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401(a) Special Pay

ACCUMULATED LEAVE ALTERNATIVE  
MASTER DEFINED CONTRIBUTION PLAN

("Prefunded" Alternative)

**for**

**Linn-Mar Community School District**

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## ACCUMULATED LEAVE ALTERNATIVE MASTER DEFINED CONTRIBUTION PLAN

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**ACCUMULATED LEAVE ALTERNATIVE  
MASTER DEFINED CONTRIBUTION PLAN**

The Employer hereby establishes and adopts this Accumulated Leave Alternative Master Defined Contribution Plan pursuant to Code Section 401(a) for the purpose of providing benefits for eligible Employees of the Employer and their beneficiaries effective as of the date indicated in the Adoption Agreement. It is intended that this Plan shall be a governmental plan under Section 3(32) of ERISA and shall, therefore, be exempt from Title I of ERISA. Furthermore, it is intended that this Plan shall be a governmental plan under IRC Section 414(d), intending to qualify under IRC Section 401(a) for use by state and local governments.

WITNESSETH:

WHEREAS, the Employer desires to provide for the retirement of certain Employees employed by the Employer by establishing a defined contribution plan for those Employees who now or may hereafter qualify for participation therein;

WHEREAS, the Employer acknowledges that neither an IRS opinion letter nor a determination letter issued to an adopting employer with respect to the Plan is a ruling by the Internal Revenue Service that Participant contributions that are picked-up by the Employer are not includable in the Participant's gross income for federal income tax purposes, and that the Employer may seek such a ruling under Revenue Procedure 2010- 4 or successor revenue procedures [NOTE to Employer: picked-up contributions are excludable from the Participant's gross income under section 414(h)(2) of the Internal Revenue Code of 1986 only if they meet the requirements of Rev. Ruls. 81-35, 81-36, 87-10, and 2006-43. Those requirements include (1) that the Employer must specify that the contributions, although designated as employee contributions are being paid by the Employer in lieu of contributions by the employees; (2) the employee must not have the election (within the meaning of Treasury Regulation §1.401(k)-(a)(3) of receiving the contributed amounts directly instead of having them paid by the Employer to the plan; and (3) the required specification of designated employee contributions must be completed before the period to which such contribution related.];

WHEREAS, Rev. Ruls. 2009-31 and 2009-32 provide additional guidance on the contribution of unused paid time off to qualified plans; and the Employer intends to make such contributions in accordance with such rulings as applicable; and,

WHEREAS, the Employer is authorized to adopt the Plan.

NOW, THEREFORE, in consideration of the premises, it is agreed as follows:

## ARTICLE I - Definitions

1.1 Account or Accounts shall mean a Participant's Employer Contribution Account, a Participant's Employee Mandatory Contribution Account, and/or such other accounts as may be established by the Plan Administrator.

1.2 Accumulated Leave shall mean any unpaid sick leave and/or vacation leave, as elected in the Adoption Agreement.

1.3 Administrator shall mean the Plan Administrator.

1.4 Adoption Agreement shall mean the agreement entered into by the Employer adopting the Master Defined Contribution Plan. The terms of the Adoption Agreement are incorporated by reference herein and shall be considered a part of this Master Defined Contribution Plan as if specifically set forth herein.

1.5 Age (for purposes of allocating the Employer Contribution Unrelated to Accumulated Leave) shall mean the Participant's actual age at the end of the Plan Year as of which the allocation is made.

1.6 Anniversary Date shall mean the last day of each Plan Year.

1.7 Annual Additions shall mean the sum of the following amounts credited to a Participant's account for the Limitation Year:

- (a) employer contributions;
- (b) employee contributions;
- (c) forfeitures;
- (d) allocations under a simplified employee pension; and
- (e) amounts allocated after March 31, 1984, to an individual medical account that is part of a pension or annuity plan maintained by the employer, and amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after such date, that are attributable to post-retirement medical benefits allocated to the separate account of a key employee (as defined in Section 419A(d)(3) of the Internal Revenue Code) under a welfare benefit fund.

1.8 Break in Service shall mean a Plan Year during which an individual has not completed more than 500 Hours of Service.

Following the occurrence of a Break in Service, an individual shall retain his prior Years of Participation until such time as he incurs five consecutive one-year Breaks in Service. If an individual does not have five consecutive one-year Breaks in Service, both pre-break and post-break service will be deemed to be Years of Participation for vesting purposes and for purposes of determining the Employer Contribution Unrelated to Accumulated Leave.



1.9 Code shall mean the Internal Revenue Code of 1986, as amended, or any successor statute. Reference to a specific section of the Code shall include a reference to any successor provision.

1.10 Compensation shall mean

(a) the regular salaries and wages, bonuses, overtime pay, holiday time, accrued vacation and sick pay paid by the Employer during the Plan Year reportable as W-2 wages for Federal income tax withholding purposes, Employee contributions designated as employer contributions under Section 414(h) of the Code and elective contributions made during the Plan Year on behalf of a Participant to a plan described in Section 125 (subject to Section 1.10(c)) or 457 of the Code (other than Employee Contributions separately discussed herein), but shall not include any other type of cash or non-cash remuneration, including, but not limited to disability payments, credits or benefits under this Plan, any amount contributed to any pension, employee welfare, life insurance or health insurance plan or arrangement, or any other fringe benefits, welfare benefits, severance pay or deferred compensation.

(b) For any plan year beginning after December 31, 2001, the annual compensation of each participant taken into account in determining allocations shall not exceed \$280,000, as applicable for 2019, and as adjusted for subsequent cost-of-living increases in accordance with Section 401(a)(17)(B) of the Code. If a Plan Year consists of fewer than 12 months, the Compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the Plan Year, and the denominator of which is 12.

For purposes of the definition of Compensation under paragraph 1.10(a) above, amounts under Section 125 of the Code include any amounts not available to a Participant in cash in lieu of group health coverage because the Participant is unable to certify that he or she has other health coverage. An amount will be treated as an amount under Section 125 of the Code only if the Employer does not request or collect information regarding the Participant's other health coverage as part of the enrollment process for the health plan.

1.11 Effective Date of this Plan shall be the Effective Date as set forth in the Adoption Agreement.

1.12 Employee shall mean an individual actively employed by the Employer.

1.13 Employee Mandatory Contributions of Accumulated Leave shall mean contributions to the Plan made pursuant to Section 5.1(b) with respect to accumulated leave for which the Employee has no right to request a cash payment.

1.14 Employee Mandatory Contributions of Accumulated Leave Account shall mean the account to which contributions made pursuant to Section 5.1(b) shall be credited.

1.15 Employer shall mean the Employer identified in the Adoption Agreement. The employer must be a State or political subdivision thereof, or an agency or instrumentality of a State or political subdivision thereof, within the meaning of Code section 414(d).

1.16 Employer Contributions Related to Accumulated Leave shall mean contributions to the Plan made pursuant to Section 5.1(a)(1) with respect to accumulated leave for which the Employee has no right to request a cash payment.

1.17 Employer Contributions Unrelated to Accumulated Leave shall mean Employer discretionary contributions to the Plan made pursuant to Section 5.1(a)(2).

