



4. David M. Farley and Joan F. Farley, husband and wife, are residents of the State of Virginia. David and Joan Farley are the surviving father and mother of decedent, Sarah Ellyn Farley.

5. This Court has jurisdiction under 28 U.S.C. § 1331 and 29 U.S.C. § 1132(e).

6. Venue is proper in this district pursuant to 28 U.S.C.A. § 1391, because the property that is the subject of this action is situated in this district, and pursuant to 29 U.S.C. § 1132(e)(2), because the Cozen O'Connor Profit Sharing Plan is administered in this district.

## **II. THE PROFIT SHARING PLAN**

7. On or about January 1, 2007, Sarah Ellyn Farley, Cozen O'Connor's employee, became eligible to participate in the Cozen O'Connor Profit Sharing Plan (hereinafter, the "Plan") whereby Cozen O'Connor promised to distribute the value of Ms. Farley's accounts to her Beneficiary upon Ms. Farley's death. The Plan is subject to the provisions of ERISA, 29 U.S.C. §§ 1101 *et seq.*

8. The Plan has a current value of approximately \$40,820.20 with a cash value of \$35,666.08. An additional estimated \$5,154.12 cash contribution will be made during the calendar year 2011, but no earlier than July 2011.

9. Cozen O'Connor had not received a valid designation of Beneficiary form from Ms. Farley prior to her death.

## **III. COMPETING BENEFICIARIES UNDER THE PLAN**

10. Ms. Farley died on September 13, 2010.

11. Following Ms. Farley's death, David and Joan Farley presented a designation of Beneficiary form to Cozen O'Connor, purporting to show that Ms. Farley had designated them as her Beneficiaries under the Plan and had represented her present marital status as "single." (A true copy of this designation of Beneficiary form is attached hereto as Exhibit A; see also letter from Jonathan W. Michael, counsel for David and Joan Farley, to Vincent R. McGuinness, Esq., dated November 11, 2010, a true copy of such letter is attached hereto as Exhibit B.)

12. This designation of Beneficiary form bears the date of September 12, 2010, the day before Ms. Farley's death. It purports to have Ms. Farley's signature above "Participant's Signature." It also purports to have the signature of Ms. Farley's spouse notarized which is inconsistent with the declaration that she is "single" and, in any event, is not signed by her spouse. Accordingly, Cozen O'Connor cannot determine the validity of this designation of Beneficiary form.

13. On November 30, 2010, Ms. Tobits advised Cozen O'Connor that she intended to file a claim with respect to the accounts owed to Ms. Farley's Beneficiary under the Plan. (A true copy of the letter by Ms. Tobits addressed to Cozen O'Connor's counsel, H. Robert Fiebach, dated November 30, 2010, is attached hereto as Exhibit C.)

14. Ms. Tobits presented Cozen O'Connor with a copy of a Marriage Certificate executed on February 17, 2006 in Toronto, Ontario, Canada between Sarah Ellyn Farley and Jennifer Jean Tobits. (A copy of the Marriage Certificate, represented to be a true and correct copy of the original Marriage Certificate by Ms. Tobits, is attached hereto as Exhibit D.)

15. Under article VI, section 6.2(a) of the Plan, “[u]pon the death of a Participant . . . all amounts credited to such Participant’s Combined Account shall become fully Vested. The Administrator shall direct the Trustee . . . to distribute the value of the deceased Participant’s accounts to the Participant’s Beneficiary,” (A true copy of article I of the Plan, entitled “Definitions,” article VI of the Plan, entitled “Determination and Distribution of Benefits,” and article IX of the Plan, entitled “Miscellaneous,” are attached hereto as Exhibit E.)<sup>1</sup>

16. Article VI, section 6.2(e) instructs that:

(e) Unless otherwise elected in the manner prescribed in Section 6.6, the Participant’s surviving Spouse shall receive a death benefit equal to the Pre-Retirement Survivor Annuity. The Participant may designate a Beneficiary other than the Spouse to receive that portion of the Participant’s death benefit which is not payable as a Pre-Retirement Survivor Annuity. The Participant may also designate a Beneficiary other than the Participant’s Spouse to receive the Pre-Retirement Survivor Annuity but only if:

(1) the Participant and the Participant’s Spouse have validly waived the Pre-Retirement Survivor Annuity in the manner prescribed in Section 6.6, **and the Spouse has waived the right to be the Participant’s Beneficiary**, or

\*\*\*

(3) the Participant has no Spouse, or

\*\*\*

(Exh. E) (emphasis supplied.)

---

<sup>1</sup> Due to its voluminous size, Cozen O’Connor has not attached the Plan in its entirety, but rather has attached the relevant articles of the Plan. Cozen O’Connor will produce the Plan in its entirety if this Court so wishes and directs.

17. “Spouse” is defined under article I, section 1.55A to mean “the person to whom the Participant has been married throughout the one-year period ending on . . . the date of the Participant’s death.” (Id.)

18. Under article VI, section 6.2(f):

(f) In the event no valid designation of Beneficiary exists, or if the Beneficiary is not alive at the time of the Participant’s death, the death benefit will be paid in the following order of priority to:

(1) the Participant’s surviving Spouse;

\*\*\*

(3) the Participant’s surviving parents, in equal shares; or

\*\*\*

(Id.)

19. Additionally, under article IX, section 9.3, the Plan “shall be construed and enforced according to the [Internal Revenue Code], the [Employee Retirement Income Security Act (the “Act”)], and the laws of the Commonwealth of Pennsylvania, other than its laws respecting choice of law, to the extent not pre-empted by the Act.”

(Id.)

20. Ms. Tobits’ signature does not appear on the designation of Beneficiary form in the space reserved for spousal consent to beneficiary designation. (See Exh. B.)

21. By reason of these conflicting claims of the defendants, plaintiff is uncertain as to which defendant is entitled to distribution of the accounts owed to Ms. Farley’s Beneficiary under the Plan.

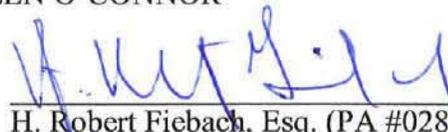
WHEREFORE, Cozen O'Connor, P.C., respectfully requests that the court  
adjudge:

- a) That the defendants be required to interplead and settle among themselves their respective claims to the money due under the Plan;
- b) That each defendant be restrained from commencing any action against Cozen O'Connor on the Plan;
- c) That Cozen O'Connor be permitted to pay into the registry of the court all amounts due under the Plan and upon such deposit be discharged from all liability arising from the Plan; and
- d) That Cozen O'Connor be awarded its costs and attorneys' fees.

Respectfully submitted,

COZEN O'CONNOR

By:



H. Robert Fiebach, Esq. (PA #02812)

Jay Dorsch, Esq. (PA #42827)

Jill M. Caughie, Esq. (PA #307269)

1900 Market Street

Philadelphia, PA 19103

(215) 665-2000 (t)

(215) 665-2013 (f)

*Attorneys for Plaintiff,  
Cozen O'Connor*

Dated: January 24, 2011

# EXHIBIT “A”

Cozen O'Connor Profit Sharing Plan  
Designation of Beneficiary Form

Participant  
Information  
(Please print clearly)

Sally ELLYN Farley  
Name 228-35-8608  
s.farley@cozen.coz Social Security Number ~~77385~~ 773 860 8694  
E-mail Address Daytime Phone Number

Present Marital  
Status  
(Check one)

Single  Married

Explanation of  
Qualified  
Preretirement  
Survivor Annuity

If you are married when you die, your money purchase pension vested account balance will be used to purchase an annuity providing periodic payments for the life of your surviving spouse. This annuity form of payment is called a "Qualified Preretirement Survivor Annuity" or QPSA. You may waive the QPSA, as long as your spouse consents in writing to the waiver. In addition, after your death, your spouse may choose a form of benefit other than the QPSA.

If you waive the QPSA, you may designate other beneficiaries and/or forms of payment for your vested account only if your spouse consents to the specific beneficiary you designate on this form. If you revoke your waiver of the QPSA, your spouse will again receive death benefits in the form of a QPSA, unless your spouse either (1) consents to a new waiver of the QPSA, or (2) chooses another form of benefit after your death.

Generally, you cannot waive the QPSA until the plan year in which you turn 35. You also may waive the QPSA, with proper consent, prior to the plan year in which you turn 35. However, the QPSA will be automatically reinstated as of the first day of the plan year in which you turn 35. Of course, you can again waive the QPSA at that time, with proper spousal consent. After you have separated from service, you may waive the QPSA, with proper spousal consent, at any time. Such waiver will remain effective until you revoke the waiver or are reemployed.

If you are unmarried and subsequently marry, or marry a different person after you sign this form, your spouse at your death is automatically entitled to a qualified preretirement survivor annuity and this Primary Beneficiary designation no longer applies. Thus be sure to update this form after a change in marital status.

This consent is required only if a married Participant does not name the spouse as the only primary beneficiary. To be effective, the spouse's signature must be notarized.

Beneficiary  
Designation

I, the undersigned, hereby elect that upon my death the following person(s) shall be my primary and secondary beneficiary(ies) under the plan:

Primary  
Beneficiary(ies)

<u>Farley Joan E.</u>	<u>Farley David M</u>
Last Name First M.I.	Last Name First M.I.
<u>231-60-8129</u>	<u>231 148-4771</u>
Social Security Number	Social Security Number
<u>6510 Woodbrook Dr</u>	<u>6510 Woodbrook Dr.</u>
Street Address	Street Address
<u>Roanoke, Va. 24018</u>	<u>Roanoke Va. 24018</u>
City State ZIP Code	City State ZIP Code
<u>9-13-46</u>	<u>3-22-41</u>
Birth Date	Birth Date
<u>Mother</u>	<u>Father</u>
Relationship	Relationship
<u>100%</u>	<u>100%</u>
Percent	Percent



If you name more than one primary beneficiary but do not specify a percentage for each, your account will be divided equally among the primary beneficiaries who survive you. Check here if you have more than two primary beneficiaries and have used the space on the next page.

**Secondary Beneficiary(ies)**

In the event the primary beneficiary(ies) is/are not living, I designate the following person(s) as my beneficiary(ies):

_____ Last Name	_____ First	_____ M.I.	_____ Last Name	_____ First	_____ M.I.
_____ Social Security Number			_____ Social Security Number		
_____ Street Address			_____ Street Address		
_____ City	_____ State	_____ ZIP Code	_____ City	_____ State	_____ ZIP Code
_____ Birth Date	_____ Relationship		_____ Birth Date	_____ Relationship	
_____ Percent			_____ Percent		

If you name more than one secondary beneficiary but do not specify a percentage for each, your account will be divided equally among the secondary beneficiaries who survive you. Check here if you have more than two secondary beneficiaries and have used the space on the next page.

**Participant's Signature**

Any election I have made on this form revokes all prior designations with respect to this Plan.

9-12-10  
 \_\_\_\_\_  
 Date

\_\_\_\_\_  
 Participant's Signature

**Participant's Waiver**

**Waiver of Preretirement Survivor Annuity**

I have reviewed the Explanation of the Qualified Preretirement Survivor Annuity ("QPSA") above. I understand that my preretirement death benefits will be paid in the form of a QPSA unless I choose a primary beneficiary other than my spouse and my spouse consents to the beneficiary. I understand that I may not change the beneficiary unless my spouse consents to the new beneficiary. I also understand that I may revoke my waiver of the QPSA at any time by designating my spouse as the sole primary beneficiary for the QPSA.

I hereby waive the Qualified Preretirement Survivor Annuity under the plan. By signing this waiver, the individual(s) that I have designated as my primary beneficiaries on this form will receive my vested plan benefits at my death instead of my spouse. If my spouse consents to this waiver, I understand that I also may choose a form of payment for death benefits other than the QPSA.

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Participant's Signature

**Spouse's Consent**

I voluntarily consent to my spouse's election to waive the qualified preretirement survivor annuity and to designate the beneficiary(ies) listed on this form. I have read the explanation of the qualified preretirement survivor annuity benefit and I understand that:

1. If I do not sign this consent, the qualified preretirement survivor annuity benefit will remain in effect.
2. By signing this consent, the beneficiary(ies) designated by my spouse will receive my spouse's plan benefits instead of me.
3. This consent applies only to the beneficiaries designated on this form. My spouse



Cozen O'Connor Profit Sharing Plan  
Designation of Beneficiary Form

- may not change beneficiaries without again getting my consent.
- 4. I do not have to sign this consent. However, once I do, I cannot revoke my consent.
- 5. This consent has no application to the benefits that begin during my spouse's lifetime.
- 6. My signature must be witnessed by a Notary Public for my consent to be effective.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Spouse's Signature

Notarization of  
Spouse's Signature

State of Illinois County of (or City of) Cook

Sworn to before me this 12 day of September, 2010

[Signature]  
Signature of Notary Public

9-12-10  
Date

Heather A. Bauer  
Name of Notary Public

11-5-11  
My Commission Expires

Additional Beneficiaries

Additional Primary  
Beneficiary(ies)

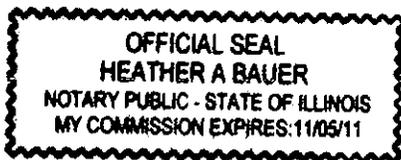
Last Name \_\_\_\_\_ First \_\_\_\_\_ M.I. \_\_\_\_\_  
 Social Security Number \_\_\_\_\_  
 Street Address \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ ZIP Code \_\_\_\_\_  
 Birth Date \_\_\_\_\_ Relationship \_\_\_\_\_  
 Percent \_\_\_\_\_

Last Name \_\_\_\_\_ First \_\_\_\_\_ M.I. \_\_\_\_\_  
 Social Security Number \_\_\_\_\_  
 Street Address \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ ZIP Code \_\_\_\_\_  
 Birth Date \_\_\_\_\_ Relationship \_\_\_\_\_  
 Percent \_\_\_\_\_

Additional Secondary  
Beneficiary(ies)

Last Name \_\_\_\_\_ First \_\_\_\_\_ M.I. \_\_\_\_\_  
 Social Security Number \_\_\_\_\_  
 Street Address \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ ZIP Code \_\_\_\_\_  
 Birth Date \_\_\_\_\_ Relationship \_\_\_\_\_  
 Percent \_\_\_\_\_

Last Name \_\_\_\_\_ First \_\_\_\_\_ M.I. \_\_\_\_\_  
 Social Security Number \_\_\_\_\_  
 Street Address \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ ZIP Code \_\_\_\_\_  
 Birth Date \_\_\_\_\_ Relationship \_\_\_\_\_  
 Percent \_\_\_\_\_



# EXHIBIT “B”

**BURKE, WARREN, MACKAY & SERRITELLA, P.C.**

330 NORTH WABASH AVENUE  
22ND FLOOR  
CHICAGO, ILLINOIS 60611-3607  
TELEPHONE (312) 840-7000  
FACSIMILE (312) 840-7900  
www.burkelaw.com

JONATHAN W. MICHAEL  
DIRECT DIAL NUMBER  
(312) 840-7049  
jtmichael@burkelaw.com

November 11, 2010

**VIA FEDERAL EXPRESS**

Vincent R. McGuinness, Esq.  
Administrative Managing Partner  
Cozen O'Connor  
1900 Market  
Philadelphia, Pennsylvania 19103

**RE: Sarah Ellyn Farley**

Dear Mr. McGuinness:

As you know from our prior correspondence, we represent David and Joan Farley, the parents of your partner, Sarah Ellyn Farley. David and Joan Farley were designated by Ellyn as the beneficiaries of her account in the Cozen O'Connor Profit Sharing Plan. Pursuant to ERISA, request is hereby made for a copy of the Cozen O'Connor Profit Sharing Plan plan document and trust agreement. Please advise if there is a charge, and we will promptly remit payment. We trust you will respond to this written request as soon as possible and definitely within the ERISA time period both to accommodate Mr. and Mrs. Farley as the beneficiaries and to avoid the per diem penalties under ERISA.

