

businesses under common control), as applicable. To identify the group of entities described in the preceding sentence, an ownership threshold of 50 percent shall be used as a substitute for the 80 percent minimum ownership threshold that appears in, and otherwise must be used when applying, the applicable provisions of (A) Code Section 1563 and the Treasury Regulations thereunder for determining a controlled group of corporations under Code Section 414(b), and (B) Treasury Regulation Section 1.414(c)-2 for determining the trades or businesses that are under common control under Code Section 414(c).

1.17 "Specified Employee" means any Participant who, as of the Participant's Separation from Service, is determined to be a "key employee" (as defined under Code Section 416(i)(1)(A)(i), (ii) or (iii) (applied in accordance with the Treasury Regulations thereunder and disregarding Code Section 416(i)(5)) for the applicable period, as determined by the Company in accordance with Treasury Regulation Section 1.409A-1(i). For purposes of determining Specified Employees under this Section 1.17, the Company uses the following default provisions under Regulation Section 1.409A-1(i): *First*, for purposes of identifying a Specified Employee by applying the requirements of Code Sections 416(i)(1)(A)(i), (ii) and (iii), the definition of compensation under Regulation Section 1.415(c)-2(a) is used, applied as if the Company were not using any safe harbor provided in Regulation Section 1.415(c)-2(d), were not using any of the special timing rules provided in Regulation Section 1.415(c)-2(e), and were not using any of the special rules provided in Regulation Section 1.415(c)-2(g). *Second*, the specified employee identification date is December 31. *Third*, the specified employee effective date is the first day of the fourth month following the specified employee identification date.

1.18 "Spouse" means a Participant's legal spouse, including a same sex spouse recognized as such in the state where the marriage is performed, except that such term does not include (a) a common law spouse in the absence of a Declaration and Registration of Informal Marriage filed with the County Clerk and provided to the Company, (b) an opposite sex domestic partner, or (c) a same sex domestic partner.

1.19 "Surviving Spouse" means a Spouse who is married to a Participant at the date of his death and for at least one year prior thereto.

1.20 "Total Excess Benefit" is calculated as provided in Section 3.1.

1.21 "Total Post-Death Excess Benefit" is calculated as provided in Section 4.2.

## ARTICLE 2 ELIGIBILITY

Any employee of the Company who holds the office of Vice President or any office above Vice President, with the Company, and who has not previously been selected for participation in the Plan under the prior provisions of the Plan, shall become a Participant upon the latest of (1) the employee's date of hire as a Vice President or above, (2) the employee's date of promotion to Vice President or above, and (3) April 1, 2014. In addition to those employees who become Participants under the preceding sentence, the Company may select any other employee of the Company, who is in a select group of management or highly compensated

employees of the Company, and who has not previously been selected for participation in the Plan, as a Participant in the Plan.

In order to be vested in a benefit under the Plan, a Participant must be fully vested in a benefit under the provisions of the Qualified Plan. In general, and subject to the provisions of the Plan, such a vested Participant is entitled to a benefit under the Plan if his Qualified Plan benefit is subject to any limitation on benefits or compensation imposed by any provision of the Code (as in effect on the date for commencement of the Participant's Qualified Plan benefit, or as in effect at any time thereafter), or if the Participant receives bonuses pursuant to the Company's short term bonus program (which bonuses are not considered under the Qualified Plan for purposes of calculating Qualified Plan benefits). Any benefit payable under the Plan to a Participant shall be by reason of the Participant's Separation from Service, in accordance with the provisions of Article 3, or by reason of the Participant's death, in accordance with the provisions of Article 4. In no event will a Participant receive a benefit under the Plan with respect to any amounts earned, through a consulting arrangement or otherwise, after the Participant's termination of employment with the Company.

### ARTICLE 3 EXCESS BENEFIT

3.1 Amount of Total Excess Benefit. The amount of the "Total Excess Benefit" for each Participant under the Plan shall be calculated as the sum of (1) the Participant's Final Average Pay Excess Benefit, as defined under Section 3.1(a), if any, plus (2) the Participant's Cash Balance Account Excess Benefit, as defined under Section 3.1(b), if any. Some Participants will have only a Final Average Pay Excess Benefit or only a Cash Balance Account Excess Benefit, while other Participants will have both a Final Average Pay Excess Benefit and a Cash Balance Account Excess Benefit. A Participant shall have a Cash Balance Account Excess Benefit under the Plan only to the extent that the Participant is eligible for and has a "cash balance account" established for him on or after April 1, 2014 under the provisions of the Qualified Plan.

(a) Final Average Pay Excess Benefit. A Participant's "Final Average Pay Excess Benefit" shall be calculated as

(1) the monthly amount to which the Participant would be entitled under the Qualified Plan based on the Participant's "average monthly earnings," as determined under the Qualified Plan, except that "annualized rate of basic compensation (excluding bonuses, overtime pay, expense allowances, profit sharing and any other extra compensation such as supplemental payments and other extra compensation in any form)," as used in the Qualified Plan's definition of "average monthly earnings," shall be adjusted to include bonuses paid pursuant to the Company's short term bonus program (but not to include any other bonuses that may be paid by the Company), and "benefit accrual service," as determined under the Qualified Plan, without giving effect to any limitation on benefits or compensation imposed by any provision of the Code (and without considering the Participant's "cash balance benefits," if any, under the Qualified Plan),

LESS

(2) the monthly amount to which the Participant is entitled under the Qualified Plan (whether from the Trust that funds the Qualified Plan or from annuities purchased under the Qualified Plan) based on the Participant's "average monthly earnings" and "benefit accrual service," as determined under the Qualified Plan, considering any limitation on benefits or compensation imposed by any provision of the Code (and without considering the Participant's "cash balance benefits," if any, under the Qualified Plan).

The amounts described in (1) and (2) of the preceding sentence shall be computed as of the date of the Participant's Separation from Service in the form of a single life only annuity payable over the lifetime of the Participant commencing as of the Participant's Normal Retirement Date, and amounts determined as of any date other than Normal Retirement Date shall be actuarially adjusted as provided under Section 3.5.

(b) Cash Balance Account Excess Benefit. A Participant's "Cash Balance Account Excess Benefit" shall be calculated as

(1) the "cash balance account" to which the Participant would be entitled under the Qualified Plan if "pay credits" to the Participant's Qualified Plan "cash balance account" were calculated considering "base pay," as determined under the Qualified Plan, adjusted to include bonuses paid pursuant to the Company's short term bonus plan (but not to include any other bonuses that may be paid by the Company), without giving effect to any limitation on benefits or compensation imposed by any provision of the Code, and "years of vesting service," as determined under the Qualified Plan, and if "interest credits" to the Participant's Qualified Plan "cash balance account" were calculated in the manner provided under the Qualified Plan (without considering the Participant's benefits, if any, under the Qualified Plan other than his "cash balance benefits"),

LESS

(2) the "cash balance account" to which the Participant is entitled under the Qualified Plan based on "pay credits" to the Participant's Qualified Plan "cash balance account" (which are based on the Participant's "years of vesting service" and "base pay," as determined under the Qualified Plan) and "interest credits" to the Participant's Qualified Plan "cash balance account," considering any limitation on benefits or compensation imposed by any provision of the Code (and without considering the Participant's benefits, if any, under the Qualified Plan other than his "cash balance benefits").

The amounts described in (1) and (2) of the preceding sentence shall be computed as of the date of the Participant's Separation from Service; provided, however, that in determining a Participant's Cash Balance Account Excess Benefit, "interest credits," calculated in the manner provided under the Qualified Plan, shall continue to be credited through the last day of the month preceding the date as of which a distribution commences or occurs under Section 3.2, 3.3, 3.4, 3.6, 3.7 (to the extent that a distribution is made under 3.7), 3.8 or 4.3, as applicable.

3.2 Payment of Total Excess Benefit for Individuals who Become Participants before April 1, 2014.

(a) Annuity Benefit. Each individual who becomes a Participant in the Plan, as provided in Article 2, before April 1, 2014, and who is vested, as provided in Article 2, shall receive his Total Excess Benefit, as determined under Section 3.1, in the form of

(1) a single life only annuity for the life of the Participant if the Participant is not married to a Spouse on the date payment of the Participant's benefits commence under Section 3.2(b), 3.4 or 3.8, or if the Participant has not been married to his Spouse for at least one year on the date payment of the Participant's benefits commence under Section 3.2(b), 3.4 or 3.8;

(2) a joint life annuity payable for the life of the Participant with a survivor annuity for the life of his Spouse equal to 50 percent of the amount of the annuity payable during the joint lives of the Participant and his Spouse, if the Participant is married to a Spouse, and has been married to his Spouse for at least one year, on the date payment of the Participant's benefits commence under Section 3.2(b), 3.4 or 3.8, which joint life and 50 percent survivor annuity described in this paragraph (2) shall be actuarially equivalent, as determined under Section 3.5, to the Participant's single life only annuity for the life of the Participant described in paragraph (a)(1) of this Section 3.2; or

(3) one of the following three optional forms of benefit elected by the Participant. If the Participant is married to a Spouse, and has been married to his Spouse for at least one year on the date payment of the Participant's benefits commence under Section 3.2(b), 3.4 or 3.8, the election of an optional form of benefit is subject to the consent of the Participant's Spouse on a form acceptable to the Committee. Each optional form of benefit will be adjusted for actuarial equivalence as provided in Section 3.5.

(A) a joint life annuity payable for the life of the Participant with a survivor annuity for the life of any individual designated by the Participant on a form acceptable to the Committee. The amount payable to the survivor will be a percentage, elected by the Participant, of the amount of the annuity payable during the joint lives of the Participant and the individual designated.

(B) an annuity payable for the life of the Participant, with 120 monthly payments guaranteed, regardless of whether the Participant dies before all 120 payments have been made. In the event of the Participant's death prior to payment of 120 monthly installments, the same amount of annuity will be payable for the remainder of the 120 months to the individual designated by the Participant on a form acceptable to the Committee.

(C) a single life only annuity payable for the life of a Participant until the Participant's death.

(b) Commencement of Annuity Benefit.

(1) Except as provided in Section 3.8(b), if an individual, who becomes a Participant, as provided in Article 2, before April 1, 2014, and who is vested, as provided in Article 2, experiences a Separation from Service before the Participant reaches Early Retirement Age, the payment of the Participant's Total Excess Benefit, as determined under Section 3.1, shall commence no earlier than the Participant's Early Retirement Age and no later than the first day of the month following the month in which the Participant reaches Early Retirement Age.

(2) Except as provided in Section 3.8(b), if an individual, who becomes a Participant, as provided in Article 2, before April 1, 2014, experiences a Separation from Service after reaching Early Retirement Age, the payment of the Participant's Total Excess Benefit, as determined under Section 3.1, shall commence no later than the first day of the month following the month in which the Participant experiences his Separation from Service.

**3.3 Payment of Total Excess Benefit for Individuals who Become Participants on or after April 1, 2014.**

(a) **Lump Sum Benefit.** Each individual who becomes a Participant, as provided in Article 2, on or after April 1, 2014, and who is vested, as provided in Article 2, shall receive his Total Excess Benefit, as determined under Section 3.1, in the form of a lump sum payment.

(b) **Time of Lump Sum Benefit Payment.** Except as provided in Section 3.8(b), each individual who becomes a Participant, as provided in Article 2, on or after April 1, 2014, and who is vested, as provided in Article 2, shall receive his Total Excess Benefit, as determined under Section 3.1, in the form of a lump sum benefit payment on the first day of the second month following the Participant's Separation from Service.

**3.4 Deferred Benefit Commencement Date.** A Participant may delay the commencement of his annuity benefit under Section 3.2(b), or the payment of his lump sum benefit under Section 3.3(b), as applicable, provided that:

(a) the Participant's election to defer the commencement or payment of his benefit is made on a form acceptable to the Committee;

(b) the Participant files the form with the Committee on a date that is at least 12 months prior to the then current benefit commencement or payment date;

(c) the Participant's election to defer the commencement or payment of his benefit, as evidenced by a properly completed and executed distribution form, shall not be effective until at least 12 months after the date on which the election is made;

(d) the deferred benefit commencement or payment date is at least the fifth anniversary of the current benefit commencement or payment date; and

(e) the Committee, in its sole discretion, consents to the change.

3.5 Actuarial Equivalent. Subject to the provisions of Regulation Section 1.409A-2(b)(2)(ii), actuarial equivalent calculations under the Plan are determined as follows:

(a) Cash Balance Account Excess Benefit Payable as an Annuity. If the Cash Balance Account Excess Benefit is payable in the form of an annuity (*e.g.*, the Cash Balance Account Excess Benefit of an individual who becomes a Participant before April 1, 2014), the Cash Balance Account Excess Benefit shall be converted to an actuarially equivalent single life annuity based on the actuarial assumptions specified in Section 2.2(e) of the Qualified Plan and, if payable in an annuity form other than a single life annuity, shall be further adjusted as described in paragraph (c) of this Section 3.5.

(b) Final Average Pay Excess Benefit Payable as a Lump Sum. If the Final Average Pay Excess Benefit is payable in the form of a lump sum (*e.g.*, the Final Average Pay Excess Benefit of an individual who becomes a Participant on or after April 1, 2014), the Final Average Pay Excess Benefit shall be converted to an actuarially equivalent single lump sum based on the actuarial assumptions specified in Section 2.2(e) of the Qualified Plan.

(c) Plan Benefits Payable in the Form of an Annuity other than a Single Life Annuity. If benefits are payable in an alternative annuity form of payment, other than a single life annuity (*e.g.*, for an individual who becomes a Participant before April 1, 2014), such alternative annuity form of payment amount will be determined by converting the single life annuity to such actuarially equivalent alternative annuity form of payment based on the actuarial assumptions specified in Section 2.2(a) of the Qualified Plan.

3.6 Distribution of de Minimis Amounts. If, as of a vested Participant's Separation from Service, or any payment date subsequent to the Participant's Separation from Service, (a) the actuarially equivalent present value of the Participant's Total Excess Benefit under the Plan, as determined under Section 3.1, and all agreements, methods, programs or other arrangements with respect to which deferrals of compensation are treated as having been deferred under a single nonqualified deferred compensation plan under Regulation Section 1.409A-1(c)(2), is less than the applicable dollar limit under Code Section 402(g)(1)(B), and (b) the payment results in the termination and liquidation of the entirety of the Participant's interest under the Plan, and all agreements, methods, programs or other arrangements with respect to which deferrals of compensation are treated as having been deferred under a single nonqualified deferred compensation plan under Regulation Section 1.409A-1(c)(2), the Committee may require that the remaining unpaid vested benefit be paid to the Participant, or the individual designated by the Participant on a form acceptable to the Committee, in a lump sum in lieu of any further benefit payments under the Plan. The Committee's discretion to require lump sum benefit payments under this Section 3.6 shall be evidenced in writing no later than the date of such payments.

3.7 Accelerated Distribution under Certain Circumstances. Notwithstanding any provision of the Plan to the contrary, the Committee, in its discretion, may accelerate payment of a Participant's benefit in accordance with the provisions of Regulation Sections 1.409A-3(j)(4)(ii) through (xiv), as applicable.

3.8 Delay of Payment under Certain Circumstances. Notwithstanding any provision of the Plan to the contrary,

(a) payment of a Participant's benefit may be delayed by the Committee under circumstances described in Regulation Section 1.409A-2(b)(7), provided that the Committee treats all payments to similarly situated Participants on a reasonably consistent basis.

(b) if as of a Participant's Separation from Service, other than as a result of the Participant's death, the Participant is a Specified Employee, no payment on account of the Separation from Service may be made with respect to such Participant before the date that is six months after the Participant's Separation from Service, or if earlier than the end of the six-month period, the date of the Participant's death. In such case, any payment that would have, but for this Section 3.8(b), been distributed to the Participant during the six-month period following the Participant's Separation from Service, will be accumulated and paid to the Participant (or if the Participant is no longer living, the Participant's executor or administrator), in a single lump sum as soon as is administratively practicable following the end of the six-month period, but in no event more than 60 days after the end of the such six-month period.

#### ARTICLE 4 POST-DEATH EXCESS BENEFIT

4.1 Eligibility. In no event shall a post-death benefit under this Article 4 be payable with respect to a Participant if, at his death, he has already commenced an annuity distribution under Section 3.2(b), 3.4 or 3.8, or he has already received a lump sum payment under Section 3.3(b), 3.4, 3.6 or 3.8. Otherwise, a post-death benefit shall be payable with respect to any vested Participant who has a cash balance account benefit under the Qualified Plan (in which case, the Participant's Surviving Spouse, or other Beneficiary, shall receive the Participant's Post-Death Cash Balance Account Excess Benefit in accordance with Section 4.3), and a post-death benefit shall be payable with respect to any vested Participant who has a benefit, other than a cash balance account benefit (*i.e.* a final average pay benefit) under the Qualified Plan only if, at his death, the Participant has a Surviving Spouse (in which case, the Participant's Surviving Spouse shall receive the Post-Death Final Average Pay Excess Benefit in accordance with Section 4.3).

4.2 Amount of Total Post-Death Excess Benefit. The amount of the "Total Post-Death Excess Benefit" for each Participant shall be calculated as the sum of (1) the Participant's Post-Death Final Average Pay Excess Benefit, as defined under Section 4.2(a), if any, plus (2) the Participant's Post-Death Cash Balance Account Excess Benefit, as defined under Section 4.2(b), if any. Some Participants will have only a Post-Death Final Average Pay Excess Benefit or only a Post-Death Cash Balance Account Excess Benefit, while other Participants will have both a Post-Death Final Average Pay Excess Benefit and a Post-Death Cash Balance Account Excess Benefit. A Participant shall have a Post-Death Cash Balance Account Excess Benefit under the Plan only to the extent that the Participant is eligible for and has a cash balance account established for him on or after April 1, 2014 under the provisions of the Qualified Plan.

(a) Post-Death Final Average Pay Excess Benefit. The "Post-Death Final Average Pay Excess Benefit" shall be calculated as the death benefit that would be payable to the Surviving Spouse of a Participant under the Qualified Plan (either as a "qualified pre-retirement survivor annuity" under Section 2.65 of the Qualified Plan, or as a "pre-retirement death benefit" under Section 6.8 of the Qualified Plan), considering only the Participant's Final Average Pay Excess Benefit, as calculated under Section 3.1(a). A Post-Death Final Average Pay Excess Benefit shall be payable following the death of a Participant only if the requirements set forth in Section 2.65 or 6.8, as applicable, of the Qualified Plan are satisfied.

(b) Post-Death Cash Balance Account Excess Benefit. The "Post-Death Cash Balance Account Excess Benefit" shall be calculated as the death benefit that would be payable under the Qualified Plan considering only the Participant's Cash Balance Account Excess Benefit, as calculated under Section 3.1(b).

#### 4.3 Payment of Total Post-Death Excess Benefit.

(a) Annuity Benefit Payable if Plan Participation Commenced before April 1, 2014. Subject to the conditions set forth in Section 4.1, following the death of any individual who becomes a Participant, as provided in Article 2, before April 1, 2014, the Surviving Spouse of the Participant shall receive his Total Post-Death Excess Benefit in the form of an annuity over the lifetime of the Surviving Spouse, in monthly installments commencing

(1) no earlier than the date the Participant would have reached Early Retirement Age and no later than the first day of the month following the month in which the Participant would have reached Early Retirement Age, if the Participant dies before reaching Early Retirement Age, or

(2) no later than the first day of the month following the month in which the Participant dies, if the Participant dies after reaching Early Retirement Age.

The preceding provisions of this Section 4.3(a) notwithstanding, to the extent that an individual who becomes a Participant before April 1, 2014 accrues a Cash Balance Account Excess Benefit with respect to his post-March 31, 2014 service, and with respect to whom a Post-Death Cash Balance Account Excess Benefit is payable, if the Participant does not have a Surviving Spouse, his Post-Death Cash Balance Account Excess Benefit shall be payable in the form of an annuity over the lifetime of the individual designated by the Participant on a form acceptable to the Committee, beginning on the date that annuity payments to a Surviving Spouse would have commenced under this Section 4.3(a).

(b) Lump Sum Benefit Payable if Plan Participation Commenced on or after April 1, 2014. Subject to the conditions set forth in Section 4.1, following the death of any individual who becomes a Participant, as provided in Article 2, on or after April 1, 2014, the Participant's Total Post-Death Excess Benefit shall be paid, in the form of a lump sum benefit, to the Participant's Surviving Spouse, or if there is no Surviving Spouse, to the individual designated by the Participant on a form acceptable to the Committee. The lump sum benefit



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provided for under the preceding sentence shall be paid in a single lump sum payment on the first day of the second month following the date of the Participant's death.

ARTICLE 5  
ADMINISTRATION OF THE PLAN

5.1 Appointment of Plan Administrator. The Committee shall be the plan administrator. Any action (including decisions, determinations and interpretations) that may be taken by the plan administrator under the Plan may be delegated by the Committee to another person to be performed on behalf of, and as a designee of, the plan administrator. If the title for this position changes, the title used herein shall be read as the new title.

5.2 Company Duties. The Company shall, upon request or as may be specifically required under the Plan, furnish or cause to be furnished all of the information or documentation in its possession or control that is necessary or required by the plan administrator to perform its duties and functions under the Plan.

5.3 Powers of Plan Administrator. The plan administrator shall have all powers and discretion as may be necessary to discharge its duties and responsibilities under the Plan, including the power to:

- (a) maintain and preserve records relating to Participants, former Participants and Beneficiaries;
- (b) prepare and furnish to Participants all information required under applicable law or the provisions of the Plan;
- (c) maintain sufficient Participant data and make required payments of benefits;
- (d) prepare and file or publish with all appropriate government officials all reports, filings and other information required under law to be so filed or published;
- (e) interpret and construe the Plan;
- (f) make rules and regulations for the administration of the Plan; and
- (g) retain records on elections and waivers by Participants, their Surviving Spouses and others, as applicable, as further set forth herein.

The plan administrator may engage agents to assist it and may engage legal counsel, who may be counsel for the Company. The plan administrator shall not be responsible for any action taken or not taken on the advice of such counsel.

5.4 Interpretations. Subject to the express provisions of the Plan, the plan administrator may interpret the Plan, prescribe, amend and rescind rules and regulations relating

to it, and make all other determinations it deems necessary or advisable for the administration of the Plan.

5.5 Determinations. The plan administrator's determinations under the Plan need not be uniform and may be made selectively among Participants who have a benefit under the Plan, whether or not such Participants are similarly situated, consistent with Code Section 409A. The determination of the plan administrator on all matters regarding the Plan shall be conclusive.

5.6 Indemnification. To the extent permitted by the laws of the State of Texas, the plan administrator and the person(s) who may act to fulfill the responsibilities of the plan administrator or the Company shall be indemnified by the Company against any and all liabilities arising by reason of any act, or failure to act, pursuant to the provisions of the Plan, including expenses reasonably incurred in the defense of any claim relating to the Plan, even if the same is judicially determined to be due to such person's negligence, but not when the same is judicially determined to be due to the gross negligence or willful misconduct of such person.

5.7 Bond and Expenses. The plan administrator shall serve without bond unless state or federal statutes require otherwise, in which event the Company shall pay the premium of any statutorily required bond. Except as may otherwise be provided herein, the expenses of the plan administrator shall be paid by the Company. Such expenses shall include all expenses incident to the functioning of the plan administrator, including litigation costs, fees of accountants, counsel and other specialists, and other costs of administering the Plan.

5.8 Right to Suspend Benefits and Correct Errors. The plan administrator shall take such steps as are considered necessary and appropriate to remedy any inequity that results from incorrect information received or communicated in good faith or as the consequence of an administrative error. The plan administrator may suspend the payment of any benefit under the Plan until satisfied as to the correctness of the payment or the individual to receive the payment or to allow filing in any court of competent jurisdiction of a suit in such form as the plan administrator considers appropriate for a legal determination of the benefits to be paid and the individuals to receive them. The plan administrator specifically reserves the right to correct errors of every sort, and the Participant hereby agrees as Participant, and on behalf of any Surviving Spouse or Beneficiary, to any method of error correction that the plan administrator shall specify. The objective of any such method of error correction shall be, to the extent reasonably possible, to adjust the benefit paid to the Participant by reversing transactions or taking other actions to approach the situation that would have existed if the error had not been made. The plan administrator shall also be authorized to recover any payment made in error including the right to make deductions from future benefits. To the extent that corrections contemplated by this Section 5.8 are required to be made in accordance with IRS correction guidance, including Notice 2008-113, such corrections shall be made in accordance with such guidance.

5.9 Reliance on Tables. In administering the Plan, the plan administrator and the Company shall be entitled, to the extent permitted by law, to rely conclusively on all tables, valuations, certificates, opinions and reports that are furnished by accountants, actuaries, legal counsel or other experts employed or engaged by the plan administrator or the Company.

5.10 Designated Payment Dates. The following designated payment dates are set forth in the Plan: under Section 3.3(b), the first day of the second month following the Participant's Separation from Service, and under Section 4.3(b), the first day of the second month following the date of the Participant's death. In accordance with Regulation Section 1.409A-3(d), a payment is treated as made upon the designated payment date if the payment is made (a) on the designated payment date or a later date within the Participant's same taxable year, or if later, by the 15<sup>th</sup> day of the third calendar month following the designated payment date, or (b) no earlier than 30 days before the designated payment date; provided, however, that the Participant must not be permitted, directly or indirectly, to designate the taxable year of the payment.