1.18 Employer Contributions of Accumulated Leave Account shall mean the account to which contributions made pursuant to Section 5.1(a)(i) shall be credited.

1.19 Employer Contributions Unrelated to Accumulated Leave Account shall mean the account to which contributions made pursuant to Section 5.1(a)(2) shall be credited.

1.20 Group Annuity Contract shall mean an arrangement entered into by the Employer with the Insurer under which the assets of this Plan are held. The Group Annuity Contract shall be treated as a qualified trust pursuant to Section 401(f) of the Code.

1.21 Hour of Service shall mean:

(a) Each hour for which an Employee is paid, or entitled to payment, for the performance of duties. These hours shall be credited to the Employee for the computation period in which the duties are performed;

(b) Each hour for which an Employee is paid, or entitled to payment, on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence. However, no more than 501 Hours of Service shall be credited under this subparagraph (b) to an Employee for any single continuous period (whether or not such period occurs in a single computation period). An hour for which an Employee is directly or indirectly paid, or entitled to payment, on account of a period during which no duties are performed shall not be credited to the Employee if such payment is made by or due under a plan maintained solely for the purpose of complying with applicable workers' compensation, unemployment or disability insurance laws. Hours of Service shall not be credited for a payment that solely reimburses an Employee for medical or medically related expenses incurred. For purposes of this subparagraph, a payment shall be deemed to be made or due regardless of whether such payment is made or due directly, or indirectly through, among others, a trust fund or insurer to which contributions are made or premiums are paid, regardless of whether contributions made or due to the trust fund, insurer or other entity are for the benefit of particular Employees or are on behalf of a group of Employees in the aggregate; and

(c) Each hour for which back pay, irrespective of mitigation of damages, is either agreed to or awarded. No more than 501 Hours of Service shall be credited

for payments of back pay, to the extent that such back pay is agreed to or awarded for a period of time during which an Employee did not or would not have performed duties.

1.22 Insurer shall mean the insurance company with which the Employer has entered into a Group Annuity Contract. Such insurance company shall be qualified to do business in the state in which the Employer is incorporated or organized.

1.23 Limitation Year shall mean the period specified by the Employer in the Adoption Agreement.

1.24 Master Defined Contribution Plan shall mean the Accumulated Leave Alternative Master Defined Contribution Plan.

1.25 Normal Retirement Age shall mean the age specified in the Adoption Agreement.

1.26 Participant shall mean any eligible Employee of the Employer who has become a Participant under the Plan. Participant shall include any former employee of the Employer who became a Participant under the Plan and who still has a balance in an Account under the Plan.

1.27 Plan shall mean this plan, intended to be a profit sharing plan, as described in the Adoption Agreement as herein set forth, and as may be amended from time to time.

1.28 Plan Administrator shall mean the Employer or the person or persons appointed by the Employer to administer the Plan.

1.29 Plan Year shall mean the 12-consecutive-month period set forth in the Adoption Agreement.

1.30 Provider shall mean MidAmerica Administrative and Retirement Solutions, LLC, the provider of this pre-approved plan.

1.31 Section 415 Compensation shall mean

(a) an employee's wages, salaries, fees for professional services, and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the employer maintaining the plan to the extent that the amounts are includable in gross income (including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements or other expense allowances under a non-accountable plan) (as described in the Treasury Regulation § 1.62-2(c)). Section 415 Compensation shall not refer to contributions made by the employer to a plan of deferred compensation to the extent that, before the application of the Section 415 limitations to that plan, the contributions are not includable in the gross income of the employee for the taxable year in which



contributed. Additionally, any distributions from a plan of deferred compensation are not considered as compensation, regardless of whether such amounts are includable in the gross income of the employee when distributed. This definition shall include any elective deferral, and any amount which is contributed or deferred by the employer at the election of the employee and which is not includable in the gross income of the employee by reason of Section 125, 132(f)(4), or 457. This definition includes transportation fringes under Section 132(f)(4) of the Code, even if such amounts are not includable in the gross income of the employee. Contributions to a Qualified Governmental Excess Benefit Arrangement are to be included in Section 415 Compensation. Section 415 Compensation shall also include differential wage payments, within the meaning of Section 3401(h) of the Code.

(b) Section 415 Compensation shall also include regular Compensation for services that, absent the severance from employment, would have been paid to the former Employee if he had continued in employment with the Employer, in accordance with Treas. Reg. Section 1.415(c)-2(e)(3)(ii), provided the payment is made within the later of (i) 2½ months after the Participant's severance from employment or (ii) the end of the Limitation Year that includes the date of the severance from employment. No other amounts paid after the date of a Participant's severance from employment shall be included.

1.32 Spouse shall mean the person to whom the Participant is legally married under the laws of the state or country in which the marriage was celebrated, without regard to whether such marriage is recognized under the laws of the state or country in which the Participant resides.

1.33 Valuation Date shall mean Anniversary Date and such other date(s) each year as may be selected by the Plan Administrator.

1.34 Valuation Period shall mean the period beginning with the first day after a Valuation Date and ending with the next Valuation Date; provided, however, that the first Valuation Period shall begin on the Effective Date of the Plan.

1.35 Year of Participation shall mean a Plan Year during which a Participant completes at least 1,000 Hours of Service.

## **ARTICLE II - Establishment of the Plan**

2.1 Exclusive Benefit. This Plan is created for the sole purpose of providing benefits to the Participants. Except as otherwise permitted by law, in no event shall any part of the principal or income of the Plan be paid to or reinvested in the Employer or be used for or diverted to any purpose whatsoever other than for the exclusive benefit of the Participants and their beneficiaries.

2.2 Mistake of Fact. Notwithstanding the foregoing provisions of Section 2.1, any contribution made by the Employer to this Plan by a mistake of fact may be returned to the Employer within one year after the payment of the contribution.

2.3 Participants' Rights. The establishment of this Plan shall not be considered as giving any Employee, or any other person, any legal or equitable right against the Employer or the Insurer, or the principal or the income of the Plan, except to the extent otherwise provided by law. The establishment of this Plan shall not be considered as giving any Employee, or any other person, the right to be retained in the employ of the Employer.

2.4 Qualified Plan. This Plan is intended to qualify as a governmental plan as defined in Section 414(d) of the Code and is intended to be qualified under Section 401(a) of the Code. The provisions of this Plan are to be interpreted accordingly.

### **ARTICLE III - Plan Administrator**

#### **3.1 Administration of the Plan.**

(a) The Plan Administrator shall control and manage the operation and administration of the Plan.

(b) (1) The Employer may appoint a committee to assist in the administration of the Plan. All usual and reasonable expenses of the committee may be paid in whole or part by the Employer. Any members of the committee who are employees of the Employer shall not receive compensation with respect to their services for the committee.

(2) The committee may elect one of its members as chairman, appoint a secretary, who may or may not be a committee member, and advise the Insurer of its actions in writing. The secretary shall keep a record of all meetings and forward necessary communications to the Employer or the Insurer. The committee may adopt such by-laws and regulations as it deems desirable for the conduct of its affairs. All decisions of the committee shall be made by a vote of the majority, including actions taken in writing without a meeting.

