

**Fourth Restatement of the  
SEIU Affiliates' Officers &  
Employees Supplemental Retirement  
Savings 401(k) Plan**

**("SEIU Affiliates 401(k) Plan")**

**Effective January 1, 2021**

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## **SEIU AFFILIATES 401(k) PLAN FOURTH RESTATEMENT**

### **Article 1. Purpose**

The Service Employees International Union (SEIU) established the Plan and Trust known as the SEIU Affiliates' Officers & Employees Supplemental Retirement Savings 401(k) Plan ("SEIU Affiliates 401(k) Plan and Trust," the "Plan" or "Plan and Trust"), originally effective August 1, 1999. Unless specifically provided herein, the terms of this Fourth Restatement shall be effective as if they had been part of the original document. The purpose and goal of this Plan is to provide additional retirement income to employees of affiliates and related organizations of the SEIU.

The Plan and Trust are intended to meet the requirements of Sections 401(a) and (k) and 501(a) of the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 and other subsequent legislation. The Plan is intended to be a profit sharing and cash or deferred savings plan. The provisions of this Plan shall apply only to an Employee who is employed on or after the Effective Date.

### **Article 2. Definitions and Construction**

**a. Definitions:** Where the following words and phrases appear in this Plan, they shall have the respective meanings set forth in this Article, unless the context clearly indicates to the contrary.

*i. Principal Entities:*

(1) **Plan:** SEIU Affiliates 401(k) Plan and Trust, the Plan set forth herein, as amended from time to time. To the extent that this document provides that the Plan shall take any action or exercise any power, such action or power shall be taken or exercised by SEIU, or by such other person or entity to whom SEIU has delegated such responsibility.

(2) **Trust (or Trust Fund):** The fund known as the SEIU Affiliates 401(k) Trust, maintained in accordance with the terms of this document.

(3) **Employer:** Any local union or other subordinate entity of the SEIU, or any other organization that the Board of Trustees in its sole discretion has determined to be permitted to participate, that has executed a Participation Agreement, providing for its participation in this Plan. Notwithstanding the foregoing, an Employer that has failed to remit contributions when due shall cease to be an Employer maintaining the Plan with regard to contributions that would otherwise become due and owing after such date. However, such Employer shall remain liable for all obligations incurred prior to the date it ceased to participate in the Plan. The Board of Trustees, by regulation or otherwise, may reinstate an Employer following the cure of any such delinquency.

(4) Employee: Any person who, on or after the Effective Date, is an employee of an Employer.

(5) Leased Employee: The term Leased Employee means any person (other than an Employee of the Recipient Employer) who has performed services for an Employer (“Recipient Employer”) (or for the Recipient Employer and related persons determined in accordance with Section 414(n)(6) of the Code) pursuant to an agreement between the Recipient Employer and any other person (“Leasing Organization”) on a substantially full-time basis for a period of at least one (1) year under the primary direction or control of the Recipient Employer.

Except as provided otherwise in this paragraph (5), a Leased Employee shall be considered an Employee of the Recipient Employer. Contributions or benefits provided to a Leased Employee by the Leasing Organization that are attributable to services performed for the Recipient Employer shall be treated as provided by the Recipient Employer.

A Leased Employee shall not be considered an Employee of the Recipient Employer if:

- (i) such Leased Employee is covered by a money purchase plan providing:
  - (1) a nonintegrated employer contribution rate of at least 10 percent of compensation, as defined in Section 415(c)(3) of the Code, but including amounts contributed pursuant to a salary reduction agreement that are excludable from the employee’s gross income under Section 125, Section 402(e), Section 402(h)(1)(B), or Section 403(b) of the Code; (2) immediate participation; and (3) full and immediate vesting; and
- (ii) Leased Employees do not constitute more than 20% of the Recipient Employer’s non-highly compensated workforce.

(6) Participant: An Employee participating in the Plan in accordance with the provisions of Article 3.a.

(7) Terminated Vested Participant: A Participant whose employment with an Employer has terminated but who has a vested account balance under the Plan that has not been paid in full and, therefore, is continuing to participate in the allocation of Trust Fund Income.

(8) Beneficiary: A person or persons (natural or otherwise) designated by a Participant in accordance with the provisions of Article 6.g to receive any death benefit that shall be payable under this Plan.

(9) Board of Trustees: The Board of Trustees appointed in accordance with Article 9.

(10) Fiduciaries: The Board of Trustees, and anyone else to whom the Board of Trustees has delegated fiduciary responsibility, but only with respect to the specific responsibilities of each for Plan and Trust administration, as described in Article 10.a.

(11) Eligible Spouse: The spouse to whom a Participant or Terminated Vested Participant was married on the date benefit payments under the Plan commenced pursuant to Article 6.e, or if the Participant dies prior to commencement of benefit payments, the spouse to whom the Participant or Terminated Vested Participant was married on the date of his or her death.

(12) Plan Administrator: The Plan Administrator, within the meaning of ERISA Section 3(16)(A), shall be the Board of Trustees.

(13) Plan Sponsor: The Plan Sponsor, within the meaning of ERISA Section 3(16)(B), shall be the Board of Trustees.

(14) Highly Compensated Employee: The term Highly Compensated Employee means any employee who: (1) was a 5-percent owner at any time during the year or the preceding year, or (2) for the preceding year had compensation from the employer in excess of a set amount (“HCE Compensation Threshold”) annually adjusted under Section 415(d) of the Code and, if the Plan Sponsor so elects was in the top paid group (20%) for the preceding year. The HCE Compensation Threshold of the compensation limitation is \$130,000 for 2021. Absent a specific election in the Participation Agreement, the Plan Sponsor will not select the top paid group option under definition (2) above.

For this purpose the applicable year of the plan for which a determination is being made is called a determination year and the preceding 12-month period is called the look-back year.

In determining who is a highly compensated employee, an Employer may make a top paid group election. The effect of this election is that an Employee (who is not a 5-percent owner at any time during the determination year or the look-back year) with compensation in excess of the HCE Compensation Threshold (as adjusted) for the look-back year is a Highly Compensated Employee only if the Employee was in the top-paid group for the look-back year. An employee is in the top-paid group of employees if such employee is in the group consisting of the top 20 percent of employees when ranked on the basis of compensation paid during the year. To the extent the foregoing definition of “top-paid group” is unclear, the definition shall be interpreted in accordance with Section 414(q)(3) of the Internal Revenue Code.

*ii. Determination of Benefits:*

(1) Account Balance: To the extent applicable, on any date of determination, the value of a Participant’s Employer Contribution Account, Elective Deferral Contribution Account, and Rollover Contribution Account.

(2) Actual Deferral Percentage: For a specified group of Participants for a Plan Year, the average of the ratios (calculated separately) for each Participant in such group of:

(a) The amount of Elective Deferral Contributions actually paid to the Plan by an Employer on behalf of each such Participant for such Plan Year; divided by

(b) The Participant's Compensation for such Plan Year, whether or not the Participant was a Participant for the entire Plan Year.

The Actual Deferral Percentage for any Participant who is a Highly Compensated Employee for the Plan Year and who is eligible to have Salary Reduction Contributions or similar contributions allocated to his account under two or more plans or arrangements described in Section 401(k) of the Code that are maintained by the Employer under Sections 414(b), (c), (m), or (o), of the Code will be determined as if all such Elective Deferral Contributions were made under a single arrangement. If a Highly Compensated Employee participates in two or more plans or arrangements described in Section 401(k) of the Code that have different plan years, all such plans or arrangements ending with or within the same calendar year shall be treated as a single arrangement.

The determination and treatment of the Actual Deferral Percentage of any Participant will satisfy such other requirements as may be prescribed by the Secretary of the Treasury. In accordance with regulations prescribed by the Secretary of the Treasury, the Employer may elect to take into account Employer matching contributions when computing the Actual Deferral Percentage limits.

In the event that this Plan satisfies the requirements of Sections 401(k), 401(a)(4), or 410(b) of the Code only if aggregated with one or more other plans, or if one or more other plans satisfy the requirements of such Sections only if aggregated with this Plan, then this Article 2.a.ii.(2) shall be applied by determining the Actual Deferral Percentage of Employees as if all such plans were a single plan. Plans may be aggregated in order to satisfy Section 401(k) of the Code only if they have the same plan year.

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

(4) **Participation:** The period commencing as of the date the Employee became a Participant and ending on the date his or her employment with all Employers terminated except that, with respect to a Terminated Vested Participant, limited participation in the Trust Fund Income continues until his or her vested account balance is distributed.

(5) Service: A Participant's period of employment with an Employer determined in accordance with Article 3.c.

(6) Authorized Leave of Absence: Any absence authorized by an Employer under the Employer's standard personnel practices provided that all persons under similar circumstances must be treated alike in the granting of such Authorized Leaves of Absence and provided further that the Employee returns or retires within the period of authorized absence. An absence due to service in the Armed Forces of the United States shall be considered an Authorized Leave of Absence provided that the Employee complies with all of the requirements of federal law in order to be entitled to reemployment and provided further that the Employee returns to employment with the Employer within the period provided by such law.

(7) Military Service: Notwithstanding any provision of this plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Code and, effective January 1, 2007, in accordance with Section 401(a)(37) of the Code. Additionally, in the case of a qualified reservist distribution, such distributions shall be provided in accordance with Section 72(t)(2)(G)(iv) of the Code effective January 1, 2007.

(8) Employer Contribution Account: The account maintained for a Participant to record his or her share of the contributions of an Employer and adjustments relating thereto, but excluding all Voluntary Deferrals.

(9) Elective Deferral Contribution Account (or "Elective Deferral Account): The account maintained for a Participant to record his or her Elective Deferral Contributions made pursuant to a Salary Reduction Agreement, and adjustments relating thereto.

(10) Matching Contribution Account: The account maintained for a Participant to record any Matching Contributions made by his or her Employer on his or her behalf.

(11) Contribution Percentage: For a group of Participants, the average of the following ratios (calculated separately) for each Participant in the group:

(a) The Employer Matching Contributions made on behalf of each Participant for the Plan Year; over

(b) The Participant's Compensation for that Plan Year, whether or not the Participant was a Participant for the entire Plan Year.

In accordance with regulations prescribed by the Secretary of the Treasury, the Board of Trustees may elect to take into account Salary Reduction Contributions when computing the Contribution Percentage limits. The Contribution Percentage for any Participant who is a Highly Compensated Employee for the Plan Year and who is eligible to have Elective Deferral Contributions or Employer Matching Contributions allocated to his account under two or more

plans described in Section 401(a) of the Code or arrangements described in Section 401(k) of the Code that are maintained by an Employer or an entity that is required to be aggregated with the Employer pursuant to Sections 414(b), (c), (m), or (o) of the Code will be determined as if all such contributions were made under a single plan. If a Highly Compensated Employee participates in two or more arrangements described in Section 401(k) of the Code that have different plan years, all such arrangements ending with or within the same calendar year shall be treated as a single arrangement.

For purposes of computing the Contribution Percentage Test, Elective Deferral Contributions will be considered made in the Plan Year in which they are contributed to the Trust Fund and Employer matching contributions will be considered made for the Plan Year if made no later than the end of the twelve-month period beginning after the close of the Plan Year. The determination and treatment of the Contribution Percentage of any Participant will satisfy such other requirements as may be prescribed by Secretary of the Treasury.

In the event that this Plan satisfies the requirements of Section 401(m), 401(a)(4) or 410(b) of the Code only if aggregated with one or more other plans, or if one or more other plans satisfy the requirements of such Sections only if aggregated with this Plan, then this Article 2.a.ii.(11) will be applied by determining the Contribution percentages of eligible Participants as if all such plans were a single plan. Plans may be aggregated in order to satisfy Section 401(m) of the Code only if they have the same plan year.

(12) Compensation: The total of all amounts paid to a Participant by an Employer for personal services as reported on the Participant's Federal Income Tax Withholding Statement (Form W-2) and excluding any benefits paid under this Plan, provided that for purposes of allocating the Employer's contribution for the Year in which a Participant begins or resumes Participation, Compensation before his or her Participation began or resumed shall be disregarded. This Plan shall not take into consideration a Participant's Compensation to the extent it exceeds \$200,000 (\$290,000 for 2021), as adjusted from time to time pursuant to IRC Section 401(a)(17)(B).

For purposes of limitations on contributions and deferrals, the term compensation shall include any elective deferral (as defined in Section 402(g)(3) of the Code) and any amount which is contributed or deferred by the employer at the election of the employee and which is not includible in the gross income of the employee by reason of Section 125, or Section 457 of the Code. Effective January 1, 2001, compensation shall also include any amount which is contributed or deferred by the employer at the election of the employee and which is not includible in the gross income of the employee by reason of Section 132(f)(4) of the Code. Effective January 1, 2009, Compensation shall include the amount of any differential wage payments paid by the Employer to a Participant in accordance with Code Sections 3401(h) and 414(u)(12).

Beginning January 1, 2008, the definition of compensation for purposes of Section 415 of the Code, as well as compensation for purposes of determining Highly Compensated Employees pursuant to Section 414(q) of the Code and for top-heavy purposes under Section 416 of the

Code (including the determination of key employees), shall be modified by (1) including “Accrued Leave Payments” or other leaves, (2) including “Deferred Compensation Payments”, and (3) excluding salary continuation payments for “Military Leave Payments”, and (4) excluding salary continuation payments for “Disability Payments.”

(a) “Accrued Leave Payments” mean payments made within the post-severance window period for accrued bona fide sick, vacation or other leave, but only if (1) the participant would have been able to use such leave if his employment had continued and (2) such amounts would have been included in 415 compensation if paid prior to severance from employment.

(b) “Deferred Compensation Payments” mean amounts received by the participant within the post-severance window period pursuant to a non-qualified, unfunded deferred compensation plan, but only if and to the extent (1) the participant would have received such payment at the same if he had continued in employment, (2) such amounts would have been included in 415 compensation if paid prior to severance from employment, and (3) the payment is includable in the participant’s gross income.

(c) “Military Leave Payments” mean payments to a participant who is not performing services for the employer due to qualified military service; to the extent such amounts do not exceed the amounts the participants would have received if he had continued in employment with the employer.

(d) “Disability Payments” mean compensation received by a participant who is permanently and totally disabled, provided that the plan limits availability of this option to either (a) non-Highly Compensated Employees or (b) a specified period of time.

