

# SECURITIES & EXCHANGE COMMISSION EDGAR FILING

**Rocky Mountain Chocolate Factory, Inc.**

**Form: S-8**

**Date Filed: 2015-08-24**

Corporate Issuer CIK: 1616262

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

**FORM S-8**

**REGISTRATION STATEMENT  
UNDER THE SECURITIES ACT OF 1933**

**ROCKY MOUNTAIN CHOCOLATE FACTORY, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of incorporation or organization)

**47-1535633**

(I.R.S. Employer Identification Number)

**265 Turner Drive  
Durango, CO 81303**

(Address of Principal Executive Offices, Including Zip Code)

**ROCKY MOUNTAIN CHOCOLATE FACTORY, INC. 401(K) PLAN**

(Full title of the plan)

**Bryan J. Merryman  
Chief Operating Officer/Chief Financial Officer  
Rocky Mountain Chocolate Factory, Inc.**

**265 Turner Drive  
Durango, Colorado 81303**

(Name and address of agent for service)

**(970) 259-0554**

(Telephone number, including area code, of agent for service)

***Copies to:***

**Sonny Allison  
Perkins Coie LLP  
1900 Sixteenth Street, Suite 1400  
Denver, Colorado 80202  
(303) 291-2300**

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐

Accelerated filer ☐

Non-accelerated filer ☐ (Do not check if a smaller reporting company)

Smaller reporting company ☒

**CALCULATION OF REGISTRATION FEE**

<b>Title of Securities to Be Registered(1)</b>	<b>Amount to Be Registered (2)</b>	<b>Proposed Maximum Offering Price Per Share (3)</b>	<b>Proposed Maximum Aggregate Offering Price (3)</b>	<b>Amount of Registration Fee (3)</b>
Common Stock, \$0.001 par value	250,000	\$12.38	\$3,095,000	\$359.64

- (1) Pursuant to Rule 416(c) under the Securities Act of 1933, as amended (the "Securities Act"), this registration statement also covers an indeterminate amount of interests to be offered or sold pursuant to the employee benefit plan described herein.
  - (2) Pursuant to Rule 416(a) under the Securities Act, this registration statement also covers any additional shares of the registrant's common stock that may become issuable under the Rocky Mountain Chocolate Factory, Inc. 401(k) Plan as a result of any future stock splits, stock dividends or similar adjustments of the registrant's outstanding common stock.
  - (3) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(c) and Rule 457(h) under the Securities Act. The proposed maximum offering price per share is estimated based on the average of the high and low sales prices for the registrant's common stock as reported by the NASDAQ Global Market on August 18, 2015.
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**PART II**  
**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 3. Incorporation of Documents by Reference.**

The following documents filed by the Registrant with the Securities and Exchange Commission (the "Commission") are hereby incorporated by reference in this registration statement:

- (a) The Registrant's Annual Report on Form 10-K for the fiscal year ended February 28, 2015, filed with the Commission on May 27, 2015, which contains the Registrant's audited financial statements for the most recent fiscal year for which such statements have been filed;
- (b) The Registrant's Quarterly Report on Form 10-Q for the fiscal quarter ended May 31, 2015, filed with the Commission on July 15, 2015;
- (c) The Registrant's Current Reports on Form 8-K filed with the Commission on March 2, 2015, June 2, 2015, July 20, 2015, July 22, 2015, August 21, 2015 and August 24, 2015;
- (d) The Rocky Mountain Chocolate Factory, Inc. 401(k) Plan Annual Report on Form 11-K for the fiscal year ended February 28, 2014, filed with the Commission on August 25, 2014 (File No. 000-14749); and
- (e) The description of the Registrant's common stock contained in the Registrant's Current Report on Form 8-K filed with the Commission on August 24, 2015, including any amendment or report filed for the purpose of updating such description.

All documents filed by the Registrant pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), after the date hereof (excluding any documents or portions of such documents that are furnished under Item 2.02 or Item 7.01 of a Current Report on Form 8-K and any exhibits included with such Items), and prior to the filing of a post-effective amendment that indicates that all the securities offered hereby have been sold or that deregisters the securities offered hereby then remaining unsold, shall also be deemed to be incorporated by reference into this registration statement and to be a part hereof from the date of filing of such documents.

Any statement contained in this registration statement or in a document incorporated or deemed to be incorporated by reference in this registration statement will be deemed to be modified or superseded to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference in this registration statement modifies or supersedes that statement. Any statement so modified or superseded will not be deemed, except as so modified or superseded, to constitute a part of this registration statement.

**Item 4. Description of Securities.**

Not applicable.

**Item 5. Interests of Named Experts and Counsel.**

None.

**Item 6. Indemnification of Directors and Officers.**

Section 145 of the Delaware General Corporation Law ("DGCL") authorizes a corporation to indemnify its directors, officers, employees and agents against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement reasonably incurred, provided they act in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal proceeding, had no reasonable cause to believe their conduct was unlawful, although in the case of proceedings brought by or on behalf of the corporation, such indemnification is limited to expenses and is not permitted if the individual is adjudged liable to the corporation (unless the Delaware Court of Chancery or the court in which such proceeding was brought determines otherwise in accordance with the DGCL).

Section 102 of the DGCL authorizes a corporation to limit or eliminate its directors' liability to the corporation or its stockholders for monetary damages for breaches of fiduciary duties, other than for (1) breaches of the duty of loyalty, (2) acts or omissions not in good faith or that involve intentional misconduct or knowing violations of law, (3) unlawful payments of dividends, stock purchases or redemptions or (4) transactions from which a director derives an improper personal benefit.

The Registrant's certificate of incorporation contains provisions protecting its directors and officers to the fullest extent permitted by Sections 102 and 145 of the DGCL. The Registrant's bylaws provide similar protection under Section 145 of the DGCL for its directors and officers.

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Section 145 of the DGCL also authorizes a corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation against certain liabilities asserted against and incurred by such person in any such capacity, or arising out of such person's status as such. The Registrant maintains liability insurance covering its directors and officers for claims asserted against them or incurred by them in such capacity.

The Registrant expects to enter into agreements to indemnify its directors and certain of its officers to the maximum extent allowed under Delaware law. These agreements, among other things, will indemnify the Registrant's directors for certain expenses (including attorneys' fees), judgments, fines and settlement amounts reasonably incurred by such person in any action or proceeding, including any action by or in the Registrant's right, on account of any services undertaken by such person on behalf of the Registrant or that person's status as a member of the Registrant's board or directors.

**Item 7. Exemption from Registration Claimed.**

Not applicable.

**Item 8. Exhibits.**

<b>Exhibit Number</b>	<b>Description of Document</b>
5.1	Opinion of Perkins Coie LLP.
23.1	Consent of EKS&H LLLP.
23.2	Consent of Perkins Coie LLP (included in Exhibit 5.1).
24.1	Power of Attorney (see signature page).
99.1	Rocky Mountain Chocolate Factory, Inc. 401(k) Plan, as amended.

The Registrant hereby undertakes that it will submit or has submitted the Rocky Mountain Chocolate Factory, Inc. 401(k) Plan subject to this registration statement and any amendments thereto to the Internal Revenue Service (the "IRS") in a timely manner and has made or will make all changes required by the IRS in order to qualify the plan under Section 401 of the Internal Revenue Code of 1986, as amended.

**Item 9. Undertakings.**

A. The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(a) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(b) To reflect in the prospectus any facts or events arising after the effective date of this registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this registration statement; and

(c) To include any material information with respect to the plan of distribution not previously disclosed in this registration statement or any material change to such information in this registration statement;

*provided, however*, that paragraphs (1)(a) and (1)(b) above do not apply if this registration statement is on Form S-8 and the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in this registration statement..

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

B. The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in this registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

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C. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that, in the opinion of the Commission, such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

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## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Durango, State of Colorado, on August 24, 2015.

### ROCKY MOUNTAIN CHOCOLATE FACTORY, INC.

By: /s/ Franklin E. Crail

Name: Franklin E. Crail

Title: Chief Executive Officer and President

## POWER OF ATTORNEY

Each person whose signature appears below constitutes and appoints Franklin E. Crail and Bryan J. Merryman, or any of them, as his attorneys-in-fact, with the power of substitution, for him in any and all capacities, to sign any amendments to this registration statement, including any and all post-effective amendments, and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that said attorneys-in-fact, or their substitute or substitutes, may do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Franklin E. Crail</u> Franklin E. Crail	Chairman of the Board, Chief Executive Officer and President (Principal Executive Officer)	August 24, 2015
<u>/s/ Bryan J. Merryman</u> Bryan J. Merryman	Chief Operating Officer, Chief Financial Officer, Treasurer and Director (Principal Financial and Accounting Officer)	August 24, 2015
<u>/s/ Gerald A. Kien</u> Gerald A. Kien	Director	August 24, 2015
<u>/s/ Lee N. Mortenson</u> Lee N. Mortenson	Director	August 24, 2015
<u>/s/ Clyde Wm. Engle</u> Clyde Wm. Engle	Director	August 24, 2015
<u>/s/ Scott G. Capdevielle</u> Scott G. Capdevielle	Director	August 24, 2015

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**ROCKY MOUNTAIN CHOCOLATE FACTORY, INC. 401(K) PLAN**

Pursuant to the requirements of the Securities Act of 1933, as amended, the trustee (or other persons who administer the Rocky Mountain Chocolate Factory, Inc. 401(k) Plan) have duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Durango, State of Colorado, on August 24, 2015.

**ROCKY MOUNTAIN CHOCOLATE FACTORY, INC.  
401(K) PLAN**

By: /s/ Bryan J. Merryman

Name: Bryan J. Merryman

Title: Plan Administrator

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## EXHIBIT INDEX

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23.2	Consent of Perkins Coie LLP (included in Exhibit 5.1).
24.1	Power of Attorney (see signature page).
99.1	Rocky Mountain Chocolate Factory, Inc. 401(k) Plan, as amended.



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Suite 1400  
Denver, CO 80202-5255

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perkinscoie.com

August 24, 2015

Rocky Mountain Chocolate Factory Inc.  
265 Turner Drive  
Durango, Colorado 81303

**Re: Registration Statement on Form S-8 of Shares of Common Stock, par value \$0.001 per share, of Rocky Mountain Chocolate Factory, Inc.**

Ladies and Gentlemen:

We have acted as counsel to Rocky Mountain Chocolate Factory, Inc. (the "Company") in connection with the preparation of a Registration Statement on Form S-8 (the "Registration Statement") under the Securities Act of 1933, as amended (the "Act"), which the Company is filing with the Securities and Exchange Commission (the "Commission") with respect to up to 250,000 shares of common stock of the Company, par value \$0.001 per share (the "Shares"), which may be issued under the Rocky Mountain Chocolate Factory, Inc. 401(k) Plan (the "Plan").

We have examined the Registration Statement and such documents and records of the Company as we have deemed necessary for the purpose of this opinion. In giving this opinion, we are assuming the authenticity of all instruments presented to us as originals, the conformity with originals of all instruments presented to us as copies and the genuineness of all signatures.

Based upon and subject to the foregoing, we are of the opinion that any Shares issued by the Company pursuant to the Plan, upon registration by its registrar of such Shares and the issuance thereof by the Company in accordance with the terms of the Plan, and the receipt of consideration for such Shares in accordance with the terms of the Plan, will be legally issued, fully paid and non-assessable.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement. In giving such consent, we do not admit that we are in the category of persons whose consent is required under Section 7 of the Act.

Very truly yours,

/s/ PERKINS COIE LLP

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We hereby consent to the incorporation by reference in this Registration Statement on Form S-8 of our report dated May 27, 2015, with respect to the financial statements, which appears in Rocky Mountain Chocolate Factory, Inc.'s Annual Report on Form 10-K for the year ended February 28, 2015 and our report dated August 25, 2014, appearing in the Annual Report on Form 11-K of the Rocky Mountain Chocolate Factory, Inc. 401(k) Plan for the year ended February 28, 2014.

/s/ EKS&H LLP

August 24, 2015  
Denver, Colorado

ROCKY MOUNTAIN CHOCOLATE FACTORY, INC. 401(K) PLAN



**ADOPTION AGREEMENT #005  
NONSTANDARDIZED 401(k) PLAN  
[Related Employers only]**

The undersigned Employer, by executing this Adoption Agreement, establishes a retirement plan and trust (collectively "Plan") under the Wells Fargo Defined Contribution Prototype Plan and Trust Agreement (basic plan document #01). The Employer, subject to the Employer's Adoption Agreement elections, adopts fully the Prototype Plan and Trust provisions. This Adoption Agreement, the basic plan document and any attached Appendices or agreements permitted or referenced therein, constitute the Employer's entire plan and trust document. All "Election" references within this Adoption Agreement are Adoption Agreement Elections. All "Article" or "Section" references are basic plan document references. Numbers in parentheses which follow election numbers are basic plan document references. Where an Adoption Agreement election calls for the Employer to supply text, the Employer (without altering the content of any existing printed text) may lengthen any space or line, or create additional tiers. When Employer-supplied text uses terms substantially similar to existed printed options, all clarifications and caveats applicable to the printed options apply to the Employer-supplied text unless the context requires otherwise. The Employer makes the following elections granted under the corresponding provisions of the basic plan document.

**ARTICLE I  
DEFINITIONS**

**1. EMPLOYER (1.23).**

Name: Rocky Mountain Chocolate Factory, Inc.

Address: 265 Turner Drive, Durango, Colorado 81303

Phone number: 970-247-4943

E-mail (optional): \_\_\_\_\_

Employer's Taxable Year: \_\_\_\_\_

EIN: 84-0910696

**2. PLAN (1.40).**

Name: Rocky Mountain Chocolate Factory, Inc. 401(k) Plan

Plan number: 001 (3-digit number for Form 5500 reporting)

Trust EIN (optional): \_\_\_\_\_

**3. PLAN/LIMITATION YEAR (1.42/1.33).** Plan Year and Limitation Year mean the 12 consecutive month period (except for a short Plan/Limitation Year) ending every (Complete (a) and (b)):

[Note: Complete any applicable blanks under Election 3 with a specific date, e.g., "June 30" OR "the last day of February" OR "the first Tuesday in January." In the case of a Short Plan Year or a Short Limitation Year, include the year, e.g., "May 1, 2008."]

**(a) Plan Year (Choose one of (1) or (2) and choose (3) if applicable):**

(1) ☐ December 31.

(2) ☒ Fiscal Plan Year: ending: February 28.

(3) ☐ Short Plan Year: commencing: \_\_\_\_\_ and ending: \_\_\_\_\_.

**(b) Limitation Year (Choose one of (1) or (2) and choose (3) if applicable):**

(1) ☒ Generally same as Plan Year. The Limitation Year is the same as the Plan Year except where the Plan Year is a short year in which event the Limitation Year is always a 12 month period, unless the short Plan Year (and short Limitation Year) result from a Plan amendment.

(2) ☐ Different Limitation Year: ending: \_\_\_\_\_.

(3) ☐ Short Limitation Year: commencing: \_\_\_\_\_ and ending: \_\_\_\_\_.

**4. EFFECTIVE DATE (1.19).** The Employer's adoption of the Plan is a (Choose one of (a), (b), or (c). Choose (d) if applicable):

(a) ☐ New Plan. The Plan's Effective Date is: \_\_\_\_\_.

(b) ☒ Restated Plan. The Plan's restated Effective Date is: March 1, 2002. The Plan's original Effective Date was: June 1, 1994.

[Note: See Section 1.51 for the definition of Restated Plan. If this Plan is an EGTRRA restatement: (i) the EGTRRA restatement Effective Date must be the later of the beginning of the 2002 Plan Year or the Plan's original Effective Date; and (ii) if specific Plan provisions, as reflected in this Adoption Agreement, do not date back to the EGTRRA restatement Effective Date, indicate as such in Appendix A.]

Nonstandardized 401(k) Plan

- (c) ☐ **Restatement of surviving and merging plans.** The Plan restates two (or more) plans (Complete (1) and (2). Choose (3) as applicable):

(1) **This (surviving) Plan.** The Plan's restated Effective Date is: \_\_\_\_\_. The Plan's original Effective Date was: \_\_\_\_\_.

[Note: If this Plan is an EGTRRA restatement: (i) the EGTRRA restatement Effective Date must be the later of the beginning of the 2002 Plan Year or the Plan's original Effective Date; and (ii) if specific Plan provisions, as reflected in this Adoption Agreement, do not date back to the EGTRRA restatement Effective Date, indicate as such in Appendix A.]

(2) **Merging plan.** The \_\_\_\_\_ Plan was or will be merged into this surviving Plan as of: \_\_\_\_\_. The merging plan's restated Effective Date is: \_\_\_\_\_. The merging plan's original Effective Date was: \_\_\_\_\_.

[See the Note under Election 4(c)(1) if this document is the merging plan's EGTRRA restatement.]

(3) ☐ **Additional merging plans.** The following additional plans were or will be merged into this surviving Plan (Complete a. and b. as applicable):

	Name of merging plan	Merger date	Restated Effective Date	Original Effective Date
a.	_____	_____	_____	_____
b.	_____	_____	_____	_____

(d) ☐ **Special Effective Date for Elective Deferral provisions:** \_\_\_\_\_

5. **TRUSTEE (1.65).** The Trustee executing this Adoption Agreement is (Choose one or more of (a), (b), or (c). Choose (d) if applicable):

(a) ☐ **A discretionary Trustee.** See Section 8.02(A).

(b) ☒ **A nondiscretionary (directed) Trustee or Custodian.** See Section 8.02(B).

(c) ☐ **A Trustee under the:** \_\_\_\_\_ (specify name of trust), a separate trust agreement the Trustee has executed and that the IRS has approved for use with this Plan. Under this Election 5(c) the Trustee is not executing the Adoption Agreement and Article VIII of the basic plan document does not apply, except as indicated otherwise in the separate trust agreement. See Section 8.11(C).

(d) ☐ **Permitted Trust amendments apply.** Under Section 8.11 the Employer in Appendix C has made certain permitted amendments to the Trust. Such amendments do not constitute a separate trust under Election 5(c).

6. **CONTRIBUTION TYPES (1.12).** The Employer and/or Participants, in accordance with the Plan terms, make the following Contribution Types to the Plan/Trust (Choose one or more of (a) through (h) as applicable. Choose (i) if applicable):

(a) ☒ **Pre-Tax Deferrals.** See Section 3.02 and Elections 20-23.

(b) ☐ **Roth Deferrals.** See Section 3.02(E) and Elections 20, 21, and 23. [Note: The Employer may not limit Elective Deferrals to Roth Deferrals only.]

(c) ☒ **Matching.** See Sections 1.34 and 3.03 and Elections 24-26. [Note: The Employer may make an Operational QMAC without electing 6(c). See Section 3.03(C)(2).]

(d) ☒ **Nonelective.** See Sections 1.37 and 3.04 and Elections 27-29. [Note: The Employer may make an Operational QNEC without electing 6(d). See Section 3.04(C)(2).]

(e) ☐ **Safe Harbor/Additional Matching.** The Plan is (or pursuant to a delayed election, may be) a safe harbor 401(k) Plan. The Employer will make (or under a delayed election, may make) Safe Harbor Contributions as it elects in Election 30. The Employer may or may not make Additional Matching Contributions as it elects in Election 30. See Election 26 as to matching Catch-Up Deferrals. See Section 3.05.

(f) ☐ **Employee (after-tax).** See Section 3.09 and Election 35.

(g) ☐ **SIMPLE 401(k).** The Plan is a SIMPLE 401(k) Plan. See Section 3.10. The Employer operationally will elect for each Plan Year to make a SIMPLE Matching Contribution or a SIMPLE Nonelective Contribution as described in Section 3.10(E). The Employer must notify Participants of the Employer's SIMPLE contribution election and of the Participants' deferral election rights and limitations within a reasonable period of time before the 60th day prior to the beginning of the Plan Year. [Note: The Employer electing 6(g) may not elect any other Contribution Types except under Elections 6(a), 6(b), and 6(h).]

(h) ☐ **Designated IRA.** See Section 3.12 and Election 36.

(i) ☐ **None (frozen plan).** The Plan is/was frozen effective as of: \_\_\_\_\_, See Sections 3.01(J) and 11.04.

[Note: Elections 20 through 30 and Elections 35 through 37 do not apply to any Plan Year in which the Plan is frozen.]

7. **DISABILITY (1.15).** Disability means (Choose one of (a) or (b)):(a) ☒ **Basic Plan.** Disability as defined in Section 1.15(A).(b) ☐ **Describe:** \_\_\_\_\_

[Note: The Employer may elect an alternative definition of Disability for purposes of Plan distributions. However, the use of an alternative definition may result in loss of favorable tax treatment of the Disability distribution.]

8. **EXCLUDED EMPLOYEES (1.21(D)).** The following Employees are not Eligible Employees but are Excluded Employees (Choose one of (a) or (b)):

[Note: Regardless of the Employer's elections under Election 8: (i) Employees of any Related Employers (excluding the Signatory Employer) are Excluded Employees unless the Related Employer becomes a Participating Employer; and (ii) Reclassified Employees and Leased Employees are Excluded Employees unless the Employer in Appendix B elects otherwise. See Sections 1.21(B), 1.21(D)(3) and 1.23(D).]

