

CAROLINAS ELECTRICAL WORKERS  
RETIREMENT PLAN

AMENDED AND RESTATED EFFECTIVE SEPTEMBER 1, 1997

A DEFINED CONTRIBUTION PLAN

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RETIREMENT PLAN

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CAROLINAS ELECTRICAL WORKERS  
RETIREMENT PLAN

WHEREAS, the Trustees acting under the Agreement and Declaration of Trust of the Carolinas Electrical Workers Retirement Plan (the "Trust Agreement") established the Carolinas Electrical Workers Retirement Plan (the "Plan") effective as of January 1, 1983; and

WHEREAS, the Trustees have amended the Plan from time to time, and the Trustees desire to amend and to restate the Plan to incorporate such amendments and to comply with the requirements of the Internal Revenue Code of 1986, as amended (the "Code") and the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

NOW, THEREFORE, the Trustees have adopted, by appropriate resolution, this Plan, as hereinafter amended and restated, to be effective as of September 1, 1997, except as shall be otherwise specifically provided in this Plan. It is intended that this Plan, together with the Trust Agreement, shall constitute a "money purchase pension plan" that shall meet the requirements of the Code and ERISA, and the Plan shall be interpreted, wherever possible, to comply with the Code and ERISA and all formal regulations and rulings issued thereunder.

ARTICLE I  
DEFINITIONS

As used in this Plan, each of the following terms shall have the respective meaning set forth below unless a different meaning shall be plainly required by the context.

1.01 The Term "Account" shall mean, with respect to an Employee, the aggregate of the Subaccounts maintained on behalf of the Employee to record his or her interest or potential interest in this Plan.

1.02 The Term "Affiliated Employer" shall mean, with respect to an Employer, any corporation or other entity that is required to be aggregated with the Employer under Code Section 414(b), 414(c), 414(m), or 414(o).

1.03 Effective January 1, 1987, the term "Annual Addition" shall mean, with respect to a Participant for a limitation year, the sum for the limitation year of (a) any Employer contributions credited to the Participant's Account pursuant to Article IV and (b) any amounts credited to the Participant's account(s) under any other Defined Contribution Plans (whether or not terminated) maintained by his or her Employer as shall be considered "annual additions" within the meaning of Code Section 415(c) (2). As used in this Section, the term "Employer" shall include all other employers required to be aggregated with the Employer for the limitation year under Code Sections 414(b) and 414(c), as applied in accordance with Code Section 415(h), and Code Sections 414(m) and 414(o).

1.04 The term "Annuity Starting Date" shall mean, with respect to a Participant or a Beneficiary of a deceased Participant, the date that all or a portion of the Participant's account may be payable to the Participant or Beneficiary, which date shall be selected by the Participant or Beneficiary in accordance with Article VII or shall be otherwise determined by the Plan Administrator pursuant to this Plan.

1.05 The term "Association" shall mean Atlantic Coast Chapter National Electrical Contractors Association, Inc., or its successor.

1.06 The Term "Beneficiary" shall mean, with respect to a Participant, an individual or entity that may be entitled to receive all or a portion of the Participant's Account upon the Participant's death; and, with respect to a deceased Participant, an individual or entity that is or shall be receiving all or a portion of the deceased Participant's Account.

1.07 The term "Code" shall mean the Internal Revenue Code of 1986, as it may be amended from time to time.

1.08 The term "Collective Bargaining Agreement" shall mean the negotiated labor contract between the Association and the Union covering employees of each Employer that is a member of the Association and any other Employer that has agreed to be bound thereby, which such contract requires the Employer to contribute to the Trust Fund on behalf of its employees covered thereby, any amendment thereto, and any modification, extension, renewal or successor thereof.

1.14 The Term "Employer" shall mean:

(a) An employer that (i) is bound by the Collective Bargaining Agreement that (ii) has agreed to be bound by the provisions of the Trust Agreement;

(b) An employer described in Subsection (a) above whom the Trustees agree may contribute to the Trust Fund on behalf of its employees not covered by the Collective Bargaining Agreement; or

(c) The Unions with respect to their full-time employees.

1.15 The term "Employer Contribution" shall mean, with respect to an Employee for a Plan Year, a contribution due to the Trust Fund because of an Hour of Employment completed by the Employee during the Plan Year.

1.16 The term "Employer Contributions Subaccount" shall mean, with respect to a Participant, the Subaccount maintained on the Participant's behalf to record the Participant's allocable share (if any) of Employer Contributions

1.17 The term "Employment Date" shall mean, with respect to an employee of an Employer, the date that the employee first completes an Hour of Service, where the term "Hour of Service" shall be only as defined in Section 1.22(a) of this Plan.

1.18 The term "Excess Employer Contributions" shall mean, with respect to a Plan Year, an Employer Contributions that are forfeited as of the last day of the Plan Year pursuant to Section 5.02 of this Plan.

1.19 The term "Five-percent Owner" shall mean, with respect to an Employer, an individual who owns an interest in the Employer of more than five percent (5%), as determined in accordance with Code Section 416(i) (1).

1.20 The term "Highly Compensated Employee" shall be defined in Subsection (a) below subject to the rules provided in Subsection (b) below:

(a) Definition. With respect to an Employer for a Plan Year, a Highly Compensated Employee of the Employer for the Plan Year shall be an individual described in any of Paragraphs (i) through (iv) below:

(i) An Employee who performed services for the Employer during the Plan Year and, during the preceding Plan Year:

(A) Received Compensation in excess of seventy-five thousand dollars (\$75,000), as adjusted by the Secretary of the Treasury at the same time and in the same manner as under Code Section 415(d);

(B) Received Compensation in excess of fifty thousand dollars (\$50,000), as adjusted by the Secretary of the Treasury at the same time and in the same manner as under Code Section 415(d), and was a member of the Top-paid Group; or

(C) Was an officer of the Employer and received Compensation in excess of fifty percent (50%) of the dollar limitation in effect under Code Section 415(b) (1) (A) or, if there is no such officer, was the officer who received the highest Compensation.

(ii) An Employee who performed services for the Employer during the Plan Year, who meets one of the requirements in Paragraphs (i) (A), (B), and (C) above for the Plan Year, and who was among the one hundred (100) Employees who received the highest Compensation during the Plan Year.

(iii) An Employee who performed services for the Employer during the Plan Year and who was a Five-percent Owner during the Plan Year or the prior Plan Year.

(iv) A Former Employee who separated (or was deemed to have separated) from the service of the Employer prior to the Plan Year, who performed no services for the Employer during the Plan Year, and who was a Highly Compensated Employee for either the Plan Year in which he or she separated from the service of the Employer or any Plan Year ending on or after his or her fifty-fifth (55th) birthday.

(b) Rules. For purposes of this Section, the determination of the Highly Compensated Employees of an Employer for a Plan Year shall be made in accordance with regulations under Code Section 414(q) and the following:

(i) No more than fifty (50) Employees of the Employer or, if lesser, the greater of three (3) Employees or ten percent (10%) of the Employees shall be considered to be officers during the Plan Year or the preceding Plan Year.

(ii) For purposes of determining the maximum number of Employees of the Employer who shall be considered officers during the Plan Year or the preceding Plan Year and the Employees of the Employer who shall be included in the top-paid Group for the Plan Year, the following groups of Employees shall be excluded: (a) Employees who have not completed six (6) months of service; (B) Employees who normally work fewer than seventeen and one-half (17-1/2 hours per week; (C) Employees who normally work during not more than six (6) months during any year; (D) Employees who have not attained age twenty-one (21); and (E) to the extent provided in Treasury regulations, Employees who are covered by the Collective Bargaining Agreement.

(iii) The term "Top-paid Group" shall mean the twenty percent (20%) of the Employees of the Employer who received the highest compensation.