(3) The committee and the individual members thereof shall be indemnified by the Employer against any and all liabilities arising by reason of any act or failure to act made in good faith pursuant to the provisions of the Plan, including expenses reasonably incurred in the defense of any claim relating thereto.

#### **3.2 Powers and Duties.**

(a) The Plan Administrator shall have complete control over the administration of the Plan herein embodied, with all powers necessary to enable it to carry out its duties in that respect. Not in limitation, but in amplification of the foregoing, the Plan Administrator shall have the power and discretion to interpret or construe this Plan and to determine all questions that may arise as to the status and rights of the Participants and others hereunder.

(b) The Plan Administrator may promulgate such policies and make such rules and regulations for the proper administration of the Plan as it deems necessary.

(c) The Plan Administrator shall discharge its duties with respect to the Plan in accordance with such fiduciary requirements as may be imposed by the laws of the State, political subdivision of the State, or agency or instrumentality of the State or political subdivision of the State applicable to the Plan.

3.3 Direction of Insurer. It shall be the duty of the Plan Administrator to direct the Insurer with regard to the distribution of benefits to the Participants and others hereunder.

3.4 Conflict in Terms. In the event of any conflict between the terms of this Plan or the Group Annuity Contract described in Section 9.1 and any explanatory booklet or other description, this Plan and/or such Group Annuity Contract shall control. In the event of any conflict between the terms of this Plan and the terms of the Group Annuity Contract described in Section 9.1, the terms of this Plan will govern.

3.5 Final Authority. Except to the extent otherwise required by law, the decision of the Plan Administrator in matters within its jurisdiction shall be final, binding and conclusive upon each Employee and beneficiary and every other interested or concerned person or party.

3.6 Appointment of Advisors and Delegation of Duties.

(a) The Plan Administrator may appoint such accountants, counsel, specialists and other persons that it deems necessary and desirable in connection with the administration of this Plan.

(b) The Plan Administrator may designate one or more of its employees to perform the duties required of the Plan Administrator hereunder.



#### **ARTICLE IV - Eligibility and Participation**

4.1 Eligibility and Participation. Any Employee who meets the eligibility requirements set forth in the Adoption Agreement shall be eligible to become a Participant in the Plan on the date of his employment (unless otherwise provided in the Adoption Agreement). Any Employee who does not meet the eligibility requirements set forth in the Adoption Agreement on the date of his employment shall be eligible to become a Participant in the Plan immediately upon meeting such eligibility requirements. Any age requirement for eligibility selected in the Adoption Agreement must be less than the Normal Retirement Age under this Plan or any other qualified plan of the Employer in which Participants in this Plan participate.

4.2 Former Employees. An Employee who ceases to be a Participant, terminates employment and is reemployed by the Employer shall be eligible again to become a Participant on the date of his reemployment so long as he meets the eligibility requirements as set forth in the Adoption Agreement.

4.3 Veterans' Reemployment Rights. Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Code. An individual in military service receiving a differential wage payment within the meaning of Code section 414(u)(12) shall be treated as an employee of the employer making the payment and the differential wage payment shall be treated as compensation for purposes of this Plan.



## **ARTICLE V - Contributions to the Plan**

5.1 Method of Contributions. Contributions to the Plan shall be made in the manner selected in the Adoption Agreement as Employer Contributions or Employee Mandatory Contributions of Accumulated Leave in accordance with (a) or (b) below.

(a) Employer Contributions. If Employer Contributions are selected in the Adoption Agreement, the following contributions shall be made:

(1) Employer Contributions of Accumulated Leave. The Employer shall contribute to the Plan an amount equal to a percentage of the value of the Participant's Accumulated Leave, as determined by the Employer, on an annual basis and as described in the Adoption Agreement. The value of the Participant's Accumulated Leave shall be determined by multiplying the Participant's current daily rate of pay by the amount of the Participant's accrued unpaid Accumulated Leave.

(2) Employer Contributions Unrelated to Accumulated Leave. If elected in the Adoption Agreement, any Employer Contributions Unrelated to Accumulated Leave made to the Plan shall be discretionary and for the exclusive benefit of Employees or their beneficiaries and shall be substantial and recurring in accordance with Treasury Regulations sections 1.401-1(a)(3) and 1.401-1(b)(2).

(b) Employee Mandatory Contributions of Accumulated Leave.

(1) If the Employer has selected the option of Employee Mandatory Contributions of Accumulated Leave in the Adoption Agreement, the Employee shall contribute to the Plan on an annual basis, an amount equal to a percentage of the value of the Participant's Accumulated Leave as determined by the Employer and as described in the Adoption Agreement. The value of the Participant's Accumulated Leave shall be determined by multiplying the Participant's current daily rate of pay by the amount of the Participant's accrued unpaid Accumulated Leave.

(2) If elected in the Adoption Agreement, any Employer Contributions Unrelated to Accumulated Leave made to the Plan will meet the requirements described in Section 5.1(a)(2) above.

(3) The contributions made by each Employee under the Plan shall be designated as Employer contributions pursuant to Section 414(h) of the Code. Such designation is contingent upon the contributions being excluded from the Employees' gross income for federal Income tax purposes. For all other purposes of the Plan, such contributions shall be considered mandatory employee contributions.

5.2 Allocation of Employer Contribution Unrelated to Accumulated Leave. The Employer Contributions Unrelated to Accumulated Leave pursuant to section 5.1(a)(2)

shall be allocated to the Participants' Employer Contribution Unrelated to Accumulated Leave Accounts as of the last day of each Plan Year in accordance with the option selected in the Adoption Agreement

5.3 Form and Timing of Contributions. Payments of contributions due shall be made in cash. Such contributions may be made by the Employer at any time, subject to the requirements of the applicable laws of the State, political subdivision, or agency or instrumentality thereof which is the Employer.

5.4 Profits. Contributions need not be based on profits, either current or accumulated.

5.5 Leave Must be Nonelective. For the value of any Accumulated Leave to be contributed to the Plan, such Accumulated Leave must not have been eligible to be paid to the Employee at the Employee's election prior to such contribution, other than taken as actual leave.

## **ARTICLE VI - Participants' Accounts and Allocation of Contributions**

6.1 Investments of Accounts. Pursuant to Article IX, the assets of the Plan shall be invested in a Group Annuity Contract, as determined by the Employer. If any or all Plan investment accounts are pooled, each Participant's Account will have an undivided interest in the assets comprising the pooled account.

6.2 Establishment of Accounts. The Plan Administrator shall establish and maintain with respect to each Participant an account, designated as (i) an Employer Contributions Related to Accumulated Leave Account, (ii) an Employer Contributions Unrelated to Accumulated Leave Account or (iii) an Employee Mandatory Contributions of Accumulated Leave Account, based upon the type of contributions being used to fund this Plan as indicated in the Adoption Agreement, that shall reflect the Participant's interest in the Group Annuity Contract with respect to contributions made by the Employer. The Plan Administrator may establish such additional accounts as are necessary to reflect a Participant's interest in the Group Annuity Contract.

6.3 Interests of Participants. The interest of a Participant in the Group Annuity Contract shall be the balance based upon the value of the Employer Contribution Account or Mandatory Employee Contribution Account at the time of retirement or other separation from service after making the adjustments required in Section 6.4.