(a) ☒ **No Excluded Employees.** All Employees are Eligible Employees as to all Contribution Types.(b) ☐ **Exclusions.** The following Employees are Excluded Employees (either as to all Contribution Types or to the designated Contribution Type) (Choose one or more of (1) through (7) as applicable):

[Note: For this Election 8, unless described otherwise in Election 8(b)(7), Elective Deferrals includes Pre-Tax Deferrals, Roth Deferrals, Employee Contributions and Safe Harbor Contributions. Matching includes all Matching Contributions except Safe Harbor Matching Contributions. Nonelective includes all Nonelective Contributions except Safe Harbor Nonelective Contributions.]

	(1) All Contributions	(2) Elective Deferrals	(3) Matching	(4) Nonelective
(1) <input type="checkbox"/> <b>No exclusions.</b> No exclusions as to the designated Contribution Type.	N/A (See Election 8(a))	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2) <input type="checkbox"/> <b>Collective Bargaining (union) Employees.</b> As described in Code §410(b)(3)(A). See Section 1.21(D)(1).	<input type="checkbox"/>	<b>OR</b> <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(3) <input type="checkbox"/> <b>Non-Resident Aliens.</b> As described in Code §410(b)(3)(C). See Section 1.21(D)(2).	<input type="checkbox"/>	<b>OR</b> <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(4) <input type="checkbox"/> <b>HCEs.</b> See Section 1.21(E). See Election 30(e) as to exclusion of some or all HCEs from Safe Harbor Contributions.	<input type="checkbox"/>	<b>OR</b> <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(5) <input type="checkbox"/> <b>Hourly paid Employees.</b>	<input type="checkbox"/>	<b>OR</b> <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(6) <input type="checkbox"/> <b>Part-Time/Temporary/Seasonal Employees.</b> See Section 1.21(D)(4). A Part-Time, Temporary or Seasonal Employee is an Employee whose regularly scheduled Service is less than _____ (specify a maximum of 1,000) Hours of Service in the relevant Eligibility Computation Period.	<input type="checkbox"/>	<b>OR</b> <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

[Note: If the Employer under Election 8(b)(6) elects to treat Part-Time, Temporary and Seasonal Employees as Excluded Employees and any such an Employee actually completes at least 1,000 Hours of Service during the relevant Eligibility Computation Period, the Employee becomes an Eligible Employee. See Section 1.21(D)(4).]

(7) ☐ **Describe exclusion category and/or Contribution Type:** \_\_\_\_\_  
(e.g., Exclude Division B Employees OR Exclude salaried Employees from Discretionary Matching Contributions.)

[Note: Any exclusion under Election 8(b)(7), except as to Part-Time/Temporary/Seasonal Employees, may not be based on age or Service or level of Compensation. See Election 14 for eligibility conditions based on age or Service.]

Nonstandardized 401(k) Plan

9. **COMPENSATION (1.11(B)).** The following base Compensation (as adjusted under Elections 10 and 11) applies in allocating Employer Contributions (or the designated Contribution Type) (Choose one or more of (a) through (d) as applicable):

[Note: For this Election 9 all definitions include Elective Deferrals unless excluded under Election 11. See Section 1.11(D). Unless described otherwise in Election 9(d), Elective Deferrals includes Pre-Tax Deferrals, Roth Deferrals and Employee Contributions. Matching includes all Matching Contributions and Nonelective includes all Nonelective Contributions. In applying any Plan definition which references Section 1.11 Compensation, where the Employer in this Election 9 elects more than one Compensation definition for allocation purposes, the Plan Administrator will use W-2 Wages for such other Plan definitions if the Employer has elected W-2 Wages for any Contribution Type or Participant group under Election 9. If the Employer has not elected W-2 Wages, the Plan Administrator for such other Plan definitions will use 415 Compensation.]

		(1) All Contributions		(2) Elective Deferrals	(3) Matching	(4) Nonelective
(a)	<input checked="" type="checkbox"/> W-2 Wages (plus Elective Deferrals). See Section 1.11(B)(1).	<input checked="" type="checkbox"/>	OR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b)	<input type="checkbox"/> Code §3401 Federal Income Tax Withholding Wages (plus Elective Deferrals). See Section 1.11(B)(2).	<input type="checkbox"/>	OR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(c)	<input type="checkbox"/> 415 Compensation (simplified). See Section 1.11(B)(3). [Note: The Employer may elect an alternative "general 415 Compensation" definition by electing 9(c) and by electing the alternative definition in Appendix B. See Section 1.11(B)(4).]	<input type="checkbox"/>	OR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

(d) ☐ Describe Compensation by Contribution Type or by Participant group: \_\_\_\_\_

[Note: Under Election 9(d), the Employer may: (i) elect Compensation from the elections available under Elections 9(a), (b), or (c), or a combination thereof as to a Participant group (e.g., W-2 Wages for Matching Contributions for Division A Employees and 415 Compensation in all other cases); and/or (ii) define the Contribution Type column headings in a manner which differs from the "all-inclusive" description in the Note immediately preceding Election 9(a) (e.g., Compensation for Safe Harbor Matching Contributions means W-2 Wages and for Additional Matching Contributions means 415 Compensation).]

10. **PRE-ENTRY/POST-SERVERANCE COMPENSATION (1.11(H)(I)).** Compensation under Election 9 (Complete (a). Choose (b), if applicable):

[Note: The Plan does not take into account Post-Severance Compensation unless the Employer elects otherwise in Appendix B or except as otherwise specified in a Plan amendment. For this Election 10, unless described otherwise in Election 10(b), Elective Deferrals includes Pre-Tax Deferrals, Roth Deferrals and Employee Contributions. Matching includes all Matching Contributions and Nonelective includes all Nonelective Contributions.]

		(1) All Contributions		(2) Elective Deferrals	(3) Matching	(4) Nonelective
(a)	<input checked="" type="checkbox"/> Pre-Entry Compensation. Includes (Choose (1) and (2) as applicable):					
(1)	<input type="checkbox"/> Plan Year. Compensation for the entire Plan Year which includes the Participant's Entry Date.	<input type="checkbox"/>	OR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2)	<input checked="" type="checkbox"/> Participating Compensation. Only Participating Compensation. See Section 1.11(H)(1).	<input checked="" type="checkbox"/>	OR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

[Note: Under a Participating Compensation election, in applying any Adoption Agreement elected contribution limit or formula, the Plan Administrator will count only the Participant's Participating Compensation. See Section 1.11(H)(1) as to plan disaggregation.]

(b) ☐ Describe Pre-Entry Compensation by Contribution Type or by Participant group: \_\_\_\_\_

[Note: Under Election 10(b), the Employer may: (i) elect Compensation from the elections available under Election 10(a) or a combination thereof as to a Participant group (e.g., Participating Compensation for all Contribution Types or to Division A Employees, Plan Year Compensation for all Contribution Types to Division B Employees); and/or (ii) define the Contribution Type column headings in a manner which differs from the "all-inclusive" description in the Note immediately preceding Election 10(a) (e.g., Compensation for Nonelective Contributions is Participating Compensation and for Safe Harbor Nonelective Contributions is Plan Year Compensation).]

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11. **EXCLUDED COMPENSATION (1.11(G)).** Apply the following Compensation exclusions to Elections 9 and 10 (Choose one of (a) or (b)):

(a) ☐ **No exclusions.** Compensation as to all Contribution Types means Compensation as elected in Elections 9 and 10.

(b) ☒ **Exclusions.** Exclude the following (Choose one or more of (1) through (9) as applicable):

[Note: In a safe harbor 401(k) plan, allocations qualifying for the ADP or ACP test safe harbors must be based on a non-discriminatory definition of Compensation. If the Plan applies permitted disparity, allocations also must be based on a non-discriminatory definition of Compensation if the Plan is to avoid more complex testing. Elections 11(b)(4) through (b)(9) may cause allocation Compensation to fail to be non-discriminatory. In a non-safe harbor 401(k) plan, Elections 11(b)(4) through (b)(9) which result in Compensation failing to be non-discriminatory may result in more complex nondiscrimination testing. For this Election 11, unless described otherwise in Election 11(b)(9), Elective Deferrals includes Pre-Tax Deferrals, Roth Deferrals and Employee Contributions, Matching includes all Matching Contributions and Nonelective includes all Nonelective Contributions.]

		(1) All Contributions	(2) Elective Deferrals	(3) Matching	(4) Nonelective
(1)	<input type="checkbox"/> <b>No exclusions-limited.</b> No exclusions as to the designated Contribution Type(s).	N/A (See Election 11(a))	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2)	<input type="checkbox"/> <b>Elective Deferrals.</b> See Section 1.20.	N/A	N/A	<input type="checkbox"/>	<input type="checkbox"/>
(3)	<input type="checkbox"/> <b>Fringe benefits.</b> As described in Treas. Reg. §1.414(s)-1(c)(3).	<input type="checkbox"/>	<b>OR</b> <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(4)	<input type="checkbox"/> <b>Compensation exceeding \$_____.</b> Apply this election to (Choose one of a. or b.):	<input type="checkbox"/>	<b>OR</b> <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	a. <input type="checkbox"/> <b>All Participants.</b> [Note: If the Employer elects Safe Harbor Contributions under Election 6(e), the Employer may not elect 11(b)(4)a. to limit the Safe Harbor Contribution allocation to the NHCEs.]				
	b. <input type="checkbox"/> <b>HCE Participants only.</b>				
(5)	<input type="checkbox"/> <b>Bonus.</b>	<input type="checkbox"/>	<b>OR</b> <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(6)	<input type="checkbox"/> <b>Commission.</b>	<input type="checkbox"/>	<b>OR</b> <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(7)	<input type="checkbox"/> <b>Overtime.</b>	<input type="checkbox"/>	<b>OR</b> <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(8)	<input type="checkbox"/> <b>Related Employers.</b> See Section 1.23(C). (If there are Related Employers, choose one or both of a. and b. as applicable):				
	a. <input type="checkbox"/> <b>Non-Participating.</b> Compensation paid to Employees by a Related Employer that is not a Participating Employer.	<input type="checkbox"/>	<b>OR</b> <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	b. <input type="checkbox"/> <b>Participating.</b> As to the Employees of any Participating Employer, Compensation paid by any other Participating Employer to its Employees. See Election 28(g)(2)a.	<input type="checkbox"/>	<b>OR</b> <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

(9) ☒ **Describe Compensation exclusion(s):** Stock based compensation included in W-2 wages

[Note: Under Election 11(b)(9), the Employer may: (i) describe Compensation from the elections available under Elections 11(b)(1) through (8), or a combination thereof as to a Participant group (e.g., No exclusions as to Division A Employees and exclude bonus as to Division B Employees); (ii) define the Contribution Type column headings in a manner which differs from the "all-inclusive" description in the Note immediately preceding Election 11(b)(1) (e.g., Elective Deferrals means §125 cafeteria deferrals only OR No exclusions as to Safe Harbor Contributions and exclude bonus as to Nonelective Contributions); and/or (iii) describe another exclusion (e.g., Exclude shift differential pay).]

12. **HOURS OF SERVICE (1.31).** The Plan credits Hours of Service for the following purposes (and to the Employees described in Elections 12(d) or (e)) as follows (Choose one or more of (a) through (e) as applicable):

	(1) All Purposes	(2) Eligibility	(3) Vesting	(4) Allocation Conditions
(a) <input checked="" type="checkbox"/> <b>Actual Method.</b> See Section 1.31(A)(1).	<input checked="" type="checkbox"/>	OR <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b) <input type="checkbox"/> <b>Equivalency Method:</b> _____ (e.g., daily, weekly, etc.). See Section 1.31(A)(2).	<input type="checkbox"/>	OR <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(c) <input type="checkbox"/> <b>Elapsed Time Method.</b> See Section 1.31(A)(3).	<input type="checkbox"/>	OR <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(d) <input type="checkbox"/> <b>Actual (hourly) and Equivalency (salaried).</b> Actual Method for hourly paid Employees and Equivalency Method: _____ (e.g., daily, weekly, etc.) for salaried Employees.	<input type="checkbox"/>	OR <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(e) <input type="checkbox"/> <b>Describe method:</b> _____				

[Note: Under Election 12(e), the Employer may describe Hours of Service from the elections available under Elections 12(a) through (d), or a combination thereof as to a Participant group and/or Contribution Type (e.g., For all purposes, Actual Method applies to office workers and Equivalency Method applies to truck drivers).]

13. **ELECTIVE SERVICE CREDITING (1.56(C)).** The Plan must credit Related Employer Service under Section 1.23(C) and also must credit certain Predecessor Employer/Predecessor Plan Service under Section 1.56(B). The Plan also elects under Section 1.56(C) to credit as Service the following Predecessor Employer service (Choose one of (a) or (b)):

- (a) ☒ **Not applicable.** No elective Predecessor Employer Service crediting applies.
- (b) ☐ **Applies.** The Plan credits the specified service with the following designated Predecessor Employers as Service for the Employer for the purposes indicated (Choose (1) and (2) as applicable. Complete (3). Choose (4) if applicable):

[Note: Any elective Service crediting under this Election 13 must be nondiscriminatory.]

(1) <input type="checkbox"/>	<b>All purposes.</b> Credit Service for all purposes with Predecessor Employer(s): _____ (insert as many names as needed).			
(2) <input type="checkbox"/>	<b>Designated purposes.</b> Credit Service with the following Predecessor Employer(s) for the designated purpose(s):	(1) Eligibility	(2) Vesting	(3) Contribution Allocation

- |    |                 |                          |                          |                          |
|----|-----------------|--------------------------|--------------------------|--------------------------|
| a. | Employer: _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| b. | Employer: _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| c. | Employer: _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

(3) **Time period.** Under Elections 13(b)(1) or (2), the Plan credits (Choose one or more of a., b., and c. as applicable):

- a. ☐ **All.** All Service under Election(s) 13(b) \_\_\_\_\_, regardless of when rendered.
- b. ☐ **Service after.** All Service under Election(s) 13(b) \_\_\_\_\_, which is or was rendered after: \_\_\_\_\_  
(specify date).
- c. ☐ **Service before.** All Service under Election(s) 13(b) \_\_\_\_\_, which is or was rendered before: \_\_\_\_\_  
(specify date).

(4) ☐ **Describe elective Predecessor Employer Service crediting:** \_\_\_\_\_

[Note: Under Election 13(b)(4), the Employer may describe service crediting from the elections available under Elections 13(b)(1) through (3), or a combination thereof as to a Participant group and/or Contribution Type (e.g., For all purposes credit service with X only on/after 1/1/05 OR Credit all service for all purposes with entities the Employer acquires after 12/31/04 OR Service crediting for X Company applies only for purposes of Nonelective Contributions and not for Matching Contributions).]

## ARTICLE II ELIGIBILITY REQUIREMENTS

14. **ELIGIBILITY (2.01).** To become a Participant in the Plan, an Eligible Employee must satisfy (Choose one of (a) or (b)):

[Note: If the Employer under a safe harbor plan elects "early" eligibility for Elective Deferrals (e.g., less than one Year of Service and age 21), but does not elect early eligibility for any Safe Harbor Contributions, also see Election 30(f).]

- (a) ☐ **No conditions.** No eligibility conditions as to all Contribution Types. Entry is on the Employment Commencement Date (if that date is also an Entry Date), or if later, upon the next following Plan Entry Date.

[Note: No eligibility conditions apply to Prevailing Wage Contributions unless the Prevailing Wage Contract provides otherwise. See Section 2.01(D).]

- (b) ☒ **Conditions.** The following eligibility conditions (either as to all Contribution Types or as to the designated Contribution Type) (Choose one or more of (1) through (8) as applicable):

[Note: For this Election 14, unless described otherwise in Election 14(b)(8)), or the context otherwise requires, Elective Deferrals includes Pre-Tax Deferrals, Roth Elective Deferrals and Employee Contributions, Matching includes all Matching Contributions (except Safe Harbor Matching Contributions under Section 3.05(E)(3) and Operational QMACs under Section 3.03(C)(2)) and Nonelective includes all Nonelective Contributions (except Safe Harbor Nonelective Contributions under Section 3.05(E)(2) and Operational QNECs under Section 3.04(C)(2)). Safe Harbor includes Safe Harbor Nonelective and Safe Harbor Matching Contributions. If the Employer elects more than one Year of Service as to Additional Matching, the Plan will not satisfy the ACP test safe harbor. See Section 3.05(F)(3).]

	(1) All Contributions	(2) Elective Deferrals	(3) Matching	(4) Nonelective	(5) Safe Harbor
(1) <input type="checkbox"/> <b>None.</b> Entry on the Employment Commencement Date (if that date is also an Entry Date) or if later, upon the next following Plan Entry Date.	N/A (See Election 14(a))	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2) <input type="checkbox"/> <b>Age</b> _____ (not to exceed age 21).	<input type="checkbox"/>	<b>OR</b> <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(3) <input checked="" type="checkbox"/> <b>One Year of Service.</b> See Election 16(a).	<input checked="" type="checkbox"/>	<b>OR</b> <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(4) <input type="checkbox"/> <b>Two Years of Service</b> (without an intervening Break in Service). 100% vesting is required. [Note: Two Years of Service does not apply to Elective Deferrals, Safe Harbor Contributions or SIMPLE Contributions.]	N/A	N/A	<input type="checkbox"/>	<input type="checkbox"/>	N/A
(5) <input type="checkbox"/> _____ month(s) (not exceeding 12 months for Elective Deferrals, Safe Harbor Contributions and SIMPLE Contributions and not exceeding 24 months for other contributions). If more than 12 months, 100% vesting is required. Service need not be continuous (no minimum Hours of Service required, and is mere passage of time).	<input type="checkbox"/>	<b>OR</b> <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(6) <input type="checkbox"/> _____ month(s) with at least _____ Hours of Service in each month (not exceeding 12 months for Elective Deferrals, Safe Harbor Contributions and SIMPLE Contributions and not exceeding 24 months for other contributions). If more than 12 months, 100% vesting is required. If the Employee does not complete the designated Hours of Service each month during the specified monthly time period, the Employee is subject to the one Year of Service (or two Years of Service if elect more than 12 months) requirement with 1,000 Hours of Service per Year of Service. The months during which the Employee completes the specified Hours of Service (Choose one of a. or b.):	<input type="checkbox"/>	<b>OR</b> <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
a. <input type="checkbox"/> <b>Consecutive.</b> Must be consecutive.					
b. <input type="checkbox"/> <b>Not consecutive.</b> Need not be consecutive.					

(7) [ ] \_\_\_\_\_ Hours of Service within the \_\_\_\_\_ [ ] OR [ ] [ ] [ ] [ ] [ ]  
time period following the Employee's Employment  
Commencement Date (not exceeding 12 months for  
Elective Deferrals, Safe Harbor Contributions and  
SIMPLE Contributions and not exceeding 24 months  
for other contributions). If more than 12 months,  
100% vesting is required. If the Employee does not  
complete the designated Hours of Service during the  
specified time period (if any), the Employee is  
subject to the one Year of Service (or two Years of  
Service if elect more than 12 months) requirement  
with 1,000 Hours of Service per Year of Service.

[Note: The Employer may complete the second blank in Election 14(b)(7) with "N/A" if the Employer wishes to impose an Hour of Service requirement without specifying a time period within which an Employee must complete the required Hours of Service.]

(8) [ ] Describe eligibility conditions: \_\_\_\_\_

[Note: The Employer may use Election 14(b)(8) to describe different eligibility conditions as to different Contribution Types or Employee groups (e.g., As to all Contribution Types, no eligibility requirements for Division A Employees and one Year of Service as to Division B Employees). The Employer also may elect different ages for different Contribution Types and/or to specify different months or Hours of Service requirements under Elections 14(b)(5), (b)(6), or (b)(7) as to different Contribution Types. Any election must satisfy Code §410(a).

15. **SPECIAL ELIGIBILITY EFFECTIVE DATE (DUAL ELIGIBILITY) (2.01(E)).** The eligibility conditions of Election 14 (*Choose (a) or choose (b) and (c) as applicable*):

(a) **[X]** No exceptions. Apply to all Employees.

[Note: Elections 15(b) or (c) may trigger a coverage failure under Code §410(b).]

(b) [ ] **Waiver of eligibility conditions for certain Employees.** For all Contribution Types, apply solely to an Eligible Employee employed or reemployed by the Employer after \_\_\_\_\_ (specify date). If the Eligible Employee was employed or reemployed by the Employer by the specified date, the Employee will become a Participant on the latest of: (i) the Effective Date; (ii) the restated Effective Date; (iii) the Employee's Employment Commencement Date or Re-Employment Commencement Date; or (iv) on the date the Employee attains age \_\_\_\_\_ (not exceeding age 21).

[Note: If the Employer does not wish to impose an age condition under clause (iv) as part of the requirements for the eligibility conditions waiver, leave the age blank.]

(c) [ ] Describe special eligibility Effective Date(s): \_\_\_\_\_

*[Note: Under Election 15(c), the Employer may describe special eligibility Effective Dates as to a Participant group and/or Contribution Type (e.g., Eligibility conditions apply only as to Nonemployee Contributions and solely as to the Eligible Employees of Division B who were hired or reemployed by the Employer after January 1, 2007).]*

16. YEAR OF SERVICE - ELIGIBILITY (2.02(A)). (Choose (a), (b), and (c) as applicable):

[Note: If the Employer under Election 14 elects a one or two Year(s) of Service condition (including any requirement which defaults to such conditions under Elections 14(b)(6), (7), and (8)) or elects to apply a Year of Service for eligibility under any other Adoption Agreement election, the Employer should complete Election 16. The Employer should not complete Election 16 if it elects the Elapsed Time Method for eligibility.]