(iv) The term "Compensation" shall include, with respect to an Employee or former Employee of the Employer, any contributions made on the Employee's behalf under a plan maintained by the Employer pursuant to Code Section 125 or Code Section 401(k) or a simplified employee pension maintained by the Employer.

(v) The term "Employer" shall include, for purposes of determining an individual's Compensation and for all other purposes related to this definition other than determining who is a Five-percent Owner, all Affiliated Employers of the Employer for the Plan Year.

(vi) The term "Employee" shall not include an individual who is a non-resident alien described in Code Section 414(q) (11).

1.21 The term "Hour of Employment" shall mean, with respect to an Employee, each hour for which the Employee's Employer is required to make a contribution to the Trust Fund on behalf of the Employee pursuant to the Collective Bargaining Agreement or this Plan.

1.22 The term "Hour of Service" shall be defined in Subsection (a) below subject to the rules in Subsection (b) below:

(a) Definition. With respect to an employee of an Employer, an Hour of Service shall be an hour described in any of Paragraphs (i), (ii) or (iii) below:

(i) Each hour for which the employee is paid, or entitled to payment, for the performance of duties for the Employer (a "Performance Hour").

(ii) Each hour for which the employee is paid, or entitled to payment, by the Employer on account of a period of time during which the employee did not perform duties (irrespective of whether the employment relationship had terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty, or leave of absence (an "Absence Hour").

(iii) Each hour during which the employee performed duties and for which the Employer awards or agrees to back pay, irrespective of mitigation of damages (a "Back-pay Performance Hour") and each hour during which the employee did not perform or would not have performed duties and for which the Employer awards or agrees to back pay, irrespective of mitigation of damages (a "Back-pay Absence Hour").

(b) Rules. For purposes of this Section, an employee's Hours of Service shall be calculated and credited in accordance with Paragraphs (b) and (c) of Section 2530.200b-2 of the United States Department of Labor regulations and the following:

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

(ii) An Absence Hour shall not be based on a payment to the employee that was made or is due (A) under a plan maintained solely for the purpose of complying with applicable workers' compensation, unemployment compensation, or disability insurance laws or (B) solely to reimburse the employee for medical or medically related expenses incurred by the employee.

(iii) A Performance Hour or an Absence Hour that is also a Back-pay Performance Hour or a Back-pay Absence Hour, respectively, shall be credited as only one (1) Hour of Service.

(iv) No more than two hundred ninety-nine (299) Hours of service shall be credited for a continuous period of Absence Hours or Back-pay Absence Hours, whether or not such period occurs in one or more than one Plan Year or other computation period.

(v) For purposes of Paragraph (b) (1) of Section 2530.200b-2 of the United States Department of Labor regulations, forty (40) Hours of Service shall be credited for each week of Absence Hours or Back-pay Absence Hours.

(vi) The term "Employer" shall include all Affiliated Employers thereof.

1.23 The Term "Normal Retirement Date" shall mean, with respect to a Participant, the Participant's Fifty-Fifth (55th) Birthday.

1.24 The Term "Paid Employer Contributions" shall mean, with respect to a Valuation Period, the Employer Contributions paid to the Trust Fund during the Valuation Period, which shall be credited to the Employer Contribution Subaccounts of the respective Participants and Employees who have not yet become Participants, as shall be determined by the Plan Administrator pursuant to Section 4.02(a) of this Plan.

1.25 The term "Participant" shall mean an Employee or former Employee who is participating in this Plan pursuant to Article II of the Plan.

1.26 The term "Plan" shall mean the Carolinas Electrical Workers Retirement Plan, as it is herein amended and restated and as it may be amended from time to time.

1.27 The Term "Plan Administrator" shall mean the Board of Trustees.

1.28 The Term "Plan Year" shall mean a calendar year. The Plan Year shall constitute the "limitation year" for purposes of Code Section 415.

1.29 The term "Qualified Annuity" shall mean, with respect to a Participant (a) a Single Life Annuity payable to the Participant if he or she shall not have a spouse as of his or her Annuity Starting Date or (b) a Qualified Joint and Survivor Annuity payable to the Participant and his or her spouse if the Participant shall have a spouse as of his or her Annuity Starting Date.

1.30 The term "Qualified Joint and Survivor Annuity" shall mean, with respect to a Participant and his or her spouse on the Participant's Annuity Starting Date, a Single Life Annuity payable to the Participant and, commencing as of the first day of the month next succeeding the month in which the participant's death occurs, a Single Life Annuity payable to the spouse (if then living) under which the monthly payment to the spouse shall equal fifty percent (50%) of the monthly payment to the Participant.

1.31 The term "Reemployment Date" shall mean, with respect to a former Employee, the date (if any) that the individual first completes an Hour of Service as a reemployed Employee, where the term "Hour of Service" shall be defined only as in Section 1.22 (a) of this Plan.

1.32 The term "Required Beginning Date" shall mean, with respect to a Participant or a deceased Participant, the April 1 of the calendar year next following the calendar year in which the participant attained or would have attained age seventy and one-half (70-1/2); provided, however, the, if the participant attained age seventy and one-half (70-1/2) before January 1, 1988, and was not a Five-percent Owner of his or her Employer at any time during the period of consecutive Plan Years beginning with the Plan Year in which the participant attained age sixty-



six and one-half (66-1/2), the term "Required Beginning Date" shall mean the April 1 of the calendar year next following the later of: (a) the calendar year in which the participant attained age seventy and one-half (70-1/2), or (b) the calendar year in which the participant ceased being an employee.

1.33 The term "Single Life Annuity" shall mean, with respect to a participant or the spouse of a deceased participant, a series of monthly payments to the participant or spouse for his or her life under which the last payment shall be made as of the first day of the month in which the participant or spouse dies.

1.34 The term "Subaccount" shall mean, with respect to an Employee, any of the following subaccounts as may be maintained by the Trustees on the employee's behalf in accordance with the terms of this Plan: (a) an Employer Contributions Subaccount, and (b) any other Subaccount as the Trustees may maintain on the Employee's behalf as they may deem necessary.

1.35 The term "Top Ten Employees" shall mean, with respect to an Employer, any of the ten (10) Highly Compensated Employees of the Employer who have the highest Compensation. The Term "Employer" shall include, for purposes of determining an individual's Compensation and for all other purposes related to this definition, all Affiliated Employers of the Employer for the Plan Year.

1.36 The term "Total and Permanent Disability" shall mean, with respect to a participant, a physical or mental condition which totally prevents the participant from performing the duties assigned by his or her employer. The disability must be certified by a licensed physician. The Trustees have the authority to have the participant examined by a physician of their choice and at the Trust Fund's expense to verify total disability.

1.37 The term "Trust Agreement" shall mean the Agreement and Declaration of Trust of the Carolinas Electrical Workers Retirement Plan made among the Association, each Union, and the Trustees, as it may be amended from time to time, whereby the Trustees hold the assets of this Plan.

1.38 The term "Trust Fund" shall mean all cash, securities, life insurance, and real estate and any and all other property held by the Trustees pursuant to the terms of the Trust Agreement, any additions thereto and any deductions therefrom.

1.39 The term "Trustees" shall mean the Trustees designated in the Trust Agreement or designated pursuant to any procedure therefor provided in the Trust Agreement.

1.40 The term "Union" shall mean either Local Union #238, Local Union #342, Local Union #379, Local Union #495 or Local Union #553 of the International Brotherhood of Electrical Workers, or the successor of either such Local Union.

1.41 The term "Unpaid Employer Contributions" shall mean any Employer Contributions required to be made, but not made, to the Trust Fund with respect to which corresponding amounts shall nevertheless be credited to the Employer Contribution Subaccounts of the affected Participants and Employees who have not yet become participants, as shall be determined by the Plan Administrator pursuant to Section 4.01(b) of this Plan.

1.42 The term "Valuation Date" shall mean the last day of a calendar month.

1.43 The term "Valuation Period" shall mean, with respect to a Valuation Date, the time period beginning on the first (1st) day of a month and ending on the Valuation Date.