6.4 Adjustments to Accounts. Subject to the provisions of Section 6.5, a Participant's Account shall be adjusted from time to time as follows:

(a) As of each Valuation Date, each of a Participant's Accounts shall be credited or charged, as the case may be, with a share of the earnings of the Group Annuity Contract for the Valuation Period ending with such current Valuation Date. Earnings shall be allocated to each Group Annuity Contract for the respective Valuation Period under a method which is consistently followed and uniformly applied.

(1) As of each Valuation Date, the portion of the Participant's Accounts shall be credited or charged, as the case may be, with the earnings attributable to the Participant's interest in the Group Annuity Contract for the Valuation Period ending with such current Valuation Date.

(2) As of each Valuation Date that is the last day of the Plan Year, or at such other times as determined by the Employer, the Employer Contribution Account of a Participant shall be credited with his share of the contribution made by the Employer with respect to the Plan Year ending with such Valuation Date. A Participant's share of the amount of the contribution for the Plan Year shall be determined pursuant to the provisions of Article V.

(b) As of each Valuation Date, each Account of a Participant shall be charged with the amount of any distribution made to the Participant or his beneficiary from such Account during the Valuation Period ending with such Valuation Date.



(c) For purposes of all computations required by this Article VI, the cash method of accounting shall be used, and the Group Annuity Contract and the assets thereof shall be valued at their fair market value as of each Valuation Date.

(d) The Plan Administrator may adopt such additional accounting procedures as are necessary to accurately reflect each Participant's interest in the Group Annuity Contract, which procedures shall be effective upon approval by the Employer. All such procedures shall be applied in a consistent, nondiscriminatory manner.

#### 6.5 Limitation on Allocation of Contributions.

(a) For Limitation Years beginning on or after January 1, 2018, the annual addition that may be contributed or allocated to a participant's account under the Plan for any Limitation Year shall not exceed the lesser of:

(1) \$40,000, as adjusted for increases in the cost-of-living under Section 415(d) of the Code, or

(2) 100 percent of the Participant's Section 415 Compensation for the limitation year.

The compensation limit referred to in (2) above shall not apply to any contribution for medical benefits after separation from service (within the meaning of § 401(h) or Section 419A(f)(2) of the Code) which is otherwise treated as an annual addition.

(b) Effective for Limitation Years beginning prior to July 1, 2007, in the event that the Annual Additions, under the normal administration of the Plan, would otherwise exceed the limits set forth above for any Participant due to the allocation of forfeitures, a reasonable error in estimating a Participant's annual compensation, or a reasonable error in determining the amount of contributions that may be made for a Participant, then the Administrator shall take such actions, applied in a uniform and nondiscriminatory manner, as will keep the Annual Additions and projected benefits for such Participant from exceeding the applicable limits provided by law. Effective for Limitation Years beginning on or after July 1, 2007, in the event that the Annual Additions, under the normal administration of the Plan, would otherwise exceed the limits set forth above for any Participant, the Employer may distribute an excess or erroneous contribution, to the extent permitted under the Employee Plans Compliance Resolution System of Revenue Procedure 2016-51, a successor thereto, or any other applicable Internal Revenue Service guidance, but this section 6.5(b) shall not be interpreted to require the Employer to take any particular action.

If the Employer does not sponsor an excess benefit plan, and the Plan provides for Employee Mandatory Contributions of Accumulated Leave, the Plan Administrator will return any mandatory employee contributions to the Participant to the extent that the return would reduce the excess Annual Additions amount.

If the Employer does not sponsor an excess benefit plan and the Plan provides for Employer Contributions, the Plan Administrator will use the excess Annual Addition amount to reduce future Employer Contributions under the Plan for the next Limitation Year and for each succeeding Limitation Year, as is necessary, for the Participant.

Adjustments shall be made under this Plan, if necessary to comply with such limits, before any adjustments shall be made to other plans.



## **ARTICLE VII - Benefits under the Plan**

### **7.1 Termination Benefit.**

(a) A Participant shall be entitled to a benefit under the Plan upon such Participant's termination of employment or death, which benefit shall be (i) calculated in accordance with Section 7.2 and the provisions selected in the Adoption Agreement, subject to adjustment as provided in Section 8.5, and (ii) payable at the time and in the manner described in Article VIII.

(b) Until a Participant receives a full distribution from the Plan he shall continue to be treated in all respects as a Participant.

### **7.2 Vesting of Benefit.**

(a) The benefit payable upon a Participant's retirement or other termination of employment, including death, and attributable to all Accounts other than the Employer Contribution Unrelated to Accumulated Leave shall always be 100 percent vested and nonforfeitable.

(b) The benefit payable upon a Participant's retirement or other termination of employment, including death, and attributable to the Employer Contribution Unrelated to Accumulated Leave shall vest in accordance with a vesting schedule established by the Employer in the Adoption Agreement, which schedule shall require each Participant's Employer Contribution Unrelated to Accumulated Leave Account to become 100 percent vested and nonforfeitable upon the Participant's attainment of the Normal Retirement Age specified in the Adoption Agreement.

### **7.3 Death Benefit.**

(a) In the event of the death of a Participant and subject to adjustment as provided in Section 8.5, his beneficiary shall be entitled to receive, at the time and in the manner described in Article VIII, a death benefit in an amount equal to the vested percentage (determined in accordance with Section 7.2 hereof) of the balance in the Participant's Accounts as of the Valuation Date concurring with or preceding the date of his death, plus the amount of any contributions allocated subsequent to such Valuation Date multiplied by the applicable vesting percentage.

(b) At any time and from time to time, each Participant shall have the unrestricted right to designate a beneficiary to receive his death benefit and to revoke any such designation. Each designation or revocation shall be evidenced by written instrument filed with the Plan Administrator, signed by the Participant and bearing the signature of a witness to the Participant's signature. In the event that a Participant has not designated a beneficiary or beneficiaries, or if for any reason such designation shall be legally ineffective, or if such beneficiary or beneficiaries shall predecease the Participant, then the personal representative of the estate of such Participant shall be deemed to be the beneficiary designated to receive such death benefit, or if no personal representative is appointed for the

estate of such Participant, then his next of kin under the statute of descent and distribution of the state of such Participant's domicile at the date of his death shall be deemed to be the beneficiary or beneficiaries to receive such death benefit.

(c) Effective January 1, 2007, to the extent required by section 401(a) of the Code, if a Participant dies while performing qualified military service (as defined in Code section 414(u)) the survivors of the Participant shall be entitled to any additional benefits as determined under Code section 401(a)(37) provided under the Plan had the Participant resumed his or her prior employment with the Employer and then terminated employment on account of death. "Additional benefits" under this Policy shall not include benefit accruals relating to the period of qualified military service.

7.4 Allocation of Forfeitures. Forfeitures arising under section 7.2 shall be used to reduce Employer Contributions for the Plan Year in which the forfeitures occur, as selected in the Adoption Agreement, and in any event shall be exhausted no later than the end of the following Plan Year.

