as stated in the preceding paragraph. The requirement to provide relative values of the optional forms of benefits shall only apply to plans that offer a life annuity form of payment. Written consent of the Participant to a distribution must be made after the Participant receives such notice and must not be made more than 90 days before the Annuity Starting Date.

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(a) If a distribution is one to which Sections 401(a)(11) and 417 of the Code do not apply, such distribution may commence less than 30 days after the notice required under Section 1.411(a)-11(c) of the Income Tax Regulations is given, provided that:

(i) The Committee clearly informs the Participant that the Participant has a right to a period of at least 30 days after receiving the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular distribution option); and

(ii) The Participant, after receiving the notice, affirmatively elects a distribution.

(b) If a distribution is one to which Sections 401(a)(11) and 417 of the Code apply, such distribution may commence less than 30 days after the notice is given provided that:

(i) The Committee provides information to the Participant clearly indicating that the Participant has a right to at least 30 days to consider whether to waive the Qualified Joint and Survivor Annuity and consent to a form of distribution other than a Qualified Joint and Survivor Annuity;

(ii) The Participant is permitted to revoke an affirmative distribution election at least until the Annuity Starting Date, or if later, at any time prior to the expiration of the seven (7) day period that begins the day after the explanation of the Qualified Joint and Survivor Annuity is provided to the Participant;

(iii) The Annuity Starting Date is after the date that the explanation of the Qualified Joint and Survivor Annuity is provided to the Participant. However, for distributions made after December 31, 1996, the Annuity Starting Date may be before the date that the written explanation is given to the Participant, provided that the distribution does not commence until at least 30 days after such written explanation is provided to such Participant; and

(iv) Distribution in accordance with the affirmative election does not commence before the expiration of the seven (7) day period that begins the day after the explanation of the Qualified Joint and Survivor Annuity is provided to the Participant.

3. <u>Alternate Forms of Benefit Payments</u>. During any time that a Waiver Election is in effect, the Participant shall elect to have his or her Accrued Benefit distributable in one (1) of the alternate forms of payment described in subparagraphs (a) through (e) of this Paragraph B.3 as permitted in Article I. The Committee shall instruct

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the Trustee to distribute the benefits in such form. If a Waiver Election is in effect when benefits are distributed, but no method of distribution is otherwise selected by the Participant, then the Committee shall make reasonable efforts to obtain an election of a method of distribution from such Participant. If the Committee is unable to obtain an election for a method of distribution from such Participant, then the benefits shall be deferred until the later of Normal Retirement Age or age 62, at which time the benefits shall be paid in the form of a Qualified Joint and Survivor Annuity if required, or in the form of a cash lump sum in all other cases.

(a) The payment of the Participant's vested Accrued Benefit in a single sum in cash or in kind.

(b) Except as provided in subparagraph 4(a) of this Paragraph B, the payment of the Participant's vested Accrued Benefit as an annuity, in a series of monthly payments, variable or fixed, with or without a period certain for his or her life or for the joint lives of the Participant and his or her spouse or Designated Beneficiary.

(c) The payment of the Participant's vested Accrued Benefit in a series of installments.

(d) Any combination of the methods described above.

(e) Effective January 1, 1993, if the distribution constitutes an Eligible Rollover Distribution, the payment of the Participant's vested Accrued Benefit in a total or partial direct transfer to an Eligible Retirement Plan; provided that a partial direct transfer shall be equal to at least \$500.

#### 4. Restriction on Alternate Form of Benefits.

(a) If this Plan does not provided for a Qualified Joint and Survivor Annuity, no distributions shall be made in the form of a life annuity. In-kind distributions requested by a Participant, if permitted under Article I, shall be made available in a non-discriminatory manner under Section 401(a)(4) of the Code and if permitted by the issuer of the particular asset. If a Participant elects installments, his or her installment payments shall be payable not less frequently than annually over a period not to exceed any one (1) of the following permissible periods:

(i) A period certain not extending beyond the life expectancy of the Participant; or

(ii) A period certain not extending beyond the joint and last survivor expectancy of the Participant and a Designated Beneficiary.

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The Trustee may segregate the unpaid balance of the Participant's vested Accrued Benefit in one (1) or more banks, trust companies, savings and loan associations or similar institutions, including the Trust or any of its affiliates, if applicable, for investment in savings accounts, certificates of deposit, government bonds, bankers' acceptances or similar securities. Unless violative of Section 401(a)(9) of the Code, net earnings on the unpaid vested Accrued Benefit shall be distributed with the last payment.

(b) Any deferred distribution from an annuity contract in a form other than a Qualified Joint and Survivor Annuity shall require a Waiver Election. The annuity contract shall provide for the notice provisions of REACT and shall comply with the requirements of this Plan, including the Participant's rights to optional forms of benefits and the distribution requirement of Section 401(a)(9) of the Code and the proposed regulations thereunder. Any annuity contract distributed hereunder must be non-transferable.

5. Distribution Consent Requirements. Subject to the last paragraph of this Paragraph B.5, for distributions made prior to March 22, 1999, if the Participant's vested Accrued Benefit ever exceeded \$5,000 (\$3,500 for Plan Years beginning before August 6, 1997) at the time a Participant could have received a distribution from the Plan or any subsequent time, the Participant and the Participant's Spouse or the survivor of the two must consent to any distribution of such vested Accrued Benefit if the form of benefit is payable in other than a Qualified Joint and Survivor Annuity. No consent is required before the Annuity Starting Date if the vested Accrued Benefit is not more than \$5,000. If this Plan is not subject to Section 401(a)(11) and 417 of the Code only the Participant's consent is required. If this Plan is subject to Sections 401(a)(11) and 417 of the Code, a distribution may not be made after the Annuity Starting Date unless the Participant and the Spouse of the Participant or the Surviving Spouse consent in writing to such distribution even if the vested Accrued Benefit is less than or equal to \$5,000.

Subject to the last paragraph of this Paragraph B.5, for distribution made on or after March 22, 1999, written consent of the Participant is not required if the vested Accrued Benefit does not exceed \$5,000 at the date of distribution. However, if a Participant has begun to receive distributions pursuant to an optional form of benefit that provides for a schedule of periodic distribution, consent will be required even if the Participant's vested Accrued Benefit is less than \$5,000. If this Plan is subject to Sections 401(a)(11) and 417 of the Code, a distribution may not be made after the Annuity Starting Date unless the Participant and the Spouse of the Participant or the Surviving Spouse consent in writing to such distribution even if the vested Accrued Benefit is less than or equal to \$5,000.

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Effective January 1, 1993, if the Participant separates from service with a vested Accrued Benefit of at least \$200 but not more than \$5,000, such Participant shall be entitled to elect a direct transfer or partial direct transfer of his or her Accrued Benefit as described in Paragraph B.3 of this Article VII. If the Participant fails to make such election, his or her vested Accrued Benefit shall be paid to him or her in a single sum payment subject to mandatory federal income tax withholding. Such payment shall occur 30 days after the receipt of the notice described in Paragraph B.2 of this Article VII but before the 90 day period described in such Paragraph B.2 has expired.

If the Participant's vested Accrued Benefit is less than \$200, it shall be paid to him or her in a single sum payment as soon as administratively feasible after the date elected in Article I.

If and to the extent elected in Article I, the involuntary cash-out limit of \$5,000 described above shall be \$3,500.

6. <u>Special Rules</u>. The Committee shall notify the Participant and the Participant's Spouse of the right to defer benefits to the later of age 62 or the Normal Retirement Age under the Plan and the right to optional forms of benefit as described in Paragraph B.3 of this Article VII. The notice to defer benefits and the explanation of the optional forms of benefits shall comply with Paragraph B.2 of this Article VII. If the benefit is payable commencing before the later of age 62 or the Normal Retirement Age, in a Qualified Joint and Survivor Annuity, or if this Plan does not provide for the survivor annuity requirements of REACT, only the Participant's consent is required. If this Plan is terminated and an annuity that may be purchased from a commercial provider is not offered as an optional form of distribution, the Participant's Accrued Benefit payable upon termination may be distributed to the Participant without his or her consent. The preceding sentence shall not apply if the Employer maintains another defined contribution plan within the Controlled Group other than an employee stock ownership plan as defined in Section 4975(e)(7) of the Code to which benefits are transferred from the terminated Plan. However, the transfer need not require Participant consent. All transfers shall comply with the rules of Section 411(d)(6) of the Code. The consent requirements of this Paragraph B.6 do not apply to the extent that a distribution is required to satisfy the requirements of Sections 401(a)(9) and 415 of the Code.

7. <u>Accumulated Deductible Employee Contributions</u>. Before the first day of the first Plan Year beginning after December 31, 1989, the Participant's vested Accrued Benefit shall not include accumulated deductible employee contributions within the meaning of Section 72(o)(5)(B) of the Code. These employee contributions, if any, shall be maintained in a separate account.

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8. <u>Incidental Benefit Rule</u>. The Committee shall ensure that all distributions required under this Article VII shall be made and determined in accordance with Section 401(a)(9) of the Code and the proposed regulations issued thereunder, including the minimum distribution and incidental benefit requirements of Section 401(a)(9)(G) of the Code and Section 1.401(a)(9)-2 of the Proposed Treasury Regulations which are incorporated herein by this reference.

9. <u>Commencement of Benefits</u>. Distribution to any Participant of his or her vested Accrued Benefit shall commence not later than the April 1 of the calendar year following the calendar year in which he or she attains age 70<sup>1</sup>/<sub>2</sub>. However, with respect to a non-5%-Owner who attained age 70<sup>1</sup>/<sub>2</sub> prior to January 1, 1988, his or her commencement date shall be the later of the April 1 of the calendar year following the calendar year in which he or she attains age 70<sup>1</sup>/<sub>2</sub> or the calendar year in which he or she retires. The term "5%-Owner" shall be further modified by Q&A B-2 of Section 1.401(a)(9)-1 of the Proposed Treasury Regulations.

Notwithstanding the preceding paragraph, if elected in Article I, the required beginning date for minimum required distributions for any Participant (other than a 5%-Owner) is the April 1 of the calendar year following the later of the calendar year in which such Participant attains age 70<sup>1</sup>/<sub>2</sub> or the calendar year in which such Participant retires.

If elected in Article I, the required beginning date for minimum required distributions is the April 1 of the calendar year following the calendar year in which the Participant attains age  $70^{1/2}$ , except that benefit distributions to a Participant (other than a 5%-Owner) with respect to benefits accrued after the later of the adoption or effective date of an amendment to the Plan must commence by the later of the April 1 of the calendar year following the calendar year in which the Participant attains age  $70^{1/2}$  or retires.

If elected in Article I, any Participant (other than a 5%-Owner) who attained age 70<sup>1</sup>/<sub>2</sub> prior to January 1, 1997 and who is still employed by the Employer, may elect, in accordance with the administrative procedures established by the Committee, to stop receiving minimum required distributions until April 1 of the calendar year following retirement. If provided in Article I, there shall be a new Annuity Starting Date upon recommencement. Any such election shall not affect a new Participant's right to elect an in-service distribution pursuant to Article I of the Plan. The election to stop receiving minimum required distributions shall also apply to any Participant who is currently receiving minimum required distributions and has not been given the right to elect to stop such distributions.

If provided in Article I, any Participant (other than a 5%-Owner) who attains age 70<sup>1</sup>/<sub>2</sub> after 1995 and is still employed by the Employer may elect, in

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accordance with the administrative procedures established by the Committee, to defer receiving minimum required distributions until the calendar year following retirement. Such election must be made by the April 1 of the calendar year following the calendar year in which the Participant attained age 70<sup>1</sup>/<sub>2</sub> (i.e., by April 1, 1997 if the Participant attained age 70<sup>1</sup>/<sub>2</sub> in 1996) unless such Participant has not been given the right to elect to defer such distributions. If a Participant fails to make such election, such Participant will begin receiving a minimum required distribution by the April 1 of the calendar year following the calendar year in which the Participant attains age 70<sup>1</sup>/<sub>2</sub> (i.e., by April 1, 1997 if the Participant attained age 70<sup>1</sup>/<sub>2</sub> (i.e., by April 1, 1997 if the Participant attained age 70<sup>1</sup>/<sub>2</sub> (i.e., by April 1, 1997 if the Participant attained age 70<sup>1</sup>/<sub>2</sub> (i.e., by April 1, 1997 if the Participant attained age 70<sup>1</sup>/<sub>2</sub> (i.e., by April 1, 1997 if the Participant attained age 70<sup>1</sup>/<sub>2</sub> (i.e., by April 1, 1997 if the Participant attained age 70<sup>1</sup>/<sub>2</sub> in 1996).

If elected in Article I, the preretirement age 70<sup>1</sup>/<sub>2</sub> distribution option is only eliminated with respect to Participants who attain age 70<sup>1</sup>/<sub>2</sub> in or after a calendar year that begins after the later of December 31, 1998, or the adoption date of this amendment. This provision shall not affect the Participant's right to receive an in-service distribution pursuant to Article I of the Plan.

Any amendment made to an existing plan to eliminate distributions after age 70<sup>1</sup>/<sub>2</sub> shall not apply if the amendment is not adopted by the last day of the remedial amendment period that applies to such plan due to changes made by the Small Business Job Protection Act of 1996.

If this document establishes a new plan and if elected in Article I, any Participant (other than a 5%-Owner) who is still employed by the Employer and who has attained age 70<sup>1</sup>/<sub>2</sub> will not be entitled to receive distributions until the April 1 of the calendar year following retirement. This provision shall not affect the Participant's right to elect an in-service distribution pursuant to Article I of the Plan.

Notwithstanding the above, once minimum required distributions have commenced to a 5%-Owner under this Paragraph B.9, such distributions shall continue.

The minimum amount to be distributed with respect to the calendar year in which such Participant attains age 70<sup>1</sup>/<sub>2</sub> and the amount distributed by December 31 of each calendar year thereafter must be at least an amount equal to the quotient obtained by dividing the Participant's Accrued Benefit determined as of the Valuation Date immediately preceding the distribution calendar year by his or her life expectancy or the joint and last survivor expectancy of the Participant and his or her Designated Beneficiary determined for the distribution calendar year. The life expectancy and the joint and last survivor expectancy of the Participant and his or her Designated Beneficiary shall be computed by reference to the expected return multiple Tables V and VI contained in Section 1.72-9 of the Income Tax Regulations.

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For purposes of this computation, a Participant's life expectancy and that of his or her Spouse shall be recalculated no more frequently than annually unless the Participant or the Surviving Spouse elects not to recalculate. Such election shall be irrevocable as to the Participant or Surviving Spouse for subsequent years. The life expectancy of a non-spouse Designated Beneficiary may not be recalculated.

10. <u>Distribution on Total Disability</u>. Notwithstanding any delay in the timing of distributions pursuant to Article I, if a Participant terminates employment as a result of Total Disability, he or she shall be eligible for the immediate commencement of his or her vested Accrued Benefit as soon as administratively feasible after such termination; provided that the Participant shall make a written application for and submit to the Committee sufficient evidence to establish his or her Total Disability. The Committee, in its sole discretion, may demand further examination by an independent physician acceptable to it to determine the Participant's Total Disability before approving or denying any such claim. If permitted in Article I, a Participant may receive an in-service distribution of his or her vested Accrued Benefit on account of Total Disability.

C. <u>Distribution at Death</u>. If this Plan provides for an annuity option as selected in Article I, and if a Participant ceases participation under the Plan by reason of his or her death prior to the Annuity Starting Date, unless there has been a valid Waiver Election during the applicable Election Period, a Qualified Preretirement Survivor Annuity shall be paid to the Surviving Spouse commencing on the later of the Normal Retirement Age or on the date that a Participant would have attained age 62 unless an alternate form of benefit is selected. The Surviving Spouse may elect to have such annuity distributed within a reasonable time after the Participant's death, subject to an adjustment on account of an earlier distribution, if any.

### 1. Notice Requirements and Alternate Forms of Death Benefits.

(a) The Committee shall provide each Participant a written explanation of the Qualified Preretirement Survivor Annuity in such terms and in such manner as would be comparable to the explanations provided for meeting the notice requirements of Paragraph B.2 of this Article VII applicable to a Qualified Joint and Survivor Annuity. Except for separation from service prior to age 35, the applicable period for a written explanation to a Participant is whichever of the following periods ends last: (i) the period beginning with the first day of the Plan Year in which the Participant attained age 32 and ending with the close of the Plan Year preceding the Plan Year in which the Participant attained age 35; (ii) a reasonable period ending after an Employee becomes a Participant; (iii) a reasonable period ending after the Plan no longer fully subsidizes the benefit; or (iv) a reasonable period ending after Section 401(a)(11) of the Code first applies to the Participant.

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For purposes of applying clauses (ii), (iii) and (iv) of the preceding paragraph, a reasonable period ending after the last of these events have occurred means the end of the two-year period beginning one (1) year prior to the date the applicable event occurs, and ending one (1) year after that date.

If a Participant separates from service before the Plan Year in which the Participant attains age 35, notice shall be provided within the two-year period beginning one (1) year prior to separation and ending one (1) year after separation. If the Participant thereafter returns to employment with the Employer, the applicable period for such Participant shall be redetermined as described in clauses (i), (ii), (iii) and (iv) of this Paragraph C.1(a).

(b) During any time that a Waiver Election is in force, the Participant may elect to have his or her death benefit distributed in any one of the ways permitted by Paragraph B.3 of this Article VII.

If, at the death of a Participant, his or her death benefit is payable in the form of a Qualified Preretirement Survivor Annuity, the Participant's Surviving Spouse shall be entitled to select by written election an alternate form of benefit payment in any of the ways permitted by such Paragraph B.3.

2. <u>Timing of Distributions</u>. Upon the death of a Participant, the following distribution provisions shall apply:

(a) If the Participant dies after distribution of his or her vested Accrued Benefit has commenced, the remaining portion of such Accrued Benefit shall continue to be distributed at least as rapidly as under the method of distribution being used prior to the Participant's death.