(a) [X] **Year of Service.** An Employee must complete 1,000 Hour(s) of Service during the relevant Eligibility Computation Period to receive credit for one Year of Service under Article II. [Note: The number may not exceed 1,000. If left blank, the requirement is 1,000 Hours of Service. Under Elections 14(b)(6) and (b)(7) and under Election 14(b)(8) if it incorporates Elections 14(b)(6) or (7), the number is 1,000 and the Employee should not supply any other number in the blank.]

(b) [X] **Subsequent Eligibility Computation Periods.** After the Initial Eligibility Computation Period described in Section 2.02(C)(2), the Plan measures Subsequent Eligibility Computation Periods as (Choose one of (1), (2), or (3)):

(1) ☒ **Plan Year.** The Plan Year, beginning with the Plan Year which includes the first anniversary of the Employee's Employment Commencement Date.

(2) [ ] **Anniversary Year.** The Anniversary Year, beginning with the Employee's second Anniversary Year.

(3) ☐ **Split.** The Plan Year as described in Election 16(b)(1) as to: \_\_\_\_\_ (describe Contribution Type(s)) and the Anniversary Year as described in Election 16(b)(2) as to: \_\_\_\_\_ (describe Contribution Type(s)).

[Note: To maximize delayed entry under a two Years of Service condition for Nonselective Contributions or Matching Contributions, the Employer should elect to remain on the Anniversary Year for such contributions.]



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(c) ☐ Describe: \_\_\_\_\_ (e.g., Anniversary Year as to Division A and Plan Year as to Division B.)

17. **ENTRY DATE (2.02(D)).** Entry Date means the Effective Date and (Choose one or more of (a) through (f) as applicable):

[Note: For this Election 17, unless described otherwise in Election 17(f), Elective Deferrals includes Pre-Tax Deferrals, Roth Elective Deferrals and Employee Contributions, Matching includes all Matching Contributions (except Operational QMACs under Section 3.03(C)(2)) and Nonservice includes all Nonservice Contributions (except Operational QNECs under Section 3.04(C)(2)). Entry as to Prevailing Wage Contributions is on the Employment Commencement Date unless the Prevailing Wage Contract provides otherwise. See Section 2.02(D).]

		(1) All Contributions		(2) Elective Deferrals	(3) Matching	(4) Nonservice
(a)	<input type="checkbox"/> Semi-annual. The first day of the first month and of the seventh month of the Plan Year.	<input type="checkbox"/>	OR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b)	<input type="checkbox"/> First day of Plan Year	<input type="checkbox"/>	OR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(c)	<input checked="" type="checkbox"/> First day of each Plan Year quarter	<input checked="" type="checkbox"/>	OR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(d)	<input type="checkbox"/> The first day of each month	<input type="checkbox"/>	OR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(e)	<input type="checkbox"/> Immediate. Upon Employment Commencement Date or if later, upon satisfaction of eligibility conditions.	<input type="checkbox"/>	OR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

(f) ☐ Describe Entry Date(s): \_\_\_\_\_

[Note: Under Election 17(f), the Employer may describe Entry Dates from the elections available under Elections 17(a) through (e), or a combination thereof as to a Participant group and/or Contribution Type or may elect additional Entry Dates (e.g., As to Matching Contributions excluding Additional Matching, immediate as to Division A Employees and semi-annual as to Division B Employees OR the earlier of the Plan's semi-annual Entry Dates or the entry dates under the Employer's medical plan).]

18. **PROSPECTIVE/RETROACTIVE ENTRY DATE (2.02(D)).** An Employee after satisfying the eligibility conditions in Election 14 will become a Participant (unless an Excluded Employee under Election 8) on the Entry Date (if employed on that date) (Choose one or more of (a) through (f) as applicable):

[Note: Unless otherwise excluded under Election 8, an Employee who remains employed by the Employer on the relevant date must become a Participant by the earlier of: (i) the first day of the Plan Year beginning after the date the Employee completes the age and service requirements of Code §410(a); or (ii) 6 months after the date the Employee completes those requirements. For this Election 18, unless described otherwise in Election 18(f), Elective Deferrals includes Pre-Tax Deferrals, Roth Deferrals and Employee Contributions, Matching includes all Matching Contributions (except Operational QMACs under Section 3.03(C)(2)) and Nonservice includes all Nonservice Contributions, (except Operational QNECs under Section 3.04(C)(2)).]

		(1) All Contributions		(2) Elective Deferrals	(3) Matching	(4) Nonservice
(a)	<input checked="" type="checkbox"/> Immediately following or coincident with the date the Employee completes the eligibility conditions.	<input checked="" type="checkbox"/>	OR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b)	<input type="checkbox"/> Immediately following the date the Employee completes the eligibility conditions.	<input type="checkbox"/>	OR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(c)	<input type="checkbox"/> Immediately preceding or coincident with the date the Employee completes the eligibility conditions.	N/A		N/A	<input type="checkbox"/>	<input type="checkbox"/>
(d)	<input type="checkbox"/> Immediately preceding the date the Employee completes the eligibility conditions.	N/A		N/A	<input type="checkbox"/>	<input type="checkbox"/>
(e)	<input type="checkbox"/> Nearest the date the Employee completes the eligibility conditions.	N/A		N/A	<input type="checkbox"/>	<input type="checkbox"/>

(f) ☐ Describe retroactive/prospective entry relative to Entry Date: \_\_\_\_\_

[Note: Under Election 18(f), the Employer may describe the timing of entry relative to an Entry Date from the elections available under Elections 18(a) through (e), or a combination thereof as to a Participant group and/or Contribution Type (e.g., As to Matching Contributions excluding Additional Matching nearest as to Division A Employees and immediately following as to Division B Employees).]

19. **BREAK IN SERVICE – PARTICIPATION (2.03).** The one year hold-out rule described in Section 2.03(C) (Choose one of (a), (b), or (c)):

- (a) ☒ **Does not apply.**  
 (b) ☐ **Applies.** Applies to the Plan and to all Participants.  
 (c) ☐ **Limited application.** Applies to the Plan, but only to a Participant who has incurred a Severance from Employment.

[Note: The Plan does not apply the rule of parity under Code §410(a)(5)(D) unless the Employer in Appendix B specifies otherwise. See Section 2.03(D).]

### ARTICLE III PLAN CONTRIBUTIONS AND FORFEITURES

20. **ELECTIVE DEFERRAL LIMITATIONS (3.02(A)).** The following limitations apply to Elective Deferrals under Elections 6(a) and 6(b), which are in addition to those limitations imposed under the basic plan document (Choose (a) or choose (b) and (c) as applicable):

- (a) ☒ **None.** No additional Plan imposed limits.

[Note: The Employer under Election 20 may not impose a lower deferral limit applicable only to Catch-Up Eligible Participants and the Employer's elections must be nondiscriminatory. The elected limits apply to Pre-Tax Deferrals and to Roth Deferrals unless described otherwise. Under a safe harbor plan: (i) NHCEs must be able to defer enough to receive the maximum Safe Harbor Matching and Additional Matching Contribution under the plan and must be permitted to defer any lesser amount; and (ii) the Employer may limit Elective Deferrals to a whole percentage of Compensation or to a whole dollar amount. See Section 1.54(C) as to administrative limitations on Elective Deferrals.]

- (b) ☐ **Additional Plan limit(s).** (Choose (1) and (2) as applicable. Complete (3) if (1) or (2) is chosen):

- (1) ☐ **Maximum deferral amount.** A Participant's Elective Deferrals may not exceed: \_\_\_\_\_ (specify dollar amount or percentage of Compensation).  
 (2) ☐ **Minimum deferral amount.** A Participant's Elective Deferrals may not be less than: \_\_\_\_\_ (specify dollar amount or percentage of Compensation).  
 (3) **Application of limitations.** The Election 20(b)(1) and (2) limitations apply based on Elective Deferral Compensation described in Elections 9 – 11. If the Employer elects Plan Year/Participation Compensation under column (1) and in Election 10 elects Participating Compensation, in the Plan Years commencing after an Employee becomes a Participant, apply the elected minimum or maximum limitations to the Plan Year. Apply the elected limitation based on such Compensation during the designated time period and only to HCEs as elected below. (Choose a. or choose b. and c. as applicable. Under each of a., b. or c. choose one of (1) or (2). Choose (3) if applicable):

		(1) Plan Year/Participating Compensation	(2) Payroll period	(3) HCEs only
a.	<input type="checkbox"/> <b>Both.</b> Both limits under Elections 20(b)(1) and (2).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b.	<input type="checkbox"/> <b>Maximum limit.</b> The maximum amount limit under Election 20(b)(1).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c.	<input type="checkbox"/> <b>Minimum limit.</b> The minimum amount limit under Election 20(b)(2).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

- (c) ☐ **Describe Elective Deferral limitation(s):** \_\_\_\_\_

[Note: Under Election 20(c), the Employer: (i) may describe limitations on Elective Deferrals from the elections available under Elections 20(a) and (b) or a combination thereof as to a Participant group (e.g., No limit applies to Division A Employees. Division B Employees may not defer in excess of 10% of Plan Year Compensation); (ii) may elect a different time period to which the limitations apply; and/or (iii) may apply a different limitation to Pre-Tax Deferrals and to Roth Deferrals.]

21. **AUTOMATIC DEFERRAL (3.02(B)).** The Automatic Deferral provisions of Section 3.02(B) (Choose one of (a) or (b)):

- (a) ☐ **Do not apply.**
- (b) ☒ **Apply.** The Automatic Deferral Effective Date is: April 1, 2012 (specify date). (Complete (1), (2), and (3). Choose (4) as applicable):
- (1) **Automatic Deferral Amount.** The Employer, as to each Participant affected, will withhold as the Automatic Deferral Amount, 3 % from the Participant's Compensation each payroll period unless the Participant makes a Contrary Election.
- (2) **Participants affected.** The Automatic Deferral applies to (Choose one of a., b., c., or d.):
- a. ☐ **All Participants.** All Participants, regardless of any prior Salary Reduction Agreement, unless and until they make a Contrary Election after the Automatic Deferral Effective Date.
- b. ☐ **Election of at least Automatic Deferral amount.** All Participants, except those who have in effect a Salary Reduction Agreement on the Automatic Deferral Effective Date provided that the Elective Deferral amount under the Agreement is at least equal to the Automatic Deferral Amount.
- c. ☒ **No existing Salary Reduction Agreement.** All Participants, except those who have in effect a Salary Reduction Agreement on the Automatic Deferral Effective Date regardless of the Elective Deferral amount under the Agreement.
- d. ☐ **New Participants.** Each Employee whose Entry Date is on or following the Automatic Deferral Effective Date.
- (3) **Scheduled increases.** The Automatic Deferral Amount will or will not increase (as a percentage of Compensation) in Plan Years following the Plan Year containing the Automatic Deferral Effective Date (or, if later, the Plan Year in which the Automatic Deferral first applies to a Participant) as follows (Choose one of a., b., or c.):
- a. ☒ **No scheduled increase.** The Automatic Deferral Amount applies in all Plan Years.
- b. ☐ **Scheduled increase.** The Automatic Deferral Amount will increase as follows:
- | Plan Year of application to a Participant | Automatic Deferral Amount |
|---|---------------------------|
| 1   | 3%                        |
| 2   | 3%                        |
| 3   | 4%                        |
| 4   | 5%                        |
| 5 and thereafter                          | 6%                        |
- c. ☐ **Other scheduled increase.** The Automatic Deferral Amount will increase as follows:
- | Plan Year of application to a Participant | Automatic Deferral Amount |
|---|---------------------------|
| _____                                     | _____ %                   |
| _____                                     | _____ %                   |
| _____                                     | _____ %                   |
| _____                                     | _____ %                   |
- (4) ☐ **Describe Automatic Deferral:** \_\_\_\_\_

[Note: Under Election 21(b)(4), the Employer may describe Automatic Deferral provisions from the elections available under Election 21 and/or a combination thereof as to a Participant group (e.g., Automatic Deferrals do not apply to Division A Employees. All Division B Employee/Participants are subject to an Automatic Deferral Amount equal to 3% of Compensation effective as of January 1, 2008).]

22. **CODA (3.02(C)).** The CODA provisions of Section 3.02(C) (Choose one of (a) or (b)):

- (a) ☒ **Do not apply.**
- (b) ☐ **Apply.** For each Plan Year for which the Employer makes a designated CODA contribution under Section 3.02(C), a Participant may elect to receive directly in cash not more than the following portion (or, if less, the Elective Deferral Limit) of his/her proportionate share of that CODA contribution (Choose one of (1) or (2)):
- (1) ☐ **All or any portion.**
- (2) ☐ **\_\_\_\_\_ %**

23. **CATCH-UP DEFERRALS (3.02(D)).** A Catch-Up Eligible Participant (Choose one of (a) or (b)):

- (a) ☒ **Permitted.** May make Catch-Up Deferrals to the Plan.
- (b) ☐ **Not Permitted.** May not make Catch-Up Deferrals to the Plan.

24. **MATCHING CONTRIBUTIONS (EXCLUDING SAFE HARBOR MATCH AND ADDITIONAL MATCH UNDER SECTION 3.05)** (3.03(A)). The Employer Matching Contributions under Election 6(c) are subject to the following additional elections regarding type (discretionary/fixed), rate/amount, limitations and time period (collectively, such elections are "the matching formula") and the allocation of Matching Contributions is subject to Section 3.06 except as otherwise provided (Choose one or more of (a) through (g) as applicable; then, for the elected match, complete (1), (2), and/or (3) as applicable. If the Employer completes (2) or (3), also complete one of (4), (5), or (6)):

[Note: If the Employer wishes to make any Matching Contributions that satisfy the ADP or ACP safe harbor, the Employer should make these Elections under Election 30, and not under this Election 24.]

	(1) Match Rate/Amt [S/% of Elective Deferrals]	(2) Limit on Deferrals Matched [S/% of Compensation]	(3) Limit on Match Amount [S/% of Compensation]	(4) Apply limit(s) per Plan Year ["true-up"]	(5) Apply limit(s) per payroll period [no "true-up"]	(6) Apply limit(s) per designated time period [no "true-up"]
(a) <input checked="" type="checkbox"/> Discretionary – see Section 1.34(B) (The Employer may, but is not required to complete (a)(1)-(6). See the "Note" following Election 24.)	_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b) <input checked="" type="checkbox"/> Fixed – uniform rate/amount	<u>25%</u>	<u>6%</u>	_____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(c) <input type="checkbox"/> Fixed – tiered	Elective Deferral % _____ _____ _____ _____	Matching Rate _____ _____ _____ _____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(d) <input type="checkbox"/> Fixed – Years of Service	Years of Service _____ _____ _____ _____	Matching Rate _____ _____ _____ _____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(1) "Years of Service" under this Election 24(d) means (Choose one of a. or b.):						
a. <input type="checkbox"/> Eligibility. Years of Service for eligibility in Election 16.						
b. <input type="checkbox"/> Vesting. Years of Service for vesting in Elections 42 and 43.						
(e) <input type="checkbox"/> Fixed – multiple formulas	Formula 1: _____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Formula 2: _____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Formula 3: _____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(f) <input type="checkbox"/> Related and Participating Employers. If any Related and Participating Employers contribute Matching Contributions to the Plan, the following apply (Complete (1) and (2)):						
(1) Matching formula. The matching formula for the Participating Employer(s) (Choose one of a. or b.):						
a. <input type="checkbox"/> All the same. Is (are) the same as for the Signatory Employer under this Election 24.						
b. <input type="checkbox"/> At least one different. Is (are) as follows: _____						
(2) Allocation sharing. The Plan Administrator will allocate the Matching Contributions made by the Signatory Employer and by any Participating Employer (Choose one of a. or b.):						
a. <input type="checkbox"/> Employer by Employer. Only to the Participants directly employed by the contributing Employer.						
b. <input type="checkbox"/> Across Employer lines. To all Participants regardless of which Employer directly employs them and regardless of whether their direct Employer made Matching Contributions for the Plan Year.						

[Note: The Employer should not elect 24(f) unless there are Related Employers which are also Participating Employers. See Section 1.23(D).]

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- (g) ☐ Describe: \_\_\_\_\_ (e.g., A Discretionary Matching Contribution applies to Division A Participants. A Fixed Matching Contribution equal to 50% of Elective Deferrals not exceeding 6% of Plan Year Compensation applies to Division B Participants.)

[Note: See Section 1.34(A) as to Fixed Matching Contributions. A Participant's Elective Deferral percentage is equal to the Participant's Elective Deferrals divided by his/her Compensation. The matching rate/amount is the specified rate/amount of match for the corresponding Elective Deferral amount/percentage. Any Matching Contributions apply to Pre-Tax Deferrals and to Roth Deferrals unless described otherwise in Election 24(g). Matching Contributions for nondiscrimination testing purposes are subject to the targeting limitations. See Section 4.10(D). The Employer under Election 24(a) in its discretion may determine the amount of a Discretionary Matching Contribution and the matching contribution formula. Alternatively, the Employer in Election 24(a) may specify the Discretionary Matching Contribution formula.]

25. **QMAC (PLAN-DESIGNATED) (3.03(C)(1)).** The following provisions apply regarding Plan-Designated QMACs (Choose one of (a) or (b)):

[Note: Regardless of its elections under this Election 25, the Employer under Section 3.03(C)(2) may elect for any Plan Year where the Plan is using Current Year Testing to make Operational QMACs which the Plan Administrator will allocate only to NHCEs for purposes of correction of an ADP or ACP test failure.]

- (a) ☒ Not applicable. There are no Plan-Designated QMACs.
- (b) ☐ Applies. There are Plan-Designated QMACs to which the following provisions apply (Complete (1) and (2)):
- (1) Matching Contributions affected. The following Matching Contributions (as allocated to the designated allocation group under Election 25(b)(2)) are Plan-Designated QMACs (Choose one of a. or b.):
- a. ☐ All. All Matching Contributions.
- b. ☐ Designated. Only the following Matching Contributions under Election 24: \_\_\_\_\_
- (2) Allocation Group. Subject to Section 3.06, allocate the Plan-Designated QMAC (Choose one of a. or b.):
- a. ☐ NHCEs only. Only to NHCEs who make Elective Deferrals subject to the Plan-Designated QMAC.
- b. ☐ All Participants. To all Participants who make Elective Deferrals subject to the Plan-Designated QMAC.

The Plan Administrator will allocate all other Matching Contributions as Regular Matching Contributions under Section 3.03(B), except as provided in Sections 3.03(C)(2) or 3.05.

[Note: See Section 4.10(D) as to targeting limitations applicable to QMAC nondiscrimination testing.]

26. **MATCHING CATCH-UP DEFERRALS (3.03(D)).** If a Participant makes a Catch-Up Deferral, the Employer (Choose one of (a) or (b)):

- (a) ☒ Match. Will apply to the Catch-Up Deferral (Choose one of (1) or (2)):
- (1) ☒ All. All Matching Contributions.
- (2) ☐ Designated. The following Matching Contributions in Election 24: \_\_\_\_\_
- (b) ☐ No Match. Will not match any Catch-Up Deferrals.

[Note: Election 26 does not apply to a safe harbor 401(k) plan unless the Employer will apply the ACP test. See Elections 37(a)(2)b. and 37(a)(2)c.(ii). In this case, Election 26 applies only to Additional Matching, if any. A safe harbor 401(k) Plan will apply the Basic Match or Enhanced Match to Catch-Up Deferrals. If the Employer elects to apply the ACP test safe harbor under Election 37(a)(2)a. or 37(a)(2)c.(i), Election 26 does not apply and the Plan also will apply any Additional Match to Catch-Up Deferrals.]

27. **NONELECTIVE CONTRIBUTIONS (TYPE/AMOUNT) INCLUDING PREVAILING WAGE CONTRIBUTIONS (3.04(A)).** The Employer Nonelective Contributions under Election 6(d) are subject to the following additional elections as to type and amount (Choose one or more of (a) through (e) as applicable):

- (a) ☒ Discretionary. An amount the Employer in its sole discretion may determine.
- (b) ☐ Fixed. (Choose one or more of (1), (2), and (3) as applicable):
- (1) ☐ Uniform %. \_\_\_\_\_ % of each Participant's Compensation, per \_\_\_\_\_ (e.g., Plan Year, month).
- (2) ☐ Fixed dollar amount. \$\_\_\_\_\_, per \_\_\_\_\_ (e.g., Plan Year, month, HOS, per Participant per month).
- (3) ☐ Describe: \_\_\_\_\_ (specify time period, e.g., per Plan Year quarter. If not specified, the time period is the Plan Year).

[Note: The Employer under Election 27(b)(3) may specify any Fixed Nonelective Contribution formula not described under Elections 27(b)(1) or (2) (e.g., For each Plan Year, 2% of net profits exceeding \$50,000) and/or the Employer may describe different Fixed Nonelective Contributions as applicable to different Participant groups (e.g., A Fixed Nonelective Contribution equal to 5% of Plan Year

Compensation applies to Division A Participants and a Fixed Nonelective Contribution equal to \$500 per Participant each Plan Year applies to Division B Participants.)

- (c) ☐ **Prevailing Wage Contribution.** The Prevailing Wage Contribution amount(s) specified for the Plan Year or other applicable period in the Employer's Prevailing Wage Contract(s). The Employer will make a Prevailing Wage Contribution only to Participants covered by the Contract and only as to Compensation paid under the Contract. If the Participant accrues an allocation of Employer Contributions (including forfeitures) under the Plan or any other Employer plan in addition to the Prevailing Wage Contribution, the Plan Administrator will (Choose one of (1) or (2)):
- (1) ☐ **No offset.** Not reduce the Participant's Employer Contribution allocation by the amount of the Prevailing Wage Contribution.
- (2) ☐ **Offset.** Reduce the Participant's Employer Contribution allocation by the amount of the Prevailing Wage Contribution.
- (d) ☐ **Related and Participating Employers.** If any Related and Participating Employers contribute Nonelective Contributions to the Plan, the contribution formula(s) (Choose one of (1) or (2)):
- (1) ☐ **All the same.** Is (are) the same as for the Signatory Employer under this Election 27.
- (2) ☐ **At least one different.** Is (are) as follows: \_\_\_\_\_

[Note: The Employer should not elect 27(d) unless there are Related Employers which are also Participating Employers. See Section 1.23(D). The Employer electing 27(d) also must complete Election 28(g) as to the allocation methods which apply to the Participating Employers.]