## **ARTICLE VIII - Form and Payment of Benefits**

### **8.1 Timing and Form.**

(a) (1) Except as otherwise provided In this Article VIII, the amount of the termination or death benefit to which a Participant is entitled under Sections 7.1 and 7.3 shall be paid to him or, in the case of a death benefit, shall be paid to said Participant's beneficiary or beneficiaries as soon as practicable following the Participant's termination of employment or death.

(2) Notwithstanding paragraph (a)(1), above, a Participant may elect to defer the distribution of his benefit until any subsequent date elected by the Participant in writing pursuant to such procedures as the Administrator may adopt, but in no event later than the date described in subsection 8.1(b).

(b) Notwithstanding anything contained herein to the contrary, any distribution paid to a Participant (or, in the case of a death benefit, to his beneficiary or beneficiaries) pursuant to paragraph (a)(1) shall commence not later than April 1 of the year immediately following the calendar year in which the Participant reaches age 70½, or if later, April 1 of the year immediately following the calendar year in which the Participant terminates employment.

(c) Unless the Participant elects otherwise, benefits will commence not later than the 60<sup>th</sup> day after the latest of the close of the Plan Year in which:

(1) The date on which the Participant attains the earlier of age 65 or the Normal Retirement Age specified in the Adoption Agreement,

(2) Occurs the 10<sup>th</sup> anniversary of the year in which the Participant commenced participation in the Plan, or

(3) The Participant terminates his services with the employer.

### **8.2 Manner of Payment.**

(a) A Participant's benefit may be paid in one of the following optional forms, as set forth in the Adoption Agreement as elected by the Participant, or in the case of a death benefit, by the Participant's beneficiary or beneficiaries. The optional forms are as follows:

(1) Lump sum payment.

(2) Life annuity - an annuity for the life of the Participant.

(3) 50% joint and survivor annuity - an annuity for the life of the Participant with a survivor annuity payable to the Participant's designated beneficiary equal to 50% of the amount of the annuity payable during the life of the Participant.



(4) Monthly, quarterly or annual installments over a fixed period of time, not exceeding the life of the Participant or the joint life and last survivor expectancy of the Participant and his designated beneficiary.

(b) A Participant or his beneficiary may elect to receive the payment of any part or all of the unpaid installments under paragraph 8.2(a)(4) above in a lump sum, in accordance with rules and regulations promulgated by the Plan Administrator.

(c) Each Participant shall have the right to designate a beneficiary for purposes of the optional form of benefit payment described in paragraph 8.2(a)(2), (3) and (4), above and to revoke any such designation. Each designation or revocation shall be evidenced by written instrument filed with the Employer and shall be effective upon filing with the Employer.

### 8.3 Required Minimum Distributions.

#### (a) General Rules.

(1) The requirements of this Section 8.3 shall apply to any distribution of a Participant's interest and will take precedence over any inconsistent provisions of this Plan.

(2) All distributions required under this Article VIII shall be determined and made in accordance with section 401(a)(9) of the Code and the regulations thereunder, including the minimum distribution incidental benefit requirement of section 401(a)(9)(G) of the Code, pursuant to a reasonable and good faith interpretation of section 401(a)(9) of the Code.

(3) Limits on Distribution Periods. As of the first distribution calendar year, distributions, if not made in a single-sum, may only be made over one of the following periods (or a combination thereof):

- (A) the life of the Participant,
- (B) the life of the Participant and a designated beneficiary,
- (C) a period certain not extending beyond the life expectancy of the Participant, or
- (D) a period certain not extending beyond the joint and last survivor expectancy of the Participant and a designated beneficiary.

#### (b) Time and Manner of Distribution.

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

(2) Death of Participant Before Distributions Begin. If the Participant dies before required distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

(A) If the Participant's surviving spouse is the Participant's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70 1/2, if later.

(B) If the Participant's surviving spouse is not the Participant's sole designated beneficiary, then distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(C) If there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(D) If the Participant's surviving spouse is the Participant's sole designated beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse are required to begin, this section 8.3(b)(2), other than section 8.3(b)(2)(A), will apply as if the surviving spouse were the Participant.

For purposes of this section 8.3(b)(2) and section 8.3(d), unless section 8.3(b)(2)(D) applies, distributions are considered to begin on the Participant's required beginning date. If section 8.3(b)(2)(D) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under section 8.3(b)(2)(A). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's required beginning date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under section 8.3(b)(2)(A)), the date distributions are considered to begin is the date distributions actually commence.

(3) Forms of Distribution. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single-sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with sections 8.3(c) and (d) of this article. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of section 401(a)(9) of the Code and the regulations.



(c) Required Minimum Distributions During Participant's Lifetime.

(1) Amount of Required Minimum Distribution for Each Distribution Calendar Year. During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

(A) the quotient obtained by dividing the Participant's account balance by the distribution period in the Uniform Lifetime Table set forth in section 1.401(a)(9)-9, Q&A-2, of the regulations, using the Participant's age as of the Participant's birthday in the distribution calendar year;

(B) if the Participant's sole designated beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's account balance by the number in the Joint and Last Survivor Table set forth in section 1.401(a)(9)-9, Q&A-3, of the regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in distribution calendar year.

(2) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under this section 8.3(c) beginning with the first distribution calendar year and continuing up to, and including, the distribution calendar year that includes the Participant's date of death.

(d) Required Minimum Distributions After Participant's Death.

(1) Death On or After Date Distributions Begin.

(A) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated beneficiary, determined as follows:

(i) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(ii) If the Participant's surviving spouse is the Participant's sole designated beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's

birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

(iii) If the Participant's surviving spouse is not the Participant's sole designated beneficiary, the designated beneficiary's remaining life expectancy is calculated using the age of the beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(B) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no designated beneficiary as of the September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(C) Notwithstanding anything else in this section, if a Participant dies after the required distribution of benefits has begun, the remaining portion of the Participant's benefits must be distributed at least as rapidly as under the method of distribution before the Participant's death.

(2) Death Before Date Distributions Begin.

(A) Participant Survived by Designated Beneficiary. If the Participant dies before the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance the remaining life expectancy of the Participant's designated beneficiary, determined as provided in section 8.3(d)(1).

(B) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(C) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies

before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under section 8.3(b)(2)(A), this section 8.3(d)(2) will apply as if the surviving spouse were the Participant.

(e) Changes to Annuity Payment Period.

(1) Permitted Annuity Payment Period Changes. An annuity payment period under section 8.2(a)(2) or (3) may be changed only in association with an annuity payment increase described in section 8.3(e)(2) or in accordance with section 8.3(e)(3).

