

**THE LANCASTER COUNTY, NEBRASKA EMPLOYEES RETIREMENT PLAN**

**January 1, 2009 Restatement**

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## PREAMBLE

The Lancaster County, Nebraska Employees Retirement Plan, originally effective as of July 21, 1964, is hereby amended and restated in its entirety. This amendment and restatement shall be effective as of January 1, 2009, unless otherwise provided herein or as required by law. The Plan, as amended and restated hereby, is intended to qualify as a money purchase pension plan under Code Section 401(a) and is a governmental plan under Code Section 414(d). The Plan is maintained for the exclusive benefit of eligible employees and their beneficiaries. Contributions by employees under the Plan are intended to be "picked up" and treated as employer contributions in accordance with Code Section 414(h)(2).

The Plan is not intended to be subject to the provisions of the Employee Retirement Income Security Act of 1974.

## ARTICLE I DEFINITIONS

### 1.1 Plan Definitions

As used herein, the following words and phrases have the meanings hereinafter set forth, unless a different meaning is plainly required by the context:

An "**Account**" means the account maintained in the name of a Participant that reflects his interest in the Funding Arrangement and any Sub-Accounts maintained thereunder, as provided in Article VIII.

The "**Administrator**" means the Employer unless the Employer designates another person or persons to act as such.

An "**After-Tax Contribution**" means any after-tax employee contribution made by a Participant to the Plan as may be permitted under Article V or as may have been permitted under the terms of the Plan prior to this amendment and restatement or any after-tax employee contribution made by a Participant to another plan that is rolled over or transferred directly to the Plan.

The "**Beneficiary**" of a Participant means the person or persons entitled under the provisions of the Plan to receive distribution hereunder in the event the Participant dies before receiving distribution of his entire interest under the Plan.

A Participant's "**Benefit Payment Date**" means (i) if payment is made through the purchase of an annuity, the first day of the first period for which the annuity is payable or (ii) if payment is made in any other form, the first day on which all events have occurred which entitle the Participant to receive payment of his benefit.

A "**Break in Service**" means any "computation period" (as defined in Section 2.1 for purposes of determining years of Vesting Service) during which a person completes fewer than 501 Hours of Service; provided, however, that no person shall incur a Break in Service for the "computation period" in which he becomes an Eligible Employee, dies, retires on or after his Normal or Early Retirement Date, or becomes Disabled; and provided, further, that no person shall incur a Break in Service solely by reason of temporary absence from work resulting from illness, layoff, or other cause if authorized in advance by the Employer pursuant to its uniform leave policy, if his employment shall not otherwise be terminated during the period of such absence.

The "**Code**" means the Internal Revenue Code of 1986, as amended from time to time. Reference to a Code section includes such section and any comparable section or sections of any future legislation that amends, supplements, or supersedes such section.

The "**Compensation**" of a Participant for any period means, except for purposes of the limitation on contribution provisions of Article VII, the wages as defined in Code Section 3401(a) paid to him for such period for services as an Employee that would be used for purposes of income tax withholding at the source, determined without regard to any rules that limit compensation included in wages based on the nature or location of the employment or services performed.

Notwithstanding the foregoing, Compensation includes any elective deferral, as defined in Code Section 402(g)(3), any amount contributed or deferred by the Employer at the Participant's election and which is not includable in the Participant's gross income by reason of Code Section 125, 132(f)(4), or 457, and certain contributions described in Code Section 414(h)(2) that are picked up by the employing unit and treated as employer contributions; provided that such amounts would have been includable in Compensation if they had been paid to the Participant.

In no event, however, shall the Compensation of a Participant taken into account under the Plan for any Plan Year exceed the limitation in effect for the Plan Year under Code Section 401(a)(17) (\$245,000 for Plan Years beginning in 2009, subject to adjustment annually as provided in Code Sections 401(a)(17)(B) and 415(d)); provided, however, that the dollar increase in effect on January 1 of any calendar year, if any, is effective for Plan Years beginning in such calendar year). If the Compensation of a Participant is determined over a period of time that contains fewer than 12 calendar months, then the annual compensation limitation described above shall be adjusted with respect to that Participant by multiplying the annual compensation limitation in effect for the Plan Year by a fraction the numerator of which is the number of full months in the period and the denominator of which is 12; provided, however, that no proration is required for a Participant who is covered under the Plan for less than one full Plan Year if the formula for allocations is based on Compensation for a period of at least 12 months.

In accordance with Code Section 414(u)(12), an individual receiving differential wage payments (as defined in Code Section 3401(h)(2)) shall be treated as an Eligible Employee and differential wage payments shall be treated as Compensation under the Plan.

A "**Contribution Period**" means the period specified in Article VI for which Employer Contributions shall be made.

"**Disabled**" means a Participant can no longer continue in any substantial, gainful activity by reason of a medically determinable mental or physical condition that is likely to result in death or is expected to continue for a period of at least 12 months. A Participant shall be considered Disabled only if the Administrator determines that he is Disabled based on a written certificate of a physician acceptable to it.

The "**Early Retirement Date**" of an employee means the first day of a month coinciding with or next following the later of the date he attains age 55 or the date he completes 10 years of Vesting Service.

An "**Eligible Employee**" means any Employee who has met the eligibility requirements of Article III to participate in the Plan; provided, however, that any employee hired after the attainment of age 55 who has made an election not to participate in the Plan for a particular Plan Year, as provided in Article III, shall not be considered an Eligible Employee for purposes of receiving an allocation of Employer Contributions for the Plan Year(s) in which his election is in effect.

The "**Eligibility Service**" of an employee means the period or periods of service credited to him under the provisions of Article II for purposes of determining his eligibility to participate in the Plan as may be required under Article III.

An "**Employee**" means any person who is classified by the Employer, in accordance with its payroll records, as an employee of the Employer. Any individual who is not treated by the Employer as a common law employee of the Employer shall be excluded from Plan participation even if a court or administrative agency determines that such individual is a common law employee and not an independent contractor.

Notwithstanding the foregoing, the term "Employee" shall not include the following:

- (a) An independent contractor.
- (b) Any leased employee covered under a money purchase pension plan of the leasing organization.
- (c) Any employee who is regularly scheduled to work less than 20 hours per week, excluding any rehired retiree who does not work more than 867 hours per year.

The "**Employer**" means Lancaster County, Nebraska.

An "**Employer Contribution**" means the amount that the Employer contributes to the Plan as provided under Article VI.

An "**Enrollment Date**" means the first day of each calendar month.

The "**Funding Agent**" means the entity which at the time shall be designated, qualified, and acting under the Funding Agreement and shall include any trustee that holds Plan assets under the terms of the Funding Agreement, any insurance company that issues an annuity or insurance contract pursuant to the Funding Agreement or any person holding assets in a custodial account pursuant to the Funding Agreement. The Employer may designate a person or persons other than the Funding Agent to perform any responsibility of the Funding Agent under the Plan. The term Funding Agent shall include any delegate of the Funding Agent as may be provided in the Funding Agreement.

The "**Funding Agreement**" means any agreement or agreements entered into between the Employer and the Funding Agent relating to the holding, investment, and reinvestment of the assets of the Plan, together with all amendments thereto and shall include any agreement establishing a trust or any agreement establishing a custodial account, an annuity contract, or an insurance contract (other than a life, health or accident, property, casualty, or liability insurance contract) for the investment of assets if the custodial account or contract would, except for the fact that it is not a trust, constitute a qualified trust under Code Section 401.

The "**Funding Arrangement**" means the trust, custodial accounts, annuity contracts, or insurance contracts maintained by the Funding Agent under the Funding Agreement.

The "**General Fund**" means the portion of the Plan's assets maintained by the Funding Agent as required to hold and administer any assets of the Plan that are not allocated among any separate Investment Funds as may be provided in the Plan or the Funding Agreement. No General Fund shall be maintained if all assets of the Plan are allocated among separate Investment Funds.

An "**Hour of Service**" with respect to a person means each hour, if any, that may be credited to him in accordance with the provisions of Article II.

An "**Investment Fund**" means any separate investment vehicle maintained as may be provided in the Plan or the Funding Agreement or any separate investment fund maintained by the Funding Agent, to the extent that there are Participant Sub-Accounts under such funds, to which assets of the Plan may be allocated and separately invested.

The "**Normal Retirement Date**" of an employee means the first day of the month coinciding with or next following the date he attains age 60.

A "**Participant**" means any person who has satisfied the eligibility requirements in Article III to participate in the Plan and has an Account under the Plan.

"**Participant Contributions**" means the contributions made by a Participant under the Plan that are "picked up" in accordance with Code Section 414(h)(2) and treated as employer contributions.

The "**Plan**" means The Lancaster County, Nebraska Employees Retirement Plan, as from time to time in effect.

A "**Plan Year**" means the 12-consecutive-month period ending each December 31.

A Participant's "**Required Beginning Date**" means April 1 of the calendar year following the calendar year in which occurs the later of the Participant's (i) attainment of age 70 1/2 or (ii) Settlement Date.