(b) If the Participant dies before distribution of his or her vested Accrued Benefit has commenced, the Participant's entire death benefit shall be distributed no later than December 31 of the calendar year containing the fifth anniversary of his or her death, unless the Participant's Designated Beneficiary receives distributions in accordance with the following subparagraphs (i) or (ii):

(i) If the Participant's Accrued Benefit is payable to a Designated Beneficiary, distributions may be made in substantially equal installments, if installments are a permitted optional form of benefit as selected in Article I, over the life or life expectancy of the Designated Beneficiary (or over a period not extending beyond the life expectancy of such Designated Beneficiary) commencing no later than December 31 of the calendar year immediately following the calendar year of the Participant's death.

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(ii) If the Designated Beneficiary is the Participant's Surviving Spouse, at the Spouse's election, the date distributions are required to commence need not be earlier than December 31 of the calendar year in which the Participant would have attained age 70<sup>1</sup>/<sub>2</sub> had he or she lived. If the Surviving Spouse dies before payments to him or her commence, the Spouse shall be deemed to be, and shall be treated as, the Participant.

(iii) Minimum payments made to a Surviving Spouse shall be calculated by reference to the expected return multiple Table V contained in Section 1.72-9 of the Treasury Regulations. The life expectancy of the Surviving Spouse shall be recalculated annually unless otherwise elected by the Surviving Spouse prior to the first distribution date.

(iv) For purposes of subparagraphs (i), (ii) and (iii) of this Paragraph C.2(b), any amount paid to a child of the Participant shall be treated as if it had been paid to the Surviving Spouse if the amount becomes payable to the Surviving Spouse when the child attains the age of majority under applicable state law.

3. <u>REACT Death Benefit</u>. If the Plan is subject to REACT Surviving Spouse protection, the amount of death benefits to be paid to the Participant's Surviving Spouse shall be a Qualified Preretirement Survivor Annuity determined in accordance with Article I and this Article VII. Any remaining Accrued Benefit shall be paid in accordance with the Participant's Beneficiary designation. If this Plan does not provide for an annuity option, the special rule as provided in Paragraph E of this Article VII shall apply.

4. <u>Death Benefits</u>. The death benefit payable under this Plan shall be equal to the face amount of any life insurance policies, if any (excluding key man insurance) on such Participant's life in effect on his or her date of death, plus such Participant's Accrued Benefit.

5. <u>Lack of Designation</u>. If such deceased Participant had filed with the Committee a document naming a Designated Beneficiary, but failed to designate the form in which benefit payments are to be made, then the Committee shall direct the Trustee to distribute to such Designated Beneficiary the unpaid amount of the Participant's Accrued Benefit as determined above, in such one (1) or more ways as permissible under Paragraph B.3 of this Article VII. If such deceased Participant failed to name a Designated Beneficiary, or if no Designated Beneficiary survives him or her, then the unpaid amount of the Participant's Accrued Beneficiary pursuant to the priorities set forth in Article IX of the Plan.

6. <u>Proof of Death</u>. Upon the death of a Participant, the Committee may, but need not, require the personal representative of the Participant's estate and/or the

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Designated Beneficiary to furnish proof of death and such tax release forms and any other forms, papers or documents as are deemed appropriate by the Committee prior to making any payment of death benefits.

7. <u>Proof of Surviving Spouse</u>. The Committee shall withhold and shall not authorize the distribution of death benefits until such time as the Committee can determine the existence and/or identity of a Surviving Spouse or any other non-spouse Beneficiary. If the Committee cannot determine to its reasonable satisfaction the identity of the person or persons to whom such death benefits should be distributed within a reasonable time after the date of death of the Participant, then the Committee shall not authorize the distribution of such death benefits but shall hold such death benefits in trust until the identity of such Surviving Spouse or other Beneficiary is finally determined. If necessary, the Committee shall file a complaint for interpleader and declaratory relief requesting that the court determine the identity of any persons who are entitled to payment of such benefits.

D. <u>Transitional Rules</u>. The Qualified Joint and Survivor Annuity and Qualified Preretirement Survivor Annuity provisions of this Article VII, to the extent that they are applicable under this Plan, shall apply only to Participants who complete an Hour of Service on or after August 23, 1984.

1. <u>Service On or After January 1, 1976</u>. Any Inactive Participant not receiving benefits on August 23, 1984, shall be given the opportunity to make a Waiver Election for a Qualified Preretirement Survivor Annuity if such Inactive Participant (i) completed at least one (1) Hour of Service with the Employer under this Plan (or a Predecessor Plan) in a Plan Year beginning on or after January 1, 1976; and (ii) had completed at least 10 Years of Vested Service when he or she terminated employment.

2. <u>Service On or After September 2, 1974 and Before January 1, 1976</u>. Any Inactive Participant not receiving benefits on August 23, 1984, who completed at least one (1) Hour of Service with the Employer under this Plan (or a Predecessor Plan) on or after September 2, 1974, but who did not complete an Hour of Service in a Plan Year beginning on or after January 1, 1976, shall be given the opportunity to have his or her benefits paid in accordance with the distributive provisions and the Qualified Joint and Survivor Annuity provisions of this Plan in effect before August 23, 1984, as required by Section 303(e) of REACT.

Any election available to an Inactive Participant under this Paragraph D.2 may be made during the period commencing on August 23, 1984, and ending on such former Participant's Annuity Starting Date.

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### E. Non-Annuity Rules.

1. <u>No Annuities</u>. If this Plan does not provide for an annuity option as selected in Article I, then the Participant shall not be entitled to the payment of his or her vested Accrued Benefit in the form of annuity. Furthermore, the Qualified Joint and Survivor Annuity and Qualified Preretirement Survivor Annuity provisions of Paragraphs B and C of this Article VII shall not be applicable to this Plan, but all of the remaining provisions of such Paragraphs B and C relating to distribution forms and time of commencement of distributions shall be applicable to the Participant and his or her Surviving Spouse and/or Designated Beneficiary. On the death of the Participant, all of his or her death benefit shall be paid to his or her Surviving Spouse within a reasonable time. The Surviving Spouse may elect to receive the deceased Participant's benefits under the Plan within 90 days after the date of death. If there is no Surviving Spouse or if the Surviving Spouse consents in writing in a manner prescribed under Paragraph A.7 of this Article VII, then the Participant's death benefit shall be paid to the Designated Beneficiary.

2. <u>Transferred Benefits</u>. Irrespective of any lack of selection of the annuity option in Article I, the Qualified Joint and Survivor Annuity and Qualified Preretirement Survivor Annuity provisions of Paragraphs B and C of this Article VII shall apply to Transferred Benefits which are neither rollover benefits nor voluntary transfers under Q&A 3 of Section 1.411(d)-4 of the Treasury Regulations.

F. <u>Time of Distribution</u>. Unless Article I allows Participants to defer commencement of benefits, distribution to a Participant shall occur no later than 60 days after the close of the Plan Year in which the Participant reaches Normal Retirement Age or terminates employment, whichever is later. However, the failure of a Participant and his or her Spouse, where applicable, to consent to a distribution, shall be deemed to be an election to defer the commencement of a payment of any benefits to the later of age 62 or the Normal Retirement Age. Notwithstanding anything herein to the contrary, any deferral of benefit shall not violate Sections 401(a)(9) and 415 of the Code including the failure to consent to a distribution by the Participant and the Spouse where applicable.

G. <u>Pre-TEFRA Designations</u>. Notwithstanding Paragraphs B and C of this Article VII, each Participant or his or her Designated Beneficiary who made a timely designation pursuant to Section 242(b)(2) of TEFRA shall have had the right and power to elect by written designation delivered to the Committee, the time for commencement of and the form of distribution of his or her Accrued Benefits; provided, however, that any such designation must have been consistent with the provisions of ERISA, the Code and Notice 83-23 in effect at the time the designation was made and shall comply with the spousal consent requirements of REACT; provided, further, however, that such Participant or his or her Designated Beneficiary may have selected any form of distribution available under the terms of the Plan as in effect at the time of execution of such designation and

### ARTICLE VII

the form selected by each Participant is hereby incorporated by reference. The following form of distribution is also available pursuant to such designation, in addition to those forms of distribution set forth above by reference and elsewhere in the Plan:

Payment in a series of cash installments, not less frequently than annually, over a period of time equal to twice the future life expectancy of the Participant determined as of the date payments of benefits commence, or if the Participant is married at such date, over the greater of twice the life expectancy of the Participant or his or her Spouse. Expected return multiple Tables V and VI of Section 1.72-9 of the Treasury Regulations shall determine the number of years of future life expectancy.

If a designation is revoked subsequent to the date distributions are required to commence, the Trust must distribute by the end of the calendar year following the calendar year in which the revocation occurs the total amount not yet distributed which would have been required to have been distributed to satisfy Section 401(a)(9) of the Code and the proposed regulations thereunder, but for the Section 242(b)(2) election. For calendar years beginning after December 31, 1988, such distributions must meet the minimum distribution incidental benefit requirements in Section 1.401(a)(9)-2 of the Proposed Regulations. Any changes in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another Beneficiary (one not named in the designation) under the designation will not be considered to be a revocation of the designation, so long as such substitution or addition does not alter the period over which distributions are to be made under the designation, directly or indirectly (such as altering the relevant measuring life). If an amount is transferred or rolled over from one plan to another, the rules in Q&A J-2 and Q&A J-3 of Section 1.401(a)(9)-1 of the Proposed Regulations shall apply.

H. Loans to Participants. If allowed under Article I, the Committee may, in its sole discretion and upon written application of a Participant or his or her Beneficiaries on a form provided by the Committee, direct the Trustee to make a loan or loans to such Participant in a total amount not to exceed the lesser of (i) \$50,000 reduced by any excess of the highest outstanding balance of loans made to the Participant from the Plan during the one (1) year period ending on the day before the date the most recent loan is given, over the outstanding balance of any loan from the Plan made to the Participant on the date which the loan was made; or (ii) 50% of the single sum of the vested Accrued Benefit of such Participant; provided that the policy with respect to making any such loan or loans shall be uniformly and non-discriminatorily applied and shall not be made available to Highly Compensated Employees, officers or shareholders in an amount greater than the amount made available to other Employees. For purposes of the preceding sentence, loans shall be aggregated pursuant to Section 414(b), (c), (m) or (o) of the Code. In no event shall the Committee be required to make any such loans. In determining such limitation, the Committee shall take into account the balance of such loan or loans and the balance of all outstanding loans to the Participant under this Plan or any other qualified plan of the

### ARTICLE VII

Employer. The Committee shall give due consideration to the type of security given for the loan and the creditworthiness of the Participant/borrower in determining whether to approve or disapprove a loan. Unless loans are designated as a directed investment of the Participant's Account pursuant to Article I, any loan or loans made to a Participant shall be treated as an investment of the Trust. Any loans shall be (i) for a specific term, which shall not exceed five (5) years unless the Participant certifies in writing to the Committee that the proceeds of the loan will be applied to acquire the Participant's principal residence; (ii) adequately secured in the event of a default by the Participant's vested Accrued Benefit and other collateral if the Committee reasonably determines that additional collateral is necessary; and (iii) evidenced by the Participant's promissory note bearing interest at the rate equal to the prevailing interest rate charged by persons in the business of lending money for loans made under similar circumstances.

For Participant loans granted or renewed on or after the last day of the first Plan Year beginning on or after January 1, 1989, the Committee shall establish a written program which contains the following requirements:

1. The identity of the person(s) authorized to administer the loan program.

- 2. A procedure for applying for a loan.
- 3. The basis on which loans will be approved or denied.
- 4. Limitations, if any, on the types and amount of the loan offered.
- 5. The procedures for determining a reasonable rate of interest.
- 6. The type of collateral which may secure a Participant's loan.

7. The events constituting default and causing acceleration and the steps that will be taken to preserve plan assets in the event of any such events.

In addition to any acceleration provisions contained in the promissory note, a Participant's loan shall immediately become due and payable if such Participant is entitled to and elects to receive a distribution from the Plan. In this case, the Employer shall immediately request payment of the outstanding principal balance and accrued but unpaid interest on the loan. If the Participant does not repay such amount within a reasonable time after such request, the Employer shall have the right to offset and reduce the Participant's vested Account balance which was used for security for such loan by such amount. If the Participant's vested Account balance is less than the amount due, the Employer shall take appropriate steps to collect the balance due directly from the Participant.

### ARTICLE VII

Upon default of a loan, the Participant's Accrued Benefit shall be reduced by the outstanding principal balance of the loan plus accrued but unpaid interest. However, if the Participant's Account is subject to the withdrawal restrictions of Section 401(k) of the Code or if this Plan is subject to Section 417 of the Code, the Participant's Account balance shall not be reduced until a distributable event occurs under the terms of the Plan. During any time that a loan is in default under the terms of the promissory note and the borrowing Participant's vested Accrued Benefit is not distributable, such loan shall be treated as a directed investment of such Participant's Account, regardless of whether directed investments are permitted in Article I.

Notwithstanding the foregoing, loans to an Owner-Employee (or a Shareholder-Employee as defined in former Section 1379(d) of the Code) shall not be permitted under the Plan without an exemption from the prohibited transaction requirements of the Code.

If a Participant making a loan pursuant to this Paragraph H is married, the Committee shall require that such Participant obtain his or her Spouse's consent to the making of the loan and the possible reduction in such Participant's Accrued Benefit. Such consent shall be obtained within the 90-day period prior to the making of the loan and shall be in writing and shall acknowledge the effect of the loan and shall be witnessed by a Plan representative or notary public. However, if this Plan does not provide for annuities, spousal consent shall not be required.

#### I. <u>Reserved</u>.

J. <u>Distributions to Incompetent Persons</u>. The Committee may direct the Trustee to distribute the benefits of any Participant pursuant to the instructions of any person named by such Participant in a durable power of attorney which, on its face, appears to be valid and enforceable, or the legal guardian or conservator of such Participant, or the custodian of such Participant's assets under the Uniform Gifts to Minors Act (or the comparable law of any state in which such Participant resides).

K. <u>Nonliability</u>. Any payment to a Participant or Designated Beneficiary, or to the legal representative of a Participant or Designated Beneficiary, in accordance with the provisions of this Plan, shall to the extent thereof be in full satisfaction of all claims under this Plan against the Trustee, the Committee and the Employer, any of whom may require such Participant, legal representative or Designated Beneficiary, as a condition precedent to such payment, to execute a receipt and release therefor in such form as shall be determined by the Trustee, the Committee, or the Employer, as the case may be. The Employer does not guarantee the Trust, the Participants, former Participants or their Designated Beneficiaries against loss of or depreciation in value of any right or benefit that any of them may acquire under the terms of this Plan. All of the benefits payable under

### ARTICLE VII

this Plan shall be paid or provided solely from the Trust, and the Employer does not assume any liability or responsibility for payment of such benefits.

### L. Benefit Claims Procedure.

1. <u>Applications</u>. All applications for benefits under the Plan shall be submitted to the Committee at the Employer's principal place of business. Applications for benefits must be in writing on forms acceptable by the Committee and must be signed by the Participant and his or her Spouse, or in the case of a death benefit, by the Designated Beneficiary or legal representative of the deceased Participant. The Committee reserves the right to require the Participant to furnish proof of his or her marital status, age, and the age of his or her Spouse, if any, prior to processing any application. Each application shall be acted upon and approved or disapproved by the Committee within 60 days following its receipt by the responsible officer of the Employer. If any application for benefits is denied, in whole or in part, the Committee shall notify the applicant in writing of such denial and of his or her right to a review by the Committee and shall set forth, in a manner calculated to be understood by the applicant, the specific reasons for such denial, the specific references to pertinent Plan provisions on which the denial is based, a description of any additional material or information necessary for the applicant to perfect his or her application, an explanation of why such material or information is necessary, and an explanation of the Plan's review procedure.

2. <u>Review of Denials</u>. Any person whose application for benefits is denied in whole or in part may appeal to the Committee for a review of the decision by submitting a written statement to the Committee within 90 days after receiving written notice from the Committee of the denial of his or her claim (i) requesting a review by the Committee of his or her application for benefits; (ii) setting forth all of the grounds upon which his or her request for review is based and any facts in support of such request; and (iii) setting forth any issues or comments which the applicant deems pertinent to his or her application. The Committee shall meet as required to review appeals of denials of applications for benefits submitted to it. The Committee shall act upon each appeal within 60 days after receipt of the applicant's request for review by the Committee. The Committee shall make a full and fair review of each such application and any written material submitted by the applicant or the Employer in connection with such review and may require the Employer or the applicant to submit such additional facts, documents, or other evidence as the Committee, in its sole discretion, deems necessary or advisable in making such a review. On the basis of its review, the Committee shall make an independent determination of the applicant's eligibility for benefits under the Plan. The decision of the Committee on any application for benefits shall be final and conclusive upon all persons if supported by substantial evidence in the records.

### ARTICLE VII

M. <u>Income Tax Withholding</u>. Distributions made under the Plan to any Participant or his or her Designated Beneficiary shall be subject to the income tax withholding rules set forth in Section 3405 of the Code and the Treasury Regulations promulgated thereunder.

N. <u>Qualified Domestic Relations Orders</u>. Notwithstanding anything to the contrary contained herein, the Committee shall direct the Trustee to make distribution to an alternate payee in accordance with a Qualified Domestic Relations Order, and such distribution may be made, notwithstanding the age or continued employment of the Participant who is a party to such Order, at any time as specified in the Order, provided the Order is filed with the court, served on the Plan, approved by the Committee and the alternate payee executes release forms, withholding forms and any other documents, forms or papers that the Committee deems necessary and desirable.

O. <u>Overpayment of Vested Interest</u>. If a Participant or Beneficiary is erroneously paid benefits greater than the Participant's vested Accrued Benefit, the Committee may, in its sole discretion exercised in the best interests of Participants and Beneficiaries, demand from the Participant or Beneficiary repayment of such overpayment. If the Participant or Beneficiary refuses to make repayment, the Committee may take legal action to recover the amount of the overpayment, plus interest, and costs of collection including reasonable attorneys' fees. If the Participant returns to employment and the overpayment has not been repaid to the Plan, the Committee may offset the overpayment against future Plan benefits.