(e) “Post-Severance Window Period” means the period (a) within 2 ½ months of the participant’s severance date or (b) by the close of the limitation year in which the severance occurs, whichever is later.

(13) Excess Aggregate Contributions: With respect to any Plan Year, the excess of:

(a) The aggregate Contribution Percentage amounts taken into account in computing the numerator of the Contribution Percentage actually made on behalf of Highly Compensated Employees for such Plan Year; over

(b) The maximum Contribution Percentage amounts permitted by the Contribution Percentage limits set forth in Article 5.e (determined by reducing contributions made on behalf of Highly Compensated Employees

in order of their Contribution Percentages beginning with the highest of such percentages).

Such determination shall be made after first determining Excess Deferral Amounts allocated to this Plan pursuant to Article 5.e.i and then determining Excess Contributions pursuant to Article 5.e.ii.

(14) Excess Contributions: With respect to any Plan Year, the excess of:

(a) The aggregate amount of contributions actually taken into account in computing the Actual Deferral Percentage of Highly Compensated Employees for such Plan Year; over

(b) The maximum amount of such contributions permitted by the Actual Deferral Percentage limits set forth in Article 5.e.i (determined by reducing contributions made on behalf of Highly Compensated Employees in order of the Actual Deferral Percentage, beginning with the highest of such percentages).

(15) Excess Deferral Amounts: The total of a Participant's Elective Deferral Contributions under this Plan for a calendar year and other amounts deferred by the Participant under other plans or arrangements described in Section 401(k), 408(k) or 403(b) of the Code for such year in excess of the limit imposed on the Participant for such year by Section 402(g) of the Code.

(16) Excess Compensation: Compensation (subject to the limitations set forth in the preceding paragraph) in excess of the maximum taxable wage base as provided by the Social Security Act in any given Year except that, with respect to a Participant who begins or resumes Participation on a date other than January 1, Excess Compensation for such Year shall be Compensation in excess of a percentage of such designated amount, such percentage being equal to the fractional portion of the Year during which the Employee was an active Participant in the Plan.

(17) Forfeiture: The portion of a Participant's Employer contribution Account which is forfeited because of termination of employment before full vesting.

(18) Income: The net gain or loss of the Trust Fund from investments, as reflected by interest payments, dividends, realized and unrealized gains and losses on securities, other investment transactions and expenses paid from the Trust Fund. In determining the Income of the Trust Fund as of any date, assets shall be valued on the basis of their then fair market value.

(19) Additions: With respect to each Year, the total of the amount allocated to a Participant's Employer Contribution Account exclusive of any Forfeiture amounts reinstated pursuant to Article 4.c.

(20) Disability: A determination by the Social Security Administration, the Railroad Retirement Board, or another governmental entity that awards benefits on the basis of disability, that an individual is permanently disabled. The Trustees shall accept as proof of disability a written determination of disability from the governmental entity making such determination.

(21) Vested Employer Contribution Account: The account maintained for a Participant to record amounts transferred to the Trust Fund pursuant to Article 4.d and adjustments relating thereto.

(22) Salary Reduction Agreement: The written agreement between a Participant and his or her Employer pursuant to which the Participant agrees to reduce his or her Compensation by a specified percentage and an Employer agrees to remit such amounts to the Plan as Elective Deferral Contributions on behalf of the Participant.

(23) Roth Elective Deferrals or Roth Elective Deferral Contributions: A Participant's Elective Deferrals that are includible in the Participant's gross income at the time deferred and that have been irrevocably designated as Roth Elective Deferrals by the Participant in his or her deferral election. For calendar years beginning after December 31, 2021, the term "Elective Deferrals" (or "Elective Deferral Contributions") includes Roth Elective Deferrals.

(24) Roth Elective Deferral Account: The portion of the Elective Deferral Account attributable to Roth Elective Deferrals. A Participant's Roth Elective Deferrals will be maintained in a separate account containing only the Participant's Roth Elective Deferrals and gains and losses attributable to those Roth Elective Deferrals.

*iii Other Definitions:*

(1) Effective Date: August 1, 1999, the date on which the provisions of this Plan became effective.

(2) Plan Year: The 12-month period commencing on January 1 and ending on December 31.

(3) Valuation Date: The last day of each Year or the date on which a special valuation is made pursuant to Article 5.b.

(4) ERISA: The Employee Retirement Income Security Act of 1974, as amended from time to time.

(5) **Participation Agreement:** An Agreement between the Board of Trustees and an Employer that provides for participation in this Plan.

**b. Construction:** The masculine gender, where appearing in the Plan, shall be deemed to include the feminine gender, unless the context clearly indicates to the contrary. The words “hereof,” “herein,” “hereunder” and other similar compounds of the word “here” shall mean and refer to the entire Plan and not to any particular provision or Section. Article and Section headings are included for convenience of reference and are not intended to add or subtract from the terms of the Plan.

### **Article 3. Participation and Service**

**a. Participation:** An Employee shall become a Participant on the later of the following:

- i.* His or her Employer’s effective date of participation in the Plan;
- ii.* The first day of the month following the date upon which he or she attains age 18; or
- iii.* The first day of the month following the conclusion of the eligibility period selected by the Employer in its Participation Agreement. Under no circumstance may the eligibility period exceed one year.

After a termination of employment with any Employer, a rehired Employee’s subsequent Participation in the Plan shall be subject to the provisions of Article 3.c.

**b. Exclusions from Participation**

- i.* Notwithstanding the foregoing, an Employer’s Participation Agreement may exclude from participation employees covered under one or more collectively bargained agreements as defined in Section 410(b)(3)(A) of the Code.
- ii.* Notwithstanding the foregoing, an Employer’s Participation Agreement may limit participation to employees covered under one or more identified collectively bargaining agreements.
- iii.* Notwithstanding the foregoing and effective May 15, 2002, an Employer’s Participation Agreement may exclude from participation part-time employees who work fewer than 1,000 hours within a calendar year.

**c. Service:** Service is used to determine eligibility for participation and vesting and means the aggregate of all period(s) of time, expressed in months, which elapses during an

Employee's Employment, commencing from the "elapsed time start date" and ending on the date the Employee "severs from service."

The "elapsed time start date" is the first day of the first month in which the Employee completes an Hour of Service. An Employee shall be deemed to "sever from service" on the earlier of (i) the date the Employee quits, is discharged, retires or dies; or (ii) the first anniversary of the first date in which the Employee remains absent from active service (with or without pay) for any reason such as sickness, disability, leave of absence, layoff or maternity or paternity leave.

In addition, if an Employee performs an Hour of Service on or before the first anniversary of the earlier of (i) the date the Employee "severs from service" as a result of a quit, discharge or retirement; or (ii) the first day of absence from active service, the intervening period shall be counted as Service.

Hour of Service shall mean each hour for which an employee is paid or entitled to payment for the performance of duties for the employer. Retroactive to deaths occurring on or after January 1, 2007, Hour of Service shall be credited under this Section to a Participant even if such Participant's employment ceases due to the performance of Qualified Military Service during which the Participant dies, so that the Participant is deemed to have been reemployed on the day immediately preceding his date of death. Period of Severance is a continuous period of time during which the employee is not employed by the employer. Such period begins on the date the employee retires, quits or is discharged, or if earlier, the twelve (12) month anniversary of the date on which the employee was otherwise first absent from service. A One Year Period of Severance is a 12-month period beginning on the severance from service date and ending on the first anniversary of such date, provided that the employee during such twelve (12) month period fails to perform an Hour of Service for an Employer or Employers maintaining the Plan.

In the case of an individual who is absent from work for maternity or paternity reasons, the 12-month period beginning on the first anniversary of the first date of such absences shall not constitute a Period of Severance. For the purpose of this paragraph, an absence from work for maternity or paternity reasons means an absence (1) by reason of the pregnancy of the individual, (2) by reason of the birth of a child of the individual, (3) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or (4) for purposes of caring for such child for a period beginning immediately following such birth or placement.

Service shall include contiguous non-covered service. Contiguous non-covered service is service with an Employer in employment not covered by the Plan immediately following or preceding employment covered by the Plan with the same Employer, where no quit, discharge or retirement occurs between the covered employment and non-covered employment. For purposes of the preceding sentence only, the phrase "the same Employer" shall not include other separate and distinct members of the same "Controlled Group," as defined in Section 4001(a)(14)(A) of ERISA and 26 U.S.C. § 1563.

**d. Termination and Reemployment:** Except for the continuing participation in Trust Fund Income of a Terminated Vested Participant, Participation in the Plan shall cease upon termination of employment with an Employer. Termination of employment may have resulted from Retirement, death, voluntary or involuntary termination of employment, unauthorized absence, or by failure to return to active employment with an Employer or to retire by the date on which an Authorized Leave of Absence expired.

*i. Termination of Employment:* Upon the reemployment of an Employee, the following rules shall apply in determining his or her Participation in the Plan and his or her Service under Article 3.b:

(1) Before 5 One Year Periods of Severance -- if the Employee is rehired before he has 5 One Year Periods of Severance, he shall participate in the Plan as of the date of his or her reemployment, if he previously was a Participant, or the first January 1 or July 1 following his or her reemployment on which he has completed the requirements of Article 3.a. For the purpose of determining when an Employee completes the requirements of Article 3.a, hours of employment during his or her prior period of employment shall be recognized. In addition, if a terminated Participant is rehired before he has 5 One Year Periods of Severance, he may also be entitled to a beginning Employer Contribution Account as provided in Article 4.c.

(2) After 5 One Year Periods of Severance -- If an Employee who was not vested when he or she terminated, or was not a Participant in the Plan during, his or her prior period of employment is rehired after he or she has 5 One Year Periods of Severance, (i) any Service attributable to his or her prior period of employment shall be cancelled and (ii) he or she must meet the requirements of Article 3.a for Participation in the Plan as if he or she were a new Employee. If an Employee who was vested when his or her prior period of employment terminated is rehired after he or she has 5 One Year Periods of Severance, (i) any Service attributable to his or her prior period of employment shall not be cancelled and (ii) he or she shall recommence Participation as of the date of his or her reemployment, if he or she previously was a Participant, or the first January 1 or July 1 following his or her reemployment on which he has completed the requirements of Article 3.a. For the purpose of determining when an Employee completes the requirements of Article 3.a, hours of employment during his or her prior period of employment will be recognized.

*ii. Parental Leave:*

Notwithstanding the foregoing, if an Employee's termination of employment is due to a "maternity or paternity leave," then subparagraph (i)(1) above shall be read by substituting the number "6" for the number "5" wherever it appears therein. For the purposes of this Plan, "maternity or paternity leave" means termination of employment or absence from work due to

the pregnancy of the Employee, the birth of a child by an Employee, the placement of a child in connection with the adoption of the child by an Employee, or the caring for an Employee's child during the period immediately following the child's birth or placement for adoption. The Board of Trustees shall determine, under rules of uniform application and based on information provided to the Board of Trustees by the Employee, whether or not the Employee's termination of employment or absence from work is due to "maternity or paternity leave."

**e. Portability**

Service for any Employer participating in the Plan shall be treated as service under the Plan. An Employee may change participating Employers, and service for each such Employer shall be aggregated. Notwithstanding the forgoing, no more than one year of service may be earned during any single calendar year.

**f. Termination of Participation**

Notwithstanding any other provision of this Section, service for an Employer subsequent to the date the Employer ceases to participate in the Plan shall not be considered service under this Plan.

**Article 4. Contributions and Forfeitures**

**a. Elective Deferral Contributions:**

*i.* Effective June 1, 2002, each Participant may elect to defer the receipt of not more than 25% of Compensation by signing a Salary Reduction Agreement furnished by the Plan. An Employer will pay over to the Fund all Elective Deferral Contributions remitted on behalf of a Participant not later than the date required by applicable law and regulations. All amounts withheld pursuant to a Salary Reduction Agreement shall be credited to the Participant's Elective Deferral Contribution Account.

*ii.* Participants may elect to commence Elective Deferral Contributions at any time following the Participant's satisfaction of the eligibility requirements of this Plan.

*iii.* If elected by his or her Employer in the Participation Agreement, effective as of the later of March 1, 2022 or the date specified in the Participation Agreement, a Participant may make Roth Elective Deferrals to the Plan pursuant to paragraph (i) above. Roth Elective Deferrals are includible in the Participant's gross income at the time deferred and must be irrevocably designated as Roth Elective Deferrals by the Participant in the Salary Reduction Agreement.

*iv.* A Participant may elect to stop, reduce or increase his or her Elective Deferral Contributions at any time by completing a new Salary Reduction Agreement. Any such election will be effective as of the next pay period, provided such pay period is at least 5

business days away. Otherwise, such new election shall become effective for the succeeding pay period.

v. A Salary Reduction Agreement will remain in effect until participation in the Plan ceases or until the Participant delivers written notice to his or her Employer.

vi. No Participant shall be permitted to have Elective Deferral Contributions, including Roth Elective Deferrals, made under this Plan, or any other qualified plan maintained by an Employer during any taxable year, in excess of the dollar limitation contained in section 402(g) of the Code in effect for such taxable year, except to the extent permitted under Article 4, Section (e) and section 414(v) of the Code, if applicable. Corrective distributions of deferrals for any taxable year in excess of the dollar limitation in Code Section 402(g), plus any income allocable to such amount through the end of such taxable year, will be made no later than the first April 15 following the close of such tax year in accordance with Section 402(g) and any regulations thereunder.

vii. The Plan may promulgate rules and procedures from time to time to carry out the provisions of this Section.

**b. Employer Contributions:**

i. Non-Elective Contributions. An Employer shall, for each Year, pay to the Plan or its designee an amount for allocation to the Employer Contribution Accounts of Participants who are in the employ of an Employer at the rate specified in the Employer's Participation Agreement, provided that the Employer shall be required to contribute the same percentage of Compensation for each of its Employees.

ii. Matching Contributions. Each Employer shall make matching contributions with respect to a Participant's Elective Deferral Contributions at the level, if any, specified in its Participation Agreement. Employer matching contributions shall be credited to the Participant's Employer Contribution Account.

iii. Discretionary Contributions. An Employer may make discretionary contributions to the Plan, which shall be allocated pro rata based upon each Participant's Compensation from that Employer.

iv. Qualified Non-Elective Contributions. An Employer shall contribute to the Plan each Plan Year such amount as a Qualified Non-Elective Contribution as the Employer may determine. In addition, in lieu of distributing Excess Contributions or Excess Aggregate Contributions as provided in Article 5.e, the Employer may make Qualified Non-Elective Contributions on behalf of Employees who are not Highly Compensated Employees that are sufficient to satisfy either the ADP test or the ACP test, or both, pursuant to regulations under the Internal Revenue Code.