- (e) ☐ **Describe:** \_\_\_\_\_

[Note: Under Election 27(e), the Employer may describe the amount and type of Nonelective Contributions from the elections available under Election 27 and/or a combination thereof as to a Participant group (e.g., A Discretionary Nonelective Contribution applies to Division A Employees. A Fixed Nonelective Contribution equal to 5% of Plan Year Compensation applies to Division B Employees).]

28. **NONELECTIVE CONTRIBUTION ALLOCATION (3.04(B)).** The Plan Administrator, subject to Section 3.06, will allocate to each Participant any Nonelective Contribution (excluding QNECs) under the following contribution allocation formula (Choose one or more of (a) through (h) as applicable):

- (a) ☐ **Pro rata.** As a uniform percentage of Participant Compensation.
- (b) ☒ **Permitted disparity.** In accordance with the permitted disparity allocation provisions of Section 3.04(B)(2), under which the following permitted disparity formula and definition of "Excess Compensation" apply (Complete (1) and (2)):
- (1) **Formula (Choose one of a. or b.):**
- a. ☒ **Two-tiered.**
- b. ☐ **Four-tiered.**
- (2) **Excess Compensation.** For purposes of Section 3.04(B)(2), "Excess Compensation" means Compensation in excess of (Choose one of a. or b.):
- a. ☐ **Percentage amount.** \_\_\_\_\_% (not exceeding 100%) of the taxable wage base in effect on the first day of the Plan Year, rounded to the next highest \$\_\_\_\_\_ (not exceeding the taxable wage base).
- b. ☒ **Dollar amount.** The following amount: \$ 35,000 (not exceeding the taxable wage base in effect on the first day of the Plan Year).
- (c) ☐ **Incorporation of contribution formula.** The Plan Administrator will allocate any Fixed Nonelective Contribution under Elections 27(b), 27(d) or 27(e), or any Prevailing Wage Contribution under Election 27(e), in accordance with the contribution formula the Employer adopts under these Elections.
- (d) ☐ **Classifications of Participants.** In accordance with the classifications allocation provisions of Section 3.04(B)(3). The classifications are (Choose one of (1), (2), or (3)):

[Note: Typically, the Employer would elect 28(d) where it intends to satisfy nondiscrimination requirements using "cross-testing" under Treas. Reg. §1.401(a)(4)-3. However, choosing this election does not necessarily require application of cross-testing and the Plan may be able to satisfy nondiscrimination as to its classification-based allocations by testing allocation rates.]

- (1) ☐ **Each in own classification.** Each Participant constitutes a separate classification.
- (2) ☐ **NHCEs/HCEs.** Nonhighly Compensated Employee/Participants and Highly Compensated Employee/Participants.
- (3) ☐ **Describe the classifications:** \_\_\_\_\_

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[Note: Any classifications under Election 28(d) must result in a definitely determinable allocation under Treas. Reg. §1.401-1(b)(1)(ii) and must constitute a reasonable classification within the meaning of Treas. Reg. §1.410(b)-4(b). The number of allocation rates is subject to the limitations in Section 3.04(B)(3)(b). Standard interest and mortality assumptions under Treas. Reg. §1.401(a)(4)-12 apply. In the case of a self-employed Participant, the requirements of Treas. Reg. §1.401(k)-1(a)(6) apply and the allocation method should not result in a cash or deferred election for the self-employed Participant. The Employer by the due date of its tax return (including extensions) must advise the Plan Administrator or Trustee in writing as to the allocation rate applicable to each Participant under Election 28(d)(1) or applicable to each classification under Elections 28(d)(2) or (3) for the allocation Plan Year. Under Election 28(d)(1), the Employer may decide from year to year the classification (allocation rate) applicable to each Participant, without the need to amend the Plan to change the classification.]

- (e) ☐ **Age-based.** In accordance with the age-based allocation provisions of Section 3.04(B)(5). The Plan Administrator will use the Actuarial Factors based on the following assumptions (Complete both (1) and (2)):
- (1) **Interest rate.** (Choose one of a., b., or c.):
    - a. ☐ 7.5%      b. ☐ 8.0%      c. ☐ 8.5%
  - (2) **Mortality table.** (Choose one of a. or b.):
    - a. ☐ UP-1984. See Appendix D.
    - b. ☐ Alternative: \_\_\_\_\_ (Specify 1983 GAM, 1983 IAM, 1971 GAM or 1971 IAM and attach applicable tables using such mortality table and the specified interest rate as replacement Appendix D.)
- (f) ☐ **Uniform points.** In accordance with the uniform points allocation provisions of Section 3.04(B)(6). Under the uniform points allocation formula, a Participant receives (Choose one or both of (1) and (2). Choose (3) if applicable):
- (1) ☐ **Years of Service.** \_\_\_\_\_ point(s) for each Year of Service. The maximum number of Years of Service counted for points is \_\_\_\_\_.  
 "Year of Service" under this Election 28(f) means (Choose one of a. or b.):
    - a. ☐ **Eligibility.** Years of Service for eligibility in Election 16.
    - b. ☐ **Vesting.** Years of Service for vesting in Elections 42 and 43.
 [Note: A Year of Service must satisfy Treas. Reg. §1.401(a)(4)-11(d)(3) for the uniform points allocation to qualify as a safe harbor allocation under Treas. Reg. §1.401(a)(4)-2(b)(3).]
  - (2) ☐ **Age.** \_\_\_\_\_ point(s) for each year of age attained during the Plan Year.
  - (3) ☐ **Compensation.** \_\_\_\_\_ point(s) for each \$ \_\_\_\_\_ (not to exceed \$200) increment of Plan Year Compensation.
- (g) ☐ **Related and Participating Employers.** If any Related and Participating Employers contribute Nonelective Contributions to the Plan, the Plan Administrator will allocate the Nonelective Contributions made by the Participating Employer(s) under Election 27(d) (Complete (1) and (2)):
- (1) **Allocation Method.** (Choose one of a. or b.):
    - a. ☐ **All the same.** Using the same allocation method as applies to the Signatory Employer under this Election 28.
    - b. ☐ **At least one different.** Under the following allocation method(s): \_\_\_\_\_
  - (2) **Allocation sharing.** The Plan Administrator will allocate the Nonelective Contributions made by the Signatory Employer and by any Participating Employer (Choose one of a. or b.):
    - a. ☐ **Employer by Employer.** Only to the Participants directly employed by the contributing Employer.
    - b. ☐ **Across Employer lines.** To all Participants regardless of which Employer directly employs them and regardless of whether their direct Employer made Nonelective Contributions for the Plan Year.
- [Note: The Employer should not elect 28(g) unless there are Related Employers which are also Participating Employers. See Section 1.23(D) and Election 27(d). If the Employer elects 28(g)(2)a., the Employer should also elect 11(b)(8)b., to disregard the Compensation paid by "Y" Participating Employer in determining the allocation of the "X" Participating Employer contribution to a Participant (and vice versa) who receives Compensation from both X and Y. If the Employer elects 28(g)(2)b., the Employer should not elect 11(b)(8)b. Election 28(g)(2)a. does not apply to Safe Harbor Nonelective Contributions.]
- (h) ☐ **Describe:** \_\_\_\_\_  
 (e.g., Pro rata as to Division A Participants and Permitted Disparity (two-tiered at 100% of the SSTWB) as to Division B Participants.)

29. **QNEC (PLAN-DESIGNATED)** (3.04(C)(1)). The following provisions apply regarding Plan-Designated QNECs (Choose one of (a) or (b)):

[Note: Regardless of its elections under this Election 29, the Employer under Section 3.04(C)(2) may elect for any Plan Year where the Plan is using Current Year Testing to make Operational QNECs which the Plan Administrator will allocate only to NHCEs for purposes of correction of an ADP or ACP test failure.]

- (a) ☒ **Not applicable.** There are no Plan-Designated QNECs.
- (b) ☐ **Applies.** There are Plan-Designated QNECs to which the following provisions apply (Complete (1), (2), and (3)):
- (1) **Nonelective Contributions affected.** The following Nonelective Contributions (as allocated to the designated allocation group under Election 29(b)(2)) are Plan-Designated QNECs (Choose one of a. or b.):
    - a. ☐ **All.** All Nonelective Contributions.
    - b. ☐ **Designated.** Only the following Nonelective Contributions under Election 27: \_\_\_\_\_
  - (2) **Allocation Group.** Subject to Section 3.06, allocate the Plan-Designated QNEC (Choose one of a. or b.):
    - a. ☐ **NHCEs only.** Only to NHCEs under the method elected in Election 29(b)(3).
    - b. ☐ **All Participants.** To all Participants under the method elected in Election 29(b)(3).
  - (3) **Allocation Method.** The Plan Administrator will allocate a Plan-Designated QNEC using the following method (Choose one of a., b., c., or d.):
    - a. ☐ **Pro rata.**
    - b. ☐ **Flat dollar.**
    - c. ☐ **Reverse.** See Section 3.04(C)(3).
    - d. ☐ **Describe:** \_\_\_\_\_

[Note: Any allocation method the Employer elects under Election 29(b)(3)d. must be definitely determinable. See Section 4.10(D) as to targeting limitations applicable to QNEC nondiscrimination testing.]

30. **SAFE HARBOR 401(K) PLAN (SAFE HARBOR CONTRIBUTIONS/ADDITIONAL MATCHING CONTRIBUTIONS)** (3.05). The Employer under Election 6(e) will (or in the case of the Safe Harbor Nonelective Contribution may) contribute the following Safe Harbor Contributions described in Section 3.05(E) and will or may contribute Additional Matching Contributions described in Section 3.05(F) (Choose one of (a), (b), (c), or (d) when and as applicable. Complete (e) and (f). Choose (f), (g), and (h) as applicable):

- (a) ☐ **Safe Harbor Nonelective Contribution.** The Safe Harbor Nonelective Contribution equals \_\_\_\_\_% of a Participant's Compensation [Note: The amount in the blank must be at least 3%. The Safe Harbor Nonelective Contribution applies toward (offsets) most other Employer Nonelective Contributions. See Section 3.05(E)(11).]
- (b) ☐ **Safe Harbor Nonelective Contribution/delayed year-by-year election (maybe and supplemental notices).** In connection with the Employer's provision of the maybe notice under Section 3.05(I)(1), the Employer elects into safe harbor status by giving the supplemental notice and by making this Election 30(b) to provide for a Safe Harbor Nonelective Contribution equal to \_\_\_\_\_% (specify amount at least equal to 3%) of a Participant's Compensation. This Election 30(b) and safe harbor status applies for the Plan Year ending: \_\_\_\_\_ (specify Plan Year end), which is the Plan Year to which the Employer's maybe and supplemental notices apply.

[Note: If the Employer makes a delayed election into safe harbor status under Section 3.05(I)(1), the Employer must amend the Plan to provide for a Safe Harbor Nonelective Contribution equal to at least 3% of each Participant's Compensation. The Employer may make this amendment by substitute Adoption Agreement page (electing Election 30(b)) or by another form of amendment under Section 11.02(B). An Employer using the maybe notice should not elect a Safe Harbor Nonelective Contribution under Election 30(a) unless the Employer intends to continue safe harbor status under this election in the subsequent Plan Year. By making its amendment into safe harbor status under Election 30(b), the Employer avoids the need to further amend the Plan if the Employer is not certain that it will apply the safe harbor in the subsequent Plan Year. By contrast, an Employer which gave the maybe notice and has decided to make the Safe Harbor Nonelective Contribution for that year and for future years should use Election 30(a). The Employer only elects 30(a) and should not elect 30(b) if prior to the Plan Year the Employer unequivocally decides to elect safe harbor status for the Plan Year and provides a safe harbor notice consistent with this election rather than giving the maybe notice. If the Employer gives the maybe notice and the Employer will or may make Matching Contributions, the Employer should elect Additional Matching under Election 30(h) (and should not elect Matching Contributions under Election 24) if it wishes to avoid ACP testing.]



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- (c) ☐ **Basic Matching Contribution.** A Matching Contribution equal to 100% of each Participant's Elective Deferrals not exceeding 3% of the Participant's Compensation, plus 50% of each Participant's Elective Deferrals in excess of 3% but not in excess of 5% of the Participant's Compensation. See Sections 1.34(E) and 3.05(E)(4). *(Complete (1)):*

- (1) ☐ **Time period.** For purposes of this Election 30(c), "Compensation" and "Elective Deferrals" mean Compensation and Elective Deferrals for: \_\_\_\_\_. *[Note: The Employer must complete the blank line with the applicable time period for computing the Basic Match, such as "each payroll period," "each calendar month," "each Plan Year quarter" or "the Plan Year."]*

- (d) ☐ **Enhanced Matching Contribution.** See Sections 1.34(F) and 3.05(E)(5). *(Choose one of (1) or (2) and complete (3) for any election):*

- (1) ☐ **Uniform percentage.** A Matching Contribution equal to \_\_\_\_\_% of each Participant's Elective Deferrals but not as to Elective Deferrals exceeding \_\_\_\_\_% of the Participant's Compensation.
- (2) ☐ **Tiered formula.** A Matching Contribution equal to the specified matching rate for the corresponding level of each Participant's Elective Deferral percentage. A Participant's Elective Deferral percentage is equal to the Participant's Elective Deferrals divided by his/her Compensation.

<u>Elective Deferral Percentage</u>	<u>Matching Rate</u>
_____%	_____%
_____%	_____%
_____%	_____%

- (3) **Time period.** For purposes of this Election 30(d), "Compensation" and "Elective Deferrals" mean Compensation and Elective Deferrals for: \_\_\_\_\_. *[Note: The Employer must complete the blank line with the applicable time period for computing the Enhanced Match, such as "each payroll period," "each calendar month," "each Plan Year quarter" or "the Plan Year."]*

*[Note: The matching rate may not increase as the Elective Deferral percentage increases and the Enhanced Matching formula otherwise must satisfy the requirements of Code §§401(k)(12)(B)(ii) and (iii). If the Employer elects to satisfy the ACP safe harbor under Election 37(a)(2)a., the Employer also must limit Elective Deferrals taken into account for the Enhanced Matching Contribution to a maximum of 6% of Plan Year Compensation.]*

- (e) **Participants who will receive Safe Harbor Contributions.** The allocation of Safe Harbor Contributions *(Choose one of (1), (2), or (3)):*

- (1) ☐ **Applies to all Participants.** Applies to all Participants except as may be limited under Election 30(f).
- (2) ☐ **NHCEs only.** Is limited to NHCE Participants only and may be limited further under Election 30(f). No HCE will receive a Safe Harbor Contribution allocation.
- (3) ☐ **NHCEs and designated HCEs.** Is limited to NHCE Participants and to the following HCE Participants and may be limited further under Election 30(f): \_\_\_\_\_

*[Note: Any HCE allocation group the Employer describes under Election 30(e)(3) must be definitely determinable. (e.g., Division "A" HCEs OR HCEs who own more than 5% of the Employer without regard to attribution rules).]*

- (f) ☐ **Early Elective Deferrals/delay of Safe Harbor Contribution.** The Employer may elect this Election 30(f) only if the Employer in Election 14 elects eligibility requirements for Elective Deferrals of less than age 21 and one Year of Service but elects age 21 and one Year of Service for Safe Harbor Matching or for Safe Harbor Nonelective Contributions. The Employer under this Election 30(f) limits the allocation of any Safe Harbor Contribution under Election 30 for a Plan Year to those Participants: (i) who have attained age 21; (ii) who have completed one Year of Service; and (iii) who the Plan Administrator in applying the OEE rule described in Section 4.06(C), treats as benefiting in the disaggregated plan covering the Includible Employees. Those Participants in the Plan Year whom the Plan Administrator treats as Otherwise Excludable Employees will not receive any Safe Harbor Contribution allocation and the Plan Administrator will apply the ADP (and, as applicable the ACP) test(s) to the disaggregated plan benefiting the Otherwise Excludable Employees. If the Employer in Election 10(a)(2) has elected "Participating Compensation" for allocating Elective Deferrals, Nonelective Contributions or Matching Contributions (as relevant to the allocation under this Election 30 based on the Contribution Type), the Plan Administrator, in allocating the Safe Harbor Contribution for the Plan Year in which the Participant crosses over to the Includible Employees group, will count Compensation and Elective Deferrals only on and following the Cross-Over Date. See Section 3.05(D).

- (g) ☐ **Another plan.** The Employer will make the Safe Harbor Contribution to the following plan: \_\_\_\_\_

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(h) **Additional Matching Contributions.** See Sections 1.34(G) and 3.05(F). (Choose one of (1) or (2)):

(1) ☐ **No Additional Matching Contributions.** The Employer will not make any Additional Matching Contributions to its safe harbor Plan.

(2) ☐ **Additional Matching Contributions.** The Employer will or may make the following Additional Matching Contributions to its safe harbor Plan. (Choose a. and b. as applicable):

a. ☐ **Fixed Additional Matching Contribution.** The following Fixed Additional Matching Contribution (Choose (i) and (ii) as applicable and complete (iii) for any election):

(i) ☐ **Uniform percentage.** A Matching Contribution equal to \_\_\_\_\_% of each Participant's Elective Deferrals but not as to Elective Deferrals exceeding \_\_\_\_\_% of the Participant's Compensation.

(ii) ☐ **Tiered formula.** A Matching Contribution equal to the specified matching rate for the corresponding level of each Participant's Elective Deferral percentage. A Participant's Elective Deferral percentage is equal to the Participant's Elective Deferrals divided by his/her Compensation.

<u>Elective Deferral Percentage</u>	<u>Matching Rate</u>
_____%	_____%
_____%	_____%
_____%	_____%

(iii) **Time period.** For purposes of this Election 30(h)(2)a., "Compensation" and "Elective Deferrals" mean Compensation and Elective Deferrals for: \_\_\_\_\_. [Note: The Employer must complete the blank line with the applicable time period for computing the Additional Match, e.g., "each payroll period," "each calendar month," "each Plan Year quarter" OR "the Plan Year." If the Employer elects a match under both (i) and (ii) and will apply a different time period to each match, the Employer may indicate as such in the blank line.]

b. ☐ **Discretionary Additional Matching Contribution.** The Employer may make a Discretionary Additional Matching Contribution. If the Employer makes a Discretionary Matching Contribution, the Discretionary Matching Contribution will not apply as to Elective Deferrals exceeding \_\_\_\_\_% of the Participant's Compensation (complete the blank if applicable or leave blank).

[Note: If the Employer elects to satisfy the ACP safe harbor under Election 37(a)(2)a. or 37(a)(2)c.(i), then as to any and all Matching Contributions, including Fixed Additional Matching Contributions and Discretionary Additional Matching Contributions: (i) the matching rate may not increase as the Elective Deferral percentage increases; (ii) no HCE may be entitled to a greater rate of match than any NHCE; (iii) the Employer must limit Elective Deferrals taken into account for the Additional Matching Contributions to a maximum of 6% of Plan Year Compensation; (iv) the Plan must apply all Matching Contributions to Catch-Up Deferrals; and (v) in the case of a Discretionary Additional Matching Contribution, the contribution amount may not exceed 4% of the Participant's Plan Year Compensation.]

(i) ☐ **Multiple Safe Harbor Contributions in disaggregated Plan.** The Employer elects to make different Safe Harbor Contributions and/or Additional Matching Contributions to disaggregated parts of its Plan under Treas. Reg. §1.401(k)-1(b)(4) as follows:

(Specify contributions for disaggregated plans, e.g., as to Collectively Bargained Employees a 3% Nonelective Safe Harbor Contribution applies and as to non-Collectively Bargained Employees, the Basic Matching Contribution applies).

31. **ALLOCATION CONDITIONS (3.06(B)(C)).** The Plan does not apply any allocation conditions to: (i) Elective Deferrals; (ii) Safe Harbor Contributions; (iii) commencing as of the Final 401(k) Regulations Effective Date, Additional Matching Contributions which will satisfy the ACP test safe harbor; (iv) Employee Contributions; (v) Rollover Contributions; (vi) Designated IRA Contributions; (vii) SIMPLE Contributions; or (viii) Prevailing Wage Contributions, except as may be required by the Prevailing Wage Contract. To receive an allocation of Matching Contributions, Nonelective Contributions or Participant forfeitures, a Participant must satisfy the following allocation condition(s) (Choose one of (a) or (b). Choose (c) if applicable):

(a) ☐ **No conditions.** No allocation conditions apply to Matching Contributions, to Nonelective Contributions or to forfeitures.

(b) ☒ **Conditions.** The following allocation conditions apply to the designated Contribution Type and/or forfeitures (Choose one or more of (1) through (7) as applicable):

[Note: For this Election 31, except as the Employer describes otherwise in Election 31(b)(7) or as provided in Sections 3.03(C)(2) and 3.04(C)(2) regarding Operational QMACs and Operational QNECs, Matching includes all Matching Contributions and Nonelective Contributions to which allocation conditions may apply. The Employer under Election 31(b)(7) may not impose an Hour of Service condition exceeding 1,000 Hours of Service in a Plan Year.]