In my conversation of November 8, 2010 with Cheryl Progen of your office, I understand that your office is contemplating contacting and releasing information regarding Ellyn's benefits, including life insurance benefits, to individuals who have not been named as beneficiaries of those assets. Mr. and Mrs. Farley are the beneficiaries designated by Ellyn and have not consented to the distribution of that information to anyone other than the plan administrator and those employees who need to know to process a distribution of the account balance and life insurance proceeds. Any other distribution of this information to someone other than my clients will result in an unwarranted invasion of privacy, a negligent or intentional creation of an adverse situation with non-interested parties where none exists now, and an infliction of emotional distress. No one has a legitimate interest in this information other than Ellyn's named beneficiaries.

We can only assume the fact Ellyn had a domestic partner is causing your hesitancy to make a distribution. In that regard, we note Illinois and Pennsylvania do not recognize same sex

Vincent R. McGuinness, Esq.  
November 11, 2010  
November 11, 2010  
Page 2

marriages. More importantly, the federal Defense of Marriage Act clearly applies to ERISA plans and defines marriage as being with an individual of the opposite sex. Most importantly, Ellyn considered herself single for these purposes by designating herself as such on the beneficiary designation form of which you have a copy.

In addition to the requested documents, we request and expect an expeditious payment of the account balance to our clients as the designated beneficiaries. In these turbulent economic times, we do not believe that you would not want to hold and assume the investment risk for properly distributable funds.

My clients are very frustrated that their daughter's employer has taken it upon itself to create a dispute where none exists. We advise you to follow the beneficiary designation forms that your firm asked Ellyn to complete.

Should you have any questions, please feel free to contact me. I look forward to your cooperation.

Very truly yours,



Jonathan W. Michael

JWM:amc

cc: Joseph G. Lyons, Esq.  
Mr. and Mrs. David Farley

# EXHIBIT “C”

**Jennifer Tobits**  
**7442 N. Hoyne Avenue, Apt. 2N**  
**Chicago, Illinois 60645**

November 30, 2010

Via Facsimile and U.S. Mail

Mr. H. Robert Fiebach  
COZEN O'CONNOR  
1900 Market Street  
Philadelphia, PA 19103

Re: Sarah Ellyn Farley

Dear Mr. Fiebach:

Please allow this letter to respond to your November 22, 2010 correspondence, and to formally advise you that I intend to make a claim with respect to the Death Benefits of my wife, Sarah Ellyn Farley. As indicated by the attached Request for Marriage Certificates, I have ordered five certified copies of the applicable Marriage Certificate; however, I am uncertain if I will receive these copies by the December 10, 2010 deadline mentioned in your letter. In the interim, I attach a copy of the original Marriage Certificate. I have the original Certificate in my possession, and would be happy to allow you to review same here in Chicago.

Please be advised that I have retained an attorney to represent my interests with respect to my wife's Estate. My lawyer's contact information is as follows:

Timothy J. Klein, Esq.  
290 Springfield Drive, Suite 220  
Bloomington, Illinois 60108  
Phone No.: 630-893-5200  
Fax No.: 630-893-5224

Sincerely,



Jennifer Tobits

JT/kd

cc: Mr. Timothy Klein, Esq.

# EXHIBIT “D”

Part 5

Record  
of Solemnization of  
**Marriage**

This is to certify that

Sarah Elynn Farley and Jennifer Jean Tobitz  
were married on  
17th February 2006  
Day, month, year

in the city or town of  
Toronto  
Name of city, town, village

Hayton A. Hall  
Signature of person who performed the marriage

[Signature]  
Signature of witness

[Signature]  
Signature of witness

E385842  
Licence number

# EXHIBIT “E”

COZEN O'CONNOR PROFIT SHARING PLAN

January 1, 2002

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COZEN O'CONNOR PROFIT SHARING PLAN

THIS PLAN, hereby adopted on the date shown below by Cozen O'Connor (herein referred to as the "Employer" or "Employer-Sponsor)."

W I T N E S S E T H:

WHEREAS, the Employer-Sponsor heretofore established a Profit Sharing Plan effective December 31, 1971, (hereinafter called the "Effective Date") originally known as the Cozen and O'Connor Profit Sharing Plan and subsequently re-named the Cozen O'Connor Profit Sharing Plan (herein referred to as the "Plan") in recognition of the contribution made to its successful operation by its employees and for the exclusive benefit of its eligible employees; and

WHEREAS, under the terms of the Plan, the Employer-Sponsor has the ability to amend the Plan, provided the Trustee joins in such amendment if the provisions of the Plan affecting the Trustee are amended;

NOW, THEREFORE, effective January 1, 2002, except as otherwise provided, the Employer-Sponsor in accordance with the provisions of the Plan pertaining to amendments thereof, hereby amends the Plan in its entirety and restates the Plan to provide as follows:

ARTICLE I  
DEFINITIONS

1.1 "Act" means the Employee Retirement Income Security Act of 1974, as it may be amended from time to time.

1.2 "Administrator" means the Employer-Sponsor. The Employer-Sponsor may delegate all or part of its duties in connection therewith, pursuant to the provisions of Section 2.2.

1.3 "Affiliated Employer" means any corporation which is a member of a controlled group of corporations (as defined in Code Section 414(b)) which includes the Employer; any trade or business (whether or not incorporated) which is under common control (as defined in Code Section 414(c)) with the Employer; any organization (whether or not incorporated) which is a member of an affiliated service group (as defined in Code Section 414(m)) which includes the Employer; and any other entity required to be aggregated with the Employer pursuant to Regulations under Code Section 414(o).

1.4 "Aggregate Account" means, with respect to each Participant, the value of all accounts maintained on behalf of a Participant, whether attributable to Employer or Employee contributions, subject to the provisions of Section 8.2.

1.5 "Anniversary Date" means the last day of the Plan Year. Notwithstanding anything contained in this document to the contrary, for purposes of allocations and distributions, the term "Valuation Date" shall be substituted for Anniversary Date, as applicable, if a Valuation Date has occurred since the last Anniversary Date.

1.6 "Annuity Starting Date" means, with respect to any Participant, the first day of the first period for which an amount is paid as an annuity, or, in the case of a benefit not payable in

the form of an annuity, the first day on which all events have occurred which entitles the Participant to such benefit.

1.7 "Beneficiary" means the person (or entity) to whom the share of a deceased Participant's total account is payable, subject to the restrictions of Sections 6.2 and 6.6.

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

1.9 "Compensation" with respect to any Participant means such Participant's wages for the Plan Year within the meaning of Code Section 3401(a) (for the purposes of income tax withholding at the source) but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code Section 3401(a)(2)).

For purposes of this Section, the determination of Compensation shall be made by:

(a) excluding (even if includible in gross income) reimbursements or other expense allowances, fringe benefits (cash or noncash), moving expenses, deferred compensation, and welfare benefits.

(b) including amounts which are contributed by the Employer pursuant to a salary reduction agreement and which are not includible in the gross income of the Participant under Code Sections 125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 403(b) or 457(b), and Employee contributions described in Code Section 414(h)(2) that are treated as Employer contributions.

Notwithstanding the foregoing, for Plan Years beginning prior to January 1, 2005, "compensation" was defined as "total compensation which is actually paid to the Participant during the determination period as calculated for federal income tax purposes for Form W-2, reduced by all of the following items (even if includable in gross income): reimbursements or other expense allowances, fringe benefits (cash and noncash), moving expenses, deferred compensation, and welfare benefits. The determination period shall be the Plan Year." In addition, for such Plan Years beginning prior to January 1, 2005, the amounts described in (b) above were also included in compensation.

For a Participant's initial year of participation, Compensation shall be recognized for the entire Plan Year.

Compensation in excess of \$150,000 (or such other amount provided in the Code) shall be disregarded for all purposes other than for purposes of salary deferral elections pursuant to Section 4.2. Such amount shall be adjusted for increases in the cost of living in accordance with Code Section 401(a)(17)(B), except that the dollar increase in effect on January 1 of any calendar year shall be effective for the Plan Year beginning with or within such calendar year. For any short Plan Year the Compensation limit shall be an amount equal to the Compensation limit for the calendar year in which the Plan Year begins multiplied by the ratio obtained by dividing the number of full months in the short Plan Year by twelve (12).

If any class of Employees is excluded from the Plan, then Compensation for any Employee who becomes eligible or ceases to be eligible to participate during a Plan Year shall only include Compensation while the Employee is an Eligible Employee.

For purposes of this Section, if the Plan is a plan described in Code Section 413(c) or 414(f) (a plan maintained by more than one Employer), the limitation applies separately with respect to the Compensation of any Participant from each Employer maintaining the Plan.

If, in connection with the adoption of this amendment and restatement, the definition of Compensation has been modified, then, for Plan Years prior to the Plan Year which includes the adoption date of this amendment and restatement, Compensation means compensation determined pursuant to the Plan then in effect.

For purposes of the definition of "Compensation", "414(s) Compensation" and "415 Compensation" under the Plan, amounts under Code Section 125 include any amounts not available to a Participant in cash in lieu of group health coverage because the Participant is unable to certify that he or she has other health coverage. An amount will be treated as an amount under Code Section 125 only if the Employer does not request or collect information regarding the Participant's other health coverage as part of the enrollment process for the health plan.

1.10 "Contract" or "Policy" means any life insurance policy, retirement income policy or annuity contract (group or individual) issued pursuant to the terms of the Plan. In the event of any conflict between the terms of this Plan and the terms of any contract purchased hereunder, the Plan provisions shall control.

1.11 "Deferred Compensation" with respect to any Participant means the amount of the Participant's total Compensation which has been contributed to the Plan in accordance with the Participant's deferral election pursuant to Section 4.2 excluding any such amounts distributed as excess "annual additions" pursuant to Section 4.10(a).

1.12 "Designated Investment Alternative" means a specific investment identified by name by a Fiduciary as an available investment under the Plan to which Plan assets may be invested by the Trustee pursuant to the investment direction of a Participant.

1.13 "Directed Investment Option" means one or more of the following:

(a) a Designated Investment Alternative.

(b) any other investment permitted by the Plan and the Participant Direction Procedures to which Plan assets may be invested by the Trustee pursuant to the investment direction of a Participant.

1.14 "Early Retirement Date." This Plan does not provide for a retirement date prior to Normal Retirement Date.

1.15 "Elective Contribution" means the Employer contributions to the Plan of Deferred Compensation excluding any such amounts distributed as excess "annual additions" pursuant to Section 4.10(a). In addition, any Employer Qualified Non-Elective Contribution made pursuant to Section 4.1(c) and Section 4.6(b) which is used to satisfy the "Actual Deferral Percentage" tests shall be considered an Elective Contribution for purposes of the Plan. Any contributions

deemed to be Elective Contributions (whether or not used to satisfy the "Actual Deferral Percentage" tests or the "Actual Contribution Percentage" tests) shall be subject to the requirements of Sections 4.2(b) and 4.2(c) and shall further be required to satisfy the nondiscrimination requirements of Regulation 1.401(k)-1(b)(5) and Regulation 1.401(m)-1(b)(5), the provisions of which are specifically incorporated herein by reference.

1.16 "Eligible Employee" means, except as excluded below by class, any Employee who has satisfied the provisions of Section 3.1.

Employees who are classified as "associates" or "staff attorneys" shall not be eligible to participate in the Plan. Any Employee who commences participation in the Plan and subsequently becomes an associate or staff attorney shall be ineligible to participate in the Plan as of the date he is first classified as an associate or staff attorney.

Notwithstanding anything in this Plan to the contrary, individuals who are providing services on the premises of the Employer pursuant to an agreement between the Employer and the Pitney Bowes (hereinafter referred to as 'NewCo') shall not be eligible to participate in the Plan. Any such individual who was formerly an Employee of the Employer and formerly an active Participant in the Plan shall become an inactive Participant in the Plan after his termination of employment with the Employer and subsequent employment of NewCo. The Participant's Account of any such inactive Participants shall continue to be maintained in the Plan but shall become fully vested upon the date of their employment with NewCo and shall not share in any allocation of contributions or forfeitures under the Plan attributable to services performed pursuant to the agreement between the Employer and NewCo.