**c. Disposition of Forfeitures:** If upon termination of employment a Participant's vested percentage is not 100 percent, his or her accounts shall not be distributed until the end of the fifth Year following the Year in which his or her termination occurs. As of the end of the Year in which his or her termination occurs, his or her Employer Contribution Account shall be divided in two portions, one representing his or her vested percentage, and the other his or her forfeited percentage, of said account. Both portions shall continue to receive Income allocations pursuant to Article 5.b.i until his or her accounts are distributed. If the Terminated Vested Participant returns to the employ of an Employer before he has 5 consecutive one-year Periods of Severance (as defined in Article 3.c), the vested and Forfeiture portions of his or her Employer Contribution Account, plus Income allocations, shall, upon his or her reparticipation, become the beginning balance in his or her new Employer Contribution Account. If he or she does not so return, the vested portion, plus Income allocations, will be distributed pursuant to Article 6.e. The Forfeiture portion, plus Income allocations, shall be distributed on a pro rata basis among the Plan's other Participants.

Notwithstanding the foregoing, if a Participant's termination of employment is due to a "maternity or paternity leave" as defined in Article 3.c, then this Article 4.c shall be read by substituting the number "6" for the number "5" and the word "sixth" for the word "fifth" wherever they appear in the text.

**d. Rollovers**

**(i) Rollovers From Other Plans:** The Plan will accept participant rollover contributions and/or direct rollovers of distributions made after December 31, 2001, from the following types of plans: a qualified plan described in section 401(a) or 403(a) of the Code; an annuity contract described in section 403(b) of the Code; an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state. The Plan will also accept a participant rollover contribution of the portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the Code that is eligible to be rolled over and would otherwise be includible in gross income. If elected by his or her Employer in the Participation Agreement, effective as of the later of March 1, 2022 or the date specified in the Participation Agreement the Plan will accept direct rollovers of designated Roth contributions from 401(a) and 403(a) qualified plans, 403(b) annuity contracts, and 457(b) plans; any Roth contributions accepted as rollovers shall be separately accounted for in such individual's Roth Elective Deferral Account. The Plan will not accept any portion of a rollover comprising of after-tax contributions except as provided in this Section 4(d).

The Board of Trustees shall develop such procedures, and may require such information from an Employee desiring to make such a transfer, as it deems necessary or desirable to determine that the proposed transfer will meet the requirements of this Section. Upon approval by the Board of Trustees, the amount transferred shall be deposited in the Trust Fund and shall be credited to a Vested Employer Contribution Account. Such account shall be 100 percent vested in the Employee, shall share in Income allocations in accordance with Article 5.b.i., but shall not share in Employer contribution or Forfeiture allocations. Upon termination of employment, the total

amount of the Employee's Vested Employer Contribution Account shall be distributed in accordance with Article 6.

Upon such a transfer by an Employee who is otherwise eligible to participate in the Plan but who has not yet completed the participation requirements of Article 3.a, his or her Vested Employer Contribution Account shall represent his or her sole interest in the Plan until he becomes a Participant.

(ii) **In-Plan Rollovers:** Effective as of the later of March 1, 2022 or the date specified in the Participation Agreement, a Participant may elect an In-Plan Roth Rollover Contribution from any account in the Plan other than accounts that are already part of a Roth Elective Deferral Account. An In-Plan Roth Rollover Contribution means a rollover contribution to the Plan that consists of a distribution from a Participant's Plan account that the Participant rolls over to the Participant's Roth Rollover Contribution Account in the Plan in accordance with Code §402A(c)(4). An In-Plan Roth Rollover Contribution may occur only by a Direct Rollover. Only amounts that are available for distribution as an Eligible Rollover Distribution under the terms of the Plan at the time of the election are eligible for an In-Plan Roth Rollover Contribution. A In-Plan Roth Rollover Contribution is not a rollover contribution for purposes of determining whether a Participant's vested Account Balance exceeds \$5,000 under Code §411(a)(11). In addition, an In-Plan Roth Rollover Contribution is not a distribution for purposes of the rules of Code §§401(a)(11) (relating to spousal consent) or 3405(c) (relating to mandatory income tax withholding). In-Plan Roth Rollover Contributions are available to Participants, Eligible Spouses and former spouses pursuant to a QDRO; In-Plan Roth Rollover Contributions are not available to non-spouse beneficiaries.

**e. Catch-Up Contributions:** All Employees who are eligible to make Elective Deferral Contributions under this Plan and who have attained age 50 before the close of the Plan Year shall be eligible to make catch-up contributions in accordance with, and subject to the limitations of, section 414(v) of the Code. Such catch-up contributions shall not be taken into account for purposes of the provisions of the Plan implementing the required limitations of sections 402(g) and 415 of the Code. The Plan shall not be treated as failing to satisfy the provisions of the Plan implementing the requirements of section 401(k)(3), 401(k)(11), 401(k)(12), 410(b), or 416 of the Code, as applicable, by reason of the making of such catch-up contributions.

**f. Automatic Elective Deferrals**

(i) The provisions of this Section 4(f) shall apply only to the Employees of any Employer that has elected Automatic Elective Deferrals in its Participation Agreement. "Automatic Elective Deferrals" are Elective Deferral Contributions that are automatically withheld and remitted on behalf of a Participant in the absence of an affirmative deferral election by such Participant. Except as otherwise indicated in this section, Automatic Elective Deferrals shall be treated as Elective Deferral Contributions for all purposes of the Plan.

(ii) Automatic Elective Deferrals will be made on behalf of Participants who do not have an affirmative deferral election pursuant to section 4(a) and who are otherwise eligible to make Elective Deferral Contributions. The rate of Automatic Elective Deferrals shall be specified in the Employer's Participation Agreement.

(iii) A Participant will have a reasonable opportunity after receipt of the notice described in paragraph (iv) to make an affirmative election to change the rate of Elective Deferral Contributions or to have no Elective Deferral Contributions before Automatic Elective Deferrals are made on his or her behalf. Automatic Elective Deferrals will cease or continue as elected as soon as administratively feasible after the Participant makes an affirmative election.

(iv) At least 30 but not more than 90 days before the beginning of each Plan Year or, for new Employees and for Employees of Employers newly electing Automatic Elective Deferrals, before the date Automatic Elective Deferrals are to commence for such Employee, the Employer will provide each Employee for whom Automatic Elective Deferrals will be remitted a notice of the Employee's rights and obligations under the Automatic Elective Deferral arrangement, written in a manner calculated to be understood by the average Employee. Such notice will describe the rate of Automatic Elective Deferrals, the Employee's right to have no Elective Deferrals made or to have a different amount of Elective Deferrals made on his or her behalf, and how Automatic Elective Deferrals will be invested in the absence of the Employee's investment instructions.

## **Article 5. Allocations to Participants' Accounts**

**a. Individual Accounts:** The Plan shall create and maintain adequate records to disclose the interest in the Trust of each Participant, Terminated Vested Participant and Beneficiary. Such records shall be in the form of individual accounts, and credits and charges shall be made to such accounts in the manner herein described. When appropriate, a Participant shall have three separate accounts, an Elective Deferral Account, an Employer Contribution Account, and a Vested Employer Contribution Account. A Participant's Roth Elective Deferrals, if any, shall be allocated to the Participant's Roth Elective Deferral Account. Except as provided in Section 4(d)(ii), Elective Deferrals contributed to the Plan as one type, either Roth Elective Deferrals or Pre-Tax Elective Deferrals, may not later be reclassified as the other type. The maintenance of individual accounts is only for accounting purposes, and a segregation of the assets of the Trust Fund to each account shall not be required. Distributions and withdrawals made from an account shall not be required. Distributions and withdrawals made from an account shall be charged to the account as of the date paid.

The Trust Fund is to consist of one or more separate and distinct investment Funds managed by a bank, mutual fund sponsor or other person or entity in accordance with the Participants' investment directions and pursuant to the terms of the Trust Agreement.

Each Participant shall direct the Plan (or its delegate) in writing, at the time he elects to participate in the Plan, the manner in which his or her individual account balance shall be allocated among the investment Funds. The allocation among Funds shall be subject to the methods of allocation permitted by the Plan. In the event that a Participant fails to provide the Plan with investment directions at such time and in such manner as the Plan shall prescribe, the Participant's Account shall be invested in the sole discretion of the Plan (or its delegate) in savings accounts, certificates of deposit, U.S. Government obligations of five years or less, money market instruments, or one or more investment Funds investing predominately in one or more of the foregoing.

The Participant shall exercise control over the investment of his or her account within the meaning of Section 404(c) of ERISA and Regulations issued thereunder, and neither the Plan, the Board of Trustees, nor such other persons as may be properly designated have liability for any such investment or for following any such instruction by the Participant. No Participant shall, however, direct any investment that would violate any provision of ERISA, nor may a Participant direct that any part of his or her account be loaned to the Participant, except as specifically permitted herein.

Any investment direction given by a Participant shall continue in effect until changed by the Participant; provided, however, that a new investment direction shall be required if the Plan in its discretion, discontinues an investment Fund in which the Participant's Account is invested. A Participant may change his or her investment direction as to the accumulated balance of his or her account and/or future Contributions, pursuant to such rules as promulgated by the Plan.

**b. Account Adjustments:** The accounts of Participants, Terminated Vested Participants and Beneficiaries shall be adjusted in accordance with the following:

*i. Income:* The Income of the Trust Fund for each Year shall be allocated to the accounts of Participants, Terminated Vested Participants and Beneficiaries who had unpaid balances in their accounts on the last day of the Year in proportion to the balances in such accounts at the beginning of the Year, but after first reducing each such account balance by any distributions from the account during the Year. If, upon termination of employment of a Participant, change of 15 percent or more in the value of the assets of the Trust Fund has occurred since the last Valuation Date and distribution is to be made prior to the next Valuation Date, The Plan shall cause to be determined the Income since the last Valuation Date, in which event the accounts of any Participant whose employment terminates prior to the next Valuation Date shall be adjusted to reflect this determination. Each valuation shall be based on the fair market value of assets in the Trust Fund on the Valuation Date. Notwithstanding the forgoing, income attributable to an individual account may be allocated on a daily basis (or other periodic basis), as permitted.

*ii. Employer Contribution:* An Employer's contribution for the Year made pursuant to Article 4.b shall be allocated to the Employer Contribution Accounts of Participants for whom such contribution was made.

**c. Maximum Additions:** Notwithstanding anything contained herein to the contrary, and except to the extent permitted under Article 4, Section (e) and section 414(v) of the Code, if applicable, the total Additions made to an Employer Contribution Account of a Participant for any Year shall not exceed the lesser of

- i.* \$40,000, as adjusted for increases in the cost-of-living under section 415(d) of the Code, or
- ii.* 100 percent of the Participant's compensation, within the meaning of section 415(c)(3) of the Code, for the limitation year.

**The compensation limit referred to in subsection (ii) above shall not apply to any contribution for medical benefits after separation from service (within the meaning of section 401(h) or section 419A(f)(2) of the Code) which is otherwise treated as an annual addition.**

If such Additions exceed the limitations, the Employer's contribution for the Year on behalf of the Participant shall be limited to the amount sufficient to alleviate the excess. Notwithstanding the foregoing, the otherwise permissible annual Additions for any Participant under this Plan may be further reduced to the extent necessary, as determined by the Plan to prevent disqualification of the Plan under Section 415 of the Code, which imposes the following additional limitations on the benefits payable to Participants who also may be participating in another tax qualified pension, profit sharing, savings or stock bonus plan maintained by the Employer or any Related Employer. Unless otherwise indicated in a Participation Agreement, the annual Additions to this Plan shall be reduced in accordance with the preceding sentence after reductions have been made to the other plans as provided in those other plans, if so provided.

For purposes of limitations on contributions and deferrals, the term compensation shall include any elective deferral (as defined in Section 402(g)(3) of the Code) and any amount which is contributed or deferred by the employer at the election of the employee and which is not includible in the gross income of the employee by reason of Section 125, or Section 457 of the Code. Effective January 1, 2001, compensation shall also include any amount which is contributed or deferred by the employer at the election of the employee and which is not includible in the gross income of the employee by reason of Section 132(f)(4) of the Code.

The above limitations are intended to comply with the provisions of Section 415 of the Internal Revenue Code as amended so that the maximum benefits provided by plans of the Employers shall be exactly equal to the maximum amounts allowed under Section 415 of the Internal Revenue Code and regulations thereunder. If there is any discrepancy between the provisions of this Section and the provisions of Section 415 of the Internal Revenue Code and regulations thereunder, such discrepancy shall be resolved in such a way as to give full effect to the provisions of Section 415 of the Code. The above limitations shall be prorated if the Plan is terminated on a day other than the last day of the limitation year.

**d. Top-Heavy Provisions:** The following provisions shall become effective with respect to the Participants employed by an Employer in any year in which the Plan is determined to be a Top-Heavy Plan with regard to that Employer. This Section (d) shall apply for the purposes of determining the present value of accrued benefits and the amounts of account balances of employees as of the determination date.

*i. Determination of Top-Heavy:* If the top-heavy ratio for the Plan exceeds 60 percent and the Plan is not part of any required aggregation group or permissive aggregation group of plans.

(1) If the Plan is a part of a required aggregation group of plans but not part of a permissive aggregation group and the top-heavy ratio for the group of plans exceeds 60 percent.

(2) If the Plan is a part of a required aggregation group and part of a permissive aggregation group of plans and the top-heavy ratio for the permissive aggregation group exceeds 60 percent.

(3) “Top-Heavy Ratio”:

(a) If the Employer maintains one or more defined contribution plans (including any simplified employee pension plan) and the Employer has not maintained any defined benefit plan which during the 5-year period ending on the Determination Date(s) has or has had accrued benefits, the top-heavy ratio for this plan alone or for the required or permissive aggregation group as appropriate is a fraction, the numerator of which is the sum of the account balances of all Key Employees as of the Determination Date(s) (including any part of any account balance distributed in the 5-year period ending on the Determination Date(s)), and the denominator of which is the sum of all account balances (including any part of any account balance distributed in the 5-year period ending on the Determination Date(s)), both computed in accordance with Section 416 of the Code and the regulations thereunder. Both the numerator and denominator of the top-heavy ratio are increased to reflect any contribution not actually made as of the Determination Date, but which is required to be taken into account on that date under Section 416 of the Code and the regulations thereunder.