A "**Rollover Contribution**" means any rollover contribution to the Plan made by a Participant as may be permitted under Article V.

The "**Settlement Date**" of a Participant means the date on which a Participant's interest under the Plan becomes distributable in accordance with Articles XIV and XV.

A "**Sub-Account**" means any of the individual sub-accounts of a Participant's Account that is maintained as provided in Article VIII.

A "**Valuation Date**" means the date or dates designated by the Employer and communicated in writing to the Funding Agent for the purpose of valuing the General Fund and each Investment Fund and adjusting Accounts and Sub-Accounts hereunder, which dates need not be uniform with respect to the General Fund, each Investment Fund, Account, or Sub-Account; provided, however, that the General Fund and each Investment Fund shall be valued and each Account and Sub-Account shall be adjusted no less often than once annually.

The "**Vesting Service**" of an employee means the period or periods of service credited to him under the provisions of Article II for purposes of determining his vested interest in his Employer Contributions Sub-Account, if Employer Contributions are not immediately vested, and for determining whether he has reached his Early Retirement Date under the Plan.

## **1.2 Interpretation**

Where required by the context, the noun, verb, adjective, and adverb forms of each defined term shall include any of its other forms. Wherever used herein, the masculine pronoun shall include the feminine, the singular shall include the plural, and the plural shall include the singular.

## ARTICLE II SERVICE

### 2.1 Special Definitions

For purposes of this Article, the following terms have the following meanings.

A "**computation period**" for purposes of determining an employee's years of Vesting Service means (i) the 12-consecutive-month period beginning on the first date he completes an Hour of Service, and (ii) each 12-consecutive-month period beginning on an anniversary of such date.

The "**continuous service**" of an employee means the continuous service credited to him in accordance with the provisions of this Article.

The "**employment commencement date**" of an employee means the date he first completes an Hour of Service.

The "**reemployment commencement date**" of an employee means the first date following a "severance date" on which he again completes an Hour of Service.

The "**severance date**" of an employee means the earlier of (i) the date on which he retires, dies, or his employment with the Employer is otherwise terminated, or (ii) the first anniversary of the first date of a period during which he is absent from work with the Employer for any other reason; provided, however, that if he terminates employment with or is absent from work with the Employer on account of service with the armed forces of the United States, he shall not incur a "severance date" if he is eligible for reemployment rights under the Uniformed Services Employment and Reemployment Rights Act of 1994 and he returns to work with the Employer within the period during which he retains such reemployment rights, but, if he does not return to work within such period, his "severance date" shall be the earlier of the date which is one year after his absence commenced or the last day of the period during which he retains such reemployment rights.

### 2.2 Crediting of Hours of Service

A person shall be credited with an Hour of Service for:

- (a) Each hour for which he is paid, or entitled to payment, for the performance of duties for the Employer during the applicable period; provided, however, that hours compensated at a premium rate shall be treated as straight-time hours.
- (b) Subject to the provisions of Section 2.3, each hour for which he is paid, or entitled to payment, by the Employer on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to

vacation, holiday, illness, incapacity (including disability), lay-off, jury duty, military duty, or leave of absence.

- (c) Each hour for which he would have been scheduled to work for the Employer during the period that he is absent from work because of service with the armed forces of the United States provided he is eligible for reemployment rights under the Uniformed Services Employment and Reemployment Rights Act of 1994 and returns to work with the Employer within the period during which he retains such reemployment rights; provided, however, that the same Hour of Service shall not be credited under paragraph (b) of this Section and under this paragraph (c).
- (d) Each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Employer; provided, however, that the same Hour of Service shall not be credited both under paragraph (a) or (b) or (c) of this Section, as the case may be, and under this paragraph (d); and provided, further, that the crediting of Hours of Service for back pay awarded or agreed to with respect to periods described in such paragraph (b) shall be subject to the limitations set forth therein and in Section 2.3.

### **2.3 Limitations on Crediting of Hours of Service**

In the application of the provisions of paragraph (b) of Section 2.2, the following shall apply:

- (a) An hour for which a person 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 him if such payment is made or due under a plan maintained solely for the purpose of complying with applicable workers' compensation, unemployment compensation, or disability insurance laws.
- (b) Hours of Service shall not be credited with respect to a payment which solely reimburses a person for medical or medically-related expenses incurred by him.
- (c) A payment shall be deemed to be made by or due from the Employer (i) regardless of whether such payment is made by or due from such employer directly or indirectly, through (among others) a trust fund or insurer to which any such employer contributes or pays premiums, and (ii) regardless of whether contributions made or due to such trust fund, insurer, or other entity are for the benefit of particular persons or are on behalf of a group of persons in the aggregate.
- (d) No more than 501 Hours of Service shall be credited to a person on account of any single continuous period during which he performs no duties (whether or not such period occurs in a single "computation period"), unless no duties are performed due to service with the armed forces of the United States for which the person retains reemployment rights as provided in paragraph (c) of Section 2.2.

## **2.4 Department of Labor Rules**

The rules set forth in paragraphs (b) and (c) of Department of Labor Regulations Section 2530.200b-2, which relate to determining Hours of Service attributable to reasons other than the performance of duties and crediting Hours of Service to particular periods, are hereby incorporated into the Plan by reference.

## **2.5 Crediting of "Continuous Service"**

A person shall be credited with "continuous service" for the aggregate of the periods of time between his "employment commencement date" or any "reemployment commencement date" and the "severance date" that next follows such "employment commencement date" or "reemployment commencement date"; provided, however, that an employee who has a "reemployment commencement date" within the 12-consecutive-month period following the earlier of the first date of his absence or his "severance date" shall be credited with "continuous service" for the period between his "severance date" and "reemployment commencement date".

## **2.6 Eligibility Service**

An employee shall be credited with Eligibility Service equal to his "continuous service."

## **2.7 Years of Vesting Service**

Years of Vesting Service shall be determined in accordance with the following provisions:

- (a) An employee shall be credited with a year of Vesting Service for each "computation period" during which he completes at least 1,000 Hours of Service.
- (b) Notwithstanding the provisions of paragraph (a), service completed by an employee prior to a Break in Service shall not be included in determining the employee's years of Vesting Service unless either
  - (i) the employee had a nonforfeitable right to any portion of his Account, excluding that portion of his Account that is attributable to Rollover Contributions, before his Break in Service commenced, or
  - (ii) the number of his consecutive Breaks in Service is fewer than the greater of five or the aggregate number of his years of Vesting Service before his Break in Service commenced.

## **ARTICLE III ELIGIBILITY**

### **3.1 Eligibility**

Each Employee who was an Eligible Employee immediately prior to January 1, 2009 shall continue to be an Eligible Employee on January 1, 2009. Each other Employee who is an elected official, chief deputy, attorney, physician, department head, appointed assistant to department head, county board administrator, bailiff, district court referee, or sheriff captain and is not covered by a collective bargaining agreement may elect to become an Eligible Employee as of the Enrollment Date coinciding with or next following the date he becomes an Employee. Each other Employee may elect to become an Eligible Employee as of the Enrollment Date coinciding with or next following the latest of the date he becomes an Employee, attains age 21, or completes six months of continuous service. An Employee shall become an Eligible Employee as of the Enrollment Date coinciding with or next following the latest of the date he becomes an Employee, attains age 25, or completes one year of Eligibility Service. Any election under this Section to become an Eligible Employee shall be irrevocable once made.

Notwithstanding the foregoing, no person shall become an Eligible Employee hereunder unless he makes Participant Contributions as provided in Section 3.2. An Employee who would otherwise have become an Eligible Employee hereunder as of an Enrollment Date but for his failure to make Participant Contributions to the Plan shall become an Eligible Employee as of any subsequent Enrollment Date as of which he makes Participant Contributions to the Plan.

### **3.2 Participant Contributions**

An Employee who has met the eligibility requirements described above shall as a condition of the employment with the Employer be required to make Participant Contributions to the Plan and shall execute and complete all enrollment or application forms required by the Employer with respect to the Plan. The amount of an Employee's Participant Contributions shall be 5.2 percent of his Compensation, excluding Compensation earned by the Employee prior to becoming an Eligible Employee. An amount equal to the amount of such Participant Contributions shall be withheld from the Employee's Compensation each bi-weekly period and contributed to the Plan. Participant Contributions are "picked up" by the Employer and treated as employer contributions in accordance with Code Section 414(h)(2). A Participant's vested interest in his Participant Contributions Sub-Account shall at all times be 100 percent.

### **3.3 Reemployment**

If a person who terminated employment with the Employer is reemployed as an Employee and if he had been an Eligible Employee prior to his termination of employment, he shall again become an Eligible Employee on the date he is reemployed. Otherwise, the eligibility of a person who

terminated employment with the Employer and who is reemployed by the Employer to participate in the Plan shall be determined in accordance with Section 3.1.

### **3.4 Notification Concerning New Eligible Employees**

The Employer shall notify the Administrator as soon as practicable of Employees becoming Eligible Employees as of any date.