Employees who are Leased Employees within the meaning of Code Sections 414(n)(2) and 414(o)(2) shall not be eligible to participate in this Plan.

Employees who are classified as either 'leased employees' or 'independent contractors' by the Employer shall not be eligible to participate in the Plan, regardless of how such individuals may be classified by the IRS or for common law purposes.

Employees whose employment is governed by the terms of a collective bargaining agreement between Employee representatives (within the meaning of Code Section 7701(a)(46)) and the Employer under which retirement benefits were the subject of good faith bargaining between the parties will not be eligible to participate in this Plan unless such agreement expressly provides for coverage in this Plan.

Employees who are nonresident aliens (within the meaning of Code Section 7701(b)(1)(B)) and who receive no earned income (within the meaning of Code Section 911(d)(2)) from the Employer which constitutes income from sources within the United States (within the meaning of Code Section 861(a)(3)) shall not be eligible to participate in this Plan.

Employees of Affiliated Employers shall not be eligible to participate in this Plan unless such Affiliated Employers have specifically adopted this Plan in writing.

1.17 "Employee" means any person who is employed by the Employer or Affiliated Employer, and excludes any person who is employed as an independent contractor. Employee shall include Leased Employees within the meaning of Code Sections 414(n)(2) and 414(o)(2) unless such Leased Employees are covered by a plan described in Code Section 414(n)(5) and such Leased Employees do not constitute more than 20% of the recipient's non-highly compensated work force.

1.18 "Employer" means Cozen O'Connor (formerly known as Cozen and O'Connor"), which is also the Employer-Sponsor and any successor which shall maintain this Plan; and any predecessor which has maintained this Plan. The Employer is a corporation, with principal offices in the Commonwealth of Pennsylvania. In addition, where appropriate, the term Employer shall include any Participating Employer (as defined in Section 10.1) which shall adopt this Plan.

1.19 "Excess Aggregate Contributions" means, with respect to any Plan Year, the excess of the aggregate amount of the Employer matching contributions made pursuant to Section 4.1(b) and any qualified non-elective contributions or elective deferrals taken into account pursuant to Section 4.7(c) on behalf of Highly Compensated Participants for such Plan Year, over the maximum amount of such contributions permitted under the limitations of Section 4.7(a) (determined by hypothetically reducing contributions made on behalf of Highly Compensated Participants in order of the actual contribution ratios beginning with the highest of such ratios). Such determination shall be made after first taking into account corrections of any Excess Deferred Compensation pursuant to Section 4.2 and taking into account any adjustments of any Excess Contributions pursuant to Section 4.6.

1.20 "Excess Contributions" means, with respect to a Plan Year, the excess of Elective Contributions used to satisfy the "Actual Deferral Percentage" tests made on behalf of Highly Compensated Participants for the Plan Year over the maximum amount of such contributions permitted under Section 4.5(a) (determined by hypothetically reducing contributions made on behalf of Highly Compensated Participants in order of the actual deferral ratios beginning with the highest of such ratios). Excess Contributions shall be treated as an "annual addition" pursuant to Section 4.9(b).

1.21 "Excess Deferred Compensation" means, with respect to any taxable year of a Participant, the excess of the aggregate amount of such Participant's Deferred Compensation and the elective deferrals pursuant to Section 4.2(f) actually made on behalf of such Participant for such taxable year, over the dollar limitation provided for in Code Section 402(g), which is incorporated herein by reference. Excess Deferred Compensation shall be treated as an "annual addition" pursuant to Section 4.9(b) when contributed to the Plan unless distributed to the affected Participant not later than the first April 15th following the close of the Participant's taxable year. Additionally, for purposes of Sections 8.2 and 4.4(g), Excess Deferred Compensation shall continue to be treated as Employer contributions even if distributed pursuant to Section 4.2(f). However, Excess Deferred Compensation of Non-Highly Compensated Participants is not taken into account for purposes of Section 4.5(a) to the extent such Excess Deferred Compensation occurs pursuant to Section 4.2(d).

1.22 "Fiduciary" means any person who (a) exercises any discretionary authority or discretionary control respecting management of the Plan or exercises any authority or control respecting management or disposition of its assets, (b) renders investment advice for a fee or other compensation, direct or indirect, with respect to any monies or other property of the Plan or

has any authority or responsibility to do so, or (c) has any discretionary authority or discretionary responsibility in the administration of the Plan, including, but not limited to, the Trustee, the Employer and its representative body, and the Administrator.

1.23 "Fiscal Year" means the Employer's accounting year.

1.24 "Forfeiture" means that portion of a Participant's Account that is not Vested, and occurs on the earlier of:

(a) the distribution of the entire Vested portion of the Participant's Account of a Former Participant who has severed employment with the Employer. For purposes of this provision, if the Former Participant has a Vested benefit of zero, then such Former Participant shall be deemed to have received a distribution of such Vested benefit as of the year in which the severance of employment occurs, or

(b) the last day of the Plan Year in which a Former Participant who has severed employment with the Employer incurs five (5) consecutive 1-Year Breaks in Service.

Regardless of the preceding provisions, if a Former Participant is eligible to share in the allocation of Employer contributions or Forfeitures in the year in which the Forfeiture would otherwise occur, then the Forfeiture will not occur until the end of the first Plan Year for which the Former Participant is not eligible to share in the allocation of Employer contributions or Forfeitures. Furthermore, the term "Forfeiture" shall also include amounts deemed to be Forfeitures pursuant to any other provision of this Plan.

1.25 "Former Participant" means a person who has been a Participant, but who has ceased to be a Participant for any reason.

1.26 "415 Compensation" with respect to any Participant means such Participant's wages for the Plan Year within the meaning of Code Section 3401(a) (for the purposes of income tax withholding at the source) but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code Section 3401(a)(2)).

For purposes of this Section, the determination of "415 Compensation" shall include any elective deferral (as defined in Code Section 402(g)(3)), and any amount which is contributed or deferred by the Employer at the election of the Participant and which is not includible in the gross income of the Participant by reason of Code Sections 125, 132(f)(4) or 457.

1.27 "414(s) Compensation" means any definition of compensation that satisfies the nondiscrimination requirements of Code Section 414(s) and the Regulations thereunder. The period for determining 414(s) Compensation must be either the Plan Year or the calendar year ending with or within the Plan Year. An Employer may further limit the period taken into account to that part of the Plan Year or calendar year in which an Employee was a Participant in the component of the Plan being tested. The period used to determine 414(s) Compensation must be applied uniformly to all Participants for the Plan Year.

1.28 "Highly Compensated Employee" means an Employee described in Code Section 414(q) and the Regulations thereunder, and generally means any Employee who:

(a) was a "five percent owner" as defined in Section 1.33(c) at any time during the "determination year" or the "look-back year"; or

(b) for the "look-back year" had "415 Compensation" from the Employer in excess of \$80,000 and was in the Top-Paid Group for the "look-back year." The \$80,000 amount is adjusted at the same time and in the same manner as under Code Section 415(d), except that the base period is the calendar quarter ending September 30, 1996.

The "determination year" means the Plan Year for which testing is being performed, and the "look-back year" means the immediately preceding twelve (12) month period.

A highly compensated former Employee is based on the rules applicable to determining Highly Compensated Employee status as in effect for the "determination year," in accordance with Regulation 1.414(q)-1T, A-4 and IRS Notice 97-45 (or any superseding guidance).

In determining who is a Highly Compensated Employee, Employees who are non-resident aliens and who received no earned income (within the meaning of Code Section 911(d)(2)) from the Employer constituting United States source income within the meaning of Code Section 861(a)(3) shall not be treated as Employees. Additionally, all Affiliated Employers shall be taken into account as a single employer and Leased Employees within the meaning of Code Sections 414(n)(2) and 414(o)(2) shall be considered Employees unless such Leased Employees are covered by a plan described in Code Section 414(n)(5) and are not covered in any qualified plan maintained by the Employer. The exclusion of Leased Employees for this purpose shall be applied on a uniform and consistent basis for all of the Employer's retirement plans. Highly Compensated Former Employees shall be treated as Highly Compensated Employees without regard to whether they performed services during the "determination year."

1.29 "Highly Compensated Participant" means any Highly Compensated Employee who is eligible to participate in the component of the Plan being tested.

1.30 "Hour of Service" means (1) each hour for which an Employee is directly or indirectly compensated or entitled to compensation by the Employer for the performance of duties (these hours will be credited to the Employee for the computation period in which the duties are performed); (2) each hour for which an Employee is directly or indirectly compensated or entitled to compensation by the Employer (irrespective of whether the employment relationship has terminated) for reasons other than performance of duties (such as vacation, holidays, sickness, jury duty, disability, lay-off, military duty or leave of absence) during the applicable computation period (these hours will be calculated and credited pursuant to Department of Labor regulation 2530.200b-2 which is incorporated herein by reference); (3) each hour for which back pay is awarded or agreed to by the Employer without regard to mitigation of damages (these hours will be credited to the Employee for the computation period or periods to which the award or agreement pertains rather than the computation period in which

the award, agreement or payment is made). The same Hours of Service shall not be credited both under (1) or (2), as the case may be, and under (3).

Notwithstanding (2) above, (i) no more than 501 Hours of Service are required to be credited to an Employee on account of any single continuous period during which the Employee performs no duties (whether or not such period occurs in a single computation period); (ii) an hour for which an Employee is directly or indirectly paid, or entitled to payment, on account of a period during which no duties are performed is not required to be credited to the Employee if such payment is made or due under a plan maintained solely for the purpose of complying with applicable worker's compensation, or unemployment compensation or disability insurance laws; and (iii) Hours of Service are not required to be credited for a payment which solely reimburses an Employee for medical or medically related expenses incurred by the Employee.

For purposes of (2) above, a payment shall be deemed to be made by or due from the Employer regardless of whether such payment is made by or due from the Employer directly, or indirectly through, among others, a trust fund, or insurer, to which the Employer contributes or pays premiums and regardless of whether contributions made or due to the trust fund, insurer, or other entity are for the benefit of particular Employees or are on behalf of a group of Employees in the aggregate.

For purposes of this Section, Hours of Service will be credited for employment with other Affiliated Employers. The provisions of Department of Labor regulations 2530.200b-2(b) and (c) are incorporated herein by reference.

With respect to any Plan Year for which an Employee's Hours of Service cannot be accurately determined from the Employer's records, Employees shall be credited with service under the 'equivalencies based on periods of employment' method set for the Department of Labor regulation 2530.200b-3(e)(ii). Pursuant to such method, for each two weeks of employment during which the Employee would be required to be credited with at least one Hour of Service under the provisions set forth in this Section 1.28, the Employee shall be credited with 90 Hours of Service.

1.31 "Income" means the income or losses allocable to "excess amounts" which shall equal the allocable gain or loss for the "applicable computation period". The income allocable to "excess amounts" for the "applicable computation period" is determined by multiplying the income for the "applicable computation period" by a fraction. The numerator of the fraction is the "excess amount" for the "applicable computation period." The denominator of the fraction is the total "account balance" attributable to "Employer contributions" as of the end of the "applicable computation period", reduced by the gain allocable to such total amount for the "applicable computation period" and increased by the loss allocable to such total amount for the "applicable computation period". The provisions of this Section shall be applied:

- (a) For purposes of Section 4.2(f), by substituting:
  - (1) "Excess Deferred Compensation" for "excess amounts";
  - (2) "taxable year of the Participant" for "applicable computation period";

- (3) "Deferred Compensation" for "Employer contributions"; and
- (4) "Participant's Elective Account" for "account balance."
- (b) For purposes of Section 4.6(a), by substituting:
  - (1) "Excess Contributions" for "excess amounts";
  - (2) "Plan Year" for "applicable computation period";
  - (3) "Elective Contributions" for "Employer contributions"; and
  - (4) "Participant's Elective Account" for "account balance."
- (c) For purposes of Section 4.8(a), by substituting:
  - (1) "Excess Aggregate Contributions" for "excess amounts";
  - (2) "Plan Year" for "applicable computation period";
  - (3) "Employer matching contributions made pursuant to Section 4.1(b) and any qualified non-elective contributions or elective deferrals taken into account pursuant to Section 4.7(c)" for "Employer contributions"; and
  - (4) "Participant's Account" for "account balance."

Income allocable to any distribution of Excess Deferred Compensation on or before the last day of the taxable year of the Participant shall be calculated from the first day of the taxable year of the Participant to the date on which the distribution is made pursuant to either the "fractional method" or the "safe harbor method." Under such "safe harbor method," allocable Income for such period shall be deemed to equal ten percent (10%) of the Income allocable to such Excess Deferred Compensation multiplied by the number of calendar months in such period. For purposes of determining the number of calendar months in such period, a distribution occurring on or before the fifteenth day of the month shall be treated as having been made on the last day of the preceding month and a distribution occurring after such fifteenth day shall be treated as having been made on the first day of the next subsequent month.

1.32 "Investment Manager" means an entity that (a) has the power to manage, acquire, or dispose of Plan assets and (b) acknowledges fiduciary responsibility to the Plan in writing. Such entity must be a person, firm, or corporation registered as an investment adviser under the Investment Advisers Act of 1940, a bank, or an insurance company.

1.33 "Key Employee" means Key employee means any Employee or former Employee (including any deceased Employee) who at any time during the Plan Year that includes the determination date was an officer of the Employer having "415 Compensation" greater than \$130,000 (as adjusted under Code Section 416(i)(1) for Plan Years beginning after December 31, 2002), a 5-percent owner of the Employer, or a 1-percent owner of the Employer having "415 Compensation" of more than \$150,000. The determination of who is a key employee will be made in accordance with Code Section 416(i)(1) and the applicable regulations and other

guidance of general applicability issued thereunder.

