

April 15, 1988

To Our Clients:

Change of Control Employment Agreements
And Other Employee Benefit Protections

This memorandum reviews certain issues relating to the protection and preservation of employee benefits after a change in control and provides our recommendations both with respect to a form of change of control employment agreement for key employees and amendments to employee benefit plans.

We continue to recommend reasonable change of control employment agreements and other change of control employee benefit protections as part of a corporation's general employee benefit program, as well as in connection with advance planning for takeovers.

Job insecurity for key employees as a result of both threatened and actual takeovers is a significant employee relations and management problem. Change of control severance and employment arrangements help a company to attract and retain key employees by assuring fair treatment in the event of a change of control. Equally important, by reducing the personal uncertainty and anxiety arising from a takeover situation, such arrangements help to assure full and impartial consideration of a takeover proposal by a target company's management. Adopting measures that safeguard existing employee benefits after a change in control also assures that all employees will receive the benefit of their employment arrangements regardless of any change of control.

Appropriately structured, golden parachutes and other employee benefit protections do not in any way deter takeovers or disadvantage shareholders. There is no question as to the legality of properly structured golden parachutes and other employee benefit protections and the adoption of these arrangements is generally within the ambit of the business judgment rule.

Because the standards of review and the burdens of proof that apply in litigation may well shift depending upon the context in which severance agreements are adopted, and severance agreements that are adopted along with other defensive mechanisms in response to a potential or real takeover threat are more likely to be enjoined as part of a package of responses a target corporation has taken, we cannot emphasize too strongly how important it is to adopt severance and benefit protection arrangements before a change of control becomes imminent.

In addition, a number of strategic reasons make it more favorable to adopt change of control employment agreements before a potential change of control situation arises. A target company's independent directors may no longer be deemed truly independent at a time when a potential or real threat to control exists. Moreover, a target company's board may be reluctant to take actions (such as adopting golden parachutes) in the context of a potential or threatened change of control because of the greater scrutiny these actions may face in such a situation and the higher standard such actions must satisfy to pass judicial muster.

I. Golden Parachute Agreements

In recent years, golden parachute agreements have become an important consideration in compensation planning. Generally, a "golden parachute" is a contract between an employee and his employer which provides additional compensation or benefits to an employee upon the occurrence of a change of control or ownership of the employer, or upon the termination of the employee's employment following such a change of control.

Attached as Annex A is a term sheet which contains a summary of the principal features of our model key employee change of control employment agreement that we recommend for adoption. Annex B is our model change of control employment agreement with alternative provisions.

The principal features of our model change of control employment agreement are as follows:

1. Form of Agreement. The model agreement guarantees the employee continued employment following a change of control on an equivalent basis to employment immediately before the change of control (e.g., in terms of position, authority, duties and responsibilities, compensation and benefits). If the employee is terminated other than for "cause" or if the employee terminates his employment under enumerated circumstances during the term of the agreement, the employee become entitled to a specific severance payment. The model employment agreement contains an "evergreen" provision providing for automatic yearly renewal unless notice is given.

The model employment agreement is entered into before a change of control, but becomes effective only upon the change of control. Under this arrangement, neither employer nor employee is contractually bound absent a change of control. Once a change of control occurs, however, the employee is protected.

2. Employees to be Covered. A key issue to be addressed is which employees are to receive the protection of the golden parachute agreements. Most companies cover only a limited number of key employees, although some companies have determined that it is appropriate to cover a much larger group.

If employees of different levels of seniority are to be offered such agreements, there are a number of ways to differentiate among them. The agreements providing for continued employment following a change of control, like our model agreement, typically continue existing salary and benefit arrangements and thereby maintain the existing spread in levels of salary and benefits. Some companies have offered varying periods of severance protection to different classes of employees and severance benefits of varied multiples of compensation. Other companies provide more senior employees with agreements that protect a larger variety of benefits than those covered for less senior employees. Some agreements combine these approaches.

Recently so-called "tin parachutes" -- arrangements whereby a large number of a company's non-managerial employees become entitled to certain benefits either upon a change of control or upon being dismissed subsequent to a change of control -- have received media attention. Such arrangements often provide that all employees of a company will become entitled to a one-time payment equal to two to four weeks' salary for each year of service upon a change of control. Tin parachutes are legal and their adoption is a matter that each company should consider in light of its particular personnel situation.

3. Definition of Change of Control. The model employment agreement defines a change of control as the acquisition of 20% to 30% of the company's common stock by a person or group, pursuant to a tender offer or otherwise, or a change in a majority of the board of directors from the board on the date of adoption (other than a change approved by the existing board), or a merger, liquidation, dissolution or sale of all or substantially all of the assets of the company. An exception may be provided for purchases by the company or company employee benefit plans and for so-called "white squire" arrangements.

Since almost all successful hostile takeovers culminate in negotiations with existing management and a merger agreement approved by the incumbent directors, change of control employment agreements that exempt transactions approved by the incumbent directors do not ensure that key employees benefit from the protections those agreements are intended to afford and we do not recommend them.

Similarly, a requirement of pre-change of control board action to activate benefits or the ability of the board to retract benefits puts the board in the awkward position of having to trade dollars for the shareholder with dollars for the management and is, therefore, not recommended.

4. Benefit Trigger. The severance payment provision most often used in golden parachute agreements limits benefits to a situation where the employee voluntarily leaves for "good

reason" following a change of control or is involuntarily terminated other than for "cause." "Good reason" is generally defined, as it is in our model agreement, as a diminution in compensation or level of responsibility, forced relocation to another area, or the failure to continue employment upon stated terms and conditions.

Some change of control employment agreements, however, provide that the covered employee becomes entitled to severance payments upon the voluntary or involuntary termination of his employment following a change of control. This sort of "single-trigger" contract is more vulnerable to attack than a "double-trigger" contract which requires the termination or constructive termination of employment by the employer because, among other things, a single-trigger contract does not contain any incentive for the covered employee to remain with the target company after a change of control and aid the transition to new ownership.

On the other hand, by assuring that target company employees will be financially independent of any potential acquirer after an acquisition is effected, single-trigger employment contracts may add a measure of impartiality to target company management.

Given these competing considerations, we recommend a modified single-trigger contract that protects the interests of both shareholders and covered employees. Our recommended form of agreement contains a conventional definition of termination for "good reason," pursuant to which a covered employee would receive severance benefits if terminated after a change in control. The contract also, however, allows the covered employee to collect severance benefits after voluntary termination of employment, provided that such voluntary termination occurs during a 30-day window period one year after the change of control. This one year cooling-off period is designed to ensure that the covered employee will be available during a crucial transition period.

5. Amount of Severance Benefit. The amount of the severance benefit is of prime importance. If severance benefits reach excessively high levels, they may be attacked as unreasonable.

As part of the Tax Reform Act of 1984, as amended by the Tax Reform Act of 1986, Congress imposed penalties on certain golden parachute payments in an effort to curb perceived abuses associated with the use of golden parachutes. The rules governing the application of the golden parachute tax penalties are complex.

Under the applicable provisions, the present value of all payments in the nature of compensation to an employee that are contingent on a change of control are added together. A payment is considered contingent on a change of control if the

payment is made because of the change of control. Payments in the nature of compensation include, among others, severance payments and benefits, accelerated payment of long-term awards and enhanced payments under supplemental retirement plans. However, specifically excluded are (1) any payments from qualified pension plans and (2) any payments which constitute "reasonable compensation" for services to be rendered after a change of control. All payments under contracts or agreements entered into within one year of a change of control are presumed to be contingent on the change of control (even if by their terms they are not triggered by a change of control) unless this presumption is rebutted by clear and convincing evidence.

If the total amount of change of control compensation payments to an employee equals or exceeds three times the employee's "base amount" (the average annual taxable compensation of the employee for the five years preceding the year in which the change of control occurs), the payments are considered "parachute payments," and the excess of the total amount of parachute payments over the greater of (a) the base amount or (b) "reasonable compensation" for services actually rendered prior to the change of control will be considered "excess parachute payments." Excess parachute payments are subject to a 20%, nondeductible excise tax (payable by the employee) and are not deductible by the employer.

Three approaches to dealing with golden parachute tax penalties are possible:

(i) payments can be "grossed-up" so that the employee is in the same after-tax position as if there were no excise tax;

(ii) payments that are contingent on a change of control can be "cut-back" to 299.9% of the base amount, so that no payments are considered parachute payments; or

(iii) payments can be scaled down only if the result is to give the employee a larger after-tax return than if the payment were not scaled down.

The model change of control employment agreement contains examples of each of these alternatives. Depending on the circumstances each of the alternatives may be appropriate. The board of directors may exercise its business judgment in selecting an alternative. Different alternatives may be selected for different alternatives.

6. Payment of Legal Fees. The model agreement provides that an employee will be reimbursed for any legal expenses incurred in litigating his rights under the agreement regardless of whether such litigation is successful.

7. Mitigation Clauses. Some golden parachute agreements require an employee to seek other employment and then reduce golden parachute benefits by all or a portion of the compensation earned from any successor employer. Other agreements do not impose a duty to mitigate, but merely provide for an offset in the event other employment is obtained. Most agreements, however, do not contain any mitigation or offset provisions and the absence of such a provision should not invalidate the agreement. See, e.g., Koenings v. Joseph Schlitz Brewing Co., 377 N.W.2d 593 (Wis. 1985) (holding that mitigation was not necessary given economic rationale for golden parachutes); Sullivan v. Easco Corp., 656 F. Supp. 531 (D. Md. 1987) (specific excusal of duty to mitigate held not an unreasonable penalty).

The legislative history of the golden parachute tax rules indicates that damages under an employment contract may constitute "reasonable compensation" for services to be rendered after a change of control (and thus outside the scope of the parachute tax) if:

- (i) such damages do not exceed the compensation the individual would have received if employment continued;
- (ii) the individual demonstrates that an offer to work was made and rejected; and
- (iii) any damages are reduced by mitigation.

Thus, change of control employment agreements with mitigation clauses may effectively avoid the golden parachute excise tax for employees with significant other parachute payments who could receive little or no severance under a pure "cutback" approach (as described below). However, until regulations that clarify the availability of these tax benefits are adopted, we do not generally recommend inclusion of a mitigation clause and the model agreement states that there is no duty to mitigate.

8. Protection of Other Benefits. The model agreement provides for continuation of medical and life insurance benefits or for substitute benefits and for a payment in lieu of lost pension benefits.

II. Protection of Certain Employee Benefits

Most major companies sponsor a variety of employee benefit programs whose purposes may be frustrated by a change of control. Accordingly, many companies have adopted measures to ensure that benefit expectancies are not defeated by new management. If these measures are contingent on a change of control, the benefits may be considered "parachute payments" for tax purposes. Therefore, protection of employee benefits should

be carefully crafted in light of potential golden parachute tax penalties. Some of the more typical protective strategies are as follows.

1. Stock Option Plans; Restricted Stock Plans.

Incentive stock options, non-qualified stock option and stock appreciation right ("SAR") plans generally provide for deferred exercisability of some or all options or SARs. Restricted stock plans similarly provide for deferred vesting of shares. We recommend adoption of provisions calling for acceleration of the exercisability of options and SARs and the vesting of restricted stock in the event of a change of control (including, in certain cases, upon commencement of a tender or exchange offer). We also recommend adoption of provisions for canceling options and SARs in exchange for a cash payment in the event of a change of control or provide for "limited" SARs which permit a cash payment upon commencement of a tender or exchange offer. Generally, the board of directors (or its compensation committee) can adopt an acceleration provision without shareholder approval. Similarly, such a cash-out provision can generally be adopted without a shareholder vote if the plan provides for the issuance of SARs.