### **3.5 Effect and Duration**

Upon becoming an Eligible Employee, an Employee shall be required to make Participant Contributions to the Plan in accordance with the provisions of Section 3.2, shall be entitled to receive allocations of Employer Contributions in accordance with the provisions of Article VI (provided he meets any applicable requirements thereunder), and shall be bound by all the terms and conditions of the Plan and the Funding Agreement. A person shall continue as an Eligible Employee eligible to make Participant Contributions to the Plan and participate in allocations of Employer Contributions only so long as he continues employment as an Employee.

### **3.6 Election Not to Participate**

Notwithstanding any other provision of the Plan to the contrary, an Employee who is hired by the Employer after the attainment of age 55 and who would otherwise be eligible to participate in the Plan may elect not to participate in the Plan for any Plan Year. An Employee who makes an election not to participate in accordance with the provisions of this Section shall not be treated as an Eligible Employee for purposes of receiving allocations of Employer Contributions for any Plan Year in which his election is in effect.

The Administrator shall establish uniform and nondiscriminatory rules to carry out the provisions of this Section, including, but not limited to, establishing the time period for filing an election not to participate and the procedures to elect re-participation.

**ARTICLE IV  
AFTER-TAX CONTRIBUTIONS**

**4.1 After-Tax Contributions**

Eligible Employees are not permitted to make After-Tax Contributions directly to the Plan. However, the Plan may include assets attributable to After-Tax Contributions that were made to the Plan prior to the effective date of this amendment and restatement of the Plan, were transferred directly to the Plan from another qualified plan, or were rolled over to the Plan directly from another "eligible retirement plan", as defined in Section 5.1.

**4.2 Vesting of After-Tax Contributions**

A Participant's vested interest in his After-Tax Contributions Sub-Account shall be at all times 100 percent.

## ARTICLE V ROLLOVER CONTRIBUTIONS

### 5.1 Rollover Contributions

An Eligible Employee who participated in an "eligible retirement plan" and who receives (or is eligible to receive) a cash distribution from such plan that he elects to roll over immediately to a qualified retirement plan may elect to make a Rollover Contribution to the Plan if he is entitled under Code Section 402(c) to roll over such distribution to another qualified retirement plan. The Administrator may require an Eligible Employee to provide it with such information as it deems necessary or desirable to show that he is entitled to roll over such distribution to another qualified retirement plan. An Eligible Employee shall make a Rollover Contribution to the Plan by delivering, or causing to be delivered, to the Funding Agent the cash that constitutes the Rollover Contribution amount. If the Eligible Employee received a cash distribution that he is rolling over, such delivery must be made within 60 days of receipt of the distribution from the plan in the manner prescribed by the Administrator.

An "eligible retirement plan" means a qualified plan described in Code Section 401(a) or 403(a). No After-Tax Contributions may be rolled into the Plan.

### 5.2 Vesting of Rollover Contributions

A Participant's vested interest in his Rollover Contributions Sub-Account shall be at all times 100 percent.

**ARTICLE VI  
EMPLOYER CONTRIBUTIONS**

**6.1 Contribution Period**

The Contribution Period for Employer Contributions under the Plan is each Plan Year.

**6.2 Amount and Allocation of Employer Contributions**

The Employer shall make an Employer Contribution to the Plan for the Contribution Period on behalf of each of its Eligible Employees who has satisfied the requirements to receive an allocation of Employer Contributions under this Article. The amount of the Employer Contribution shall be 150% of the amount of such Eligible Employee's Participant Contributions under the Plan for such Contribution Period.

**6.3 Payment of Employer Contributions**

Employer Contributions made for a Contribution Period shall be paid in cash to the Funding Agent.

**6.4 Allocation Requirements for Employer Contributions**

A person who was an Eligible Employee at any time during a Contribution Period shall be eligible to receive an allocation of Employer Contributions for such Contribution Period.

**6.5 Vesting of Employer Contributions**

The vested interest of a Participant who is an elected official or department head who is an Employee on or after January 1, 2001, in his Employer Contributions Sub-Account shall be at all times 100 percent. The vested interest of each other Participant in his Employer Contributions Sub-Account shall be determined in accordance with the following schedule:

<b>Years of Vesting Service</b>	<b>Vested Interest</b>
Less than 2	0%
2, but less than 3	20%
3, but less than 4	40%
4, but less than 5	60%
5, but less than 6	80%
6 or more	100%

Notwithstanding the foregoing, if a Participant is employed by the Employer on the following date(s), his vested interest in his Employer Contributions Sub-Account shall be 100 percent:

- (a) his Normal Retirement Date.
- (b) his Early Retirement Date.

#### **6.6 Forfeitures to Reduce Employer Contributions**

Notwithstanding any other provision of the Plan to the contrary, the amount of the Employer Contribution required under this Article for a Plan Year may be reduced by the amount of any forfeitures occurring during the Plan Year or any prior Plan Year that are not used to pay Plan expenses or restore forfeitures and that are applied against Employer Contributions as provided in Article XIV.

**ARTICLE VII  
LIMITATIONS ON CONTRIBUTIONS**

**7.1 Definitions**

For purposes of this Article, the following terms have the following meanings:

The "**annual addition**" with respect to a Participant for a "limitation year" means the sum of the following amounts allocated to the Participant's account for the "limitation year":

- (a) all employer contributions allocated to the Participant's account under any qualified defined contribution plan maintained by the Employer, including "elective contributions" and amounts attributable to the forfeitures applied to reduce the employer's contribution obligation, but excluding "catch-up contributions".
- (b) all employee contributions allocated to the Participant's account under any qualified defined contribution plan maintained by the Employer or any qualified defined benefit plan maintained by the Employer if separate accounts are maintained under the defined benefit plan with respect to such employee contributions.
- (c) all forfeitures allocated to the Participant's account under any qualified defined contribution plan maintained by the Employer.
- (d) all amounts allocated to an individual medical account, as described in Code Section 415(1)(2) established for the Participant as part of a pension or annuity plan maintained by the Employer.
- (e) If the Participant is a key employee, as defined in Code Section 419A(d)(3), all amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after that date, that are attributable to post-retirement medical benefits allocated to the Participant's separate account under a welfare benefit fund, as defined in Code Section 419(e), maintained by the Employer or an "affiliated employer".
- (f) all allocations to the Participant under a simplified employee pension.

Restorative payments allocated to a Participant's Account, which include payments made to restore losses to the Plan resulting from actions (or a failure to act) by a fiduciary for which there is a reasonable risk of liability under applicable law, where similarly situated Participants are similarly situated, shall not give rise to an annual addition for any limitation year.

An "**elective contribution**" means any employer contribution made to a plan maintained by the Employer on behalf of a Participant in lieu of cash compensation pursuant to his written election to defer under any qualified CODA as described in Code Section 401(k), any simplified

employee pension cash or deferred arrangement as described in Code Section 402(h)(1)(B), any eligible deferred compensation plan under Code Section 457, or any plan as described in Code Section 501(c)(18), and any contribution made on behalf of the Participant by the Employer for the purchase of an annuity contract under Code Section 403(b) pursuant to a salary reduction agreement.

An "**employee contribution**" means any employee after-tax contribution allocated to an Eligible Employee's account under any qualified plan of the Employer.

Effective January 1, 2008, a Participant's "**415 compensation**" means wages, salaries, and 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 to the extent that the amounts are includible 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 nonaccountable plan (as described in section 1.62-2(c) of the regulations)). The definition of "415 compensation" includes all items of remuneration described in Section 1.415(c)-2(b) of the Treasury regulations and excludes those items of remuneration described in Section 1.415(c)-2(c) of the Treasury regulations.

Compensation for this purpose does not include amounts paid after a Participant's termination of employment, unless such amounts are paid before the later of (i) the close of the Plan Year in which the Participant's employment terminates or (ii) within 2-1/2 months of a Participant's termination of employment, and unless such amounts would otherwise have been paid to the Participant in the course of his employment and are regular compensation for services during the Participant's regular working hours, compensation for services outside the Participant's regular working hours (such as overtime or shift differential pay), commissions, bonuses, or similar compensation, (B) are payments for unpaid accrued bona fide sick, vacation, or other leave, but only if the Participant would have been able to use such leave if his employment had continued and not including any amounts paid to the Post Employment Health Plan, or (c) are amounts received pursuant to a nonqualified deferred compensation plan, but only if the payment would have been paid to the Participant at the same time if the Participant had continued in employment with the Employer and only to the extent that the payment is includible in the Participant's gross income. Compensation for this purpose includes any amount contributed or deferred by the Employer at the Participant's election which is not includable in the Participant's gross income by reason of Code Section 125, 132(f)(4), 402(e)(3), 402(h), 403(b), or 457(b).

The exclusions from 415 compensation for payments after termination of employment do not apply to payments to an individual who does not currently perform services for the Employer by reason of qualified military service (as that term is used in Code Section 414(u)(1)) to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service.

