

**[PLACE YOUR COMPANY NAME HERE]
NONQUALIFIED DEFERRED COMPENSATION PLAN
BASIC PLAN DOCUMENT #409A**

[PLACE YOUR COMPANY NAME HERE]
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ARTICLE 1
INTRODUCTION

Section 1.01 PLAN

This document ("Basic Plan Document") and its related Adoption Agreement are intended to provide deferred compensation for Eligible Employees of the Company. This Plan is intended to constitute a deferred compensation plan that complies with the requirements of Code section 409A and its corresponding regulations and is intended as a plan for a select group of management or highly compensated employees within the meaning of ERISA sections 201(2), 301(a)(3) and 401(a)(1) or, if the Adoption Agreement so provides, an excess benefit plan within the meaning of ERISA section 3(36). The provisions of this Plan are intended to comply with requirements of Code section 409A in form and operation and shall be interpreted in a manner consistent with such Code section and regulations promulgated pursuant thereto.

Any reference in the Plan to Treas. Reg. 1.409A shall be deemed to be a reference to the final regulations issued on April 17, 2007.

Section 1.02 APPLICATION OF PLAN

Except as otherwise specifically provided herein, the provisions of this Plan shall apply to those individuals who are Eligible Employees of the Company on or after the Effective Date. Except as otherwise specifically provided for herein, the rights and benefits, if any, of former Eligible Employees of the Company whose employment terminated prior to the Effective Date, shall be determined under the provisions of the Plan, as in effect from time to time prior to that date.

Section 1.03 GRANDFATHERED AMOUNTS

(a) Application. This Section applies if any Accounts under the Plan contained, as of December 31, 2004, amounts of deferred compensation that were earned and vested as of such date. The portion of each Account that was earned and vested as of December 31, 2004 shall be referred to herein as the "Grandfathered Amount."

(b) If the Plan contains any Grandfathered Amount, the provisions of the Plan in effect as of December 31, 2004 (taking into account amendments other than material modifications after that date), shall apply to the Grandfathered Amount and earnings on such amount as determined in accordance with Treas. Reg. 1.409A-6.

Section 1.04 TRANSITION RULES

The transition relief provided in the Preamble to Treas. Reg. 1.409A Decision 9321 published April 17, 2007 shall apply to the extent applicable. The transition relief provided in Notice 2007-78 shall apply to the extent applicable.

ARTICLE 2 DEFINITIONS

"Account" means any of the book entry account(s) maintained with respect to each Participant pursuant to Article 5. "Account" or "Accounts" shall include to the extent provided in the Adoption Agreement an Account established for Participant Contributions, Matching Contributions, Nonelective Contributions, 401(k) Wrap Contributions and such other account(s) or subaccount(s) as the Plan Administrator, in its discretion, deems appropriate.

"Adoption Agreement" means the document executed in conjunction with this Basic Plan Document that contains the optional features selected by the Plan Sponsor.

"Beneficiary" means the person or persons designated by the Participant to receive distributions from the Participant's Account after the Participant's death. Upon enrollment, the Participant shall designate a Beneficiary to receive distributions from the Participant's Account in the event of the Participant's death. A Participant may change his or her designated Beneficiary at any time. A Participant may designate any person or persons as Beneficiaries. Unless otherwise provided in the Beneficiary designation form, each designated Beneficiary shall be entitled to equal shares of the benefits payable after the Participant's death. If the Participant fails to designate a Beneficiary, or if no designated Beneficiary survives the Participant for a period of fifteen (15) days, then the Participant's surviving spouse shall be the Beneficiary. If the Participant has no surviving spouse, or if the surviving spouse does not survive the Participant for a period of fifteen (15) days, then the estate of the Participant shall be the Beneficiary.

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

"Change in Control" means a change in the ownership or effective control of the corporation, or in the ownership of a substantial portion of the assets of the corporation. Unless otherwise specified in the Adoption Agreement, a Change in Control occurs on the date:

- (a) any one person, or more than one person acting as a group, acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such person or persons) ownership of stock of the corporation possessing 30 percent or more of the total voting power of the stock of such corporation;
- (b) a majority of members of the corporation's board of directors is replaced during any 12-month period by directors whose appointment or election is not endorsed by a majority of the members of the corporation's board of directors before the date of the appointment or election; or
- (c) that any one person, or more than one person acting as a group, acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such person or persons) assets from the corporation that have a total gross fair market value equal to 40 percent of the total gross fair market value of all of the assets of the corporation immediately before such acquisition or acquisitions.

See Treas. Reg. 1.409A-3(i)(5) for definitions of "person acting as a group", "corporation" and "gross fair market value".

To qualify as a Change in Control event, the occurrence of the event must be objectively determinable and any requirement that any other person or group, such as a Plan Administrator or compensation committee, certify the occurrence of a Change in Control must be strictly ministerial and not involve any discretionary authority. If the Adoption Agreement provides for a payment on a Change in Control, such payment shall only be made if the event specified in the Adoption Agreement also qualifies as a change in control event within the meaning of Code section 409A (Treas. Reg. section 1.409A.-3(i)(5)). To the extent permitted by the Internal Revenue Service, a Change of Control may also occur in the event of changes in the ownership of a partnership and changes in the ownership of a substantial portion of the assets of a partnership.

"Company" means the Plan Sponsor and any other entity that has adopted the Plan with the approval of the Plan Sponsor. Company means "service recipient" as used in Treas. Reg. section 1.409A-1(g).

"Compensation" means, except to the extent modified in the Adoption Agreement, wages within the meaning of Code section 3401(a) and all other payments of compensation to an Employee by the Employer (in the course of the Employer's trade or business) for which the Employer is required to furnish the Employee a written statement under Code sections 6041(d), 6051(a)(3), and 6052. Compensation shall also include any amount which is contributed by the Company pursuant to a salary reduction agreement under any qualified or nonqualified plan. Compensation for an Independent Contractor shall include payment by the Company to the Independent Contractor.

"Deferral Election" means an election as to the amount of deferred compensation with regard to Accounts established with respect to Participant Contributions and to the time and form of payment with respect to all Accounts.

"Defined Contributions Account" means the Accounts established for Participant Contributions, Matching Contributions, Nonelective Contributions and 401(k) Wrap Contributions.

"Disabled" or "Disability" shall mean the Participant is: (i) unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, or (ii) is, by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, receiving income replacement benefits for a period of not less than 3 months under an accident and health plan covering employees of the Participant's employer. The Adoption Agreement may also provide that a Participant will be deemed to be Disabled if determined to be totally disabled by the Social Security Administration or Railroad Retirement Board. The determination of Disability shall be made by the Plan Administrator. The Plan Administrator may require that the Participant submit to an examination by the Company or its agent to determine the existence of a Disability. The determination of Disability shall be made by the Plan Administrator.

"Effective Date" shall have the meaning set forth in the Adoption Agreement.

"Eligible Employee" means any Employee employed by the Company, subject to the modifications and exclusions described in the Adoption Agreement. If the Plan is not an excess benefit plan within the meaning of ERISA section 3(36), participation in the Plan will be limited to a select group of management or highly compensated employees within the meaning of Title 1 of ERISA. If an individual is subsequently reclassified as, or determined to be, an Employee by a court, the Internal Revenue Service or any other governmental agency or authority, or if the Company is required to reclassify such individual an Employee as a result of such reclassification determination (including any reclassification by the Company in settlement of any claim or action relating to such individual's employment status), such individual shall not become an Eligible Employee by reason of such reclassification or determination.

An individual who becomes employed by the Employer in a transaction between the Employer and another entity that is a stock or asset acquisition, merger, or other similar transaction involving a change in the employer of the employees of the trade or business shall not become eligible to participate in the Plan until the Plan Sponsor specifically authorizes such participation.

"Employee" means any individual who is employed by or providing services to the Employer. Employee means "service provider" as used in Treas. Reg. section 1.409A-1(f).