2. SERPs. Supplemental executive retirement plans ("SERPs") provide enhanced pension benefits for key employees. These plans are generally non-qualified and unfunded and require that covered employees remain in service until normal or early retirement age in order to receive benefits under such the plan. We recommend that such plans be modified to protect accrued benefits in the event of a change of control. Sometimes additional benefits are provided in those circumstances as well.

3. Performance and Bonus Plans. Under bonus or performance plans, if the company or the employee meets certain goals during the performance period, which may range over one or more years, the employee will receive a prescribed payment. This payment may be either immediate or deferred. Especially where such plans extend beyond one year, we recommend that such plans be modified to protect the proration of all benefits to the date of a change of control and the acceleration of all payments owing on the date of a change of control. The manner of proration depends upon the type of plan. In addition, we recommend that companies with employees who receive a substantial portion of their annual compensation as a year-end bonus consider adoption of a plan under which such employees receive a pro-rated portion of their expected bonus in the event of a change of control.

4. Qualified Plans. Qualified plans have extensive ERISA protections and generally cannot be tampered with by an acquirer. Nevertheless, absent a protective provision, a qualified defined benefit plan may be terminated and any excess assets therein recovered by the acquirer (subject to income tax and a newly enacted 10% federal excise tax). Even if not terminated, overfunding in a qualified defined benefit plan will

reduce future required contributions. Furthermore, employees who participate in a qualified plan and who are terminated following a change of control will generally forfeit unvested benefits (absent extensive terminations of participants' employment which results in a "partial termination" of the plan). Thus, we recommend consideration of amendments to qualified plans which provide for immediate vesting of forfeitable portions of participants' accounts under the plan in the event of a change of control or full vesting of a participant's account upon termination of employment following a change of control. In addition, it may be appropriate to provide that, at the time of a change of control or upon termination of the plan, any excess assets will be allocated to increase the benefits of participants, thereby preventing an acquirer from removing those assets from the plan.

5. Rabbi Trusts. A "rabbi trust" is a trust established to provide a pool of funds for the payment of employee benefits due in the future, whether or not related to a change of control. In order to avoid taxation of the employees upon the creation of the trust, the employer must make sure that it is a grantor trust the assets of which remain subject to the claims of creditors of the employer. Companies with large amounts of deferred compensation obligations or other unfunded employee benefits should consider creating a rabbi trust. While not a completely secure arrangement, the rabbi trusts provide employees some level of assurance that the benefits will be paid. Annex C contains a draft of a model rabbi trust.

III. Golden Parachute Agreements -- Certain Legal Considerations

The case law relating to the adoption of golden parachutes and the timing of their adoption is not extensive. However, those courts that have addressed the issue have generally found such agreements to be enforceable. In Orin v. Huntington Bancshares, Inc. (Ohio Cuyahoga C.P. Oct. 1, 1986), aff'd (Ohio Ct. App. Nov. 25, 1987), the court found severance agreements which were made part of an employment contract enforceable, even though they were entered into after the corporation learned of a threatened takeover.

A board of directors' decision to adopt severance agreements is usually analyzed under the business judgment rule. "A hallmark of the business judgment rule is that a court will not substitute its judgment for that of the board if the latter's decision can be 'attributed to any rational business purpose'" Unocal Corp. v. Mesa Petroleum Co., 493 A.2d 946, 954 (Del. 1985).

Despite its general applicability, the business judgment rule, as articulated in Unocal and numerous other cases, will not always apply to decisions taken by a board of directors faced with a takeover situation. Instead, the Delaware Supreme Court has held that, in such circumstances, "if a defensive

measure is to come within the ambit of the business judgment rule, it must be reasonable in relation to the threat posed." Unocal, 493 A.2d at 955. Thus, if a reviewing court deems a target company's decision to adopt golden parachutes or otherwise modify its employment arrangements to be a defensive measure against a threatened or pending change of control, the board's decision could be analyzed under this stricter Unocal standard. If this standard were to be found to apply, the target company's board would have the burden of showing that the adoption of severance agreements is "reasonable in relation to the threat posed" to the corporation by the takeover threat.

One court has already concluded, albeit in dicta, that golden parachute clauses "may be unenforceable if enacted with notice of an impending tender offer or during a hostile takeover battle." Bender v. Highway Truck Drivers & Helpers Local 107, 598 F. Supp. 178, 189 n. 16 (E.D. Pa. 1984), aff'd mem., 770 F.2d 1066 (3d Cir. 1985). Similarly, in Buckhorn, Inc. v. Ropak Corp., 656 F. Supp. 209 (S.D. Ohio 1987), an Ohio case that applied Delaware law, the court shifted to the board the burden of proof on the propriety of the severance agreements and stock option plans, because they were "defensive measures adopted by [the] directors only after they learned of [the hostile] tender offer."

In Buckhorn, the court analyzed two sets of modifications made to an employment agreement: the first prior to the commencement of a tender offer, and the second after the tender offer had begun. The court determined that the first set of changes were properly analyzed under the traditional business judgment rule, while the second group of amendments were better considered under the Unocal test.

Having established this conceptual framework, the Buckhorn court upheld severance agreements that were adopted in response to the tender offer, concluding that they were a reasonable response to the threat posed and "advance[d] the shareholders interest in retaining key management personnel . . . during a critical transition period." Notably, however, some of the measures adopted, such as the extension of an employment contract from four to six years, the acceleration at-will of a key manager's pension plan within seven days after the change in control, and the granting of new stock options which vested on a change in control were found not reasonable in relation to the threat posed under the Unocal standard. The court concluded that such stock options did little to increase job security and noted that the substantial stock options were detrimental to stockholders.

In a recent decision of potentially far reaching application, a federal district court in Delaware, applying Delaware law, applied a third, and even more stringent, standard of review to severance and employee benefit protection arrangement adopted while a threatened takeover was pending and

target company management was planning a defensive restructuring to thwart the takeover. Black & Decker Corporation v. American Standard Inc., Civ. Act. No. 88-50 LON (D. Del. Mar. 16, 1988). The court's reasoning stemmed from its conclusion that the restructuring planned by the target, American Standard, amounted to a sale of the company because, among other factors, management and employees would acquire a greater than 50% equity interest following the recapitalization.

The result in Black & Decker might have been different had American Standard adopted golden parachute and other benefit protection arrangements while a hostile takeover was pending but before a decision to "sell" (or recapitalize) the company had been made. However, the result would almost certainly have been different if such measures were adopted before any threat of takeover was present.

In addition, from time to time legislation has been introduced that would proscribe the adoption of golden parachutes after a takeover bid has been made.

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Advance planning with regard to golden parachute arrangements and change of control protection for employee benefits is critical. It should be done now.

M. Lipton
J.J. Schwartz
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Annex A



SUMMARY OF TERMS

Change of Control Employment Agreement

- Agreement
- Change of Control Employment Agreements to be entered into with key employees of the Company.
- Effective Date
- The Agreement become effective, and the Employee becomes entitled to certain compensation during the Employment Period, when a Change of Control occurs during the Change of Control Period.
- Change of Control Period
- Any time before earlier of [third] anniversary of date of the Agreement or the Employee's normal retirement date, with provision for automatic renewal.
- Change of Control
- A Change of Control shall mean: (i) an acquisition (other than from the Company) by a person or a group [(excluding the Company or an employee benefit plan)] of 20% or more of either (x) the Company's common stock or (y) the Company's voting stock, (ii) a change in a majority of the Board of Directors (excluding any persons approved by a vote of at least a majority of the Incumbent Board); or (iii) the approval by the stockholders of a merger, consolidation [(other than a merger or consolidation in which stockholders of the Company receive [50%] or more of the stock of the surviving company)], or a liquidation, dissolution or the sale of substantially all of the assets of the Company.
- Employment Period
- From date of Change of Control until earlier of [third] anniversary of Change of Control or the Employee's normal retirement date.

Compensation During
Employment Period

- A monthly base salary equal to or greater than highest monthly base salary paid to the Employee by the Company during previous year.
- An annual bonus in cash equal to or greater than the [average] bonus payable to the Employee in respect of the immediately preceding [three] fiscal year[s].
- Incentive, savings, welfare benefit, fringe benefit and retirement plan participation at least equal to most favorable available in 90-day period prior to Effective Date.

Termination of
Employment After
a Change of Control

- Upon death or disability of the Employee.
- Upon termination of the Employee for cause.
- Upon termination of employment by the Employee for good reason. Good reason shall mean: the diminution of responsibilities, assignment to inappropriate duties, failure of the Company to comply with compensation provisions, transfer more than thirty-five miles, purported termination by the Company other than in accordance with the Agreement, or failure of the Company to require any successor to Company to comply with the Agreement. Determination by the Employee of "good reason" shall be conclusive if made in good faith.
- Upon termination for any reason within 30 days of the first anniversary of the Effective Date (the "Window Period").

Obligations
of the Company
Upon Termination

Death

- No obligations other than obligations accrued at the Date of Termination (e.g., salary, pro rata bonus, deferred compensation, vacation pay, and other accrued benefits ("Accrued Obligations")).

Disability

- Disability benefits and all Accrued Obligations as of the Date of Termination.

Cause

- Full base salary through termination date.

Other than for
Cause or during
Window Period or
for Good Reason

- Lump sum cash payment consisting of:
(a) the Employee's base salary through the Date of Termination, (b) a proportionate bonus based upon the Employee's annual bonus for the last three fiscal years, (c) [two] times the sum of the base salary plus bonus the Employee is entitled to under the Agreement, (d) other Accrued Obligations, and (e) the difference between the actuarial equivalent of the retirement benefit the Employee would receive if he remained employed for the Employment Period and the actuarial equivalent of the Employee's actual retirement benefit. In addition, for the remainder of the Employment Period, the Employee is entitled to continued employee benefits.

[Certain Additional
Payments by
the Company

- If any payment to the Employee, whether pursuant to the Agreement or otherwise, would be subject to the excise tax imposed by Section 4999 of the Internal Revenue Code, then an additional payment shall be made to the Employee such that the Employee receives on a net basis the amount the Employee would have received absent the applicability of such Code section.]

[Certain Reduction
of Payments by the
Company]

- If any payment to the Employee, whether pursuant to the Agreement or otherwise, would be subject to the excise tax imposed by Section 4999 of the Internal Revenue Code, then the payments pursuant to the Agreement [or otherwise] will be reduced to avoid imposition of the excise tax.]

[Certain Reduction
of Payments by the
Company]

- If any payment to the Employee, whether pursuant to the Agreement or otherwise, would be subject to the excise tax imposed by Section 4999 of the Internal Revenue Code, then the payments pursuant to this Agreement [or otherwise] shall be reduced if such reduction results in a greater net after tax benefit to the Employee.]

Confidential
Information

- The Employee shall hold for the benefit of the Company all confidential information concerning the Company obtained over the course of his Employment.