## ARTICLE 6 CLAIMS PROCEDURES

6.1 Presentation of Claim. Any Participant or Beneficiary, or the authorized representative of either (such Participant or Beneficiary being referred to as a "Claimant"), may deliver to the plan administrator a written claim for a determination with respect to the amounts distributable to such Claimant from the Plan. If such a claim relates to the contents of a notice received by the Claimant, the claim must be made within 60 days after such notice was received by the Claimant. All other claims must be made within 180 days of the date on which the event that caused the claim to arise occurred. The claim must state with particularity the determination desired by the Claimant.

6.2 Notification of Decision. The plan administrator shall consider a Claimant's claim within a reasonable time, but no later than 90 days after receiving the claim. If the plan administrator determines that special circumstances require an extension of time for processing the claim, written notice of the extension shall be furnished to the Claimant prior to the termination of the initial 90 day period. In no event shall such extension exceed a period of 90 days from the end of the initial period. The extension notice shall indicate the special circumstances requiring an extension of time and the date by which the plan administrator expects to render the benefit determination. The plan administrator shall notify the Claimant in writing:

(a) that the Claimant's requested determination has been made, and that the claim has been allowed in full; or

(b) that the plan administrator has reached a conclusion contrary, in whole or in part, to the Claimant's requested determination, in which event such notice shall set forth in a manner calculated to be understood by the Claimant:

(1) the specific reason(s) for the denial of the claim, or any part of it, or other adverse benefit determination;

(2) specific reference(s) to pertinent provisions of the Plan upon which such adverse benefit determination was based;

(3) a description of any additional material or information necessary for the Claimant to perfect the claim, and an explanation of why such material or information is necessary;

(4) an explanation of the claim review procedure set forth in Section 6.3; and

(5) a statement of the Claimant's right to bring a civil action under Section 5.02(a) of ERISA following an adverse benefit determination on review.

**6.3 Review of a Denied Claim.** On or before 60 days after receiving a notice from the plan administrator that a claim has been denied, in whole or in part, or that there has been any other adverse benefit determination, a Claimant (or the Claimant's duly authorized representative) may file with the plan administrator a written request for a review of the adverse benefit determination. The Claimant (or the Claimant's duly authorized representative):

(a) may, upon request and free of charge, have reasonable access to, and copies of, all documents, records and other information relevant to the claim for benefits;

(b) may submit written comments, documents, records and other information relating to the claim; and/or

(c) may request a hearing, which the plan administrator, in its sole discretion, may grant.

**6.4 Decision on Review.** The plan administrator shall render its decision on review promptly, and no later than 60 days after the plan administrator receives the Claimant's written request for a review of the adverse benefit determination. If the plan administrator determines that special circumstances require an extension of time for processing the claim, written notice of the extension shall be furnished to the Claimant prior to the termination of the initial 60-day period. In no event shall such extension exceed a period of 60 days from the end of the initial period. The extension notice shall indicate the special circumstances requiring an extension of time and the date by which the plan administrator expects to render the benefit determination. In rendering its decision, the plan administrator shall take into account all comments, documents, records and other information submitted by the Claimant relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination. The decision shall be written in a manner calculated to be understood by the Claimant, and shall contain:

(a) specific reasons for the decision;

(b) specific reference(s) to the pertinent Plan provisions upon which the decision was based;

(c) a statement that the Claimant is entitled to receive, upon request and free of charge, reasonable access to and copies of, all documents, records and other information relevant (as defined in applicable ERISA regulations) to the Claimant's claim for benefits; and

(d) a statement of the Claimant's right to bring a civil action under Section 502(a) of ERISA.

6.5 Designation of Authorized Representative. Pursuant to such procedures as the plan administrator may from time to time establish, a Participant or the Surviving Spouse may designate an authorized representative to represent him in connection with a claim for benefits.

6.6 Legal Action. A Claimant's compliance with the foregoing provisions of this Article 6 is a mandatory prerequisite to a Claimant's right to commence any legal action with respect to any claim for benefits under the Plan.

#### ARTICLE 7 AMENDMENT OR TERMINATION

7.1 Amendment or Termination. Although the Company anticipates that the Plan will continue indefinitely, the Company reserves the right to amend or terminate the Plan when, in the sole opinion of the Company, such amendment to termination is advisable. Any such amendment or termination shall be made pursuant to a resolution of the Compensation Committee of the Board and shall be effective as of the date of such resolution. This Section 7.1 incorporates the termination restrictions referred to in Section 3.7.

7.2 Effect of Amendment or Termination. No amendment or termination of the Plan shall directly or indirectly deprive any current or former Participant, Surviving Spouse or Beneficiary of all or any portion of any benefit that has commenced prior to the effective date of such amendment or termination, or that would be payable following the Participant's Separation from Service for any reason, including death, on such effective date; provided, however, that consistent with the termination restrictions referred to in Section 3.7, which are incorporated into this Section 7.2, Plan benefits may be accelerated upon Plan termination.

#### ARTICLE 8 GENERAL PROVISIONS

8.1 Funding. The Plan at all times shall be entirely unfunded and no provision shall at any time be made with respect to segregating any assets of the Company for payment of any benefits hereunder. No Participant, Surviving Spouse or other person shall have any interest in any particular assets of the Company by reason of the right to receive a benefit under the Plan, and any such Participant, Surviving Spouse or other person shall have only the rights of a general unsecured creditor of the Company with respect to any rights under the Plan.

8.2 General Conditions. Except as otherwise expressly provided herein, and to the extent consistent with Code Section 409A, all terms and conditions of the Qualified Plan applicable to benefits payable under the Qualified Plan shall also be applicable to benefits

payable hereunder. Any benefit payable under the Qualified Plan shall be paid solely in accordance with the terms and conditions of the Qualified Plan and nothing in this Plan shall operate or be construed in any way to modify, amend or affect the terms and provisions of the Qualified Plan.

8.3 No Guaranty of Benefits. Nothing contained in the Plan shall constitute a guaranty by the Company or any other entity or person that the assets of the Company will be sufficient to pay any benefit hereunder.

8.4 No Employment Rights. Neither the Plan nor any action taken under the Plan shall be construed as giving to any Participant the right to be retained by the Company an employee or in any other capacity, or as affecting the right of the Company to terminate its employment relationship with a Participant at any time, with or without cause.

8.5 Unsecured General Creditors. Participants and Beneficiaries, and their heirs, successors and assigns shall have no legal or equitable rights, interests or claims in any property or assets of the Company. For purposes of the payment of benefits under the Plan, any and all of the Company's assets shall be, and remain, the general, unpledged unrestricted assets of the Company. The Company's obligation under the Plan shall be merely that of an unfunded and unsecured promise to make benefit payments in the future.

8.6 No Assignment. The right of any Participant or other person to the payment of a benefit under the Plan shall not be anticipated, alienated, sold, transferred, assigned, pledged, encumbered, attached or garnished, either voluntarily or by operation of law, except as provided in this Section 8.6 or Section 8.7 with respect to former Spouses. If any person shall attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, attach or garnish any amount payable under the Plan, or if by reason of his bankruptcy or other event happening at any time any such payment would be made subject to his debts or liabilities or would otherwise devolve upon anyone else and not be enjoyed by him, his Surviving Spouse or Beneficiary, as applicable, the plan administrator may, in its sole discretion, terminate such person's interest in any such payment and direct that the same be held and applied to or for the benefit of such person, his Spouse, children or other dependents, or any other persons deemed to be the natural objects of his bounty, or any of them, in such manner as the plan administrator may deem proper. Notwithstanding the foregoing, if a Participant's Spouse is awarded all or a portion of a Participant's benefit under the Plan pursuant to a division of property in connection with a divorce, such Spouse's share of the Participant's benefit shall be her separate property, and to the extent that a benefit is available under the Plan following the death of the former Spouse, shall be transferable by the Participant's former Spouse by beneficiary designation on a form approved by, and filed with, the Committee. In order to be effective, notice of such division of the Participant's benefit under the Plan pursuant to a division of property in connection with divorce must be provided to the Committee. Any such share of a Participant's benefit to which the Participant's former Spouse may be entitled shall be distributed to the former Spouse in a lump sum in cash as soon as is administratively practicable following the plan administrator's approval of the division of property as prescribed in this Section 8.6 or in Section 8.7.

8.7 Court Order. The plan administrator is authorized to comply with any court order in any action in which the Plan or the plan administrator has been named as a party, including any action involving a determination of the rights or interests in a Participant's benefits under the Plan. Notwithstanding the foregoing, the plan administrator shall, to the extent necessary, interpret this provision in a manner that is consistent with Code Section 409A and other applicable tax law. In addition, if necessary to comply with a qualified domestic relations order, as defined in Code Section 414(p)(1)(B), pursuant to which a court has determined that a Spouse or former Spouse of a Participant has an interest in the Participant's benefits under the Plan, the plan administrator, in its sole discretion, shall have the right to immediately distribute the Spouse's or former Spouse's interest in the Participant's benefits under the Plan to such Spouse or former Spouse.

8.8 Effect of Payment. The full payment of the benefit to which a Participant, Surviving Spouse or Beneficiary (as applicable) is entitled under the terms of this Plan shall completely discharge all obligations of the Company to the Participant, Surviving Spouse or Beneficiary (as applicable).

8.9 Spendthrift Provision. Except as may be provided in Section 8.6 or 8.7 with respect to a Spouse being awarded all or a portion of a Participant's benefit pursuant to a division of property in connection with a divorce, or pursuant to a valid court order, no interest of any person or entity in, or right to receive a benefit under, the Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, attachment or garnishment of any kind; nor may such interest or right to receive a benefit be taken, either voluntarily or involuntarily, for the satisfaction of the debts of, or other obligations or claims against, such person or entity, including claims for alimony, support, separate maintenance and claims in bankruptcy proceedings.

8.10 Applicable Law. The Plan shall be construed and administered under the laws of the State of Texas, except to the extent preempted by applicable federal law.

8.11 Withholding of Taxes. The Company shall deduct from the amount of any benefits that may be or become payable (before the amount is paid or made available to the Participant), or payments made pursuant to the Plan, any amounts required to be paid or withheld by the federal government or any state or local government, including a payment to pay the income tax at source on wages imposed by the Code as a result of such payment and to pay the additional income tax at source on wages imposed by the Code attributable to such additional wages and taxes (not to exceed the aggregate of the tax amount and the income tax withholding related to such amount). By the Participant's participation in the Plan, the Participant, Surviving Spouse and Beneficiary agree to all deductions.

8.12 Incompetent. If the plan administrator determines in its discretion that a benefit under the Plan is to be paid to a person declared incompetent or to a person incapable of handling his affairs because of accident or illness, the plan administrator may direct payment of such benefit to the guardian, legal representative or person having the care and custody of the incompetent or incapable person. The plan administrator may require such proof of incompetence, incapacity or guardianship, as it may deem appropriate prior to distribution of the

benefits. Any payment of a benefit under this Section 8.12 shall be a payment for the account of the Participant, Surviving Spouse or Beneficiary, as the case may be, and shall be a complete discharge of any liability under the Plan for such payment amount.

8.13 Corporate Successors. The Plan shall not be automatically terminated by a transfer or sale of assets of the Company, or by the merger or consolidation of the Company into or with any other corporation or other entity, but the Plan shall be continued after such sale, merger or consolidation only if and to the extent that the transferee, purchaser or successor entity agrees to continue the Plan. In the event that the Plan is not continued by the transferee, purchaser or successor entity, then the Plan shall terminate subject to the provisions of Sections 3.7, 7.1 and 7.2.

8.14 Payment in the Event of Taxation. If, for any reason, all or any portion of a Participant's benefit fails to meet the requirements of Code Section 409A and becomes taxable to the Participant prior to receipt, the Committee, on behalf of the Company, may, in its discretion, pay to the Participant that portion of the Participant's benefit that has become taxable prior to the date otherwise provided in the Plan. The payment shall not exceed the amount required to be included in income as a result of the failure to comply with the requirements of Code Section 409A and the Regulations thereunder. The preceding provisions of this Section 8.14 notwithstanding, (a) discretion under this Section 8.14 is provided only to the Committee, not directly or indirectly to the Participant, and (b) in exercising discretion under this Section 8.14, the Committee shall not treat similarly situated Participants differently.

8.15 Overpayment and Underpayment of Benefits. The Committee may adopt, in its sole discretion, whatever rules, procedures and accounting practices that comply with Code Section 409A and are appropriate in providing for the collection of any overpayment of benefits. To the extent permitted by Code Section 409A, if an overpayment is made to a Participant, Surviving Spouse, Beneficiary or any other person, for whatever reason, the Committee may, in its sole discretion, withhold payment of any further benefits under the Plan until the overpayment has been collected or may require repayment of benefits paid under this Plan, without regard to further benefits to which the person may be entitled and, to the extent deemed necessary by the Committee, in its sole discretion, the Committee may seek repayment of such overpaid amounts through any and all available legal actions, including filing suit in a court with appropriate jurisdiction. If a Participant, Surviving Spouse, Beneficiary or any other person receives an underpayment of benefits, the Committee shall direct that immediate payment be made to make up for the underpayment; provided, however, that such payment shall be made in a manner that complies with Code Section 409A. To the extent that corrections contemplated by this Section 8.15 are required to be made in accordance with IRS correction guidance, including Notice 2008-113 regarding compliance by the Plan with Code Section 409A, such corrections shall be made in accordance with such guidance.

8.16 Captions and Construction. The captions preceding the Articles and Sections of the Plan have been inserted solely as a matter of convenience and in no way define or limit the scope or intent of any provisions of the Plan. Where the context admits or requires, words used in the masculine gender shall be construed to include the feminine and the neuter also, the plural



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shall include the singular, and the singular shall include the plural. As used herein, references to "including" shall be construed to mean "including, but not limited to."

8.17 Severability. In case any one or more of the provisions contained in the Plan shall be found to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions in the Plan shall not in any way be affected or impaired.

8.18 Limitations on Liability. Notwithstanding any provision of the Plan, neither the Company nor any individual acting as an employee or agent of the Company shall be liable to any Participant. Surviving Spouse, Beneficiary or any other person for any claim, loss, liability or expense incurred in connection with the Plan.

8.19 Spouse's Interest. Except as may be provided in Sections 8.6 and 8.7, with respect to a Spouse being awarded all or a portion of a Participant's benefit pursuant to a division of property in connection with a divorce, or pursuant to a valid court order, the interest in a Participant's benefit hereunder of a Participant's Spouse, if any, who has predeceased the Participant shall automatically pass to the Participant and shall not be transferable by such Spouse or such Spouse's estate in any manner, including such Spouse's will, nor shall such interest pass under the laws of intestate succession.

8.20 Code Section 409A Compliance. In all cases, the Plan shall continue to be construed and operated in a manner that is consistent with the requirements of Code Section 409A and guidance issued thereunder.

IN WITNESS WHEREOF, the Company has caused this Plan to be executed by a duly authorized officer this 27 day of March, 2014.

EL PASO ELECTRIC COMPANY

By: [Signature]

Name: William Stiller

Title: S.R.V.P. of Human Resources and Customer Care

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EL PASO ELECTRIC COMPANY  
SUPPLEMENTAL RETIREMENT  
AND SURVIVOR INCOME PLAN  
FOR KEY EMPLOYEES

Plan Document  
July 30, 1986

EL PASO ELECTRIC COMPANY  
SUPPLEMENTAL RETIREMENT AND  
SURVIVOR INCOME PLAN FOR  
KEY EMPLOYEES

ARTICLE I

Purpose

The purpose of this Plan is to assure that selected key employees of El Paso Electric Company (also described herein as the "Company") have sufficient retirement and survivorship benefits.

ARTICLE II

Definitions

- 2.1 Actuarial Equivalent shall mean equality in value of the aggregate amounts expected to be received under different forms of payment based upon the 1971 Group Annuity Mortality Table for males, with a three year age setback for both males and females and interest at the rate used by the Pension Benefit Guaranty Corporation to value immediate annuities on the January 1 coincident with or immediately preceding the date of commencement of payment of the benefit.
- 2.2 Beneficiary shall mean any person designated by the Participant who shall be entitled to receive any payments under this Plan in the event of a Participant's death.
- 2.3 Board of Directors shall mean the Board of Directors of the Company. The Board of Directors shall be responsible for the administration of the Plan through the Committee.
- 2.4 Committee. The Insurance and Benefits Review Committee, or its successor.
- 2.5 Company shall mean El Paso Electric Company, a corporation organized under the laws of the State of Texas and any successor(s) company to the business thereof by law, equity or otherwise, and its wholly owned subsidiaries.
- 2.6 Deferred Retirement Date shall mean the first day of any month on which a Participant retires after the attainment of Normal Retirement Date.

- 2.7 Early Retirement Date shall mean the first day of any month after the Participant attains age 55 and has completed 10 Years of Service.
- 2.8 Effective Date is July 1, 1984.
- 2.9 Final Average Salary shall mean the average of the Participant's annual salary rate for the three years immediately prior to the Participant's Early Retirement Date, Normal Retirement Date or Deferred Retirement Date, whichever is applicable. For this purpose, the Participant's annual salary rate shall be the Participant's rate of pay as of the date of such Participant's Early Retirement, Normal Retirement or Deferred Retirement, whichever is applicable and the two preceding anniversaries of such date.
- 2.10 Normal Retirement Age shall mean age 65.
- 2.11 Normal Retirement Date shall mean the first day of the calendar month coincident with or next following the Participant's attainment of age 65.
- 2.12 Participant shall mean a key employee of the Company who shall be selected as provided in Article III.
- 2.13 Plan shall mean the El Paso Electric Company Supplemental Retirement and Survivor Income Plan for Key Employees.
- 2.14 Years of Service shall mean a twelve consecutive month period of employment with the Company measured from the month in which a Participant is first employed with the Company as defined in the Retirement Income Plan for Employees of El Paso Electric Company, the qualified defined benefit plan for the Company's employees.

### ARTICLE III

#### Eligibility and Participation

Participants shall be selected from time to time by executive management of the Company. A Participant shall remain a Participant unless he is removed from participation by executive management or by the Board. An Employee who is removed from participation shall have no right to any benefit under this Plan. The list of Participants chosen by executive management shall be subject to yearly review by the Board. The Board shall have the right and power to appoint additional Participants or to remove any Participant at the time of the review. Neither executive management nor the Board shall have the power to remove a Participant or beneficiary who is in receipt of benefits under this Plan or to reduce such Participant or beneficiary's benefits.

ARTICLE IV

Retirement Income Benefits

4.1 Normal Retirement Benefits

If a Participant retires on or after his Normal Retirement Date (including retirement on a Deferred Retirement Date) with 20 or more Years of Service, he will be entitled to a target benefit equal to:

60% of the Participant's Final Average Salary reduced by:

- . The Participant's entitlement under the Retirement Income Plan for Employees of El Paso Electric Company (payable as a single life annuity), and
- . 50% of the Participant's Primary Insurance Amount (PIA) Social Security Benefit payable at age 65 as estimated by the Committee.

For Participants who retire with less than 20 Years of Service, the target benefit shall be reduced proportionately.

The benefit payable under this section shall be paid monthly for the Participant's life, commencing on the Normal Retirement Date or Deferred Retirement Date, whichever is applicable.

4.2 Early Retirement

Upon receipt of approval by the Committee, a Participant may retire under this Plan following the attainment of age 55 and the completion of 10 Years of Service. The first day of the month coincident with or next following the date of early retirement shall be the Participant's Early Retirement Date.

If a Participant receives approval to retire under this Plan before his Normal Retirement Date, the Participant's retirement benefit shall be determined in the same manner as the Normal Retirement Benefit under Section 3.1. but based only on service and Final Average Salary determined as of the Participant's Early Retirement Date. The Participant's Social Security Benefit shall be determined under the assumption that the Participant continues to work until age 65 at the same salary, reduced in the proportion which the Participant's Years of Service as of the such Early Retirement Date bears to the Years of Service had the Participant continued employment until age 65. The target benefit shall be reduced by 0.25% for each month payments commence before age 62.

No retirement income benefits are payable in the event of termination prior to age 55, but a survivorship benefit is payable in the event of death prior to age 55, as described in Section 4.1.

- 4.3 No Effect on Other Plans. Benefits payable under this Article IV do not affect an eligible Participant's right to receive benefits under the Retirement Income Plan for Employees of El Paso Electric Company or any other employee benefit plan or deferred compensation arrangement offered by the Company.

ARTICLE V

Death Benefit

5.1 Pre-Retirement Death Benefit

If a Participant dies while participating in the Plan before retiring, the Participant's Beneficiary shall be entitled to annual income for fifteen (15) years from the Company equal to 25% of the Participant's final annual salary rate at the time of the Participant's death (the "Survivor Income Benefit").

If a Beneficiary entitled to a benefit under this Section 4.1 is the deceased Participant's surviving spouse, the Participant may elect, at any time, that the spouse receive the pre-retirement death benefit in the form of an annual income for fifteen (15) years as described above, or under either of the following methods:

- (a) a lump sum settlement equal to the Actuarial Equivalent of the Survivor Income Benefit, or
- (2) a monthly benefit for the spouse's lifetime which is equal to the Actuarial Equivalent of the Survivor Income Benefit.

5.2 Post-Retirement Death Benefit

If a Participant dies after retiring, either on or after the Normal Retirement Date or Early Retirement Date as approved by the Committee, a death benefit will be paid to the Beneficiary in accordance with the following schedule:

<u>Age at Time of Death</u>	<u>% of Final Average Salary</u>
Prior to 66	300%
66	285
67	270
68	255
69	240
70	225
71	210
72	195
73	180
74	165
75 and later	150

This benefit will be paid in a lump-sum unless the Participant elects installment payments as provided below.

If the designated Beneficiary is the Participant's surviving spouse, the Participant may elect, at any time, that the benefit be paid in a series of monthly installments for the lifetime of the spouse in an annual amount equal to 35% of the Participant's Final Average Salary. An actuarial adjustment will be made if the difference in ages between the Participant and spouse is more than three years.

For a spouse or non-spouse Beneficiary, the Participant may elect a monthly survivor income benefit, in lieu of the lump sum payment, in an annual amount of 35% of the Participant's Final Average Salary. If death occurs after retirement but prior to age 65, survivor income will be paid for 180 months. If death occurs after age 65 but prior to age 75, monthly payments will be made until the end of the month in which the Participant would have been 80 years of age. If death occurs after age 75, 60 monthly payments will be made.

- 5.3 No Effect on Other Plans. Benefits payable under this Article V do not affect an eligible Participant's right to receive benefits under the Retirement Income Plan for Employees of El Paso Electric Company, or any other employee benefit plan or deferred compensation arrangement offered by the Company.
- 5.4 Beneficiary Designation. A Participant shall designate a Beneficiary, and a contingent Beneficiary, on a form to be provided by the Committee. The beneficiary designation may be changed by the Participant at any time. If the Participant fails to designate a Beneficiary or if the designated Beneficiary fails to survive the Participant, the death benefit payable under this Plan shall be paid to the Participant's estate in a lump sum which is the Actuarial Equivalent of the form of benefit selected by the Participant.



ARTICLE VI

Termination of Employment

- 6.1 No benefits or no further benefits shall be paid under this Plan to or on behalf of a Participant who terminates employment either voluntarily or involuntarily and engages in any substantive employment prior to the Participant's attainment of his Normal Retirement Age. For purposes of this Section 6.1, "substantive employment" shall mean any managerial or other comparable position with another employer in which the Participant receives compensation at an annual rate equal to 50% or more of the Participant's salary with the Company for the last full year immediately preceding the Participant's termination of employment. Notwithstanding the foregoing, the Committee may, in its sole discretion, waive the forfeiture requirements of this Section and authorize the payment of or the continuation of the payment of benefits.
- 6.2 No benefits shall be paid under this Plan to or on behalf of a Participant whose employment is terminated for an act of malfeasance or for criminal acts; who is demoted for unsatisfactory job performance, for an act of malfeasance or for criminal acts; or who dies while in the commission of a criminal act. Notwithstanding the foregoing, the Committee may, in its sole discretion, waive the forfeiture requirements of this Section and authorize the payment of benefits.

ARTICLE VII

Administration

- 7.1 The Committee shall be the Administrator of the Plan and shall have the following powers and responsibilities as Plan Administrator:
- (a) To determine benefit rights.
  - (b) To determine the manner of disbursement of benefits.
  - (c) To make rules and regulations as it may deem necessary to carry out the provisions of the Plan.
  - (d) To take all necessary steps as may be deemed advisable to 'internally' finance the Company's obligation under the Plan, including obtaining and modifying corporate owned life insurance.
  - (e) To employ actuaries, attorneys, accountants, and such other individuals as it shall deem necessary or desirable in the administration of the Plan, and to delegate to such actuaries, attorneys, accountants and other individuals such powers and responsibilities as it shall determine.
  - (f) To determine in accordance with uniform standards any question arising in the administration, interpretation and application of the Plan, such determination to be conclusive and binding to the extent the same shall not be plainly inconsistent with the terms of the Plan or any applicable law.
  - (g) To decide any disputes which may arise.
  - (h) To designate, consistent with sound standards, the actuarial basis to be used for all actuarial calculations.

Without limiting the generality of the foregoing, the Committee may allocate some or all of its powers and responsibilities as Plan Administrator as enumerated above to such individuals as it shall determine.

- 7.2 The Company, acting through its Board of Directors, shall have the power, in its uncontrolled discretion, to amend or terminate the Plan at any time but in no event shall any such amendment or termination relieve the Company of its obligations to provide benefits as provided under the Plan as of the date of such amendment or termination, nor shall any such amendment in any way reduce such benefits for current participants and beneficiaries who are currently entitled to receipt or receiving benefits.
- 7.3 Whenever the Company is required or authorized to exercise any powers hereunder, or whenever any discretion or activity is called for by the Committee, such action shall be taken by the Committee.