(b) If the Employer maintains one or more defined contribution plans (including any simplified employee pension plan) and the Employer maintains or has maintained one or more defined benefit plans which during the 5-year period ending on the Determination Date(s) has or has had any accrued benefits, the top-heavy ratio for any required or permissive aggregation group as appropriate is a fraction, the numerator of which is the sum of account balances under the aggregated defined contribution plan or plans for all Key Employees, determined in accordance with Article 5.d.i.(3)(a) above, and the present value of accrued benefits under the aggregated defined benefit plan or plans for all Key Employees as of the Determination Date(s), and the denominator of which is the sum of the account balances

under the aggregated defined contribution plan or plans for all Participants, determined in accordance with Article 5.d.i.(3)(a) above, and the present value of accrued benefits under the defined benefit plan or plans for all Participants as of the Determination Date(s), all determined in accordance with Section 416 of the Code and the regulations thereunder. The accrued benefits under a defined benefit plan in both the numerator and denominator of the top-heavy ratio are increased for any distribution of an accrued benefit made in the five-year period ending on the Determination Date.

(c) For purposes of Article 5.d.i.(3)(a) and 5.d.i.(3)(b) above, the value of account balances and the present value of accrued benefits will be determined as of the most recent valuation date that falls within or ends with the 12-month period ending on the Determination Date, except as provided in Section 416 of the Code and the regulations thereunder for the first and second plan years of a defined benefit plan. The account balances and accrued benefits of a Participant (1) who is not a Key Employee but was a Key Employee in a prior year, or (2) who has not been credited with at least one hour of service with any Employer maintaining the plan at any time during the 5-year period ending on the Determination Date will be disregarded. The calculation of the top-heavy ratio, and the extent to which distributions, rollovers, and transfers are taken into account will be made in accordance with Section 416 of the Code and the regulations thereunder. Deductible employee contributions will not be taken into account for purposes of computing the top-heavy ratio. When aggregating plans, the value of account balances and accrued benefits will be calculated with reference to the Determination Dates that fall within the same calendar year.

The accrued benefit of a Participant other than a Key Employee shall be determined under (a) the method, if any, that uniformly applies for accrual purposes under all defined benefit plans maintained by the Employer, or (b) if there is no such method, as if such benefit accrued not more rapidly than the slowest accrual rate permitted under the fractional rule of Section 411(b)(1)(C) of the Code.

(4) “Permissive Aggregation Group”: The required aggregation group of plans plus any other plan or plans of the Employer which, when considered as a group with the required aggregation group, would continue to satisfy the requirements of Sections 401(a)(4) and 410 of the Code.

(5) “Required Aggregation Group”:

(a) Each qualified plan of the Employer in which at least one Key Employee participates or participated at any time during the Determination Period (regardless of whether the plan has terminated).

(b) Any other qualified plan of the Employer which enables a plan described in (i) to meet the requirements of Sections 401(a)(4) or 410 of the Code.

(6) “Determination Date”: For any Plan Year subsequent to the first Plan Year, the last day of the preceding Plan Year. For the first Plan Year of the Plan, the last day of that year.

(7) “Determination Period”: The Plan Year containing the Determination Date and the four (4) preceding Plan Years.

(8) “Non-Key Employee”: An Employee who is not a Key Employee.

(9) “Key Employee”: Key Employee means any Employee or former Employee (including any deceased Employee) who at any time during the Plan Year that includes the determination date was an officer of an Employer having annual compensation greater than \$160,000 (as adjusted under section 416(i)(1) of the code for Plan Years beginning after December 31, 2002), a 5-percent owner of an Employer, or a 1-percent owner of an Employer having annual compensation of more than \$150,000. For this purpose, annual compensation means compensation within the meaning of Section 415(c)(3) of the Code. The determination of who is a key employee will be made in accordance with Section 416(i)(1) of the Code and the applicable regulations and other guidance of the general applicability issued thereunder.

*ii. Minimum Allocations:*

(1) Notwithstanding the provisions of Article 5.b.ii, for any Year during which the Plan is deemed a top-heavy plan with regard to an Employer, and except as otherwise provided in (2) and (3) below, the Employer Contributions and Forfeitures allocated on behalf of any Participant who is not a Key Employee shall not be less than five percent of the Participant’s Compensation. Where Contributions and Forfeitures are insufficient to satisfy the foregoing minimum allocation, and the Employer has no defined benefit plan which designates this Plan to satisfy Section 416 of the Code, Non-Key Employees shall receive a minimum allocation which represents a percentage of their Compensation which is equal to or greater than, the largest percentage of Employer Contributions and Forfeitures, as a percentage of the Key Employee’s compensation, allocated on behalf of any Key Employee for that year. The minimum allocation is determined without regard to any Social Security contribution by the Employer. This minimum allocation shall be made even though, under other Plan provisions, the Participant would not otherwise be entitled to receive an allocation, or would have received a lesser allocation for the year because (i) the Participant’s failure to complete 1,000 hours of service (or any equivalent provided in the Plan), (ii) the Participant’s failure to make mandatory contributions to the Plan, or (iii) compensation less than a stated amount.

(2) The provision in Article 5.d.ii.(1) above shall not apply to any Participant who was not employed by the Employer on the last day of the Plan Year.

(3) The provision in Article 5.d.ii.(1) above shall not apply to any Participant to the extent the Participant is covered under any other plan or plans of the Employer and the Company has provided that the minimum allocation or benefit requirement applicable to

Top-Heavy Plans will be met in the other plan or plans. If for any reason the minimum is not provided for a Participant in the other plan, it shall be provided in this Plan, but only to the extent necessary to satisfy the top heavy minimum allocation without duplication.

(4) Salary Deferrals made by non-Key Employees shall not count towards satisfying the Top Heavy minimum allocation to non-Key Employees in Article 5.d.ii.(1) above. However, Salary Deferrals made by Key Employees shall count in determining the largest percentage of Contributions and Forfeitures (as a percent of Compensation) allocated to Key Employees as required in Article 5.d.ii.(1) above. Matching Contributions made on behalf of non-Key Employees may, at the option of the Administrator, be used to satisfy the Top Heavy minimum allocation to non-Key Employees, to the extent permitted by law.

(5) The minimum allocation required (to the extent required to be non-forfeitable under Code Section 416(b)) may not be forfeited under Code Sections 411(a)(3)(B) or 411(a)(3)(D).

iii. *Minimum Vesting:* Notwithstanding the provisions of Article 6.d.ii, if a Participant's termination of employment from an Employer occurs while the Plan is a Top-Heavy Plan with regard to such Employer, such Participant's vested percentage in his or her Employer Contribution Account shall not be less than the percentage determined in accordance with the following table:

Years of Service	Vested Percentage	Forfeited Percentage
less than 3	0%	100%
3 or more	100%	0%

iv. *Compensation Limitation:* For any Year in which the Plan is a Top-Heavy Plan with regard to an Employer, the compensation limitation, including increases of said limitation, all as described in Section 416(d) of the Internal Revenue code shall apply with regard to such Employer.

v. *Change in Top-Heavy Status:* If the Plan becomes a Top-Heavy Plan with respect to an Employer and subsequently ceases to be such, the vesting schedule in subsection 5.d.iii shall continue to apply in determining the vested percentage of any Participant who had at least five years of Service as of December 31 in the last Year of top-heaviness. For other Participants, said schedule shall apply only to their Employer Contribution Account balance as of such December 31.

vi. *Distribution during year ending on the determination date.* The present value of accrued benefits and the amounts of account balances of an employee 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 Section 416(g)(2) of the Code during

the one year period ending on the determination date. The preceding sentence shall also apply to distributions under a terminated plan which, had it not been terminated, would have been aggregated with the Plan under Section 416 (g)(2)(A)(i) of the Code. 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 “5-year period” for “1-year period.”

vii. *Employee not performing services during year ending on the determination date.* The accrued benefits and accounts of any individual who had not performed services for the employer during the 1-year period ending on the determination date shall not be taken into account.

viii. *Minimum benefits.*

(1) Matching contribution. Employer matching contributions shall be taken into account for purposes of satisfying the minimum contribution requirements of Section 416(c)(2) of the Code and the Plan. The preceding sentence shall apply with respect to matching contributions under the Plan or, if the Plan provides that the minimum contribution shall be met in another plan, such other plan. Employer matching contributions that are used to satisfy the minimum contribution requirements shall be treated as matching contributions for purposes of the actual contribution percentage test and other requirements of Section 401(m) of the Code.

(2) Contributions under other plans. The employer may provide in the Participation Agreement that the minimum benefit requirement shall be met in another plan (including another plan that consists solely of a cash or deferred arrangement which meets the requirements of Section 401(k)(12) of the Code and matching contributions with respect to which the requirements of Section 401(m)(11) of the Code are met).

**e. ADP and ACP Testing:**

i. *ADP Testing:* Notwithstanding any provision herein to the contrary, the actual deferral percentage for all Highly Compensated Employees of an Employer for each Plan Year must not exceed the actual deferral percentage for all other Employees of such Employer eligible to participate by more than the greater of:

(1) the actual deferral percentage of such other Employees multiplied by 1.25; or

(2) the actual deferral percentage of such other Employees multiplied by 2.0, but in no event more than two (2) percentage points greater than the actual deferral percentage of such other Employees.

For purposes hereof, the actual deferral percentages for a Plan Year for all Highly Compensated Employees of an Employer and for all other Employees of such Employer respectively are the averages of the ratios, calculated separately for each Employee in the

respective group, of the amount of Elective Contributions and Qualified Non-Elective Contributions paid under the Plan on behalf of each such Employee for such Plan Year including Excess Elective Deferrals to the Employee's Compensation for such Plan Year (whether or not the Employee was a Participant for the entire Plan Year) but excluding Elective Deferrals that are taken into account in the Contribution Percentage test (provided the ADP test is satisfied both with and without exclusion of those Elective Deferrals). An Employee who would be a Participant but for the failure to have Elective Contributions made on his behalf shall be treated as a Participant on whose behalf no Elective Contributions are made. For Plan Years beginning prior to January 1, 2009, the Plan shall use prior year testing. For Plan Years beginning on or after January 1, 2009, the Plan shall cease to use prior year testing and shall instead use current year testing.

For purposes of determining the actual deferral percentage test, Elective Contributions and Qualified Non-Elective Contributions must be made before the last day of the twelve month period immediately following the Plan Year to which the contributions relate. An Employer shall maintain records sufficient to demonstrate satisfaction of the actual deferral percentage test and the amount of Qualified Non-Elective Contributions used in such test. The determination and treatment of the actual deferral percentage amounts of any Participant shall satisfy such other requirements as may be prescribed by the Secretary of the Treasury.

**Multiple Plan Limitations.** The actual deferral percentage for any Participant who is a Highly Compensated Employee for the Plan Year and who is eligible to have Elective Contributions (and Qualified Non-Elective Contributions if treated as Elective Deferrals for purposes of the actual deferral percentage test) allocated to his or her Accounts under two or more arrangements described in Section 401(k) of the Code, that are maintained by an Employer, shall be determined as if such Elective Deferrals (and, if applicable, such Qualified Non-Elective Contributions) were made under a single arrangement. If a Highly Compensated Employee participates in two or more cash or deferred arrangements that have different Plan Years, all cash or deferred arrangements ending with or within the same calendar year shall be treated as a single arrangement. Notwithstanding the foregoing, certain plans shall be treated as separate if mandatorily disaggregated under regulations under Section 401(k) of the Code.

In the event that this Plan satisfies the requirements of Section 401(k), 401(a)(4) or 410(b) of the Code only if aggregated with one or more other plans, or if one or more other plans satisfy the requirements of such sections of the Code only if aggregated with this Plan, then this section shall be applied by determining the actual deferral percentage of Employees as if all such plans were a single plan. For Plan Years beginning after December 31, 1989, plans may be aggregated in order to satisfy Section 401(k) of the Code only if they have the same Plan Year.

*ii. Limitation on Matching Contributions.* Notwithstanding any provision herein to the contrary, the average contribution percentage for all Highly Compensated Employees of an Employer for each Plan Year must not exceed the average contribution percentage for all other Employees of the Employer eligible to participate by more than the greater of:

(1) the average contribution percentage of such other Employees multiplied by 1.25; or

(2) the average contribution percentage of such other Employees multiplied by 2.0, but in no event more than two (2) percentage points greater than the average contribution percentage of such other Employees.

For purposes hereof, the average contribution percentages for a Plan Year for all Highly Compensated Employees of an Employer and for all other Employees of the Employer respectively are the averages of the ratios, calculated separately for each Employee in the respective group, of the amount of Matching Contributions paid under the Plan on behalf of each such Employee for such Plan Year, to the Employee's Compensation for such Plan Year whether or not the Employee was a Participant for the entire Plan Year. Such contribution percentage amounts shall include forfeitures of Excess Aggregate Contributions or Matching Contributions allocated to the Participant's Accounts which shall be taken into account in the Plan Year in which such forfeiture is allocated. Forfeitures of Matching Contributions shall be included as contribution percentage amounts only to the extent such forfeitures are used to reduce or supplement the Matching Contributions, as specified in the Participation Agreement. If so elected in the Participation Agreement, an Employer may include Qualified Non-Elective Contributions in the contribution percentage amounts. An Employer may also elect to use Elective Deferrals in the contribution percentage amounts so long as the ADP test is met before the Elective Deferrals are used in the ACP test and continues to be met following the exclusion of those Elective Deferrals that are used to meet the ACP test. If an Elective Contribution or other contribution by an Employee is required as a condition of participation in the Plan, any Employee who would be a Participant if such Employee made such a contribution shall be treated as an eligible Participant on behalf of whom no such contributions are made. An Employer shall maintain records sufficient to demonstrate satisfaction of the average contribution percentage test and the amount of Qualified Non-Elective Contributions used in such test. The determination and treatment of the contribution percentage of any Participant shall satisfy such other requirements as may be prescribed by the Secretary of the Treasury. For Plan Years beginning prior to January 1, 2009, the Plan shall use prior year testing. For Plan Years beginning on or after January 1, 2009, the Plan shall cease to use prior year testing and shall instead use current year testing.

