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# SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

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## FORM S-8

REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933

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### Inhale Therapeutic Systems, Inc.

(Exact name of registrant as specified in its charter)

**Delaware**  
(State of Incorporation)

**94-3134940**  
(I.R.S. Employer Identification No.)

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**150 Industrial Road**  
**San Carlos, CA 94070**  
(Address of principal executive offices)

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**Inhale Therapeutic Systems, Inc. 401(k) Retirement Plan**  
(Full title of the plans)

**Ajit S. Gill**  
**President, Chief Executive Officer and Director**  
**Inhale Therapeutic Systems, Inc.**  
**150 Industrial Road**  
**San Carlos, CA 94070**  
**(650) 631-3100**  
(Name, address, including zip code, and telephone number, including area code, of agent for service)

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Copies to:  
**Mark P. Tanoury, Esq.**  
**John M. Geschke, Esq.**  
**COOLEY GODWARD LLP**  
**Five Palo Alto Square**  
**3000 El Camino Real**  
**Palo Alto, CA 94306**  
**(650) 843-5000**

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#### CALCULATION OF REGISTRATION FEE

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Title of Securities to be Registered	Amount to be Registered (1)	Proposed Maximum Offering Price per Share (2)	Proposed Maximum Aggregate Offering Price (2)	Amount of Registration Fee
Common Stock, par value \$0.0001 per share	300,000 shares	\$17.8250	\$5,347,500.00	\$1,278.05

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- (1) Pursuant to Rule 416(a), this Registration Statement shall also cover any additional shares of Registrant's Common Stock that become issuable under the plan by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without receipt of consideration that increases the number of outstanding shares of Registrant's Common Stock.
- (2) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(h). The price per share and aggregate offering price are based upon the average of the high and low prices of Registrant's Common Stock on January 7, 2002, as reported on the Nasdaq National Market (pursuant to Rule 457(c) under the Securities Act of 1933, as amended).

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## INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

The following documents filed by Inhale Therapeutic Systems, Inc. (the "Registrant") with the Securities and Exchange Commission are incorporated by reference into this Registration Statement:

1. Our Annual Report on Form 10-K for the fiscal year ended December 31, 2000, filed on March 1, 2001, including all material incorporated by reference therein, as amended by our Amendment to Annual Report on Form 10-K/A for the fiscal year ended December 31, 2000, filed on May 1, 2001, including all material incorporated by reference therein, and further amended by our Amendment No. 2 to Annual Report on Form 10-K/A for the fiscal year ended December 31, 2000, filed on October 4, 2001, including all material incorporated by reference therein;
2. Our Definitive Proxy on Schedule 14A, filed on May 1, 2001;
3. Our Quarterly Report on Form 10-Q for the quarter ended March 31, 2001, filed on May 14, 2001, including all material incorporated by reference therein;
4. Our Quarterly Report on Form 10-Q for the quarter ended June 30, 2001, filed on August 14, 2001, including all material incorporated by reference therein;
5. Our Quarterly Report on Form 10-Q for the quarter ended September 30, 2001, filed on November 13, 2001, including all material incorporated by reference therein;
6. Our Current Report on Form 8-K, filed on January 11, 2001, as amended by our Current Report on Form 8-K/A, filed on October 4, 2001;
7. Our Current Report on Form 8-K, filed on May 23, 2001;
8. Our Current Report on Form 8-K, filed on June 4, 2001;
9. Our Current Report on Form 8-K, filed on June 20, 2001, as amended by our Current Report on Form 8-K/A, filed on June 20, 2001;
10. Our Current Report on Form 8-K, filed on July 10, 2001, as amended by our Current Report on Form 8-K/A, filed on August 10, 2001, and further amended by our Current Report on Form 8-K/A, filed on October 4, 2001;
11. Our Current Report on Form 8-K/A, filed on October 25, 2001;
12. Our Current Report on Form 8-K, filed on January 8, 2002;
13. All other reports filed by us pursuant to Section 13(a) or 15(d) of the Exchange Act since December 31, 2000, including all materials incorporated by reference therein; and
14. The description of the common stock contained in our Registration Statement on Form 8-A.

## DESCRIPTION OF SECURITIES

Not applicable.

## INTERESTS OF NAMED EXPERTS AND COUNSEL

The validity of the Common Stock offered hereby will be passed upon for the Company by Cooley Godward LLP, Palo Alto, California.

## INDEMNIFICATION OF DIRECTORS AND OFFICERS

Under Section 145 of the Delaware General Corporation Law, the Registrant has broad powers to indemnify its directors and officers against liabilities they may incur in such capacities, including liabilities under the Securities Act of 1933, as amended (the "Securities Act").

The Registrant's certificate of incorporation, as amended, provides for the elimination of liability for monetary damages for breach of the directors' fiduciary duty of care to the Registrant and its

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stockholders. These provisions do not eliminate the directors' duty of care and, in appropriate circumstances, equitable remedies such as an injunctive or other forms of non-monetary relief will remain available under Delaware law. In addition, each director will continue to be subject to liability for breach of the director's duty of loyalty to the Registrant, for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, for any transaction from which the director derived an improper personal benefit and for violating Section 174 of the Delaware General Corporation Law. The provision does not affect a director's responsibilities under any other laws, such as the federal securities laws or state or federal environmental laws.

The Registrant has entered into agreements with its directors and executive officers that require the Registrant to indemnify such persons against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred (including expenses of a derivative action) in connection with any proceeding, whether actual or threatened, to which any such person may be made a party by reason of the fact that such person is or was a director or officer of the Registrant or any of the Registrant's affiliated enterprises, provided such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Registrant and, with respect to any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful. The indemnification agreements also set forth certain procedures that will apply in the event of a claim for indemnification thereunder.

#### EXEMPTION FROM REGISTRATION CLAIMED

Not applicable.

#### EXHIBITS

Exhibit Number	Description
3.1	(1) Certificate of Incorporation of the Registrant.
3.2	(1) Bylaws of the Registrant.
3.3	(2) Certificate of Amendment of the Amended Certificate of Incorporation of the Registrant.
3.4	(11) Certificate of Designation of Series A Junior Participating Preferred Stock of the Registrant.
3.5	(12) Certificate of Designation of Series B Convertible Preferred Stock of the Registrant.
4.1	Reference is made to Exhibits 3.1, 3.2, 3.3, 3.4 and 3.5.
4.2	(3) Restated Investor Rights Agreement, dated April 29, 1993, as amended October 29, 1993, by and among the Registrant and certain other persons named therein.
4.3	(4) Stock Purchase Agreement, dated January 18, 1995, by and between the Registrant and Pfizer Inc.
4.4	(5) Form of Purchase Agreement, dated January 28, 1997, by and between the Registrant and the individual Purchasers.
4.5	(6) Stock Purchase Agreement, dated December 8, 1998, by and between the Registrant and Capital Research and Management Company.
4.6	(7) Purchase Agreement, dated October 6, 1999, by and among the Registrant and Lehman Brothers Inc., Deutsche Bank Securities Inc. and U.S. Bancorp Piper Jaffray Inc.
4.7	(7) Resale Registration Rights Agreement, dated October 13, 1999, by and among the Registrant and Lehman Brothers Inc., Deutsche Bank Securities Inc. and U.S. Bancorp Piper Jaffray Inc.
4.8	(7) Indenture, dated October 13, 1999, by and between the Registrant as Issuer and Chase Manhattan Bank and Trust Company, National Association as Trustee.
4.9	(7) Form of the Registrant Registration Rights Agreement, dated January 25, 2000, by and between the Registrant and Selling Shareholder.
4.10	(8) Purchase Agreement, dated February 2, 2000, by and among the Registrant and Merrill Lynch, Pierce, Fenner & Smith Incorporated, Deutsche Bank Securities Inc., Lehman Brothers Inc. and U.S. Bancorp Piper Jaffray Inc.
4.11	(8) Resale Registration Rights Agreement, dated February 8, 2000, by and among the Registrant and Merrill Lynch, Pierce, Fenner & Smith Incorporated, Deutsche Bank Securities Inc., Lehman Brothers Inc. and U.S. Bancorp Piper Jaffray Inc.
4.12	(8) Indenture, dated February 8, 2000, by and between the Registrant as Issuer and Chase Manhattan Bank and Trust Company, National Association as Trustee.
4.13	(2) Specimen common stock certificate of the Registrant.
4.14	(9) Specimen warrants to purchase shares of common stock of the Registrant.
4.15	(10) Purchase Agreement, dated October 11, 2000, by and among the Registrant and Merrill Lynch, Pierce, Fenner & Smith Incorporated, Deutsche Bank Securities Inc., Lehman Brothers Inc. and U.S. Bancorp Piper Jaffray Inc.
4.16	(10) Resale Registration Rights Agreement, dated October 17, 2000, by and among the Registrant and Merrill Lynch, Pierce, Fenner & Smith Incorporated, Deutsche Bank Securities Inc., Lehman Brothers Inc. and U.S. Bancorp Piper Jaffray Inc.
4.17	(10) Indenture, dated October 17, 2000, by and between the Registrant as Issuer and Chase Manhattan Bank and Trust Company,

National Association as Trustee.

- 4.18 (11) Rights Agreement, dated June 1, 2001, by and between the Registrant and Mellon Investor Services LLC.
- 4.19 (11) Form of Right Certificate of the Registrant.
- 4.20 (12) Stock Purchase Agreement, dated January 7, 2002, by and between the Registrant and Enzon, Inc.
- 5.1 (13) Opinion of Cooley Godward LLP.
- 23.1 (13) Consent of Ernst & Young LLP, independent auditors.
- 23.2 (13) Consent of Ernst & Young LLP, independent auditors.
- 23.3 (13) Consent of Cooley Godward LLP. Reference is made to Exhibit 5.1.
- 24.1 (13) Power of Attorney. Reference is made to Signature Page.
- 99.1 (13) Inhale Therapeutic Systems, Inc. 401(k) Retirement Plan.
- 99.2 (13) Non-Standardized Adoption Agreement No. 001 for use with Inhale Therapeutic Systems, Inc. 401(k) Retirement Plan.

---

(1) Incorporated by reference to the indicated exhibit in the Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 1998.

(2) Incorporated by reference to the indicated exhibit in the Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2000.

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(3) Incorporated by reference to the indicated exhibit in the Registrant's Registration Statement on Form S-1 (No. 33-75942), as amended.

(4) Incorporated by reference to the indicated exhibit in the Registrant's Registration Statement on Form S-1 (No. 33-89502), as amended.

(5) Incorporated by reference to the indicated exhibit in the Registrant's Registration Statement on Form S-3 (No. 333-20787).

(6) Incorporated by reference to the indicated exhibit in the Registrant's Registration Statement on Form S-3 (No. 333-68897), as amended.

(7) Incorporated by reference to the indicated exhibit in the Registrant's Registration Statement on Form S-3 (No. 333-94161), as amended.

(8) Incorporated by reference to the indicated exhibit in the Registrant's Annual Report on Form 10-K for the year ended December 31, 1999.

(9) Incorporated by reference to the indicated exhibit in the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2000.

(10) Incorporated by reference to the indicated exhibit in the Registrant's Registration Statement on Form S-3 (No. 333-53678), filed on January 12, 2001.

(11) Incorporated by reference to the indicated exhibit in the Registrant's Current Report on Form 8-K, filed on June 4, 2001.

(12) Incorporated by reference to the indicated exhibit in the Registrant's Current Report on Form 8-K, filed on January 8, 2002.

(13) Filed herewith.

## UNDERTAKINGS

1. The undersigned Registrant hereby undertakes:

(a) 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;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of

prospectus filed with the Commission pursuant to Rule 424(b) (§ 230.424(b) of this chapter) if, in the aggregate, the changes in volume and price represent no more than a 20% 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 the Registration Statement or any material change to such information in the Registration Statement;

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

(b) 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 herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) 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.

2. 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 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Exchange Act) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

3. 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 Securities 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 Securities Act and will be governed by the final adjudication of such issue.

## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, 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 San Carlos, State of California, on January 11, 2002.

### INHALE THERAPEUTIC SYSTEMS, INC.

By: /s/ Ajit S. Gill

Ajit S. Gill  
President, Chief Executive Officer and Director

## POWER OF ATTORNEY

**KNOW ALL PERSONS BY THESE PRESENTS**, that each person whose signature appears below constitutes and appoints Ajit S. Gill and Brigid A. Makes, and each or any one of them, his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his or her substitutes or substitute, may lawfully do or cause to be done by virtue hereof.

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

Signature	Title	Date
/s/ Ajit S. Gill	President, Chief Executive Officer and Director (Principal Executive Officer)	January 11, 2002
AJIT S. GILL		
/s/ Robert B. Chess	Chairman of the Board	January 11, 2002
ROBERT B. CHESS		
/s/ Brigid A. Makes	Vice President, Finance and Administration, Chief Financial Officer and Assistant Secretary (Principal Financial and Accounting Officer)	January 11, 2002
BRIGID A. MAKES		
/s/ John S. Patton	Vice President and Director	January 11, 2002

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JOHN S. PATTON

/s/ James B. Glavin

Director

January 11, 2002

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JAMES B. GLAVIN

---

/s/ Melvin Perelman

Director

January 11, 2002

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MELVIN PERELMAN

/s/ Irwin Lerner

Director

January 11, 2002

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IRWIN LERNER

/s/ Roy A. Whitfield

Director

January 11, 2002

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ROY A. WHITFIELD

/s/ Chris Kuebler

Director

January 11, 2002

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CHRIS KUEBLER

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23.1	(13)	Consent of Ernst & Young LLP, independent auditors.
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24.1	(13)	Power of Attorney. Reference is made to Signature Page.
99.1	(13)	Inhale Therapeutic Systems, Inc. 401(k) Retirement Plan.
99.2	(13)	Non-Standardized Adoption Agreement No. 001 for use with Inhale Therapeutic Systems, Inc. 401(k) Retirement Plan.

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- (13) Filed herewith.
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QuickLinks

[SIGNATURES](#)

[EXHIBIT INDEX](#)



January 11, 2002

Inhale Therapeutic Systems, Inc.  
150 Industrial Road  
San Carlos, CA 94070

Ladies and Gentlemen:

You have requested our opinion with respect to certain matters in connection with the filing by **INHALE THERAPEUTIC SYSTEMS, INC.** (the "Registrant") of a Registration Statement on Form S-8 (the "Registration Statement") with the Securities and Exchange Commission covering the offering of up to an aggregate of 300,000 shares of the Registrant's Common Stock, \$0.0001 par value (the "Shares"), pursuant to the Registrant's 401(k) Retirement Plan (the "Plan").

In connection with this opinion, we have examined the Registration Statement, the Plan, the Registrant's Certificate of Incorporation, as amended, and Bylaws and such other documents, records, certificates, memoranda and other instruments as we deem necessary as a basis for this opinion. We have assumed the genuineness and authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as copies thereof and the due execution and delivery of all documents where due execution and delivery are a prerequisite to the effectiveness thereof.

On the basis of the foregoing, and in reliance thereon, we are of the opinion that the Shares, when sold and issued in accordance with the Plan and the Registration Statement, will be validly issued, fully paid and nonassessable (except as to shares issued pursuant to certain deferred payment arrangements, which will be fully paid and nonassessable when such deferred payments are made in full).

We consent to the filing of this opinion as an exhibit to the S-8 Registration Statement.

Sincerely,

COOLEY GODWARD LLP

/s/ Mark P. Tanoury

Mark P. Tanoury, Esq.

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**CONSENT OF ERNST & YOUNG LLP, INDEPENDENT AUDITORS**

We consent to the reference to our firm in the Registration Statement on Form S-8 pertaining to the 401(k) Plan of Inhale Therapeutic Systems, Inc. for the registration of 300,000 shares of its common stock and to the incorporation by reference therein of our report dated January 23, 2001, with respect to the consolidated financial statements of Inhale Therapeutic Systems, Inc. included in its Annual Report, as amended (Form 10-K/A) for the year ended December 31, 2000, filed with the Securities and Exchange Commission, and of our report dated January 5, 2001, with respect to the financial statements of Bradford Particle Design plc included in Amendment No. 1 to the Current Report on Form 8-K of Inhale Therapeutic Systems, Inc., filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

Palo Alto, California  
January 8, 2002

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**Consent of Independent Auditors**

We consent to the reference to our firm in the Registration Statement (Form S-8) of Inhale Therapeutic Systems, Inc. for the registration of 300,000 shares of its common stock and to the incorporation by reference therein, of our report dated February 7, 2001, with respect to the financial statements of Shearwater Polymers, Inc. for the year ended June 30, 2000 included in the Inhale Therapeutic Systems, Inc. Current Report on Form 8-K Amendment No. 2, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

Birmingham, Alabama  
January 10, 2002

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**THE CORPORATE PLAN  
FOR RETIREMENT<sup>SM</sup>**

**FIDELITY BASIC PLAN DOCUMENT NO. 07**

**TABLE OF CONTENTS**

PREAMBLE		1
ARTICLE 1	ADOPTION AGREEMENT	1
ARTICLE 2	DEFINITIONS	1
2.01	Definitions	1
2.02	Pronouns	10
2.03	Special Effective Dates	10
ARTICLE 3	SERVICE	11
3.01	Crediting Eligibility service	11
3.02	Re-Crediting of Eligibility Service Following Termination of Employment	11
3.03	Crediting of Vesting Service	11
3.04	Application of Vesting Service to a Participant's Account Following a Break in Vesting Service	11
3.05	Service with Predecessor Employer	12
3.06	Change in Service Crediting	12
ARTICLE 4	PARTICIPATION	12
4.01	Date of Participation	12
4.02	Transfers Out of Covered Employment	12
4.03	Transfers Into Covered Employment	12
4.04	Resumption of Participation Following Reemployment	13
4.05	Omission of Eligible Employee	13
ARTICLE 5	CONTRIBUTIONS	13
5.01	Contributions Subject to Limitations	13
5.02	Compensation Taken into Account in Determining Contributions	13
5.03	Deferral Contributions	14
5.04	Employee Contributions	15
5.05	No Deductible Employee Contributions	15
5.06	Rollover Contributions	15
5.07	Qualified Nonelective Employer Contributions	16
5.08	Matching Employer Contributions	17
5.09	Qualified Matching Employer Contributions	17
5.10	Nonelective Employer Contributions	17
5.11	Vested Interest in Contributions	19
5.12	Time for Making Employer Contributions	19
5.13	Return of Employer Contributions	19

ARTICLE 6	LIMITATIONS ON CONTRIBUTIONS	20
6.01	Special Definitions	20
6.02	Code Section 402(g) Limit on Deferral Contributions	25
6.03	Additional Limit on Deferral Contributions ("ADP" Test)	26
6.04	Allocation and Distribution of "Excess Contributions"	27
6.05	Reductions in Deferral Contributions to Meet Code Requirements	27
6.06	Limit on Matching Employer Contributions and Employee Contributions ("ACP" Test)	27
6.07	Allocation, Distribution, and Forfeiture of "Excess Aggregate Contributions"	28
6.08	Aggregate Limit on "Contribution Percentage Amounts" and "Includable Contributions"	28
6.09	Income or Loan on Distributable Contributions	29
6.10	Deemed Satisfaction of "ADP" Test	29

6.11	Deemed Satisfaction of "ACP" Test With Respect to Matching Employer Contributions	30
6.12	Code Section 415 Limitations	30
ARTICLE 7	PARTICIPANTS' ACCOUNTS	33
7.01	Individual Accounts	33
7.02	Valuation of Accounts	33
ARTICLE 8	INVESTMENT OF CONTRIBUTIONS	33
8.01	Manner of Investment	33
8.02	Investment Decisions	33
8.03	Participant Directions to Trustee	34
ARTICLE 9	PARTICIPANT LOANS	34
9.01	Special Definitions	34
9.02	Participant Loans	34
9.03	Separate Loan Procedures	34
9.04	Availability of Loans	34
9.05	Limitation on Loan Amount	35
9.06	Interest Rate	35
9.07	Level Amortization	35
9.08	Security	35
9.09	Transfer and Distribution of Loan Amounts from Permissible Investments	35
9.10	Default	35
9.11	Effect of Termination Where Participant has Outstanding Loan Balance	36
9.12	Deemed Distributions Under Code Section 72(p)	36
9.13	Determination of Account Value Upon Distribution Where Plan Loan is Outstanding	36
ARTICLE 10	IN-SERVICE WITHDRAWALS	37
10.01	Availability of In-Service Withdrawals	37
10.02	Withdrawal of Employee Contributions	37
10.03	Withdrawal of Rollover Contributions	37
10.04	Age 59 <sup>1/2</sup> Withdrawals	37
10.05	Hardship Withdrawals	37
10.06	Preservation of Prior Plan in-Service Withdrawal Rules	38
10.07	Restrictions on In-Service Withdrawals	39
10.08	Distribution of Withdrawal Amounts	39

ARTICLE 11	RIGHT TO BENEFITS	39
11.01	Normal or Early Retirement	39
11.02	Late Retirement	40
11.03	Disability Retirement	40
11.04	Death	40
11.05	Other Termination of Employment	40
11.06	Application for Distribution	41
11.07	Application of Vesting Schedule Following Partial Distribution	41
11.08	Forfeitures	41
11.09	Application of Forfeitures	41
11.10	Reinstatement of Forfeitures	42
11.11	Adjustment for Investment Experience	42
ARTICLE 12	DISTRIBUTIONS	42
12.01.	Restrictions on Distributions	42
12.02	Timing of Distribution Following Retirement or Termination of Employment	42
12.03	Participant Consent to Distribution	43
12.04	Required Commencement of Distribution to Participants	43
12.05	Required Commencement of Distribution to Beneficiaries	44
12.06	Whereabouts of Participants and Beneficiaries	45
ARTICLE 13	FORM OF DISTRIBUTION	45
13.01	Normal Form of Distribution Under Profit Sharing Plan	45
13.02	Mandatory Cash Out	45
13.03	Minimum Distributions	46
13.04	Direct Rollovers	47
13.05	Notice Regarding Timing and Form of Distribution	47
13.06	Determination of Method of Distribution	48

13.07	Notice to Trustee	48
ARTICLE 14	SUPERSEDING ANNUITY DISTRIBUTION PROVISIONS	48
14.01	Special Definitions	48
14.02	Applicability	48
14.03	Annuity Form of Payment	49
14.04	"Qualified Joint and Survivor Annuity" and "Qualified Preretirement Survivor Annuity" Requirements	49
14.05	Waiver of the "Qualified Joint and Survivor Annuity" and/or "Qualified preretirement Survivor Annuity—Rights	50
14.06	Spouse's Consent to Waiver	50
14.07	Notice Regarding "Qualified Joint and Survivor Annuity"	50
14.08	Notice Regarding "Qualified Preretirement Survivor Annuity"	51
14.09	Former Spouse	51
ARTICLE 15	TOP-HEAVY PROVISIONS	51
15.01	Definitions	51
15.02	Application	53
15.03	Minimum Contribution	53
15.04	Modification of Allocation Provisions to Meet Minimum Contribution Requirements	54
15.05	Adjustment to the Limitation on Contributions and Benefits	55
15.06	Accelerated Vesting	55
15.07	Exclusion of Collectively Bargained Employees	55

iii

ARTICLE 16	AMENDMENT AND TERMINATION	56
16.01	Amendments by the Employer that do Not Affect Prototype Status	56
16.02	Amendments by the Employer that Affect Prototype Status	56
16.03	Amendment by the Mass Submitter Sponsor and the Prototype Sponsor	57
16.04	Amendments Affecting Vested and/or Accrued Benefits	57
16.05	Retroactive Amendments	57
16.06	Termination	57
16.07	Distribution upon Termination of the Plan	57
16.08	Merger or Consolidation of Plan; Transfer of Plan Assets	58
ARTICLE 17	AMENDMENT AND CONTINUATION OF PRIOR PLAN; TRANSFER OF FUNDS TO OR FROM OTHER QUALIFIED PLANS	58
17.01	Amendment and Continuation of Prior Plan	58
17.02	Transfer of Funds from an Existing Plan	59
17.03	Acceptance of Assets by Trustee	59
17.04	Transfer of Assets from Trust	59
ARTICLE 18	MISCELLANEOUS	59
18.01	Communication to Participants	59
18.02	Limitation of Rights	59
18.03	Nonalienability of Benefits	60
18.04	Qualified Domestic Relations Orders Procedures	60
18.05	Additional Rules for Paired Plans	61
18.06	Application of Plan Provisions in Multiple Employer Plans	61
18.07	Veterans Reemployment Rights	61
18.08	Effect of Scrivener's Error	61
18.09	Facility of Payment	61
18.10	Information between Employer and Trustee	62
18.11	Effect of Failure to Qualify Under Code	62
18.12	Notices	62
18.13	Governing Law	62
ARTICLE 19	PLAN ADMINISTRATION	62
19.01	Powers and Responsibilities of the Administrator	62
19.02	Nondiscriminatory Exercise of Authority	62
19.03	Claims and Review Procedures	62
19.04	Named Fiduciary	63
19.05	Costs of Administration	63

iv

ARTICLE 20	TRUST AGREEMENT	63
20.01	Acceptance of Trust Responsibilities	63

20.02	Establishment of Trust Fund	63
20.03	Exclusive Benefit	64
20.04	Powers of Trustee	64
20.05	Accounts	65
20.06	Approval of Accounts	65
20.07	Distribution from Trust Fund	66
20.08	Transfer of Amounts from Qualified Plan	66
20.09	Transfer of Assets from Trust	66
20.10	Separate Trust or Fund for Existing Plan Assets	66
20.11	Self-Directed Brokerage Option	67
20.12	Employer Stock Option	67
20.13	Voting; Delivery of Information	71
20.14	Compensation and Expenses of Trustee	72
20.15	Reliance by Trustee on Other Persons	72
20.16	Indemnification by Employer	72
20.17	Consultation by Trustee with Counsel	72
20.18	Persons Dealing with the Trustee	72
20.19	Resignation or Removal of Trustee	73
20.20	Fiscal Year of the Trust	73
20.21	Discharge of Duties by Fiduciaries	73
20.22	Amendment	73
20.23	Plan Termination	73
20.24	Permitted Reversion of Funds to Employer	73
20.25	Governing Law	74

*Preamble.*

This prototype plan consists of three parts: (1) an Adoption Agreement that is a separate document incorporated by reference into this Basic Plan Document; (2) this Basic Plan Document; and (3) a Trust Agreement that is a part of this Basic Plan Document and is found in Article 20. Each part of the Prototype plan contains substantive provisions that are integral to the operation of the plan. The Adoption Agreement is the means by which an adopting Employer elects the optional provisions that shall apply under its plan. The Basic Plan Document describes the standard provisions elected in the Adoption Agreement. The Trust Agreement describes the powers and duties of the Trustee with respect to plan assets.

The prototype plan is intended to qualify under code Section 401(a). Depending upon the Adoption Agreement completed by an adopting Employer, the prototype plan may be used to implement a money purchase pension plan, a profit sharing plan, or a profit sharing plan with a cash or deferred arrangement intended to qualify under Code Section 401(k).

**ARTICLE 1 ADOPTION AGREEMENT.**

**ARTICLE 2 DEFINITIONS.**

**2.01 Definitions.** Wherever used herein, the following terms have the meanings set forth below, unless a different meaning is clearly required by the context:

- (a) "**Account**" means an account established for the purpose of recording any contributions made on behalf of a Participant and any income, expenses, gains, or losses incurred thereon. The Administrator shall establish and maintain sub-accounts within a Participant's Account as necessary to depict accurately a Participant's interest under the Plan.
- (b) "**Active Participant**" means any Eligible Employee who has met the requirements of Article 4 to participate in the Plan and who may be entitled to receive allocations under the Plan.
- (c) "**Administrator**" means the Employer adopting this Plan, as listed in Subsection 1.02(a) of the Adoption Agreement, or any other person designated by the Employer in Subsection 1.01(c) of the Adoption Agreement.
- (d) "**Adoption Agreement**" means Article 1, under which the Employer establishes and adopts, or amends the Plan and Trust and designates the optional provisions selected by the Employer, and the Trustee accepts its responsibilities under Article 20. The provisions of the Adoption Agreement shall be an integral part of the Plan.
- (e) "**Annuity Starting Date**" means the first day of the first period for which an amount is payable as an annuity or in any other form permitted under the Plan.
- (f) "**Basic Plan Document**" means this Fidelity prototype plan document, qualified with the National Office of the Internal Revenue Service as Basic Plan Document No. 07.
- (g) "**Beneficiary**" means the person or persons entitled under Section 11.04 or 14.04 to receive benefits under the Plan upon the death of a Participant; provided, however, that for purposes of Section 13.03 such term shall be applied in accordance with Code Section 401(a)(9) and the regulations thereunder.
- (h) "**Break in Vesting Service**" means a 12-consecutive-month period beginning on an Employee's Severance Date or any anniversary thereof in which the Employee is not credited with an Hour of Service.

Notwithstanding the foregoing, the following special rules apply in determining whether an Employee who is on leave has incurred a Break in Vesting Service:

(1) if an individual is absent from work because of "maternity/paternity leave" beyond the first anniversary of his severance Date, the 12-consecutive-month period beginning on the individual's Severance Date shall not constitute a Break in Vesting Service. For purposes of this paragraph, "maternity/paternity leave" means a leave of absence (A) by reason of the pregnancy of the individual, (B) by reason of the birth of a child of the individual, (C) by reason of the placement of a child with the individual in connection with the adoption of such child by the individual, or (D) for purposes of caring for a child for the period beginning immediately following such birth or placement.

(2) if an individual is absent from work because of "FMLA leave" and returns to employment with the Employer or a Related Employer following such "FMLA leave", he shall not incur a Break in Vesting Service during any 12-consecutive-month period beginning on his Severance Date or anniversaries thereof in which he is absent because of such "FMLA leave". For purposes of this paragraph, "FMLA leave" means an approved leave of absence pursuant to the Family and Medical Leave Act of 1993.

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

(j) "**Compensation**" means wages as defined in Code Section 3401(a) and all other payments of compensation to an Eligible Employee by the Employer (in the course of the Employer's trade or business) for services to the Employer while employed as an Eligible Employee for which the Employer is required to furnish the Eligible Employee a written statement under Code Sections 6041(d) and 6051(a)(3). Compensation must be determined without regard to any rules under code Section 3401(a) 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 Code section 3401(a)(2)).

For any Self-Employed individual, Compensation means Earned Income; provided, however, that if the Employer elects to exclude specified items from Compensation, such Earned Income shall be adjusted in a similar manner so that it is equivalent under regulations issued under Code Section 414(s) to Compensation for Participants who are not Self-Employed Individuals.

Compensation shall generally be based on the amount actually paid to the Eligible Employee during the Plan Year or, for purposes of Articles 5 and Article 15 if so elected by the Employer in Subsection 1.05(c) of the Adoption Agreement, during that portion of the Plan Year during which the Eligible Employee is an Active Participant. Notwithstanding the preceding sentence, Compensation for purposes of Section 6.12 (Code Section 415 Limitations) shall be based on the amount actually paid or made available to the Participant during the Limitation Year.

If the initial Plan Year of a new plan consists of fewer than 12 months, calculated from the Effective Date listed in Subsection 1.01(g)(1) of the Adoption Agreement through the end of such initial Plan Year, Compensation for such initial Plan Year shall be determined as follows:

(1) For purposes of allocating Nonelective Employer Contributions under Section 1.11 of the Adoption Agreement (other than Nonelective Employer Contributions made in accordance with the Safe Harbor Nonelective Employer Contributions Addendum to the Adoption Agreement) and determining Highly Compensated Employees under Subsection 2.01(z), the initial Plan Year shall be the 12-month period ending on the last day of the Plan Year.

(2) For purposes of Section 6.12 (Code Section 415 Limitations) where the Limitation Year is based on the Plan Year, the Limitation Year shall be the 12-month period ending on the last day of the Plan Year.

(3) For all other purposes, the initial Plan Year shall be the period from the Effective Date listed in Subsection 1.01(g)(1) of the Adoption Agreement through the end of the initial Plan Year.

The annual Compensation of each Active Participant taken into account for determining benefits provided under the Plan for any determination period shall not exceed the annual Compensation limit under Code Section 401(a)(17) as in effect on the first day of the determination period. This limit shall be adjusted by the Secretary to reflect increases in the cost of living, as provided in Code Section 401(a)(17)(B); provided, however, that the dollar increase in effect on January 1 of any calendar year is effective for determination periods beginning in such calendar year. If a Plan determines Compensation over a determination period that contains fewer than 12 calendar months (a "short determination period"), then the Compensation limit for such "short determination period" is equal to the Compensation limit for the calendar year in which the "short determination period" begins multiplied by the ratio obtained by dividing the number of full months in the "short determination period" by 12; provided, however, that such proration shall not apply if there is a "short determination period" because (i) the Employer elected in Subsection 1.05(c) of the Adoption Agreement to determine contributions based only on Compensation paid during the portion of the Plan Year during which an individual was an Active Participant, (ii) an Employee is covered under the Plan less than a full Plan Year, or (iii) Deferral Contributions and/or Matching Employer Contributions are contributed for each pay period during the Plan Year and are based on Compensation for that pay period.

(k) "**Contribution Period**" means the period for which Matching Employer and Nonelective Employer Contributions are made and calculated. The Contribution Period for safe harbor Matching Employer Contributions, as described in Subsection 1.10(a)(3) of the Adoption Agreement, additional Matching Employer Contributions, as described in Subsection 1.10(b) of the Adoption Agreement, and Nonelective Employer Contributions is the Plan Year. The Contribution Period for basic Matching Employer Contributions, as described in Subsection 1.10(a)(1) or (2) of the Adoption Agreement, is the period specified by the Employer in Subsection 1.10(c) of the Adoption Agreement.

(l) "**Deferral Contribution**" means any contribution made to the Plan by the Employer in accordance with the provisions of Section 5.03.

(m) "**Early Retirement Age**" means the early retirement age specified in Subsection 1.13(b) of the Adoption Agreement, if any.

(n) "**Earned Income**" means the net earnings of a Self-Employed Individual derived from the trade or business with respect to which the Plan is established and for which the personal services of such individual are a material income-providing factor, excluding any items not included in gross income and the deductions allocated to such items, except that net earnings shall be determined with regard to the deduction allowed under Code Section 164(f), to the extent applicable to the Employer. Net earnings shall be reduced by contributions of the Employer to any qualified plan, to the extent a deduction is allowed to the Employer for such contributions under Code Section 404.



(o) "**Effective Date**" means the effective date specified by the Employer in Subsection 1.01(g)(1) or (2) of the Adoption Agreement with respect to the Plan, if this is a new plan, or with respect to the amendment and restatement, if this is an amendment and restatement of a prior plan. The Employer may select special Effective Dates with respect to specified Plan provisions, as set forth in Section (a) of the Special Effective Dates Addendum to the Adoption Agreement. In the event that another plan is merged into and made a part of the Plan, the effective date of the merger shall be reflected in Section (b) of the Special Effective Dates Addendum to the Adoption Agreement.

3

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Notwithstanding any other provision of the Plan to the contrary, the following special Effective Dates shall apply:

(1) The definition of "Required Beginning Date" in Subsection 2.01(ss) is effective January 1, 1997; provided, however, that Participants who attain age 70<sup>1/2</sup> before January 1, 1999, or such later effective date as may be provided in Section (d) of the Special Effective Dates Addendum to the Adoption Agreement, may elect to commence benefits under Code Section 401(a)(9) as in effect prior to January 1, 1997.

(2) The following provisions are effective for Plan Years beginning on or after January 1, 1997:

(i) The definition of "Highly Compensated Employee" in Subsection 2.01(z), including elimination of the family aggregation rules.

(ii) The definition of "Leased Employee" in Subsection 2.01(cc).

(iii) The rules for applying the "ADP" test, described in Section 6.03, and the "ACP" test, described in Section 6.06.

(iv) The rules for allocating and distributing "excess contributions", as provided in Section 6.04, and the rules for allocation, distribution and forfeiture of "excess aggregate contributions", as provided in Section 6.07.

(3) The change in the "maximum permissible amount", as defined in Subsection 6.01(r), to \$30,000 adjusted for cost of living increases, is effective for Limitation Years beginning on or after January 1, 1995.

(4) The inclusion in Compensation for purposes of Code Section 415 of amounts excluded from gross income under a salary reduction agreement by reason of the application of Code Sections 125, 402(a)(8), 402(h), or 403(b), as provided in Subsection 6.12(d), is effective for Limitation Years beginning on or after January 1, 1998.

(5) The increase in the cash out limitation from \$3,500 to \$5,000 is effective the first day of the Plan Year beginning after August 5, 1997, or the date the Plan is first operated in compliance with such rule, if later, but in no event later than the date specified in Subsection 1.01(g)(1) or (2) of the Adoption Agreement.

(6) The elimination of the "look back year" requirement for mandatory cashouts with respect to Participants whose Accounts are not subject to the requirements of Section 14.04 shall be effective with respect to distributions made on or after the first day of the Plan Year beginning after August 5, 1997, or the date the Plan is first operated in compliance with such rule, if later, but in no event later than the date specified in Subsection 1.01(g)(1) or (2) of the Adoption Agreement.

(7) The provisions of Section 18.03, regarding the Code Section 401(a)(13)(C) and (D) exceptions to the nonalienability of benefits rules, are effective August 5, 1997.

(8) The exclusion from the definition of "eligible rollover distribution" in Subsection 13.04(c) of hardship withdrawals of Deferral Contributions made in accordance with the provisions of Section 10.05 or the Protected In-Service Withdrawal Addendum to the Adoption Agreement is effective for distributions made on or after the earlier of (i) the date the Plan is first operated in compliance with such rule or (ii) January 1, 2000, but in no event later than the date specified in Subsection 1.01(g)(1) or (2) of the Adoption Agreement.

(p) "**Eligibility Computation Period**" means each 12-consecutive-month period beginning with an Employee's Employment Commencement Date and each anniversary thereof or, in the case of an Employee who terminates employment with the Employer and all Related Employers before

4

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completing the eligibility requirements set forth in Subsection 1.04(b) of the Adoption Agreement and thereafter returns to the employ of the Employer or a Related Employer, each 12-consecutive-month period beginning with his Reemployment Commencement Date and each anniversary thereof.

(q) "**Eligibility Service**" means an Employee's service that is taken into account in determining his eligibility to participate in the Plan as may be required under Subsection 1.04(b) of the Adoption Agreement. Eligibility Service shall be credited in accordance with Article 3.