For purposes of this Section, the determination of "415 Compensation" shall be made by including amounts which are contributed by the Employer pursuant to a salary reduction agreement and which are not includible in the gross income of the Participant under Code Sections 125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 403(b) or 457(b), and Employee contributions described in Code Section 414(h)(2) that are treated as Employer contributions.

1.34 "Late Retirement Date" means the first day of the month coinciding with or next following a Participant's actual Retirement Date after having reached Normal Retirement Date.

1.35 "Leased Employee" means any person (other than an Employee of the recipient Employer) who pursuant to an agreement between the recipient Employer and any other person or entity ("leasing organization") has performed services for the recipient (or for the recipient and related persons determined in accordance with Code Section 414(n)(6)) on a substantially full time basis for a period of at least one year, and such services are performed under primary direction or control by the recipient Employer. Contributions or benefits provided a Leased Employee by the leasing organization which are attributable to services performed for the recipient Employer shall be treated as provided by the recipient Employer. Furthermore, Compensation for a Leased Employee shall only include Compensation from the leasing organization that is attributable to services performed for the recipient Employer. A Leased Employee shall not be considered an Employee of the recipient Employer:

- (a) if such employee is covered by a money purchase pension plan providing:
  - (1) a nonintegrated employer contribution rate of at least 10% of compensation, as defined in Code Section 415(c)(3);
  - (2) immediate participation;
  - (3) full and immediate vesting; and
- (b) if Leased Employees do not constitute more than 20% of the recipient Employer's nonhighly compensated work force.

1.36 "Non-Elective Contribution" means the Employer contributions to the Plan excluding, however, contributions made pursuant to the Participant's deferral election provided for in Section 4.2 and any Qualified Non-Elective Contribution used in the "Actual Deferral Percentage" tests.

1.37 "Non-Highly Compensated Participant" means any Participant who is not a Highly Compensated Employee. However, for purposes of Section 4.5(a) and Section 4.6, if the prior year testing method is used, a Non-Highly Compensated Participant shall be determined using the definition of Highly Compensated Employee in effect for the preceding Plan Year.

1.38 "Non-Key Employee" means any Employee or former Employee (and such Employee's or former Employee's Beneficiaries) who is not, and has never been a Key Employee.

1.39 "Normal Retirement Age" means the earlier of (i) a Participant's 60th birthday, or (ii) the Participant's 55<sup>th</sup> birthday and his completion of 20 Years of Service. A Participant shall become fully Vested in the Participant's Account upon attaining Normal Retirement Age while actively employed.

1.40 "Normal Retirement Date" means the first day of the month coinciding with or next following the Participant's Normal Retirement Age.

1.41 "1-Year Break in Service" means the applicable computation period during which an Employee has not completed more than 500 Hours of Service with the Employer. Further, solely for the purpose of determining whether a Participant has incurred a 1-Year Break in Service, Hours of Service shall be recognized for "authorized leaves of absence" and "maternity and paternity leaves of absence." Years of Service and 1-Year Breaks in Service shall be measured on the same computation period.

"Authorized leave of absence" means an unpaid, temporary cessation from active employment with the Employer pursuant to an established nondiscriminatory policy, whether occasioned by illness, military service, or any other reason.

A "maternity or paternity leave of absence" means an absence from work for any period by reason of the Employee's pregnancy, birth of the Employee's child, placement of a child with the Employee in connection with the adoption of such child, or any absence for the purpose of caring for such child for a period immediately following such birth or placement. For this purpose, Hours of Service shall be credited for the computation period in which the absence from work begins, only if credit therefore is necessary to prevent the Employee from incurring a 1-Year Break in Service, or, in any other case, in the immediately following computation period. The Hours of Service credited for a "maternity or paternity leave of absence" shall be those which would normally have been credited but for such absence, or, in any case in which the Administrator is unable to determine such hours normally credited, eight (8) Hours of Service per day. The total Hours of Service required to be credited for a "maternity or paternity leave of absence" shall not exceed the number of Hours of Service needed to prevent the Employee from incurring a 1-Year Break in Service.

1.42 "Participant" means any Eligible Employee who participates in the Plan and has not for any reason become ineligible to participate further in the Plan.

1.43 "Participant Direction Procedures" means such instructions, guidelines or policies, the terms of which are incorporated herein, as shall be established pursuant to Section 4.12 and observed by the Administrator and applied and provided to Participants who have Participant Directed Accounts.

1.44 "Participant's Account" means the account established and maintained by the Administrator for each Participant with respect to such Participant's total interest in the Plan and Trust resulting from the Employer Non-Elective Contributions.

A separate accounting shall be maintained with respect to that portion of the Participant's Account attributable to Employer matching contributions made pursuant to Section 4.1(b), Employer discretionary contributions made pursuant to Section 4.1(d) and any Employer Qualified Non-Elective Contributions.

1.45 "Participant's Combined Account" means the total aggregate amount of each Participant's Elective Account and Participant's Account.

1.46 "Participant's Directed Account" means that portion of a Participant's interest in the Plan with respect to which the Participant has directed the investment in accordance with the Participant Direction Procedure.

1.47 "Participant's Elective Account" means the account established and maintained by the Administrator for each Participant with respect to the Participant's total interest in the Plan and Trust resulting from the Employer Elective Contributions used to satisfy the "Actual Deferral Percentage" tests. A separate accounting shall be maintained with respect to that portion of the Participant's Elective Account attributable to such Elective Contributions pursuant to Section 4.2 and any Employer Qualified Non-Elective Contributions.

1.48 "Participant's Transfer/Rollover Account" means the account established and maintained by the Administrator for each Participant with respect to the Participant's total interest in the Plan resulting from amounts transferred to this Plan from a direct plan-to-plan transfer and/or with respect to such Participant's interest in the Plan resulting from amounts transferred from another qualified plan or "conduit" Individual Retirement Account in accordance with Section 4.11.

A separate accounting shall be maintained with respect to that portion of the Participant's Transfer/Rollover Account attributable to transfers (within the meaning of Code Section 414(l)) and "rollovers."

1.49 "Plan" means this instrument, including all amendments thereto.

1.50 "Plan Year" means the Plan's accounting year of twelve (12) months commencing on January 1 of each year and ending the following December 31.

1.51 "Pre-Retirement Survivor Annuity" means an immediate annuity for the life of the Participant's Spouse, the payments under which must be equal to the benefit which can be purchased with 50% of the accounts of a Participant.

A proportionate share of each of the Participant's accounts shall be used to provide the Pre-Retirement Survivor Annuity.

1.52 "Qualified Non-Elective Contribution" means any Employer contributions made pursuant to Section 4.1(c) and Section 4.6(b) and Section 4.8(f). Such contributions shall be considered an Elective Contribution for the purposes of the Plan and may be used to satisfy the "Actual Deferral Percentage" tests or the "Actual Contribution Percentage" tests.

1.53 "Regulation" means the Income Tax Regulations as promulgated by the Secretary of the Treasury or a delegate of the Secretary of the Treasury, and as amended from time to time.

1.54 "Retired Participant" means a person who has been a Participant, but who has become entitled to retirement benefits under the Plan.

1.55 "Retirement Date" means the date as of which a Participant retires for reasons other than Total and Permanent Disability, whether such retirement occurs on a Participant's Normal Retirement Date or Late Retirement Date (see Section 6.1).

1.55A "Spouse" means the person to whom the Participant has been married throughout the one-year period ending on the earlier of (1) the Participant's annuity starting date or (2) the date of the Participant's death. The Plan Administrator may rely on the Participant's written statement regarding such Participant's marital status.

1.56 "Terminated Participant" means a person who has been a Participant, but whose employment has been terminated other than by death, Total and Permanent Disability or retirement.

1.57 "Top Heavy Plan" means a plan described in Section 8.2(a).

1.58 "Top Heavy Plan Year" means a Plan Year during which the Plan is a Top Heavy Plan.

1.59 "Top-Paid Group" means the top 20 percent of Employees who performed services for the Employer during the applicable year, ranked according to the amount of "415 Compensation" received from the Employer during such year. All Affiliated Employers shall be taken into account as a single employer, and Leased Employees within the meaning of Code Sections 414(n)(2) and 414(o)(2) shall be considered Employees unless such Leased Employees are covered by a plan described in Code Section 414(n)(5) and are not covered in any qualified plan maintained by the Employer. Employees who are non-resident aliens who received no earned income (within the meaning of Code Section 911(d)(2)) from the Employer constituting United States source income within the meaning of Code Section 861(a)(3) shall not be treated as Employees. Furthermore, for the purpose of determining the number of active Employees in any year, the following additional Employees shall also be excluded, however, such Employees shall still be considered for the purpose of identifying the particular Employees in the Top-Paid Group:

- (a) Employees with less than six (6) months of service;
- (b) Employees who normally work less than 17 1/2 hours per week;
- (c) Employees who normally work less than six (6) months during a year; and
- (d) Employees who have not yet attained age twenty-one (21).

In addition, if 90 percent or more of the Employees of the Employer are covered under agreements the Secretary of Labor finds to be collective bargaining agreements between Employee representatives and the Employer, and the Plan covers only Employees who are not covered under such agreements, then Employees covered by such agreements shall be excluded from both the total number of active Employees as well as from the identification of particular Employees in the Top-Paid Group.

The foregoing exclusions set forth in this Section shall be applied on a uniform and consistent basis for all purposes for which the Code Section 414(q) definition is applicable.

1.60 "Total and Permanent Disability" means a physical or mental condition of a Participant resulting from bodily injury, disease, or mental disorder which renders him permanently incapable of continuing his usual and customary employment with the Employer. The disability of a Participant shall be determined by a licensed physician chosen by the Administrator. The determination shall be applied uniformly to all Participants. No determination of Total Disability shall be made if the Participant fails to provide such evidence as is required by the Plan Administrator and/or fails to submit to examination by the medical practitioner(s) selected by the Plan Administrator.

1.61 "Trustee" means the person or entity named as trustee herein or in any separate trust forming a part of this Plan, and any successors.

1.62 "Trust Fund" means the assets of the Plan and Trust as the same shall exist from time to time.

1.63 "Valuation Date" means the Anniversary Date and may include any other date or dates deemed necessary or appropriate by the Administrator for the valuation of the Participants' accounts during the Plan Year, which may include any day that the Trustee, any transfer agent appointed by the Trustee or the Employer or any stock exchange used by such agent, are open for business. Participant Directed Accounts shall have a daily Valuation Date.

1.64 "Vested" means the nonforfeitable portion of any account maintained on behalf of a Participant.

1.65 "Year of Service" means the computation period of twelve (12) consecutive months, herein set forth, during which an Employee has at least 1000 Hours of Service.

For vesting purposes, the computation periods shall be the Plan Year, including periods prior to the Effective Date of the Plan.

The computation period shall be the Plan Year if not otherwise set forth herein.

Notwithstanding the foregoing, for any short Plan Year, the determination of whether an Employee has completed a Year of Service shall be made in accordance with Department of Labor regulation 2530.203-2(c). However, in determining whether an Employee has completed a Year of Service for benefit accrual purposes in the short Plan Year, the number of the Hours of Service required shall be proportionately reduced based on the number of full months in the short Plan Year.

Years of Service with any Affiliated Employer shall be recognized, but only during the period of affiliation.

1.65A "Years of Service" shall also include prior service during the periods of employment described below:

- (i) Notwithstanding anything contained herein to the contrary, only for purposes of eligibility to participate in the Salary Reduction Election pursuant to Section 4.2 of this Plan, an individual who became an Eligible Employee between

September 1, 1994, and August 31, 1995, inclusive, who was an employee of Wolf, Block, Schorr and Solis-Cohen immediately prior to becoming an Eligible Employee shall be credited with years of service with Wolf, Block, Schorr and Solis-Cohen for this purpose.

(ii) Years of service with Cozen, Begier & O'Connor shall be recognized, for purposes of determining eligibility to participate, vesting, and determining the discretionary Employer contribution for a Plan Year of reference.

(iii) Notwithstanding anything in this Plan to the contrary, effective for any Plan Year beginning after December 31, 1995, an individual who became an Eligible Employee and was an employee or a partner of a law firm or governmental agency or any other entity in which the individual was employed in the practice of law or as in-house legal counsel to that entity or otherwise performed legal-related duties for such entity immediately or within a reasonable period of time prior to becoming an Eligible Employee shall be credited with the years of service with such firm for purposes of determining their vesting percentage, Years of Service for eligibility for Normal Retirement, and in determining whether such Participant has completed 1000 Hours of Service in order to be eligible for an Employer discretionary contribution with respect to their first year of participation.

## ARTICLE II ADMINISTRATION

### 2.1 POWERS AND RESPONSIBILITIES OF THE EMPLOYER

(a) In addition to the general powers and responsibilities otherwise provided for in this Plan, the Employer shall be empowered to appoint and remove the Trustee and the Administrator from time to time as it deems necessary for the proper administration of the Plan to ensure that the Plan is being operated for the exclusive benefit of the Participants and their Beneficiaries in accordance with the terms of the Plan, the Code, and the Act. The Employer may appoint counsel, specialists, advisers, agents (including any nonfiduciary agent) and other persons as the Employer deems necessary or desirable in connection with the exercise of its fiduciary duties under this Plan. The Employer may compensate such agents or advisers from the assets of the Plan as fiduciary expenses (but not including any business (settlor) expenses of the Employer), to the extent not paid by the Employer.

(b) The Employer may, by written agreement or designation, appoint at its option an Investment Manager (qualified under the Investment Company Act of 1940 as amended), investment adviser, or other agent to provide direction to the Trustee with respect to any or all of the Plan assets. Such appointment shall be given by the Employer in writing in a form acceptable to the Trustee and shall specifically identify the Plan assets with respect to which the Investment Manager or other agent shall have authority to direct the investment.

