

**CITY OF JONESBORO, ARKANSAS
NON-UNIFORMED EMPLOYEES 401(a)
DEFINED CONTRIBUTION PLAN**

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**CITY OF JONESBORO, ARKANSAS
NON-UNIFORMED EMPLOYEES 401(a)
DEFINED CONTRIBUTION PLAN**

The CITY OF JONESBORO, ARKANSAS (the "City") hereby establishes this City of Jonesboro, Arkansas Non-Uniformed Employees 401(a) Defined Contribution Plan (the "Plan"), and hereby enters into this Trust Agreement by and between the City and First Security Bank (herein referred to as the "Trustee"). Effective as of January 1, 2012, the terms of the Plan and Trust Agreement shall be as follows:

**ARTICLE I
DEFINITIONS**

1.1 **"Account"** means any separate notational account established and maintained by the Administrator for each Participant under the Plan. The term "Participant's Account" or "Participant's Account Balance" generally means the sum of all Accounts being maintained for the Participant, which represents the Participant's total interest in the Plan. Section 6.7 contains a definition of "Participant's Account Balance" for purposes of that Section. To the extent applicable, a Participant may have any (or all) of the following notational Accounts:

- (a) the Nonelective Contribution Account;
- (b) the Matching Contribution Account;
- (c) the Rollover Account;
- (d) the Transfer Account; and
- (e) any other account, including an overlapping account or sub-account, necessary for the administration of the Plan

1.2 **"Administrator"** means the Employer unless another person or entity has been designated by the Employer pursuant to Section 2.2 to administer the Plan on behalf of the Employer.

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 **"Annual Additions"** means, for purposes of applying the limitations of Code Section 415, the sum credited to a Participant's Accounts for any Limitation Year of (1) Employer contributions, (2) employee after-tax contributions, (3) forfeitures, (4) amounts allocated to an individual medical account, as defined in Code Section 415(l)(2) which is part of a pension or annuity plan maintained by the Employer, (5) amounts derived from contributions paid or

accrued which are attributable to post retirement medical benefits allocated to the separate account of a key employee (as defined in Code Section 419A(d)(3)) under a welfare benefit plan (as defined in Code Section 419(e)) maintained by the Employer and (6) allocations under a simplified employee pension plan.

Annual Additions do not include the transfers of funds from one plan to another. In addition, the following are not Annual Additions for the purposes of this definition: (1) rollover contributions as defined in Code Sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3) and 457(e)(16); (2) repayments of loans made to a Participant from the Plan; (3) repayment of distributions received by an Employee pursuant to Code Section 411(a)(7)(B) (cash outs); (4) repayment of distributions received by an Employee pursuant to Code Section 411(a)(3)(D) (mandatory contributions); and (5) employee contributions to a simplified employee pension excludable from gross income under Code Section 408(k)(6).

1.5 **“Beneficiary”** means the person (or entity) to whom the share of a deceased Participant’s interest in the Plan is payable. Section 6.8 contains a definition of “designated Beneficiary” for purposes of that Section.

1.6 **“City Council”** means the City Council for the City of Jonesboro, Arkansas.

1.7 **“Code”** means the Internal Revenue Code of 1986, as amended or replaced from time to time.

1.8 **“Compensation”** means, with respect to any Participant and except as otherwise provided herein, such Participant’s wages as defined in Code Section 3401(a) and all other payments of compensation by the Employer (in the course of the Employer’s trade or business) for a Plan Year (the “determination period”) for which the Employer is required to furnish the Participant a written statement under Code Sections 6041(d), 6051(a)(3) and 6052 (Form W 2 wages). Compensation must be determined without regard to any rules under Code Section 3401(a) 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 pre participation Compensation paid during the Plan Year while not a Participant.
- (b) excluding any amounts paid to an Employee after his or her severance from employment except such amounts that are considered Post-Severance Compensation.

Compensation in excess of \$250,000 (or such other amount provided in the Code) shall be disregarded for all purposes. 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 “determination period” of less than twelve (12) months, the Compensation limit shall be an amount equal to the Compensation limit for the calendar year in which the “determination period” begins multiplied by the ratio obtained by dividing the number

of full months in the short “determination period” by twelve (12). A “determination period” is not less than twelve (12) months solely because a Participant’s Compensation does not include Compensation paid during a “determination period” while the Participant was not a Participant in the Plan.

If any Employees are excluded from the Plan, then Compensation for any such Employees who become eligible or cease to be eligible to participate in the Plan during a Plan Year shall only include Compensation while such Employees are Eligible Employees of the Plan.

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.

1.9 **“Custodian”** means a person or entity that has custody of all or any portion of the Plan assets, and which shall be INTRUST Bank, N.A.

1.10 **“Disability”** means a physical or mental condition of a Participant resulting from bodily injury, disease, or mental disorder which renders such Participant incapable of continuing any gainful occupation and which condition constitutes total disability under the federal Social Security Acts.

1.11 **“Effective Date”** means January 1, 2012.

1.12 **“Eligible Employee”** means any Employee, except as provided below, and except as provided in any other particular provision for the limited purposes of that provision. The following Employees shall not be eligible to participate in this Plan:

(a) An individual shall not be an Eligible Employee if such individual is not reported on the payroll records of the Employer as a common law employee. In particular, it is expressly intended that individuals not treated as common law employees by the Employer on its payroll records and out sourced workers, are neither Employees nor Eligible Employees, and are excluded from Plan participation even if a court or administrative agency determines that such individuals are common law employees and not independent contractors. However, this paragraph shall not apply to partners or other Self Employed Individuals unless the Employer treats them as independent contractors;

(b) Employees who are Leased Employees;

(c) 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, unless such agreement expressly provides for coverage in this Plan;

(d) Uniformed police and fire department personnel of the City of Jonesboro, Arkansas; and

(e) Elected officials of the City of Jonesboro, Arkansas.

1.13 **“Employee”** means any common law employee, Leased Employee or other person to the extent that the Code treats such an individual as an employee of the Employer for purposes of the Plan, such as (for certain purposes) any person who is employed by an Affiliated Employer.

1.14 **“Employer”** means the City of Jonesboro, Arkansas and any successor which shall maintain this Plan; and any predecessor which has maintained this Plan. The Employer is a municipality of the State of Arkansas. In addition, where appropriate, the term Employer shall include any Participating Employer.

1.15 **“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.

1.16 **“Forfeiture”** means that portion of a Participant’s Account that is not Vested, and which becomes a Forfeiture at the time described below:

The earlier of:

(a) the distribution of the entire Vested portion of the Participant’s Account of a Participant who has severed employment with the Employer. For purposes of this provision, if the Participant has a Vested benefit of zero (determined without regard to the Participant’s Rollover Account), then such Participant shall be deemed to have received a distribution of such Vested benefit as of the date on which the severance of employment occurs, or

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

In addition, the term “Forfeiture” shall also include amounts deemed to be Forfeitures pursuant to any other provisions of this Plan.

Regardless of the preceding provisions, if a Participant is eligible to share in the allocation of Forfeitures in the year in which the Forfeiture would otherwise occur, then the Forfeiture will not occur until the end of the subsequent Plan Year.

For purposes of this Plan, any Forfeiture will be disposed of in the Plan Year following the Plan Year in which the Forfeiture arises.

1.17 **“Former Employee”** means an Employee who had a severance from employment with the Employer or an Affiliated Employer.

1.18 **“415 Compensation”** with respect to any Participant means such Participant’s wages as defined in Code Section 3401(a) and all other payments of compensation by the Employer (in the course of the Employer’s trade or business) for a Plan Year for which the Employer is required to furnish the Participant a written statement under Code Sections 6041(d), 6051(a)(3) and 6052.

415 Compensation must be determined without regard to any rules under Code Section 3401(a) 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)).

Notwithstanding the above, the determination of 415 Compensation shall be made by:

(a) including any amount which is contributed by the Employer at the election of the Participant pursuant to a salary reduction agreement and which is not includible in the gross income of the Participant by reason of 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. For this purpose, amounts not includible in gross income under Code Section 125 shall be deemed to include any amounts not available to a Participant in cash in lieu of group health coverage because the Participant is unable to certify that the Participant has other health coverage, provided 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.

(b) excluding any amount paid to a Participant following severance from employment except to the extent such payment is considered Post-Severance Compensation.

1.19 **"457(b) Plan"** means the City of Jonesboro, Arkansas Non-Uniformed Employees 457(b) Retirement Savings Plan, as shall be amended and restated from time to time.

1.20 **"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; (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.

Each Employee shall be credited with such Employee's actual Hours of Service.

For purposes of this Section, Hours of Service will be credited for employment with any Affiliated Employers.

1.21 **"Investment Manager"** means any investment advisor or agent described in Section 2.1(b).

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

1.23 **"Limitation Year"** means the Plan Year. However, the Employer may elect a different Limitation Year by amending the Plan. All qualified plans maintained by the Employer must use the same Limitation Year. Furthermore, unless there is a change to a new Limitation Year, the Limitation Year will be a twelve (12) consecutive month period. In the case of an initial Limitation Year, the Limitation Year will be the twelve (12) consecutive month period ending on the last day of the initial Plan Year. If the Limitation Year is amended to a different twelve (12) consecutive month period, the new Limitation Year must begin on a date within the Limitation Year in which the amendment is made.