1.44 The term "Year of Service" shall mean, with respect to an Employee, a Plan Year beginning on or after the Employee's Employment Date during which he or she completes at least three hundred (300) Hours of Service or, if the Employee has had a Reemployment Date, a Plan Year beginning on or after the Employee's Reemployment Date during which he or she completes at least three hundred (300) Hours of Service.

ARTICLE II  
PARTICIPATION

2.01 Commencement of Participation.

(a) An Employee who has never been a Participant shall become a Participant as of the first day of the Plan Year in which he completes one (1) Year of Service.

(b) An Employee who once was a Participant shall become a Participant on his or her Reemployment Date.

2.02 Termination of Participation. A Participant shall cease being a Participant on the earlier of (a) the date of his or her death or (b) the date as of which an Account is no longer maintained for him or her.

## ARTICLE III

### EMPLOYER CONTRIBUTIONS

3.01 Employer Contributions. Each Employer other than either Union shall pay to the Trust Fund the Employer Contributions required by the Collective Bargaining Agreement. In addition, each Union shall pay to the Trust Fund on behalf of its Employees, and any Employer who is contributing on behalf of Employees not covered by the Collective Bargaining Agreement shall pay to the Trust Fund on their behalf, Employer Contributions calculated in the same manner as provided in the Collective Bargaining Agreement for Employees covered thereby.

3.02 Compensation Limitation. Notwithstanding Section 3.01 of this Plan, the Employee's wages for the Plan Year considered for purposes of calculating his or her Employer Contributions for the Plan Year shall not exceed the Compensation Limitation.

3.03 Additional Employer Contributions. Notwithstanding any other provision of this Plan:

(a) Corrective Contributions. An Employer shall make any such contribution to the Trust Fund on behalf of a Participant as the Plan Administrator may determine shall be required to correct a Participant's Account, including, but not limited to, a correction to include an individual who was erroneously excluded from participation in this Plan.

(b) Required Contributions. An Employer shall make any such contribution on behalf of a Participant as the Plan Administrator may determine shall be required to comply with the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended from time to time, or any prior or subsequent corresponding law.

3.04 Conditional Employer Contributions. Any contribution made to the Trust Fund by an Employer pursuant to Section 3.01 or 3.03 of this Plan shall be conditioned upon its deductibility under Code Section 404 and shall be subject to reversion to the Employer in accordance with Section 3.05 of this Plan.

3.05 Reversion of Employer Contributions. No contribution made to the Trust Fund by an Employer pursuant to Section 3.01 or 3.03 of this Plan may revert to the Employee except as follows:

(a) Mistake of Fact or Law. If the Employer made the contribution by reason of a mistake of fact or law, the contribution, to the extent attributable to the mistake of fact or law, may be returned to the Employer within six (6) months after the Plan Administrator determines that the contribution was made by reason of such mistake.

(b) Deductibility. If the Internal Revenue Service disallows a deduction taken by the Employee for the contribution under Code Section 404, the contribution, to the extent determined to be nondeductible, may be returned to the Employer within one (1) year after the disallowance of the deduction.

## ARTICLE IV

### ALLOCATIONS AND ACCOUNTS

#### 4.01 Determinations and Allocations of Contributions

(a) Monthly Allocations. As of each Valuation Date, the Plan Administrator shall determine the Paid Employer Contributions as the aggregate amount of Employer Contributions made to the Trust Fund during the Valuation Period, and the Plan Administrator shall allocate such Paid Employer Contributions to the respective Employer Contribution Subaccounts of the Participants and Employees who have not yet become Participants on whose behalf such contributions were made.

(b) Periodic Allocations. As of any date during a Plan Year, the Plan Administrator shall determine the Unpaid Employer Contributions as the aggregate amount (if any) of Employer Contributions required to be made, but not made, to the Trust Fund since the last such determination, and the Plan Administrator shall allocate such Unpaid Employer Contributions to the respective Employer Contribution Subaccounts of the Participants and Employees who have not yet become Participants on whose behalf such contributions were made.

4.02 Allocation of Suspense Account. As of the last day of each Plan Year, the Plan Administrator shall allocate any amount that has been held in a suspense account pursuant to Section 4.04(b) since the last day of the preceding Plan Year by crediting to each Account existing as of such date, as an Employer Contribution, an amount that bears the same ratio to the amount in the suspense account as the value of the respective Account as of such date bears to the aggregate value of all Accounts as of such date.

4.03 Determination and Allocation of Net Earnings or Losses. As of the last day of each Plan Year, the Trustees shall determine the net earnings or losses of the Trust Fund for the Plan Year as the gross earnings or losses of the Trust Fund, less expenses of the Trust Fund for the Plan Year, plus Excess Employer Contributions for the Plan Year, and minus Unpaid Employer Contributions allocated pursuant to Section 4.01(b) during the Plan Year, and the Plan Administrator shall allocate such net earnings or losses of the Trust Fund for the Plan Year to the Participants' Accounts pro-rata based on the value of such accounts as of the last day of the Plan Year.

#### 4.04 Code Section 415 Requirements.

(a) Limitation. Notwithstanding any other provision of this Plan, Paragraphs (i) and (ii) below shall apply to each Participant for a Plan Year:

(i) If the Participant has never participated in a Defined Benefit Plan (whether or not terminated) maintained by an Employer, the Participant's Annual Addition for the Plan Year shall not exceed the lesser of:

(A) Twenty-five percent (25%) of the Participant's Compensation for the Plan Year; or

(B) Thirty thousand dollars (\$30,000) or, if greater, twenty-five percent (25%) of the dollar limitation in effect under Code Section 415(b) (1) (A) on the first day of the Plan Year.

(ii) If the Participant participates in or has participated in one or more Defined Benefit Plans (whether or not terminated) maintained by an Employer, the sum for the Plan Year of the Participant's Defined Benefit Plan Fraction and his or her Defined Contribution Plan Fraction shall not exceed one (1).

(b) Excess Annual Additions. As soon as possible after the end of each Plan Year, the Plan Administrator shall determine if a reduction of any Participant's Annual Addition is required in order to comply with the limitation in Subsection (a) above. If a reduction of a Participant's Annual Addition is required, the Plan Administrator shall forfeit a portion or all, as necessary, of the Employer Contributions credited to the Participant's Account for the Plan Year. Any amounts forfeited pursuant to this Subsection shall be held in a suspense account and shall be allocated pursuant to Section 4.02 of this Plan.

(c) Definition. As used in this Section, the term "Employer" shall include, for purposes of determining an individual's Compensation and all other purposes, all other employers required to be aggregated with the Employer under Code Sections 414(b) and 414(c), as applied in accordance with Code Section 415(h), and Code Sections 414(m) and 414(o).

4.05 Corrections. Notwithstanding any other provision of this Plan, in the event that the Plan Administrator determines in its sole discretion, that there has been an incorrect credit to or debit from an account, the Plan Administrator shall take any such actions as it may deem in its sole discretion, to be necessary or desirable to correct such prior incorrect credit or debit.

4.06 Determination of Value of Accounts. The fair market value of each account shall be determined as of the last day of each Plan Year as follows:

(a) The fair market value of the account (if any) as of the last day of the preceding Plan Year; plus

(b) Any contributions credited to the Account pursuant to Section 4.01 of this Plan during the Plan Year after any forfeiture thereof pursuant to Section 5.02 of this Plan; plus

(c) Any amounts credited to the Account pursuant to Section 4.02 of this Plan as of the last day of the Plan Year; plus

(d) Any amounts credited to the Account pursuant to Section 3.03 of this Plan during the Plan Year or as of the last day thereof; plus

(e) Any net earnings credited to the Account pursuant to Section 4.03 of this Plan as of the last day of the Plan Year; plus

(f) Any amounts credited to the Account in accordance with Section 4.05 of this Plan during the Plan Year or as of the last day thereof; less

(g) Any net losses deducted from the account pursuant to Section 4.03 of this Plan as of the last day of the Plan Year; less

(h) Any amounts deducted from the Account in accordance with Section 4.05 of this Plan during the Plan Year or as of the last day thereof; less

(i) Any cash amounts and the fair market value of any property distributed or transferred to or on behalf of the respective Participant from the Account during the Plan Year or as of the last day thereof.