ARTICLE V  
VALUATIONS

5.1 VALUATION OF THE TRUST FUND

The Administrator shall direct the Trustee, as of each Valuation Date, to determine the net worth of the assets comprising the Trust Fund as it exists on the Valuation Date. In determining such net worth, the Trustee shall value the assets comprising the Trust Fund at their fair market value (or their contractual value in the case of a Contract or Policy) as of the Valuation Date and shall deduct all expenses for which the Trustee has not yet obtained reimbursement from the Employer or the Trust Fund. The Trustee may update the value of any shares held in the Participant Directed Account by reference to the number of shares held by that Participant, priced at the market value as of the Valuation Date.

5.2 METHOD OF VALUATION

In determining the fair market value of securities held in the Trust Fund which are listed on a registered stock exchange, the Administrator shall direct the Trustee to value the same at the prices they were last traded on such exchange preceding the close of business on the Valuation Date. If such securities were not traded on the Valuation Date, or if the exchange on which they are traded was not open for business on the Valuation Date, then the securities shall be valued at the prices at which they were last traded prior to the Valuation Date. Any unlisted security held in the Trust Fund shall be valued at its bid price next preceding the close of business on the Valuation Date, which bid price shall be obtained from a registered broker or an investment banker. In determining the fair market value of assets other than securities for which trading or bid prices can be obtained, the Trustee may appraise such assets itself, or in its discretion, employ one or more appraisers for that purpose and rely on the values established by such appraiser or appraisers.

ARTICLE VI  
DETERMINATION AND DISTRIBUTION OF BENEFITS

6.1 DETERMINATION OF BENEFITS UPON RETIREMENT

Every Participant may terminate employment with the Employer and retire for the purposes hereof on the Participant's Normal Retirement Date. However, a Participant may postpone the termination of employment with the Employer to a later date, in which event the participation of such Participant in the Plan, including the right to receive allocations pursuant to Section 4.4, shall continue until such Participant's Late Retirement Date. Upon Participant's actual Retirement Date, or as soon thereafter as is practicable, the Trustee shall distribute all amounts credited to such Participant's Account in accordance with Section 6.5. A Participant who remains employed beyond his Normal Retirement Date may elect an 'in-service distribution of part or all of his Vested portion of his Combined Account; any such distribution shall be in a manner which is consistent with and satisfies the provisions of Section 6.5, including, but not limited to, all notice and consent requirements of Code Sections 417 and 411(a)(11) and Regulations thereunder.

## 6.2 DETERMINATION OF BENEFITS UPON DEATH

(a) Upon the death of a Participant before the Participant's Retirement Date or other termination of employment, all amounts credited to such Participant's Combined Account shall become fully Vested. The Administrator shall direct the Trustee, in accordance with the provisions of Sections 6.6 and 6.7, to distribute the value of the deceased Participant's accounts to the Participant's Beneficiary.

(b) Upon the death of a Former Participant, the Administrator shall direct the Trustee, in accordance with the provisions of Sections 6.6 and 6.7, to distribute any remaining Vested amounts credited to the accounts of a deceased Former Participant to such Former Participant's Beneficiary.

(c) Any security interest held by the Plan by reason of an outstanding loan to the Participant or Former Participant shall be taken into account in determining the amount of the Pre-Retirement Survivor Annuity.

(d) The Administrator may require such proper proof of death and such evidence of the right of any person to receive payment of the value of the account of a deceased Participant or Former Participant as the Administrator may deem desirable. The Administrator's determination of death and of the right of any person to receive payment shall be conclusive.

(e) Unless otherwise elected in the manner prescribed in Section 6.6, the Participant's surviving Spouse shall receive a death benefit equal to the Pre-Retirement Survivor Annuity. The Participant may designate a Beneficiary other than the Spouse to receive that portion of the Participant's death benefit which is not payable as a Pre-Retirement Survivor Annuity. The Participant may also designate a Beneficiary other than the Participant's Spouse to receive the Pre-Retirement Survivor Annuity but only if:

- (1) the Participant and the Participant's Spouse have validly waived the Pre-Retirement Survivor Annuity in the manner prescribed in Section 6.6, and the Spouse has waived the right to be the Participant's Beneficiary, or
- (2) the Participant is legally separated or has been abandoned (within the meaning of local law) and the Participant has a court order to such effect (and there is no "qualified domestic relations order" as defined in Code Section 414(p) which provides otherwise), or
- (3) the Participant has no Spouse, or
- (4) the Spouse cannot be located.

In such event, the designation of a Beneficiary shall be made on a form satisfactory to the Administrator. A Participant may at any time revoke a designation of a Beneficiary or change a Beneficiary by filing written (or in such other form as permitted by the Internal Revenue Service) notice of such revocation or change with the Administrator. However, the Participant's Spouse

must again consent in writing (or in such other form as permitted by the Internal Revenue Service) to any change in Beneficiary of that portion of the death benefit that would otherwise be paid as a Pre-Retirement Survivor Annuity unless the original consent acknowledged that the Spouse had the right to limit consent only to a specific Beneficiary and that the Spouse voluntarily elected to relinquish such right. A Participant may, at any time, designate a Beneficiary to receive death benefits that are in excess of the Pre-Retirement Survivor Annuity without the waiver or consent of the Participant's Spouse.

(f) In the event no valid designation of Beneficiary exists, or if the Beneficiary is not alive at the time of the Participant's death, the death benefit will be paid in the following order of priority to:

- (1) the Participant's surviving Spouse;
- (2) the Participant's children, including adopted children, per stirpes;
- (3) the Participant's surviving parents, in equal shares; or
- (4) the Participant's estate.

If the Beneficiary does not predecease the Participant, but dies prior to distribution of the death benefit, the death benefit will be paid to the Beneficiary's estate.

(g) Notwithstanding anything in this Section to the contrary, if a Participant has designated the Spouse as a Beneficiary, then a divorce decree or a legal separation that relates to such Spouse shall revoke the Participant's designation of the Spouse as a Beneficiary unless the decree or a qualified domestic relations order (within the meaning of Code Section 414(p)) provides otherwise.

### 6.3 DETERMINATION OF BENEFITS IN EVENT OF DISABILITY

In the event of a Participant's Total and Permanent Disability prior to the Participant's Retirement Date or other termination of employment, all amounts credited to such Participant's Combined Account shall become fully Vested. In the event of a Participant's Total and Permanent Disability, the Administrator, in accordance with the provisions of Sections 6.5 and 6.7, shall direct the distribution to such Participant of all Vested amounts credited to such Participant's Combined Account.

### 6.4 DETERMINATION OF BENEFITS UPON TERMINATION

(a) If a Participant's employment with the Employer is terminated for any reason other than death, Total and Permanent Disability or retirement, then such Participant shall be entitled to such benefits as are provided hereinafter pursuant to this Section 6.4.

Distribution of the funds due to a Terminated Participant shall be made on the occurrence of an event which would result in the distribution had the

Terminated Participant remained in the employ of the Employer (upon the Participant's death, Total and Permanent Disability or Normal Retirement). However, at the election of the Participant, the Administrator shall direct the Trustee that the entire Vested portion of the Terminated Participant's Combined Account be payable to such Terminated Participant. Any distribution under this paragraph shall be made in a manner which is consistent with and satisfies the provisions of Section 6.5, including, but not limited to, all notice and consent requirements of Code Sections 417 and 411(a)(11) and the Regulations thereunder.

If the value of a Terminated Participant's Vested benefit derived from Employer and Employee contributions does not exceed \$5,000 (\$3,500 for Plan Years beginning prior to August 6, 1997), then the Administrator shall direct the Trustee to cause the entire Vested benefit to be paid to such Participant in a single lump sum. Notwithstanding the foregoing, however, effective March 28, 2005, the preceding sentence shall be disregarded. Effective as of such date, there shall be no "mandatory cash out provisions" in effect.

For purposes of this Section 6.4(a), the value of a Participant's nonforfeitable account balance shall be determined without regard to that portion of the account balance that is attributable to rollover contributions (and earnings allocable thereto) within the meaning of Code Sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16). If the value of the Participant's nonforfeitable account balance as so determined is \$5,000 or less, the Plan shall immediately distribute the Participant's entire nonforfeitable account balance.

(b) A Participant shall become fully Vested in the Participant's Account attributable to Employer matching contributions made pursuant to Section 4.1(b) immediately upon entry into the Plan.

(c) The Vested portion of any Participant's Account attributable to Employer discretionary contributions made pursuant to Section 4.1(d) shall be a percentage of the total of such amount credited to the Participant's Account determined on the basis of the Participant's number of Years of Service according to the following schedule:

Vesting Schedule	
Employer Discretionary Profit Sharing Contributions Years of Service	Percentage
Less than 2	0%
2	20%
3	40%
4	60%
5	80%
6	100%

Effective January 1, 1998, notwithstanding the above-described schedule, the Participant's Account of any individual providing services on the premises of the Employer pursuant to an agreement between the Employer and NewCo shall

be 100% vested. As noted in Section 1.12, such individuals are not eligible to participate in the Plan, but may have Participant's Accounts in the Plan from a prior period of participation, which shall be 100% vested pursuant to the provisions of this Section 6.4(b).

(d) Notwithstanding the vesting schedule above, the Vested percentage of a Participant's Account shall not be less than the Vested percentage attained as of the later of the effective date or adoption date of this amendment and restatement.

(e) Notwithstanding the vesting schedule above, upon the complete discontinuance of the Employer contributions to the Plan or upon any full or partial termination of the Plan, all amounts then credited to the account of any affected Participant shall become 100% Vested and shall not thereafter be subject to Forfeiture.

(f) The computation of a Participant's nonforfeitable percentage of such Participant's interest in the Plan shall not be reduced as the result of any direct or indirect amendment to this Plan. In the event that the Plan is amended to change or modify any vesting schedule, or if the Plan is amended in any way that directly or indirectly affects the computation of the Participant's nonforfeitable percentage, or if the Plan is deemed amended by an automatic change to a top heavy vesting schedule, then each Participant with at least three (3) Years of Service as of the expiration date of the election period may elect to have such Participant's nonforfeitable percentage computed under the Plan without regard to such amendment or change. If a Participant fails to make such election, then such Participant shall be subject to the new vesting schedule. The Participant's election period shall commence on the adoption date of the amendment and shall end sixty (60) days after the latest of:

- (1) the adoption date of the amendment,
- (2) the effective date of the amendment, or
- (3) the date the Participant receives written notice of the amendment from the Employer or Administrator.

## 6.5 DISTRIBUTION OF BENEFITS

(a)(1) Unless otherwise elected as provided below, a Participant who is married on the Annuity Starting Date and who does not die before the Annuity Starting Date shall receive the value of all such Participant's benefits in the form of a joint and survivor annuity. The joint and survivor annuity is an annuity that commences immediately and shall be equal in value to a single life annuity. Such joint and survivor benefits following the Participant's death shall continue to the Spouse during the Spouse's lifetime at a rate equal to fifty percent (50%) of the rate at which such benefits were payable to the Participant. This joint and fifty percent (50%) survivor annuity shall be considered the designated qualified joint and survivor annuity and automatic form of payment for the purposes of this Plan. However, the Participant may, without spousal consent, elect to receive a smaller

annuity benefit with continuation of payments to the Spouse at a rate of seventy-five percent (75%) or one-hundred percent (100%) of the rate payable to a Participant during the Participant's lifetime, which alternative joint and survivor annuity shall be equal in value to the automatic joint and fifty percent (50%) survivor annuity. An unmarried Participant shall receive the value of such Participant's benefit in the form of a life annuity. Such unmarried Participant, however, may elect in writing to waive the life annuity. The election must comply with the provisions of this Section as if it were an election to waive the joint and survivor annuity by a married Participant, but without the spousal consent requirement. The Participant may elect to have any annuity provided for in this Section distributed upon the attainment of the "earliest retirement age" under the Plan. The "earliest retirement age" is the earliest date on which, under the Plan, the Participant could elect to receive retirement benefits.

(2) Any election to waive the joint and survivor annuity must be made by the Participant in writing (or in such other form as permitted by the Internal Revenue Service) during the election period and be consented to in writing (or in such other form as permitted by the Internal Revenue Service) by the Participant's Spouse. If the Spouse is legally incompetent to give consent, the Spouse's legal guardian, even if such guardian is the Participant, may give consent. Such election shall designate a Beneficiary (or a form of benefits) that may not be changed without spousal consent (unless the consent of the Spouse expressly permits designations by the Participant without the requirement of further consent by the Spouse). Such Spouse's consent shall be irrevocable and must acknowledge the effect of such election and be witnessed by a Plan representative or a notary public. Such consent shall not be required if it is established to the satisfaction of the Administrator that the required consent cannot be obtained because there is no Spouse, the Spouse cannot be located, or other circumstances that may be prescribed by Regulations. The election made by the Participant and consented to by such Participant's Spouse may be revoked by the Participant in writing (or in such other form as permitted by the Internal Revenue Service) without the consent of the Spouse at any time during the election period. A revocation of a prior election shall cause the Participant's benefits to be distributed as a joint and survivor annuity. The number of revocations shall not be limited. Any new election must comply with the requirements of this paragraph. A former Spouse's waiver shall not be binding on a new Spouse.

(3) The election period to waive the joint and survivor annuity shall be the ninety (90) day period ending on the Annuity Starting Date. Notwithstanding the foregoing, effective January 1, 2008, the election period shall be the one hundred eighty (180) day period ending on the Annuity Starting Date.

(4) For purposes of this Section, Spouse or surviving Spouse means the Spouse or surviving Spouse of the Participant, provided that a former Spouse will be treated as the Spouse or surviving Spouse and a current Spouse will not be treated as the Spouse or surviving Spouse to the extent provided under a qualified domestic relations order as described in Code Section 414(p).

(5) With regard to the election, the Administrator shall provide to the Participant no less than thirty (30) days and no more than ninety (90) days before the Annuity Starting Date a written (or in such other form as permitted by the Internal Revenue Service) explanation of:

- (i) the terms and conditions of the joint and survivor annuity,
- (ii) the Participant's right to make, and the effect of, an election to waive the joint and survivor annuity,
- (iii) the right of the Participant's Spouse to consent to any election to waive the joint and survivor annuity, and
- (iv) the right of the Participant to revoke such election, and the effect of such revocation.
- (v) Notwithstanding the foregoing, effective January 1, 2008, the election period shall be the one hundred eighty (180) day period ending on the Annuity Starting Date.