1.24 **"Matching Contribution"** means any Employer matching contribution (including a contribution made at the Employer's discretion) to the Plan, as described in Section 4.1(b).

1.25 **"Matching Contribution Account"** means the separate account established and maintained by the Administrator for each Participant with respect to the Participant's total interest in the Plan resulting from Matching Contributions.

1.26 **“Nonelective Contribution”** means any Employer contribution (including a contribution made at the Employer’s discretion) to the Plan.

1.27 **“Nonelective Contribution Account”** means the separate account established and maintained by the Administrator for each Participant with respect to the Participant’s total interest in the Plan resulting from Nonelective Contributions.

1.28 **“Normal Retirement Age”** means the date upon which Participant attains the age of 65. A Participant shall become fully Vested in the Participant’s Account upon attaining Normal Retirement Age (if the Participant is still employed by the Employer on or after that date).

1.29 **“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.

For purposes of this definition, “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.

Furthermore, for purposes of this definition, “maternity and 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 “maternity and paternity leaves 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 “maternity and paternity leaves of absence” shall not exceed the number of Hours of Service needed to prevent the Employee from incurring a 1-Year Break in Service.

1.30 **“Participant”** means any Employee or Former Employee who has satisfied the requirements of Sections 3.1 and 3.2 and entered the Plan and is eligible to accrue benefits under the Plan. In addition, the term “Participant” also includes any individual who was a Participant (as defined in the preceding sentence) and who must continue to be taken into account under a particular provision of the Plan (e.g., because the Participant has an Account Balance in the Plan).

1.31 **“Participating Employer”** means an Employer who adopts the Plan pursuant to Section 10.1.

1.32 **“Plan”** means this instrument, including all amendments thereto. The Plan is a “governmental plan” as described in Code Section 414(d).

1.33 **“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.

1.34 **“Post-Severance Compensation”** means payments made within 2 1/2 months after severance from employment (within the meaning of Code Section 401(k)(2)(B)(i)(I)) if they are payments that, absent a severance from employment, would have been paid to the Employee while the Employee continued in employment with the Employer and are regular compensation for services during the Employee’s regular working hours, compensation for services outside the Employee’s regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar compensation, and payments for accrued bona fide sick, vacation or other leave, but only if the Employee would have been able to use the leave if employment had continued. Any payments not described above are not considered compensation if paid after severance from employment, even if they are paid within 2 1/2 months following severance from employment, except for payments to an individual who does not currently perform services for the Employer by reason of qualified military service (within the meaning of Code Section 414(u)(1)) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service.

1.35 **“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.

1.36 **“Rollover Account”** means the separate account established and maintained by the Administrator for each Participant with respect to such Participant’s interest in the Plan resulting from amounts that are rolled over from another plan or Individual Retirement Account in accordance with Section 4.5. Amounts in the Rollover Account are nonforfeitable when made.

1.37 **“Service”** means an Employee’s consecutive period of employment with the Employer.

1.38 **“Trustee”** means the person or entity named as trustee herein or in any separate trust forming a part of this Plan, and any successors, effective upon the written acceptance of such person or entity to serve as Trustee.

1.39 **“Trust Fund”** means the assets of the Plan and Trust as the same shall exist from time to time.

1.40 **“Valuation Date”** means each business day that the Trustee, any transfer agent appointed by the Trustee or the Employer or any stock exchange used by such agent, is open for business.

1.41 **“Vested”** means the nonforfeitable portion of any account maintained on behalf of a Participant.

1.42 **“Year of Service”** means for vesting purposes, a Plan Year during which an Employee has at least 1,000 Hours of Service. Periods of Service performed prior to the Effective Date of the Plan shall be recognized for vesting purposes.

ARTICLE II ADMINISTRATION

2.1 POWERS AND RESPONSIBILITIES OF THE EMPLOYER

(a) **Appointment of Trustee and Administrator.** 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 and the Code. 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) **Appointment of Investment Manager.** The Employer may appoint, at its option, an Investment Manager (qualified under the Investment Company Act of 1940 as amended), investment adviser, or other agent to provide investment 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.

2.2 DESIGNATION OF ADMINISTRATIVE AUTHORITY

The Employer, acting through the City council, shall be the Administrator. The City Council may appoint any person, including, but not limited to, the Employees of the Employer, to perform the duties of the Administrator. Any person so appointed shall signify acceptance by filing written acceptance with the City Council. Upon the resignation or removal of any individual performing the duties of the Administrator, the Employer, acting through the City Council, may designate a successor.

2.3 ALLOCATION AND DELEGATION OF RESPONSIBILITIES

If more than one person is serving as Administrator, the responsibilities of each Administrator may be specified by the Employer and accepted in writing by each Administrator. In the event that no such delegation is made by the Employer, the Administrators may allocate the responsibilities among themselves, in which event the Administrators shall notify the Employer and the Trustee in writing of such action and specify the responsibilities of each Administrator. The Trustee thereafter shall accept and rely upon any documents executed by the appropriate Administrator until such time as the Employer or the Administrators file with the Trustee a written revocation of such designation.

2.4 POWERS AND DUTIES OF THE ADMINISTRATOR

The primary responsibility of the Administrator is to administer the Plan for the exclusive benefit of the Participants and their Beneficiaries, subject to the specific terms of the Plan. The Administrator shall administer the Plan in accordance with its terms and shall have the power and discretion to construe the terms of the Plan and to determine all questions arising in connection with the administration, interpretation, and application of the Plan. Benefits under this Plan will be paid only if the Administrator decides in its discretion that the applicant is entitled to them. Any such determination by the Administrator shall be conclusive and binding upon all persons. The Administrator may establish procedures, correct any defect, supply any information, or reconcile any inconsistency in such manner and to such extent as shall be deemed necessary or advisable to carry out the purpose of the Plan; provided, however, that any procedure, discretionary act, interpretation or construction shall be done in a nondiscriminatory manner based upon uniform principles consistently applied and shall be consistent with the intent that the Plan shall continue to be deemed a qualified plan under the terms of Code Section 401(a). The Administrator shall have all powers necessary or appropriate to accomplish the Administrator's duties under the Plan.

The Administrator shall be charged with the duties of the general administration of the Plan as set forth under the terms of the Plan, including, but not limited to, the following:

- (a) the discretion to determine all questions relating to the eligibility of Employees to participate or remain a Participant hereunder and to receive benefits under the Plan;
- (b) the authority to review and settle all claims against the Plan, including claims where the settlement amount cannot be calculated or is not calculated in accordance with the Plan's benefit formula. This authority specifically permits the Administrator to settle disputed claims for benefits and any other disputed claims made against the Plan;
- (c) to compute, certify, and direct the Trustee with respect to the amount and the kind of benefits to which any Participant shall be entitled hereunder;
- (d) to authorize and direct the Trustee with respect to all discretionary or otherwise directed disbursements from the Trust;
- (e) to maintain all necessary records for the administration of the Plan;
- (f) to interpret the provisions of the Plan and to make and publish such rules for regulation of the Plan as are consistent with the terms hereof;
- (g) to compute and certify to the Employer and to the Trustee from time to time the sums of money necessary or desirable to be contributed to the Plan;
- (h) to consult with the Employer and the Trustee regarding the short and long term liquidity needs of the Plan in order that the Trustee can exercise any investment discretion (if the Trustee has such discretion) in a manner designed to accomplish specific objectives;

- (i) to determine the validity of, and take appropriate action with respect to, any qualified domestic relations order received by it; and
- (j) to assist any Participant regarding the Participant's rights, benefits, or elections available under the Plan.

2.5 RECORDS AND REPORTS

The Administrator shall keep a record of all actions taken and shall keep all other books of account, records, policies, and other data that may be necessary for proper administration of the Plan and shall be responsible for supplying all information and reports to the Internal Revenue Service, Participants, Beneficiaries and others as required by law.

2.6 APPOINTMENT OF ADVISERS

The Administrator, or the Trustee with the consent of the Administrator, may appoint counsel, specialists, advisers, agents (including nonfiduciary agents) and other persons as the Administrator or the Trustee deems necessary or desirable in connection with the administration of this Plan, including but not limited to agents and advisers to assist with the administration and management of the Plan, and thereby to provide, among such other duties as the Administrator may appoint, assistance with maintaining Plan records and the providing of investment information to the Plan's investment fiduciaries.

2.7 PAYMENT OF EXPENSES

All reasonable expenses of administration may be paid out of the Plan assets unless paid by the Employer. Such expenses shall include any expenses incident to the functioning of the Administrator, or any person or persons retained or appointed by any Fiduciary incident to the exercise of their duties under the Plan, including, but not limited to, fees of accountants, counsel, Investment Managers, and other specialists and their agents, and other costs of administering the Plan. Until paid, the expenses shall constitute a liability of the Trust Fund. In addition, unless specifically prohibited under statute, regulation or other guidance of general applicability, the Administrator may charge to the Account of an individual Participant a reasonable charge to offset the cost of making a distribution to the Participant, Beneficiary, or alternate payee under a qualified domestic relation order, as defined in Code Section 414(p). If liquid assets of the Plan are insufficient to cover the fees of the Trustee or the Plan Administrator, then Plan assets shall be liquidated to the extent necessary for such fees. In the event any part of the Plan assets becomes subject to tax, all taxes incurred will be paid from the Plan assets. Until paid, the expenses shall constitute a liability of the Trust Fund.