(r) "**Eligible Employee**" means any Employee of the Employer who is in the class of Employees eligible to participate in the Plan. The Employer must specify in Subsection 1.04(C) of the Adoption Agreement any Employee or class of Employees not eligible to participate in the Plan. If Article 1 of the Employer's Plan is a Non-Standardized Adoption Agreement, regardless of the Employer's selection in Subsection 1.04(c) of the Adoption Agreement, the following Employees are automatically excluded from eligibility to participate in the Plan:

(1) any individual who is a signatory to a contract, letter of agreement, or other document that acknowledges his status as an independent contractor not entitled to benefits under the Plan or who is not otherwise classified by the Employer as a common law employee and with respect to whom the Employer does not withhold income taxes and file Form W-2 (or any replacement Form), with the Internal Revenue Service and does not remit Social Security payments to the Federal government, even if such individual is later adjudicated to be a common law employee; and

(2) any Employee who is a citizen of Puerto Rico.

If the Employer elects to exclude collective bargaining employees from the eligible class, the exclusion applies to any Employee of the Employer included in a unit of Employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and

one or more employers, unless the collective bargaining agreement requires the Employee to be covered under the Plan. The term "employee representatives" does not include any organization more than half the members of which are owners, officers, or executives of the Employer.

If the Employer does not elect to exclude Leased Employees from the eligible class, contributions or benefits provided by the leasing organization which are attributable to services performed for the Employer shall be treated as provided by the Employer and there shall be no duplication of benefits under this Plan.

(s) "**Employee**" means any common law employee of the Employer or a Related Employer, any Self-Employed Individual, and any Leased Employee. Notwithstanding the foregoing, a Leased Employee shall not be considered an Employee if Leased Employees do not constitute more than 20-percent of the Employer's non-highly compensated work-force (taking into account all Related Employers) and the Leased Employee is covered by a money purchase pension plan maintained by the leasing organization and providing (1) a nonintegrated employer contribution rate of at least 10-percent of compensation, as defined for purposes of Code Section 415(c)(3), but including amounts contributed pursuant to a salary reduction agreement which are excludable from gross income under Code Section 125, 402(a)(8), 402(h) or 403(b), (2) full and immediate vesting, and (3) immediate participation by each employee of the leasing organization.

(t) "**Employee Contribution**" means any after-tax contribution made by an Active Participant to the Plan.

(u) "**Employer**" means the employer named in Subsection 1.02(a) of the Adoption Agreement and any Related Employer included as an Employer under this Subsection 2.01(u). If Article 1 of the Employer's Plan is a standardized Adoption Agreement, the term "Employer"

5

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includes all Related Employers. If Article 1 of the Employer's Plan is a Non-Standardized Adoption Agreement, the term "Employer" includes only those Related Employers designated in Subsection 1.02(b) of the Adoption Agreement.

If the organization or other entity named in the Adoption Agreement is a sole proprietor or a professional corporation and the sole proprietor of such proprietorship or the sole shareholder of the professional corporation dies, then the legal representative of such sole proprietor or shareholder shall be deemed to be the Employer until such time as, through the disposition of such sole proprietor's or sole shareholder's estate or otherwise, any organization or other entity succeeds to the interests of the sole proprietor in the proprietorship or the sole shareholder in the professional corporation. The legal representative of a sole proprietor or shareholder shall be (1) the person appointed as such by the sole proprietor or shareholder prior to his death under a legally enforceable power of attorney, or, if none, (2) the executor or administrator of the sole proprietor's or shareholder's estate.

If one of the Employers designated in Subsection 1.02(b) of the Adoption Agreement is not a Related Employer, the term "Employer" includes such un-Related Employer and the provisions of Section 18.06 shall apply.

(v) "**Employment Commencement Date**" means the date on which an Employee first performs an Hour of Service.

(w) "**Entry Date**" means the date specified by the Employer in Subsection 1.04(d) or (e) of the Adoption Agreement as of which an Eligible Employee who has met the applicable eligibility requirements begins to participate in the Plan. The Employer may specify different Entry Dates for purposes of eligibility to participate in the Plan by (1) making Deferral Contributions and (2) receiving allocations of Matching and/or Nonelective Employer Contributions.

(x) "**ERISA**" means the Employee Retirement Income Security Act of 1974, as from time to time amended.

(y) "**Fund Share**" means the share, unit, or other evidence of ownership in a Permissible Investment.

(z) "**Highly Compensated Employee**" means both highly compensated active Employees and highly compensated former Employees.

A highly compensated active Employee includes any Employee who performs service for the Employer during the "determination year" and who (1) at any time during the "determination year" or the "look-back year" was a five percent owner or (2) received Compensation from the Employer during the "look-back year" in excess of \$80,000 (as adjusted pursuant to Code Section 415(d)) and, unless otherwise provided by the Employer in Section 1.06 of the Adoption Agreement, was a member of the top-paid group for such year.

For this purpose, the "determination year" shall be the Plan Year. The "look-back year" shall be the twelve-month period immediately preceding the "determination year", unless the Employer has elected in Section 1.06 of the Adoption Agreement to make the "look-back year" the calendar year beginning within the preceding Plan Year.

A highly compensated former Employee includes any Employee who separated from service (or was deemed to have separated) prior to the "determination year", performs no service for the Employer during the "determination year", and was a highly compensated active Employee for either the separation year or any "determination year" ending on or after the Employee's 55th birthday, as determined under the rules in effect for determining Highly Compensated Employees for such separation year or "determination year".

6

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The determination of who is a Highly compensated Employee, including the determinations of the number and identity of Employees in the top-paid group, shall be made in accordance with Code Section 414(q) and the Treasury Regulations issued thereunder.

For purposes of this Subsection 2.01(z), Compensation shall include amounts that are not includable in the gross income of an Employee under a salary reduction agreement by reason of the application of Code Section 125, 402(a)(8), 402(h), or 403(b)

(aa) "**Hour of Service**", with respect to any individual, means:

(1) Each hour for which the individual is directly or indirectly paid, or entitled to payment, for the performance of duties for the Employer or a Related Employer, each such hour to be credited to the individual for the Eligibility Computation Period in which the duties were performed;

(2) Each hour for which the individual is directly or indirectly paid, or entitled to payment, by the Employer or a Related Employer (including payments made or due from a trust fund or insurer to which the Employer contributes or pays premiums) 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, disability, layoff, jury duty, military duty, or leave of absence, each such hour to be credited to the individual for the Eligibility Computation Period in which such period of time occurs, subject to the following rules:

(A) No more than 501 Hours of Service shall be credited under this paragraph (2) on account of any single continuous period during which the individual performs no duties, unless the individual performs no duties because of military duty, the individual's employment rights are protected by law, and the individual returns to employment with the Employer or a Related Employer during the period that his employment rights are protected under Federal law;

(B) Hours of Service shall not be credited under this paragraph (2) for a payment which solely reimburses the individual for medically related expenses, or which is made or due under a plan maintained solely for the purpose of complying with applicable worker's compensation, unemployment compensation or disability insurance laws; and

(C) If the period during which the individual performs no duties falls within two or more Eligibility Computation Periods and if the payment made on account of such period is not calculated on the basis of units of time, the Hours of Service credited with respect to such period shall be allocated between not more than the first two such Eligibility Computation Periods on any reasonable basis consistently applied with respect to similarly situated individuals;

(3) Each hour not counted under paragraph (1) or (2) for which he would have been scheduled to work for the Employer or a Related Employer during the period that he is absent from work because of military duty, provided the individual's employment rights are protected under Federal law and the individual returns to work with the Employer or a Related Company during the period that his employment rights are protected, each such hour to be credited to the individual for the Eligibility Computation Period for which he would have been scheduled to work; and

(4) Each hour not counted under paragraph (1), (2), or (3) for which back pay, irrespective of mitigation of damages, has been either awarded or agreed to be paid by the Employer or a Related Employer, shall be credited to the individual for the Eligibility Computation Period to which the award or agreement pertains rather than the Eligibility Computation Period in which the award, agreement, or payment is made.

7

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For purposes of paragraphs (2) and (4) above, Hours of Service shall be calculated in accordance with the provisions of Section 2530.200b-2(b) of the Department of Labor regulations, which are incorporated herein by reference.

Notwithstanding any other provision of this Subsection to the contrary, the Employer may elect to credit Hours of Service in accordance with any of the equivalencies set forth in paragraphs (d), (e), or (f) of Department of Labor Regulations Section 2530.200b-3.

(bb) "**Inactive Participant**" means any individual who was an Active Participant, but is no longer an Eligible Employee and who has an Account under the Plan.

(cc) "**Leased Employee**" means any individual who provides services to the Employer or a Related Employer (the "recipient") but is not otherwise an employee of the recipient if (1) such services are provided pursuant to an agreement between the recipient and any other person (the "leasing organization"), (2) such individual has performed services for the recipient (or for the recipient and any related persons within the meaning of Code Section 414(n)(6)) on a substantially full-time basis for at least one year, and (3) such services are performed under primary direction of or control by the recipient. The determination of who is a Leased Employee shall be made in accordance with any rules and regulations issued by the Secretary of the Treasury or his delegate.

(dd) "**Limitation Year**" means the 12-consecutive-month period designated by the Employer in Subsection 1.01(f) of the Adoption Agreement. If no other Limitation Year is designated by the Employer, the Limitation Year shall be the Plan Year. All qualified plans of the Employer and any Related Employer must use the same Limitation Year. If the Limitation Year is amended to a different 12-consecutive-month period, the new Limitation Year must begin on a date within the Limitation Year in which the amendment is made.

(ee) "**Matching Employer Contribution**" means any contribution made by the Employer to the Plan in accordance with Section 5.08 or 5.09 on account of an Active Participant's Deferral Contributions.

(ff) "**Mass Submitter Sponsor**" means Fidelity Management & Research company or its successor.

(gg) "**Nonelective Employer Contribution**" means any contribution made by the Employer to the Plan in accordance with Section 5.10.

(hh) "**Non-Highly Compensated Employee**" means any Employee who is not a Highly Compensated Employee.

(ii) "**Normal Retirement Age**" means the normal retirement age specified in Subsection 1.13(a) of the Adoption Agreement. If the Employer enforces a mandatory retirement age in accordance with Federal law, the Normal Retirement Age is the lesser of that mandatory age or the age specified in Subsection 1.13(a) of the Adoption Agreement.

(jj) "**Participant**" means any individual who is either an Active Participant or an Inactive Participant.

(kk) "**Permissible Investment**" means the investments specified by the Employer as available for investment of assets of the Trust and agreed to by the Trustee and the Prototype Sponsor. The Permissible Investments under the Plan shall be listed in the Service Agreement.

(ll) "**Plan**" means the plan established by the Employer in the form of the prototype plan, as set forth herein as a new plan or as an amendment to an existing plan, by executing the Adoption Agreement, together with any and all amendments hereto.

8

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(mm) "**Plan Year**" means the 12-consecutive-month period ending on the date designated by the Employer in Subsection 1.01(d) of the Adoption Agreement, except that the initial Plan Year of a new Plan may consist of fewer than 12 months, calculated from the Effective Date listed in Subsection 1.01(g)(1) of the Adoption Agreement through the end of such initial Plan Year, in which event Compensation for such initial Plan Year shall be treated as provided in Subsection 2.01(j).

(nn) "**Prototype Sponsor**" means Fidelity Management & Research Company or its successor.

(oo) "**Qualified Matching Employer Contribution**" means any contribution made by the Employer to the Plan on account of Deferral Contributions or Employee Contributions made by or on behalf of Active Participants in accordance with section 5.09, that may be included in determining whether the Plan meets the "ADP" test described in Section 6.03.

(pp) "**Qualified Nonelective Employer Contribution**" means any contribution made by the Employer to the Plan on behalf of Non-Highly Compensated Employees in accordance with Section 5.07, that may be included in determining whether the Plan meets the "ADP" test described in Section 6.03 or the "ACP" test described in Section 6.06.

(qq) "**Reemployment Commencement Date**" means the date on which an Employee who terminates employment with the Employer and all Related Employers first performs an Hour of Service following such termination of employment.

(rr) "**Related Employer**" means any employer other than the Employer named in Subsection 1.02(a) of the Adoption Agreement if the Employer and such other employer are members of a controlled group of corporations (as defined in Code Section 414(b)) or an affiliated service group (as defined in Code Section 414(m)), or are trades or businesses (whether or not incorporated) which are under common control (as defined in code section 414(c)), or such other employer is required to be aggregated with the Employer pursuant to regulations issued under Code Section 414(o).

(ss) "**Required Beginning Date**" means:

(1) for a Participant who is not a five-percent owner, April 1 of the calendar year following the calendar year in which occurs the later of (i) the Participant's retirement or (ii) the Participant's attainment of age 70<sup>1/2</sup>; provided, however, that any such Participant who attains age 70<sup>1/2</sup> prior to January 1, 1999, or such later date as may be specified by the Employer in Section (e) of the Special Effective Dates Addendum to the Adoption Agreement, may elect to have his Required Beginning Date determined without regard to the provisions of clause (i).

(2) for a Participant who is a five-percent owner, April 1 of the calendar year following the calendar year in which the Participant attains age 70<sup>1/2</sup>.

Once a five-percent owner's Required Beginning Date has occurred, it shall not be re-determined, even if the Participant ceases to be a five-percent owner in a subsequent year.

For purposes of this Subsection 2.01(ss), a Participant is treated as a five-percent owner if such Participant is a five-percent owner as defined in Code Section 416(i) (determined in accordance with Code Section 416 but without regard to whether the Plan is top-heavy) at any time during the Plan Year ending with or within the calendar year in which such owner attains age 70<sup>1/2</sup>.

(tt) "**Rollover Contribution**" means any distribution from a qualified plan (or an individual retirement account holding only assets allocable to a distribution from a qualified plan) that an Employee elects to contribute to the Plan in accordance with the provisions of Section 5.06.

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(uu) "**Self-Employed individual**" means an individual who has Earned Income for the taxable year from the Employer or who would have had Earned Income but for the fact that the trade or business had no net profits for the taxable year, including, but not limited to, a partner in a partnership, a sole proprietor, or a shareholder in a limited liability company or subchapter S corporation.

(vv) "**Service Agreement**" means the agreement between the Employer and the Prototype Sponsor (or an agent or affiliate of the Prototype Sponsor) relating to the provision of investment and other services to the plan and shall include any addendum to the agreement and any other separate written agreement between the Employer and the Prototype Sponsor (or an agent or affiliate of the Prototype Sponsor) relating to the provision of services to the Plan.

(ww) "**Severance Date**" means the earlier of (i) the date an Employee retires, dies, quits, or is discharged from employment with the Employer and all Related Employers or (ii) the 12-month anniversary of the date on which the Employee was otherwise first absent from employment; provided, however, that if an individual terminates or is absent from employment with the Employer and all Related Employers because of military duty, such individual shall not incur a Severance Date if his employment rights are protected under Federal law and he returns to employment with the Employer or a Related Employer within the period during which he retains such employment rights, but, if he does not return to such employment within such period, his Severance Date shall be the earlier of (1) the anniversary of the date his absence commenced or (2) the last day of the period during which he retains such employment rights.

(xx) "**Trust**" means the trust created by the Employer in accordance with the provisions of Section 20.01.

(yy) "**Trust Agreement**" means the agreement between the Employer and the Trustee, as set forth in Article 20, under which the assets of the Plan are held, administered, and managed.

(zz) "**Trustee**" means Fidelity Management Trust Company or its successor. The term Trustee shall include any delegate of the Trustee as may be provided in the Trust Agreement.

(aaa) "**Trust Fund**" means the property held in Trust by the Trustee for the Accounts of Participants and their Beneficiaries.

(bbb) "**Vesting Service**" means an Employee's service that is taken into account in determining his vested interest in his Matching Employer and Nonelective Employer Contributions Accounts as may be required under Section 1.15 of the Adoption Agreement. Vesting Service shall be credited in accordance with Article 3.

2.02 **Pronouns.** Pronouns used in the Plan are in the masculine gender but include the feminine gender unless the context clearly indicates otherwise.

2.03 **Special Effective Dates.** Some provisions of the Plan are only effective beginning as of a specified date or until a specified date. Special effective dates are only specified within Plan text if they are prospective from the date the Prototype Sponsor submits the Basic Plan Document to the National Office of the Internal Revenue Service for approval or if the dates serve a continuing function in making Plan determinations. Special effective dates that serve no continuing Plan function have been removed from Plan text.

10

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## ARTICLE 3 SERVICE.

3.01 **Crediting Eligibility service.** If the Employer has selected an Eligibility Service requirement in Subsection 1.04(b) of the Adoption Agreement for an Eligible Employee to become an Active Participant, Eligibility Service shall be credited to an Employee as follows:

(a) if the Employer has selected the one or two year(s) of Eligibility Service requirement described in Subsection 1.04(b) (1) (C) or (D) of the Adoption Agreement, an Employee shall be credited with a year of Eligibility Service for each Eligibility Computation Period during which the Employee has been credited with at least 1,000 Hours of Service.

(b) If the Employer has selected the months of Eligibility Service requirement described in Subsection 1.04(b)(1)(B) of the Adoption Agreement, an Employee shall be credited with Eligibility Service for the aggregate of the periods beginning with the Employee's Employment Commencement Date (or Reemployment Commencement Date) and ending on his subsequent Severance Date; provided, however, that an Employee who has a Reemployment Date within the 12-consecutive-month period following the earlier of the first date of his absence or his Severance Date shall be credited with Eligibility Service for the period between his Severance Date and his Reemployment Date. Months of Eligibility Service shall be measured from the Employee's Employment Commencement Date or Reemployment Commencement Date to the coinciding date in the applicable following month.

3.02 **Re-Crediting of Eligibility Service Following Termination of Employment.** An Employee whose employment with the Employer and all Related Employers terminates and who is subsequently reemployed by the Employer or a Related Employer shall be re-credited upon reemployment with his Eligibility Service earned prior to his termination of employment.

3.03 **Crediting of Vesting Service.** If the Plan provides for Matching Employer and/or Nonelective Employer Contributions that are not 100-percent vested when made, Vesting Service shall be credited to an Employee for the aggregate of the periods beginning with the Employee's Employment Commencement Date (or Reemployment Commencement Date) and ending on his subsequent Severance Date; provided, however, that an Employee who has a Reemployment Date within the 12-month period following the earlier of the first date of his absence or his Severance Date shall be credited with Eligibility Service for the period between his Severance Date and his Reemployment Date. Fractional periods of a year shall be expressed in terms of days.

3.04 **Application of Vesting Service to a Participant's Account Following a Break in Vesting Service.** The following rules describe how Vesting Service earned before and after a Break in Vesting Service shall be applied for purposes of determining a Participant's vested interest in his Matching Employer and Nonelective Employer Contributions Accounts.

(a) If a Participant incurs five-consecutive Breaks in Vesting Service, all years of Vesting Service earned by the Employee after such Breaks in Service shall be disregarded in determining the Participant's vested interest in his Matching Employer and Nonelective Employer Contributions Account balances attributable to employment before such Breaks in Vesting Service. However, Vesting Service earned both before and after such Breaks in Vesting Service shall be included in determining the Participant's vested interest in his Matching Employer and Nonelective Employer Contributions Account balances attributable to employment after such Breaks in Vesting service.

(b) If a Participant incurs fewer than five-consecutive Breaks in Vesting Service, Vesting Service earned both before and after such Breaks in Vesting Service shall be included in determining the Participant's vested interest in his Matching Employer and Nonelective Employer Contributions Account balances attributable to employment both before and after such Breaks in Vesting Service.

11

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3.05 **Service with Predecessor Employer.** If the Plan is the plan of a predecessor employer, an Employee's Eligibility and Vesting Service shall include years of service with such predecessor employer. In any case in which the Plan is not the plan maintained by a predecessor employer, service for such predecessor employer shall be treated as Eligibility and Vesting Service if so specified in Section 1.16 of the Adoption Agreement.

3.06 **Change in Service Crediting.** If an amendment to the Plan or a transfer from employment as an Employee covered under another qualified plan maintained by the Employer or a Related Employer results in a change in the method of crediting Eligibility and/or Vesting Service with respect to a Participant between the Hours of Service crediting method set forth in Section 2530.200b-2 of the Department of Labor Regulations and the elapsed-time crediting method set forth in Section 1.410(a)-7 of the Treasury Regulations, each Participant with respect to whom the method of crediting Eligibility and/or Vesting Service is changed shall be treated in the manner set forth in Section 1.410(a)-7(f)(1) of the Treasury Regulations which are incorporated herein by reference.

## ARTICLE 4 PARTICIPATION

4.01 **Date of Participation.** If the Plan is an amendment and restatement of a prior plan, all Eligible Employees who were active participants in the Plan immediately prior to the Effective Date shall continue as Active Participants on the Effective Date. All Eligible Employees who are in the service of the Employer on the Effective Date (and, if this is an amendment and restatement of a prior plan, were not active participants in the prior plan immediately prior to the Effective Date) shall become Active Participants on the date elected by the Employer in Subsection 1.04(f) of the Adoption Agreement. Any other Eligible Employee shall become an Active Participant in the Plan on the Entry Date coinciding with or immediately following the date on which he first satisfies the eligibility requirements set forth in Subsections 1.04(a) and 1.04(b) of the Adoption Agreement.

The Employer may elect different Eligibility Service requirements for purposes of eligibility (a) to make Deferral Contributions and (b) to receive Nonelective and/or Matching Employer Contributions. Any Eligibility Service requirement that the Employer elects to apply in determining an Eligible Employee's eligibility to make Deferral Contributions shall also apply in determining an Eligible Employee's eligibility to make Employee Contributions, if Employee Contributions are permitted under the Plan, and to receive Qualified Nonelective Employer Contributions. If an Employer elects to have different Eligibility Service requirements

apply, an Eligible Employee who has met the eligibility requirements with respect to certain contributions, but who has not met the eligibility requirements with respect to other contributions, shall become an Active Participant in accordance with the provisions of the preceding paragraph, but only with respect to the contributions for which he has met the eligibility requirements.

**4.02 Transfers Out of Covered Employment.** If any Active Participant ceases to be an Eligible Employee, but continues in the employ of the Employer or a Related Employer, such Employee shall cease to be an Active Participant, but shall continue as an Inactive Participant until his entire Account balance is forfeited or distributed. An Inactive Participant shall not be entitled to receive an allocation of contributions or forfeitures under the Plan for the period that he is not an Eligible Employee and wages and other payments made to him by the Employer or a Related Employer for services other than as an Eligible Employee shall not be included in Compensation for purposes of determining the amount and allocation of any contributions to the Account of such Inactive Participant. Such Inactive Participant shall continue to receive credit for Vesting Service completed during the period that he continues in the employ of the Employer or a Related Employer.

**4.03 Transfers Into Covered Employment.** If an Employee who is not an Eligible Employee becomes an Eligible Employee, such Eligible Employee shall become an Active Participant immediately as of his transfer date if such Eligible Employee has already satisfied the eligibility requirements and

12

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would have otherwise previously become an Active Participant in accordance with Section 4.01. Otherwise, such Eligible Employee shall become an Active Participant in accordance with Section 4.01.

Wages and other payments made to an Employee prior to his becoming an Eligible Employee by the Employer or a Related Employer for services other than as an Eligible Employee shall not be included in Compensation for purposes of determining the amount and allocation of any contributions to the Account of such Eligible Employee.

**4.04 Resumption of Participation Following Reemployment.** If a Participant who terminates employment with the Employer and all Related Employers is reemployed as an Eligible Employee, he shall again become an Active Participant on his Reemployment Date. Any other Employee who terminates employment with the Employer and all Related Employers and is reemployed by the Employer or a Related Employer shall become an Active Participant as provided in section 4.01 or 4.03. Any distribution which a Participant is receiving under the Plan at the time he is reemployed by the Employer or a Related Employer shall cease except as otherwise required under Section 12.04.

**4.05 Omission of Eligible Employee.** If any Eligible Employee who should be included as an Active Participant in the Plan is erroneously omitted and discovery of such omission is not made until after a Nonelective Employer Contribution has been made by his Employer for the year, the Employer shall make a subsequent Nonelective Employer Contribution, if necessary, so that the omitted Eligible Employee receives the total amount which such Eligible Employee would have received as a Nonelective Employer Contribution had he not been omitted.

In addition, if such Employee would have been eligible to make Deferral Contributions to the Plan for such year, the Employer shall make a special Qualified Nonelective Employer Contribution to the Account of the omitted Eligible Employee in an amount equal to the average of the "deferral ratios", as defined in Subsection 6.01(e), for the year of the Employee group (Highly Compensated or Non-Highly Compensated Employees, as applicable) of which the omitted Eligible Employee is a member. If the omitted Eligible Employee would have been eligible to receive Matching Employer Contributions with respect to his Deferral Contributions, the Employer shall make an additional special Qualified Nonelective Employer Contribution to the Account of the omitted Eligible Employee in an amount equal to the average of the "contribution percentages", as defined in Subsection 6.01(c), for the year of the Employee group (Highly Compensated or Non-Highly Compensated Employees, as applicable) of which the omitted Eligible Employee is a member. Contributions made in accordance with the provisions of this section 4.05 shall be treated as "annual additions", as defined in Subsection 6.01(b), for the year for which they were made.

## ARTICLE 5 CONTRIBUTIONS.

**5.01 Contributions Subject to Limitations.** All contributions made to the Plan under this Article 5 shall be subject to the limitations contained in Article 6.

**5.02 Compensation Taken into Account in Determining Contributions.** In determining the amount or allocation of any contribution that is based on a percentage of Compensation, only Compensation paid to a Participant for services rendered to the Employer while employed as an Eligible Employee shall be taken into account. Except as otherwise specifically provided in this Article 5, for purposes of determining the amount and allocation of contributions under this Article 5, Compensation shall not include reimbursements or other expense allowances, fringe benefits (cash and non-cash), moving expenses, deferred compensation, welfare benefits, and any items elected by the Employer with respect to such contributions in Subsection 1.05(a) or (b), as applicable, of the Adoption Agreement, but shall include amounts that are not includable in the gross income of the Participant under a salary reduction agreement by reason of the application of Code Section 125, 402(a)(8), 402(h), or 403(b).

13

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If the initial Plan Year of a new plan consists of fewer than 12 months, calculated from the Effective Date listed in Subsection 1.01(g)(1) of the Adoption Agreement through the end of such initial Plan Year, Compensation for purposes of determining the amount and allocation of contributions, other than non-safe harbor Nonelective Employer Contributions, under this Article 5 for such initial Plan Year shall include only Compensation for services during the period beginning on the Effective Date listed in Subsection 1.01(g)(1) of the Adoption Agreement and ending on the last day of the initial Plan Year. Compensation for purposes of determining the amount and allocation of non-safe harbor Nonelective Employer Contributions under this Article 5 for such initial Plan Year shall include Compensation for the full 12-consecutive-month period ending on the last day of the initial Plan Year.

**5.03 Deferral Contributions.** If so provided by the Employer in Subsection 1.07(a) of the Adoption Agreement, each Active Participant may elect to execute a salary reduction agreement with the Employer to reduce his Compensation by a specified percentage, not exceeding the percentage specified by the Employer in Subsection 1.07(a)(1) of the Adoption Agreement, per payroll period, subject to any exceptions elected by the Employer in Subsections 1.07(a)(2) and (3) of the Adoption Agreement, and equal to a whole number multiple of one-percent. If elected by the Employer in Subsection 1.07(a)(1)(A) of the Adoption Agreement, in lieu of specifying a percentage of Compensation reduction, an Active Participant may elect to reduce his Compensation by a specified dollar amount per payroll period, provided that such dollar amount may not exceed the percentage of Compensation specified by the Employer in Subsection 1.07(a)(1) of the Adoption Agreement, subject to any exceptions elected by the Employer in Subsections 1.07(a)(2) and (3) of the Adoption Agreement.

An Active Participant's salary reduction agreement shall become effective on the first day of the first payroll period for which the Employer can reasonably process the request, but not earlier than the later of (a) the effective date of the provisions permitting Deferral Contributions or (b) the date the Employer adopts such provisions. The Employer shall make a Deferral Contribution on behalf of the Participant corresponding to the amount of said reduction. Under no circumstances may a salary reduction agreement be adopted retroactively.

An Active Participant may elect to change or discontinue the percentage or dollar amount by which his Compensation is reduced by notice to the Employer as provided in Subsection 1.07(a)(1)(B) or (C) of the Adoption Agreement. Notwithstanding the Employer's election in Subsection 1.07(a)(1)(B) or (C) of the Adoption Agreement, if the Employer has elected one of the safe harbor contributions in Subsection 1.10(a)(3) or 1.11(a)(3) of the Adoption Agreement, an Active Participant may elect to change or discontinue the percentage or dollar amount by which his Compensation is reduced by notice to the Employer within a reasonable period, as specified by the Employer (but not less than 30 days), of receiving the notice described in Section 6.10.

If elected by the Employer in Subsection 1.07(a)(4) of the Adoption Agreement, if at the time that an Eligible Employee becomes an Active Participant, such Eligible Employee does not affirmatively elect in accordance with the preceding provisions of this Section 5.03 to reduce his compensation by an alternative percentage or dollar amount, if applicable, his Compensation shall be reduced by the percentage specified by the Employer in subsection 1.07(a)(4) of the Adoption Agreement, which amount shall be contributed to the Plan on his behalf as a Deferral Contribution. Such Active Participant's Compensation shall continue to be reduced and Deferral Contributions made to the Plan on his behalf until the Active Participant elects to change or discontinue the percentage by which his Compensation is reduced by notice to the Employer as provided in Subsection 1.07(a)(1)(B) or (C) of the Adoption Agreement.

As of the date he becomes an Active Participant, an Eligible Employee may affirmatively elect not to have his Compensation reduced in accordance with the preceding paragraph by notice filed with his Employer prior to the date he becomes an Active Participant or within a reasonable period following

14

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such date that ends no later than the date Compensation subject to reduction hereunder becomes available to the Active Participant. At the time an Eligible Employee becomes an Active Participant, the Employer shall provide such Eligible Employee with a notice explaining the automatic reduction in his Compensation and his right to elect either a different reduction amount or no reduction. The notice shall describe the procedures for making such an election and the period in which such an election must be made. In addition, the Employer shall provide annual notices to Active Participants regarding the percentage or dollar amount by which their Compensation is being reduced, if any, and their right to change such percentage or dollar amount by notice to the Employer as provided in Subsection 1.07(a)(1)(B) or (C) of the Adoption Agreement.

**5.04 Employee Contributions.** If the Employer elected to permit Deferral Contributions in Subsection 1.07(a) of the Adoption Agreement and if so provided by the Employer in Subsection 1.08(a)(1) of the Adoption Agreement, each Active participant may elect to make non-deductible Employee Contributions to the Plan in accordance with the rules and procedures established by the Employer and in an amount not less than one-percent and not greater than, ten-percent of such Participant's Compensation for the Plan Year.

**5.05 No Deductible Employee Contributions.** No deductible Employee Contributions may be made to the Plan. Deductible Employee Contributions made prior to January 1, 1987 shall be maintained in a separate Account. No part of the deductible Employee Contributions Account shall be used to purchase life insurance.

**5.06 Rollover Contributions.** An Eligible Employee who is or was entitled to receive an eligible rollover distribution, as defined in Code Section 402(c)(4) and Treasury Regulations issued thereunder, from a qualified plan (or an individual retirement account holding only assets attributable to a distribution from a qualified plan) may elect to contribute all or any portion of such distribution to the Trust directly from such qualified plan or individual retirement account or within 60 days of payment of such distribution to the Eligible Employee. Rollover Contributions shall only be made in the form of cash, allowable Fund Shares, or, if and to the extent permitted by the Employer with the consent of the Trustee, promissory notes evidencing a plan loan to the Eligible Employee; provided, however, that Rollover Contributions shall only be permitted in the form of promissory notes if the Plan otherwise provides for loans.

An Eligible Employee who has not yet become an Active Participant in the Plan in accordance with the provisions of Article 3 may make a Rollover Contribution to the Plan. Such Eligible Employee shall be treated as a Participant under the Plan for all purposes of the Plan, except eligibility to have Deferral Contributions made on his behalf and to receive an allocation of Matching Employer or Nonelective Employer contributions.

The Administrator shall develop such procedures and require such information from Eligible Employees as it deems necessary to insure that amounts contributed under this Section 5.06 meet the requirements for tax-free rollovers established by this Section 5.06 and by Code Section 402(c). No Rollover Contributions may be made to the Plan until approved by the Administrator.

If a Rollover Contribution made under this Section 5.06 is later determined by the Administrator not to have met the requirements of this Section 5.06 or of the Code or Treasury regulations, the Trustee shall, within a reasonable time after such determination is made, and on instructions from the Administrator, distribute to the Employee the amounts then held in the Trust attributable to such Rollover Contribution.

A Participant's Rollover Contributions Account shall be subject to the tax, of the Plan, including Article 14, except as otherwise provided in this Section 5.06.

Notwithstanding any other provision of this Section 5.06, the Employer may direct the Trustee not to accept Rollover contributions.

15

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**5.07 Qualified Nonelective Employer Contributions.** The Employer may, in its discretion, make a Qualified Nonelective Employer Contribution for the Plan Year in any amount necessary to satisfy or help to satisfy the "ADP" test, described in Section 6.03, and/or the "ACP" test, described in Section 6.06. Qualified Nonelective Employer Contributions shall be made and allocated based on Participants' "testing compensation", as defined in Subsection 6.01(t), rather than compensation, as defined in Subsection 2.01(j). Any Qualified Nonelective Employer Contribution shall be allocated among the Accounts of Non-Highly Compensated Employees who are Active Participants at any time during the Plan Year as follows:

(a) Unless the Employer elects the allocation formula in Subsection 1.09(a)(2) of the Adoption Agreement, the Qualified Nonelective Employer Contribution shall be allocated at the election of the Employer either

(1) in the ratio that each eligible Active Participant's "testing compensation", as defined in Subsection 6.01(t), for the Plan Year bears to the total "testing compensation" paid to all eligible Active Participants for the Plan Year; or

(2) as a uniform flat dollar amount for each eligible Active Participant for the Plan Year.

(b) if the Employer elects the allocation formula in Subsection 1.09(a)(2) of the Adoption Agreement, the Qualified Nonelective Employer Contribution shall be allocated as follows:

(1) The eligible Active Participant with the least "testing compensation", as defined in Subsection 6.01(t), for the Plan Year shall receive an allocation equal to the lowest of:

(A) the product of the maximum rate of Deferral Contributions specified by the Employer in Subsection 1.07(a)(1) of the Adoption Agreement multiplied by the eligible Active Participant's "testing compensation" for the Plan Year;

(B) the maximum amount that may be contributed on the eligible Active Participant's behalf under Code Section 415, taking into account all other contributions made by or on behalf of the eligible Active Participant to plans maintained by the Employer or a Related Employer that are includable as "annual additions", as defined in Subsection 6.01(b); or

(C) the full amount of the Qualified Nonelective Employer Contribution.

(2) The eligible Active Participant with the next lowest "testing compensation", as defined in Subsection 6.01(t), for the Plan Year shall receive an allocation equal to the lowest of:

(A) the product of the maximum rate of Deferral Contributions specified by the Employer in Subsection 1.07(a)(1) of the Adoption Agreement multiplied by the eligible Active Participant's "testing compensation" for the Plan Year;

(B) the maximum amount that may be contributed on the eligible Active Participant's behalf under code Section 415, taking into account all other contributions made by or on behalf of the eligible Active Participant to plans maintained by the Employer or a Related Employer that are includable as "annual additions", as defined in Subsection 6.01(b); or

(C) the balance of any Qualified Nonelective Employer Contribution remaining after allocation is made as provided in Subsection 5.07(b)(1) above.

(3) The allocation in subsection 5.07(b)(2) shall be applied individually to each remaining eligible Active Participant, in ascending order of "testing compensation", until the Qualified Nonelective Employer Contribution is fully allocated. Once the Qualified Nonelective Employer Contribution is fully allocated, no further allocation shall be made to the remaining eligible Active Participants.

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Active Participants shall not be required to satisfy any Hours of Service or employment requirement for the Plan Year in order to receive an allocation of Qualified Nonelective Employer Contributions.

Qualified Nonelective Employer Contributions shall be distributable only in accordance with the distribution provisions that are applicable to Deferral Contributions; provided, however, that a Participant shall not be permitted to take a hardship withdrawal of amounts credited to his Qualified Nonelective Employer Contributions Account after the later of December 31, 1988 or the last day of the Plan Year ending before July 1, 1989.

**5.08 Matching Employer Contributions.** If so provided by the Employer in Section 1.10 of the Adoption Agreement, the Employer shall make a Matching Employer Contribution on behalf of each eligible Active Participant, as determined in accordance with subsection 1.10(d) and Section 1.12 of the Adoption Agreement, who had Deferral Contributions made on his behalf during the Contribution Period. The amount of the Matching Employer Contribution shall be determined in accordance with Subsection 1.10(a) and/or (b) and/or the Safe Harbor Matching Employer Contribution Addendum to the Adoption Agreement, as applicable.

**5.09 Qualified Matching Employer Contributions.** If so provided by the Employer in Subsection 1.10(e) of the Adoption Agreement, prior to making its matching Employer Contribution (other than any safe harbor Matching Employer Contribution) to the Plan, the Employer may designate all or a portion of such Matching Employer Contribution as a Qualified Matching Employer Contribution. The Employer shall notify the Trustee of such designation at the time it makes its Matching Employer Contribution. Qualified Matching Employer Contributions shall be distributable only in accordance with the distribution provisions that are applicable to Deferral Contributions; provided, however, that a Participant shall not be permitted to take a hardship withdrawal of amounts credited to his Qualified Matching Employer Contributions Account after the later of December 31, 1988 or the last day of the Plan Year ending before July 1, 1989.

If the amount of an Employer's Qualified Matching Employer Contribution is determined based on a Participant's compensation, and the Qualified Matching Employer Contribution is necessary to satisfy the "ADP" test described in Section 6.03, the compensation used in determining the amount of the Qualified Matching Employer contribution shall be "testing compensation", as defined in Subsection 6.01(t). If the Qualified Matching Employer Contribution is not necessary to satisfy the "ADP" test described in Section 6.03, the compensation used to determine the amount of the Qualified Matching Employer Contribution shall be compensation as defined in Subsection 2.01(j), modified as provided in section 5.01.

**5.10 Nonelective Employer Contributions.** If so provided by the Employer in Section 1.11 of the Adoption Agreement, the Employer shall make Nonelective Employer Contributions to the Trust in accordance with Subsection 1.11(a) and/or (b) of the Adoption Agreement to be allocated as follows:

(a) If the Plan is a money purchase pension plan or the Employer has elected a fixed contribution formula, Nonelective Employer Contributions shall be allocated among eligible Active Participants, as determined in accordance with Subsection 1.11(c) and Section 1.12 of the Adoption Agreement, in the manner specified in Subsection 1.11(a) or the Safe Harbor Nonelective Employer Contribution Addendum to the Adoption Agreement, as applicable.