(2) Payments will either be nonincreasing or increase only as follows:

(A) by an annual percentage increase that does not exceed the percentage increase in an eligible cost-of-living index for a 12-month period ending in the year during which the increase occurs or a prior year;

(B) by a percentage increase that occurs at specified times and does not exceed the cumulative total of annual percentage increases in an eligible cost-of-living index since the annuity starting date, or if later, the date of the most recent percentage increase;

(C) by a constant percentage of less than 5 percent per year, applied not less frequently than annually;

(D) as a result of dividend or other payments that result from actuarial gains, provided:

(i) actuarial gain is measured not less frequently than annually,

(ii) the resulting dividend or other payments are either paid no later than the year following the year for which the actuarial experience is measured or paid in the same form as the payment of the annuity over the remaining period of the annuity (beginning no later than the year following the year for which the actuarial experience is measured),

(iii) the actuarial gain taken into account is limited to actuarial gain from investment experience,

(iv) the assumed interest rate used to calculate such actuarial gains is not less than 3 percent, and



(v) the annuity payments are not increased by a constant percentage as described in (C) of this section 8.3(e)(2);

(E) to the extent of the reduction in the amount of the Participant's payments to provide for a survivor benefit, but only if there is no longer a survivor benefit because the beneficiary whose life was being used to determine the distribution period described in Section 401(a)(9)(A)(ii) of the Code dies or is no longer the Participant's beneficiary pursuant to a qualified domestic relations order within the meaning of Section 414(p) of the Code;

(F) to provide a final payment upon the Participant's death not greater than the excess of the actuarial present value of the Participant's interest (within the meaning of § 411(a)(7) of the Code) calculated as of the annuity starting date over the total of payments before the Participant's death;

(G) to allow a beneficiary to convert the survivor portion of a joint and survivor annuity into a single sum distribution upon the Participant's death; or

(H) to pay increased benefits that result from a plan amendment.

(3) Reannuitization. An annuity payment period under section 8.2(a)(2) or (3) may be changed and the annuity payments modified in accordance with that change if the conditions in section 8.3(e)(4) are satisfied and:

(A) the modification occurs when the Participant retires or in connection with a plan termination;

(B) the payment period prior to modification is a period certain without life contingencies; or

(C) the annuity payments after modification are paid under a qualified joint and survivor annuity over the joint lives of the Participant and a designated beneficiary, the Participant's Spouse is the sole designated beneficiary, and the modification occurs in connection with the Participant's becoming married to such Spouse.

(4) Conditions. The conditions in this section 8.3(e)(4) are satisfied if:

(A) the future payments after the modification satisfy the requirements of Section 401(a)(9) of the Code, section 1.401(a)(9)

of the regulations, and this section (determined by treating the date of the change as a new annuity starting date and the actuarial present value of the remaining payments prior to modification as the entire interest of the Participant);

(B) for purposes of Section 415 and Section 417 of the Code, the modification is treated as a new annuity starting date;

(C) after taking into account the modification, the annuity (including all past and future payments) satisfies the requirements of Section 415 of the Code (determined at the original annuity starting date, using the interest rates and mortality tables applicable to such date); and

(D) the end point of the period certain, if any, for any modified payment period is not later than the end point available to the employee at the original annuity starting date under Section 401(a)(9) of the Code and this section.

(f) Definitions

(1) Designated beneficiary. The individual who is designated by the Participant (or the Participant's surviving spouse) as the beneficiary of the Participant's interest under the Plan and who is the designated beneficiary under section 401(a)(9) of the Code and section 1.401(a)(9)-4 of the regulations.

(2) Distribution calendar year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under section 8.3(b). The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.

(3) Life expectancy. Life expectancy as computed by use of the Single Life Table in section 1.401(a)(9)-9, Q&A-1, of the regulations.

(4) Participant's account balance. The account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the account as of dates in the valuation calendar year after the valuation

date and decreased by distributions made in the valuation calendar year after the valuation date. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

(5) Required Beginning Date: The required beginning date of a Participant is April 1 of the calendar year following the calendar year in which the Participant attains age 70 1/2.

(6) 5-percent owner. A Participant is treated as a 5-percent owner for purposes of this section 8.3(f) if such Participant is a 5-percent owner as defined in section 416 of the Code at any time during the Plan year ending with or within the calendar year in which such owner attains age 70 1/2. Once distributions have begun to a 5-percent owner under this section 6, they must continue to be distributed, even if the Participant ceases to be a 5-percent owner in a subsequent year.

(g) TEFRA Section 242(b)(2) Elections

(1) Notwithstanding the other requirements of this article, distribution on behalf of any employee, including a 5-percent owner, who has made a designation under section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (a "section 242(b)(2) election") may be made in accordance with all of the following requirements (regardless of when such distribution commences):

(A) The distribution by the Plan is one which would not have disqualified such Plan under section 401(a)(9) of the Code as in effect prior to amendment by the Deficit Reduction Act of 1984.

(B) The distribution is in accordance with a method of distribution designated by the employee whose interest in the Plan is being distributed or, if the employee is deceased, by a beneficiary of such employee.

(C) Such designation was in writing, was signed by the employee or the beneficiary, and was made before January 1, 1984.

(D) The employee had accrued a benefit under the Plan as of December 31, 1983.

(E) The method of distribution designated by the employee or the beneficiary specifies the time at which distribution will commence, the period over which distributions will be made, and in the case of any distribution upon the employee's death, the beneficiaries of the employee listed in order of priority.



(2) A distribution upon death will not be covered by this transitional rule unless the information in the designation contains the required information described above with respect to the distributions to be made upon the death of the employee.

(3) For any distribution which commences before January 1, 1984, but continues after December 31, 1983, the employee, or the beneficiary, to whom such distribution is being made, will be presumed to have designated the method of distribution under which the distribution is being made if the method of distribution was specified in writing and the distribution satisfies the requirements in subsections 8.3(g)(1)(A) and (E).

(4) If a designation is revoked, any subsequent distribution must satisfy the requirements of section 401(a)(9) of the Code and the regulations thereunder. If a designation is revoked subsequent to the date distributions are required to begin, the Plan must distribute by the end of the calendar year following the calendar year in which the revocation occurs the total amount not yet distributed which would have been required to have been distributed to satisfy section 401(a)(9) of the Code and the regulations thereunder, but for the section 242(b)(2) election. For calendar years beginning after December 31, 1988, such distributions must meet the minimum distribution incidental benefit requirements. Any changes in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another beneficiary (one not named in the designation) under the designation will not be considered to be a revocation of the designation, so long as such substitution or addition does not alter the period over which distributions are to be made under the designation, directly or indirectly (for example, by altering the relevant measuring life).

(5) In the case in which an amount is transferred or rolled over from one plan to another plan, the rules in § 1.401(a)(9)-8, Q&A-14 and Q&A-15, shall apply.

(h) Transition Rules

(1) For plans in existence before 2003, required minimum distributions before 2003 were made pursuant to section 8.3(g), if applicable, and sections 8.3(h)(2) through 8.3(h)(4) below.

(2) 2000 and Before. Required minimum distributions for calendar years after 1984 and before 2001 were made in accordance with section 401(a)(9) and the proposed regulations thereunder published in the Federal Register on July 27, 1987 (the "1987 Proposed Regulations").

(3) 2001. Required minimum distributions for calendar year 2001 were made in accordance with section 401(a)(9) and the 1987 Proposed Regulations. If distributions were made in 2001 under the 1987 Proposed

Regulations prior to the date in 2001 the plan began operating under the 2001 Proposed Regulations, the special transition rule in Announcement 2001-82, 2001-2 C.B. 123, applied.

(4) 2002. Required minimum distributions for calendar year 2002 were made in accordance with section 401(a)(9) and the 1987 Proposed Regulations.