ARTICLE III ELIGIBILITY

3.1 CONDITIONS OF ELIGIBILITY

- (a) **Eligibility.** Any Eligible Employee who has completed 90 days of Service and has attained the age of twenty-one (21) shall be eligible to participate hereunder as of the effective date of participation described in Section 3.2.

3.2 EFFECTIVE DATE OF PARTICIPATION

(a) **Effective date of participation.** An Eligible Employee shall become a Participant effective as of the first day of the Plan Year quarter coinciding with or next following the date such Employee met the eligibility requirements of Section 3.1.

(b) **Ineligible to eligible classification.** If an Employee, who has satisfied the Plan's eligibility requirements and would otherwise have become a Participant in the Plan, shall go from a classification of an ineligible Employee to an Eligible Employee, such Employee shall become a Participant in the Plan on the date such Employee becomes an Eligible Employee or, if later, the date that the Employee would have otherwise entered the Plan had the Employee always been an Eligible Employee.

(c) **Eligible to ineligible classification.** If an Employee, who has satisfied the Plan's eligibility requirements and would otherwise become a Participant in the Plan, shall go from a classification of an Eligible Employee to an ineligible class of Employees, such Employee shall become a Participant in the Plan on the date such Employee again becomes an Eligible Employee, or, if later, the date that the Employee would have otherwise entered the Plan had the Employee always been an Eligible Employee.

3.3 DETERMINATION OF ELIGIBILITY

The Administrator shall determine the eligibility of each Employee for participation in the Plan based upon information furnished by the Employer. Such determination shall be conclusive and binding upon all persons, as long as the same is made pursuant to the Plan.

3.4 TERMINATION OF ELIGIBILITY

In the event a Participant shall go from a classification of an Eligible Employee to an ineligible Employee with respect to the Plan, then such Participant shall continue to Vest in the Plan for each Year of Service completed while an ineligible Employee, until such time as the Participant's Account is forfeited or distributed pursuant to the terms of the Plan. Additionally, the Participant's interest in the Plan shall continue to share in the earnings of the Trust Fund.

3.5 REHIRED EMPLOYEES AND BREAKS IN SERVICE

(a) **Participation in Plan.** For eligibility purposes, the Plan does not apply any break in the Service rules.

(b) **Vesting after five (5) consecutive 1-Year Breaks in Service.** After a Participant who has severed employment with the Employer incurs five (5) consecutive 1-Year Breaks in Service, the Vested portion of said Participant's Account attributable to pre break service shall not be increased as a result of post-break service. In such case, separate accounts will be maintained as follows:

- (1) one account for nonforfeitable benefits attributable to pre-break service;
- and

(2) one account representing the Participant's Employer derived account balance in the Plan attributable to post break service.

(c) **Buyback provisions.** If any Participant severs employment with the Employer and is reemployed by the Employer before five (5) consecutive 1-Year Breaks in Service, and such Participant had received a distribution of the entire Vested interest prior to reemployment, then the forfeited account shall be reinstated only if the Participant repays the full amount which had been distributed. Such repayment must be made before the earlier of five (5) years after the first date on which the Participant is subsequently reemployed by the Employer or the close of the first period of five (5) consecutive 1-Year Breaks in Service commencing after the distribution. If a distribution occurs for any reason other than a severance of employment, the time for repayment may not end earlier than five (5) years after the date of distribution. In the event the Participant does repay the full amount distributed, the undistributed forfeited portion of the Participant's Account must be restored in full, unadjusted by any gains or losses occurring subsequent to the Valuation Date preceding the distribution. The source for such reinstatement may be Forfeitures occurring during the Plan Year. If such source is insufficient, then the Employer will contribute an amount which is sufficient to restore any such forfeited Accounts provided, however, that if a discretionary contribution is made for such year pursuant to Section 4.1(a), such contribution will first be applied to restore any such Accounts and the remainder shall be allocated in accordance with the terms of the Plan.

If a non Vested Participant was deemed to have received a distribution and such Participant is reemployed by the Employer before five (5) consecutive 1-Year Breaks in Service, then such Participant will be deemed to have repaid the deemed distribution as of the date of reemployment.

3.6 OMISSION OF ELIGIBLE EMPLOYEE; INCLUSION OF INELIGIBLE EMPLOYEE

If, in any Plan Year, any Employee who should be included as a Participant in the Plan is erroneously omitted and discovery of such omission is not made until after a contribution by the Employer for the year has been made and allocated, or any person who should not have been included as a Participant in the Plan is erroneously included, then the Employer shall apply the principles described by, and take corrective actions consistent with, the IRS Employee Plans Compliance Resolution System.

ARTICLE IV CONTRIBUTION AND ALLOCATION

4.1 FORMULA FOR DETERMINING EMPLOYER CONTRIBUTION

For each Plan Year, the Employer may, in its sole discretion, contribute to the Plan:

(a) **Nonelective Contributions.** A discretionary amount, which amount, if any, shall be a Nonelective Contribution.

(b) **Matching Contributions.** A discretionary amount with respect to each Participant who makes an elective deferral to the 457(b) Plan.

4.2 ALLOCATION OF CONTRIBUTION AND USAGE OF FORFEITURES AND EARNINGS

(a) **Separate accounting.** The Administrator shall establish and maintain an account in the name of each Participant to which the Administrator shall credit as of each Anniversary Date, or other Valuation Date, all amounts allocated to a particular Account of each such Participant as set forth herein.

(b) **Allocation of contributions.** The Employer shall provide the Administrator with all information required by the Administrator to make a proper allocation of the Employer contributions for each Plan Year. Within a reasonable period of time after the date of receipt by the Administrator of such information, the Administrator shall allocate such contribution as follows:

(1) **Nonelective Contributions.** With respect to the Nonelective Contribution made pursuant to Section 4.1(a), to each Participant's Nonelective Contribution Account in the same proportion that each such Participant's Compensation for the year bears to the total Compensation of all Participants for such year. Any Participant employed during the Plan Year shall be eligible to share in the Nonelective Contribution for the year.

(2) **Matching Contributions.** With respect to the Matching Contribution made pursuant to Section 4.1(b), to the Matching Contribution Account of each Participant who makes an elective deferral to 457(b) Plan in the same discretionary percentage set by the Employer of the Participant's "Eligible 457(b) Deferrals." For purposes hereof, a Participant's "Eligible 457(b) Deferrals" shall be the amount of such Participant's deferral contributions made to the 457(b) Plan which is not in excess of the lesser of (i) the limitation on elective deferrals imposed by Code Section 457(e)(15), or (ii) a percentage determined by the Employer of such Participant's Compensation. Notwithstanding the foregoing, any elective deferrals made to the 457(b) Plan pursuant to an Age 50 Catch-Up provision or the Special 457(b) Catch-Up provision described in Code Section 457(b)(3) shall not be included in a Participant's "Eligible 457(b) Deferrals".

(c) **Usage of Forfeitures.** On or before the last day of each Plan Year, any Forfeitures may be made available to reinstate previously forfeited Account balances of Participants, if any, in accordance with Section 3.5(c), and any remaining Forfeitures may be used to satisfy any contribution that may be required pursuant to Section 3.6 or 6.10, or be used to pay any administrative expenses of the Plan. The remaining Forfeitures, if any, shall be used to offset the next Employer contribution to the Plan.

(d) **Allocation of earnings.** As of each Valuation Date, before the current valuation period allocation of Employer contributions and Forfeitures, any earnings or losses (net appreciation or net depreciation) of the Trust Fund shall be allocated in the same

proportion that each Participant's nonsegregated accounts bear to the total of all Participants' nonsegregated accounts as of such date.

(e) **Rollovers.** Participants' rollovers deposited in the general Trust Fund shall share in any earnings and losses (net appreciation or net depreciation) of the Trust Fund in the same manner provided above. Each segregated account maintained on behalf of a Participant shall be credited or charged with its separate earnings and losses.

(f) **Delay in processing transactions.** Notwithstanding anything in this Section to the contrary, all information necessary to properly reflect a given transaction may not be available until after the date specified herein for processing such transaction, in which case the transaction will be reflected when such information is received and processed. Subject to express limits that may be imposed under the Code, the processing of any contribution, distribution or other transaction may be delayed for any legitimate business reason or force majeure (including, but not limited to, failure of systems or computer programs, failure of the means of the transmission of data, the failure of a service provider to timely receive values or prices, and the correction for errors or omissions or the errors or omissions of any service provider). The processing date of a transaction will be binding for all purposes of the Plan.

4.3 TIME OF PAYMENT OF EMPLOYER CONTRIBUTION

Unless otherwise provided by contract or law, the Employer may make its contribution to the Plan for a particular Plan Year at such time as the Employer, in its sole discretion, determines. If the Employer makes a contribution for a particular Plan Year after the close of that Plan Year, then the Employer will designate to the Administrator the Plan Year for which the Employer is making its contribution.

4.4 MAXIMUM ANNUAL ADDITIONS

(a) **Maximum permissible amount.** Notwithstanding the foregoing, the maximum Annual Additions credited to a Participant's Accounts for any Limitation Year shall equal the lesser of:

- (1) \$50,000 adjusted annually as provided in Code Section 415(d) pursuant to the Regulations, or
- (2) one hundred percent (100%) of the Participant's 415 Compensation for such Limitation Year.