Post year-end compensation shall not be included in 415 compensation. "Post year-end compensation" means amounts earned during a limitation year but not paid during that limitation year solely because of the timing of pay periods and pay dates if: (A) these amounts are paid during the first few weeks of the next limitation year; (B) the amounts are included on a uniform and consistent basis with respect to all similarly situated employees; and (C) no compensation is included in more than one limitation year.

In no event, however, shall the compensation of a Participant taken into account under the Plan in any limitation year for purposes of applying the Code Section 415 limitations exceed the limit in effect for such year under Code Section 401(a)(17).

A "**limitation year**" means the Plan Year. The "limitation year" may be changed only by amendment of the Plan. If the Plan is terminated effective as of a date other than the last day of the Plan's "limitation year", the Plan shall be treated as if it had been amended to change its "limitation year".

## **7.2 Code Section 415 Limitations on Crediting of Contributions and Forfeitures**

Notwithstanding any other provision of the Plan to the contrary, the "annual addition" with respect to a Participant for a "limitation year" shall in no event exceed the lesser of (i) the maximum dollar amount permitted under Code Section 415(c)(1)(A) as adjusted for cost of living changes pursuant to Code Section 415(d) (e.g., \$49,000 for the 2009 limitation year); or (ii) 100 percent of the Participant's "415 compensation" for the "limitation year"; provided, however, that the limit in clause (i) shall be pro-rated for any short "limitation year". The limit in clause (ii) shall not apply to any contribution for medical benefits within the meaning of Code Section 401(h) or 419A(F)(2) after separation from service which is otherwise treated as an "annual addition" under Code Section 419A(d)(2) or 415(l)(1). If the "annual addition" to the Account of a Participant in any "limitation year" would otherwise exceed the amount that may be applied for his benefit under the limitation contained in this Section, the limitation shall be satisfied by reducing Employer Contributions made to the Participant's Account to the extent necessary.

If the "annual addition" is exceeded for any Participant, the Plan may correct such excess only in accordance with the Employee Plan's Compliance Resolution System as set forth in Revenue Procedure 2006-27 or any superseding guidance, including, but not limited to, the preamble of the final regulations under Code Section 415.

## **7.3 Application of Code Section 415 Limitations Where Participant is Covered Under Other Qualified Defined Contribution Plan**

If a Participant is covered by any other qualified defined contribution plan (whether or not terminated) maintained by the Employer concurrently with the Plan, and if the "annual addition" for the "limitation year" would otherwise exceed the amount that may be applied for the Participant's benefit under the limitation contained in the preceding Section, contributions to be

made to the other plan or plans shall be reduced first to the extent necessary to satisfy the limitation.

#### **7.4 Scope of Limitations**

The Code Section 415 limitations contained in the preceding Sections shall be applicable only with respect to benefits provided pursuant to defined contribution plans described in Code Section 415(k).

## **ARTICLE VIII FUNDS AND ACCOUNTS**

### **8.1 General Fund**

The Funding Agent shall maintain a General Fund as required to hold and administer any assets of the Plan that are not allocated among the Investment Funds as provided in the Plan or the Funding Agreement. The General Fund shall be held and administered as a separate common fund. The interest of each Participant or Beneficiary under the Plan in the General Fund shall be an undivided interest.

### **8.2 Investment Funds**

The Employer shall determine the number and type of Investment Funds and shall communicate the same and any changes therein in writing to the Administrator and the Funding Agent. Each Investment Fund shall be held and administered as a separate common fund. The interest of each Participant or Beneficiary under the Plan in any Investment Fund shall be an undivided interest.

### **8.3 Income on Plan Assets**

Any dividends, interest, distributions, or other income received by the Funding Agent with respect to any Plan assets shall be allocated by the Funding Agent to the General Fund or Investment Fund for which the income was received.

### **8.4 Accounts**

As of the first date a contribution is made by or on behalf of an Employee there shall be established an Account in his name reflecting his interest in the Plan. Each Account shall be maintained and administered for each Participant and Beneficiary in accordance with the provisions of the Plan. The balance of each Account shall be the balance of the account after all credits and charges thereto, for and as of such date, have been made as provided herein.

### **8.5 Sub-Accounts**

A Participant's Account shall be divided into such separate, individual Sub-Accounts as are necessary or appropriate to reflect the Participant's interest in the Plan.

**ARTICLE IX  
LIFE INSURANCE CONTRACTS**

**9.1 No Life Insurance Contracts**

A Participant's Account may not be invested in life insurance contracts on the life of the Participant.

**ARTICLE X**  
**DEPOSIT AND INVESTMENT OF CONTRIBUTIONS**

**10.1 Future Contribution Investment Elections**

Each Eligible Employee shall make an investment election in the manner and form prescribed by the Administrator directing the manner in which the contributions made on his behalf shall be invested. An Eligible Employee's investment election shall specify the percentage, in the percentage increments prescribed by the Administrator, of such contributions that shall be allocated to one or more of the Investment Funds with the sum of such percentages equaling 100 percent. The investment election by a Participant shall remain in effect until his entire interest under the Plan is distributed or forfeited in accordance with the provisions of the Plan or until he records a change of investment election with the Administrator, in such form as the Administrator shall prescribe. If recorded in accordance with any rules prescribed by the Administrator, a Participant's change of investment election may be implemented effective as of the business day on which the Administrator receives the Participant's instructions.

**10.2 Deposit of Contributions**

All contributions made on a Participant's behalf shall be deposited in the Funding Arrangement and allocated among the Investment Funds in accordance with the Participant's currently effective investment election. If no investment election is recorded with the Administrator at the time contributions are to be deposited to a Participant's Account, his contributions shall be allocated among the Investment Funds as directed by the Administrator.

**10.3 Election to Transfer Between Funds**

A Participant may elect to transfer investments from any Investment Fund to any other Investment Fund. The Participant's transfer election shall specify either (i) a percentage, in the percentage increments prescribed by the Administrator, of the amount eligible for transfer, which percentage may not exceed 100 percent, or (ii) a dollar amount that is to be transferred. Any transfer election must be recorded with the Administrator, in such form as the Administrator shall prescribe. Subject to any restrictions pertaining to a particular Investment Fund, if recorded in accordance with any rules prescribed by the Administrator, a Participant's transfer election may be implemented effective as of the business day on which the Administrator receives the Participant's instructions.

Notwithstanding any other provision of this Section to the contrary, the Administrator may prescribe such rules restricting Participants' transfer elections as it deems necessary or appropriate to preclude excessive or abusive trading or market timing.

## ARTICLE XI CREDITING AND VALUING ACCOUNTS

### 11.1 Crediting Accounts

All contributions made under the provisions of the Plan shall be credited to Accounts by the Funding Agent in accordance with procedures established in writing by the Administrator, either when received or on the succeeding Valuation Date after valuation of the Plan assets has been completed for such Valuation Date as provided in Section 11.2, as shall be determined by the Administrator.

### 11.2 Valuing Accounts

Accounts shall be valued by the Funding Agent on the Valuation Date, in accordance with procedures established in writing by the Administrator, either in the manner adopted by the Funding Agent and approved by the Administrator or in the manner set forth in Section 11.3 as Plan valuation procedures, as determined by the Administrator.

### 11.3 Plan Valuation Procedures

The Administrator may determine that the following valuation procedures shall be applied. As of each Valuation Date hereunder, the portion of any Accounts in the General Fund or any Investment Fund shall be adjusted to reflect any increase or decrease in the value of such fund for the period of time occurring since the immediately preceding Valuation Date for the fund (the "valuation period") in the following manner:

- (a) First, the value of the fund shall be determined by valuing all of the assets of the fund at fair market value.
- (b) Next, the net increase or decrease in the value of the fund attributable to net income and all profits and losses, realized and unrealized, during the valuation period shall be determined on the basis of the valuation under paragraph (a) taking into account appropriate adjustments for contributions, loan payments, and transfers to and distributions, withdrawals, loans, and transfers from such fund during the valuation period.
- (c) Finally, the net increase or decrease in the value of the fund shall be allocated among Accounts in the fund in the ratio of the balance of the portion of such Account in the fund as of the preceding Valuation Date less any distributions, withdrawals, loans, and transfers from such Account balance in the fund since the Valuation Date to the aggregate balances of the portions of all Accounts in the fund similarly adjusted, and each Account in the fund shall be credited or charged with the amount of its allocated share.  
Notwithstanding the foregoing, the Administrator may adopt such accounting procedures

as it considers appropriate and equitable to establish a proportionate crediting of net increase or decrease in the value of the fund for contributions, and transfers to and distributions, withdrawals, and transfers from such fund made by or on behalf of a Participant during the valuation period.

#### **11.4 Finality of Determinations**

The Funding Agent shall have exclusive responsibility for determining the value of each Account maintained hereunder. The Funding Agent's determinations thereof shall be conclusive upon all interested parties.

#### **11.5 Notification**

Within a reasonable period of time after the end of each Plan Year, the Administrator shall notify each Participant and Beneficiary of the value of his Account and Sub-Accounts as of a Valuation Date during the Plan Year.