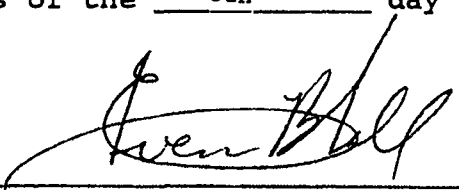
ARTICLE VIII

Miscellaneous

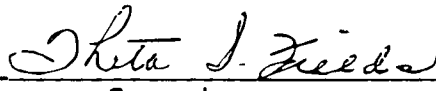
- 8.1 No benefit payable under this Plan, whether or not in payment status, shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber or to charge the same shall be void. No such benefit or interest shall be liable for or subject to the debts, contracts, liabilities or torts of the Participant or the Participant's Beneficiary entitled to any benefit or having any interest herein. If any Participant, former Participant, or Beneficiary becomes bankrupt or attempts to anticipate, alienate, sell, transfer, assign, pledge, encumber or charge any benefit under this Plan, the Company may, in its discretion, direct that any benefit to which such Participant, former Participant, or Beneficiary is entitled be terminated and that all future payments to which such person would otherwise be entitled be held and applied for the benefit of such person, his or her children or other dependents, or any of them, in such manner and in such proportion as the Company may deem proper.
- 8.2 In the event that the Committee finds that a Participant, former Participant, or Beneficiary is unable to care for his or her affairs because of illness or accident, any benefits payable hereunder may, unless claim has been made therefor by a duly appointed guardian, conservator or other legal representative, be paid to a spouse, child, parent, or other blood relative of such person, or to anyone found by the Company to have incurred expense for the support and maintenance of such Participant, former Participant or Beneficiary and any such payment made shall be a complete discharge of all liability of the Company under the Plan, to the extent of such payment.
- 8.3 Nothing in this Plan shall be construed as giving any Participant the right to be retained in the employee of the Company or the right to any payment whatsoever except to the extent of the benefits provided for in the Plan. The Company expressly reserves the right to dismiss any Participant at any time without liability for the effect which such dismissal might have upon any benefit to be paid thereunder.
- 8.4 It is expressly intended that the Plan shall not be funded by trust, insurance contract, or otherwise, to fulfill any supplementary retirement plan responsibilities which the Company may have under the Plan.

8.5 The provisions of the Plan shall be construed, administered and enforced according to the laws of the State of Texas. If any part of this Plan shall be held by the courts or by the Internal Revenue Service to be unlawful or unenforceable in whole or in part, such invalidity shall not affect the validity or enforceability of the remaining provisions of this Plan and the Company hereby declares that it would have established the Plan with all remaining valid provisions despite the invalidity of any portion.

IN WITNESS WHEREOF, and as conclusive evidence of the adoption of the Plan by the Board of Directors of the Company, the El Paso Electric Company has caused these presents to be executed by its duly authorized officer on its behalf and the Company's corporate seal to be hereunder affixed as of the 6th day of August, 1986.

By   
President & Chairman of the Board

ATTEST:

  
Secretary

EL PASO ELECTRIC COMPANY  
2021 TEXAS RATE CASE FILING  
SCHEDULE G-2: GENERAL EMPLOYEE BENEFIT INFORMATION  
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PREPARER: MYRNA A. ORTIZ  
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**RETIREMENT INCOME PLAN FOR EMPLOYEES OF  
EL PASO ELECTRIC COMPANY**

**(as Amended and Restated Effective January 1, 2020)**

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**ARTICLE 1**  
**ESTABLISHMENT OF PLAN**

1.1 **Amendment and Restatement of Plan.** Set forth in this document is the amendment and restatement of the Retirement Income Plan for Employees of El Paso Electric Company (the "Plan") effective January 1, 2020, except as provided herein or as otherwise required by applicable law. The Plan became effective July 1, 1945 and has previously been amended, and amended and restated, from time to time, as required by applicable law. The Plan was most recently amended and restated on January 27, 2016, effective January 1, 2016, and then subsequently amended (a) with the execution of the First Amendment to the Plan on December 12, 2016 to modify the definition of Base Pay (as defined in Section 2.10) for purposes of calculating pay credits to Cash Balance Accounts (as defined under Section 2.16) effective January 1, 2017, (b) with the execution of the Second Amendment to the Plan on June 5, 2017, effective April 1, 2014, when Cash Balance Benefits became available under the Plan with respect to certain post-March 31, 2014 benefit accruals under the Plan, to comply with requests made by the Internal Revenue Service (the "IRS") in connection with its issuance of the Plan's most recent favorable determination letter on May 18, 2017, (c) with the execution of the Third Amendment to the Plan on June 27, 2017 to use an equivalency method for calculating Hours of Service (as defined in Section 2.40) under the Plan beginning January 1, 2018, and (d) with the execution of the Fourth Amendment to the Plan on January 27, 2020 to add Separate Accounts (as defined in Section 14.1) under Internal Revenue Code ("Code") Section 401(h) to the Plan effective February 1, 2020 for the payment of post-retirement health and related administrative expenses for certain retired employees under the Plan (and their eligible spouses and dependents).

Consistent with IRS Notice 2019-20, this amendment and restatement of the Plan is intended to comply with applicable law, including those requirements in the 2017 Required Amendments List for Qualified Retirement Plans set forth in IRS Notice 2017-72, effective on the dates required by applicable law, and shall be construed accordingly.

1.2 **Purpose of Plan.** The purpose of the Plan is to reward eligible employees of El Paso Electric Company (the "Sponsor"), as determined herein, for their long and faithful service to the Sponsor by providing retirement benefits that are definitely determinable and not dependent on profits.

1.3 **Cash Balance Benefits.** The Cash Balance Benefit provisions of the Plan did not become effective until April 1, 2014. In connection with the implementation of the Plan's Cash Balance Benefit provisions, there was no conversion of pre-April 1, 2014 benefits to Cash Balance Benefits.

1.4 **Status of Plan.** The Plan is covered by the Employee Retirement Income Security Act of 1974 ("ERISA") and is intended to be a qualified defined benefit pension plan, within the meaning of Code Section 401(a). It shall be construed and administered in a manner consistent with applicable provisions of the Code and ERISA.

1.5 Trust Agreement. To implement the provisions of the Plan, the Sponsor has previously entered into a trust agreement creating the Trust (as defined in Section 2.82), such Trust being incorporated herein by reference and forming a part of the Plan. The Trust is intended to satisfy the requirements of Code Section 501(a) and shall be construed and administered in a manner consistent with this intent.

## ARTICLE 2 DEFINITIONS

The following words and terms shall have the meanings set forth below unless the context of their usage plainly indicates otherwise.

2.1 Accrued Benefit. In the case of a Cash Balance Member, a single life only annuity payable as of the Cash Balance Member's Normal Retirement Date that is Actuarially Equivalent, under the provisions of Section 2.2(e), to the Cash Balance Member's Cash Balance Account as of the determination date or, if the determination date is before the Cash Balance Member's Normal Retirement Date, a single life only annuity payable as of the Cash Balance Member's Normal Retirement Date that is Actuarially Equivalent, under the provisions of Section 2.2(e), to the Cash Balance Member's Cash Balance Account as of the determination date projected to the Cash Balance Member's Normal Retirement Date at the interest crediting rate under Section 2.16(b) as of the determination date plus, in the case of a Cash Balance Member who accrued benefits under the Plan prior to becoming a Cash Balance Member, the benefit that the Cash Balance Member accrued under the Plan prior to becoming a Cash Balance Member, as determined under the following provisions of this Section 2.1, where Average Monthly Earnings and Benefit Accrual Service are as defined in Sections 2.9 and 2.12, respectively. In the case of a Member, other than a Cash Balance Member, a single life only annuity payable as of a Member's Normal Retirement Date or Retirement Date, if later, equal to the product of 1.25 percent of his Average Monthly Earnings and his Benefit Accrual Service; provided, however, that a Member's Accrued Benefit shall not be less than the greatest of

(a) 1.5 percent of his Average Monthly Earnings as of October 17, 1990 multiplied by years of Projected Benefit Service as of October 17, 1990, less one percent of his Social Security Benefit, multiplied by his years of Projected Benefit Service limited to 45 years. This amount multiplied by the ratio of the number of his Benefit Accrual Service (determined only through October 17, 1990), to the number of his Projected Benefit Service produces the total value of this paragraph (a);

(b) \$25.00 multiplied by his years (not to exceed ten) of Projected Benefit Service at his retirement date. This amount multiplied by the ratio of the number of his Benefit Accrual Service to the number of his Projected Benefit Service produces the total value of this paragraph (b); or

(c) the amount of his June 30, 1982 monthly benefit payable in accordance with provisions of the Plan as of that date based on his Benefit Accrual Service at his retirement date and Average Monthly Earnings as of June 30, 1982.

**Offset for Benefits Provided Under Plan:** If a Member under the Plan is entitled to any benefit under group annuity contracts deemed purchased prior to August 1, 1989, including Equitable group annuity contracts 956, 1868, 1868A and 6660, then notwithstanding any other provision of the Plan, any benefits payable to such Member or his Beneficiary hereunder shall be subject to offset as described below.

Such Member's Accrued Benefit shall be computed as provided in this Section 2.1 less an amount equal to the amount of frozen benefits shown in Appendix A, which shall be paid under the applicable group annuity contract.

Hereinafter, a single life only annuity payable as of a Member's Normal Retirement Date is referred to as the "normal" form of benefit.

The Accrued Benefit of any Member with at least one Hour of Service in a Plan Year beginning after December 31, 1988 shall equal the greater of (a) the Member's Frozen Accrued Benefit (as defined in the following paragraph), or (b) the Member's Accrued Benefit calculated above based on the normal retirement benefit formula provided in Section 6.1.

"Frozen Accrued Benefit" means a Member's Accrued Benefit under the Plan determined as of the latest Fresh Start Date (as defined below in this Section 2.1) as if the Member terminated employment with the Employer on that date and without regard to any amendment to the Plan adopted after that date, other than amendments recognized as effective as of or before that date under Code Section 401(b) or Regulation Section 1.401(a)(4)-11(g).

If, as of the latest Fresh Start Date, the amount of a Member's Frozen Accrued Benefit was limited by the application of Code Section 415, the Member's Frozen Accrued Benefit will be increased for years after the latest Fresh Start Date to the extent permitted under Code Section 415(d)(1). If (a) the Plan's normal form of benefit in effect on the latest Fresh Start Date is not the same as the normal form under the Plan after the latest Fresh Start Date and/or (b) the Normal Retirement Age for any Member on that date was greater than the Normal Retirement Age for that Member under the Plan after the latest Fresh Start Date, the stated Frozen Accrued Benefit will be expressed as an actuarially equivalent benefit in the normal form under the Plan after the latest Fresh Start Date, commencing at the Member's Normal Retirement Age under the Plan in effect after the latest Fresh Start Date. Each Member's Frozen Accrued Benefit will be increased, to the extent necessary, so that the base benefit percentage, determined with reference to all years of credited service as of the latest Fresh Start Date, is not less than 50 percent of the excess benefit percentage as of the latest Fresh Start Date, determined with reference to all years of credited service as of the latest Fresh Start Date. Each Member's offset applied to determine the Frozen Accrued Benefit will be decreased, to the extent necessary, so that it does not exceed 50 percent of the benefit determined without applying the offset, taking into account all years of credited service as of the latest Fresh Start Date.

"Fresh Start Date" means the last day of the Plan Year preceding a Plan Year for which any amendment to the Plan that directly or indirectly affects the amount of a Member's benefit determined under the current benefit formula, is made effective.

Notwithstanding any other provision in the Plan, the Accrued Benefit of each Section 401(a)(17) Member (as defined below in this Section 2.1) under the Plan will be the greater of

(a) the Member's Accrued Benefit as of the last day of the last Plan Year beginning before January 1, 1994, frozen in accordance with Regulation Section 1.401(a)(4)-13, or

(b) the Member's Accrued Benefit determined with respect to the benefit formula applicable for the Plan Year beginning on or after January 1, 1994, as applied to the Member's total years of service taken into account under the Plan for purposes of benefit accruals.

A "Section 401(a)(17) Member" means a Member whose current Accrued Benefit, as of a date on or after the first day of the first Plan Year beginning on or after January 1, 1994, is based on compensation for a year beginning prior to the first day of the first Plan Year beginning on or after January 1, 1994 that exceeded \$150,000.

## 2.2 Actuarial Equivalent or Actuarially Equivalent.

(a) For purposes of annuity distributions under the Plan (that is, for purposes of converting single life only annuities to other forms of annuities, but not for purposes of converting Cash Balance Accounts to annuities), a benefit differing in time, period or manner of payment, from a specified annuity benefit provided under the Plan, but having the same value at the date of commencement of benefits when computed using the 1971 Group Annuity Mortality Table for males, set back three years, and an interest rate of six percent compounded annually.

(b) For lump sum distributions payable prior to December 31, 1999, the interest rate used for determining Actuarial Equivalence shall be the lesser of (1) the rates that would be used by the PBGC, as of the first day of the Plan Year in which a distribution occurs, for purposes of determining the present value of a Member's benefit under the Plan, or (2) six percent compounded annually.

(c) Notwithstanding the two preceding paragraphs of this Section 2.2, a lump sum distribution that becomes payable on or after January 1, 2000 will be the greater of the amount determined using the assumptions stated in Section 2.2(a) or the amount determined using the following assumptions:

**Mortality:** The "applicable mortality table" under Code Section 417(e)(3), which is the Commissioner's Standard Table used to determine reserves for group annuity contracts issued on the date as of which present value is being determined.

**Interest:** The "applicable interest rate" under Code Section 417(e)(3), determined as of the second month immediately preceding the first day of the Plan Year in which the distribution is being made and which is the annual interest rate on the 30-year Treasury



Securities for such month as specified by the Commissioner in revenue rulings, notices or other guidance published in the Internal Revenue Bulletin.

(d) Notwithstanding the foregoing, a lump sum distribution that becomes payable on or after January 1, 2008, shall be determined using the following assumptions:

Mortality: The "applicable mortality table" under Code Section 417(e)(3)(B).

Interest: The "applicable interest rate" under Code Section 417(e)(3)(C), determined as of the second month immediately preceding the first day of the Plan Year in which the distribution is being made.

(e) Notwithstanding the foregoing, and except as otherwise required by Section 11.14 upon termination of the Plan, (1) a single life only annuity, derived from a Member's benefit accrued under the Plan prior to becoming a Cash Balance Member, that becomes payable as a lump sum distribution on or after April 1, 2014, or (2) a Cash Balance Account (as determined under Section 2.16) that may be paid as a single life only annuity on or after April 1, 2014, shall be determined using the following assumptions:

Mortality: The "applicable mortality table" under Code Section 417(e)(3)(B).

Interest: The "applicable interest rate" under Code Section 417(e)(3)(C), determined as of the fifth month immediately preceding the first day of the Plan Year in which the distribution is being made.

A Cash Balance Member's early retirement Cash Balance Benefits under Section 6.1(b)(3) or deferred vested Cash Balance Benefits commencing prior to his Normal Retirement Date under Section 6.13 shall be equal to the Cash Balance Member's Accrued Benefit multiplied by the immediate annuity factor as of the Cash Balance Member's Normal Retirement Date, based on the Mortality and Interest specified in Section 2.2(e). This result is discounted from the Cash Balance Member's Normal Retirement Date to the Cash Balance Member's Benefit Commencement Date at the interest crediting rate under Section 2.16(b) as of the Benefit Commencement Date, and then divided by the immediate annuity factor as of the Cash Balance Member's Benefit Commencement Date, based on the Mortality and Interest specified in this Section 2.2(e).

**2.3 Affiliated Employer.** The following entities, other than an Employer: (a) any member of a controlled group of corporations (within the meaning of Code Section 414(b)) that includes the Employer; (b) any incorporated or unincorporated trade or business that is under common control (within the meaning of Code Section 414(c)) with the Employer; (c) any organization, whether or not incorporated, that is a member of an affiliated service group (within the meaning of Code Section 414(m)) that includes the Employer; and (d) any other entity required to be aggregated with the Employer under Code Section 414(o).

2.4 AFTAP. The Plan's adjusted funding target attainment percentage, as defined in Regulation Section 1.436-1(j)(i).

2.5 Alternate Payee. An Alternate Payee as defined in Code Section 414(p)(8).

2.6 Annual Compensation. For purposes of Article 10, compensation within the meaning of Code Section 415(c).

2.7 Authorized Leave of Absence. An unpaid, temporary cessation from active employment authorized by the Employer pursuant to an established uniform, nondiscriminatory policy, whether occasioned by illness, military service or any other reason.

2.8 Average Annual Compensation. For purposes of Article 10, a Member's Compensation (as modified by Regulation Sections 1.415-2(d)(1) and (2)) averaged over his consecutive years of Benefit Accrual Service with the Employer (not to exceed five) during which he earned his highest Compensation.

2.9 Average Monthly Earnings. Except as provided in the following two paragraphs with respect to Cash Balance Members, the monthly average of a Member's annualized rate of basic compensation (excluding bonuses, overtime pay, expense allowances, profit sharing and any other extra compensation such as supplemental payments and other extra compensation in any form) as of any date and for each of the days beginning the four years preceding such date. Such average shall be computed by dividing the total of the Member's annualized rate of basic compensation for the five years by 60. If a Member has less than five years of service from his date of employment to his date of termination, his Average Monthly Earnings will be based on his annualized rate of basic compensation during his years of service from his date of employment to his date of termination. Compensation subsequent to termination of participation shall not be recognized.

The Average Monthly Earnings of a Cash Balance Member who had an Accrued Benefit under the Plan as of March 31, 2014, but who was no longer employed by the Employer as of March 31, 2014, shall be the Cash Balance Member's Average Monthly Earnings as of his most recent employment termination date preceding March 31, 2014, and in no event shall his Average Monthly Earnings increase after March 31, 2014 (so that, in no event shall his Accrued Benefit, other than a Cash Balance Benefit (as determined under Section 2.16), increase as a result of increases in his Average Monthly Earnings after March 31, 2014).

The Average Monthly Earnings of a Cash Balance Member (a) who is employed by the Employer as of April 1, 2014 (other than a Cash Balance Member who is hired or re-hired after December 31, 2013 and before April 1, 2014), and (b) who becomes a Cash Balance Member in the Plan as of April 1, 2014 in accordance with Section 3.1 (whether or not such Cash Balance Member had become a Member in the Plan in accordance with Section 3.1 prior to December 31, 2013), shall be the monthly average of the Cash Balance Member's annualized rate of basic compensation (excluding bonuses, overtime pay, expense allowances, profit sharing and any other extra compensation such as supplemental payments and other extra compensation in any form) as of March 31, 2014 and as of March 31 of the preceding four calendar years.

Such average shall be computed by dividing the total of the Cash Balance Member's annualized rate of basic compensation for the five years by 60. If the Cash Balance Member has less than five years of service from his date of employment to March 31, 2014, his Average Monthly Earnings will be based on his annualized rate of basic compensation during his years of service from his date of employment to March 31, 2014. In no event shall the Average Monthly Earnings of a Cash Balance Member described in the first sentence of this paragraph increase after March 31, 2014 (so that, in no event shall his Accrued Benefit, other than a Cash Balance Benefit (as determined under Section 2.16), increase as a result of increases in his Average Monthly Earnings after March 31, 2014).

For any Plan Year beginning after December 31, 1988, the Committee must take into account only the first \$200,000 (or such larger amount as the Commissioner may prescribe under Code Section 401(a)(17)) of any Member's annualized rate of basic compensation.

In addition to other applicable limitations set forth in the Plan, and notwithstanding any other provision of the Plan to the contrary, for Plan Years beginning on or after January 1, 1994, the Compensation of each Member taken into account under the Plan shall not exceed the OBRA '93 Annual Compensation Limit. The "OBRA '93 Annual Compensation Limit" is \$150,000, as adjusted for increases in the cost of living in accordance with Code Section 401(a)(17)(B). The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which Compensation is determined ("Determination Period") beginning in such calendar year. If a Determination Period consists of fewer than 12 months, the OBRA '93 Annual Compensation Limit will be multiplied by a fraction, the numerator of which is the number of months in the Determination Period, and the denominator of which is 12.

Any reference in the Plan to the limitation under Code Section 401(a)(17) shall mean the "OBRA '93 Annual Compensation Limit" set forth in this Section 2.9.

If Compensation for any prior Determination Period is taken into account in determining a Member's benefits accruing in the current Plan Year, Compensation for that prior Determination Period is subject to the OBRA '93 Annual Compensation Limit in effect for that prior Determination Period. For this purpose, for Determination Periods beginning before the first day of the first Plan Year beginning on or after January 1, 1994, the OBRA '93 Annual Compensation Limit is \$150,000.

Notwithstanding the foregoing, effective as of January 1, 2002, the annual Compensation of each Member taken into account in determining benefit accruals for any Plan Year shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with Code Section 401(a)(17)(B). Annual compensation means compensation during the Plan Year or any such other consecutive 12-month period over which compensation is otherwise determined under the Plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.

**2.10 Base Pay.** Base Pay is used to calculate pay credits to the Cash Balance Accounts of Cash Balance Members under Section 2.16(a).

(a) Definition of Basic Compensation Used to Determine Base Pay. In determining Base Pay under this Section 2.10, a Cash Balance Member's "Basic Compensation" means the Cash Balance Member's basic compensation (excluding bonuses, overtime pay, expense allowances, profit sharing, supplemental payments and any other extra compensation in any form), prior to deductions.

(b) Base Pay if Cash Balance Member Employed throughout the Entire Plan Year. In the case of a Cash Balance Member who is an Employee throughout the entire Plan Year, Base Pay is determined by dividing the Cash Balance Member's Basic Compensation, determined as of the last day of each calendar month within the Plan Year, by 12, and then adding the results of these 12 calculations to arrive at the Cash Balance Member's Base Pay for the Plan Year.

Example – Employment throughout the Entire Plan Year. For a Cash Balance Member who is an Employee throughout the entire Plan Year, if the Cash Balance Member's Basic Compensation as of the last day of January, February, March, April, May, June and July of the Plan Year is \$30,000, before the Cash Balance Member's Basic Compensation is raised to \$35,000 in August, on or before the last day of August, and the Cash Balance Member's Basic Compensation is \$35,000 as of the last day of August, September, October, November and December of the Plan Year, such Cash Balance Member's Base Pay would be \$32,083.35, calculated as \$17,500.00 (\$30,000.00 divided by 12 months in the calendar year (to obtain \$2,500.00) multiplied by the seven months of January through July) *plus* \$14,583.35 (\$35,000.00 divided by 12 months in the calendar year (to obtain \$2,916.67) multiplied by the five months of August through December).

(c) Base Pay if Cash Balance Member Not Employed throughout the Entire Plan Year. In the case a Cash Balance Member who is not an Employee throughout the entire Plan Year (if, for example, his Employment Commencement Date or his Re-Employment Commencement Date is after the first day of the Plan Year, or if he terminates employment with the Employer before the last day of the Plan Year), Base Pay for the Plan Year is the sum of the amounts determined under the following three paragraphs, as applicable:

(1) for those calendar months within the Plan Year during which the Cash Balance Member is employed for the entire month, the amount determined by dividing the Cash Balance Member's Basic Compensation, determined as of the last day of each such calendar month, by 12, and then adding the results of these separate calculations for each of the calendar months within the Plan Year during which the Cash Balance Member is an Employee for the entire month;

(2) for any calendar month within the Plan Year in which the Cash Balance Member's Employment Commencement Date or his Re-Employment Commencement Date occurs, the result obtained by dividing the Cash Balance Member's Basic Compensation, determined as of the last day of such calendar month, by 12, and then multiplying the result

thereof by a fraction, the numerator of which is the number of days in such month during which he is an Employee and the denominator of which is the total number of days in such month; and

(3) for any calendar month within the Plan Year in which the Cash Balance Member terminates employment with the Employer, the result obtained by dividing the Cash Balance Member's Basic Compensation, determined as of his employment termination date, by 12, and then multiplying the result thereof by a fraction, the numerator of which is the number of days in such month during which he is an Employee and the denominator of which is the total number of days in such month.

The first example below illustrates the Base Pay calculation for a Cash Balance Member whose Employment Commencement Date or Re-Employment Commencement Date occurs after the first day of the Plan Year. The second example below illustrates the Base Pay calculation for a Cash Balance Member who terminates employment with the Employer before the last day of the Plan Year. In the case of a Cash Balance Member whose Employment Commencement Date or Re-Employment Commencement Date occurs after the first day of the Plan Year and who terminates employment with the Employer before the last day of the Plan Year, his Base Pay would be calculated taking into account the principles illustrated under both of the examples below.

Example – Employment Commencement Date or Re-Employment Commencement Date After First Day of Plan Year. For an Employee who is a Cash Balance Member, whose Employment Commencement Date or Re-Employment Commencement Date is March 5 of the Plan Year, whose Basic Compensation is \$30,000 as of the last day of March, April, May and June, before his Basic Compensation is raised to \$35,000 in July, on or before the last day of July, so that his Basic Compensation is \$35,000.00 as of the last day of July, August, September, October, November and December, and who continues his employment with the Employer throughout the remainder of the Plan Year, such Cash Balance Member's Base Pay would be \$27,177.44, calculated as (1) consistent with Section 2.10(c)(2) for the month of March, \$2,177.42 (\$30,000.00 divided by 12 months in the calendar year (to obtain \$2,500.00), multiplied by a fraction, the numerator of which is 27 (the number of days in March during which the Cash Balance Member is an Employee) and the denominator of which is 31 (the total number of days in March), plus (2) consistent with Section 2.10(c)(1) for the months of April through December, \$25,000.02, calculated as \$7,500.00 (\$30,000.00 divided by 12 months in the calendar year (to obtain \$2,500.00) multiplied by the three months of April, May and June) plus \$17,500.02 (\$35,000.00 divided by 12 months in the calendar year (to obtain \$2,916.67) multiplied by the six months of July through December).