The percentage limitation in paragraph (2) above shall not apply to: (1) any contribution for medical benefits (within the meaning of Code Section 419A(f)(2)) after separation from service which is otherwise treated as an annual addition, or (2) any amount otherwise treated as an annual addition under Code Section 415(l)(1).

For any short Limitation Year, the dollar limitation in paragraph (1) above shall be reduced by a fraction, the numerator of which is the number of full months in the short Limitation Year and the denominator of which is twelve (12).

(b) . **Reasonable estimate permissible.** Prior to determining the Participant's actual 415 Compensation for the Limitation Year, the Employer may determine the maximum permissible amount for a Participant on the basis of a reasonable estimation of the Participant's 415 Compensation for the Limitation Year, uniformly determined for all Participants similarly situated. As soon as is administratively feasible after the end of the Limitation Year, the maximum permissible amount for the Limitation Year will be determined on the basis of the Participant's actual 415 Compensation for the Limitation Year.

(c) **Excess Annual Additions defined.** For purposes of this Article, the term "Excess Annual Additions" for any Participant for a Limitation Year means a Participant's Annual Additions under this Plan and such other plans of the Employer or Affiliated Employer that are in excess of the maximum permissible amount of Section 4.4 for a Limitation Year. The Excess Annual Additions will be deemed to consist of the Annual Additions last allocated, except that Annual Additions attributable to a simplified employee pension will be deemed to have been allocated first, followed by Annual Additions to a welfare benefit fund or individual medical account, and then by Annual Additions to a plan subject to Code Section 412, regardless of the actual allocation date.

(d) **Annual Additions can cease when maximum permissible amount reached.** If the Employer contribution that would otherwise be contributed or allocated to the Participant's Accounts would cause the Annual Additions for the Limitation Year to exceed the maximum permissible amount, then the amount that would otherwise be contributed or allocated will be reduced so that the Annual Additions for the Limitation Year will equal the maximum permissible amount, and any such amounts which would have been allocated to such Participant may be allocated to other Participants.

(e) **All DC plans treated as one plan.** For the purpose of this Section, all qualified defined contribution plans (regardless of whether such plan has terminated) maintained by the Employer during a Limitation Year shall be treated as one defined contribution plan.

(f) **All Employees of Related Employers treated as employed by one Employer.** For the purpose of this Section, if the Employer is a member of a controlled group of corporations, trades or businesses under common control (as defined by Code Section 1563(a) or Code Section 414(b) and (c) as modified by Code Section 415(h)), is a member of an affiliated service group (as defined by Code Section 414(m)), or is a member of a group of entities required to be aggregated pursuant to Regulations under Code Section 414(o), then all Employees of such Employers shall be considered to be employed by a single Employer.

(g) (1) **DC Plans with same/different Anniversary Dates.** If a Participant participates in more than one defined contribution plan maintained by the Employer that have different Plan Years, then the maximum permissible amount under this Plan shall equal the maximum permissible amount for the Limitation Year minus any Annual Additions previously credited to such Participant's Accounts during the Limitation Year.

(2) If a Participant participates in more than one defined contribution plan maintained by the Employer which have the same Plan Year, then the maximum permissible amount under this Plan shall equal the product of (A) the maximum permissible amount for the Limitation Year minus any Annual Additions previously credited under subparagraphs (1) or (2) above, multiplied by (B) a fraction (i) the numerator of which is the Annual Additions which would be credited to such Participant's Accounts under this Plan without regard to the limitations of Code Section 415 and (ii) the denominator of which is such Annual Additions for all plans described in this subparagraph.

(h) Notwithstanding anything contained in this Section to the contrary, the limitations, adjustments, and other requirements prescribed in this Section shall at all times comply with the provisions of Code Section 415 and the Regulations issued thereunder. Any allocation of an Annual Addition in excess of the limits of this Section shall be corrected in accordance with the principles established under the Employer Plan Compliance Resolution System (EPCRS), as set forth in Revenue Procedure 2008-50, or any superseding guidance, or as described in the Regulations under Code Section 415, including the preamble thereto.

4.5 ROLLOVERS FROM OTHER PLANS

(a) **Acceptance of rollovers into the Plan.** With the consent of the Administrator (such consent must be exercised in a nondiscriminatory manner and applied uniformly to all Participants), the Plan may accept a rollover by Participants, excluding Participants who are no longer employed as an Employee and including Eligible Employees, provided the rollover will not jeopardize the tax exempt status of the Plan or create adverse tax consequences for the Employer. The rollover amounts shall be allocated to the Rollover Account of the Participant. The Rollover Account of a Participant shall be 100% Vested at all times and shall not be subject to Forfeiture for any reason.

(b) **Treatment of Rollover Account in the Plan.** The Rollover Account shall be held by the Trustee pursuant to the provisions of this Plan and may not be withdrawn by, or distributed to the Participant, in whole or in part, except as provided in paragraph (c) of this Section. The Trustee shall have no duty or responsibility to inquire as to the propriety of the amount, value or type of assets transferred, nor to conduct any due diligence with respect to such assets; provided, however, that such assets are otherwise eligible to be held by the Trustee under the terms of this Plan.

(c) **Distribution of rollovers.** At such date when the Participant or the Participant's Beneficiary shall be entitled to receive benefits, the Rollover Account of a Participant shall be used to provide additional benefits to the Participant or the Participant's Beneficiary. Notwithstanding the foregoing, amounts in the Rollover Account shall not be considered in determining whether a mandatory involuntary cash-out distribution of benefits may be made without Participant consent. Any distributions of amounts that are held in the Rollover Account shall be made in a manner which is consistent with and satisfies the provisions of Article VI.

(d) **Limits on accepting rollovers.** Prior to accepting any rollovers to which this Section applies, the Administrator may require the Employee to provide evidence that the amounts to be rolled over to this Plan meet the requirements of this Section. The Employer may instruct the Administrator, operationally and on a nondiscriminatory basis, to limit the source of rollovers that may be accepted by the Plan.

(e) **Rollovers maintained in a separate account.** The Administrator may direct that rollovers received after a Valuation Date be segregated into a separate account for each Participant until such time as the allocations pursuant to this Plan have been made, at which time they may remain segregated or be invested as part of the general Trust Fund.

(f) **Definitions.** For purposes of this Section, the following definitions shall apply:

(1) The term "rollover" means: (i) amounts transferred to this Plan directly from another "eligible retirement plan;" (ii) distributions received by an Employee from other "eligible retirement plans" which are eligible for tax free rollover to an "eligible retirement plan" and which are transferred by the Employee to this Plan within sixty (60) days following receipt thereof; and (iii) any other amounts which are eligible to be rolled over to this Plan pursuant to the Code.

(2) The term "eligible retirement plan" means an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b) (other than an endowment contract), a qualified trust (an employees' trust described in Code Section 401(a) which is exempt from tax under Code Section 501(a)), an annuity plan described in Code Section 403(a), an eligible deferred compensation plan described in Code Section 457(b) which is maintained by an eligible employer described in Code Section 457(e)(1)(A), and an annuity contract described in Code Section 403(b).

4.6 QUALIFIED MILITARY SERVICE

Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service will be provided in accordance with Code Section 414(u).

If a Participant dies while performing qualified military service (as defined in Code Section 414(u)), the Participant's Beneficiary is entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Participant has resumed employment and then terminated employment on account of death. Moreover, the Plan will credit the Participant's qualified military service as service for vesting purposes, as though the Participant had resumed employment under USERRA immediately prior to the Participant's death.

With respect to military differential wage payments, (i) an individual receiving a differential wage payment, as defined by Code Section 3401(h)(2), is treated as an employee of the employer making the payment; (ii) the differential wage payment is treated as compensation for purposes of Code Section 415(c)(3) and Regulation Section 1.415(c)-2; and (iii) the Plan is not treated as failing to meet the requirements of any provision described in Code Section

414(u)(1)(C) by reason of any contribution or benefit which is based on the differential wage payment.

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 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.

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 or after Participant's Normal Retirement Age. Upon attainment of Normal Retirement Age, all amounts in the Participant's Account become fully Vested. 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 4.3, shall continue until such Participant's actual retirement date. Upon a Participant's retirement from employment on or after Normal Retirement Age, or as soon thereafter as is practicable, the Administrator shall direct the distribution, at the election of the Participant, of the Participant's entire Vested interest in the Plan (or any portion thereof), in accordance with Section 6.5.

6.2 DETERMINATION OF BENEFITS UPON DEATH

Upon the death of a Participant before the Participant's Retirement Date or other termination of employment, all amounts credited to such Participant's Account shall become fully Vested.

Upon the death of a Participant, the Administrator shall direct, in accordance with the provisions of Sections 6.6 and 6.7, the distribution of the Participant's Account to such Participant's Beneficiary.

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 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.

The Beneficiary of the death benefit payable pursuant to this Section shall be the Participant's surviving spouse. Except, however, the Participant may designate a Beneficiary other than the spouse if:

- (1) 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 notice (or in such other form as permitted by the Internal Revenue Service) 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 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.