(b) If the Employer has elected a discretionary contribution amount, Nonelective Employer Contributions shall be allocated among eligible Active Participants, as determined in accordance with Subsection 1.11(c) and Section 1.12 of the Adoption Agreement, as follows:



(1) if the non-integrated formula is elected in Subsection 1.11(b)(1) of the Adoption Agreement, Nonelective Employer Contributions shall be allocated to eligible Active Participants in the ratio that each eligible Active Participant's Compensation bears to the total

Compensation paid to all eligible Active Participants for the Plan Year; provided, however, that if the Plan is or is deemed to be a "top-heavy plan", as defined in Subsection 15.01(f), for any Plan Year, these allocation provisions shall be modified as provided in Section 15.04; or

(2) If the integrated formula is elected in subsection 1.11(b)(2) of the Adoption Agreement, Nonelective Employer Contributions shall be allocated in the following steps:

(A) First, to each eligible Active Participant in the same ratio that the sum of the eligible Active Participant's Compensation and "excess Compensation" for the Plan Year bears to the sum of the Compensation and "excess Compensation" of all eligible Active Participants for the Plan Year. This allocation as a percentage of the sum of each eligible Active Participant's Compensation and "excess Compensation" shall not exceed the "permitted disparity limit", as defined in Section 1.11 of the Adoption Agreement.

Notwithstanding the foregoing, if in any Plan Year an eligible Active Participant has reached the "cumulative permitted disparity limit", such eligible Active Participant shall receive an allocation under this Subsection 5.10(b)(2)(A) based on two times his Compensation for the Plan Year, rather than the sum of his Compensation and "excess Compensation" for the Plan Year. If an Active Participant did not benefit under a qualified defined benefit plan or target benefit plan for any Plan Year beginning on or after January 1, 1995, the Active Participant shall have no "cumulative disparity limit".

(B) second, if any Nonelective Employer Contributions remain after the allocation in Subsection 5.10(b)(2)(A), the remaining Nonelective Employer Contributions shall be allocated to each eligible Active Participant in the same ratio that the eligible Active Participant's Compensation for the Plan Year bears to the total Compensation of all eligible Active Participants for the Plan Year.

Notwithstanding the provisions of Subsections 5.10(b)(2)(A) and (B) above, if in any Plan Year an eligible Active Participant benefits under another qualified plan or simplified employee pension, as defined in Code Section 408(k), that provides for or imputes permitted disparity, the Nonelective Employer Contributions for the Plan Year allocated to such eligible Active Participant shall be in the ratio that his Compensation for the Plan Year bears to the total Compensation paid to all eligible Active Participants.

If the Plan is or is deemed to be a "top-heavy plan", as defined in Subsection 15.01(f), for any Plan Year, the allocation steps in Subsections 5.10(b)(2)(A) and (B) shall be modified as provided in Section 15.04.

For purposes of this Subsection 5.10(b)(2) the following definitions shall apply:

(C) "Cumulative permitted disparity limit" means 35 multiplied by the sum of an Active Participant's annual permitted disparity fractions, as defined in Sections 1.401(1)-5(b)(3) through (b)(7) of the Treasury Regulations, attributable to the Active Participant's total years of service under the Plan and any other qualified plan or simplified employee pension, as defined in Code Section 408(k), maintained by the Employer or a Related Employer. For each Plan Year commencing prior to January 1, 1989, the annual permitted disparity fraction shall be deemed to be one, unless the Participant never accrued a benefit under any qualified plan or simplified employee pension maintained by the Employer or a Related Employer during any such Plan Year. In determining the annual permitted disparity fraction for any Plan Year, the Employer may elect to assume that the full disparity limit has been used for such Plan Year.

(D) "**Excess Compensation**" means Compensation in excess of the "integration level" specified by the Employer in Subsection 1.11(b)(2) of the Adoption Agreement.

5.11 **Vested Interest in Contributions.** A Participant's vested interest in the following sub-accounts shall be 100-percent:

(a) his Deferral Contributions Account;

(b) his Qualified Nonelective Contributions Account;

(c) his Qualified Matching Employer Contributions Account;

(d) his Nonelective Employer Contributions Account attributable to Nonelective Employer Contributions made in accordance with the Safe Harbor Nonelective Employer Contribution Addendum to the Adoption Agreement that are intended to satisfy the safe harbor contribution requirement for deemed satisfaction of the "ADP" test described in Section 6.03;

(e) his Matching Employer contributions Account attributable to Matching Employer Contributions made in accordance with the Safe Harbor Matching Employer Contribution Addendum to the Adoption Agreement that are intended to satisfy the safe harbor contribution requirement for deemed satisfaction of the "ADP" test described in Section 6.03;

(f) his Rollover Contributions Account;

(g) his Employee Contributions Account; and

(h) his deductible Employee Contributions Account.

A Participant's vested interest in his Nonelective Employer Contributions Account attributable to Nonelective Employer contributions other than those described in Subsection 5.11(d) above, shall be determined in accordance with the vesting schedule elected by the Employer in Subsection 1.15(c)(1) of the Adoption Agreement. A Participant's vested interest in his Matching Employer Contributions Account attributable to Matching Employer contributions other than

those described in Subsection 5.11(e) above, shall be determined in accordance with the vesting schedule elected by the Employer in Subsection 1.15(c)(2) of the Adoption Agreement.

5.12 **Time for Making Employer Contributions.** The Employer shall pay its contribution for each Plan Year not later than the time prescribed by law for filing the Employer's Federal income tax return for the fiscal (or taxable) year with or within which such Plan Year ends (including extensions thereof). If the Employer has elected an Hours of Service and/or last day requirement for eligibility to receive an allocation of Matching Employer and/or Nonelective Employer Contributions, the Employer may not fund such contributions prior to the date as of which such eligibility requirements must be met.

The Trustee shall have no authority to inquire into the correctness of the amounts contributed and paid over to the Trustee, to determine whether any contribution is payable under this Article 5, or to enforce, by suit or otherwise, the Employer's obligation, if any, to make a contribution to the Trustee.

5.13 **Return of Employer Contributions.** The Trustee shall, upon request by the Employer, return to the Employer the amount (if any) determined under Section 20.24. Such amount shall be reduced by amounts attributable thereto which have been credited to the Accounts of Participants who have since received distributions from the Trust, except to the extent such amounts continue to be credited to such Participants' Accounts at the time the amount is returned to the Employer. Such amount shall also be reduced by the losses of the Trust attributable thereto, if and to the extent such losses exceed the gains and income attributable thereto, but shall not be increased by the gains and income of the Trust attributable thereto, if and to the extent such gains and income exceed the losses attributable thereto. To the extent such gains exceed losses, the gains shall be forfeited and applied as provided in Section 11.09. In no event shall the return of a contribution hereunder cause the balance of the

19

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individual Account of any Participant to be reduced to less than the balance which would have been credited to the Account had the mistaken amount not been contributed.

## ARTICLE 6 LIMITATIONS ON CONTRIBUTIONS.

6.01 **Special Definitions.** For purposes of this Article, the following definitions shall apply:

(a) "**Aggregate limit**" means the greater of (1) or (2) where (1) is the sum of (A) 125-percent of the greater of the average "deferral ratio" of the Active Participants who are Non-Highly Compensated Employees for the "testing year" or the average "contribution percentage" of Active Participants who are Non-Highly Compensated Employees for the "testing year", beginning with or within the "testing year" of the cash or deferred arrangement and (B) the lesser of 200-percent or two plus the lesser of such average "deferral ratio" or average "contribution percentage" and where (2) is the sum of (A) 125 percent of the lesser of the average "deferral ratio" of the Active Participants who are Non-Highly Compensated Employees for the "testing year" or the average "contribution percentage" of the Active Participants who are Non-Highly Compensated Employees for the "testing year" beginning with or within the "testing year" of the cash or deferred arrangement and (B) the lesser of 200-percent or two plus the greater of such average "deferral ratio" or average "contribution percentage".

(b) "**Annual additions**" mean the sum of the following amounts allocated to an Active Participant for a Limitation Year:

(1) all employer contributions allocated to an Active Participant's account under qualified defined contribution plans maintained by the "415 employer", including amounts applied to reduce employer contributions as provided under Section 11.09;

(2) all employee contributions allocated to an Active Participant's account under a qualified defined contribution plan or a qualified defined benefit plan maintained by the "415 employer" if separate accounts are maintained with respect to such Active Participant under the defined benefit plan;

(3) all forfeitures allocated to an Active Participant's account under a qualified defined contribution plan maintained by the "415 employer";

(4) all amounts allocated, after March 31, 1984, to an "individual medical account" which is part of a pension or annuity plan maintained by the "415 employer";

(5) all 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 Code Section 419A(d)(3), under a "welfare benefit fund" maintained by the "415 employer"; and

(6) all allocations to an Active Participant under a "simplified employee pension".

(c) "**Contribution percentage**" means the ratio (expressed as a percentage) of (1) the "contribution percentage amounts" allocated to an "eligible participant's" accounts for the Plan Year to (2) the "eligible participant's" "testing compensation" for the Plan Year.

(d) "**Contribution percentage amounts**" mean:

(1) any Employee Contributions made by an "eligible participant" to the Plan;

(2) any matching Employer Contributions, but excluding (A) Qualified Matching Employer contributions that are taken into account in satisfying the "ADP" test described in Section 6.03 (except that such exclusion shall not apply for any Plan Year in which the "ADP" test described in Section 6.03 is deemed satisfied pursuant to Section 6.10) and (B) Matching

20

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Employer Contributions that are forfeited either to correct "excess aggregate contributions" or because the contributions to which they relate are "excess deferrals", "excess contributions", or "excess aggregate contributions";

(3) at the election of the Employer, Qualified Nonelective Employer Contributions, excluding Qualified Nonelective Employer Contributions that are taken into account in satisfying the "ADP" test described in Section 6.03; and

(4) at the election of the Employer, Deferral Contributions, excluding Deferral Contributions that are taken into account in satisfying the "ADP" test described in Section 6.03.

Notwithstanding the foregoing, for any Plan Year in which the "ADP" test described in Section 6.03 is deemed satisfied pursuant to Section 6.10, "contribution percentage amounts" shall not include the following:

(5) any Deferral Contributions; and

(6) if the requirements described in Section 6.11 for deemed satisfaction of the "ACP" test with respect to Matching Employer Contributions are met, any Matching Employer Contributions; or if the requirements described in Section 6.11 for deemed satisfaction of the "ACP" test with respect to Matching Employer Contributions are not met, any Matching Employer Contributions made on behalf of an "eligible participant" for the Plan Year that do not exceed four percent of the "eligible participant's" Compensation for the Plan Year.

To be included in determining an "eligible participant's", "contribution percentage" for a Plan Year, Employee Contributions must be made to the plan before the end of such Plan Year and other "contribution percentage amounts" must be allocated to the "eligible participant's" Account as of a date within such Plan Year and made before the last day of the 12-month period immediately following the Plan Year to which the "contribution percentage amounts" relate. If an Employer has elected the prior year testing method described in Subsection 1.06(a)(2) of the Adoption Agreement, "contribution percentage amounts" that are taken into account for purposes of determining the "contribution percentages" of Non-Highly Compensated Employees for the prior year relate to such prior year. Therefore, such "contribution percentage amounts" must be made before the last day of the Plan Year being tested.

Effective for Plan Years beginning on or after January 1, 1999, if an Employer elects to change from the current year testing method described in Subsection 1.06(a)(1) of the Adoption Agreement to the prior year testing method described in Subsection 1.06(a)(2) of the Adoption Agreement, the following shall not be considered "contribution percentage amounts" for purposes of determining the "contribution percentages" of Non-Highly Compensated Employees for the prior year immediately preceding the Plan Year in which the change is effective:

(7) Qualified Matching Employer Contributions that were taken into account in satisfying the "ADP" test described in Section 6.03 for such prior year;

(8) Qualified Nonelective Employer Contributions that were taken into account in satisfying the "ADP" test described in Section 6.03 or the "ACP" test described in Section 6.06 for such prior year; and

(9) all Deferral Contributions.

(e) "**Deferral ratio**" means the ratio (expressed as a percentage) of (1) the amount of "includable contributions" made on behalf of an Active Participant for the Plan Year to (2) the Active Participant's "testing compensation" for such Plan Year. An Active Participant who does not receive "includable contributions" for a Plan Year shall have a "deferral ratio" of zero.

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(f) "**Defined benefit fraction**" means a fraction, the numerator of which is the sum of the Active Participant's annual benefits (adjusted to an actuarially equivalent straight life annuity if such benefit is expressed in a form other than a straight life annuity or qualified joint and survivor annuity) under all the defined benefit plans (whether or not terminated) maintained by the "415 employer", each such annual benefit computed on the assumptions that the Active Participant shall remain in employment until the normal retirement age under each such plan (or the Active Participant's current age, if later) and that all other factors used to determine benefits under such plan shall remain constant for all future Limitation Years, and the denominator of which is the lesser of 125-percent of the dollar limitation determined for the Limitation Year under Code Sections 415(b)(1)(A) and 415(d) or 140-percent of the Active Participant's highest average Compensation for three consecutive calendar years of service during which the Active Participant was active in each such plan, including any adjustments under Code Section 415(b). However, if the Active Participant was a participant as of the first day of the first Limitation Year beginning after December 31, 1986, in one or more defined benefit plans maintained by the "415 employer" which were in existence on May 6, 1986 then the denominator of the "defined benefit fraction" shall not be less than 125 percent of the Active Participant's total accrued benefit as of the close of the last Limitation Year beginning before January 1, 1987, disregarding any changes in the terms and conditions of such plans made after May 5, 1986, under all such defined benefit plans that met, individually and in the aggregate, the requirements of Code section 415 for all Limitation Years beginning before January 1, 1987.

(g) "**Defined contribution fraction**" means a fraction, the numerator of which is the sum of all "annual additions" credited to an Active Participant for the current Limitation Year and all prior Limitation Years and the denominator of which is the sum of the "maximum permissible amounts" for the current Limitation Year and all prior Limitation Years during which the Participant was an Employee (regardless of whether the "415 employer" maintained a defined contribution plan in any such Limitation Year).

If the Active Participant was a participant as of the first day of the first Limitation Year beginning after December 31, 1986, in one or more defined contribution plans maintained by the "415 employer" which were in existence on May 6, 1986, then the numerator of the "defined contribution fraction" shall be adjusted if the sum of this fraction and the "defined benefit fraction" would otherwise exceed 1.0 under the terms of the Plan. Under the adjustment an amount equal to the product of (1) the excess of the sum of the fractions over 1.0 and (2) the denominator of this fraction shall be permanently subtracted from the numerator of this fraction. The adjustment is calculated using the fractions as they would be computed as of the end of the last Limitation Year beginning before January 1, 1987, and disregarding any changes in the terms and conditions of the plans made after May 6, 1986, but using the Section 415 limitation applicable to the first Limitation Year beginning on or after January 1, 1987.

For purposes of determining the "defined contribution fraction", the "annual additions" for Limitation Years beginning before January 1, 1987 shall not be recomputed to treat all employee contributions as "annual additions".

(h) "**Determination year**" means (1) for purposes of determining income or loss with respect to "excess deferrals", the calendar year in which the "excess deferrals" were made and (2) for purposes of determining income or loss with respect to "excess contributions", and "excess aggregate contributions", the Plan Year in which such "excess contributions" or "excess aggregate contributions" were made.

(i) **"Elective deferrals"** mean all employer contributions, other than Deferral Contributions, made on behalf of a Participant pursuant to an election to defer under any qualified CODA as described in Code Section 401(k), any simplified employee pension cash or deferred arrangement

as described in Code Section 402(h)(1)(B), any eligible deferred compensation plan under Code Section 457, any plan as described under Code Section 501(c)(18), and any employer contributions made on behalf of a Participant pursuant to a salary reduction agreement for the purchase of an annuity contract under Code Section 403(b). "Elective deferrals" shall not include any deferrals properly distributed as excess "annual additions".

(j) **"Eligible participant"** means any Active Participant who is eligible to make Employee Contributions, or Deferral Contributions (if the Employer takes such contributions into account in calculating "contribution percentages"), or to receive a Matching Employer Contribution. Notwithstanding the foregoing, the term "eligible participant" shall not include any Active Participant who is included in a unit of Employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers.

(k) **"Excess aggregate contributions"** with respect to any Plan Year mean the excess of

(1) The aggregate "contribution percentage amounts" actually taken into account in computing the average "contribution percentages" of "eligible participants" who are Highly Compensated Employees for such Plan Year, over

(2) The maximum amount of "contribution percentage amounts" permitted to be made on behalf of Highly Compensated Employees under Section 6.06 (determined by reducing "contribution percentage amounts" made for the Plan Year on behalf of "eligible participants" who are Highly Compensated Employees in order of their "contribution percentages" beginning with the highest of such "contribution percentages").

"Excess aggregate contributions" shall be determined after first determining "excess deferrals" and then determining "excess contributions".

(l) **"Excess contributions"** with respect to any Plan Year mean the excess of

(1) The aggregate amount of "includable contributions", actually taken into account in computing the average "deferral percentages", of Active Participants who are Highly Compensated Employees for such Plan Year, over

(2) The maximum amount of "includable contributions" permitted to be made on behalf of Highly Compensated Employees under Section 6.03 (determined by reducing "includable contributions" made for the Plan Year on behalf of Active Participants who are Highly Compensated Employees in order of their "deferral ratios", beginning with the highest of such "deferral ratios").

(m) **"Excess deferrals"** mean those Deferral Contributions and/or "elective deferrals" that are includable in a Participant's gross income under Code Section 402(g) to the extent such Participant's Deferral Contributions and/or "elective deferrals" for a calendar year exceed the dollar limitation under such Code Section.

(n) **"Excess 415 amount"** means the excess of an Active Participant's "annual additions" for the Limitation Year over the "maximum permissible amount".

(o) **"415 employer"** means the Employer and any other employers which constitute a controlled group of corporations (as defined in Code Section 414(b) as modified by Code Section 415(h)) or which constitute trades or businesses (whether or not incorporated) which are under common control (as defined in Code Section 414(c) as modified by Code Section 415(h)) or which constitute an affiliated service group (as defined in Code Section 414(m)) and any other entity required to be aggregated with the Employer pursuant to regulations issued under Code Section 414(o).

(p) **"Includable contributions"** mean:

(1) any Deferral Contributions made on behalf of an Active Participant, including "excess deferrals" of Highly Compensated Employees, but excluding (a) "excess deferrals" of Non-Highly Compensated Employees that arise solely from Deferral Contributions made under the Plan or plans maintained by the Employer or a Related Employer and (b) Deferral Contributions that are taken into account in satisfying the "ACP" test described in Section 6.06;

(2) at the election of the Employer, Qualified Nonelective Employer contributions, excluding Qualified Nonelective Employer Contributions that are taken into account in satisfying the "ACP" test described in Section 6.06; and

(3) at the election of the Employer, Qualified Matching Employer Contributions; provided, however, that the Employer may not elect to treat Qualified Matching Employer Contributions as "includable contributions" for any Plan Year in which the "ADP" test described in Section 6.03 is deemed satisfied pursuant to Section 6.10.

To be included in determining an Active Participant's "deferral ratio" for a Plan Year, "includable contributions" must be allocated to the Participant's Account as of a date within such Plan Year and made before the last day of the 12-month period immediately following the Plan Year to which the "includable contributions" relate. If an Employer has elected the prior year testing method described in Subsection 1.06(a)(2) of the Adoption Agreement, "includable contributions" that are taken into account for purposes of determining the "deferral ratios" of Non-Highly Compensated Employees for the prior year relate to such prior year. Therefore, such "includable contributions" must be made before the last day of the Plan Year being tested.

Effective for Plan Years beginning on or after January 1, 1999, if an Employer elects to change from the current year testing method described in Subsection 1.06(a)(1) of the Adoption Agreement to the prior year testing method described in Subsection 1.06(a)(2) of the Adoption Agreement, the following shall not be considered "includable contributions" for purposes of determining the "deferral ratios" of Non-Highly Compensated Employees for the prior year immediately preceding the Plan Year in which the change is effective:

(4) Deferral Contributions that were taken into account in satisfying the "ACP" test described in Section 6.06 for such prior year;

(5) Qualified Nonelective Employer Contributions that were taken into account in satisfying the "ADP" test described in section 6.03 or the "ACP" test described in Section 6.06 for such prior year; and

(6) all Qualified Matching Employer Contributions.

(q) "**Individual medical account**" means an individual medical account as defined in Code Section 415(1)(2).

(r) "**Maximum permissible amount**" means for a Limitation Year with respect to any Active Participant the lesser of (1) \$30,000 (adjusted as provided in Code Section 415(d)) or (2) 25-percent of the Active 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 12 consecutive-month period, the dollar limitation specified in clause (1) above shall be adjusted by multiplying it by a fraction the numerator of which is the number of months in the short Limitation Year and the denominator of which is 12. For purposes of determining the "maximum permissible amount" with respect to an Active Participant, Compensation shall include amounts that are not includable in the gross income of the Participant under a salary reduction agreement by reason of the application of Code Section 125, 402(a)(8), 402(h), or 403(b), unless the Employer elects to exclude such amounts under Subsection 1.05(a) or (b), as applicable, of the Adoption Agreement.

24

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The Compensation limitation specified in clause (2) above Shall not apply to any contribution for medical benefits within the meaning of Code Section 401(h) or 419A(f)(2) after separation from service which is otherwise treated as an "annual addition" under Code Section 419A(d)(2) or 415(l)(1).

(s) "**Simplified employee pension**" means a simplified employee pension as defined in Code Section 408(k).

(t) "**Testing compensation**" means compensation as defined in Code Section 414(s). "Testing compensation" shall be based on the amount actually paid to a Participant during the "testing year" or, at the option of the Employer, during that portion of the "testing year" during which the Participant is an Active Participant; provided, however, that if the Employer elected different Eligibility Service requirements for purposes of eligibility to make Deferral Contributions and to receive Matching Employer Contributions, then "test compensation" must be based on the amount paid to a Participant during the full "testing year".

The annual "testing compensation" of each Active Participant taken into account in applying the "ADP" test described in Section 6.03 and the "ACP" test described in Section 6.06 for any "testing year" shall not exceed the annual compensation limit under Code Section 401(a)(17) as in effect on the first day of the "testing year". This limit shall be adjusted by the Secretary to reflect increases in the cost of living, as provided in Code Section 401(a)(17)(B); provided, however, that the dollar increase in effect on January 1 of any calendar year is effective for "testing years" beginning in such calendar year. If a Plan determines "testing compensation" over a period that contains fewer than 12 calendar months (a "short determination period"), then the Compensation limit for such "short determination period" is equal to the Compensation limit for the calendar year in which the "short determination period" begins multiplied by the ratio obtained by dividing the number of full months in the "short determination period" by 12; provided, however, that such proration shall not apply if there is a "short determination period" because (1) the Employer elected in accordance with any rules and regulations issued by the Secretary of the Treasury or his delegate to apply the "ADP" test described in Section 6.03 and/or the "ACP" test described in Section 6.06 based only on Compensation paid during the portion of the "testing year" during which an individual was an Active Participant or (2) an Employee is covered under the Plan for fewer than 12 calendar months.

(u) "**Testing year**" means

(1) if the Employer has elected the current year testing method in Subsection 1.06(a)(1) of the Adoption Agreement, the Plan Year being tested.

(2) if the Employer has elected the prior year testing method in Subsection 1.06(a)(2) of the Adoption Agreement, the Plan Year immediately preceding the Plan Year being tested.

(v) "**Welfare benefit fund**" means a welfare benefit fund as defined in Code Section 419(e)

**6.02 Code Section 402(g) Limit on Deferral Contributions.** In no event shall the amount of Deferral Contributions made under the Plan for a calendar year, when aggregated with the "elective deferrals" made under any other plan maintained by the Employer or a Related Employer, exceed the dollar limitation contained in Code Section 402(g) in effect at the beginning of such calendar year.

A Participant may assign to the Plan any "excess deferrals" made during a calendar year by notifying the Administrator on or before March 15 following the calendar year in which the "excess deferrals" were made of the amount of the "excess deferrals" to be assigned to the Plan. A Participant is deemed to notify the Administrator of any "excess deferrals" that arise by taking into account only those Deferral Contributions made to the Plan and those "elective deferrals" made to any other plan maintained by the Employer or a Related Employer. Notwithstanding any other provision of the Plan, "excess deferrals", plus any income and minus any loss allocable thereto, as determined under Section 6.09, shall be distributed no later than April 15 to any Participant to whose Account "excess

25

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deferrals" were so assigned for the preceding calendar year and who claims "excess deferrals" for such calendar year.

Any Matching Employer Contributions attributable to "excess deferrals", plus any income and minus any loss allocable thereto, as determined under Section 6.09, shall be forfeited and applied as provided in section 11.09.

"Excess deferrals" shall be treated as "annual additions" under the Plan, unless such amounts are distributed no later than the first April 15 following the close of the calendar year in which the "excess deferrals" were made.

**6.03 Additional Limit on Deferral Contributions ("ADP" Test).** Notwithstanding any other provision of the Plan to the contrary, the Deferral Contributions made with respect to a Plan Year on behalf of Active Participants who are Highly Compensated Employees for such Plan Year may not result in an average "deferral ratio" for such Active Participants that exceeds the greater of:

(a) the average "deferral ratio" for the "testing year" of Active Participants who are Non-Highly Compensated Employees for the "testing year" multiplied by 1.25; or

(b) the average "deferral ratio", for the "testing year" of Active Participants who are Non-Highly Compensated Employees for the "testing year" multiplied by two, provided that the average "deferral ratio" for Active Participants who are Highly Compensated Employees for the Plan Year being tested does not exceed the average "deferral ratio" for Participants who are Non-Highly Compensated Employees for the "testing year" by more than two percentage points.

For the first Plan Year in which the Plan provides a cash or deferred arrangement, the average "deferral ratio" for Active Participants who are Non-Highly Compensated Employees used in determining the limits applicable under Subsections 6.03(a) and (b) shall be either three-percent or the actual average "deferral ratio" for such Active Participants for such first Plan Year, as elected by the Employer in Section 1.06(c) of the Adoption Agreement.

The deferral ratios of Active Participants who are included in a unit of Employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement shall be disaggregated from the "deferral ratios" of other Active Participant and the provisions of this Section 6.03 shall be applied separately with respect to each group.

The "deferral ratio" for any Active Participant who is a Highly Compensated Employee for the Plan Year being tested and who is eligible to have "includable contributions" allocated to his accounts under two or more cash or deferred arrangements described in Code Section 401(k) that are maintained by the Employer or a Related Employer, shall be determined as if such "includable contributions", were made under a single arrangement. If a Highly Compensated Employee participates in two or more cash or deferred arrangements that have different plan years, all cash or deferred arrangements ending with or within the same calendar year shall be treated as a single arrangement. Notwithstanding the foregoing, certain plans shall be treated as separate if mandatorily disaggregated under regulations under Code Section 401(k).

If this Plan satisfies the requirements of Code Section 401(k), 401(a)(4), or 410(b) only if aggregated with one or more other plans, or if one or more other plans satisfy the requirements of such Code Sections only if aggregated with this plan, then this Section 6.03 shall be applied by determining the "deferral ratios" of Employees as if all such plans were a single plan. Plans may be aggregated in order to satisfy code Section 401(k) only if they have the same plan year.

The Employer shall maintain records sufficient to demonstrate satisfaction of the "ADP" test and the amount of Qualified Nonelective and/or Qualified Matching Employer Contributions used in such test.

26

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**6.04 Allocation and Distribution of "Excess Contributions".** Notwithstanding any other provision of this Plan, the "excess contributions" allocable to the Account of a Participant, plus any income and minus any loss allocable thereto, as determined under Section 6.09, shall be distributed to the Participant no later than the last day of the Plan Year immediately following the Plan Year in which the "excess contributions" were made. If such excess amounts are distributed more than 2<sup>1</sup>/<sub>2</sub> months after the last day of the Plan Year in which the "excess contributions" were made, a ten-percent excise tax shall be imposed on the Employer maintaining the Plan with respect to such amounts.

The "excess contributions" allocable to a Participant's Account shall be determined by reducing the "includable contributions" made for the Plan Year on behalf of Active Participants who are Highly Compensated Employees in order of the dollar amount of such "includable contributions", beginning with the highest such dollar amount.

"Excess contributions" shall be treated as "annual additions".

Any Matching Employer Contributions attributable to "excess contributions", plus any income and minus any loss allocable thereto, as determined under Section 6.09, shall be forfeited and applied as provided in Section 11.09.

**6.05 Reductions in Deferral Contributions to Meet Code Requirements.** In order for the Plan to comply with the requirements of Code Sections 401(k), 402(g) and 415 and the regulations promulgated thereunder, at any time in a Plan Year the Administrator may reduce the rate of Deferral Contributions to be made on behalf of any Active Participant, or class of Active Participants, for the remainder of that Plan Year, or the Administrator may require that all Deferral Contributions to be made on behalf of an Active Participant be discontinued for the remainder of that Plan Year. Upon the close of the Plan Year or such earlier date as the Administrator may determine, any reduction or discontinuance in Deferral Contributions shall automatically cease until the Administrator again determines that such a reduction or discontinuance of Deferral Contributions is required.

**6.06 Limit on Matching Employer Contributions and Employee Contributions ("ACP" Test).** The provisions of this Section 6.06 shall not apply to Active Participants who are included in a unit of Employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers.

Notwithstanding any other provision of the Plan to the contrary, Matching Employer Contributions and Employee Contributions made with respect to a Plan Year by or on behalf of "eligible participants" who are Highly Compensated Employees for such Plan Year may not result in an average "contribution percentage" for such "eligible participants" that exceeds the greater of:

(a) the average "contribution percentage" for the "testing year" of "eligible participants" who are Non-Highly Compensated Employees for the "testing year" multiplied by 1.25; or

(b) the average "contribution percentage" for the "testing year" of "eligible participants" who are Non-Highly Compensated Employees for the "testing year" multiplied by two, provided that the average "contribution percentage" for the Plan Year being tested of "eligible participants" who are Highly Compensated Employees does not exceed the average "contribution percentage" for the "testing year" of "eligible participants" who are Non-Highly Compensated Employees for the "testing year" by more than two percentage points.

For the first Plan Year in which the Plan provides for "contribution percentage amounts" to be made, the "ACP" for "eligible participants" who are Non-Highly Compensated Employees used in determining the limits applicable under paragraphs (a) and (b) of this Section 6.06 shall be determined under rules similar to the rules under Code Section 401(k)(3)(E).

The "contribution percentage" for any "eligible participant" who is a Highly Compensated Employee for the Plan Year and who is eligible to have "contribution percentage amounts" allocated to

27

his accounts under two or more plans described in Code Section 401(a) that are maintained by the Employer or a Related Employer, shall be determined as if such "contribution percentage amounts" were contributed under a single plan. If a Highly Compensated Employee participates in two or more such plans that have different plan years, all plans ending with or within the same calendar year shall be treated as a single plan. Notwithstanding the foregoing, certain plans shall be treated as separate if mandatorily disaggregated under Treasury Regulations issued under Code section 401(m).

If this Plan satisfies the requirements of Code Section 401(m), 401(a)(4) or 410(b) only if aggregated with one or more other plans, or if one or more other plans satisfy the requirements of such Code Sections only if aggregated with this Plan, then this Section 6.06 shall be applied by determining the "contribution percentages" of Employees as if all such plans were a single plan. Plans may be aggregated in order to satisfy Code Section 401(m) only if they have the same plan year.

The Employer shall maintain records sufficient to demonstrate satisfaction of the "ACP" test and the amount of Deferral Contributions, Qualified Nonelective Employer Contributions, and/or Qualified Matching Employer Contributions used in such test.

**6.07 Allocation, Distribution, and Forfeiture of "Excess Aggregate Contributions".** Notwithstanding any other provision of the Plan, the "excess aggregate contributions" allocable to the Account of a Participant, plus any income and minus any loss allocable thereto, as determined under Section 6.09, shall be forfeited, if forfeitable, or if not forfeitable, distributed to the Participant no later than the last day of the Plan Year immediately following the Plan Year in which the "excess aggregate contributions" were made. If such excess amounts are distributed more than 2<sup>1</sup>/<sub>2</sub> months after the last day of the Plan Year in which such "excess aggregate contributions" were made, a ten-percent excise tax shall be imposed on the Employer maintaining the Plan with respect to such amounts.

The "excess aggregate contributions" allocable to a Participant's Account shall be determined by reducing the "contribution percentage amounts" made for the Plan Year on behalf of "eligible participants" who are Highly Compensated Employees in order of the dollar amount of such "contribution percentage amounts", beginning with the highest such dollar amount.

"Excess aggregate contributions" shall be treated as "annual additions".

"Excess aggregate contributions" shall be forfeited or distributed from a Participant's Employee Contributions Account, Matching Employer Contributions Account and if applicable, the Participant's Deferral Contributions Account and/or Qualified Nonelective Employer Contributions Account in the order prescribed by the Trustee, which order shall be uniform with respect to all Participants and non-discriminatory.

Forfeitures of "excess aggregate contributions" shall first be applied to pay Plan expenses and, if any excess remains, shall then either (a) be applied to reduce Employer contributions or (b) be allocated among Active Participants' Accounts, as elected by the Employer in Subsection 1.15(d) of the Adoption Agreement.

**6.08 Aggregate Limit on "Contribution Percentage Amounts" and "Includable Contributions".** The sum of the average "deferral ratio" and the average "contribution percentage" of those Active Participants who are Highly Compensated Employees during the Plan Year shall not exceed the "aggregate limit". The average "deferral ratio" and average "contribution percentage" of such Active Participants shall be determined after any corrections required to meet the "ADP" test, described in Section 6.03, and the "ACP" test, described in Section 6.06, have been made. Notwithstanding the foregoing, the "aggregate limit" shall not be exceeded if either the average "deferral ratio" or the average "contribution percentage" of such Active Participants for the Plan Year does not exceed 1.25 multiplied by the average "deferral ratio" or the average "contribution percentage", as applicable, for the "testing year" of the Active Participants who are Non-Highly Compensated Employees for the "testing year" if the "aggregate limit" would be exceeded for any Plan Year, then the limit shall be met

28

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by reducing the "contribution percentage amounts" contributed for the Plan Year on behalf of the Active Participants who are Highly Compensated Employees for such Plan Year (in order of their "contribution percentages", beginning with the highest such "contribution percentage"). "Contribution percentage amounts" that are reduced as provided herein shall be treated as "excess aggregate contributions". If for any Plan Year in which the "ADP" test described in Section 6.03 is deemed satisfied pursuant to Section 6.10, the average "deferral ratio" of those Active Participants who are Highly Compensated Employees during the Plan Year does not meet the "aggregate limit" after reducing the "contribution percentage amounts" contributed on behalf of such Active Participants to zero, no further reduction shall be required under this Section 6.08.

**6.09 Income or Loan on Distributable Contributions.** The income or loss allocable to "excess deferrals", "excess contributions" and "excess aggregate contributions" shall be determined under one of the following methods:

(a) the income or loss for the "determination year" allocable to the Participant's Account to which such contributions were made multiplied by a fraction, the numerator of which is the amount of the distributable contributions and the denominator of which is the balance of the Participant's Account to which such contributions were made, determined without regard to any income or loss occurring during the "determination year"; or

(b) the income or loss for the "determination year" determined under any other reasonable method, provided that such method is used consistently for all Participants in determining the income or loss allocable to distributable contributions hereunder for the Plan Year, and is used by the Plan in allocating income or loss to Participants' Accounts.

Income or loss allocable to the period between the end of the "determination year" and the date of distribution shall be disregarded in determining income or loss.

**6.10 Deemed Satisfaction of "ADP" Test.** Notwithstanding any other provision of this Article 6 to the contrary, for any Plan Year beginning on or after January 1, 1999, if the Employer has elected one of the safe harbor contributions in Subsection 1.10(a)(3) or 1.11(a)(3) of the Adoption Agreement and complies with the notice requirements described herein for such Plan Year, the Plan shall be deemed to have satisfied the "ADP" test described in Section 6.03. The Employer shall provide a notice to each Active Participant during the Plan Year describing the following:

(a) the formula used for determining the amount of the safe harbor contribution to be made on behalf of Active Participants for the Plan Year;

(b) any other contributions provided under the Plan and any requirements that Active Participants must satisfy to be entitled to receive such contributions;

(c) the type and amount of Compensation that may be deferred under the Plan as Deferral Contributions;

(d) the procedures for making a cash or deferred election under the Plan and the periods during which such elections may be made or changed; and

(e) the withdrawal and vesting provisions applicable to contributions under the Plan.

Such notice shall be written in a manner calculated to be understood by the average Active Participant. The Employer shall provide the notice to each Active Participant within one of the following periods, whichever is applicable:

(f) if the employee is an Active Participant 90 days before the beginning of the Plan Year, within the period beginning 90 days and ending 30 days before the first day of the Plan Year; or

(g) if the employee becomes an Active Participant after the date described in paragraph (f) above, within the period beginning 90 days before and ending on the date he becomes an Active

29

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Participant; provided, however, that for a Plan Year that begins on or after January 1, 1999, but before April 1, 1999, such notice shall not be required to be provided to an Active Participant earlier than March 1, 1999.

**6.11 Deemed Satisfaction of "ACP" Test With Respect to Matching Employer Contributions.** A Plan that satisfies the requirements of Section 6.10 shall also be deemed to have satisfied the "ACP" test described in Section 6.06 with respect to Matching Employer Contributions, if Matching Employer Contributions to the Plan for the Plan Year meet all of the following requirements: (a) the percentage of Deferral Contributions matched does not increase as the percentage of Compensation contributed increases; (b) Highly Compensated Employees are not provided a greater percentage match than Non-Highly Compensated Employees; (c) Deferral Contributions matched do not exceed six percent of a Participant's Compensation; and (d) for Plan Years beginning on or after January 1, 2000, if the Employer elected in Subsection 1.10(a)(2) or 1.10(b) of the Adoption Agreement to provide discretionary Matching Employer Contributions, the Employer also elected in Subsection 1.10(a)(2)(A) or 1.11(b)(1) of the Adoption Agreement, as applicable, to limit the dollar amount of such discretionary Matching Employer Contributions allocated to a Participant for the Plan Year to no more than four percent of such Participant's Compensation for the Plan Year.

If such Plan provides for Employee Contributions, the "ACP" test described in Section 6.06 must be applied with respect to such Employee Contributions. For purposes of applying the "ACP" test with respect to Employee Contributions, matching Employer Contributions and Nonelective Employer Contributions that satisfy the vesting and distribution requirements applicable to safe harbor contributions, but which are not required to comply with the safe harbor contribution requirements may be taken into account.

**6.12 Code Section 415 Limitations.** Notwithstanding any other provisions of the Plan, the following limitations shall apply:

(a) **Employer Maintains Single Plan:** if the "415 employer" does not maintain any other qualified defined contribution plan or any "welfare benefit fund", "individual medical account", or "simplified employee pension" in addition to the Plan, the provisions of this Subsection 6.12(a) shall apply.