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	(1) Matching, Nonelective and Forfeitures	(2) Matching	(3) Nonelective	(4) Forfeitures
(1) <input type="checkbox"/> None.	N/A (See Election 31(a))	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2) <input type="checkbox"/> 501 HOS/terminees (91 consecutive days if Elapsed Time). See Section 3.06(B)(1)(b).	<input type="checkbox"/>	OR <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(3) <input checked="" type="checkbox"/> Last day of the Plan Year.	<input checked="" type="checkbox"/>	OR <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(4) <input type="checkbox"/> Last day of the Election 31(c) time period.	<input type="checkbox"/>	OR <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(5) <input checked="" type="checkbox"/> 1,000 HOS in the Plan Year (182 consecutive days in Plan Year if Elapsed Time).	<input checked="" type="checkbox"/>	OR <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(6) <input type="checkbox"/> _____ (specify) HOS within the Election 31(c) time period, (but not exceeding 1,000 HOS in a Plan Year).	<input type="checkbox"/>	OR <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(7) <input type="checkbox"/> Describe conditions: _____ (e.g., Last day of the Plan Year as to Nonelective Contributions for Participating Employer "A" Participants. No allocation conditions for Participating Employer "B" Participants).				
(c) <input type="checkbox"/> Time period. Under Section 3.06(C), apply Elections 31(b)(4), (b)(6) or (b)(7) to the specified contributions/forfeitures based on each (Choose one of (1) through (5)):				
(1) <input type="checkbox"/> Plan Year	<input type="checkbox"/>	OR <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2) <input type="checkbox"/> Plan Year quarter	<input type="checkbox"/>	OR <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(3) <input type="checkbox"/> Calendar month	<input type="checkbox"/>	OR <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(4) <input type="checkbox"/> Payroll period	<input type="checkbox"/>	OR <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(5) <input type="checkbox"/> Describe time period: _____				

[Note: If the Employer elects 31(b)(4) or (b)(5), the Employer must choose (c). If the Employer elects 31(b)(7), choose (c) if applicable.]

32. **ALLOCATION CONDITIONS – APPLICATION/WAIVER/SUSPENSION (3.06(D)(F)).** Under Section 3.06(D), in the event of Severance from Employment as described below, apply or do not apply Election 31(b) allocation conditions to the specified contributions/forfeitures as follows (If the Employer elects 31(b), the Employer must complete Election 32. Choose one of (a) or (b). Complete (c)).

[Note: For this Election 32, except as the Employer describes otherwise in Election 31(b)(7) or as provided in Sections 3.03(C)(2) and 3.04(C)(2) regarding Operational QMACs and Operational QNECs, Matching includes all Matching Contributions and Nonelective includes all Nonelective Contributions to which allocation conditions may apply.]

- (a) ☒ **Total waiver or application.** If a Participant incurs a Severance from Employment on account of or following death, Disability or attainment of Normal Retirement Age (Choose one of (1) or (2)):
- (1) ☒ **Do not apply.** Do not apply elected allocation conditions to Matching Contributions, to Nonelective Contributions or to forfeitures.
- (2) ☐ **Apply.** Apply elected allocation conditions to Matching Contributions, to Nonelective Contributions and to forfeitures.

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	(1) Matching, Nonelective and Forfeitures	(2) Matching	(3) Nonelective	(4) Forfeitures
(b) <input type="checkbox"/> Application/waiver as to Contribution Types events. If a Participant incurs a Severance from Employment, apply allocation conditions <i>except</i> such conditions are waived if Severance is on account of or following death, Disability or attainment of Normal Retirement Age as specified, and as applied to the specified Contribution Types/forfeitures (Choose (1), (2), and (3) as applicable):				
(1) <input type="checkbox"/> Death	<input type="checkbox"/>	OR <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2) <input type="checkbox"/> Disability	<input type="checkbox"/>	OR <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(3) <input type="checkbox"/> Normal Retirement Age	<input type="checkbox"/>	OR <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

(c) Suspension. The suspension of allocation conditions of Section 3.06(F) (Choose one of (1) or (2)):

- (1) ☒ Applies. Applies as follows (Choose one of a., b., or c.):
- a. ☒ Both. Applies both to Nonelective Contributions and to Matching Contributions.
  - b. ☐ Nonelective. Applies only to Nonelective Contributions.
  - c. ☐ Match. Applies only to Matching Contributions.
- (2) ☐ Does not apply.

33. **FORFEITURE ALLOCATION METHOD (3.07).** The Plan Administrator will allocate a Participant forfeiture attributable to all Contribution Types or attributable to all Nonelective Contributions or to all Matching Contributions as follows (Choose one or more of (a) through (g) as applicable. Choose (e) only in conjunction with at least one other election):

[Note: Even if the Employer elects immediate vesting, the Employer should complete Election 33. See Section 7.07.]

	(1) All Forfeitures	(2) Nonelective Forfeitures	(3) Matching Forfeitures
(a) <input type="checkbox"/> Additional Nonelective. Allocate as additional Discretionary Nonelective Contribution.	<input type="checkbox"/>	OR <input type="checkbox"/>	<input type="checkbox"/>
(b) <input type="checkbox"/> Additional Match. Allocate as additional Discretionary Matching Contribution.	<input type="checkbox"/>	OR <input type="checkbox"/>	<input type="checkbox"/>
(c) <input type="checkbox"/> Reduce Nonelective. Apply to Nonelective Contribution.	<input type="checkbox"/>	OR <input type="checkbox"/>	<input type="checkbox"/>
(d) <input checked="" type="checkbox"/> Reduce Match. Apply to Matching Contribution.	<input checked="" type="checkbox"/>	OR <input type="checkbox"/>	<input type="checkbox"/>
(e) <input type="checkbox"/> Plan expenses. Pay reasonable Plan expenses first (See Section 7.04(C)), then allocate in the manner described above.	<input type="checkbox"/>	OR <input type="checkbox"/>	<input type="checkbox"/>
(f) <input type="checkbox"/> Safe harbor/top-heavy exempt. Apply all forfeitures to Safe Harbor Contributions and Plan expenses in accordance with Section 3.07(A)(4).			
(g) <input type="checkbox"/> Describe: _____ (e.g., Forfeitures attributable to transferred balances from Plan X are allocated only to former Plan X participants.)			

34. **FORFEITURE ALLOCATION TIMING (3.07(B)).** See Sections 3.07, 5.07 and 7.07 as to when a forfeiture occurs. Once a forfeiture occurs, this Election 34 determines the timing of the forfeiture allocation. The Plan Administrator will allocate a Participant's forfeiture (Choose one or both of (a) and (b) as applicable):

	(1) All Forfeitures	(2) Nonelective Forfeitures	(3) Matching Forfeitures
(a) <input type="checkbox"/> Same Plan Year. In the same Plan Year in which the designated forfeiture occurs.	<input type="checkbox"/>	OR <input type="checkbox"/>	<input type="checkbox"/>
(b) <input checked="" type="checkbox"/> Next Plan Year. In the Plan Year following the Plan Year in which the designated forfeiture occurs.	<input checked="" type="checkbox"/>	OR <input type="checkbox"/>	<input type="checkbox"/>

[Note: The elected forfeiture allocation timing applies irrespective of when the Employer makes its contribution(s), if any, for a Plan Year. Even if the Employer elects immediate vesting, the Employer should complete Election 34. See Sections 3.07 and 7.07.]

35. **EMPLOYEE (AFTER-TAX) CONTRIBUTIONS (3.09).** The following additional elections apply to Employee Contributions under Election 6(f). (Complete (a) and (b)):

- (a) **Limitations.** The Plan permits Employee Contributions subject to the following limitations, if any, in addition to those already imposed under the Plan (Choose one of (1) or (2)):
- (1) ☐ **None.** No additional limitations.
- (2) ☐ **Additional limitations.** The following additional limitations: \_\_\_\_\_
- [Note: Any designated limitation(s) must be the same for all Participants and must be definitely determinable.]
- (b) **Matching Contributions.** (Choose one of (1) or (2)):
- (1) ☐ **None.** The Employer will not make any Matching Contributions based on Employee Contributions.
- (2) ☐ **Applies.** For each Plan Year, the Employer's Matching Contribution made as to Employee Contributions is: \_\_\_\_\_

36. **DESIGNATED IRA CONTRIBUTIONS (3.12).** Under Election 6(h), a Participant may make Designated IRA Contributions effective for Plan Years beginning after \_\_\_\_\_ (date specified must be no earlier than December 31, 2002). (Complete (a) and (b)):

- (a) **Type of IRA contribution.** A Participant's Designated IRA Contributions will be (Choose one of (1), (2), or (3)):
- (1) ☐ **Traditional.**
- (2) ☐ **Roth.**
- (3) ☐ **Traditional/Roth.** As the Participant elects at the time of contribution.
- (b) **Type of Account.** A Participant's Designated IRA Contributions will be held in the following form of Account(s) (Choose one of (1), (2), or (3)):
- (1) ☐ **IRA.**
- (2) ☐ **Individual Retirement Annuity.**
- (3) ☐ **IRA/Individual Retirement Annuity.** As the Participant elects at the time of contribution.

#### ARTICLE IV LIMITATIONS AND TESTING

[Note: The Employer, in the "Effective as of execution" column under Election 37, must elect those testing elections which are: (i) in effect as of date of the Employer's execution of this Adoption Agreement; and (ii) if the Adoption Agreement restates the Plan, also are retroactive to the later of the Plan's original Effective Date or EGTRRA restated Effective Date, except as indicated in Appendix A. If the Employer wishes to change any testing election after it executes this Adoption Agreement, the Employer must elect the changes in the "Changes post-execution" column under Election 37, and the Employer must specify the Plan Year Effective Date(s) of any changed election. The Employer may complete the Effective Date blanks specifying the changed election applies to a single Plan Year (e.g., "2011 only"), or a range of Plan Years (e.g., "2011-2015") or may specify the change as becoming effective in a specified Plan Year (e.g., "commencing 2010"). If the Employer specifies a single Plan Year only or specifies a range of Plan Years, the Plan becomes subject to the election in the "Effective as of execution" column in the Plan Years commencing after the specified Year(s), unless the Employer subsequently changes the election. If the Employer specifies the change as commencing in a Plan Year, the election applies in the specified Plan Year and in all following Plan Years unless the Employer subsequently changes the election.]

37. **ANNUAL TESTING ELECTIONS (4.06(B)).** The Employer makes the following Plan specific annual testing elections under Section 4.06(B). (Complete (a) and (b)):

- |  | (1)<br>Effective as of execution<br>(and retroactively<br>if restatement) | (2)<br>Changes post-execution<br>(specify Plan Year<br>Effective Date(s)) |
|--|---|---|
| (a) <b>Nondiscrimination testing.</b> (Choose one or more of (1), (2), or (3)):  |   |   |
| (1) <input checked="" type="checkbox"/> <b>Traditional 401(k) Plan/ADP/ACP test.</b><br>The following testing method(s) apply<br>(Choose a. and b. as applicable): |   |   |

[Note: The Plan may "split test" for Plan Years commencing in 2005.]

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- a. ☐ ☐ **Current Year Testing.** See Section 4.11(E).  
Current Year Testing applies to the ADP/ACP tests  
as elected below (Choose one or both of (i) and (ii)):

- (i) ☐ ☐ **ADP test.** ☐ ☐ **Effective Date(s):** \_\_\_\_\_
- (ii) ☐ ☐ **ACP test.** ☐ ☐ **Effective Date(s):** \_\_\_\_\_

[Note: The Employer may leave (ii) blank if the Plan does not permit Matching Contributions or Employee Contributions and the Plan Administrator will not recharacterize Elective Deferrals as Employee Contributions for testing.]

- b. ☒ ☒ **Prior Year Testing.** See Section 4.11(F).  
Prior Year Testing applies to the ADP/ACP tests as  
elected below. See Sections 4.10(B)(4)(i)(iv) and  
4.10(C)(5)(e)(iv) as to the first Plan Year. (Choose  
one or both of (i) and (ii)):

- (i) ☒ ☒ **ADP test.** ☒ ☒ **Effective Date(s):** \_\_\_\_\_
- (ii) ☐ ☐ **ACP test.** ☐ ☐ **Effective Date(s):** \_\_\_\_\_

[Note: The Employer may leave (ii) blank if the Plan does not permit Matching Contributions or Employee Contributions and the Plan Administrator will not recharacterize Elective Deferrals as Employee Contributions for testing.]

- (2) ☐ ☐ **Safe Harbor Plan/No testing or ACP test only.**  
(Choose one of a., b., or c.):

- a. ☐ ☐ **No testing.** ☐ ☐ **Effective Date(s):** \_\_\_\_\_  
ADP test safe harbor applies and if applicable,  
ACP test safe harbor applies.
- b. ☐ ☐ **ACP test only.**  
ADP test safe harbor applies, but Plan will perform  
ACP test as follows (Choose one of (i) or (ii)):
- (i) ☐ ☐ **Current Year Testing.** ☐ ☐ **Effective Date(s):** \_\_\_\_\_
- (ii) ☐ ☐ **Prior Year Testing.** ☐ ☐ **Effective Date(s):** \_\_\_\_\_

[Note: The Employer may elect Prior Year Testing under Election 37(a)(2)b.(ii) only for Plan Years after the Final 401(k) Regulations Effective Date.]

- c. ☐ ☐ **Possible delayed election.** ☐ ☐ **Effective Date(s):** \_\_\_\_\_  
(maybe notice/supplemental notice)

The Employer under Section 3.05(I)(1) may treat the Plan as a Traditional 401(k) Plan or may make a delayed election to treat the Plan as a Safe Harbor 401(k) Plan. If the Employer gives the maybe and supplemental notices and amends the Plan to provide for the Safe Harbor Nonelective Contribution, the Plan is an ADP test safe harbor plan for the Plan Year to which the maybe and supplemental notices and the amendment apply. If the Employer does not give the supplemental notice, the Plan is a Traditional 401(k) Plan, subject to ADP Current Year Testing and, if applicable, to ACP Current Year Testing. If the Employer gives the supplemental notice and amends the Plan to provide for the Safe Harbor Nonelective Contribution, and the Employer has elected Additional Matching Contributions under Election 30(h) (Choose one of (i) or (ii)):

- (i) ☐ ☐ **No testing.** ADP and ACP test safe harbors apply. The Employer's elections under 30(h) as to Additional Matching Contributions satisfy the ACP safe harbor requirements and the Employer elects to apply the Election 30(h) stated ACP test safe harbor conditions (see the Note following Election 30(h)) as to all Additional Matching Contributions.
- (ii) ☐ ☐ **ACP test only.** ADP safe harbor applies, but the Plan will perform the ACP test as to all Additional Matching Contributions using Current Year Testing.

[Note: Even if the Employer does not elect 37(a)(2)c., the Employer still may make a delayed election into safe harbor status under Section 3.05(I)(1) using the maybe and supplemental notices and by amending the plan to provide for the Safe Harbor Nonelective Contribution. However, in this case, the Employer also must amend the Plan to make its testing elections under this Election 37 consistent with its delayed election into safe harbor status. The Employer then may elect any election under 37(a)(2), including 37(a)(2)c. An Employer's election of 37(a)(2)c. permits the Plan to remain in perpetual possible delayed safe harbor election status, while minimizing the number of Plan amendments required to do so.]

- (3) ☐ ☐ SIMPLE 401(k) Plan/No testing. ☐ ☐ Effective Date(s): \_\_\_\_\_
- (b) HCE determination. (Complete both (1) and (2)):
- (1) Top-paid group election. (Choose one of a. or b.):
- a. ☐ ☐ Does not apply. ☐ ☐ Effective Date(s): \_\_\_\_\_
- b. ☒ ☐ Applies. ☐ ☐ Effective Date(s): February 28, 1997
- (2) Calendar year data election (fiscal year Plan only). (Choose one of a. or b.):
- a. ☒ ☐ Does not apply. ☒ ☐ Effective Date(s): \_\_\_\_\_
- b. ☐ ☐ Applies. ☐ ☐ Effective Date(s): \_\_\_\_\_

#### ARTICLE V VESTING REQUIREMENTS

38. **NORMAL RETIREMENT AGE (5.01).** A Participant attains Normal Retirement Age under the Plan on the following date (Choose one of (a) or (b)):

- (a) ☒ ☐ Specific age. The date the Participant attains age 55. [Note: The age may not exceed age 65.]
- (b) ☐ ☐ Age/participation. The later of the date the Participant attains age \_\_\_\_\_ or the \_\_\_\_\_ anniversary of the first day of the Plan Year in which the Participant commenced participation in the Plan. [Note: The age may not exceed age 65 and the anniversary may not exceed the 5th.]

39. **EARLY RETIREMENT AGE (5.01).** (Choose one of (a) or (b)):

- (a) ☒ ☐ Not applicable. The Plan does not provide for an Early Retirement Age.
- (b) ☐ ☐ Early Retirement Age. Early Retirement Age is the later of: (i) the date a Participant attains age \_\_\_\_\_; (ii) the date a Participant reaches his/her \_\_\_\_\_ anniversary of the first day of the Plan Year in which the Participant commenced participation in the Plan; or (iii) the date a Participant completes \_\_\_\_\_ Years of Service.

[Note: The Employer should leave blank any of clauses (i), (ii), and (iii) which are not applicable.]

"Years of Service" under this Election 39 means (Choose one of (1) or (2) as applicable):

- (1) ☐ ☐ Eligibility. Years of Service for eligibility in Election 16.
- (2) ☐ ☐ Vesting. Years of Service for vesting in Elections 42 and 43.

[Note: Election of an Early Retirement Age does not affect the time at which a Participant may receive a Plan distribution. However, a Participant becomes 100% vested at Early Retirement Age.]

40. **ACCELERATION ON DEATH OR DISABILITY (5.02).** Under Section 5.02, if a Participant incurs a Severance from Employment as a result of death or Disability (Choose one of (a), (b), or (c)):

- (a) ☒ ☐ Applies. Apply 100% vesting.
- (b) ☐ ☐ Not applicable. Do not apply 100% vesting. The Participant's vesting is in accordance with the applicable Plan vesting schedule.
- (c) ☐ ☐ Limited application. Apply 100% vesting, but only if a Participant incurs a Severance from Employment as a result of (Choose one of (1) or (2)):
- (1) ☐ ☐ Death.
- (2) ☐ ☐ Disability.

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41. **VESTING SCHEDULE (5.03).** A Participant has a 100% Vested interest at all times in his/her Accounts attributable to: (i) Elective Deferrals; (ii) Employee Contributions; (iii) QNECs; (iv) QMACs; (v) Safe Harbor Contributions; (vi) SIMPLE Contributions; (vii) Rollover Contributions; (viii) Prevailing Wage Contributions unless the Prevailing Wage Contract provides otherwise; (ix) DECs; and (x) Designated IRA Contributions. The following vesting schedule applies to Regular Matching Contributions, to Additional Matching Contributions (irrespective of ACP testing status) and to Nonelective Contributions (other than Prevailing Wage Contributions) (Choose (a) or choose one or both of (b) and (d) as applicable. Choose (c) if elect a non-top-heavy schedule under (b) or (d)):

(a) ☐ Immediate vesting. 100% Vested at all times in all Accounts.

[Note: Unless all Contribution Types are 100% Vested, the Employer should not elect 41(a). If the Employer elects immediate vesting under 41(a), the Employer should not complete the balance of Election 41 or Elections 42 and 43 (except as noted therein). The Employer must elect 41(a) if the eligibility service condition under Election 14 as to all Contribution Types (except Elective Deferrals and Safe Harbor Contributions) exceeds one Year of Service or more than 12 months. The Employer must elect 41(b)(1) as to any Contribution Type where the eligibility service condition exceeds one Year of Service or more than 12 months. The Employer should elect 41(b) if any Contribution Type is subject to a vesting schedule.]

(b) ☒ Vesting schedules: Apply the following vesting schedules (Choose one or more of (1) through (7) as applicable):

	(1)		(2)		(3)		(4)
	All		Nonelective		Regular		Additional
	Contributions				Matching		Matching (Sec
							Section 3.05(F))
(1) <input type="checkbox"/> Immediate vesting	N/A (See Election 41(a))		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
(2) <input type="checkbox"/> Top-heavy: 6-year graded	<input type="checkbox"/>	OR	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
(3) <input type="checkbox"/> Top-heavy: 3-year cliff	<input type="checkbox"/>	OR	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
(4) <input checked="" type="checkbox"/> Modified top-heavy:	<input checked="" type="checkbox"/>	OR	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
Years of Service	Vested %						
Less than 1	a. 0%						
1	b. 33%						
2	c. 67%						
3	d. 100%						
4	e. _____						
5	f. _____						
6 or more	100%						
(5) <input type="checkbox"/> Non-top-heavy: 7-year graded	N/A		<input type="checkbox"/>		N/A		N/A
(6) <input type="checkbox"/> Non-top-heavy: 5-year cliff	N/A		<input type="checkbox"/>		N/A		N/A
(7) <input type="checkbox"/> Modified non-top-heavy:	N/A		<input type="checkbox"/>		N/A		N/A
Years of Service	Vested %						
Less than 1	a. _____						
1	b. _____						
2	c. _____						
3	d. _____						
4	e. _____						
5	f. _____						
6	g. _____						
7 or more	100%						

[Note: If the Employer does not elect 41(a), the Employer under 41(b) must elect immediate vesting or must elect a top-heavy or modified top-heavy vesting schedule. The modified top-heavy schedule of Election 41(b)(4) must satisfy Code §416. A top-heavy schedule must apply to Regular Matching Contributions and to Additional Matching Contributions. See Section 5.03(4)(f). The Employer as to Nonelective Contributions only may elect one of Elections 41(b)(5), (6), or (7) in addition to electing a top-heavy schedule. The Employer must complete Election 41(c) if it elects any non-top-heavy schedule. If the Employer does not elect a non-top-heavy schedule, the elected top-heavy schedule(s) applies to all Plan Years. If the Employer elects 41(b)(7), the modified non-top-heavy schedule must satisfy Code §411(a)(2). If the Employer elects Additional Matching under Election 30(h), the Employer should elect vesting under the Additional Matching column in this Election 41(b). That election applies to the Additional Matching even if the Employer has given the maybe notice but does not give the supplemental notice for any Plan Year and as to such Plan Years, the Plan is not a safe harbor plan and the Matching Contributions are not Additional Matching Contributions. If the Plan's Effective Date is after December 31, 2006, do not complete Elections 41(b)(5), (b)(6), or (b)(7).]