In the event no valid designation of Beneficiary exists with respect to all or a portion of the death benefit, or if the Beneficiary of such death benefit is not alive at the time of the Participant's death and no contingent Beneficiary has been designated, then such 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 designated Beneficiary (or there is no designated Beneficiary, to the Beneficiary's estate).

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 or a subsequent beneficiary designation is made.

Any consent by the Participant's spouse to waive any rights to the death benefit must be in writing (or in such other form as permitted by the Internal Revenue Service), must acknowledge the effect of such waiver, and be witnessed by a Plan representative or a notary public. Further, the spouse's consent must be irrevocable and must acknowledge the specific nonspouse Beneficiary.

6.3 DISABILITY RETIREMENT BENEFITS

In the event of a Participant's Disability prior to Normal Retirement Age or termination of employment, all amounts credited to such Participant's Account shall become fully Vested. In the event of a Participant's 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 Account.

6.4 DETERMINATION OF BENEFITS UPON TERMINATION

- (a) Payment on termination of employment. If a Participant's employment with the Employer is terminated for any reason other than death, Disability or retirement on or after Normal Retirement Age, then such Participant shall be entitled to such benefits as are provided hereinafter pursuant to this Section 6.4.

At the election of the Participant, the Administrator shall direct the distribution of the entire Vested portion of the terminated Participant's Account be payable to such terminated Participant as soon as administratively feasible after termination of employment. Any distribution under this paragraph shall be made in a manner which is consistent with and satisfies the provisions of Section 6.5.

For purposes of this Section 6.4, if the value of a terminated Participant's Vested benefit is zero, the terminated Participant shall be deemed to have received a distribution of such Vested benefit.

- (b) Vesting schedule. The Vested portion of the Account of any Participant attributable to Employer contributions shall be a percentage of the total amount credited

to the Participant's Accounts determined on the basis of the Participant's number of Years of Service according to the following schedule(s):

Vesting Schedule	
Years of Service	Percentage
1	25 %
2	50 %
3	75 %
4	100 %

(c) Time of application of vesting schedule liberalization. In the absence of any provision to the contrary, any direct or indirect increase to a Participant's Vested percentage (at any point on a vesting schedule) will not apply to a Participant unless and until such Participant completes an Hour of Service after the effective date of such amendment.

(d) 100% Vesting on partial or full Plan termination. 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.

6.5 DISTRIBUTION OF BENEFITS

(a) The Administrator, pursuant to the election of the Participant, shall direct the Trustee to distribute to a Participant or such Participant's Beneficiary the amount (if any) to which the Participant (or Beneficiary) has become entitled under the Plan in one lump-sum payment in cash or in property allocated to the Participant's Account.

(b) Any distribution to a Participant who has a Vested Account which exceeds \$1,000 shall require such Participant's written consent (or in such other form as permitted by the Internal Revenue Service) if such distribution occurs during the time 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 such distribution may be made less than thirty (30) days after notice 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.

(c) 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, and the relevant time is the time at which, under the Plan, the Vested percentage in the account cannot increase.

(d) Notwithstanding any provision in the Plan to the contrary, the distribution of a Participant's benefits shall be made in accordance with the required minimum distribution requirements described in Section 6.7.

6.6 DISTRIBUTION OF BENEFITS UPON DEATH

The death benefit payable pursuant to Section 6.2 shall be paid to the Participant's Beneficiary in one lump sum payment in cash or in property allocated to the Participant's Account subject to the rules of Section 6.7.

6.7 REQUIRED MINIMUM DISTRIBUTIONS

(a) General Rules

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

(2) Requirements of Treasury Regulations Incorporated. All distributions required under this Section will be determined and made in accordance with the Regulations under Code Section 401(a)(9) and the minimum distribution incidental benefit requirement of Code Section 401(a)(9)(G).

(b) Time and manner of distribution

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

(2) Death of Participant before distributions begin. If the Participant dies before distributions begin, the Participant's entire death benefit will be distributed, or begin to be distributed, as follows:

(i) If the Participant or Beneficiary elects, distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or, if the Participant's surviving spouse is the Participant's designated beneficiary, by December 31 of the calendar year in which the Participant

would have attained age 70 1/2, if later. Alternatively, the Participant or Beneficiary may elect to have distribution of the Participant's death benefit be completed by the December 31 of the calendar year containing the fifth anniversary of the Participant's death. In the absence of any election (including the failure to commence required minimum distributions described by this Section by the December 31 of the calendar year immediately following the calendar year in which the Participant died), distribution of the Participant's death benefit shall be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(ii) If there is no beneficiary as of September 30 of the year following the year of the Participant's death, the distribution of the Participant's death benefit will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(iii) 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 6.8(b), other than this paragraph, will apply as if the surviving spouse were the Participant. Thus, in all such cases, the time at which distributions must commence (or be completed by) shall be determined solely by reference to the year that the Participant died, and not the year in which the Participant would have attained age 70 1/2.

For purposes of this Section 6.7(b), unless a surviving spouse is electing to commence benefits based upon the date that the Participant would have attained age 70 1/2, distributions are considered to begin on the Participant's required beginning date. If the surviving-spouse election applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 6.7(b).

(3) Forms of distribution. Unless the Participant's interest is distributed 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 6.7(c) and 6.7(d). All distributions under 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 Section 411(a)(11) and the Regulations thereunder.

(c) Required minimum distributions during Participant's lifetime

(1) Amount of required minimum distribution for each distribution calendar year. During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

(i) the quotient obtained by dividing the Participant's Account balance by the distribution period in the Uniform Lifetime Table set forth in Regulation Section 1.401(a)(9)-9, using the Participant's age as of the Participant's birthday in the distribution calendar year; or

(ii) if the Participant's sole designated beneficiary for the distribution calendar year is the Participant's spouse and the spouse is more than 10 years younger than the Participant, the quotient obtained by dividing the Participant's Account balance by the number in the Joint and Last Survivor Table set forth in Regulation Section 1.401(a)(9)-9, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.

(2) Lifetime required minimum distributions continue through year of Participant's death. Required minimum distributions will be determined under this Section 6.7(c) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

(d) Required minimum distributions after Participant's death

(1) Death on or after date distributions begin.

(i) 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:

(A) 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.

(B) 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.

(C) 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.

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

(2) Death before date distributions begin.

(i) Participant survived by designated beneficiary. Except as provided in Section 6.7(b)(3), 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 6.7(d)(1).

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

(iii) 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 6.7(b), this Section 6.7(d)(2) will apply as if the surviving spouse were the Participant.

(e) Definitions. For purposes of this Section, the following definitions apply:

(1) "Designated beneficiary" means the individual who is designated as the Beneficiary under the Plan and is the designated beneficiary under Code Section 401(a)(9) and Regulation Section 1.401(a)(9)-4, Q&A 4.

(2) "Distribution calendar year" means a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the

calendar year which contains the Participant's "required beginning date." For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under Section 6.7(b). The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's "required beginning date." The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's "required beginning date" occurs, will be made on or before December 31 of that distribution calendar year.

(3) "Life expectancy" means the life expectancy as computed by use of the Single Life Table in Regulation Section 1.401(a)(9)-9, Q&A 1.

(4) "Participant's account balance" means the "Participant's 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. For this purpose, the Administrator may exclude contributions that are allocated to the account balance as of dates in the valuation calendar year after the Valuation Date, but that are not actually made during the valuation calendar year. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the Distribution calendar year if distributed or transferred in the valuation calendar year.

(5) "Required beginning date" means, with respect to any Participant, April 1 of the calendar year following the later of the calendar year in which the Participant attains age 70 1/2 or the calendar year in which the Participant retires.

6.8 DISTRIBUTION FOR MINOR OR INCOMPETENT INDIVIDUAL

In the event a distribution is to be made to a minor or incompetent individual, then the Administrator may direct that such distribution be paid to the court appointed legal guardian or any other person authorized under state law to receive such distribution, or if none, then in the case of a minor Beneficiary, to a parent of such Beneficiary, 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 guardian, custodian or parent of a minor or incompetent individual 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 Plan provides for mandatory distributions and the amount to be distributed to a Participant or Beneficiary does not exceed \$1,000, 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. Upon Plan termination, the portion of the distributable amount that is an eligible rollover distribution as defined in Plan Section 6.11 may 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). However, regardless of the preceding, a benefit that 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 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. For the purposes of this Section, the terms "alternate payee," "qualified domestic relations order" and "earliest retirement age" shall have the meaning set forth under Code Section 414(p).

6.11 DIRECT ROLLOVER

(a) Right to direct partial rollover. 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 only a portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. However, the minimum partial rollover must equal at least \$500.

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

(1) An "eligible rollover distribution" means any distribution described in Code Section 402(c)(4) and generally includes 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 (10) years or more; any distribution to the extent such

distribution is required under Code Section 401(a)(9); the portion of any other distribution(s) that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and any other distribution reasonably expected to total less than \$200 during a year. Any amount that is distributed on account of hardship shall not be an eligible rollover distribution and the distributee may not elect to have any portion of such a distribution paid directly to an eligible retirement plan.

(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), (other than an endowment contract), a qualified trust (an employees' trust) described in Code Section 401(a) which is exempt from tax under Code Section 501(a) and which agrees to separately account for amounts transferred into such plan from this Plan, an annuity plan described in Code Section 403(a), an eligible deferred compensation plan described in Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality thereof which agrees to separately account for amounts transferred into such plan from this Plan, an annuity contract described in Code Section 403(b) that accepts the distributee's eligible rollover distribution and a Roth IRA described in Code Section 408A(b). The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in Code Section 414(p).