8.4 Lump Sum Payment. Notwithstanding anything contained in this Plan to the contrary, any benefit payable under the Plan, which is not more than \$500, shall be paid in a lump sum as soon as practicable following the Participant's termination of employment.

8.5 Periodic Adjustments. To the extent the balance of a Participant's Accounts has not been distributed and remains in the Plan, and notwithstanding anything contained in the Plan to the contrary, the value of such remaining balance shall share in allocations of the income (or loss) under the Group Annuity Contract pursuant to the provisions of Article VI.

8.6 Location of Participant or Beneficiary Unknown. In the event that all, or any portion of the distribution payable to a Participant or his beneficiary shall remain unpaid after five (5) Plan Years solely by reason of the inability of the Administrator, after sending a registered letter, return receipt requested, to the last known address, and after further diligent effort, to ascertain the whereabouts of such Participant or his beneficiary, the amount so distributable shall be treated as a forfeiture. In the event a Participant or beneficiary of such Participant is located subsequent to his benefit being reallocated, such benefit shall be restored by an additional contribution by the Employer.

8.7 Direct Rollovers.

(a) Notwithstanding any provisions of the Plan to the contrary that would otherwise limit a distributee's (as defined below) election under this paragraph, a distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an eligible rollover distribution (as defined below) paid directly to an eligible retirement plan (as defined below) specified by the distributee in a direct rollover (as defined below).

(b) For purposes of this paragraph, the following terms shall have the following meanings:

(1) An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9), the portion of any distribution that is not included in gross income (determined



without regard to the exclusion for net unrealized appreciation with respect to employer securities), and any hardship withdrawal on or after January 1, 1999, provided that a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to (1) an individual retirement account or annuity described in Code section 408(a) or Code section 408(b); (2) for taxable years beginning after December 31, 2001 and before January 1, 2007; to a qualified trust which is part of a defined contribution plan that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible; or (3) for taxable years beginning after December 31, 2006, to a qualified trust or to an annuity contract described in Code section 403(b), if such trust or contract provides for separate accounting for amounts so transferred (including interest thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible. Effective for distributions after December 31, 2007, a portion of a distribution shall not fail to be an eligible rollover Distribution merely because it is transferred to a Roth individual retirement account as described in Code section 408A(a).

(2) An eligible retirement plan is an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan, an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), a SIMPLE individual retirement account plan described in Code Section 408(p), an annuity plan described in Code Section 403(a), an annuity contract described in Code Section 403(b), or a qualified plan described in Code Section 401(a) that accepts the distributee's eligible rollover distribution. Effective for distributions after December 31, 2007, a Roth individual retirement account described in Code section 408A(a) shall be considered an eligible retirement plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p).

(3) A distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse, as defined in Code Section 414(p), are distributees with regard to the Interest of the spouse or former spouse. Effective January 1, 2010, a Participant's non-spousal beneficiary is a distributee and may elect to transfer a distribution that would be an eligible rollover distribution if it were made to a spousal beneficiary to an IRA described in Code section 408(a) or (b), that will be treated as an inherited IRA within the meaning of Code section 408(d)(3)(C) or a Roth



IRA, pursuant to a direct rollover. A trust can be a designated beneficiary if it meets the requirements of Code section 401(a)(9)(E). The Employer, the Sponsor, and their employees and agents are not responsible for assuring that the distributee is eligible to make a rollover.

(4) A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

8.8 Loans to Participants. Participant loans shall be made in accordance with this Section 8.8 and a written loan policy adopted by the Plan Administrator.

(a) Loans shall be made available to all Participants and beneficiaries on a reasonably equivalent basis.

(b) Loans must be adequately secured and bear a reasonable interest rate.

(c) No Participant loan shall exceed the present value of the Participant's vested accrued benefit.

(d) In the event of default, foreclosure on the note and attachment of security will not occur until a distributable event occurs in the Plan.

(e) For Plan loans made before January 1, 2002, no loans will be made to any shareholder-employee or owner-employee. For purposes of this requirement, a 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 section 318(a)(1) of the Code), on any day during the taxable year of such corporation, more than 5% of the outstanding stock of the corporation.

(f) Loan repayments will be suspended under this Plan as permitted under section 414(u)(4) of the Internal Revenue Code.

(g) No loan to any Participant or beneficiary can be made to the extent that such loan when added to the outstanding balance of all other loans to the Participant or beneficiary would exceed the lesser of (i) \$50,000 reduced by the excess (if any) of the highest outstanding balance of loans during the one year period ending on the day before the loan is made, over the outstanding balance of loans from the Plan on the date the loan is made, or (ii) one-half the present value of the nonforfeitable accrued benefit of the Participant or, if greater, the total accrued benefit up to \$10,000. For the purpose of the above limitation, all loans from all plans of the Employer and other members of a group of Employers described in section 414(b), 414(c), and 414(m) of the Code are aggregated. Furthermore, any loan shall by its terms require that repayment (principal and interest) be amortized in level payments, not less frequently than quarterly, over a period not extending beyond five years from the date of the loan, unless such loan is used to acquire a dwelling unit which within a reasonable time (determined at the time the loan is made) will be used as the principal residence of the Participant. An assignment or pledge of any portion of the Participant's interest in the Plan and

a loan, pledge, or assignment with respect to any insurance contract purchased under the Plan, will be treated as a loan under this paragraph.

## **ARTICLE IX - Group Annuity Contract and Expenses of Administration**

9.1 Funding Vehicle. The Employer will establish a Group Annuity Contract that satisfies the requirements of Code section 401(f) to be treated as a qualified trust under Code section 401 to hold the Plan assets. The Plan assets shall be held by the Insurer for use in accordance with the Plan under the Group Annuity Contract, respectively. The Group Annuity Contract may from time to time be amended in the manner therein provided. Similarly, the Insurer may be changed from time to time in the manner provided in the Group Annuity Contract. In the case of a conflict between the Plan document and a Group Annuity Contract established by the Employer to hold Plan assets, the Plan document will prevail.

### **9.2 Expenses of Administration.**

(a) (1) The assets held in the Group Annuity Contract may be used to pay all expenses of the administration of the Plan, including the Insurer's compensation, the compensation of any investment manager, the expense incurred by the Plan Administrator in discharging its duties, all income or other taxes of any kind whatsoever that may be levied or assessed under existing or future laws upon or in respect of the Group Annuity Contract, and any interest that may be payable on money borrowed by the Insurer for the purpose of the Plan.

(2) The Employer may pay the expenses of the Plan and the Group Annuity Contract. Any such payment by the Employer shall not be deemed a contribution to this Plan.

(b) Notwithstanding anything contained herein to the contrary, no excise tax or other liability imposed upon the Insurer, the Plan Administrator or any other person for failure to comply with the provisions of any federal law shall be subject to payment or reimbursement from the assets of the Plan.

(c) For its services, any Insurer shall be entitled to receive reasonable compensation in accordance with its rate schedule in effect from time to time for the handling of assets of the Plan.