"Employer" means the Company or any other employer required to be aggregated with the Company under Code sections 414(b), (c), (m) or (o); provided, however, that "Employer" shall not include any entity or unincorporated trade or business prior to the date on which such entity, trade or business satisfies the affiliation or control tests described above.

"ERISA" means the Employee Retirement Income Security Act of 1974, all amendments thereto and all federal regulations promulgated pursuant thereto.

"401(k) Wrap Contribution" means the contributions described in Section 5.02(d).

"Independent Contractor" means an independent contractor for whom deferred amounts will be subject to 409A as provided in Treas. Reg. 1.409A-1(f)(2).

"Matching Contribution" means the contributions described in Section 5.02(b).

"Nonelective Contribution" means the contributions described in Section 5.02(c).

"Participant" means an Eligible Employee who participates in the Plan in accordance with Articles 3 and 4.

"Participant Contribution" means the contributions described in Section 5.02(a).

"Plan Administrator" means the person(s) designated pursuant to the Adoption Agreement and Section 7.01.

"Plan Sponsor" means the entity described in the Adoption Agreement.

"Plan Year" means the 12-consecutive month period described in the Adoption Agreement.

"Retirement Age" shall have the meaning set forth in the Adoption Agreement.

"Separation from Service" means:

(a) Employee. Any absence from service that ends the employment of an individual with the Employer shall be deemed to be a Separation from Service. However, the employment relationship is treated as continuing intact while the individual is on military leave, sick leave, or other bona fide leave of absence (such as temporary employment by the government) if the period of such leave does not exceed six months, or if longer, so long as the individual's right to reemployment with the Company is provided either by statute or by contract. If the period of leave exceeds six months and the individual's right to reemployment is not provided either by statute or by contract, the employment relationship is deemed to terminate on the first date immediately following such six-month period. The determination of whether an Employee has a Separation from Service shall be determined pursuant to the Adoption Agreement and Treas. Reg. section 1.409A-1(h). If the Adoption Agreement does not specify the percentage of average level of bona fide services to constitute a Separation from Service, a Separation from Service will occur once an Employee's services decrease to 20% or less of the average level of bona fide services compared to services performed over the preceding 12 month period.

(b) Independent Contractor. An Independent Contractor is considered to have a Separation from Service upon the expiration of the contract (or in the case of more than one contract, all contracts) under which services are performed if the expiration constitutes a good-faith and complete termination of the contractual relationship. If so provided in the Adoption Agreement, no amount will be paid to an Independent Contractor until 12 months after the day on which the contract expires under which services are performed for the Company (or, in the case of more than one contract, all such contracts expire); and no amount payable to the Independent Contractor on that date will be paid to the Independent Contractor if, after the expiration of the contract (or contracts) and before that date, the Independent Contractor performs services for the Company as an Independent Contractor or an employee.

"Specified Employee" means a key employee (as defined in Code section 416(i) without regard to Code section 416(i)(5)) of the Company (within the meaning of Code section 409A(a)(2)(B)) any stock of which is publicly traded on an established securities market or otherwise. An employee is a key employee if the employee meets the requirements of Code section 416(i)(1)(A)(i), (ii) or (iii) (applied in accordance with the regulations thereunder and disregarding Code section 416(i)(5)) at any time during the 12-month period ending on an identification date specified in the Adoption Agreement. If a person is a key employee as of an identification date, the person is treated as a specified employee for the 12-month period beginning on the first day of the fourth month following the identification date. If no identification date is designated in the Adoption Agreement, the identification date is December 31. Whether any stock of the Company is publicly traded on an established securities market or otherwise must be determined as of the date of the employee's Separation from Service. The application of rules

regarding "Specified Employee" to spinoffs and mergers and nonresident alien employees shall be determined pursuant to applicable Internal Revenue Service guidance.

"State" means a state (treating the District of Columbia as a state as provided under Code section 7701(a)(10)), a political subdivision of a state, and any agency or instrumentality of a state.

"Tax-Exempt Entity" means any organization exempt from tax under subtitle A of the Internal Revenue Code, except that a governmental unit (including an international governmental organization) is not a tax-exempt entity.

"Unforeseeable Emergency" means a severe financial hardship to the Participant resulting from an illness or accident of the Participant, the Participant's spouse, the Participant's Beneficiary or the Participant's dependent (as defined in Code section 152 determined without regard to Code section 152(b)(1), (b)(2) and (d)(1)(B)) as provided in Code section 409A(a), Treas. Reg. 1.409A-3(i)(3), Revenue Ruling 2010-27 and any superseding guidance. Unforeseeable Emergencies include:

(a) loss of the Participant's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by insurance, for example, as a result of a natural disaster); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant, including significant water damage from a water leak.

(b) The need to pay for medical expenses, including nonrefundable deductibles, as well as for the costs of prescription drug medication, may constitute an Unforeseeable Emergency and

(c) the need to pay for the funeral expenses of a spouse, a Beneficiary or a dependent (as defined in Code section 152 determined without regard to Code section 152(b)(1), (b)(2) and (d)(1)(B)) may also constitute an Unforeseeable Emergency. Funeral expenses for an adult son who is not a dependent may also constitute an Unforeseeable Emergency.

Whether a Participant or Beneficiary is faced with an Unforeseeable Emergency is to be determined based on the relevant facts and circumstances of each case, but, in any case, a distribution on account of Unforeseeable Emergency may not be made to the extent that such emergency is or may be relieved through reimbursement or compensation from insurance or otherwise, by liquidation of the Participant's assets, to the extent the liquidation of such assets would not cause severe financial hardship, or by cessation of Participant Contributions under the Plan. Distributions because of an Unforeseeable Emergency shall be limited to the amount reasonably necessary to satisfy the emergency need (which may include amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution). Credit card debt is not considered unforeseeable.

"Valuation Date" shall have the meaning set forth in the Adoption Agreement.

ARTICLE 3
PARTICIPATION

Section 3.01 PARTICIPATION

Each Eligible Employee as of the Effective Date who was eligible to participate in the Plan immediately prior to the Effective Date shall be a Participant eligible to participate in the Plan pursuant to Article 4 on the Effective Date. Each other Eligible Employee who was not a Participant in the Plan prior to the Effective Date shall become a Participant eligible to participate pursuant to Article 4 on the date specified in the Adoption Agreement; provided that he is an Eligible Employee on such date.

Section 3.02 TRANSFERS/SEPARATION FROM SERVICE

If a change in job classification, Separation from Service or a transfer results in an individual no longer qualifying as an Eligible Employee, such Employee shall cease to be a Participant for purposes of Article 4 (or shall not become eligible to become a Participant) as of the first day of the Plan Year immediately succeeding such change of job classification or transfer; or in the case of a Separation from Service, the effective date of the Separation from Service. Should such Employee again qualify as an Eligible Employee or if an Employee who was not previously an Eligible Employee becomes an Eligible Employee, he shall become a Participant on the first day of the Plan Year following the later of the effective date of such subsequent change of status or the date the Employee meets the eligibility requirements of this Article 3. Notwithstanding the foregoing, a Participant shall not be eligible to make any elections to contribute to the Plan unless such elections are specifically permitted pursuant to Article 4.

Section 3.03 PROCEDURES FOR ADMISSION

The Plan Administrator shall prescribe such forms and may require such data from Participants as are reasonably required to enroll a Participant in the Plan or to effectuate any Participant elections. The Plan Administrator may impose other limitations and/or conditions with respect to participation in the Plan on Eligible Employees who commence or recommence participation in the Plan pursuant to Section 3.02.

ARTICLE 4
ELECTIONS

Section 4.01 INITIAL DEFERRAL ELECTIONS

(a) In General. Except as specified in 4.01(b) and 4.04, Compensation for services performed during a Plan Year may be deferred only if the election to defer such Compensation and election as to time and form of payment is made not later than the close of the Plan Year next preceding the Plan Year in which the service is rendered.