4.07 Value Determinations. The Trustees shall exercise their best judgment in determining any issue of value. All such determinations of value shall be binding upon all Participants and their Beneficiaries.

ARTICLE V

VESTING AND FORFEITURES

5.01 Nonforfeitability of Accounts. A Participant's Account shall be at all times one hundred percent (100%) nonforfeitable.

5.02 Forfeitures of Accounts. Any Employer Contributions credited to the Account of an Employee during a Plan Year shall become Excess Employer Contributions as of the last day of such Plan Year if the Employee does not become a Participant as of the first day of the Plan Year notwithstanding the fact (if applicable) that the Employee becomes a Participant as of the first day of a subsequent Plan Year.



## ARTICLE VI

### ELIGIBILITY FOR BENEFITS AND NORMAL FORMS OF BENEFIT

6.01 Normal or Late Retirement. Subject to Article VII of this Plan, if a Participant shall cease being an Employee on or after his or her Normal Retirement Date, the Participant shall be entitled to receive payment of his or her Account in the Form of a Single Life Annuity/5-Year Certain.

6.02 Disability. Subject to Article VII of this Plan, if a Participant shall cease being an Employee because the Participant has incurred a Total and Permanent Disability, the Participant shall be entitled to receive payment of his or her Account in the form of a Single Life Annuity.

6.03 Other Termination of Employment. Subject to Article VII of this Plan, if a Participant who shall not be entitled to receive payment of his or her account pursuant to Section 6.01, or 6.02, of this Plan shall cease being an Employee, the participant shall be entitled to receive payment of his or her Account in the form of a Single Life Annuity/5 Year Certain.

6.04 Death. Subject to Article VII of this Plan:

(a) Death Before Annuity Starting Date. In the event of the death of a Participant before his or her Annuity Starting Date:

(i) Spouse's Benefit. If the Participant had a spouse on the date that the participant died, the spouse shall be entitled to receive payment of the Participant's Account in the form of a Single Life Annuity or in the form of a lump-sum distribution.

(ii) Benefit for Non-spouse Beneficiary. If the Participant did not have a spouse on the date that the Participant died, a Beneficiary of the Participant shall be entitled to receive payment of the Participant's Account or the Beneficiary's appropriate share thereof, as applicable, in the form of a lump-sum distribution.

(b) Death After Annuity Starting Date. In the event of the death of a Participant on or after his or her Annuity Starting Date, if an Account is being maintained for the Participant because installment payments were payable or being paid to him or her, a Beneficiary of the Participant shall be entitled to receive payment of the Participant's Account or the Beneficiary's appropriate share thereof, as applicable, in the form of a lump-sum distribution.

## ARTICLE VII

### ALTERNATE FORMS OF PAYMENT AND REQUIREMENTS FOR PAYMENT OF BENEFITS

7.01 Commencement of Benefits. Subject to Article VIII of this Plan, a benefit payable to a Participant or the Beneficiary of a deceased Participant shall commence or shall be paid as of the Participant's or Beneficiary's Annuity Starting Date, which shall be determined as provided in Subsections (a) through (e) below, as applicable. As of the Annuity Starting Date of a Participant or a Beneficiary, any and all terms and conditions of the benefit payable to the Participant or Beneficiary shall be final and binding on the Participant or Beneficiary.

(a) Normal or Late Retirement. The Annuity Starting Date of a Participant who is eligible for a benefit under Section 6.01 of this Plan shall be any date selected by the Participant in his or her application therefor that is the first (1st) day of a month and that coincides with or follows the date that the Participant ceased being an Employee.

(b) Disability. The Annuity Starting Date of a Participant who is eligible for a benefit under Section 6.02 of this Plan shall be any date selected by the Participant in his or her application therefor that is the first (1st) day of a month and that coincides with or follows the date of the Participant's Total and Permanent Disability.

(c) Other Termination of Employment. The Annuity Starting Date of a Participant who is eligible for a benefit under Section 6.03 of this Plan shall be any date selected by the Participant in his or her application therefor that is the first (1st) day of a month and that coincides with or follows the earlier of the date (if any) of the Participant's Total and Permanent Disability Date.

(d) Distributions at Participant's Death.

(i) Spouse's Benefit. The Annuity Starting Date of the spouse of a deceased Participant who is eligible for a benefit under Section 6.04 (a) (i) of this Plan shall be any date selected by the spouse in his or her application therefor that is the first (1st) day of a month and that coincides with or follows the Participant's date of death.

(ii) Benefit for Non-Spouse Beneficiary. The Annuity Starting Date of a Beneficiary of a deceased Participant to whom a lump-sum distribution shall become payable pursuant to Section 6.04 (a) (ii) or 6.04 (b) of this Plan shall be the earliest date administratively feasible coincident with or following the Participant's date of death.

(e) Cash-Out Distributions. Notwithstanding the foregoing Subsections, the Annuity Starting Date of a Participant who elects a lump-sum distribution pursuant to Section 7.03 of this Plan shall be any date selected by the Participant in his or her application therefor.

7.02 Alternative Forms of Payment for Participants. This Section shall apply to a Participant who is eligible for a benefit under Article VI of this Plan.

(a) Required Form for Married Participants. Subject to Subsection (b) below, if the Participant shall have a spouse on the Participant's Annuity Starting Date, the Participant shall receive his or her account in the form of a Qualified Joint and Survivor Annuity.

(b) Optional Forms. Subject to Subsections (d) and (e) below, if the Participant's Annuity Starting Date is later than his or her Normal Retirement Date or the date (if any) of his or her Total and Permanent Disability, the Participant may elect to receive his or her account in one of the optional forms of payment described in Paragraphs (i) and (ii) below, if and as applicable, and the Participant shall receive his or her Account in the elected form (if any) as of the Participant's Annuity Starting Date in lieu of the Qualified Annuity otherwise payable to the Participant as of such date:

(i) Installment Distributions. The Participant may elect to receive his or her account in the form of equal monthly payments from his or her account until the account is exhausted, over a time period approved by the trustees.

(ii) Lump-Sum Distribution. The Participant may elect to receive his or her account in the form of a lump-sum distribution.

(c) Explanation. Within the period of time beginning ninety (90) days before and ending thirty (30) days before the Participant's Annuity Starting Date, the Plan Administrator shall furnish to the Participant a non-technical explanation of the Qualified Annuity and the optional forms of payment described in Subsection (b) above, which shall include: (i) the terms and conditions of the Qualified Annuity and such optional forms of payment; (ii) the Participant's right to waive the Qualified Annuity and to elect such an optional form of payment; (iii) the financial effect of any such waiver and election; (iv) the spousal consent requirement described in Subsection (d) below, if applicable; (v) the fact (if applicable) that the Participant has the right to defer payment of the Qualified Annuity if he or she has not attained age fifty-five (55); (vi) the Participant's right to revoke any waiver of the Qualified Annuity and election of an optional form of payment; (vii) the financial effect of any such revocation; and (viii) the Participant's right to request in writing additional information. The Participant may make a written request for additional information, which the Plan Administrator shall furnish within ninety (90) days after its receipt of such request.

(d) Waiver. The Participant may elect to waive the Qualified Annuity and to receive instead an optional form of payment described in Subsection (b) above by filing with the Plan Administrator the appropriate forms provided by the Plan Administrator within the ninety (90) day period ending on the Participant's Annuity Starting Date. If the Participant had requested additional information pursuant to Subsection (c) above, he or she shall have ninety (90) days beginning on the date that the Plan Administrator provides such information to waive the Qualified Annuity.