(c) ☐ Nonelective Contributions: application of top-heavy schedule (Choose one of (1) or (2)):

(1) ☐ Apply in all Plan Years once top-heavy. Apply the top-heavy vesting schedule under Election 41(b) for the first Plan Year in which the Plan is top-heavy and then in all subsequent Plan Years.



- (2) ☐ **Apply only in top-heavy Plan Years.** Apply the non-top-heavy schedule under Election 41(b) in all Plan Years in which the Plan is not a top-heavy plan.

- (d) ☐ **Special vesting provisions:** \_\_\_\_\_

[Note: The Employer under Election 41(d) may describe special vesting provisions from the elections available under Election 41 and/or a combination thereof as to a: (i) Participant group (e.g., Full vesting applies to Division A Employees OR to Employees hired on/before "x" date, 6-year graded vesting applies to Division B Employees OR to Employees hired after "x" date.); and/or (ii) Contribution Type (e.g., Full vesting applies as to Discretionary Nonelective Contributions, 6-year graded vesting applies to Fixed Nonelective Contributions). Any special vesting provision must satisfy Code §411(a) and must be nondiscriminatory.]

**42. YEAR OF SERVICE - VESTING (5.05).** (Complete both (a) and (b)):

[Note: If the Employer elects the Elapsed Time Method for vesting the Employer should not complete this Election 42. If the Employer elects immediate vesting, the Employer should not complete Election 42 or Election 43 unless it elects to apply a Year of Service for vesting under any other Adoption Agreement election.]

- (a) **Year of Service.** An Employee must complete at least 1,000 Hours of Service during a Vesting Computation Period to receive credit for a Year of Service under Article V. [Note: The number may not exceed 1,000. If left blank, the requirement is 1,000.]
- (b) **Vesting Computation Period.** The Plan measures a Year of Service based on the following 12-consecutive month period (Choose one of (1) or (2)):
- (1) ☒ **Plan Year.**
- (2) ☐ **Anniversary Year.**

**43. EXCLUDED YEARS OF SERVICE - VESTING (5.05(C)).** The Plan excludes the following Years of Service for purposes of vesting (Choose (a) or choose one or more of (b) through (e) as applicable):

- (a) ☒ **None.** None other than as specified in Section 5.05(C)(1).
- (b) ☐ **Age 18.** Any Year of Service before the Vesting Computation Period during which the Participant attained the age of 18.
- (c) ☐ **Prior to Plan establishment.** Any Year of Service during the period the Employer did not maintain this Plan or a predecessor plan.
- (d) ☐ **Rule of Parity.** Any Year of Service excluded under the rule of parity. See Plan Section 5.06(C).
- (e) ☐ **Additional exclusions.** The following Years of Service: \_\_\_\_\_

[Note: The Employer under Election 43(e) may describe vesting service exclusions provisions available under Election 43 and/or a combination thereof as to a: (i) Participant group (e.g., No exclusions apply to Division A Employees OR to Employees hired on/before "x" date. The age 18 exclusion applies to Division B Employees OR to Employees hired after "x" date.); or (ii) Contribution Type (e.g., No exclusions apply as to Discretionary Nonelective Contributions. The age 18 exclusion applies to Fixed Nonelective Contributions). Any exclusion specified under Election 43(e) must comply with Code §411(a)(4). Any exclusion must be nondiscriminatory.]

**ARTICLE VI  
DISTRIBUTION OF ACCOUNT BALANCE**

**44. MANDATORY DISTRIBUTION (6.01(A)(1)/6.08(D)).** The Plan provides or does not provide for Mandatory Distribution of a Participant's Vested Account Balance following Severance from Employment, as follows (Choose one of (a) or (b)):

- (a) ☐ **No Mandatory Distribution.** The Plan will not make a Mandatory Distribution following Severance from Employment.
- (b) ☒ **Mandatory Distribution.** The Plan will make a Mandatory Distribution following Severance from Employment. (Complete (1) and (2). Choose (3) unless the Employer elects to limit Mandatory Distributions to \$1,000 including Rollover Contributions under Elections 44(b)(1)b. and 44(b)(2)b.):
- (1) **Amount limit.** As to a Participant who incurs a Severance from Employment and who will receive distribution before attaining the later of age 62 or Normal Retirement Age, the Mandatory Distribution maximum amount is equal to (Choose one of a., b., or c.):
- a. ☒ **\$5,000.**
- b. ☐ **\$1,000.**
- c. ☐ **Specify amount: \$\_\_\_\_\_ (may not exceed \$5,000).**
- (2) **Application of Rollovers to amount limit.** In determining whether a Participant's Vested Account Balance exceeds the Mandatory Distribution dollar limit in Election 44(b)(1), the Plan (Choose one of a. or b.):
- a. ☒ **Disregards Rollover Contribution Account.**
- b. ☐ **Includes Rollover Contribution Account.**

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- (3) ☒ **Amount of Mandatory Distribution subject to Automatic Rollover.** A Mandatory Distribution to a Participant before attaining the later of age 62 or Normal Retirement Age is subject to Automatic Rollover under Section 6.09(D) (Choose one of a. or b.):
- a. ☒ **Only if exceeds \$1,000.** Only if the amount of the Mandatory Distribution exceeds \$1,000, which for this purpose must include any Rollover Contributions Account.
- b. ☐ **Specify lesser amount.** Only if the amount of the Mandatory Distribution is at least: \$\_\_\_\_\_ (specify \$1,000 or less).

45. **SEVERANCE DISTRIBUTION TIMING (6.01).** Subject to the timing limitations of Section 6.01(A)(1) in the case of a Mandatory Distribution, or in the case of any Distribution Requiring Consent under Section 6.01(A)(2), for which consent is received, the Plan Administrator will instruct the Trustee to distribute a Participant's Vested Account Balance as soon as is administratively practical following the time specified below (Choose one or more of (a) through (k) as applicable):

[Note: If a Participant dies after Severance from Employment but before receiving distribution of all of his/her Account, the elections under this Election 45 no longer apply. See Section 6.01(B) and Election 49.]

	(1) Mandatory Distribution	(2) Distribution Requiring Consent
(a) <input type="checkbox"/> <b>Immediate.</b> Immediately following Severance from Employment.	<input type="checkbox"/>	<input type="checkbox"/>
(b) <input type="checkbox"/> <b>Next Valuation Date.</b> After the next Valuation Date following Severance from Employment.	<input type="checkbox"/>	<input type="checkbox"/>
(c) <input type="checkbox"/> <b>Plan Year.</b> In the _____ Plan Year following Severance from Employment (e.g., next or fifth).	<input type="checkbox"/>	<input type="checkbox"/>
(d) <input checked="" type="checkbox"/> <b>Plan Year quarter.</b> In the <u>first</u> Plan Year quarter following Severance from Employment (e.g., next or fifth).	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
(e) <input type="checkbox"/> <b>Contribution Type Accounts.</b> _____ as to the Participant's _____ Account(s) and _____ as to the Participant's _____ Account(s) (e.g., As soon as is practical following Severance from Employment as to the Participant's Elective Deferral Account and as soon as is practical in the next Plan Year following Severance from Employment as to the Participant's Nonelective and Matching Accounts).	<input type="checkbox"/>	<input type="checkbox"/>
(f) <input type="checkbox"/> <b>Vesting controlled timing.</b> If the Participant's total Vested Account Balance exceeds \$_____, distribute _____ (specify timing) and if the Participant's total Vested Account Balance does not exceed \$_____, distribute _____ (specify timing).	<input type="checkbox"/>	<input type="checkbox"/>
(g) <input type="checkbox"/> <b>Distribute at Normal Retirement Age.</b> As to a Mandatory Distribution, distribute not later than 60 days after the beginning of the Plan Year following the Plan Year in which the previously severed Participant attains the earlier of Normal Retirement Age or age 65. [Note: An election under column (2) only will have effect if the Plan's NRA is less than age 62.]	<input type="checkbox"/>	<input type="checkbox"/>
(h) <input type="checkbox"/> <b>Acceleration.</b> Notwithstanding any later specified distribution date in Election 45, a Participant may elect an earlier distribution following Severance from Employment (Choose (1) and (2) as applicable):	<input type="checkbox"/>	<input type="checkbox"/>
(1) <input type="checkbox"/> <b>Disability.</b> If Severance from Employment is on account of Disability or if the Participant incurs a Disability following Severance from Employment.		
(2) <input type="checkbox"/> <b>Hardship.</b> If the Participant incurs a hardship under Section 6.07 following Severance from Employment.		
(i) <input type="checkbox"/> <b>Required distribution at Normal Retirement Age.</b> A severed Participant may not elect to delay distribution beyond the later of age 62 or Normal Retirement Age.	N/A	<input type="checkbox"/>
(j) <input type="checkbox"/> <b>No buy-back/vesting controlled timing.</b> Distribute as soon as is practical following Severance from Employment if the Participant is fully Vested.	<input type="checkbox"/>	<input type="checkbox"/>

Distribute as soon as is practical following a Forfeiture  
Break in Service if the Participant is not fully Vested.

(k) ☐ Describe Severance from Employment distribution timing: \_\_\_\_\_

[Note: The Employer under Election 45(k) may describe Severance from Employment distribution timing provisions from the elections available under Election 45 and/or a combination thereof as to any: (i) Participant group (e.g., Immediate distribution after Severance of Employment applies to Division A Employees OR to Employees hired on/before "x" date. Distribution after the next Valuation Date following Severance from Employment applies to Division B Employees OR to Employees hired after "x" date.); (ii) Contribution Type (e.g., As to Division A Employees, immediate distribution after Severance of Employment applies as to Elective Deferral Accounts; and/or distribution after the next Valuation Date following Severance from Employment applies to Nonelective Contribution Accounts); and/or (iii) merged plan account now held in the Plan (e.g., The accounts from the X plan merged into this Plan continue to be distributable in accordance with the X plan terms [supply terms] and not in accordance with the terms of this Plan). An Employer's election under Election 45(k) must: (i) be objectively determinable; (ii) not be subject to Employer discretion; (iii) comply with Code §401(a)(14) timing requirements; (iv) be nondiscriminatory and (v) preserve Protected Benefits as required.]

46. **IN-SERVICE DISTRIBUTIONS/EVENTS** (6.01(C)). A Participant may elect an In-Service Distribution of the designated Contribution Type Accounts based on any of the following events in accordance with Section 6.01(C) (Choose one of (a) or (b)):

[Note: If the Employer elects any In-Service Distribution option, a Participant may elect to receive as many In-Service Distributions per Plan Year (with a minimum of one per Plan Year) as the Plan Administrator's In-Service Distribution form or policy may permit. If the form or policy is silent, the number of In-Service Distributions is not limited. Prevailing Wage Contributions are treated as Nonelective Contributions unless the Prevailing Wage Contract provides otherwise. See Section 6.01(C)(4)(d) if the Employer elects to use Prevailing Wage Contributions to offset other contributions.]

(a) ☐ **None.** The Plan does not permit any In-Service Distributions except as to any of the following (if applicable): (i) RMDs under Section 6.02; (ii) Protected Benefits; and (iii) under Section 6.01(C)(4) as to Employee Contributions, Rollover Contributions, DEC's, Transfers, and Designated IRA Contributions.

(b) ☒ **Permitted.** In-Service Distributions are permitted as follows from the designated Contribution Type Accounts (Choose one or more of (1) through (9)):

[Note: Unless the Employer elects otherwise in Election 46(b)(9), Elective Deferrals under Election 46(b) includes Pre-Tax and Roth Deferrals and Matching Contributions includes Additional Matching Contributions, irrespective of the Plan's ACP testing status.]

	(1) All Contributions	(2) Elective Deferrals	(3) Safe Harbor Contributions	(4) QNECs	(5) QMACs	(6) Matching Contrib.	(7) Nonelective/ SIMPLE
(1) <input type="checkbox"/> <b>None.</b> Except for Election 46(a) exceptions.	N/A (See Election 46(a))	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2) <input checked="" type="checkbox"/> Age <u>59 1/2</u> (must be at least 59 1/2).	<input type="checkbox"/> OR <input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(3) <input checked="" type="checkbox"/> Age <u>55</u> (may be less than 59 1/2).	N/A	N/A	N/A	N/A	N/A	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
(4) <input checked="" type="checkbox"/> Hardship (safe harbor). See Section 6.07(A).	N/A	<input checked="" type="checkbox"/>	N/A	N/A	N/A	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
(5) <input type="checkbox"/> Hardship (non-safe harbor). See Section 6.07(B).	N/A	N/A	N/A	N/A	N/A	<input type="checkbox"/>	<input type="checkbox"/>
(6) <input checked="" type="checkbox"/> Disability.	<input checked="" type="checkbox"/> OR <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(7) <input type="checkbox"/> _____ year contributions. (specify minimum of two years) See Section 6.01(C)(4)(a)(i).	N/A	N/A	N/A	N/A	N/A	<input type="checkbox"/>	<input type="checkbox"/>
(8) <input type="checkbox"/> _____ months of participation. (specify minimum of 60 months) See Section 6.01(C)(4)(a)(ii).	N/A	N/A	N/A	N/A	N/A	<input type="checkbox"/>	<input type="checkbox"/>
(9) <input type="checkbox"/> Describe: _____							

[Note: The Employer under Election 46(b)(9) may describe In-Service Distribution provisions from the elections available under Election 46 and/or a combination thereof as to any: (i) Participant group (e.g., Division A Employee Accounts are distributable at age 59 1/2 OR Accounts of Employees hired on/before "x" date are distributable at age 59 1/2). No In-Service Distributions apply to Division B Employees OR to Employees hired after "x" date.); (ii) Contribution Type (e.g., Discretionary Nonelective Contribution Accounts are distributable on Disability. Fixed Nonelective Contribution Accounts are distributable on Disability or Hardship (non-safe harbor)); and/or (iii) merged plan account now held in the Plan (e.g., The accounts from the X plan merged into this Plan continue to be distributable in accordance with the X plan terms [supply terms] and not in accordance with the terms of this Plan). An Employer's election under Election 46(b)(9) must: (i) be objectively determinable; (ii) not be subject to Employer discretion; (iii) preserve Protected Benefits as required; (iv) be nondiscriminatory; and (v) not permit an "early" distribution of any Restricted 401(k) Accounts or Restricted Pension Accounts. See Section 6.01(C)(4).]

**In-Service Distribution of other Accounts.** See Section 6.01(C)(4) as to In-Service Distribution of Employee Contributions, Rollover Contributions, DEC's, Transfers, and Designated IRA Contributions.

**47. IN-SERVICE DISTRIBUTIONS/ADDITIONAL CONDITIONS (6.01(C)).** The following additional conditions apply to In-Service Distributions under Election 46(b) (Choose one of (a) or (b)):

[Note: The Employer should complete Election 47 if the Employer elects any In-Service Distributions under Election 46(b).]

(a) ☐ **Additional conditions.** (Complete (1). Choose (2) and (3) as applicable):

(1) **Vesting.** A Participant may receive an In-Service Distribution under Election 46(b) based on vesting in the distributing Account as follows (Choose one of a., b., or c.):

- a. ☐ **100% vesting required.** A Participant may not receive any In-Service Distribution unless the Participant is 100% Vested in the distributing Account.
- b. ☐ **100% vesting required except hardship.** A Participant may not receive any In-Service Distribution unless the Participant is 100% Vested in the distributing Account, unless the distribution is based on hardship.
- c. ☐ **Not required.** A Participant may receive an In-Service Distribution even from a partially-Vested Account, but the amount distributed may not exceed the Vested amount in the distributing partially-Vested Account.

(2) ☐ **Minimum amount.** A Participant may not receive an In-Service Distribution in an amount which is less than: \$\_\_\_\_\_ (specify amount not exceeding \$1,000).

(3) ☐ **Describe other conditions:** \_\_\_\_\_

[Note: An Employer's election under Election 47(a)(3) must: (i) be objectively determinable; (ii) not be subject to Employer discretion; (iii) preserve Protected Benefits as required; (iv) be nondiscriminatory; and (v) not permit an "early" distribution of any Restricted 401(k) Accounts or Restricted Pension Accounts. See Section 6.01(C)(4).]

(b) ☒ **No other conditions.** A Participant may elect to receive an In-Service Distribution upon any Election 46(b) event without further condition, provided that the amount distributed may not exceed the Vested amount in the distributing Account.

**48. POST-SEVERANCE AND LIFETIME RMD DISTRIBUTION METHODS (6.03).** A Participant whose Vested Account Balance exceeds \$5,000 (or any lesser amount elected in Appendix B, Election 54(g)(7)): (i) who has incurred a Severance from Employment and will receive a distribution; or (ii) who remains employed but who must receive lifetime RMDs, may elect distribution under one of the following method(s) of distribution described in Section 6.03 and subject to any Section 6.03 limitations. (Choose one or more of (a) through (f) as applicable):

[Note: If a Participant dies after Severance from Employment but before receiving distribution of all of his/her Account, the elections under this Election 48 no longer apply. See Section 6.01(B) and Election 49.]

(a) ☒ **Lump-Sum.** See Section 6.03(A)(3).

(b) ☐ **Installments only if Participant subject to lifetime RMDs.** A Participant who is required to receive lifetime RMDs may receive installments payable in monthly, quarterly or annual installments equal to or exceeding the annual RMD amount. See Sections 6.02(A) and 6.03(A)(4)(a).

(c) ☒ **Installments.** See Section 6.03(A)(4).

(d) ☐ **Alternative Annuity:** \_\_\_\_\_ See Section 6.03(A)(5).

[Note: Under a Plan which is subject to the joint and survivor annuity distribution requirements of Section 6.04 (Election 50(b)), the Employer may elect under 48(d) to offer one or more additional annuities (Alternative Annuity) to the Plan's QJSA or QPSA. If the Employer elects under Election 50(a) to exempt Exempt Participants from the joint and survivor annuity requirements, the Employer should not elect to provide an Alternative Annuity under 48(d).]

(e) ☐ **Ad-Hoc distributions.** See Section 6.03(A)(6).

[Note: If an Employer elects to permit Ad-Hoc distributions: (i) the option must be available to all Participants; and (ii) the option is a Protected Benefit.]

(f) ☐ Describe distribution method(s): \_\_\_\_\_

[Note: The Employer under Election 48(f) may describe Severance from Employment distribution methods from the elections available under Election 48 and/or a combination thereof as to any: (i) Participant group (e.g., Division A Employee Accounts are distributable in a Lump-Sum OR Accounts of Employees hired after "x" date are distributable in a Lump-Sum, Division B Employee Accounts are distributable in a Lump-Sum or in Installments OR Accounts of Employees hired on/before "x" date are distributable in a Lump-Sum or in Installments.); (ii) Contribution Type (e.g., Discretionary Nonelective Contribution Accounts are distributable in a Lump-Sum, Fixed Nonelective Contribution Accounts are distributable in a Lump-Sum or in Installments); and/or (iii) merged plan account now held in the Plan (e.g., The accounts from the X plan merged into this Plan continue to be distributable in accordance with the X plan terms [supply terms] and not in accordance with the terms of this Plan). An Employer's election under Election 48(f) must: (i) be objectively determinable; (ii) not be subject to Employer, Plan Administrator or Trustee discretion; (iii) be nondiscriminatory; and (iv) preserve Protected Benefits as required.]

49. **BENEFICIARY DISTRIBUTION ELECTIONS** (6.01(B)/6.02(B)/6.03). Subject to the Participant's elections under Section 6.01(B)(1) as to the timing and method of distribution of the Participant's Account to the Participant's Beneficiary (which Participant elections must be consistent with the Plan and this Election 49), in the case of a Participant's death, the Beneficiary will receive distribution of the Participant's Account (or of the Beneficiary's share thereof) as follows (Complete (a), (b), and (c)):

[Note: For purposes of this Election 49, unless otherwise noted, a "Beneficiary" includes, but is not limited to a "Designated Beneficiary" under Section 6.02(E)(1).]