*iii. Multiple Use:*

(1) For all years beginning after December 31, 2001, multiple use testing shall not apply and it is disregarded.

(2) If one or more Highly Compensated Employees participate in both a CODA and a plan subject to the ACP test maintained by an Employer and the sum of the ADP and ACP of those Highly Compensated Employees subject to either or both tests exceeds the Aggregate Limit, then the ACP of those Highly Compensated Employees who also participate in a CODA shall be reduced (beginning with such Highly Compensated Employee whose ACP is the highest) so that the limit is not exceeded. The amount by which each Highly Compensated

Employee's contribution percentage amounts is reduced shall be treated as an Excess Aggregate Contribution. The ADP and ACP of the Highly Compensated Employees are determined after any corrections required to meet the ADP and ACP tests. Multiple use does not occur if either the ADP or ACP of the Highly Compensated Employees does not exceed 1.25 multiplied by the ADP and ACP of the Employees who are not Highly Compensated Employees.

(3) The contribution percentage for any Participant who is a Highly Compensated Employee and who is eligible to have contribution percentage amounts allocated to his or her Accounts under two or more plans described in Section 401(a) of the Code, or arrangements described in Section 401(k) of the Code that are maintained by an Employer, shall be determined as if the total of such contribution percentage amounts was made under each plan. If a Highly Compensated Employee participates in two or more cash or deferred arrangements that have different plan years, all cash or deferred arrangements ending with or within the same calendar year shall be treated as a single arrangement. Notwithstanding the foregoing, certain plans shall be treated as separate if mandatorily disaggregated under regulations under section 401(m) of the Code.

(4) In the event that this Plan satisfies the requirements of Sections 401(m), 401(a)(4) or 410(b) of the Code only if aggregated with one or more other plans, or if one or more other plans satisfy the requirements of such Sections of the Code only if aggregated with this plan, then this section shall be applied by determining the contribution percentages of Employees as if all such plans were a single plan. For Plan Years beginning after December 31, 1989, plans may be aggregated in order to satisfy Section 401(m) of the Code only if they have the same Plan Year.

(5) "Aggregate Limit" shall mean the sum of (i) 125 percent of the greater of the ADP of the Non-highly Compensated Employees for the Plan Year or the ACP of Non-highly Compensated Employees under the plan subject to Code § 401(m) for the Plan Year of the CODA and (ii) the lesser of 200 percent or 2 plus the lesser of such ADP or ACP. "Lesser" is substituted for "greater" in "(i)", above, and "greater" is substituted for "lesser" after "2 plus the" in "(ii)" if it would result in a larger Aggregate Limit.

(6) For purposes of determining the contribution percentage test, Employee Contributions are considered to have been made in the Plan Year in which contributed to the trust. Matching Contributions and Qualified Non-Elective Contributions shall be considered made for a Plan Year if made no later than the end of the twelve month period beginning on the day after the close of the Plan Year.

*iv. Distribution of Excess Elective Deferral Contributions:* Excess Elective Deferral Contributions, plus any income and minus any loss allocable thereto, shall be distributed no later than March 15 of each Plan Year to any Participant to whose account Excess Elective Deferral Contributions were assigned for the preceding year. Excess Elective Deferral Contributions distributed under this section shall be adjusted for any income or loss based on a reasonable method of computing the allocable income or loss. The method selected for computing the allocable income or loss must be applied consistently to all Participants and used

for all corrective distributions under the Plan for the Plan Year, and must be the same method that is used by the Plan for allocating income or loss to Participants' Accounts. Income or loss allocable to the period between the end of the taxable year and the date of distribution may be disregarded in determining income or loss.

v. *Method for Distributing Excess Elective Deferral Contributions:* To the extent required by Section 401(k)(8), Excess Elective Deferral Contributions are allocated to the Highly Compensated Employees with the largest amounts of Employer contributions taken into account in calculating the ADP test for the year in which the excess arose, beginning with the Highly Compensated Employee with the largest amount of such employer contributions and continuing in descending order until all the Excess Contributions have been allocated. For purposes of the preceding sentence, the "largest amount" is determined after distribution of any Excess Elective Deferral Contributions. Any Matching Contributions based upon any such distributions shall be forfeited as well (along with the income or loss attributable to such Matching Contributions).

In order to distribute the Excess Elective Deferral Contributions under Section 401(k)(8), the Plan shall apply the following procedure. Step 1, the Plan shall calculate the dollar amount of excess contributions for each affected highly compensated employee in manner described in Section 401(k)(8)(B) of the Code and Section 1.401(k)-2(b)(2)(ii) of the Regulations. Step 2, the Plan shall determine the total dollar amount calculated for all highly compensated employees in Step 1. The amount determined by Step 2 will be distributed in accordance with Steps 3 and 4. Step 3, the elective deferral contributions of the highly compensated employee with the highest dollar amount of elective deferral contributions are reduced by the amount required to cause that highest compensated employee's elective deferral contributions to equal the dollar amount of the elective deferral contributions of the highly compensated employee with the next highest dollar amount of elective deferral contributions. This amount of Excess Elective Deferral Contributions is distributed to the highly compensated employee with the next highest dollar amount. However, if a lesser reduction, when added to the total dollar amount already distributed under this Step, would equal the total excess contributions, the lesser reduction amount is distributed. Step 4, if the total amount distributed is less than the total excess contributions, Step 3 is repeated. If the dollar amounts of remaining elective deferral contributions of each affected highly compensated employee is equal, the remaining Excess Elective Deferral Contributions are then distributed equally between each affected highly compensated employee.

vi. *Distribution of Excess Aggregate Contributions.* Notwithstanding any other provision of this Plan, Excess Aggregate Contributions, plus any income and minus any loss allocable thereto, shall be distributed no later than March 15 to Participants to whose accounts such Excess Aggregate Contributions were allocated for the preceding Plan Year. Such distributions shall be made to Highly Compensated Employees on the basis of the respective portions of the Excess Aggregate Contributions attributable to each of such Employees.

Excess Aggregate Contributions distributed under this section shall be adjusted for any income or loss based on a reasonable method of computing the allocable income or loss. The

method selected must be applied consistently to all Participants and used for all corrective distributions under the Plan for the Plan Year, and must be the same method that is used by the Plan for allocating income or loss to Participants' Accounts. Income or loss allocable to the period between the end of the taxable year and the date of distribution may be disregarded in determining income or loss.

In order to distribute the Excess Aggregate Contributions, the Plan shall apply the following procedure. Step 1, the Plan shall calculate the dollar amount of excess contributions for each affected highly compensated employee in manner described in Section 401(k)(8)(B) of the Code and Section 1.401(k)-2(b)(2)(ii) of the Regulations. Step 2, the Plan shall determine the total dollar amount calculated for all highly compensated employees in Step 1. The amount determined by Step 2 will be distributed in accordance with Steps 3 and 4. Step 3, the aggregate contributions of the highly compensated employee with the highest dollar amount of aggregate contributions are reduced by the amount required to cause that highest compensated employee's aggregate contributions to equal the dollar amount of the aggregate contributions of the highly compensated employee with the next highest dollar amount of aggregate contributions. This amount of Excess Aggregate Contributions is distributed to the highly compensated employee with the next highest dollar amount. However, if a lesser reduction, when added to the total dollar amount already distributed under this Step, would equal the total excess contributions, the lesser reduction amount is distributed. Step 4, if the total amount distributed is less than the total excess contributions, Step 3 is repeated. If the dollar amounts of remaining aggregate contributions of each affected highly compensated employee is equal, the remaining Excess Aggregate Contributions are then distributed equally between each affected highly compensated employee.

**f. Safe Harbor CODA:** The following rules apply to contributions from any Employer that elects to make Safe Harbor Matching Contributions, Enhanced Safe Harbor Matching Contributions, or Safe Harbor Fixed Contributions ("Safe Harbor Contributions"):

*i.* If the Employer has elected to make Safe Harbor Contributions in its participation agreement, the provisions of this Article 5.f shall apply for the Plan Year and any provisions relating to the ADP test described in §401(k)(3) of the Code or the ACP test described in §401(m)(2) of the Code do not apply. Effective on or after January 1, 2002, an Employer that satisfies the requirements of this Article 5.f shall be excluded from the requirements of Article 5.d. To the extent that any other provision of the Plan is inconsistent with the provisions of this Article 5.f, the provisions of this Article 5.f govern.

*ii.* Notwithstanding the foregoing provision, an Employer's election to make Safe Harbor Contributions is only effective for the Plan Year following the Plan Year in which the Employer timely executes a valid participation agreement electing the Safe Harbor Contributions, and delivers a timely Notice as provided herein. If the Employer elects to satisfy the current year ADP (and, if applicable, ACP) testing method for a Plan Year and the Employer has not elected to make Safe Harbor Contributions in the participation agreement, the Employer may amend the agreement not later than 30 days before the last day of the Plan Year to specify that Safe Harbor Contributions will be used for the subsequent Plan Year, provided that the Plan

otherwise satisfies the ADP (and, if applicable, ACP) test safe harbor for the Plan Year, including the notice requirement. If the Employer has elected the Safe Harbor Contribution option in the participation agreement, and has specified that the Safe Harbor Matching Contribution will be used for the Plan Year, the Employer may amend the Plan during the Plan Year to reduce or eliminate Matching Contributions provided: (a) a supplemental notice is given to all Eligible Employees explaining the consequences of the amendment and informing them of the effective date of the reduction or elimination of Matching Contributions and that they have a reasonable opportunity (including a reasonable period) to change their cash or deferred elections and, if applicable, their Employee contribution elections; (b) the reduction or elimination of Matching Contributions is effective no earlier than the later of (i) 30 days after eligible Employees are given the supplemental notice and (ii) the date the amendment is adopted; (c) Eligible Employees are given a reasonable opportunity (including a reasonable period) prior to the reduction or elimination of Matching Contributions to change their cash or deferred elections and, if applicable, their Employee contribution elections; (d) the agreement is amended to provide that the ADP test and, if applicable, the ACP test will be performed and satisfied for the entire Plan Year using the Current Year Testing Method; and (e) all other safe harbor requirements including but not limited to the matching contribution requirements, are satisfied through the effective date of the amendment.

iii. “Compensation” is defined in Article 2(a)(ii)(12) of the Plan, except, for purposes of this Article 5.f, no dollar limit, other than the limit imposed by §401(a)(17) of the Code, applies to the compensation of a Non-Highly Compensated Employee. However, solely for purposes of determining the compensation subject to a Participant’s deferral election, the Employer may use an alternative definition to the one described in the preceding sentence, provided such alternative definition is a reasonable definition within the meaning of §1.414(s) - 1(d)(2) of the regulations and permits each Participant to elect sufficient Elective Deferrals to receive the maximum amount of Matching Contributions (determined using the definition of compensation described in the preceding sentence) available to the Participant under the Plan.

iv. “Eligible Employee” means an Employee eligible to make Elective Deferrals under the Plan for any part of the Plan Year or who would be eligible to make Elective Deferrals but for a suspension due to a hardship distribution described in Article 7 of the Plan or to statutory limitations, such as §§402(g) and 415 of the Code.

v. “Matching Contributions” are contributions made by the Employer on account of an Eligible Employee’s Elective Deferrals.

vi. *Safe Harbor Matching Contributions and Enhanced Safe Harbor Matching Contributions*

(a) Unless the Employer elects otherwise, the Employer will contribute for the Plan Year a Safe Harbor Matching Contribution to the Plan on behalf of each Eligible Employee equal to (i) 100 percent of the amount of the Employee’s Elective Deferrals that do not exceed 3 percent of the Employee’s Compensation for the Plan Year, plus (ii) 50 percent of the amount of the Employee’s Elective Deferrals that exceed 3 percent of the

Employee's Compensation but that do not exceed 5 percent of the Employee's Compensation ("Safe Harbor Matching Contributions").

(b) Employers may also elect to contribute in amounts greater than the Safe Harbor Matching Contribution ("Enhanced Matching Contributions") subject to the limits of Article 5.c, so long as (i) the rate of the Employer's Matching Contribution does not increase as the Employee's rate of Elective Deferrals increases, (ii) the aggregate amount of Matching Contributions, at the rate of Elective Deferrals, at least equals the aggregate amount of Matching Contributions that would have been provided under the basic matching formula, (iii) the amount necessary to satisfy the Safe Harbor Matching Contribution is fully vested at all times, (iv) at any rate of employee contributions or elective contributions, the rate of matching contributions that would apply with respect to any HCE who is an eligible employee is no greater than the rate of matching contributions that would apply with respect to an NHCE who is an eligible employee and who has the same rate of employee contributions or elective contributions, and (v) if the Enhanced Safe Harbor Matching Contributions exceed six (6%) percent of the Employee's Compensation, the ACP test of §401(m)(2) of the Code will still apply to the extent required by applicable law.

(c) Notwithstanding the requirements in (a) and (b) above that the Employer make the Safe Harbor Matching Contributions to this Plan, if the Employer so provides in a participation agreement approved by the Board of Trustees, the Safe Harbor Matching Contributions will be made to the defined contribution plan indicated in the participation agreement. However, such contributions will be made to this Plan unless (i) each Employee eligible under this Plan is also eligible under the other plan and (ii) the other plan has the same Plan Year as this Plan.

*vii. Safe Harbor Fixed (Non-Elective) Contributions*

(a) In lieu of the Safe Harbor Matching Contributions described in Section 1.6 of this Article 5.f, the Employer may choose in the participation agreement for the Plan Year to make fixed (non-elective) contributions at the rate of 3% of compensation ("Safe Harbor Fixed Contributions"). All such Safe Harbor Fixed Contributions shall be 100% vested at all times.

(b) Amounts contributed in excess of the Safe Harbor Fixed Contributions will be vested as indicated in the participation agreement, but, in any event, such contributions shall be fully vested at normal retirement age, upon the complete or partial termination of the plan, or upon the complete discontinuance of Employer contributions. Forfeitures of nonvested contributions made under this subpart will be used to reduce the Employer's contribution.

*viii. Distribution* -- The Participant's accrued benefit derived from Safe Harbor Matching Contributions or Safe Harbor Fixed Contributions is nonforfeitable and may not be distributed earlier than separation from service, death, disability, an event described in §401(k)(10) of the Code, or, in the case of a profit-sharing plan, the attainment of age 59½. In

addition, such contributions must satisfy the applicable ADP Test Safe Harbor without regard to permitted disparity under §401(1).