## ARTICLE VII

### VIII. TOP-HEAVY LIMITATIONS

If in any Plan Year the Plan is a Top-heavy Plan as defined in Paragraph A below, the limitations and requirements set forth in this Article VIII shall apply to the Plan, unless this is a Simple 401(k) Plan within the meaning of Section 401(k)(11) of the Code.

### A. Definitions.

1. "Determination Date" means 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 of such Plan Year, provided that the Employer did not previously establish another qualified plan that is part of a Required Aggregation Group.

2. "Key Employee" means any Participant who at any time during the Plan Year containing the Determination Date or any of the four (4) preceding Plan Years is:

(a) An officer of the Employer having Section 415 Compensation greater than 50% of the Defined Benefit Dollar Limitation; provided, however, that no more than 50 Employees or, if lesser, the greater of three (3) or 10% of the Employees shall be treated as officers; provided further that if the total number of officers exceeds this limitation, only the highest compensated officers shall be included;

(b) One (1) of the 10 Employees having Section 415 Compensation from the Employer of more than the Defined Contribution Dollar Limitation and owning (or considered as owning within the meaning of Section 318 of the Code) both more than ½% interest and the largest interests in the Employer. For such purposes, if two (2) Employees have the same interest in the Employer, the Employee having the greater Section 415 Compensation from the Employer shall be treated as having a larger interest;

- (c) A 5%-Owner of the Employer;
- (d) A 1%-Owner of the Employer whose Section 415 Compensation exceeds \$150,000; or
- (e) A Beneficiary of a Key Employee or a former Key Employee.

For purposes of this Paragraph A.2, Section 415 Compensation shall include amounts contributed by the Employer pursuant to a salary reduction agreement which are excludable from the Employee's gross income under Section 125, 402(e)(3), 402(h), 403(b), 408(p)(2)(A)(i) or 457 of the Code.

### ARTICLE VIII

An Employee shall be deemed a "1%-Owner" if he or she (i) owns more than one percent (1%) of the outstanding stock or owns stock possessing more than one percent (1%) of the total combined voting power of all classes of stock, if the Employer is a corporation; or (ii) owns more than one percent (1%) of the capital or profit interests in the Employer if the Employer is not a corporation. In making the determination of a 1%-Owner or a 5%-Owner, Section 416(i)(1)(B) (iii) of the Code modifies Section 318(a)(2) of the Code, the corporate attribution rule. The business aggregation rules of Section 414 of the Code shall not be applied to determine ownership in the Employer.

3. "<u>Non-Key Employee</u>" means any Employee who is not a Key Employee.

4. "<u>Top-heavy Plan</u>" means, with respect to any Plan Year, (i) any defined benefit pension plan maintained by the Employer if, as of the Determination Date, the present value of cumulative Accrued Benefits under the plan for Key Employees exceeds 60% of the present value of cumulative Accrued Benefits under the Plan for all Employees; and (ii) any defined contribution plan, other than a Simple 401(k) Plan, maintained by the Employer if, as of the Determination Date, the aggregate of the Accounts of Key Employees under the Plan exceeds 60% of the aggregate of the Accounts of all Employees under the Plan. This rule is referred to herein as the "<u>60% Test</u>."

5. "<u>Top-heavy Group</u>" means any Aggregation Group if the sum of the present value of cumulative accrued benefits for Key Employees under all defined benefit pension plans included in the Aggregation Group, and the sum of the accounts of Key Employees under all defined contribution plans included in the Aggregation Group, exceed 60% of a similar sum determined for all Employees. An "<u>Aggregation Group</u>" means either a Required Aggregation Group or a Permissive Aggregation Group.

6. "<u>Required Aggregation Group</u>" means each qualified plan of the Employer in which a Key Employee is a participant, and each other qualified plan of the Employer which enables the qualified plan or plans containing a Key Employee to meet the anti-discrimination requirements of Section 401(a)(4) or 410 of the Code. A Required Aggregation Group includes any qualified plan of the Employer that has terminated within the last (5) years ending on the Determination Date.

B. Aggregation Groups.

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1. <u>Required Aggregation Group</u>. Each qualified plan of the Employer required to be included in a Required Aggregation Group shall be treated as a Topheavy Plan if the Required Aggregation Group is a Topheavy Group.

2. <u>Permissive Aggregation Group</u>. For purposes of determining the existence of a Top-heavy Group, the Employer may elect to include in the Required Aggregation Group any other qualified plan of the Employer not otherwise required to be included, if such Group after the election would continue to meet the anti-discrimination requirements of Sections 401(a)(4) and 410 of the Code; provided, however, that any such qualified plan will not be otherwise deemed a Top-heavy Plan by reason of such election.

If the Permissive Aggregation Group is a Top-heavy Group, each qualified plan of the Employer that is a part of a Required Aggregation Group will be considered a Top-heavy Plan. If the Permissive Aggregation Group is not a Top-heavy Group, no qualified plan in the Permissive Aggregation Group will be considered a Top-heavy Plan.

3. <u>Plans Aggregated</u>. Only those qualified plans of the Employer in which the Determination Dates fall within the calendar year shall be aggregated to determine whether the qualified plans (or the Aggregation Group) are Top-heavy Plans (or a Top-heavy Group).

C. 60% Test – Special Rules. For purposes of the 60% Test, the following special rules of this Paragraph C shall apply.

1. <u>Participant Contributions</u>. Benefits derived from both Participant contributions (whether voluntary or mandatory, but not deductible contributions) and Employer contributions shall be taken into account for the 60% Test.

2. <u>Distributions</u>. In determining the present value of cumulative Accrued Benefits of any Participant or the Account of any Participant under the Plan (or plans which form the Aggregation Group), such present value or Account shall be increased by the aggregate of distributions made to such Participant from the Plan (or plans forming the Aggregation Group) during the five (5) year period ending on the Determination Date. For this purpose, the term "Participant" shall include an Employee who is no longer employed by the Employer. The foregoing shall also apply to distributions under a terminated qualified plan of the Employer which, if it had not been terminated, would have been required to be included in an Aggregation Group.

3. <u>Rollover Contributions</u>. Except as otherwise provided in the Treasury Regulations, any rollover contribution or similar transfer made by an Employee to the Plan after December 31, 1983 shall not be taken into account; provided, however, that

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this transfer rule shall not apply to mergers or consolidations of several plans, the division of one (1) plan, or rollovers between plans of the Employer or related employers.

4. <u>Change of Status</u>. The cumulative Accrued Benefit or Account of a Participant who was formerly a Key Employee, but who ceases to be a Key Employee for a Plan Year, shall not be taken into account for purposes of the 60% Test for the Plan Year in which he or she is not a Key Employee.

5. <u>Non-Performance of Service</u>. The Accounts and Accrued Benefits of a Participant who has not performed services for the Employer maintaining the Plan during the five (5) year period ending on the Determination Date shall be disregarded.

6. <u>Determination of Present Value</u>. The present value of cumulative accrued benefits under any aggregated defined benefit pension plan maintained by the Employer shall be determined by applying the actuarial equivalents set forth in such defined benefit pension plan.

7. Determination of Accrued Benefit. Solely for the purpose of determining if the Plan, or any other plan included in a Required Aggregation Group of which this Plan is a part, is top-heavy (within the meaning of Section 416(g) of the Code) the accrued benefit of an Employee other than a Key Employee (within the meaning of Section 416(i)(1) of the Code) shall be determined under (i) the method, if any, that uniformly applies for accrual purposes under all plans maintained by the Controlled Group; or (ii) if there is no such method, as if such benefit accrued not more rapidly than the slowest accrual rate permitted under the fractional accrual rate of Section 411(b)(1)(C) of the Code.

D. <u>Minimum Vesting Requirements</u>. If the Plan is a Top-heavy Plan, then the partial vesting provisions of Paragraph A.5 of Article VI are modified to the extent necessary to provide for vesting at a faster rate during the relevant Plan Year under either of the following vesting schedules, as elected in Paragraph V of Article I:

1. <u>3-Year Cliff Vesting</u>. Each Employee who has completed three (3) Years of Vested Service with the Employer shall be 100% vested in his or her Accrued Benefit.

2. <u>6-Year Graded Vesting</u>. Each Employee shall have a non-forfeitable vested interest in his or her Accrued Benefit determined under the following schedule:

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Years of Vesting Service	Vested Percentage of the Participant's Accrued Benefit
less than 2	0%
2	20%
3	40%
4	60%
5	80%
6 or more	100%

3. <u>Limitations on Right to Amend Vesting Schedule</u>. The limitations of Paragraph K of Article VI regarding the right to amend the vesting schedule shall apply to any change in the vesting schedule caused by the Plan becoming a Top-heavy Plan, or ceasing to be a Top-heavy Plan.

E. <u>Minimum Benefit Requirement</u>. If the Plan is a Top-heavy Plan, then to the extent that the Plan benefits do not meet the minimum benefit requirements set forth below, each Participant who is not a Key Employee shall be provided with such minimum benefits. Key Employees shall share in the allocation of Top-heavy minimum benefits, if any, as described in this Paragraph E, if elected in Article I. Such minimum benefits shall be determined without taking into account Employer contributions to or a Participant's benefits under the Social Security Act. To the extent that the minimum benefit of any Participant is vested in accordance with Paragraph D of this Article VIII, such minimum Accrued Benefit may not be forfeited or suspended under Section 411(a)(3)(B) or 411(a)(3)(D) of the Code.

1. <u>3% Benefit</u>. Each Participant who is not a Key Employee shall receive an allocation of Employer contributions (and forfeitures, if applicable) of not less than three percent (3%) or such higher percentage of such Participant's Section 415 Compensation as elected in Article I; provided, however, that if there is an allocation of Employer contributions (and forfeitures, if applicable) of less than three percent (3%) of Section 415 Compensation in any Plan Year for all Employees, the allocation of such contributions (and forfeitures, if applicable) need not exceed the highest percentage of Section 415 Compensation at which such contributions (and forfeitures, if applicable) need not exceed the Plan for any Key Employee. If the top-heavy contribution is less than three percent (3%), then Elective Contributions made by Key Employees shall be included in determining the Key Employee percentage of contribution. If a Key Employee participates in a defined benefit plan which is included with this Plan in a Top-heavy Group, a three percent (3%) minimum benefit will be provided to each Non-Key Employee who only participates in this Plan.

All defined contribution plans required to be included in an Aggregation Group shall be treated as one (1) plan; provided, however, that any defined contribution plan required to be included in an Aggregation Group where such plan

## ARTICLE VIII

enables a defined benefit pension plan to meet the anti-discrimination requirements of Sections 401(a)(4) and 410 of the Code shall not be taken into account.

2. <u>Persons Covered</u>. Notwithstanding anything to the contrary contained in this Plan, each person who is a Participant (other than an Inactive Participant) on the last day of the Plan Year shall have allocated to his or her Employer Contribution Account the minimum benefits provided under this Paragraph E even if such Participant (i) fails to complete 1,000 Hours of Service during the Plan Year; (ii) refuses to make mandatory contributions to the Plan, if applicable; or (iii) is excluded from participation under the Plan because his or her Section 415 Compensation is less than a stated amount.

3. <u>Profit Sharing and Retirement Savings Plans</u>. Participant Elective Contributions made pursuant to Paragraph H.2 of Article I shall be taken into account in determining the minimum benefit requirements of Paragraphs E and G of this Article VIII.

For Plan Years beginning after December 31, 1988, Elective Contributions and Qualified Matching Contributions shall be treated as contributions for purposes of determining the minimum contribution or benefits allocated to Key Employees under Section 416 of the Code but will not be treated as satisfying the minimum contribution or benefit requirements of Section 416 of the Code for Non-Key Employees. However, Qualified Nonelective Employer Contributions described in Section 401(m)(4)(C) of the Code and Matching Contributions not used to satisfy the 401(k) and 401(m) discrimination tests may be used to satisfy minimum contribution requirements for Non-Key Employees.

For Plan Years beginning after December 31, 1998, Safe Harbor Matching Contributions may not be used to satisfy the top-heavy minimum contribution or benefit requirement of Section 416 of the Code. However, Safe Harbor Nonelective Employer Contributions may be used to satisfy such top-heavy minimum requirements.

F. <u>Annual Section 415 Compensation</u>. For Plan Years beginning after December 31, 1988, Section 415 Compensation shall be limited to the Compensation Limitation. For Plan Years beginning after December 31, 1983 and before January 1, 1989, for purposes of determining the retirement benefits under a Topheavy defined benefit pension plan and the allocations of contributions (and forfeitures, if applicable) under a Topheavy defined contribution plan, the maximum amount of Section 415 Compensation of any Participant shall not exceed \$200,000.00, as such amount may be annually adjusted for cost of living increases in Plan Years at the same time and in the same manner allowed by the Secretary of the Treasury pursuant to Regulations to be issued under Section 415(d) of the Code.

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G. <u>Multiple Plans</u>. If this Plan is the only qualified plan of the Employer in which a Participant who is a Non-Key Employee participates, the minimum benefits required by Paragraph E.1 of this Article VII shall be provided under this Plan. If such Participant participates in this Plan and a defined benefit plan included in a Top-heavy Group or in another defined contribution plan of the Employer included in a Top-heavy Group, the top-heavy minimum benefits shall be provided under the Plan designated in Article I.

1. <u>Special Section 416 Rules</u>. If such multiple plans, including this Plan, consist of a defined benefit pension plan and a defined contribution plan, the Rule of 1.0 as set forth in Article V of the Plan (as it may be modified by the Top-heavy Plan transitional rule under Section 416(h)(3) of the Code) shall be in effect only if the following two (2) requirements are satisfied:

(a) The Employer shall designate in Article I whether this Plan or another plan provides for the additional top-heavy minimum benefits for purposes of Section 416(h) of the Code. If the Employer elects in Article I to provide the additional top-heavy minimum benefits, and the conditions of subparagraph (b) of this Paragraph G apply, Non-Key Employees covered only by the Employer's defined contribution plan will receive a four percent (4%) top-heavy minimum benefit.

(b) The sum of the cumulative Accrued Benefits and the aggregate of accounts held for Key Employees under the plans cannot exceed 90% of a similar sum for all Employees.

If either of the requirements of subparagraphs (a) and (b) of this Paragraph G.1 is not met, then for purposes of the Rule of 1.0 as set forth in Article V of the Plan, the number "1.25" as applied to the Defined Contribution Plan Fraction and to the Defined Benefit Plan Fraction shall be replaced by the number "1.0."

2. <u>Repeal of the Rule of 1.0</u>. For Limitation Years beginning after December 31, 1999, Paragraph G.1 of this Article VIII shall no longer apply unless otherwise elected in Article I.

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## IX. DESIGNATED BENEFICIARIES

Each Participant and Inactive Participant may name a Designated Beneficiary to receive his or her death benefits by completing a form acceptable to the Committee. Participants shall have the right at any time to revoke such designation or to substitute another Designated Beneficiary. If at the death of a Participant or a Designated Beneficiary, the name of a Designated Beneficiary or contingent Designated Beneficiary is not on file with the Committee, the Participant shall be deemed to have named the following Designated Beneficiary, in order of priority:

(i) The Surviving Spouse (as defined in Paragraph A.5 of Article VII, without regard to the one-year marriage requirement);

(ii) If the Participant is not survived by a Surviving Spouse, the trustees of the revocable living trust established by the Participant during his or her lifetime;

(iii) The Participant's children, per stirpes;

(iv) The Participant's estate.

The Committee's determination as to which persons, if any, qualify within the aforementioned categories shall be final and conclusive upon all persons.

# ARTICLE IX

### X. CONTRIBUTIONS BY PARTICIPANTS

#### A. Employee After-Tax Contributions.

1. <u>Eligibility</u>. If allowed under Article I, all Participants are eligible to make Employee After-Tax Contributions to the Plan by submitting an application on forms acceptable to the Committee. All such applications shall include the Participant's acceptance of the relevant terms and conditions of this Plan. If such contributions are to be made by payroll deduction, such application shall state the Participant's designation of the proportion of his or her Section 415 Compensation which he or she shall contribute, and his or her consent to the withholding of such contributions by the Employer. Contributions may also be made by the Participant in a single-sum form by direct contribution. A Participant may continue to make Employee After-Tax Contributions throughout the period he or she is a Participant; provided, however, that a Participant shall have the absolute right to discontinue payroll deduction Employee After-Tax Contributions as of the end of any month following the month in which he or she gives written notice thereof to the Employer.

2. <u>Amount of Contributions</u>. A Participant may contribute to the Trust such amounts as he or she shall determine as set forth in his or her written election; provided, however, that such amounts shall not exceed the limitations of Paragraph E of Article V. A Participant may change the amount of his or her Employee After-Tax Contributions withheld by payroll deduction once during each Plan Year, and any other time permitted by the Committee, with respect to future contributions by filing a written election with the Committee.

3. <u>Collection of Contributions</u>. All contributions received by the Employer, whether by withholding or by direct payment from the Participant, shall be paid over by the Employer to the Trustee.

B. <u>Rollover Contributions</u>. If allowed under Article I, any Employee who is a Participant during any Plan Year, or any Employee who the Committee reasonably anticipates will become a Participant, may make qualified Rollover Contributions to the Plan. If the Committee shall determine, subsequent to any such contribution, that such contribution did not in fact constitute a qualified Rollover Contribution, the amount of such contribution shall be returned to the Employee as soon thereafter as reasonably practicable. Any such qualified Rollover Contributions shall be allocated and held on behalf of the Participant in a Rollover Contribution Account. Said Account shall be deemed a part of the Participant's Accrued Benefit and shall be subject to the distribution provisions of Article VII of the Plan.

C. <u>Separate Administration and Accounts for Participant Contributions</u>. The Employee After-Tax Contributions and the Rollover Contributions of a Participant shall be

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accounted for separately. The Committee shall establish an Employee After-Tax Contribution Account for each Participant's Employee After-Tax Contributions and a Rollover Contribution Account for his or her Rollover Contributions. Unless Participant Directed Accounts are allowed under Article I, a Participant's Employee After-Tax Contribution Account and Rollover Contribution Account shall be invested in the general Trust Fund. On each Valuation Date, the Committee shall determine the fair market value of such Accounts and (subject to the following sentence) shall allocate income or losses to the respective Accounts in proportion to the amounts therein as of the Valuation Date. For the purpose of allocating income and losses, the Accounts to which Participants' contributions are allocated shall be valued by including only a portion of current year contributions and taking into account Participant withdrawals, which portion shall be determined on a weighted basis by considering the length of time (in complete months) since the making of the contribution (or withdrawal) in relation to the number of complete months elapsed since the last Valuation Date.