If the Participant has a spouse, the Participant's waiver of the Qualified Annuity shall not be effective unless: (i) the Participant's waiver contains or is accompanied by the written consent of the spouse, which acknowledges the effect of such waiver and election and is witnessed by a notary public or a representative of the Plan Administrator; or (ii) if the consent of the Participant's spouse would otherwise be required, the Plan Administrator is satisfied that such consent cannot be obtained because the spouse cannot be located or because of such other circumstances as may be specified in regulations promulgated by the Secretary of the Treasury.

7.03 Cash-out Distribution for Participants. Notwithstanding any other provision of this Plan, a Participant who is eligible for a benefit under Article VI of this Plan may elect to receive his or her account in the form of a lump-sum distribution, if, as of the annuity starting date for such lump-sum distribution provided in Section 7.01(e) of this Plan, the value of the Participant's account shall not exceed thirty-five hundred dollars (\$3,500); provided, however, that, in the case of a participant who is eligible for a benefit under Section 6.03 of this Plan, the participant may not elect a lump-sum distribution under this Section until at least two (2) consecutive Plan Years with respect to which no Employer Contributions were paid or were required to be paid to the Trust Fund on the Participant's behalf shall have elapsed. Any lump-sum distribution payable pursuant to this Section shall be paid as of the Participant's Annuity Starting Date for such lump-sum distribution in lieu of the Qualified Annuity otherwise payable. Notwithstanding the foregoing, if the Annuity Starting Date for a lump-sum distribution that shall be payable pursuant to this Section precedes the date that the participant shall attain age fifty-five (55), no lump-sum distribution shall be payable pursuant to this Section after such Annuity Starting Date unless the Participant and his or her spouse (if any) consent in writing thereto, where any spousal consent required for purposes of this Section shall be obtained in accordance with the requirements for spousal consent provided in Section 7.02(d) of this Plan.

7.04 Optional Forms of Payment for Spouses of Deceased Participants. This Section shall apply to the spouse of a deceased Participant who is eligible for a benefit under Section 6.04(a) (i) of this Plan.

(a) Election of Optional Form. Subject to Subsections (c) and (d) below, the spouse may elect to receive the Participant's Account in the form of (i) a lump-sum distribution or (ii) monthly payments from the participant's account until the account is exhausted. Any distribution(s) so payable shall be payable as of the spouse's Annuity Starting Date in lieu of the Single Life Annuity otherwise payable.

(b) Explanation. Within the period of time beginning ninety (90) days before and ending thirty (30) days before the spouse's Annuity Starting Date, the Plan Administrator shall furnish to the spouse in writing a general, non-technical description of the Single Life Annuity and the optional forms of payment described in Subsection (a) above, which shall include (i) an explanation of the relative financial effect of the Single Life Annuity and such optional forms of payment; (ii) the fact that the Single Life Annuity shall be paid automatically unless it is waived; (iii) the fact (if applicable) that the spouse has the right to defer distribution if the spouse's Annuity Starting Date precedes the date that the Participant would have attained age fifty-five (55); (iv) the spouse's right to waive the Single Life Annuity and to elect such an optional form of payment; (v) the effect of any such waiver; (vi) the spouse's right to revoke any such waiver and the effect of any such revocation; and (vii) the spouse's right to request in writing additional information. The spouse may make a written request for additional information, which the Plan Administrator shall furnish within ninety (90) days after its receipt of such request.

(c) Waiver. Subject to Subsection (d) below, the spouse may elect to waive the Single Life Annuity and to receive instead an optional form of payment described in Subsection (a) above by filing a written waiver with the Plan Administrator within the ninety (90) day period ending on the spouse's Annuity Starting Date. If the spouse had requested additional information pursuant to Subsection (b) above, he or she shall have ninety (90) days beginning on the date that the Plan Administrator provides such information to waive the Single Life Annuity.

(d) Revocation of Waiver. If the spouse has elected to waive the Single Life Annuity pursuant to Subsection (c) above, the spouse may revoke the waiver by filing a written revocation with the Plan Administrator within the ninety (90) day period ending on the spouse's annuity starting date or such later ninety (90) day period as may be applicable pursuant to Subsection (c).

#### 7.05 Direct Rollovers.

(a) Applicability of Section. With respect to any distribution that shall be payable notwithstanding any other provision of this Plan, this Section shall apply to a Participant or the spouse of a deceased Participant who has elected to receive a lump-sum distribution but only to the extent, with respect to such a spouse, that such benefit shall not be presumed by the Plan Administrator, in accordance with Treasury regulations, to be excludable from gross income under Code Section 101(b).

(b) Election of Direct Rollover. A Participant or spouse described in Subsection (a) above may elect, at the time and in the manner prescribed by the Plan Administrator, to have a Direct Rollover made to an Eligible Retirement Plan, where the Direct Rollover shall consist of such lump-sum distribution.

(c) Explanation. In accordance with the applicable notice and timing requirements of Code Section 411(a) (11), the Plan Administrator shall furnish to a Participant or spouse described in Subsection (a) above a non-technical explanation of the Direct Rollover option provided for in Subsection (b) above prior to the date that a distribution eligible for a Direct Rollover shall otherwise be made to the Participant or spouse.

(d) Definitions. For purposes of this Section, (i) the term "Direct Rollover" shall mean a direct Trustee-to-Trustee transfer described in Code Section 401(a) (31); and (ii) the term "Eligible Retirement Plan" shall mean, in the case of a Participant, a qualified trust described in Code Section 401(a) and maintained in conjunction with a defined contribution plan or an annuity plan described in Code Section 403(a) and, in the case of either a Participant or the spouse of a deceased Participant, an individual retirement account described in Code Section 408(a) or an individual retirement annuity described in Code Section 408(b).

7.06 Beneficiaries. The Plan Administrator shall provide to each new Participant a form on which he or she may designate (a) one or more Beneficiaries who shall receive all or a portion of the Participant's Account (if any) upon the Participant's death pursuant to Section 6.04 (a) (ii) or 6.04(b) of this Plan, if and as applicable, including any Beneficiary who shall receive any such amount only in the event of the death of another Beneficiary; and (b) the percentages to be paid to each such Beneficiary (if there is more than one). A Participant may change his or her beneficiary designation from time to time by filing a new form with the Plan Administrator. No such Beneficiary designation shall be effective unless and until the Participant has properly filed the completed form with the Plan Administrator.

In the event of the death of a Participant, if the former Participant is not survived by any Beneficiary (including his or her spouse) or if no Beneficiary was effectively designated, any amount payable pursuant to Section 6.04(a) of this Plan shall be paid in a lump-sum to the Participant's estate and any amount payable pursuant to Section 6.04(b) of this Plan shall be paid in a lump-sum to the Participant's spouse and, if there is no such individual, to the Participant's estate. If a designated Beneficiary is living at the death of the Participant but dies before

receiving the entire benefit to which the Beneficiary was entitled, the remaining portion of such benefit shall be paid in a lump sum to the estate of the deceased Beneficiary.

7.07 Annuity Contracts. The Trustees shall purchase and may distribute to a Participant or the spouse of a deceased Participant an annuity contract that provides for the Qualified Annuity of Single Life Annuity that shall be payable to the Participant or spouse. In such an event, the annuity contract shall comply with the requirements of Code Section 417 to the extent applicable under the Plan and shall be nontransferable.

7.08 Reemployment. If a Participant who is receiving installments payments has a Reemployment Date, he or she shall not be entitled to receive any further payments from his or her account until the Participant ceases being an Employee again.