*ix. Notice Requirement* -- At least 30 days, but not more than 90 days, before the beginning of the Plan Year, the Employer will provide each Eligible Employee a comprehensive notice of the Employee's rights and obligations under the Plan, written in a manner calculated to be understood by the average Eligible Employee ("Notice"). The Notice shall describe the Safe Harbor Contribution election of the Employer. If an Employee becomes eligible after the 90th day before the beginning of the Plan Year and does not receive the Notice for that reason, the Notice must be provided no more than 90 days before the Employee becomes eligible but not later than the date the Employee becomes eligible.

*x. Election Periods* -- In addition to any other election periods provided under the Plan, each Eligible Employee may make or modify a deferral election during the 30-day period immediately following receipt of the Notice described in Section i.x of this Article 5.f.

## **Article 6. Benefits**

**a. Elective Deferral Contribution Account to be Fully Vested:** A Participant has an immediate nonforfeitable right to all contributions, including any income allocable thereto, attributable to Elective Deferral Contributions made pursuant to a Salary Reduction Agreement.

**b. Retirement or Disability:** If a Participant's employment with an Employer is terminated at or after he attains age 59½, or if his or her employment is terminated at an earlier age because of Disability, he shall be vested in, and entitled to receive, the entire amount in each of his or her accounts. The "entire amount" in a Participant's accounts shall include any Employee contributions and Employer contributions allocations to be made as of the end of the Year in which employment terminated. Payment of benefits due under this Section shall be made in accordance with Article 6.e. For purposes of this Article and Article 6.d, a Participant who terminates employment with an Employer will not be considered to have terminated employment if he or she commences employment with another Employer immediately following such termination.

**c. Death:** In the event that the termination of employment of a Participant is caused by his or her death, his or her Beneficiary shall be vested in, and paid the entire amount, in each of his or her accounts. The "entire amount" in a Participant's accounts shall include any Employee contributions and Employer contribution allocations to be made as of the end of the Year in which his or her death occurs. Payment of benefits due under this Section shall be made within 90 days, unless otherwise elected in accordance with the provisions of Article 6.e.

**d. Termination for Other Reasons:** If a Participant's employment with an Employer is terminated before age 59½ for any reason other than Disability or death, the Participant shall be entitled to:

*i.* The entire amount credited to his or her Vested Employer Contribution Account, if any, including any Employer contributions made for the Year of termination of employment but not yet allocated, plus

*ii.* He shall be vested in, and entitled to receive, an amount equal to a percentage of the balance of his or her Employer Contribution Account, if any. Such percentage shall be determined in accordance with one of the following schedules (as determined by the Participant's Employer's Participation Agreement):

(1) Three Year Cliff Vesting:

Years of Service	Vested Percentage	Forfeited Percentage
less than 3	0%	100%
3 or more	100%	0%

(2) Immediate Vesting:

Each participant's vested percentage shall be 100%.

(3) Graduated Vesting:

Years of Service	Vested Percentage	Forfeited Percentage
less than 1	0 %	100 %
1 but fewer than 2	33%	77%
2 but fewer than 3	66%	33%
3 or more	100%	0%

Notwithstanding the foregoing, a Participant shall at all times be vested in any contribution that is required to be vested in order to satisfy a "safe harbor" or that is otherwise required to be vested in order to satisfy any testing required under applicable law.

Payment of benefits due under this Article shall be made in accordance with Article 6.e.

**e. Payment of Benefits:** Payment of benefits shall be in the form of a single lump sum. All benefit payments under the Plan shall be made as soon as practical after entitlement thereto, following the submission of an application for benefits.

*i.* Except in the case of amounts subject to Article 6.f for which a Participant's consent is not required, unless the Participant elects to defer distribution,

distribution of his or her benefit shall take place no later than the later of the sixtieth (60th) day after the close of the later of the following Plan Years:

(a). The Plan Year during which the Participant attains age 59½;

(b). The Plan Year during which the tenth (10th) anniversary of the commencement of the Participant's participation in the Plan occurs; or

(b). The Plan Year during which the Participant terminates service with the Employer.

ii. In no event shall benefits be paid later than the later of:

(a). April 1 of the calendar year following the calendar year in which the Participant attained age 70½ (or effective for plan years on or after January 1, 2020, age 72); and

(b). The calendar year in which the Participant retires (or, in the case of a 5% owner, April 1 following the year in which the Participant attained age 70½, or age 72, effective for plan years on or after January 1, 2020).

(c) Notwithstanding anything in the Plan to the contrary, the Plan will apply the minimum distribution requirements of Section 401(a)(9) of the Code in accordance with Treasury Regulation Sections 1.401(a)(9)-1 through 1.401(a)(9)-9, including the incidental death benefit requirement of Treasury Regulations 1.401(a)(9)-5 and including any provisions of 401(a)(9) prescribed in Revenue Rulings, Notices, including and other guidance published in the Internal Revenue Bulletin and as amended by Section 2203 of the CARES Act.

(d) Notwithstanding the foregoing, distributions required to be made in accordance with this paragraph (ii) shall not be made for the calendar year ending December 31, 2020, unless requested by the Participant.

iii. The amount which a Participant, Terminated Vested Participant or Beneficiary is entitled to receive at any time and from time to time may be paid in cash or in securities, or in any combination thereof, provided no discrimination in value results therefrom. The Plan shall provide each recipient receiving payment of a benefit hereunder with an officially approved notice supplied by the Secretary of the Treasury which specifies certain information regarding the federal income tax treatment of certain Plan benefits.

**f. Cash-Out Provisions:** If an Employee terminates service, and the Employee's vested account balance derived from Employer and Employee Contributions is not greater than \$5,000, the Employee will receive a distribution of the entire vested account balance and the nonvested portion of the account balance will be treated as a forfeiture. For purposes of this

section, if the present value of an Employee's vested account balance is zero, the Employee shall be deemed to have received a distribution of such vested account balance.

If an Employee terminates service, and the present value of the Employee's vested account balance derived from Employer and Employee Contributions exceeds \$5,000, the Employee may elect, in accordance with this Article of the Plan, to receive a distribution of the present value of the entire vested portion of such accrued benefit and the nonvested portion will be treated as a forfeiture.

For purposes of this Section, the value of a Participant's nonforfeitable account balance shall be determined without regard to that portion of the account balance that is attributable to rollover contributions (and earnings thereto) within the meaning of sections 402(c), 403(a)(4), 402(b)(8), 408(d)(3)(A)(ii), and 457 (e)(16) of the Code.

**g. Designation of Beneficiary:** Designation of a Beneficiary or Beneficiaries under the Plan shall be governed by the following rules:

*i. Designation Procedure:* Subject to the provisions of subsection 6.g.ii, each Participant or Terminated Vested Participant from time to time may designate any person or persons (who may be designated primarily, contingently or successively and who may be an entity other than a natural person) as his or her Beneficiary or Beneficiaries to whom his or her Plan benefits are paid if he dies before receipt of all such benefits. Each Beneficiary designation shall be in a form prescribed by the Plan during the Participant's lifetime. The Plan shall supply the Participant with written information concerning the financial effect of electing either of the two methods of payment for the Eligible Spouse/Beneficiary.

Each Beneficiary designation filed with the Plan will cancel all Beneficiary designations previously filed with the Plan. The revocation of a Beneficiary designation no matter how effected, shall not require the consent of any designated Beneficiary except as provided in subsection 6.g.ii below.

*ii. Spousal Consent:* No Beneficiary designation shall be effective under the Plan unless the Participant's Eligible Spouse consents in writing to such designation, the Eligible Spouse's consent acknowledges the effect of such designation and the Eligible Spouse's signature is witnessed by a notary public. The consent must state the specific non-spouse beneficiary, including any class of beneficiaries or any contingent beneficiaries. If a trust is the beneficiary, then the designation need only refer to the trust. The consent must also specify the optional form of benefit payment, if any.

Any change in the specified beneficiary or form of payment will require a new spousal consent unless a change is made subsequent to the spouse's death or a divorce (other than as provided in a Qualified Domestic Relations Order).

Notwithstanding the foregoing, spousal consent to a Participant's Beneficiary designation shall not be required if:

(1) the Eligible Spouse is designated as the primary beneficiary by the Participant; or

(2) it is established to the satisfaction of the Plan that spousal consent cannot be obtained because there is no Eligible Spouse, because the Eligible Spouse cannot be located, or because of such other circumstances as may be prescribed in regulations issued by the Secretary of the Treasury.

Any consent by an Eligible Spouse or any determination that the consent is not required shall be effective only with respect to such spouse.

*iii. Lack of Designation:* If any Participant or Terminated Vested Participant fails to designate a Beneficiary in the manner provided above, or if the Beneficiary designated by a deceased Participant dies before him or before complete distribution of the Participant's benefits, such Participant's benefits shall be paid in accordance with the following order of priority:

- (1) to the Participant's Eligible Spouse, or if there be none surviving,
- (2) to the Participant's surviving spouse, or if there be none surviving,
- (3) to the Participant's children, in equal parts, or if there be none surviving,
- (4) to the Participant's father and mother, in equal parts, or if there be none surviving, and
- (5) to the Participant's estate.

*iv. Designation of Domestic Partner:* At any time, a Participant who does not have an Eligible Spouse may designate a Domestic Partner on such forms and in such manner as determined by the Plan.

**h. Nonalienation of Benefits:** Except with respect to federal income tax withholding, benefits payable under this Plan shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution, or levy of any kind, either voluntary or involuntary, including any such liability which is for alimony or other payments for the support of a spouse or former spouse or for any other relative of the Employee, prior to actually being received by the person entitled to the benefit under the terms of the Plan; and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge or otherwise dispose of any right to benefits payable hereunder, shall be void. The Trust Fund shall not in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to benefits hereunder.

Notwithstanding the above, the Plan shall comply with a Qualified Domestic Relations Order. A Qualified Domestic Relations Order is a judgment, decree or order (including approval of a property settlement agreement) made pursuant to a state domestic relations law (including community property law) that relates to the provision of child support, alimony payments or marital property rights to a spouse, former spouse, child or other dependent of a Participant (“Alternate Payee”) and which:

*i.* creates or recognizes the existence of an Alternate Payee’s right to, or assigns to an Alternate Payee the right to, receive all or a portion of the benefits payable to a Participant under this Plan; and

*ii.* specifies the name and last known mailing address (if any) of the Participant and each Alternate Payee covered by the order, the amount or percentage of the Participant’s Plan benefits to be paid to any Alternate Payee, or the manner in which such amount or percentage is to be determined, and the number of payments or the period to which the order applies, as well as each plan to which the order relates; and

*iii.* does not require the Plan to:

(1) provide any type or form of benefit, or any, option not otherwise provided under the Plan;

(2) pay any benefits to any Alternate Payee prior to the earlier of the affected Participant's termination of employment or attainment of age 50;

(3) provide increased benefits; or

(4) pay benefits to an Alternate Payee that are required to be paid to another Alternate Payee under a prior Qualified Domestic Relations Order.

For purposes of this Plan, an Alternate Payee who had been married to the Participant for at least one year may be treated as an Eligible Spouse with respect to the portion of the Participant’s benefit in which such Alternate Payee has an interest provided that the Qualified Domestic Relations Order provides for such treatment. However, under no circumstances, may the spouse of an Alternate Payee (who is not a Participant hereunder) be treated as an Eligible Spouse under the terms of the Plan.

Upon receipt of any judgment, decree or order (including approval of a property settlement agreement) relating to the provision of payment by the Plan to an Alternate Payee pursuant to a state domestic relations law, the Plan shall promptly notify the affected Participant and any Alternate Payee of the receipt of such judgment, decree or order and shall notify the affected Participant and any Alternate Payee of the Plan’s procedure for determining whether or not the judgment, decree or order is a Qualified Domestic Relations Order.

The Plan shall establish a procedure to determine the status of a judgment, decree or order as a Qualified Domestic Relations Order and to administer Plan distributions in accordance with Qualified Domestic Relations Order. Such procedure shall be in writing, shall include a provision specifying the notification requirements enumerated in the preceding paragraph, shall permit an Alternate Payee to designate a representative for receipt of communications from the Plan and shall include such other provisions as the Plan shall determine, including provisions required under regulations promulgated by the Secretary of the Treasury.

During any period in which the issue of whether a judgment, decree or order is a Qualified Domestic Relations Order is being determined (by the Plan, a court of competent jurisdiction or otherwise), the Plan shall account for separately the amount, if any, which would have been payable to the Alternate Payee during such period if the judgment, decree or order had been determined to be a Qualified Domestic Relations Order.

If the judgment, decree, or order is determined to be a Qualified Domestic Relations Order within the 18-month period following the receipt by the Plan of the Qualified Domestic Relations Order, then payment from the segregated account shall be paid to the appropriate Alternate Payee. If such a determination is not made within the 18-month period, the segregated account shall be returned to the Participant's accounts under the Plan and shall be paid at the time and the manner provided under the Plan as if no order, judgment or decree had been received by the Plan.

**i. Direct Rollovers:** Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this part, a Distributee may elect, at the time and in the manner prescribed by the Plan Administrator to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

(a) An "Eligible Rollover Distribution" is any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion of net unrealized appreciation with respect to employer securities). An "Eligible Rollover Distribution" shall not include any hardship distribution as defined in Article 7.a. For purposes of the direct rollover provisions in the Plan, any amount that is distributed on account of hardship shall not be an eligible rollover distribution and the distributee may not elect to have any portion of such a distribution paid directly to an eligible retirement plan.

(b) An "Eligible Retirement Plan" is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, a qualified trust

described in Section 401(a) of the Code that accepts that Distributee's Eligible Rollover Distribution, an annuity contract described in Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state which agrees to separately account for amounts transferred into such plan from this Plan. However, in the case of an Eligible Rollover Distribution to the surviving spouse, an Eligible Retirement Plan is an individual retirement account or individual retirement annuity. The definition of an Eligible Retirement Plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code. However, in the case of an Eligible Rollover Distribution to a surviving spouse or non-spouse beneficiary within the meaning of Section 401(c)(11) of the Code, an Eligible Retirement Plan is an individual retirement account or individual retirement annuity, or effective for distributions made on or after January 1, 2008, a Roth IRA described in section 408A of the Code, provided the eligible rollover distribution is considered a qualified rollover contribution under section 408A(e) of the Code. Any portion of an individual's "Eligible Rollover Distribution" that is attributable to payments or distributions from a Roth Elective Deferral Account, may be rolled over to such individual's Roth IRA described in Code §408A(b) or to a qualified plan or a 403(b) plan that agrees to account separately for such amounts so transferred.