Successors

- The Agreement is not assignable by the Employee other than by upon his death without the written consent of the Company.
- The Company will require its successors to expressly assume its obligations under the Agreement and the Agreement will then also benefit such successors.

Governing Law

- [State of the Company's Incorporation]

Employment
at Will

- Prior to Effective Date, the Employee's employment is at will.

Annex B

EMPLOYMENT AGREEMENT

AGREEMENT by and between _____
(the "Company"), and _____ (the "Employee"), dated
as of the ____ day of _____, 1988.

The Board of Directors of the Company (the "Board"), has determined that it is in the best interests of the Company and its shareholders to assure that the Company will have the continued dedication of the Employee, notwithstanding the possibility, threat, or occurrence of a Change of Control (as defined below) of the Company. The Board believes it is imperative to diminish the inevitable distraction of the Employee by virtue of the personal uncertainties and risks created by a pending or threatened Change of Control, to encourage the Employee's full attention and dedication to the Company currently and in the event of any threatened or pending Change of Control, and to provide the Employee with compensation arrangements upon a Change of Control which provide the Employee with individual financial security and which are competitive with those of other corporations and, in order to accomplish these objectives, the Board has caused the Company to enter into this Agreement.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. Certain Definitions. (a) The "Effective Date" shall be the first date during the "Change of Control Period" (as defined in Section 1(b)) on which a Change of Control occurs. Anything in this Agreement to the contrary notwithstanding, if the Employee's employment with the Company is terminated prior to the date on which a Change of Control occurs, and it is reasonably demonstrated that such termination (1) was at the request of a third party who has taken steps reasonably calculated to effect a Change of Control or (2) otherwise arose in connection with or anticipation of a Change of Control, then for all purposes of this Agreement the "Effective Date" shall mean the date immediately prior to the date of such termination.

(b) The "Change of Control Period" is the period commencing on the date hereof and ending on the earlier to occur of (i) the [third] anniversary of such date or (ii) the first day of the month next following the Employee's normal retirement date ("Normal Retirement Date") under the Company's [retirement plan] or any successor retirement plan (the "Retirement Plan"); provided, however, that commencing on the date one year after the date hereof, and on each annual anniversary of such date (such date and each annual anniversary thereof is hereinafter referred to as the

"Renewal Date"), the Change of Control Period shall be automatically extended so as to terminate on the earlier of (x) [three] years from such Renewal Date or (y) the first day of the month coinciding with or next following the Employee's Normal Retirement Date, unless at least 60 days prior to the Renewal Date the Company shall give notice that the Change of Control Period shall not be so extended.

2. Change of Control. For the purpose of this Agreement, a "Change of Control" shall mean:

(i) The acquisition (other than from the Company) by any person, entity or "group", within the meaning of Section 13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934 (the "Exchange Act"), [(excluding, for this purpose, the Company or its subsidiaries, [or any employee benefit plan of the Company or its subsidiaries which acquires beneficial ownership of voting securities of the Company)] of beneficial ownership, (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of [20% to 30%] or more of either the then outstanding shares of common stock or the combined voting power of the Company's then outstanding voting securities entitled to vote generally in the election of directors; or

(ii) Individuals who, as of the date hereof, constitute the Board (as of the date hereof the

"Incumbent Board") cease for any reason to constitute at least a majority of the Board, provided that any person becoming a director subsequent to the date hereof whose election, or nomination for election by the Company's shareholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board (other than an election or nomination of an individual whose initial assumption of office is in connection with an actual or threatened election contest relating to the election of the Directors of the Company, as such terms are used in Rule 14a-11 of Regulation 14A promulgated under the Exchange Act) shall be, for purposes of this Agreement, considered as though such person were a member of the Incumbent Board; or

(iii) Approval by the stockholders of the Company of a [reorganization, merger, consolidation,] [in each case, with respect to which persons who were the stockholders of the Company immediately prior to such reorganization, merger or consolidation do not, immediately thereafter, own more than [50%] of the combined voting power entitled to vote generally in the election of directors of the reorganized, merged or consolidated company's then outstanding voting securities, or a] liquidation or dissolution of the Company or of the sale of all or substantially all of the assets of the Company.

3. Employment Period. The Company hereby agrees to continue the Employee in its employ, and the Employee hereby agrees to remain in the employ of the Company, for the period commencing on the Effective Date and ending on the earlier to occur of (a) the [third] anniversary of such date or (b) the first day of the month coinciding with or next following the Employee's Normal Retirement Date (the "Employment Period").

4. Terms of Employment. (a) Position and Duties. (i) During the Employment Period, (A) the Employee's position (including status, offices, titles and reporting requirements), authority, duties and responsibilities shall be at least commensurate in all material respects with the most significant of those held, exercised and assigned at any time during the 90-day period immediately preceding the Effective Date and (B) the Employee's services shall be performed at the location where the Employee was employed immediately preceding the Effective Date or any office or location less than [thirty-five (35) miles] from such location.

(ii) During the Employment Period, and excluding any periods of vacation and sick leave to which the Employee is entitled, the Employee agrees to devote reasonable attention and time during normal business hours to

the business and affairs of the Company and, to the extent necessary to discharge the responsibilities assigned to the Employee hereunder, to use the Employee's reasonable best efforts to perform faithfully and efficiently such responsibilities. During the Employment Period it shall not be a violation of this Agreement for the Employee to (A) serve on corporate, civic or charitable boards or committees, (B) deliver lectures, fulfill speaking engagements or teach at educational institutions and (C) manage personal investments, so long as such activities do not significantly interfere with the performance of the Employee's responsibilities as an employee of the Company in accordance with this Agreement. It is expressly understood and agreed that to the extent that any such activities have been conducted by the Employee prior to the Effective Date, the continued conduct of such activities (or the conduct of activities similar in nature and scope thereto) subsequent to the Effective Date shall not thereafter be deemed to interfere with the performance of the Employee's responsibilities to the Company.

(b) Compensation. (i) Base Salary. During the Employment Period, the Employee shall receive a base salary ("Base Salary") at a monthly rate at least equal to the highest monthly base salary paid or payable to the Employee by the Company during the twelve-month period immediately

preceding the month in which the Effective Date occurs. During the Employment Period, the Base Salary shall be reviewed at least annually and shall be increased at any time and from time to time as shall be substantially consistent with increases in base salary awarded in the ordinary course of business to other key employees of the Company and its subsidiaries. Any increase in Base Salary shall not serve to limit or reduce any other obligation to the Employee under this Agreement. Base Salary shall not be reduced after any such increase.

(ii) Annual Bonus. In addition to Base Salary, the Employee shall be awarded, for each fiscal year during the Employment Period, an annual bonus (an "Annual Bonus") (either pursuant to the [incentive compensation plan] of the Company or otherwise) in cash at least equal to the [average] bonus payable to the Employee from the Company and its subsidiaries in respect of the [three] fiscal years immediately preceding the fiscal year in which the Effective Date occurs.

(iii) Incentive, Savings and Retirement Plans. In addition to Base Salary and Annual Bonus payable as hereinabove provided, the Employee shall be entitled to participate during the Employment Period in all incentive, savings and retirement plans, practices, policies and pro-

grams applicable to other key employees of the Company and its subsidiaries (including [Company's employee benefit plans], in each case providing benefits which are the economic equivalent to those in effect or as subsequently amended). Such plans, practices, policies and programs, in the aggregate, shall provide the Employee with compensation, benefits and reward opportunities at least as favorable as the most favorable of such compensation, benefits and reward opportunities provided by the Company for the Employee under such plans, practices, policies and programs as in effect at any time during the 90-day period immediately preceding the Effective Date or, if more favorable to the Employee, as provided at any time thereafter with respect to other key employees of the Company and its subsidiaries.

(iv) Welfare Benefit Plans. During the Employment Period, the Employee and/or the Employee's family, as the case may be, shall be eligible for participation in and shall receive all benefits under welfare benefit plans, practices, policies and programs provided by the Company and its subsidiaries (including, without limitation, medical, prescription, dental, disability, salary continuance, employee life, group life, accidental death and travel accident insurance plans and programs), at least as favorable as the most favorable of such plans, practices, policies and programs in effect at any time during the

90-day period immediately preceding the Effective Date or, if more favorable to the Employee and/or the Employee's family, as in effect at any time thereafter with respect to other key employees of the Company and its subsidiaries.

(v) Expenses. During the Employment Period, the Employee shall be entitled to receive prompt reimbursement for all reasonable expenses incurred by the Employee in accordance with the most favorable policies, practices and procedures of the Company and its subsidiaries in effect at any time during the 90-day period immediately preceding the Effective Date or, if more favorable to the Employee, as in effect at any time thereafter with respect to other key employees of the Company and its subsidiaries.

(vi) Fringe Benefits. During the Employment Period, the Employee shall be entitled to fringe benefits, including use of an automobile and payment of related expenses, in accordance with the most favorable plans, practices, programs and policies of the Company and its subsidiaries in effect at any time during the 90-day period immediately preceding the Effective Date or, if more favorable to the Employee, as in effect at any time thereafter with respect to other key employees of the Company and its subsidiaries.

(vii) Office and Support Staff. During the Employment Period, the Employee shall be entitled to an office or offices of a size and with furnishings and other appointments, and to secretarial and other assistance, at least equal to the most favorable of the foregoing provided to the Employee by the Company and its subsidiaries at any time during the 90-day period immediately preceding the Effective Date or, if more favorable to the Employee, as provided at any time thereafter with respect to other key employees of the Company and its subsidiaries.

(viii) Vacation. During the Employment Period, the Employee shall be entitled to paid vacation in accordance with the most favorable plans, policies, programs and practices of the Company and its subsidiaries as in effect at any time during the 90-day period immediately preceding the Effective Date or, if more favorable to the Employee, as in effect at any time thereafter with respect to other key employees of the Company and its subsidiaries.

5. Termination. (a) Death or Disability. This Agreement shall terminate automatically upon the Employee's death. If the Company determines in good faith that the Disability of the Employee has occurred (pursuant to the definition of "Disability" set forth below), it may give to the Employee written notice of its intention to terminate

the Employee's employment. In such event, the Employee's employment with the Company shall terminate effective on the 30th day after receipt of such notice by the Employee (the "Disability Effective Date"), provided that, within the 30 days after such receipt, the Employee shall not have returned to full-time performance of the Employee's duties. For purposes of this Agreement, "Disability" means disability which, at least 26 weeks after its commencement, is determined to be total and permanent by a physician selected by the Company or its insurers and acceptable to the Employee or the Employee's legal representative (such agreement as to acceptability not to be withheld unreasonably).

(b) Cause. The Company may terminate the Employee's employment for "Cause." For purposes of this Agreement, "Cause" means (i) an act or acts of personal dishonesty taken by the Employee and intended to result in substantial personal enrichment of the Employee at the expense of the Company, (ii) repeated violations by the Employee of the Employee's obligations under Section 4(a) of this Agreement which are demonstrably willful and deliberate on the Employee's part and which are not remedied in a reasonable period of time after receipt of written notice from the Company or (iii) the conviction of the Employee of a felony.