**ARTICLE XII  
LOANS**

**12.1 No Loans**

There shall be no loans made to Participants from the Plan.

**ARTICLE XIII  
WITHDRAWALS WHILE EMPLOYED**

**13.1 No In-Service Withdrawals**

Except as otherwise specifically provided in Article XV, no Participant who is employed by the Employer shall be eligible to withdraw any portion of his Account under the Plan.

**ARTICLE XIV**  
**TERMINATION OF EMPLOYMENT AND SETTLEMENT DATE**

**14.1 Termination of Employment and Settlement Date**

A Participant's Settlement Date shall occur on the date he terminates employment with the Employer because of death, disability, retirement, or other termination of employment. Written notice of a Participant's Settlement Date shall be given by the Administrator to the Funding Agent.

**14.2 Separate Accounting for Non-Vested Amounts**

If as of a Participant's Settlement Date the Participant's vested interest in his Employer Contributions Sub-Account is less than 100 percent, that portion of his Employer Contributions Sub-Account that is not vested shall be accounted for separately from the vested portion and shall be disposed of as provided in the following Section. If prior to such Settlement Date the Participant received a distribution under the Plan, his vested interest in his Employer Contributions Sub-Account shall be an amount ("X") determined by the following formula:

$$X = P(AB + (R \times D)) - (R \times D)$$

For purposes of the formula:

- P = The Participant's vested interest in his Employer Contributions Sub-Account on the date distribution is to be made.
- AB = The balance of the Participant's Employer Contributions Sub-Account as of the Valuation Date immediately preceding the date distribution is to be made.
- R = The ratio of (i) the balance of the Participant's Employer Contributions Sub-Account as of the Valuation Date immediately preceding the date distribution is to be made to (ii) the balance of the Participant's Employer Contributions Sub-Account after distribution is made.
- D = The amount of all prior distributions from the Participant's Employer Contributions Sub-Account.

**14.3 Disposition of Non-Vested Amounts**

That portion of a Participant's Employer Contributions Sub-Account that is not vested upon the occurrence of his Settlement Date shall be disposed of as follows:

- (a) If the Participant has no vested interest in his Account upon the occurrence of his Settlement Date or his vested interest in his Account as of the date of distribution does not exceed \$5,000, resulting in the distribution or deemed distribution to the Participant of his entire vested interest in his Account, the non-vested balance remaining in the Participant's Employer Contributions Sub-Account shall be forfeited and his Account closed as of (i) the Participant's Settlement Date, if the Participant has no vested interest in his Account and is therefore deemed to have received distribution on that date, or (ii) the date actual distribution is made to the Participant.
- (b) If the Participant's vested interest in his Account exceeds \$5,000 and the Participant is eligible for and receives a single sum payment of his vested interest in his Account, the non-vested balance remaining in the Participant's Employer Contributions Sub-Account shall be forfeited and his Account closed as of the date the single sum payment occurs.
- (c) If neither paragraph (a) nor paragraph (b) is applicable, the non-vested balance remaining in the Participant's Employer Contributions Sub-Account shall continue to be held in such Sub-Account and shall not be forfeited until the date the Participant incurs five consecutive Breaks in Service.

#### **14.4 Treatment of Forfeited Amounts**

Whenever the non-vested balance of a Participant's Employer Contributions Sub-Account is forfeited during a Plan Year in accordance with the provisions of the preceding Section, the amount of such forfeiture may be applied against the Employer Contribution obligations for any subsequent Contribution Period of the Employer for which the Participant last performed services as an Employee, against Plan expenses or to restore the forfeitures under Section 14.5, as directed by the Administrator. Notwithstanding the foregoing, however, should the amount of all such forfeitures for any Contribution Period with respect to any Employer exceed the amount credited toward the Employer's Employer Contribution obligation for the Contribution Period, used to pay Plan expenses or used to restore forfeitures under Section 14.5, the excess amount of such forfeitures shall be held unallocated in a suspense account established with respect to the Employer and shall be used as permitted under this Section as determined by the Employer.

#### **14.5 Recrediting of Forfeited Amounts**

A former Participant who forfeited the non-vested portion of his Employer Contributions Sub-Account in accordance with the provisions of paragraph (a) or (b) of Section 14.3 and who is reemployed by the Employer shall have such forfeited amounts recredited to a new Account in his name, without adjustment for interim gains or losses experienced by the Plan, if:

- (a) he returns to employment with the Employer before he incurs five consecutive Breaks in Service commencing after the date he received, or is deemed to have received, distribution of his vested interest in his Account;

- (b) he resumes employment covered under the Plan before the earlier of (i) the end of the five-year period beginning on the date he is reemployed or (ii) the date he incurs five consecutive Breaks in Service commencing after the date he received, or is deemed to have received, distribution of his vested interest in his Account; and
- (c) if he received actual distribution of his vested interest in his Account, he repays to the Plan the full amount of such distribution that is attributable to Employer Contributions before the earlier of (i) the end of the five year period beginning on the date he is reemployed or (ii) the date he incurs five consecutive Breaks in Service commencing after the date he received distribution of his vested interest in his Account.

Funds needed in any Plan Year to recredit the Account of a Participant with the amounts of prior forfeitures in accordance with the preceding sentence shall come first from forfeitures that arise during such Plan Year, and then from Plan income earned in such Plan Year, to the extent that it has not yet been allocated among Participants' Accounts as provided in Article XI, unless the Employer chooses to make an additional Employer Contribution, and shall finally be provided by the Employer by way of a separate Employer Contribution.

## **ARTICLE XV DISTRIBUTIONS**

### **15.1 Distributions to Participants**

A Participant whose Settlement Date occurs shall receive distribution of his vested interest in his Account in the form provided under Article XVI beginning as soon as reasonably practicable following his Settlement Date or the date his application for distribution is filed with the Administrator, if later.

### **15.2 Distributions to Beneficiaries**

If a Participant dies prior to his Benefit Payment Date, his Beneficiary shall receive distribution of the Participant's vested interest in his Account in the form provided under Article XVI beginning as soon as reasonably practicable following the date the Beneficiary's application for distribution is filed with the Administrator, subject to the requirements of Code Section 401(a)(9), as set forth in the Appendix to the Plan.

If distribution is to be made to a Participant's spouse, it shall be made available within a reasonable period of time after the Participant's death that is no less favorable than the period of time applicable to other distributions. If a Participant dies after the date distribution of his vested interest in his Account begins under this Article, but before his entire vested interest in his Account is distributed, his Beneficiary shall receive distribution of the remainder of the Participant's vested interest in his Account beginning as soon as reasonably practicable following the Participant's date of death in a form that provides for distribution at least as rapidly as under the form in which the Participant was receiving distribution.

### **15.3 Cash Outs**

Notwithstanding any other provision of the Plan to the contrary, if a Participant's vested interest in his Account does not exceed \$5,000, distribution of such vested interest shall be made to the Participant in a single sum payment or through a direct rollover, as described in Article XVI, as soon as reasonably practicable following his Settlement Date. If a Participant has no vested interest in his Account on his Settlement Date, he shall be deemed to have received distribution of such vested interest on his Settlement Date.

If distribution of a Participant's vested interest is to be made in accordance with this Section before the date the Participant attains age 62, and such vested interest exceeds \$1,000, distribution of such vested interest shall be made through a direct rollover to an individual retirement plan selected by the Administrator, unless the Participant affirmatively elects distribution in a single sum payment or through a direct rollover to an "eligible retirement plan" (as defined in Code Section 402(c)(8)(B), modified as provided in Code Section 401(a)(31)(E))

specified by the Participant. Any distribution made pursuant to this Section to a Participant's surviving spouse or other Beneficiary or to an alternate payee under a qualified domestic relations order shall not be subject to the automatic rollover provisions described in the preceding sentence.

#### **15.4 Required Commencement of Distribution**

Notwithstanding any other provision of the Plan to the contrary, distribution of a Participant's vested interest in his Account shall commence to the Participant no later than his Required Beginning Date.

Distributions required to commence under this Section shall be made in the form provided under Article XVI and in accordance with Code Section 401(a)(9) and regulations issued thereunder, as described in the Appendix to the Plan.

#### **15.5 Reemployment of a Participant**

If a Participant whose Settlement Date has occurred is reemployed by the Employer, he shall continue to have a right to any distribution or further distributions from the Plan arising from his prior Settlement Date and any amounts credited to his Account with respect to employment after his prior Settlement Date shall be accounted for separately.

#### **15.6 Restrictions on Alienation**

Except as required under any domestic relations order approved by the Administrator or as otherwise required by law, no benefit under the Plan at any time shall be subject in any manner to anticipation, alienation, assignment (either at law or in equity), encumbrance, garnishment, levy, execution, or other legal or equitable process; and no person shall have power in any manner to anticipate, transfer, assign (either at law or in equity), alienate or subject to attachment, garnishment, levy, execution, or other legal or equitable process, or in any way encumber his benefits under the Plan, or any part thereof, and any attempt to do so shall be void.