(c) A "Distributee" includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse or non-spouse beneficiary and the Employee's or former Employee's spouse or former spouse, or non-spouse beneficiary who is an alternate payee under a qualified domestic relations order, as defined in Section 414(q) of the Code, are distributees with regard to the interest of the spouse or former spouse.

(d) A "Direct Rollover" is a payment by the plan to the eligible retirement plan specified by the Distributee.

In the event of a mandatory distribution greater than \$1,000 in accordance with the provisions of Section 6(f) occurring on or after March 28, 2005, if the Participant does not elect to have such distribution paid directly to an eligible retirement plan specified by the participant in a direct rollover or to receive the distribution directly in accordance with Section 6(f), then the Administrator will pay the distribution in a direct rollover to an individual retirement plan designated by the Administrator.

## **Article 7. Hardship Distributions**

**a. Payment.** Subject to a procedure adopted by the Board of Trustees in compliance with the requirements of Section 401(k) of the Code and Regulations issued thereunder, upon written request submitted to the Board of Trustees (or its delegate) with adequate notice, a Participant who is in the employ of an Employer or an entity that is a member of the same controlled group as referred to in Section 414(b) and (c) of the Code as an Employer or the same affiliated service group as defined in Section 414(m) of the Code as the Employer,

may withdraw part or all of the amount of his or her Elective Deferral Account in the event an immediate and heavy financial need exists that would create a severe financial hardship to the Participant if early withdrawal were not permitted.

The Board of Trustees (or its designee) shall determine whether the withdrawal request specifies an immediate and heavy financial need. Such a need shall be deemed to exist if the withdrawal is requested on account of:

- i.* expenses for medical care described in Section 213(d) of the Code previously incurred by the Participant, the Participant's spouse, or the Participant's dependents, or the Participant's beneficiary, or necessary for these persons to obtain such medical care;
- ii.* purchase (excluding mortgage payments) of a principal residence for the Participant;
- iii.* payment of tuition and related educational fees for the next twelve (12) months and post-secondary education for the Participant or the Participant's spouse, children or dependents, or beneficiary;
- iv.* the need to prevent eviction of the Participant from the Participant's principal residence or foreclosure on the mortgage of the Participant's principal residence; or
- v.* any other condition determined by the Internal Revenue Service to constitute a "deemed" need.

In all other cases, the Board of Trustees shall determine whether an immediate and heavy financial need exists based on all relevant facts and circumstances. The Board of Trustees shall also determine, based on all the facts and circumstances, whether the need may be satisfied from other resources reasonably to the Participant, including assets of the Participant's spouse and minor children that are reasonably available. The Participant shall also provide a written representations that he or she has insufficient cash or other liquid assets reasonably available to satisfy the need. The Trustees shall not determine that an immediate and heavy financial need exists to the extent they have actual knowledge contrary to the Participant's representation that insufficient cash or liquid assets are available.

The amount withdrawn may not exceed the actual expense incurred or to be incurred by the Participant on account of such need (taking into account any amounts necessary to pay any federal, state or local income taxes or penalties reasonably anticipated to result from the distribution). A Participant may specify the Fund or Funds out of which a withdrawal is to be made. Unless specified otherwise, a withdrawal shall be made out of the Participant's interest in all of the Funds in which his 401(k) Contributions Account is invested in the same proportion that the Participant's share in each of the Funds attributable to his 401(k) Contributions Account bears to his total share in all of the Funds. A withdrawal may not exceed the net value of the Account. A Participant shall be limited to one such withdrawal in a calendar quarter.

Withdrawals under this Section shall not be available to Participants who have retired or otherwise terminated employment.

**b. Time of Payment.** Payment to a Participant pursuant to an election of withdrawal under Article 7.a shall be made in cash as soon as practicable.

**c. Coronavirus-Related Distribution.** Effective January 1, 2020, a Participant who is a CRD Eligible Individual may withdraw part or all of the amount of his or her Elective Deferral Account and his or her Vested Employer Contribution Account as a Coronavirus-Related Distribution (“CRD”), subject to the rules herein.

i. A CRD Eligible Individual is any Participant:

(1) who is diagnosed with the SARS-CoV-2 (“COVID-19”) or whose spouse or dependent is diagnosed with COVID-19; or

(2) who experiences adverse financial consequences as a result of quarantine, furlough, layoff, work reduction or related childcare needs resulting from the COVID-19 pandemic or other categories to be established by the IRS pursuant to Section 2202 of the Coronavirus Aid, Relief, and Economic Security Act of 2020 (“CARES Act”).

ii. A CRD shall not exceed the lesser of the sum of the Participant’s Elective Deferral Account and his or her Vested Employer Contribution Account or \$100,000.

iii. CRD Eligible Individuals requesting a CRD shall submit a certification as to CRD eligibility in accordance with rules or procedures adopted by the Plan or its designee.

iv. CRDs shall be requested and distributed no later than December 31, 2020.

## **Article 8. Plan Loans**

**a. Availability of Loans:** Loans shall be made available on an equivalent basis to all Participants employed by an Employer that has elected to permit loans by its employees in its Participation Agreement. By making such an election the Employer has agreed to abide by the terms of this Article, including the withholding and transmittal of payroll deductions required by Article 8.f.

**b. Amount of Loan:** The Board of Trustees, or its designee, in its discretion, may authorize a loan to a Participant who is a party in interest, within the meaning of Section 3(14) of ERISA, upon receipt of a written request from the Participant. The total amount of any such loan (when added to the outstanding balance of all other loans to the Participant under the Plan

or any other qualified plan of an Employer) will not exceed the lesser of \$50,000 or 50% of the value of the Participant's vested Account Balance. The \$50,000 limitation will be reduced by the excess, if any, of the highest outstanding loan balance from the Plan during the one-year period ending on the day before the date on which such loan was made over the outstanding balance of loans from the Plan on the date that such loan was made.

**c. Manner of Making Loans:** A request by a Participant for a loan will be made to the Board of Trustees or its designee and will specify the amount of the loan. The terms and conditions on which the Board of Trustees or their designee will approve loans under the Plan will be applied on a reasonably equivalent basis with respect to all Participants. If a Participant's request for a loan is approved, the Board of Trustees or its designee will arrange for the distribution of the specified amount in a single sum payment of cash to the Participant.

For all loans made on or after January 1, 2004, the loan shall be treated as a distribution consistent with the terms of Code Section 72(p) and the corresponding regulations except as otherwise provided therein and in Article 8 of the Plan.

**d. Terms of Loan:** Loans will be made on such terms and subject to such limitations as the Board of Trustees may prescribe, provided any such loan is evidenced by a written promissory note, bears a reasonable rate of interest on the unpaid principal, is adequately secured, and will be repaid by the Participant over a period not to exceed three years. Effective for loans approved on or after June 1, 2015, loans will be repaid by the Participant over a period not to exceed five years (excluding the period of March 27, 2020 through December 31, 2020). In the case of a loan used to acquire any dwelling unit that within a reasonable period of time is to be used (determined at the time the loan is made) as a principal residence of the Participant, the loan may be repaid over a period not to exceed twenty years. The interest rate charged on a loan will be an amount determined by the Board of Trustees or its designee, and must be at least equivalent to the prevailing interest rate charged by persons in the business of lending money for loans which would be made under similar circumstances.

**e. Security for Loan:** Any loan to a Participant under the Plan will be secured by the pledge of the Participant's right and interest in his Account Balance. The pledge will be evidenced by the execution of a promissory note by the Participant.

**f. Repayment of Loan:** All loans will be repaid by means of payroll deductions. The Employer of the Employee will have the sole responsibility for ensuring that a Participant timely makes all scheduled loan repayments. Repayment will be paid to the Plan in a form, and with such documentation, as determined by the Board of Trustees or its designee. Any loan must be amortized on a substantially level basis, with payments not less frequently than quarterly over the term of the loan. A loan may be pre-paid, in full or in part, without penalty at any time. Repayments with a deadline occurring between March 27, 2020 and December 31, 2020 may be delayed for a period of one year from such deadline; any repayments so delayed so be re-amortized, with interest, over the remainder of the repayment term.

**g. Suspension of Repayment during Qualified Military Leave:** Loan repayments will be suspended under this Plan as permitted under Section 414(u)(4) of the Code.

**h. Default on Loan:** In the event of a termination of the Participant's employment with the Employer or a default by a Participant on a loan repayment, all remaining principal payments on the loan will be immediately due and payable. The Board of Trustees or its designee will be authorized (to the extent permitted by law) to take any and all actions necessary and appropriate to enforce collection of an unpaid loan. However, in the event of a default, foreclosure on the note and attachment of security will not occur until a distributable event occurs under the Plan. A default will be deemed to have occurred if any loan payment has not been made within 90 days of when the payment was due to be paid by the Participant.

**i. Unpaid Amounts:** Upon a Participant's retirement or death, or upon a Participant's Break in Service or earlier distribution, the unpaid balance of any loan, including any unpaid interest, will be deducted from any payment or distribution from the Fund to which such Participant or his designated Beneficiary may be entitled and the vested interest in the account will be correspondingly reduced.

**j. Rolled Over Loans:** A loan that is rolled over as a distribution from another qualified plan shall be administered in accordance with the terms of the original loan.

**k. Loan Guidelines:** The Board of Trustees or its designee may issue written loan guidelines, which shall form part of the Plan, describing the procedures and conditions for making loans, and may revise those guidelines at any time, and for any reason.

**m. CARES Act Loan Rules:** Effective May 4, 2020 through September 23, 2020, A CRD Eligible Individual, as defined in Section 7.c of the Plan, employed by an Employer that has elected to permit loans by its employees may receive CARES Act Loans. CARES Act Loans shall be governed by this Article 8, except as modified as follows. Notwithstanding the provisions of Section 8.b, the total amount of any CARES Act Loan (when added to the outstanding balance of all other loans to the Participant under the Plan or any other qualified plan of an Employer) will not exceed the lesser of \$100,000 or 100% of the value of the Participant's vested Account Balance.

## **Article 9. Trust**

### **a. Creation**

The Trust established hereunder is an irrevocable trust, which shall endure as long as the purposes for its creation shall exist. The Trust consists of such sums of money and other property, acceptable to the Board of Trustees, as from time to time shall be contributed to, held by, or paid or delivered to the Trust and such earnings, profits, and increments thereon as may occur from time to time. All such money and other property delivered to the Trust and all investments and reinvestments made therewith or proceeds thereof and all earnings and profits thereon, less the payments which at the time of reference shall have been made by the Board of

Trustees as authorized herein, are referred to herein as the “assets of the Trust.” The assets of the Trust shall be held and dealt with in accordance with the express provisions of this instrument and the requirements of law.

The monies to be paid into the Trust shall not in any manner be liable for or subject to the debts, contract, liabilities or torts of the parties entitled to such money, i.e., the Participants of the Trust under the terms of the instrument.

All contributions under this Plan shall be paid in the manner specified by the Plan and deposited in the Trust Fund. However, all contributions made by an Employer are expressly conditioned upon the continued qualification of the Plan under the Internal Revenue Code, including any amendments to the Plan, and upon the deductibility under Section 404 of the Internal Revenue Code of contributions made to provide Plan benefits. Upon an Employer’s request, a contribution made by a mistake of fact, or conditioned upon qualification of the Plan or any amendment thereof or upon the deductibility of the contribution under Section 404 of the Internal Revenue Code of 1986, shall be returned to an Employer within one year after the payment of the contribution, the denial of the qualification or the disallowance of the deduction (to the extent disallowed), whichever is applicable.

Except as provided above, all assets of the Trust Fund, including investment Income, shall be retained for the exclusive benefit of Participants, Terminated Vested Participants and Beneficiaries and shall be used to pay benefits to such persons or to pay administrative expenses of the Plan and Trust Fund to the extent not paid by an Employer and shall not revert to or inure to the benefit of an Employer.

**b. Board of Trustees**

The Trust shall be administered by a Board of Trustees, who shall be appointed by the SEIU. The SEIU may expand or contract the Board, and may remove and/or replace any trustee at any time and for any reason. For purposes of taking any action and all other aspects of administration under the Plan or Trust, a quorum shall consist of half of the number of appointed Trustees, provided, however, that a quorum shall not be deemed to exist unless all Trustees have received reasonable notice of the meeting at which any action is taken, unless such notice is waived. Any Trustee may call a meeting of the Trustees pursuant to the provisions hereof.

**c. Powers of Trustees**

In administering the Trust Fund, and subject to the Participants' direction regarding their accounts as permitted herein, the Board of Trustees shall be specifically authorized, in its discretion:

*i.* To sell, exchange, transfer or grant options with respect to any real or personal property at any time held by them, by private contract, public auction, or otherwise, for cash or upon credit, as the Board of Trustees may deem advisable; and no person dealing with

the Plan shall be bound to see to the application of the purchase money or to inquire into the validity, expediency, or propriety of any sale or other disposition.

*ii.* To invest any portion of the Trust Fund, provided that such investments shall not exceed the lesser of the then fair market value of all Employer Contribution Accounts or 10% of the total assets of the Trust Fund, in qualifying stocks, bonds, notes, debentures or other obligations issued by, or in qualifying real property or any interest therein, of an Employer or any affiliated company of an Employer.

*iii.* To acquire any real estate through foreclosure, liquidation or other salvage of any investment previously made by them; to hold such real estate pending liquidation thereof at such time, in such manner, and upon such terms as the Board of Trustees may deem advisable; to manage, operate, repair, improve, partition, mortgage, or lease such real estate, upon such terms as the Board of Trustees may deem advisable; and to use other Trust assets for any of such purposes.

*iv.* To compromise, compound and settle any obligation due to or from the Trust, to reduce the rate of interest or extend or otherwise modify such obligation; or to foreclose upon default or otherwise enforce such obligation.

*v.* To vote in person or by proxy any stocks, bonds, or other securities held by them; to exercise any options appurtenant thereto for the conversion thereof into other stocks, bonds or securities; to exercise any rights to subscribe for additional stocks, bonds or other securities and to make any and all necessary payments therefor; and to join in, dissent from, or oppose the reorganization, recapitalization, consolidation, liquidation, sale or merger of corporations or properties in which it may be interested as the Board of Trustees.