D. Vesting. A Participant's Employee After-Tax Contribution Account and Rollover Contribution Account shall at all times be fully vested.

E. <u>Withdrawal of Contributions</u>. The balance of the Employee After-Tax Contribution Account as of any Anniversary Date may be withdrawn upon 90 days written notice to the Committee, severance of employment being automatically deemed such notice; provided, however, that such 90 day period may be extended by the Committee to satisfy liquidity needs of the Trust. Any Participant who withdraws 90% of his or her Employee After-Tax Contribution Account within one (1) Plan Year must withdraw his or her entire Employee After-Tax Contribution Account and shall be ineligible to make Employee After-Tax Contributions for the period ending on the Anniversary Date following one (1) year from the date of the last such withdrawal. If this Plan is subject to Section 417 of the Code, the withdrawal of all or any portion of a Participant's Employee After-Tax Contributions shall be subject to the annuity provisions of Article VII of the Plan.

F. <u>Distribution of Rollover Contribution Accounts</u>. When a Participant terminates employment for any reason, his or her Rollover Contribution Accounts shall be distributed to him or her (or in the case of death, to his or her Designated Beneficiary) in the form designated by the Participant as required pursuant to the provisions of Article VII of the Plan. If elected in Article I, a Participant may receive his or her Rollover Contribution Account prior to termination of employment.

### G. Limitations on Section 401(m) Contributions.

# 1. Contribution Percentage Limitation.

(a) For Plan Years beginning prior to January 1, 1997, the amount of Qualifying Section 401(m) Contributions made on behalf of the group of Highly

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Compensated Employees shall not result in an Average Contribution Percentage that exceeds the greater of the following:

(i) The Average Contribution Percentage for Eligible Participants who are Highly Compensated Employees for the Plan Year shall not exceed the Average Contribution Percentage for Eligible Participants who are Non-Highly Compensated Employees for the Plan Year multiplied by 1.25; or

(ii) The Average Contribution Percentage for Eligible Participants who are Highly Compensated Employees for the Plan Year shall not exceed the Average Contribution Percentage for Eligible Participants who are Non-Highly Compensated Employees for the Plan Year multiplied by two (2); provided that the Average Contribution Percentage for Eligible Participants who are Highly Compensated Employees does not exceed the Average Contribution Percentage for Eligible Participants who are Highly Compensated Employees does not exceed the Average Contribution Percentage for Eligible Participants who are Highly Compensated Employees does not exceed the Average Contribution Percentage for Eligible Participants who are Highly Compensated Employees does not exceed the Average Contribution Percentage for Eligible Participants who are Highly Compensated Employees does not exceed the Average Contribution Percentage for Eligible Participants who are Highly Compensated Employees does not exceed the Average Contribution Percentage for Eligible Participants who are Highly Compensated Employees does not exceed the Average Contribution Percentage for Eligible Participants who are Non-Highly Compensated Employees by more than two (2) percentage points or such lesser amount as the Secretary of the Treasury shall prescribe to prevent the multiple use of this alternative limitation with respect to any Highly Compensated Employee.

(b) For Plan Years beginning after December 31, 1996, the amount of Qualifying Section 401(m) Contributions made on behalf of the group consisting of Highly Compensated Employees shall not result in an Actual Deferral Percentage that exceeds the greater of the following:

(i) The Average Contribution Percentage for Eligible Participants who are Highly Compensated Employees for the current Plan Year shall not exceed the Average Contribution Percentage for Eligible Participants who are Non-Highly Compensated Employees for the current or the preceding Plan Year, as elected in Article I, multiplied by 1.25; or

(ii) The Average Contribution Percentage for Eligible Participants who are Highly Compensated Employees for the Plan Year shall not exceed the Average Contribution Percentage for Eligible Participants who are Non-Highly Compensated Employees for the current or the preceding Plan Year, as elected in Article I, multiplied by two (2); provided that the Average Contribution Percentage for Eligible Participants who are Non-Highly Compensated Employees for the current or preceding Plan Year, as elected in Article I, by more than two (2) percentage points or such lesser amount as the Secretary of the Treasury shall prescribe to prevent the multiple use of this alternative limitation with respect to any Highly Compensated Employee.

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For the first Plan Year in which the Plan (other than a successor plan) provides for a Matching Contribution or After-Tax Employer Contribution, the Average Contribution Percentage of Non-Highly Compensated Employees under the prior year testing method shall be the greater of three percent (3%) or the Average Contribution Percentage of the Non-Highly Compensated Employees for the first Plan Year.

If the Plan provides for the prior year testing method, the Average Contribution Percentage shall be determined without regard to changes in the group of Non-Highly Compensated Employees who are Eligible Participants during the testing year.

2. <u>Matching Contributions</u>. If elected in Article I, Matching Contributions may be made to the Plan. Such Matching Contributions shall be allocated in accordance with Article I.

3. <u>Safe Harbor Matching Contributions</u>. If Safe Harbor Matching Contributions are made to this Plan, the Average Contribution Percentage shall be deemed satisfied but only with respect to Matching Contributions provided that the following requirements are met:

(a) Each Non-Highly Compensated Employee who is eligible to receive an allocation of Safe Harbor Matching Contributions under the Plan must be an Eligible Participant under the Plan's cash or deferred arrangement;

(b) The Plan provides for a Safe Harbor Matching Contribution formula as described in either Section 401(k)(12)(B)(i) of the Code (the "<u>Basic</u> <u>Matching Formula</u>") and no other required Matching Contributions are provided under the Plan or Section 401(m)(11)(B)(ii) of the Code (the "<u>Enhanced</u> <u>Matching Formula</u>") and with respect to the Enhanced Matching Formula, the Safe Harbor Matching Contributions are only made with respect to Elective Contributions or Employee

After-Tax Contributions that do not exceed six percent (6%) of the Employee's Compensation and no other required Matching Contributions are provided under this Plan;

(c) For Plan Years beginning after December 31, 1999, Matching Contributions made at the Employer's discretion on behalf of any Participant may not exceed a dollar amount greater than four percent (4%) of such Participant's Compensation and are only made with respect to Elective Contributions or Employee's After-Tax Contributions that do not exceed six percent (6%) of the Participant's Compensation; and

(d) Effective for the Plan quarter beginning after May 1, 2000, if Safe Harbor Matching Contributions are made on a payroll period method rather than

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on an annual method, then such Safe Harbor Matching Contributions must be contributed to the Plan by the last day of the following Plan Year quarter;

(e) Safe Harbor Matching Contributions must also satisfy the requirements of Paragraph F of Article IV.

- 4. Simple 401(k) Plan. A Simple 401(k) Plan shall not be subject to the Contribution Percentage limitation.
- 5. Special Rules.

(a) For purposes of determining the Contribution Percentage limitation, Employee After-Tax Contributions are taken into account for a Plan Year in which such amounts were contributed to the trust or paid to an agent of the Plan and transmitted to the trust within a reasonable time after the payment to the agent. Excess Contributions that are recharacterized are taken into account as Employee After-Tax Contributions for the Plan Year that includes the period for which such Excess Contributions are includable in the gross income of the Employee.

(b) A Matching Contribution or Safe Harbor Matching Contribution will be taken into account under the Contribution Percentage limitation for the Plan Year only if such contribution is (i) allocated to the Employee Account under the terms of the Plan as of any date within the Plan Year; (ii) actually paid to the trust no later than the end of the 12-month period beginning on the date after the close of the Plan Year; and (iii) made on behalf of the Employee on account of such Employee's Elective Contributions or Employee After-Tax Contributions for the Plan Year. Safe Harbor Matching Contributions may be allocated only to Non-Highly Compensated Participants. Matching Contributions and Safe Harbor Matching Contributions that do not satisfy all of the preceding requirements of this subparagraph (b) may not be taken in account for purposes of the Average Contribution Percentage limitation. Instead, the contribution must satisfy Section 401(a)(4) of the Code without regard to the special non-discrimination rule in this paragraph for the Plan Year in which allocated as if they were the only Employer allocation for that Plan Year.

H. <u>Correction of Excess Aggregate Contributions</u>. If the Committee recharacterizes Excess Contributions as described in Paragraph J.5 of Article IV, the recharacterized amount shall be subject to the Contribution Percentage limitation of Section 401(m) of the Code. Excess Contributions recharacterized as Employee After-Tax Contributions shall be included in determining the amount of Excess Aggregate Contributions for the Plan Year that ends with or within the Plan Year for which the Contribution Percentage limitation is applied.

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The Committee may correct Excess Aggregate Contributions by distributing the Excess Aggregate Contributions and income allocated thereto to the appropriate Highly Compensated Employee after the close of the Plan Year but not more than 12 months after the close of the Plan Year. The return of Excess Aggregate Contributions to the Highly Compensated Employee shall be determined using the same method applied to the return of Excess Contributions.

The Committee may correct Excess Aggregate Contributions by the forfeiture of nonvested Matching Contributions (and income allocable thereto). Such forfeitures shall be made only to the extent necessary to avoid failure of the Contribution Percentage limitation. The forfeiture of Excess Aggregate Contributions to the Highly Compensated Employee shall be determined using the same method applied to the return of Excess Contributions.

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J. <u>Distribution of Income</u>. Any distribution or forfeiture of Excess Aggregate Contributions must include the income or loss allocated to such contributions. Allocable income or loss includes income or loss both from the Plan Year in which the Contribution Percentage limitation was exceeded and for the gap period between the end of the Plan Year and the date of distribution. Allocable income or loss for the Plan Year is determined by multiplying the income or loss for the Plan Year allocable to Qualifying Section 401(m) Contributions by a fraction, the numerator of which is the Excess Aggregate Contributions made on behalf of an Employee for the Plan Year and the denominator of which is the total Account balance attributed to Qualifying Section 401(m) Contributions as of the end of the Plan Year minus the income or plus the loss allocable to such account balance for the Plan Year. The Committee may determine the allocable income or loss for the gap period by using the fractional method, as prescribed in the preceding sentence, for the period between the end of the Plan Year and the last day of the month preceding the distribution date that is allocable to Qualifying 401(m) Contributions. Alternatively the Committee may determine income or loss for the gap period under a safe-harbor method, under which income on Excess Aggregate Contributions for the gap period is equal to 10% of the income or loss allocable to Excess Aggregate Contributions calculated under the fractional method as described above in this paragraph for the Plan Year, times the number of calendar months between the end of the Plan Year and the date of distribution counting whole months only and treating distributions made on or before the 15<sup>th</sup> day of the month as made on the last day of the preceding month and distributions made after the first 15 days of the month as occurring on the first day of the next month. Notwithstanding the preceding, the Committee may exclude gap period income so long as such exclusion is applied consistently to all

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Notwithstanding the preceding paragraph, the Committee may use any reasonable method for computing income allocable to Excess Aggregate Contributions provided the method is non-discriminatory and is applied consistently to all Participants and corrective distributions for the Plan Year. Such reasonable method may include or exclude gap period income.

K. <u>Coordination with Section 401(a)(4) of the Code</u>. Matching Contributions attributable to Employee After-Tax Contributions or Elective Contributions which are returned to the Highly Compensated Employee shall not remain allocated to the Highly Compensated Employee. The distribution of a matched Employee After-Tax Contribution or Elective Contribution to a Highly Compensated Employee must include the corresponding Matching Contribution. Unmatched Employee After-Tax Contributions shall be distributed first. To the extent necessary, matched Employee After-Tax Contributions shall be distributed for the matched and Matching Contributions. A Matching Contribution that is forfeited to cover an Excess Aggregate Contribution is not taken into account under the Contribution Percentage limitation.

If an Elective Contribution is returned to a Highly Compensated Employee and a corresponding Matching Contribution relates to such Elective Contribution, the Committee may forfeit such Matching Contribution regardless of vesting in order to satisfy Section 401(a)(4) of the Code.

L. <u>Additional Qualified Nonelective Employer Contributions</u>. Rather than returning Excess Aggregate Contributions, the Committee, in its sole discretion, may make additional Qualified Nonelective Employer Contributions or may apply Elective Contributions to satisfy the Contribution Percentage limitation provided that the Qualified Nonelective Employer Contributions and Elective Contributions that will be treated as Matching Contributions are made with respect to Employees who are Eligible Participants under the Plan. Furthermore, such contributions will be treated as Matching Contributions only if the additional requirements described below are satisfied:

1. The Nonelective Employer Contributions including Qualified Nonelective Employer Contributions treated as Matching Contributions shall satisfy Section 401(a)(4) of the Code and, for Plan Years beginning after December 31, 1993 or such later effective date as determined by the Commissioner of Internal Revenue, Section 1.401(a)(4)-1(b)(2) of the Treasury Regulations.

2. The Nonelective Employer Contributions excluding Qualified Nonelective Employer Contributions treated as Matching Contributions for the Contribution Percentage limitation and Qualified Nonelective Employer Contributions treated as Elective Contributions for the Actual Deferral Percentage limitation shall

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satisfy Section 401(a)(4) of the Code and for Plan Years beginning after December 31, 1993, or such later effective date as determined by the Commissioner of Internal Revenue, Section 1.401(a)(4)-1(b)(2) of the Treasury Regulations.

3. The Elective Contributions including those treated as Matching Contributions for purposes of the Contribution Percentage limitation shall satisfy Section 401(k)(3) of the Code.

4. Qualified Nonelective Employer Contributions shall be allocated to the Employee within the Plan Year, and the Elective Contributions shall relate to Compensation for the Plan Year or Compensation that would have been received within 2<sup>1</sup>/<sub>2</sub> months after the Plan Year and are allocated within the Plan Year.

5. For Plan Years beginning after December 31, 1988, the plan which treats Qualified Nonelective Employer Contributions and Elective Contributions as Matching Contributions and the plan to which the Qualified Nonelective Employer Contributions and Elective Contributions are made must have the same Plan Year. If the Plan Year is changed to satisfy this requirement, such contributions may be taken into account during the short Plan Year if they satisfy the allocation requirements for Elective Contributions.

6. If the Employer has elected to apply the prior year testing method to calculate the Contribution Percentage limitation, Qualified Nonelective Employer Contributions must be made no later than twelve (12) months following the last day of the Plan Year preceding the current Plan Year to satisfy the Contribution Percentage limitation. If the Employer has elected to apply the current year testing method to calculate the Contribution Percentage limitation, Qualified Nonelective Employer Contributions must be made no later than twelve (12) months following the close of the current Plan Year to satisfy the Contribution Percentage limitation.

M. <u>Correction of Excess Aggregate Contribution Prior to the Plan Year</u>. If the Committee determines that the Contribution Percentage is being exceeded during the Plan Year, the Committee may suspend the group of Highly Compensated Employees by suspending Matching Contributions or Employee After-Tax Contributions or any other contributions which result in additional contributions under Section 401(m) of the Code to satisfy the Contribution Percentage limitation. The Committee shall give notice to such Employees of the amounts to be reduced. The determination of the reduction shall be made in accordance with the same method used for the return of Excess Aggregate Contributions or pro rata as elected in Article I.

N. <u>Coordination with Correction of Excess Contributions and Excess Deferrals</u>. The determination of the amount of Excess Aggregate Contributions with respect to a Plan Year shall be made after determining the Excess Contribution, if any, to be treated as an

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Employee After-Tax Contribution due to recharacterization under Section 401(k) of the Code for the Plan Year subject to Section 401(k) of the Code ending with the Plan Year being tested under Section 401(m) of the Code. Excess Aggregate Contributions attributed to amounts other than Employee After-Tax Contributions, including forfeited Matching Contributions, shall be treated as Employer Contributions for purposes of Sections 404 and 415 of the Code even if distributed from the Plan.

### O. Prevention of Multiple Use.

1. <u>Multiple Use Condition</u>. Multiple use of the alternative limitation occurs if all of the following conditions of this Paragraph O are satisfied:

(a) One (1) or more Highly Compensated Employees of the Employer or a Controlled Group are eligible both in a cash or deferred arrangement subject to Section 401(k) of the Code and in any plan maintained by such Employer subject to Section 401(m) of the Code.

(b) The sum of the Actual Deferral Percentage of the entire group of eligible Highly Compensated Employees under the arrangement subject to Section 401(k) of the Code and the Average Contribution Percentage of the entire group of eligible Highly Compensated Employees under the Plan subject to Section 401(m) of the Code exceeds the aggregate limit of Paragraph O.2 of this Article X.

(c) The Actual Deferral Percentage of the entire group of eligible Highly Compensated Employees under the arrangement subject to Section 401(k) of the Code exceeds the 1.25 test as described in Section 401(k)(3)(A)(ii)(l) of the Code.

(d) The Average Contribution Percentage of the entire group of eligible Highly Compensated Employees under the arrangement subject to Section 401(m) of the Code exceeds the 1.25 test as described in Section 401(m)(2)(A)(i) of the Code.

2. <u>Aggregate Limit</u>. For purposes of this Paragraph O, the aggregate limit is the greater of:

(a) The sum of:

(i) 125% of the greater of (A) the Actual Deferral Percentage of the group of Non-Highly Compensated Employees eligible under the arrangement subject to Section 401(k) of the Code for the Plan Year; or (B) the Average Contribution Percentage of the group of Non-Highly Compensated Employees eligible under the Plan Year subject to Section 401(m) of the Code for the Plan Year beginning

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with or within the Plan Year of the arrangement subject to Section 401(k) of the Code; and

(ii) Two (2) plus the lesser of clauses (A) or (B) of Paragraph O.2(a)(i) above. In no event, however, shall this amount exceed 200% of the lesser of such clauses (A) or (B); or

(b) The sum of:

(i) 125% of the lesser of (A) the Actual Deferral Percentage of the group of eligible Non-Highly Compensated Employees under the arrangement subject to Section 401(k) of the Code for the Plan Year; or (B) the Average Contribution Percentage of the group of eligible Non-Highly Compensated Employees under the Plan subject to Section 401(m) of the Code for the Plan Year beginning with or within the Plan Year of the arrangement subject to Section 401(k) of the Code; and

(ii) Two (2) plus the greater of clauses (A) or (B) of Paragraph O.2(b)(i) above. In no event, however, should this amount exceed 200% of the greater of such clauses (A) or (B).