#### **15.7 Facility of Payment**

If the Administrator finds that any individual to whom an amount is payable hereunder is incapable of attending to his financial affairs because of any mental or physical condition, including the infirmities of advanced age, such amount (unless prior claim therefore shall have been made by a duly qualified guardian or other legal representative) may, in the discretion of the Administrator, be paid to another person for the use or benefit of the individual found incapable of attending to his financial affairs or in satisfaction of legal obligations incurred by or on behalf of such individual. The Funding Agent shall make such payment only upon receipt of written instructions to such effect from the Administrator. Any such payment shall be charged to the Account from which any such payment would otherwise have been paid to the individual

found incapable of attending to his financial affairs and shall be a complete discharge of any liability therefore under the Plan.

#### **15.8 Inability to Locate Payee**

If any benefit becomes payable to any person, or to the executor or administrator of any deceased person, and if that person or his executor or administrator does not present himself to the Administrator within a reasonable period after the Administrator mails written notice of his eligibility to receive a distribution hereunder to his last known address and makes such other diligent effort to locate the person as the Administrator determines, that benefit will be forfeited. However, if the payee later files a claim for that benefit, the benefit will be restored.

#### **15.9 Distribution Pursuant to Qualified Domestic Relations Orders**

Notwithstanding any other provision of the Plan to the contrary, if a qualified domestic relations order so provides, distribution may be made to an alternate payee pursuant to a qualified domestic relations order, as defined in Code Section 414(p), regardless of whether the Participant's Settlement Date has occurred or whether the Participant is otherwise entitled to receive a distribution under the Plan.

**ARTICLE XVI  
FORM OF PAYMENT**

**16.1 Normal Form of Payment**

Unless the Participant elects an optional form of payment described in Section 16.2, distribution shall be made to a Participant through the purchase of an annuity contract that provides for payment in one of the following:

- (a) The automatic annuity form for a Participant who is married on his Benefit Payment Date is the "50 percent qualified joint and survivor annuity". This annuity provides monthly benefits to the Participant for life. Upon the Participant's death, monthly payments continue to his surviving spouse equal to 50 percent of the monthly amount the Participant was receiving. Payments cease the month in which the death of the Participant or his spouse occurs, whichever is later. A Participant's spouse must be the same spouse to whom the Participant was married on his Benefit Payment Date.
- (b) The automatic annuity form for a Participant who is not married on his Benefit Payment Date is the "single life annuity". This annuity provides monthly benefits to the Participant for life, the last payment being for the month in which the Participant's death occurs.

Unless a Participant's Beneficiary elects an optional form of payment described in Section 16.2, distribution shall be made to the Beneficiary through the purchase of an annuity contract that provides for payment in the single life annuity form.

**16.2 Optional Forms of Payment**

A Participant, or his Beneficiary, as the case may be, may elect to receive distribution of all or a portion of his Account in one of the following optional forms of payment:

- (a) Single Sum Cash Payment.
- (b) Installment Payments - Distribution shall be made in a series of cash installments over a period elected by the Participant (or if applicable, the Beneficiary) not exceeding the life expectancy of the Participant, or the Participant's Beneficiary, if the Participant has died, or a period not exceeding the joint life and last survivor expectancy of the Participant and his Beneficiary. Each installment shall be equal in amount except as necessary to adjust for any changes in the value of the Participant's Account.
- (c) Other Annuity Option - Distribution shall be made through the purchase of a single premium, nontransferable annuity contract. A Participant, or his Beneficiary, if the Participant has died, may elect any one of the following types of annuity contracts: single

life annuity; life annuity with 5, 10, or 15-year period certain; or 100%, 66-2/3%, or 50% joint and survivor annuity. Notwithstanding any other provision of this Article, a Participant's Beneficiary may not elect to receive distribution of an annuity payable over the joint lives of the Beneficiary and any other individual. The terms of any annuity contract purchased hereunder and distributed to a Participant or his Beneficiary shall comply with the requirements of the Plan.

### **16.3 Change of Election**

A Participant or Beneficiary who has elected an annuity form of payment or an optional form of payment may revoke or change his election at any time prior to his Benefit Payment Date by filing his election with the Administrator in the form prescribed by the Administrator.

### **16.4 Direct Rollover**

Notwithstanding any other provision of the Plan to the contrary, in lieu of receiving distribution in a form of payment provided under this Article, a "qualified distributee" may elect in writing, in accordance with rules prescribed by the Administrator, to have a portion or all of any "eligible rollover distribution" paid directly by the Plan to the "eligible retirement plan" designated by the "qualified distributee". Any such payment by the Plan to another "eligible retirement plan" shall be a direct rollover.

Notwithstanding the foregoing, a "qualified distributee" may not elect a direct rollover with respect to an "eligible rollover distribution" if the total value of such distribution is less than \$200 or with respect to a portion of an "eligible rollover distribution" if the value of such portion is less than \$500. For purposes of this Section, the following terms have the following meanings:

- (a) An "eligible retirement plan" with respect to the Participant, the Participant's surviving spouse, or the Participant's surviving spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined in Code Section 414(p), means an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b) (other than an endowment contract), an annuity plan described in Code Section 403(a), or a qualified trust described in Code Section 401(a), an annuity contract described in Code Section 403(b), 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. In the case of a nonspouse Beneficiary, an "eligible retirement plan" means only an individual retirement account described in Code Section 408(a) or an individual retirement annuity described in Code Section 408(b) (an "IRA"). Such IRA must be treated as an IRA inherited from the deceased Participant within the meaning of Code Section 408(d)(3)(C) and must be established in a manner that identifies it as such.

(b) An "eligible rollover distribution" means any distribution of all or any portion of the balance of a Participant's Account; provided, however, that an eligible rollover distribution does not include the following:

- (i) any distribution to the extent such distribution is required under Code Section 401(a)(9).
- (ii) any distribution that is one of a series of substantially equal periodic payments made not less frequently than annually for the life or life expectancy of the "qualified distributee" or the joint lives or life expectancies of the "qualified distributee" and the "qualified distributee's" designated beneficiary, or for a specified period of ten years or more.

A portion of a distribution shall not fail to be an "eligible rollover distribution" merely because the portion consists of After-Tax Contributions that are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Code Section 408(a) or (b), or to a qualified defined contribution plan described in Code Section 401(a) or 403(a) 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.

(c) A "qualified distributee" means a Participant, his surviving spouse, his spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined in Code Section 414(p), or a Participant's nonspouse Beneficiary who is his designated beneficiary within the meaning of Code Section 401(a)(9)(E), provided the requirements of Code Section 402(c)(11) are satisfied.

## **16.5 Notice Regarding Forms of Payment**

Within a reasonable period of time ending at least 30 days before the Participant's Benefit Payment Date, the Administrator shall provide each Participant with a written explanation of his right to make a direct rollover and the forms of payment available under the Plan. Distribution of the Participant's Account may commence fewer than 30 days after such explanation is provided to the Participant if (i) the Administrator clearly informs the Participant of his right to consider his election of whether or not to make a direct rollover for a period of at least 30 days following his receipt of the explanation and (ii) the Participant, after receiving the explanation, affirmatively elects an early distribution.

## **16.6 Reemployment**

If a Participant is reemployed by the Employer prior to receiving distribution of the entire balance of his vested interest in his Account, his prior election of a form of payment hereunder shall continue to apply to that portion of his Account attributable to his prior employment.

## **16.7 Qualified Preretirement Survivor Annuity Requirements**

If a married Participant dies before his Benefit Payment Date, his Spouse shall receive distribution of 50% of the value of the Participant's vested interest in his Account through the purchase of an annuity contract that provides for payment over the life of the Participant's Spouse. A Participant's Spouse may elect to receive distribution under any one of the other forms of payment available under this Article instead of in the Qualified Preretirement Survivor Annuity Form. A married Participant may designate a non-Spouse Beneficiary pursuant to Article XVII to receive distribution of the Participant's vested interest in his Account that is not payable to his Spouse as a Qualified Preretirement Survivor Annuity.

## **16.8 Spousal Consent Requirements**

A married Participant's election, modification, or change of an election of an optional form of payment must include the written consent of the Participant's Spouse, if any. A Participant's Spouse shall be deemed to have given written consent to the Participant's election if the Participant establishes to the satisfaction of a Plan representative that such consent cannot be obtained because of any of the following circumstances:

- (a) the Spouse cannot be located,
- (b) the Participant is legally separated or has been abandoned within the meaning of local law, and the Participant has a court order to that effect, or
- (c) other circumstances set forth in Code Section 401(a)(11) and regulations issued there under.

Any written spousal consent given pursuant to this Section shall acknowledge the effect of the election of an optional form of payment, shall specify the optional form of payment selected by the Participant and that such form may not be changed (except to a Qualified Joint and Survivor Annuity) without written spousal consent and shall be witnessed by a Plan representative or a notary public. Any written consent given or deemed to be given by a Participant's Spouse shall be irrevocable and shall be effective only with respect to such Spouse and not with respect to any subsequent Spouse.