(3) A "distributee" includes an Employee or Former Employee. In addition, the Employee's or Former Employee's surviving spouse and the Employee's or Former Employee's spouse 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.

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

(c) Nonspouse rollover. A nonspouse Beneficiary who is a "designated beneficiary" under Code Section 401(a)(9)(E) and the Regulations thereunder, by a direct trustee-to-trustee transfer ("direct rollover"), may roll over all or any portion of his or her distribution to an individual retirement account the beneficiary establishes for purposes of receiving the distribution. In order to be able to roll over the distribution, the distribution otherwise must be an "eligible rollover distribution." If the Participant's named beneficiary is a trust, the Plan may make a direct rollover to an individual retirement account on behalf of the trust, provided the trust satisfies the requirements to be a designated Beneficiary within the meaning of Code Section 401(a)(9)(E). A nonspouse Beneficiary may not roll over an amount which is a required minimum distribution, as determined under applicable Regulations and other Revenue Service guidance. If the Participant dies before his or her required beginning date and the nonspouse Beneficiary rolls over to an IRA the maximum amount eligible for rollover, the beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to Regulations Section

1.401(a)(9)-3, A-4(c), in determining the required minimum distributions from the IRA that receives the non-spouse Beneficiary's distribution.

(d) Participant Notice. A Participant entitled to an eligible rollover distribution must receive a written explanation of his/her right to a direct rollover, the tax consequences of not making a direct rollover, and, if applicable, any available special income tax elections. The notice must be provided within the same 30 to 180 day timeframe applicable to the Participant consent notice. The direct rollover notice must be provided to all Participants, unless the total amount the Participant will receive as a distribution during the calendar year is expected to be less than \$200.

6.12 CORRECTIVE DISTRIBUTIONS

Nothing in this Article shall preclude the Administrator from making a distribution to a Participant, to the extent such distribution is made to correct a qualification defect in accordance with the corrective procedures under any voluntary compliance program.

ARTICLE VII TRUSTEE

7.1 BASIC RESPONSIBILITIES OF THE TRUSTEE

(a) The Trustee shall have the following categories of responsibilities:

(1) Consistent with the funding policy and method determined by the Employer, to invest, manage, and control the Plan assets subject, however, to the direction of the Employer, an Investment Manager or other agent appointed by the Employer;

(2) At the direction of the Administrator, to pay benefits required under the Plan to be paid to Participants, or, in the event of their death, to their Beneficiaries; and

(3) To maintain records of receipts and disbursements and furnish to the Employer and/or Administrator for each Plan Year a written annual report pursuant to Section 7.8.

(b) In the event that the Trustee shall be directed by the Employer, an Investment Manager or other agent appointed by the Employer with respect to the investment of any or all Plan assets, the Trustee shall have no liability with respect to the investment of such assets, but shall be responsible only to execute such investment instructions as so directed.

(1) The Trustee shall be entitled to rely fully on the written (or other form acceptable to the Administrator and the Trustee, including, but not limited to, voice recorded) instructions of the Employer, or any Fiduciary or nonfiduciary agent of the Employer, in the discharge of such duties, and shall not be liable for

any loss or other liability, resulting from such direction (or lack of direction) of the investment of any part of the Plan assets.

(2) The Trustee may delegate the duty of executing such instructions to any nonfiduciary agent, which may be an affiliate of the Trustee or any Plan representative.

(c) The Trustee is accountable to the Employer for the funds contributed to the Plan by the Employer, but the Trustee does not have any duty to see that the contributions received comply with the provisions of the Plan. The Trustee is not obligated to collect any contributions from the Employer, nor is it under a duty to see that funds deposited with it are deposited in accordance with the provisions of the Plan.

(d) The Trustee will credit and distribute the Trust Fund as directed by the Administrator. The Trustee is not obligated to inquire as to whether any payee or distributee is entitled to any payment or whether the distribution is proper or within the terms of the Plan, or whether the manner of making any payment or distribution is proper. The Trustee is accountable only to the Administrator for any payment or distribution made by it in good faith on the order or direction of the Administrator.

(e) The Trustee may employ a bank or trust company pursuant to the terms of its usual and customary bank agency agreement, under which the duties of such bank or trust company shall be of a custodial, clerical and record keeping nature.

(f) The Trustee may employ and pay from the Trust Fund reasonable compensation to agents, attorneys, accountants and other persons to advise the Trustee as in its opinion may be necessary. The Trustee may delegate to any agent, attorney, accountant or other person selected by it any non Trustee power or duty vested in it by the Plan, and the Trustee may act or refrain from acting on the advice or opinion of any such person.

7.2 INVESTMENT POWERS AND DUTIES OF THE TRUSTEE

(a) Unless the Trustee has no discretionary authority, the Trustee shall invest and reinvest the Trust Fund to keep the Trust Fund invested without distinction between principal and income and in such securities or property, real or personal, wherever situated, as the Trustee shall deem advisable, including, but not limited to, stocks, common or preferred, open end or closed end mutual funds, bonds and other evidences of indebtedness or ownership, and real estate or any interest therein. The Trustee shall at all times in making investments of the Trust Fund consider, among other factors, the short and long term financial needs of the Plan on the basis of information furnished by the Employer. In making such investments, the Trustee shall not be restricted to securities or other property of the character expressly authorized by the applicable law for trust investments; however, the Trustee shall give due regard to any limitations imposed by the Code so that at all times the Plan may qualify as a qualified plan pursuant to Code Section 401(a). The Trustee shall discharge its duties with respect to the Plan solely in the interest of the Participants and Beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like

capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

(b) Notwithstanding anything in this Plan to the contrary, including the other Sections of this Article, the Trustee is to administer all or a portion of the trust as a nondiscretionary Trustee. Accordingly, the Trustee shall have no discretionary authority to invest, manage, exercise voting rights or control those Plan assets, but must act solely as a directed Trustee of those Plan assets. A nondiscretionary Trustee, as directed Trustee of the Plan funds it holds, is authorized and empowered, by way of limitation, with the powers, rights and duties set forth herein, each of which the nondiscretionary Trustee exercises solely as directed Trustee in accordance with the direction of the party which has the authority to manage and control the investment of the Plan assets. If no directions are provided to the Trustee, the Employer will provide necessary direction. Furthermore, the Employer and the nondiscretionary Trustee may, in writing, limit the powers of the nondiscretionary Trustee to any combination of powers set forth in this Plan.

(c) The Trustee may transfer to a common, collective, pooled trust fund or money market fund maintained by any corporate Trustee or affiliate thereof hereunder, all or such part of the Trust Fund as the Trustee may deem advisable, and such part or all of the Trust Fund so transferred shall be subject to all the terms and provisions of the common, collective, pooled trust fund or money market fund which contemplate the commingling for investment purposes of such trust assets with trust assets of other trusts. The Trustee may transfer any part of the Trust Fund intended for temporary investment of cash balances to a money market fund maintained by any corporate trustee or affiliate thereof. The Trustee may withdraw from such common, collective, pooled trust fund or money market fund all or such part of the Trust Fund as the Trustee may deem advisable.

7.3 OTHER POWERS OF THE TRUSTEE

The Trustee, in addition to all powers and authorities under common law, statutory authority and other provisions of the Plan, shall have the following powers and authorities:

(a) To purchase, or subscribe for, any securities or other property and to retain the same. In conjunction with the purchase of securities, margin accounts may be opened and maintained;

(b) To sell, exchange, convey, transfer, grant options to purchase, or otherwise dispose of any securities or other property held by the Trustee, by private contract or at public auction. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity, expediency, or propriety of any such sale or other disposition, with or without advertisement;

(c) To vote upon any stocks, bonds, or other securities; to give general or special proxies or powers of attorney with or without power of substitution; to exercise any conversion privileges, subscription rights or other options, and to make any payments incidental thereto; to oppose, or to consent to, or otherwise participate in, corporate

reorganizations or other changes affecting corporate securities, and to pay any assessments or charges in connection therewith; and generally to exercise any of the powers of an owner with respect to stocks, bonds, securities, or other property. However, the Trustee shall not vote proxies relating to securities for which it has not been assigned full investment management responsibilities. In those cases where another party has such investment authority or discretion, the Trustee will deliver all proxies to said party, who will then have full responsibility for voting those proxies;

(d) To cause any securities or other property to be registered in the name of the Trust, and the books and records of the Trustee shall at all times show that all such investments are part of the Trust Fund, or to cause any securities or other property to be registered in the Trustee's own name or in the name of a nominee or in a street name, provided such securities or other property are held on behalf of the Plan by (i) a bank or trust company, (ii) a broker or dealer registered under the Securities Exchange Act of 1934, or a nominee of such broker or dealer, or (iii) a clearing agency as defined in Section 3(a)(23) of the Securities Exchange Act of 1934;

(e) To borrow or raise money for the purposes of the Plan in such amount, and upon such terms and conditions, as the Trustee shall deem advisable; and for any sum so borrowed, to issue a promissory note as Trustee, and to secure the repayment thereof by pledging all, or any part, of the Trust Fund; and no person lending money to the Trustee shall be bound to see to the application of the money lent or to inquire into the validity, expediency, or propriety of any borrowing;