	(1) Spouse Beneficiary	(2) Other Beneficiary
(a) <b>Timing.</b> The Plan will distribute to the Beneficiary as soon as is practical at (or not later than) the following time or date (Choose one of (1) through (4). Choose (5) if applicable):		
(1) <input type="checkbox"/> <b>Immediate.</b> Immediately following the Participant's death.	<input type="checkbox"/>	<input type="checkbox"/>
(2) <input type="checkbox"/> <b>Next Calendar Year.</b> In the calendar year which next follows the calendar year of the Participant's death, but not later than December 31 of such following calendar year.	<input type="checkbox"/>	<input type="checkbox"/>
(3) <input checked="" type="checkbox"/> <b>As Beneficiary elects.</b> At such time as the Beneficiary may elect, provided that distribution pursuant to such election (or in the absence of any Beneficiary election) must commence no later than the Section 6.02 required date.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
(4) <input type="checkbox"/> <b>Describe:</b> _____	<input type="checkbox"/>	<input type="checkbox"/>
[Note: The Employer under Election 49(a)(4) may describe an alternative distribution timing or afford the Beneficiary an election which is narrower than that permitted under election 49(a)(3). However, any election under Election 49(a)(4) must require distribution to commence no later than the Section 6.02 required date.]		
(5) <input checked="" type="checkbox"/> <b>Death before DCD; spousal election to delay.</b> If the Participant dies before his/her Distribution Commencement Date and the Participant's sole Designated Beneficiary is his/her spouse, the spouse may elect to delay distribution until the end of the calendar year in which the Participant would have attained age 70 1/2, if that date is later than the date upon which distribution would be required to commence to a non-spouse Beneficiary.	<input checked="" type="checkbox"/>	N/A
(b) <b>Method.</b> The Plan will distribute to the Beneficiary under the following distribution method(s). If more than one method is elected, the Beneficiary may choose the method of distribution. (Choose one or more of (1) through (4) but do not elect (4) only):		
(1) <input checked="" type="checkbox"/> <b>Lump-Sum.</b> See Section 6.03(A)(3).	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
(2) <input checked="" type="checkbox"/> <b>Installments sufficient to satisfy RMD.</b> See Section 6.03(A)(4)(a). An Installment in each Distribution Calendar Year must at least equal the RMD amount.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

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- (3) ☐ ☐ **Ad-Hoc sufficient to satisfy RMD.** See Section 6.03(A)(5). ☐ ☐ ☐ ☐  
The Beneficiary must elect an Ad-Hoc distribution for each Distribution Calendar Year at least equal to the RMD amount.

[Note: If an Employer elects to permit Ad-Hoc distributions: (i) the option must be available to all Beneficiaries; and (ii) the option is a Protected Benefit.]

- (4) ☐ ☐ **QPSA.** See Section 6.04(B). ☐ ☐ N/A

[Note: If the Employer elects 50(b), the Employer should elect 49(b)(4). If the Employer elects 50(a), the Employer should not elect 49(b)(4). A surviving spouse may elect to waive the QPSA in favor of another method.]

- (c) **Death before the DCD.** If a Participant dies before the Distribution Commencement Date, the distribution to the Beneficiary will be made in accordance with the following rule(s) (Choose one of (1), (2), or (3)):
- (1) ☒ **Beneficiary election.** See Section 6.02(B)(1)(c). This election applies only if the Beneficiary is a Designated Beneficiary under Treas. Reg. §1.401(a)(9)-4. If not, the 5-year rule applies. In the absence of the Designated Beneficiary's election, the Life Expectancy rule applies. The Employer in Appendix B may elect to change the default (no Designated Beneficiary election) to the 5-year rule. ☒ ☒
- (2) ☐ **Life Expectancy rule.** See Section 6.02(B)(1)(d). This election applies only if the Beneficiary is a Designated Beneficiary under Treas. Reg. §1.401(a)(9)-4. If not, the 5-year rule applies. ☐ ☐
- (3) ☐ **5-year rule.** See Section 6.02(B)(1)(c). This election applies regardless of whether the Beneficiary is a Designated Beneficiary under Treas. Reg. §1.401(a)(9)-4. ☐ ☐

50. **JOINT AND SURVIVOR ANNUITY REQUIREMENTS (6.04).** The joint and survivor annuity distribution requirements of Section 6.04 (Choose one of (a) or (b)):

- (a) ☒ **Profit sharing exception.** Do not apply to an Exempt Participant, as described in Section 6.04(G)(1), but apply to any other Participants (or to a portion of their Account as described in Section 6.04(G)) (Complete (1)):
- (1) **One-year marriage rule.** Under Section 7.05(A)(3) relating to an Exempt Participant's Beneficiary designation under the profit sharing exception (Choose one of a. or b.):
- a. ☒ **Applies.** The one-year marriage rule applies.
- b. ☐ **Does not apply.** The one-year marriage rule does not apply.
- (b) ☐ **Joint and survivor annuity applicable.** Section 6.04 applies to all Participants (Complete (1)):
- (1) **One-year marriage rule.** Under Section 6.04(B) relating to the QPSA (Choose one of a. or b.):
- a. ☐ **Applies.** The one-year marriage rule applies.
- b. ☐ **Does not apply.** The one-year marriage rule does not apply.

## ARTICLE VII ADMINISTRATIVE PROVISIONS

51. **ALLOCATION OF EARNINGS (7.04(B)).** For each Contribution Type provided under the Plan, the Plan allocates Earnings using the following method (Choose one or more of (a) through (f) as applicable):

[Note: Elective Deferrals/Employee Contributions also includes Rollover Contributions, Transfers, DEC's and Designated IRA Contributions, Matching Contributions includes all Matching Contributions and Nonelective Contributions includes all Nonelective Contributions unless described otherwise in Election 51(f).]

- |  | (1)<br>All<br>Contributions | (2)<br>Elective Deferrals/<br>Employee<br>Contributions | (3)<br>Matching<br>Contributions | (4)<br>Nonelective<br>Contributions |
|--|-----------------------------|---|----------------------------------|-------------------------------------|
| (a) <input type="checkbox"/> <input type="checkbox"/> <b>Daily.</b> See Section 7.04(B)(4)(a). <input type="checkbox"/> <input type="checkbox"/> <b>OR</b> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>           |                             |   |                                  |                                     |
| (b) <input type="checkbox"/> <input type="checkbox"/> <b>Balance forward.</b> See Section 7.04(B)(4)(b). <input type="checkbox"/> <input type="checkbox"/> <b>OR</b> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> |                             |   |                                  |                                     |
| (c) <input type="checkbox"/> <input type="checkbox"/> <b>Balance forward with adjustment.</b> <input type="checkbox"/> <input type="checkbox"/> <b>OR</b> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>            |                             |   |                                  |                                     |

See Section 7.04(B)(4)(c). Allocate pursuant to the balance forward method, except treat as part of the relevant Account at the beginning of the Valuation Period 50 % of the contributions made during the following Valuation Period: current valuation period.

- (d) ☐ **Weighted average.** See Section 7.04(B)(4)(d). If not a monthly weighting period, the weighting period is: \_\_\_\_\_ ☐ OR ☐ ☐ ☐
- (e) ☒ **Participant-Directed Account.** See Section 7.04(B)(4)(c). ☒ OR ☐ ☐ ☐
- (f) ☐ **Describe Earnings allocation method:** \_\_\_\_\_

[Note: The Employer under Election 51(f) may describe Earnings allocation methods from the elections available under Election 51 and/or a combination thereof as to any: (i) Participant group (e.g., Daily applies to Division A Employees OR to Employees hired after "x" date. Balance forward applies to Division B Employees OR to Employees hired on/before "x" date.); (ii) Contribution Type (e.g., Daily applies as to Discretionary Nonelective Contribution Accounts. Participant-Directed Account applies to Fixed Nonelective Contribution Accounts); (iii) investment type, investment vendor or Account type (e.g., Balance forward applies to investments placed with vendor A and Participant-Directed Account applies to investments placed with vendor B OR Daily applies to Participant-Directed Accounts and balance forward applies to pooled Accounts); and/or (iv) merged plan account now held in the Plan (e.g., The accounts from the X plan merged into this Plan continue to be subject to Earnings allocation in accordance with the X plan terms [supply terms] and not in accordance with the terms of this Plan). An Employer's election under Election 51(f) must: (i) be objectively determinable; (ii) not be subject to Employer discretion; and (iii) be nondiscriminatory.]

#### ARTICLE VIII TRUSTEE AND CUSTODIAN, POWERS AND DUTIES

52. **VALUATION OF TRUST (8.02(C)(4)).** In addition to the last day of the Plan Year, the Trustee (or Named Fiduciary as applicable) must value the Trust Fund on the following Valuation Date(s) (Choose one or more of (a) through (d) as applicable):

[Note: Elective Deferrals/Employee Contributions also include Rollover Contributions, Transfers, DEC's and Designated IRA Contributions. Matching Contributions includes all Matching Contributions and Nonelective Contributions includes all Nonelective Contributions unless described otherwise in Election 52(d).]

- |   | (1)<br>All<br>Contributions         |    | (2)<br>Elective Deferrals/<br>Employee<br>Contributions |  | (3)<br>Matching<br>Contributions |  | (4)<br>Nonelective<br>Contributions |
|---|-------------------------------------|----|---|--|----------------------------------|--|-------------------------------------|
| (a) <input type="checkbox"/> <b>No additional Valuation Dates.</b>  | <input type="checkbox"/>            | OR | <input type="checkbox"/>                                |  | <input type="checkbox"/>         |  | <input type="checkbox"/>            |
| (b) <input checked="" type="checkbox"/> <b>Daily Valuation Dates.</b> Each business day of the Plan Year on which Plan assets for which there is an established market are valued and the Trustee is conducting business. | <input checked="" type="checkbox"/> | OR | <input type="checkbox"/>                                |  | <input type="checkbox"/>         |  | <input type="checkbox"/>            |
| (c) <input type="checkbox"/> <b>Last day of a specified period.</b> The last day of each _____ of the Plan Year.  | <input type="checkbox"/>            | OR | <input type="checkbox"/>                                |  | <input type="checkbox"/>         |  | <input type="checkbox"/>            |
| (d) <input type="checkbox"/> <b>Specified Valuation Dates:</b> _____  |                                     |    |   |  |                                  |  |                                     |

[Note: The Employer under Election 52(d) may describe Valuation Dates from the elections available under Election 52 and/or a combination thereof as to any: (i) Participant group (e.g., No additional Valuation Dates apply to Division A Employees OR to Employees hired after "x" date. Daily Valuation Dates apply to Division B Employees OR to Employees hired on/before "x" date.); (ii) Contribution Type (e.g., No additional Valuation Dates apply as to Discretionary Nonelective Contribution Accounts. The last day of each Plan Year quarter applies to Fixed Nonelective Contribution Accounts); (iii) investment type, investment vendor or Account type (e.g., No additional Valuation Dates apply to investments placed with vendor A and Daily Valuation Dates apply to investments placed with vendor B OR Daily Valuation Dates apply to Participant-Directed Accounts and no additional Valuation Dates apply to pooled Accounts); and/or (iv) merged plan account now held in the Plan (e.g., The accounts from the X plan merged into this Plan continue to be subject to Trust valuation in accordance with the X plan terms [supply terms] and not in accordance with the terms of this Plan). An Employer's election under Election 52(d) must: (i) be objectively determinable; (ii) not be subject to Employer discretion; and (iii) be nondiscriminatory.]

## EXECUTION PAGE

The Employer, by executing this Adoption Agreement, hereby agrees to the provisions of this Plan and Trust.

Employer: Rocky Mountain Chocolate Factory, Inc.  
 Date: 4.6.10  
 Signed: [Signature]  
BOYAN MERRYMAN COO  
 [print name/title]

The Trustee (and Custodian, if applicable), by executing this Adoption Agreement, hereby accepts its position and agrees to all of the obligations, responsibilities and duties imposed upon the Trustee (or Custodian) under the Prototype Plan and Trust. If the Employer under Election 5(c) will use a separate Trust, the Trustee need not execute this Adoption Agreement.

Nondiscretionary Trustee(s): Wells Fargo Bank, N.A.  
 Date: April 15, 2010  
 Signed: [Signature]  
Kim Scott  
 [print name/title]

Nondiscretionary Trustee(s): \_\_\_\_\_  
 Date: \_\_\_\_\_  
 Signed: \_\_\_\_\_  
 [print name/title]

Custodian(s) (Optional): \_\_\_\_\_  
 Date: \_\_\_\_\_  
 Signed: \_\_\_\_\_  
 [print name/title]

**Use of Adoption Agreement.** Failure to complete properly the elections in this Adoption Agreement may result in disqualification of the Employer's Plan. The Employer only may use this Adoption Agreement only in conjunction with the basic plan document referenced by its document number on Adoption Agreement page one.

**Execution for Page Substitution Amendment Only.** If this paragraph is completed, this Execution Page documents an amendment to Adoption Agreement Election(s) \_\_\_\_\_ effective \_\_\_\_\_ by substitute Adoption Agreement page number(s) \_\_\_\_\_. The Employer should retain all Adoption Agreement Execution Pages and amended pages. [Note: The Effective Date may be retroactive or may be prospective as permitted under Applicable Law.]

**Prototype Plan Sponsor.** The Prototype Plan Sponsor identified on the first page of the basic plan document will notify all adopting Employers of any amendment to this Prototype Plan or of any abandonment or discontinuance by the Prototype Plan Sponsor of its maintenance of this Prototype Plan. For inquiries regarding the adoption of the Prototype Plan, the Prototype Plan Sponsor's intended meaning of any Plan provisions or the effect of the Opinion Letter issued to the Prototype Plan Sponsor, please contact the Prototype Plan Sponsor at the following address and telephone number: 2700 Snelling Avenue North, Roseville, MN 55113, 651-205-9868

**Reliance on Sponsor Opinion Letter.** The Prototype Plan Sponsor has obtained from the IRS an Opinion Letter specifying the form of this Adoption Agreement and the basic plan document satisfy, as of the date of the Opinion Letter, Code §401. An adopting Employer may rely on the Prototype Sponsor's IRS Opinion Letter *only* to the extent provided in Rev. Proc. 2005-16. The Employer may not rely on the Opinion Letter in certain other circumstances or with respect to certain qualification requirements, which are specified in the Opinion Letter and in Rev. Proc. 2005-16, Sections 19.02 and 19.03. In order to have reliance in such circumstances or with respect to such qualification requirements, the Employer must apply for a determination letter to Employee Plans Determinations of the IRS.



**APPENDIX A**  
**EGTRRA RESTATED PLANS - SPECIAL EFFECTIVE DATES**  
*[Covering period from restated Effective Date in Election 4(b) until Employer executes EGTRRA restatement]*

53. **SPECIAL EFFECTIVE DATES (1.19).** The Employer elects or does not elect Appendix A special Effective Date(s) as follows. (Choose (a) or one or more of (b) through (r) as applicable):

[Note: If the Employer elects 53(a), do not complete the balance of this Election 53.]

(a) ☐ **Not applicable.** The Employer does not elect any Appendix A special Effective Dates.

[Note: The Employer should use this Appendix A where it is restating its Plan for EGTRRA with a retroactive Effective Date, but where one or more Adoption Agreement elections under the restated Plan became effective after the Plan's general restatement Effective Date under Election 4(b). For periods prior to the below-specified special Effective Date(s), the Plan terms in effect prior to its restatement under this Adoption Agreement control for purposes of the designated provisions. Any special Effective Date the Employer elects must comply with Applicable Law.]

(b) ☐ **Contribution Types (1.12).** The Contribution Types under Election(s) 6 \_\_\_\_\_ are effective: \_\_\_\_\_.

[Note: The Plan may not permit Roth Deferrals before January 1, 2006.]

(c) ☒ **Excluded Employees (1.21(D)).** The Excluded Employee provisions under Election(s) 8 h are effective: January 1, 2009.

(d) ☐ **Compensation (1.11).** The Compensation definition under Election(s) \_\_\_\_\_ (specify 9-11 as applicable) are effective: \_\_\_\_\_.

(e) ☐ **Eligibility (2.01-2.03).** The eligibility provisions under Election(s) \_\_\_\_\_ (specify 14-19 as applicable) are effective: \_\_\_\_\_.

(f) ☐ **Elective Deferrals (3.02(A)-(C)).** The Elective Deferral provisions under Election(s) \_\_\_\_\_ (specify 20-22 as applicable) are effective: \_\_\_\_\_.

(g) ☐ **Catch-Up Deferrals (3.02(D)).** The Catch-Up Deferral provisions under Election 23 \_\_\_\_\_ are effective: \_\_\_\_\_.

(h) ☐ **Matching Contributions (3.03).** The Matching Contribution provisions under Election(s) \_\_\_\_\_ (specify 24-26 as applicable) are effective: \_\_\_\_\_.

(i) ☐ **Nonelective Contributions (3.04).** The Nonelective Contribution provisions under Election(s) \_\_\_\_\_ (specify 27-29 as applicable) are effective: \_\_\_\_\_.

(j) ☐ **401(k) safe harbor (3.05).** The 401(k) safe harbor provisions under Election(s) 30 \_\_\_\_\_ are effective: \_\_\_\_\_.

(k) ☐ **Allocation conditions (3.06).** The allocation conditions under Election(s) \_\_\_\_\_ (specify 31-32 as applicable) are effective: \_\_\_\_\_.

(l) ☐ **Forfeitures (3.07).** The forfeiture allocation provisions under Election(s) \_\_\_\_\_ (specify 33-34 as applicable) are effective: \_\_\_\_\_.

(m) ☐ **Employee Contributions (3.09).** The Employee Contribution provisions under Election(s) 35 \_\_\_\_\_ are effective: \_\_\_\_\_.

(n) ☐ **Testing elections (4.06(B)).** The testing elections under Election(s) 37 \_\_\_\_\_ under the "Effective as of execution (and retroactively if restatement)" column are effective: \_\_\_\_\_.

(o) ☐ **Vesting (5.03).** The vesting provisions under Election(s) \_\_\_\_\_ (specify 38-43 as applicable) are effective: \_\_\_\_\_.

(p) ☒ **Distributions (6.01 and 6.03).** The distribution elections under Election(s) 48 & 50 (specify 44-50 as applicable) are effective: March 1, 2003.

(q) ☐ **Earnings/Trust valuation (7.04(B)/8.02(C)(4)).** The Earnings allocation and Trust valuation provisions under Election(s) \_\_\_\_\_ (specify 51-52 as applicable) are effective: \_\_\_\_\_.

(r) ☒ **Special Effective Date(s) for other elections (specify elections and dates):**

As specified in Election 4(b) or 4(c), the Plan's restated Effective Date is retroactive. However, one or more of the Adoption Agreement elections in effect on the execution date hereof may be the result of Plan amendments adopted and effective after the restated Effective Date and before this Adoption Agreement was executed. The Employer is not itemizing the special Effective Dates for such elections in this Appendix A as these dates are already reflected in the Amendments.

APPENDIX C  
LIST OF GROUP TRUST FUNDS/PERMISSIBLE TRUST AMENDMENTS

55. ☐ **INVESTMENT IN GROUP TRUST FUND (8.09).** The nondiscretionary Trustee, as directed or the discretionary Trustee acting without direction (and in addition to the discretionary Trustee's authority to invest in its own funds under Section 8.02(A)(3)), may invest in any of the following group trust funds: \_\_\_\_\_ (Specify the names of one or more group trust funds in which the Plan can invest).

[Note: A discretionary or nondiscretionary Trustee also may invest in any group trust fund authorized by an independent Named Fiduciary.]

56. ☒ **PERMISSIBLE TRUST AMENDMENTS (8.11).** The Employer makes the following amendments to the Trust as permitted under Rev. Proc. 2005-16, Section 5.09 (Choose one or more of (a) through (c) as applicable):

[Note: Any amendment under this Election 56 must not: (i) conflict with any Plan provision unrelated to the Trust or Trustee; or (ii) cause the Plan to violate Code §401(a). The amendment may override, add to, delete or otherwise modify the Trust provisions. Do not use this Election 56 to substitute another pre-approved trust for the Trust. See Election 5(c) as to a substitute trust.]

- (a) ☐ **Investments.** The Employer amends the Trust provisions relating to Trust investments as follows:  
\_\_\_\_\_
- (b) ☐ **Duties.** The Employer amends the Trust provisions relating to Trustee (or Custodian) duties as follows:  
\_\_\_\_\_
- (c) ☒ **Other administrative provisions.** The Employer amends the other administrative provisions of the Trust as follows:  
The Trustee shall be a directed trustee with respect to contributions pursuant to ERISA Section 403(a)(1) and the Plan Administrator shall be the fiduciary responsible for directing the Trustee regarding any obligation to collect contributions.

## AMENDMENT FOR PENSION PROTECTION ACT AND HEART ACT

ARTICLE I  
PREAMBLE

- 1.1 **Effective date of Amendment.** The Employer, or if applicable, the sponsor on behalf of the Employer, adopts this Amendment to the Plan to reflect recent law changes. This Amendment is effective as indicated below for the respective provisions.
- 1.2 **Superseding of inconsistent provisions.** This Amendment supersedes the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment.
- 1.3 **Employer's election.** The Employer adopts all the default provisions of this Amendment except as otherwise elected in Article II.
- 1.4 **Construction.** Except as otherwise provided in this Amendment, any reference to "Section" in this Amendment refers only to sections within this Amendment, and is not a reference to the Plan. The Article and Section numbering in this Amendment is solely for purposes of this Amendment, and does not relate to any Plan article, section or other numbering designations.
- 1.5 **Effect of restatement of Plan.** If the Employer restates the Plan, then this Amendment shall remain in effect after such restatement unless the provisions in this Amendment are restated or otherwise become obsolete (e.g., if the Plan is restated onto a plan document which incorporates PPA provisions).
- 1.6 **Adoption by prototype sponsor.** Except as otherwise provided herein, pursuant to the provisions of the Plan and Section 5.01 of Revenue Procedure 2005-16, the sponsor hereby adopts this Amendment on behalf of all adopting employers. The adoption by the sponsor becomes applicable with respect to an adopting Employer's Plan as of the last day of the first Plan Year beginning after December 31, 2008, unless the Employer individually adopts this Amendment, or an alternative amendment, prior to such date.