7.09 Limitation on Payment of Benefits. Notwithstanding any other provision of this Plan, the payment of any benefit to or on behalf of a Participant under the Plan shall be subject to the limitations provided in Subsections (a) through (f) below, as applicable:

(a) Commencement of Benefits. Subject to Section 8.01 of this Plan, unless a later date is elected by the Participant, his or her Annuity Starting Date shall not be later than sixty (60) days after the last day of the Plan Year in which occurs the latest of the dates described in Paragraphs (i), (ii), and (iii) below:

- (i) The Participant's Normal Retirement Date;
- (ii) The tenth (10th) anniversary of the date that the Participant began participating in the Plan; or
- (iii) The date that the Participant ceases being an Employee.

(b) Required Distribution. Notwithstanding Subsection (a) above, the Participant's Annuity Starting Date shall not be later than the Participant's Required Beginning Date.

(c) Required Death Benefits.

(i) In General. If the Participant dies before his or her Required Beginning Date and the Participant was not receiving payments under this Plan as of his or her date of death, any benefit payable on behalf of the Participant shall be paid within the five (5) year period beginning on the Participant's date of death.

(ii) Special Rule for Non-spouse Beneficiary. If Paragraph (i) above would otherwise apply to the benefit payable upon the death of the Participant but such benefit shall be paid as annuity payments or installment distributions to a Beneficiary of the Participant who is not the Participant's Spouse, then Paragraph (i) shall not apply and the Beneficiary's Annuity Starting Date with respect to such payments shall not be later than December 31st of the calendar year following the calendar year in which the Participant died.

(iii) Special Rule for Spousal Beneficiary. If Paragraph (i) above would otherwise apply to the Benefit payable upon the death of the Participant, but such

benefit shall be paid to the Participant's spouse, then Paragraph (i) shall not apply and the spouse's Annuity Starting Date with respect to such payments shall not be later than the later of (A) December 31st of the calendar year following the calendar year in which the Participant died, or (B) December 31st of the calendar year in which the Participant would have attained age seventy and one-half (70-1/2); provided, however, that, if the spouse dies before such date and the spouse was not receiving payments under this Plan as of his or her date of death, any benefit payable on behalf of the spouse shall be paid within the five (5) year period beginning on the spouse's date of death.

(d) Other Requirements. Payment of the Participant's benefit shall be made in accordance with the regulations under Code Section 401(a) (9), including Proposed Treasury Regulation Section 1.401(a) (9) -2.

(e) Incidental Death Benefits. The Participant shall not receive a benefit under which the present value of payments to be made to the Participant (based upon the life expectancy of the Participant determined under Treasury Regulation Section 1.72-9, Table I, and a five percent (5%) per annum interest) would be less than fifty-one percent (51%) of the value of the Participant's Account.

(f) Administrative Matters. The Plan Administrator may, in its discretion, delay the date for distribution of the benefit payable to or on behalf of a Participant to the extent necessary to determine the benefit properly, or, notwithstanding Sections 7.01 and 8.01 of this Plan, the Plan Administrator may, in its discretion, commence payment of the benefit payable to or on behalf of a Participant despite the fact that a timely claim therefor has not been filed.

## ARTICLE VIII

### CLAIMS AND ADMINISTRATION

8.01 Applications. A Participant or a Beneficiary who is or may be entitled to a benefit under this Plan shall apply for such benefit in writing in a form and manner prescribed by the Plan Administrator.

8.02 Information and Proof. A Participant or the Beneficiary of a deceased Participant shall furnish all information and proof required by the Plan Administrator for the determination of any issue arising under the Plan including, but not limited to, proof of marriage to a Participant or a certified copy of the death certificate of a Participant. The failure by a Participant or the Beneficiary of a deceased Participant to furnish such information or proof promptly and in good faith, or the furnishing of false or fraudulent information or proof by the Participant or Beneficiary, shall be sufficient reason for the denial, suspension, or discontinuance of benefits thereto and the recovery of any benefits paid in reliance thereon.

8.03 Notice of Address Change. Each participant and any Beneficiary of a deceased Participant who is or may be entitled to a benefit under this Plan shall notify the Plan Administrator in writing of any change of his or her address.

#### 8.04 Claims Procedure

(a) Claim Denial. The Plan Administrator shall provide adequate notice in writing to any Participant or Beneficiary of a Deceased Participant whose application for benefits, made in accordance with Section 8.01 of this Plan, has been wholly or partially denied. Such notice shall include the reasons for denial, including references, when appropriate, to specific Plan or Trust Agreement provisions; a description of any additional information necessary for the claimant to perfect the claim, if applicable; and a description of the claimant's right to appeal under Subsection (b) below.

The Plan Administrator shall furnish such notice of a claim denial within ninety (90) days after the date that the Plan Administrator received the claim. If special circumstances require an extension of time for deciding a claim, the Plan Administrator shall notify the claimant in writing thereof within such ninety (90) day period and shall specify the date a decision on the claim shall be made, which shall not be more than one hundred eighty (180) days after the date that the Plan Administrator received the claim. Then, the Plan Administrator shall furnish any denial notice on the claim by the later date so specified.

(b) Appeal Procedure. A claimant or his or her duly authorized representative shall have the right to file a written request for review of a claim denial within sixty (60) days after receipt of the denial, to review pertinent documents, and to submit comments in writing.

(c) Decision Upon Appeal. In considering an appeal made in accordance with Subsection (b) above, the Plan Administrator shall review and consider any written comments by the claimant or his or her duly authorized representative. The claimant or his or her representative shall not be entitled to appear in person before any representative of the Plan Administrator.



The Plan Administrator shall issue a written decision on an appeal within sixty (60) days after the date the Plan Administrator receives the appeal together with any written comments relating thereto. If special circumstances require an extension of time for a decision on an appeal, the Plan Administrator shall notify the claimant in writing thereof within such sixty (60) day period. Then, the Plan Administrator shall furnish a written decision on the appeal as soon as possible but no later than one hundred twenty (120) days after the date that Plan Administrator received the appeal. The decision on the appeal shall be written in a manner calculated to be understood by the claimant and shall include specific references to the pertinent Plan provisions on which the decision is based.

#### 8.05 Status, Responsibilities, Authority and Immunity of Plan Administrator

##### (a) Status of Plan Administrator and Designation of Additional Fiduciaries.

The Plan Administrator shall be the "administrator" of the Plan, as such term is defined in Section 3(16) (A) of ERISA. The Plan Administrator may, in its discretion, designate in writing one or more other persons who shall carry out fiduciary responsibilities (other than Trustee responsibilities) under this Plan.

(b) Responsibilities and Discretionary Authority. The Plan Administrator shall have absolute and exclusive discretion to manage the Plan and to determine all issues and questions arising in the administration, interpretation, and application of the Plan and the Trust Agreement, including, but not limited to, issues and questions relating to a Participant's eligibility for Plan benefits and to the nature, amount, conditions and duration of any Plan benefits. Furthermore, the Plan Administrator shall have absolute and exclusive discretion to formulate and to adopt any and all standards for use in any actuarial calculations required in connection with the Plan and rules, regulations, and procedures that it deems necessary or desirable to effectuate the terms of the Plan, including, but not limited to procedures governing applications and claims for Plan benefits and appeals of claim denials; provided, however, that the Plan Administrator shall not adopt a rule, regulation, or procedure that shall conflict with this Plan or the Trust Agreement. Subject to the terms of any applicable annuity policy providing for the payment of Plan benefits or other applicable contract or agreement, any interpretation or application of this Plan or the Trust Agreement by the Plan Administrator, or any rules, regulations, and procedures duly adopted by the Plan Administrator, shall be final and binding upon Employees, Participants, Beneficiaries and any and all other persons dealing with the Trust Fund.

(c) Delegation of Authority and Reliance on Agents. The Plan Administrator or any fiduciary designated thereby in accordance with Subsection (a) above may, in its discretion, allocate administrative duties and responsibilities for the operation and administration of the Plan to one or more persons, who may or may not be Employees, and employ or retain one or more persons, including accountants and attorneys, to render advice with regard to any responsibility of such fiduciary.