(b) Initial Year of Participation.

(1) When a Participant is Initially Eligible

(A) An Employee is eligible to participate in the Plan at any time during which, under the Adoption Agreement and without further amendment or action by the Participant, the Participant is eligible to accrue an amount of deferred compensation under the Plan other than earnings on amounts previously deferred, even if the Participant has elected not to accrue (or has not elected to accrue) an amount of deferred compensation.

(B) Where a Participant has been paid all amounts deferred under the Plan, and on and before the date of the last payment was not eligible to continue (or to elect to continue) to participate in the Plan for periods after the last payment (other than through an election of a different time and form of payment with respect to the amounts paid), the Participant may be treated as initially eligible to participate in the Plan as of the first date following such payment that the Participant becomes eligible to accrue an additional amount of deferred compensation.

(C) Where a Participant has ceased being eligible to participate in the Plan (other than the accrual of earnings), regardless of whether all amounts deferred under the Plan have been paid, and subsequently becomes eligible to participate in the Plan again, the Participant may be treated as being initially eligible to participate in the Plan if the Participant had not been eligible to participate in the Plan (other than the accrual of earnings) at any time during the 24-month period ending on the date the Participant again becomes eligible to participate in the Plan.

(2) Initial Year Elections

(A) In the case of the first year in which a Participant becomes eligible to participate in a plan (after application of the aggregation rules of Code section 409A(d)), the Participant may make an initial election within 30 days after the date the Participant becomes eligible to participate in such plan, with respect to Compensation paid for services to be performed after the election.

(B) For Compensation that is earned based upon a specified performance period, where a Deferral Election is made in the first year of eligibility but after the beginning of the performance period, the election will be deemed to apply to Compensation paid for services performed after the election if the election applies to no more than an amount equal to the total amount of the Compensation for the performance period multiplied by the ratio of the number of days remaining in the performance period after the election over the total number of days in the performance period.

(C) If the Plan is a nonelective excess benefit plan (within the meaning of Treas. Reg. section 1.409A-2(a)(7)(iii)), the Participant is treated as initially eligible as of the first day of the Company's taxable year immediately following the first year the Participant accrues a benefit under the Plan and any election made within 30 days following such date is treated as applying to benefits accrued under the Plan before the election. This election may only be made once after application of the aggregation rules of Code section 409A(d).

(c) Default. In the event that the Participant fails to make any election as to time and form of payment by the deadlines specified in this Article, the Participant shall be deemed to have elected to receive a single lump sum payment payable 90 days following Separation from Service.

(d) Performance Based Compensation. A Deferral Election may be made with respect to performance-based compensation (within the meaning of Treas. Reg. section 1.409A-1(e)) if each of the following requirements is met:

(1) The performance period is at least 12 months in length

(2) The Deferral Election is made no later than the date that is six months before the end of the performance period;

(3) Such compensation has not become readily ascertainable. Compensation is readily ascertainable when the amount is first both calculable and substantially certain to be paid. The performance-based compensation is bifurcated between the portion that is readily ascertainable and the amount that is not readily ascertainable. Accordingly, in general any minimum amount that is both calculable and substantially certain to be paid will be treated as readily ascertainable.

(4) The Participant performs services continuously from the later of the beginning of the performance period or the date upon which the performance criteria are established through the date upon which the Participant makes the Deferral Election.

(e) Commissions.

(A) Sales Commission Compensation. A Participant earning sales commission compensation (as defined in Treas. Reg. section 1.409A-2(a)(12)) is treated as providing the services to which such compensation relates only in the Company's taxable Year in which the customer remits payment to the Company or, if applied consistently to all similarly situated Participants, the Company's taxable Year in which the sale occurs.

(B) Investment Commission Compensation. A Participant earning investment commission compensation (as defined in Treas. Reg. section 1.409A-2(a)(12)) is treated as providing the services to which such compensation relates over the 12 months preceding the date as of which the overall value of the assets or asset accounts is determined for purposes of the calculation of the investment commission compensation.

(f) Differing Fiscal Years. If the Company has a taxable year that differs from the Participant's taxable year, compensation during the Company's taxable year may be deferred at the Participant's election only if the election to defer such Compensation is made not later than the close of the Company's taxable year next preceding the first taxable year in which are performed any services for which such compensation is payable. For purposes of this Subsection, the term taxable year compensation means compensation relating to a period of service coextensive with one or more consecutive taxable years of the Company, of which no amount is paid or payable during the Company's taxable year or years constituting the period of service.

(g) Final Payroll Period. Compensation payable after the last day of the Plan Year solely for services performed during the payroll period containing the last day of the Plan Year (the final payroll period) is treated as compensation for services performed in the subsequent Plan Year in which the payment is made. This Subsection does not apply to any Compensation paid during such period for services performed during any period other than such final payroll period, such as a payment of an annual bonus. Any amendment to the Plan made after December 31, 2007, to add a provision providing for a differing treatment of such compensation shall not be effective for 12 months from the date the amendment is executed and enacted.

(h) Separation Pay. In the case of separation pay (as defined in Treas. Reg. section 1.409A-1(m)) where such separation pay is the subject of bona fide, arm's length negotiations, the Deferral Election may be made at any time up to the time the Participant obtains a legally binding right to the payment. In the case of separation pay due to participation in a window program (as defined in Treas. Reg. section 1.409A-1(b)(9)(v)), the initial Deferral

Election may be made at any time up to the time the election to participate in the window program becomes irrevocable.

(i) **Certain Forfeitable Rights.** With respect to a legally binding right to a payment in a subsequent year that is subject to a forfeiture condition requiring the Participant's continued services for a period of at least 12 months from the date the Participant obtains the legally binding right, an election to defer such compensation may be made on or before the 30th day after the Participant obtains the legally binding right to the compensation, provided that the election is made at least 12 months in advance of the earliest date at which the forfeiture condition could lapse. For purposes of this Subsection, a condition will not be treated as failing to require the Participant to continue to provide services for a period of at least 12 months from the date the Participant obtains the legally binding right merely because the condition immediately lapses upon the death or Disability of the Participant, or upon a Change in Control event, provided that if death, Disability, or a Change in Control event occurs and the condition lapses before the end of such 12-month period, a deferral election may be given effect only if the deferral election is permitted under this Section 4.01 without regard to this Subsection.

(j) **Short-Term Deferrals.** Procedures as specified in Treas. Reg. section 1.409A and any other guidance of general applicability issued thereunder shall apply with respect to short-term deferrals.

(k) **Elections to Annualize Recurring Part-year Compensation.** If the Participant receives recurring part-year compensation (within the meaning of Treas. Reg. section 1.409A-2(a)(14)), an election to defer all or a portion of the recurring part-year compensation to be earned during a particular service period must be made before the services for which the recurring part-year compensation is paid begin, and the election must not defer payment of any of the recurring part-year compensation to a date beyond the last day of the 13th month following the first date of the service period. An amount deferred under this section may not again be treated as recurring part-year compensation for purposes of this paragraph and subject to a second deferral election.

(l) **USERRA Rights.** The requirements of section 4.01 are deemed satisfied to the extent an initial deferral election is provided to satisfy the requirements of the Uniformed Service Employment and Reemployment Rights Act of 1994, as amended, 38 U.S.C. 4301-4334.

Section 4.02 CHANGES IN TIME OR FORM OF PAYMENT

(a) **In General.** To the extent that the Adoption Agreement permits a subsequent election to delay a payment or to change the form of payment, subsequent changes in the time and form of payment (whether changes are made by Participants, the Company or Beneficiaries) may be made pursuant to this Section. Except as expressly permitted by the Plan, Code section 409A, and applicable Regulations no Deferral Election shall accelerate the time or schedule of any payment under the Plan.

(b) The requirements of this Section are met if the following conditions are met:

(1) Such election may not take effect until at least 12 months after the date on which the election is made.