(6) Notwithstanding the above, if the Participant elects (with spousal consent, if applicable) to waive the requirement that the explanation be provided at least thirty (30) days before the Annuity Starting Date, the election period shall be extended to the thirtieth (30th) day after the date on which such explanation is provided to the Participant, unless the thirty (30) day period is waived pursuant to the following provisions.

Any distribution provided for in this Section 6.5 may commence less than thirty (30) days after the notice required by Code Section 417(a)(3) is given provided the following requirements are satisfied:

- (i) the Administrator clearly informs the Participant that the Participant has a right to a period of thirty (30) days after receiving the notice to consider whether to waive the joint and survivor annuity and to elect (with spousal consent) to a form of distribution other than a joint and survivor annuity;
- (ii) the Participant is permitted to revoke an affirmative distribution election at least until the Annuity Starting Date, or, if later, at any time prior to the expiration of the seven (7) day period that begins the day after the explanation of the joint and survivor annuity is provided to the Participant;
- (iii) the Annuity Starting Date is after the date that the explanation of the joint and survivor annuity is provided to the Participant. However, the Annuity Starting Date may be before the date that any affirmative distribution election is made by the

Participant and before the date that the distribution is permitted to commence under (iv) below; and

(iv) distribution in accordance with the affirmative election does not commence before the expiration of the seven (7) day period that begins the day after the explanation of the joint and survivor annuity is provided to the Participant.

(b) In the event a married Participant duly elects pursuant to paragraph (a)(2) above not to receive benefits in the form of a joint and survivor annuity, or if such Participant is not married, in the form of a life annuity, the Administrator, pursuant to the election of the Participant, shall direct the Trustee to distribute to a Participant or Beneficiary any amount to which the Participant or Beneficiary is entitled under the Plan in one or more of the following methods:

(1) One lump-sum payment in cash.

(2) Payments over a period certain in monthly, quarterly, semiannual, or annual cash installments. In order to provide such installment payments, the Administrator may (A) segregate the aggregate amount thereof in a separate, federally insured savings account, certificate of deposit in a bank or savings and loan association, money market certificate or other liquid short-term security or (B) purchase a nontransferable annuity contract for a term certain (with no life contingencies) providing for such payment. The period over which such payment is to be made shall not extend beyond the Participant's life expectancy (or the life expectancy of the Participant and the Participant's designated Beneficiary).

(3) Purchase of or providing an annuity. However, such annuity may not be in any form that will provide for payments over a period extending beyond either the life of the Participant (or the lives of the Participant and the Participant's designated Beneficiary) or the life expectancy of the Participant (or the life expectancy of the Participant and the Participant's designated Beneficiary).

(c) The present value of a Participant's joint and survivor annuity derived from Employer and Employee contributions may not be paid without the Participant's and the Participant's Spouse's written (or in such form as permitted by the Internal Revenue Service) consent if the value exceeds \$5,000 (\$3,500 for Plan Years beginning prior to August 6, 1997) and the benefit is "immediately distributable." However, spousal consent is not required if the distribution will be made in the form of a joint and survivor annuity and the benefit is "immediately distributable." A benefit is "immediately distributable" if any part of the benefit could be distributed to the Participant (or surviving Spouse) before the Participant attains (or would have attained if not deceased) the later of the Participant's Normal Retirement Age or age 62. Any consent required by this Section 6.5(c) must be obtained not more than ninety (90) days before commencement of the distribution and shall be made in a manner consistent with Section 6.5(a)(2). Notwithstanding the foregoing, effective January 1, 2008, the election period shall be the one hundred eighty (180) day period ending on the Annuity Starting Date.

If the value of the Participant's benefit derived from Employer and Employee contributions does not exceed \$5,000 (\$3,500 for Plan Years beginning prior to August 6, 1997), then the Administrator shall direct the Trustee to immediately distribute such benefit in a lump sum without the Participant's and the Participant's Spouse's written consent. No distribution may be made under the preceding sentence after the Annuity Starting Date unless the Participant and the Participant's Spouse consent in writing (or in such form as permitted by the Internal Revenue Service) to such distribution. Notwithstanding the foregoing, effective March 28, 2005, the preceding two sentences shall be disregarded, and the following shall apply: The present value of a Participant's joint and survivor annuity derived from Employer and Employee contributions may not be paid without the Participant's and the Participant's spouse's written consent (or in such form as permitted by the Internal Revenue Service.)

(d) The following rules will apply to the consent requirements set forth in subsection (c):

(1) No consent shall be valid unless the Participant has received a general description of the material features and an explanation of the relative values of the optional forms of benefit available under the Plan that would satisfy the notice requirements of Code Section 417.

(2) The Participant must be informed of the right to defer receipt of the distribution. If a Participant fails to consent, it shall be deemed an election to defer the commencement of payment of any benefit. However, any election to defer the receipt of benefits shall not apply with respect to distributions which are required under Section 6.5(e). Notwithstanding the foregoing, however, effective March 28, 2005, any distribution to a Participant shall require such Participant's consent.

(3) Notice of the rights specified under this paragraph shall be provided no less than thirty (30) days and no more than ninety (90) days before the Annuity Starting Date. Notwithstanding the foregoing, effective January 1, 2008, the election period shall be the one hundred eighty (180) day period ending on the Annuity Starting Date.

Notwithstanding the above, the Annuity Starting Date may be a date prior to the date the explanation is provided to the Participant if the distribution does not commence until at least thirty (30) days after such explanation is provided, subject to the waiver of the thirty (30) day period as provided for in Section 6.5(a)(6).

(4) Written (or such other form as permitted by the Internal Revenue Service) consent of the Participant to the distribution must not be made before the Participant receives the notice and must not be made more than ninety (90) days before the Annuity Starting Date. Notwithstanding the foregoing, effective January 1, 2008, the election period shall be the one hundred eighty (180) day period ending on the Annuity Starting Date.

(5) No consent shall be valid if a significant detriment is imposed under the Plan on any Participant who does not consent to the distribution.

Any such distribution may commence less than thirty (30) days, subject to Section 6.5(a)(6), after the notice required under Regulation 1.411(a)-11(c) is given, provided that: (1) the Administrator clearly informs the Participant that the Participant has a right to a period of at least thirty (30) days after receiving the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular distribution option), and (2) the Participant, after receiving the notice, affirmatively elects a distribution.

(e) Notwithstanding any provision in the Plan to the contrary, the distribution of a Participant's benefits, whether under the Plan or through the purchase of an annuity contract, shall be made in accordance with the following requirements and shall otherwise comply with Code Section 401(a)(9) and the Regulations thereunder (including Regulation 1.401(a)(9)-2), the provisions of which are incorporated herein by reference:

(1) A Participant's benefits shall be distributed or must begin to be distributed not later than April 1st of the calendar year following the later of (i) the calendar year in which the Participant attains age 70 1/2 or (ii) the calendar year in which the Participant retires, provided, however, that this clause (ii) shall not apply in the case of a Participant who is a "five (5) percent owner" at any time during the Plan Year ending with or within the calendar year in which such owner attains age 70 1/2. Such distributions shall be equal to or greater than any required distribution.

Alternatively, distributions to a Participant must begin no later than the applicable April 1st as determined under the preceding paragraph and must be made over the life of the Participant (or the lives of the Participant and the Participant's designated Beneficiary) or the life expectancy of the Participant (or the life expectancies of the Participant and the Participant's designated Beneficiary) in accordance with Regulations.

(2) Distributions to a Participant and the Participant's Beneficiaries shall only be made in accordance with the incidental death benefit requirements of Code Section 401(a)(9)(G) and the Regulations thereunder.

(f) For purposes of this Section, the life expectancy of a Participant and a Participant's Spouse (other than in the case of a life annuity) shall not be redetermined in accordance with Code Section 401(a)(9)(D). Life expectancy and joint and last survivor expectancy shall be computed using the return multiples in Tables V and VI of Regulation 1.72-9.

(g) Subject to the Spouse's right of consent afforded under the Plan, the restrictions imposed by this Section shall not apply if a Participant has, prior to January 1, 1984, made a written designation to have retirement benefits paid in an alternative method acceptable under Code Section 401(a)(9) as in effect prior to the enactment of the Tax Equity and Fiscal Responsibility Act of 1982.

(h) All annuity Contracts under this Plan shall be non-transferable when distributed. Furthermore, the terms of any annuity Contract purchased and distributed to a Participant or Spouse shall comply with all of the requirements of the Plan.

(i) If a distribution is made to a Participant who has not severed employment and who is not fully Vested in the Participant's Account and the Participant may increase the Vested percentage in such account, then, at any relevant time the Participant's Vested portion of the account will be equal to an amount ("X") determined by the formula:

$$X \text{ equals } P(\text{AB plus D}) - D$$

For purposes of applying the formula: P is the Vested percentage at the relevant time, AB is the account balance at the relevant time, and D is the amount of distribution.

(j) Notwithstanding anything in this Plan to the contrary, effective with the 2003 calendar year, the Minimum Distribution Requirements set forth in Article VI-A of this Plan shall apply.

## 6.6 DISTRIBUTION OF BENEFITS UPON DEATH

(a) Unless otherwise elected as provided below, a Vested Participant who dies before the Annuity Starting Date and who has a surviving Spouse shall have the Pre-Retirement Survivor Annuity paid to the surviving Spouse. The Participant's Spouse may direct that payment of the Pre-Retirement Survivor Annuity commence within a reasonable period after the Participant's death. If the Spouse does not so direct, payment of such benefit will commence at the time the Participant would have attained the later of Normal Retirement Age or age 62. However, the Spouse may elect a later commencement date. Any distribution to the Participant's Spouse shall be subject to the rules specified in Section 6.6(g).

(b) Any election to waive the Pre-Retirement Survivor Annuity before the Participant's death must be made by the Participant in writing (or in such other form as permitted by the Internal Revenue Service) during the election period and shall require the Spouse's irrevocable consent in the same manner provided for in Section 6.5(a)(2). Further, the Spouse's consent must acknowledge the specific nonSpouse Beneficiary. Notwithstanding the foregoing, the nonSpouse Beneficiary need not be acknowledged, provided the consent of the Spouse acknowledges that the Spouse has the right to limit consent only to a specific Beneficiary and that the Spouse voluntarily elects to relinquish such right.

(c) The election period to waive the Pre-Retirement Survivor Annuity shall begin on the first day of the Plan Year in which the Participant attains age thirty-five (35) and end on the date of the Participant's death. An earlier waiver (with spousal consent) may be made provided a written (or in such other form as permitted by the Internal Revenue Service) explanation of the Pre-Retirement Survivor Annuity is given to the Participant and such waiver becomes invalid at the beginning

of the Plan Year in which the Participant turns age thirty-five (35). In the event a Vested Participant separates from service prior to the beginning of the election period, the election period shall begin on the date of such separation from service.

(d) With regard to the election, the Administrator shall provide each Participant within the applicable period, with respect to such Participant (and consistent with Regulations), a written (or in such other form as permitted by the Internal Revenue Service) explanation of the Pre-Retirement Survivor Annuity containing comparable information to that required pursuant to Section 6.5(a)(5). For the purposes of this paragraph, the term "applicable period" means, with respect to a Participant, whichever of the following periods ends last:

(1) The period beginning with the first day of the Plan Year in which the Participant attains age thirty-two (32) and ending with the close of the Plan Year preceding the Plan Year in which the Participant attains age thirty-five (35);

(2) A reasonable period after the individual becomes a Participant;

(3) A reasonable period ending after the Plan no longer fully subsidizes the cost of the Pre-Retirement Survivor Annuity with respect to the Participant;

(4) A reasonable period ending after Code Section 401(a)(11) applies to the Participant; or

(5) A reasonable period after separation from service in the case of a Participant who separates before attaining age thirty-five (35). For this purpose, the Administrator must provide the explanation beginning one (1) year before the separation from service and ending one (1) year after such separation. If such a Participant thereafter returns to employment with the Employer, the applicable period for such Participant shall be redetermined.

For purposes of applying this Section 6.6(d), a reasonable period ending after the enumerated events described in paragraphs (2), (3) and (4) is the end of the two (2) year period beginning one (1) year prior to the date the applicable event occurs, and ending one (1) year after that date.

(e) If the present value of the Pre-Retirement Survivor Annuity derived from Employer and Employee contributions does not exceed \$5,000 (\$3,500 for Plan Years beginning prior to August 6, 1997), then the Administrator shall direct the immediate distribution of the present value of the Pre-Retirement Survivor Annuity to the Participant's Spouse. No distribution may be made under the preceding sentence after the Annuity Starting Date unless the Spouse consents in writing (or in such other form as permitted by the Internal Revenue Service) to such distribution. If the value exceeds \$5,000 (\$3,500 for Plan Years beginning prior to August 6, 1997), then an immediate distribution of the entire amount of the Pre-Retirement Survivor Annuity may be made to the surviving Spouse, provided such surviving Spouse consents in writing (or in such other form as permitted by the Internal Revenue Service) to such distribution. Any consent

required under this paragraph must be obtained not more than ninety (90) days before commencement of the distribution and shall be made in a manner consistent with Section 6.5(a)(2). Notwithstanding the foregoing, effective March 28, 2005, the preceding provisions of this paragraph 6.6(e) shall be disregarded, and the following shall apply: An immediate distribution of the entire amount of the Pre-Retirement Survivor Annuity may be made to the surviving spouse (in lieu of the payment of a Pre-Retirement Survivor Annuity to such spouse), provided such surviving spouse consents in writing (or in such other form as permitted by the Internal Revenue Service) to such lump sum distribution. Any consent required under this paragraph must be obtained not more than ninety (90) days before commencement of the distribution and shall be made in a manner consistent with Section 6.5(a)(2). Notwithstanding the foregoing, effective January 1, 2008, the consent period shall be the one hundred eighty (180) day period ending on the Annuity Starting Date.