(1) If a Participant does not participate in, and has never participated in any other qualified defined contribution plan, "welfare benefit fund", "individual medical account", or "simplified employee pension" maintained by the "415 employer", which provides an "annual addition", the amount of "annual additions" to the Participant's Account for a Limitation Year shall not exceed the lesser of the "maximum permissible amount" or any other limitation contained in the Plan. If a contribution that would otherwise be contributed or allocated to the Participant's Account would cause the "annual additions" for the Limitation Year to exceed the "maximum permissible amount", the amount contributed or allocated shall be reduced so that the "annual additions" for the Limitation Year shall equal the "maximum permissible amount".

(2) Prior to the determination of a Participant's actual Compensation for a Limitation Year, the "maximum permissible amount" may be determined on the basis of a reasonable estimation of the Participant's Compensation for such Limitation Year, uniformly determined for all Participants similarly situated. Any Employer contributions based on estimated annual compensation shall be reduced by any "excess 415 amounts" carried over from prior Limitation Years.

(3) As soon as is administratively feasible after the end of the Limitation Year, the "maximum permissible amount" for such Limitation Year shall be determined on the basis of the Participant's actual Compensation for such Limitation Year.

30

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(4) If there is an "excess 415 amount" with respect to a Participant for a Limitation Year as a result of the estimation of the Participant's Compensation for the Limitation Year, the allocation of forfeitures to the Participant's Account, or a reasonable error in determining the amount of Deferral Contributions that may be made on behalf of the Participant under the limits of this Section 6.12, such "excess 415 amount" shall be disposed of as follows:

(A) Any Employee contributions shall be reduced to the extent necessary to reduce the "excess 415 amount".

(B) if after application of Subsection 6.12(a)(4)(A) an "excess 415 amount" still exists, any Deferral Contributions shall be reduced to the extent necessary to reduce the "excess 415 amount".

(C) If after application of Subsection 6.12(a)(4)(B) an "excess 415 amount" still exists, any Matching Employer Contributions shall be reduced to the extent necessary to reduce the "excess 415 amount".

(D) if after the application of Subsection 6.12(a)(4)(C) an "excess 415 amount" still exists, any Nonelective Employer Contributions shall be reduced to the extent necessary to reduce the "excess 415 amount".

(E) If after the application of Subsection 6.12(a)(4)(D) an "excess 415 amount" still exists, any Qualified Nonelective Employer contributions shall be reduced to the extent necessary to reduce the "excess 415 amount".



Employee Contributions and Deferral Contributions that are reduced as provided above shall be returned to the Participant. Any income allocable to returned Employee Contributions or Deferral Contributions shall also be returned or shall be treated as additional "annual additions" for the Limitation Year in which the excess contributions to which they are allocable were made, if Matching Employer, Nonelective Employer, or Qualified Nonelective Employer Contributions to a Participant's Account are reduced as an "excess 415 amount", as provided above, and the individual is still an Active Participant at the end of the Limitation Year, then such "excess 415 amount" shall be reapplied to reduce future Employer contributions under the Plan for the next Limitation Year (and for each succeeding Limitation Year, as necessary) for such Participant, so that in each such Limitation Year the sum of the actual Employer contributions made on behalf of such Participant plus the reapplied amount shall equal the amount of Employer contributions which would otherwise be made to such Participant's Account. If the individual is not an Active Participant at the end of a Limitation Year, then such "excess 415 amount" shall be held unallocated in a suspense account. The suspense account shall be applied to reduce future Employer contributions for all remaining Active Participants in the next Limitation Year and each succeeding Limitation Year if necessary.

If a suspense account is in existence at any time during the Limitation Year pursuant to this subsection 6.12 (a) (4), it shall participate in the allocation of the Trust Fund's investment gains and losses. All amounts in the suspense account must be allocated to the Accounts of Active Participants before any Employer contribution may be made for the Limitation Year.

Except as otherwise specifically provided in this Subsection 6.12, "excess 415 amounts" may not be distributed to Participants.

(b)

**Employer Maintains Multiple Defined Contribution Type Plans:** Unless the Employer specifies another method for limiting "annual additions" in the 415 Correction Addendum to the Adoption Agreement, if the "415 employer" maintains any other qualified defined contribution plan or any "welfare benefit fund", "individual medical account", or "simplified employee pension" in addition to the Plan, the provisions of this Subsection 6.12(b) shall apply

31

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(1) If a Participant is covered under any other qualified defined contribution plan or any "welfare benefit fund", "individual medical account", or "simplified employee pension" maintained by the "415 employer", that provides an "annual addition", the amount of "annual additions" to the Participant's Account for a Limitation Year shall not exceed the lesser of

(A) the "maximum permissible amount", reduced by the sum of any "annual additions" to the Participant's accounts for the same Limitation Year under such other qualified defined contribution plans and "welfare benefit funds", "individual medical accounts", and "simplified employee pensions", or

(B) any other limitation contained in the Plan.

If the "annual additions" with respect to a Participant under other qualified defined contribution plans, "welfare benefit funds", "individual medical accounts", and "simplified employee pensions" maintained by the "415 employer" are less than the "maximum Permissible amount" and a contribution that would otherwise be contributed or allocated to the Participant's Account under the Plan would cause the "annual additions" for the Limitation Year to exceed the "maximum permissible amount", the amount to be contributed or allocated shall be reduced so that the "annual additions" for the Limitation Year shall equal the "maximum permissible amount". If the "annual additions", with respect to the Participant under such other qualified defined contribution plans, "welfare benefit funds", "individual medical accounts", and "simplified employee pensions" in the aggregate are equal to or greater than the "maximum permissible amount", no amount shall be contributed or allocated to the Participant's Account under the Plan for the Limitation Year.

(2) Prior to the determination of a Participant's actual Compensation for the Limitation Year, the amounts referred to in Subsection 6.12(b)(1) (A) above may be determined on the basis of a reasonable estimation of the Participant's Compensation for such Limitation Year, uniformly determined for all Participants similarly situated. Any Employer contribution based on estimated annual Compensation shall be reduced by any "excess 415 amounts" carried over from prior Limitation Years.

(3) As soon as is administratively feasible after the end of the Limitation Year, the amounts referred to in Subsection 6.12(b)(1)(A) shall be determined on the basis of the Participant's actual Compensation for such Limitation Year.

(4) Notwithstanding the provisions of any other plan maintained by a "415 employer", if there is an "excess 415 amount" with respect to a Participant for a Limitation Year as a result of estimation of the Participant's Compensation for the Limitation Year, the allocation of forfeitures to the Participant's account under any qualified defined contribution plan maintained by the "415 employer", or a reasonable error in determining the amount of Deferral Contributions that may be made on behalf of the Participant to the Plan or any other qualified defined contribution plan maintained by the "415 employer" under the limits of this Subsection 6.12(b), such "excess 415 amount" shall be deemed to consist first of the "annual additions" allocated to this Plan and shall be reduced as provided in Subsection 6.12(a)(4); provided, however, that if the "415 employer" maintains both a profit sharing plan and a money purchase pension plan under this Basic Plan Document, "annual additions" to the money purchase pension plan shall be reduced only after all "annual additions" to the profit sharing plan have been reduced.

(c) **Employer Maintains or Maintained Defined Benefit Plan:** For Limitation Years beginning prior to January 1, 2000, if the "415 employer" maintains, or at any time maintained, a qualified defined benefit plan, the sum of any Participant's "defined benefit plan fraction" and "defined contribution plan fraction" shall not exceed the combined plan limitation of 1.00 in any such Limitation Year. The combined plan limitation shall be met by reducing "annual additions" under the Plan, unless otherwise provided in the qualified defined benefit plan.

32

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(d) **Adjustment to Compensation:** Compensation for purposes of this Section 6.12 shall include amounts that are not includable in the gross income of the Participant under a salary reduction agreement by reason of the application of Code Section 125, 402(a)(8), 402(h), or 403(b).

## ARTICLE 7 PARTICIPANTS' ACCOUNTS.

7.01 **Individual Accounts.** The Administrator shall establish and maintain an Account for each Participant that shall reflect Employer and Employee contributions made on behalf of the Participant and earnings, expenses, gains and losses attributable thereto, and investments made with amounts in the

Participant's Account. The Administrator shall establish and maintain such other accounts and records as it decides in its discretion to be reasonably required or appropriate in order to discharge its duties under the Plan. The Administrator shall notify the Trustee of all Accounts established and maintained under the Plan.

**7.02 Valuation of Accounts.** Participant Accounts shall be valued at their fair market value at least annually as of a date specified by the Administrator in accordance with a method consistently followed and uniformly applied, and on such date earnings, expenses, gains and losses on investments made with amounts in each Participant's Account shall be allocated to such Account. Participants shall be furnished statements of their Account values at least once each Plan Year.

## **ARTICLE 8 INVESTMENT OF CONTRIBUTIONS.**

**8.01 Manner of Investment.** All contributions made to the Accounts of Participants shall be held for investment by the Trustee. Except as otherwise specifically provided in Section 20.10, the Accounts of Participants shall be invested and reinvested only in Permissible Investments selected by the Employer and designated in the Service Agreement.

**8.02 Investment Decisions.** Investments shall be directed by the Employer or by each Participant or both, in accordance with the Employer's election in Subsection 1.23(a) of the Adoption Agreement. Pursuant to Section 20.04, the Trustee shall have no discretion or authority with respect to the investment of the Trust Fund.

(a) With respect to those Participant Accounts for which Employer investment direction is elected, the Employer has the right to direct the Trustee in writing with respect to the investment and reinvestment of assets comprising the Trust Fund in the Permissible Investments designated in the Service Agreement.

(b) if Participant investment direction is elected, each Participant shall direct the investment of his Account among the Permissible Investments designated in the Service Agreement. The Participant shall file initial investment instructions with the Administrator, on such form as the Administrator may provide, selecting the Permissible Investments in which amounts credited to his Account shall be invested.

(1) Except as provided in this Section 8.02, only authorized Plan contacts and the Participant shall have access to a Participant's Account. while any balance remains in the Account of a Participant after his death, the Beneficiary of the Participant shall make decisions as to the investment of the Account as though the Beneficiary were the Participant. To the extent required by a qualified domestic relations order as defined in Code Section 414(p), an alternate payee shall make investment decisions with respect to any segregated account established in the name of the alternate payee as provided in Section 18.04.

(2) if the Trustee receives any contribution under the Plan as to which investment instructions have not been provided, the Trustee shall promptly notify the Administrator and the Administrator shall take steps to elicit instructions from the Participant. The Trustee shall

33

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credit any such contribution to the Participant's Account and such amount shall be invested in the Permissible investment selected by the Employer for such purposes or, absent Employer selection, in the most conservative Permissible Investment designated in the Service Agreement, until investment instructions have been received by the Trustee.

If the Employer so provides in Subsection 1.23(b) of the Adoption Agreement, the Plan is intended to constitute a plan described in ERISA Section 404(c) and regulations issued thereunder. The fiduciaries of the Plan shall be relieved of liability for any losses that are the direct and necessary result of investment instructions given by the Participant, his Beneficiary, or an alternate payee under a qualified domestic relations order. The Employer shall not be relieved of fiduciary responsibility for the selection and monitoring of the Permissible Investments under the Plan.

(c) All dividends, interest, gains and distributions of any nature received in respect of Fund Shares shall be reinvested in additional shares of that Permissible Investment.

(d) Expenses attributable to the acquisition of investments shall be charged to the Account of the Participant for which such investment is made.

**8.03 Participant Directions to Trustee.** The method and frequency for change of investments shall be determined under (a) the rules applicable to the Permissible Investments selected by the Employer and designated in the Service Agreement and (b) any additional rules of the Employer limiting the frequency of investment changes, which are included in a separate written administrative procedure adopted by the Employer and accepted by the Trustee. The Trustee shall have no duty to inquire into the investment decisions of a Participant or to advise him regarding the purchase, retention, or sale of assets credited to his Account.

## **ARTICLE 9 PARTICIPANT LOANS.**

**9.01 Special Definitions.** For purposes of this Article, the following special definitions shall apply:

(a) "**Participant**" means any Participant or Beneficiary, including an alternate payee under a qualified domestic relations order, as defined in Code Section 414(p), who is a party- in- interest (as determined under ERISA Section 3(14)) with respect to the Plan.

(b) "**Owner-employee**" means, if the Employer is a sole proprietorship, the individual who is the sole proprietor, or if the Employer is a partnership, a partner who owns more than 10-percent of either the capital interest or the profits interest of the partnership.

(c) "**Shareholder-employee**" means an employee or officer of an electing small business (Subchapter S) corporation who owns (or is considered as owning within the meaning of Code Section 318(a)(1)), on any day during the taxable year of such corporation, more than five-percent of the outstanding stock of the corporation.

**9.02 Participant Loans.** If so provided by the Employer in Section 1.17 of the Adoption Agreement, the Administrator shall allow "participants" to apply for a loan from their Accounts under the Plan, subject to the provisions of this Article 9.

**9.03 Separate Loan Procedures.** All Plan loans shall be made and administered in accordance with separate loan procedures that are hereby incorporated into the Plan by reference.

9.04 **Availability of Loans.** Loans shall be made available to all "participants" on a reasonably equivalent basis. Notwithstanding the preceding sentence, no loans shall be made to (a) an Eligible Employee who makes a Rollover Contribution in accordance with Section 5.06, but who has not satisfied the requirements of Section 4.01 to become an Active Participant or (b) a "shareholder-employee" or "owner-employee".

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Loans shall not be made available to "participants" who are Highly Compensated Employees in an amount greater than the amount made available to other "participants".

9.05 **Limitation on Loan Amount.** No loan to any "participant" shall be made to the extent that such loan when added to the outstanding balance of all other loans to the "participant" would exceed the lesser of (a) \$50,000 reduced by the excess (if any) of the highest outstanding balance of plan loans during the one year period ending on the day before the loan is made over the outstanding balance of plan loans on the date the loan is made, or (b) one-half the present value of the "participant's" vested interest in his Account. For purposes of the above limitation, plan loans include all loans from all plans maintained by the Employer and any Related Employer.

9.06 **Interest Rate.** All loans shall bear a reasonable rate of interest as determined by the Administrator based on the prevailing interest rates charged by persons in the business of lending money for loans which would be made under similar circumstances. The determination of a reasonable rate of interest must be based on appropriate regional factors unless the Plan is administered on a national basis in which case the Administrator may establish a uniform reasonable rate of interest applicable to all regions.

9.07 **Level Amortization.** All loans shall by their terms require that repayment (principal and interest) be amortized in level payments, not less than quarterly, over a period not extending beyond five years from the date of the loan unless such loan is for the purchase of a "participant's" primary residence.

Notwithstanding the foregoing, the amortization requirement may be waived for a period not exceeding one year during which a "participant" is on a leave of absence from employment with the Employer and any Related Employer either without pay or at a rate of pay which, after withholding for employment and income taxes, is less than the amount of the installment payments required under the terms of the loan. Installment payments must resume after such leave of absence ends or, if earlier, after the first year of such leave of absence, in an amount that is not less than the amount of the installment payments required under the terms of the original loan. No waiver of the amortization requirements shall extend the period of the loan beyond five years from the date of the loan, unless the loan is for purchase of the "participant's" primary residence.

9.08 **Security.** Loans must be secured by the "participant's" so vested interest in his Account not to exceed 50-percent of such vested interest. If the provisions of Section 14.04 apply to a Participant, a Participant must obtain the consent of his or her spouse, if any, to use his vested interest in his Account as security for the loan. Spousal consent shall be obtained no earlier than the beginning of the 90-day period that ends on the date on which the loan is to be so secured. The consent must be in writing, must acknowledge the effect of the loan, and must be witnessed by a Plan representative or notary public. Such consent shall thereafter be binding with respect to the consenting spouse or any subsequent spouse with respect to that loan.

9.09 **Transfer and Distribution of Loan Amounts from Permissible Investments.** The Trustee shall determine from among the Permissible Investments in which a "participant's" Account is invested the Permissible Investments from which the loan amount shall be transferred and distributed.

9.10 **Default.** The Administrator shall treat a loan in default if

(a) any scheduled repayment remains unpaid at the end of the period specified in the separate loan procedures (unless payment is not made due to a waiver of the amortization schedule for a "participant" who is on a leave of absence, as described in Section 9.07), or

(b) there is an outstanding principal balance existing on a loan after the last scheduled repayment date.

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Upon default, the entire outstanding principal and accrued interest shall be immediately due and payable. If a distributable event (as defined by the Code) has occurred, the Administrator shall direct the Trustee to foreclose on the promissory note and offset the "participant's" vested interest in his Account by the outstanding balance of the loan. If a distributable event has not occurred, the Administrator shall direct the Trustee to foreclose on the promissory note and offset the "participant's" vested interest in his Account as soon as a distributable event occurs. The Trustee shall have no obligation to foreclose on the promissory note and offset the outstanding balance of the loan except as directed by the Administrator.

9.11 **Effect of Termination Where Participant has Outstanding Loan Balance.** If a Participant has an outstanding loan balance at the time his employment terminates, the entire outstanding principal and accrued interest shall be immediately due and payable. Any outstanding loan amounts that are immediately due and payable hereunder shall be treated in accordance with the provisions of Sections 9.10 and 9.12 as if the Participant had defaulted on the outstanding loan.

9.12 **Deemed Distributions Under Code Section 72(p).** Notwithstanding the provisions of Section 9.10, if a "participant's" loan is in default, the "participant" shall be treated as having received a taxable "deemed distribution", for purposes of Code Section 72(p), whether or not a distributable event has occurred. The amount of a loan that is a deemed distribution ceases to be an outstanding loan for purposes of Code Section 72, except as otherwise specifically provided herein, and a Participant shall not be treated as having received a taxable distribution when the Participant's Account is offset by the outstanding balance of the loan amount as provided in Section 9.10. In addition, interest that accrues on a loan after it is deemed distributed shall not be treated as an additional loan to the Participant and shall not be included in the income of the Participant as a deemed distribution. Notwithstanding the foregoing, unless a Participant repays a loan that has been deemed distributed, with interest thereon, the amount of such loan, with interest, shall be considered an outstanding loan under Code Section 72(p) for purposes of determining the applicable limitation on subsequent loans under Section 9.05.

If a Participant makes payments on a loan that has been deemed distributed, payments made on the loan after the date it was deemed distributed shall be treated as Employee Contributions to the Plan for purposes of increasing the Participant's tax basis in his Account, but shall not be treated as Employee Contributions for any other purpose under the Plan, including application of the "ACP" test described in Section 6.06 and application of the Code Section 415 limitations described in Section 6.12.

The provisions of this Section 9.12 regarding treatment of loans that are deemed distributed shall be effective as of

(a) the Effective Date, if the Plan is a new plan or is an amendment and restatement of a plan that administered loans in accordance with the provisions of Q & A 19 and 20 of Section 1.72(p)-1 of the Proposed Treasury Regulations immediately prior to the Effective Date or

(b) as of the January 1 coinciding with or immediately following the Effective Date, in any other case.

Any loan that was deemed distributed prior to the date the provisions of this Section 9.12 are effective shall be administered in accordance with the provisions of this Section 9.12 to the extent such administration is consistent with the transition rules in Q & A 21(c)(2) of Section 1.72(p)-1 of the Proposed Treasury Regulations.

**9.13 Determination of Account Value Upon Distribution Where Plan Loan is Outstanding.** Notwithstanding any other provision of the Plan, the portion of a "participant's" vested interest in his Account that is held by the Plan as security for a loan outstanding to the "participant" in accordance with the provisions of this Article shall reduce the amount of the Account payable at the time of death or distribution, but only if the reduction is used as repayment of the loan. If less than 100-percent of a

36

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"participant's", vested interest in his Account (determined without regard to the preceding sentence) is payable to the "participant's" surviving spouse or other Beneficiary, then the Account shall be adjusted by first reducing the "participant's", vested interest in his Account by the amount of the security used as repayment of the loan, and then determining the benefit payable to the surviving spouse or other Beneficiary.

#### **ARTICLE 10 IN-SERVICE WITHDRAWALS.**

**10.01 Availability of In-Service Withdrawals.** Except as otherwise permitted under Section 11.02 with respect to Participants who continue in employment past Normal Retirement Age, or as required under Section 12.04 with respect to Participants who continue in employment past their Required Beginning Date, a Participant shall not be permitted to make a withdrawal from his Account under the Plan prior to retirement or termination of employment with the Employer and all Related Employers, if any, except as provided in this Article.

**10.02 Withdrawal of Employee Contributions.** A Participant may elect to withdraw, in cash, up to 100-percent of the amount then credited to his Employee Contributions Account. Such withdrawals may be made at any time, unless the Employer elects in Subsection 1.18(c) to limit the frequency of such withdrawals.

**10.03 Withdrawal of Rollover Contributions.** A Participant may elect to withdraw, in cash, up to 100-percent of the amount then credited to his Rollover contributions Account. Such withdrawals may be made at any time.

**10.04 Age 59<sup>1/2</sup> Withdrawals.** If so provided by the Employer in Subsection 1.18(b) or the Protected In-Service Withdrawals Addendum to the Adoption Agreement, a Participant who continues in employment as an Employee and who has attained the age of 59<sup>1/2</sup> is permitted to withdraw upon request all or any portion of the Accounts specified by the Employer in Subsection 1.18(b) or the Protected In-Service Withdrawals Addendum to the Adoption Agreement, as applicable.

**10.05 Hardship Withdrawals.** If so provided by the Employer in Subsection 1.18(a) or the Protected In-Service Withdrawals Addendum to the Adoption Agreement, a Participant who continues in employment as an Employee may apply to the Administrator for a hardship withdrawal of all or any portion of his Deferral Contributions Account (excluding any earnings thereon accrued after the later of December 31, 1988 or the last day of the last Plan Year ending before July 1, 1989). The minimum amount that a Participant may withdraw because of hardship is \$500.

For purposes of this Section 10.05, a withdrawal is made on account of hardship if made on account of an immediate and heavy financial need of the Participant where such Participant lacks other available resources. Determinations with respect to hardship shall be made by the Administrator and shall be conclusive for purposes of the Plan, and shall be based on the following special rules:

(a) The following are the only financial needs considered immediate and heavy:

- (1) expenses incurred or necessary for medical care (within the meaning of Code Section 213(d)) of the Participant, the Participant's spouse, children, or dependents;
- (2) the purchase (excluding mortgage payments) of a principal residence for the Participant;
- (3) payment of tuition, related educational fees, and room and board for the next 12 months of post-secondary education for the Participant, the Participant's spouse, children or dependents;
- (4) the need to prevent the eviction of the Participant from, or a foreclosure on the mortgage of, the Participant's principal residence; or

37

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(5) any other financial need determined to be immediate and heavy under rules and regulations issued by the Secretary of the Treasury or his delegate.

(b) A distribution shall be considered as necessary to satisfy an immediate and heavy financial need of the Participant only if:

(1) The Participant has obtained all distributions, other than the hardship withdrawal, and all nontaxable (at the time of the loan) loans currently available under all plans maintained by the Employer or any Related Employer;

(2) The Participant suspends Deferral Contributions and Employee Contributions to the Plan for the 12-month period following the date of his hardship withdrawal. The suspension must also apply to all elective contributions and employee contributions to all other qualified plans and non-qualified plans maintained by the Employer or any Related Employer, other than any mandatory employee contribution portion of a defined benefit plan, including stock option, stock purchase, and other similar plans, but not including health and welfare benefit plans (other than the cash or deferred arrangement portion of a cafeteria plan);

(3) The withdrawal amount is not in excess of the amount of an immediate and heavy financial need (including amounts necessary to pay any Federal, state or local income taxes or penalties reasonably anticipated to result from the distribution); and

(4) The Participant agrees to limit Deferral Contributions (and "elective deferrals", as defined in Subsection 6.01(i)) to the Plan and any other qualified plan maintained by the Employer or a Related Employer for the calendar year immediately following the calendar year in which the Participant received the hardship withdrawal to the applicable limit under Code Section 402(g) for such calendar year less the amount of the Participant's Deferral Contributions (and "elective deferrals") for the calendar year in which the Participant received the hardship withdrawal.

**10.06 Preservation of Prior Plan In-Service Withdrawal Rules.** As indicated by the Employer in Subsection 1.18(d) of the Adoption Agreement, to the extent required under Code Section 411(d)(6), in-service withdrawals that were available under a prior plan shall be available under the Plan.

(a) If the Plan is a profit sharing plan, the following provisions shall apply to preserve prior in-service withdrawal provisions.

(1) If the Plan is an amendment and restatement of a prior plan or is a transferee plan of a prior plan that provided for in-service withdrawals from a Participant's Matching Employer and/or Nonelective Employer Contributions Accounts of amounts that have been held in such Accounts for a specified period of time, a Participant shall be entitled to withdraw at any time prior to his termination of employment, subject to any restrictions applicable under the prior plan that the Employer elects in Subsection 1.18(d)(1)(A)(i) of the Adoption Agreement to continue under the Plan as amended and restated hereunder (other than any mandatory suspension of contributions restriction), any vested amounts held in such Accounts for the period of time specified by the Employer in Subsection 1.18(d)(1)(A) of the Adoption Agreement.

(2) If the Plan is an amendment and restatement of a prior plan or is a transferee plan of a prior plan that provided for in-service withdrawals from a Participant's Matching Employer and/or Nonelective Employer Contributions Accounts by Participants with at least 60 months of participation, a Participant with at least 60 months of participation shall be entitled to withdraw at any time prior to his termination of employment, subject to any restrictions applicable under the prior plan that the Employer elects in Subsection 1.19(d)(1)(B)(i) of the Adoption Agreement to continue under the Plan as amended and

38

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restated hereunder (other than any mandatory suspension of contributions restriction), any vested amounts held in such Accounts.

(3) If the Plan is an amendment and restatement of a prior plan or is a transferee plan of a prior plan that provided for in-service withdrawals from a Participant's Matching Employer and/or Nonelective Employer Contributions Accounts under any other circumstances, a Participant who has met any applicable requirements, as set forth in the Protected In-Service Withdrawals Addendum to the Adoption Agreement, shall be entitled to withdraw at any time prior to his termination of employment any vested amounts held in such Accounts, subject to any restrictions applicable under the prior plan that the Employer elects to continue under the Plan as amended and restated hereunder, as set forth in the Protected In-Service Withdrawal Addendum to the Adoption Agreement.

(b) If the Plan is a money purchase pension plan that is an amendment and restatement of a prior profit sharing plan or is a transferee plan of a prior profit sharing plan that provided for in-service withdrawals from any portion of a Participant's Account other than his Employee Contributions and/or Rollover Contributions Accounts, a Participant who has met any applicable requirements, as set forth in the Protected In-Service Withdrawals Addendum to the Adoption Agreement, shall be entitled to withdraw at any time prior to his termination of employment his vested interest in amounts attributable to such prior profit sharing accounts, subject to any restrictions applicable under the prior plan that the Employer elects to continue under the Plan as amended and restated hereunder (other than any mandatory suspension of contributions restriction), as set forth in the Protected In-Service Withdrawal Addendum to the Adoption Agreement.

**10.07 Restrictions on In-Service Withdrawals.** The following restrictions apply to any in-service withdrawal made from a Participant's Account under this Article:

(a) if the provisions of Section 14.04 apply to a Participant's Account, the Participant must obtain the consent of his spouse, if any, to obtain an in-service withdrawal.

(b) in-service withdrawals shall be made in a lump sum payment, except that if the provisions of Section 14.04 apply to a Participant's Account, the participant may receive the in-service withdrawal in the form of a "qualified joint and survivor annuity", as defined in Subsection 14.01(a).

(c) Notwithstanding any other provision of the Plan to the contrary, a Participant shall not be permitted to make an in-service withdrawal from his Account of amounts attributable to contributions made to a money purchase pension plan, except employee contributions that were held in a separate account under such plan.

**10.08 Distribution of Withdrawal Amounts.** The Trustee shall determine from among the Permissible Investments in which the Account from which a Participant is receiving a withdrawal is invested the Permissible Investments from which the withdrawal amount shall be distributed.

## **ARTICLE 11 RIGHT TO BENEFITS.**

**11.01 Normal or Early Retirement.** Each Participant who continues in employment as an Employee until his Normal Retirement Age or, if so provided by the Employer in Subsection 1.13(b) of the Adoption Agreement, Early Retirement Age, shall have a vested interest in his Account of 100-percent regardless of any vesting schedule elected in Section 1.15 of the Adoption Agreement. If a Participant retires upon the attainment of Normal or Early Retirement Age, such retirement is referred to as a normal retirement.

39

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**11.02 Late Retirement.** If a Participant continues in employment as an Employee after his Normal Retirement Age, he shall continue to have a 100-percent vested interest in his Account and shall continue to participate in the Plan until the date he establishes with the Employer for his late retirement. Until he retires, he has a continuing election to receive all or any portion of his Account.

11.03 **Disability Retirement.** If so provided by the Employer in Subsection 1.13(c) of the Adoption Agreement, a Participant who becomes disabled while employed as an Employee shall have a 100-percent vested interest in his Account regardless of any vesting schedule elected in Section 1.15 of the Adoption Agreement. An Employee is considered disabled if he satisfies any of the requirements for disability retirement selected by the Employer in Section 1.14 of the Adoption Agreement and terminates his employment with the Employer. Such termination of employment is referred to as a disability retirement. Determinations with respect to disability shall be made by the Administrator.

11.04 **Death.** If a Participant who is employed as an Employee dies, his Account shall become 100-percent vested and his designated Beneficiary shall be entitled to receive the balance of his Account, plus any amounts thereafter credited to his Account. If a Participant whose employment as an Employee has terminated dies, his designated Beneficiary shall be entitled to receive the Participant's vested interest in his Account.

A copy of the death notice or other sufficient documentation must be filed with and approved by the Administrator. If upon the death of the Participant there is, in the opinion of the Administrator, no designated Beneficiary for part or all of the Participant's Account, such amount shall be paid to his surviving spouse or, if none, to his estate (such spouse or estate shall be deemed to be the Beneficiary for purposes of the Plan). If a Beneficiary dies after benefits to such Beneficiary have commenced, but before they have been completed, and, in the opinion of the Administrator, no person has been designated to receive such remaining benefits, then such benefits shall be paid in a lump sum to the deceased Beneficiary's estate.

Subject to the requirements of Section 14.04, a Participant may designate a Beneficiary, or change any prior designation of Beneficiary by giving notice to the Administrator on a form designated by the Administrator. If more than one person is designated as the Beneficiary, their respective interests shall be as indicated on the designation form. In the case of a married Participant, the Participant's spouse shall be deemed to be the designated Beneficiary unless the Participant's spouse has consented to another designation in the manner described in Section 14.06.

11.05 **Other Termination of Employment.** If a Participant terminates his employment with the Employer and all Related Employers, if any, for any reason other than death or normal, late, or disability retirement, he shall be entitled to a termination benefit equal to the sum of (a) his vested interest in the balance of his matching Employer and/or Nonelective Employer Contributions Account(s), other than the balance attributable to safe harbor Matching Employer and/or safe harbor Nonelective Employer Contributions elected by the Employer in Subsection 1.10(a) (3) or 1.11(a)(3) of the Adoption Agreement, such vested interest to be determined in accordance with the vesting schedule(s) selected by the Employer in Section 1.15 of the Adoption Agreement, and (b) the balance of his Deferral, Employee, Qualified Nonelective Employer, Qualified Matching Employer, and Rollover Contributions Accounts, and the balance of his matching Employer or Nonelective Employer Contributions Account that is attributable to safe harbor Matching Employer and/or safe harbor Nonelective Employer Contributions.

40

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11.06 **Application for Distribution.** Unless a Participant's Account is cashed out as provided in Section 13.02, a Participant (or his Beneficiary, if the Participant has died) who is entitled to a distribution hereunder must make application, in a form acceptable to the Prototype Sponsor, for a distribution from his Account. No distribution shall be made hereunder without proper application therefor, except as otherwise provided in Section 13.02.

11.07 **Application of Vesting Schedule Following Partial Distribution.** If a distribution from a Participant's Matching Employer and/or Nonelective Employer Contributions Account has been made to him at a time when he is less than 100-percent vested in such Account balance, the vesting schedule(s) in Section 1.15 of the Adoption Agreement shall thereafter apply only to the balance of his Account attributable to Matching Employer and/or Nonelective Employer Contributions allocated after such distribution. The balance of the Account of which such distribution was made shall be transferred to a separate account immediately following such distribution.

At any relevant time prior to a forfeiture of any portion thereof under Section 11.08, a Participant's vested interest in such separate account shall be equal to  $P$   $(AB + (R * D)) - (R * D)$ , where  $P$  is the Participant's vested interest at the relevant time determined under Section 11.05;  $AB$  is the account balance of the separate account 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. Following a forfeiture of any portion of such separate account under Section 11.08 below, any balance in the Participant's separate account shall remain 100-percent vested.

11.08 **Forfeitures.** If a Participant terminates his employment with the Employer and all Related Employers before he is 100-percent vested in his Matching Employer and/or Nonelective Employer Contributions Accounts, the nonvested portion of his Account (including any amounts credited after his termination of employment) shall be forfeited by him as follows:

(a) If the Inactive Participant elects to receive distribution of his entire vested interest in his Account, the non-vested portion of his Account shall be forfeited upon the complete distribution of such vested interest, subject to the possibility of reinstatement as provided in section 11.10. For purposes of this Subsection, if the value of an Employee's vested interest in his Account balance is zero, the Employee shall be deemed to have received a distribution of his vested interest immediately following termination of employment.

(b) if the Inactive Participant elects not to receive distribution of his vested interest in his Account following his termination of employment, the non-vested portion of his Account shall be forfeited after the Participant has incurred five consecutive Breaks in Vesting Service.

11.09 **Application of Forfeitures.** Any forfeitures occurring during a Plan Year shall be used to reduce administrative expenses under the Plan. Any forfeitures remaining after paying the administrative expenses of the Plan shall be applied to reduce the contributions of the Employer next payable under the Plan, unless the Employer has elected in Subsection 1.15(d)(3) of the Adoption Agreement that such remaining forfeitures shall be allocated among the Accounts of Active Participants who are eligible to receive allocations of Nonelective Employer Contributions for the Plan Year in which the forfeiture occurs, as determined under Subsection 1.11(c) and Section 1.12 of the Adoption Agreement. Forfeitures that are allocated among the Accounts of eligible Active Participants shall be allocated in the same manner as Nonelective Employer Contributions. If the plan is a money purchase pension plan or the Employer has elected a fixed Nonelective Employer Contribution rate rather than a discretionary rate, forfeitures shall incrementally increase the amount allocated to the Accounts of eligible Active Participants.

Pending application, forfeitures shall be held in the Permissible Investment selected by the Employer for such purpose or, absent Employer selection, in the most conservative Permissible Investment designated by the Employer in the Service Agreement.

41

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11.10 **Reinstatement of Forfeitures.** If a Participant forfeits any portion of his Account under Subsection 11.08(a) because of distribution of his complete vested interest in his Account, but again becomes an Employee, then the amount so forfeited, without any adjustment for the earnings, expenses, losses, or gains of the assets credited to his Account since the date forfeited, shall be recredited to his Account (or to a separate account as described in Section 11.07, if applicable) if he meets all of the following requirements:

(a) he again becomes an Employee before the date he incurs five-consecutive Breaks in Vesting Service following the date complete distribution of his vested interest was made to him; and

(b) he repays to the Plan the amount previously distributed to him, without interest, within five years of his Reemployment Date. If an Employee is deemed to have received distribution of his complete vested interest as provided in Section 11.08, the Employee shall be deemed to have repaid such distribution on his Reemployment Date.

Upon such an actual or deemed repayment, the provisions of the Plan (including Section 11.07) shall thereafter apply as if no forfeiture had occurred. The amount to be recredited pursuant to this paragraph shall be derived first from the forfeitures, if any, which as of the date of recrediting have yet to be applied as provided in Section 11.09 and, to the extent such forfeitures are insufficient, from a special contribution to be made by the Employer.

No forfeitures shall occur solely as a result of a Participant's withdrawal of Employee Contributions.

11.11 **Adjustment for Investment Experience.** If any distribution under this Article 11 is not made in a single payment, the amount retained by the Trustee after the distribution shall be subject to adjustment until distributed to reflect the income and gain or loss on the investments in which such amount is invested and any expenses properly charged under the Plan and Trust to such amounts.

## ARTICLE 12 DISTRIBUTIONS.

12.01. **Restrictions on Distributions.** A Participant, or his Beneficiary, may not receive a distribution from his Deferral Contributions, Qualified Nonelective Employer Contributions, or Qualified Matching Employer Contributions Accounts earlier than upon the Participant's separation from service with the Employer and all Related Employers, death, or disability, except as otherwise provided in Article 10 or Section 12.04. Notwithstanding the foregoing, amounts may also be distributed from such Accounts, in the form of a lump sum only, upon

(a) Termination of the Plan without establishment of another defined contribution plan, other than an employee stock ownership plan (as defined in Code Section 4975(e) or 409) or a simplified employee pension plan as defined in Code section 408(k).

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

(c) The disposition by a corporation to an unrelated entity of such corporation's interest in a subsidiary (within the meaning of Code Section 409(d)(2)) if such corporation continues to maintain this Plan, but only with respect to former Employees who continue employment with such subsidiary.

12.02 **Timing of Distribution Following Retirement or Termination of Employment.** Except as otherwise elected by the Employer in Subsection 1.20(a) and provided in the Postponed Distribution Addendum to the Adoption Agreement, the balance of a Participant's vested interest in his Account

42

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shall be distributable upon his termination of employment with the Employer and all Related Employers, if any, because of death, normal, early, or disability retirement (as permitted under the Plan), or other termination of employment. Notwithstanding the foregoing, a Participant whose vested interest in his Account exceeds, or at the time of any prior distribution exceeded, \$5,000 (or such larger amount as may be specified in Code Section 417(e)(1)) may elect to postpone distribution of his Account until his Required Beginning Date. A Participant who elects to postpone distribution has a continuing election to receive such distribution prior to the date as of which distribution is required, unless such Participant is reemployed as an Employee.

12.03 **Participant Consent to Distribution.** If a Participant's vested interest in his Account exceeds, or at the time of any prior distribution exceeded, \$5,000 (or such larger amount as may be specified in code Section 417(e)(1)), no distribution shall be made to the Participant before he reaches his Normal Retirement Age (or age 62, if later), unless the consent of the Participant has been obtained. Such consent shall be made within the 90-day period ending on the Participant's Annuity Starting Date.

The consent of the Participant's spouse must also be obtained if the Participant's Account is subject to the provisions of Section 14.04, unless the distribution shall be made in the form of a "qualified joint and survivor annuity" as defined in Section 14.01. A spouse's consent to early distribution, if required, must satisfy the requirements of Section 14.06.