(2) In the case of an election related to a payment other than a payment on account of Disability, death or Unforeseeable Emergency, the payment must be deferred for a period of not less than five years from the date such payment would otherwise have been paid (or in the case of a life annuity or installment payments, five years from the date the first amount was scheduled to be paid).

(3) An election related to a payment at a specified time or pursuant to a fixed schedule be made not less than 12 months before the date the payment is scheduled to be paid (or in the case of a life annuity or installment payments, 12 months before the date the first amount was scheduled to be paid).

(c) The addition of Disability, or an Unforeseeable Emergency, as a potentially earlier alternative payment event to an amount previously deferred will not be treated as resulting in an acceleration of a payment, even if such addition results in the payment being paid at an earlier time than such payment would have been made absent the addition of the payment event. However, the addition of such a payment event as a potentially later

alternative payment event generally is subject to the rules governing changes in the time and form of payment in this Section.

(d) Definition of Payments.

(1) In General. The term payment refers to each separately identified amount to which a Participant is entitled to payment under the Plan on a determinable date. An amount is separately identified only if the amount may be objectively determined under a nondiscretionary formula. A payment includes, but is not limited to, the transfer, cancellation or reduction of an amount of deferred compensation in exchange for benefits under a welfare benefit plan, fringe benefit excludible under Code sections 119 or 132, or any other benefit that is excludible from gross income.

(2) Life Annuities. The entitlement to a life annuity (as defined in Treas. Reg. section 1.409A-2(b)(2)(ii)), is treated as the entitlement to a single payment. A change in the form of a payment from one type of life annuity to another type of life annuity with the same scheduled date for the first annuity payment or a change in designated beneficiary before any annuity payment has been made is not considered a change in the time and form of a payment, provided that the annuities are actuarially equivalent applying reasonable actuarial assumptions as described in Treas. Reg. section 1.409A-2(b)(2)(ii).

(3) Installment Payments. Except as provided in the Adoption Agreement, the entitlement to a series of installment payments that is not a life annuity is treated as the entitlement to a single payment. A series of installment payments refers to an entitlement to the payment of a series of substantially equal periodic amounts to be paid over a predetermined period of years, except to the extent any increase (or decrease) in the amount reflects reasonable earnings (or losses) through the date the amount is paid.

(e) Multiple Payment Events. If the Adoption Agreement permits a payment upon each of a number of potential permissible payment events, such as the earlier of a fixed date or Separation from Service, the requirements of this Section shall be applied separately to each payment due upon each payment event.

(f) Domestic Relations Orders. Elections by individuals other than a Participant, with respect to payments to a person other than the Participant, to the extent such elections are reflected in, or made in accordance with, the terms of a domestic relations order (as defined in section 414(p)(1)(B)) are not changes in the time or form of payment under this section.

(g) Changes to Beneficiaries. An election to change the identity of a Beneficiary does not constitute a change in the time and form of payment merely because the election changes the identity of the recipient of the payment, if the time and form of the payment is not otherwise changed.

(h) USERRA rights. The requirements of section 4.02 are deemed met to the extent an election to change the time or form of a payment of deferred compensation is provided to satisfy the requirements of the Uniformed Service Employment and Reemployment Rights Act of 1994, as amended, 38 U.S.C. 4301-4334.

Section 4.03 CANCELLATION OF PARTICIPANT CONTRIBUTIONS

(a) Separation from Service. Except as expressly otherwise provided by the Plan, a Participant's election regarding Participant Contributions shall be cancelled upon his or her Separation from Service for any reason.

(b) Unforeseeable Emergency. A Participant's election regarding Participant Contributions and 401(k) Wrap Contributions shall be cancelled due to an Unforeseeable Emergency or a hardship distribution pursuant to Treas. Reg. 1.401(k)-1(d)(3). Any later election regarding Participant Contributions shall be subject to Section 4.01.

(c) Disability. To the extent permitted in the Adoption Agreement, a Participant's election regarding Participant Contributions may be cancelled, where such cancellation occurs by the later of the end of the taxable year of the Participant or the 15th day of the third month following the date the Participant incurs a disability. For purposes of this Subsection, a disability refers to any medically determinable physical or mental impairment

resulting in the Participant's inability to perform the duties of his or her position or any substantially similar position, where such impairment can be expected to result in death or can be expected to last for a continuous period of not less than six months.

Section 4.04 ELECTION PROCEDURES

Each Participant may execute elections pursuant to this Article 4 in the form and manner prescribed by the Plan Administrator and at such time in advance as the Plan Administrator may require. The Plan Administrator shall provide each Participant with the forms necessary to make such elections. Notwithstanding the foregoing, a Participant shall be eligible to make elections only to the extent such elections are permitted in the Adoption Agreement and relate to contributions and/or benefits for which the Participant has met the eligibility requirements of Article 3. The Adoption Agreement may provide additional conditions and/or limitations on Participant elections. To the extent provided in the Adoption Agreement, a Participant may make separate elections as to the time and form of payment with respect to objectively identifiable portions of his Account.

Section 4.05 WRAP/OFFSET PLANS

(a) Application. This section applies if the Adoption Agreement provides that the Company may make 401(k) wrap contributions or provides that benefits in the Plan are offset by some or all of the benefits provided under a qualified employer plan.

(b) Limitation of Benefits. The Plan Administrator shall limit any modifications to amounts deferred under the Plan or take any other action in order to comply with Treas. Reg. section 1.409A-2(a)(9).

ARTICLE 5
ACCOUNTS/BENEFITS

Section 5.01 ESTABLISHMENT OF ACCOUNTS

(a) Defined Contribution Accounts. If the Plan provides for Defined Contribution Accounts, the Plan Administrator shall establish and maintain a book entry account on behalf of each Participant to the extent necessary to account for account balance benefits provided in the Adoption Agreement. Each such book entry account shall reflect the aggregate of Participant and/or Company contributions and investment experience attributable to each such book entry account based upon the investment experience/plan expenses described in Section 5.03 below. Each book entry account shall also reflect any reductions due to expense charges applied to, and distributions made from, each such account.

(b) Accounts Unsecured. Such Account(s) shall be simply an unsecured claim against the general assets of the Company. A Participant shall have no interest in such Account(s), which is established merely as an accounting convenience.

Section 5.02 CONTRIBUTION/BENEFIT ACCRUAL

(a) Participant Contributions. To the extent provided in the Adoption Agreement and Article 4, a Participant may elect to contribute a portion of his Compensation to the Plan. For purposes of this Subsection, "Participant" shall mean an Eligible Employee who has met the eligibility requirements of Article 3 with respect to Participant contributions.

(b) Matching Contributions. To the extent provided in the Adoption Agreement, a Participant may receive an allocation of matching contributions which shall be based upon the Participant's Participant Contributions. For purposes of this Subsection, "Participant" shall mean an Eligible Employee who has met the eligibility requirements of Article 3 with respect to matching contributions and has met any requirements in the applicable Plan Year specified in the Adoption Agreement to receive an allocation of such contributions.

(c) Nonelective Contributions. To the extent provided in the Adoption Agreement, a Participant may receive an allocation of Nonelective Contributions. If the Adoption Agreement specifies an excess formula, a Participant shall receive an allocation equal to the allocation the Participant would have received under the deferred compensation Plan specified in the Adoption Agreement had the allocation in the deferred compensation Plan been calculated without regard to the limitations on allocations imposed by Code section 415 (and to the extent provided in the Adoption Agreement, Code section 401(a)(17)); reduced by the allocation actually received in the deferred compensation Plan. For purposes of this Subsection, "Participant" shall mean an Eligible Employee who has met the eligibility requirements of Article 3 with respect to Nonelective Contributions and has met any requirements in the applicable Plan Year specified in the Adoption Agreement to receive an allocation of such contributions.