(f)(1) To the extent the death benefit is not paid in the form of a Pre-Retirement Survivor Annuity, it shall be paid to the Participant's Beneficiary by either of the following methods, as elected by the Participant (or if no election has been made prior to the Participant's death, by the Participant's Beneficiary), subject to the rules specified in Section 6.6(g):

(i) One lump-sum payment in cash.

(ii) Payment in monthly, quarterly, semi-annual, or annual cash installments over a period to be determined by the Participant or the Participant's Beneficiary. After periodic installments commence, the Beneficiary shall have the right to direct the Trustee to reduce the period over which such periodic installments shall be made, and the Trustee shall adjust the cash amount of such periodic installments accordingly.

(2) In the event the death benefit payable pursuant to Section 6.2 is payable in installments, then, upon the death of the Participant, the Administrator may direct the Trustee to segregate the death benefit into a separate account, and the Trustee shall invest such segregated account separately, and the funds accumulated in such account shall be used for the payment of the installments.

If death benefits in excess of the Pre-Retirement Survivor Annuity are to be paid to the surviving Spouse, such benefits may be paid pursuant to (1) and (2) above, or used to purchase an annuity so as to increase the payments made pursuant to the Pre-Retirement Survivor Annuity.

(g) Notwithstanding any provision in the Plan to the contrary, distributions upon the death of a Participant shall be made in accordance with the following requirements and shall otherwise comply with Code Section 401(a)(9) and the Regulations thereunder. If it is determined, pursuant to Regulations, that the distribution of a Participant's interest has begun and the Participant dies before the entire interest has been distributed, the remaining portion of such interest shall be distributed at least as rapidly as under the method of distribution selected pursuant to Section 6.5 as of the date of death. If a Participant dies before

receiving any distributions of the interest in the Plan or before distributions are deemed to have begun pursuant to Regulations, then the death benefit shall be distributed to the Participant's Beneficiaries by December 31st of the calendar year in which the fifth anniversary of the Participant's date of death occurs.

However, in the event that the Participant's Spouse (determined as of the date of the Participant's death) is the designated Beneficiary, then in lieu of the preceding rules, distributions must be made over the life of the Spouse (or over a period not extending beyond the life expectancy of the Spouse) and must commence on or before the later of: (1) December 31st of the calendar year immediately following the calendar year in which the Participant died; or (2) December 31st of the calendar year in which the Participant would have attained age 70 1/2. If the surviving Spouse dies before distributions to such Spouse begin, then the 5-year distribution requirement of this Section shall apply as if the Spouse was the Participant.

(h) For purposes of this Section, the life expectancy of a Participant and a Participant's Spouse (other than in the case of a life annuity) shall not be redetermined in accordance with Code Section 401(a)(9)(D). Life expectancy and joint and last survivor expectancy shall be computed using the return multiples in Tables V and VI of Regulation 1.72-9.

(i) For purposes of this Section, any amount paid to a child of the Participant will be treated as if it had been paid to the surviving Spouse if the amount becomes payable to the surviving Spouse when the child reaches the age of majority.

(j) Subject to the Spouse's right of consent afforded under the Plan, the restrictions imposed by this Section shall not apply if a Participant has, prior to January 1, 1984, made a written designation to have death benefits paid in an alternative method acceptable under Code Section 401(a)(9) as in effect prior to the enactment of the Tax Equity and Fiscal Responsibility Act of 1982.

(k) Notwithstanding anything in this Plan to the contrary, effective with the 2003 calendar year, the Minimum Distribution Requirements set forth in Article VI-A of this Plan shall apply.

## 6.7 TIME OF SEGREGATION OR DISTRIBUTION

Except as limited by Sections 6.5 and 6.6, whenever the Trustee is to make a distribution or to commence a series of payments the distribution or series of payments may be made or begun on such date or as soon thereafter as is practicable. However, unless a Former Participant elects in writing to defer the receipt of benefits (such election may not result in a death benefit that is more than incidental), the payment of benefits shall begin not later than the sixtieth (60th) day after the close of the Plan Year in which the latest of the following events occurs: (a) the date on which the Participant attains the earlier of age 65 or the Normal Retirement Age specified herein; (b) the tenth (10th) anniversary of the year in which the Participant commenced participation in the Plan; or (c) the date the Participant terminates service with the Employer.

Notwithstanding the foregoing, the failure of a Participant and, if applicable, the Participant's Spouse, to consent to a distribution that is "immediately distributable" (within the meaning of Section 6.5), shall be deemed to be an election to defer the commencement of payment of any benefit sufficient to satisfy this Section.

#### 6.8 DISTRIBUTION FOR MINOR OR INCOMPETENT BENEFICIARY

In the event a distribution is to be made to a minor or incompetent Beneficiary, then the Administrator may direct that such distribution be paid to the legal guardian, or if none in the case of a minor Beneficiary, to a parent of such Beneficiary or a responsible adult with whom the Beneficiary maintains residence, or to the custodian for such Beneficiary under the Uniform Gift to Minors Act or Gift to Minors Act, if such is permitted by the laws of the state in which said Beneficiary resides. Such a payment to the legal guardian, custodian or parent of a minor Beneficiary shall fully discharge the Trustee, Employer, and Plan from further liability on account thereof.

#### 6.9 LOCATION OF PARTICIPANT OR BENEFICIARY UNKNOWN

In the event that all, or any portion, of the distribution payable to a Participant or Beneficiary hereunder shall, at the later of the Participant's attainment of age 62 or Normal Retirement Age, remain unpaid solely by reason of the inability of the Administrator, after sending a registered letter, return receipt requested, to the last known address, and after further diligent effort, to ascertain the whereabouts of such Participant or Beneficiary, the amount so distributable shall be treated as a Forfeiture pursuant to the Plan. Notwithstanding the foregoing, if the value of a Participant's Vested benefit derived from Employer and Employee contributions does not exceed \$5,000 (\$3,500 for Plan Years beginning prior to August 6, 1997), then the amount distributable may, in the sole discretion of the Administrator, either be treated as a Forfeiture, or be paid directly to an individual retirement account described in Code Section 408(a) or an individual retirement annuity described in Code Section 408(b) at the time it is determined that the whereabouts of the Participant or the Participant's Beneficiary cannot be ascertained. In the event a Participant or Beneficiary is located subsequent to the Forfeiture, such benefit shall be restored, first from Forfeitures, if any, and then from an additional Employer contribution if necessary. However, regardless of the preceding, a benefit which is lost by reason of escheat under applicable state law is not treated as a Forfeiture for purposes of this Section nor as an impermissible forfeiture under the Code.

6.10 ADVANCE DISTRIBUTION FOR HARDSHIP

(a) The Administrator, at the election of the Participant, shall direct the Trustee to distribute to any Participant in any one Plan Year up to the lesser of 100% of the Participant's Elective Account and Participant's Transfer/Rollover Account valued as of the last Valuation Date or the amount necessary to satisfy the immediate and heavy financial need of the Participant. Any distribution made pursuant to this Section shall be deemed to be made as of the first day of the Plan Year or, if later, the Valuation Date immediately preceding the date of distribution, and the Participant's Elective Account and Participant's Transfer/Rollover Account shall be reduced accordingly. Withdrawal under this Section is deemed to be on account of an immediate and heavy financial need of the Participant only if the withdrawal is for:

- (1) Medical expenses described in Code Section 213(d) incurred by the Participant, the Participant's Spouse, or any of the Participant's dependents (as defined in Code Section 152) or necessary for these persons to obtain medical care as described in Code Section 213(d);
- (2) The costs directly related to the purchase (excluding mortgage payments) of a principal residence for the Participant;
- (3) Payment of tuition, related educational fees, and room and board expenses for the next twelve (12) months of post-secondary education for the Participant and the Participant's Spouse, children, or dependents; or
- (4) Payments necessary to prevent the eviction of the Participant from the Participant's principal residence or foreclosure on the mortgage on that residence.

(b) No distribution shall be made pursuant to this Section unless the Administrator, based upon the Participant's representation and such other facts as are known to the Administrator, determines that all of the following conditions are satisfied:

- (1) The distribution is not in excess of the amount of the immediate and heavy financial need of the Participant. The amount of the immediate and heavy financial need may include any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution;
- (2) The Participant has obtained all distributions, other than hardship distributions, and all nontaxable (at the time of the loan) loans currently available under all plans maintained by the Employer;
- (3) The Plan, and all other plans maintained by the Employer, provide that the Participant's elective deferrals and after-tax voluntary Employee contributions will be suspended for at least six (6) months after receipt of the hardship distribution or, the Participant, pursuant to a legally enforceable agreement, will suspend elective deferrals and after-tax

voluntary Employee contributions to the Plan and all other plans maintained by the Employer for at least six (6) months after receipt of the hardship distribution.

(c) Notwithstanding the above, distributions from the Participant's Elective Account pursuant to this Section shall be limited, as of the date of distribution, to the Participant's Elective Account as of the end of the last Plan Year ending before July 1, 1989, plus the total Participant's Deferred Compensation after such date, reduced by the amount of any previous distributions pursuant to this Section.

(d) Any distribution made pursuant to this Section shall be made in a manner which is consistent with and satisfies the provisions of Section 6.5, including, but not limited to, all notice and consent requirements of Code Sections 417 and 411(a)(11) and the Regulations thereunder.

#### 6.11 QUALIFIED DOMESTIC RELATIONS ORDER DISTRIBUTION

All rights and benefits, including elections, provided to a Participant in this Plan shall be subject to the rights afforded to any "alternate payee" under a "qualified domestic relations order." Furthermore, a distribution to an "alternate payee" shall be permitted if such distribution is authorized by a "qualified domestic relations order," even if the affected Participant has not separated from service and has not reached the "earliest retirement age" under the Plan. For the purposes of this Section, "alternate payee," "qualified domestic relations order" and "earliest retirement age" shall have the meaning set forth under Code Section 414(p).

#### 6.12 DIRECT ROLLOVER

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

(b) For purposes of this Section the following definitions shall apply:

(1) An "eligible rollover distribution" is any distribution of all or any portion of the balance to the credit of the "distributee," except that an "eligible rollover distribution" does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the "distributee" or the joint lives (or joint life expectancies) of the "distributee" and the "distributee's" designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); or the portion of any other distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities). Effective January 1, 2007,

notwithstanding the foregoing, any distribution made to a non-Spouse Beneficiary that satisfies the conditions described herein shall be an "eligible rollover distribution" only for the purposes of Code Section 402(c).

(2) An "eligible retirement plan" is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), a qualified trust described in Code Section 401(a), that accepts the "distributee's" "eligible rollover distribution," or an annuity contract described in Code Section 403(b) and 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. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving Spouse, or a Spouse or former Spouse who is the Alternate Payee under a qualified domestic relations order, as defined in Code Section 414(p). However, in the case of an "eligible rollover distribution" to the surviving Spouse, an "eligible retirement plan" is an individual retirement account or individual retirement annuity. For "eligible rollover distributions" made on or after January 1, 2007, an "eligible retirement plan" shall also mean an individual retirement account established on behalf of a non-Spouse Beneficiary as described in Code Section 402(c)(11).

(3) A "distributee" includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving Spouse and the Employee's or former Employee's Spouse or former Spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p), are "distributees" with regard to the interest of the Spouse or former Spouse. Effective for "eligible rollover distributions" made on or after January 1, 2007, the former Participant's non-Spouse Beneficiary is a "distributee" with regard to the interest of the non-Spouse Beneficiary.

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

#### ARTICLE VI – A MINIMUM DISTRIBUTION REQUIREMENTS

##### 6A.1 General Rules.

(a) **Effective Date.** The provisions of this Article will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.

(b) **Coordination with Minimum Distribution Requirements Previously in Effect.** If the total amount of 2002 required minimum distributions under the Plan made to the distributee prior to the effective date of this Article equals or exceeds the required minimum distributions determined under this Article, then no

additional distributions will be required to be made for 2002 on or after such date to the distributee. If the total amount of 2002 required minimum distributions under the Plan made to the distributee prior to the effective date of this Article is less than the amount determined under this Article, then required minimum distributions for 2002 on and after such date will be determined so that the total amount of required minimum distributions for 2002 made to the distributee will be the amount determined under this Article.

(c) Precedence. The requirements of this Article will take precedence over any inconsistent provisions of the Plan.

(d) Requirements of Treasury Regulations Incorporated. All distributions required under this Article will be determined and made in accordance with the Treasury regulations under Code Section 401(a)(9).

(e) TEFRA Section 242(b)(2) Elections. Notwithstanding the other provisions of this Article, distributions may be made under a designation made before January 1, 1984, in accordance with section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the Plan that relate to section 242(b)(2) of TEFRA.

#### 6A.2 Time and Manner of Distribution.

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

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

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

(2) If the Participant's surviving Spouse is not the Participant's sole designated Beneficiary, then, except as provided in Section 6A.2(b)(3), distributions to the designated Beneficiary will begin by December 31st of the calendar year immediately following the calendar year in which the Participant died.

(3) If the Participant dies before distributions begin and there is a designated Beneficiary (other than the Participant's surviving Spouse), distribution to the designated Beneficiary is not required to begin by the date specified in Section 6A.2(b)(2), but the Participant's entire interest will be distributed to the designated Beneficiary by December 31st of the calendar year containing the fifth anniversary of the Participant's death.

(4) If there is no designated Beneficiary as of September 30th of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31st of the calendar year containing the fifth

anniversary of the Participant's death.

(5) 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 6A.2(b), other than Section 6A.2(b)(1), will apply as if the surviving Spouse were the Participant.

For purposes of this Section 6A.2(b) and Section 6A.4, unless Section 6A.2(b)(5) applies, distributions are considered to begin on the Participant's required beginning date. If Section 6A.2(b)(5) applies, distributions are considered to begin on the date distributions are required to begin to the surviving Spouse under Section 6A.2(b)(1). 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 6A.2(b)(1)), the date distributions are considered to begin is the date distributions actually commence.