Neither the consent of the Participant nor the Participant's spouse shall be required to the extent that a distribution is required to satisfy Code Section 401(a)(9) or Code Section 415. In addition, upon termination of the Plan if it does not offer an annuity option (purchased from a commercial provider) and if the Employer or any Related Employer does not maintain another defined contribution plan (other than an employee stock ownership plan as defined in Code Section 4975(e)(7)) the Participant's Account shall, without the Participant's consent, be distributed to the Participant. However, if any Related Employer maintains another defined contribution plan (other than an employee stock ownership plan as defined in Code Section 4975(e)(7)) then the Participant's Account shall be transferred, without the Participant's consent, to the other plan if the Participant does not consent to an immediate distribution.

12.04 **Required Commencement of Distribution to Participants.** In no event shall distribution to a Participant commence later than the earlier of the dates described in (a) and (b) below:

(a) unless the Participant (and his spouse, if appropriate) elects otherwise, the 60th day after the close of the Plan Year in which occurs the latest of (i) the date on which the Participant attains Normal Retirement Age, or age 65, if earlier, (ii) the date on which the Participant's employment with the Employer and all Related Employers ceases, or (iii) the 10th anniversary of the year in which the Participant commenced participation in the Plan; and

(b) the Participant's Required Beginning Date. A Participant, other than a five-percent owner, who attains age 70<sup>1/2</sup> prior to January 1, 1999 and who continues in employment with the Employer or a Related Employer may elect

(1) if distribution to the Participant has not yet commenced, to defer the commencement of distribution to a date no later than the April 1 of the calendar year following the Participant's retirement. If the Plan provides for in-service withdrawals of all of a Participant's Accounts upon attainment of age 59<sup>1/2</sup> under Section 1.18 of the Adoption Agreement, such Participant shall be deemed to have elected to defer the commencement of distribution.

(2) if distribution to the Participant has already commenced, to cease further distribution and defer the re-commencement of distribution to a date no later than April 1 of the calendar year following the Participant's retirement. A Participant shall not be required to obtain spousal consent to an election to cease further distribution in accordance with the provision of this subsection.

43

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The re-commencement of distribution to a Participant who has elected to cease further distribution hereunder shall not constitute a new Annuity Starting Date with respect to such Participant and distribution shall re-commence under the same form in effect prior to the date further distribution ceased in accordance with the Participant's election, unless such form is not an optional form of distribution available to retirees under the provisions of Section 1.19 of the Adoption Agreement. If the form of distribution previously elected by the Participant is not available to retirees, distribution shall re-commence to the Participant in the form that would have been applicable to such Participant upon retirement if he had continued to receive distribution until retirement rather than electing to cease such distribution. A Participant shall not be required to obtain spousal consent to the re-commencement of distribution hereunder.

Distributions that have been made through the purchase of an annuity contract are not subject to the provisions of this subsection 12.04(b)(2).

Notwithstanding the provisions of Subsection 12.04(a) above, the failure of a Participant (and the Participant's spouse, if applicable) to consent to a distribution as required under Section 12.03, shall be deemed to be an election to defer commencement of payment as provided in Subsection 12.04(a) above.

**12.05 Required Commencement of Distribution to Beneficiaries.** If a Participant dies before his Annuity Starting Date, the Participant's Beneficiary shall receive distribution of the Participant's vested interest in his Account in the form provided under Article 13 or 14, as applicable, beginning as soon as reasonably practicable following the date the Beneficiary's application for distribution is filed with the Administrator. Unless distribution is to be made over the life or over a period certain not greater than the life expectancy of the Beneficiary, distribution of the Participant's entire vested interest shall be made to the Beneficiary no later than the end of the fifth calendar year beginning after the Participant's death. If distribution is to be made over the life or over a period certain no greater than the life expectancy of the Beneficiary, distribution shall commence no later than:

(a) if the Beneficiary is not the Participant's spouse, the end of the first calendar year beginning after the Participant's death; or

(b) If the Beneficiary is the Participant's spouse, the later of (i) the end of the first calendar year beginning after the Participant's death or (ii) the end of the calendar year in which the Participant would have attained age 70<sup>1/2</sup>.

If distribution is to be made to a Participant's spouse, it shall be made available within a reasonable period of time after the Participant's death that is no less favorable than the period of time applicable to other distributions. In the event such spouse dies prior to the date distribution commences, he shall be treated for purposes of this Section 12.05 (other than Subsection 12.05(b) above) as if he were the Participant. 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 reaches the age of majority.

If the Participant has not designated a Beneficiary, or the Participant or Beneficiary has not effectively selected a method of distribution, distribution of the Participant's benefit shall be completed by the close of the calendar year in which the fifth anniversary of the death of the Participant occurs.

If a Participant dies on or after his Annuity Starting Date, but before his entire vested interest in his Account is distributed, his Beneficiary shall receive distribution of the remainder of the Participant's vested interest in his Account beginning as soon as reasonably practicable following the Participant's date of death in a form that provides for distribution at least as rapidly as under the form in which the Participant was receiving distribution.

44

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**12.06 Whereabouts of Participants and Beneficiaries.** The Administrator shall at all times be responsible for determining the whereabouts of each Participant or Beneficiary who may be entitled to benefits under the Plan and shall at all times be responsible for instructing the Trustee in writing as to the current address of each such Participant or Beneficiary. The Trustee shall be entitled to rely on the latest written statement received from the Administrator as to such addresses. The Trustee shall be under no duty to make any distributions under the Plan unless and until it has received written instructions from the Administrator satisfactory to the Trustee containing the name and address of the distributee, the time when the distribution is to occur, and the form which the distribution shall take.

Notwithstanding the foregoing, if the Trustee attempts to make a distribution in accordance with the Administrator's instructions but is unable to make such distribution because the whereabouts of the distributee is unknown, the Trustee shall notify the Administrator of such situation and thereafter the Trustee shall be under no duty to make any further distributions to such distributee until it receives further written instructions from the Administrator.

If the Administrator is unable after diligent attempts to locate a Participant or Beneficiary who is entitled to a benefit under the Plan, the benefit otherwise payable to such Participant or Beneficiary shall be forfeited and applied to pay Plan expenses or reduce Employer contributions as provided in Section 11.09. If a benefit is forfeited because the Administrator determines that the Participant or Beneficiary cannot be found, such benefit shall be reinstated by the Employer if a claim is filed by the Participant or Beneficiary with the Administrator and the Administrator confirms the claim to the Employer.

#### **ARTICLE 13 FORM OF DISTRIBUTION.**

**13.01 Normal Form of Distribution Under Profit Sharing Plan.** Unless the Plan is a money purchase pension plan subject to the requirements of Article 14, or a Participant's account is otherwise subject to the requirements of Section 14.03 or 14.04, distributions to a Participant or to the Beneficiary of the Participant shall be made in a lump sum in cash or, if elected by the Participant (or the Participant's Beneficiary, if applicable) and provided by the Employer in Section 1.19 of the Adoption Agreement, under a systematic withdrawal plan (installments). A Participant (or the Participant's Beneficiary, if applicable) who is receiving distribution under a systematic withdrawal plan may elect to accelerate installment payments or to receive a lump sum distribution of the remainder of his Account balance. Distribution may also be made hereunder in any non-annuity form that is a protected benefit and is provided by the Employer in Section 1.19 or the Protected Benefit Forms Addendum to the Adoption Agreement.



Even if the Plan does not otherwise provide for distributions under a systematic withdrawal plan, if distributions are required to commence to a Participant while he is still employed by the Employer or a Related Company because his Required Beginning Date has occurred, the Participant may elect to receive distributions under a systematic withdrawal plan that provides the minimum distributions required under Code Section 401(a)(9), as determined under Section 13.03 of the Plan. Minimum required distributions to a Participant described in the preceding sentence shall only continue to such Participant through the calendar year in which the Participant retires or otherwise terminates employment. Distributions for calendar years following the calendar year in which the Participant retires shall be made in one of the forms of payment otherwise available under the Plan, as provided in Section 1.19 of the Adoption Agreement.

A distribution may be made in Fund Shares, at the election of the Participant, pursuant to the qualifying rollover of such distribution to a Fidelity Investments® individual retirement account.

**13.02 Mandatory Cash Out.** Notwithstanding any other provision of the Plan to the contrary, if a Participant's vested interest in his Account is \$5,000 (or such larger amount as may be specified in Code Section 417(e)(1)) or less, the Participant's vested interest in his Account shall be distributed in a

45

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lump sum as soon as practicable following the Participant's termination of employment because of retirement, disability, death or other termination of employment. For purposes of this Section, if a Participant's Account is subject to the provisions of Section 14.04, his vested interest in his Account shall be deemed to exceed \$5,000 (or such larger amount as may be specified in code Section 417(e)(1)) if the Participant's vested interest in his Account exceeded such dollar amount at the time of any prior distribution.

**13.03 Minimum Distributions.** This section applies to distributions under a systematic withdrawal plan that are made on or after a Participant's Required Beginning Date or his date of death, if earlier. This Section shall be interpreted and applied in accordance with the regulations under Code Section 401(a)(9), including the minimum distribution incidental benefit requirement of Section 1.401(a)(9)-2 of the Proposed Treasury Regulations, or any successor regulations of similar import.

Distribution must be made in substantially equal annual, or more frequent, installments, in cash, over a period certain which does not extend beyond the life expectancy or joint life expectancies of the Participant and his Beneficiary or, if the Participant dies prior to the commencement of distributions from his Account, the life expectancy of the Participant's Beneficiary. The amount to be distributed for each calendar year for which a minimum distribution is required shall be at least an amount equal to the quotient obtained by dividing the Participant's interest in his Account by the life expectancy of the Participant or Beneficiary or the joint life and last survivor expectancy of the Participant and his Beneficiary, whichever is applicable. The amount to be distributed for each calendar year shall not be less than an amount equal to the quotient obtained by dividing the Participant's interest in his Account by the lesser of (a) the applicable life expectancy, or (b) if a Participant's Beneficiary is not his spouse, the applicable divisor determined under Section 1.401(a)(9)-2, Q&A 4 of the Proposed Treasury Regulations, or any successor regulations of similar import. Distributions after the death of the Participant shall be made using the applicable life expectancy under (a) above, without regard to Section 1.401(a)(9)-2 of such regulations. For purposes of this Section 13.03, life expectancy and joint life and last survivor expectancy shall be computed by use of the expected return multiples in Table V and VI of Section 1.72-9 of the Treasury Regulations.

For purposes of this Section 13.03, the life expectancy of a Participant or a Beneficiary who is the Participant's surviving spouse shall be recalculated annually unless the Participant or the Participant's spouse irrevocably elects otherwise prior to the time distributions are required to begin. If not recalculated in accordance with the foregoing, life expectancy shall be calculated using the attained age of the Participant or Beneficiary, whichever is applicable, as of such individual's birth date in the first year for which a minimum distribution is required reduced by one for each elapsed calendar year since the date life expectancy was first calculated.

If the Participant dies after distribution of his benefits has begun, distributions to the Participant's Beneficiary shall be made at least as rapidly as under the method of distribution being used as of the date of the Participant's death.

A Participant's interest in his Account for purposes of this Section 13.03 shall be determined as of the last valuation date in the calendar year immediately preceding the calendar year for which a minimum distribution is required, increased by the amount of any contributions allocated to, and decreased by any distributions from, such Account after the valuation date. Any distribution for the first year for which a minimum distribution is required made after the close of such year shall be treated as if made prior to the close of such year.

The Administrator shall notify the Trustee in writing whenever a distribution is necessary in order to comply with the minimum distribution rules set forth in this Section 13.03.

46

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**13.04 Direct Rollovers.** Notwithstanding any other provision of the Plan to the contrary, a "distributee" may elect, at the time and in the manner prescribed by the Administrator, to have any portion or all of an "eligible rollover distribution" paid directly to an "eligible retirement plan" specified by the "distributee" in a direct rollover; provided, however, that this provision shall not apply if the total "eligible rollover distribution" that the Participant is reasonably expected to receive for the calendar year is less than \$200 and that a "qualified distributee" may not elect a direct rollover with respect to a portion of an "eligible rollover distribution" if such portion totals less than \$500. For purposes of this Section 13.04, the following definitions shall apply:

(a) "**Distributee**" means a Participant, the Participant's surviving spouse, and the Participant's spouse or former spouse who is the alternate payee under a qualified domestic relations order, who is entitled to receive a distribution from the Participant's vested interest in his Account.

(b) "**Eligible retirement plan**" means an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), or a qualified trust described in Code Section 401(a), that accepts "eligible rollover distributions". However, in the case of an "eligible rollover distribution" to a surviving spouse, an "eligible retirement plan" means an individual retirement account or individual retirement annuity.

(c) "**Eligible rollover distribution**" means 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 the following:

(1) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the "distributee" or the joint lives (or joint life expectancies) of the "distributee" and the "distributee's" designated beneficiary, or

for a specified period of ten years or more;

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

(3) 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);

(4) any hardship withdrawal of Deferral Contributions made in accordance with the provisions of Section 10.05 or the Protected In-Service Withdrawals Addendum to the Adoption Agreement.

**13.05 Notice Regarding Timing and Form of Distribution.** Within the period beginning 90 days before a Participant's Annuity Starting Date and ending 30 days before such date, the Administrator shall provide such Participant with written notice containing a general description of the material features and an explanation of the relative values of the forms of benefit available under the Plan and informing the Participant of his right to defer receipt of the distribution until his Required Beginning Date and his right to make a direct rollover.

Distribution may commence fewer than 30 days after such notice is given, provided that:

(a) the Administrator 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);

(b) the Participant, after receiving the notice, affirmatively elects a distribution, with his spouse's written consent, if necessary;

47

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(c) if the Participant's Account is subject to the requirements of Section 14.04, the following additional requirements apply:

(1) the Participant is permitted to revoke his affirmative distribution election at any time prior to the later of (A) his Annuity Starting Date or (B) the expiration of the seven-day period beginning the day after such notice is provided to him; and

(2) distribution does not begin to such Participant until such revocation period ends.

**13.06 Determination of Method of Distribution.** Subject to Section 13.02, the Participant shall determine the method of distribution of benefits to himself and may determine the method of distribution to his Beneficiary. Such determination shall be made prior to the time benefits become payable under the Plan. If the Participant does not determine the method of distribution to his Beneficiary or if the Participant permits his Beneficiary to override his determination, the Beneficiary, in the event of the Participant's death, shall determine the method of distribution of benefits to himself as if he were the Participant. A determination by the Beneficiary must be made no later than the close of the calendar year in which distribution would be required to begin under Section 12.05 or, if earlier, the close of the calendar year in which the fifth anniversary of the death of the Participant occurs.

**13.07 Notice to Trustee.** The Administrator shall notify the Trustee in any medium acceptable to the Trustee, which may be specified in the Service Agreement, whenever any Participant or Beneficiary is entitled to receive benefits under the Plan. The Administrator's notice shall indicate the form of payment of benefits that such Participant or Beneficiary shall receive, (in the case of distributions to a Participant) the name of any designated Beneficiary or Beneficiaries, and such other information as the Trustee shall require.

#### **ARTICLE 14 SUPERSEDING ANNUITY DISTRIBUTION PROVISIONS.**

**14.01 Special Definitions.** For purposes of this Article, the following special definitions shall apply:

(a) "**Qualified joint and survivor annuity**" means (1) if the Participant is not married on his Annuity Starting Date, an immediate annuity payable for the life of the Participant or (2) if the Participant is married on his Annuity Starting Date, an immediate annuity for the life of the Participant with a survivor annuity for the life of the Participant's spouse (determined as of the Annuity Starting Date) which is equal to at least 50-percent of the amount of the annuity which is payable during the joint lives of the Participant and such spouse, provided that the survivor annuity shall not be payable to a Participant's spouse if such spouse is not the same spouse to whom the Participant was married on his Annuity Starting Date.

(b) "**Qualified reretirement survivor annuity**" means an annuity purchased with at least 50-percent of a Participant's vested interest in his Account that is payable for the life of a Participant's surviving spouse. The Employer shall specify that portion of a Participant's vested interest in his Account that is to be used to purchase the "qualified preretirement survivor annuity" in Section 1.19 or the Protected Benefit Forms Addendum to the Adoption Agreement.

**14.02 Applicability.** The provisions of this Article shall apply to a Participant's Account if:

(a) the Plan is a money purchase pension plan;

(b) the Plan is an amendment and restatement of a prior plan that provided an annuity form of payment;

(c) the Participant's Account contains assets attributable to amounts directly or indirectly transferred from a plan that provided an annuity form of payment.

48

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**14.03 Annuity Form of Payment.** To the extent provided in Subsection 1.19 or the Protected Benefit Forms Addendum to the Adoption Agreement, a Participant may elect distributions made in whole or in part in the form of an annuity contract. Any annuity contract distributed under the Plan shall be subject to the provisions of this Section 14.03 and, to the extent provided therein, Sections 14.04 through 14.09.

(a) At the direction of the Administrator, the Trustee shall purchase the annuity contract on behalf of a Participant or Beneficiary from an insurance company. Such annuity contract shall be nontransferable.

(b) The terms of the annuity contract shall comply with the requirements of the Plan and distributions under such contract shall be made in accordance with Code Section 401(a)(9) and the regulations thereunder.

(c) The annuity contract may provide for payment over the life of the Participant and, upon the death of the Participant, may provide a survivor annuity continuing for the life of the Participant's designated Beneficiary. Such an annuity may provide for an annuity certain feature for a period not exceeding the life expectancy of the Participant or, if the annuity is payable to the Participant and a designated Beneficiary, the joint life and last survivor expectancy of the Participant and such Beneficiary. If the participant dies prior to his Annuity Starting Date, the annuity contract distributed to the Participant's Beneficiary may provide for payment over the life of the Beneficiary, and may provide for an annuity certain feature for a period not exceeding the life expectancy of the Beneficiary. The types of annuity contracts provided under the Plan shall be limited to the types of annuities described in Section 1.19 and the Protected Benefit Forms Addendum to the Adoption Agreement.

(d) The annuity contract must provide for nonincreasing payments.

14.04 **"Qualified Joint and Survivor Annuity" and "Qualified Preretirement Survivor Annuity" Requirements.** The requirements of this section 14.04 apply to a Participant's Account if:

(a) the Plan is a money purchase pension plan;

(b) the Employer has selected distribution in the form of a "qualified joint and survivor annuity" contract as the normal form of distribution with respect to such Participant's Account in Subsection 1.19(c)(1)(A)(ii) or the Protected Benefit Forms Addendum to the Adoption Agreement; or

(c) the Participant is permitted to elect and has elected distribution in the form of an annuity contract payable over the life of the Participant. If a Participant's Account is subject to the requirements of this Section 14.04, distribution shall be made to the Participant in the form of a "qualified joint and survivor annuity" (with a survivor annuity in the percentage amount specified by the Employer in Subsection 1.19 or the Protected Benefit Forms Addendum to the Adoption Agreement), unless the Participant waives the "qualified joint and survivor annuity" as provided in Section 14.05. If the Participant dies prior to his Annuity Starting Date, distribution shall be made to the Participant's surviving spouse, if any, in the form of a "qualified preretirement survivor annuity", unless the Participant waives the "qualified preretirement survivor annuity" as provided in Section 14.05, or the Participant's surviving spouse elects in writing to receive distribution in one of the other forms of payment provided under the Plan. If the Employer has specified in Section 1.19 or the Protected Benefit Forms Addendum to the Adoption Agreement that less than 100-percent of a Participant's Account shall be used to purchase the "qualified preretirement survivor annuity", distribution of the balance of the Participant's vested interest in his Account that is not used to purchase the "qualified preretirement survivor annuity" shall be distributed to the Participant's designated Beneficiary in accordance with the provisions of Sections 11.04 and 12.05.

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14.05 **Waiver of the "Qualified Joint and Survivor Annuity" and/or "Qualified Preretirement Survivor Annuity- Rights.** A Participant may waive the "qualified joint and survivor annuity" described in Section 14.04 and elect another form of distribution permitted under the Plan at any time during the 90-day period ending on his Annuity Starting Date; provided, however, that if the Participant is married, his spouse must consent in writing to such election as provided in Section 14.06. Spousal consent is not required if the Participant elects distribution in the form of a different "qualified joint and survivor annuity".

A Participant may waive the "qualified preretirement survivor annuity" and designate a non-spouse Beneficiary at any time during the "applicable election period"; provided, however, that the Participant's spouse must consent in writing to such election as provided in Section 14.06. The "applicable election period" begins on the later of (1) the date the Participant's Account becomes subject to the requirements of Section 14.04 or (2) the first day of the Plan Year in which the Participant attains age 35 or, if he terminates employment prior to such date, the date he terminates employment with the Employer and all Related Employers. The "applicable election period" ends on the earlier of the Participant's Annuity Starting Date or the date of the Participant's death. A Participant whose employment has not terminated may elect to waive the "qualified preretirement survivor annuity" prior to the Plan Year in which he attains age 35, provided that any such waiver shall cease to be effective as of the first day of the Plan Year in which the Participant attains age 35.

If the Employer has specified in Section 1.19 or the Protected Benefit Forms Addendum to the Adoption Agreement that less than 100-percent of a Participant's Account shall be used to purchase the "qualified preretirement survivor annuity", the Participant may designate a non-spouse Beneficiary for the balance of the Participant's vested interest in his Account that is not used to purchase the "qualified preretirement survivor annuity". such designation shall not be subject to the spousal consent requirements of Section 14.06.

14.06 **Spouse's Consent to Waiver.** A spouse's written consent to a Participant's waiver of the "qualified joint and survivor annuity" or "qualified preretirement survivor annuity" forms of distribution must acknowledge the effect of the Participant's election and must be witnessed by a Plan representative or a notary public. In addition, the spouse's written consent must either (a) specify the form of distribution elected instead of the "qualified joint and survivor annuity", if applicable, and that such form may not be changed (except to a "qualified joint and survivor annuity") without written spousal consent and specify any non-spouse Beneficiary designated by the Participant, if applicable, and that such designation may not be changed without written spousal consent or (b) acknowledge that the spouse has the right to limit consent as provided in clause (a) above, but permit the Participant to change the form of distribution elected or the designated Beneficiary without the spouse's further consent.

A Participant's spouse shall be deemed to have given written consent to a Participant's waiver if the Participant establishes to the satisfaction of a Plan representative that spousal consent cannot be obtained because the spouse cannot be located or because of other circumstances set forth in Code Section 401(a)(11) and Treasury Regulations issued thereunder.

Any written consent given or deemed to have been given by a Participant's spouse hereunder shall be irrevocable and shall be effective only with respect to such spouse and not with respect to any subsequent spouse.

A spouse's consent to a Participant's waiver shall be valid only if the applicable notice described in Section 14.07 or 14.08 has been provided to the Participant.

14.07 **Notice Regarding "Qualified Joint and Survivor Annuity".** The notice provided to a Participant under Section 14.05 shall include a written explanation of (a) the terms and conditions of the "qualified joint and survivor annuity" provided herein, (b) the Participant's right to make, and the

effect of, an election to waive the "qualified joint and survivor annuity", (c) the rights of the Participant's spouse under Section 14.06, and (d) the Participant's right to revoke an election to waive the "qualified-joint and survivor annuity" prior to his Annuity Starting Date.

14.08 **Notice Regarding "Qualified Preretirement Survivor Annuity"**. If a Participant's Account is subject to the requirements of Section 14.04, the Administrator shall provide the Participant with a written explanation of the "qualified preretirement survivor annuity" comparable to the written explanation provided with respect to the "qualified joint and survivor annuity", as described in Section 14.07. Such explanation shall be furnished within whichever of the following periods ends last:

- (a) the period beginning with the first day of the Plan Year in which the Participant reaches age 32 and ending with the end of the Plan Year preceding the Plan Year in which he reaches age 35;
- (b) a reasonable period ending after the Employee becomes an Active Participant;
- (c) a reasonable period ending after Section 14.04 first becomes applicable to the Participant's Account; or
- (d) in the case of a Participant who separates from service before age 35, a reasonable period ending after such separation from service.

For purposes of the preceding sentence, the two-year period beginning one year prior to the date of the event described in Subsection 14.08(b), (c) or (d) above, whichever is applicable, and ending one year after such date shall be considered reasonable, provided, that in the case of a Participant who separates from service under Subsection 14.08(d) above and subsequently recommences employment with the Employer, the applicable period for such Participant shall be redetermined in accordance with this Section 14.08.

14.09 **Former Spouse**. For purposes of this Article, a former spouse of a Participant shall be treated as the spouse or surviving spouse of the Participant, and a current spouse shall not be so treated, to the extent required under a qualified domestic relations order, as defined in Code Section 414(p).

## ARTICLE 15 TOP-HEAVY PROVISIONS.

15.01 **Definitions**. For purposes of this Article, the following special definitions shall apply:

(a) "**Determination date**" means, 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, the last day of that Plan Year.

(b) "**Determination period**" means the Plan Year containing the "determination date" and the four preceding Plan Years.

(c) "**Key employee**" means any Employee or former Employee (and the Beneficiary of any such Employee) who at any time during the "determination period" was (1) an officer of the Employer or a Related Employer whose annual Compensation exceeds 50-percent of the dollar limitation "under Code Section 415(b)(1)(A), (2) one of the ten Employees whose annual Compensation from the Employer or a Related Employer exceeds the dollar limitation under Code Section 415(c)(1)(A) and who owns (or is considered as owning under Code Section 318) one of the largest interests in the Employer and all Related Employers, (3) a five-percent owner of the Employer and all Related Employers, or (4) a one-percent owner of the Employer and all Related Employers whose annual compensation exceeds \$150,000. The determination of who is a "key employee" shall be made in accordance with Code Section 416(i)(1) and regulations issued thereunder.

(d) "**Permissive aggregation group**" means the "required aggregation group", plus any other qualified plans of the Employer or a Related Employer which, when considered as a group with the "required aggregation group", would continue to satisfy the requirements of Code Sections 401(a)(4) and 410.

(e) "**Required aggregation group**" means:

(1) Each qualified plan of the Employer or Related Employer in which at least one "key employee" participates, or has participated at any time during the "determination period" (regardless of whether the plan has terminated), and

(2) any other qualified plan of the Employer or Related Employer which enables a plan described in Subsection 15.01(e)(1) above to meet the requirements of Code Section 401(a)(4) or 410.

(f) "**Top-heavy plan**" means a plan in which any of the following conditions exists:

(1) the "top-heavy ratio" for the plan exceeds 60-percent and the Plan is not part of any "required aggregation group" or "permissive aggregation group";

(2) the plan is a part of a "required aggregation group" but not part of a "permissive aggregation group" and the "top-heavy ratio" for the "required aggregation group" exceeds 60-percent; or

(3) the plan is a part of a "required aggregation group" and a "permissive aggregation group" and the "top-heavy ratio" for both groups exceeds 60-percent.

(g) "**Top-heavy ratio**" means:

(1) With respect to the Plan, or with respect to any "required aggregation group" or "permissive aggregation groups, that consists solely of defined contribution plans (including any simplified employee pension, as defined in Code Section 408(k)), a fraction, the numerator of which is the sum of the account balances of all "key employees" under the plans as of the "determination date" (including any part of any account balance, distributed during the five-year period ending on the "determination date"), and the denominator of which is the sum of all account balances

(including any part of any account balance distributed during the five-year period ending on the "determination date") of all Participants under the plans as of the "determination date". Both the numerator and denominator of the "top-heavy ratio" shall be increased, to the extent required by Code Section 416, to reflect any contribution which is due but unpaid as of the "determination date".

(2) With respect to any "required aggregation group" or "permissive aggregation group" that includes one or more defined benefit plans which, during the five-year period ending on the "determination date", has covered or could cover an Active Participant in the Plan, a fraction, the numerator of which is the sum of the account balances under the defined contribution plans for all "key employees" and the present value of accrued benefits under the defined benefit plan 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 present value of accrued benefits under the defined benefit plans for all participants. Both the numerator and denominator of the "top-heavy ratio" shall be increased for any distribution of an account balance or an accrued benefit made during the five-year period ending on the "determination date" and any contribution due but unpaid as of the "determination date".

For purposes of Subsections 15.01(g) (1) and (2) above, the value of accounts and the present value of accrued benefits shall be determined as of the most recent "determination date", except as provided in Code Section 416 and the regulations issued thereunder for the first and second plan years

52

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of a defined benefit plan. When aggregating plans, the value of accounts and accrued benefits shall be calculated with reference to the "determination dates" that fall within the same calendar year. The present value of accrued benefits shall be determined using the interest rate and mortality table specified in Subsection 1.21(b) of the Adoption Agreement.

The accounts and accrued benefits of a Participant who is not a "key employee" but who was a "key employee" in a prior year, or who has not performed services for the Employer or any Related Employer at any time during the five-year period ending on the "determination date", shall be disregarded. The calculation of the "top-heavy ratio", and the extent to which distributions, rollovers, and transfers are taken into account, shall be made in accordance with Code Section 416 and the regulations issued thereunder. Deductible employee contributions shall not be taken into account for purposes of computing the "top-heavy ratio".

For purposes of determining if the Plan, or any other plan included in a "required aggregation group" of which the Plan is a part, is a "top-heavy plan" the accrued benefit in a defined benefit plan of an Employee other than a "key employee" shall be determined under the method, if any, that uniformly applies for accrual purposes under all plans maintained by the Employer or a Related Employer, or, 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).

**15.02 Application.** If the Plan is or becomes a "top-heavy plan" in any Plan Year or is automatically deemed to be a "top-heavy plan" in accordance with the Employer's selection in Subsection 1.21(a)(1) of the Adoption Agreement, the provisions of this Article shall apply and shall supersede any conflicting provision in the Plan.

**15.03 Minimum Contribution.** Except as otherwise specifically provided in this Section 15.03, the Nonelective Employer Contributions made for the Plan Year on behalf of any Active Participant who is not a "key employee" shall not be less than the lesser of three-percent (or such other percentage selected by the Employer in Subsection 1.21(c) of the Adoption Agreement) of such Participant's Compensation for the Plan Year or, in the case where neither the Employer nor any Related Employer maintains a defined benefit plan which uses the Plan to satisfy Code Section 401(a)(4) or 410, the largest percentage of Employer contributions made on behalf of any "key employee" for the Plan Year, expressed as a percentage of the "key employee's" Compensation for the Plan Year.

The minimum contribution required under this Section 15.03 shall be made to the Account of an Active Participant even though, under other Plan provisions, the Active Participant would not otherwise be entitled to receive a contribution, or would have received a lesser contribution for the Plan Year, because (a) the Active Participant failed to complete the Hours of Service requirement selected by the Employer in Subsection 1.10(d) or 1.11(c) of the Adoption Agreement, or (b) the Participant's Compensation was less than a stated amount; provided, however, that no minimum contribution shall be made for a Plan Year to the Account of an Active Participant who is not employed by the Employer or a Related Employer on the last day of the Plan Year.

The minimum contribution for the Plan Year made on behalf of each Active Participant who is not a "key employee" and who is a participant in a defined benefit plan maintained by the Employer or a Related Employer shall not be less than five-percent of such Participant's Compensation for the Plan Year, unless the Employer has provided in Subsection 1.21(c) of the Adoption Agreement that the minimum contribution requirement shall be met under the other plan or plans of the Employer.

That portion of a Participant's Account that is attributable to minimum contributions required under this section 15.03, to the extent required to be nonforfeitable under Code Section 416(b), may not be forfeited under Code Section 411(a)(3)(B)

Notwithstanding any other provision of the Plan to the contrary, for purposes of this Article, Compensation shall include amounts that are not includable in the gross income of the Participant

53

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under a salary reduction agreement by reason of the application of Code Section 125, 402(a)(8), 402(h), or 403(b).

Compensation shall generally be based on the amount actually paid to the Eligible Employee during the Plan Year or during that portion of the Plan Year during which the Eligible Employee is an Active Participant, as elected by the Employer in Subsection 1.05(c) of the Adoption Agreement.

**15.04 Modification of Allocation Provisions to Meet Minimum Contribution Requirements.** If the Employer elected a discretionary Nonelective Employer Contribution, the provisions for allocating Nonelective Employer Contributions described in Subsection 5.10(b) shall be modified as provided herein to meet the minimum contribution requirements of Section 15.03.

(a) If the Employer selected the non-integrated formula in Subsection 1.11(b)(1) of the Adoption Agreement, Nonelective Employer Contributions shall be allocated as follows:

(1) Nonelective Employer Contributions shall be allocated to each eligible Active Participant, as determined under this Section 15.04, who is not a "key employee" in the same ratio that the eligible Active Participant's Compensation for the Plan Year bears to the total Compensation of all such eligible Active Participants for the Plan Year; provided, however that such ratio shall not exceed three-percent of a Participant's Compensation for the Plan Year (or such other percentage selected by the Employer in Subsection 1.21(c) of the Adoption Agreement).

(2) If any Nonelective Employer contributions remain after the allocation in Subsection 15.04(a)(1) above, the remaining Nonelective Employer Contributions shall be allocated to each eligible Active Participant, as determined under this Section 15.04, who is a "key employee" in the same ratio that the eligible Active Participant's Compensation for the Plan Year bears to the total Compensation of all such eligible Active Participants for the Plan Year; provided, however that such ratio shall not exceed three-percent of a Participant's Compensation for the Plan Year (or such other percentage selected by the Employer in Subsection 1.21(c) of the Adoption Agreement).

(3) If any Nonelective Employer Contributions remain after the allocation in Subsection 15.04(a)(2) above, the remaining Nonelective Employer Contributions shall be allocated to each eligible Active Participant, as determined under this Section 15.04, in the same ratio that the eligible Active Participant's Compensation for the Plan Year bears to the total Compensation of all such eligible Active Participants for the Plan Year.

(b) if the Employer selected the integrated formula in Subsection 1.11(b)(2) of the Adoption Agreement, the "permitted disparity limit", as defined in Subsection 1.11(b)(2) of the Adoption Agreement, shall be reduced by the percentage allocated under Subsection 15.04(b)(1) or (2) below, and the allocation steps in Subsection 5.10(b)(2) shall be preceded by the following steps:

(1) Nonelective Employer Contributions shall be allocated to each eligible Active Participant, as determined under this Section 15.04, who is not a "key employee" in the same ratio that the eligible Active Participant's Compensation for the Plan Year bears to the total Compensation of all such eligible Active Participants for the Plan Year; provided, however that such ratio shall not exceed three-percent of a Participant's Compensation for the Plan Year (or such other percentage selected by the Employer in Subsection 1.21(c) Of the Adoption Agreement).

(2) If any Nonelective Employer Contributions remain after the allocation in Subsection 15.04(b)(1) above, the remaining Nonelective Employer Contributions shall be allocated to each eligible Active Participant, as determined under this Section 15.04, who is a

54

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"key employee" in the same ratio that the eligible Active Participant's Compensation for the Plan Year bears to the total Compensation of all such eligible Active Participants for the Plan Year; provided, however that such ratio shall not exceed three-percent of a Participant's Compensation for the Plan Year (or such other percentage selected by the Employer in Subsection 1.21(c) of the Adoption Agreement).

(3) If any Nonelective Employer Contributions remain after the allocation in Subsection 15.04(b)(2) above, the remaining Nonelective Employer Contributions shall be allocated to each eligible Active Participant in the same ratio that the eligible Active Participant's Excess Compensation for the Plan Year bears to the total Excess Compensation of all eligible Participants for the Plan Year; provided, however, that such ratio shall not exceed three-percent (or such other percentage selected by the Employer in Subsection 1.21(c) of the Adoption Agreement).

**15.05 Adjustment to the on Contributions and Benefits.** For Limitation Years beginning prior to January 1, 2000, if the Plan is a "top-heavy plan", the number 100 shall be substituted for the number 125 in determining the "defined benefit fraction", as defined in Subsection 6.01(f) and the "defined contribution fraction", as defined in Subsection 6.01(g). However, this substitution shall not take effect with respect to the Plan in any Plan Year in which the following requirements are satisfied:

(a) The Employer contributions for such Plan Year made on behalf of each eligible Active Participant, an determined under section 15.03, who is not a "key employee" and who is a participant in a defined benefit plan maintained by the Employer or a Related Employer is not less than 7<sup>1</sup>/<sub>2</sub> percent of such eligible Active Participant's Compensation.

(b) The "top-heavy ratio" for the Plan (or the "required aggregation group" or "permissible aggregation group", as applicable) does not exceed 90-percent

The substitutions of the number 100 for 125 shall not take effect in any Limitation Year with respect to any Participant for whom no benefits are accrued or contributions made for the Limitation Year.

**15.06 Accelerated Vesting.** For any Plan Year in which the Plan is or is deemed to be a "top-heavy plan" and all Plan Years thereafter, the top-heavy vesting, schedule selected by the Employer in Subsection 1.21(d) of the Adoption Agreement shall automatically apply to the Plan. The top-heavy vesting schedule applies to all benefits within the meaning of code section 411(a)(7) except those already subject to a vesting schedule which vests at least as rapidly in all cases as the schedule elected in Subsection 1.21(d) of the Adoption Agreement, including benefits accrued before the Plan becomes a "top-heavy plan". Notwithstanding the foregoing provisions of this Section 15.06, the top-heavy vesting schedule does not apply to the Account of any Participant who does not have an Hour of Service after the Plan initially becomes or is deemed to have become a "top-heavy plan" and such Employee's Account attributable to Employer Contributions shall be determined without regard to this Section 15.06.

**15.07 Exclusion of Collectively-Bargained Employees.** Notwithstanding any other provision of this Article 15, Employees who are included in a unit covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers shall not be included in determining whether or not the Plan is a "top-heavy plan". In addition, such Employees shall not be entitled to a minimum contribution under Section 15.03 or accelerated vesting under Section 15.06, unless otherwise provided in the collective bargaining agreement.

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## ARTICLE 16 AMENDMENT AND TERMINATION.

**16.01 Amendments by the Employer that do Not Affect Prototype Status.** The Employer reserves the authority through a board of directors' resolution or similar action, subject to the provisions of Article 1 and Section 16.04, to amend the Plan as provided herein, and such amendment shall not effect the status of the Plan as a prototype plan.

(a) The Employer may amend the Adoption Agreement to make a change or changes in the provisions previously elected by it. Such amendment may be made either by (1) completing an amended Adoption Agreement on which the Employer has indicated the change or changes, or (2) adopting an amendment, executed by the Employer only, in the form provided by the Prototype Sponsor, that provides replacement pages to be inserted into the Adoption Agreement, which pages include the change or changes. Any such amendment must be filed with the Trustee. Such changes shall be effective on the effective date of the amended Adoption Agreement or amendment, except that retroactive changes to a previous election or elections may be made to the extent permitted under Treasury Regulations issued under Code Section 401(a)(4) or 401(b).