Example – Employment Termination Date Before Last Day of Plan Year. For a Cash Balance Member who is an Employee from the first day of the Plan Year until he terminates employment with the Employer on September 8 of the Plan Year, whose Basic Compensation is \$30,000 as of the last day of January, February, March, April, May, June and July, before his Basic Compensation is raised to \$35,000 in August, on or before the last day of August, and his Basic Compensation is \$35,000.00 as of the last day of August and as of his employment termination date on September 8, such Cash Balance Member's Base Pay would be \$21,194.45, calculated as (1) consistent with Section 2.10(c)(1) for the months of January

through August, \$20,416.67, calculated as \$17,500 (\$30,000.00 divided by 12 months in the calendar year (to obtain \$2,500), multiplied by the seven months of January through July), plus \$2,916.67 for the month of August (\$35,000.00 divided by 12 months in the calendar year (to obtain \$2,916.67), multiplied by the one month of August), *plus* (2) consistent with Section 2.10(c)(3) for the month of September, \$777.78 (\$35,000.00 divided by 12 months in the calendar year (to obtain \$2,916.67), multiplied by a fraction, the numerator of which is eight (the number of days in September during which the Cash Balance Member is an Employee) and the denominator of which is 30 (the total number of days in September).

(d) Limitation on Base Pay. For each Plan Year, a Cash Balance Member's annual Base Pay taken into account in calculating pay credits to his Cash Balance Account (as described under Section 2.16) shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with Code Section 401(a)(17)(B).

2.11 Beneficiary. A person or persons (natural or otherwise) designated by a Member in accordance with the provisions of Section 9.1 to receive any death benefit payable under the Plan.

2.12 Benefit Accrual Service. Except as provided in Section 6.1(d)(1) for purposes of the 1989 Special Supplement program under Section 6.1(c), and except as provided in the final paragraph of this Section 2.12 with respect to Cash Balance Members, each Member shall be credited with a year of Benefit Accrual Service in any Plan Year during which he completes at least 1,000 Hours of Service for the Employer. Except as provided in the final paragraph of this Section 2.12, the Plan takes into account years of service an Employee completes with the Employer, including, in accordance with Section 6.14, certain years of service prior to his Normal Retirement Date or Re-Employment Commencement Date during which a Member is considered Disabled, except

(a) If a Member with a zero percent Vested Accrued Benefit incurs a Break in Service, the Committee shall disregard his Benefit Accrual Service before the Break in Service if the number of the Employee's consecutive Breaks in Service equals or exceeds the greater of five or the aggregate number of the Employee's years of service prior to the Break in Service. The aggregate number of years of service before the Break in Service does not include any years of service not required to be taken into account under this exception by reason of any prior Break in Service. (See Section 6.4 for the manner in which the Cash Balance Account of a Cash Balance Member will be handled if a Cash Balance Member with a zero percent Vested Accrued Benefit incurs a Break in Service.)

(b) If a Member with a 100 percent Vested Accrued Benefit receives a lump sum distribution of the Actuarial Equivalent of his Accrued Benefit, whether by retirement or otherwise, his Benefit Accrual Service shall be disregarded immediately after such receipt. If no such distribution was received or if Section 6.3 applies, upon re-employment, his Benefit Accrual Service shall be reinstated to that to which he was entitled prior to his separation from service. (See Section 6.5 for the manner in which the Cash Balance Account of a Cash Balance Member will be handled if a Cash Balance Member with a 100 percent Vested Accrued Benefit

receives a lump sum distribution of his Cash Balance Account, whether by retirement or otherwise.)

Prior to January 1, 1989, a Member shall be entitled to Benefit Accrual Service in accordance with the terms of the Plan in effect prior to that date.

A Cash Balance Member (other than a Cash Balance Member who is hired or re-hired after December 31, 2013 and before April 1, 2014) who completes at least one Hour of Service with the Employer during the period beginning January 1, 2014 and ending March 31, 2014 (whether or not such Cash Balance Member had become a Member in the Plan in accordance with Section 3.1 prior to December 31, 2013) shall receive credit for 0.25 year of Benefit Accrual Service for the 2014 Plan Year. In no event shall a Cash Balance Member's Benefit Accrual Service, as determined under the provisions of this Section 2.12, increase after March 31, 2014 (so that, in no event shall his Accrued Benefit, other than a Cash Balance Benefit (as determined under Section 2.16), increase as a result of increases in his Benefit Accrual Service after March 31, 2014), subject to the following exception. A Member whose employment terminated due to Disability at a time when the Member was not a Cash Balance Member, who is removed from the disability roll by reason of ceasing to be incapacitated, and is returned to active employment, may receive post-March 31, 2014 Benefit Accrual Service in accordance with Section 6.14.

**2.13 Benefit Commencement Date.** The date on which a Member's benefit payments commence under the Plan. The Benefit Commencement Date of a Member who dies after his Normal Retirement Age but prior to receiving benefits under the Plan shall be the first day of the month following his date of death.

**2.14 Board.** The Board of Directors of El Paso Electric Company or any committee of the Board authorized to act on its behalf.

**2.15 Break in Service.** A Member's failure to complete at least 501 Hours of Service with the Employer during any Plan Year. This Break in Service concept has no application to Members who are Vested upon termination of employment. Solely for purposes of determining whether a Member has incurred a Break in Service, Hours of Service shall be recognized for Authorized Leaves of Absence and Maternity or Paternity Leaves. The Hours of Service credited for a Maternity or Paternity Leave shall be those that would normally have been credited but for such Absence, or in any case in which the Committee is unable to determine the hours normally credited, eight Hours of Service per business day. The total Hours of Service credited for a Maternity or Paternity Leave shall not exceed 501. For this purpose, Hours of Service shall be credited for the computation period in which the absence from work begins, only if credit is necessary to prevent a Member from incurring a Break in Service, or in any other case, in the immediately following computation period.

**2.16 Cash Balance Benefits; Cash Balance Accounts.** Cash Balance Benefits are benefits provided to Cash Balance Members hereunder that are expressed as Cash Balance Accounts consisting of pay credits determined under Section 2.16(a) and interest credits determined under Section 2.16(b). Under Sections 2.16(a) and 2.16(b), which provide for pay

credits and interest credits based on an interest crediting rate not below 3.8 percent for the Plan Year, compounded monthly, and consistent with Code Section 411(b)(5)(B)(i)(II), a Cash Balance Member's Cash Balance Account as of the Member's annuity starting date shall be no less than the sum of the pay credits to such Cash Balance Member's Cash Balance Account, reduced to reflect the value of any prior distributions from such Cash Balance Member's Cash Balance Account. This requirement applies only as of an annuity starting date as of which a distribution of the Cash Balance Member's entire remaining vested benefit under the Plan commences.

(a) Pay Credits. For each Plan Year beginning January 1, 2014 and thereafter, each Cash Balance Member who is employed by the Employer on the last day of the Plan Year shall receive a pay credit to his Cash Balance Account as of the last day of the Plan Year, as determined under the Pay Credit Chart set forth in this Section 2.16(a), based on the sum of the Cash Balance Member's attained age (expressed in whole years) plus his completed Years of Vesting Service (also expressed in whole years) as of the last day of the Plan Year. For each Plan Year beginning January 1, 2014 and thereafter, each Cash Balance Member who terminates employment with the Employer prior to the last day of the Plan Year shall receive a pay credit to his Cash Balance Account as of the last day of the month coinciding with or immediately following the Cash Balance Member's employment termination date, as determined under the Pay Credit Chart set forth in this Section 2.16(a), based on the sum of the Cash Balance Member's attained age (expressed in whole years) plus his completed Years of Vesting Service (also expressed in whole years) as of his employment termination date.

Pay Credit Chart

Cash Balance Member's Age Plus Years of Vesting Service	Percentage of Cash Balance Member's Base Pay for the Plan Year
Less than 30	
30 – 39	3.00%
40 – 49	4.00%
50 – 59	5.00%
60 – 69	6.00%
70 – 79	7.00%
80 or More	8.00%
	9.00%

For the avoidance of doubt, the opening balance of a Cash Balance Member's Cash Balance Account, prior to the first pay credit being made to his Cash Balance Account under this Section 2.16(a) (which in no event shall be prior to the 2014 Plan Year) shall be zero.

(b) Interest Credits. Each Cash Balance Member who has a balance in his Cash Balance Account shall receive an interest credit to his Cash Balance Account as of the last day of each month, based on the balance of his Cash Balance Account as of the last day of the preceding month, beginning as of the last day of the month following the month in which the



Cash Balance Member receives the first pay credit to his Cash Balance Account under Section 2.16(a), and ending as of the last day of the month preceding the first to occur of the following: (1) the first day of the month as of which the Cash Balance Member or his Spouse or Beneficiary, as applicable, receives an involuntary cash out distribution in accordance with Section 6.2, (2) the first day of the month as of which the Cash Balance Member or his Spouse or Beneficiary, as applicable, receives a lump sum distribution under Section 6.8 or 6.11, or (3) the first day of the month as of which the Cash Balance Member's or his Spouse's or Beneficiary's, as applicable, pension commences under Section 6.8 or 6.11. Except as otherwise required by Section 11.14 upon termination of the Plan, interest credits shall be calculated by multiplying the value of the Cash Balance Member's Cash Balance Account as of the last day of the preceding month (taking into account pay credits under Section 2.16(a) and interest credits under this Section 2.16(b) through the last day of the preceding month) by the Thirty-Year Treasury Bond Rate for the month; provided, however, that in no event shall the interest crediting rate be below 3.8 percent for the Plan Year, compounded monthly. For purposes of the preceding sentence, the "Thirty-Year Treasury Bond Rate" for each month shall be the rate, which, when compounded monthly for the 12 months of the Plan Year, is equal to the Nominal Thirty-Year Treasury Constant Maturity, as reported in the Federal Reserve Bulletin for the fifth month preceding the Plan Year.

2.17 Code. As defined in Section 1.1, the Internal Revenue Code, as it may be amended from time to time, and regulations issued thereunder. Reference to a section of the Code shall include that section and any comparable section or sections of future legislation that amends, supplements or supersedes such section, and any regulations issued thereunder.

2.18 Commissioner. The Commissioner of the Internal Revenue Service.

2.19 Committee. The persons appointed by the Board to assist in the administration of the Plan. The Committee is the Benefits Oversight Committee or any successor committee appointed by the Board.

2.20 Compensation. Except as provided in Section 6.16 with respect to Code Section 415 limitations, a Member's Compensation as shown on his Form W-2 for federal income tax withholding purposes and any amounts that are contributed by the Employer pursuant to a salary reduction agreement and that are not includable in the gross income of an Employee under Code Section 125, 402(e)(3), 402(h) or 403(b). For Plan Years beginning on or after January 1, 2001, Compensation shall include amounts that are not includable in the gross income of the Employee by reason of Code Section 132(f)(4). Compensation shall be measured on the basis of the Plan Year. The limitations on the amount of annual compensation described in Section 2.9 are relevant under this Section 2.20.

Effective January 1, 2009, differential wage payments (as defined in Code Section 3401(h)(2)) will be included in a Member's Compensation, provided that all employees of the Employer on active duty in the uniformed services (as defined in Chapter 43 of Title 38 of the United States Code) for a period of more than 30 days are determined by the Committee to receive differential wage payments on reasonably equivalent terms and, if eligible to participate

in a retirement plan maintained by the Employer, to make contributions based on the differential wage payments on reasonably equivalent terms.

2.21 Designated Beneficiary. For purposes of Section 7.6, 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.

2.22 Determination Date. For purposes of Article 10, with respect to any Plan Year, the last day of the preceding Plan Year.

2.23 Direct Rollover. For purposes of Section 7.8, Direct Rollover as described in Section 7.8(d).

2.24 Disability or Disabled. A period in which a Member is eligible for and is receiving disability benefits under the federal Social Security Act.

2.25 Distributee. For purposes of Section 7.8, Distributee as described in Section 7.8(c).

2.26 Distribution Calendar Year. For purposes of Section 7.6, a calendar year for which a minimum distribution is required. For distributions beginning before the Member's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year that includes the Member's Required Beginning Date. For distributions beginning after the Member's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin under Section 7.6(d)(4)(B). The required minimum distribution for the Member's first Distribution Calendar Year will be made on or before the Member'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 Member's Required Beginning Date occurs, will be made on or before December 31<sup>st</sup> of that Distribution Calendar Year.

2.27 Early Retirement Date. For a Member, other than a Cash Balance Member, the date on which the Member has attained age 55 and completed five Years of Vesting Service, or, for a Cash Balance Member, the date on which the Member has attained age 55 and completed three Years of Vesting Service.

2.28 Effective Date. For purposes of Article 12, the first day of the Plan Year in which the Employer initially established the Plan.

2.29 Eligibility Computation Period. The 12-consecutive-month period measured from an Employee's Employment Commencement Date and each anniversary thereof.

2.30 Eligible Member. Eligible Member, as defined in Section 6.1(d)(2) for purposes of Section 6.1(c).

2.31 Eligible Retirement Plan. For purposes of Section 7.8, Eligible Retirement Plan as described in Section 7.8(b).

2.32 Eligible Rollover Distribution. For purposes of Section 7.8, Eligible Rollover Distribution as described in Section 7.8(a).

2.33 Employee. An employee who is receiving remuneration for personal services rendered to the Employer (or who, were it not for being on an Authorized Leave of Absence, would be receiving such remuneration). Employee shall also include Leased Employees.

Notwithstanding the preceding paragraph, a Leased Employee shall not be considered to be an Employee of the Employer if

(a) Leased Employees do not constitute more than 20 percent of the Employer's non-highly compensated workforce, and

(b) such employee is covered by a money purchase pension plan providing

(1) a nonintegrated employer contribution rate of at least ten percent of Compensation as defined in Code Section 414(n)(5)(C)(iii),

(2) immediate participation, and

(3) full and immediate Vesting.

2.34 Employer. Except as otherwise provided in the Plan, El Paso Electric Company and any other organization that may in the future, with the consent of El Paso Electric Company, adopt the Plan for the benefit of its eligible employees, and any successor of either that shall assume the obligations under the Plan.

2.35 Employment Commencement Date. The date on which an Employee first performs an Hour of Service.

2.36 ERISA. As defined in Section 1.4, the Employee Retirement Income Security Act of 1974, as it may be amended from time to time, and regulations issued thereunder. Reference to a section of ERISA shall include that section and any comparable section or sections of future legislation that amends, supplements or supersedes such section, and any regulations issued thereunder.

2.37 Fiduciary. One who is a Fiduciary under ERISA Section 3(21) but only with respect to the specific responsibilities of the Fiduciary. Fiduciaries under the Plan include, but are not limited to (a) the Sponsor, (b) the Employer, (c) the Committee, (d) the Trustee and (e) any Investment Manager appointed hereunder.

2.38 Five Percent Owner. A Five Percent Owner as defined in Code Section 416(i)(1).

**2.39 Highly Compensated Employee.** Any Employee or former Employee who is a Highly Compensated Employee as defined in Code Section 414(q). Generally, an Employee or former Employee is considered a Highly Compensated Employee if such Employee or former Employee is in one or more of the following groups:

(a) Employees who at any time during the determination year or the look back year were Five Percent Owners.

(b) Employees who, during the look back year

(1) received Compensation in excess of \$80,000 (or such other amount as adjusted by the Secretary of the Treasury to reflect cost-of-living increases in accordance with Code Section 414(q)(1)), and

(2) were in the Top Paid Group of Employees for the look back year.

The "determination year" is the Plan Year, and the "look back year" is the 12-month period preceding the determination year.

A former Employee shall be treated as a Highly Compensated Employee if (1) such former Employee was a Highly Compensated Employee when he separated from service, or (2) such former Employee was a Highly Compensated Employee at any time after attaining age 55.

**2.40 Hour of Service.**

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

(b) Each hour for which an Employee is paid, or entitled to payment, by the Employer on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or Authorized Leave of Absence. No more than 501 Hours of Service shall be credited under this Section 2.40(b) for any single continuous period (whether or not such period occurs in a single computation period). Hours under this Section 2.40(b) shall be calculated and credited pursuant to Department of Labor Regulation Section 2530.200b-2, which is incorporated herein by reference.

(c) Each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Employer. The same Hours of Service shall not be credited both under Section 2.40(a) or (b), as the case may be, and under this Section 2.40(c). These hours shall be credited to an 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.

(d) Under the equivalency based on months of employment method set forth in Regulation Section 2530.200b-3(e)(iv), 190 Hours of Service shall be credited for each month for which an Employee would be required to be credited with at least one Hour of Service under this Section 2.40.

(e) An Hour of Service with an Affiliated Employer shall be credited as an Hour of Service with the Employer.

(f) Hours of Service also shall be credited for any individual considered an Employee for purposes of this Plan under Code Section 414(n).

(g) The above provisions shall be construed so as to resolve any ambiguities in favor of crediting Employees with Hours of Service.

2.41 Investment Manager. Any person, firm or corporation who

(a) is a registered investment adviser under the Investment Advisers Act of 1940, a bank or an insurance company;

(b) has the power to manage, acquire or dispose of Plan assets; and

(c) acknowledges in writing his fiduciary responsibility to the Plan.

2.42 IRS. As defined in Section 1.1, the Internal Revenue Service.

2.43 Key Employee. For purposes of Article 10, an Employee or former Employee (including any deceased Employee) who is a Key Employee as defined in Code Section 416(i)(1). Generally, an Employee or former Employee (including any deceased Employee) is considered a Key Employee if at any time during the Plan Year that includes the Determination Date he is included in one or more of the following groups: (a) an Officer, (b) a Five Percent Owner or (c) a One Percent Owner.

2.44 Leased Employee. Any person (other than an Employee of the Employer) who pursuant to an agreement between the Employer and any other person ("leasing organization") has performed services for the Employer or an Affiliated Employer on a substantially full-time basis for a period of at least one year, where such services are performed under the primary direction or control of the Employer. Contributions or benefits provided to a Leased Employee by the leasing organization that are attributable to services performed for the Employer shall be treated as provided by the Employer.

2.45 Life Expectancy. For purposes of Section 7.6, Life Expectancy as computed by use of the Single Life Table in Regulation Section 1.401(a)(9)-9.

2.46 Limitation Year. The Plan Year.

**2.47 Maternity or Paternity Leave.** 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 the child, or any absence for the purpose of caring for the child for a period immediately following 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 Break in Service, or in any other case, in the immediately following computation period. The Hours of Service credited for a Maternity or Paternity Leave shall be those that would normally have been credited but for the Absence, or in any case in which the Committee is unable to determine the hours normally credited, eight Hours of Service per day. The total Hours of Service to be credited for a Maternity or Paternity Leave shall not exceed 501.

**2.48 Member; Cash Balance Member.** An Employee who has satisfied the eligibility requirements to participate in the Plan pursuant to Section 3.1 and who has an Accrued Benefit under the Plan. Effective April 1, 2014 and thereafter, the Plan covers the following two groups of Members: Cash Balance Members and Members other than Cash Balance Members. Cash Balance Members consist of Members (a) who are hired or re-hired by the Employer on or after April 1, 2014 and who become Cash Balance Members under Section 3.1; (b) who are hired or re-hired by the Employer after December 31, 2013 and before April 1, 2014 and who become Cash Balance Members on April 1, 2014 under Section 3.1; and (c) who are hired or re-hired by the Employer on or before December 31, 2013, who affirmatively elect to accrue Cash Balance Benefits under the Plan with respect to their post-March 31, 2014 employment with the Employer, and who become Cash Balance Members on April 1, 2014 under Section 3.1. Some Cash Balance Members have Cash Balance Benefits as well as other Accrued Benefits under the Plan. Unless they may later become Cash Balance Members as described in the preceding provisions of this Section 2.48, Members other than Cash Balance Members consist of (a) Members whose employment with the Employer terminated prior to December 31, 2013 (including certain Disabled Members, consistent with the provisions of Sections 2.12 and 6.14), (b) Employees who are Members on December 31, 2013 and who do not affirmatively elect, during the period beginning January 13, 2014 and ending February 28, 2014, and in accordance with procedures established by the Committee, to accrue Cash Balance Benefits with respect to their post-March 31, 2014 employment with the Employer, and (c) Employees of the Employer on December 31, 2013, who are not Members, and who do not affirmatively elect, during the period beginning January 13, 2014 and ending February 28, 2014, and in accordance with procedures established by the Committee, to accrue Cash Balance Benefits with respect to their post-March 31, 2014 employment with the Employer, but who later satisfy the eligibility requirements (including the Year of Eligibility Service requirement) to become a Member, other than a Cash Balance Member, under Section 3.1. Where appropriate in the context, Members shall include (a) Cash Balance Members and Members other than Cash Balance Members, and (b) former Members.

**2.49 Member's Account Balance.** For purposes of Section 7.6, the account balance as of the last valuation date in the Valuation Calendar Year increased by the amount of any contributions made and allocated or forfeitures allocated to the account balance as of dates in the Valuation Calendar Year after the valuation date and decreased by distributions made in the Valuation Calendar Year after the valuation date. The account balance for the Valuation

Calendar Year includes any amounts rolled over or transferred to the Plan either in the Valuation Calendar Year or in the Distribution Calendar Year if distributed or transferred in the Valuation Calendar Year.

2.50 Minimum Normal Retirement Benefit. For purposes of Article 10, Minimum Normal Retirement Benefit as described in Section 10.1(f).

2.51 New 25 Employees. For purposes of Article 12, New 25 Employees as defined in Section 12.5.

2.52 Non-Key Employee. For purposes of Article 10, any Employee or former Employee (including any deceased Employee) who is not a Key Employee.

2.53 Normal Retirement Age. The date a Member attains age 65 or, if later, his fifth anniversary of commencement of participation in the Plan.

2.54 Normal Retirement Date. The first day of the month coinciding with or next following a Member's separation from service with the Employer after attaining Normal Retirement Age. For a Member separating from service with the Employer prior to attaining Normal Retirement Age, Normal Retirement Date means the first day of the month coinciding with or next following his attainment of Normal Retirement Age.

2.55 Officer. For purposes of Article 10, an officer of the Employer as defined in Code Section 416(i)(1) with Annual Compensation from the Employer and Affiliated Employers of more than \$130,000, as adjusted under Code Section 416(i)(1).

2.56 One Percent Owner. For purposes of Article 10, a One Percent Owner as defined in Code Section 416(i)(1) with Annual Compensation from the Employer and Affiliated Employers of more than \$150,000.

2.57 Original 25 Employees. For purposes of Article 12, Original 25 Employees as defined in Section 12.4.

2.58 PBGC. The Pension Benefit Guaranty Corporation.

2.59 Permissive Aggregation Group. For purposes of Article 10, Permissive Aggregation Group as described in Section 10.1(d).

2.60 Plan. The Retirement Income Plan for Employees of El Paso Electric Company, as defined in Section 1.1 and as amended from time to time.

2.61 Plan Administrator. The Committee described in Section 2.19.

2.62 Plan Year. The Plan's 12-consecutive-month accounting year commencing each January 1<sup>st</sup> and ending the following December 31<sup>st</sup>.

**2.63 Present Value of Accrued Benefits.** For purposes of Article 10, Present Value of Accrued Benefits as described in Section 10.1(b).

**2.64 Projected Benefit Service.** A Member's Benefit Accrual Service as of January 1, 1989 and, if such date is prior to his Normal Retirement Date, the additional Benefit Service he would be expected to accrue from such date if he continued in the employ of the Employer until his Normal Retirement Date.

**2.65 QDRO.** A qualified domestic relations order as defined in Code Section 414(p)(1)(A).

**2.66 Qualified Joint and Survivor Annuity.** For a Member who is married to the same Spouse for at least a one-year period, an annuity for the life of the Member with a survivor annuity for the life of his surviving Spouse that is equal to 50 percent of the amount of the annuity that is payable during the joint lives of the Member and the surviving Spouse and that is the Actuarial Equivalent of the single life only annuity that expresses the Member's Accrued Benefit. For an unmarried Member, Qualified Joint and Survivor Annuity means the annuity that expresses his Accrued Benefit.

**2.67 Qualified Optional Survivor Annuity.** For a Member who is married to the same Spouse for at least a one-year period, an annuity for the life of the Member with a survivor annuity for the life of his surviving Spouse that is equal to 75 percent of the amount of the annuity that is payable during the joint lives of the Member and the surviving Spouse and that is the Actuarial Equivalent of the single life only annuity that expresses the Member's Accrued Benefit.

**2.68 Qualified Pre-Retirement Survivor Annuity.** For a Member who is married to the same Spouse for at least a one-year period, an annuity for the life of the surviving Spouse of the Member under which the payments are determined as follows:

(a) In the case of a Member who dies before attaining age 55 under the Plan, the benefit determined under this Section 2.68 shall be the same benefit that would have been payable if a Member had

(1) separated from service on the date of death (or if earlier, the date of separation from service),

(2) survived to the earliest retirement age under the Plan,

(3) retired with an immediate Qualified Joint and Survivor Annuity at the earliest retirement age under the Plan, and

(4) died on the day after the earliest retirement age under the Plan.

(b) In the case of a Member who dies after attaining age 55 under the Plan but before commencement of payment of his Accrued Benefit (or its Actuarial Equivalent), the



benefit determined under this Section 2.68 shall be the same benefit that would have been payable if a Member had retired with an immediate Qualified Joint and Survivor Annuity on the day before his date of death.