(c) Good Reason. The Employee's employment may be terminated by the Employee for Good Reason. For purposes of this Agreement, "Good Reason" means

(i) the assignment to the Employee of any duties inconsistent in any respect with the Employee's position (including status, offices, titles and reporting requirements), authority, duties or responsibilities as contemplated by Section 4(a) of this Agreement, or any other action by the Company which results in a diminution in such position, authority, duties or responsibilities, excluding for this purpose an isolated, insubstantial and inadvertent action not taken in bad faith and which is remedied by the Company promptly after receipt of notice thereof given by the Employee;

(ii) any failure by the Company to comply with any of the provisions of Section 4(b) of this Agreement, other than an isolated, insubstantial and inadvertent failure not occurring in bad faith and which is remedied by the Company promptly after receipt of notice thereof given by the Employee;

(iii) the Company's requiring the Employee to be based at any office or location other than that described in Section 4(a)(i)(B) hereof, except for travel reasonably required in the performance of the Employee's responsibilities;

(iv) any purported termination by the Company of the Employee's employment otherwise than as expressly permitted by this Agreement; or

(v) any failure by the Company to comply with and satisfy Section 11(c) of this Agreement.

For purposes of this Section 5(c), any good faith determination of "Good Reason" made by the Employee shall be conclusive. Anything in this Agreement to the contrary notwithstanding, a termination by the Employee for any reason during the 30-day period immediately following the first anniversary of the Effective Date shall be deemed to be a termination for Good Reason for all purposes of this Agreement.

(d) Notice of Termination. Any termination by the Company for Cause or by the Employee for Good Reason shall be communicated by Notice of Termination to the other party hereto given in accordance with Section 12(b) of this Agreement. For purposes of this Agreement, a "Notice of Termination" means a written notice which (i) indicates the specific termination provision in this Agreement relied upon, (ii) sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Employee's employment under the provision so indicated and (iii) if the Date of Termination (as defined below) is other

than the date of receipt of such notice, specifies the termination date (which date shall be not more than fifteen (15) days after the giving of such notice). The failure by the Employee to set forth in the Notice of Termination any fact or circumstance which contributes to a showing of Good Reason shall not waive any right of the Employee hereunder or preclude the Employee from asserting such fact or circumstance in enforcing his rights hereunder.

(e) Date of Termination. "Date of Termination" means the date of receipt of the Notice of Termination or any later date specified therein, as the case may be; provided, however, that (i) if the Employee's employment is terminated by the Company other than for Cause or Disability, the Date of Termination shall be the date on which the Company notifies the Employee of such termination and (ii) if the Employee's employment is terminated by reason of death or Disability, the Date of Termination shall be the date of death of the Employee or the Disability Effective Date, as the case may be.

6. Obligations of the Company upon Termination.

(a) Death. If the Employee's employment is terminated by reason of the Employee's death, this Agreement shall terminate without further obligations to the Employee's legal representatives under this Agreement, other than those obli-

gations accrued or earned and vested (if applicable) by the Employee as of the Date of Termination, including, for this purpose (i) the Employee's full Base Salary through the Date of Termination at the rate in effect on the Date of Termination or, if higher, at the highest rate in effect at any time from the 90-day period preceding the Effective Date through the Date of Termination (the "Highest Base Salary"), (ii) the product of the Annual Bonus paid to the Employee for the last full fiscal year and a fraction, the numerator of which is the number of days in the current fiscal year through the Date of Termination, and the denominator of which is 365 and (iii) any compensation previously deferred by the Employee (together with any accrued interest thereon) and not yet paid by the Company and any accrued vacation pay not yet paid by the Company (such amounts specified in clauses (i), (ii) and (iii) are hereinafter referred to as "Accrued Obligations"). All such Accrued Obligations shall be paid to the Employee's estate or beneficiary, as applicable, in a lump sum in cash within 30 days of the Date of Termination. Anything in this Agreement to the contrary notwithstanding, the Employee's family shall be entitled to receive benefits at least equal to the most favorable benefits provided by the Company and any of its subsidiaries to surviving families of employees of the Company and such subsidiaries under such plans, programs, practices and

policies relating to family death benefits, if any, in accordance with the most favorable plans, programs, practices and policies of the Company and its subsidiaries in effect at any time during the 90-day period immediately preceding the Effective Date or, if more favorable to the Employee and/or the Employee's family, as in effect on the date of the Employee's death with respect to other key employees of the Company and its subsidiaries and their families.

(b) Disability. If the Employee's employment is terminated by reason of the Employee's Disability, this Agreement shall terminate without further obligations to the Employee, other than those obligations accrued or earned and vested (if applicable) by the Employee as of the Date of Termination, including for this purpose, all Accrued Obligations. All such Accrued Obligations shall be paid to the Employee in a lump sum in cash within 30 days of the Date of Termination. Anything in this Agreement to the contrary notwithstanding, the Employee shall be entitled after the Disability Effective Date to receive disability and other benefits at least equal to the most favorable of those provided by the Company and its subsidiaries to disabled employees and/or their families in accordance with such plans, programs, practices and policies relating to disability, if any, in accordance with the most favorable plans, programs,

practices and policies of the Company and its subsidiaries in effect at any time during the 90-day period immediately preceding the Effective Date or, if more favorable to the Employee and/or the Employee's family, as in effect at any time thereafter with respect to other key employees of the Company and its subsidiaries and their families.

(c) Cause; Other than for Good Reason. If the Employee's employment shall be terminated for Cause, this Agreement shall terminate without further obligations to the Employee [other than the obligation to pay to the Employee the Highest Base Salary through the Date of Termination plus the amount of any compensation previously deferred by the Employee (together with accrued interest thereon)]. If the Employee terminates employment other than for Good Reason, this Agreement shall terminate without further obligations to the Employee, other than those obligations accrued or earned and vested (if applicable) by the Employee through the Date of Termination, including for this purpose, all Accrued Obligations. All such Accrued Obligations shall be paid to the Employee in a lump sum in cash within 30 days of the Date of Termination.

(d) Good Reason; Other Than for Cause or Disability. If, during the Employment Period, the Company shall terminate the Employee's employment other than for Cause,

Disability, or death or if the Employee shall terminate his employment for Good Reason:

(i) the Company shall pay to the Employee in a lump sum in cash within 30 days after the Date of Termination the aggregate of the following amounts:

A. to the extent not theretofore paid, the Employee's Highest Base Salary through the Date of Termination; and

B. the product of (x) the Annual Bonus paid to the Employee for the last full fiscal year (if any) ending during the Employment Period or, if higher, the Annual Bonus paid to the Employee for the last full fiscal year prior to the Effective Date (as applicable, the "Recent Bonus") and (y) a fraction, the numerator of which is the number of days in the current fiscal year through the Date of Termination and the denominator of which is 365; and

C. the product of (x) [two] and (y) the sum of (i) the Highest Base Salary and (ii) the Recent Bonus; and

D. in the case of compensation previously deferred by the Employee, all amounts previously deferred (together with any accrued interest there-

on) and not yet paid by the Company, and any accrued vacation pay not yet paid by the Company; and

[E. the Employee shall be entitled to receive a lump-sum retirement benefit equal to the difference between (a) the actuarial equivalent of the benefit under the Retirement Plan and the [supplemental and/or excess retirement plan] the Employee would receive if he remained employed by the Company at the compensation level provided for in Sections 4(b)(i) and 4(b)(ii) of this Agreement for the remainder of the Employment Period and (b) the actuarial equivalent of his benefit, if any, under the Retirement Plan and the [supplemental and/or excess retirement plan;] and

(ii) for the remainder of the Employment Period, or such longer period as any plan, program, practice or policy may provide, the Company shall continue benefits to the Employee and/or the Employee's family at least equal to those which would have been provided to them in accordance with the plans, programs, practices and policies described in Section 4(b)(iv) of this Agreement if the Employee's employment had not been terminated, including health insurance and life insurance, in accor-

dance with the most favorable plans, practices, programs or policies of the Company and its subsidiaries during the 90-day period immediately preceding the Effective Date or, if more favorable to the Employee, as in effect at any time thereafter with respect to other key employees and their families and for purposes of eligibility for retiree benefits pursuant to such plans, practices, programs and policies, the Employee shall be considered to have remained employed until the end of the Employment Period and to have retired on the last day of such period.

7. Non-exclusivity of Rights. Nothing in this Agreement shall prevent or limit the Employee's continuing or future participation in any benefit, bonus, incentive or other plans, programs, policies or practices, provided by the Company or any of its subsidiaries and for which the Employee may qualify, nor shall anything herein limit or otherwise affect such rights as the Employee may have under any stock option or other agreements with the Company or any of its subsidiaries. Amounts which are vested benefits or which the Employee is otherwise entitled to receive under any plan, policy, practice or program of the Company or any of its subsidiaries at or subsequent to the Date of Termination shall be payable in accordance with such plan, policy, practice or program.

8. Full Settlement. The Company's obligation to make the payments provided for in this Agreement and otherwise to perform its obligations hereunder shall not be affected by any set-off, counterclaim, recoupment, defense or other claim, right or action which the Company may have against the Employee or others. In no event shall the Employee be obligated to seek other employment or take any other action by way of mitigation of the amounts payable to the Employee under any of the provisions of this Agreement. The Company agrees to pay, to the full extent permitted by law, all legal fees and expenses which the Employee may reasonably incur as a result of any contest (regardless of the outcome thereof) by the Company or others of the validity or enforceability of, or liability under, any provision of this Agreement or any guarantee of performance thereof (including as a result of any contest by the Employee about the amount of any payment pursuant to Section 9 of this Agreement), plus in each case interest at the applicable Federal rate provided for in Section 7872(f)(2) of the Code.

{9. Certain Additional Payments by the Company.

(a) Anything in this Agreement to the contrary notwithstanding, in the event it shall be determined that any payment or distribution by the Company to or for the benefit of the Employee, whether paid or payable or distrib-

uted or distributable pursuant to the terms of this Agreement or otherwise (a "Payment"), would be subject to the excise tax imposed by Section 4999 of the Internal Revenue Code of 1986, as amended (the "Code") or any interest or penalties with respect to such excise tax (such excise tax, together with any such interest and penalties, are hereinafter collectively referred to as the "Excise Tax"), then the Employee shall be entitled to receive an additional payment (a "Gross-Up Payment") in an amount such that after payment by the Employee of all taxes (including any interest or penalties imposed with respect to such taxes), including any Excise Tax, imposed upon the Gross-Up Payment, the Employee retains an amount of the Gross-Up Payment equal to the Excise Tax imposed upon the Payments.

(b) Subject to the provisions of Section 9(c), all determinations required to be made under this Section 9, including whether a Gross-Up Payment is required and the amount of such Gross-Up Payment, shall be made by [Accounting Firm] (the "Accounting Firm") which shall provide detailed supporting calculations both to the Company and the Employee within 15 business days of the Date of Termination, if applicable, or such earlier time as is requested by the Company. The initial Gross-Up Payment, if any, as determined pursuant to this Section 9(b), shall be paid to the Employee within 5 days of the receipt of the Accounting

Firm's determination. If the Accounting Firm determines that no Excise Tax is payable by the Employee, it shall furnish the Employee with an opinion that he has substantial authority not to report any Excise Tax on his federal income tax return. Any determination by the Accounting Firm shall be binding upon the Company and the Employee. As a result of the uncertainty in the application of Section 4999 of the Code at the time of the initial determination by the Accounting Firm hereunder, it is possible that Gross-Up Payments which will not have been made by the Company should have been made ("Underpayment"), consistent with the calculations required to be made hereunder. In the event that the Company exhausts its remedies pursuant to Section 9(c) and the Employee thereafter is required to make a payment of any Excise Tax, the Accounting Firm shall determine the amount of the Underpayment that has occurred and any such Underpayment shall be promptly paid by the Company to or for the benefit of the Employee.