(b) If the Plan fails to meet the minimum coverage requirements of Code Section 410(b), the nondiscriminatory amount requirement of Section 1.401(a)(4)-1(b)(2) of the Treasury Regulations, or the nondiscriminatory plan amendment requirements of Section 1.401(a)(4)-1(b)(4) of the Treasury Regulations for a Plan Year, the Employer may, within 9<sup>1</sup>/<sub>2</sub> months of the close of such Plan Year, amend the Plan either by amending the Adoption Agreement or by adopting a separate amendment completely overriding the Basic Plan Document provisions. Such amendment shall either retroactively extend coverage to individuals who did not benefit under the Plan for the Plan Year being corrected or retroactively increase allocations for Active Participants who benefited under the Plan for the Plan Year being corrected, as provided in Section 1.401(a)(4)-11(g) of the Treasury Regulations, in order to correct such deficiency. Similarly, if the Plan fails the nondiscriminatory current availability of benefits, rights, and features requirement of Section 1.401(a)(4)-4(b) of the Treasury Regulations for a Plan Year, the Employer may amend the Plan to make a benefit, right, or feature available to Participants to whom it was not previously available.

(c) The Employer may make a separate amendment to the Plan as necessary to satisfy Code Section 415 or 416 because of the required aggregation of multiple plans by completely overriding the Basic Plan Document provisions.

(d) The Employer may adopt certain model amendments published by the Internal Revenue Service which specifically provide that their adoption shall not cause the Plan to be treated as an individually designed plan.

**16.02 Amendments by the lover that Affect Prototype Status.** The Employer reserves the authority through a board of directors' resolution or similar action, subject to the provisions of Section 16.04, to amend the Plan in a manner other than that provided in Section 16.01. However, upon making such amendment, including, if the Plan is a money purchase pension plan, a waiver of the minimum funding requirement under Code Section 412(d), the Employer may no longer participate in this prototype plan arrangement and shall be deemed to have an individually designed plan. Following such amendment, the Trustee may transfer the assets of the Trust to the trust forming part of such newly adopted plan upon receipt of sufficient evidence (such as a determination letter or opinion letter from the Internal Revenue Service or an opinion of counsel satisfactory to the Trustee) that such trust shall be a qualified trust under the Code.

56

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**16.03 Amendment by the Mass Submitter Sponsor and the Prototype Sponsor.** The Mass Submitter Sponsor may in its discretion amend the mass submitter prototype plan at any time, subject to the provisions of Article I and Section 16.04, and provided that the Mass Submitter Sponsor mails a copy of such amendment to each Prototype Sponsor that maintains the prototype plan or a minor modifier of the prototype plan. Each Prototype Sponsor shall mail a copy of such amendment to each Employer adopting its prototype plan at the Employer's last known address as shown on the books maintained by the Prototype Sponsor or its affiliates.

The Prototype Sponsor may, in its discretion, amend the Plan or the Adoption Agreement, subject to the provisions of Article I and Section 16.04, and provided that such amendment does not change the Plan's status as a word for word adoption of the mass submitter prototype plan or a minor modifier of the mass submitter prototype plan, unless such Prototype Sponsor elects no longer to be a sponsoring organization with respect to the mass submitter prototype plan. The Prototype Sponsor shall mail a copy of such amendment to each Employer adopting its prototype plan at the Employer's last known address as shown on the books maintained by the Prototype Sponsor or its affiliates.

**16.04 Amendments Affecting Vested and/or Accrued Benefits.** Except as permitted by Section 16.05, no amendment to the Plan shall be effective to the extent that it has the effect of decreasing a Participant's Account or eliminating an optional form of benefit with respect to benefits attributable to service before the amendment. Furthermore, if the vesting schedule of the Plan is amended, the nonforfeitable interest of a Participant in his Account, determined as of the later of the date the amendment is adopted or the date it becomes effective, shall not be less than the Participant's nonforfeitable interest in his Account determined without regard to such amendment.

If the Plan is a money purchase pension plan, no amendment to the plan that provides for a significant reduction in contributions to the Plan shall be made unless notice has been furnished to Participants and alternate payees under a qualified domestic relations order as provided in ERISA Section 204(h).

If the Plan's vesting schedule is amended because of a change to "top-heavy plan" status, as described in Subsection 15.01(f), the accelerated vesting provisions of Section 15.06 shall continue to apply for all Plan Years thereafter, regardless of whether the Plan is a "top-heavy plan" for such Plan Year. If the Plan's vesting schedule is amended to a more restrictive schedule, the more restrictive vesting schedule shall apply only to Employees hired on or after the effective date of the change in vesting schedule.

**16.05 Retroactive Amendments.** An amendment made by the Mass Submitter Sponsor or Prototype Sponsor in accordance with Section 16.03 may be made effective on a date prior to the first day of the Plan Year in which it is adopted if such amendment is necessary or appropriate to enable the Plan and Trust to satisfy the applicable requirements of the Code or to conform the Plan to any change in Federal law, or to any regulations or ruling thereunder. Any retroactive amendment by the Employer shall be subject to the provisions of Sections 16.01 and 16.02.

**16.06 Termination.** The Employer has adopted the Plan with the intention and expectation that contributions shall be continued indefinitely. However, said Employer has no obligation or liability whatsoever to maintain the Plan for any length of time and may discontinue contributions under the Plan or terminate the Plan at any time without any liability hereunder for any such discontinuance or termination. The Employer may terminate the Plan by written notice delivered to the Trustee.

**16.07 Distribution upon Termination of the Plan.** Upon termination or partial termination of the Plan or complete discontinuance of contributions thereunder, each Participant (including a terminated Participant with respect to amounts not previously forfeited by him) who is affected by such termination or partial termination or discontinuance shall have a vested interest in his Account of 100-percent. Subject to Section 12.01 and Article 14, upon receipt of written instructions from the

57

Administrator, the Trustee shall distribute to each Participant or other person entitled to distribution the balance of the Participant's Account in a single lump sum payment. In the absence of such instructions, the Trustee shall notify the Administrator of such situation and the Trustee shall be under no duty to make any distributions under the Plan until it receives written instructions from the Administrator. Upon the completion of such distributions, the Trust shall terminate, the Trustee shall be relieved from all liability under the Trust, and no Participant or other person shall have any claims thereunder, except as required by applicable law.

If distribution is to be made to a Participant or Beneficiary who cannot be located, the Administrator shall give written instructions to the Trustee to (a) escheat the distributable amount to the State or Commonwealth of the distributee's last known address or (b) draw a check in the distributable amount and mail it to the distributee's last known address. In the absence of such instructions, the Trustee shall make distribution to the distributee by drawing a check in the distributable amount and mailing it to the distributee's last known address.

**16.08 Merger or Consolidation of Plan; Transfer of Plan Assets.** In case of any merger or consolidation of the Plan with, or transfer of assets and liabilities of the Plan to, any other plan, provision must be made so that each Participant would, if the Plan then terminated, receive a benefit immediately after the merger, consolidation or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation or transfer if the Plan had then terminated.

#### **ARTICLE 17 AMENDMENT AND CONTINUATION OF PRIOR PLAN; TRANSFER OF FUNDS TO OR FROM OTHER QUALIFIED PLANS.**

**17.01 Amendment and Continuation of Prior Plan.** In the event the Employer has previously established a plan (the "prior plan") which is a defined contribution plan under the Code and which on the date of adoption of the Plan meets the applicable requirements of Code Section 401(a), the Employer may, in accordance with the provisions of the prior plan, amend and restate the prior plan in the form of the Plan and become the Employer hereunder, subject to the following:

(a) Subject to the provisions of the Plan, each individual who was a Participant in the prior plan immediately prior to the effective date of such amendment and restatement shall become a Participant in the Plan.

(b) Except as provided in Section 16.04, no election may be made under the vesting provisions of the Adoption Agreement if such election would reduce the benefits of a Participant under the Plan to less than the benefits to which he would have been entitled if he voluntarily separated from the service of the Employer immediately prior to such amendment and restatement.

(c) No amendment to the Plan shall decrease a Participant's accrued benefit or eliminate an optional form of benefit.

(d) The amounts standing to the credit of a Participant's account immediately prior to such amendment and restatement which represent the amounts properly attributable to (1) contributions by the Participant and (2) contributions by the Employer and forfeitures shall constitute the opening balance of his Account or Accounts under the Plan.

(e) Amounts being paid to an Inactive Participant or to a Beneficiary in accordance with the provisions of the prior plan shall continue to be paid in accordance with such provisions.

(f) Any election and waiver of the "qualified preretirement survivor annuity", as defined in Section 14.01, in effect after August 23, 1984, under the prior plan immediately before such amendment and restatement shall be deemed a valid election and waiver of Beneficiary under

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Section 14.04 if such designation satisfies the requirements of Sections 14.05 and 14.06, unless and until the Participant revokes such election and waiver under the Plan.

(g) Unless the Employer and the Trustee agree otherwise, all assets of the predecessor trust shall be deemed to be assets of the Trust as of the effective date of such amendment. Such assets shall be invested by the Trustee as soon as reasonably practicable pursuant to Article 8. The Employer agrees to assist the Trustee in any way requested by the Trustee in order to facilitate the transfer of assets from the predecessor trust to the Trust Fund.

**17.02 Transfer of Funds from an Existing Plan.** The Employer may from time to time direct the Trustee, in accordance with such rules as the Trustee may establish, to accept cash, allowable Fund Shares or participant loan promissory notes transferred for the benefit of Participants from a trust forming part of another qualified plan under the Code, provided such plan is a defined contribution plan. Such transferred assets shall become assets of the Trust as of the date they are received by the Trustee. Such transferred assets shall be credited to Participants' Account in accordance with their respective interests immediately upon receipt by the Trustee. A Participant's interest under the Plan in transferred assets which were fully vested and nonforfeitable under the transferring plan shall be fully vested and nonforfeitable at all times. Such transferred assets shall be invested by the Trustee in accordance with the provisions of Subsection 17.01(g) as if such assets were transferred from a prior plan. No transfer of assets in accordance with this Section 17.02 may cause a loss of an accrued or optional form of benefit protected by Code Section 411(d)(6).

The Trustee shall have no liability for and no duty to inquire into the administration of such transferred assets for periods prior to the transfer.

**17.03 Acceptance of Assets by Trustee.** The Trustee shall not accept assets which are not either in a medium proper for investment under the Plan, as set forth in the Plan and the Service Agreement, or in cash. Such assets shall be accompanied by instructions in writing (or such other medium as may be acceptable to the Trustee) showing separately the respective contributions by the prior employer and by the Participant, and identifying the assets attributable to such contributions. The Trustee shall establish such accounts as may be necessary or appropriate to reflect such contributions under the Plan. The Trustee shall hold such assets for investment in accordance with the provisions of Article 8, and shall in accordance with the written instructions of the Employer make appropriate credits to the Accounts of the Participants for whose benefit assets have been transferred.

**17.04 Transfer of Assets from Trust.** The Employer may direct the Trustee to transfer all or a specified portion of the Trust assets to any other plan or plans maintained by the Employer or the employer or employers of an Inactive Participant or Participants, provided that the Trustee has received evidence satisfactory to it that such other plan meets all applicable requirements of the Code. The assets so transferred shall be accompanied by instructions in writing (or such other medium as may be acceptable to the Trustee) from the Employer naming the persons for whose benefit such assets have been transferred, showing separately the respective contributions by the Employer and by each Inactive Participant, if any, and identifying the assets attributable to the various contributions. The Trustee shall not transfer assets hereunder until all applicable filing requirements are met. The Trustee shall have no further liabilities with respect to assets so transferred.



18.01 **Communication to Participants.** The Plan shall be communicated to all Eligible Employees by the Employer promptly after the Plan is adopted.

18.02 **Limitation of Rights.** Neither the establishment of the Plan and the Trust, nor any amendment thereof, nor the creation 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

59

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Employer, Administrator or Trustee, except as provided herein; and in no event shall the terms of employment or service of any Participant be modified or in any way affected hereby. It is a condition of the Plan, and each Participant expressly agrees by his participation herein, that each Participant shall look solely to the assets held in the Trust for the payment of any benefit to which he is entitled under the Plan.

18.03 **Nonalienability of Benefits.** Except as provided in Code Sections 401(a)(13)(C) and (D) (relating to offsets ordered or required under a criminal conviction involving the Plan, a civil judgment in connection with a violation or alleged violation of fiduciary responsibilities under ERISA, or a settlement agreement between the Participant and the Department of Labor in connection with a violation or alleged violation of fiduciary responsibilities under ERISA), Section 1.401 a)-13(b)(2) of the Treasury Regulations (relating to Federal tax levies), or as otherwise required by law, the benefits provided hereunder shall not be subject to alienation, assignment, garnishment, attachment, execution or levy of any kind, either voluntarily or involuntarily, and any attempt to cause such benefits to be so subjected shall not be recognized. The preceding sentence 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 by the Administrator to be a qualified domestic relations order, as defined in Code Section 414(p), or any domestic relations order entered before January 1, 1985.

18.04 **Qualified Domestic Relations Orders Procedures.** The Administrator must establish reasonable procedures to determine the qualified status of a domestic relations order. Upon receiving a domestic relations order, the Administrator shall promptly notify the Participant and any alternate payee named in the order, in writing, of the receipt of the order and the Plan's procedures for determining the qualified status of the order. Within a reasonable period of time after receiving the domestic relations order, the Administrator must determine the qualified status of the order and must notify the Participant and each alternate payee, in writing, of its determination. The Administrator shall provide such notice by mailing to the individual's address specified in the domestic relations order, or in a manner consistent with the Department of Labor regulations.

If any portion of the Participant's Account is payable during the period the Administrator is making its determination of the qualified status of the domestic relations order, the Administrator must make a separate accounting of the amounts payable. If the Administrator determines the order is a qualified domestic order within 18 months of the date amounts first are payable following receipt of the order, the Administrator shall direct the Trustee to distribute the payable amounts in accordance with the order. If the Administrator does not make his determination of the qualified status of the order within the 18-month determination period, the Administrator shall direct the Trustee to distribute the payable amounts in the manner the Plan would distribute if the order did not exist and shall apply the order prospectively if the Administrator later determines the order is a qualified domestic relations order.

The Trustee shall set up segregated accounts for each alternate payee when properly notified by the Administrator.

A domestic relations order shall not fail to be deemed a qualified domestic relations order merely because it requires the distribution or segregation of all or part of a Participant's Account with respect to an alternate payee prior to the Participant's earliest retirement age (as defined in Code Section 414(p)) under the Plan. A distribution to an alternate payee prior to the Participant's attainment of the earliest retirement age is available only if (a) the order specifies distribution at that time and (b) if the present value of the alternate payee's benefits under the Plan exceeds \$5,000 (or such larger amount as may be specified in Code Section 417(e)(1)), and the order requires, and the alternate payee consents to, a distribution occurring prior to the Participant's attainment of earliest retirement age.

60

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18.05 **Additional Rules for Paired Plans.** If the Employer has adopted both a money purchase pension plan and a profit sharing plan under this Basic Plan Document which are to be considered paired plans, the elections in Section 1.04 of the Adoption Agreement must be identical with respect to both plans. When the paired plans are "top-heavy plans", as defined in Subsection 15.01(f), or are deemed to be "top-heavy plans", the money purchase pension plan shall provide the minimum contribution required under Section 15.03, unless contributions under the money purchase pension plan are frozen.

18.06 **Application of Plan Provisions in Multiple Employer Plans.** Notwithstanding any other provision of the Plan to the contrary, if one of the Employers designated in Subsection 1.02(b) of the Adoption Agreement is not a Related Employer, the Prototype Sponsor reserves the right to take any or all of the following actions:

- (a) treat the Plan as a multiple employer plan;
- (b) permit the Employer to amend the Plan to exclude the un-Related Employer from participation in the Plan; or
- (c) treat the Employer as having amended the Plan in the manner described in Section 16.02 such that the Employer may no longer participate in this prototype plan arrangement.

For the period, if any, that the Prototype Sponsor elects to treat the Plan as a multiple employer plan, each un-Related Employer shall be treated as a separate Employer for purposes of contributions, application of the "ADP" and "ACP" tests described in Sections 6.03 and 6.06, application of the Code Section 415 limitations described in section 6.12, top-heavy determinations and application of the top-heavy requirements under Article 15, and application of such other Plan provisions as the Employers determine to be appropriate. For any such period, the Prototype Sponsor shall continue to treat the Employer as participating in this prototype plan arrangement for purposes of Plan administration, notices or other communications in connection with the Plan, and other Plan-related services; provided, however, that if the Employer applies to the Internal Revenue Service for a determination letter, the multiple employer plan shall be filed on the form appropriate for multiple employer plans. The Administrator shall be responsible for administering the Plan as a multiple employer plan.

18.07 **Veterans Reemployment Rights.** Notwithstanding any other provision of the Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service shall be provided in accordance with Code Section 414(u). The Administrator shall notify the Trustee of any Participant with respect to whom additional contributions are made because of qualified military service.

18.08 **Effect of Scrivener's Error.** Notwithstanding any other provision of the Plan to the contrary, if there is an error in properly transcribing the provisions of the Employer's Plan through the Adoption Agreement, it shall not be a violation of the Plan terms to operate the Plan in accordance with its proper provisions, rather than in accordance with the terms of the Adoption Agreement, pending correction of the Adoption Agreement through Plan amendment. In addition, any provisions of the Plan improperly added as a result of scrivener's error shall be considered null and void as of the date such error occurred. Therefore, it shall not be a violation of Code Section 411(d)(6) to eliminate such provisions through Plan amendment.

18.09 **Facility of Payment.** In the event the Administrator determines, on the basis of medical reports or other evidence satisfactory to the Administrator, that the recipient of any benefit payments under the Plan is incapable of handling his affairs by reason of minority, illness, infirmity or other incapacity, the Administrator may direct the Trustee to disburse such payments to a person or institution designated by a court which has jurisdiction over such recipient or a person or institution otherwise having the legal authority under state law for the care and control of such recipient. The

61

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receipt by such person or institution of any such payments shall be complete acquittance therefore, and any such payment to the extent thereof, shall discharge the liability of the Trust for the payment of benefits hereunder to such recipient.

18.10 **Information between Employer and Trustee.** The Employer agrees to furnish the Trustee, and the Trustee agrees to furnish the Employer, with such information relating to the Plan and Trust as may be required by the other in order to carry out their respective duties hereunder, including without limitation information required under the Code and any regulations issued or forms adopted by the Treasury Department thereunder or under the provisions of ERISA and any regulations issued or forms adopted by the Department of Labor thereunder.

18.11 **Effect of Failure to Qualify Under Code.** Notwithstanding any other provision contained herein, if the Employer fails to obtain or retain approval of the Plan by the Internal Revenue Service as a qualified Plan under the Code, the Employer may no longer participate in this prototype Plan arrangement and shall be deemed to have an individually designed plan.

18.12 **Notices.** Any notice or other communication in connection with this Plan shall be deemed delivered in writing if addressed as provided below and if either actually delivered at said address or, in the case of a letter, three business days shall have elapsed after the same shall have been deposited in the United States mails, first-class postage prepaid and registered or certified:

(a) If to the Employer or Administrator, to it at the address set forth in the Adoption Agreement, and, if to the Employer, to the attention of the contact specified in Subsection 1.02(a) of the Adoption Agreement;

(b) If to the Trustee, to it at the address set forth in Subsection 1.03(a) the Adoption Agreement; or, in each case at such other address as the addressee shall have specified by written notice delivered in accordance with the foregoing to the addressor's then effective notice address.

Any written notice or communication required to be given to the Trustee may be given in such other medium that the Trustee deems acceptable.

18.13 **Governing Law.** The Plan and the accompanying Adoption Agreement shall be construed, administered and enforced according to ERISA, and to the extent not preempted thereby, the laws of the Commonwealth of Massachusetts.

## ARTICLE 19 PLAN ADMINISTRATION.

19.01 **Powers and Responsibilities of the Administrator.** The Administrator has the full power and the full responsibility to administer the Plan in all of its details, subject, however, to the requirements of ERISA. In addition to the powers and authorities expressly conferred upon it in the Plan, the Administrator shall have all such powers and authorities as may be necessary to carry out the provisions of the Plan, including the discretionary power and authority to interpret and construe the provisions of the Plan, such interpretation to be final and conclusive on all persons claiming benefits under the Plan; to make benefit determinations; and to resolve any disputes arising under the Plan. The Administrator may, by written instrument, allocate and delegate its fiduciary responsibilities in accordance with ERISA Section 405, including allocation of such responsibilities to an administrative committee formed to administer the Plan.

19.02 **Nondiscriminatory Exercise of Authority.** Whenever, in the administration of the Plan, any discretionary action by the Administrator is required, the Administrator shall exercise its authority in a nondiscriminatory manner so that all persons similarly situated shall receive substantially the same treatment.

19.03 **Claims and Review Procedures.** Except to the extent that the provisions of any collective-bargaining agreement provide another method of resolving claims for benefits under the Plan, the

62

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provisions of this Section 19.04 shall control with respect to the resolution of such claims; provided, however, that the Employer may institute alternative claims procedures that are more restrictive on the Employer and more generous with respect to persons claiming a benefit under the Plan.

(a) **Claims Procedure.** Whenever a request for benefits under the Plan is wholly or partially denied, the Administrator shall notify the person claiming such benefits of its decision in writing. Such notification shall contain (1) specific reasons for the denial of the claim, (2) specific reference to pertinent Plan provisions, (3) a description of any additional material or information necessary for such person to perfect such claim and an explanation of why such material or information is necessary, and (4) information as to the steps to be taken if the person wishes to submit a request for review. Such notification shall be given within 90 days after the claim is received by the Administrator (or within 180 days, if special circumstances require an extension of time for processing the claim, and if written notice of such extension and circumstances is given to such person within the initial 90-day period). If such notification is not given within such period, the claim shall be considered denied as of the last day of such period and such person may request a review of his claim.

(b) **Review Procedure.** Within 60 days after the date on which a person receives a written notice of a denied claim (or, if applicable, within 60 days after the date on which such denial is considered to have occurred), such person (or his duly authorized representative) may (1) file a written request with the Administrator for a review of his denied claim and of pertinent documents and (2) submit written issues and comments to the Administrator. The Administrator shall notify such person of its decision in writing. Such notification shall be written in a manner calculated to be understood by such person and shall contain specific reasons for the decision as well as specific references to pertinent Plan provisions. The decision on review shall be made within

60 days after the request for review is received by the Administrator (or within 120 days, if special circumstances require an extension of time for processing the request, such as an election by the Administrator to hold a hearing, and if written notice of such extension and circumstances is given to such person within the initial 60-day period). If the decision on review is not made within such period, the claim shall be considered denied.

19.04 **Named Fiduciary.** The Administrator is a "named fiduciary" for purposes of ERISA Section 402(a)(1) and has the powers and responsibilities with respect to the management and operation of the Plan described herein.

19.05 **Costs of Administration.** Unless some or all are paid by the Employer, all reasonable costs and expenses (including legal, accounting, and employee communication fees) incurred by the Administrator and the Trustee in administering the Plan and Trust shall be paid first from the forfeitures (if any) resulting under Section 11.08, then from the remaining Trust Fund. All such costs and expenses paid from the Trust Fund shall, unless allocable to the Accounts of particular Participants, be charged against the Accounts of all Participants on a pro rata basis or in such other reasonable manner as may be directed by the Employer and accepted by the Trustee.

## **ARTICLE 20 TRUST AGREEMENT.**

20.01 **Acceptance of Trust Responsibilities.** By executing the Adoption Agreement, the Employer establishes a trust to hold the assets of the Plan that are invested in Permissible Investments. By executing the Adoption Agreement, the Trustee agrees to accept the rights, duties and responsibilities set forth in this Article. If the Plan is an amendment and restatement of a prior plan, the Trustee shall have no liability for and no duty to inquire into the administration of the assets of the Plan for periods prior to the date such assets are transferred to the Trust.

20.02 **Establishment of Trust Fund.** A trust is hereby established under the Plan and the Trustee shall open and maintain a trust account for the Plan and, as part thereof, Participant's Accounts for

63

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such individuals as the Employer shall from time to time give written notice to the Trustee are Participants in the Plan. The Trustee shall accept and hold in the Trust Fund such contributions on behalf of Participants as it may receive from time to time from the Employer. The Trust Fund shall be fully invested and reinvested in accordance with the applicable provisions of the Plan in Fund Shares or as otherwise provided in Section 20.10.

20.03 **Exclusive Benefit.** The Trustee shall hold the assets of the Trust Fund for the exclusive purpose of providing benefits to Participants and Beneficiaries and defraying the reasonable expenses of administering the Plan. No assets of the Plan shall revert to the Employer except as specifically permitted by the terms of the Plan.

20.04 **Powers of Trustee.** The Trustee shall have no discretion or authority with respect to the investment of the Trust Fund but shall act solely as a directed trustee of the funds contributed to it. In addition to and not in limitation of such powers as the Trustee has by law or under any other provision of the Plan, the Trustee shall have the following powers, each of which the Trustee exercises solely as directed Trustee in accordance with the written direction of the Employer except to the extent a Plan asset is subject to Participant direction of investment and provided that no such power shall be exercised in any manner inconsistent with the provisions of ERISA:

(a) to deal with all or any part of the Trust Fund and to invest all or a part of the Trust Fund in Permissible Investments, without regard to the law of any state regarding proper investment;

(b) to transfer to and invest all or any part of the Trust in any collective investment trust which is then maintained by a bank or trust company (or any affiliate) and which is tax-exempt pursuant to Code Section 501(a) and Rev. Rul. 81-100; provided that such collective investment trust is a Permissible Investment; and provided, further, that the instrument establishing such collective investment trust, as amended from time to time, shall govern any investment therein, and is hereby made a part of the plan and this Trust Agreement to the extent of such investment therein; and provided, further, that if the "affiliated broker" designated in Section 20.11 is used to purchase or sell Plan assets, investment may not be made in any such collective investment trust maintained by the Trustee;

(c) to retain uninvested such cash as it may deem necessary or advisable, without liability for interest thereon, for the administration of the Trust;

(d) to sell, lease, convert, redeem, exchange, or otherwise dispose of all or any part of the assets constituting the Trust Fund;

(e) to borrow funds from a bank not affiliated with the Trustee in order to provide sufficient liquidity to process Plan transactions in a timely fashion, provided that the cost of borrowing shall be allocated in a reasonable fashion to the Permissible Investment(s) in need of liquidity;

(f) to enforce by suit or otherwise, or to waive, its rights on behalf of the Trust, and to defend claims asserted against it or the Trust, provided that the Trustee is indemnified to its satisfaction against liability and expenses;

(g) to employ such agents and counsel as may be reasonably necessary in collecting, managing, administering, investing, distributing and protecting the Trust Fund or the assets thereof and to pay them reasonable compensation;

(h) to compromise, adjust and settle any and all claims against or in favor of it or the Trust;

(i) to oppose, or participate in and consent to the reorganization, merger, consolidation, or readjustment of the finances of any enterprise, to pay assessments and expenses in connection therewith, and to deposit securities under deposit agreements;

(j) to apply for or purchase annuity contracts in accordance with Article 14;

64

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(k) to hold securities unregistered, or to register them in its own name or in the name of nominees;

(l) to appoint custodians to hold investments within the jurisdiction of the district courts of the United States and to deposit securities with stock clearing corporations or depositories or similar organizations;

(m) to make, execute, acknowledge and deliver any and all instruments that it deems necessary or appropriate to carry out the powers herein granted;

(n) generally to exercise any of the powers of an owner with respect to all or any part of the Trust Fund; and

(o) to take all such actions as may be necessary under the Trust Agreement, to the extent consistent with applicable law.

The Employer specifically acknowledges and authorizes that affiliates of the Trustee may act as its agent in the performance of ministerial, nonfiduciary duties under the Trust. The expenses and compensation of such agent shall be paid by the Trustee.

The Trustee shall provide the Employer with reasonable notice of any claim filed against the Plan or Trust or with regard to any related matter, or of any claim filed by the Trustee on behalf of the Plan or Trust or with regard to any related matter.

**20.05 Accounts.** The Trustee shall keep full accounts of all receipts and disbursements and other transactions hereunder. Within 120 days after the close of each Plan Year, within 90 days after termination of the Trust, and at such other times as may be appropriate, the Trustee shall determine the then net fair market value of the Trust Fund as of the close of the Plan Year, as of the termination of the Trust, or as of such other time, whichever is applicable, and shall render to the Employer and Administrator an account of its administration of the Trust during the period since the last such accounting, including all allocations made by it during such period.

**20.06 Approval of Accounts.** To the extent permitted by law, the written approval of any account by the Employer or Administrator shall be final and binding, as to all matters and transactions stated or shown therein, upon the Employer, Administrator, Participants and all persons who then are or thereafter become interested in the Trust. The failure of the Employer or Administrator to notify the Trustee within six months after the receipt of any account of its objection to the account shall, to the extent permitted by law, be the equivalent of written approval. If the Employer or Administrator files any objections within such six month period with respect to any matters or transactions stated or shown in the account, and the Employer or Administrator and the Trustee cannot amicably settle the question raised by such objections, the Trustee shall have the right to have such questions settled by judicial proceedings. Nothing herein contained shall be construed so as to deprive the Trustee of the right to have judicial settlement of its accounts. In any proceeding for a judicial settlement of any account or for instructions, the only necessary parties shall be the Trustee, the Employer and the Administrator.

65

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**20.07 Distribution from Trust Fund.** The Trustee shall make such distribution from the Trust Fund as the Employer or Administrator may direct (in writing or such other medium as may be acceptable to the Trustee), consistent with the terms of the Plan and either for the exclusive benefit of Participants or their Beneficiaries, or for the payment of expenses of administering the Plan.

**20.08 Transfer of Amounts from Qualified Plan.** If amounts are to be transferred to the Plan from another qualified plan or trust under Code Section 401(a), such transfer shall be made in accordance with the provisions of the Plan and with such rules as may be established by the Trustee. The Trustee shall only accept assets which are in a medium proper for investment under this agreement or in cash, and that are accompanied in a timely manner, as agreed to by the Administrator and the Trustee, by instructions in writing (or such other medium as may be acceptable to the Trustee) showing separately the respective contributions by the prior employer and the transferring Employee, the records relating to such contributions, and identifying the assets attributable to such contributions. The Trustee shall hold such assets for investment in accordance with the provisions of this agreement.

**20.09 Transfer of Assets from Trust.** Subject to the provisions of the Plan, the Employer may direct the Trustee to transfer all or a specified portion of the Trust assets to any other plan or plans maintained by the Employer or the employer or employers of an Inactive Participant or Participants, provided that the Trustee has received evidence satisfactory to it that such other plan meets all applicable requirements of the Code. The assets so transferred shall be accompanied by written instructions from the Employer naming the persons for whose benefit such assets have been transferred, showing separately the respective contributions by the Employer and by each Participant, if any, and identifying the assets attributable to the various contributions. The Trustee shall have no further liabilities with respect to assets so transferred.

**20.10 Separate Trust or Fund for Existing Plan Assets.** With the consent of the Trustee, the Employer may maintain a trust or fund (including a group annuity contract) under this prototype plan document separate from the Trust Fund for Plan assets purchased prior to the adoption of this prototype plan document which are not Permissible Investments listed in the Service Agreement. The Trustee shall have no authority and no responsibility for the Plan assets held in such separate trust or fund. The Employer shall be responsible for assuring that such separate trust or fund is maintained pursuant to a separate trust agreement signed by the Employer and the trustee. The duties and responsibilities of the trustee of a separate trust shall be provided by the separate trust agreement, between the Employer and the trustee.

Notwithstanding the preceding paragraph, the Trustee or an affiliate of the Trustee may agree in writing to provide ministerial recordkeeping services for guaranteed investment contracts held in the separate trust or fund. The guaranteed investment contract(s) shall be valued as directed by the Employer or the trustee of the separate trust.

The trustee of the separate trust (hereafter referred to as "trustee") shall be the owner of any insurance contract purchased prior to the adoption of this prototype plan document. The insurance contract(s) must provide that proceeds shall be payable to the trustee; provided, however, that the trustee shall be required to pay over all proceeds of the contract(s) to the Participant's designated Beneficiary in accordance with the distribution provisions of this Plan. A Participant's spouse shall be the designated Beneficiary of the proceeds in all circumstances unless a qualified election has been made in accordance with Article 14. Under no circumstances shall the trust retain any part of the proceeds. In the event of any conflict between the terms of the Plan and the terms of any insurance contract purchased hereunder, the Plan provisions shall control.

66

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Any life insurance contracts held in the Trust Fund or in the separate trust are subject to the following limits:

(a) Ordinary life—For purposes of these incidental insurance provisions, ordinary life insurance contracts are contracts with both nondecreasing death benefits and nonincreasing premiums. If such contracts are held, less than  $\frac{1}{2}$  of the aggregate employer contributions allocated to any Participant shall be

used to pay the premiums attributable to them.

(b) Term and universal life—No more than  $\frac{1}{4}$  of the aggregate employer contributions allocated to any participant shall be used to pay the premiums on term life insurance contracts, universal life insurance contracts, and all other life insurance contracts which are not ordinary life.

(c) Combination—The sum of  $\frac{1}{2}$  of the ordinary life insurance premiums and all other life insurance premiums shall not exceed  $\frac{1}{4}$  of the aggregate employer contributions allocated to any Participant.

**20.11 Self-Directed Brokerage Option.** If one of the Permissible Investments under the Plan is the self-directed brokerage option, the Employer hereby directs the Trustee to use Fidelity Brokerage Services, Inc. ("affiliated broker") to purchase or sell individual securities for Participant Accounts in accordance with investment directions provided by such Participants. In accordance with the requirements of Department of Labor Prohibited Transaction Class Exemption ("PTCE") 86-128, the "affiliated broker" may not be a trustee (other than a non-discretionary trustee), the plan administrator, or an Employer, unless otherwise permitted under Section IV of PTCE 86-128. The provision of brokerage services by the "affiliated broker" shall be subject to the following:

(a) In accordance with the procedures set forth in PTCE 86-128, the Trustee shall provide the Employer with the following documents: (1) a description of the "affiliated broker's" brokerage placement practices; (2) a copy of PTCE 86-128; (3) an annual report which summarizes all securities transaction-related charges incurred by the Plan; and (4) a form by which the Employer may terminate this authorization to use a broker affiliated with the Trustee. The Trustee shall provide the Employer with the termination form described above annually.

(b) Any successor organization of the "affiliated broker", through reorganization, consolidation, merger, or similar transactions, shall, upon consummation of such transaction, become the successor broker in accordance with the terms of this authorization provision.

(c) The Trustee and the "affiliated broker" shall continue to rely on this authorization provision until notified to the contrary. The Employer reserves the right to terminate this authorization upon sixty (60) days written notice to the "affiliated broker" (or its successor) and the Trustee, and in accordance with Section 20.22 of this Agreement.

(d) The Trustee shall provide the Employer with a list of the types of securities that may not be purchased under this self-directed brokerage option. The Trustee shall provide the Employer with administrative procedures and fees governing investment in and withdrawals from the self-directed brokerage option.

(e) Participants may authorize the use of an agent to have limited trading authority over assets in their Accounts invested under the self-directed brokerage option provided that the Participant completes and files with the "affiliated broker" a limited trading authorization and indemnification form in the form prescribed by the "affiliated broker".

**20.12 Employer Stock Option.** If one of the Permissible Investments is equity securities issued by the Employer or a Related Company which are publicly traded and which are "qualifying employer securities" within the meaning of Section 407(d)(5) of ERISA ("Employer stock"), investments in "Employer stock" shall be made via the "Employer stock" investment fund (the "stock fund") which shall consist of shares of "Employer stock" and short-term liquid investments consisting of mutual fund

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shares or commingled money market pool units as agreed to by the Employer and the Trustee, necessary to satisfy the "stock fund's" cash needs for transfers and payments. A cash target range shall be maintained in the "stock fund". Such target range may be changed as agreed to in writing by the Employer and the Trustee. The Trustee is responsible for ensuring that the actual cash held in the "stock fund" falls within the agreed upon range over time.

Each Participant's interest in the "stock fund" shall be measured either in (a) actual shares of "Employer stock" that are allocated to the Participant's Account and a proportionate interest in all other assets of the "Stock fund" or (b) units of participation, as provided in the Service Agreement. If accounting is by units of participation, such units shall represent a proportionate interest in all assets of the "stock fund", which includes shares of "Employer stock", short-term investments and at times, receivables for dividends and/or "Employer stock" sold and payables for "Employer stock" purchased. A net asset value per unit shall be determined daily for each cash unit outstanding of the "stock fund". The return earned by the "stock fund" shall represent a combination of the dividends paid on the shares of "Employer stock" held by the "stock fund", gains or losses realized on sales of "Employer stock", appreciation or depreciation in the market price of those shares owned, and interest on the short-term investments held by the "stock fund".

Dividends received by the "stock fund" are reinvested in additional shares of "Employer stock". Investments in "Employer stock" shall be subject to the following limitations:

(a) **Acquisition Limit.** Pursuant to the Plan, the Trust may be invested in "Employer stock" to the extent necessary to comply with investment directions under Section 8.02 of the Plan. Notwithstanding the foregoing, effective for Deferral Contributions made for Plan Years beginning on or after January 1, 1999, the portion of a Participant's Deferral Contributions that the Employer may require to be invested in "Employer stock" for a Plan Year cannot exceed one-percent of such Participant's Compensation for the Plan Year.

(b) **Fiduciary Duty of "Named Fiduciary".** The Administrator or any person designated by the Administrator as a named fiduciary under Section 19.01 (the "named fiduciary") shall continuously monitor the suitability under the fiduciary duty rules of ERISA Section 404(a)(1) (as modified by ERISA Section 404(a)(2)) of acquiring and holding "Employer stock". The Trustee shall not be liable for any loss, or by reason of any breach, which arises from the directions of the "named fiduciary" with respect to the acquisition and holding of "Employer stock", unless it is clear on their face that the actions to be taken under those directions would be prohibited by the foregoing fiduciary duty rules or would be contrary to the terms of the plan or this Trust Agreement.

(c) **Execution of Purchases and Sales.** Purchases and sales of "Employer stock" (other than for exchanges) shall be made on the open market on the date on which the Trustee receives from the Employer in good order all information and documentation necessary to accurately effect such purchases and sales (or, in the case of purchases, the subsequent date on which the Trustee has received a wire transfer of the funds necessary to make such purchases). Such general rules shall not apply in the following circumstances:

(1) If the Trustee is unable to determine the number of shares required to be purchased or sold on such day;

(2) If the Trustee is unable to purchase or sell the total number of shares required to be purchased or sold on such day as a result of market conditions; or

(3) If the Trustee is prohibited by the Securities and Exchange Commission, the New York Stock Exchange, or any other regulatory body from purchasing or selling any or all of the shares required to be purchased or sold on such day.

68

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In the event of the occurrence of the circumstances described in (1), (2) or (3) above, the Trustee shall purchase or sell such shares as soon as possible thereafter and shall determine the price of such purchases or sales to be the average purchase or sales price of all such shares purchased or sold, respectively. The Trustee may follow directions from the "named fiduciary" to deviate from the above purchase and sale procedures provided that such direction is made in writing by the "named fiduciary".