(c) See Section 6.10 for Pre-Retirement Death Benefits, and see Section 6.11 for special death benefits available for Cash Balance Members.

2.69 Re-Employment Commencement Date. The date on which an Employee again performs an Hour of Service following his termination of employment.

2.70 Required Aggregation Group. For purposes of Article 10, Required Aggregation Group as described in Section 10.1(e).

2.71 Required Beginning Date. For purposes of Section 7.6, the Required Beginning Date specified in the first paragraph of Section 7.6.

2.72 Retirement Date. The first day of the month coinciding with or next following the date on which a Member separates from service with the Employer under either Section 2.27 (Early Retirement Date) or 2.54 (Normal Retirement Date).

2.73 Social Security Benefit. The amount of monthly benefit, based on the provisions of the federal Social Security Act as amended and in effect on the earlier of the January 1<sup>st</sup> coinciding with or immediately preceding a Member's date of termination of employment such Member is entitled to receive as his "primary insurance amount," at age 65 (or date of termination, if later) assuming that (a) he has or will apply for such benefit, (b) no event occurs that shall delay, suspend or forfeit the amount of such benefit in whole or in part, (c) if termination or death, while still in the employ of the Employer, occurs prior to age 65, he shall continue to receive earnings at the same rate in effect at termination (which would be treated as taxable wages for purposes of the federal Social Security Act) until attaining age 65, and (d) his earnings history, for calendar years preceding the years for which Employer records are available, shall be derived by applying the U.S. National Average Wage indices to the earliest full calendar year available from Employer records. Notwithstanding the foregoing sentence, effective January 1, 1984, a Member's estimated earnings shall be used for all years before retirement or termination of employment as defined in paragraph (d) of this Section 2.73; additionally, each Member has the right to have his benefit computed on the basis of actual salary history instead of estimated earnings. Each Employee shall be provided with written notice of his right to supply actual salary history and of the financial consequences of failing to supply such history. The designation, so long as such substitution or addition does not alter the period over which distributions are to be made under the designation, directly or indirectly (for example, by altering the relevant measuring life). As used herein, the term "primary insurance amount" shall have the meaning ascribed to it in the federal Social Security Act as amended and in effect on the earlier of the January 1<sup>st</sup> coinciding with or immediately preceding the affected Member's date of termination of employment.

2.74 Social Security Offset. An offset as of the close of the last Plan Year prior to January 1, 1989 of a Member's primary insurance amount under the federal Social Security Act

(appropriately adjusted to reflect benefit commencement prior to a Member's attainment of Social Security Retirement Age) against such Member's Accrued Benefit. Furthermore, if a Member receives distribution from the Plan based wholly or partly on this preserved Accrued Benefit and the prior benefit formula calculated the primary insurance amount based on an estimated earnings for any years prior to the year of termination of employment, the Committee shall provide a Member a written notice of (a) his right to provide the Committee actual salary history, (b) the financial effect of failing to supply actual salary history, and (c) a Member's right to obtain actual salary history from the Social Security Administration. If a Member provides the Committee actual salary history within six months (or such longer period of time the Committee determines is administratively reasonable) following the later of the date a Member terminates or the date the Committee notifies him of the amount of his benefit, the Committee shall adjust a Member's benefit to reflect an offset based on the actual salary history.

2.75 Special Retirement Date. Special Retirement Date, as defined in Section 6.1(d)(3) for purposes of Section 6.1(c).

2.76 Sponsor. As defined in Section 1.2, El Paso Electric Company.

2.77 Spouse; Spousal. A Member's legal spouse, including a same sex spouse recognized as such in the state where the marriage is performed, except that such term will not include (a) a common law spouse in the absence of a Declaration and Registration of Informal Marriage filed with the County Clerk and provided to the Employer, (b) an opposite sex domestic partner, or (c) a same sex domestic partner.

2.78 TEFRA. The Tax Equity and Fiscal Responsibility Act of 1982.

2.79 Top Heavy Group. For purposes of Article 10, Top Heavy Group as described in Section 10.1(c).

2.80 Top Heavy Plan. For purposes of Article 10, Top Heavy Plan as described in Section 10.1(a).

2.81 Top Paid Group. The Employees that, as a group, constitute the top 20 percent of all Employees when ranked on the basis of compensation (as determined under Code Section 414(q)(3)) for the calendar year.

2.82 Trust. The Plan assets held in trust by the Trustee, together with all income, profits and increments thereto, constituting the fund to which contributions are made and from which benefits are provided.

2.83 Trust Agreement. The separate Agreement entered into between the Sponsor and the Trustee establishing the Trust, which forms part of the Plan.

2.84 Trustee. Any duly appointed, qualified and acting trustee or successor trustee that assumes responsibility and liability for the Plan assets under terms acceptable to the Trustee,

upon execution of such document or documents acceptable to the Trustee evidencing acceptance of Plan assets and liabilities.

2.85 Valuation Calendar Year. The calendar year immediately preceding the Distribution Calendar Year.

2.86 Vested. The extent to which a Member's Accrued Benefit is nonforfeitable. Other forms of the word "Vest" shall have the meaning that the suffix would normally connote given the meaning of Vested.

2.87 Vesting Computation Period. The Plan Year.

2.88 Year of Eligibility Service. An Eligibility Computation Period during which an Employee completes not less than 1,000 Hours of Service with the Employer or an Affiliated Employer, except as follows: A Break in Service occurs for an Eligibility Computation Period during which an Employee has not completed more than 500 Hours of Service. Further, only in determining whether an Employee has incurred a Break in Service for this purpose, Hours of Service shall be recognized for Authorized Leaves of Absence and Maternity and Paternity Leaves.

2.89 Year of Vesting Service. A Vesting Computation Period during which an Employee completes not less than 1,000 Hours of Service with the Employer or an Affiliated Employer, including years of service a Member is considered Disabled, prior to his Normal Retirement Date or Re-Employment Commencement Date, except if a Member with a zero percent Vested Accrued Benefit incurs a Break in Service as described in Section 2.15.

### ARTICLE 3 ELIGIBILITY AND MEMBERSHIP

3.1 Eligibility for Membership. Except as otherwise provided in this Section 3.1, each Employee shall become a Member in the Plan, other than a Cash Balance Member, on the first day of any month coinciding with or immediately following his completion of one Year of Eligibility Service, provided he is still employed by the Employer on such date. Effective April 1, 2014 and thereafter, (a) if not already a Cash Balance Member in the Plan, an Employee who is hired or re-hired by the Employer on or after April 1, 2014 shall become a Cash Balance Member in the Plan on his Employment Commencement Date or his Re-Employment Commencement Date, as applicable; (b) an Employee who is hired or re-hired by the Employer after December 31, 2013 and before April 1, 2014, and who remains an Employee of the Employer on April 1, 2014, shall become a Cash Balance Member in the Plan on April 1, 2014; and (c) an Employee who is hired or re-hired by the Employer on or before December 31, 2013, who affirmatively elects, during the period beginning January 13, 2014 and ending February 28, 2014, and in accordance with procedures established by the Committee, to accrue Cash Balance Benefits under the Plan with respect to his post-March 31, 2014 employment with the Employer, and who remains an Employee of the Employer on April 1, 2014, shall become a Cash Balance Member in the Plan on April 1, 2014. For the avoidance of doubt, an Employee who is on an approved leave of absence shall be treated as an Employee, so that, for example, an Employee

who is hired or re-hired by the Employer on or before December 31, 2013, and who is on an approved leave of absence on December 31, 2013, shall be permitted to elect, in accordance with this Section 3.1, to accrue Cash Balance Benefits under the Plan with respect to his post-March 31, 2014 employment with the Employer. The preceding provisions of this Section 3.1 notwithstanding, neither Leased Employees nor Employees who the Employer designates in its records as interns shall be eligible to participate in the Plan, and an individual's status as an Employee, a Leased Employee or an intern for purposes of eligibility under the Plan will be determined by the Committee, and that determination will be conclusive and binding on all persons.

3.2 Membership Upon Re-Employment. An Employee who is a Member (or was formerly a Member) who is re-hired after a separation from service shall be eligible to resume active membership in the Plan on his Re-Employment Commencement Date, subject to the Break in Service rule under Section 2.88. Any Employee who terminated employment prior to satisfying the Plan's eligibility conditions becomes a Member in accordance with Section 3.1.

#### ARTICLE 4 CONTRIBUTIONS

4.1 Employer Contributions. The Employer alone shall make the contributions required to fund the cost of benefits provided by the Plan.

4.2 Determination of Employer Contributions. The Employer, from its records and reports of the actuary, shall determine the amount of any contribution to be made to the Trust under the terms of the Plan. In this regard, the Employer may place full reliance upon all reports, opinions, tables, valuations, certificates and computations that the actuary furnishes to the Employer.

4.3 Member Contributions. The Plan does not require or permit contributions from Members; provided, however, under Section 14.5, the Employer may, in the future, require Members to make contributions to the Separate Accounts established for post-retirement health benefits under Article 14.

4.4 Member Rollover Contributions. The Plan does not permit rollover contributions from Members.

4.5 Return of Employer Contributions. Except as provided in this Section 4.5, in Section 12.2, in Article 14, or as otherwise specifically permitted by law, it shall be impossible by operation of the Plan or Trust, by the happening of any contingency, by collateral arrangement or by any other means, for any part of the corpus or income of the Trust maintained pursuant to the Plan or any funds contributed thereto to be used for, or diverted to, purposes other than the exclusive benefit of Members or their Beneficiaries.

(a) Contribution by Mistake of Fact. In the event the Employer shall make an excessive contribution under a mistake of fact pursuant to ERISA Section 403(c)(2)(A), the Employer may demand repayment of such excessive contribution at any time within one year

following the time of payment, and the Trustee shall return such amount to the Employer within the one-year period. Earnings of the Plan attributable to the excess contribution may not be returned to the Employer, but any losses attributable thereto must reduce the amount so returned.

(b) Disallowed Deduction. All contributions by the Employer to the Trust are strictly conditioned upon the deductibility of such contributions by the Employer under the Code and, to the extent any deduction is disallowed, the Employer may within one year following a final determination of the disallowance, whether by agreement with the IRS or by final decision of a court of competent jurisdiction, demand repayment of such disallowed contribution, and the Trustee shall return such contribution within one year following the disallowance. Earnings of the Plan attributable to the excess contributions will not be returned to the Employer, and any losses attributable thereto shall reduce the amount so returned.

4.6 Forfeitures. To the extent not used to pay administrative expenses under the Plan, the Committee shall allocate the amount of a Member's Accrued Benefit forfeited under the Plan to reduce Employer contributions for the Plan Year in which the forfeiture occurs. A Member's Accrued Benefit shall not be increased by the allocation of forfeitures at any time prior to termination of the Plan.

## ARTICLE 5 VESTING

5.1 Vesting Schedule. Upon a Member's termination of employment due to death or Disability, or at or after his Early Retirement Date or his Normal Retirement Age, the Member shall be 100 percent Vested in his Accrued Benefit. At any other time, a Cash Balance Member's *total* Vested Accrued Benefit (including his Vested Accrued Benefit attributable to Cash Balance Benefits and his Vested Accrued Benefit not attributable to Cash Balance Benefits, if any) shall be determined from the following schedule based on his Years of Vesting Service:

<u>Years of Vesting Service</u>	<u>Percent Vested</u>
Less than Three	0%
Three or More	100%

At any other time, the Vested Accrued Benefit of a Member, other than a Cash Balance Member, shall be determined from the following schedule based on his Years of Vesting Service:

<u>Years of Vesting Service</u>	<u>Percent Vested</u>
Less than Five	0%
Five or More	100%

For purposes of this Section 5.1, a Member who terminates employment before his Accrued Benefit is Vested shall (a) be deemed to have a complete distribution of his Accrued Benefit, in accordance with Section 6.2, on his date of termination of employment, and (b) his

Accrued Benefit that is not Vested (in accordance with this Section 5.1) shall be immediately forfeited.

5.2 Changes in Vesting Schedule. If the Plan's Vesting schedule in Section 5.1 is amended, in any way that directly or indirectly affects the computation of a Member's Vested interest in his Accrued Benefit, affected Members who have completed at least three Years of Vesting Service as of the date the amendment is adopted or deemed to be made shall have the Vested portion of their Accrued Benefits determined under the more favorable of the two Vesting schedules. Members who have not completed at least three years of Vesting Service as of the date the amendment is adopted or deemed to be made shall have the Vested portion of their Accrued Benefits determined under the new Vesting schedule, except that no Member shall have his Vested percentage decreased by any Plan amendment.

ARTICLE 6  
AMOUNT AND FORM OF BENEFITS

6.1 Retirement Benefits.

(a) Normal Retirement. Normal retirement benefits, subject to the limitations in Section 6.16, shall be a Member's Accrued Benefit described in Section 2.1. A Member's Accrued Benefit, other than his Cash Balance Benefit, if any, is expressed as a single life only annuity payable as of the Member's Normal Retirement Date or Retirement Date, if later, and a Cash Balance Member's Accrued Benefit attributable to his Cash Balance Account, shall be converted to a single life only annuity payable as of the Member's Normal Retirement Date or Retirement Date, if later, under the provisions of Section 2.2(e). The amount of monthly retirement income determined under this Section 6.1(a) shall be subject to actuarial adjustment under Section 2.2(a) if a Member is to receive a monthly retirement income in a form other than a single life only annuity.

(b) Early Retirement. Early retirement benefits, available to all Members subject to the limitations in Section 6.16, shall be a Member's Accrued Benefit described in Sections 2.1 and 6.1(a), adjusted in accordance with paragraphs (1), (2) and (3) of this paragraph (b), as applicable.

(1) The Accrued Benefit of a Member, other than a Cash Balance Member, or for a Cash Balance Member, his Accrued Benefit, if any, excluding his Cash Balance Benefits, payable on or after his Early Retirement Date, reduced to take into account early commencement prior to his Normal Retirement Date. Such reduction shall be in accordance with the following schedule.

<u>Retirement Age</u>	<u>Percent of Accrued Benefit</u>
65	100.00%
64	93.33%
63	86.67%

62	80.00%
61	73.33%
60	66.67%
59	63.33%
58	60.00%
57	56.67%
56	53.33%
55	50.00%

Straight line interpolation of these percentages shall be employed where fractional years are involved. Notwithstanding the foregoing schedule, no early retirement reduction shall apply (1) if the Member retires on or after his Early Retirement Date after completing at least 20 Years of Vesting Service and attaining age 62, or (2) if the Member retires on or after his Early Retirement Date after June 30, 1983 and if the sum of his attained age and Years of Vesting Service exceeds 85 years.

(2) For a Cash Balance Member, for his Accrued Benefit, if any, excluding his Cash Balance Benefits, payable before his Early Retirement Date, a single life only annuity commencing as of the Cash Balance Member's Benefit Commencement Date that is Actuarially Equivalent, under the provisions of Section 2.2(e), to a single life only annuity commencing as of such Member's Normal Retirement Date.

(3) For a Cash Balance Member, for his Cash Balance Benefits, a single life only annuity commencing as of the Cash Balance Member's Benefit Commencement Date that is Actuarially Equivalent, under the provisions of Section 2.2(e), to the Cash Balance Member's Accrued Benefit attributable to his Cash Balance Account.

In the case of a Cash Balance Member, in no event will the *total* early retirement benefit payable under this Section 6.1(b) be less than a single life only annuity that is Actuarially Equivalent, under the provisions of Section 2.2(e), to the lump sum distribution available to the Cash Balance Member under Section 6.1(a).

The amount of monthly retirement income determined under this Section 6.1(b) shall be subject to actuarial adjustment under Section 2.2(a) if a Member is to receive a monthly retirement income in a form other than a single life only annuity.

(c) Early Retirement - 1989 Special Supplement. In lieu of the monthly retirement income otherwise payable under Section 6.1(b), a Member who

- (1) is an Employee on February 13, 1989, and
- (2) will have attained age 55 on or before December 31, 1989, and
- (3) is 100 percent Vested by the beginning of the five-week period between February 14, 1989 and March 17, 1989 and who elects retirement during this five-week period (with retirement occurring no later than April 30, 1989), or

(4) is 100 percent Vested by the beginning of the two-week period between June 2, 1989 and June 16, 1989 and who elects retirement during this two-week period (with retirement occurring no later than July 1, 1989),

shall be entitled to a monthly retirement income equal to the sum of the amounts described in Sections 6.1(c)(5) and (6).

(5) his Accrued Benefit calculated at his date of retirement under the greatest of

(A) The product of (i) and (ii), where

(i) is 1.5 percent of his Average Monthly Earnings as of his Special Retirement Date multiplied by his years of Projected Benefit Service less one percent of his Social Security Benefit, determined as of his Special Retirement Date, multiplied by his years of Projected Benefit Service limited to 45 years, and

(ii) is the ratio of his Benefit Accrual Service as of his Special Retirement Date to his years of Projected Benefit Service.

(B) \$25 multiplied by his years of Projected Benefit Service (not to exceed ten) and the ratio of his Benefit Accrual Service as of his Special Retirement Date to his years of Projected Benefit Service, or

(C) The amount of his June 30, 1982 monthly benefit payable in accordance with provisions of the Plan as of that date based on his Benefit Accrual Service at his Special Retirement Date and Average Monthly Earnings as of June 30, 1982.

(6) A monthly supplemental benefit equal to the greater of (A) the equivalent of 60 percent of his monthly Accrued Benefit, calculated as described under this Section 6.1(c) as of his Special Retirement Date, or (B) \$250 commencing on the first day of the month coinciding with or next following his date of retirement.

(A) Such monthly retirement income shall not be reduced to take into account a Member's younger age and the early commencement of his benefits. The amount of monthly retirement income determined under this Section 6.1(c) shall be subject to actuarial adjustment if a Member is to receive a monthly retirement income in a form other than as described herein.

(B) The amount of monthly retirement income described in this Section 6.1(c)(6) shall be payable as a temporary benefit during a Member's lifetime with the last payment to be made to him on the earlier of the month in which his death occurs or in which he attains age 62 and if death occurs in a month before he attains age 62 and he is survived by the spouse to whom he was married for the one-year period ending on his Special Retirement Date, then 50 percent of the amount described in clause (B) of the first sentence of this Section



6.1(c)(6) shall be payable as a temporary benefit to the spouse commencing on the first day of the month following the Member's death during the lifetime of the spouse with the last payment to be made for the earlier of the month in which the spouse's death occurs or in which the Member would have attained age 62 but for his earlier death.

(d) Definitions for Purposes of Section 6.1(c). For purposes of Section 6.1(c), the following definitions shall apply:

(1) Benefit Accrual Service. The meaning prescribed in Section 2.12, with additional credited years of Benefit Accrual Service attributed to each Eligible Member equal to the difference in his age at his Special Retirement Date and age 65 (not to exceed five years).

(2) Eligible Member. A Member who is age 55 on or before December 31, 1989 and 100 percent vested, who elects to participate in the 1989 Special Supplement program of the Employer.

(3) Special Retirement Date. April 30, 1989, or any other date the Committee shall deem appropriate under the provisions of the 1989 Special Supplement program.

6.2 Involuntary Cash Out. If the lump sum Actuarial Equivalent of a Member's Vested Accrued Benefit does not exceed \$1,000 (\$5,000 for distributions prior to March 28, 2005) when he is first eligible for a distribution, the Committee may distribute the entire amount in a single cash payment without the consent of the Member (or if the Member is married, the Member's Spouse), provided that (a) proper notice regarding the Member's right to a distribution is given to the Member, and (b) the amount of the Vested Accrued Benefit remains less than \$1,000 (\$5,000 for distributions prior to March 28, 2005) on the date the distribution is made. If a distribution is made under this Section 6.2, the Committee shall disregard the Member's years of service represented by the distribution.

6.3 Buy Back of Disregarded Service Due to Cash Out. If a Member receives a distribution pursuant to Section 6.2 and the Committee disregards the Member's years of service represented by the distribution, then this Section 6.3 applies to a Member who has received the distribution and is re-employed.

A Member described in the preceding paragraph shall have the right to repay the full portion of his Employer-provided benefit that he received in a distribution described in Section 6.2, provided that (a) the full repayment includes interest at the rate of five percent per annum (as adjusted by the IRS) from the date of the distribution, (b) the Member resumes covered employment under the Plan, and (c) his right to repay has not expired. A Member's right to repay shall expire on the earlier of

(a) the date five years after the Member's first Re-Employment Commencement Date following the distribution, or

(b) the close of the first period of five consecutive one-year Breaks in Service commencing after the distribution.

If, prior to the expiration of the repayment period, the re-employed Member makes full repayment in accordance with this Section 6.3, the Committee shall restore the Member's disregarded years of service. The restoration shall include all Code Section 411(d)(6) protected benefits applicable to the restored Accrued Benefit, in accordance with applicable regulations.

**6.4 Cash Balance Account Following Termination.** If a Cash Balance Member with a zero percent Vested Accrued Benefit incurs a Break in Service, the Cash Balance Member will forfeit his Cash Balance Account if the Cash Balance Member's consecutive Breaks in Service equals or exceeds the greater of five or the aggregate number of the Cash Balance Member's years of service prior to the Break in Service.

**6.5 Buy Back of Cash Balance Account Following Lump Sum Distribution.** A Cash Balance Member, who receives a lump sum distribution of his Cash Balance Account upon retirement or otherwise, and who is re-employed, shall have the right to repay his entire Cash Balance Account to the Plan in accordance with this Section 6.5. The Cash Balance Member must repay the lump sum distribution of his Cash Balance Account to the Plan, together with the interest credits that would have been allocated to his Cash Balance Account under the Plan had he not received the lump sum distribution. The Cash Balance Member must repay such amounts to the Plan by the earlier of

(a) the date five years after the Cash Balance Member's first Re-Employment Commencement Date following the distribution; or

(b) the close of the first period of five consecutive one-year Breaks in Service commencing after the distribution.

If, prior to the expiration of the repayment period, the re-employed Cash Balance Member makes full repayment in accordance with this Section 6.5, the Cash Balance Member's Cash Balance Account will be restored. The restoration shall include all Code Section 411(d)(6) protected benefits applicable to the restored Accrued Benefit, in accordance with applicable regulations.

**6.6 Automatic Form of Benefit.** Every Member shall have *all* of his benefits (including his Cash Balance Benefits, if any) paid in the form of a Qualified Joint and Survivor Annuity, except to the extent that a valid election is made under Section 6.7.

**6.7 Waiver of Qualified Joint and Survivor Annuity.** A Member (or if married, a Member and his Spouse) may elect an optional form of benefit rather than the automatic form of benefit described in Section 6.6. Such optional forms are set forth in Section 6.8, and the manner of waiver of the automatic form is described in Section 6.9.

**6.8 Optional Benefit Forms.** Subject to the provisions of Section 6.9, a Member (or if married, a Member and his Spouse) may decline the automatic form of benefit specified in Section 6.6, and elect (under a procedure prescribed by the Committee) an optional Actuarially Equivalent benefit. Any election of an optional Actuarially Equivalent benefit shall apply to the Member's *total* Accrued Benefit, including his Accrued Benefit, if any, attributable to his Cash Balance Benefit, and his Accrued Benefit, if any, based primarily on his Average Monthly Earnings and his Benefit Accrual Service. The following options described under paragraphs (a), (b) and (c) (which are sometimes referred to herein as "optional annuity benefit forms") are available to all Members:

(a) **Joint and Survivor Annuity.** A joint life annuity is payable for the life of the Member with a survivor annuity for the life of any person designated by the Member. The amount payable to the survivor shall be 25 percent, 50 percent, 75 percent or 100 percent of the amount of the annuity payable during the joint lives of the Member and the person designated. For the avoidance of doubt, the Qualified Optional Survivor Annuity is offered as a joint and survivor annuity under this paragraph (a).

(b) **Life Annuity with Term Certain.** An annuity is payable for the life of the Member, with 120 monthly payments guaranteed, regardless of whether the Member dies before all 120 payments have been made. In the event of the Member's death prior to payment of 120 monthly installments, the same amount of annuity shall be payable for the remainder of such 120 months to the Beneficiary.

(c) **Single Life Only Annuity.** An annuity is payable for the life of the Member until his death.

(d) **Lump Sum Distribution.** In addition to the above optional annuity benefit forms, a lump sum distribution option is available to Cash Balance Members only. Any election of a lump sum distribution shall apply to the Cash Balance Member's *total* Accrued Benefit, including his Accrued Benefit attributable to his Cash Balance Account and his Accrued Benefit, if any, based primarily on his Average Monthly Earnings and his Benefit Accrual Service. The amount of the Cash Balance Member's lump sum distribution shall equal (1) the Cash Balance Member's Cash Balance Account, plus (2)(a) in the case of a Cash Balance Member who has an Accrued Benefit, other than a Cash Balance Benefit, and who has not attained his Early Retirement Date, the present value of a single life only annuity commencing on such Cash Balance Member's Normal Retirement Date, or (2)(b) in the case of a Cash Balance Member who has an Accrued Benefit, other than a Cash Balance Benefit, and who has attained his Early Retirement Date, the present value of a single life only annuity commencing on such Cash Balance Member's Normal Retirement Date, or if greater, the present value of the immediate single life only annuity available to the Cash Balance Member under the provisions of Section 6.1(b).