(c) The Employee shall notify the Company in writing of any claim by the Internal Revenue Service that, if successful, would require the payment by the Company of the Gross-Up Payment. Such notification shall be given as soon as practicable but no later than ten business days after the Employee knows of such claim and shall apprise the Company of the nature of such claim and the date on which such claim

is requested to be paid. The Employee shall not pay such claim prior to the expiration of the thirty-day period following the date on which it gives such notice to the Company (or such shorter period ending on the date that any payment of taxes with respect to such claim is due). If the Company notifies the Employee in writing prior to the expiration of such period that it desires to contest such claim, the Employee shall:

(i) give the Company any information reasonably requested by the Company relating to such claim,

(ii) take such action in connection with contesting such claim as the Company shall reasonably request in writing from time to time, including, without limitation, accepting legal representation with respect to such claim by an attorney reasonably selected by the Company,

(iii) cooperate with the Company in good faith in order effectively to contest such claim,

(iv) permit the Company to participate in any proceedings relating to such claim;

provided, however, that the Company shall bear and pay directly all costs and expenses (including additional interest and penalties) incurred in connection with such contest

and shall indemnify and hold the Employee harmless, on an after-tax basis, for any Excise Tax or income tax, including interest and penalties with respect thereto, imposed as a result of such representation and payment of costs and expenses. Without limitation on the foregoing provisions of this Section 9(c), the Company shall control all proceedings taken in connection with such contest and, at its sole option, may pursue or forgo any and all administrative appeals, proceedings, hearings and conferences with the taxing authority in respect of such claim and may, at its sole option, either direct the Employee to pay the tax claimed and sue for a refund or contest the claim in any permissible manner, and the Employee agrees to prosecute such contest to a determination before any administrative tribunal, in a court of initial jurisdiction and in one or more appellate courts, as the Company shall determine; provided, however, that if the Company directs the Employee to pay such claim and sue for a refund, the Company shall advance the amount of such payment to the Employee, on an interest-free basis and shall indemnify and hold the Employee harmless, on an after-tax basis, from any Excise Tax or income tax, including interest or penalties with respect thereto, imposed with respect to such advance or with respect to any imputed income with respect to such advance; and further provided that any extension of the statute of limitations relating to

payment of taxes for the taxable year of the Employee with respect to which such contested amount is claimed to be due is limited solely to such contested amount. Furthermore, the Company's control of the contest shall be limited to issues with respect to which a Gross-Up Payment would be payable hereunder and the Employee shall be entitled to settle or contest, as the case may be, any other issue raised by the Internal Revenue Service or any other taxing authority.

(d) If, after the receipt by the Employee of an amount advanced by the Company pursuant to Section 9(c), the Employee becomes entitled to receive any refund with respect to such claim, the Employee shall (subject to the Company's complying with the requirements of Section 9(c)) promptly pay to the Company the amount of such refund (together with any interest paid or credited thereon after taxes applicable thereto). If, after the receipt by the Employee of an amount advanced by the Company pursuant to Section 9(c), a determination is made that the Employee shall not be entitled to any refund with respect to such claim and the Company does not notify the Employee in writing of its intent to contest such denial of refund prior to the expiration of thirty days after such determination, then such advance shall be forgiven and shall not be required to be repaid and the amount of such advance shall offset, to the extent thereof, the amount of Gross-Up Payment required to be paid.]

[Alternatively: 9. Certain Reduction of Payments by the Company. (a) Anything in this Agreement to the contrary notwithstanding, in the event it shall be determined that any payment or distribution by the Company to or for the benefit of the Employee (whether paid or payable or distributed or distributable pursuant to the terms of this Agreement or otherwise) (a "Payment") would be nondeductible by the Company for Federal income tax purposes because of Section 280G of the Code, then the aggregate present value of amounts payable or distributable to or for the benefit of the Employee pursuant to this Agreement (such payments or distributions pursuant to this Agreement are hereinafter referred to as "Agreement Payments") shall be reduced to the Reduced Amount. The "Reduced Amount" shall be an amount expressed in present value which maximizes the aggregate present value of Agreement Payments without causing any Payment to be nondeductible by the Company because of Section 280G of the Code. [Anything to the contrary notwithstanding, if the Reduced Amount is zero and it is determined further that any Payment which is not an Agreement Payment would nevertheless be nondeductible by the Company for Federal income tax purposes because of Section 280G of the Code, then the aggregate present value of Payments which are not Agreement Payments shall also be reduced (but not below zero) to an amount expressed in present value which

maximizes the aggregate present value of Payments without causing any Payment to be nondeductible by the Company because of Section 280G of the Code.] For purposes of this Section 9, present value shall be determined in accordance with Section 280G(d)(4) of the Code.

(b) All determinations required to be made under this Section 9 shall be made by [Accounting Firm] (the "Accounting Firm") which shall provide detailed supporting calculations both to the Company and the Employee within 15 business days of the Date of Termination or such earlier time as is requested by the Company and an opinion to the Employee that he has substantial authority not to report any Excise Tax on his Federal income tax return with respect to [the Agreement Payments] [any Payments]. Any such determination by the Accounting Firm shall be binding upon the Company and the Employee. The Employee shall determine which and how much of the Agreement Payments [or Payments, as the case may be,] shall be eliminated or reduced consistent with the requirements of this Section 9, provided that, if the Employee does not make such determination within ten business days of the receipt of the calculations made by the Accounting Firm, the Company shall elect which and how much of the Agreement Payments [or Payments, as the case may be,] shall be eliminated or reduced consistent with the requirements of this Section 9 and shall notify the Employee

promptly of such election. Within five business days thereafter, the Company shall pay to or distribute to or for the benefit of the Employee such amounts as are then due to the Employee under this Agreement.

(c) As a result of the uncertainty in the application of Section 280G of the Code at the time of the initial determination by the Accounting Firm hereunder, it is possible that Agreement Payments [or Payments, as the case may be,] will have been made by the Company which should not have been made ("Overpayment") or that additional Agreement Payments [or Payments, as the case may be,] which will not have been made by the Company could have been made ("Underpayment"), in each case, consistent with the calculations required to be made hereunder. In the event that the Accounting Firm, based upon the assertion of a deficiency by the Internal Revenue Service against the Employee which the Accounting Firm believes has a high probability of success determines that an Overpayment has been made, any such Overpayment paid or distributed by the Company to or for the benefit of the Employee shall be treated for all purposes as a loan ab initio to the Employee which the Employee shall repay to the Company together with interest at the applicable federal rate provided for in Section 7872(f)(2) of the Code; provided, however, that no such loan shall be deemed to have been made and no amount shall be payable by the Em-

ployee to the Company if and to the extent such deemed loan and payment would not either reduce the amount on which the Employee is subject to tax under Section 1 and Section 4999 of the Code or generate a refund of such taxes. In the event that the Accounting Firm, based upon controlling precedent or other substantial authority, determines that an Underpayment has occurred, any such Underpayment shall be promptly paid by the Company to or for the benefit of the Employee together with interest at the applicable federal rate provided for in Section 7872(f)(2) of the Code.]

[Alternatively: 9. Certain Reduction of Payments by the Company. (a) For purposes of this section, (i) A Payment shall mean any payment or distribution in the nature of compensation to or for the benefit of the Employee, whether paid or payable pursuant to this Agreement or otherwise; (ii) Agreement Payment shall mean a Payment paid or payable pursuant to this Agreement (disregarding this Section 9); (iii) Net After Tax Receipt shall mean the Present Value of a Payment net of all taxes imposed on the Employee with respect thereto under Sections 1 and 4999 of the Internal Revenue Code of 1986, as amended (the "Code"), determined by applying the highest marginal rate under Section 1 of the Code which applied to the Employee's taxable income for the immediately preceding taxable year; (iv) "Present Value" shall mean such value determined in accordance with

Section 280G(d)(4) of the Code; and (v) "Reduced Amount" shall mean the smallest aggregate amount of Payments which (a) is less than the sum of all Payments and (b) results in aggregate Net After Tax Receipts which are equal to or greater than the Net After Tax Receipts which would result if the aggregate Payments were any other amount less than the sum of all Payments.

(b) Anything in this Agreement to the contrary notwithstanding, in the event [accounting firm] (the "Accounting Firm") shall determine that receipt of all Payments would subject the Employee to tax under Section 4999 of the Code, it shall determine whether some amount of Payments would meet the definition of a "Reduced Amount." If the Accounting Firm determines that there is a Reduced Amount, the aggregate Agreement Payments shall be reduced to such Reduced Amount; provided, however, that if the Reduced Amount exceeds the aggregate Agreement Payments, the aggregate Payments shall, after the reduction of all Agreement Payments, be reduced (but not below zero) in the amount of such excess.

(c) If the Accounting Firm determines that aggregate Agreement Payments or Payments, as the case may be, should be reduced to the Reduced Amount, the Company shall promptly give the Employee notice to that effect and a copy

of the detailed calculation thereof, and the Employee may then elect, in his sole discretion, which and how much of the Payments shall be eliminated or reduced (as long as after such election the present value of the aggregate Payments equals the Reduced Amount), and shall advise the Company in writing of his election within ten days of his receipt of notice. If no such election is made by the Employee within such ten-day period, the Company may elect which of the Agreement Payments or Payments, as the case may be, shall be eliminated or reduced (as long as after such election the present value of the aggregate Agreement Payments or Payments, as the case may be, equals the Reduced Amount) and shall notify the Employee promptly of such election. All determinations made by the Accounting Firm under this Section shall be binding upon the Company and the Employee and shall be made within 60 days of a termination of employment of the Employee. As promptly as practicable following such determination, the Company shall pay to or distribute for the benefit of the Employee such Payments as are then due to the Employee under this Agreement and shall promptly pay to or distribute for the benefit of the Employee in the future such Payments as become due to the Employee under this Agreement.

(d) While it is the intention of the Company and the Employee to reduce the amounts payable or distributable to the Employee hereunder only if the aggregate Net After

Tax Receipts to the Employee would thereby be increased, as a result of the uncertainty in the application of Section 4999 of the Code at the time of the initial determination by the Accounting Firm hereunder, it is possible that amounts will not have been paid or distributed by the Company to or for the benefit of the Employee pursuant to this Agreement which should not have been so paid or distributed ("Overpayment") or that additional amounts which will have not been paid or distributed by the Company to or for the benefit of the Employee pursuant to this Agreement could have been so paid or distributed ("Underpayment"), in each case, consistent with the calculation of the Reduced Amount hereunder. In the event that the Accounting Firm, based either upon the assertion of a deficiency by the Internal Revenue Service against the Company or the Employee which the Accounting Firm believes has a high probability of success or controlling precedent or other substantial authority, determines that an Overpayment has been made, any such Overpayment paid or distributed by the Company to or for the benefit of the Employee shall be treated for all purposes as a loan ab initio to the Employee which the Employee shall repay to the Company together with interest at the applicable federal rate provided for in Section 7872(f)(2) of the Code; provided, however, that no such loan shall be deemed to have been made and no amount shall be payable by the Em-

ployee to the Company if and to the extent such deemed loan and payment would not either reduce the amount on which the Employee is subject to tax under Section 1 and Section 4999 of the Code or generate a refund of such taxes. In the event that the Accounting Firm, based upon controlling precedent or other substantial authority, determines that an Underpayment has occurred, any such Underpayment shall be promptly paid by the Company to or for the benefit of the Employee together with interest at the applicable federal rate provided for in Section 7872(f)(2) of the Code.]