(d) 401(k) Wrap Contributions. To the extent provided in the Adoption Agreement, a Participant may make contributions that are coordinated with the 401(k) Plan specified in the Adoption Agreement in the manner described in this Subsection. The Participant's Deferral Election must indicate whether he or she authorizes a distribution from the Plan after the Plan Year to be either: (i) paid in cash to the Participant, or (ii) transferred to the 401(k) Plan. The 401(k) Wrap Contributions must comply with the prohibition on contingent benefits as specified in Treas. Reg. section 1.401(k)-1(e)(6). The distribution or transfer must be completed before March 15 of the Plan Year following the year in which the contribution was made to this Plan. The elections specified in this Subsection must be made pursuant to Article 4.

Section 5.03 EARNINGS/EXPENSES

(a) Earnings. A Participant's Defined Contribution Accounts shall be credited with earnings and losses in the manner specified in the Adoption Agreement. The Plan Administrator shall credit investment experience to each Participant's Defined Contribution Account as of each Valuation Date specified in the Adoption Agreement. If the Adoption Agreement provides for predetermined investments, such investments are to be used for measurement

purposes only and there is no obligation for the Plan Administrator or Company to set aside, fund or actually purchase any investments.

(b) Expenses. The expenses of administering the Plan, including (i) expenses incurred by the Plan Administrator in the administration of the Plan, (ii) fees and expenses approved by the Plan Administrator for investment advisory, custodial, recordkeeping, and other plan administration and communication services, and (iii) any other expenses or charges allocable to the Plan that have been approved by the Plan Administrator may be charged, at the discretion of the Plan Administrator, to Participants' Account balances. If amounts are deposited into an account or trust owned by the Employer, brokerage fees, transfer taxes, and any other costs incident to the purchase or sale of securities or other investments shall be deemed to be part of the cost of such securities or investments or deducted in computing the sales proceeds therefrom and shall be accounted for accordingly.

(c) Unfunded. The Plan is unfunded as specified in Section 7.04.

Section 5.04 VESTING

(a) Except as provided in Section 5.05, a Participant shall have a fully vested and nonforfeitable interest in his Accounts relating to Participant Contributions and 401(k) Wrap Contributions.

(b) Except as provided in Section 5.05, the Participant's interest in his Accounts relating to Matching Contributions and Nonelective Contributions shall vest based on his Years of Vesting Service in accordance with the terms of the Adoption Agreement.

For purposes of the Adoption Agreement, "3-7 Year Graded", "2-6 Year Graded", "1-5 Year Graded", "1-4 Year Graded", "5 Year Cliff", "3 Year Cliff" and "2 Year Cliff" shall be determined in accordance with the following schedules:

Years of vesting service	Vesting Percentage
"3-7 Year Graded":	
Less than Three Years	0%
Three Years but less than Four Years	20%
Four Years but less than Five Years	40%
Five Years but less than Six Years	60%
Six Years but less than Seven Years	80%
Seven or More Years	100%
"2-6 Year Graded":	
Less than Two Years	0%
Two Years but less than Three Years	20%
Three Years but less than Four Years	40%
Four Years but less than Five Years	60%
Five Years but less than Six Years	80%
Six or More Years	100%
"1-5 Year Graded":	
Less than One Year	0%
One Year but less than Two Years	20%
Two Years but less than Three Years	40%
Three Years but less than Four Years	60%
Four Years but less than Five Years	80%
Five or More Years	100%

"1-4 Year Graded":	
Less than One Year	0%
One Year but less than Two Years	25%
Two Years but less than Three Years	50%
Three Years but less than Four Years	75%
Four or More Years	100%
"5 Year Cliff":	
Less than Five Years	0%
Five or More Years	100%
"3 Year Cliff":	
Less than Three Years	0%
Three or More Years	100%
"2 Year Cliff":	
Less than Two Years	0%
Two or More Years	100%

In addition, the Adoption Agreement may provide that a Participant will become fully (100%) vested upon: (i) his attainment of Retirement Age while an Employee, (ii) his death while an Employee, (iii) his Separation from Service due to Disability while an Employee, (iv) a Change in Control event, or (v) other event as specified in the Adoption Agreement.

(c) Special Forfeitures. Notwithstanding any provision to the contrary, a Participant shall also forfeit his or her Account pursuant to any special forfeiture provisions in the Adoption Agreement. Such special forfeiture provisions may include, without limitation, a provision requiring complete forfeiture of Participant's Account upon the occurrence of a specified event.

Section 5.05 FORFEITURES

All forfeitures shall revert to the Company.

ARTICLE 6
DISTRIBUTIONS

Section 6.01 TIME OF DISTRIBUTION

(a) Election. Benefits shall commence on the date specified in the Participant's Deferral Election to the extent permitted by the Adoption Agreement and Article 4. Such election may not be revised except as expressly provided in Article 4. A Participant may make separate elections as to the time and form of payment with respect to objectively identifiable portions of his Account to the extent provided in Section 4.04.

(b) Permissible Events. A Participant's benefit under the Plan may only be paid on account of the Participant's Separation from Service, death or other event specified in the Adoption Agreement and permitted under Code section 409A and regulations promulgated thereunder. Payments for a Specified Employee that would otherwise be paid during the first six months after Separation from Service shall be accumulated and paid as of the first day of the seventh month following Separation from Service or, if earlier, the date of death and thereafter, payments shall be paid as regularly scheduled. Payments for a permissible event shall commence on the date of the event or a specified number of days after the event as provided in the Adoption Agreement. Under no circumstances may a Participant select the taxable year in which payment is to be made.

(c) Optional Acceleration of Time of Payment. To the extent provided in the Adoption Agreement, payment of benefits under the Plan shall be made in the event of the following:

(1) Disability. A Participant shall receive a distribution of his Account upon his or her Disability at the time specified in the Adoption Agreement.

(2) Change in Control. A Participant shall receive a distribution of his Account upon a Change in Control specified in the Adoption Agreement; provided that the event specified in the Adoption Agreement also qualifies as a change in control event within the meaning of Code section 409A.

(3) Unforeseeable Emergency. A Participant may apply to receive that part of the value of the Participant's Account that does not exceed the amount reasonably necessary to satisfy the Unforeseeable Emergency (which may include amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution). Determinations of amounts reasonably necessary to satisfy the Unforeseeable Emergency must take into account any additional Compensation that is available if the Adoption Agreement provides for cancellation of Participant Contributions and 401(k) Wrap Contributions upon a payment due to an Unforeseeable Emergency.

(d) Optional Acceleration of Time of Payment.

(1) Domestic Relations Order. Payment may be accelerated to the extent necessary to fulfill a domestic relations order (as defined in Code section 414(p)(1)(B)).

(2) Conflicts of Interest. Payment may be accelerated to the extent:

(A) necessary for any Federal officer or employee in the executive branch to comply with an ethics agreement with the Federal government.

(B) reasonably necessary (as defined in Treas. Reg. section 1.409A-3(j)(4)(iii)(B)) to avoid the violation of an applicable Federal, state, local, or foreign ethics law or conflicts of interest law (including where such payment is reasonably necessary to permit the Participant to participate in activities in the normal course of his or her position in which the Participant would otherwise not be able to participate under an applicable rule) regardless of whether other actions would also result in compliance with the Federal, state, local, or foreign ethics law or conflicts of interest law.

(3) Payment of Employment Taxes. Payment may be accelerated to the extent necessary to pay the Federal Insurance Contributions Act (FICA) tax imposed under Code sections 3101, 3121(a) and 3121(v)(2), or the Railroad Retirement Act tax imposed under section 3201, section 3211, section 3231(e)(1), and section 3231(e)(8), where applicable, on compensation deferred under the plan (the FICA Amount or RRTA amount). Additionally, payment may be accelerated to the extent necessary to pay the income tax at source on wages imposed under Code section 3401 or the corresponding withholding provisions of applicable state, local, or foreign tax laws as a result of the payment of the FICA or RRTA amount, and to pay the additional income tax at source on wages attributable to the pyramiding Code section 3401 wages and taxes. However, the total payment under this acceleration provision must not exceed the aggregate of the FICA or RRTA amount, and the income tax withholding related to such FICA or RRTA Amount.