## **ARTICLE XVII BENEFICIARIES**

### **17.1 Designation of Beneficiary**

An unmarried Participant's Beneficiary shall be the person or persons designated by such Participant in accordance with rules prescribed by the Administrator. A married Participant's Beneficiary shall be his spouse, unless the Participant designates a person or persons other than his spouse as Beneficiary with spousal consent. The spousal consent may permit the Participant to name a new Beneficiary other than the spouse without further spousal consent. Spousal consent shall be witnessed by a Plan representative or a notary public.

A Participant who designates a Beneficiary and subsequently gets married must execute another designation, if he wishes to retain someone other than his new spouse as his Beneficiary. For purposes of this Section, a Participant shall be treated as unmarried if the Participant is not married on his Benefit Payment Date.

If no Beneficiary has been designated pursuant to the provisions of this Section, or if no Beneficiary survives the Participant and he has no surviving spouse, then the Beneficiary under the Plan shall be the deceased Participant's surviving children in equal shares or, if there are no surviving children, the Participant's estate. If a Beneficiary dies after becoming entitled to receive a distribution under the Plan but before distribution is made to him in full, and if the Participant has not designated another Beneficiary to receive the balance of the distribution in that event, the estate of the deceased Beneficiary shall be the Beneficiary as to the balance of the distribution.

## **ARTICLE XVIII ADMINISTRATION**

### **18.1 Authority of the Employer**

The Employer, which shall be the plan administrator for purposes of the Code, shall be responsible for the administration of the Plan and, in addition to the powers and authorities expressly conferred upon it in the Plan, shall have all such powers and authorities as may be necessary to carry out the provisions of the Plan, including the power and authority to interpret and construe the provisions of the Plan, to make benefit determinations, and to resolve any disputes which arise under the Plan. The Employer may employ such attorneys, agents, and accountants as it may deem necessary or advisable to assist in carrying out its duties hereunder. The Employer may designate any person to carry out any of its powers, authority, or responsibilities for the operation and administration of the Plan except that no allocation by the Employer of, or designation by the Employer with respect to, any of such powers, authority, or responsibilities to another person shall become effective unless such allocation or designation shall first be accepted by such person in a writing signed by it and delivered to the Employer.

### **18.2 Discretionary Authority**

In carrying out its duties under the Plan, including making benefit determinations, interpreting or construing the provisions of the Plan, and resolving disputes, the Employer (or any individual to whom authority has been delegated in accordance with Section 18.1) shall have absolute discretionary authority.

### **18.3 Action of the Employer**

Any act authorized, permitted, or required to be taken under the Plan by the Employer and which has not been delegated in accordance with Section 18.1, may be taken by a majority of the members of the committee appointed to act on behalf of the Employer, either by vote at a meeting, or in writing without a meeting, or by the employee or employees of the Employer designated by the committee to carry out such acts on behalf of the Employer. All notices, advice, directions, certifications, approvals, and instructions required or authorized to be given by the Employer as under the Plan shall be in writing and signed by either (i) a majority of the members of the committee or by such member or members as may be designated by an instrument in writing, signed by all the members thereof, as having authority to execute such documents on its behalf, or (ii) the employee or employees authorized to act for the Employer in accordance with the provisions of this Section.

### **18.4 Qualified Domestic Relations Orders**

The Employer shall establish reasonable procedures to determine the status of domestic relations orders and to administer distributions under domestic relations orders which are deemed to be

qualified orders. Such procedures shall be in writing and shall comply with the provisions of Code Section 414(p) and regulations issued thereunder.

### **18.5 Indemnification**

In addition to whatever rights of indemnification the Funding Agent or the members of the committee appointed to act on behalf of the Employer or any employee or employees of the Employer to whom any power, authority, or responsibility is delegated pursuant to Section 18.3, may be entitled under the organizational authority or regulations of the Employer, under any provision of law, or under any other agreement, the Employer shall satisfy any liability actually and reasonably incurred by any such person or persons, including expenses, attorneys' fees, judgments, fines, and amounts paid in settlement (other than amounts paid in settlement not approved by the Employer), in connection with any threatened, pending or completed action, suit, or proceeding which is related to the exercising or failure to exercise by such person or persons of any of the powers, authority, responsibilities, or discretion as provided under the Plan, or reasonably believed by such person or persons to be provided hereunder, and any action taken by such person or persons in connection therewith, unless the same is judicially determined to be the result of such person or persons' gross negligence or willful misconduct.

### **18.6 Actions Binding**

Subject to the provisions of Section 18.4, any action taken by the Employer which is authorized, permitted, or required under the Plan shall be final and binding upon the Employer, the Funding Agent, all persons who have or who claim an interest under the Plan, and all third parties dealing with the Employer or the Funding Agent.

**ARTICLE XIX  
AMENDMENT AND TERMINATION**

**19.1 Amendment**

Subject to the provisions of Section 19.2, the Employer may at any time and from time to time, by action in accordance with its organizational authority amend the Plan, either prospectively or retroactively. Any such amendment shall be by written instrument executed by the Employer.

**19.2 Limitation on Amendment**

No amendment shall be made hereunder which shall permit any part of the Plan assets to revert to the Employer or be used or be diverted to purposes other than the exclusive benefit of Participants and Beneficiaries.

**19.3 Termination**

The Employer reserves the right, by action in accordance with the requirements of its organizational authority to terminate the Plan at any time (the effective date of such termination being hereinafter referred to as the "termination date"). Upon any such termination of the Plan, the following actions shall be taken for the benefit of Participants and Beneficiaries:

- (a) As of the termination date, each Investment Fund shall be valued and all Accounts and Sub-Accounts shall be adjusted in the manner provided in Article XI, with any unallocated contributions or forfeitures being allocated as of the termination date in the manner otherwise provided in the Plan. The termination date shall become a Valuation Date for purposes of Article XI. In determining the net worth of the Plan assets, there shall be included as a liability such amounts as shall be necessary to pay all expenses in connection with the termination of the Plan and the liquidation and distribution of the property of the Plan, as well as other expenses, whether or not accrued, and shall include as an asset all accrued income.
- (b) All Accounts shall then be disposed of to or for the benefit of each Participant or Beneficiary in accordance with the provisions of Article XV as if the termination date were his Settlement Date.

Notwithstanding anything to the contrary contained in the Plan, upon any such Plan termination, the vested interest of each Participant and Beneficiary in his Employer Contributions Sub-Account shall be 100 percent; and, if there is a partial termination of the Plan, the vested interest of each Participant and Beneficiary who is affected by the partial termination in his Employer Contributions Sub-Account shall be 100 percent. For purposes of the preceding sentence only, the Plan shall be deemed to terminate automatically if there shall be a complete discontinuance of contributions hereunder.

**ARTICLE XX**  
**ADOPTION BY OTHER ENTITIES**

**20.1 No Adoption**

No other entity may become an Employer hereunder.

**ARTICLE XXI  
MISCELLANEOUS PROVISIONS**

**21.1 No Commitment as to Employment**

Nothing contained herein shall be construed as a commitment or agreement upon the part of any person to continue his employment with the Employer, or as a commitment on the part of the Employer to continue the employment, compensation, or benefits of any person for any period.

**21.2 Benefits**

Nothing in the Plan nor the Funding Agreement shall be construed to confer any right or claim upon any person, firm, or corporation other than the Employer, the Funding Agent, Participants, and Beneficiaries.

**21.3 No Guarantees**

The Employer, the Administrator, and the Funding Agent do not guarantee the Plan from loss or depreciation, nor do they guarantee the payment of any amount which may become due to any person hereunder.

**21.4 Expenses**

The expenses of administration of the Plan, including the expenses of the Administrator and fees of the Funding Agent, shall be paid from the Plan assets as a general charge thereon, unless the Employer elects to make payment. Notwithstanding the foregoing, the Employer may direct that administrative expenses that are allocable to the Account of a specific Participant shall be paid from that Account and that the costs incident to the management of the assets of an Investment Fund or to the purchase or sale of securities held in an Investment Fund shall be paid by the Funding Agent from such Investment Fund.

**21.5 Precedent**

Except as otherwise specifically provided, no action taken in accordance with the Plan shall be construed or relied upon as a precedent for similar action under similar circumstances.

**21.6 Duty to Furnish Information**

The Employer, the Administrator, and the Funding Agent shall furnish to any of the others any documents, reports, returns, statements, or other information that the other reasonably deems necessary to perform its duties hereunder or otherwise imposed by law.

## **21.7 Condition on Employer Contributions**

Notwithstanding anything to the contrary contained in the Plan or the Funding Agreement, any contribution of the Employer hereunder is conditioned upon the continued qualification of the Plan under Code Section 401(a). Except as otherwise provided in this Section and Section 21.8, however, in no event shall any portion of the property of the Plan ever revert to or otherwise inure to the benefit of the Employer.

## **21.8 Return of Contributions to the Employer**

Notwithstanding any other provision of the Plan or the Funding Agreement to the contrary, in the event any contribution of the Employer is made under a mistake of fact, such contribution may be returned to the Employer within one year after the payment of the contribution.