The Actual Deferral Percentage and the Average Contribution Percentage of the group of eligible Highly Compensated Employees shall be determined after the use of Qualified Nonelective Employer Contributions and Qualified Matching Contributions to meet the requirements of Section 401(k)(3)(A)(ii) of the Code and after using Qualified Nonelective Employer Contributions and Elective Contributions to meet the requirements of Section 401(m)(2)(A) of the Code. The Actual Deferral Percentage and the Average Contribution Percentage of the group of eligible Highly Compensated Employees shall be determined after any corrective distribution of Excess Deferrals, Excess Contributions or Excess Aggregate Contributions and after any recharacterization of Excess Contributions required without regard to this paragraph. If the Employer maintains two (2) or more plans subject to Section 401(k) or 401(m) of the Code, then multiple use shall be tested separately with respect to each Section 401(k) arrangement and each plan or aggregate group of plans if the Section 401(k) arrangement and each plan subject to Section 401(m) of the Code are not aggregated.

If a multiple use of the alternative limitation occurs with respect to this Plan or with respect to two (2) or more plans or arrangements maintained by the Employer, such multiple use shall be corrected by reducing the Actual Deferral Percentage or the Average Contribution Percentage of Highly Compensated Employees. The amount of the reduction to the Actual Deferral Percentage or the Average Contribution Percentage of the entire group of Highly Compensated Employees shall be calculated in a manner consistent with the method as stated in this Plan. The Employer may elect to reduce the actual deferred ratios or the Contribution

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Percentage ratios, as designated in Article I, either for all Highly Compensated Employees under the Plan and/or arrangements subject to the reduction or for only those Highly Compensated Employees who are eligible in both the arrangements subject to Section 401(k) of the Code and the Plan subject to Section 401(m) of the Code.

Notwithstanding the preceding paragraph, the Employer may make Qualified Nonelective Employer Contributions to correct the multiple limitations.

The restrictions of multiple use do not apply if Safe Harbor Nonelective Employer Contributions are provided to satisfy the Actual Deferral Percentage limitation or Safe Harbor Matching Contributions are either provided to satisfy the Actual Deferral Percentage limitation or the Contribution Percentage limitation, provided that the Plan does not provide for Employee After-Tax Contributions.

P. <u>Aggregation Rules for Section 401(m) Contributions</u>. If the Employer maintains two (2) or more plans to which Employee After-Tax Contributions or Matching Contributions are made, then the plans may be considered as a single plan for purposes of determining whether or not such plans satisfy Sections 401(a)(4), 401(m) or 410(b) of the Code, other than Section 410(b)(2)(A) of the Code. In such case, the aggregated plans must satisfy the Contribution Percentage limitation with respect to the amount of the Employee After-Tax Contributions and Matching Contributions and additionally must satisfy Sections 401(a)(4) and 410(b) of the Code as though such aggregated plans were a single plan. Whenever a Highly Compensated Employee is eligible under two (2) or more plans of the Employer which are subject to Section 401(m) of the Code, in calculating the Contribution Percentage limitation, the actual contribution ratio of such Highly Compensated Employee will be determined by treating all such plans in which such Highly Compensated Employee is an Eligible Participant as a single plan.

Except for certain plans in existence on November 1, 1977, for Plan Years beginning after December 31, 1988, contributions allocated under a plan described in Section 4975(e)(7) of the Code cannot be combined with contributions or allocations under any plan not described in Section 4975(e)(7) of the Code including required aggregation of a Highly Compensated Employee. However, a plan described in Section 4975(e)(7) of the Code may provide for contributions as described in Section 401(k)(12) of the Code. Mandatory disaggregation shall also apply to plans described under Sections 1.401(m)-1(b)(3)(ii) and 1.401(k)-1(g)(11)(iii) of the Treasury Regulations. However, for Plan Years beginning after December 31, 1990, for purposes of the average benefit percentage test under Section 410(b)(2)(A)(ii) of the Code, a plan described in Section 4975(e)(7) of the Code shall be aggregated. For Plan Years beginning before January 1, 1991, the Employer shall have the option to aggregate such plans for purposes of the average benefit percentage test. Plans that are to be aggregated may only be aggregated if they have the same Plan Year.

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The rules regarding the aggregation and disaggregation of cash or deferred arrangements and plans shall also apply for purposes of Sections 401(k)(12) and 401(m)(11) of the Code.

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### XI. LIFE INSURANCE POLICIES

A. <u>Investment and Ownership of Life Insurance Policies</u>. The Committee may direct the Trustee to purchase life insurance policies on the life of an individual Participant. The Trustee shall be the applicant for any policies purchased, and each Participant for whom such policy is purchased shall direct in writing that the Trustee shall be recognized by the insurer as the owner of the policy having the power to exercise all rights, privileges, options, elections and other incidents of ownership granted by or permitted under the policy. The Trustee shall also be named as the Beneficiary in the application for such policy; provided, however, that the Participant shall have the right to nominate the Designated Beneficiary pursuant to Article IX of the Plan.

B. <u>Payment of Premiums</u>. Upon receipt of notice of the premiums due the insurer for the initial premium on policies purchased pursuant to this Article XI and upon direction of the Committee, the Trustee shall pay such premiums to said insurer. The policies shall be delivered to the Trustee, and any notices of premiums falling due under such policies thereafter shall be addressed to and such premiums shall be paid by the Trustee.

C. <u>Accounting for Policies</u>. The value of any policies purchased by the Trustee pursuant to this Article XI shall be included in the annual valuations of the Plan.

D. <u>Discrimination</u>. To the extent that policies are purchased, there shall be no discrimination between Participants as to the form, optional methods of settlement, or other provisions of said policies. However, any Participant may refuse any offer to purchase contracts for his or her benefit. Such refusal must be in writing and, when tendered, shall satisfy the anti-discrimination intent of the first sentence of this Paragraph D.

E. <u>Disposition Upon Retirement or Total Disability</u>. If any Participant with respect to whom a policy is held by the Trustee ceases to be a Participant as a result of termination of employment (other than by death) on or after Normal Retirement Age or Total Disability, the Trustee pursuant to the direction and discretion of the Committee shall either (i) dispose of, or convert, such policy or policies to the extent necessary or desirable in order that the proceeds of such disposition or conversion may be used to provide retirement or disability benefits to the Participant in accordance with the provisions of this Plan; or (ii) distribute such policy or policies to the Participant, provided such policy complies with Paragraph B.4(b) of Article VII.

F. <u>Disposition Upon Other Separation From Service</u>. Death benefits payable from policies on the life of a Participant shall cease as of the date of the Participant's separation from service for any reason other than death, Total Disability or termination of employment on or after Normal Retirement Age. In such event, the Trustee, subject to the

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direction and discretion of the Committee, shall make one (1) of the following dispositions of such policy or polices:

1. Surrender each such policy to cash or designate itself as Beneficiary of each such policy.

2. Offer to such Participant all such policies at a price (hereafter referred to as the "purchase price") equal to the cash value if the policy is whole life or accumulation value if the policy is interest sensitive or universal life. If the Participant accepts such offer, the purchase price shall be charged against his or her vested interest in that portion of the value of his or her Accrued Benefit not represented by such policies, and any excess of such purchase price over such vested interest shall be paid by the Participant to the Trustee in cash within 10 days after accepting such offer. If the offer is so accepted and any required payment made, the Trustee shall transfer ownership of such policies to such Participant. If such Participant does not accept such offer within 30 days after written notice from the Committee, the Trustee shall take such action as the Committee may direct to liquidate such policies in order to distribute to such Participant the amount to which he or she is entitled pursuant to this Plan.

3. Effect a policy loan upon all such policies from the insurer on the sole security of the policies in an amount determined by applying to the then cash value of each such policy a percentage equal to the excess of 100% over the percent vested in such Participant in accordance with the schedule of vesting set forth in this Plan. The loan proceeds shall go to and become the property of the Trust, and the Trustee shall, after effecting such loan, deliver such policy to the Participant subject to such loan.

G. <u>Policy Loans</u>. Except as provided in Paragraph F.3 of this Article XI, policy loans under the loan provisions, if any, may be made by the Trustee proportionately against all contracts held by the Trust and solely for the purpose of paying premiums under such contracts. No loan shall be made on any policy on the life of any Participant to pay premiums on the life of any other Participant.

H. <u>Insurer Not a Party</u>. The insurer shall not be deemed a party to this Plan, and its obligation shall be measured and determined solely by the terms of its policies. The insurer shall deal with the Trustee as the sole and absolute owner of the policies, and the insurer shall be under no obligation of inquiring or determining whether any action or failure to act on the part of the Trustee is in accordance with or authorized by the terms of this Plan. The insurer shall be fully discharged from any and all liability for any action taken or any amount paid in accordance with the direction of the Trustee, and the insurer shall not be obligated to see to the distribution or application of any money so paid. The insurer shall be fully discharged of all liability in dealing with the Trustee, as indicated on its records, until such time as it shall receive satisfactory evidence of the appointment and acceptance of a successor Trustee.

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I. <u>Reserved</u>.

J. <u>Insurance Limitations</u>. If the Committee directs the Trustee to purchase life insurance, the following limitations shall apply:

1. The cumulative premium for ordinary life insurance contracts shall be less than 50% of the aggregate Employer contributions allocated to any Participant;

2. The cumulative premium for term and universal life insurance shall be less than 25% of the aggregate Employer contributions allocated to any Participant;

3. The cumulative premium for a combination of ordinary life insurance and term and universal life insurance contracts shall be less than 25% of the aggregate Employer contributions allocated to any Participant. However, for purposes of this Paragraph J.3, 50% of the premium paid for the ordinary life insurance policies shall be excluded from the calculations.

4. If the level annual premiums (with respect to a Participant) required to be paid on account of life insurance policies exceed the limitations described in this Paragraph J, then at the election of the Committee:

(a) Employee contributions of the Participant, if available, shall be used to sustain the level of such premiums, and if not available, the insurer shall adjust the face amount of the policies to a basis consistent with the reduced contributions applicable to payment of premiums and shall credit resulting excess cash values to succeeding premiums due under the policies; or

(b) The Committee may direct the Trustee to request the insurer to convert the existing insurance policies to paid-up policies other than term insurance and issue new policies for the lower premiums at the attained age of the Participant; or to pay over the entire cash values to the Trustee upon surrender of the policies.

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### XII. <u>TRUST</u>

A. <u>Payment of Contributions</u>. All contributions under this Plan shall be paid to the Trustee to be held in trust under a Trust Agreement executed by the Employer and the Trustee, which Trust Agreement shall be incorporated herein by this reference.

B. <u>Participant Directed Accounts</u>. If allowed under Article I, each Participant shall have the right and power to direct the investment of all assets of the designated Accounts which have been allocated to and set aside in his or her name. Such power to direct investments shall be made in accordance with the provisions of the Trust Agreement and shall not include the power to invest in "collectibles" as defined in Section 408(m) of the Code and may be limited as described in the following paragraph.

The Committee may establish nondiscriminatory rules and procedures relating to Participants directing investments, Participants selecting brokers, Participants appointing investment managers and Plan fiduciaries meeting their duties under ERISA Section 404(c) and its regulations.

The Committee shall have the sole discretion to modify and replace any and all of these rules and procedures without further amendment to the Plan or Trust. The Committee shall notify the Trustee and Participants within a reasonable time after the adoption of any change to these rules and procedures. Inactive Participants are solely responsible for informing the Committee of current addresses where changes in these rules and procedures may be sent.

The Participant's right to direct the investment of their Accounts may be limited by the Committee's selection of investment options. The Committee shall have the sole discretion to delete or substitute investment options without further amendment to the Plan or Trust. Notice shall be given to Participants within a reasonable time after the adoption by the Committee of any changes in investment options. Inactive Participants shall have the sole responsibility for keeping the Committee informed of their current addresses for the Committee's use in informing such Inactive Participants of any changes in investment options.

#### ARTICLE XII

### XIII. THE ADMINISTRATIVE COMMITTEE

A. <u>Committee Membership</u>. The Sponsoring Employer shall appoint an administrative Committee of one (1) or more persons, some or all of whom may be officers or involved in management of the Employer; provided, however, that the Committee may be comprised of members of the Board, and the Employer may designate its Board to serve as the Committee as the same may be constituted from time to time. The Employer shall certify to the Trustee the names and specimen signatures of the members of the Committee. The Committee shall serve at the pleasure of the Employer and any members of the Committee may resign by written instrument addressed to the Employer and may be removed by the Employer with or without cause. While a vacancy exists, the remaining member(s) of the Committee may perform any act which the Committee is authorized to perform.

B. <u>Named Fiduciary and Plan Administration</u>. The Sponsoring Employer is the named fiduciary, administrator of the Plan, and agent to receive service of legal process and, except as otherwise provided for herein, shall have the authority to control and manage the operation and administration of the Plan. The Committee, as agent for the administrator and subject to the administrator's approval, shall make such rules, regulations, interpretations and computations and shall take such other action to administer the Plan as the Committee may deem appropriate in its sole discretion. The Committee shall administer the Plan in a non-discriminatory manner consistent with the requirements of Section 401(a) of the Code. The Committee shall resolve by majority vote all questions involving the interpretation, application and administration of the Plan. The Committee's resolution of such questions shall be final and binding upon the Participants, their Beneficiaries, and the successors, assigns, heirs and personal representatives of any of them. Subject to the provisions of Paragraph B of Article XII and the Committee's right to delegate responsibility as set forth in the Trust, the Committee shall direct the investment of the assets of the Trust by written direction to the Trustee.

C. <u>Compensation</u>. The members of the Committee shall receive no compensation for acting as such, but the Employer shall reimburse the Committee for all necessary and proper expenses incurred in administering this Plan.

D. <u>Delegation of Duties</u>. The Committee may, from time to time, allocate to one (1) or more of its members and may delegate to any other persons or organizations any of its rights, powers, duties and responsibilities with respect to the operation and administration of the Plan. Any such allocation and delegation of responsibilities shall be reviewed at least annually by the Committee and shall be revocable upon such notice as the Committee, in its sole discretion, deems reasonable and prudent under the circumstances. The Committee, on its own behalf or on behalf of the Trustee, may employ such persons or organizations to render advice or perform services with respect to responsibilities of the Committee under the Plan as the Committee, in its sole discretion,

### ARTICLE XIII

determines to be necessary and appropriate; provided, however, that the Committee must employ an enrolled actuary to perform the actuarial functions required by ERISA. Such persons or organizations may include, without limitation, attorneys, accountants and financial and administrative consultants.

All or any portion of the expenses incurred for such services or advice shall be borne by the Employer, if it so elects, and if the Employer does not so elect, such expenses shall be borne by the Trust. Expenses incurred for the administration of the Plan shall be deemed a liability of the Plan until such time as the expenses are paid by the Plan either as direct payments to the service providers or as reimbursements to the Employer in cases where the Employer has directly paid the service providers; provided, however, that reimbursements paid to the Employer must occur by the last day of the Plan Year following the later of the Plan Year during which the Employer paid such expenses.

E. <u>Bonding of Fiduciaries</u>. The Committee shall be responsible for seeing that every fiduciary of the Plan and Trust and every person who handles Trust assets shall be bonded to the extent required by the provisions of Section 412 of ERISA. The cost of such bond shall be paid by the Trustee out of Trust assets, upon direction of the Committee, if the cost thereof shall not be timely paid by the Employer.

F. <u>Action By Committee Members</u>. If the Committee is comprised of more than one (1) member, any one (1) member may execute any form, document or other paper on behalf of the Committee and thereby bind the Committee, if the Board or the other Committee members unanimously delegate such authority in writing.

### ARTICLE XIII

### XIV. <u>AMENDMENT AND TERMINATION; RETURN OF EMPLOYER</u> <u>CONTRIBUTIONS; PARTICIPATING EMPLOYERS</u>

A. <u>Amendment</u>. The Sponsoring Employer reserves the right to amend this Plan by written instrument, at any time and from time to time, in whole or in part, including without limitation, retroactive amendments necessary or advisable to qualify this Plan and the Trust under the provisions of Section 401(a) of the Code. However, no such amendment shall (i) reduce the Accrued Benefit of any Participant to the date the amendment is adopted, except to the extent that a reduction may be permitted or required by ERISA and the Code; or (ii) divert any part of the Trust assets to purposes other than for the exclusive benefit of the Participants, retired Participants or their joint annuitants or Beneficiaries who have an interest in the Plan or for the purpose of defraying reasonable expenses of administering the Plan. Further, no amendment of the Plan shall alter, change or modify the duties, powers or liabilities of the Trustee without its consent, or permit any part of the Trust to be used to pay premiums or contributions of the Employer under any other plan maintained by the Employer for the benefit of its Employees.

If this Plan is an amendment and restatement of a prior Plan that provided for an optional form of benefit after July 30, 1994 that is not provided herein, and such form of benefit cannot be eliminated under Section 411(d)(6) of the Code and Treasury Regulations issued pursuant thereto, then such optional form of benefit shall continue to be available under this Plan to the extent necessary to satisfy Section 411(d)(6) of the Code.

B. <u>Termination or Partial Termination or Complete Discontinuance of Contributions</u>. The Employer has established the Plan with a bona fide intention and expectation that it will be able to make contributions indefinitely. Nevertheless, the Employer is not and shall not be under any obligation or liability whatsoever to continue making contributions or to maintain the Plan for any given length of time. The Employer may in its sole and exclusive discretion discontinue such contributions, or terminate or partially terminate the Plan in accordance with its provisions, the Code and ERISA, if applicable, at any time without any liability whatsoever for any such discontinuance, termination or partial termination. If the Plan shall be terminated, partially terminated or the contributions of the Employer shall be completely discontinued, the rights of all affected Participants in their Accrued Benefits shall thereupon become fully vested and nonforfeitable notwithstanding any other provisions of this Plan. However, the Trust shall continue until all Participants' Accounts have been completely distributed to or for the benefit of the Participants or their Designated Beneficiaries in accordance with this Plan, unless the Board specifies that distributions shall occur as a result of such Plan termination.