ARTICLE II  
EMPLOYER ELECTIONS

The Employer only needs to complete the questions in Sections 2.2 through 2.7 below in order to override the default provisions set forth below. If the Plan will use all of the default provisions, then these questions should be skipped and the Employer does not need to execute this Amendment.

- 2.1 **Default Provisions.** Unless the Employer elects otherwise in this Article, the following defaults will apply:
  - a. **If the Plan has a vesting schedule for nonelective contributions that does not meet the Pension Protection Act of 2006 (PPA), then the vesting schedule for any Employer nonelective contributions for Participants who complete an Hour of Service in a Plan Year beginning after December 31, 2006, will be the schedule below. Such schedule will apply to all nonelective contributions, even those made prior to January 1, 2007.**

**If the Plan has a graded vesting schedule (i.e., the vesting schedule includes a vested percentage that is more than 0% and less than 100%), then the vesting schedule will be a 6-year graded schedule (20% after 2 years of vesting service and an additional 20% for each year thereafter).**

**If the Plan has a cliff vesting schedule that requires more than 3 years of vesting service, then nonelective contributions will be nonforfeitable upon the completion of 3 years of vesting service.**
  - b. **Nonspousal beneficiary rollovers are allowed effective for distributions made after 12/31/08.**
  - c. **Hardship distributions for expenses of a beneficiary are not allowed.**
  - d. **The option to permit in-service distributions at age 62 (with respect to amounts attributable to a money purchase pension plan, target benefit plan, or any other defined contribution plan that has received a transfer of assets from a pension plan) is not adopted.**
  - e. **Qualified Reservist Distributions are not allowed.**
  - f. **Continued benefit accruals pursuant to the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act) are not provided.**
- 2.2 **Vesting (Article III).** The default vesting schedule applies unless a. is elected below.
  - a. ☐ In lieu of the above default vesting provisions, the employer elects the following schedule:
    1. ☐ 3 year cliff (a Participant's accrued benefit derived from employer nonelective contributions is nonforfeitable upon the Participant's completion of three years of vesting service).

2. ☐ 6 year graded schedule (20% after 2 years of vesting service and an additional 20% for each year thereafter).
3. ☐ Other (must be at least as liberal as 1. or 2. above at each point in time):

Years of vesting service	Nonforfeitable percentage
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %
_____	_____ %

The vesting schedule set forth herein only applies to Participants who complete an Hour of Service in a Plan Year beginning after December 31, 2006, and, unless b. is elected below, applies to all nonelective contributions subject to a vesting schedule.

- b. ☐ The vesting schedule will only apply to nonelective contributions made in Plan Years beginning after December 31, 2006 (the prior schedule will apply to nonelective contributions made in prior Plan Years).
- 2.3 **Non-spousal rollovers** (Article VII). Non-spousal rollovers are allowed after December 31, 2008 unless a. is elected below (Article VII provides that such distributions are always allowed after December 31, 2009):
- a. ☐ Use the following instead of the default (select one):
1. ☐ Non-spousal rollovers are not allowed.
  2. ☐ Non-spousal rollovers are allowed effective \_\_\_\_\_ (not earlier than January 1, 2007 and not later than January 1, 2010).
- 2.4 **Hardships** (Article VIII). Hardship distributions for expenses of beneficiaries will not be allowed unless elected below:
- a. ☐ Hardship distributions are allowed for beneficiary expenses (See IRS Notice 2007-7) (applies only for 401(k) or profit sharing plans that allow hardship distributions) effective as of August 17, 2006 unless another date is elected below:
1. ☐ \_\_\_\_\_ (may not be earlier than August 17, 2006).
- 2.5 **In-service distributions** (Article IX). In-service distributions at age 62 will not be allowed (except as otherwise permitted under the Plan without regard to this Amendment) unless elected below:
- a. ☐ In-service distributions will be allowed for Participants at age 62 (generally applies only for money purchase (including target benefit) plans, but may apply to any other defined contribution plans that have received a transfer of assets from a pension plan) effective as of the first day of the 2007 Plan Year unless another date is elected below:
1. ☐ \_\_\_\_\_ (may not be earlier than the first day of the 2007 Plan Year).
- AND**, the following limitations apply to in-service distributions:
2. ☐ The Plan already provides for in-service distributions and the restrictions set forth in the Plan (e.g., minimum amount of distributions or frequency of distributions) are applicable to in-service distributions at age 62.
  3. ☐ N/A. No limitations.
  4. ☐ The following elections apply to in-service distributions at age 62 (select all that apply):
    - a. ☐ The minimum amount of a distribution is \$\_\_\_\_\_ (may not exceed \$1,000).
    - b. ☐ No more than \_\_\_\_\_ distribution(s) may be made to a Participant during a Plan Year.
    - c. ☐ Distributions may only be made from accounts which are fully Vested.
    - d. ☐ In-service distributions may be made subject to the following provisions: \_\_\_\_\_ (must be definitely determinable and not subject to discretion).
- 2.6 **Qualified Reservist Distributions** (Article X). Qualified Reservist distributions will not be allowed unless elected below:
- a. ☐ Qualified Reservist Distributions are allowed effective as of \_\_\_\_\_ (may not be earlier than September 12, 2001).
- 2.7 **Continued benefit accruals** (Article XV). Continued benefit accruals for the Heart Act (Amendment Section 15.2) will not apply unless elected below:
- a. ☐ The provisions of Amendment Section 15.2 apply.

### ARTICLE III NONELECTIVE CONTRIBUTION VESTING

- 3.1 **Applicability.** This Article applies to Participants who complete an Hour of Service in a Plan Year beginning after December 31, 2006, with respect to accrued benefits derived from employer nonelective contributions made in Plan Years beginning after December 31, 2006. Unless otherwise elected by the employer in Amendment Section 2.2 above, this Article also will apply to all nonelective contributions subject to a vesting schedule, including nonelective contributions allocated under the Plan terms as of a date in a Plan Year beginning *before* January 1, 2007.

- 3.2 **Vesting schedule.** A Participant's accrued benefit derived from employer nonelective contributions vests as provided in Amendment Section 2.1.a, or if applicable, Amendment Section 2.2.

#### ARTICLE IV PARTICIPANT DISTRIBUTION NOTIFICATION

- 4.1 **180-day notification period.** For any distribution notice issued in Plan Years beginning after December 31, 2006, any reference to the 90-day maximum notice period prior to distribution in applying the notice requirements of Code §§402(f) (the rollover notice), 411(a)(1) (Participant's consent to distribution), and 417 (notice under the joint and survivor annuity rules) will become 180 days.
- 4.2 **Notice of right to defer distribution.** For any distribution notice issued in Plan Years beginning after December 31, 2006, the description of a Participant's right, if any, to defer receipt of a distribution also will describe the consequences of failing to defer receipt of the distribution.

#### ARTICLE V ROLLOVER OF AFTER-TAX/ROTH AMOUNTS

- 5.1 **Direct rollover to qualified plan/403(b) plan.** For taxable years beginning after December 31, 2006, a Participant may elect to transfer employee (after-tax) or Roth elective deferral contributions by means of a direct rollover to a qualified plan or to a 403(b) plan that agrees to account separately for amounts so transferred, including accounting separately for the portion of such distribution which is includible in gross income and the portion of such distribution which is not includible in gross income.

#### ARTICLE VI DIVESTMENT OF EMPLOYER SECURITIES

- 6.1 **Rule applicable to elective deferrals and employee contributions.** For Plan Years beginning after December 31, 2006, if any portion of the account of a Participant (including, for purposes of this Article VI, a beneficiary entitled to exercise the rights of a Participant) attributable to elective deferrals or employee contributions is invested in publicly-traded Employer securities, the Participant may elect to direct the Plan to divest any such securities, and to reinvest an equivalent amount in other investment options which satisfy the requirements of Section 6.3.
- 6.2 **Rule applicable to Employer contributions.** If any portion of a Participant's account attributable to nonelective or matching contributions is invested in publicly-traded Employer securities, then a Participant who has completed at least 3 years of vesting service, or a beneficiary of any deceased Participant entitled to exercise the right of a Participant, may elect to direct the Plan to divest any such securities, and to reinvest an equivalent amount in other investment options which satisfy the requirements of Section 6.3.
- a. **Three-year phase-in applicable to Employer contributions.** For Employer securities acquired with nonelective or matching contributions during a Plan Year beginning before January 1, 2007, the rule described in this Section 6.2 only applies to the percentage of the Employer securities (applied separately for each class of securities) as follows:
- | <u>Plan Year</u> | <u>Percentage</u> |
|------------------|-------------------|
| 2007             | 33                |
| 2008             | 66                |
| 2009             | 100               |
- b. **Exception to phase-in for certain age 55 Participants.** The 3-year phase-in rule of Section 6.2.a does not apply to a Participant who has attained age 55 and who has completed at least 3 years of service before the first Plan Year beginning after December 31, 2005.
- 6.3 **Investment options.** For purposes of this Article VI, other investment options must include not less than 3 investment options, other than Employer securities, to which the Participant may direct the proceeds of divestment of Employer securities required by this Article VI, each of which options is diversified and has materially different risk and return characteristics. The Plan must provide reasonable divestment and reinvestment opportunities at least quarterly. Except as provided in regulations, the Plan may not impose restrictions or conditions on the investment of Employer securities which the Plan does not impose on the investment of other Plan assets, other than restrictions or conditions imposed by reason of the application of securities laws or a condition permitted under IRS Notice 2006-107 or other applicable guidance.
- 6.4 **Exceptions for certain plans.** This Article VI does not apply to a one-participant plan, as defined in Code §401(a)(35)(E)(iv), or to an employee stock ownership plan ("ESOP") if: (i) there are no contributions to the ESOP (or related earnings) attributable to elective deferrals or matching contributions; and (ii) the ESOP is a separate plan, for purposes of Code §414(l), from any other defined benefit plan or defined contribution plan maintained by the same employer or employers. Pursuant to a uniform and nondiscriminatory policy, the Employer may provide for participants' divestment of Employer securities in a manner which is less restrictive than the provisions outlined in this Article VI.

- 6.5 **Treatment as publicly traded Employer securities.** Except as provided in Treasury regulations or in Code §401(a)(35)(F)(ii) (relating to certain controlled groups), a plan holding Employer securities which are not publicly traded Employer securities is treated as holding publicly traded Employer securities if any Employer corporation, or any member of a controlled group of corporations which includes such Employer corporation (as defined in Code §401(a)(35)(F)(iii)) has issued a class of stock which is a publicly traded Employer security.

#### ARTICLE VII DIRECT ROLLOVER OF NON-SPOUSAL DISTRIBUTION

- 7.1 **Non-spouse beneficiary rollover right.** For distributions after December 31, 2009, and unless otherwise elected in Section 2.3 of this Amendment, for distributions after December 31, 2006, a non-spouse beneficiary who is a "designated beneficiary" under Code §401(a)(9)(E) and the regulations thereunder, by a direct trustee-to-trustee transfer ("direct rollover"), may roll over all or any portion of his or her distribution to an individual retirement account the beneficiary establishes for purposes of receiving the distribution. In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of an eligible rollover distribution.
- 7.2 **Certain requirements not applicable.** Although a non-spouse beneficiary may roll over directly a distribution as provided in Section 7.1, any distribution made prior to January 1, 2010 is not subject to the direct rollover requirements of Code §401(a)(31) (including Code §401(a)(31)(B)), the notice requirements of Code §402(f) or the mandatory withholding requirements of Code §3405(c)). If a non-spouse beneficiary receives a distribution from the Plan, the distribution is not eligible for a "60-day" rollover.
- 7.3 **Trust beneficiary.** If the Participant's named beneficiary is a trust, the Plan may make a direct rollover to an individual retirement account on behalf of the trust, provided the trust satisfies the requirements to be a designated beneficiary within the meaning of Code §401(a)(9)(E).
- 7.4 **Required minimum distributions not eligible for rollover.** A non-spouse beneficiary may not roll over an amount which is a required minimum distribution, as determined under applicable Treasury regulations and other Revenue Service guidance. If the Participant dies before his or her required beginning date and the non-spouse beneficiary rolls over to an IRA the maximum amount eligible for rollover, the beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to Treas. Reg. §1.401(a)(9)-3, A-4(c), in determining the required minimum distributions from the IRA that receives the non-spouse beneficiary's distribution.

#### ARTICLE VIII DISTRIBUTION BASED ON BENEFICIARY HARDSHIP

- 8.1 **Beneficiary-based distribution.** If elected in Amendment Section 2.4.a, then beginning as of the date specified in such Section, a Participant's hardship event, for purposes of the Plan's safe harbor hardship distribution provisions pursuant to Treas. Reg. §1.401(k)-1(d)(3)(iii)(B), includes an immediate and heavy financial need of the Participant's primary beneficiary under the Plan, that would constitute a hardship event if it occurred with respect to the Participant's spouse or dependent as defined under Code §152 (such hardship events being limited to educational expenses, funeral expenses and certain medical expenses). For purposes of this Article, a Participant's "primary beneficiary under the Plan" is an individual who is named as a beneficiary under the Plan and has an unconditional right to all or a portion of the Participant's account balance under the Plan upon the Participant's death.

#### ARTICLE IX IN-SERVICE PENSION DISTRIBUTIONS

- 9.1 **Age 62 distributions.** If elected in Amendment Section 2.5.a, then beginning as of the date specified in such Section, if the Plan is a money purchase pension plan, a target benefit plan, or any other defined contribution plan that has received a transfer of assets from a pension plan, a Participant who has attained age 62 and who has not separated from employment may elect to receive a distribution of his or her vested account balance (or in case of a transferee plan, of the transferred account balance).

#### ARTICLE X QUALIFIED RESERVIST DISTRIBUTION

- 10.1 **401(k) distribution restrictions.** If elected in Amendment Section 2.6, then effective as of the date specified in such Section, the Plan permits a Participant to elect a Qualified Reservist Distribution, as defined in this Article X.
- 10.2 **Qualified Reservist Distribution defined.** A "Qualified Reservist Distribution" is any distribution to an individual who is ordered or called to active duty after September 11, 2001, if: (i) the distribution is from amounts attributable to elective deferrals in a 401(k) plan; (ii) the individual was (by reason of being a member of a reserve component, as defined in section 101 of title 37, United States Code) ordered or called to active duty for a period in excess of 179 days or for an indefinite period; and (iii) the Plan makes the distribution during the period beginning on the date of such order or call, and ending at the close of the active duty period.

**ARTICLE XI  
OTHER 401(k)/401(m) PLAN PROVISIONS**

- 11.1 **Gap period income on distributed excess contributions and excess aggregate contributions.** This Section applies to excess contributions (as defined in Code §401(k)(8)(B)) and excess aggregate contributions (as defined in Code §401(m)(6)(B)) made with respect to Plan Years beginning after December 31, 2007. The Plan administrator will not calculate and distribute allocable income for the gap period (i.e., the period after the close of the Plan Year in which the excess contribution or excess aggregate contribution occurred and prior to the distribution).
- 11.2 **Gap period income on distributed excess deferrals.** With respect to 401(k) plan excess deferrals (as defined in Code §402(g)) made in taxable year 2007, the Plan administrator must calculate allocable income for the taxable year and also for the gap period (i.e., the period after the close of the taxable year in which the excess deferral occurred and prior to the distribution); provided that the Plan administrator will calculate and distribute the gap period allocable income only if the Plan administrator in accordance with the Plan terms otherwise would allocate the gap period allocable income to the Participant's account. With respect to 401(k) plan excess deferrals made in taxable years after 2007, gap period income may not be distributed.
- 11.3 **Plan termination distribution availability.** For purposes of determining whether the Employer maintains an alternative defined contribution plan (described in Treas. Reg. §1.401(k)-1(d)(4)(i)) that would prevent the Employer from distributing elective deferrals (and other amounts, such as QNECs, that are subject to the distribution restrictions that apply to elective deferrals) from a terminating 401(k) plan, an alternative defined contribution plan does not include an employee stock ownership plan defined in Code §§4975(e)(7) or 409(a), a simplified employee pension as defined in Code §408(k), a SIMPLE IRA plan as defined in Code §408(p), a plan or contract that satisfies the requirements of Code §403(b), or a plan that is described in Code §§457(b) or (f).

**ARTICLE XII  
QUALIFIED OPTIONAL SURVIVOR ANNUITY**

- 12.1 **Right to Elect Qualified Optional Survivor Annuity.** Effective with respect to Plan Years beginning after December 31, 2007, a participant who elects to waive the qualified joint and survivor annuity form of benefit, if offered under the Plan, is entitled to elect the "qualified optional survivor annuity" at any time during the applicable election period. Furthermore, the written explanation of the joint and survivor annuity shall explain the terms and conditions of the "qualified optional survivor annuity."
- 12.2 **Definition of Qualified Optional Survivor Annuity.**
- a. **General.** For purposes of this Article, the term "qualified optional survivor annuity" means an annuity:
- (1) For the life of the participant with a survivor annuity for the life of the spouse which is equal to the "applicable percentage" of the amount of the annuity which is payable during the joint lives of the Participant and the spouse, and
- (2) Which is the actuarial equivalent of a single annuity for the life of the participant.
- Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.
- b. **Applicable percentage.** For purposes of this Section, the "applicable percentage" is based on the survivor annuity percentage (i.e., the percentage which the survivor annuity under the Plan's qualified joint and survivor annuity bears to the annuity payable during the joint lives of the participant and the spouse). If the survivor annuity percentage is less than 75 percent, then the "applicable percentage" is 75 percent; otherwise, the "applicable percentage" is 50 percent.

**ARTICLE XIII  
DIRECT ROLLOVER TO ROTH IRA**

- 13.1 **Roth IRA rollover.** For distributions made after December 31, 2007, a participant may elect to roll over directly an eligible rollover distribution to a Roth IRA described in Code §408A(b).

**ARTICLE XIV  
QUALIFIED DOMESTIC RELATIONS ORDERS**

- 14.1 **Permissible QDROs.** Effective April 6, 2007, a domestic relations order that otherwise satisfies the requirements for a qualified domestic relations order ("QDRO") will not fail to be a QDRO: (i) solely because the order is issued after, or revises, another domestic relations order or QDRO; or (ii) solely because of the time at which the order is issued, including issuance after the annuity starting date or after the Participant's death.
- 14.2 **Other QDRO requirements apply.** A domestic relations order described in Section 14.1 is subject to the same requirements and protections that apply to QDROs.

**ARTICLE XV  
HEART ACT PROVISIONS**

- 15.1 **Death benefits.** In the case of a death occurring on or after January 1, 2007, if a Participant dies while performing qualified military service (as defined in Code §414(u)), the survivors of the Participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Participant had resumed and then terminated employment on account of death.
- 15.2 **Benefit accrual.** If the Employer elects in Amendment Section 2.7 to apply this Section 15.2, then for benefit accrual purposes, the Plan treats an individual who dies or becomes disabled on or after January 1, 2007 (as defined under the terms of the Plan) while performing qualified military service with respect to the Employer as if the individual had resumed employment in accordance with the individual's reemployment rights under USERRA, on the day preceding death or disability (as the case may be) and terminated employment on the actual date of death or disability.
- a. **Determination of benefits.** The Plan will determine the amount of employee contributions and the amount of elective deferrals of an individual treated as reemployed under this Section 15.2 for purposes of applying paragraph Code §414(u)(8)(C) on the basis of the individual's average actual employee contributions or elective deferrals for the lesser of: (i) the 12-month period of service with the Employer immediately prior to qualified military service; or (ii) if service with the Employer is less than such 12-month period, the actual length of continuous service with the Employer.
- 15.3 **Differential wage payments.** For years beginning after December 31, 2008, (i) an individual receiving a differential wage payment, as defined by Code §3401(h)(2), is treated as an employee of the employer making the payment, (ii) the differential wage payment is treated as compensation, and (iii) the Plan is not treated as failing to meet the requirements of any provision described in Code §414(u)(1)(C) by reason of any contribution or benefit which is based on the differential wage payment.
- 15.4 **Severance from employment.** Notwithstanding Section 15.3(i), for purposes of Code §401(k)(2)(B)(i)(I), an individual is treated as having been severed from employment during any period the individual is performing service in the uniformed services described in Code §3401(h)(2)(A).
- a. **Suspension of deferrals.** If an individual elects to receive a distribution by reason of severance from employment, death or disability, the individual may not make an elective deferral or employee contribution during the 6-month period beginning on the date of the distribution.
- b. **Nondiscrimination requirement.** Section 15.3(iii) applies only if all employees of the Employer performing service in the uniformed services described in Code §3401(h)(2)(A) are entitled to receive differential wage payments (as defined in Code §3401(h)(2)) on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the employer, to make contributions based on the payments on reasonably equivalent terms (taking into account Code §§410(b)(3), (4), and (5)).

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Except with respect to any election made by the employer in Article II, this amendment is hereby adopted by the prototype sponsor on behalf of all adopting employers

**Sponsor's signature and Adoption Date are on file with Sponsor**

Sponsor Name: Wells Fargo Bank, N.A.

**NOTE: The Employer only needs to execute this Amendment if an election has been made in Article II.**

This Amendment has been executed this \_\_\_\_\_ day of \_\_\_\_\_.

Name of Plan: Rocky Mountain Chocolate Factory, Inc. 401(k) Plan

Name of Employer: Rocky Mountain Chocolate Factory, Inc.

By: \_\_\_\_\_  
EMPLOYER