## **21.9 Validity of Plan**

The validity of the Plan shall be determined and the Plan shall be construed and interpreted in accordance with the laws of the state or commonwealth in which the Employer has its principal place of business, except as preempted by applicable Federal law. The invalidity or illegality of any provision of the Plan shall not affect the legality or validity of any other part thereof.

## **21.10 Funding Agreement**

The Funding Agreement shall be deemed to be a part of the Plan as if fully set forth herein and the provisions of the Funding Agreement are hereby incorporated by reference into the Plan.

## **21.11 Parties Bound**

The Plan shall be binding upon the Employer, all Participants and Beneficiaries hereunder, and, as the case may be, the heirs, executors, administrators, successors, and assigns of each of them.

## **21.12 Application of Certain Plan Provisions**

For purposes of the general administrative provisions and limitations of the Plan, a Participant's Beneficiary or alternate payee under a qualified domestic relations order shall be treated as any other person entitled to receive benefits under the Plan. Upon any termination of the Plan, any such Beneficiary or alternate payee under a qualified domestic relations order who has an interest under the Plan at the time of such termination, which does not cease by reason thereof, shall be deemed to be a Participant for all purposes of the Plan. A Participant's Beneficiary, if the Participant has died, or alternate payee under a qualified domestic relations order shall be treated as a Participant for purposes of directing investments as provided in Article X.

### **21.13 Transferred Funds**

If funds from another qualified plan are transferred or merged into the Plan, such funds shall be held and administered in accordance with any restrictions applicable to them under such other plan to the extent required by law and shall be accounted for separately to the extent necessary to accomplish the foregoing.

### **21.14 Veterans Reemployment Rights**

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

Effective January 1, 2007, if a Participant dies while performing qualified military service (as defined in Code Section 414(u)), the Beneficiary of the Participant is entitled to any additional benefits provided under the Plan as if the Participant resumed and then terminated employment on account of death pursuant to Code Section 401(a)(37).

### **21.15 Delivery of Cash Amounts**

To the extent that the Plan requires the Employer to deliver cash amounts to the Funding Agent, such delivery may be made through any means acceptable to the Funding Agent, including wire transfer.

### **21.16 Written Communications**

Any communication among the Employer, the Administrator, and the Funding Agent that is stipulated under the Plan to be made in writing may be made in any medium that is acceptable to the receiving party and permitted under applicable law. In addition, any communication or disclosure to or from Participants and/or Beneficiaries that is required under the terms of the Plan to be made in writing may be provided in any other medium (electronic, telephonic, or otherwise) that is acceptable to the Administrator and permitted under applicable law.

\* \* \*

EXECUTED AT the County/City Building 555 South 10<sup>th</sup> St,

Lincoln, NE, this 29<sup>th</sup> day of January, 2009.

LANCASTER COUNTY

By: Bernie Heier Chair - Lancaster County Board  
(Name and Title)

Bernie Heier, Chair, Lancaster County Board

**APPENDIX  
TO  
THE LANCASTER COUNTY, NEBRASKA EMPLOYEES RETIREMENT PLAN**

Re: Minimum Distribution Requirements

**SECTION I  
DEFINITIONS**

**1.1 Definitions**

For purposes of this Appendix the following terms have the following meanings. Except as otherwise specifically provided herein, any term defined in Section 1.1 of the Plan has the meaning given such term in such Section.

A Participant's "**designated beneficiary**" means the individual who is designated as the Participant's Beneficiary under Article XVII of the Plan and is the designated beneficiary under Code Section 401(a)(9) and Section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.

A "**distribution calendar year**" means a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first "distribution calendar year" is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first "distribution calendar year" is the calendar year in which distributions are required to begin under Section 3.2 of this Appendix. 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".

A Participant's or Beneficiary's "**life expectancy**" means his life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury regulations.

A "**Participant's account balance**" means the Account balance as of the last Valuation Date in the calendar year immediately preceding the "distribution calendar year" (the "valuation calendar year") increased by the amount of any contributions made and allocated or forfeitures allocated to the Account balance as of dates in the "valuation calendar year" after the Valuation Date and decreased by distributions made in the "valuation calendar year" after the Valuation Date. The Account balance for the "valuation calendar year" includes any amounts rolled over or transferred to the Plan either in the "valuation calendar year" or in the "distribution calendar year" if distributed or transferred in the "valuation calendar year".

## SECTION II GENERAL RULES

### 2.1 Effective Date

The provisions of this Appendix will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.

### 2.2 Precedence

The requirements of this Appendix will take precedence over any inconsistent provisions of the Plan.

### 2.3 Requirements of Treasury Regulations Incorporated

All distributions required under this Appendix will be determined and made in accordance with the Treasury regulations under Code Section 401(a)(9).

## SECTION III TIME AND MANNER OF DISTRIBUTION

### 3.1 Required Beginning Date

A Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date.

### 3.2 Death of Participant Before Distributions Begin

If a Participant dies before 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, except as provided in Section VI of this Appendix, 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, except as provided in Section VI of this Appendix, 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 begin, this Section 3.2, other than Section 3.2(a), will apply as if the surviving spouse were the Participant.

For purposes of this Section 3.2 and Section V, unless Section 3.2(d) applies, distributions are considered to begin on the Participant's Required Beginning Date. If Section 3.2(d) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 3.2(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 3.2(a)), the date distributions are considered to begin is the date distributions actually commence.

### **3.3 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 IV and V of this Appendix. 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 Code Section 401(a)(9) and the Treasury regulations.

## **SECTION IV REQUIRED MINIMUM DISTRIBUTIONS DURING PARTICIPANT'S LIFETIME**

### **4.1 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 of the Treasury regulations, using the Participant's age as of the Participant's birthday in the "distribution calendar year"; or

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

#### **4.2 Lifetime Required Minimum Distributions Continue Through Year of Participant's Death**

Required minimum distributions will be determined under this Section IV beginning with the first "distribution calendar year" and up to and including the "distribution calendar year" that includes the Participant's date of death.

### **SECTION V REQUIRED MINIMUM DISTRIBUTIONS AFTER PARTICIPANT'S DEATH**

#### **5.1 Death On or After Date Distributions Begin**

If a Participant dies on or after the date distributions begin, the following rules shall apply.

- (a) If there is a "designated beneficiary", the minimum amount that will be distributed for each "distribution calendar year" after the year of the Participant's death is the quotient obtained by dividing the "Participant's account balance" by the longer of the remaining "life expectancy" of the Participant or the remaining "life expectancy" of the Participant's "designated beneficiary", determined as follows:
- (1) The Participant's remaining "life expectancy" is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
  - (2) If the Participant's surviving spouse is the Participant's sole "designated beneficiary", the remaining "life expectancy" of the surviving spouse is calculated for each "distribution calendar year" after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For "distribution calendar years" after the year of the surviving spouse's death, the remaining "life expectancy" of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.
  - (3) If the Participant's surviving spouse is not the Participant's sole "designated beneficiary", the "designated beneficiary's" remaining "life expectancy" is calculated using the age of the beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

- (b) If there is no "designated beneficiary" as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each "distribution calendar year" after the year of the Participant's death is the quotient obtained by dividing the "Participant's account balance" by the Participant's remaining "life expectancy" calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

## **5.2 Death Before Date Distributions Begin**

If the Participant dies before the date distributions begin, the following rules shall apply.

- (a) Except as provided in Section VI, if there is a "designated beneficiary", the minimum amount that will be distributed for each "distribution calendar year" after the year of the Participant's death is the quotient obtained by dividing the "Participant's account balance" by the remaining "life expectancy" of the Participant's "designated beneficiary", determined as provided in Section 5.1 of this Appendix.
- (b) If 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) 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 3.2(a) of this Appendix, this Section 5.2 will apply as if the surviving spouse were the Participant.

## **SECTION VI SPECIAL RULES**

### **6.1 5-Year Rule**

If a Participant dies before distributions begin and there is a "designated beneficiary", distribution to the "designated beneficiary" is not required to begin by the date specified in Section 3.2 of the Appendix, but the Participant's entire interest will be distributed to the "designated beneficiary" by December 31 of the calendar year containing the fifth anniversary of the Participant's death. 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 either the Participant or the surviving spouse begin, the 5-year rule will apply as if the surviving spouse were the Participant.

## **6.2 Election to Allow Participants or Beneficiaries to Elect 5-Year Rule**

Participants or Beneficiaries may elect on an individual basis whether the 5-year rule (as described in Section 6.1 above) or the "life expectancy" rule in Sections 3.2 and 5.2 of this Appendix applies to distributions after the death of a Participant who has a "designated beneficiary". The election must be made no later than the earlier of September 30 of the calendar year in which distribution would be required to begin under Section 3.2 of this Appendix, or by September 30 of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, surviving spouse's) death. If neither the Participant nor Beneficiary makes an election under this Section, distributions will be made in accordance with Sections 3.2 and 5.2 of this Appendix.