10. Confidential Information. The Employee shall hold in a fiduciary capacity for the benefit of the Company all secret or confidential information, knowledge or data relating to the Company or any of its subsidiaries, and their respective businesses, which shall have been obtained by the Employee during the Employee's employment by the Company or any of its subsidiaries and which shall not be or become public knowledge (other than by acts by the Employee or his representatives in violation of this Agreement). After termination of the Employee's employment with the Company, the Employee shall not, without the prior written consent of the Company, communicate or divulge any such information, knowledge or data to anyone other than the Company and those designated by it. In no event shall an asserted violation of the provisions of this Section 10 constitute a

basis for deferring or withholding any amounts otherwise payable to the Employee under this Agreement.

11. Successors. (a) This Agreement is personal to the Employee and without the prior written consent of the Company shall not be assignable by the Employee otherwise than by will or the laws of descent and distribution. This Agreement shall inure to the benefit of and be enforceable by the Employee's legal representatives.

(b) This Agreement shall inure to the benefit of and be binding upon the Company and its successors and assigns.

(c) The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to assume expressly and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. As used in this Agreement, "Company" shall mean the Company as hereinbefore defined and any successor to its business and/or assets as aforesaid which assumes and agrees to perform this Agreement by operation of law, or otherwise.

12. Miscellaneous. (a) This Agreement shall be governed by and construed in accordance with the laws of the State of [], without reference to principles of conflict of laws. The captions of this Agreement are not part of the provisions hereof and shall have no force or effect. This Agreement may not be amended or modified otherwise than by a written agreement executed by the parties hereto or their respective successors and legal representatives.

(b) All notices and other communications hereunder shall be in writing and shall be given by hand delivery to the other party or by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the Employee:

If to the Company:

[Company]

Attention: _____

or to such other address as either party shall have furnished to the other in writing in accordance herewith. Notice and communications shall be effective when actually received by the addressee.

(c) The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

(d) The Company may withhold from any amounts payable under this Agreement such Federal, state or local taxes as shall be required to be withheld pursuant to any applicable law or regulation.

(e) The Employee's failure to insist upon strict compliance with any provision hereof shall not be deemed to be a waiver of such provision or any other provision thereof.

(f) This Agreement contains the entire understanding of the Company and the Employee with respect to the subject matter hereof.

(g) The Employee and the Company acknowledge that the employment of the Employee by the Company is "at will", and, prior to the Effective Date, may be terminated by either the Employee or the Company at any time. Upon a termination of the Employee's employment or upon the Employee's ceasing to be an officer of the Company, in each case, prior to the Effective Date, there shall be no further rights under this Agreement.

IN WITNESS WHEREOF, the Employee has hereunto set his hand and, pursuant to the authorization from its Board

of Directors, the Company has caused these presents to be
executed in its name on its behalf, all as of the day and
year first above written.

[Employee]

[COMPANY]

By _____

Attest: _____

Secretary

Annex C

[Corporation] Agreement and Plans Trust

This Trust Agreement made as of this ____ day of _____, 19__, by and between [Corporation], a [state of incorporation] corporation (the "Company"), and [Trustee] (the "Trustee"). This Trust Agreement provides for the establishment of a trust to be known as the [Corporation] Agreement and Plans Trust (hereinafter called the "Trust") to provide a source for payments required to be made under the contracts, agreements and plans listed on Exhibit A as amended from time to time (the "Agreements") between the Company and certain of its key management personnel or members of its Board of Directors (the "Participants").

WITNESSETH:

WHEREAS, the Company wishes to establish the Trust and to transfer to the Trust certain assets to be held therein, subject to the claims of the Company's creditors in the event of the Company's insolvency or bankruptcy, until paid to the Participants in such manner and at such time as specified in this Trust Agreement; and

WHEREAS, it is the intention of the Company to make contributions in addition to the Initial Contribution (as defined below) (such additional contributions are referred to herein as the "Additional Contributions" and,

together with the Initial Contributions, collectively known as "Contributions") to the Trust upon or in anticipation of the occurrence of a Change of Control of the Company;

NOW, THEREFORE, the parties hereto do hereby establish the Trust and agree that the Trust shall be comprised, held and disposed of as follows:

Section 1. Trust Fund

(a) Subject to the claims of its creditors as set forth in Section 5, the Company hereby deposits with the Trustee in trust [One Hundred Dollars (\$100.00)] (the "Initial Contribution") which shall become the initial principal of the Trust to be held, administered and disposed of by the Trustee as provided in this Trust Agreement. The Trustee shall have no obligation to invest the Initial Contribution in an interest-bearing account.

(b) The Trust is intended to be a grantor trust, within the meaning of Section 671 of the Internal Revenue Code of 1986, as amended (the "Code"), and shall be construed accordingly. The purpose of the Trust is to assure that the Company's obligations to the Participants pursuant to the Agreements are fulfilled. The Trust is not designed to qualify under Section 401(a) of the Code.

(c) The principal of the Trust, and any earnings thereon (such principal, together with any earnings thereon and other increases thereof, reduced by any losses and distributions from the Trust and any other reductions thereof, is sometimes referred to herein as the "Trust Assets"), shall be held separate and apart from other funds of the Company and shall be used exclusively for the uses and purposes herein set forth. The Participants shall not have any preferred claim on, or any beneficial ownership interest in, any of the Trust Assets prior to the time such Trust Assets are paid to the Participants pursuant to the terms of this Trust Agreement, and all rights created under the Agreements and this Trust Agreement shall be mere unsecured contractual rights of the Participants against the Company.

(d) [Except as provided in the second succeeding sentence,] The Trustee shall have full discretion in and sole responsibility for investment, management and control of the Trust Assets. Without limiting such discretion, the Company requests, but does not direct, that the Trustee, based upon the nature of this Trust, only make short-term investments with a stated maturity of twelve months or less from the date of purchase by the Trustee. [The Trust Assets shall only be invested in obligations of or guaranteed by the United States of America in commercial paper obligations receiving the highest rating from either Moody's Investors

Service, Inc. or Standard & Poor's Corporation or a similar rating service or in certificates of deposit, bank repurchase agreements or bankers acceptances (including those of the Trustee) of commercial banks with capital exceeding \$1,000,000,000 the securities of which or the securities of the holding company of which are rated in the highest category by a nationally-recognized credit agency ("Permitted Investments") or in money-market funds which are invested solely in Permitted Investments.]

(e) The advisor to the Trust (the "Consulting Firm") shall be [Consulting Firm], or such successor firm of consulting actuaries as the Company shall select prior to a Change of Control, or after a Change of Control, such successor firm of consulting actuaries as the Trustee shall select. It is not intended that the Consulting Firm act in a fiduciary capacity under the Agreements or the Trust.

Section 2. Contributions

(a) The Company may make such Contributions to the Trust as the Board of Directors of the Company deems appropriate from time to time.

(b) As soon as practicable following a Change of Control (as defined in Section 3(a) hereof), the Consulting Firm shall calculate the maximum aggregate amount due pursu-

ant to each Agreement [without regard to any reduction required under such Agreements to avoid any such payment being nondeductible to the Company pursuant to Section 280G of the Code] (the aggregate of such amounts for all the Agreements is hereinafter referred to as the "Maximum Amount Payable").* The Consulting Firm shall promptly furnish such calculation to the Company and the Company shall have the obligation to make Additional Contributions to the Trust, and shall make Additional Contributions to the Trust, within three business days of the receipt of such calculation, in an amount equal to the excess (the "Excess"), if any, of the Maximum Amount Payable over the then fair market value of the Trust Assets [or shall direct the Trustee to draw down a letter of credit held by the Trust in such amount]. If at any time following a Change of Control, a valuation of the Trust Assets occurs pursuant to this Trust Agreement and it is determined by the Consulting Firm that an Excess shall exist, the Company shall promptly contribute such amount to the Trust as is necessary to eliminate the Excess [or direct the Trustee to draw down a letter of credit held by the Trust in such amount].

(c) Anything contained herein in Section 2(b) hereof to the contrary notwithstanding, in the event of a

* Agreement may also provide for the transfer of funds sufficient to pay estimated Trust expenses.

Potential Change of Control (as defined in Section 3(b) hereof), the Company shall have the obligation to make additional contributions to the Trust in an amount equal to the Excess [or direct the Trustee to draw down a letter of credit held by the Trust in such amount]. If a Change of Control shall not have occurred within ninety (90) days of a Contribution made pursuant to this Section 2(c) and the Board of Directors adopts a resolution to the effect that, for purposes of this Trust Agreement, a Change of Control is not imminent, any amounts contributed to the Trust pursuant to this Section 2(c), together with any earnings thereon, shall be paid by the Trustee to the Company.

(d) The Company shall make all required Contributions to the Trust in cash. [Alternatively, the Company may at any time provide the Trustee with an irrevocable and unconditional letter of credit sufficient for the Trustee to draw down an amount equal to all required Contributions. If at any time the Trust has been provided with a letter of credit by the Company, the Company will direct the Trustee (i) when to draw down on such letter of credit and in what amount and (ii) whether, if necessary, to renew the Letter of Credit or change its amount or terms.] All Contributions so received [(including any cash received on the draw down of a Letter of Credit),] together with the income therefrom and any increment thereon, shall be held, managed and admin-

istered by the Trustee as a single commingled Trust pursuant to the terms of this Trust without distinction between principal and income. Neither the Trustee nor the Consulting Firm shall have any duty to require any Contributions to be made to the Trust by the Company or to determine that a Change of Control or Potential Change of Control has occurred.

(e) Anything in Section 2 to the contrary notwithstanding, the Trustee shall return to the Company as soon as feasible following the close of each calendar quarter within each calendar year the excess, if any, of (i) the then aggregate fair market value of the Trust Assets over (ii) [150%] of the Maximum Amount Payable, as determined by the Consulting Firm at the request of the Company.

(f) The Company may at any time or from time to time make additional deposits of cash or other property in Trust with the Trustee to augment the Trust Assets to be held, administered and disposed of by Trustee as provided in this Trust Agreement.