Notwithstanding the foregoing, in the event the Plan is terminated, the administrative Committee shall remain in existence and all of the provisions of the Plan

### ARTICLE XIV

which in the opinion of said Committee are necessary to effectuate the termination of the Plan and the administration and distribution of Plan benefits shall remain in force. In addition, the Board of Directors and the Committee reserve the right to further amend or modify the Plan, including the adoption of any retroactive amendments or modifications, to the extent necessary or desirable to effectuate the termination of the Plan or if necessary or appropriate to qualify or maintain the Plan and the Trust Fund as a plan and trust meeting the requirements of Sections 401(a) and 501(a) of the Code or any other applicable law (including ERISA) and the Regulations issued thereunder, and any amendment necessary or advisable to conform the Plan to prior administrative practice shall be retroactive.

C. <u>Return of Employer Contributions</u>. Except as set forth in Paragraphs C.1, 2, 3 and 4 of this Article XIV, the assets of the Plan and Trust shall never inure to the benefit of the Employer and the same shall be held for the exclusive purpose of providing benefits to Participants and their Designated Beneficiaries and defraying reasonable expenses of administering the Plan and Trust.

1. <u>Mistake of Fact</u>. If a contribution is made by the Employer by a mistake of fact, the Trustee shall, on written direction of the Committee, return such contribution to the Employer, provided such return of contribution is made within one (1) year after the payment of such contribution.

2. <u>Initial Qualification</u>. Employer contributions shall be conditioned on the initial qualification of the Plan under Section 401 of the Code. If it is finally determined that the Plan is not initially qualified by the Commissioner of Internal Revenue, then such contributions shall be returned to the Employer no later than one (1) year after such final determination but only if the application for determination was filed by the time prescribed by law for filing the Employer's return for the taxable year in which the Plan is adopted or such later date as the Secretary of the Treasury may prescribe.

3. <u>Deductibility</u>. Employer contributions shall be conditioned upon the deductibility of such contributions under Section 404 of the Code. If such deductions are disallowed, then such contributions (to the extent disallowed) shall be returned to the Employer no later than one (1) year after the final disallowance of the deductions.

4. <u>Suspense Accounts</u>. If, upon termination of the Plan, there remain Trust assets held in suspense accounts because of the application of Section 415 of the Code, the Trustee shall return such assets to the Employer.

D. Procedure for Adoption and Withdrawal by Participating Employers.

1. <u>Adoption of the Plan</u>. Any member or future member of the Controlled Group, which is not already a Participating Employer under this Plan may, with the

### ARTICLE XIV

consent and approval of the Sponsoring Employer, adopt this Plan as a Participating Employer for all or any classification of persons in its employ. The adoption of this Plan by a Participating Employer shall be effected by resolution of its board of directors or other written instrument if the Participating Employer is an Unincorporated Entity. It shall not be necessary for any adopting Participating Employer to formally execute the Plan or Trust as then in effect. As to the Participating Employer, the effective date of its participation shall be stated in its resolutions, and it shall assume all the rights, obligations and liabilities of a Participating Employer under the Plan and Trust.

2. <u>Withdrawal from the Plan</u>. At any time, a Participating Employer, by resolution of its board of directors and notice to the Sponsoring Employer and Trustee, may withdraw from participation under the Plan. A withdrawing Participating Employer may arrange for the continuation of this Plan and Trust in a separate form for its own employees. The withdrawing Participating Employer may arrange for continuation of the Plan and Trust by merger with an existing plan and trust and may request, subject to the Sponsoring Employer's consent, the transfer to such plan and trust of all Trust assets representing the benefits of its employees.

3. <u>Continued Qualification of the Plan</u>. The Sponsoring Employer may request a determination from the appropriate District Director of the Internal Revenue Service to the effect that the Plan and Trust as adopted (and amended, as the case may be) by the Participating Employer continues to meet the requirements of tax-qualified status. If such determination is denied, the adoption by the Participating Employer shall become void and inoperative and any contributions made by or for the Participating Employer shall be promptly refunded by the Trustee. Furthermore, if the Plan or the Trust in its operation becomes disqualified under the Code for any reason because of the Plan's adoption by any Participating Employer, the portion of the Trust allocable to Participants employed by such Participating Employer shall be segregated as soon as is administratively feasible, pending the:

(a) Correction of the conditions which caused the Plan's disqualification to the satisfaction of the Internal Revenue Service; or

(b) Re-qualification of the Plan; or

(c) Withdrawal of such Participating Employer from the Plan and a continuation by itself or its successor of a separate qualified plan, or by merger with another existing qualified plan; or

(d) Termination of the Plan and Trust as to such Participating Employer and its Employees.

## ARTICLE XIV

## XV. STANDARD OF CONDUCT OF FIDUCIARIES

A. <u>Fiduciaries</u>. Each member of the Board and of the Committee and any other person to whom any fiduciary responsibility with respect to the Plan or Trust is allocated or delegated shall discharge his or her duties and responsibilities with respect to the Plan or Trust in accordance with the standards set forth in Section 401(a)(1) of ERISA and Paragraph B of this Article XV.

B. <u>Fiduciary Duties</u>. Subject to Sections 403(c) and (d), 4042, and 4044 of ERISA, a fiduciary shall discharge his or her duties with respect to the Plan solely in the interest of the Participants and Beneficiaries and:

1. For the exclusive purpose of:

(a) Providing benefits to Participants and their Beneficiaries; and

(b) Defraying reasonable expenses of administering the Plan;

2. With the care, skill, 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;

3. By diversifying the investments of the Plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

4. In accordance with the documents and instruments governing the Plan insofar as such documents and instruments are consistent with the provisions of this title.

## ARTICLE XV

#### XVI. MERGERS, CONSOLIDATIONS AND TRANSFERS OF ASSETS

A. <u>Merger or Consolidation of the Plan</u>. If this Plan and its Trust merge or consolidate with, or transfer assets or liabilities to, any other qualified plan of deferred compensation, no Participant shall, solely on account of such merger, consolidation or transfer, be entitled to a benefit on the date following such event which is less than the benefit to which he or she was entitled on the date preceding such event, such benefits to be determined as if the Plan had terminated on the date preceding such event (except that there shall be no grant of full vesting).

B. <u>Transfers From Other Qualified Plans – Rollovers</u>. There may be transferred to the Trustee, subject to the approval of the Employer, all or any of the assets held (whether by a trustee, custodian or otherwise) on behalf of any other plan which satisfies the applicable requirements of Section 401(a) of the Code, or any qualified Rollover Contributions which are maintained for the benefit of any persons who are or are about to become Participants. The Employer may require proof that a prior determination was made by the Internal Revenue Service that such transfer will not affect the qualified status of the Plan and Trust. Any such transfer of assets or Rollovers shall be held and administered in accordance with Article X of the Plan.

C. <u>Transfer To Eligible Retirement Plans</u>. Upon direction of the Participant delivered to the Committee, the Trustee is hereby authorized to transfer the assets representing the Vested Accrued Benefit of any Participant under this Plan to the Trustee of an Eligible Retirement Plan.

D. <u>Transfer or Merger of Money Purchase Pension Plan to this Plan</u>. Notwithstanding any provision of this Plan to the contrary, to the extent that any optional form of benefit under this Plan permits a distribution prior to Normal Retirement Age, death, disability, severance from employment or Plan termination, such optional form of benefit shall not be available with respect to benefits attributable to assets (including the earnings thereon) and liabilities that are transferred, within the meaning of Section 414(l) of the Code, to this Plan from a money purchase pension plan qualified under Section 401(a) of the Code (other than any portion of those assets and liabilities attributable to voluntary employee contributions).

## ARTICLE XVI

### XVII. MISCELLANEOUS

A. <u>Limitation of Rights and Employment Relationship</u>. Neither the establishment of the Plan and Trust nor any modification thereof, nor the creating of any fund or account, nor the payment of any benefits shall be construed as giving to any Participant or other person any legal or equitable right against the Employer or the Trustee except as provided in the Plan and Trust Agreement; and in no event shall the terms of employment of any Employee or Participant be modified or in any way be affected by the provisions of the Plan or Trust Agreement.

B. <u>Payments to Missing Persons</u>. If the Trustee is unable to effect deliver of any distribution to the person entitled to receive it or, upon such person's death, to such person's Designated Beneficiary, it shall so advise the Committee and the Committee shall give written notice to such person at his or her last known address as shown in the Employer's records. If such person shall not have presented himself or herself to the Employer after one (1) year from the date of mailing such notice, then such distribution shall be forfeited and applied to reduce current and future Employer contributions or allocated if Article I so provides. Alternatively, the Trustee shall have the discretion to use other means to protect the Participant's or Beneficiary's vested Accrued Benefit. A missing Participant's vested Accrued Benefit shall be reinstated if a claim is later made by the Participant or Beneficiary of the Participant for the forfeited benefit and such claim is approved by the Committee.

C. <u>Spendthrift Provisions</u>. Except with respect to a Participant loan, neither the Employer nor the Trustee shall recognize any transfer, mortgage, pledge, hypothecation, order or assignment by any Participant or Beneficiary of all or any part of his or her interest under the Plan and Trust. Any attempt by a Participant or Beneficiary to assign, alienate, sell, transfer, pledge or encumber his or her benefits shall be void. A Participant's or Beneficiary's interest shall not be subject in any manner to transfer by operation of law, and shall be exempt from the claims of creditors or other claimants (including but not limited to, debts, contracts, liabilities or torts) from all orders, decrees, levies, garnishments and/or executions and other legal or equitable process or proceedings against such Participant or Beneficiary to the full extent which may be permitted by law.

Notwithstanding the foregoing, this Paragraph C shall also apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a Participant pursuant to a domestic relations order, unless such order is determined to be a Qualified Domestic Relations Order. The Committee shall determine whether any domestic relations order submitted with respect to a Participant's benefits is a Qualified Domestic Relations Order and shall establish procedures for making such determination and notifying interested parties of its ruling. A domestic relations order entered into before January 1, 1985 (i) shall be treated as a Qualified Domestic Relations Order if the payment of benefits pursuant to the order has commenced as of such date; or (ii) at

### ARTICLE XVII

the Committee's discretion, may be treated as a Qualified Domestic Relations Order if the payment of benefits has not commenced as of January 1, 1985, even though the order does not satisfy the requirements of Section 414(p) of the Code.

D. <u>Indemnification</u>. The Employer shall indemnify and hold harmless the members of the Board of Directors and the Committee to whom any fiduciary responsibility with respect to the Plan is allocated or delegated, from and against any and all liabilities, costs and expenses incurred by such persons as a result of any act, or omission to act, in connection with the performance of their duties, responsibilities and obligations under the Plan and under ERISA, other than such liabilities, costs and expenses as may result from the bad faith or criminal acts of such persons.

E. <u>Applicable Laws</u>; <u>Severability</u>. The provisions of the Plan shall be construed and enforced according to ERISA and the Code and, to the extent applicable, according to the laws of the state in which the Sponsoring Employer maintains its principal place of business; provided, further, that if any provision is susceptible to more than one (1) interpretation, such interpretation shall be given thereto as is consistent with the Plan being a qualified employees' profit sharing or pension plan within the meaning of the Code. If any provision of this instrument shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions shall continue to be fully effective.

The Employer has executed this Plan on the 2nd, day of September, 2003.

## DH COMPOUNDING COMPANY

By: /s/ Dan Rader

/s/ Paul Geaslin

/s/ Theressa A. Myers

Its:

ARTICLE XVII

#### FIRST AMENDMENT TO THE

## DH COMPOUNDING COMPANY SAVINGS AND RETIREMENT PLAN AND TRUST

DH COMPOUNDING COMPANY, a Tennessee partnership (the "Employer"), hereby amends the DH COMPOUNDING COMPANY SAVINGS AND RETIREMENT PLAN AND TRUST to be effective as specified below:

1. The following paragraph is added to the Plan's preamble:

"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. This amendment shall supersede the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this amendment."

2. Paragraph H.2 of Article I is amended to add the following:

"Effective on and after January 1, 2002, catch-up contributions described in Paragraph D.2 of Article IV shall apply."

3. If applicable, Paragraph M.4 of Article I is amended to replace 25% with 100% wherever it appears.

4. Paragraph T of Article I shall not be amended.

5. Paragraph V of Article I with respect to Matching Contributions is not affected since the current vesting schedule for Matching Contributions satisfy Section 4II of the Code as amended by EGTRRA.

6. Paragraph BB of Article I is not affected since the Plan does not provide for hardship distributions.

7. Paragraph DD of Article I is amended to add Paragraph DD.5:

"5. For distributions made after 05/01/2003 to Participants who have separated from service after 05/01/2003, this Plan shall exclude Rollover Contributions (and earnings allocable thereto) in determining the value of the Participant's vested Accrued Benefit for purposes of the involuntary cash-out limit of \$5,000."

8. Paragraph EE of Article I is amended to add the following paragraph:

"Distribution upon severance from employment shall apply for distributions after 05/01/2003 regardless of when the severance from employment occurred."

9. Paragraph A.11 of Article II is amended to add subparagraph (c):

"(c) For Plan Years beginning after December 31, 2001, the annual Compensation of each Participant taken into account in determining allocations for any Plan Year shall not exceed \$200,000. The Compensation Limitation shall be 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). 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."

10. Paragraph A.11 of Article II is amended to add a reference to subparagraph (c) in the last paragraph thereof.

11. Paragraph A.16 of Article II is amended to add the following sentence:

"Effective for Limitation Years beginning after December 31, 2001, Defined Contribution Dollar Limitation means \$40,000 as adjusted for increases in the cost-of-living under Section 415(d) of the Code."

12. Paragraph A.28 of Article II is amended to add the following paragraph:

"For distributions made after December 31, 2001, 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. An Eligible Retirement Plan shall also

apply in the case of a distribution made to a Surviving Spouse, or to a Spouse or former Spouse who is the alternate payee under a Qualified Domestic Relation Order."

13. Paragraph A.29 of Article II is amended to add the following paragraphs:

"Notwithstanding the above, any amount that is distributed on account of hardship on and after January 1, 2002, shall not be an Eligible Rollover Distribution and the Distribute may not elect to have any portion of such a distribution paid directly to an Eligible Retirement Plan.

A portion of a distribution made after December 31, 2001 shall not fail to be an Eligible Rollover Distribution merely because the portion consists of Employee After-Tax Contributions which are not includible in gross income. However, such portion may be transferred only to a traditional 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."

14. Paragraph D.2 of Article IV is amended to add the following:

"If provided in Paragraph H.2 of Article I, all Employees who are eligible to make Elective Contributions under this Plan and who have attained age 50 by the end of the taxable 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 Section 401(k)(3), 401(k)(11), 410(b), or 416 of the Code, as applicable, by reason of the making of such catch-up contributions."

15. Paragraph H of Article IV is amended to add the following paragraph:

"Except to the extent permitted under H.2 of Article I as amended by this amendment relating to catch-up contributions and Section 414(v) of the Code, if applicable, 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."

16. Paragraph P of Article IV is amended to add Paragraph P.7:

"7. If provided in Article I, this paragraph shall apply for distributions and severances from employment occurring after the dates specified in Article I. A Participant's Elective Contributions, Qualified Nonelective Employer Contributions, Qualified Matching Contributions, and earnings attributable to such contributions shall be distributed on account of the Participant's severance from employment. However, such distributions 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."

17. Subparagraph Q.3(c) of Article IV is amended to add the following paragraph:

"Notwithstanding the preceding paragraph, a Participant who receives a distribution of Elective Contributions after December 31, 2001, on account of hardship shall be prohibited from making Elective Contributions and Employee After-Tax Contributions under this and all other plans of the Employer for six (6) months after receipt of the distribution. A Participant who receives a distribution of Elective Contributions in calendar year 2001 on account of hardship shall be prohibited from making Elective Contributions and Employee After-Tax Contributions under this and all other plans of the Employer for the period specified by the Employer in Article I."

18. Paragraph E.1 of Article V is amended in its entirety to read as follows:

"1. <u>Dollar Amount and Percentage Limitations</u>. Except to the extent permitted under H.2 of Article I as amended by this amendment relating to catchup contributions, and Section 414(v) of the Code, the Annual Addition to a Participant's Accounts shall not exceed the lesser of:

(a) The Defined Contribution Dollar Limitation; or

(b) 100% of the Participant's Section 415 Compensation for the Limitation Year; provided, however, that this compensation limitation shall not apply to:

(i) Any contribution for medical benefits (within the meaning of Section 401(h) or 419A(f)(2) of the Code) after separation from service which is otherwise treated as an Annual Addition; or

(ii) Any amount otherwise treated as an Annual Addition under Section 415(l)(1) of the Code.

(c) For purposes of applying the limitation described in this Paragraph E, Section 415 Compensation shall include elective amounts that are not includible in the gross income of the Employee by reason of Section 132(f)(4) of the Code."

19. Paragraph B.3 of Article VI is amended to add the following paragraph:

"If provided in Article I, for purposes of this Paragraph B.3, the value of a Participant's vested Accrued Benefit shall be determined without regard to that portion of the vested Accrued Benefit that is attributable to Rollover Contributions (and earnings allocable thereto). If the value of the Participant's vested Accrued Benefit as so determined is \$5,000 or less, the Plan shall distribute the Participant's entire vested Accrued Benefit."

20. Paragraph H of Article VII is amended to add the following sentence to the second to last paragraph:

"Effective for Plan loans made after December 31, 2001, the preceding sentence prohibiting loans to any Owner-Employee or Shareholder-Employee shall cease to apply."

The provisions of items 21 through 25 of this amendment 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.