(d) Reliance on Documents. Neither the Plan Administrator nor any fiduciary designated thereby in accordance with Subsection (a) above shall incur any liability in relying or in acting upon any instrument, application, notice, request, letter, telegram or other paper or document believed by it to be genuine, to contain a true statement of facts, and to have been executed or sent by the proper person.

(e) Immunity of Plan Administrator. Except as and to the extent prohibited by ERISA, neither the Plan Administrator nor any fiduciary designated thereby in accordance with Subsection (a) above shall be liable for any of its acts or omissions, the acts or omissions of any other such fiduciary, or the acts or omissions of any employee or agent authorized or retained pursuant to Subsection (c) above by the Plan Administrator or other such fiduciary, except any act of any such person as constitutes gross negligence or willful misconduct.

8.06 Facility of Payment. If the Trustees shall determine that a Participant or the Beneficiary of a deceased Participant to whom a benefit is payable is unable to care for his or her affairs because of illness, accident or other incapacity, the Trustees may, in their discretion, make any payment otherwise due to the Participant or Beneficiary to the legal guardian or other representative of the Participant or Beneficiary. Furthermore, the Trustees may, in their discretion, make any payment otherwise due to a minor Participant or Beneficiary of a deceased Participant to the guardian of the minor or the person having custody of the minor. Any payment made in accordance with this Section to a person other than a Participant or Beneficiary shall, to the extent thereof, be a complete discharge of Trust Fund's obligation to the Participant or Beneficiary.

8.07 Unclaimed Benefits. If the Plan Administrator cannot locate a Participant or the Beneficiary of a deceased Participant to whom payment of a benefit under this Plan is required, following a diligent effort by the Plan Administrator to locate the Participant or Beneficiary, such benefit shall be forfeited; provided that the benefit shall be restored upon the Participant's or Beneficiary's subsequent application therefor.

## ARTICLE IX

### TRUST FUND PURPOSES AND ADMINISTRATION

9.01 Existence and Purposes of Trust Fund. Except as provided in Section 3.05 of this Plan, notwithstanding anything in this Plan to the contrary, at no time shall any contributions made to the Trust Fund or any assets at any time forming part of the Trust Fund insure to the benefit of any Employer, and Trust Fund assets shall be held for the exclusive purposes of providing benefits to Participants and Beneficiaries of deceased Participants and defraying the reasonable expenses of administering this Plan and the Trust Fund.

9.02 Powers of the Trustees. The Trustees shall have such powers to hold, to invest, to reinvest, to control, and to disburse the Trust Fund as shall, at such time and from time to time, be set forth in the Trust Agreement or in this Plan.

9.03 Integration of Trust Agreement. The Trust Agreement shall be deemed to be a part of this Plan, and all rights of Participants and Beneficiaries of deceased Participants under this Plan shall be subject to the provisions of the Trust Agreement.

9.04 Rights to Trust Fund Assets. No Participant or Beneficiary of a deceased Participant, nor any other person, shall have any right to, or interest in, any assets of the Trust Fund upon termination of any such Participant's employment or otherwise, except as may be specifically provided from time to time in this Plan, the Trust Agreement, or both, and then only to the extent so specifically provided.

9.05 Plan Benefits Paid From Trust Fund Assets. Payment of all benefits provided for in this Plan shall be made solely out of the assets of the Trust Fund.

## ARTICLE X

### PLAN AMENDMENT OR TERMINATION

10.01 Right to Amend. The Trustees reserve the right to amend this Plan, by action duly taken, at any time and from time to time, to any extent that the Trustees may deem advisable, and any such amendment shall take the form of an instrument in writing duly executed by one or more individuals duly authorized under the Trust Agreement. Without limiting the generality of the foregoing, the Trustees specifically reserve the right to amend the Plan as may be deemed necessary to ensure the continued qualification of the Plan under Code Section 401(a) and tax-exempt status of the Trust Fund under Code Section 501(a) and to amend the Plan retroactively.

10.02 Termination. The Union and the Association may terminate the Plan at any time by an instrument in writing duly executed. If the Plan is terminated, the Trustees may, in their sole discretion, distribute the interest of each Participant or Beneficiary of a deceased Participant in a lump sum notwithstanding any other election of a form of payment that is then in effect under any other provision of this Plan. Upon termination of the Plan, (a) the Trustees shall determine the value of the Accounts in accordance with Article IV of the Plan; (b) the Trustees shall distribute the balance in each account to or on behalf of the respective participant in a lump sum, in cash or in kind, provided that no in-kind distribution shall be made of a life annuity; and (c) each Employer on whose behalf an amount is being held in a suspense account pursuant to Section 4.04(b) of this Plan shall receive a reversion of such amount.

## ARTICLE XI

### TOP-HEAVY PLAN PROVISIONS

11.01 Purpose. Notwithstanding anything in this Plan to the contrary, this Plan shall be administered when necessary according to this Article and Code Section 416.

11.02 Definitions. Terms used in this Article, other than terms defined in Article I of this Plan and not defined in this Section, shall have the respective meanings set forth below unless the context clearly indicates to the contrary:

(a) The term "Collectively Bargained Employee" shall mean an Employee with respect to whom Employer Contributions are due to the trust Fund under the Collective Bargaining Agreement.

(b) The term "Determination Date" shall mean (i) the Effective Date with respect to the Plan Year beginning on the Effective Date and (ii) with respect to any later Plan Year, the last day of the preceding Plan Year.

(c) The term "Eligible Non-Key Employee" shall mean, with respect to a Determination Date and an Employer, (i) an individual who was a Participant during the Plan Year, (ii) shall not have been a Key Employee or a Collectively Bargained Employee as of the Determination Date for the Plan Year, and (iii) shall have been an Employee on the last day of the Plan Year.

(d) The term "Employer" shall be as defined in Section 1.14 of this Plan except that, other than for purposes of Subsections (f) and (g) below, the term shall include all Affiliated Employers of the Employer.

(e) The term "Key Employer" shall mean, with respect to a Determination Date, an Employee or former Employee who, at any time during a Plan Year in the period of five (5) consecutive Plan Years ending on the Determination Date, was (i) an officer of his or her Employer who received Compensation greater than fifty percent (50%) of the dollar limitation in effect under Code Section 415(b) (1) (A); (ii) a Top Ten Owner; (iii) a Five-percent Owner; or (iv) a One-Percent Owner who received Compensation greater than \$150,000. The spouse of a Key Employee or a former Key Employee shall be considered to be a Key Employee or a former Key Employee, respectively.

(f) The term "One-percent Owner" shall mean, with respect to a Determination Date and an Employer, any individual who owns an interest in the Employer of more than one percent (1%), as determined in accordance with Code Section 416(i) (1).

(g) The term "Top Ten Owner" shall mean, with respect to a Determination Date and an Employer, one (1) of the ten (10) employees of the Employer who received Compensation greater than the limitation in effect under Code Section 415(c) (1) (A) and who owns the largest interests in the Employer, as determined in accordance with Code Section 416(i) (1).

(h) The term "Top-heavy Contribution" shall mean, with respect to an Eligible Non-key Employee for a Plan Year, a contribution made on behalf of the Eligible Non-Key Employee for the Plan Year.

(i) The term "Top-heavy Group" shall mean, with respect to an Employer as of a Determination Date, a group of one (1) or more Defined Contribution Plans and Defined Benefit Plans maintained by the Employer in which any Key Employee participates, and any other Defined Contribution Plans and Defined Benefit Plans that the Employer aggregates therewith to meet Code Sections 401(a) (4) and 410 (b), if, as of the Determination Date, the sum of (i) the aggregate value of the accounts of Key Employees in all such Defined Contributions Plans and (ii) the aggregate present value of the cumulative accrued benefits of Key Employees under all such Defined Benefit Plans exceeds sixty percent (60%) of the sum of (i) the aggregate value of the accounts of all Participants who are or were Employees in all such Defined Contribution Plans and (ii) the aggregate present value of the cumulative accrued benefits of all Participants who are or were Employees under all such Defined Benefit Plans. In order, to prevent such required aggregation group from being a Top-heavy Group, the Employer may include in such group any other Defined Contribution Plan or Defined Benefit Plan maintained by the Employer if the group as so aggregated continues to meet the requirements of Code Sections 401(a) (4) and 410(b).