## **ARTICLE X - Amendment and Termination**

10.1 Restrictions on Amendment and Termination of Plan. It is the present intention of the Employer to maintain the Plan set forth herein indefinitely. Nevertheless, the Employer specifically reserves to itself the right at any time, and from time to time, to amend or terminate this Plan in whole or in part; provided, however, that no such amendment shall:

(a) have the effect of vesting in the Employer, directly or indirectly, any interest, ownership or control in any of the present or subsequent funds held subject to the terms of the Group Annuity Contract;

(b) cause or permit any property held subject to the terms of the Group Annuity Contract to be diverted to purposes other than the exclusive benefit of the Participants and their beneficiaries or for the administrative expenses of the Plan Administrator and the Group Annuity Contract;

(c) reduce the then vested interest of a Participant;

(d) reduce the Account of any Participant; or

(e) increase the duties or liabilities of the Insurer without its written consent.

### 10.2 Amendment of Plan.

(a) Subject to the limitations stated in Section 10.1, and Section 10.2 (b), (c) and (d) the Employer shall have the power to amend this Plan in any manner that it deems desirable, and, not in limitation but in amplification of the foregoing, it shall have the right to change or modify the method of allocation of contributions here under, to change any provision relating to the administration of this Plan and to change any provision relating to the distribution or payment, or both, of any of the assets of the Plan.

(b) The Provider may amend the Plan on behalf of all adopting Employers, including those Employers who have adopted the Plan prior to this amendment, for changes in the Code, regulations, revenue rulings, other statements published by the Internal Revenue Service, including model, sample or other required good faith amendments, but only if their adoption will not cause such plan to be individually designed, and for corrections of prior approved plans. These amendments will be applied to all Employers who have adopted the Plan.

(c) The Provider will no longer have the authority to amend the Plan on behalf of any adopting Employer as of either: (1) the date the Service requires the Employer to file Form 5300 as an individually designed plan as a result of an Employer amendment to the Plan to incorporate a type of plan not allowable in the Pre-Approved Plan program, as described in Rev. Proc. 2017-41, or (2) as of the date the plan is otherwise considered an individually designed plan due to the nature and extent of the amendments. If the Employer is required to obtain a

determination letter for any reason in order to maintain reliance on the opinion letter, the Provider's authority to amend the Plan on behalf of the adopting Employer is conditioned on the Plan receiving a favorable determination letter.

(d) The Provider will maintain, or have maintained on its behalf, a record of the Employers that have adopted the Plan, and the Provider will make reasonable and diligent efforts to ensure that adopting Employers have actually received and are aware of all Plan amendments and that such Employers adopt new documents when necessary. This amendment supersedes other provisions of the Plan to the extent those other provisions are inconsistent with this amendment.

10.3 Termination of Plan. The Employer, in its sole and absolute discretion, may terminate this Plan, completely or partially, at any time without any liability whatsoever for such complete or partial termination. In any of such events, the affected Participants, notwithstanding any other provisions of this Plan, shall have fully vested interests in the amounts credited to their respective Accounts at the time of such complete or partial termination of this Plan. All such vested interests shall be nonforfeitable. For purposes of this paragraph only, the Plan shall be deemed to have terminated if there shall be a complete discontinuance of contributions hereunder within the meaning of Section 411(d)(3) of the Code.

10.4 Termination Procedure. In the event the Employer decides to terminate this Plan, after payment of all expenses and proportional adjustments of individual Accounts to reflect such expenses and other changes in the value of the Group Annuity Contract as of the date of termination, each affected Participant (or the beneficiary of any such Participant) shall then be entitled to receive any amount then credited to his Account in accordance with the form of payment prescribed by Article VIII.

10.5 Initial Qualification of Plan. Notwithstanding the provisions of Section 10.1, if it is finally determined that the Plan does not qualify under the Code, then, in that event, the Plan shall terminate as of the date of such final determination and the Plan Administrator shall direct the Insurer to pay the then aggregate of the balances in the Accounts under the Plan to the appropriate Participants (provided such payment is made within one year after the date of the final determination). The Participants and their beneficiaries shall have no further rights under the Plan, and the Insurer shall be discharged of all obligations and duties under the Plan.



## **ARTICLE XI - Miscellaneous**

11.1 Alienation. No Participant or beneficiary of a Participant shall have any right to assign, transfer, appropriate, encumber, commute, anticipate or otherwise alienate his interest in this Plan or any payments to be made thereunder; no benefits, payments, rights or interests of a Participant or beneficiary of a Participant of any kind or nature shall be in any way subject to legal process to levy upon, garnish or attach the same for payment of any claim against the Participant or beneficiary of a Participant; and no Participant or beneficiary of a Participant shall have any right of any kind whatsoever with respect to the Group Annuity Contract, or any estate or interest therein, or with respect to any other property or right, other than the right to receive such distributions as are lawfully made out of the Group Annuity Contract, as and when the same respectively are due and payable under the terms of this Plan.

11.2 Governing Law. This Plan shall be administered, construed and enforced according to the laws of the state specified in the Adoption Agreement, or if no state is selected in the Adoption Agreement, according to the laws of the State of Florida, and in either case except to the extent such laws have been expressly preempted by federal law.

11.3 Gender. Throughout this Plan, and whenever appropriate, the masculine gender shall be deemed to include the feminine and neuter, the singular, the plural; and vice versa.

### **11.4 Claims Procedures.**

(a) Claims for benefits under the Plan may be made by a Participant or a beneficiary of a Participant on forms supplied by the Plan Administrator. Written notice of the disposition of a claim shall be furnished to the claimant by the Plan Administrator within ninety (90) days after the application is filed with the Plan Administrator, unless special circumstances require an extension of time for processing, in which event action shall be taken as soon as possible, but not later than one hundred eighty (180) days after the application is filed with the Administrator; and, in the event that no action has been taken within such ninety (90) or one hundred eighty (180) day period, the claim shall be deemed to be denied for the purposes of subsection 11.4(b). In the event that the claim is denied, the denial shall be written in a manner calculated to be understood by the claimant and shall include the specific reasons for the denial, specific references to pertinent Plan provisions on which the denial is based, a description of the material information, if any, necessary for the claimant to perfect the claim, an explanation of why such material information is necessary and an explanation of the claim review procedure.

(b) If a claim is denied (either in the form of a written denial or by the failure of the Plan Administrator, within the required time period, to notify the claimant of the action taken), a claimant or his duly authorized representative shall have sixty (60) days after the receipt of such denial to petition the Plan Administrator in writing for a full and fair review of the denial, during which time the claimant or his duly authorized representative shall have the right to review pertinent documents and to submit issues and comments in writing. The Plan Administrator shall promptly



review the claim and shall make a decision not later than sixty (60) days after receipt of the request for review, unless special circumstances require an extension of time for processing, in which event a decision shall be rendered as soon as possible, but not later than one hundred twenty (120) days after the receipt of the request for review. If such an extension is required because of special circumstances, written notice of the extension shall be furnished to the claimant prior to the commencement of the extension. The decision of the review shall be in writing and shall include specific reasons for the decision, written in a manner calculated to be understood by the claimant with specific references to the Plan provisions on which the decision is based.

IN WITNESS WHEREOF, this Plan has been execute this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ .

By: \_\_\_\_\_

EMPLOYER