(c) Form 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 6A.3 and 6A.4 of this Article. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code Section 401(a)(9) and the Treasury regulations.

#### 6A.3 Required Minimum Distributions During Participant's Lifetime.

(a) 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:

(1) 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

(2) 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.

(b) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under this Section 6A.3 beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

#### 6A.4 Required Minimum Distributions After Participant's Death.

(a) Death On or After Date Distributions Begin.

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

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

(ii) If the Participant's surviving Spouse is the Participant's sole designated Beneficiary, the remaining life expectancy of the surviving Spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving Spouse's age as of the Spouse's birthday in that year. For distribution calendar years after the year of the surviving Spouse's death, the remaining life expectancy of the surviving Spouse is calculated using the age of the surviving Spouse as of the Spouse's birthday in the calendar year of the Spouse's death, reduced by one for each subsequent calendar year.

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

(2) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no designated Beneficiary as of September 30th 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.

(b) Death Before Date Distributions Begin.

(1) Participant Survived by Designated Beneficiary. Except as provided in Section 6A.4(b)(2), if the Participant dies before the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the remaining life expectancy of the Participant's designated Beneficiary, determined as provided in Section 6A.4(a).

(2) If the Participant dies before distributions begin and there is a designated Beneficiary (other than the Participant's surviving Spouse), distribution to the designated Beneficiary is not required to begin by the date specified in Section 6A.2(b)(2), but the Participant's entire interest will be distributed to the designated Beneficiary by December 31st of the calendar

year containing the fifth anniversary of the Participant's death.

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

(4) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving Spouse is the Participant's sole designated Beneficiary, and the surviving Spouse dies before distributions are required to begin to the surviving Spouse under Section 6A.2(b)(1), this Section 6A.4(b) will apply as if the surviving Spouse were the Participant.

#### 6A.5 Definitions.

(a) Designated Beneficiary. The individual who is designated as the Beneficiary under 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.

(b) Distribution calendar year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under Section 6A.2(b). The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's required beginning date occurs, will be made on or before December 31st of that distribution calendar year.

(c) Life expectancy. Life expectancy as computed by use of the Single Life Table in section 1.401(a)(9)-9 of the Treasury regulations.

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

(e) Required beginning date. The date specified in Section 6.5 and 6.6 of the Plan.

ARTICLE IX  
MISCELLANEOUS

9.1 PARTICIPANT'S RIGHTS

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

9.2 ALIENATION

(a) Subject to the exceptions provided below, no benefit which shall be payable out of the Trust Fund to any person (including a Participant or the Participant's Beneficiary) shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, or charge the same shall be void; and no such benefit shall in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any such person, nor shall it be subject to attachment or legal process for or against such person, and the same shall not be recognized by the Trustee, except to such extent as may be required by law.

(b) Subsection (a) shall not apply to the extent a Participant or Beneficiary is indebted to the Plan, by reason of a loan from the Plan. At the time a distribution is to be made to or for a Participant's or Beneficiary's benefit, such proportion of the amount to be distributed as shall equal such indebtedness shall be paid to the Plan, to apply against or discharge such indebtedness. Prior to making a payment, however, the Participant or Beneficiary must be given written notice by the Administrator that such indebtedness is to be so paid in whole or part from the Participant's Combined Account. If the Participant or Beneficiary does not agree that the indebtedness is a valid claim against the Vested Participant's Combined Account, the Participant or Beneficiary shall be entitled to a review of the validity of the claim in accordance with procedures provided in Sections 2.7 and 2.8.

(c) Subsection (a) shall not apply to a "qualified domestic relations order" defined in Code Section 414(p), and those other domestic relations orders permitted to be so treated by the Administrator under the provisions of the Retirement Equity Act of 1984. The Administrator shall establish a written procedure to determine the qualified status of domestic relations orders and to administer distributions under such qualified orders. Further, to the extent provided under a "qualified domestic relations order," a former Spouse of a Participant shall be treated as the Spouse or surviving Spouse for all purposes under the Plan. The Plan shall permit distribution to the "alternate payee" pursuant to the terms of a "qualified domestic relations order" even if the Participant had not attained his "earliest retirement age" as defined in Code

Section 414(p) and distribution would not otherwise be permitted under the terms of the Plan.

(d) Subsection (a) shall not apply to an offset to a Participant's accrued benefit against an amount that the Participant is ordered or required to pay the Plan with respect to a judgment, order, or decree issued, or a settlement entered into, on or after August 5, 1997, in accordance with Code Sections 401(a)(13)(C) and (D). In a case in which the survivor annuity requirements of Code Section 401(a)(11) apply with respect to distributions from the Plan to the Participant, if the Participant has a Spouse at the time at which the offset is to be made:

(1) either such Spouse has consented in writing to such offset and such consent is witnessed by a notary public or representative of the Plan (or it is established to the satisfaction of a Plan representative that such consent may not be obtained by reason of circumstances described in Code Section 417(a)(2)(B)), or an election to waive the right of the Spouse to either a qualified joint and survivor annuity or a qualified pre-retirement survivor annuity is in effect in accordance with the requirements of Code Section 417(a),

(2) such Spouse is ordered or required in such judgment, order, decree or settlement to pay an amount to the Plan in connection with a violation of fiduciary duties, or

(3) in such judgment, order, decree or settlement, such Spouse retains the right to receive the survivor annuity under a qualified joint and survivor annuity provided pursuant to Code Section 401(a)(11)(A)(i) and under a qualified pre-retirement survivor annuity provided pursuant to Code Section 401(a)(11)(A)(ii).

### 9.3 CONSTRUCTION OF PLAN

This Plan shall be construed and enforced according to the Code, the Act and the laws of the Commonwealth of Pennsylvania, other than its laws respecting choice of law, to the extent not pre-empted by the Act.

### 9.4 GENDER AND NUMBER

Wherever any words are used herein in the masculine, feminine or neuter gender, they shall be construed as though they were also used in another gender in all cases where they would so apply, and whenever any words are used herein in the singular or plural form, they shall be construed as though they were also used in the other form in all cases where they would so apply.

### 9.5 LEGAL ACTION

In the event any claim, suit, or proceeding is brought regarding the Trust and/or Plan established hereunder to which the Trustee, the Employer or the Administrator may be a party, and such claim, suit, or proceeding is resolved in favor of the Trustee, the Employer or the Administrator, they shall be entitled to be reimbursed from the Trust Fund for any and all costs,

attorney's fees, and other expenses pertaining thereto incurred by them for which they shall have become liable.

#### 9.6 PROHIBITION AGAINST DIVERSION OF FUNDS

(a) Except as provided below and otherwise specifically permitted by law, it shall be impossible by operation of the Plan or of the Trust, by termination of either, by power of revocation or amendment, by the happening of any contingency, by collateral arrangement or by any other means, for any part of the corpus or income of any Trust Fund maintained pursuant to the Plan or any funds contributed thereto to be used for, or diverted to, purposes other than the exclusive benefit of Participants, Former Participants, or their Beneficiaries.

(b) In the event the Employer shall make an excessive contribution under a mistake of fact pursuant to Act Section 403(c)(2)(A), the Employer may demand repayment of such excessive contribution at any time within one (1) year following the time of payment and the Trustees shall return such amount to the Employer within the one (1) year period. Earnings of the Plan attributable to the contributions may not be returned to the Employer but any losses attributable thereto must reduce the amount so returned.

(c) Except for Sections 3.5, 3.6, and 4.1(e), any contribution by the Employer to the Trust Fund is conditioned upon the deductibility of the contribution by the Employer under the Code and, to the extent any such deduction is disallowed, the Employer may, within one (1) year following the final determination of the disallowance, whether by agreement with the Internal Revenue Service or by final decision of a competent jurisdiction, demand repayment of such disallowed contribution and the Trustee shall return such contribution within one (1) year following the disallowance. Earnings of the Plan attributable to the contribution may not be returned to the Employer, but any losses attributable thereto must reduce the amount so returned.

#### 9.7 EMPLOYER'S AND TRUSTEE'S PROTECTIVE CLAUSE

The Employer, Administrator and Trustee, and their successors, shall not be responsible for the validity of any Contract issued hereunder or for the failure on the part of the insurer to make payments provided by any such Contract, or for the action of any person which may delay payment or render a Contract null and void or unenforceable in whole or in part.

#### 9.8 INSURER'S PROTECTIVE CLAUSE

Except as otherwise agreed upon in writing between the Employer and the insurer, an insurer which issues any Contracts hereunder shall not have any responsibility for the validity of this Plan or for the tax or legal aspects of this Plan. The insurer shall be protected and held harmless in acting in accordance with any written direction of the Trustee, and shall have no duty to see to the application of any funds paid to the Trustee, nor be required to question any actions directed by the Trustee. Regardless of any provision of this Plan, the insurer shall not be required to take or permit any action or allow any benefit or privilege contrary to the terms of any Contract which it issues hereunder, or the rules of the insurer.

#### 9.9 RECEIPT AND RELEASE FOR PAYMENTS

Any payment to any Participant, the Participant's legal representative, Beneficiary, or to any guardian or committee appointed for such Participant or Beneficiary in accordance with the provisions of the Plan, shall, to the extent thereof, be in full satisfaction of all claims hereunder against the Trustee and the Employer, either of whom may require such Participant, legal representative, Beneficiary, guardian or committee, as a condition precedent to such payment, to execute a receipt and release thereof in such form as shall be determined by the Trustee or Employer.

#### 9.10 ACTION BY THE EMPLOYER

Whenever the Employer under the terms of the Plan is permitted or required to do or perform any act or matter or thing, it shall be done and performed by a person duly authorized by its legally constituted authority.

#### 9.11 NAMED FIDUCIARIES AND ALLOCATION OF RESPONSIBILITY

The Employer, Trustee and Administrator shall have only those specific powers, duties, responsibilities, and obligations as are specifically given them under the Plan. In general, the Employer shall have the sole responsibility for making the contributions provided for under Section 4.1; and shall have the sole authority to appoint and remove the Trustee and the Administrator; to formulate the Plan's "funding policy and method"; and to amend or terminate, in whole or in part, the Plan. The Administrator shall have the sole responsibility for the administration of the Plan, which responsibility is specifically described in the Plan. The Trustee shall have the sole responsibility of management of the assets held under the Trust, except those assets, the management of which has been assigned to an Investment Manager, who shall be solely responsible for the management of the assets assigned to it, all as specifically provided in the Plan. Each named Fiduciary warrants that any directions given, information furnished, or action taken by it shall be in accordance with the provisions of the Plan, authorizing or providing for such direction, information or action. Furthermore, each named Fiduciary may rely upon any such direction, information or action of another named Fiduciary as being proper under the Plan, and is not required under the Plan to inquire into the propriety of any such direction, information or action. It is intended under the Plan that each named Fiduciary shall be responsible for the proper exercise of its own powers, duties, responsibilities and obligations under the Plan. No named Fiduciary shall guarantee the Trust Fund in any manner against investment loss or depreciation in asset value. Any person or group may serve in more than one Fiduciary capacity. In the furtherance of their responsibilities hereunder, the Fiduciaries shall be empowered to interpret the Plan and Trust and to resolve ambiguities, inconsistencies and omissions, which findings shall be binding, final and conclusive.

#### 9.12 HEADINGS

The headings and subheadings of this Plan have been inserted for convenience of reference and are to be ignored in any construction of the provisions hereof.

#### 9.13 APPROVAL BY INTERNAL REVENUE SERVICE

Notwithstanding anything herein to the contrary, if, pursuant to an application for qualification filed by or on behalf of the Plan by the time prescribed by law for filing the Employer's return for the taxable year in which the Plan is adopted, or such later date that the Secretary of the Treasury may prescribe, the Commissioner of Internal Revenue Service or the Commissioner's delegate should determine that the Plan does not initially qualify as a tax-exempt plan under Code Sections 401 and 501, and such determination is not contested, or if contested, is finally upheld, then if the Plan is a new plan, it shall be void ab initio and all amounts contributed to the Plan by the Employer, less expenses paid, shall be returned within one (1) year and the Plan shall terminate, and the Trustee shall be discharged from all further obligations. If the disqualification relates to an amended plan, then the Plan shall operate as if it had not been amended.

#### 9.14 UNIFORMITY

All provisions of this Plan shall be interpreted and applied in a uniform, nondiscriminatory manner. In the event of any conflict between the terms of this Plan and any Contract purchased hereunder, the Plan provisions shall control.

#### 9.15 SELF-CORRECTION

The Plan Administrator shall take such steps as it considers necessary and appropriate to remedy any inequity that results from incorrect information received or communicated in good faith, or as a consequence of administrative or operational error. Such steps may include, but shall not be limited to, taking any action required under the employee plans compliance resolution system of the Internal Revenue Service, any asset management or fiduciary conduct error correction program available through the Department of Labor, any similar correction program instituted by the Internal Revenue Service, Department of Labor, or other administrative agency, reallocation of Plan assets, adjustments in amounts of future payments to Participants, Beneficiaries, or Alternate Payees, and institution and prosecution of actions to recover benefit payments made in error or on the basis of incorrect or incomplete information.

#### 9.16 INDEMNIFICATION

The Administrator, each member of the Committee, and any other person who is an Employee or director of the Employer shall be indemnified and held harmless by the Employer against and with respect to all damages, losses, obligations, liabilities, liens, deficiencies, costs and expenses, including without limitation, reasonable attorney's fees and other costs incident to any suit, action, investigation, claim or proceedings to which he may be a party by reason of his performance of administrative functions and duties under the Plan, except in relation to matters as to which he shall be held liable for an act of willful misconduct in the performance of his duties. The foregoing right to indemnification shall be in addition to such other rights as Plan Administrator, the Committee member or other person may enjoy as a matter of law or by reason of insurance coverage of any kind. Rights granted hereunder shall be in addition to and not in lieu of any rights to indemnification to which the Administrator, the Committee member or other person may be entitled pursuant to the by-laws of the Employer.