21. The following paragraph is added to the preamble of Article VIII:

"For Plan Years beginning after December 31, 2001, the top-heavy requirements of Section 416 of the Code and Paragraph E of this Article VIII shall not apply, if this Plan consists solely of a cash or deferred arrangement which meets the requirements of Section 401(k)(12) of the Code and Matching Contributions that comply with the requirements of Section 401(m)(11) of the Code. "

22. Paragraph A.2 of Article VIII is amended for Plan Years beginning after December 31, 2001 to read as follows:

"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 (i) an officer of the Employer having Section 415 Compensation greater than \$130,000 (as adjusted under Section 416(i)(1) of the Code for Plan Years beginning after December 31, 2002); (ii) a 5% Owner of the Employer; or (iii) a 1% Owner

of the Employer having Section 415 Compensation of more than \$150,000. 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."

23. Paragraph C.2 of Article VIII is amended to add the following paragraph:

"For Plan Years beginning after December 31, 2001, the present values of Accrued Benefits and Accounts 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 one (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 employment, death, or Total Disability, this provision shall be applied by substituting five (5) year period for one (1) year period."

24. Paragraph C.5 of Article VIII is amended to add the following paragraph:

"For Plan Years beginning after December 31, 2001, Accounts and Accrued Benefits of any individual who has not performed services for the Employer during the one (1) year period ending on the Determination Date shall not be taken into account."

25. Paragraph E.3 of Article VIII is amended to add the following paragraph:

"For Plan Years beginning after December 31, 2001, Matching Contributions shall be taken into account for purposes of satisfying the top-heavy 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 this Plan or, if Article I provides that the minimum contribution requirement shall be met in another plan, such other plan. Matching Contributions that are used to satisfy the minimum contribution requirements shall be treated as Matching Contributions for purposes of the Contribution Percentage test and other requirements of Section 401(m) of the Code."

26. Paragraph B of Article X is amended to add the following paragraph:

"If provided in Article I, this Plan will accept Rollover Contributions and direct rollovers of distributions made after December 31, 2001, from the types of plans

specified in Article I, beginning on the effective date specified in Article I."

27. Paragraph O of Article X is amended to add Paragraph O.3:

"3. <u>Repeal of Multiple Use</u>.

For Plan Years beginning after December 31, 2001, the multiple use test described in Treasury Regulation Section 1.401(m)-2 and this Paragraph O shall not apply."

IN WITNESS WHEREOF, the Employer has caused this First Amendment to be executed by its duly represented officer, this 2nd day of September, 2003.

# EMPLOYER:

By: /s/ Dan Rader

/s/ Paul Geaslin

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/s/ Theressa A. Myers

Its:

#### Second AMENDMENT TO THE

#### DH COMPOUNDING COMPANY SAVINGS AND RETIREMENT PLAN AND TRUST

DH COMPOUNDING COMPANY, a Tennessee partnership (the "Employer"), hereby amends the DH COMPOUNDING COMPANY SAVINGS AND RETIREMENT PLAN AND TRUST to be effective as specified below:

1. Paragraph K of Article I is amended to add the following paragraph:

"Effective for Plan Years beginning on and after 01/01/1998 and Limitation Years beginning on and after 01/01/1998, for purposes of the definition of Compensation under this Paragraph K, Paragraphs A.30, A.41 and A.76 of Article II, Paragraph E.1 of Article V and Paragraphs A.2 and E of Article VIII, amounts under Section 125 of the Code include any amounts not available to a Participant in cash in lieu of group health coverage because the Participant is unable to certify that he or she has other health coverage. An amount will be treated as an amount under Section 125 of the Code only if the Employer does not request or collect information regarding the Participant's other health coverage as part of the enrollment process for the health plan."

2. Paragraph PP.4 of Article I is amended to add the following paragraphs:

"Notwithstanding the preceding paragraph and any inconsistent provisions of the Plan, for purposes of determining required minimum distributions for Distribution Calendar Years beginning with the 2003 calendar year, as well as required minimum distributions for the 2002 Distribution Calendar Year that are made on or after 12/31/2002, this Plan will apply the minimum distribution requirements of Section 401(a)(9) of the Code in accordance with Final and Temporary Regulations issued on April 17, 2002.

For purposes of this Paragraph PP.4 and Article VII, Distribution Calendar Year means a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin under subparagraph C.2(a) of Article VII. The required minimum distribution for the Participant's first Distribution Calendar Years, including the required minimum distribution for the Distribution for the Distribution Calendar Year in which the Participant's required beginning date occurs, will be made on or before December 31 of that Distribution Calendar Year."

3. Paragraph PP.5 is added to the Article I to read as follows:

"5. <u>Election to Apply 5-Year Rule to Distributions to Designated Beneficiaries</u>. The provisions of subparagraph C.2(a) of Article VII of the Plan will not be modified."

4. Paragraph PP.6 is added to the Article I to read as follows:

"6. <u>Election to Allow Participants or Beneficiaries to elect the 5-Year Rule</u>. Participants or Beneficiaries may not elect on an individual basis whether the 5-year rule or the life expectancy rule in subparagraph C.2(a), (d), (e) and (f) of Article VII of the Plan applies to distributions after the death of a Participant who has a Designated Beneficiary. The election must be made no later than the earlier of September 30 of the calendar year in which distribution would be required to begin under subparagraph C.2(a) of Article VII of the Plan, or by September 30 of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, Surviving Spouse's) death. If neither the Participant nor Beneficiary makes an election under this paragraph, distributions will be made in accordance with subparagraphs C.2(a), (d), (e) and (f) of Article VII of the Plan and, if applicable, the elections in Paragraph PP.5 of this Article I. "

5. Paragraph PP.7 is added to the Article I to read as follows:

"7. <u>Election to Allow Designated Beneficiary Receiving Distributions Under 5-Year Rule to Elect Life Expectancy Distributions</u>. A Designated Beneficiary who is receiving payments under the 5-year rule may not make a new election to receive payments under the life expectancy rule until December 31, 2003, provided that all amounts that would have been required to be distributed under the life expectancy rule for all Distribution Calendar Years before 2004 are distributed by the earlier of December 31, 2003 or the end of the 5-year period."

6. Effective on and after the date specified in Paragraph PP.4 of Article I, Paragraph B.9 of Article VII is amended to delete the last three (3) paragraphs.

7. The following new Paragraphs are added as B.10, B.11 and B.12 and the former Paragraph B.10 is redesignated as Paragraph B.13:

"10. <u>Coordination with Minimum Distribution Requirements Previously in Effect</u>. If Article I specifies an effective date to apply the Final and Temporary Regulations under Section 401(a)(9) of the Code that is earlier than calendar years beginning with the 2003 calendar year, required minimum distributions for 2002 under this Article VII will be determined as follows:

(a) If the total amount of 2002 required minimum distributions under the Plan made to the Distributee or Designated Beneficiary prior to the effective date stated in

Paragraph PP.4 of Article I equals or exceeds the required minimum distributions determined after the effective date in such Paragraph, then no additional distributions will be required to be made for 2002 on or after such date to the Distributee or Designated Beneficiary.

(b) If the total amount of 2002 required minimum distributions under the Plan made to the Distributee or Designated Beneficiary prior to the effective date of Paragraph PP.4 of Article I is less than the amount determined after the effective date of such Paragraph, then required minimum distributions for 2002 on and after such date will be determined so that the total amount of required minimum distributions for 2002 made to the Distributee or Designated Beneficiary will be the amount determined after the effective date of Article I.

Notwithstanding the other provisions of this Article VII, distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of TEFRA and the provisions of Paragraph G of this Article VII.

11. <u>Amount of Required Minimum Distribution During the Participant's Lifetime</u>. During the Participant's lifetime, the minimum amount that will be distributed for each Distribution Calendar Year is the lesser of:

(a) the quotient obtained by dividing the Participant's account balance by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Final Treasury Regulations, using the Participant's age as of the Participant's birthday in the Distribution Calendar Year; or

(b) if the Participant's sole Designated Beneficiary for the Distribution Calendar Year is the Participant's Spouse, the quotient obtained by dividing the Participant's account balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Final Treasury Regulations, using the Participant's and Spouse's attained ages as of the Participant's and Spouse's birthdays in the Distribution Calendar Year.

For purposes of Paragraphs B and C of this Article VII, a Participant's account balance shall equal his or her Accrued Benefit as of the last Valuation Date in the calendar year immediately preceding the Distribution Calendar Year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the account balance as of dates in the valuation calendar year after the Valuation Date and decreased by distributions made in the valuation calendar year after the Valuation Date. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the Distribution Calendar Year if distributed or transferred in the valuation calendar year.

For purposes of required minimum distributions, life expectancy, where applicable, shall be computed by use of the Single Life Table in Section 1.401(a) (9)-4 of the Final Treasury Regulations.

For the purposes of Paragraphs B and C of this Article VII, Designated Beneficiary means the individual who is designated as the Beneficiary as described in Paragraph A.19 of Article II and is the Designated Beneficiary under Section 401(a)(9) of the Code and Section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.

Required minimum distributions will be determined under this Paragraph B.11 beginning with the first Distribution Calendar Year and up to and including the Distribution Calendar Year that includes the Participant's date of death.

12. <u>Forms of Distribution</u>. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first Distribution Calendar Year distributions will be made in accordance with Paragraph B.11 and subparagraphs C.2(b), (c), (d), (e) and (f) of this Article VII. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Code and the Final and Temporary Treasury Regulations issued on April 17, 2002."

8. Paragraph C.2 of Article VII is amended in its entirety to read as follows:

"2. Time of Distribution Upon Death. Upon the death of a Participant, the following distribution provisions shall apply:

(a) If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

(i) If the Participant's Surviving Spouse is the Participant's sole Designated Beneficiary, then, except as provided in Article I, distributions to the Surviving Spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70<sup>1</sup>/<sub>2</sub>, if later.

(ii) If the Participant's Surviving Spouse is not the Participant's sole Designated Beneficiary, then, except as provided in Article I, distributions to the Designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(iii) If there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(iv) If the Participant's Surviving Spouse is the Participant's sole Designated Beneficiary and the Surviving Spouse dies after the Participant but before distributions to the Surviving Spouse begin, this subparagraph C.2(a), other than subparagraph C.2(a)(i), will apply as if the Surviving Spouse were the Participant.

For purposes of this Paragraph C.2, unless subparagraph C.2(a)(iv) applies, distributions are considered to begin on the Participant's required beginning date. If subparagraph C.2(a)(iv) applies, distributions are considered to begin on the date distributions are required to begin to the Surviving Spouse under subparagraph C.2(a)(i). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's required beginning date (or to the Participant's Surviving Spouse before the date distributions are required to begin to the Surviving Spouse under subparagraph C.2(a)(i), the date distributions are considered to begin is the date distributions actually commence.

(b) If the Participant dies on or after the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's Designated Beneficiary, determined as follows:

(i) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one (1) for each subsequent year.

(ii) If the Participant's Surviving Spouse is the Participant's sole Designated Beneficiary, the remaining life expectancy of the Surviving Spouse is calculated for each Distribution Calendar Year after the year of the Participant's death using the Surviving Spouse's age as of the Spouse's birthday in that year. For Distribution Calendar Years after the year of the Surviving Spouse's death, the remaining life expectancy of the Surviving Spouse is calculated using the age of the Surviving Spouse as of the Spouse's birthday in the calendar year of the Spouse's death, reduced by one (1) for each subsequent calendar year.

(iii) If the Participant's Surviving Spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary's remaining life expectancy is

calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one (1) for each subsequent year.

(c) If the Participant dies on or after the date distributions begin and there is no Designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one (1) for each subsequent year.

(d) Except as provided in Article I, if the Participant dies before the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the remaining life expectancy of the Participant's Designated Beneficiary, determined as provided in subparagraph C.2(b) and (c) of the Article VII.

(e) If the Participant dies before the date distributions begin and there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(f) If the Participant dies before the date distributions begin, the Participant's Surviving Spouse is the Participant's sole Designated Beneficiary, and the Surviving Spouse dies before distributions are required to begin to the Surviving Spouse under subparagraph C.2(a)(i), then subparagraphs C.2(d), (c) and (f) of this Article VII will apply as if the Surviving Spouse were the Participant."

IN WITNESS WHEREOF, the Employer has caused this Second Amendment to be executed by its duly represented officer, this 2nd day of September, 2003.

EMPLOYER:

By: /s/ Dan Rader

/s/ Paul Geaslin

/s/ Theressa A. Myers

Its:

#### THIRD AMENDMENT TO THE

### DH COMPOUNDING COMPANY SAVINGS AND RETIREMENT PLAN AND TRUST

DH COMPOUNDING COMPANY, a Tennessee partnership (the "Employer"), hereby amends the DH COMPOUNDING COMPANY SAVINGS AND RETIREMENT PLAN AND TRUST to be effective for distributions made on and after March 28, 2005, as stated below. Notwithstanding anything to the contrary contained in the Plan, the following amendment is intended solely to comply in good faith with Section 401(a)(31)(B) of the Code pursuant to IRS Notice 2005-5:

Paragraph DD.1 of Article I is amended to add the following:

"In the event of an involuntary cash-out distribution greater than \$1,000 (including Rollover Contributions) in accordance with the provisions of Paragraphs B of Article VI and B.5 of Article VII, if the Participant does not elect to have such distribution paid directly to an Eligible Retirement Plan specified by the Participant in a direct rollover or to receive the distribution directly in accordance with Paragraphs HH of Article I and B.3 of Article VII, then the Committee will pay the distribution in a direct rollover to an individual retirement plan designated by the Committee."

IN WITNESS WHEREOF, the Employer has caused this THIRD Amendment to be executed by its duly represented officer this 9th day of December, 2005.

EMPLOYER:

By: /s/ Dan Rader

/s/ Theressa A. Myers

Its:

DH COMPOUNDING COMPANY SAVINGS AND RETIREMENT PLAN AND TRUST

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#### SPECIAL PLAN AMENDMENT TO THE

# DH COMPOUNDING COMPANY SAVINGS AND RETIREMENT PLAN AND TRUST

Pursuant to the "word-for-word" adoption rules set forth by the Internal Revenue Service in Revenue Procedure 2000-20 and Announcement 2001-77, DH COMPOUNDING COMPANY, a Tennessee partnership (the "Employer"), hereby amends the DH COMPOUNDING COMPANY SAVINGS AND RETIREMENT PLAN AND TRUST to be effective for Plan Years beginning after December 31, 1996 or as otherwise stated in the Plan. This Special Plan Amendment adopts all wording and clarification changes made to the Lead Specimen Volume Submitter Profit Sharing & Retirement Savings Plan as approved by the Internal Revenue Service and incorporated into the Advisory Letters. The amendments to the Plan made herein are deemed adopted as if they were part of either the GUST amendment and restatement of the Plan as of the date adopted by the Employer or the Plan as adopted by the Employer that initially complied with GUST.

1. Article I is amended as follows:

- (A) If Article I, Paragraph E "Limitation Year" of the Plan contains the phrase "Limitation Year" means and initial period", it shall be replaced with "Limitation Year" means the initial period".
- (B) If Article I, Paragraph F.2 "Service" of the Plan begins with the phrase "For purposes of sharing in Nonelective Employer Contributions," the comma before the words "if any" and the words "if any" shall be deleted.
- (C) If Article I, Paragraph F.2 "<u>Service</u>" of the Plan contains the phrase "For purposes of sharing in all other contributions" the comma before the words "if any" and the words "if any" shall be deleted.

- (D) If Article I, Paragraph F.2 "Service" of the Plan contains the phrase "the preceding paragraph, and the attainment of age requirement stated above, if any", the comma after the word "paragraph" and the words "if any" shall be deleted.
- (E) If Article I, Paragraph F.6 "<u>Class Exclusions</u>" of the Plan contains the phrase "An individual shall be excluded", the words "other than a Self-Employed Individual" shall be added after the word "individual" and before the word "shall".
- (F) If Article I, Paragraph F.6 "<u>Class Exclusions</u>" of the Plan contains the phrase "An individual shall be excluded", the period at the end of the sentence shall be replaced with a semicolon and the following sentence shall be added after the semicolon: "provided, however, that an otherwise eligible Employee shall not be excluded under this provision merely because he or she is paid via a payroll service for the convenience of the Employer."
- (G) If Article I, Paragraph H.1 "<u>Nonelective Employer Contributions</u>" of the Plan contains the phrase "Nonelective Employer contributions" it shall be replaced with the phrase "Nonelective Employer Contributions".
- (H) If Article I, Paragraph H.5 "Qualified Matching Contributions" of the Plan contains the phrase "contribute on behalf of all Non-Highly Compensated Employees" it shall be replaced with "contribute on behalf of all Non-Highly Compensated Participants" and the comma after the word needed shall be deleted.
- (I) If Article I, Paragraph H.5 "<u>Qualified Matching Contributions</u>" of the Plan contains the phrase "Qualified Matching Employer Contribution shall be allocated to each member of each select group" the word "Employer" shall be deleted.
- (J) If Article I, Paragraph H.5 "Qualified Matching Contributions" of the Plan contains the phrase "The determination of the group and number of Non-Highly Compensated Employees to receive an allocation of Qualified Matching Employer Contributions", the word "Employer" shall be deleted.
- (K) If Article I, Paragraph J.1 "<u>Required Minimum Benefits</u>" of the Plan contains the phrase "Three percent", then it shall be deleted and the following shall be added at the beginning of the sentence in its place: "The top-heavy minimum benefit shall be three percent (3%)".