(f) To keep such portion of the Trust Fund in cash or cash balances as the Trustee may, from time to time, deem to be in the best interests of the Plan, without liability for interest thereon;

(g) To accept and retain for such time as the Trustee may deem advisable any securities or other property received or acquired as Trustee hereunder, whether or not such securities or other property would normally be purchased as investments hereunder;

(h) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(i) To settle, compromise, or submit to arbitration any claims, debts, or damages due or owing to or from the Plan (provided such arbitration does not apply to Participants or Beneficiaries), to commence or defend suits or legal or administrative proceedings, and to represent the Plan in all suits and legal and administrative proceedings;

(j) To employ suitable agents and counsel and to pay their reasonable expenses and compensation, and such agent or counsel may also be agent or counsel for the Employer;

(k) To invest funds of the Trust in time deposits or savings accounts bearing a reasonable rate of interest or in cash or cash balances without liability for interest thereon, including the specific authority to invest in any type of deposit of the Trustee (or of a financial institution related to a Trustee);

- (l) To invest in Treasury Bills and other forms of United States government obligations;
- (m) To invest in shares of investment companies registered under the Investment Company Act of 1940, including any money market fund advised by or offered through any corporate trustee or affiliate thereof;
- (n) To sell, purchase and acquire put or call options if the options are traded on and purchased through a national securities exchange registered under the Securities Exchange Act of 1934, as amended, or, if the options are not traded on a national securities exchange, are guaranteed by a member firm of the New York Stock Exchange regardless of whether such options are covered;
- (o) To deposit monies in federally insured savings accounts or certificates of deposit in banks or savings and loan associations including the specific authority to make deposit into any savings accounts or certificates of deposit of any corporate trustee or affiliate thereof;
- (p) To pool all or any of the Trust Fund, from time to time, with assets belonging to any other qualified employee pension benefit trust created by the Employer or any Affiliated Employer, and to commingle such assets and make joint or common investments and carry joint accounts on behalf of this Plan and Trust and such other trust or trusts, allocating undivided shares or interests in such investments or accounts or any pooled assets of the two or more trusts in accordance with their respective interests; and
- (q) To do all such acts and exercise all such rights and privileges, although not specifically mentioned herein, as the Trustee may deem necessary to carry out the purposes of the Plan.

7.4 POWERS OF THE CUSTODIAN

The Employer may appoint a custodian of the Plan assets. A custodian has the same powers, rights and duties as a nondiscretionary Trustee. Any reference in the Plan to a Trustee also is a reference to a custodian unless the context of the Plan indicates otherwise. A limitation of the Trustee's liability by Plan provision also acts as a limitation of the custodian's liability. The Custodian will be protected from any liability with respect to actions taken pursuant to the direction of the Trustee, Plan Administrator, the Employer, an Investment Manager, a named Fiduciary or other third party with authority to provide direction to the Custodian. The resignation or removal of the custodian shall be made in accordance with Section 7.9 as though the custodian were a Trustee.

7.5 ALLOCATION AND DELEGATION OF RESPONSIBILITIES

If more than one person is appointed as Trustee, the responsibilities of each Trustee may be specified by the Employer and accepted in writing by each Trustee. In the event that no such delegation is made by the Employer, the Trustees may allocate the responsibilities among themselves in a written document signed by all Trustees, in which event the Trustees shall notify the Employer and the Administrator in writing of such action and specify the responsibilities of

each Trustee. The Administrator thereafter shall accept and rely upon any documents executed by the appropriate Trustee until such time as the Employer or the Trustees file with the Administrator a written revocation of such designation.

7.6 MAJORITY ACTION

Except where there has been an allocation and delegation of powers, if there shall be more than one Trustee, they shall act by a majority of their number, but may authorize one or more of them to sign papers on their behalf.

7.7 TRUSTEE'S COMPENSATION AND EXPENSES AND TAXES

The Trustee shall be paid such reasonable compensation as set forth in the Trustee's fee schedule (if the Trustee has such a schedule) or as agreed upon in writing by the Employer and the Trustee. However, an individual serving as Trustee who already receives full time pay from the Employer shall not receive compensation from the Plan. In addition, the Trustee shall be reimbursed for any reasonable expenses, including reasonable counsel fees incurred by it as Trustee. Such compensation and expenses shall be paid from the Trust Fund unless paid or advanced by the Employer. All taxes of any kind whatsoever that may be levied or assessed under existing or future laws upon, or in respect of, the Trust Fund or the income thereof, shall be paid from the Trust Fund.

7.8 ANNUAL REPORT OF THE TRUSTEE

(a) **Annual report.** Within a reasonable period of time after the later of the Anniversary Date or receipt of the Employer contribution for each Plan Year, the Trustee, or its agent, shall furnish to the Employer and Administrator a written statement of account with respect to the Plan Year for which such contribution was made setting forth:

- (1) the net income, or loss, of the Trust Fund;
- (2) the gains, or losses, realized by the Trust Fund upon sales or other disposition of the assets;
- (3) the increase, or decrease, in the value of the Trust Fund;
- (4) all payments and distributions made from the Trust Fund; and
- (5) such further information as the Trustee and/or Administrator deems appropriate.

(b) **Employer approval of report.** The Employer, promptly upon its receipt of each such statement of account, shall acknowledge receipt thereof in writing and advise the Trustee and/or Administrator of its approval or disapproval thereof. Failure by the Employer to disapprove any such statement of account within thirty (30) days after its receipt thereof shall be deemed an approval thereof. The approval by the Employer of any statement of account shall be binding on the Employer and the Trustee as to all matters contained in the statement to the same extent as if the account of the Trustee had

been settled by judgment or decree in an action for a judicial settlement of its account in a court of competent jurisdiction in which the Trustee, the Employer and all persons having or claiming an interest in the Plan were parties. However, nothing contained in this Section shall deprive the Trustee of its right to have its accounts judicially settled if the Trustee so desires.

7.9 RESIGNATION, REMOVAL AND SUCCESSION OF TRUSTEE

(a) **Trustee resignation.** Unless otherwise agreed to by both the Trustee and the Employer, a Trustee may resign at any time by delivering to the Employer, at least thirty (30) days before its effective date, a written notice of resignation.

(b) **Trustee removal.** Unless otherwise agreed to by both the Trustee and the Employer, the Employer may remove a Trustee at any time by delivering to the Trustee, at least thirty (30) days before its effective date, a written notice of such Trustee's removal.

(c) **Appointment of successor.** Upon the death, resignation, incapacity, or removal of any Trustee, a successor may be appointed by the Employer; and such successor, upon accepting such appointment in writing and delivering same to the Employer, shall, without further act, become vested with all the powers and responsibilities of the predecessor as if such successor had been originally named as a Trustee herein. Until such a successor is appointed, the remaining Trustee or Trustees shall have full authority to act under the terms of the Plan.

(d) **Appointment of successor prior to removal of predecessor.** The Employer may designate one or more successors prior to the death, resignation, incapacity, or removal of a Trustee. In the event a successor is so designated by the Employer and accepts such designation, the successor shall, without further act, become vested with all the powers and responsibilities of the predecessor as if such successor had been originally named as Trustee herein immediately upon the death, resignation, incapacity, or removal of the predecessor.

(e) **Trustee's statement upon cessation of being Trustee.** Whenever any Trustee hereunder ceases to serve as such, the Trustee shall furnish to the Employer and Administrator a written statement of account with respect to the portion of the Plan Year during which the individual or entity served as Trustee. This statement shall be either (i) included as part of the annual statement of account for the Plan Year required under Section 7.8 or (ii) set forth in a special statement. Any such special statement of account should be rendered to the Employer no later than the due date of the annual statement of account for the Plan Year. The procedures set forth in Section 7.8 for the approval by the Employer of annual statements of account shall apply to any special statement of account rendered hereunder and approval by the Employer of any such special statement in the manner provided in Section 7.8 shall have the same effect upon the statement as the Employer's approval of an annual statement of account. No successor to the Trustee shall have any duty or responsibility to investigate the acts or transactions of any

predecessor who has rendered all statements of account required by Section 7.8 and this subparagraph.

7.10 TRANSFER OF INTEREST

Notwithstanding any other provision contained in this Plan, the Trustee at the direction of the Administrator shall transfer the Vested interest, if any, of a Participant to another trust forming part of a pension, profit sharing or stock bonus plan maintained by such Participant's new employer and represented by said employer in writing as meeting the requirements of Code Section 401(a), provided that the trust to which such transfers are made permits the transfer to be made.

7.11 TRUSTEE INDEMNIFICATION

The Employer agrees to indemnify and hold harmless the Trustee against any and all claims, losses, damages, expenses and liabilities the Trustee may incur in the exercise and performance of the Trustee's power and duties hereunder, unless the same are determined to be due to gross negligence or willful misconduct.

ARTICLE VIII AMENDMENT, TERMINATION AND MERGERS

8.1 AMENDMENT

(a) **General rule on Employer amendment.** The Employer, by appropriate action of the City Council, shall have the right at any time to amend this Plan, subject to the limitations of this Section. However, any amendment which affects the rights, duties or responsibilities of the Trustee or Administrator may only be made with the Trustee's or Administrator's written consent. Any such amendment shall become effective as provided therein upon its execution. The Trustee shall not be required to execute any such amendment unless the amendment affects the duties of the Trustee hereunder.