As used in this Subsection, the calculation of the value of accounts and the present values of accrued benefits shall be made with reference to the determination dates that fall within the same calendar year and shall be subject to rules the same as or comparable to the rules in Paragraphs (i) through (iii) of Subsection (j) below.

(j) The term "Top-heavy Plan" shall mean, with respect to a Determination Date and an Employer, the Plan if, as of the Determination Date, the aggregate value of the Accounts of Key Employees for the Plan Year exceeds sixty percent (60%) of the aggregate value of the Accounts of all Participants who are Employees or the Plan is part of a Top-heavy Group. The following rules shall apply for purposes of this Subsection.

(i) The aggregate value of the Accounts of a group of Participants as of a Determination Date shall be increased by (A) the aggregate distributions made to or on behalf of any such Participant during the five (5) consecutive Plan Years ending on the Determination Date and (B) any contributions allocable on their behalf in accordance with Article IV of this Plan that are due but not allocated as of the Determination Date.

(ii) If a Participant has not completed an Hour of Service at any time during the five (5) consecutive Plan Years ending on a Determination Date, his or her Account shall not be included in calculating an aggregate value of Accounts as of the Determination Date.

(iii) The Account of a Participant who is not a Key Employee as of a Determination Date but previously was a Key Employee shall not be included in calculating an aggregate value of Accounts as of the Determination Date.

11.03 Minimum Contribution Requirement. For a Plan Year in which this Plan is a Top-heavy Plan, there shall be a Top-heavy Contribution made with respect to each Eligible Non-key Employee in an amount equal to the lesser of three percent (3%) of the Compensation of such Eligible Non-key Employee for the Plan Year or the highest percentage of a Compensation allocated as Employer Contributions on behalf of a Key Employee for the Plan Year, less any amounts of Employer Contributions allocated to the Eligible Non-key Employee's Account for the Plan Year.

## ARTICLE XII

### MISCELLANEOUS PROVISIONS

12.01 Named Fiduciaries. Each of the Trustees shall each be a "named fiduciary", as such term is defined in Section 402 (a) (2) of ERISA, to the extent of their duties under this Plan.

12.02 Agreement Not An Employment Contract. This Plan shall not be deemed to constitute a contract between any Employer and any Participant or Employee or to be a consideration or an inducement for the employment of any Participant or Employee. Nothing contained in this Plan shall be deemed to give any Participant or Employee the right to be retained in the service of the Employer or to interfere with the right of any Employer to discharge any Participant or Employee at any time regardless of the effect that such discharge shall have upon such individual as a Participant in the Plan.

#### 12.03 Nonalienation of Benefits

(a) Prohibition Against Alienation or Assignment. Subject to Subsection (b) below, benefits payable under this Plan shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution, or levy of any kind, either voluntary or involuntary, including any such liability that is for alimony or other payments for the support of a spouse or former spouse, or for the support of any other relative, before payment thereof is received by the person entitled to the benefits under the Plan; and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge or to otherwise dispose of any right to benefits payable under this Plan shall be void; provided, however, that this Subsection shall not prohibit the Plan Administrator from offsetting, pursuant to Section 12.04 of this Plan, any payments due to a Participant, a Beneficiary of a deceased Participant, or any other person who may be entitled to receive a benefit under this Plan and provided further that this Subsection shall not preclude the enforcement of a federal tax levy, the collection of a judgment by the United States of an unpaid tax assessment, or any arrangement excluded from the term "assignment" or "alienation" in regulations promulgated by the Secretary of the Treasury.

(b) Exception for Qualified Domestic Relations Order. Notwithstanding Subsection (a) above or any other provision of this Plan, the Plan Administrator shall comply with a "qualified domestic relations order", as such term is defined in Code Section 414(p). The Plan Administrator shall establish a procedure to determine whether a domestic relations order that purports to affect benefits under the Plan is a qualified domestic relations order and, if so, to administer distributions thereunder. To the extent provided under a qualified domestic relations order, the former spouse of a Participant shall be treated as the surviving spouse of the participant upon his or her death for all purposes under this Plan.

12.04 Offset of Benefits. Notwithstanding anything in this Plan to the contrary, in the event that a Participant or the Beneficiary of a deceased Participant owes any amount to the Trust Fund, whether as a result of an overpayment or otherwise, the Plan Administrator may, in its discretion, offset the amount owed or any percentage thereof in any manner against any payments due from the Trust Fund to the Participant or Beneficiary.

12.05 Reciprocity Agreements. The Trustees may enter into a reciprocity agreement between the Trust Fund and another pension Trust Fund by such other Trust Fund on behalf of an individual who is employed outside the jurisdiction of the Collective Bargaining Agreement and that may require contributions received by the Trust Fund to be transmitted to such other trust fund on behalf of an individual who is employed within such jurisdiction. In the case of such a reciprocity agreement with another pension trust fund and in accordance therewith, an individual on whose behalf contributions are made to such other trust fund shall be treated as an "Employee" and a "Participant" as applicable, with respect to any such contributions that are transmitted to the trust Fund on his or her behalf by such other trust fund, and an individual on whose behalf contributions are made to the trust fund shall not be treated as an "Employee" or a "Participant" as applicable, with respect to any such contributions that are required to be transmitted on his or her behalf to such other trust fund.

12.06 Merger or Consolidation of Plan. In the event of a merger or consolidation of the Plan with any other plan or a transfer of assets or liabilities of the Plan to any other plan, a Participant shall be entitled to receive a benefit immediately after the merger, consolidation, or transfer (if the successor or transferee plan had then been terminated) that is equal to or greater than the benefit that he or she would have been entitled to receive immediately before the merger, consolidation, or transfer (if the Plan had then been terminated).

12.07 Merger or Consolidation of Employer. If an Employer is merged or consolidated with another business organization, or another business organization acquires all or substantially all of an Employer's assets, such organization may become an Employer hereunder by action of its board of directors (or other governing body) and by action of the board of directors (or other governing body) of such prior Employer, if still existent. Such a change in Employers shall not be deemed a termination of the Employer's participation in the Plan by either the predecessor or successor Employer.

12.08 Savings Clause. If any term, covenant, or condition of this Plan, or the application thereof to any person or circumstance, shall to any extent be held to be invalid or unenforceable, the remainder of this Plan, or the application of any such term, covenant, or condition to persons or circumstances other than those as to which it has been held to be invalid or unenforceable, shall not be affected thereby, and, except to the extent of any such invalidity or unenforceability, this Plan and each term, covenant, and condition hereof shall be valid and shall be enforced to the fullest extent permitted by law.

12.09 Governing Law. This Plan shall be construed, regulated and administered under the laws of the State of North Carolina to the extent not pre-empted by ERISA or any other federal law.

12.10 Construction. As used in this Plan, the masculine and feminine gender shall be deemed to include the neuter gender, as appropriate, and the singular or plural number shall be deemed to include the other, as appropriate, unless the context clearly indicates to the contrary.

12.11 Headings Not Part of Agreement. Headings of articles, sections and subsections of this Plan are inserted for convenience of reference; they constitute no part of the Plan and are not to be considered in the construction of the Plan.



IN WITNESS WHEREOF, the Trustees have adopted this amended and Restate Plan  
this 9<sup>th</sup> day of September, 1997.

UNION TRUSTEES:

Lawrence Reynolds  
Ronald Coleman  
Neal Harrison  
Paul J. Khachik  
Jay M. Maurice

EMPLOYER TRUSTEES:

Joseph A. Sinal  
[Signature]  
Gene S. Duckworth  
[Signature]  
[Signature]