(4) Payments upon Income Inclusion. Payment may be accelerated at any time the Plan fails to meet the requirements of Code section 409A and any applicable regulations. Such payment may not exceed the amount required to be included in income as a result of the failure to comply with the requirements of Code section 409A and any applicable regulations.

(5) Plan Termination and Liquidation. Payment may be accelerated where the right to the payment arises due to a termination of the Plan in accordance with Article 8.

(6) Non Allocation Year. Payment may be accelerated to the extent necessary to prevent the occurrence of a non allocation year (within the meaning of Code section 409(p)(3)) in the plan year of an employee stock ownership plan next following the plan year in which such payment is made, provided that the amount distributed may not exceed 125 percent of the minimum amount of distribution necessary to avoid the occurrence of a non allocation year in accordance with applicable Internal Revenue Service regulations.

(7) Payment of state, local or foreign taxes. Payment may be accelerated to reflect payment of state, local, or foreign tax obligations arising from participation in the Plan that apply to an amount deferred under the plan before the amount is paid or made available to the participant (the state, local, or foreign tax amount) and to pay the income tax at source on wages imposed under section 3401 as a result of such payment and to pay the additional income tax at source on wages imposed under section 3401 attributable to such additional section 3401 wages and taxes. Such payment may not exceed the amount of such taxes due as a result of participation in the Plan. Such payment may be made by distributions to the Participant in the form of withholding pursuant to provisions of applicable state, local, or foreign law or by distribution directly to the Participant.

(8) Certain offsets. Payment may be accelerated as satisfaction of a debt of the Participant to the Company, where such debt is incurred in the ordinary course of the service relationship between the Participant and the Company, the entire amount of reduction in any of the Participant's taxable years does not exceed \$5,000, and the reduction is made at the same time and in the same amount as the debt otherwise would have been due and collected from the Participant.

(9) Bona fide disputes as to right to payment. Payment may be accelerated, where such payments occur as part of a settlement between the Participant and the Company of an arm's length, bona fide dispute as to the Participant's right to the deferred amount (as described in Reg. section 1.409A-3(j)(xiv)).

(e) Deemed Specified Time. In the event that a specified time or fixed schedule includes the designation of a taxable year or years of the Participant that are objectively determinable at the time the amount is deferred, the specified time or fixed schedule of payments is deemed to refer to the first day of the relevant taxable year or years.

(f) Deemed Designated Date. A payment shall be treated as made upon the date specified if the payment is made at such date or a later date within the same taxable year of the Participant or, if later, by the 15th day of the third calendar month following the date specified. Under no circumstances may a Participant choose the taxable year in which a payment is made. If calculation of the amount of the payment is not administratively practicable due to events beyond the control of the Company, the payment will be treated as made upon the date specified if the payment is made during the first taxable year of the Participant in which the payment is administratively practicable. For purposes of this Subsection, the inability of the Company to calculate the amount

or timing of a payment due to a failure of a Participant (or Company's beneficiary) to provide reasonably available information necessary to make such calculation does not constitute an event beyond the control of the Participant. Similarly, if the making of the payment at the date specified under the Plan would jeopardize the ability of the Company to continue as a going concern, the payment will be treated as made upon the date specified under the Plan if the payment is made during the first taxable year of the Participant in which the making of the payment would not have such effect.

(g) Disputed Payments. Disputed payments and refusals to pay by the Company shall comply with Treas. Reg. section 1.409A-3(g).

Section 6.02 FORM OF DISTRIBUTION

(a) Election. Benefits shall be paid in the form specified in the Participant's Deferral Election. Such election may not be revised except as expressly provided in Article 4. A Participant may make separate elections as to the time and form of payment with respect to objectively identifiable portions of his Account to the extent provided in Section 4.04.

(b) Permissible Forms. A Participant's benefit under the Plan may only be paid in the forms specified in the Adoption Agreement and permitted under Code section 409A and regulations promulgated thereunder.

(c) Actuarial Equivalence. For purposes of determining actuarial equivalence for converting Defined Contribution Accounts into annuity forms, reasonable actuarial assumptions (within the meaning of Treas. Reg. 31.3121(v)(2)-1) must be used. These assumptions shall be set forth in an appendix to the Adoption Agreement.

Section 6.03 DEATH

Notwithstanding any provision of the Plan to the contrary, in the event of the Participant's death, payment shall be made in the time and form specified in the Adoption Agreement. If death occurs after payment has begun but before the entire Account has been paid out, the remaining balance will be paid according to the form specified in the Adoption Agreement for death. If the form of payment at death is installment payments and the Account has begun payment in installments, then the payment at death will proceed under the shorter of the two installment payment schedules. If any portion of the Account has been paid out as an annuity, payment at death (if any) will proceed as under the terms of the annuity.

Section 6.04 CASH OUT

(a) In General. To the extent provided in the Adoption Agreement, the Plan may provide for mandatory lump sum payments of benefits that do not exceed the amount specified in the Adoption Agreement subject to the following terms and conditions:

(1) The payment results in the termination and liquidation of the entirety of the Participant's interest in the Plan, including all agreements, methods, programs, or other arrangements with respect to which deferrals of compensation are treated as having been deferred under a single nonqualified deferred compensation plan under Treas. Reg. 1.409A-1(c)(2);

(2) The payment shall not exceed the lesser of: (i) the Amount specified in the Adoption Agreement, or (ii) the applicable dollar amount under section 402(g)(1)(B) in all other circumstances.

Section 6.05 DELAY IN TIME OF PAYMENT

(a) In General. To the extent provided in the Adoption Agreement, a payment shall be delayed to a date after the designated payment date under any of the following circumstances (Subsections 6.05(b) - (e)); so long as the Company treats all payments to similarly situated Participants on a reasonably consistent basis.

(b) Code Section 162(m). To the extent provided in the Adoption Agreement, a Payment shall be delayed where the Company reasonably anticipates that the Company's deduction with respect to such payment

otherwise would not be permitted due to the application of Code section 162(m). If this Subsection applies, payment shall be made:

(i) during the first taxable year of the Participant in which the Company reasonably anticipates or should reasonably anticipate that if the payment is made during such year the deduction of such payment will not be barred by application of Code section 162(m), or

(ii) during the period beginning with the date of the Participant's Separation from Service and ending on the later of the last day of the taxable year of the Participant in which the Participant Terminates from service or the 15th day of the third month following the Participant's Separation from Service, and provided further that where any scheduled payment to a specific Participant in a Participant's taxable year is delayed all scheduled payments to that Participant that could be delayed in accordance with this paragraph are also delayed. Where the payment is delayed to a date on or after the Participant's Separation from Service, the payment will be considered a payment upon a Separation from Service and, in the case of a specified employee, the date that is six months after a Participant's Separation from Service is substituted for any reference to a Participant's Separation from Service in the first sentence of this paragraph. No election may be provided to the Participant with respect to the timing of the payment under this paragraph.

(c) **Violation of Applicable Law.** To the extent provided in the Adoption Agreement, a payment may be delayed where the Company reasonably anticipates that the making of the payment will violate Federal securities laws or other applicable law. If this Subsection applies, payment shall be made at the earliest date at which the Company reasonably anticipates that the making of the payment will not cause such violation. For purposes of this Subsection, the making of a payment that would cause inclusion in gross income or the application of any penalty provision or other provision of the Internal Revenue Code is not treated as a violation of applicable law.

(d) **Certain delayed payments pursuant to a Change in Control event.** Payment may be delayed under the circumstances described in Treas. Reg. §1.409A-3(i)(5)(iv).