(d) **Purchases and Sales from or to Employer.** If directed by the Employer in writing prior to the trading date, the Trustee may purchase or sell "Employer stock" from or to the Employer if the purchase or sale is for adequate consideration (within the meaning of ERISA Section 3(18)) and no commission is charged. If Employer contributions or contributions made by the Employer on behalf of the Participants under the Plan are to be invested in "Employer stock", the Employer may transfer "Employer stock" in lieu of cash to the Trust. In either case, the number of shares to be transferred shall be determined by dividing the total amount of "Employer stock" to be purchased or sold by the closing price of the "Employer stock" on any national securities exchange on the trading date.

(e) **Use of "Affiliated Broker" to Purchase "Employer Stock".** The Employer hereby directs the Trustee to use the "affiliated broker" designated in Section 20.11 to provide brokerage services in connection with any purchase or sale of "Employer stock" in accordance with investment directions from participants and/or the Employer if and to the extent that each has authority to direct investments under Section 1.23 of the Adoption Agreement. The provision of brokerage services hereunder by the "affiliated broker" shall be subject to the provisions of Subsections 20.11(a), (b), and (c).

(f) **Securities Law Reports.** The "named fiduciary" shall be responsible for filing all reports required under Federal or state securities laws with respect to the Trust's ownership of "Employer stock"; including, without limitation, any reports required under Section 13 or 16 of the Securities Exchange Act of 1934 and shall immediately notify the Trustee in writing of any requirement to stop purchases or sales of "Employer stock" pending the filing of any report. The Trustee shall provide to the "named fiduciary" such information on the Trust's ownership of "Employer stock" as the "named fiduciary" may reasonably request in order to comply with Federal or state securities laws.

(g) **Voting and Tender offers.** Notwithstanding any other provision of the Trust Agreement the provisions of this Subsection shall govern the voting and tendering of "Employer stock". If the Plan uses share accounting with respect to the "stock fund", each Participant shall be designated as a named fiduciary under ERISA with respect to shares of "Employer stock" credited to the Participant's Account that were not acquired at the direction of the Participant in accordance with ERISA Section 404 (c). If accounting with respect to the "stock fund" is by units of participation, each Participant shall be designated as a named fiduciary under ERISA with respect to shares of "Employer stock" attributable to units in the "stock fund" credited to the Participant's Account not acquired at the direction of the Participant in accordance with ERISA Section 404(c).

The Employer, after consultation with the Trustee, shall provide and pay for all printing, mailing, tabulation and other costs associated with the voting and tendering of "Employer stock", except as required by law.

(1) *Voting.*

(A) When the issuer of the "Employer stock" prepares for any annual or special meeting, the Employer shall notify the Trustee thirty (30) days in advance of the intended record date and shall cause a copy of all materials to be sent to the Trustee. Based on these materials the Trustee shall prepare a voting instruction form. At the time of mailing

69

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of notice of each annual or special stockholders' meeting of the issuer of the "Employer stock", the Employer shall cause a copy of the notice and all proxy solicitation materials to be sent to each Participant with an interest in "Employer stock" held in the Trust, together with the foregoing voting instruction form to be returned to the Trustee or its designee. The form shall show the proportional interest in the number of full and fractional shares of "Employer stock" credited to the Participant's Sub-Accounts hold in the "stock fund". The Employer shall provide the Trustee with a copy of any materials provided to the Participants and shall (if the mailing is not handled by the Trustee) certify that the materials have been mailed or otherwise sent to Participants.

(B) Each Participant with an interest in the "stock fund" shall have the right to direct the Trustee as to the manner in which the Trustee is to vote (including not to vote) that number of shares of "Employer stock" that is credited to his Account, if the Plan uses share accounting, or, if accounting is by units of participation, that reflects such Participant's proportional interest in the "stock fund" (both vested and unvested). Directions from a Participant to the Trustee concerning the voting of "Employer stock" shall be communicated in writing, or by mailgram or similar means. These directions shall be held in confidence by the Trustee and shall not be divulged to the Employer, or any officer or employee thereof, or any other person. Upon its receipt of the directions, the Trustee shall vote the shares of "Employer stock" that are credited to a Participant's Account, if the Plan uses share accounting, or, if accounting is by units of participation, that reflect the Participant's proportional interest in the "stock fund" as directed by the Participant. The Trustee shall not vote shares of "Employer stock" that are credited to a Participant's Account, if the plan uses share accounting, or, if accounting is by units of participation, that reflect a Participant's proportional interest in the "stock fund" for which the Trustee has received no direction from the Participant, except as required by law.

(2) *Tender Offers.*

(A) Upon commencement of a tender offer for any securities held in the Trust that are "Employer stock", the Employer shall notify each Participant with an interest in such "Employer stock" of the tender offer and utilize its best efforts to timely distribute or cause to be distributed to the Participant the same information that is distributed to shareholders of the issuer of "Employer stock" in connection with the tender offer, and, after consulting with the Trustee, shall provide and pay for a means by which the Participant may direct the Trustee

whether or not to tender the "Employer stock" that is credited to a Participant's Account, if the Plan uses share accounting, or, if accounting is by units of participation, that reflects such Participant's proportional interest in the "stock fund" (both vested and unvested). The Employer shall provide the Trustee with a copy of any material provided to the Participants and shall (if the mailing is not handled by the Trustee) certify to the Trustee that the materials have been mailed or otherwise sent to Participants.

(B) Each Participant shall have the right to direct the Trustee to tender or not to tender some or all of the shares of "Employer stock" that are credited to his Account, if the Plan uses share accounting, or, if accounting is by units of participation, that reflect such Participant's proportional interest in the "stock fund" (both vested and unvested). Directions from a Participant to the Trustee concerning the tender of "Employer stock" shall be communicated in writing, or by mailgram or such similar means as is agreed upon by the Trustee and the Employer under the preceding paragraph. These directions shall be held in confidence by the Trustee and shall not be divulged to the Employer, or any officer or employee thereof, or any other person, except to the extent that the

70

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consequences of such directions are reflected in reports regularly communicated to any such persons in the ordinary course of the performance of the Trustee's services hereunder. The Trustee shall tender or not tender shares of "Employer stock" as directed by the Participant. The Trustee shall not tender shares of "Employer stock" that are credited to a Participant's Account, if the plan uses share accounting, or, if accounting is by units of participation, that reflect a Participant's proportional interest in the "stock fund" for which the Trustee has received no direction from the Participant.

(C) A Participant who has directed the Trustee to tender some or all of the shares of "Employer stock" that are credited to his Account, if the Plan uses share accounting, or, if accounting is by units of participation, that reflect the Participant's proportional interest in the "stock fund" may, at any time prior to the tender offer withdrawal date, direct the Trustee to withdraw some or all of such tendered shares, and the Trustee shall withdraw the directed number of shares from the tender offer prior to the tender offer withdrawal deadline. A Participant shall not be limited as to the number of directions to tender or withdraw that the Participant may give to the Trustee.

(D) A direction by a Participant to the Trustee to tender shares of "Employer stock" that are credited to the Participant's Account, if the Plan uses share accounting, or, if accounting is by units of participation, that reflect the Participant's proportional interest in the "stock fund" shall not be considered a written election under the Plan by the Participant to withdraw, or have distributed, any or all of his withdrawable shares. If the Plan uses share accounting, the Trustee shall credit to the Participant's Account the proceeds received by the Trustee in exchange for the shares of "Employer stock" tendered from the Participant's Account. If accounting is by units of participation, the Trustee shall credit to each proportional interest of the Participant from which the tendered shares were taken the proceeds received by the Trustee in exchange for the shares of "Employer stock" tendered from that interest. Pending receipt of direction (through the Administrator) from the Participant or the "named fiduciary", as provided in the Plan, as to which of the remaining Permissible Investments the proceeds should be invested in, the Trustee shall invest the proceeds in the Permissible Investment specified for such purposes in the Service Agreement or, if no such Permissible Investment has been specified, the most conservative Permissible Investment designated by the Employer in the Service Agreement.

(h) **Shares Credited.** If accounting with respect to the "Stock fund" is by units of participation, then for all purposes of this Section 20.12, the number of shares of "Employer stock" deemed "credited" or "reflected" to a Participant's proportional interest shall be determined as of the last preceding valuation date. The trade date is the date the transaction is valued.

(i) **General.** With respect to all rights other than the right to vote, the right to tender, and the right to withdraw shares previously tendered, in the case of "Employer stock" credited to a Participant's Account or proportional interest in the "stock fund", the Trustee shall follow the directions of the Participant and if no such directions are received, the directions of the "named fiduciary". The Trustee shall have no duty to solicit directions from Participants.

(j) **Conversion.** All provisions in this Section 20.12 shall also apply to any securities received as a result of a conversion to "Employer stock".

**20.13 Voting; Delivery of Information.** The Trustee shall deliver, or cause to be executed and delivered, to the Employer or Administrator all notices, prospectuses, financial statements, proxies and proxy soliciting materials received by the Trustee relating to securities held by the Trust or, if applicable, deliver these materials to the appropriate Participant or the Beneficiary of a deceased Participant. The Trustee shall not vote any securities held by the Trust except in accordance with the

71

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written instructions of the Employer, Participant, or the Beneficiary of the Participant, if the Participant is deceased; provided, however, that the Trustee may, in the absence of instructions, vote "present" for the sole purpose of allowing such shares to be counted for establishment of a quorum at a shareholders' meeting. The Trustee shall have no duty to solicit instructions from Participants, Beneficiaries, or the Employer.

**20.14 Compensation and Expenses of Trustee.** The Trustee's fee for performing its duties hereunder shall be such reasonable amounts as the Trustee may from time to time specify in the Service Agreement or any other written agreement with the Employer. Such fee, any taxes of any kind which may be levied or assessed upon or with respect to the Trust Fund, and any and all expenses, including without limitation legal fees and expenses of administrative and judicial proceedings, reasonably incurred by the Trustee in connection with its duties and responsibilities hereunder shall, unless some or all have been paid by said Employer, be paid first from forfeitures resulting under Section 11.08, then from the remaining Trust Fund and shall, unless allocable to the Accounts of particular Participants, be charged against the respective Accounts of all Participants, in such reasonable manner as the Trustee may determine.

**20.15 Reliance by Trustee on Other Persons.** The Trustee may rely upon and act upon any writing from any person authorized by the Employer or the Administrator pursuant to the Service Agreement or any other written direction to give instructions concerning the Plan and may conclusively rely upon and be protected in acting upon any written order from the Employer or the Administrator or upon any other notice, request, consent, certificate, or other instructions or paper reasonably believed by it to have been executed by a duly authorized person, so long as it acts in good faith in taking or omitting to take any such action. The Trustee need not inquire as to the basis in fact of any statement in writing received from the Employer or the Administrator.

The Trustee shall be entitled to rely on the latest certificate it has received from the Employer or the Administrator as to any person or persons authorized to act for the Employer or the Administrator hereunder and to sign on behalf of the Employer or the Administrator any directions or instructions, until it receives from the Employer or the Administrator written notice that such authority has been revoked.

Notwithstanding any provision contained herein, the Trustee shall be under no duty to take any action with respect to any Participant's Account (other than as specified herein) unless and until the Employer or the Administrator furnishes the Trustee with written instructions on a form acceptable to the Trustee, and the Trustee agrees thereto in writing. The Trustee shall not be liable for any action taken pursuant to the Employer's or the Administrator's written instructions (nor for the collection of contributions under the Plan, nor the purpose or propriety of any distribution made thereunder).

**20.16 Indemnification by Employer.** The Employer shall indemnify and save harmless the Trustee from and against any and all liability to which the Trustee may be subjected by reason of any act or conduct (except willful misconduct negligence) in its capacity as Trustee, including all expenses reasonably incurred in its defense.

**20.17 Consultation by Trustee with Counsel.** The Trustee may consult with legal counsel (who may be but need not be counsel for the Employer or the Administrator) concerning any question which may arise with respect to its rights and duties under the Plan and Trust, and the opinion of such counsel shall, to the extent permitted by law, be full and complete protection in respect of any action taken or omitted by the Trustee hereunder in good faith and in accordance with the opinion of such counsel.

**20.18 Persons Dealing with the Trustee.** No person dealing with the Trustee shall be bound to see to the application of any money or property paid or delivered to the Trustee or to inquire into the validity or propriety of any transactions.

72

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**20.19 Resignation or Removal of Trustee.** The Trustee may resign at any time by written notice to the Employer, which resignation shall be effective 60 days after delivery to the Employer. The Trustee may be removed by the Employer by written notice to the Trustee, which removal shall be effective 60 days after delivery to the Trustee.

Upon resignation or removal of the Trustee, the Employer may appoint a successor trustee. Any such successor trustee shall, upon written acceptance of his appointment, become vested with the estate, rights, powers, discretion, duties and obligations of the Trustee hereunder as if he had been originally named as Trustee in this Agreement.

Upon resignation or removal of the Trustee, the Employer shall no longer participate in this prototype plan and shall be deemed to have adopted an individually designed plan. In such event, the Employer shall appoint a successor trustee within said 60-day period and the Trustee shall transfer the assets of the Trust to the successor trustee upon receipt of sufficient evidence (such as a determination letter or opinion letter from the Internal Revenue Service or an opinion of counsel satisfactory to the Trustee) that such trust shall be a qualified trust under the Code.

The appointment of a successor trustee shall be accomplished by delivery to the Trustee of written notice that the Employer has appointed such successor trustee, and written acceptance of such appointment by the successor trustee. The Trustee may, upon transfer and delivery of the Trust Fund to a successor trustee, reserve such reasonable amount as it shall deem necessary to provide for its fees, compensation, costs and expenses, or for the payment of any other liabilities chargeable against the Trust Fund for which it may be liable. The Trustee shall not be liable for the acts or omissions of any successor trustee.

**20.20 Fiscal Year of the Trust.** The fiscal year of the Trust shall coincide with the Plan Year.

**20.21 Discharge of Duties by Fiduciaries.** The Trustee and the Employer and any other fiduciary shall discharge their duties under the Plan and this Trust Agreement solely in the interests of Participants and their Beneficiaries in accordance with the requirements of ERISA.

**20.22 Amendment.** In accordance with provisions of the Plan, and subject to the limitations set forth therein, this Trust Agreement may be amended by an instrument in writing signed by the Employer and the Trustee. No amendment to this Trust Agreement shall divert any part of the Trust Fund to any purpose other than as provided in Section 20.03.

**20.23 Plan Termination.** Upon termination or partial termination of the plan or complete discontinuance of contributions thereunder, the Trustee shall make distributions to the Participants or other persons entitled to distributions as the Employer or Administrator directs in accordance with the provisions of the Plan. In the absence of such instructions and unless the Plan otherwise provides, the Trustee shall notify the Employer or Administrator of such situation and the Trustee shall be under no duty to make any distributions under the plan until it receives written instructions from the Employer or Administrator. Upon the completion of such distributions, the Trust shall terminate, the Trustee shall be relieved from all liability under the Trust, and no Participant or other person shall have any claims thereunder, except as required by applicable law.

**20.24 Permitted Reversion of Funds to Employer.** If it is determined by the Internal Revenue Service that the Plan does not initially qualify under Code Section 401, all assets then held under the Plan shall be returned by the Trustee, as directed by the Administrator, to the Employer, but only if the application for determination is made by the time prescribed by law for filing the Employer's return for the taxable year in which the Plan was adopted or such later date as may be prescribed by regulations. Such distribution shall be made within one year after the date the initial qualification is denied. Upon such distribution the Plan shall be considered to be rescinded and to be of no force or effect.

73

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Contributions under the Plan are conditioned upon their deductibility under Code Section 404. In the event the deduction of a contribution made by the Employer is disallowed under Code Section 404, such contribution (to the extent disallowed) must be returned to the Employer within one year of the disallowance of the deduction.

Any contribution made by the Employer because of a mistake of fact must be returned to the Employer within one year of the contribution.

**20.25 Governing Law.** This Trust Agreement shall be construed, administered and enforced according to ERISA and, to the extent not preempted thereby, the laws of the Commonwealth of Massachusetts.



## QuickLinks

[THE CORPORATE PLAN FOR RETIREMENT<sup>SM</sup>](#)

[FIDELITY BASIC PLAN DOCUMENT NO. 07](#)

[TABLE OF CONTENTS](#)

**The CORPORATEplan  
For Retirement<sup>SM</sup>  
(Profit Sharing/401(k) Plan)**

**A Fidelity Prototype Plan**

**Non-Standardized Adoption Agreement No. 001  
For use With  
Fidelity Basic Plan Document No. 07**

*The CORPORATEplan for Retirement<sup>SM</sup>, Basic Plan Document No. 07, and related Adoption Agreements has not yet received approval from the Internal Revenue Service for use as a prototype plan. The CORPORATEplan for Retirement<sup>SM</sup> was submitted in April of 1998 to the Internal Revenue Service as a minor modifier to Fidelity Basic Plan Document No. 14. The document is considered an individually-designed plan until it is approved by the Internal Revenue Service. Revisions to the Basic Plan Document and/or Adoption Agreement may be required by the Internal Revenue Service as part of the approval process. If revisions are required, the approved document will be distributed to adopting employers and must be re-executed by them, within a specified time period.*

**ADOPTION AGREEMENT  
ARTICLE I  
NON-STANDARDIZED PROFIT SHARING/401(K) PLAN**

**1.01 PLAN INFORMATION**

**(a) Name of Plan:**

This is the *Inhale Therapeutic Systems 401(k) Plan* (the "Plan")

**(b) Type of Plan:**

- (1) // 401(k) Only
- (2) /x/ 401(k) and Profit Sharing
- (3) // Profit Sharing Only

**(c) Administrator Name (if not the Employer):**

\_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone Number: \_\_\_\_\_

The Administrator is the agent for service of legal process for the Plan.

**(d) Plan Year End** (month/day): 12/31

**(e) Three Digit Plan Number:** 001

**(f) Limitation Year** (check one):

- (1) // Calendar Year
- (2) /x/ Plan Year
- (3) // Other: \_\_\_\_\_

**(g) Plan Status** (check appropriate box(es)):

(1) // New Plan Effective Date: \_\_\_\_\_

(2) // Amendment Effective Date: 11/1/00

This is (check one):

(A) // an amendment of The CORPORATEplan for Retirement<sup>SM</sup> Basic Plan Document No. 07 Adoption Agreement previously executed by the Employer; or

(B) /x/ a conversion to The CORPORATEplan for Retirement<sup>SM</sup> Basic Plan Document No. 07.

The original effective date of the Plan: 2/15/94

The substantive provisions of the Plan shall apply prior to the Amendment Effective Date to the extent required by the Internal Revenue Code, as specifically provided in the Basic Plan Document.

(3) // Special Effective Dates—Certain provisions of the Plan shall be effective as of a date other than the date specified above. Please complete the Special Effective Dates Addendum to the Adoption Agreement indicating the affected provisions and their effective dates.

(4) // Plan Merger Effective Dates. Please complete the Special Effective Dates Addendum to the Adoption Agreement indicating the plan(s) that have merged into the Plan and the effective date(s) of such merger(s).

**1.02 EMPLOYER**

(a) **Employer Name:** Inhale Therapeutic Systems

Address: 150 Industrial Road  
San Carlos, Ca 94070-6256

Contact's Name: Kim Franklin

Telephone Number: 650-631-3222

(1) Employer's Tax Identification Number: 94 -3134940

(2) Employer's fiscal year end: 12/31

(3) Date business commenced: 7/12/90

(b) **The term "Employer" includes the following Related Employer(s) (as defined in Subsection 2.01(rr))** (list each participating Related Employer and its Employer Tax Identification Number):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**1.03 TRUSTEE**

(a) **Trustee Name:** Fidelity Management Trust Company

Address: 82 Devonshire Street  
Boston, MA 02109

**1.04 COVERAGE**

**All Employees who meet the conditions specified below shall be eligible to participate in the Plan:**

(a) **Age Requirement** (check one):

(1) // no age requirement.

(2) /x/ must have attained age: 21 (**not to exceed 21**).

(b) **Eligibility Service Requirement**

(1) **Eligibility to Participate in Plan** (check one):

(A)  no Eligibility Service requirement.

2

- (B)  \_\_\_\_\_ (not to exceed 11) months of Eligibility Service requirement (no minimum number Hours of Service can be required).
- (C)  one year of Eligibility Service requirement (at least 1,000 Hours of Service are required during the Eligibility Computation Period).
- (D)  two years of Eligibility Service requirement (at least 1,000 Hours of Service are required during each Eligibility Computation Period) **(Do not select if Option 1.01(b)(1), 401(k) Only, is checked, unless a different Eligibility Service requirement applies to Deferral Contributions under Option 1.04(b)(2)).**

**Note:** If the Employer selects the two year Eligibility Service requirement, then contributions subject to such Eligibility Service requirement must be 100% vested when made.

(2)  **Special Eligibility Service requirement for Deferral Contributions and/or Matching Employer Contributions:**

(A) The special Eligibility Service requirement applies to (check appropriate box(es)):

(i)  Deferral Contributions.

(ii)  Matching Employer Contributions.

(B) The special Eligibility Service requirement is: \_\_\_\_\_ (Fill in (A), (B), or (C) from Subsection 1.04(b) (1) above).

(c) **Eligible Class of Employees** (check one):

**Note:** The Plan may not cover employees who are citizens of Puerto Rico. These employees are automatically excluded from the eligible class, regardless of the Employer's selection under this Subsection 1.04(c).

(1)  includes all Employees of the Employer.

(2)  includes all Employees of the Employer except for (check the appropriate box(es)):

(A)  employees covered by a collective bargaining agreement.

(B)  Highly Compensated Employees as defined in Code Section 414(q).

(C)  Leased Employees as defined in Subsection 2.01(cc).

(D)  nonresident aliens who do not receive any earned income from the Employer which constitutes United States source income.

(E)  other:

Temporary Employees (an employee working on a time based assignment) \_\_\_\_\_

**Note:** No exclusion in this Subsection 1.04(c) may create a discriminatory class of employees. An Employer's Plan must still pass the Internal Revenue Code coverage requirements if one or more of the above groups of Employees have been excluded from the Plan.

3

(d) **The Entry Dates shall be** (check one):

(1)  immediate upon meeting the eligibility requirements specified in Subsections 1.04(a), (b), and (c).

(2)  the first day of each Plan Year and the first day of the seventh month of each Plan Year.

(3)  the first day of each Plan Year and the first day of the fourth, seventh, and tenth months of each Plan Year.

(4)  the first day of each month.

(5)  the first day of each Plan Year **(do not select if there is an Eligibility Service requirement of more than six months in Subsection 1.04(b) or if there is an age requirement of more than 20<sup>1</sup>/<sub>2</sub> in Subsection 1.04(a)).**

(e)  **Special Entry Date(s)**—In addition to the Entry Dates specified in Subsection 1.04(d) above, the following special Entry Date(s)

apply for Nonelective and/or Matching Employer Contributions. (*Special Entry Dates may only be selected if Option 1.04(b)(2), special Eligibility Service requirement, is checked. The same Entry Dates must be selected for contributions that are subject to the same Eligibility Service requirements.*)

- (1) The special Entry Date(s) shall apply to (check the appropriate box(es)):
- (A) // Nonelective Employer Contributions
  - (B) // Matching Employer Contributions
- (2) The special Entry Date(s) shall be: \_\_\_\_\_ (Fill in (2), (3), (4), or (5) from Subsection 1.04(d) above).
- (f) **Date of Initial Participation**—An Employee shall become a Participant unless excluded by Subsection 1.04(c) above on the Entry Date immediately following the date the Employee completes the service and age requirement(s) in Subsections 1.04(a) and (b), if any, except (check one):
- (1) /x/ no exceptions.
  - (2) // Employees employed on the Effective Date in Subsection 1.01(g) shall become Participants on that date.
  - (3) // Employees who meet the age and service requirement(s) of Subsections 1.04(a) and (b) on the Effective Date in Subsection 1.01(g) shall become Participants on that date.

4

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## 1.05 COMPENSATION

*Compensation for purposes of determining contributions shall be as defined in Subsection 2.01(j), modified as provided below.*

- (a) **Compensation Exclusions:** Compensation shall exclude the item(s) listed below for purposes of determining Deferral Contributions, Employee Contributions, if any, and Qualified Nonelective Employer Contributions, or, if Subsection 1.01(b)(3), Profit Sharing Only, is selected, Nonelective Employer Contributions. Unless otherwise indicated in Subsection 1.05(b), these exclusions shall also apply in determining all other Employer-provided contributions. (Check the appropriate box(es); Options (2), (3), (4), (5), and (6) may not be elected with respect to Deferral Contributions if Option 1.10(a)(3), Safe Harbor Matching Employer Contributions, is checked):
- (1) // No exclusions.
  - (2) // Overtime Pay.
  - (3) /x/ Bonuses.
  - (4) // Commissions.
  - (5) /x/ The value of a qualified or a non-qualified stock option granted to an Employee by the Employer to the extent such value is includable in the Employee's taxable income.
  - (6) // Severance Pay.
- (b) **Special Compensation Exclusions for Determining Employer-Provided Contributions in Article 5** (either (1) or (2) may be selected, but not both):
- (1) // Compensation for purposes of determining Matching, Qualified Matching, and Nonelective Employer Contributions shall exclude: \_\_\_\_\_ (Fill in number(s) for item(s) from Subsection 1.05(a) above that apply.)
  - (2) // Compensation for purposes of determining Nonelective Employer Contributions only shall exclude: \_\_\_\_\_ (Fill in number(s) for item(s) from Subsection 1.05(a) above that apply.)
- Note:** If the Employer selects Option (2), (3), (4), (5), or (6) with respect to Nonelective Employer Contributions, Compensation must be tested to show that it meets the requirements of Code Section 414(s) or 401(a)(4). These exclusions shall not apply for purposes of the "Top Heavy" requirements in Section 15.03, for allocating safe harbor Matching Employer Contributions if Subsection 1.10(a)(3) is selected, for allocating safe harbor Nonelective Employer Contributions if Subsection 1.11(a)(3) is selected, or for allocating non-safe harbor Nonelective Employer Contributions if the Integrated Formula is elected in Subsection 1.11(b)(2).
- (c) **Compensation for the First Year of Participation**—Contributions for the Plan Year in which an Employee first becomes a Participant shall be determined based on the Employee's Compensation (check one):
- (1) // for the entire Plan Year.
  - (2) /x/ for the portion of the Plan Year in which the Employee is eligible to participate in the Plan.

5

**Note:** If the initial Plan Year of a new Plan consists of fewer than 12 months from the Effective Date in Subsection 1.01(g)(1) through the end of the initial Plan Year, Compensation for purposes of determining the amount of contributions, other than non-safe harbor Nonelective Employer Contributions, under the Plan shall be the period from such Effective Date through the end of the initial year. However, for purposes of determining the amount of non-safe harbor Nonelective Employer Contributions and for other Plan purposes, where appropriate, the full 12-consecutive-month period ending on the last day of the initial Plan Year shall be used.

## 1.06 TESTING RULES

- (a) **ADP/ACP Present Testing Method**—The testing method for purposes of applying the "ADP" and "ACP" tests described in Sections 6.03 and 6.06 of the Plan shall be the (check one):
- (1) /x/ **Current Year Testing Method**—The ADP or ACP of Highly Compensated Employees for the Plan Year shall be compared to the ADP or ACP of Non-Highly Compensated Employees for the same Plan Year. **(Must choose if Option 1.10(a)(3), Safe Harbor Matching Employer Contributions, or Option 1.11(a)(3), Safe Harbor Formula, with respect to Nonelective Employer Contributions is checked.)**
  - (2) // **Prior Year Testing Method**—The ADP or ACP of Highly Compensated Employees for the Plan Year shall be compared to the ADP or ACP of Non-Highly Compensated Employees for the immediately preceding Plan Year. **(Do not choose if Option 1.10(a)(3), Safe Harbor Matching Employer Contributions, or Option 1.11(a)(3), Safe Harbor Formula, with respect to Nonelective Employer Contributions is checked.)**
  - (3) // Not applicable. **(Only if Option 1.01(b)(3), Profit Sharing Only, is checked.)**
- (b) // **ADP/ACP Testing Methods Used in Prior Years**—For Plan Years prior to the effective date of this amendment the "ADP" and "ACP" tests were applied using a different testing method as shown in the ADP/ACP Testing Methods History Addendum to the Adoption Agreement. **(Choose if there has been a change in the testing method used under the Plan.)**
- (c) // **Initial Year Testing Method**—For the initial Plan Year of a new Plan, other than a successor plan, the ADP and ACP tests shall be applied (check one):
- (1) // assuming a 3% ADP and ACP for Non-Highly Compensated Employees.
  - (2) // using the actual ADP and ACP of Non-Highly Compensated Employees for the initial Plan Year.
- (d) **HCE Determinations: Look Back Year**—The look back year for purposes of determining which Employees are Highly Compensated Employees shall be the 12-consecutive-month period preceding the Plan Year, unless otherwise provided below.
- (1) // **Calendar Year Determination**—The look back year shall be the calendar year beginning within the preceding Plan Year. **(Do not choose if the Plan Year is the calendar year.)**
  - (2) // **Prior Plan Years**—For Plan Years prior to the effective date of this amendment, the Plan was operated in accordance with a different look back year election as shown in the Special Effective Dates Addendum to the Adoption Agreement. **(Choose if there has been a change in the look back year used under the Plan.)**

6

- (e) **HCE Determinations: Top Paid Group**—Employees with Compensation exceeding \$80,000 (as indexed) shall be considered Highly Compensated Employees only if they are in the top paid group (the top 20% of Employees ranked by Compensation), unless otherwise provided below.
- (1) // **No Top Paid Group Election Current Plan Year**—All Employees with Compensation exceeding \$80,000 (as indexed) shall be considered Highly Compensated Employees.
  - (2) // **Prior Plan Years**—For Plan Years prior to the effective date of this amendment, the Plan was operated in accordance with a different top paid group election as shown in the Special Effective Dates Addendum to the Adoption Agreement. **(Choose if the Plan has used the top paid group election in some prior Plan Years, but not in others.)**

**Note:** Effective for determination years beginning on or after January 1, 1998, if the Employer elects Option 1.06(d)(1) and/or applies the top paid group election described in Subsection 1.06(e), such election must apply consistently to all retirement plans of the Employer for determination years that begin with or within the same calendar year (except that Option 1.06(d)(1), Calendar Year Determination, shall not apply to calendar year plans). Effective for determination years beginning on or after January 1, 2000, any such election must apply consistently to all plans of the Employer, including non-retirement plans.

## 1.07 DEFERRAL CONTRIBUTIONS

- (a) /x/ **Deferral Contributions**—Participants may elect to have a portion of their Compensation contributed to the Plan on a before-tax basis pursuant to Code Section 401(k).
- (1) **Regular Contributions**—The Employer shall make a Deferral Contribution in accordance with Section 5.03 on behalf of each Participant who has an executed salary reduction agreement in effect with the Employer for the payroll period in question, not to exceed 15% **(not to exceed 25%)** of Compensation for that period.

**Note:** The percentage elected above must be less than 25% in order to satisfy the limitation on annual additions under Code Section 415 if other types of contributions are provided under the Plan.

- (A) // Instead of specifying a percentage of Compensation, a Participant's salary reduction agreement may specify a dollar amount to be contributed each payroll period, provided such dollar amount does not exceed the maximum percentage of Compensation specified in Subsection 1.07(a)(1) above.
- (B) A Participant may increase or decrease, on a prospective basis, his salary reduction agreement percentage (check one):
- (i) /x/ as of the beginning of each payroll period.
  - (ii) // as of the first day of each month.
  - (iii) // as of the next Entry Date. **(Do not select if Option 1.04(d)(1), immediate entry, is checked.)**

7

- (iv) // other. (Specify, but must be at least once per Plan Year)

\_\_\_\_\_  
\_\_\_\_\_

**Note:** Notwithstanding the Employer's election hereunder, if Option 1.10(a)(3), Safe Harbor Matching Employer Contributions, or 1.11(a)(3), Safe Harbor Formula, with respect to Nonelective Employer Contributions is checked, the Plan provides that an Active Participant may change his salary reduction agreement percentage for the Plan Year within a reasonable period (not fewer than 30 days) of receiving the notice described in Section 6.10.

- (C) A Participant may revoke, on a prospective basis, a salary reduction agreement at any time upon proper notice to the Administrator but in such case may not file a new salary reduction agreement until (check one):
- (i) // the first day of the next Plan Year.
  - (ii) // any subsequent Entry Date. **(Do not select if Option 1.04(d)(1), immediate entry, is checked.)**
  - (iii) /x/ other. (Specify, but must be at least once per Plan Year)

Each pay roll period

- (2) /x/ **Catch-Up Contributions**—The Employer may allow Participants upon proper notice and approval to enter into a special salary reduction agreement to make additional Deferral Contributions in an amount up to 100% of their Compensation for the payroll period(s) designated by the Employer.
- (3) // **Bonus Contributions**—The Employer may allow Participants upon proper notice and approval to enter into a special salary reduction agreement to make Deferral Contributions in an amount up to 100% of any Employer paid cash bonuses designated by the Employer on a uniform and non-discriminatory basis that are made for such Participants during the Plan Year. The Compensation definition elected by the Employer in Subsection 1.05(a) must include bonuses if bonus contributions are permitted.

**Note:** A Participant's contributions under Subsection 1.07(a)(2) and/or (3) may not cause the participant to exceed the percentage limit specified by the Employer in Subsection 1.07(a)(1) for the full Plan Year. The Employer has the right to restrict a Participant's right to make Deferral Contributions if they will adversely affect the Plan's ability to pass the "ADP" and/or the "ACP" test.

## 1.08 EMPLOYEE CONTRIBUTIONS

- (a) // **Employee Contributions**—Participants either currently are or previously were permitted to contribute amounts to the Plan on an after-tax basis. (check one):
- (1) // **Future Employee Contributions**—Participants may take voluntary, non-deductible, after-tax Employee Contributions pursuant to Section 5.08 of the Plan. A Participant's Employee Contributions for the Plan Year may not exceed 10% of his Compensation for the Plan Year. **(Only if Option 1.07(a), Deferral Contributions, is checked.)**
  - (2) // **Frozen Employee Contributions**—Participants may not currently make after-tax Employee Contributions to the Plan, but the Employer does maintain frozen Employee Contributions Accounts.

8

1.09 QUALIFIED NONELECTIVE CONTRIBUTIONS

(a) **Qualified Nonelective Employer Contributions**—If Option 1.07(a), Deferral Contributions, is checked, the Employer may contribute an amount which it designates as a Qualified Nonelective Employer Contribution to be included in the "ADP" or "ACP" test. Qualified Nonelective Employer Contributions shall be allocated to Participants who were eligible to participate in the Plan at any time during the Plan Year and are Non-Highly Compensated Employees (check one):

- (1) // either (A) in the ratio which each Participant's "testing compensation", as defined in Subsection 6.01(t), for the Plan Year bears to the total of all Participants' "testing compensation" for the Plan Year or (B) as a flat dollar amount.
- (2) /x/ as a percentage of the lowest paid Participant's "testing compensation", as defined in Subsection 6.01(t), for the Plan Year up to the lower of (A) the maximum amount contributable under the Plan or (B) the amount necessary to satisfy the "ADP" or "ACP" test. If any Qualified Nonelective Employer Contribution remains, allocation shall continue in the same manner to the next lowest paid Participants until the Qualified Nonelective Employer Contribution is exhausted.
- (3) // not applicable. *(Only if Option 1.01(b)(3), Profit Sharing Only, is checked.)*

1.10 MATCHING EMPLOYER CONTRIBUTIONS (Only if Option 1.07(a), Deferral Contributions, is checked)

(a) // **Basic Matching Employer Contributions** (check one):

(1) // **Non-Discretionary Matching Employer Contributions**—The Employer shall make a basic Matching Employer Contribution on behalf of each Participant in an amount equal to the following percentage of a Participant's Deferral Contributions during the Contribution Period (check (A) or (B) and, if applicable, (C)):

**Note:** Effective for Plan Years beginning on or after January 1, 1999, if the Employer elected Option 1.11(a)(3), Safe Harbor Formula, with respect to Nonelective Employer Contributions and meets the requirements for deemed satisfaction of the "ADP" test in Section 6.10 for a Plan Year, the Plan will also be deemed to satisfy the "ACP" test for such Plan Year with respect to Matching Employer Contributions if Matching Employer Contributions hereunder meet the requirements in Section 6.11.

- (A) // Single Percentage Match: \_\_\_\_%
- (B) // Tiered Match: \_\_\_\_% of the first \_\_\_\_% of the Active Participant's Compensation contributed to the Plan,  
\_\_\_\_% of the next \_\_\_\_% of the Active Participant's Compensation contributed to the Plan,  
\_\_\_\_% of the next \_\_\_\_% of the Active Participant's Compensation contributed to the Plan.

**Note:** The percentages specified above for basic Matching Employer Contributions may not increase as the percentage of Compensation contributed increases.

9

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(C) // Limit on Non-Discretionary Matching Employer Contributions (check the appropriate box(es)):

(i) // Deferral Contributions in excess of \_\_\_\_% of the Participant's Compensation for the period in question shall not be considered for non-discretionary Matching Employer Contributions.

**Note:** If the Employer elected a percentage limit in (i) above and requested the Trustee to account separately for matched and unmatched Deferral Contributions, the non-discretionary Matching Employer Contributions allocated to each Participant must be computed, and the percentage limit applied, based upon each payroll period.

(ii) // Matching Employer Contributions for each Participant for each Plan Year shall be limited to \$\_\_\_\_.

(2) /x/ **Discretionary Matching Employer Contributions**—The Employer may make a basic Matching Employer Contribution on behalf of each Participant in an amount equal to the percentage declared for the Contribution Period, if any, by a Board of Directors' Resolution (or by a Letter of Intent for a sole proprietor or partnership) of the Deferral Contributions made by each Participant during the Contribution Period. The Board of Directors' Resolution (or Letter of Intent, if applicable) may limit the Deferral Contributions matched to a specified percentage of Compensation or limit the amount of the match to a specified dollar amount.

(A) // 4% Limitation on Discretionary Matching Employer Contributions for Deemed Satisfaction of "ACP" Test—Effective only for Plan Years beginning on or after January 1, 2000, in no event may the dollar amount of the discretionary Matching Employer Contribution made on a Participant's behalf for the Plan Year exceed 4% of the Participant's Compensation for the Plan Year. *(Only if Option 1.11(a)(3), Safe Harbor Formula, with respect to Nonelective Employer Contributions is checked.)*

(3) // **Safe Harbor Matching Employer Contributions**—Effective only for Plan Years beginning on or after January 1,



1999, if the Employer elects one of the safe harbor formula Options provided in the Safe Harbor Matching Employer Contribution Addendum to the Adoption Agreement and provides written notice each Plan Year to all Active Participants of their rights and obligations under the Plan, the Plan shall be deemed to satisfy the "ADP" test and, in certain circumstances, the "ACP" test.