**6.9 Waiver of Automatic Benefit Form.**

(a) Each Member (or if married, the Member and his Spouse) shall be provided a written explanation of

- (1) the terms and conditions of the Qualified Joint and Survivor Annuity,
- (2) the Member's right to make, and the effect of making, an election to waive the Qualified Joint and Survivor Annuity,
- (3) the Member's Spouse's rights regarding the election to waive the Qualified Joint and Survivor Annuity, and the effect of any waiver and/or revocation thereof,
- (4) the right of the Member to revoke any waiver of the Qualified Joint and Survivor Annuity,
- (5) the relative values of the various optional forms of benefit under the Plan, as provided in Regulation Section 1.417(a)(3)-1,
- (6) the right of the Member to elect a Retroactive Annuity Starting Date, if available to the Member under Section 6.9(c), and
- (7) information that clearly indicates that the Member has a right to at least 30 days to consider whether to waive the Qualified Joint and Survivor Annuity and consent to a form of distribution other than a Qualified Joint and Survivor Annuity.

Except as provided in Section 6.9(c), the written explanation of the Qualified Joint and Survivor Annuity shall be furnished to the Member (and if married, the Member and his Spouse) no earlier than 180 days nor later than 30 days before the Member's Annuity Starting Date. "Annuity Starting Date" means (A) the first day of the first period for which an amount is payable as an annuity, or (B) in the case of a benefit not payable in the form of an annuity, the first day on which all events have occurred that entitle the Member to the benefit.

Except as provided in Section 6.9(c), if the Member, after having received the written explanation of the Qualified Joint and Survivor Annuity, affirmatively elects a form of distribution and, if married, the Member's Spouse consents to that form of distribution (if necessary), the Plan may provide such written notice less than 30 days before the Annuity Starting Date, provided that the following conditions are met: (A) the Member is permitted to revoke an affirmative distribution election at least until the Annuity Starting Date, or if later, at any time prior to the expiration of the seven-day period that begins the day after the explanation of the Qualified Joint and Survivor Annuity is provided, (B) the Annuity Starting Date is after the date that the written notice is provided, and (C) distribution in accordance with the affirmative election does not commence before the expiration of the seven-day period that begins the day after the written notice is provided.

During the 180-day period ending on the Annuity Starting Date, the Member (or if married, the Member and his Spouse) may, at any time and any number of times, waive the Qualified Joint and Survivor Annuity and/or revoke any previous waiver and again elect the Qualified Joint and Survivor Annuity.

If a Member fails to return his waiver of the Qualified Joint and Survivor Annuity form of benefit by the Member's Annuity Starting Date, the Member's benefit will begin to be paid on his Annuity Starting Date in the form of a Qualified Joint and Survivor Annuity.

(b) Except to the extent that a Member is not married, or his Spouse cannot be located, the Member's election to waive a Qualified Joint and Survivor Annuity or to change a previous Beneficiary designation (see Sections 2.11 and 9.1) shall not be given effect unless

(1) his Spouse provides consent in writing to the election,

(2) the election designates a beneficiary (or a form of benefit) that may not be changed without Spousal consent (or the consent of the Spouse expressly permits designations by the Member without any requirement of further consent by the Spouse), and

(3) the written consent of the Spouse is witnessed by a Plan representative or a notary public.

(c) "Retroactive Annuity Starting Date" means an annuity starting date affirmatively elected by a Member that occurs on or before the date that the written explanation of the Qualified Joint and Survivor Annuity is provided to the Member; provided, however, such election shall be subject to the following requirements:

(1) The Member may not elect a Retroactive Annuity Starting Date that precedes the Member's Normal Retirement Date under the terms of the Plan in effect as of the Retroactive Annuity Starting Date, or if later, his termination of employment.

(2) The Member shall receive a make-up payment to reflect any missed payment or payments for the period from the Retroactive Annuity Starting Date to the date of the actual make-up payment, with an appropriate adjustment for interest from the date the missed payment or payments would have been made to the date of the actual make-up payment. The benefit determined as of the Retroactive Annuity Starting Date must satisfy the requirements of Code Section 417(e)(3), if applicable, and Code Section 415 with the applicable interest rate and applicable mortality table determined as of that date. Future periodic payments shall be the same as the future periodic payments, if any, that would have been paid to the Member had payments actually commenced on the Retroactive Annuity Starting Date.

(3) Except in the case where payment of the Member's benefit is not subject to the present value requirements of Code Section 417(e)(3) and payments commence within 12 months of the Member's Retroactive Annuity Starting Date, the Member's benefit determined based on the Retroactive Annuity Starting Date, including any interest adjustment, shall satisfy the provisions of Code Section 415, if the date the distribution commences is substituted for the Retroactive Annuity Starting Date for all purposes of determining the limits under Code Section 415.

(4) In the case of a form of benefit that would have been subject to the present value requirements of Code Section 417(e)(3) if distributions had commenced as of the Retroactive Annuity Starting Date, the distribution as of the date distributions commence shall be no less than the benefit produced by applying the applicable interest rate and the applicable mortality table determined as of such date to the annuity form that was used to determine the benefit amount as of the Member's Retroactive Annuity Starting Date.

(5) The provisions of Section 6.9(a) regarding the timing requirements for giving consent and providing an explanation of the Qualified Joint and Survivor Annuity shall apply by substituting the date of the first actual payment of benefits based on the Retroactive Annuity Starting Date for the Annuity Starting Date.

(6) If the Member's Spouse as of the Retroactive Annuity Starting Date would not be the Member's Spouse determined as of the date distributions commence, consent of that former Spouse is not needed to waive the Qualified Joint and Survivor Annuity with respect to the Retroactive Annuity Starting Date, unless otherwise provided under a QDRO.

(7) The Member's Spouse (including an alternate payee who is treated as the Spouse under a QDRO) determined as of the date distributions commence shall consent to the distribution in a manner that would satisfy the requirements of Code Section 417(a)(2) unless the amount of the Spouse's survivor annuity payments under the Retroactive Annuity Starting Date is no less than the amount the Spouse would have received under the Qualified Joint and Survivor Annuity if the Annuity Starting Date were substituted for the Retroactive Annuity Starting Date.

(d) The Plan will not fail to satisfy the timing requirements of Section 6.9(a) merely because, due to administrative delay, a distribution commences more than 180 days after the written explanation of the Qualified Joint and Survivor Annuity is provided to the Member.

**6.10 Pre-Retirement Death Benefit.** A monthly Spouse's benefit is payable upon the death of a Member who on the date of his death

(a) is employed by the Employer, except that a Member who is Disabled, is entitled to this protection only during the one-year period following the date of his initial Disability (and on the first anniversary of his last Hour of Service, a Disabled Member shall be considered terminated for purposes of this Section 6.10);

(b) has attained age 50 and completed at least ten Years of Vesting Service;

(c) has not attained Normal Retirement Age; and

(d) has been married to the same Spouse for the one-year period ending on the date of his death.

Subject to the limitations in Section 6.16, the amount of monthly benefit payable to the surviving Spouse under this Spouse's benefit shall be equal to one-half of the Accrued

**Benefit of the Member.** There shall be no reduction to the Accrued Benefit for early commencement or for optional forms of payment.

Payments of this monthly Spouse's benefit shall commence on the first day of the month following a Member's death and shall end with the month in which the surviving Spouse dies.

In all other cases, subject to the limitations in Section 6.16, upon the death of a Member, his surviving Spouse (if any) is eligible for a Qualified Pre-Retirement Survivor Annuity calculated as specified in Section 2.68. Such benefit shall commence in accordance with Section 7.2.

See Section 6.11 for special death benefits available for Cash Balance Members.

**6.11 Special Death Benefit for Cash Balance Members.** In lieu of the death benefits described in Sections 2.68 and 6.10, upon the death of a Cash Balance Member who has not received a lump sum distribution from the Plan, or commenced a pension distribution from the Plan, with respect to his total Accrued Benefit, the Cash Balance Member's surviving Spouse, to whom he has been married for the one-year period ending on the date of his death, shall be entitled to (a) the Cash Balance Member's Accrued Benefit attributable to his Cash Balance Account under the Plan, and (b) *if* the requirements for a Qualified Pre-Retirement Survivor Annuity under Section 2.68 or a Pre-Retirement Death Benefit under Section 6.10 (including the requirement that the Cash Balance Member be married to the same Spouse for the one-year period ending on the date of his death) are satisfied, the benefit that would be payable under Section 2.68 or 6.10, as applicable, with respect to the Cash Balance Member's Accrued Benefit, if any, that is not attributable to his Cash Balance Account. If the Cash Balance Member has not been married to the same Spouse for the one-year period ending on the date of his death, or if the Cash Balance Member's surviving Spouse to whom he has been married for the one-year period ending on the date of his death consents at a time and in a manner satisfactory to the Committee (pursuant to a nondiscriminatory policy), the benefit payable under this Section 6.11 shall be payable to the Cash Balance Member's Beneficiary. The *total* death benefit payable under this Section 6.11 shall be payable either in the form of a lump sum distribution or in the form of a life annuity. Any lump sum distribution payable with respect to a Cash Balance Member's Accrued Benefit that is attributable to his Cash Balance Account shall equal his Cash Balance Account. In the case of a Cash Balance Member who has an Accrued Benefit that is not attributable to his Cash Balance Account, any lump sum distribution payable with respect to his Accrued Benefit that is not attributable to his Cash Balance Account shall be based on the life expectancy of the Cash Balance Member's surviving Spouse to whom he has been married for the one-year period ending on the date of his death. Death benefits that become payable under this Section 6.11 shall commence as of the first day of the month coinciding with or next following the Cash Balance Member's date of death, without regard to the Cash Balance Member's age at date of death; provided, however, that the Cash Balance Member's surviving Spouse to whom he has been married for the one-year period ending on the date of his death may elect to delay commencement of benefits until the Cash Balance Member would have attained his Normal Retirement Date. In no event shall an annuity payable under this Section 6.11 be less than a qualified pre-retirement survivor annuity.

**6.12 Waiver of Qualified Pre-Retirement Survivor Annuity.** A Member, other than a Cash Balance Member, may not waive the Qualified Pre-Retirement Survivor Annuity described in Section 2.68 and may not name a non-Spouse Beneficiary with respect to any death benefit arising because of the Member's death. Consistent with Section 6.11, a Cash Balance Member may, with Spousal consent, waive the Qualified Pre-Retirement Survivor Annuity described in Section 2.68 and may name a non-Spouse Beneficiary with respect to any death benefit arising because of the Member's death, all in accordance with applicable legal requirements.

**6.13 Deferred Vested Benefit.** Subject to the limitations in Section 6.16, if a Member, other than a Cash Balance Member, terminates employment after completing at least five Years of Vesting Service, he may elect to receive his Accrued Benefit at his Early or Normal Retirement Date. If a Member, other than a Cash Balance Member, elects to have his benefit commence at his Early Retirement Date, the monthly benefit shall be reduced in accordance with Section 6.1(b).

Subject to the limitations in Section 6.16, if a Cash Balance Member terminates employment after completing at least three Years of Vesting Service, without regard to the Cash Balance Member's age at termination of employment, he may elect, at a time and in a manner satisfactory to the Committee (pursuant to a nondiscriminatory policy), to receive his Accrued Benefit as of the first day of any month following his termination of employment. If a Cash Balance Member elects to have his Cash Balance Benefits commence prior to his Normal Retirement Date, his Cash Balance Benefits shall be Actuarially Equivalent, under the provisions of Section 2.2(e), to the Cash Balance Member's Accrued Benefit attributable to his Cash Balance Account. If a Cash Balance Member elects to have his Accrued Benefit, other than his Cash Balance Benefits, commence prior to his Normal Retirement Date, that portion of his Accrued Benefit, other than his Cash Balance Benefits, shall be reduced in accordance with Section 6.1(b). Subject to the provisions of the Plan, the Cash Balance Member's Accrued Benefit may be distributed as either a lump sum distribution or an optional annuity benefit form available under Section 6.8.

A Member's termination benefit shall be computed in the form of a single life only annuity and shall commence at the time stated in Section 7.1 and in the form specified in Section 6.6, unless an optional form of benefit is selected in accordance with Section 6.8.

**6.14 Disability Retirement Benefit.** Subject to the limitations in Section 6.16, a Member whose employment terminated due to Disability, at a time when such Member was not a Cash Balance Member, and who is still Disabled at his Normal Retirement Date shall be entitled to receive the Accrued Benefit for which he is eligible under the Plan based on his years of Benefit Accrual Service (including credit for all years of Benefit Accrual Service while Disabled) and Average Monthly Earnings as of his date of Disability.

The disability retirement benefit of a Member whose employment terminated due to Disability, at a time when such Member was not a Cash Balance Member, shall be computed in the form of a single life only annuity and shall commence at the time stated in Section 7.1 and



in the form specified in Section 6.6, unless an optional form of benefit is selected in accordance with Section 6.8.

If a Member whose employment terminated due to Disability, at a time when such Member was not a Cash Balance Member, elects to retire early while on the disability roll or otherwise is removed from the disability roll by reason of ceasing to be incapacitated, and is not returned to active employment, the Employee shall receive the pension benefits for which he is eligible under the Plan, but based on his years of Benefit Accrual Service and Average Monthly Earnings for which he was credited when placed on the disability roll.

An Employee whose employment terminated due to Disability prior to December 31, 2013, and who is not an Employee on December 31, 2013, is not eligible to affirmatively elect, during the period beginning January 13, 2014 and ending February 28, 2014, and in accordance with procedures established by Committee, to accrue Cash Balance Benefits under the Plan with respect to his post-March 31, 2014 employment with the Employer. However, if a Member, whose employment terminated due to Disability at a time when such Member was not a Cash Balance Member, is removed from the disability roll by reason of ceasing to be incapacitated, and is returned to active employment on or after January 1, 2014, the Employee shall be treated as a re-hired Employee, who becomes a Cash Balance Member as of April 1, 2014, or if later, as of his re-hire date, and such Employee's Accrued Benefit shall consist of (a) the Accrued Benefit to which the Employee is entitled under the Plan based on his Benefit Accrual Service (including all years of Benefit Accrual Service while Disabled) and his Average Monthly Earnings as of his date of Disability, plus (b) the Accrued Benefit derived from the Employee's Cash Balance Benefit for his employment after he is returned to active employment.

**6.15 Preservation of Accrued Payments and Benefits.** Notwithstanding any provision of the Plan to the contrary, this amendment and restatement of the Plan shall not operate to exclude, diminish, limit or restrict benefits accrued under the Plan prior to the amendment and restatement.

**6.16 Limitation on Benefits.**

(a) **Transitional Limitation.** Notwithstanding any provision in the Plan to the contrary, Highly Compensated Employees may not receive a distribution after January 31, 1989 of a benefit that exceeds the benefit that a Member had accrued as of the last day of the 1988 Plan Year until such time as the benefit accrued for him under the Plan, as amended for the Tax Reform Act of 1986, exceeds his Code Section 411(d)(6) protected benefits as of the last day of the 1988 Plan Year.

(b) **Code Section 415 Requirements.** The Plan hereby incorporates by reference the limitations on benefits and contributions relating to maximum permissible annual benefits, as if fully set out herein. The maximum annual benefit under the Plan shall not exceed, for any Member, the maximum permissible annual benefit under Code Section 415. This Section 6.16 is intended to comply with the requirements of the final 415 regulations published April 5, 2007 and is to be construed in accordance with such regulations and guidance issued thereunder.

Except as otherwise provided, this Section 6.16 is effective as of the first day of the first Limitation Year beginning on or after July 1, 2007.

(c) General Code Section 415 Rules.

(1) Maximum Benefits. No benefit shall be payable to a Member or Beneficiary in excess of the benefit permitted to be paid under Code Section 415 and Regulations thereunder, the terms of which are incorporated by reference herein. For purposes of computing the limitation under Code Section 415, compensation for any Limitation Year shall mean the Member's compensation from the Employer and its Affiliated Employers for the Limitation Year.

(A) Notwithstanding the foregoing, for Limitation Years commencing prior to July 1, 2007, compensation taken into account for purposes of the limitation upon Plan benefits set forth in Code Section 415 was not limited by the dollar limitation set forth in Code Section 401(a)(17). Accordingly, a Member's accrued benefit shall not be less than his Accrued Benefit as of the last day of the last Limitation Year beginning prior to July 1, 2007, and for purposes of computing such accrued benefit as of the last day of the last Limitation Year beginning prior to July 1, 2007, the Member's compensation prior to the first day of the first Limitation Year beginning on or after July 1, 2007, taken into account for purposes of the Code Section 415(b) limitation shall not be limited by the dollar limitation set forth in Code Section 401(a)(17).

(B) Effective as of the first day of the first Limitation Year beginning on or after July 1, 2007, compensation for purposes of applying the Code Section 415(b) limitation shall not include any amounts paid after an employee's severance from employment (as defined in Regulation Section 1.415(a)-1(f)(5)) unless such amounts (A) are paid in the employee's final regular paycheck, (B) are paid (or would have been paid but for an election under Code Section 125, 132(f)(4), 401(k), 403(b), 408(k), 408(p)(2)(A)(i) or 457(b)) by the later of 2½ months after severance from employment with the Employer or the end of the Limitation Year that includes the date of the severance from employment with the Employer, (C) are regular compensation for services during the employee's regular working hours, or compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar amounts, and (D) would have been paid to the employee prior to a severance from employment if the employee had continued in employment with the Employer.

(C) Effective January 1, 2009, differential wage payments (as defined in Code Section 3401(h)(2)) will be included in a Member's compensation for purposes of computing the Code Section 415 limitation.

(2) Adjustment to Form of Benefit for Forms other than a Straight Life Annuity.

(A) Benefits Paid in a Form to which Code Section 417(e)(3) does not Apply. For purposes of determining the maximum permissible benefit payable under

the Plan for a benefit paid in a form to which Code Section 417(e)(3) does not apply, the actuarially equivalent straight life annuity benefit is the greater of (i) the annual amount of the straight life annuity payable to the Member under the Plan commencing at the same annuity starting date as the form of benefit payable to the Member, or (ii) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the Member, computed using a five percent interest assumption and the applicable mortality table described in Regulation Section 1.417(e)-1(d)(2) for that annuity starting date.

(B) Benefits Paid in a Form to which Code Section 417(e)(3) Applies. For Plan Years beginning after December 31, 2005, the actuarially equivalent straight life annuity benefit for a benefit paid in a form to which Code Section 417(e)(3) applies is the greatest of (i) the annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table otherwise specified in the Plan; (ii) the annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, calculated using a 5.5 percent interest rate assumption and the applicable mortality table for the distribution under Regulation Section 1.417(e)-1(d)(2); or (iii) the annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Regulation Section 1.417(e)-1(d)(3) and the applicable mortality table for the distribution under Regulation Section 1.417(e)-1(d)(2)), divided by 1.05.

(C) Special Rule for Distributions in Plan Years Beginning in 2004 and 2005. For a distribution to which Code Section 417(e)(3) applies and which has an annuity starting date occurring in Plan Years beginning in 2004 or 2005, except as provided in Section 101(d)(3) of the Pension Funding Equity Act of 2004, the actuarially equivalent straight life annuity benefit is the greater of (i) the annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table otherwise specified in the Plan, or (ii) the annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest rate assumption and the applicable mortality table for the distribution under Regulation Section 1.417(e)-1(d)(2).

6.17 Required Information. Each Member who elects to take an optional form of benefit under the Plan shall provide the information to the Committee that is required to implement the election. Failure to provide such information shall result in the Member receiving the automatic form of benefit under the Plan.

6.18 Nonduplication and Suspension of Benefits. This Section 6.18 addresses the manner in which pension benefits that have commenced to a Member in an optional annuity benefit form described in Section 6.8 will be handled in the event that such Member is re-employed by the Employer. Without regard to such Member's Re-Employment Commencement

Date, the Member who is receiving pension benefits under an optional annuity benefit form shall continue to receive pension benefits under his previously-elected optional annuity benefit form.

The recomputation provisions of this paragraph apply only to a Member who has commenced an optional annuity benefit form described in Section 6.8 and only with respect to such Member's Accrued Benefit, if any, other than his Cash Balance Benefit. In the case of such a Member, the Committee shall recompute that portion of the Member's Accrued Benefit, if any, described in the preceding sentence on the date, following his Re-Employment Commencement Date, that he ceases to be an Employee. The Accrued Benefit so recomputed shall be reduced by the Actuarial Equivalent of the benefit previously paid to the Member, and in no event shall the recomputation result in a reduction in such Member's Accrued Benefit.

6.19 USERRA. Notwithstanding any provision of the Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Code Section 414(u). Effective January 1, 2007, if a Member dies while performing qualified military service (as defined in Code Section 414(u)), the Member's Beneficiary is entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan had the Member resumed employment and then terminated employment on account of death.

#### ARTICLE 7 TIMING OF DISTRIBUTIONS

7.1 Commencement of Retirement Benefit. Except to the extent that

- (a) a Member forfeits his Accrued Benefit under Section 5.1,
- (b) the Actuarial Equivalent of his Accrued Benefit becomes payable under Section 6.2,
- (c) he dies prior to receipt of any portion of his Accrued Benefit (or its Actuarial Equivalent), or
- (d) he elects an alternative Benefit Commencement Date under Section 7.3,

payment of his Accrued Benefit (or its Actuarial Equivalent) shall commence on his Normal Retirement Date.

7.2 Commencement of Death Benefits. Except as provided in Section 6.11 with respect to Cash Balance Members, death benefits described in Section 6.10 that become payable to a Member's eligible Spouse shall commence on the date set forth in Section 6.10, and death benefits described in Section 2.68 that become payable to a Member's eligible Spouse shall commence as of the first day of the month coinciding with or next following the later of

- (a) the Member's date of death, or

(b) the date the Member would have attained the earliest retirement date under the Plan.

The preceding provisions of this Section 7.2 notwithstanding, a Member's eligible Spouse may elect to delay commencement of death benefits under Section 2.68 or Section 6.10, as applicable, until the Member would have attained his Normal Retirement Date.

**7.3 Election of Alternative Benefit Commencement Date.**

Except as otherwise provided under the Plan, a Member may elect, at a time and in a manner satisfactory to the Committee (pursuant to a nondiscriminatory policy), a different Benefit Commencement Date than would otherwise be prescribed under Section 7.1.

(a) Upon or after attainment of Normal Retirement Age, a Member may elect to commence receipt of his Accrued Benefit (or if greater, the Actuarial Equivalent of his Accrued Benefit at his Normal Retirement Date) at any time after termination of employment, subject to the provisions of Section 7.6.

(b) In the case of a Member's early retirement, he may elect commencement of payment of a reduced benefit at any time after attainment of age 55.

(c) A Member who separates from service with the Employer prior to attainment of age 55 may elect commencement of a reduced benefit at any time on or after his attainment of age 55, and prior to his Normal Retirement Date.

In addition, except as otherwise provided in the Plan, a Member who is a Cash Balance Member may elect, at a time and in a manner satisfactory to the Committee (pursuant to a nondiscriminatory policy), either a lump sum distribution or an optional annuity benefit form available under Section 6.8, as of the first day of any month following the Cash Balance Member's termination of employment, without regard to the Cash Balance Member's age at termination of employment.

**7.4 Required Member Consent to Distribute.** If the Actuarial Equivalent of a Member's Vested Accrued Benefit exceeds \$1,000 (\$5,000 for distributions occurring before March 28, 2005) at the time the Member is eligible for a distribution, no distribution shall be made without the written consent of the Member (and if married, the Member's Spouse), except with respect to distributions

- (a) after the Member's Normal Retirement Date,
- (b) after the Member's death,
- (c) required under Section 7.6, or
- (d) pursuant to a QDRO.

**7.5 Qualified Domestic Relations Orders and Benefit Commencement.** All rights and benefits, including elections, provided to a Member under the Plan shall be subject to the rights afforded to an Alternate Payee under a QDRO. The Committee shall establish a written procedure to determine the qualified status of any domestic relations orders received by the Plan and to administer distributions under QDROs. Subject to the preceding provisions of this Section 7.5, a distribution that is made to an Alternate Payee under a QDRO, after the Member, all or any portion of whose Plan benefits have been assigned to the Alternate Payee under the QDRO, becomes a Cash Balance Member under the Plan, may commence before the Member has separated from service, and before the Member has reached his "Earliest Retirement Age," as such term is defined in Code Section 414(p)(4)(B), under the Plan; provided, however, that a distribution that is made to an Alternate Payee of a Member who has not become a Cash Balance Member under the Plan may commence before the Member has separated from service, but not before the Member has reached his Earliest Retirement Age under the Plan.

**7.6 Mandatory Distributions.** If any distribution commencement date described under Section 7.6(a), either by Plan provision or by Member election (or nonelection) is later than a Member's Required Beginning Date, the Committee instead must direct the Trustee to make distribution under this Section 7.6 on the Member's Required Beginning Date. Except as otherwise specified in this Section 7.6, a Member's "Required Beginning Date" is April 1<sup>st</sup> of the calendar year following the later of (a) the calendar year in which the Member attains age 70½, or (b) the calendar year in which the Member retires; provided, however, that this clause (b) shall not apply in the case of a Member who is a Five Percent Owner with respect to the Plan Year ending in the calendar year in which he attains age 70½. A mandatory distribution required at a Member's Required Beginning Date shall be in the normal annuity form of distribution required under Section 6.6 unless the Member, pursuant to Article 6, makes a valid election to receive an alternative form of payment.

(a) **Minimum Distribution Requirements for Members.** The Committee may not direct the Trustee to distribute a Member's Vested Accrued Benefit, nor may a Member elect to have the Trustee distribute his Vested Accrued Benefit, under a method of payment that, as of the Required Beginning Date, does not satisfy the minimum distribution requirements under Code Section 401(a)(9).

(1) **Minimum Distribution for Annuity Distribution.** An annuity distribution made to a Member pursuant to this Section 7.6 must satisfy all of the following requirements:

(A) The periodic payment intervals under the annuity may not be longer than one year.