*vi.* To accept and hold any securities or other property received by them under the provisions of this Trust, whether or not the Board of Trustees would be authorized hereunder then to invest in such securities.

*vii.* To make, execute, acknowledge and deliver any and all deeds, leases, assignments and instruments.

*viii.* To cause any investments from time to time held by them to be registered in, or transferred to, its name as the Board of Trustees or the name of their nominee or nominees or to retain such instruments unregistered or in form permitting transfer by delivery; but the books and records of the Board of Trustees shall at all times show that all such investments are part of the Trust Fund.

*ix.* To hold any property at any place, except that the indicia of ownership of any part of the Trust Fund shall not be maintained outside the jurisdiction of the district courts of the United States, except as permitted by regulations issued under Section 404(b) of ERISA.

x. To do all such acts, execute all such instruments, take all such proceedings and exercise all such rights and privileges with relation to any assets constituting a part of the Trust Fund as are necessary to carry out the purposes of this Agreement.

Wherever it is used in this Agreement the term “securities” shall include bonds, mortgages, deeds of trust, security interests, debentures, participations, notes, obligations, warrants and stocks of any class, and part interest therein, and such other evidences of indebtedness and certificates of interest as are usually referred to by the term “securities,” and the term “property” shall include real, personal and mixed property, tangible or intangible, improved or unimproved, encumbered or unencumbered, subordinated or unsubordinated, of any kind and wherever located, and part interests therein, including air rights, leaseholds or other interests of any kind in real property including securities and also including interests in any fund that shall be or shall have been created and administered by the Board of Trustees for the collective investment of the property of employee benefit trusts of which the Trustee hereunder is the Trustee. To the extent that property of the Trust Fund is invested in any such collective investment fund, the declaration of trust pertaining to such fund and the trust fund thereby created shall be a part of this Agreement and of the Plan; and for the purposes of any valuation of the Trust Fund or any valuation of the interest or of the account of any Employee or Beneficiary under the Plan, the interest of the trust hereby created in such collective investment fund shall be valued at the times and in the manner prescribed by the declaration by which such fund was created.

## **Article 10. Administration**

### **a. Allocation of Responsibility Among Fiduciaries for Plan and Trust**

**Administration:** The Fiduciaries shall have only those specific powers, duties, responsibilities and obligations as are specifically given them under this Plan or the Trust. The Employers shall have the sole responsibility for making the contributions provided for under Article 4.b. The Board of Trustees shall have the sole authority to appoint and remove any Investment Manager which may be provided for under the Trust, and to amend or terminate, in whole or in part, this Plan or the Trust. The Board of Trustees shall have the final responsibility for administration of the Plan, which responsibility is specifically described in this Plan and the Trust. The Board of Trustees shall have the specific delegated powers and duties described in the further provisions of this Article, and such further powers and duties as hereinafter may the administration of the Trust and the management of the assets held under the directions given, information furnished, or action taken by it shall be in accordance with the provisions of the Plan or the Trust, as the case may be, authorizing or providing for such direction, information or action. It is intended under this Plan and the Trust that each Fiduciary shall be responsible for the proper exercise of its own powers, duties, responsibilities and obligations under this Plan and Trust and shall not be responsible for any act or failure to act of another Fiduciary. No Fiduciary guarantees the Trust Fund in any manner against investment loss or depreciation in asset value.

**b. Administrative Expenses:** All usual and reasonable expenses of the Plan may be paid in whole or in part from the assets of the Plan. The Trustees, in their discretion, or their delegate, may allocate Plan expenses among the Accounts of Participants, either in proportion to

the balances of such Accounts or pursuant to a different allocation methodology, such as a flat charge per Account, if they determine that such method would be more appropriate for a particular expense. Effective October 1, 2014, the Trustees may utilize Plan assets held under an Expense Reimbursement Account to pay administrative expenses of the Plan. Such Expense Reimbursement Account shall contain assets provided to the Plan by a Plan service provider and earnings, if any, thereon. Expense Reimbursement Account assets shall be used only to pay reasonable, necessary expenses of Plan administration. The Trustees may delegate management and operation of the Expense Reimbursement Account to a Plan service provider, in accordance with the provisions of ERISA.

**c. Claims Procedure:** The Board of Trustees or its designee shall make all determinations as to the right of any person to a benefit. Any denial of a claim for benefits under the Plan by a Participant or Beneficiary shall be stated in writing by the Plan and delivered or mailed to the Participant or Beneficiary; and such notice shall set forth the specific reasons for the denial, written to the best of the Plan's ability in a manner that may be understood without legal or actuarial counsel. In addition, the Plan shall afford a reasonable opportunity to any Participant or Beneficiary whose claim for benefits has been denied for a review of the decision denying the claim by appealing such decision to the Board of Trustees or its designee, whose decision shall be final and binding.

**d. Records and Report:** The Plan shall exercise such authority and responsibility as it deems appropriate in order to comply with ERISA and governmental regulations issued thereunder relating to records of Participant's Service, account balances and the percentage of such account balances and the percentage of such account balances which are nonforfeitable under the Plan; and annual reports to the Department of Labor.

**e. Other Powers and Duties:** The Board of Trustees shall have such duties and powers as may be necessary to discharge its duties hereunder, including, but not by way of limitation, the following:

*i.* to construe and interpret the Plan, decide all questions of eligibility and determine the amount, manner and time of payment of any payment of any benefits hereunder, in its discretion, which powers shall be exercised in its discretion and shall be final and binding upon all parties;

*ii.* to prescribe procedures to be followed by Participants or Beneficiaries filing applications for benefits;

*iii.* to prepare and distribute, in such manner as the Board of Trustees determines to be appropriate, information explaining the Plan;

*iv.* to receive from the Employers and from Participants such information as shall be necessary for the proper administration of the Plan;

v. to furnish the Employers, upon request, such annual reports with respect to the administration of the Plan as are reasonable and appropriate;

vi. to receive, review and keep on file (as it deems convenient and proper) reports of benefit payments and reports of disbursements of expenses directed by the Plan.

vii. to appoint or employ individuals to assist in the administration of the Plan and any other agents it deems advisable, including legal and actuarial counsel.

**f. Rules and Decisions:** The Board of Trustees may adopt such rules as it deems necessary, desirable or appropriate. All rules and decisions of the Board of Trustees shall be final and binding upon all parties. When making a determination or calculation, the Plan shall be entitled to rely upon information furnished by a Participant or Beneficiary, the Employers, the legal counsel of the Employers, its own legal counsel, or the Plan's other service providers.

**g. Authorization of Benefit Payments:** The Plan shall issue directions to the Trustee concerning all benefits which are to be paid from the Trust Fund pursuant to the provisions of the Plan, and warrants that all such directions are in accordance with this Plan. Benefits under this plan will be paid only if the Board of Trustees decides in its discretion that the applicant is entitled to them.

**h. Application and Forms for Benefits:** The Plan may require a Participant or Beneficiary to complete and file an application for a benefit and all other forms approved by the Plan, and to furnish all pertinent information requested by the Plan. The Plan may rely upon all such information so furnished it, including the Participant's or Beneficiary's current mailing address.

**i. Facility of Payment:** Whenever, in the opinion of the Plan, a person entitled to receive any payment of a benefit or installment thereof hereunder is under a legal disability or is incapacitated in any way so as to be unable to manage his or her financial affairs, the Plan may make payments to such person or to his or her legal representative or to a relative or friend of such person for his or her benefit, or to apply the payment for the benefit of such person in such manner as the Plan considers advisable. Any payment of a benefit or installment thereof in accordance with the provisions of this Section shall be a complete discharge of any liability for the making of such payment under the provisions of the Plan.

**j. Delegation of Authority:** The Board of Trustees may delegate any of the authority granted to it under the terms of this agreement, including any designation permitted by ERISA Sections 404(c) and 405(d)(1).

**k. Duty to Collect Contributions:** Notwithstanding any other provision of this Plan, the duty to collect and remit contributions shall lie solely with the contributing Employer. An Employer's obligation to remit such contributions to the Plan shall be enforceable by the affected participants or their representatives, but shall not be enforceable by the Board of Trustees or the Plan.

## **Article 11. Miscellaneous**

**a. Rights to Trust Assets:** No Employer or Beneficiary shall have any right to, or interest in, any assets of the Trust Fund upon termination of his or her employment or otherwise, except as provided from time to time under this Plan, and then only to the extent of the benefits payable under the Plan to such Employee or Beneficiary out of the assets of the Trust Fund. All payments of benefits as provided for in this Plan shall be made solely out of the assets of the Trust Fund and none of the Fiduciaries shall be liable therefor in any manner.

**b. Nonforfeitability of Benefits:** Subject only to the specific provisions of this Plan, nothing shall be deemed to divest a Participant of his or her right to the nonforfeitable benefit to which he becomes entitled in accordance with the provisions of this Plan.

**c. Discontinuance of Employer Contributions:** In the event of a permanent discontinuance of contributions to the Plan by all Employers, the accounts of all Participants shall, as of the date of such discontinuance, become 100% vested and nonforfeitable.

**d. Missing Participants.** The Trustees may adopt a policy describing the reasonable steps to be taken by the Plan Administrator to locate any missing Participant or other person entitled to benefits under the Plan. If the Plan Administrator, after taking all reasonable steps in accordance with the policy, cannot locate the person entitled to the payment of benefits under the Plan, the benefits payable to such person shall be forfeited at such time as the Trustees shall determine in a nondiscriminatory manner. If any such missing person subsequently submits a claim for a benefit previously forfeited, the forfeited benefit will be reinstated (unadjusted for gains or losses). Forfeitures shall be applied, in accordance with applicable law and regulations, firstly to restore any previously forfeited amounts subject to a claim and secondly to reduce reasonable administrative expenses of the Plan; any remaining forfeitures shall be distributed annually on a pro rata basis among the Plan's other Participants. Restoration of any previously forfeited benefits shall be paid from forfeited amounts not yet allocated to other Participants, with any balance to be paid through additional contributions from the employer.

## **Article 12. Amendments**

The Board of Trustees reserves the right to make from time to time any amendment or amendments to this Plan which do not cause any part of the Trust Fund to be used for, or diverted to, any purpose other than the exclusive benefit of Participants, Terminated Vested Participants or their Beneficiaries, provided, however, that the Board of Trustees may make any amendment it determines necessary or desirable, with or without retroactive effect, to comply with ERISA.

### **Article 13. Successor Employer and Merger or Consolidation of Plan**

**a. Successor Employer:** In the event of the dissolution, merger, consolidation or reorganization of SEIU, provision may be made by which the Plan and Trust will be continued by the successor; and, in that event, such successor shall be substituted for SEIU under the Plan. The substitution of the successor shall constitute an assumption of Plan liabilities by the successor and the successor shall have all of the powers, duties and responsibilities of SEIU under the Plan. Additionally, in the event of the dissolution, merger, consolidation or reorganization of any participating Employer, provision may be made by which the successor may continue to be a participating Employer.

**b. Conditions Applicable to Mergers or Consolidations of Plans:** No merger or consolidation of the Plan with, or transfer in whole or in part of the assets and liabilities of the Trust fund to another trust fund held under, any other plan of deferred compensation maintained or to be established for the benefit of all or some of the Participants, shall be permitted unless:

*i.* each Participant would (if either this Plan or the other plan then terminated) receive a benefit immediately after the merger, consolidation or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation or transfer (if this Plan had then terminated) and the determination of such benefits shall be made in the manner and at the time prescribed in regulations issued under ERISA; and

*ii.* such other plan and trust are qualified under Sections 401(a) and 501(a) of the Internal Revenue Code.

**(c) Plan to Plan Transfer.** In the event that an Employer ceases to participate in the Plan on or after January 1, 2017 and such Employer establishes or maintains a separate defined contribution plan qualified under Code Section 401(a), the Trustees may authorize and effect a direct plan-to-plan transfer of the accrued benefit of each Employee from the Plan to such Employer's qualified plan in cash or in such other form as determined to be acceptable by the Trustees, provided such transfer can be accomplished consistent with Code Sections 411(d)(6), 414(l), and other applicable law.

### **Article 14. Plan Termination**

**a. Right to Terminate:** In accordance with the procedures set forth in this Article, the Board of Trustees may terminate the Plan at any time.

**b. Partial Termination:** Upon termination of the Plan with respect to a group of Participants, the Plan shall, in accordance with the directions of the Board of Trustees, allocate and segregate for the benefit of the Employees then or theretofore employed by the Employer with respect to which the Plan is being terminated the proportionate interest of such Participants in the Trust Fund. The funds so allocated and segregated shall be used by the Plan to pay benefits to or on behalf of Participants in accordance with Article 14.c.

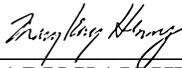
**c. Liquidation of the Trust Fund:** Upon termination or partial termination of the Plan, the accounts of all Participants affected thereby shall become fully vested, and the Board of Trustees may: continue to administer the Trust Fund and pay account balances in accordance with Article 6.e, to Participants affected by the termination upon their termination of employment or to their Beneficiaries upon such a Participant's death, until the Trust Fund has been liquidated, or distribute the assets remaining in the Trust Fund, after payment of any expenses properly chargeable thereto, to Participants, Terminated Vested Participants and Beneficiaries in proportion to their respective account balances.

In case the Board of Trustees directs liquidation of the Trust Fund pursuant to Article 14.a above, the expenses of administering the Plan and Trust shall be paid from the Trust Fund.

**d. Manner of Distribution:** To the extent that no discrimination in value results, any distribution after termination of the Plan may be made, in whole or in part, in cash, in securities or other assets in kind, or in non-transferable annuity contracts, as the Board of Trustees (in its discretion) may determine. All non-cash distributions shall be valued at fair market value at the date of distribution.

This Fourth Restatement of the Plan and Trust of the SEIU Affiliates' Officers & Employees Supplemental Retirement Savings 401(k) Plan is hereby adopted, this 7th day of December, 2021.

BOARD OF TRUSTEES  
SEIU AFFILIATES' OFFICERS &  
EMPLOYEES SUPPLEMENTAL  
RETIREMENT SAVINGS 401(K) PLAN

  
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MARY KAY HENRY  
Chair