10

(b) // **Additional Matching Employer Contributions**—The Employer may at Plan Year end make an additional Matching Employer Contribution equal to a percentage declared by the Employer, through a Board of Directors' Resolution (or by a Letter of Intent for a sole proprietor or partnership), of the Deferral Contributions made by each Participant during the Plan Year. **(Only if Option 1.10(a)(1) or (3) is checked.)** The Board of Directors' Resolution (or Letter of Intent, if applicable) may limit the Deferral Contributions matched to a specified percentage of Compensation or limit the amount of the match to a specified dollar amount.

(1) // **4% Limitation on Discretionary Matching Employer Contributions for Deemed Satisfaction of "ACP" Test**—Effective only for Plan Years beginning on or after January 1, 2000, in no event may the dollar amount of the additional Matching Employer Contribution made on a Participant's behalf for the Plan Year exceed 4% of the Participant's Compensation for the Plan Year. **(Only if Option 1.10(a)(3), Safe Harbor Matching Employer Contributions, or Option 1.11(a)(3), Safe Harbor Formula, with respect to Nonelective Employer Contributions is checked.)**

**Note:** If the Employer elected Option 1.10(a)(3), Safe Harbor Matching Employer Contributions, above and wants to be deemed to have satisfied the "ADP" test for Plan Years beginning on or after January 1, 1999, the additional Matching Employer Contribution must meet the requirements of Section 6.10. In addition to the foregoing requirements, if the Employer elected either Option 1.10(a)(3), Safe Harbor Matching Employer Contributions, or Option 1.11(a)(3), Safe Harbor Formula, with respect to Nonelective Employer Contributions, and wants to be deemed to have satisfied the "ACP" test with respect to Matching Employer Contributions for the Plan Year, the Deferral Contributions matched may not exceed the limitations in Section 6.11.

(c) **Contribution Period for Matching Employer Contributions**—The Contribution Period for purposes of calculating the amount of basic Matching Employer Contributions described in Subsection 1.10(a)(1) or (2) is:

- (1) // each calendar month.
- (2) // each Plan Year quarter.
- (3) // each Plan Year.
- (4) /x/ each payroll period.

The Contribution Period for safe harbor Matching Employer Contributions described in Subsection 1.10(a)(3) and additional Matching Employer Contributions described in Subsection 1.10(b) is the Plan Year.

(d) **Continuing Eligibility Requirement(s)**—A Participant who makes Deferral Contributions during a Contribution Period shall only be entitled to receive Matching Employer Contributions under Section 1.10 for that Contribution Period if the Participant satisfies the following requirement(s) (Check the appropriate box(es). Options (3) and (4) may not be elected together; Option (5) may not be elected with Option (2), (3), or (4); Options (2), (3), (4), (5) and (7) may not be elected with respect to basic Matching Employer Contributions if Option 1.10(a)(3), Safe Harbor Matching Employer Contributions, is checked):

(1) /x/ No requirements.

11

- (2) // Is employed by the Employer or a Related Employer on the last day of the Contribution Period.
- (3) // Earns at least 501 Hours of Service during the Plan Year. **(Only if the Contribution Period is the Plan Year.)**
- (4) // Earns at least 1,000 Hours of Service during the Plan Year. **(Only if the Contribution Period is the Plan Year.)**
- (5) // Either earns at least 501 Hours of Service during the Plan Year or is employed by the Employer or a Related Employer on the last day of the Plan Year. **(Only if the Contribution Period is the Plan Year.)**
- (6) // Is not a Highly Compensated Employee for the Plan Year.
- (7) // Is not a partner or a member of the Employer, if the Employer is a partnership or an entity taxed as a partnership.
- (8) // Special continuing eligibility requirement(s) for additional Matching Employer Contributions. **(Only if Option 1.10(b), Additional Matching Employer Contributions, is checked.)**

(A) The continuing eligibility requirement(s) for additional Matching Employer Contributions is/are: \_\_\_\_\_ (Fill in number of applicable eligibility requirement(s) from above.)

**Note:** If Option (2), (3), (4), or (5) above is selected, then Matching Employer Contributions can only be **funded** by the Employer **after** the Contribution Period or Plan Year ends. Matching Employer Contributions funded during the Contribution Period or Plan Year shall not be

subject to the eligibility requirements of Option (2), (3), (4), or (5). If Option (2), (3), (4), or (5) is adopted during a Contribution Period or Plan Year, as applicable, such Option shall not become effective until the first day of the next Contribution Period or Plan Year.

- (e) // **Qualified Matching Employer Contributions**—Prior to making any Matching Employer Contribution hereunder (other than a safe harbor Matching Employer Contribution), the Employer may designate all or a portion of such Matching Employer Contribution as a Qualified Matching Employer Contribution that may be used to satisfy the "ADP" test on Deferral Contributions and excluded in applying the "ACP" test on Employee and Matching Employer Contributions.

**Note:** Qualified Matching Contributions may not be excluded in applying the "ACP" test for a Plan Year if the Employer elected Option 1.10(a)(3), Safe Harbor Matching Contributions, or Option 1.11(a)(3), Safe Harbor Formula, with respect to Nonelective Employer Contributions, and the "ADP" test is deemed satisfied under Section 6.10 for such Plan Year.

- (1) Qualified Matching Employer Contributions shall be allocated to Participants who meet the continuing eligibility requirement(s) described in Subsection 1.10(d) above for the type of Matching Employer Contribution being characterized as a Qualified Matching Employer Contribution and who (check one):
- (A) // are Non-Highly Compensated Employees for the Plan Year.
- (B) // are either Non-Highly Compensated or Highly Compensated Employees for the Plan Year.

12

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### 1.11 NONELECTIVE EMPLOYER CONTRIBUTIONS

**Note:** An Employer may elect both a fixed formula and a discretionary formula. If both are selected, the discretionary formula shall be treated as an additional Nonelective Employer Contribution and allocated separately in accordance with the allocation formula selected by the Employer.

- (a) // **Fixed Formula** (check one):

- (1) // **Fixed Percentage Employer Contribution**—For each Plan Year, the Employer shall contribute for each eligible Active Participant an amount equal to \_\_\_\_% (**not to exceed 15%**) of such Active Participant's Compensation.
- (2) // **Fixed Flat Dollar Employer Contribution**—The Employer shall contribute for each eligible Active Participant an amount equal to \$\_\_\_\_\_.

The contribution amount is based on an Active Participant's service for the following period:

- (A) // Each paid hour.
- (B) // Each payroll period.
- (C) // Each Plan Year.
- (D) // Other: \_\_\_\_\_
- (3) // **Safe Harbor Formula**—Effective only with respect to Plan Years that begin on or after January 1, 1999, the Nonelective Employer Contribution is intended to satisfy the safe harbor contribution requirements under the Code such that the "ADP" test is deemed satisfied. Please complete the Safe Harbor Nonelective Employer Contribution Addendum to the Adoption Agreement. (**Choose only if Option 1.07(a), Deferral Contributions, is checked.**)

- (b) /x/ **Discretionary Formula**—The Employer may decide each Plan Year whether to make a discretionary Nonelective Employer Contribution on behalf of eligible Active Participants in accordance with Section 5.10. Such contributions shall be allocated to eligible Active Participants based upon the following (check (1) or (2)):

- (1) /x/ **Non-integrated Allocation Formula**—In the ratio that each eligible Active Participant's Compensation bears to the total Compensation paid to all eligible Active Participants for the Plan Year.
- (2) // **Integrated Allocation Formula**—As (A) a percentage of each eligible Active Participant's Compensation plus (B) a percentage of each eligible Active Participant's Compensation in excess of the "integration level" as defined below. The percentage of Compensation in excess of the "integration level" shall be equal to the lesser of the percentage of the Active Participant's Compensation allocated under (A) above or the "permitted disparity limit" as defined below.

**Note:** An Employer that has elected the Safe Harbor formula in Subsection 1.11(a)(3) above may not take Nonelective Employer Contributions made to satisfy the safe harbor into account in applying the integrated allocation formula described above.

"Integration level" means the Social Security taxable wage base for the Plan Year, unless the Employer elects a lesser amount in (A) or (B) below.

13

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- (A) \_\_\_\_% (**not to exceed 100%**) of the Social Security taxable wage base for the Plan Year, or

(B) \$\_\_\_\_\_ (not to exceed the Social Security taxable wage base).

"Permitted disparity limit" means the percentage provided by the following table:

If the "Integration Level" is at least _____% of the Taxable Wage Base	But Less Than _____% of the Taxable Wage Base	The "Permitted Disparity Limit" is
0%	20%	5.7%
20%	80%	4.3%
80%	100%	5.4%
100%	N/A	5.7%

**Note:** An Employer who maintains any other plan that provides for Social Security Integration (permitted disparity) may not elect Option 1.11(b)(2).

(c) **Continuing Eligibility Requirement(s)**—A Participant shall only be entitled to receive Nonelective Employer Contributions for a Plan Year under this Section 1.11 if the Participant satisfies the following requirement(s) (Check the appropriate box(es)—Options (3) and (4) may not be elected together; Option (5) may not be elected with Option (2), (3), or (4); Options (2), (3), (4), (5) and (7) may not be elected with respect to Nonelective Employer Contributions under the fixed formula if Option 1.11(a)(3), Safe Harbor Formula, is checked):

- (1) // No requirements.
- (2) /x/ Is employed by the Employer or a Related Employer on the last day of the Plan Year.
- (3) /x/ Earns at least 501 Hours of Service during the Plan Year.
- (4) // Earns at least 1,000 Hours of Service during the Plan Year.
- (5) // Either earns at least 501 Hours of Service during the Plan Year or is employed by the Employer or a Related Employer on the last day of the Plan Year.
- (6) // Is not a Highly Compensated Employee for the Plan Year.
- (7) // Is not a partner or a member of the Employer, if the Employer is a partnership or an entity taxed as a partnership.
- (8) // Special continuing eligibility requirement(s) for discretionary Nonelective Employer Contributions. **(Only if both Options 1.11(a) and (b) are checked.)**

(A) The continuing eligibility requirement(s) for additional discretionary Nonelective Employer Contributions is/are: \_\_\_\_\_ (Fill in number of applicable eligibility requirement(s) from above.)

**Note:** If Option (2), (3), (4), or (5) above is selected then Nonelective Employer Contributions can only be **funded** by the Employer **after** the Plan Year ends. Nonelective Employer Contributions funded during the Plan Year shall not be subject to the eligibility requirements of Option (2), (3), (4), or (5). If Option (2), (3), (4), or (5) is adopted during a Plan Year, such Option shall not become effective until the first day of the next Plan Year.

## 1.12 EXCEPTIONS TO CONTINUING ELIGIBILITY REQUIREMENTS

// **Death, Disability, and Retirement Exception to Eligibility Requirements**—Active Participants who do not meet any last day or Hours of Service requirement under Subsection 1.10(d) or 1.11(c) because they become disabled, as defined in Section 1.14, retire, as provided in Subsection 1.13(a), (b), or (c), or die shall nevertheless receive an allocation of Nonelective Employer and/or Matching Employer Contributions. No Compensation shall be imputed to Active Participants who become disabled for the period following their disability.

## 1.13 RETIREMENT

(a) **The Normal Retirement Age under the Plan is** (check one);

- (1) /x/ age 65.
- (2) // age \_\_\_\_\_ (specify between 55 and 64).
- (3) // later of age \_\_\_\_\_ (**not to exceed 65**) or the fifth anniversary of the Participant's Employment Commencement Date.

(b) /x/ **The Early Retirement Age is the first day of the month after the Participant attains age 62 (specify 55 or greater) and completes 3 years of Vesting Service.**

**Note:** If this Option is elected, Participants who are employed by the Employer or a Related Employer on the date they reach Early Retirement Age shall be 100% vested in their Accounts under the Plan.

- (c)  A Participant who becomes disabled, as defined in Section 1.14, is eligible for disability retirement.

**Note:** If this Option is elected, Participants who are employed by the Employer or a Related Employer on the date they become disabled shall be 100% vested in their Accounts under the Plan.

**1.14 DEFINITION OF DISABLED**

A Participant is disabled if he/she (check the appropriate box(es)):

- (a)  satisfies the requirements for benefits under the Employer's Long-Term Disability Plan.  
 (b)  satisfies the requirements for Social Security disability benefits.  
 (c)  is determined to be disabled by a physician approved by the Employer.

**1.15 VESTING**

A Participant's vested interest in Matching Employer Contributions and/or Nonelective Employer Contributions, other than Safe Harbor Matching Employer and/or Nonelective Employer Contributions elected in Subsection 1.10(a)(3) or 1.11(a)(3), shall be based upon his years of Vesting Service and the schedule(s) selected below, except as provided in Subsection 1.21(d) or in the Grandfathered Vesting Schedule Addendum to the Adoption Agreement.

- (a)  Years of Vesting Service shall exclude:

- (1)  for new plans, service prior to the Effective Date as defined in Subsection 1.01(g)(1).  
 (2)  for existing plans converting from another plan document, service prior to the original Effective Date as defined in Subsection 1.01(g)(2).

**(b) Vesting Schedule(s)**

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>(1) <b>Nonelective Employer Contributions</b><br/>(check one):</p> <p>(A) <input type="checkbox"/> N/A—No Nonelective Employer Contributions</p> <p>(B) <input type="checkbox"/> 100% Vesting immediately</p> <p>(C) <input type="checkbox"/> 3 year cliff (see <b>C</b> below)</p> <p>(D) <input type="checkbox"/> 5 year cliff (see <b>D</b> below)</p> <p>(E) <input type="checkbox"/> 6 year graduated (see <b>E</b> below)</p> <p>(F) <input type="checkbox"/> 7 year graduated (see of <b>F</b> below)</p> <p>(G) <input checked="" type="checkbox"/> Other vesting (complete <b>GI</b> below)</p> | <p>(2) <b>Matching Employer Contributions</b> (check one):</p> <p>(A) <input type="checkbox"/> N/A—No Nonelective Employer Contributions</p> <p>(B) <input type="checkbox"/> 100% Vesting immediately</p> <p>(C) <input type="checkbox"/> 3 year cliff (see <b>C</b> below)</p> <p>(D) <input type="checkbox"/> 5 year cliff (see <b>D</b> below)</p> <p>(E) <input type="checkbox"/> 6 year graduated (see <b>E</b> below)</p> <p>(F) <input type="checkbox"/> 7 year graduated (see of <b>F</b> below)</p> <p>(G) <input checked="" type="checkbox"/> Other vesting (complete <b>GI</b> below)</p> |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Years of Vesting Service	Applicable Vesting Schedule(s)					
	C	D	E	F	G1	G2
0	0%	0%	0%	0%	0%	0%
1	0%	0%	0%	0%	33%	33%
2	0%	0%	20%	0%	66%	66%
3	100%	0%	40%	20%	100%	100%
4	100%	0%	60%	40%	100%	100%
5	100%	100%	80%	60%	100%	100%
6	100%	100%	100%	80%	100%	100%
7 or more	100%	100%	100%	100%	100%	100%

**Note:** A schedule elected under GI or G2 above must be at least as favorable as one of the schedules in C, D, E or F above.

**Note:** If the Plan is being amended to provide a more restrictive vesting schedule, the more favorable vesting schedule shall continue to apply to

Participants who are Active Participants immediately prior to the later of (1) the effective date of the amendment or (2) the date the amendment is adopted. Grandfathered vesting schedules are reflected in the Grandfathered Vesting Schedule Addendum to the Adoption Agreement.

- (c) // **A vesting schedule different from the vesting schedule(s) selected above applies to certain persons employed prior to the effective date of this amendment.** Please complete the Grandfathered Vesting Schedule Addendum to the Adoption Agreement.

16

- (d) /x/ **Application of Forfeitures**—If a participant forfeits any portion of his non-vested Account balance as provided in Section 6.04, 6.07, or 11.08, such forfeitures shall be used to reduce administrative expenses under the Plan, if any. Any forfeitures remaining after administrative expenses have been paid shall be (check one):
- (1) // N/A—Either (A) there are no Matching Employer Contributions under the Plan and all other Employer Contributions are 100% vested when made or (B) there are no Employer Contributions under the Plan.
- (2) /x/ applied to reduce Employer contributions.
- (3) // allocated among the Accounts of eligible Participants in the manner provided in Section 1.11. **(Only if Option 1.11(a) or (b) is checked.)**

#### 1.16 PREDECESSOR EMPLOYER SERVICE

// **Service for purposes of eligibility in Subsection 1.04(b) and vesting in Subsection 1.15(b) of this Plan shall include service with the following predecessor employer(s):**

- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
- (d) \_\_\_\_\_

#### 1.17 PARTICIPANT LOANS

**Participant loans** (check one):

- (a) /x/ **are allowed in accordance with Article 9 and loan procedures outlined in the Service Agreement.**
- (b) // **are not allowed.**

#### 1.18 IN-SERVICE WITHDRAWALS

**Participants may make withdrawals prior to termination of employment under the following circumstances (check the appropriate box(es)):**

- (a) /x/ **Hardship Withdrawals**—Hardship withdrawals from a Participant's Deferral Contributions Account shall be allowed in accordance with Section 10.05, subject to a \$500 minimum amount.
- (b) /x/ **Age 59<sup>1</sup>/<sub>2</sub>**—Participants shall be entitled to receive a distribution of all or any portion of the following Accounts upon attainment of age 59<sup>1</sup>/<sub>2</sub> (check one):
- (1) // Deferral Contributions Account
- (2) /x/ All Accounts
- (c) **Withdrawal of Employee Contributions and Rollover Contributions**—The Plan provides for in-service withdrawals of Rollover Contributions at any time. Employee Contributions may be withdrawn in accordance with Section 10.02 subject to the following (check if applicable):
- (1) // Employees may not make such withdrawals more frequently than:  
\_\_\_\_\_

**Note:** If Option 1.18(c)(1) is not selected, withdrawals of Employee Contributions shall be permitted at any time.

17

- (d) // **Protected In-Service Withdrawal Provisions**—Check if the Plan was converted by plan amendment or received transfer contributions from another defined contribution plan, and benefits under the other defined contribution plan were payable as (check the appropriate box(es)):

- (1) // an in-service withdrawal of vested employer contributions maintained in a Participant's Account (check (A) and/or (B)):
  - (A) // for at least \_\_\_\_\_ (24 or more) months.
    - (i) // Special restrictions applied to such in-service withdrawals under the prior plan that the Employer wishes to continue under the Plan as restated hereunder. Please complete the Protected In-Service Withdrawals Addendum to the Adoption Agreement identifying the restrictions.
  - (B) // after the Participant has at least 60 months of participation.
    - (i) // Special restrictions applied to such in-service withdrawals under the prior plan that the Employer wishes to continue under the Plan as restated hereunder. Please complete the Protected In-Service Withdrawals Addendum to the Adoption Agreement identifying the restrictions.
- (2) // another in-service withdrawal option that is a "protected benefit" under Code Section 411(d)(6). Please complete the Protected In-Service Withdrawals Addendum to the Adoption Agreement identifying the in-service withdrawal option(s).

**1.19 FORM OF DISTRIBUTIONS**

*Subject to Article 14, distributions under the Plan shall be paid as* (check the appropriate box(es) with respect to optional forms):

- (a) **Lump Sum Payments**—Lump sum payments are always available under the Plan. If a Participant's account balance is less than or equal to the "cashout limit", distribution shall be made to the Participant as soon as reasonably practicable following his termination of employment in a lump sum payment. Effective the first day of the first Plan Year beginning on or after August 5, 1997 (or the date the Plan is first operated in compliance with the increase, if later, but not later than the effective date specified in Subsection 1.01(g)(1) or (2)), the "cashout limit" is \$5,000 (increased from \$3,500).
- (b) // **Installments Payments**—In lieu of a lump sum, Participants may elect distribution under a systematic withdrawal plan (installments).
- (c) // **Protected Benefit Forms**—Check if the Plan was converted by plan amendment or received transfer contributions from another defined contribution plan, and benefits under the other defined contribution plan were payable in any other form (check the appropriate box(es)):

- (1) // The protected benefit forms apply to the Accounts of all Participants (check the appropriate box(es)):
  - (A) // The prior plan provided a life annuity form of payment.
    - (i) The normal annuity form for unmarried Participants is a \_\_\_\_\_.

The normal annuity form for married Participants is a \_\_\_\_\_ (must be at least 50%, but not more than 100%) "qualified joint and survivor annuity".

- (ii) The normal form of distribution under the Plan is:
  - (I) // A lump sum payment.
  - (II) // A "qualified joint and survivor annuity".
  - (iii) The qualified preretirement survivor annuity provided to a Participant's spouse is purchased with \_\_\_\_\_% (must be at least 50%) of the Participant's Account.

- (B) // The prior plan provided other optional annuity forms. The other optional annuity forms available under the Plan are:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- (C) // The prior plan provided other forms of distribution that are protected benefits. The other forms of distribution available under the Plan are:

\_\_\_\_\_

\_\_\_\_\_

- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- (2) // The protected benefit forms apply only to the Accounts of a specified class of Participants. Please complete the Protected Benefit Forms Addendum describing each protected benefit and the class of Participants whose Accounts are subject to distribution in the protected benefit form.

## 1.20 TIMING OF DISTRIBUTIONS

*Except as provided in Subsection 1.20(b) and the Postponed Distribution Addendum to the Adoption Agreement, distribution shall be made to an eligible Participant from his vested interest in his Account as soon as reasonably practicable following the date the Participant's application for distribution is received by the Administrator, but in no event later than his Required Beginning Date, as defined in Subsection 2.01(ss).*

- (a) **Required Beginning Date**—The Required Beginning Date of a Participant who is not a five percent owner shall be determined under Code Section 401(a)(9) as amended by the Small Business Job Protection Act.

- (1) // If a Participant attained age 70<sup>1/2</sup> before January 1, 1999 (or such later date as may be specified below), he may elect to have his Required Beginning Date determined under Code Section 401(a)(9) as in effect prior to the amendment. *(Choose only if the Plan was originally effective before January 1, 1997.)*

- (A) // A later effective date applies for grandfathering the prior Code Section 401(a)(9) rules. Please complete Section (d) of the Special Effective Dates Addendum to the Adoption Agreement indicating the late effective date.

19

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- (b) // **Postponed Distributions**—Check if the Plan was converted by plan amendment from another defined contribution plan that provided for the postponement of certain distributions from the Plan to eligible Participants and the Employer wants to continue to administer the Plan using the postponed distribution provisions. Please complete the Postponed Distribution Addendum to the Adoption Agreement indicating the types of distributions that are subject to postponement and the period of postponement.

**Note:** An Employer may not provide for postponement of distribution to a Participant beyond the 60<sup>th</sup> day following the close of the Plan Year in which (1) the Participant attains Normal Retirement Age under the Plan, (2) the Participant's 10<sup>th</sup> anniversary of participation in the Plan occurs, or (3) the Participant's employment terminates, whichever is latest.

## 1.21 TOP HEAVY STATUS

- (a) **The Plan shall be subject to the Top-Heavy Plan requirements of Article 15 (check one):**

- (1) // for each Plan Year, whether or not the Plan is a "top-heavy plan" as defined in Subsection 15.01(f).
- (2) /x/ for each Plan Year, if any, for which the Plan is a "top-heavy plan" as defined in Subsection 15.01(f).
- (3) // Not applicable. *(Choose only if Plan covers only employees subject to a collective bargaining agreement.)*

- (b) **In determining whether the Plan is a "top-heavy plan" for an Employer with at least one defined benefit plan, the following assumptions shall apply:**

- (1) // Interest rate: \_\_\_\_\_% per annum.
- (2) // Mortality table: \_\_\_\_\_.
- (3) /x/ Not applicable. *(Choose only if either (A) Plan covers only employees subject to a collective bargaining agreement or (B) Employer does not maintain and has never maintained any defined benefit plans.)*

- (c) **If the Plan is or is treated as a "top-heavy plan" for a Plan Year, each non-key Employee shall receive an Employer Contribution of at 3 (3, 4, 5, or 7<sup>1/2</sup>)% of Compensation for the Plan Year in accordance with Section 15.03. The minimum Employer Contribution provided in this Subsection 1.21(c) shall be made under this Plan only if the Participant is not entitled to such contribution under another qualified plan of the Employer, unless the Employer elects otherwise in (1) or (2) below:**

- (1) /x/ The minimum Employer Contribution shall be paid under this Plan in any event.
- (2) // Not applicable. *(Choose only if Plan covers only employees subject to a collective bargaining agreement.)*

**Note:** The minimum Employer contribution may be less than the percentage indicated in Subsection 1.21(c) above to the extent provided in Section 15.03.

20

(d) **If the Plan is or is treated as a "top-heavy plan" for a Plan Year, the following vesting schedule shall apply instead of the schedule(s) elected in Subsection 1.15(b) for such Plan Year and each Plan Year thereafter** (check one):

(1)  Not applicable. **(Choose only if either (A) the schedule(s) elected in Subsection 1.15(b) is/are more favorable in all cases than the schedules available below or (B) Plan covers only employees subject to a collective bargaining agreement.)**

(2)  100% vested after \_\_\_\_\_ (not in excess of 3) years of Vesting Service.

(3)  Graded vesting:

Years of Vesting Service	Vesting Percentage	Must be at Least
0	0	0%
1	33	0%
2	66	20%
3	100	40%
4	100	60%
5	100	80%
6	100	100%

**Note:** If the schedule(s) elected in Subsection 1.15(b) is/are more favorable in all cases than the schedule elected in Subsection 1.21(d) above, then the schedule(s) in Subsection 1.15(b) shall continue to apply even in Plan Years in which the Plan is a "top-heavy plan".

### 1.22 CORRECTION TO MEET 415 REQUIREMENTS UNDER MULTIPLE DEFINED CONTRIBUTION PLANS

If the Employer maintains other defined contribution plans, annual additions to a Participant's Account shall be limited as provided in Section 6.12 of the Plan to meet the requirements of Code Section 415, unless the Employer elects otherwise below and completes the 415 Correction Addendum describing the order in which annual additions shall be limited among the plans.

(a)  **Other Order for Limiting Annual Additions**

### 1.23 INVESTMENT DIRECTION

(a) **Investment Directions**—Participant Accounts shall be invested (check one):

(1)  in accordance with investment directions provided to the Trustee by the *Employer* for allocating all Participant Accounts among the Options listed in the Service Agreement.

(2)  in accordance with investment directions provided to the Trustee by each *Participant* for allocating his entire Account among the Options listed in the Service Agreement.

(3)  in accordance with investment directions provided to the Trustee by each Participant for all contribution sources in a Participant's Account except the following sources shall be invested as directed by the Employer (check (A) and/or (B)):

(A)  Nonelective Employer Contributions

(B)  Matching Employer Contributions

The Employer must direct the applicable sources among the same investment options made available for Participant directed sources listed in the Service Agreement.

(b)  **404(c) Election** (only if Option 1.23(a)(2) or 1.23(a)(3) is checked)—The Administrator intends to treat this Plan as being subject to ERISA Section 404(c).

### 1.24 RELIANCE ON OPINION LETTER

An adopting Employer may not rely on the opinion letter issued by the National Office of the Internal Revenue Service as evidence that this Plan is qualified under Code Section 401. If the Employer wishes to obtain reliance that its Plan is qualified, application for a determination letter should be made to the appropriate Key District Director of the Internal Revenue Service. Failure to fill out the Adoption Agreement properly may result in disqualification of the Plan.

This Adoption Agreement may be used only in conjunction with Fidelity Basic Plan Document No. 07. The Prototype Sponsor shall inform the adopting Employer of any amendments made to the Plan or of the discontinuance or abandonment of the prototype plan document.

### 1.25 PROTOTYPE INFORMATION:

Name of Prototype Sponsor:  
Address of Prototype Sponsor:

Fidelity Management & Research Company  
82 Devonshire Street



Questions regarding this prototype document may be directed to the following telephone number: 1-800-684-5254.

**EXECUTION PAGE  
(Prototype Sponsor's Copy)**

IN WITNESS WHEREOF, the Employer has caused this Adoption Agreement to be executed this 18th day of August, 2000.

Employer: Brigid Makes

By: \_\_\_\_\_

Title: Vice President, CFO

Employer: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Accepted by:

Fidelity Management Trust Company, as Trustee

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

**EXECUTION PAGE  
(Employer's Copy)**

IN WITNESS WHEREOF, the Employer has caused this Adoption Agreement to be executed this 18<sup>th</sup> day of August, 2000.

Employer: Brigid Makes

By: \_\_\_\_\_

Title: Vice President, CFO

Employer: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Accepted by:

Fidelity Management Trust Company, as Trustee

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

ADDENDUM

Re: SPECIAL EFFECTIVE DATES  
for

Plan Name: \_\_\_\_\_

- (a) // **Special Effective Dates for Other Provisions**—The following provisions (e.g., new eligibility requirements, new contribution formula, etc.) shall be effective as of the dates specified herein:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- (b) // **Plan Merger Effective Dates**—The following plan(s) were merged into the Plan after the Effective Date indicated in Subsection 1.01(g)(1) or (2), as applicable. The provisions of the Plan are effective with respect to the merged plan(s) as of the date(s) indicated below:

- (1) Name of merged plan: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Effective date: \_\_\_\_\_

- (2) Name of merged plan: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Effective date: \_\_\_\_\_

- (3) Name of merged plan: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Effective date: \_\_\_\_\_

- (4) Name of merged plan: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Effective date: \_\_\_\_\_

- (5) Name of merged plan: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Effective date: \_\_\_\_\_

- 
- (c) **HCE Determinations**—HCE determinations for prior Plan Years shall be made applying the following rules:

(1) // **HCE Determinations: Look Back Year Elections**—For Plan Years prior to the effective date of this amendment, the Plan was administered in accordance with the following look back year election(s):

(A) // No calendar year election—For the following Plan Years, the look back year was the 12-consecutive-month period immediately preceding the Plan Year:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(B) // Calendar year election—For the following Plan Years, the look back year was the calendar year beginning within the preceding Plan Year:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(2) // **HCE Determinations: Top Paid Group Elections**—For Plan Years prior to the effective date of this amendment, the Plan was administered in accordance with the following top paid group election(s):

(A) // For the following Plan Years, Highly Compensated Employees included only the top 20% of Employees ranked by Compensation:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(B) // For the following Plan Years, Highly Compensated Employee, included all Employees with Compensation exceeding \$80,000 (as indexed):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(d) // **Late Effective Date for Grandfathering Prior Required Beginning Date Rules**

Effective date: January 1, \_\_\_\_\_ (Must be first day of the calendar year beginning after the date the Plan was first amended to comply with the new Required Beginning Date rules, but not later than the first day of the calendar year beginning after the end of the Employer's remedial amendment period for making changes to comply with the Small Business Job Protection Act.)

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**ADDENDUM**

**Re: ADP/ACP TESTING METHODS HISTORY  
for**

**Plan Name:** \_\_\_\_\_

(a) For Plan Years prior to the date of this amendment, the Plan applied the following testing methods:

(1) // **Current Year Testing Method**—The ADP/ACP tests for the following Plan Years were applied using the current year testing method described in Subsection 1.06(a)(1):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(2) // **Prior Year Testing Method**—The ADP/ACP tests for the following Plan Years were applied using the prior year testing method described in Subsection 1.06(a)(2):

ADDENDUM

Re: SAFE HARBOR MATCHING EMPLOYER CONTRIBUTION  
for

Plan Name: \_\_\_\_\_

(a) *Safe Harbor Matching Employer Contribution Formula*

**Note:** Matching Employer Contributions made under this Option must be 100% vested when made and may only be distributed because of death, disability, separation from service, age 59<sup>1/2</sup>, or termination of the Plan without the establishment of a successor plan. In addition, each Plan Year, the Employer must provide written notice to all Active Participants of their rights and obligations under the Plan.

(1) // 100% of the first 3% of the Active Participant's Compensation contributed to the Plan and 50% of the next 2% of the Active Participant's Compensation contributed to the Plan.

(A) // Safe harbor Matching Employer Contributions shall not be made on behalf of Highly Compensated Employees.

**Note:** If the Employer selects this formula and does not elect Option 1.10(b), Additional Matching Employer Contributions, Matching Employer Contributions will automatically meet the safe harbor contribution requirements for deemed satisfaction of the "ACP" test. (Employee Contributions must still be tested.)

(2) // Other Tiered Match: \_\_\_\_\_% of the first \_\_\_\_\_% of the Active Participant's Compensation contributed to the Plan,  
\_\_\_\_\_ % of the next \_\_\_\_\_% of the Active Participant's Compensation contributed to the Plan,  
\_\_\_\_\_ % of the next \_\_\_\_\_% of the Active Participant's Compensation contributed to the Plan.

**Note:** To satisfy the safe harbor contribution requirement for the "ADP" test, the percentages specified above for Matching Employer Contributions may not increase as the percentage of Compensation contributed increases, and the aggregate amount of Matching Employer Contributions at such rates must at least equal the aggregate amount of Matching Employer Contributions which would be made under the percentages described in (a)(1) of this Addendum.

(A) // Safe harbor Matching Employer Contributions shall *not* be made on behalf of Highly Compensated Employees.

(B) // The formula specified above is also intended to satisfy the safe harbor contribution requirement for deemed satisfaction of the "ACP" test with respect to Matching Employer Contributions. (Employee Contributions must still be tested.)

**Note:** To satisfy the safe harbor contribution requirement for the "ACP" test, the Deferral Contributions and/or Employee Contributions matched cannot exceed 6% of a Participant's Compensation.

ADDENDUM

Re: SAFE HARBOR NONELECTIVE EMPLOYER CONTRIBUTION  
for

Plan Name: \_\_\_\_\_

(a) For each Plan Year, the Employer shall contribute for each eligible Active Participant an amount equal to \_\_\_\_\_% (**not less than 3% nor more than 15%**) of such Active Participant's Compensation.

**Note:** Contributions that are intended to satisfy the safe harbor contribution requirement must be 100% vested when made and may only be distributed

because of death, disability, separation from service, age 59<sup>1/2</sup>, or termination of the Plan without the establishment of a successor plan. In addition, each Plan Year, the Employer must provide written notice to all Active Participants of their rights and obligations under the Plan.

- (1) // Safe harbor Nonelective Employer Contributions shall not be made on behalf of Highly Compensated Employees.
- (2) // In conjunction with its election of the safe harbor described above, the Employer has elected to make Matching Employer Contributions under Subsection 1.10 that are intended to meet the requirements for deemed satisfaction of the "ACP" test with respect to Matching Employer Contributions (i.e., (1) the percentage of Deferral Contributions matched does not increase as the percentage of Compensation contributed increases; (2) Highly Compensated Employees are not provided a greater percentage match than Non-Highly Compensated Employees; (3) Deferral Contributions matched do not exceed 6% of a Participant's Compensation; and (4) for Plan Years beginning on or after January 1, 2000, the dollar amount of any discretionary Matching Employer Contributions made on a Participant's behalf for the Plan Year shall not exceed 4% of the Participant's Compensation for the Plan Year).

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**ADDENDUM**

**Re: PROTECTED IN-SERVICE WITHDRAWALS  
for**

**Plan Name:** \_\_\_\_\_

- (a) // **Restrictions on In-Service Withdrawals of Amounts Held for Specified Period**—The following restrictions apply to in-service withdrawals made in accordance with Subsection 1.18(d)(1)(A) (**cannot include any mandatory suspension of contributions restriction**):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- (b) // **Restrictions on In-Service Withdrawals Because of Participation in Plan for 60 or More Months**—The following restrictions apply to in-service withdrawals made in accordance with Subsection 1.18(d)(1)(B) (**cannot include any mandatory suspension of contributions restriction**):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- (c) // **Other In-Service Withdrawal Provisions**—In-service withdrawals from a Participant's Accounts specified below shall be available to Participants who satisfy the requirements also specified below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- (1) // The following restrictions apply to a Participant's Account following an in-service withdrawal made pursuant to (c) above (**cannot include any mandatory suspension of contributions restriction**):

\_\_\_\_\_  
\_\_\_\_\_

**ADDENDUM**

**Re: PROTECTED BENEFIT FORMS  
for**

**Plan Name:** \_\_\_\_\_

**(a) // Prior Plan Provided Life Annuity Form**—The normal annuity form for unmarried Participants is a \_\_\_\_\_.

The normal annuity form for married Participants is a \_\_\_\_\_% (**must be at least 50%, but not more than 100%**) "qualified joint and survivor annuity".

**(1)** Class of Participants whose Accounts are subject to distribution in the normal annuity form:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**(2)** The normal form of distribution under the Plan is:

**(A) //** A lump sum payment.

**(B) //** A "qualified joint and survivor annuity".

**(3)** The qualified preretirement survivor annuity provided to a Participant's spouse is purchased with \_\_\_\_\_% (**must be at least 50%**) of the Participant's Account.

**(b) // Prior Plan Provided Other Optional Annuity Form(s)**—The other optional annuity forms available under the Plan are:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**(1)** Class of Participants whose Accounts are subject to distribution in the optional annuity forms:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**(c) // Prior Plan Provided Other Protected Form(s)**—The other forms of distribution available under the Plan are:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**(1)** Class of Participants whose Accounts are subject to distribution in the other forms:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ADDENDUM

Re: GRANDFATHERED VESTING SCHEDULES  
for

Plan Name: \_\_\_\_\_

(a) *Grandfather of More Favorable Vesting Schedule*

(1) Prior vesting schedule:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(2) Prior vesting schedule applies to Participants initially hired prior to:

\_\_\_\_\_

(b) // *Additional Grandfather of More Favorable Vesting Schedule*

(1) Prior vesting schedule:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(2) Prior vesting schedule applies to Participants initially hired prior to:

\_\_\_\_\_

(c) // *Additional Grandfather of More Favorable Vesting Schedule*

(1) Prior vesting schedule:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(2) Prior vesting schedule applies to Participants initially hired prior to:

\_\_\_\_\_

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ADDENDUM

Re.- POSTPONED DISTRIBUTIONS  
for

Plan Name: \_\_\_\_\_





[ADDENDUM Re: SAFE HARBOR MATCHING EMPLOYER CONTRIBUTION for](#)  
[ADDENDUM Re: SAFE HARBOR NONELECTIVE EMPLOYER CONTRIBUTION for](#)  
[ADDENDUM Re: PROTECTED IN-SERVICE WITHDRAWALS for](#)  
[ADDENDUM Re: PROTECTED BENEFIT FORMS for](#)  
[ADDENDUM Re: GRANDFATHERED VESTING SCHEDULES for](#)  
[ADDENDUM Re.- POSTPONED DISTRIBUTIONS for](#)  
[ADDENDUM Re: 415 CORRECTION for](#)