(B) The distribution period must not exceed the life (or joint lives) of a Member and his Designated Beneficiary or a period certain not longer than the Life Expectancy (or joint life expectancy) of a Member and his Designated Beneficiary.

(C) The annuity does not recalculate Life Expectancy.

(D) The Member or Beneficiary may not lengthen the period certain, if applicable, even if the period certain is shorter than the maximum period permitted under Code Section 401(a)(9).

(E) The payments are nonincreasing or increase only under the following circumstances: (i) with any percentage increase in a specified and generally recognized cost-of-living index; (ii) to take into account the reduction to the amount of the Member's payments to provide a survivor benefit, but only upon the death of the Beneficiary on whose life the annuity determines the survivor distribution period and if the payments continue over the life of a Member; (iii) to provide cash refunds of Employee contributions upon the Member's death; or (iv) because of an increase in benefits under the Plan.

(F) If the annuity is a life annuity (or a life annuity with a period certain not exceeding 20 years) the minimum distribution required by a Member's Required Beginning Date is one payment interval. Subsequent minimum distributions are the payment intervals determined under the annuity, even if the second payment interval occurs in the calendar year following the year in which the Required Beginning Date occurs.

(G) If the annuity provides a period certain without a life contingency, or if a life annuity with a period certain exceeding 20 years, the minimum distribution for each calendar year subject to this Section 7.6 is the annual amount, determined by totaling the periodic payments for a calendar year. The minimum distribution due by a Member's Required Beginning Date is the annual amount for the calendar year preceding that Required Beginning Date. The minimum distribution for the calendar year that includes the Required Beginning Date and for all subsequent calendar years is the annual amount for that calendar year and the annuity must pay that minimum distribution no later than December 31<sup>st</sup> of that calendar year.

(2) Minimum Distribution Incidental Death Benefit ("MDIB"). If a Member's Spouse is not his Designated Beneficiary, an annuity commencing after December 31, 1988 must satisfy the MDIB requirements of this Section 7.6(a)(2). If the annuity provides a period certain without a life contingency, the period certain in effect as of the first Distribution Calendar Year may not exceed the applicable period determined under the maximum period certain table set forth in Regulation Section 1.401(a)(9)-2. If the annuity with a life contingency includes a period certain, the period certain at any time on or after a Member's Required Beginning Date may not exceed the maximum period certain determined under the table described in the immediately preceding sentence. If the annuity is a joint and survivor annuity payable for the joint lives of a Member and a non-Spouse Beneficiary, the survivor percentage in effect at any time on or after a Member's Required Beginning Date may not exceed the percentage determined under the applicable percentage table set forth in Regulation Section 1.401(a)(9)-2. A joint and survivor annuity under which the survivor percentage does not exceed 50 percent always satisfies this Section 7.6(a)(2). A life annuity payable to a Member, without any period certain, is not subject to the MDIB requirements of this Section 7.6(a)(2).

(3) Transitional Rules. An annuity commencing prior to January 1, 1989 satisfies the incidental benefits requirement if it satisfies the MDIB requirements under

Section 7.6(a)(2) or if the present value of the retirement benefits payable solely to a Member is greater than 50 percent of the present value of the total benefits payable to the Member and his Beneficiaries. This transitional rule also applies to deferred annuity contracts distributed to or owned by a Member prior to January 1, 1989, unless the Employer makes additional contributions under the Plan with respect to that contract.

(4) Additional Accruals. Benefits accruing to a Member after his Required Beginning Date constitute a separate component of the annuity distribution described in this Section 7.6(a) beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues. The annuity starting date and form of distribution commenced by the Required Beginning Date applies to the distribution of these additional accruals, unless a Member elects otherwise pursuant to his benefit options described in Article 6, and that election otherwise complies with the minimum distribution requirements of this Section 7.6(a). An additional accrual includes any portion of a Member's Accrued Benefit that becomes Vested during the applicable calendar year.

(5) Nonannuity Distributions. If a Member elects an installment distribution directly from the Trust, under which the method of payment is in the form of an individual account distribution, the distribution method must satisfy the minimum distribution requirements that apply to individual accounts, including the MDIB requirements that apply to individual accounts, as determined under Code Section 401(a)(9). A lump sum distribution made on or before a Member's Required Beginning Date of his entire Vested Accrued Benefit under the Plan satisfies the minimum distribution requirements of this Section 7.6(a). Furthermore, a lump sum payment of additional accruals, as described under Section 7.6(a)(4), no later than the end of the first payment interval ending in the calendar year immediately following the calendar year in which such amounts accrue, satisfies the minimum distribution requirements of this Section 7.6(a).

(b) Minimum Distribution Requirements for Beneficiaries. The method of distribution to a Member's Beneficiary must satisfy Code Section 401(a)(9). If a Member's death occurs after his Required Beginning Date or, if earlier, the date a Member commences an irrevocable annuity pursuant to this Article 7, the method of payment to the Beneficiary must provide for completion of payment over a period that does not exceed the payment period that had commenced for the Member. If a Member's death occurs prior to his Required Beginning Date, and the Member has not commenced an irrevocable annuity pursuant to this Article 7, the method of payment to the Beneficiary must provide for completion of payment to the Beneficiary over a period not exceeding (1) five years after the date of the Member's death (with payments completed by December 31<sup>st</sup> of the calendar year in which occurs the fifth anniversary of the Member's date of death), or (2) if the Beneficiary is a Designated Beneficiary, the Designated Beneficiary's Life Expectancy. The Committee may not direct payment of a Member's Vested Accrued Benefit over a period described in clause (2) of this Section 7.6(b) unless the Trustee shall commence payment to the Designated Beneficiary not later than the December 31<sup>st</sup> following the close of the calendar year in which the Member's death occurred or, if later, and if the Designated Beneficiary is the Member's surviving Spouse, December 31<sup>st</sup> of the calendar year in which the Member would have attained age 70½. The Committee must use the unisex Life Expectancy multiples under Regulation Section 1.72-9 for purposes of



applying this Section 7.6(b). An annuity distribution to the Designated Beneficiary, whether directly from the Trust or in the form of a nontransferable annuity contract, satisfies clause (2) of this Section 7.6(b) if the annuity satisfies the minimum distribution requirements of Section 7.6(a), but applying paragraphs (F) and (G) of Section 7.6(a)(1) as follows: (A) the Distribution Calendar Years applicable to the Designated Beneficiary are the calendar year in which benefits must commence under clause (2) of this Section 7.6(b) and all subsequent calendar years; and (B) the first payment interval under paragraph (F) is due by the December 31<sup>st</sup> described in clause (2) of this Section 7.6(b). A lump sum distribution to the Beneficiary made no later than the date described in clause (1) of this Section 7.6(b) satisfies these minimum distribution requirements. In the case of a nonannuity distribution to a Designated Beneficiary, the Plan satisfies the requirement of this Section 7.6(b) if the distribution method satisfies the minimum distribution requirements applicable to individual accounts, as determined under Code Section 401(a)(9), and the first minimum distribution occurs no later than the December 31<sup>st</sup> described in clause (2) of this Section 7.6(b). The Committee shall apply this Section 7.6(b) by treating any amount paid to a Member's child, that becomes payable to a Member's surviving Spouse upon the child's attaining the age of majority, as paid to the Member's surviving Spouse.

(c) Special Rules. The Committee, only upon a Member's written request or, in the case of a distribution described in Section 7.6(b), only upon the written request of a Member's Spouse, may recalculate the applicable Life Expectancy period for purposes of calculating the minimum distribution applicable to a Distribution Calendar Year following the first Distribution Calendar Year. The Member must make a recalculation election not later than his Required Beginning Date. A surviving Spouse must make a recalculation election no later than the December 31<sup>st</sup> date described in clause (2) of Section 7.6(b). A recalculation election applicable to a joint Life Expectancy payment, where the survivor is a non-Spouse Beneficiary, may not take into account any adjustment to any Life Expectancy other than a Member's Life Expectancy, as prescribed by applicable regulations under Code Section 401(a)(9). In the absence of a recalculation election, the Plan does not permit recalculation of the applicable Life Expectancy factor.

No commencement of benefits shall be required to comply with this Section 7.6 to the extent that a Member has a valid election under TEFRA Section 242(b)(2).

(d) Notwithstanding the foregoing provisions of this Section 7.6, effective as of January 1, 2003, the following rules shall apply for purposes of determining required minimum distributions.

(1) Precedence. The requirements of this Section 7.6(d) will take precedence over any inconsistent provisions of the Plan.

(2) Requirements of Treasury Regulations Incorporated. All distributions required under this Section 7.6(d) will be determined and made in accordance with the Treasury Regulations under Code Section 401(a)(9).

(3) TEFRA Section 242(b)(2) Elections. Notwithstanding the other provisions of this Section 7.6(d), distributions may be made under a designation made before

January 1, 1984, in accordance with TEFRA Section 242(b)(2) and the provisions of the Plan that relate to TEFRA.

(4) Time and Manner of Distribution.

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

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

(i) If the Member's surviving Spouse is the Member's sole Designated Beneficiary, then distributions to the surviving Spouse will begin by December 31<sup>st</sup> of the calendar year immediately following the calendar year in which the Member died, or by December 31<sup>st</sup> of the calendar year in which the Member would have attained age 70½, if later.

(ii) If the Member's surviving Spouse is not the Member's sole Designated Beneficiary, then distributions to the Designated Beneficiary will begin by December 31<sup>st</sup> of the calendar year immediately following the calendar year in which the Member died.

(iii) If there is no Designated Beneficiary as of September 30<sup>th</sup> of the year following the year of the Member's death, the Member's entire interest will be distributed by December 31<sup>st</sup> of the calendar year including the fifth anniversary of the Member's death.

(iv) If the Member's surviving Spouse is the Member's sole Designated Beneficiary and the surviving Spouse dies after the Member but before distributions to the surviving Spouse begin, this Section 7.6(d)(4)(B), other than Section 7.6(d)(4)(B)(i), will apply as if the surviving Spouse were the Member.

For purposes of this Section 7.6(d)(4)(B) and Section 7.6(d)(6), unless Section 7.6(d)(4)(B)(iv) applies, distributions are considered to begin on the Member's Required Beginning Date. If Section 7.6(d)(4)(B)(iv) applies, distributions are considered to begin on the date distributions are required to begin to the surviving Spouse under Section 7.6(d)(4)(B)(i). If distributions under an annuity purchased from an insurance company irrevocably commence to the Member before the Member's Required Beginning Date (or to the Member's surviving Spouse before the date distributions are required to begin to the surviving Spouse under Section 7.6(d)(4)(B)(i)), the date distributions are considered to begin is the date distributions actually commence.

(C) Forms of Distribution. Unless the Member's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on

or before the Required Beginning Date, as of the first Distribution Calendar Year, distributions will be made in accordance with Sections 7.6(d)(5) and (6). If the Member's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code Section 401(a)(9).

(5) Required Minimum Distributions During Member's Lifetime.

(A) Amount of Required Minimum Distribution for Each Distribution Calendar Year. During the Member'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 Member's Account Balance by the distribution period in the Uniform Lifetime Table set forth in Regulation Section 1.401(a)(9)-9, using the Member's age as of the Member's birthday in the Distribution Calendar Year, or

(ii) if the Member's sole Designated Beneficiary for the Distribution Calendar Year is the Member's Spouse, the quotient obtained by dividing the Member'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 Member's and Spouse's attained ages as of the Member's and Spouse's birthdays in the Distribution Calendar Year.

(B) Lifetime Required Minimum Distributions Continue Through Year of Member's Death. Required minimum distributions will be determined under this Section 7.6(d)(5) beginning with the first Distribution Calendar Year and up to and including the Distribution Calendar Year that includes the Member's date of death.

(6) Required Minimum Distributions After Member's Death.

(A) Death On or After Date Distributions Begin.

(i) Member Survived by Designated Beneficiary. If the Member 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 Member's death is the quotient obtained by dividing the Member's Account Balance by the longer of the remaining Life Expectancy of the Member or the remaining Life Expectancy of the Member's Designated Beneficiary, determined as follows:

(I) The Member's remaining Life Expectancy is calculated using the age of the Member in the year of death, reduced by one for each subsequent year.

(II) If the Member's surviving Spouse is the Member's sole Designated Beneficiary, the remaining Life Expectancy of the surviving Spouse is calculated for each Distribution Calendar Year after the year of the Member's death using the surviving Spouse's age as of the Spouse's birthday in that year. For Distribution Calendar Years

after the year of the surviving Spouse's death, the remaining Life Expectancy of the surviving Spouse is calculated using the age of the surviving Spouse as of the Spouse's birthday in the calendar year of the Spouse's death, reduced by one for each subsequent calendar year.

(III) If the Member's surviving Spouse is not the Member'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 Member's death, reduced by one for each subsequent year.

(ii) No Designated Beneficiary. If the Member dies on or after the date distributions begin and there is no Designated Beneficiary as of September 30<sup>th</sup> of the year after the year of the Member's death, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Member's death is the quotient obtained by dividing the Member's Account Balance by the Member's remaining Life Expectancy calculated using the age of the Member in the year of death, reduced by one for each subsequent year.

(B) Death Before Date Distributions Begin.

(i) Member Survived by Designated Beneficiary. If the Member 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 Member's death is the quotient obtained by dividing the Member's Account Balance by the remaining Life Expectancy of the Member's Designated Beneficiary, determined as provided in 7.6(d)(6)(A).

(ii) No Designated Beneficiary. If the Member dies before the date distributions begin and there is no Designated Beneficiary as of September 30<sup>th</sup> of the year following the year of the Member's death, distribution of the Member's entire interest will be completed by December 31<sup>st</sup> of the calendar year including the fifth anniversary of the Member's death.

(iii) Death of Surviving Spouse Before Distributions to Surviving Spouse Required to Begin. If the Member dies before the date distributions begin, the Member's surviving Spouse is the Member's sole Designated Beneficiary, and the surviving Spouse dies before distributions are required to begin to the surviving Spouse under Section 7.6(d)(4)(B)(i), this Section 7.6(d)(6)(B) will apply as if the surviving Spouse were the Member.

7.7 ERISA Required Commencement Date. Payment of a Member's benefits, unless the Member elects otherwise, shall begin not later than the 60<sup>th</sup> day after the latest of the close of the Plan Year in which occurs

(a) the date on which the Member attains age 65,

(b) the tenth anniversary of the year in which the Member commenced participation in the Plan, or

- (c) the date on which the Member terminates his service with the Employer.

7.8 Payment of Distribution Directly to Eligible Retirement Plan. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Section 7.8, a Distributee may elect, at the time and in the manner prescribed by the Committee, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover. For purposes of this Section 7.8, the following definitions shall apply

(a) Eligible Rollover Distribution. An Eligible Rollover Distribution is any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include (1) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated Beneficiary, or for a specified period of ten years or more, or (2) any distribution to the extent such distribution is required under Code Section 401(a)(9).

(b) Eligible Retirement Plan. An Eligible Retirement Plan is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), a qualified trust described in Code Section 401(a), an annuity contract described in Code Section 401(b), an eligible deferred compensation plan under Code Section 457(b) (maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state, where such eligible plan agrees to separately account for amounts transferred into such plan from this Plan), or effective January 1, 2008, an individual retirement plan as described in Code Section 408A (subject to the restrictions of Code Section 408A(c)(3)(B) prior to January 1, 2010) that accepts the Distributee's Eligible Rollover Distribution. This 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 QDRO.

(c) Distributee. A Distributee includes an Employee or former Employee. In addition, an 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 QDRO are Distributees with regard to the interest of such Spouse.

Effective January 1, 2007, a Beneficiary of a Member who is (1) not the surviving Spouse of the Member and (2) a designated Beneficiary may elect, at the time and in the manner prescribed by the Committee, to have any portion of a distribution to which such Beneficiary is entitled transferred directly to an individual retirement plan described in Code Section 402(c)(8)(B)(i) or (ii) that is established for the purpose of receiving such distribution on behalf of such Beneficiary. If such direct transfer is made, (1) such direct transfer shall be treated as an Eligible Rollover Distribution, (2) the individual retirement plan shall be treated as an inherited individual retirement account or individual retirement annuity (within the meaning of Code Section 408(d)(3)(C)), and (3) Code Section 401(a)(9)(B) (other than clause (iv) thereof) shall apply to such plan. For this purpose, certain trusts shall be treated as designated beneficiaries, as provided in Code Section 402(c)(11)(B).

(d) Direct Rollover. A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

7.9 Payment of Distribution When Member Cannot be Located. Effective January 1, 2009, if it is not possible to make a required payment to a Member or Beneficiary on the date when the payment would otherwise be made under the Plan because the Member or Beneficiary cannot be located after making a reasonable effort to do so, a payment retroactive to the date the payment should have been made may be made no later than 60 days after the date the Member or Beneficiary is located in accordance with Regulation Section 1.401(a)-14(d).

## ARTICLE 8 ADMINISTRATION OF PLAN

8.1 Appointment and Term of Committee. The Board shall appoint at least three individuals to the Committee, the members of which shall serve until their resignation, death or removal. Any person, including but not limited to the directors, shareholders, officers and employees of the Employer, shall be eligible to serve on the Committee. Vacancies on the Committee arising by resignation, death, removal or otherwise shall be filled by the Board. Until such vacancies are filled, however, the remaining members of the Committee shall carry out the powers and duties of the Committee. A member of the Committee may resign at any time by delivering his written notice of resignation to the Board, with or without cause or prior notice, to take effect on the date specified. The Board may remove a member of the Committee at any time by delivering a written notice of removal to the Committee member, with or without cause or prior notice, to take effect on the date specified.

### 8.2 Powers and Responsibilities.

(a) Statement of Funding Policy. The Committee shall establish a funding policy and method, including but not limited to determination of short-term objectives for liquidity and long-term objectives for investment growth, or shall appoint a qualified person to do so. The Committee shall review, not less often than annually, all pertinent Employee information and Plan data in order to adjust the Plan's established funding policy and method to carry out the Plan's objectives. The Committee shall communicate the funding policy and method, and any changes thereto, periodically as it deems appropriate, to the Trustee and any Investment Manager.

(b) Appointment of Investment Manager. The Committee shall have the authority to appoint an Investment Manager or Managers to manage, including the power to acquire and dispose of, any or all of the Trust assets. In the event of any such appointment, the Committee shall establish the portion of the Trust assets that shall be subject to the management of the Investment Manager and shall so notify the Trustee in writing. Neither the Committee nor the Trustee shall have investment responsibility with respect to those assets subject to the investment direction of the Investment Manager.

(c) Appointment of Advisors. The Committee, or the Trustee with the consent of the Committee, may appoint counsel, specialists, advisors and other persons, as the Committee or the Trustee deems necessary or desirable in connection with the administration of the Plan.

(d) Specific Powers and Duties. The primary responsibility of the Committee is to administer the Plan for the exclusive benefit of the Members and their Beneficiaries, subject to the terms of the Plan. The Committee shall administer the Plan in accordance with the terms hereof and shall have the power to determine all questions arising in connection with the administration, interpretation and application of the Plan, and as more specifically set forth in this Section 8.2 and other Sections of the Plan. The Committee may correct any defect, supply any omission or reconcile any inconsistency in such manner and to such extent as it deems necessary or advisable to carry out the purposes of the Plan; provided, however, that any interpretation or construction shall be nondiscriminatory and consistent with the intent that the Plan continue to be a qualified plan and trust under Code Sections 401(a) and 501(a) and that the Plan continue to comply with ERISA.

The Committee is charged with the duties of the general administration of the Plan, including but not limited to the following:

- (1) resolving all questions relating to the eligibility of Employees to participate or remain Members hereunder;
- (2) computing, certifying and directing the Trustee with respect to the amount and kind of benefits to which a Member shall be entitled hereunder;
- (3) authorizing and directing the Trustee with respect to all disbursements from the Trust;
- (4) maintaining all necessary records for the administration of the Plan;
- (5) interpreting the provisions of the Plan and making and publishing such rules for regulation of the Plan as are consistent with the terms hereof;
- (6) determining the size and type of any annuity contract to be purchased from an insurer, and designating the insurer from which such contract shall be purchased;
- (7) providing information to any Member regarding his rights, benefits or elections available under the Plan;
- (8) furnishing the Employer with information that the Employer may require for tax or other purposes;

(9) enforcing the terms of the Plan and the rules and regulations adopted by the Committee;

(10) reviewing and rendering decisions with respect to a claim for (or a denial of a claim for) a benefit under the Plan; and

(11) determining the value of a Member's Accrued Benefit and the Vested percentage of each Member's Accrued Benefit.

(e) Other Powers and Duties. The Committee shall have all powers necessary or appropriate to fulfill its duties under the Plan.

8.3 Allocation of Duties Among Committee Members. The Committee may select a Chairman from among its members. A Secretary, who may or may not be a member of the Committee, may also be appointed by the Committee. The Chairman shall preside at all meetings of the Committee unless, in his absence, a Vice Chairman selected by the Committee presides. The Secretary shall keep all minutes of Committee proceedings and such records and documents as are necessary for the proper administration of the Plan.

The responsibilities of each Committee member may be specified by the Sponsor and accepted in writing by the member. In the event that no such delegation is made by the Sponsor, the Committee members may, by written instrument, allocate responsibilities among themselves, in which event the Committee shall notify the Sponsor and the Trustee in writing of such action and specify the responsibilities of each Committee member. The Trustee thereafter shall accept and rely upon any documents executed by the appropriate member of the Committee until such time as the Sponsor or the Committee files with the Trustee a written revocation of such designation.

8.4 Compensation of Committee Members. Committee members may receive reasonable compensation for services rendered, except that no person serving on the Committee who receives full-time pay from the Employer shall receive compensation from the Plan. All Committee members may receive reimbursement of expenses properly and actually incurred in the performance of duties under the Plan.

8.5 Manner of Acting. Except where there has been an allocation or delegation of administrative authority pursuant to Section 8.3, the Committee shall act by a majority of its members. The Chairman or the Secretary of the Committee may execute a certificate or other written evidence of Committee action. The Committee may delegate any of its rights, powers and duties to any one or more of its members, including the power to execute any document on behalf of the Committee, in which event the Committee shall notify the Board, the Employer and the Trustee of the name or names of its members so designated. The Trustee thereafter shall accept and rely upon any document executed by such member or members as representing action by the Committee, until the Committee files with the Board, the Employer and the Trustee written revocation of such designation.



8.6 Records and Reports. The Committee shall keep a record of all actions taken and shall keep all other books of account, records and other data that may be necessary for the proper administration of the Plan. The Committee shall be responsible for supplying all information and reports to the IRS, Department of Labor, Members, Beneficiaries and others, as required by law; provided, however, that reports concerning distributions, whether to a governmental agency or a recipient, shall be the responsibility of the Trustee.

8.7 Information from Employer. The Employer shall furnish to the Trustee proper written evidence of the names of the individuals duly appointed to the Committee, and of any resignations, deaths, removals or replacements of Committee members. To enable the Committee to perform its functions, the Employer shall provide full and timely information to the Committee on all matters relating to each Member's compensation, hours of service, years of service, retirement, death, disability or termination of employment, and such other pertinent facts and data as the Committee may require. The Committee shall advise the Trustee of the foregoing facts as may be pertinent to the Trustee's duties under the Plan. The Committee and Trustee may rely upon such information as is provided by the Employer and shall have no duty or responsibility to verify such information.

8.8 Payment of Expenses. Any bond required by applicable law for the performance of duties by Committee members, as well as all reasonable and necessary costs, expenses and liabilities incurred by the Committee in the supervision and administration of the Plan, that are not paid by the Employer, shall be a charge against the Plan assets and shall be paid therefrom (from forfeitures under the Plan or otherwise) by the Trustee, as directed in writing by the Committee. All Plan administration expenses may be paid from Plan assets (from forfeitures under the Plan or otherwise), unless paid by the Employer. Such expenses shall include any expenses incident to the functioning of the Committee, including but not limited to, fees of accountants, counsel and other specialists, and other costs of administering the Plan. Until paid, the expenses shall constitute a liability of the Plan assets. However, the Employer may reimburse the Trust for any administrative expenses incurred under this Section 8.8 or otherwise under the Plan.

8.9 Discretion. The Committee shall discharge its duties with respect to the Plan in the sole interest of the Members and their Beneficiaries, using the care, skill and discretion that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character under then prevailing circumstances. The Committee, in communicating the funding policy to the Trustee and any Investment Manager appointed under the Plan, shall instruct them to diversify the investments of the Trust so as to minimize the risk of large losses, unless it is clearly prudent under the circumstances not to do so.

8.10 Liability of Committee. No member of the Committee shall be liable for any act or omission on his own part, or on the part of any other Committee member, the Trustee, an Investment Manager or any other Fiduciary or agent appointed to serve the Plan, except to the extent required by law and to the extent that liability cannot be waived.

8.11 Employer Liability. The Employer assumes no obligation or responsibility with respect to any Employee, Member or Beneficiary for any act of, or failure to act on the part of,

the Committee, the Trustee, an Investment Manager or any other Fiduciary, except to the extent that liability cannot be waived.

8.12 Bonding. Every Fiduciary, unless exempted by ERISA, shall be bonded in an amount not less than ten percent of the amount of the fund such Fiduciary handles; provided, however, that the minimum bond shall be \$1,000 and the maximum bond, \$500,000. The amount of the bond shall be determined at the beginning of each Plan Year by the amount of funds handled by each such person, group, or class to be covered and their predecessors, if any, during the preceding Plan Year, or if there is no preceding Plan Year, then by the amount of the funds to be handled during the then current year. The bond shall provide protection to the Plan against any loss by reason of acts of fraud or dishonesty by the Fiduciary alone or in connivance with others. The surety shall be listed on the Department of Treasury's Listing of Approved Sureties, and the bond shall be in a form approved by the Secretary of Labor. Notwithstanding anything herein to the contrary, the cost of such bonds shall be an expense of the Plan and may, at the election of the Committee, be paid from the Plan assets or by the Employer.