(e) **Other Events and Conditions.** To the extent provided in the Adoption Agreement, a payment shall be delayed upon any other events and conditions as the Commissioner prescribes in generally applicable guidance published in the Internal Revenue Bulletin.

Section 6.06 WITHHOLDING

To the extent required by applicable law, income and other taxes shall be withheld from each payment, and payments shall be made and reported to the appropriate governmental agency or agencies.

Section 6.07 REFUNDS/INDEMNIFICATION

If the Plan Administrator determines that any person has directly or indirectly received excess payments under the Plan, the Plan Administrator shall notify such person and such person shall repay such excess amount as soon as possible, but in no event later than 30 days after the date of notification. A person receiving excess payments shall indemnify and reimburse the Company for any liability the Company may incur for making such payments. If a person fails to timely repay an excess amount and/or make sufficient indemnification, the Plan Administrator may: (i) to the extent permitted by applicable law, offset the person's salary or wages, and/or (ii) offset other benefits payable hereunder.

Section 6.08 CLAIMS PROCEDURE

(a) **Timing of Notice of Denied Claim.** The Plan Administrator shall notify a person claiming benefits hereunder ("Claimant") of any adverse benefit determination within a reasonable period of time, but not later than 90 days after receipt of the claim. This period may be extended one time by the Plan for up to 90 days, provided that the Plan Administrator both determines that such an extension is necessary due to matters beyond the control of the Plan and notifies the Claimant, prior to the expiration of the initial 90-day period, of the circumstances requiring the extension of time and the date by which the Plan expects to render a decision.

(b) **Content of Notice of Denied Claim.** If a claim is wholly or partially denied, the Plan Administrator shall provide the Claimant with a written notice identifying (1) the reason or reasons for such denial, (2) the pertinent Plan provisions on which the denial is based, (3) any material or information needed to grant the claim and an explanation of why the additional information is necessary, and (4) an explanation of the steps that the Claimant must take if he wishes to appeal the denial including a statement that the Claimant may bring a civil action under ERISA.

(c) **Appeal of Denied Claim.** If a Claimant wishes to appeal the denial of a claim, he shall file a written appeal with the Plan Administrator on or before the 60th day after he receives the Plan Administrator's written notice that the claim has been wholly or partially denied. The written appeal shall identify both the grounds and specific Plan provisions upon which the appeal is based. The Claimant shall be provided, upon request and free of charge, documents and other information relevant to his claim. A written appeal may also include any comments, statements or documents that the Claimant may desire to provide. The Plan Administrator shall consider the merits of the Claimant's written presentations, the merits of any facts or evidence in support of the denial of benefits, and such other facts and circumstances as the Plan Administrator may deem relevant. The Claimant shall lose the right to appeal if the appeal is not timely made. The Plan Administrator shall ordinarily rule on an appeal within 60 days. However, if special circumstances require an extension and the Plan Administrator furnishes the Claimant with a written extension notice during the initial period, the Plan Administrator may take up to 120 days to rule on an appeal.

(d) **Denial of Appeal.** If an appeal is wholly or partially denied, the Plan Administrator shall provide the Claimant with a notice identifying (1) the reason or reasons for such denial, (2) the pertinent Plan provisions on which the denial is based, (3) a statement that the Claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the Claimant's claim for benefits, and (4) a statement describing the Claimant's right to bring an action under section 502(a) of ERISA. The determination rendered by the Plan Administrator shall be binding upon all parties.

Section 6.09 MINOR OR LEGALLY INCOMPETENT PAYEE

If a distribution is to be made to an individual who is either a minor or legally incompetent, the Plan Administrator may direct that such distribution be paid to the legal guardian. If a distribution is to be made to a minor and there is no legal guardian, payment may be made to a parent of such minor or a responsible adult with whom the minor maintains his residence, or to the custodian for such minor under the Uniform Transfer to Minors Act, if such is permitted by the laws of the state in which such minor resides. Such payment shall fully discharge the Plan Administrator and the Company from further liability on account thereof.

Section 6.10 MISSING PAYEE

If the Plan Administrator is unable to make payment to any Participant or other person to whom a payment is due under the Plan because it cannot ascertain the identity or whereabouts of such Participants or other person after reasonable efforts have been made to identify or locate such person, such payment and all subsequent payments otherwise due to such Participant or other person shall be forfeited one year after the date any such payment first became due.

ARTICLE 7
PLAN ADMINISTRATION

Section 7.01 PLAN ADMINISTRATOR

(a) Designation. The Plan Administrator shall be specified in the Adoption Agreement. In the absence of a designation in the Adoption Agreement, the Plan Sponsor shall be the Plan Administrator. If a Committee is designated as the Plan Administrator, the Committee shall consist of one or more individuals who may be Employees appointed by the Plan Sponsor and the Committee shall elect a chairman and may adopt such rules and procedures as it deems desirable. The Committee may also take action with or without formal meetings and may authorize one or more individuals, who may or may not be members of the Committee, to execute documents in its behalf.

(b) Authority and Responsibility of the Plan Administrator. The Plan Administrator shall be the Plan "administrator" as such term is defined in section 3(16) of ERISA, and as such shall have total and complete discretionary power and authority:

(i) to make factual determinations, to construe and interpret the provisions of the Plan, to correct defects and resolve ambiguities and inconsistencies therein and to supply omissions thereto. Any construction, interpretation or application of the Plan by the Plan Administrator shall be final, conclusive and binding;

(ii) to determine the amount, form or timing of benefits payable hereunder and the recipient thereof and to resolve any claim for benefits in accordance with Article 6;

(iii) to determine the amount and manner of any allocations and/or benefit accruals hereunder;

(iv) to maintain and preserve records relating to Participants, former Participants, and their Beneficiaries and alternate payees;

(v) to prepare and furnish to Participants, Beneficiaries and alternate payees all information and notices required under applicable law or the provisions of this Plan;

(vi) to prepare and file or publish with the Secretary of Labor, the Secretary of the Treasury, their delegates and all other appropriate government officials all reports and other information required under law to be so filed or published;

(vii) to provide directions to the trustee of a grantor trust established in conjunction with this Plan (if any) with respect to timing and methods of benefit payment, valuations at dates other than regular valuation dates and on all other matters where called for in the Plan or requested by the trustee;

(viii) to hire such professional assistants and consultants as it, in its sole discretion, deems necessary or advisable; and shall be entitled, to the extent permitted by law, to rely conclusively on all tables, valuations, certificates, opinions and reports which are furnished by same;

(ix) to determine all questions of the eligibility of Employees and of the status of rights of Participants, Beneficiaries and alternate payees;

(x) to adjust Accounts in order to correct errors or omissions;

(xi) to determine the status and effect of any domestic relations order and to take such action as the Plan Administrator deems appropriate in light of such domestic relations order;

(xii) to retain records on elections and waivers by Participants, their spouses and their Beneficiaries and alternate payees;

(c) Procedures. The Plan Administrator may adopt such rules and procedures as it deems necessary, desirable, or appropriate for the administration of the Plan, including but not limited to, procedures relating to requirements for advance notice of any election or modification of an election, minimum and maximum amount of contributions, the types of compensation that may be deferred, the minimum amounts or percentages that may be allocated among investment options, and the timing and frequency of changes to investment elections. When making a determination or calculation, the Plan Administrator shall be entitled to rely upon information furnished to it. The Plan Administrator's decisions shall be binding and conclusive as to all parties.

(d) Allocation of Duties and Responsibilities. The Plan Administrator may designate other persons to carry out any of his duties and responsibilities under the Plan.

(e) Compensation. The Plan Administrator shall serve without compensation for its services.

(f) Expenses. All direct expenses of the Plan, the Plan Administrator and any other person in furtherance of their duties hereunder shall be paid or reimbursed by the Company.