- (L) If Article I, Paragraph J.1 "<u>Required Minimum Benefits</u>" of the Plan contains the phrase "Four percent", then it shall be deleted and the following shall be added at the beginning of the sentence in its place: "The top-heavy minimum benefit shall be four percent (4%)".
- (M) If Article I, Paragraph K "<u>Compensation</u>" of the Plan contains the phrase "Compensation" means Section 415 Compensation, not to exceed the Compensation Limitation, paid by the Employer to any Employee during a Plan Year, which is subject to withholding of income tax under Section 3401(a) of the Code, excluding all Employee expenses, reimbursements, and other fringe benefit allowances paid during the Plan Year" it shall be replaced with "Compensation" means Section 415 Compensation, not to exceed the Compensation Limitation, paid by the Employer to any Employee during a Plan Year, excluding all Employee expenses, reimbursement and other fringe benefit allowances paid during the Plan Year which are subject to withholding of income tax under Section 3401(a) of the Code".
- (N) If Article I, Paragraph K "<u>Compensation</u>" of the Plan contains the phrase "Compensation" means Section 415 Compensation, not to exceed the Compensation Limitation, paid by the Employer to any Employee during a calendar year, excluding all Employee expenses, reimbursements, and other fringe benefit allowances paid during the Plan Year which is subject to withholding of income tax under Section 3401(a) of the Code" it shall be replaced with "Compensation" means Section 415 Compensation, not to exceed the Compensation Limitation, paid by the Employer to any Employee during a calendar year, excluding all Employee expenses, reimbursement and other fringe benefit allowances paid during the calendar year which are subject to withholding of income tax under Section 3401(a) of the Code".
- (O) If Article I, Paragraph K "<u>Compensation</u>" of the Plan contains the phrase "Compensation" means Section 415 Compensation, not to exceed the Compensation Limitation, paid by the Employer to any Employee during a 12 month period ending on the last day of the Plan Year, excluding all Employee expenses, reimbursements, and other fringe benefit allowances paid during the Plan Year which is subject to withholding of income tax under Section 3401(a) of the Code" it shall be replaced with "Compensation" means Section 415 Compensation, not to exceed the Compensation Limitation, paid by the Employer to any Employee during a 12 month period ending on the last day of the Plan Year, excluding all Employee expenses, reimbursement and other fringe benefit allowances paid during the 12 month period ending on the last day of the Plan Year which are

subject to withholding of income tax under Section 3401(a) of the Code".

- (P) If Article I, Paragraph L "<u>Highly Compensated Employees and Current or Prior Testing Methods</u>" of the Plan contains the phrase "In determining the total number of active Employees who are in the Top-Paid Group for any Plan Year" then it shall be replaced with "In determining the total number of active Employees for purposes of the Top-Paid Group election for any Plan Year".
- (Q) If Article I, Paragraph M.4 "<u>Ratio of Compensation Formula</u>" of the Plan contains the phrase "Nonelective Employer Contributions for each Plan Year shall be allocated to the Employer Contribution Accounts of each Participant" the word "Nonelective" shall be added before the words "Employer Contribution Accounts of each Participant".
- (R) If Article I, Paragraph M.4 "Cross-Tested Plan Formula" of the Plan contains the phrase "Any Nonelective Employee Contribution made to Group" shall be replaced with "Any Nonelective Employer Contribution made to Group".
- (S) If Article I, Paragraph M.4 "<u>Cross-Tested Plan Formula</u>" of the Plan contains the phrase "(c) Any remaining Nonelective Employer Contribution shall be allocated based on an equal dollar amount for each Participant other than eligible Partners" it shall be replaced with "(c) Any remaining Nonelective Employer Contributions shall be allocated based on an equal dollar amount for each Participant other than eligible partners".
- (T) If Article I, Paragraph M.4 "<u>Cross-Tested Plan Formula</u>" of the Plan contains the phrase "(c) Any remaining Nonelective Employer Contribution shall be allocated based on an equal dollar amount for each Participant other than eligible Shareholders" it shall be replaced with "(c) Any remaining Nonelective Employer Contributions shall be allocated based on an equal dollar amount for each Participant other than eligible shareholders".
- (U) If Article I, Paragraph M.4 "<u>Nonelective Employer Contributions</u>" of the Plan contains a paragraph that begins "For Plan Years beginning after December 31, 2001, the preceding allocation formula of this Paragraph M.4 shall satisfy" and does not include the words "service-based", then the entire paragraph shall be replaced with the following:

"For Plan Years beginning after December 31, 2001, the preceding allocation formula of this Paragraph M.4 shall satisfy at least one (1) of the following: (i) the Plan has broadly available allocation rates within the meaning of Treasury Regulation Section 1.401(a)(4)-8(b)(1)(iii) for the Plan Year; (ii) the Plan has age-based or service-based allocation rates that are based on either a gradual age or service schedule within the meaning of Treasury Regulation Section 1.401(a)(4)-8(b)(1)(iv) or a uniform target benefit allocation within the meaning of Treasury Regulation Section 1.401(a)(4)-8(b)(1)(v) for the Plan Year; (iii) the Plan satisfies the minimum allocation gateway by providing a minimum allocation rate to each Non-Highly Compensated Participant who receives an allocation of Nonelective Employer Contributions (including any top-heavy minimum benefits or forfeitures used as Nonelective Employer Contributions), Qualified Nonelective Employer Contributions, or Safe Harbor Nonelective Employer Contributions. Such minimum allocation rate is at least (a) 1/3 of the allocation rate of the Highly Compensated Participant who receives at least a five percent (5%) allocation rate of Section 415 Compensation to each Nonhighly Compensated Participant. For purposes of this paragraph, a Participant's allocation rate equals the sum of Nonelective Employer Contributions (including any top-heavy minimum benefits), Qualified Nonelective Employer Contribution, Safe Harbor Nonelective Employer Contributions and forfeitures used as Nonelective Employer Contributions, allocation rate equals the sum of Nonelective Employer Contributions (including any top-heavy minimum benefits), Qualified Nonelective Employer Contribution, Safe Harbor Nonelective Employer Contributions and forfeitures used as Nonelective Employer Contributions allocated to the Participant divided by the Participant's Compensation."

- (V) If Article I, Paragraph O "Participant Forfeitures" of the Plan contains the phrase "Compensation bears to all such Participant" it shall be replaced with "Compensation bears to all such Participants".
- (W) If Article I, Paragraph P.1 "Last Day Employment and Hours of Service Required" of the Plan contains the phrase "and unallocated forfeitures, if applicable" it shall be deleted.
- (X) If Article I, Paragraph P.1 "Last Day Employment and Hours of Service Required" of the Plan references "Section 410(b)(1)(A) of the Code" it shall be replaced with "Section 410(b)(1)(B) of the Code" wherever it appears.

- (Y) If Article I, Paragraph P.1 "Last Day Employment- Not Required" of the Plan references "Section 410(b)(1)(A) of the Code" it shall be replaced with "Section 410(b)(1)(B) of the Code" wherever it appears.
- (Z) If Article I, Paragraph P.1 "<u>Hours of Service Not Required</u>" of the Plan references "Section 410(b)(1)(A) of the Code" it shall be replaced with "Section 410(b)(1)(B) of the Code" wherever it appears.
- (AA) If Article I, Paragraph U "<u>Normal Retirement Age</u>" of the Plan contains the phrase "the 5<sup>th</sup> anniversary of the Participant commencement" the word "Participant" shall be replaced with the word "Participant's".
- (BB) If Article I, Paragraph BB "Hardship Withdrawals" of the Plan contains the phrase "the Employee's spouse" it shall be replaced with "the Employee's Spouse".
- (CC) If Article I, Paragraph CC "<u>In-Service Distributions Other Than Hardship</u>" of the Plan contains the words "Qualified Nonelective Contribution Account" is shall be replaced with the words "Qualified Nonelective Employer Contribution Account".
- 2. Article II is amended as follows:
  - (A) Paragraph A.41 of Article II shall be amended to replace the term "<u>Highly Compensated Employee</u>" with the term "<u>Highly Compensated Employee</u>" or <u>"Highly Compensated Participant</u>".
  - (B) Paragraph A.54 of Article II shall be amended to replace the term "<u>Non-Highly Compensated Employee</u>" with the term "<u>Non-Highly Compensated Participant</u>".
  - (C) Paragraph A.76(c) of Article II shall be amended to delete "and compensation recognized as a result of a Section 83(b) election" and amended to add the following after the word "bonuses": ", fringe benefits, and reimbursements or other expense allowances under a nonaccountable plan."
  - (D) Paragraph B.13 of Article II shall be amended to delete "13."
- 3. Article IV is amended as follows:
  - (A) The first Paragraph of F.6 "Safe Harbor Contributions" of Article IV beginning with the words "For Plan Years beginning after

December 31, 2001", shall be deleted and replaced in its entirety with the following paragraph:

"For Plan Years beginning after September 30, 2003 or such other date required by the Internal Revenue Service, safe harbor provisions under Section 401(k)(12) of the Code must be adopted prior to the first day of the Plan Year in which such provisions became effective. "

- (B) Paragraph J.5 "<u>Recharacterization of Excess Contributions</u>" of Article IV shall be amended to replace "in the absence of Recharacterization", with "in the absence of recharacterization".
- 4. Article V is amended as follows:
  - (A) Paragraph F "<u>Allocation Priorities if Limitations Exceeded</u>" of Article V shall be amended to replace "shall be accomplished as follows," with "shall be accomplished as follows."
- 5. Article VI is amended as follows:
  - (A) Paragraph A.3 "Safe Harbor Contributions" of Article VI shall be amended to replace the word "Nonelection" with "Nonelective".
- 6. Article VII is amended as follows:
  - (A) The fifth paragraph of Paragraph B.9 "<u>Commencement of Benefits</u>" of Article VII shall be amended to delete "December 31" and replace it with "April 1" wherever it appears.
- 7. Article VIII is amended as follows:
  - (A) Paragraph G. "<u>Multiple Plans</u> of Article VIII shall be amended to replace "the minimum benefits described in such Paragraph E.1 shall be provided under the Plan designated in Article I."
- 8. Article X is amended as follows:
  - (A) Paragraph G.3 "<u>Safe Harbor Matching Contributions</u>" of Article X shall be amended to change the title "<u>Safe Harbor Matching Contributions</u>" to "<u>Safe Harbor Matching Contributions</u> and <u>Safe Harbor Nonelective Employer Contributions</u>"</u>.

- (B) The first sentence of Paragraph G.3 "<u>Safe Harbor Matching Contributions</u>" of Article X shall be amended to add the words "or Safe Harbor Nonelective Employer Contributions" after the words "If Safe Harbor Matching Contributions".
- (C) Paragraph G.3.a "Safe Harbor Matching Contributions" of Article X shall be amended to add the words "or Safe Harbor Nonelective Employer Contributions" after the words "Safe Harbor Matching Contributions".
- (D) Paragraph G.3.b "<u>Safe Harbor Matching Contributions</u>" of Article X shall be amended to replace the semicolon after the phrase "no other Matching Contributions are provided under this Plan;" with a period and the following sentence shall be added after the period: "Alternatively, the Plan provides for a Safe Harbor Nonelective Employer Contribution formula that satisfies Section 401(k)(12)(C) of the Code and any required Matching Contributions that do not exceed six percent 6% of Compensation;".
- 9. Article XI is amended as follows:
  - (A) Paragraph A "<u>Investment and Ownership of Life Insurance Policies</u>" of Article XI shall be amended to replace "on the life of an individual Participant." with "on the life of a Participant or a member of the Participant's family or on the joint life expectancy of a Participant and a member of the Participant's family."

IN WITNESS WHEREOF, the Employer has caused this Special Plan Amendment to be executed by its duly represented officer, this 3rd day of September, 2003.

EMPLOYER: DH COMPOUNDING COMPANY

By: /s/ Dan Rader

/s/ Theressa A. Myers	
/s/ Paul Geaslin	

### Amendment Five of the

## DH Compounding Company Savings and Retirement Plan and Trust

The Undersigned, DH Compounding Company (the "Employer"), by executing this Amendment Five to the Plan, amends the DH Compounding Company Savings and Retirement Plan and Trust (the "Plan") as follows:

# Article One, Section F, Paragraph 4.

Service with the Predecessor Employer or Predecessor Plan:

. . . .

Service with a Predecessor Employer is not applicable.

То

From

A Year of Service shall be credited to an Employee who was employed by a Predecessor Employer, for each period which would have been a Year of Service if the Predecessor Employer were the Employer, as follows:

For Eligibility and Vesting.

For purposes of the Plan, the "Predecessor Employer" means Dow Chemical.

# Article One, Section KK. Participant Directed Accounts:

#### From

Each Participant shall be entitled to direct the investment of his or her Accrued Benefits in accordance with Article XII. Except that contributions to the Payroll Period Matching Contribution Account and the Annual Matching Contribution Account shall be made as follows:

50% of the matching contribution for each period shall be made in common shares of PolyOne Corporation and

50% of the matching contribution for each period shall be made in common shares of the Dow Chemical Company.

Participant balances in these accounts are immediately eligible for transfer.

То

Each Participant shall be entitled to direct the investment of his or her Accrued Benefits in accordance with Article XII. This includes contributions to the Payroll Period Matching Contribution Account and the Annual Matching Contribution Account which shall be made in cash.

This amendment is effective October 1, 2006.

**DH Compounding Company** 

By: /s/ Theressa A. Myers

Date: 9/28/06

We consent to the incorporation by reference in the Registration Statement (Form S-8) pertaining to the PolyOne Retirement Savings Plan and the DH Compounding Company Savings and Retirement Plan and Trust of our report dated February 26, 2007 with respect to the consolidated financial statements and schedule of PolyOne Corporation included in its Annual Report (Form 10-K) for the year ended December 31, 2006, and our report dated February 26, 2007 on PolyOne Corporation management's assessment of the effectiveness of internal control over financial reporting, and the effectiveness of internal control over financial reporting of PolyOne Corporation included in its Annual Report (Form 10-K) for the year ended December 31, 2006, and our report dated May 24, 2006, with respect to the financial statements and schedules of the PolyOne Retirement Savings Plan included in the Plan's Annual Report (Form 11-K) for the year ended December 31, 2005, filed with the Securities and Exchange Commission.

/s/ ERNST & YOUNG LLP

Cleveland, Ohio February 26, 2007

We consent to the incorporation by reference in the registration statement on Form S-8 of PolyOne Corporation of our report dated February 28, 2007, with respect to the consolidated balance sheets of Oxy Vinyls, LP as of December 31, 2006 and 2005, and the related consolidated statements of operations, changes in partners' capital, and cash flows for each of the years in the three-year period ended December 31, 2006, which report appears in the December 31, 2006, annual report on Form 10-K of PolyOne Corporation. Our report refers to a change in method of accounting for share-based payments effective July 1, 2005 and a change in method of accounting for defined benefit pension and other postretirement plans effective December 31, 2006.

/s/ KPMG LLP

Dallas, Texas February 28, 2007

We consent to the incorporation by reference in the Registration Statement (Form S-8) pertaining to the PolyOne Retirement Savings Plan and the DH Compounding Company Savings and Retirement Plan and Trust of our report dated February 19, 2007 with respect to the financial statements of the SunBelt Chlor Alkali Partnership included in the Annual Report (Form 10-K) of PolyOne Corporation for the year ended December 31, 2006, filed with the Securities and Exchange Commission.

/s/ ERNST & YOUNG LLP

Cleveland, Ohio February 26, 2007

We hereby consent to the incorporation by reference in this Registration Statement on Form S-8 of our report dated June 9, 2006, relating to the financial statements and supplemental schedule of the DH Compounding Company Savings and Retirement Plan and Trust (the "Plan") included in the Annual Report (Form 11-K) of the Plan for the year ended December 31, 2005.

/s/ Coulter & Justus, P.C.

March 1, 2007 Knoxville, Tennessee

#### POLYONE CORPORATION REGISTRATION STATEMENT ON FORM S-8 POWER OF ATTORNEY

Each undersigned officer and/or director of PolyOne Corporation, an Ohio corporation (the "Registrant"), does hereby make, constitute and appoint each of Wendy C. Shiba, W. David Wilson and Michael J. Meier with full power of substitution and resubstitution, as attorney of the undersigned, to execute and file:

(i) a Registration Statement on Form S-8 (the "Retirement Plan Form S-8 Registration Statement") with respect to the registration under the Securities Act of 1933, as amended (the "Securities Act"), of Common Shares of the Registrant issuable in connection with the PolyOne Retirement Savings Plan and the DH Compounding Savings and Retirement Plan and, if required, the related participation interests under the Retirement Plans;

(ii) a Registration Statement on Form S-8 (the "Equity Plan Form S-8 Registration Statement") with respect to the registration under the Securities Act, of Common Shares of the Registrant issuable in connection with The Geon Company 1993 Incentive Stock Plan, The Geon Company 1995 Incentive Stock Plan, The Geon Company 1998 Interim Stock Award Plan, The Geon Company 1999 Incentive Stock Plan, The Geon Company Non-Employee Director Deferred Compensation Plan and the M.A. Hanna Company Long Term Incentive Plan, as amended (the "Equity Plans");

(iii) a Post-Effective Amendment No. 3 on Form S-8 to Form S-4, with respect to the registration under the Securities Act of Common Shares of the Registrant issuable in connection with certain retirement plans of the Registrant and the Equity Plans (together with the Retirement Plan Form S-8 Registration Statement and the Equity Plan Form S-8 Registration Statement, the "Form S-8 Registration Statements");

(iv) any and all amendments, including post-effective amendments, and exhibits to the Form S-8 Registration Statements; and

(v) any and all applications or other documents to be filed with the Securities and Exchange Commission or any state securities commission or other regulatory authority with respect to the securities covered by the Form S-8 Registration Statements, with full power and authority to do and perform any and all acts and things whatsoever necessary, appropriate or desirable to be done in the premises, or in the name, place and stead of the said director and/or officer, hereby ratifying and approving the acts of said attorneys and any of them and any such substitute.

IN WITNESS WHEREOF, the undersigned have subscribed these presents as of the 1st day of December, 2005.

/s/ William F. Patient William F. Patient Chairman of the Board, President, Chief Executive Officer and Director

/s/ Michael J. Meier Michael J. Meier Corporate Controller and Assistant Treasurer

/s/ Carol A. Cartwright Carol A. Cartwright Director

/s/ Wayne R. Embry Wayne R. Embry Director

/s/ Robert A. Garda

Robert A. Garda Director

/s/ Farah M. Walters

Farah M. Walters Director /s/ W. David Wilson W. David Wilson Vice President and Chief Financial Officer

/s/ J. Douglas Campbell J. Douglas Campbell Director

/s/ Gale Duff-Bloom Gale Duff-Bloom Director

/s/ Richard H. Fearon Richard H. Fearon Director

/s/ Gordon D. Harnett Gordon D. Harnett Director