8.13 Indemnification. The Employer shall indemnify each member of the Committee and each member of its Board from and against any and all liabilities, claims, costs and expenses incurred as a result of any act or omission in connection with the performance of fiduciary duties or responsibilities, if any, under the Plan and applicable law, except for liabilities, claims, costs and expenses arising from gross negligence or willful misconduct. It is specifically provided that the Employer may purchase out of its own funds, or the Trustee may purchase out of the Trust, insurance for the members of the Committee and any other Fiduciary appointed by the Board, the Employer or the Committee, and for the Trust itself, to cover liability or losses occurring by reason of the act or omission of any one or more of the members of the Committee or any other Fiduciary appointed to serve the Plan, provided such insurance permits recourse by the insurer against such Fiduciaries in the case of a breach of a fiduciary duty by one or more of the Fiduciaries.

8.14 Multiple Fiduciary Capacities. An individual, organization, firm or other entity may serve in more than one fiduciary capacity with respect to the Plan, including the ability to serve both as Trustee and as a member of the Committee.

8.15 Information to Members. The Committee shall make available to each Member and Beneficiary such records, documents and other data required by ERISA, and such Member or Beneficiary shall have the right to examine such materials at a reasonable time during normal business hours. Except as otherwise required by law, a Beneficiary's right to (and the Committee's duty to provide to the Beneficiary) information or data concerning the Plan does not arise until he first becomes entitled to receive a benefit under the Plan. Nothing included in the Plan, however, shall give a Member or Beneficiary the right to examine materials reflecting the compensation or benefits paid to any other individual Member or Beneficiary.

8.16 Reliance. Anyone required to give evidence under the terms of the Plan may do so by certificate, affidavit, document or other information that the person to act in reliance thereon may consider pertinent, reliable and genuine, and to have been signed, made or presented

by the proper party or parties. The Plan's Fiduciaries shall be fully protected in acting and relying upon any evidence described in this Section 8.16.

8.17 No Decisions by Interested Party in Own Benefit. A member of the Committee who is also a Member in the Plan shall not vote or act upon any matter relating solely to himself. In any case in which a member of the Committee is so disqualified to act, and the remaining members cannot agree, the Board shall appoint a temporary substitute member to exercise all of the powers of the disqualified member concerning the matter in which he is disqualified.

## ARTICLE 9 MEMBER ADMINISTRATIVE PROVISIONS AND CLAIMS PROCEDURE

9.1 Beneficiary Designations. Each Member from time to time may designate any person or persons (who may be designated contingently or successively and may be an entity other than a natural person) as his Beneficiary or Beneficiaries to whom his Plan benefits are paid if he dies before receipt of all such benefits (if any are required to be paid at all). Each Beneficiary designation shall be on a form approved by the Committee and will be effective only when such form is filed with the Committee during the Member's lifetime.

Each Beneficiary designation filed with the Committee will cancel all Beneficiary designations previously filed with the Committee. In the event a married Member designates a Beneficiary other than his Spouse, such designation is subject to the provisions of Section 6.9.

9.2 No Beneficiary Designation. If a married Member fails to designate a Beneficiary or if a married Member names a Beneficiary other than his Spouse and the Spouse's consent is not on file with the Committee, the Member's Vested Accrued Benefit shall be paid to the designated Beneficiary only to the extent it is not required to be paid to his surviving Spouse (if any benefit is required to be paid at all).

If a Member fails to designate a Beneficiary in the manner provided under the Plan, and is not survived by a Spouse or if the Beneficiary designated by a deceased Member dies before him or before complete distribution of his benefits, the Committee shall direct the Trustee to distribute the balance of the Member's benefits to the Member's executor or administrator.

9.3 Personal Information to Committee. Each Member and each Beneficiary of a deceased Member must furnish to the Committee or Trustee, as designated by the Committee, such evidence, data or information as the Committee or Trustee considers necessary or desirable for purposes of administering the Plan. The provisions of the Plan are effective for the benefit of each Member upon the condition precedent that each Member will furnish promptly full, true and complete evidence, data and information when requested by the Committee or Trustee, provided that the Committee or Trustee shall advise each Member of the effect of his failure to comply with its request.

9.4 Address for Notification. Each Member and each Beneficiary of a deceased Member shall file with the Committee or Trustee, as designated by the Committee, from time to

time, in writing, his address and any change of address. Any communication, statement or notice addressed to a Member or Beneficiary at his last address filed with the Committee, or as shown on the records of the Employer, shall bind the Member or Beneficiary for all purposes under the Plan.

9.5 Location of Member or Beneficiary Unknown. In the event that all, or any portion, of the distribution payable to a Member or his Beneficiary hereunder shall, at the expiration of six months after it shall become payable, remain unpaid solely by reason of the inability of the Committee, after sending a registered letter, return receipt requested, to the last known address, and after further diligent effort, to ascertain the whereabouts of such Member or his Beneficiary, such amount shall be used in the same manner as a forfeiture under the Plan. In the event a Member or Beneficiary is located subsequent to his benefit being forfeited, such benefit shall be restored.

9.6 Notice of Change in Plan Terms. The Committee, within the time prescribed by ERISA, shall furnish all Members and Beneficiaries a summary plan description and a summary description of any material modification to the Plan, or notice of discontinuance of the Plan, and all other information required by ERISA to be furnished, without charge.

9.7 Review of Plan Documents and Information. Any Member or Beneficiary of a deceased Member may examine copies of the Plan, its summary descriptions, the latest annual report, any bargaining agreement, this document and the Trust Agreement, contract or any other instrument under which the Plan is established or maintained. The Chairman of the Committee will maintain all of the items listed in this Section 9.7 in his office, or in such other place or places as he may designate from time to time in order to comply with ERISA, for examination during reasonable business hours. Upon written request of a Member or a deceased Member's Beneficiary, the Committee shall furnish a copy of any item listed in this Section 9.7. The Committee may make a reasonable charge to the requesting party for copies so furnished.

9.8 Claims Procedure. Claims for benefits under the Plan may be filed with the Committee on forms supplied by the Employer. Written notice of the disposition of a claim shall be furnished to the claimant within 90 days after the claimant's application is filed (or within 180 days if the Committee has determined that special circumstances require an extension of time and has notified the claimant of the extension). In the event the claim is denied, (a) the reasons for the denial shall be specifically set forth in the notice in language calculated to be understood by the claimant, (b) pertinent Plan provisions shall be cited, (c) where appropriate, a description of any additional material or information necessary, and an explanation as to how the claimant can perfect the claim, shall be provided, and (d) the claimant shall be furnished an explanation of the Plan's claims review procedure and applicable time limits.

9.9 Claims Review Procedure. Any Employee, former Employee, or Beneficiary of either, who has been denied a benefit by a decision of the Committee pursuant to Section 9.8 shall be entitled to file with the Committee (on a form that may be obtained from the Committee) a request for a hearing. Such request, together with a written statement of the reasons that the claimant believes his claim should be allowed, shall be filed with the Committee no later than 60 days after receipt of the written notification provided for in Section 9.8.

The claimant or his representative shall have an opportunity to review all documents in the possession of the Committee that are pertinent to the claim at issue and its disallowance. The claimant or his representative shall have an opportunity to submit written comments, documents, records and other information in support of his claim. At any hearing that is conducted, either the claimant or the Committee may cause a court reporter to attend the hearing and record the proceedings. In such event, a complete written transcript of the proceedings shall be furnished to both parties by the court reporter. The full expense of any such court reporter and such transcript shall be borne by the party causing the court reporter to attend the hearing.

A final decision as to the allowance of the claim shall be made by the Committee within 60 days of receipt of the appeal (or within 120 days if the Committee has determined that special circumstances require an extension of time and has notified the claimant of the extension). The Committee's decision on appeal shall be communicated in writing to the claimant. Such communication shall be written in a manner calculated to be understood by the claimant and shall include specific reasons for the decision and specific references to the pertinent Plan provisions on which the decision is based.

#### ARTICLE 10 TOP HEAVY PLAN PROVISIONS

10.1 Purpose and Definitions. The purpose of this Article 10 is to ensure that Non-Key Employees receive the minimum benefits and Vesting required under Code Section 416 in the event that the Plan becomes a Top Heavy Plan for any Plan Year. For purposes of complying with the top heavy plan requirements under Code Section 416, the following definitions, in addition to certain definitions set forth in Article 2, shall apply.

(a) Top Heavy Plan. This Plan, if as of the Determination Date, the aggregate of the Present Value of Accrued Benefits for Key Employees under the Plan is greater than 60 percent of the aggregate Present Value of Accrued Benefits for all Employees under the Plan.

The Plan shall also be considered a Top Heavy Plan if it is part of a Required Aggregation Group that is a Top Heavy Group.

For purposes of calculating the 60 percent top heavy ratio described in this Section 10.1(a), the Accrued Benefits of Members who are not Key Employees but who were Key Employees in prior years, and Members who have not performed services for the Employer at any time during the one-year period ending on the applicable Determination Date, shall not be taken into account.

(b) Present Value of Accrued Benefits. The actuarially calculated present value of a Member's Accrued Benefit based on the following assumptions:

(1) Present values shall be determined as of the valuation date used for computing Plan costs for minimum funding purposes (regardless of whether a valuation is

actually performed for a particular year) that falls within the 12-month period ending on the Determination Date.

(2) Accrued Benefits shall be determined as if a Member voluntarily terminated service as of the valuation date.

(3) Present values shall be determined based on the interest and mortality rates used for minimum funding purposes.

(4) In the case of a Member other than a Key Employee, a Member's Present Value of Accrued Benefits shall be determined using the single accrual method used for all plans of the Employer, or if no such single method exists, using a method that results in benefits accruing not more rapidly than the slowest accrual rate permitted under Code Section 411(b)(1)(C).

(5) Notwithstanding the foregoing, the present value of the Employee's Accrued Benefit as of the Determination Date shall be increased by the distributions made with respect to the Employee under the Plan and any Plan aggregated with the Plan under Code Section 416(g)(2) during the one-year period ending on the Determination Date. The preceding sentence shall also apply to distributions under a terminated plan that, had it not been terminated, would have been aggregated with the Plan under Code Section 416(g)(2)(A)(i). In the case of a distribution made for a reason other than severance from employment, death or disability, this provision shall be applied by substituting "five-year period" for "one-year period."

(c) Top Heavy Group. Any aggregation group if, as of the Determination Date, the sum of the aggregate accounts of Key Employees under all defined contribution plans included in such group and the Present Value of Accrued Benefits for all Key Employees under all defined benefit plans in such group, exceeds 60 percent of a similar sum determined for all Employees.

(d) Permissive Aggregation Group. The Required Aggregation Group plus any other plan or plans of the Employer that, when considered as a group with the Required Aggregation Group, would continue to satisfy the requirements of Code Sections 401(a)(4) and 410. If the Permissive Aggregation Group is not a Top Heavy Group, then no plans in such group shall be considered Top Heavy.

(e) Required Aggregation Group. In determining a Required Aggregation Group hereunder, each qualified plan of the Employer in which a Key Employee is a participant in the Plan Year including the Determination Date and each other plan of the Employer that enables any plan in which a Key Employee participates to meet the requirements of Code Section 401(a)(4) or 410 will be required to be aggregated. In the case of a Required Aggregation Group, each plan in the group will be considered a Top Heavy Plan if the Required Aggregation Group is a Top Heavy Group. No plan in the Required Aggregation Group will be considered a Top Heavy Plan if the Required Aggregation Group is not a Top Heavy Group.

(f) **Minimum Normal Retirement Benefit.** The Minimum Normal Retirement Benefit equals the applicable percentage of the Non-Key Employee's Average Annual Compensation, where applicable percentage is two percent multiplied by the number of years of Benefit Accrual Service (not to exceed ten) earned as a Non-Key Employee Member in years in which this Plan is a Top Heavy Plan.

10.2 **Minimum Normal Retirement Benefit Requirement.** If the Plan is a Top Heavy Plan, the Plan guarantees a Minimum Normal Retirement Benefit for each Non-Key Employee who is a Member in the Plan.

The Plan shall be deemed to satisfy the Minimum Normal Retirement Benefit requirement for a Non-Key Employee if the Non-Key Employee's Accrued Benefit at the end of any year in which the Plan is a Top Heavy Plan is at least equal to the Minimum Normal Retirement Benefit. For purposes of determining whether the Minimum Normal Retirement Benefit requirement is satisfied (whether through the actual Accrued Benefit or under this Section 10.2 and Section 10.3), a Member's normal retirement benefit shall be tested using a single life only annuity (with no ancillary benefits) commencing at age 65. If the normal retirement benefit is tested in any other form, it shall be actuarially adjusted, using the Actuarial Equivalent definition under Section 2.2 in accordance with Regulation Section 1.416-1, M-3.

The Minimum Normal Retirement Benefit shall not be integrated with Social Security and contributions to Social Security shall not be taken into account for purposes of determining whether the Minimum Normal Retirement Benefit has been provided.

10.3 **Additional Accruals.** If, at the end of any year in which the Plan is a Top Heavy Plan, a Non-Key Employee Member's Accrued Benefit is not at least equal to his Minimum Normal Retirement Benefit, then the Non-Key Employee Member shall earn the additional accrual necessary to increase his Accrued Benefit to the Minimum Normal Retirement Benefit. The Non-Key Employee Member's Accrued Benefit shall never be less than his Minimum Normal Retirement Benefit regardless of the Plan's Top Heavy status in Plan Years subsequent to a Plan Year in which he earned an additional accrual under Section 10.2 and this Section 10.3.

10.4 **Minimum Vesting Requirement.** If the Plan is considered a Top Heavy Plan, then the following Vesting schedule shall come into effect and replace the Vesting schedules in Section 5.1.

Years of Vesting Service	Percent Vested
Less than three	0%
Three or more	100%

The implementation of the above Vesting schedule shall be automatic and shall be deemed to have been made by a Plan amendment as of the Determination Date immediately preceding the first day of the Plan Year in which the Plan is a Top Heavy Plan, and shall be subject to the provisions of Section 5.2 (relating to a change of Vesting schedules), but shall not

be applicable to Members who do not complete at least one Hour of Service after the Plan becomes a Top Heavy Plan.

If on a subsequent Determination Date the Plan is no longer a Top Heavy Plan, the Plan may be amended to return to the prior Vesting schedules under Section 5.1. Such Plan amendment shall be subject to the provisions of Section 5.2, but in no way shall the amendment decrease the Vested percentage of a Member's Accrued Benefit that became subject to the top heavy Vesting schedule set forth in the above table under this Section 10.4.

#### ARTICLE 11

#### AMENDMENT, TERMINATION, MERGER AND MISCELLANEOUS PLAN PROVISIONS

11.1 Intent to Qualify. This Plan is intended to be a qualified defined benefit pension plan within the meaning of Code Section 401(a). The Trust is intended to be an exempt trust within the meaning of Code Section 501(a).

11.2 Exclusive Benefit/Prohibition on Diversion of Assets. This Plan has been executed for the exclusive benefit of the Members and their Beneficiaries. All assets of the Plan shall be held in the Trust for the exclusive benefit of the Members and their Beneficiaries hereunder. So far as possible, the Plan shall be interpreted and administered in a manner consistent with this intent and with the intention of the Employer that the Plan shall at all times comply fully with the requirements of applicable laws and legal guidance. Neither the Employer nor the Committee shall exercise any power or right, or perform any act, that is in conflict with or violates such laws or legal guidance. Any power or right granted under the Plan, or retained by the Employer, shall be void to the extent that its exercise or retention shall violate laws or legal guidance. The Employer shall make any and all retroactive amendments to the Plan that are required under applicable laws and legal guidance, in order to establish and maintain the Plan as a qualified plan pursuant to Code Section 401(a) and the Trust, which is part of the Plan, as tax exempt pursuant to Code Section 501(a). Except as provided in Section 4.5 or 12.2, or otherwise specifically permitted by law, it shall be impossible by operation of the Plan or 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 the Trust or any funds contributed to the Trust to be used for, or diverted to, purposes other than the exclusive benefit of Members and their Beneficiaries.

11.3 Nondiscrimination. All provisions of the Plan shall be interpreted and applied in a uniform and nondiscriminatory manner.

11.4 Nonalienation of Benefits. Subject to the exceptions set forth below in this Section 11.4, no benefit payable from the Trust to any person (including a Member or his Beneficiary) shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber or charge same shall be void. No such benefit shall be liable in any manner for, or subject to, the debts, contracts, liabilities, engagements or torts of any such person, nor shall it be subject to attachment or legal process for or against such person, and the same shall not be recognized by the Trustee, except to the extent required by law.



The preceding paragraph shall not apply to the extent that a Member or Beneficiary is indebted to the Plan for any reason under a provision of the Plan. At the time a distribution is to be made to or for the benefit of a Member or Beneficiary, such portion of the distribution amount equal to the indebtedness shall be paid by the Trustee to the Trustee or the Committee, at the direction of the Committee, to apply against or discharge the indebtedness. Prior to making a payment, however, the Committee must give the Member or Beneficiary written notice that the indebtedness is to be so paid in whole or part from his vested Accrued Benefit. If the Member or Beneficiary does not agree that the indebtedness is a valid claim against his vested Accrued Benefit, he shall be entitled to a review of the validity of the claim in accordance with Sections 9.8 and 9.9.

The first paragraph of this Section 11.4 shall not apply to a QDRO or such other domestic relations order permitted to be so treated by the Committee under the provisions of the Retirement Equity Act of 1984. All rights and benefits, including elections provided to Members, their Spouses or Beneficiaries, shall be subject to the rights accorded Alternate Payees under QDROs. To the extent provided under a QDRO, a former Spouse of a Member shall be treated as his Spouse or surviving Spouse for purposes of the Plan.

**11.5 Applicable Law.** The Plan shall be construed and administered in accordance with ERISA and the laws of the State of Texas, to the extent that such laws are not preempted by ERISA.

**11.6 Headings Not to Control.** Titles, headings and subheadings have been used in the Plan for convenience of reference only and are to be ignored in the interpretation of the Plan's provisions.

**11.7 Gender and Number.** Words used herein in the masculine or feminine gender shall be construed as the feminine or masculine gender, respectively, where appropriate. Words used in the singular or plural shall be construed as the plural or singular, respectively, where appropriate.

**11.8 Severability.** Should any provision of the Plan be determined to be void by a court of competent jurisdiction, the Plan will continue to operate, subject to the Board's right to amend or terminate under Sections 11.14 and 11.16, and for purposes of the jurisdiction of the court only, will be deemed not to include the provision determined to be void.

**11.9 No Contract of Employment.** The adoption and maintenance of the Plan shall not be deemed to constitute a contract between the Employer and any Employee or Member, and shall not be considered an inducement to the employment of any person. Nothing included herein shall be construed to give any Employee or Member the right to be retained in the employ of the Employer, or to interfere with the right of the Employer to terminate the employment of any Employee or Member at any time.

**11.10 No Duplication of Benefits.** There shall be no duplication of benefits under the Plan as a result of employment by more than one Employer.

**11.11 Legal Action.** In the event a claim, suit or proceeding is brought regarding the Plan and/or the Trust, to which the Committee and/or the Trustee may be a party, and such claim, suit or proceeding is resolved in favor of the Committee and/or the Trustee, they shall be entitled to reimbursement from the Trust for their costs, attorneys' fees and other expenses for which they may be liable.

Except as otherwise provided by ERISA, only the Employer, the Committee and the Trustee shall be necessary parties to any court proceeding involving the Trustee or the Trust. No Member or Beneficiary shall be entitled to any notice of process unless required by ERISA. Any final judgment entered in any proceeding shall be binding and conclusive upon the Employer, the Committee, the Trustee, the Members and their Beneficiaries.

**11.12 Protective Clause.** Neither the Sponsor, the Employer, the Committee nor the Trustee, nor their successors, shall be responsible for the validity of an insurance contract issued hereunder, or for the failure on the part of an insurer to make payments provided under any such contract, or for the action of any person that may delay payment or render a contract null, void or unenforceable, in whole or in part.

**11.13 Action by Sponsor or Employer.** Whenever the Sponsor or Employer is permitted or required, under the terms of the Plan, to perform any act, such act shall be performed by a person duly authorized by its legally constituted authority.

**11.14 Right to Amend and Terminate.** The Employer hopes and expects to continue the Plan indefinitely, but continuation of the Plan is not assumed as a contractual obligation. Therefore, the Employer reserves the right to amend the Plan in whole or in part at any time and from time to time, without the consent of any other party, except that at no time shall an amendment

(a) violate the exclusive benefit requirement or the prohibition on diversion of assets under Section 11.2;

(b) affect the duties, rights or responsibilities of the Trustee or the Committee without the written consent of the affected party; or

(c) reduce the Accrued Benefit of a Member, except to the extent permitted by applicable law, regulation or ruling that specifically permits the reduction of same. Any amendment shall be treated as prohibitively reducing a Member's Accrued Benefit determined immediately before the adoption of such amendment if it has the effect, with respect to benefits accrued prior to adoption of the amendment, of (1) eliminating or reducing an early retirement benefit or a retirement type subsidy, or (2) eliminating an optional form of benefit.

Each amendment shall be in writing and shall state the date on which it is effective (which may be a retroactive or a prospective effective date). Amendments shall be approved by the Board or by the Committee, if so authorized by the Board.

No amendment that affects the rights, duties or responsibilities of the Trustee, Committee or an Investment Manager may be made without such party's written consent. The Trustee shall not be required to execute any such amendment unless the Trust Agreement is amended thereby.

Upon termination of the Plan, a Member's benefit shall be determined using the interest rate and mortality table otherwise applicable for determining the Member's benefit under the Plan without regard to the termination of the Plan. Any interest rate used to determine a Cash Balance Member's benefit under the Plan that is a variable rate, including any interest crediting rate and any interest rate used to determine annuity benefits, shall be determined as the average of the rates of interest used under the Plan for that purpose during the five-year period ending on the Plan termination date.

**11.15 Security Required for Certain Amendments.** For Plan Years beginning prior to January 1, 2008, in accordance with ERISA Section 307, any amendment adopted by the Employer that has the effect of increasing the Plan's current liability (as such term is defined in ERISA Section 302(d)) such that the funded current liability percentage (as also defined in ERISA Section 302(d)) for the Plan Year in which such amendment takes effect is less than 60 percent, including the amount of the unfunded current liability (as defined in ERISA Section 302(d)) under the Plan attributable to the Plan amendment, then the Sponsor (or any member of the controlled group of the Sponsor) shall be required prior to such amendment taking effect to provide security to the Plan.

The security required under this Section 11.15 shall consist of

- (a) a bond issued by a corporate surety company that is an acceptable surety for purposes of ERISA Section 412,
- (b) cash, or United States obligations that mature in three years or less, held in escrow by a bank or similar financial institution, or
- (c) such other form of security as is satisfactory to the Secretary of the Treasury and the parties involved.

The amount of the security shall be equal to the excess of (d) over (e), where

- (d) equals the lesser of
  - (1) the amount of additional Plan assets that would be necessary to increase the funded current liability percentage under the Plan to 60 percent, including the amount of the unfunded current liability under the Plan attributable to the Plan amendment, or
  - (2) the amount of the increase in current liability under the Plan attributable to the Plan amendment, and
- (e) equals \$10,000,000.

The security shall be released (and any amounts thereunder shall be refunded together with any interest accrued thereon) at the end of the first Plan Year that ends after the provision of the security and for which the funded current liability percentage is not less than 60 percent. If the IRS publishes regulations prescribing the partial release of security by reason of increases in the funded current liability percentage, the security shall be released under the Plan in accordance with such regulations.

**11.16 Termination of Plan.** The Employer shall have the right, at any time, to suspend or discontinue its contributions under the Plan, and to terminate the Plan and Trust at any time. The Plan shall terminate upon the first to occur of the following:

- (a) the date terminated by action of the Employer;
- (b) the date the Employer is judicially declared bankrupt or insolvent; or
- (c) the dissolution, merger, consolidation or reorganization of the Employer or the sale by the Employer of all or substantially all of its assets, unless the successor or purchaser makes provision to continue the Plan, in which event the successor or purchaser shall become the Employer under the Plan.

Upon termination of the Plan, the distribution provisions of the Plan shall remain operative.

To liquidate the Trust, the Committee shall purchase either deferred or immediate annuity contracts (as the circumstances require and depending on the payment status of benefits) for each Member whose lump sum Actuarial Equivalent Vested Accrued Benefit exceeds \$3,500 (\$5,000 for Plan Years beginning after December 31, 1997) and who does not elect immediate distribution. Any such annuity contracts must protect a Member's distribution rights under the Plan.

The Trust shall continue until the Trustee has distributed all of the benefits under the Plan in accordance with the direction of the Committee. A resolution or amendment to freeze all future benefit accruals, but otherwise to continue to maintain the Plan, shall not be a termination for purposes of this Section 11.16. Further, a merger or direct transfer described in Section 11.18 is not a termination for purposes of the special distribution provisions described in this Section 11.16.

In the event of Plan termination, the benefit of any Highly Compensated Employee or any highly compensated former employee shall be limited to a benefit that is nondiscriminatory under Code Section 401(a)(4).

**11.17 Vesting upon Termination.** Notwithstanding any other provision of the Plan to the contrary, upon the full or partial termination of the Plan, an affected Member's right to his Accrued Benefit shall be 100 percent Vested to the extent funded.