(g) Allocation of Fiduciary Duties. A Plan fiduciary shall have only those specific powers, duties, responsibilities and obligations as are explicitly given him under the Plan. It is intended that each fiduciary shall not be responsible for any act or failure to act of another fiduciary. A fiduciary may serve in more than one fiduciary capacity with respect to the Plan.

Section 7.02 INDEMNIFICATION

Unless otherwise provided in the Adoption Agreement, the Company shall indemnify and hold harmless any person serving as the Plan Administrator (and its delegate) from all claims, liabilities, losses, damages and expenses, including reasonable attorneys' fees and expenses, incurred by such persons in connection with their duties hereunder to the extent not covered by insurance, except when the same is due to such person's own gross negligence, willful misconduct, lack of good faith, or breach of its fiduciary duties under this Plan or ERISA.

Section 7.03 COMMUNICATIONS

All enrollments, elections, designations, applications and other communications by or from an employee, Participant, Beneficiary, or legal representative of any such person regarding that person's rights under the Plan shall be made in the form and manner established by the Plan Administrator. Neither the Plan Administrator nor the Company shall be required to give effect to any such communication that is not made on the prescribed form and in the prescribed manner and that does not contain all information called for on the prescribed form.

Section 7.04 UNFUNDED PLAN

The Plan is intended to constitute an unfunded plan. Any amount due and payable pursuant to the terms of the Plan shall be paid out of the general assets of the Company except to the extent that it is paid from a grantor trust. All assets of the Plan shall be subject to the claims of creditors of the Company. Participants and Beneficiaries shall not have an interest in any specific asset of the Company or in any specific asset held in a grantor trust or a Company account established as a result of participation in this Plan. Except as may be provided under the terms of a grantor trust, the Company shall have no obligation to set aside any funds for the purpose of making any benefit payments under this Plan. Nothing contained herein shall give any Participant any rights that are greater than those of an unsecured creditor of the Company with respect to any unpaid amount as to which the Participant has a vested interest. No action taken pursuant to the terms of this Plan shall be construed to create a funded arrangement, a plan asset, or fiduciary relationship among the Company, its designee and a Participant or Beneficiary.

ARTICLE 8
AMENDMENT AND TERMINATION

Section 8.01 AMENDMENT

The provisions of the Plan may be amended in writing at any time and from time to time by the Plan Sponsor. Notwithstanding the foregoing, an amendment shall have no effect to the extent that it impermissibly accelerates a benefit payment or otherwise does not comply with Code section 409A and the regulations promulgated thereunder. No amendment or termination specified in this Article 8 shall result in a reduction or forfeiture of a Participant's Account unless such reduction or forfeiture is expressly provided under the terms of the Plan.

Section 8.02 TERMINATION

(a) It is the intention of the Plan Sponsor that this Plan will be permanent. However, the Plan Sponsor reserves the right to terminate the Plan at any time for any reason.

(b) Each entity constituting the Company reserves the right to terminate its participation in this Plan. Each such entity constituting the Company shall be deemed to terminate its participation in the Plan if: (i) it is a party to a merger in which it is not the surviving entity and the surviving entity is not an affiliate of another entity constituting the Company, or (ii) it sells all or substantially all of its assets to an entity that is not an affiliate of another entity constituting the Company.

(c) Distribution on Plan Termination and Liquidation. Except as otherwise provided in Sections 8.02, (c)(1), (2), (3) or (4) below, the termination of the Plan shall not affect the distribution provisions in effect for the Accounts maintained under the Plan, and all amounts deferred prior to the date of any such Plan termination shall continue to become due and payable in accordance with the distribution provisions in effect immediately prior to such Plan termination. Payment of the Account balances may be accelerated upon Plan termination and liquidation in the following circumstances:

(1) Dissolution/Bankruptcy. The Plan is terminated and liquidated within 12 months of a corporate dissolution taxed under Code section 331, or with the approval of a bankruptcy court pursuant to 11 U.S.C. 503(b)(1)(A), provided that the amounts deferred under the Plan are included in the Participants' gross incomes in the latest of:

- (A) The calendar year in which the plan termination and liquidation occurs;
- (B) The calendar year in which the amount is no longer subject to a substantial risk of forfeiture; or
- (C) The first calendar year in which the payment is administratively practicable.

(2) Change in Control. The Plan is terminated and liquidated pursuant to irrevocable action taken by the Company within the 30 days preceding or the 12 months following a change in control event (as defined in Treas. Reg. section 1.409A-3(i)(5)). For purposes of this Subsection (2), an arrangement will be treated as terminated only if all substantially similar agreements, methods, programs, and other arrangements sponsored by the Company immediately after the time of the change in control event with respect to which deferrals of compensation are treated as having been deferred under a single plan under §1.409A-1(c)(2) are terminated and liquidated with respect to each participant that experienced the change in control event, so that under the terms of the termination and liquidation all such participants are required to receive all amounts of compensation deferred under the terminated agreements, methods, programs, and other arrangements within 12 months of the date the Company irrevocably takes all necessary action to terminate and liquidate the agreements, methods, programs, and other arrangements.

(3) At Any Time. The Plan is terminated and liquidated at any time provided that:

(A) The termination and liquidation does not occur proximate to a downturn in the financial health of the Company.

(B) All agreements, methods, programs, and other arrangements sponsored by the Company that would be aggregated with any terminated and liquidated agreements, methods, programs, and other arrangement under Treas. Reg. section 1.409A-1(c) if the same Participant had deferrals of compensation under all of the agreements, methods, programs, and other arrangements that are terminated and liquidated;

(C) No payments are made other than payments that would be payable under the terms of the plans if the termination and liquidation had not occurred are made within 12 months of the termination and liquidation of the plans;

(D) All payments are made within 24 months of the date the Company takes all necessary action to irrevocably terminate and liquidate the plan; and

(E) The Company does not adopt a new plan that would be aggregated with any terminated and liquidated plan under Treas. Reg. 1.409A-1(c) if the same Company participated in both plans, at any time within three years following the date the Company takes all necessary action to irrevocably terminate and liquidate the plan.

(4) Other Events. Such other events and conditions as the Commissioner may prescribe in generally applicable guidance published in the Internal Revenue Bulletin.

ARTICLE 9
MISCELLANEOUS

Section 9.01 NONALIENATION OF BENEFITS

No Participant or Beneficiary shall have the right to alienate, anticipate, commute, pledge, encumber or assign any of the benefits or payments which he may expect to receive, contingently or otherwise, under the Plan.

Section 9.02 NO RIGHT TO EMPLOYMENT

Nothing contained in this Plan shall be construed as a contract of employment between the Company and the Participant, or as a right of any Employee to continue in the employment of the Company, or as a limitation of the right of the Company to discharge any of its Employees, with or without cause.

Section 9.03 GOVERNING LAW

The Plan shall be construed in accordance with and governed by the laws of the state or commonwealth of organization of the Plan Sponsor to the extent not preempted by Federal law.

Section 9.04 TAX EFFECT

The Company does not represent or guarantee that any particular federal, state or local income, payroll, personal property or other tax consequence will result from participation in this Plan. A Participant should consult with professional tax advisors to determine the tax consequences of his or her participation. Furthermore, the Company does not represent or guarantee investment returns with respect to any predetermined investment options and shall not be required to restore any loss which may result from such investment or lack of investment.

Section 9.05 ASSIGNMENT

The Company may transfer, assign or encumber any of its rights, privileges, duties or obligations under this Agreement.

Section 9.06 SEVERABILITY OF PROVISIONS

If any provision of the Plan shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions hereof, and the Plan shall be construed and enforced as if such provisions had not been included.

Section 9.07 HEADINGS AND CAPTIONS

The headings and captions herein are provided for reference and convenience only, shall not be considered part of the Plan, and shall not be employed in the construction of the Plan.

Section 9.08 GENDER AND NUMBER

Except where otherwise clearly indicated by context, the masculine and the neuter shall include the feminine and the neuter, the singular shall include the plural, and vice-versa.