Section 3. Change of Control

(a) For purposes of this Trust Agreement, a "Change of Control" shall mean:

(i) The acquisition (other than from the Company in a transaction approved by the Continuing Directors (as defined below)) by any person, entity or "group", within the meaning of Section 13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934 (the "Exchange Act"), [(excluding, for this purpose, the Company or its subsidiaries, [or any employee benefit plan of the Company or its subsidiaries which acquires beneficial ownership of voting securities of the Company with the approval of a majority of the Incumbent Board of beneficial ownership, (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of [20%] or more of either the then outstanding shares of common stock or the combined voting power of the Company's then outstanding voting securities [in a transaction or series of transactions not approved by a vote of at least a majority of the Incumbent Board (as defined below)]]; or

(ii) Individuals who, as of the date hereof, constitute the Board (as of the date hereof the "Incumbent Board") cease for any reason to constitute at least a majority of the Board, provided that any person becoming a director subsequent to the date hereof whose election, or nomination for election by the Company's shareholders, was approved by a vote of at least a majority of the directors comprising the Incumbent Board (other than an election or nomination of an individual whose initial assumption of

office is in connection with an actual or threatened election contest relating to the election of the Directors of the Company, as such terms are used in Rule 14a-11 of Regulation 14A promulgated under the Exchange Act) shall be, for purposes of this Agreement, considered as though such person were a member of the Incumbent Board; or

(iii) Approval by the stockholders of the Company of a reorganization, merger, consolidation, [in each case, with respect to which the stockholders of the Company do not, immediately thereafter, own more than [50%] of the combined voting power of the reorganized, merged or consolidated company's then outstanding voting securities, or a liquidation or dissolution of the Company or of the sale of all or substantially all of the assets of the Company.

(b) For purposes of this Agreement, a Potential Change of Control shall be deemed to have occurred if (i) any third person commences a tender or exchange offer [(other than a tender or exchange offer which, if consummated, would not result in a change of control) for [20%] or more of the then outstanding shares of common stock or combined voting power of the Company's then outstanding voting securities; (ii) the Company enters into an agreement, the consummation of which would result in the occurrence of a Change of Control; (iii) any person (including the Company)

publicly announces an intention to take or to consider taking actions which if consummated would constitute a Change of Control; or (iv) the Board of Directors adopts a resolution to the effect that, for purposes of this Trust Agreement, a Change of Control is imminent.]

(c) The Company shall have a duty to inform the Trustee whenever a Change of Control or Potential Change of Control has occurred. If any two Participants notify the Trustee in writing that a Change of Control has occurred then, unless, in the opinion of nationally recognized counsel to the Company (which opinion may be based on representations of fact as long as counsel does not know that such representations are untrue) such a Change of Control has not occurred, a Change of Control will be deemed to have occurred for purposes of this Trust Agreement.

Section 4. Accounting by the Trustee and Consulting Firm

(a) The Trustee shall keep accurate and detailed records of all investments, receipts, disbursements, and all other transactions required to be done, including such specific records as shall be agreed upon in writing between the Company and the Trustee. Within sixty (60) days following the close of each calendar year and within sixty (60) days after the removal or resignation of the Trustee, the Trustee

shall deliver to the Company and the Consulting Firm a written account of its administration of the Trust during such year or during the period from the close of the last preceding year to the date of such removal or resignation, setting forth all investments, receipts, disbursements and other transactions effected by it, including a description of all securities and investments purchased and sold with the cost or net proceeds of such purchases or sales (accrued interest paid or receivable being shown separately), showing all cash, securities and other property held in the Trust at the end of such year or as of the date of such removal or resignation, as the case may be, and the book and fair market value of any such asset. The Consulting Firm shall send a copy of such written account to each Participant at the address provided by the Company.

(b) As soon as practicable following a Change of Control of the Company the Consulting Firm shall establish and maintain a memorandum account for each Participant and with respect to each Agreement applicable to the Participant or with respect to which the Participant is a participant (the "Participant's Account"). As soon as practicable following a Change of Control, the Consulting Firm shall calculate the amount which would be due to each Participant pursuant to each Agreement applicable to such Participant or pursuant to which the Participant is a participant upon

satisfaction of the conditions under such Agreement which give rise to the obligation of the Company to pay such amount to the Participant (the "Agreement Payments"). The Consulting Firm shall credit each Participant's Account with the Agreement Payments and shall debit the Participant's Account with any amounts paid to the Participant with respect to an Agreement by the Company or the Trustee.

(c) The Company shall furnish the Consulting Firm with copies of each Agreement and any and all amendments thereto. The Company will promptly provide the Consulting Firm with a copy of any notice of termination required pursuant to the terms of any of the Agreements with respect to any Participant and will also promptly provide the Consulting Firm with any and all additional information the Consulting Firm reasonably requests or the Company believes would be useful to the Consulting Firm in order to enable the Consulting Firm to determine the amount of Agreement Payments with respect to each Participant and to effect such payment and will promptly update such information as it changes. The Company will use its best efforts to cause each Participant to provide the Consulting Firm with all information that it may reasonably request in order to determine the amount of Agreement Payments with respect to the Participant. The Trustee shall notify the Consulting Firm of any payment made from the Trust to the Participant

or the Participant's beneficiaries pursuant to the terms of an Agreement and the Company shall notify the Consulting Firm of any other payment pursuant to the terms of an Agreement, in each case, so that the Consulting Firm may debit the Participant's Account.

(d) All accounts, books and records maintained pursuant to Section 4 shall be opened to inspection and audit at all reasonable times by the Company and on an annual basis, after receipt of the written account described in the next sentence, by the Participants; provided, however, that no Participant shall have access to information about another Participant's Account other than in the normal course of performing his duties as an employee of the Company.

(e) The fair market value of the Trust Assets shall be determined by the Trustee whenever required pursuant to this Trust Agreement, but in any event not less than quarterly. The Trustee may base such determination upon such sources of information as it may deem reliable including, but not limited to, information reported in (i) newspapers of general circulation, (ii) standard financial periodicals or publications, (iii) statistical and valuation services, (iv) the records of securities exchanges or brokerage firms deemed by the Trustee to be reliable, or any

combination thereof. The Trustee shall promptly inform the Consulting Firm of any such valuation.

Section 5. Payments to the Participants

(a) The Trustee shall make payments to the Participants from the Trust Assets, if and to the extent such Trust Assets are available for distribution, in accordance with the provisions of this Trust Agreement, provided that the Company is not Insolvent (as defined in Section 6(a)) at the time any such payment is required to be made.

(b) Subject to Section 5(a) hereof, upon written demand for payment by a Participant accompanied with a copy of a "Notice of Qualification" (as defined below) with respect to such Participant (or by the Participant's beneficiary or beneficiaries), the Consulting Firm shall, within five business days of such demand, direct the Trustee to pay the Participant (or such beneficiary or beneficiaries) an amount equal to the lesser of the amount so demanded for payment or the then credit balance in the Participant's Account; provided, however, that if the aggregate of the then credit balances in the Participants' Accounts exceeds the then fair market value of the Trust Assets, then the Consulting Firm shall direct the Trustee to pay to the Participant (or the Participant's beneficiary or beneficiaries) the lesser of the amount so demanded or such portion

of the credit balance in the Participant's Account which is equal to (a) the full credit balance in the Participant's Account multiplied by (b) a fraction (i) the numerator of which is the then fair market value of the Trust Assets and (ii) the denominator of which is the aggregate of the then credit balances in the Participants' Accounts.

(c) Whenever the Consulting Firm notifies the Trustee that it has received a Notice of Qualification and a demand for payment from a Participant or beneficiary, the Trustee shall supply the Consulting Firm with the current fair market value of the Trust Assets within 2 business days so that the Consulting Firm may make the determination required hereunder. The Trustee shall pay the Participant (or the Participant's beneficiary or beneficiaries) the amount set forth in the notice from the Consulting Firm within five business days of receiving notice from the Consulting Firm.

(d) For the purposes of this Trust Agreement, a "Notice of Qualification" shall be a written statement by the Participant or the Participant's beneficiary or beneficiaries that states that pursuant to the terms of the Agreement applicable to such Participant or pursuant to which the Participant is a participant, the Participant or the Participant's beneficiary or beneficiaries is entitled to payment

thereunder. The Trustee and the Consulting Firm shall be under no duty to make inquiry as to whether the determination made by Participant or the Participant's beneficiary or beneficiaries is correct or whether any payment so demanded is proper and correct.

(e) Anything in this Trust Agreement to the contrary notwithstanding, all payments pursuant to this Section 5 may be made without the approval or direction of the Company, shall be made despite any direction to the contrary by the Company and shall be made upon the direction of the Consulting Firm.

(f) If the Trust Assets are not sufficient to make all payments to the Participants required to be made pursuant to the terms of the Agreements, the Company shall pay to each Participant the balance of each such payment as it falls due. If such payments are not made by the Company, and the Trust later contains sufficient Trust Assets to make such payments, they shall be made from the Trust Assets, together with interest at the rate determined pursuant to Section 1274(d) of the Code, subject to the requirements of Sections 5(a) and 5(b) hereof.

Section 6. Trustee Responsibility Regarding Payments to Trust Beneficiary When Company Insolvent

(a) The Company shall be considered "Insolvent" for purposes of this Trust Agreement if (i) the Company is unable to pay its debts as they mature, or (ii) the Company is subject to a pending proceeding as a debtor under the United States Bankruptcy Code or any similar law of any state.

(b) At all times during the continuance of this Trust, the principal and income of the Trust shall be subject to claims of general creditors of the Company as hereinafter set forth, and at any time the Trustee has actual knowledge, or has determined, that the Company is Insolvent, the Trustee shall deliver any undistributed Trust Assets to satisfy such claims as a court of competent jurisdiction may direct. The Board and the chief executive officer of the Company shall have the duty to inform the Trustee of the Company's Insolvency. If the Company or a person claiming to be a creditor of the Company alleges in writing to the Trustee that the Company has become Insolvent, the Trustee shall independently determine, within thirty (30) days after receipt of such notice, whether the Company is Insolvent and, pending such determination, the Trustee shall discontinue payments to the Participants, shall hold the Trust Assets for the potential benefit of the Company's general

creditors, and shall resume payments to the Participants in accordance with Section 5 of this Trust Agreement only after the Trustee has determined that the Company is not Insolvent (or is no longer Insolvent, if the Trustee initially determines the Company to be Insolvent). If the Trustee, after the expiration of such thirty (30) days, in good faith and with the advice of such advisors as may be retained pursuant to Section 7 hereof is unable to determine whether the Company is Insolvent, the Trustee (i) shall so notify the Company and the Consulting Firm in writing (and the Consulting Firm shall promptly notify the Participants and their beneficiaries at the address supplied by the Company) and any of the Trustee, the Company or any of the Participants or any of their beneficiaries may apply to any court of competent jurisdiction for a determination, for purposes of this Trust, as to whether or not the Company is Insolvent, and (ii) the Trustee shall thereupon hold the Trust Assets pursuant to the terms of this Trust Agreement pending the determination of such court. Unless the Trustee has actual knowledge of the Company's Insolvency, the Trustee shall have no duty to inquire whether the Company is Insolvent. The Trustee may in all events rely on such evidence concerning the Company's solvency as may be furnished to the Trustee as will give the Trustee a reasonable basis for making a determination concerning the Company's solvency.

For purposes of this Trust Agreement, the Trustee shall be considered to possess any knowledge and information concerning the Company that is in the possession of the Trustee's Banking Department or other department and can reasonably be imputed to the Trustee under normal bank procedures. Nothing in this Trust Agreement shall in any way diminish any rights of a Participant to pursue his rights as a general creditor of the Company with respect to the Agreements or otherwise.