8.2 TERMINATION

(a) **Termination of Plan.** The Employer, by appropriate action of the City Council, shall have the right at any time to terminate the Plan by delivering to the Trustee and Administrator written notice of such termination. Upon any full or partial termination, all amounts credited to the affected Participants' Accounts shall become 100% Vested as provided in Section 6.4 and shall not thereafter be subject to forfeiture.

(b) **Distribution of assets.** Upon the full termination of the Plan, the Employer shall direct the distribution of the assets of the Plan to Participants in a manner which is consistent with the provisions of Section 6.5 except that no Participant or spousal consent is required. Distributions to a Participant shall be made in cash or in property allocated to the Participant's Account or through the purchase of irrevocable nontransferable deferred commitments from an insurer. Except as permitted by Regulations, the termination of the Plan shall not result in the reduction of Section 411(d)(6) protected benefits.

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 CONSTRUCTION AND INTERPRETATION OF PLAN

This Plan and Trust shall be construed and enforced according to the Code and the laws of the State of Arkansas.

9.3. 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.

9.4 PROHIBITION AGAINST DIVERSION OF FUNDS

(a) **General rule.** 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 or their Beneficiaries.

(b) **Mistake of fact.** In the event the Employer shall make an excessive contribution under a mistake of fact, 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.

9.5 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.

9.6 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 the Mayor of the City, the City's Clerk or any other person duly authorized by its legally constituted authority.

9.7 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.

9.8 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 after the date the initial qualification is denied, 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.

9.9 ELECTRONIC MEDIA

The Administrator may use telephonic or electronic media to satisfy any notice requirements required by this Plan, to the extent permissible under regulations (or other generally applicable guidance). In addition, a Participant's consent to an immediate distribution may be provided through telephonic or electronic means, to the extent permissible under regulations (or other generally applicable guidance). The Administrator also may use telephonic or electronic media to conduct plan transactions such as enrolling Participants, electing (and changing) investment allocations, applying for Plan loans, and other transactions, to the extent permissible under regulations (or other generally applicable guidance).

9.10 PLAN CORRECTION

The Administrator in conjunction with the Employer may undertake such correction of Plan errors as the Administrator deems necessary, including correction to preserve tax qualification of the Plan under Code Section 401(a) or to correct a fiduciary breach. Without limiting the Administrator's authority under the prior sentence, the Administrator, as it determines to be reasonable and appropriate, may undertake correction of Plan document, operational, demographic and employer eligibility failures under a method described in the Plan or under the IRS Employee Plans Compliance Resolution System ("EPCRS") or any successor

program to EPCRS. The Administrator, as it determines to be reasonable and appropriate, also may undertake or assist the appropriate Fiduciary or Plan official in undertaking correction of a fiduciary breach.

ARTICLE X PARTICIPATING EMPLOYERS

10.1 ADOPTION BY OTHER EMPLOYERS

Notwithstanding anything herein to the contrary, with the consent of the Employer and Trustee, any other corporation or entity, whether an Affiliated Employer or not, may adopt this Plan and all of the provisions hereof, and participate herein and be known as a Participating Employer, by a properly executed document evidencing said intent and will of such Participating Employer.

10.2 REQUIREMENTS OF PARTICIPATING EMPLOYERS

- (a) **Same Trustee for all.** Each such Participating Employer shall be required to use the same Trustee as provided in this Plan.
- (b) **Holding and investing assets.** The Trustee may, but shall not be required to, commingle, hold and invest as one Trust Fund all contributions made by Participating Employers, as well as all increments thereof.
- (c) **Payment of expenses.** Unless the Employer otherwise directs, any expenses of the Plan which are to be paid by the Employer or borne by the Trust Fund shall be paid by each Participating Employer in the same proportion that the total amount standing to the credit of all Participants employed by such Employer bears to the total standing to the credit of all Participants.

10.3 DESIGNATION OF AGENT

Each Participating Employer shall be deemed to be a party to this Plan; provided, however, that with respect to all of its relations with the Trustee and Administrator for the purpose of this Plan, each Participating Employer shall be deemed to have designated irrevocably the Employer as its agent. Unless the context of the Plan clearly indicates the contrary, the word "Employer" shall be deemed to include each Participating Employer as related to its adoption of the Plan.

10.4 EMPLOYEE TRANSFERS

In the event an Employee is transferred between Participating Employers, accumulated service and eligibility shall be carried with the Employee involved. No such transfer shall effect a termination of employment hereunder, and the Participating Employer to which the Employee is transferred shall thereupon become obligated hereunder with respect to such Employee in the same manner as was the Participating Employer from whom the Employee was transferred.

10.5 PARTICIPATING EMPLOYER CONTRIBUTION AND FORFEITURES

Any contribution or Forfeiture subject to allocation during each Plan Year shall be determined and allocated separately by each Participating Employer, and shall be allocated only among the Participants eligible to share of the Employer or Participating Employer making the contribution or by which the forfeiting Participant was employed. On the basis of the information furnished by the Administrator, the Trustee shall keep separate books and records concerning the affairs of each Participating Employer hereunder and as to the accounts and credits of the Employees of each Participating Employer. The Trustee may, but need not, register Contracts so as to evidence that a particular Participating Employer is the interested Employer hereunder, but in the event of an Employee transfer from one Participating Employer to another, the employing Employer shall immediately notify the Trustee thereof.

10.6 AMENDMENT

Any Participating Employer that is an Affiliated Employer hereby authorizes the Employer to make amendments on its behalf, unless otherwise agreed among all affected parties. If a Participating Employer is not an Affiliated Employer, then amendment of this Plan by the Employer at any time when there shall be a Participating Employer shall, unless otherwise agreed to by the affected parties, only be by the written action of each and every Participating Employer and with the consent of the Trustee where such consent is necessary in accordance with the terms of this Plan.

10.7 DISCONTINUANCE OF PARTICIPATION

Any Participating Employer shall be permitted to discontinue or revoke its participation in the Plan at any time. At the time of any such discontinuance or revocation, satisfactory evidence thereof and of any applicable conditions imposed shall be delivered to the Trustee. The Employer shall have the right to discontinue or revoke the participation in the Plan of any Participating Employer by providing 45 days notice to such Participating Employer. The Trustee shall thereafter transfer, deliver and assign Contracts and other Trust Fund assets allocable to the Participants of such Participating Employer to such new Trustee as shall have been designated by such Participating Employer, in the event that it has established a separate qualified retirement plan for its employees provided, however, that no such transfer shall be made if the result is the elimination or reduction of any Section 411(d)(6) protected benefits as described in Section 8.1(e). If a separate plan has not been established, at the time of such continuance or revocation for whatever reason, the assets and liabilities, Contracts and other Trust Fund assets allocable to such Participating Employer's participation in this Plan shall be spun off pursuant to Code Section 414(l) and such spun off assets shall constitute a retirement plan of the Participating Employer with such Participating Employer becoming sponsor and the individual who has signed the Supplemental Participation Agreement on behalf of the Participating Employer becoming Trustee for this purpose. Such individual shall agree to this appointment by virtue of signing the Supplemental Participation Agreement. If such individual is no longer an Employee of the Participating Employer, then the Participating Employer shall appoint a Trustee. If no successor is designated, the Trustee shall retain such assets for the Employees of said Participating Employer pursuant to the provisions of Article VII hereof. In no such event shall any part of the corpus or income of the Trust Fund as it relates to such Participating Employer be

used for or diverted for purposes other than for the exclusive benefit of the Employees of such Participating Employer.

10.8 ADMINISTRATOR'S AUTHORITY

The Administrator shall have authority to make any and all necessary rules or regulations, binding upon all Participating Employers and all Participants, to effectuate the purpose of this Article.

10.9 PROVISIONS APPLIED SEPARATELY (OR JOINTLY) FOR PARTICIPATING NON AFFILIATED EMPLOYERS

(a) **Separate status.** The Plan Administrator will apply the definition of Compensation, separately for each Participating Employer other than an Affiliated Employer of such Participating Employer. For this purpose, the Employees of each Participating Employer (and its Affiliated Employers), and their allocations and accounts, shall be treated as though they were in separate plan. Any correction action, such as additional contributions or corrective distributions, shall only affect the Employees of the Participating Employer (and its Affiliated Employers, if any).

10.10 SERVICE

An Employee's service includes all Hours of Service and Years of Service with any and all Participating Employers and their Affiliated Employers. An Employee who terminates employment with one Participating Employer and immediately commences employment with another Participating Employer has not separated from service and has not had a severance from employment.

10.11 REQUIRED MINIMUM DISTRIBUTIONS

If a Participant is a 5-percent owner (under Section 6.7(e)(6)) of any Participating Employer for which the Participant is an Employee in the Plan Year the Participant attains age 70 1/2, then the Participant's required beginning date under Section 6.7 shall be the April 1 of the calendar year following the close of the calendar year in which the Participant attains age 70 1/2.

IN WITNESS WHEREOF, this Plan and Trust Agreement have been executed as of the
_____ day of _____, 2011.

The City of Jonesboro, Arkansas
Employer

By: _____

Name: _____

Title: _____

First Security Bank
Trustee

By: _____

Name: _____

Title: _____