(c) If the Trustee discontinues payments from the Trust to any Participant or beneficiary pursuant to Section 6(b) and subsequently resumes such payments, the first payment following such discontinuance shall, subject to Sections 5(a) and 5(b) hereof, include the aggregate amount of all payments which would have been made to the Participant or beneficiary (together with interest at the rate determined pursuant to Section 1274 of the Code on the amount delayed) during the period of such discontinuance, less the aggregate amount of payments made to each such Participant or beneficiary by the Company in lieu of the payments provided for hereunder during any such period of discontinuance, as certified to the Trustee by the Consulting Firm.

Section 7. Responsibility of Trustee and the Consulting Firm

(a) The Trustee shall act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; provided, however, that the Trustee shall incur no liability to anyone for any action taken pursuant to a direction, request, or approval given by the Company or any Participant contemplated by and complying with the terms of this Trust Agreement. The Trustee shall discharge its responsibility for the investment, management and control of the Trust Assets solely in the interest of the Participants and for the exclusive purpose of assuring that, to the extent of available Trust Assets, all Agreement Payments are paid when due to the Participants.

(b) Neither the Trustee nor the Consulting Firm shall be required to undertake or to defend any litigation arising in connection with this Trust Agreement, unless it be first indemnified by the Company against its prospective costs, expenses and liability, and the Company hereby agrees to indemnify the Trustee and the Consulting Firm for such costs, expenses, and liability.

(c) The Trustee and the Consulting Firm may consult with legal counsel (who may also be counsel for the Trustee or the Consulting Firm generally) with respect to any of its duties or obligations hereunder, and shall be fully protected in acting or refraining from acting in accordance with the advice of such counsel.

(d) The Trustee may hire agents, accountants, and financial consultants.

(e) The Trustee is authorized and empowered:

(i) To purchase, hold, sell, invest and reinvest the assets of the Trust, together with income therefrom;

(ii) To hold, manage and control all property at any time forming part of the assets of the Trust;

(iii) To sell, convey, transfer, exchange and otherwise dispose of the assets of the Trust from time to time in such manner, for such consideration and upon such terms and conditions as it shall determine;

(iv) To make payments from the Trust as provided hereunder; and

(v) To exercise all the further rights, powers, options and privileges granted, provided for or vested in trustees generally under applicable Federal or State of New Jersey law, as amended from time to time, it being intended that, except as herein otherwise provided, the powers conferred upon the Trustee herein shall not be construed as being in limitation of any authority conferred by law, but shall be construed as in addition thereto.

(f) The Trustee in any and all events is authorized and empowered to do all other acts necessary or desir-

able for the proper administration of the assets of the Trust, as though the absolute owner thereof, including, but not limited to, authorization and power:

(i) To cause any property of the Trust to be issued, held or registered in the individual name of the Trustee, or in the name of its nominee, or in such form that title will pass by delivery, provided, the records of the Trustee shall indicate the true ownership of such property;

(ii) To employ such agents and counsel as may be reasonably necessary in managing and protecting the Trust assets and to pay them reasonable compensation; and

(iii) To settle, compromise or abandon with the consent of the Company all claims and demands from other than the Participants or the Company in favor of or against the assets of the Trust.

Section 8. Compensation and Expenses of Trustee and Consulting Firm

The Trustee and the Consulting Firm shall each be entitled to receive such reasonable compensation for their services as shall be agreed upon by the Company and the Trustee or the Consulting Firm, as the case may be. The Trustee and the Consulting Firm shall each also be entitled to receive their reasonable expenses incurred with respect to the administration of the Trust, including counsel fees and fees incurred by the Trustee and the Consulting Firm pursuant to Sections 7(c) and 7(d) of this Trust Agreement. Such compensation and expenses shall be payable by the Company and if not so paid, shall be paid by the Trustee from the Trust Assets. In the event any Trust Assets are used

pursuant to the preceding sentence to pay compensation and expenses to the Trustee or Consulting Firm, the Company shall promptly contribute to the Trust any such amount [or direct the Trustee to draw down on a letter of credit held by the Trust in such amount].

Section 9. Resignation and Replacement of Trustee

(a) The Trustee may resign at any time during the term of this Trust by delivering to the Company a written notice of the proposed resignation. The Consulting Firm shall deliver a copy of any such notice to each Participant and beneficiary at the address supplied by the Company. Such resignation shall take effect upon the qualification of a successor Trustee and such successor Trustee commencing to act as such.

(b) In the event that, prior to a Change of Control, the Trustee notifies the Company of its intention to resign, in accordance with the foregoing provisions of this Section 9, the Company shall appoint a successor Trustee which shall be a bank or trust company. The Trustee hereunder shall thereupon deliver to the successor Trustee all property of this Trust, together with such records and documents as may be reasonably required to enable the successor Trustee to properly administer the Trust, reserving such funds as it reasonably deems necessary to cover its unpaid bills and expenses, and closing costs.

(c) Upon qualification of a successor Trustee, all right, title and interest of the resigning Trustee in the Trust Assets and all rights and privileges under this Trust Agreement theretofore vested in such resigning Trustee shall vest in the successor Trustee where applicable, and thereupon all future liability of said resigning Trustee shall terminate; provided, however, that the Trustee shall execute, acknowledge and deliver all documents and written instruments which are necessary to transfer and convey the right, title and interest in the Trust Assets, and all rights and privileges to the successor Trustee.

(d) Nothing in this Trust Agreement shall be interpreted as depriving the Trustee or the Company of the right to have a judicial settlement of the Trustee's accounts, and upon any proceeding for a judicial settlement of the Trustee's accounts or for instructions the only necessary parties thereto will be the Trustee and the Company.

Section 10. Amendment or Termination

(a) This Trust Agreement may be amended any time prior to the time any Additional Contribution is made (or, after the time any Additional Contribution is made if such Additional Contribution is returned to the Company in accordance with Section 2(c) hereof) and to any extent (including

amendments to Exhibit A hereto) by a written instrument executed by the Trustee and the Company.

(b) This Trust shall be revocable by the Company prior to the time any Additional Contribution is made or required to be made pursuant to the terms hereof by the Company to the Trust and may be terminated by the Company prior thereto (or, after the time any Additional Contribution is made if such Additional Contribution is returned to the Company in accordance with Section 2(c) hereof). After the occurrence of a Change of Control, the Trust shall remain in effect until the receipt by the Trustee of a certification from the Consulting Firm that all liabilities under all the Agreements have been satisfied; provided that, if any payment made from the Trust or to be made pursuant to any of the Agreements is being contested or litigated, the Trust shall remain in effect until such contest, litigation or dispute is resolved.

(c) At the termination of the Trust pursuant to Section 10(b), the Trustee shall as soon as practicable, but in any event within ninety days of the date of such termination, transfer to the Company in cash the value of the Trust Assets as of the termination date.

Section 11. Protection of the Trustee and the Consulting Firm

(a) The Company agrees, to the extent permitted by applicable law, to indemnify the Trustee and the Consulting Firm and hold them harmless from and against any claim or liability that may be asserted against them by reason of their taking or refraining from taking any action under this Trust Agreement, including, without limiting the generality of the foregoing, any claim brought against the Trustee or the Consulting Firm by the Company, in any case, otherwise than on account of the Trustee's or the Consulting Firm's own negligence or willful misconduct.

(b) The Trustee shall be fully protected in relying upon a certification of an authorized representative of the Company or the Consulting Firm with respect to any instruction, direction or approval of the Company or the Consulting Firm until a subsequent certification is filed with the Trustee.

(c) The Trustee and the Consulting Firm shall each be fully protected in acting upon any instrument, certificate, or paper believed by them to be genuine and to be signed or presented by the proper person or persons, and neither the Trustee nor the Consulting Firm shall be under any duty to make any investigation or inquiry as to any

statement contained in any such writing but may accept the same as conclusive evidence of the Trust and accuracy of the statements therein contained.

(d) The Trustee shall not be liable for the proper application of any part of the Trust Fund if distributions are made in accordance with the terms of this Trust Agreement and information furnished to the Trustee by the Consulting Firm. All persons dealing with the Trustee are released from inquiry into the decision or authority of the Trustee and from seeing to the application of any monies, securities or other property paid or delivered to the Trustee.

Section 12. Communication

(a) Communications to the Company shall be addressed to the Company at:

[Address]

Attention: _____

(b) Communications to the Trustee shall be addressed to it at:

[Address]

Attention: _____

(c) Communications to the Consulting Firm shall be addressed to it at:

[Address]

Attention: _____

Section 13. Severability and Alienation

(a) Any provision of this Trust Agreement prohibited by law shall be ineffective to the extent of any such prohibition without invalidating or in any other way limiting the remaining provisions hereof.

(b) The rights, benefits and payments of a Participant payable from the Trust Assets may not be anticipated, assigned (either at law or in equity), alienated or subject to attachment, garnishment, levy, execution or other legal or equitable process except as required by law. Any attempt by a Participant to anticipate, alienate, assign, sell, transfer, pledge, encumber or charge the same shall be void. The Trust Assets shall not in any manner be subject to the debts, contracts, liabilities, engagements or torts of any Participant and payments hereunder shall not be considered an asset of the Participant in the event of his insolvency or bankruptcy.

Section 14. Governing Law

This Trust Agreement shall be governed by and construed in accordance with the laws of the State of _____, without reference to principles of conflicts of law.

Section 15. Miscellaneous

(a) The Trustee shall not be either individually or severally liable for any taxes of any kind levied or assessed under the existing or future laws against the Trust Assets. The Trustee shall withhold from each payment to any Participant or beneficiary any Federal, state or local withholding taxes which is from time to time required to be deducted under applicable laws, as directed by the Consulting Firm. To the extent that any taxes levied or assessed upon the Trust are not paid by the Company, the Trustee shall pay such taxes out of the Trust Assets.

(b) Expenses and fees of the Company for the administration of this Trust and services in relation thereto for actuarial, legal and accounting and other similar expenses, including any costs with respect to the creation of the Trust, shall be paid by the Company and, if not so paid may be paid by the Trustee from the Trust Assets.

(c) Participation in this Trust shall not give any Participant any right to be retained as an employee of

the Company nor any rights other than those specifically enumerated herein or in any Agreement applicable to any Participant or pursuant to which such Participant is a participant.

(d) Any payment to any Participant or his beneficiary in accordance with the provisions of this Trust shall, to the extent thereof, be in full satisfaction of all claims against the Trustee and the Company under the Agreements. Nothing in this Trust shall relieve the Company of its liability to pay benefits under the Agreements except to the extent such liabilities are met through the use of the Trust Assets.

(e) Headings in this Trust Agreement are inserted for convenience of reference only and are not to be considered in the construction of the provisions hereof.

(f) This Trust Agreement may be executed in several counterparts, each of which shall be deemed an original, and said counterparts shall constitute but one and the same instrument, which may be sufficiently evidenced by any one counterpart.

(g) This Trust Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their successors and assigns.

(h) As used in this Trust Agreement, the masculine gender shall include the feminine and neuter genders.

(i) Any action of the Company pursuant to this Trust Agreement, including all orders, requests, data, directions, instructions and other related information shall be in writing signed on behalf of the Company by an officer or named designee of the Company.

(j) In the event that a Participant and his beneficiary shall both be deceased prior to the time payment is due the Participant or his beneficiary, then payment shall be made if due to the estate of the deceased Participant.

IN WITNESS WHEREOF, the Company and the Trustee have executed this Agreement as of the date first above written.

[CORPORATION]

By: _____
Name:
Title:

[TRUSTEE]

By: _____
Name:
Title: