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

FORM 10-K

(Mark one)
[X] ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934

FOR THE FISCAL YEAR ENDED DECEMBER 28, 2002

[ ] TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____.

COMMISSION FILE NO. 0-25121

SELECT COMFORT CORPORATION
(Exact name of registrant as specified in its charter)

| MINNESOTA | 41-1597886 |
|---|---|
| (State or other jurisdiction of incorporation or organization) | (I.R.S. Employer Identification No.) |
| 6105 TRENTON LANE NORTH MINNEAPOLIS, MINNESOTA | 55442 |
| (Address of principal executive offices) | (Zip code) |

Registrant's telephone number, including area code: (763) 551-7000

Securities registered pursuant to Section 12(b) of the Act: NONE

Securities registered pursuant to Section 12(g) of the Act:

COMMON STOCK, $.01 PAR VALUE

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. YES [X] NO [ ]

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of Registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. [X]

Indicate by check mark whether the Registrant is an accelerated filer (as defined in Exchange Act Rule 12b-2). YES [X] NO [ ]

As of June 29, 2002, the last business day of Registrant's most recently completed second fiscal quarter, 29,583,826 shares of Common Stock of the Registrant were outstanding, and the aggregate market value of the Common Stock of the Registrant as of that date (based upon the last reported sale price of the Common Stock at that date as reported by the Nasdaq National Market System), excluding outstanding shares beneficially owned by affiliates, was $88,157,052.

DOCUMENTS INCORPORATED BY REFERENCE

None

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As used in this Form 10-K, the terms "we," "us," "our," the "company" and "Select Comfort" mean Select Comfort Corporation and its subsidiaries and the term "common stock" means our common stock, par value $0.01 per share.

As used in this Form 10-K, the term "bedding" includes mattresses, box springs and foundations and does not include bedding accessories, such as sheets, pillows, headboards, frames, mattress pads and related products.

Select Comfort(R), Sleep Number(R), Comfort Club(R), Sleep Better on Air(R), The Sleep Number Bed by Select Comfort (logo)(R), Firmness Control System(TM), Precision Comfort(TM), Corner Lock(TM), Intralux(TM), Everybody has a Sleep Number(TM), Knowing your Sleep Number is the Key to a Perfect Night's Sleep(TM), The Sleep Number Store by Select Comfort (logo)(R), You can only find your Sleep Number on a Sleep Number Bed by Select Comfort,(TM) Select Comfort Creator of the Sleep Number Bed(TM), What's Your Sleep Number?(TM) and our stylized logos are trademarks and/or service marks of Select Comfort. This Form 10-K also contains trademarks, trade names and service marks that are owned by other persons or entities.

Our fiscal year ends on the Saturday closest to December 31, and, unless the context otherwise requires, all references to years in this Form 10-K refer to our fiscal years. Our fiscal year is based on a 52- or 53-week year. All years represented in this Form 10-K are 52 weeks.

Our corporate Internet website is http://www.selectcomfort.com. Through a link to a third-party content provider, our corporate website provides free access to our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and all amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 as soon as reasonably practicable after electronic filing with the Securities and Exchange Commission.

## PART I

This Annual Report on Form 10-K contains certain forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. For this purpose, any statements contained in this Annual Report on Form 10-K that are not statements of historical fact may be deemed to be forward-looking statements, including without limitation projections of results of operations, revenues, financial condition or other financial items; any statements of plans, strategies and objectives of management for future operations; any statements regarding proposed new products, services or developments; any statements regarding future economic conditions, prospects or performance; statements of belief and any statement or assumptions underlying any of the foregoing. Without limiting the foregoing, words such as "may," "will," "should," "could," "expect," "anticipate," "believe," "estimate," "plan," "project," "predict," "intend," "potential," "continue" or the negative of these or comparable terminology are intended to identify forward-looking statements.

These forward-looking statements by their nature involve substantial risks and uncertainties, and actual results may differ materially depending on a variety of factors, including the items discussed in greater detail below under the heading "Certain Risk Factors," as well as the risk factors listed from time to time in the company's filings with the SEC.

### ITEM 1. BUSINESS

OUR BUSINESS

We are the leading developer, manufacturer and marketer of premium quality, adjustable-firmness beds. The air chamber technology of our proprietary Sleep Number bed allows adjustable firmness on each side of the mattress and provides a sleep surface that is clinically proven to provide better sleep quality and greater relief of back pain in comparison to traditional mattress products.

Unlike traditional bedding manufacturers, we are vertically integrated from production through sales and customer service, which allows us to control quality, cost, price and presentation. We sell our innovative products through four distribution channels:

- Retail, through 321 company-operated stores in 46 states, of which 13 are leased departments within other retail stores;
- Direct Marketing, through a company-operated call center;
- E-commerce, through our web site at selectcomfort.com; and
- Wholesale, through leading home furnishings retailers, specialty bedding retailers and the QVC shopping channel.

Most of our products are made-to-order and are sold directly to consumers through our company-controlled distribution channels: retail, direct marketing and e-commerce. Our consumer-driven and service-oriented business model enables us to understand and respond quickly to consumer trends and preferences. In addition, our business model allows us to maintain low levels of inventory and to generate an accelerated cash-conversion cycle, which enables us to operate with minimal or no working capital.

We believe that consumers are increasingly focused on sleep quality, along with nutrition and exercise, as an important component of overall health. The National Sleep Foundation reported in 2002 that 74% of American adults are experiencing a sleeping problem a few nights a week or more and 66% of adults believe that their sleep surface is very important to them, with 89% agreeing that a better quality mattress provides a better night's sleep. Our target customers are primarily between the ages of 25 and 54 with household incomes in excess of $50,000 per year. Since our inception, we

have sold approximately 1.5 million beds and have achieved high levels of customer satisfaction. From consumer inquiries and customers, we have compiled a database of approximately 8,600,000 profiles that can be used for marketing and research.

Following a change in executive management in 2000, we improved our cost structure and rebranded our products and advertising, which led to significantly enhanced operating results. From 2001 to 2002, our sales grew 28% to $335.8 million and comparable store sales grew 27%. We have improved our profitability from an operating loss of $26.0 million in 2000 to operating income of $21.0 million in 2002 and achieved net income in each of the last six quarters. In 2002, we generated $28.3 million in cash flow from operations after capital expenditures.

Our mission is to improve people's lives through better sleep and our objective is to become the leading brand in the bedding industry. For the foreseeable future, we believe we can achieve 15% to 25% annual net sales growth and generate operating income growth of approximately twice our net sales growth rate. In addition, we believe our efficient business model will generate sufficient cash to self-finance our growth and liquidity requirements.

INDUSTRY

Overview

The U.S. wholesale bedding industry is a mature and stable industry that has experienced a compounded annual revenue growth rate of approximately 6% over the past 10 years. We believe that growth in wholesale unit sales, which has been approximately 2% over this period, has been primarily due to population growth, an increase in the number of homes, including secondary residences, and an increase in the number of beds per home. We believe growth in average wholesale prices, which has been approximately 4% over this period, was a result of a shift to larger and higher quality beds which are typically more expensive. We believe this trend toward higher price points is caused by a demographic shift to an older U.S. population that typically spends more than younger consumers, improved merchandising and consumer education by retailers and industry advertising regarding the benefits of higher quality sleep.

DOMESTIC WHOLESALE BEDDING SALES

[DOMESTIC WHOLESALE BEDDING CHART]

(IN BILLIONS)

| | |
|---|---|
| 1982 | 1,369 |
| 1983 | 1,593 |
| 1984 | 1,700 |
| 1985 | 1,796 |
| 1986 | 1,929 |
| 1987 | 2,095 |
| 1988 | 2,261 |
| 1989 | 2,309 |
| 1990 | 2,319 |
| 1991 | 2,382 |
| 1992 | 2,564 |
| 1993 | 2,762 |
| 1994 | 3,018 |
| 1995 | 3,181 |
| 1996 | 3,347 |
| 1997 | 3,621 |
| 1998 | 4,016 |
| 1999 | 4,370 |
| 2000 | 4,605 |
| 2001 | 4,592 |
| 2002 | 4,766 |

Source: International Sleep Products Association

Bedding Manufacturers

U.S. wholesale bedding sales were approximately $4.8 billion in 2002. According to Furniture/Today, the four largest manufacturers, Sealy, Serta, Simmons and Spring Air, accounted for 60.5% of wholesale bedding sales in 2001.

Bedding Retailers

U.S. retail bedding sales were approximately $7.6 billion in 2002, of which 85% consisted of traditional innerspring bedding. The retail bedding market is fragmented, with the top 10 retailers accounting for approximately 25% of total sales in 2001. Bedding is sold to consumers through a variety of channels. According to the International Sleep Products Association, in 2001, furniture stores accounted for 41% of U.S. bedding sales, down from 56% in 1993; specialty sleep stores 40%, up from 19% in 1993; and department stores 11%, at the same level as 1993, with factory-direct outlets, warehouse clubs and other retail outlets accounting for the balance.

The following chart lists the largest U.S. bedding retailers, based on 2001 sales:

| RANK | COMPANY | 2001 BEDDING SALES ($ MILLIONS) |
|---|---|---|
| 1 | Select Comfort | $242.1 |
| 2 | Federated Department Stores | 235.0 |
| 3 | The Mattress Firm | 220.0 |
| 4 | The Mattress Discounters | 218.0 |
| 5 | Sam's Club | 200.0 |
| 6 | Sleepy's | 199.0 |
| 7 | Mattress Giant | 174.0 |
| 8 | May Department Stores | 130.0 |
| 9 | Berkshire Hathaway (furniture division) | 120.0 |
| 10 | Rooms to Go | 120.0 |
| 11 | JC Penney | 103.0 |
| 12 | Art Van | 100.0 |
| 13 | Rockaway Bedding | 94.0 |
| 14 | Dial-A-Mattress | 90.0 |
| 15 | Levitz Home Furnishings | 70.0 |
| 16 | The Sleep Train | 66.0 |
| 17 | Sleep Fair/Mattress Warehouse | 63.0 |
| 18 | Sears | 60.0 |
| 19 | Havertys | 55.0 |
| 20 | Costco | 55.0 |
| 21 | Slumberland | 50.0 |
| 22 | Value City | 47.0 |
| 23 | Sit `n Sleep | 46.9 |
| 24 | Rhodes | 45.0 |
| 25 | W.S. Badcock | 42.0 |

Source: Furniture/Today (August 2002)

COMPETITIVE STRENGTHS

Our objective is to become the leading brand in the bedding industry, both in revenue share and product innovation. To achieve this goal, we intend to capitalize on the following strengths:

Differentiated, Superior Product

Our proprietary Sleep Number bed was designed on the basis of sleep research and is clinically proven to provide better sleep quality and greater relief of back pain in comparison to traditional mattress products. Unlike traditional mattresses made from innersprings, our innovative Sleep Number bed uses proprietary air-chamber technology that allows each side of the mattress to be easily adjusted on a hand-held remote control that digitally displays an individual's Sleep Number. A Sleep Number is a number from zero to 100 that represents a sleeper's ideal level of comfort, firmness and support. Our Sleep Number bed offers dual comfort control for couples, allowing either sleeper to adjust the mattress firmness on each side of the bed. Our research indicates that 9 of 10 couples sleep at different Sleep Number settings, making the dual comfort control feature a compelling differentiator from standard bedding offerings.

Clinical research has shown that people who sleep on a Sleep Number bed fall asleep faster and experience deeper sleep with fewer disturbances than those sleeping on a traditional innerspring mattress. The gentle and conforming support of the air chambers in our Sleep Number beds provides more proper spinal alignment and relief from uncomfortable pressure points that can cause tossing and turning and poor-quality sleep. The capability of our Sleep Number bed to address consumer sleep problems is further evidenced by the more than 25,000 testimonials we have received from our customers over the years.

Our Sleep Number beds are priced competitively with other premium mattress products and are also more durable than traditional innerspring products, resulting in a stronger value proposition for the consumer. Because our Sleep Number bed does not depend on metal coils or springs for its support structure, it maintains its shape and support better over time than traditional innerspring mattresses. Independent durability testing has shown our Sleep Number bed to withstand more than 20 years of simulated use.

Proven Brand Development Strategy

In January 2001, we successfully repositioned our product and advertising messages, creating the Sleep Number brand and a new multi-media advertising campaign to increase awareness of our innovative, proprietary beds. The brand message hierarchy of the Sleep Number campaign is clear and proprietary:

- A Sleep Number represents an ideal level of bedding comfort, firmness and support;
- Everybody has a Sleep Number(TM);
- Knowing your Sleep Number is the Key to a Perfect Night's Sleep(TM); and
- You can only find your Sleep Number on a Sleep Number Bed by Select Comfort(TM).

This branding strategy allowed our advertising and consumer communication to focus on our bed's distinguishing and proprietary feature, personalized comfort, as represented by the digital Sleep Number readout on the bed's hand-held remote control. In addition to rebranding our product in 2001, we broadened our demographic and media reach by targeting adults 25-54 years old with a message of improved sleep quality. The Sleep Number brand was launched through our first-ever prime-time television advertising campaign, which invited consumers to visit their local Select Comfort retail store to find their personal Sleep Number. By focusing on the unique Sleep Number setting of an individual, the campaign quickly conveys the concept of our bed's comfort customization. The Sleep Number brand and positioning have been integrated into all of our sales channels and throughout our internal and external communication programs.

Although we have less than 5% unaided awareness nationally, average unaided

awareness of our Sleep Number brand reached 15% by the end of 2002 in the eight markets where the Sleep Number campaign was launched beginning in early 2001,. In these markets, we experienced annual comparable store sales growth in the range of 26% to 38% in 2002. Our Sleep Number campaign in now in a total of 20 markets.

Our Sleep Number campaign is efficient as well as effective. During 2002, while overall media investment rose 34% to nearly $40 million, marketing expense as a percent of net sales declined to 20% in 2002 from 22% in 2001 and 24% in 2000, before our Sleep Number advertising campaign was introduced.

Company-Controlled Distribution

Unlike traditional bedding manufacturers, which primarily sell through third-party retailers, we generate approximately 95% of our net sales through company-controlled distribution channels: retail, direct marketing and e-commerce. This distribution model enables us to control the selling process to ensure that the unique benefits of our product are effectively presented to consumers, to maintain direct contact with our customers and to capture both the manufacturer's and retailer's margin.

Our company-controlled distribution channels are staffed by high-quality, well-trained and passionate sales professionals who are Sleep Number bed owners. Our retail channel comprised 77% of our net sales in 2002. We operate 321 stores in 46 states, which allows consumers to easily experience our products and find their personal Sleep Number. Our direct marketing call center and our web site at selectcomfort.com provide national sales coverage, including markets not yet served by one of our retail stores. Our web site can be used as a product research tool, a place to purchase or as a means to locate our nearest retail store. Through these various channels, we maintain close contact with consumers, who provide us with important feedback for product improvement and innovation.

Flexible and Efficient Operating Model

Unlike traditional bedding manufacturers and retailers that are dependent on a stock of finished-goods inventory to fill orders, we employ a make-to-order manufacturing process. Through our long-term relationships with high-quality suppliers, which have been selected through a rigorous certification and review process, we have implemented a just-in-time materials supply system. This operating model enables us to maintain low levels of inventory and to generate an accelerated cash-conversion cycle, which allows us to operate with minimal or no working capital. In 2002, our manufacturing inventory turn was 20x. Our make-to-order manufacturing process allows us to introduce new or enhanced products without generating significant obsolete or clearance-priced finished-goods inventory. As a result of our flexible and modular production process, we estimate that we can double our current production volume in our existing manufacturing facilities with minimal capital investment.

Our efficient operating model extends from manufacturing to our stores with no regional warehousing. Our unique air chamber technology allows our beds to be packed in boxes and shipped via UPS or Fed Ex directly from our manufacturing plants to our customers, anywhere in the United States, which lowers our distribution costs. Consumers also appreciate the ease of handling and moving our bed, particularly through hallways and tight spaces.

Our stores serve as showrooms for our Sleep Number bed, without the need for any on-hand bed inventory. This low inventory model allows us to generate increased sales volume from existing retail floor space without a corresponding increase in working capital. In 2002, our retail inventory turn was 25x, and the average net sales per store was approximately $817,000 compared to approximately $626,000 in 2001.

GROWTH STRATEGY

We expect sales growth in the foreseeable future to be derived primarily from comparable store sales increases, opening stores in existing and new markets and adding new distribution channels. We expect to enhance our profit margin primarily by leveraging our existing infrastructure. To accomplish our growth strategy, we intend to focus on the following priorities:

Building Brand Awareness

Our most significant barrier to growth has been a lack of awareness of our innovative, high quality product among the broad consumer audience. With less than 5% unaided brand awareness nationally, we have significant opportunity for growth through increasing awareness of the Sleep Number brand, our innovative products and our store locations. Through long-established advertising and marketing programs, the most recognized bed brands have built national unaided awareness to 53% (Sealy), 33% (Serta) and 19% (Simmons).

Our Sleep Number campaign was introduced regionally in early 2001, and in 2002 received substantially more national advertising, particularly on national cable television, using a new infomercial and several direct-response advertisements to drive awareness of our Sleep Number bed. Our proven national radio campaign with Paul Harvey and Rush Limbaugh is being augmented by national television advertising with a new infomercial and several new direct response ads to build national awareness of our Sleep Number bed. As of January 2002, the Sleep Number Bed by Select Comfort became a national sponsor of National Public Radio's Prairie Home Companion show hosted by Garrison Keillor. We believe increased national advertising in 2003 will further increase consumer brand awareness to profitably generate traffic and sales at our stores, call center and web site.

Our national campaign is augmented by regional advertising that continues to expand. We are currently in 20 markets that cover approximately 27% of the U.S. population and 46% of our current retail sales. This regional campaign includes a custom mix by market of prime-time and infomercial television, drive-time radio and newspaper advertisements. In 2002, we continued to drive strong sales growth in the eight markets where this campaign was launched in early 2001, with comparable store sales increases ranging from 33% to 63% in the fourth quarter of 2002. These markets are among our more mature and developed markets, reinforcing our belief that our brand awareness will continue to grow over time with additional advertising investment. We believe substantial opportunity exists in broadening the reach of this campaign into other metropolitan markets.

Due to our multi-channel and direct-to-consumer sales model, we are able to cost effectively implement an integrated multi-media advertising program, both on a national and local-market basis. Our fully integrated direct marketing capabilities allow us to provide inquiring consumers with product information and to follow up with promotional literature during the buying process. We plan to increase total media spending by 25% to approximately $50 million in 2003, and believe we have significant opportunity to increase effective investment in the future to drive incremental awareness, store traffic and sales.

Expanding Profitable Distribution

We plan to expand profitable distribution primarily by:

- Increasing comparable store sales, primarily through our multi-media advertising campaign and increasing average revenue per transaction;

- Remodeling 100 older stores in 2003 to our latest store design;

- Adding 20 to 30 new retail stores in 2003;

- Increasing our store base by 5% to 10% annually beyond 2003;

- Testing our stores in non-mall locations;

- Expanding wholesale distribution selectively through specialty retailers; and

- Building our QVC partnership.

Comparable store sales growth will be comprised of both an increase in the number of units sold and an increase in the average revenue per transaction. This growth will be driven by increased advertising, improvements in our selling process, our enhanced, performance-based sales compensation plan and improved quality and training of our sales professionals. An increase in average revenue per transaction will be driven by continued product innovation in our higher-priced bed models and continued development of our accessory line. In addition, in 2003, we plan to remodel 100 of our older stores to a newer design with improved Sleep Number branding and product presentation. In order to expand our appeal to a broader consumer market, we are increasing the availability of our convenient home delivery and assembly services and extended financing offers.

Supported by our proven advertising strategy and store economics, we are in a position to add a program of profitable store expansion to our growth initiatives. We now have at least one Select Comfort retail store in 119 Designated Market Areas in the United States, which represent 85% of total U.S. household population. However, in many of those markets, including major cities such as Boston, Los Angeles and New York, we do not have a sufficient number of stores in relation to the size of the local population to allow us to realize an economic return on advertising. These understored markets are the focus of our store opening plans in 2003.

In the past two years, we have begun to develop our wholesale sales channel, providing consumers additional opportunities to become aware of and to purchase our Sleep Number bed. Our wholesale channel sells to a limited number of home furnishings retailers and specialty bedding retailers in selected markets and to consumers via the QVC shopping channel. This channel allows us to expand our points of sale more quickly and with lower capital expenditure by leveraging our brand building advertising.

Leading the Industry in Product Innovation

Our goal is to continue to lead the industry in product innovation and sleep expertise by developing and marketing products that deliver personalized comfort and better sleep. We focus our research and development resources on enhancing performance of our core product line, improving quality and reducing costs. In 2002, we introduced more new products and product enhancements than in any other year of our history. We improved the appearance, function and sleep-surface comfort of every bed in our product line, which we expect to benefit from in 2003. Sales of the newly re-designed Sleep Number 5000 and 7000 models, our two higher-end product offerings, increased as a percentage of our product mix by eight percentage points in 2002 compared to 2001.

Our strategy is to maintain a pipeline of benefits-driven product innovation, introducing a new product or refreshing an existing model each quarter. Following a successful test market in the third quarter of 2002, we are currently in a national rollout of our Precision Comfort adjustable foundation product, which allows consumers to adjust their bed position at both the head and feet. In February 2003, we launched our new oversized Grand King model, with a 30% larger sleeping area than a traditional King-sized mattress, inspired by a bed we custom made for seven-foot-tall NBA player Kevin Garnett. We also continue to expand our line of high-quality sleep accessories that improve comfort, such as pillows designed for specific sleep positions and dual-controlled heated mattress pads.

Leveraging our Infrastructure

As a result of improving our cost structure in 2000 and 2001, we believe we are well positioned to generate profitable growth. Over this period, we eliminated over $25 million from our cost structure and reduced the number of units we must sell in a year to become profitable by nearly 20%. While undertaking this cost reduction program, we have preserved our capacity to support growth, introduced a new media campaign and reinvigorated product development.

These successful cost-containment measures continue to allow us to leverage our fixed cost structure and realize improved operating margins through sales growth. Our goal is to generate sales growth of 15% to 25% annually, while containing general and administrative expense growth at less than half that rate and leveraging the fixed costs of our retail stores. We intend to maintain marketing and advertising investment at approximately 20% of net sales to build our brand and generate sales growth. We expect 2003 operating income margin to increase to at least 7% and believe we can achieve operating income margins of 10% to 12% within a three-year horizon.

Adding Product Categories, Markets and Geographies

Once we have more thoroughly penetrated the U.S. bedding market, our longer-term goal is to extend our brand through new product introductions, new market segments and international markets. For example:

- We are currently developing a sofa sleeper featuring our Sleep Number bed;
- We are evaluating our opportunities within OEM channels, beginning with a partnership with Winnebago Industries, which now installs our Sleep Number bed as standard or as an option in six of its higher-end motor home models;
- We are testing the placement of our Sleep Number bed in a hotel chain; and
- We are evaluating the benefits of expanding internationally in order to capitalize on our differentiated product, our operating model and the international management experience of our executive team.

HISTORY

We were founded in 1987 by an entrepreneur working in the innerspring mattress industry believed adjustable air chamber technology provided better support and reduced pressure points in comparison with other bedding products. In the early 1990s, we began to market an air bed directly to consumers through traditional direct marketing and opened our own call center. We opened our first retail store in the Minneapolis area in 1992. Since then, we have grown to 321 retail stores in 46 states. We developed our third company-controlled distribution channel, e-commerce, in 1999. We added a wholesale distribution channel in late 2000.

From mid-1999 to mid-2001, we experienced operating losses. In 2000, we recruited William R. McLaughlin as our President and Chief Executive Officer. Mr. McLaughlin has been instrumental in planning and executing our improved operating and growth strategy. As part of this strategy, we implemented cost containment initiatives to return our company to profitability while preserving our capacity to support growth. In 2001, we launched our Sleep Number brand campaign to generate sales growth.

OUR PRODUCTS

We sell a proprietary line of beds under the Sleep Number brand that features an adjustable air chamber mattress. A Sleep Number is a number from zero to 100 representing an individual's ideal level of comfort, firmness and support. Unlike traditional mattresses, which use a series of innersprings for support, our

mattress design uses air chambers. Our Sleep Number bed was designed on the basis of sleep research and has been shown to improve sleep quality through:

- Better spinal alignment;
- Reduced pressure points;
- Greater relief of lower back pain; and
- Greater overall comfort.

Mattresses

We offer four different Sleep Number bed models. Each bed comes in standard mattress sizes, ranging from twin to king, as well as some specialty sizes. All Sleep Number beds feature high quality, vulcanized rubber air chambers that are highly durable. Because air is the primary support material of the mattress, Sleep Number beds do not lose their shape or support over time like traditional innerspring bedding. The dual chambers allow each side of the mattress to be independently adjusted with our Firmness Control System for personalized comfort and support. Our Firmness Control System features a compact air compressor with a handheld remote that is used to fill the bed's air chamber and regulate its firmness. The Firmness Control System for our Sleep Number bed is certified by Underwriter's Laboratories (UL).

The air chambers of a Sleep Number bed are surrounded on all sides by a high-density foam perimeter to provide strong edge support. For added comfort, we offer a plush pillowtop option with an extra cushion of support designed to cradle the body. All Sleep Number mattresses are enclosed by a comfortable, durable Belgian Damask covering. Our covers are sewn in our plants in the United States.

Our entry-level model, the Sleep Number 3000, is 7 1/2 inches in total mattress thickness for the traditional-style sleep surface and 9 inches for the European pillowtop style. It comes standard with our Firmness Control System, with two wired remote controls that allow touch-button firmness adjustment. An optional upgrade to the digital Sleep Number remote control is available.

Our Sleep Number 4000 is our first model to feature our fully gusseted pillowtop style and the Sleep Number Firmness Control System as standard. A single, wired remote control with digital display is used to set each side of the bed to each individual's preferred Sleep Number. Our Sleep Number 4000 model has added sleep-surface cushioning and is 8 1/2 inches in total mattress thickness for the traditional style and 10 inches for the pillowtop style.

Our best-selling model is the Sleep Number 5000, which features more comfort padding and fiberfill loft, a higher-quality, satin-feel rayon Belgian Damask mattress fabric, and our patent-pending Corner Lock system for crisp corner support. Our Sleep Number 5000 features the whisper-quiet Deluxe Sleep Number Firmness Control System, and comes with either one wireless or two wired digital remote controls for easy Sleep Number adjustment. Our Sleep Number 5000 is 10 inches in total mattress thickness for the traditional style and 12 1/2 inches for the pillowtop style.

Our top-of-the-line Sleep Number 7000 model incorporates the Deluxe Sleep Number Firmness Control System and the Corner Lock system is 14 inches in mattress thickness and is available exclusively as a Duvet-style pillowtop, covered in Belgian Damask fabric. Our Sleep Number 7000 features three-layers of interior foam, including Hypersoft quilting foam and a 3-inch layer of our exclusive Intralux foam, for added comfort, support and resiliency.

Our current retail prices for our beds (excluding foundations) range as follows:

| SLEEP NUMBER MODEL | TWIN | FULL/DOUBLE | QUEEN | KING |
|---|---|---|---|---|
| 3000 | $300 - 560 | $500 - 650 | $500 - 700 | $700 - 900 |
| 4000 | $500 - 700 | $700 - 900 | $800 - 1,000 | $1,100 - 1,300 |
| 5000 | $700 - 1,000 | $950 - 1,150 | $1,100 - 1,300 | $1,400 - 1,600 |
| 7000 | $1,900 | N/A | $2,300 | $2,650 |

These prices are subject to promotional offerings that can result in pricing at 10% to 15% below these listed retail prices. We offer a slightly different series of Sleep Number bed models to our wholesale partners. We do not control the prices at which our wholesale partners sell our Sleep Number beds to their customers.

Foundations

The contouring and support of a Sleep Number mattress work best with our specially designed, proprietary foundation. Used in place of a box spring, this durable foundation is uniquely designed to complement the air chambers and maintain a consistent support surface for the life of the bed. Our foundation is designed with interlocking panels for maximum structural integrity, as well as high-density polymer side panels and lateral support beams for additional support. Unlike traditional box springs, our foundation can be disassembled and easily moved through hallways, tight spaces and up and down stairs. Through certain wholesale partners, we offer a wood foundation. The current retail prices of our foundations range from $200 to $550, depending upon the size of the bed.

We recently introduced our Precision Comfort adjustable foundation, which allows consumers to adjust their bed position at both the head and feet using a handheld remote. We believe consumers will appreciate the adjustable foundation's comfort benefits, flexibility, therapeutic rest and pressure relief. The current retail prices of our adjustable foundations range from $1,200 to $2,400, depending upon the size of the bed.

Accessories

In addition to our mattresses and foundations, we offer a line of accessory bedding products, including specialty pillows, mattress pads, comforters, sheets and bed frames. The specialty pillows, which come in a variety of sizes, materials and firmness, are designed to provide personalized comfort and better quality sleep. We recently introduced a number of new accessories, including our Imperial Mattress Pad, a luxury mattress pad filled with down resilient fiber; our Dual-Weight Merino wool blanket, exclusively made for us by Faribault Woolen Mills; and our Dual-Control Heated Mattress Pad, with 21 temperature settings that allow each sleeper to customize personal warmth levels.

Delivery and Assembly Services

Our unique product design allows us to ship our beds in a modular format to customers throughout the United States by UPS or FedEx. We regularly review our package sizes to take advantage of more favorable shipping rates. Informational product brochures and easy-to-follow assembly instructions accompany each Sleep Number bed, which can be quickly and easily assembled by the customer through a simple, tool-free process. For an additional fee between $75 and $100, the customer can take advantage of our home delivery, assembly and mattress removal services. At the end of 2002, these services were available through approximately 80% of our retail stores, in certain markets by a third-party provider. We plan ultimately to offer this service in all of the markets served by our stores. Delivery typically takes between 10 and 14 days from the date of order.

Better Night's Sleep Guarantee and Warranty

Each of our Sleep Number beds comes with our 30 Night In-Home Trial and Better Night's Sleep guarantee which allows consumers 30 nights at home to make sure they are 100% comfortable with our bed. If the consumer is not completely satisfied, we will authorize the return of the bed and a refund. The consumer is responsible for the return shipping costs. Each of our Sleep Number beds is backed by a 20-year Limited Warranty. We believe that due to our unique design and craftsmanship, our Sleep Number bed is built to last 20 years or more.

OUR DISTRIBUTION CHANNELS

We generate revenue by selling our products through four complementary distribution channels. Three of these channels, retail, direct marketing and e-commerce, are company-controlled and sell directly to consumers. We also sell through a wholesale channel to leading home furnishings retailers, specialty bedding retailers and the QVC shopping channel. Our wholesale strategy is to expand our points of sale more quickly in selected markets with lower capital expenditures than opening new retail stores. In addition, our wholesale strategy allows us to leverage our advertising and increase brand awareness in large markets where it would otherwise not be cost effective for us to spend advertising dollars.

Retail

Our retail stores accounted for 77% of our net sales in 2002 and 78% of our net sales in 2001. We currently operate 321 stores in 46 states, including 13 leased departments within other retail stores. Our stores are principally mall-based showrooms, averaging approximately 1,000 square feet and displaying four models of our Sleep Number beds and a full selection of our branded accessories. Our store design incorporates a bedroom-like setting intended to convey a sense of sophistication and quality that reinforces our Sleep Number brand name as synonymous with sleep solutions. We intend to remodel approximately 100 of our older stores in 2003 to the current design standard. Our sales professionals play an important role in creating an inviting and informative retail environment. These professionals receive extensive training regarding the features and benefits of our Sleep Number beds and accessories, the overall importance of sleep quality and our newly developed, standardized selling process.

Direct marketing

Many consumers' initial exposure to our Sleep Number bed is through our direct marketing operations. Interested consumers respond to our print, radio and cable television advertisements by calling our toll-free number. Our direct marketing sales professionals capture information from the consumer, begin the consumer education process, take the order, or, if appropriate, send an information packet. Our direct marketing operations also include a database marketing department that is responsible for segmentation and analysis of our database to direct the mailing of product and promotional information in response to inquiries. We maintain a database of approximately 8,600,000 inquiries, including customers. In 2001, we established a "Factory Direct" outlet through our direct marketing channel, allowing us to selectively market returned products that we have refurbished where allowed by law and discontinued models.

E-commerce

Our web site at selectcomfort.com provides consumers with a wide array of useful information as well as the convenience of ordering our products online or calling and ordering from one of our internet-dedicated sales professionals. Since building the capability to take online orders in May 1999, our e-commerce channel has continued to add functionality and content to educate consumers regarding sleep science and research, our products and the benefits they provide. Our web site also directs consumers to our store locations and provides other means to contact us. Our e-commerce department has also focused on

developing relationships with online shopping malls and other sales portals. Our web site incorporates a look and feel that is attractive and professional and reinforces the Select Comfort and Sleep Number brand images. Consumers can access our web site through two other sites, sleepnumber.com and beds.com.

Wholesale

We are selectively building wholesale relationships with home furnishings retailers and specialty bedding retailers. These wholesale relationships increase our points of sale with lower capital requirements and we believe will allow us to leverage our advertising spending in key markets. Since September 2000, we have tested wholesale distribution through home furnishings retailers. Since July 2002, our Sleep Number bed has been featured in 40 Sleep Train stores in California. Sleep Train is the first large scale, multi-store specialty bedding retailer to offer our Sleep Number bed outside of our company-controlled stores. In August 2002, we began to sell our Sleep Number bed through Sleep America, a 19-store specialty retailer in the Phoenix and Tucson markets. We plan to selectively pursue additional distribution through other wholesale partners.

Since October 2000, we have successfully offered our products through periodic segments on the QVC shopping channel. Our Sleep Number bed was named QVC's Home Innovation Product Concept of the Year at QVC's 2001 QStar Awards. We believe that our distribution through QVC has increased overall consumer awareness of our Sleep Number brand in addition to providing us with an important sales outlet.

STORE OPERATIONS

Store Economics

Average net sales per store were approximately $817,000 in 2002 and $626,000 in 2001, with average sales per square foot of approximately $840 in 2002 and $670 in 2001. For 2001, our sales per square foot were the fourth highest among all bedding and furniture retailers according to a May 2002 Furniture/Today survey. New stores opened in 2002 are expected to average approximately $800,000 of net sales in the first year of operations. Approximately 24% of our stores generated sales of over $1.0 million in 2002.

Our investment to open a new store is approximately $140,000, including inventory. We target new stores to be cash flow positive within 12 months with a payback of the initial cash investment in less than 24 months. Our stores breakeven on a four-wall cash flow basis with approximately $525,000 of net sales. Our four-wall cash flow is calculated as gross profit generated from store sales less store expenses and advertising, without deduction of depreciation expenses. We plan to open 20 to 30 new retail stores in 2003 primarily to fill out existing markets in order to leverage brand awareness and advertising.

Site Selection

We cluster retail stores within a metropolitan market in order to leverage our advertising. In selecting new store sites, we generally seek high-traffic locations of approximately 800 to 1,200 square feet within malls in metropolitan areas. We conduct extensive analyses of potential store sites and base our selection on a number of factors, including the location within the mall, the demographics of the trade area, the specifications of the mall (including size, age, sales per square foot and the location of the nearest competitive mall), the perceived strength of the mall's anchor stores, the performance of other specialty retail tenants in the mall, the store density of existing stores and our marketing and advertising plans in the respective markets. We intend to test store locations in select strip centers and lifestyle-oriented shopping centers in 2003.

Management and Sales Professionals

Our stores are currently organized into four regional areas and 34 districts, with seven to 12 stores in each district, depending on geographical dispersion. Each regional sales

director oversees eight or nine districts. Each district has a district sales manager who is responsible for sales and operations and reports to the regional sales director. The district sales managers frequently visit stores to review merchandise presentation, sales force product knowledge, financial performance and compliance with operating standards. The typical staff of one of our new Select Comfort stores consists of one store manager and two full-time sales professionals. Store staffing expands as store sales volume grows. Our sales professionals devote substantially all of their efforts to sales and customer service, which includes helping customers and responding to inquiries.

Training and Compensation

All store personnel receive comprehensive on-site training on our technology and sleep expertise, the features and benefits of our beds, sales and customer service techniques and operating policies and guidelines. Initial training programs are reinforced through detailed product and operating manuals and periodic performance appraisals. All store sales professionals receive base compensation and are entitled to commissions and bonuses based on individual and their store's performance. Early in 2002, we introduced a redesigned retail sales professional compensation program that is more focused on individual performance and more heavily commission driven, which we believe will enable us to attract and retain quality, sales-oriented store professionals. Regional sales directors, district sales managers and store managers are eligible to receive, in addition to their base compensation, bonuses for the achievement of performance objectives.

MARKETING AND ADVERTISING

Lack of awareness among the broad consumer audience of our brand, product benefits and store locations historically has been our most significant barrier to growth. The new Sleep Number advertising campaign was introduced early in 2001 to support our retail stores in selected markets through our first comprehensive multi-media advertising campaign using prime-time TV, national cable television, infomercials, drive-time radio and newspaper advertisements. We have expanded the comprehensive multi-media Sleep Number advertising campaign from the initial eight markets in 2001, to 16 markets in 2002 and to 20 markets in 2003. As of January 2002, the Sleep Number Bed by Select Comfort became a national sponsor of National Public Radio's Prairie Home Companion show hosted by Garrison Keillor. In 2003, we plan to extend the reach of our successful radio personality endorsement advertising by adding 65 new radio personalities for a total of 123 radio personalities in 113 retail store markets.

In the direct marketing channel, our advertising message is communicated through targeted print and radio advertisements, use of infomercials and short-form direct TV advertising and through product brochures, videos and other product and promotional materials mailed in response to consumer inquiries. The direct marketing channel has relied heavily on our advertising through nationally syndicated radio personalities, such as Paul Harvey and Rush Limbaugh, and print and direct mail programs. We are continuing to increase our advertising investment on national cable TV, predominantly purchased at advantageous direct response media rates. This provides a base of awareness upon which local retail store advertising cumulatively builds. Our direct marketing operations continually monitor the effectiveness and efficiency of our advertising by tracking the cost per inquiry and cost per order of our advertising.

The Sleep Number positioning was integrated into our marketing messages across all of our distribution channels during 2001. To support our direct marketing channel, a new 30-minute infomercial, a pool of two-minute short-form television spots and new print advertisements were created around the Sleep Number positioning. Likewise, the messaging on our web site, in promotional material and on QVC broadcasts was successfully transitioned to focus on our Sleep Number bed. We have increased our

1-800 advertising on national cable TV as an economical means of increasing national brand awareness for our Sleep Number bed. Through our dedicated call center, we are able to provide the inquiring consumer more information or send a video and brochure. Although total media expenditure is planned to increase by 25% to approximately $50 million in 2003, we have significant opportunity to increase effective investment in the future, with the proven result of driving incremental awareness, traffic and purchases.

All owners of our beds are members of our Comfort Club, our customer loyalty program designed primarily to reward our owners for recommending our beds. Each time a customer purchases a bed, the referring member receives a $50 coupon for purchase of our products, with increasing benefits for multiple referrals. In 2002, approximately 23,000 beds were sold through referrals from our Comfort Club members.

OPERATIONS

Manufacturing and Distribution

We have two manufacturing plants, one located in Columbia, South Carolina, and the other in Salt Lake City, Utah. The manufacturing operations in South Carolina and Utah consist of quilting and sewing of the fabric covers for our beds and final assembly and packaging of mattresses and foundations from contract manufactured components. In addition, our electrical Firmness Control System is assembled from contract manufactured components in our Salt Lake City plant. In April 2001, we discontinued manufacturing in our Minneapolis location and have since used this facility to process returns and warranty claims.

We manufacture beds to fulfill orders rather than stocking inventory, which enables us to maintain lower levels of finished goods inventory and operate with no regional warehousing. Orders are currently shipped from our manufacturing facilities, primarily via UPS, typically within 48 hours following order receipt, and are usually received by the customer within 5 to 10 business days after shipment. We are continually evaluating alternative carriers on a national and regional basis, as well as expanding our in-home assembly services in selected markets.

Suppliers

We currently obtain all of the materials and components used to produce our beds from outside sources. Components for the Firmness Control System are obtained from a variety of domestic sources. Quilting and ticking materials are obtained from a supplier that produces both in Belgium and in the United States. Components for our foundations are obtained from one domestic source.

Our proprietary air chambers are produced to our specifications by one Eastern European supplier, which has been our sole source of supply of air chambers since 1994. Under our agreement with this supplier, we are obligated to purchase certain minimum quantities. This agreement runs through October 2006 and is thereafter subject to automatic annual renewal unless either party gives 365 days' notice of its intention not to renew the agreement. We expect to continue this supplier relationship for the foreseeable future.

Our proprietary foundations are produced to our specifications by one domestic supplier under an agreement that expires in October 2003. This agreement is subject to automatic annual renewal unless either party gives 180 days' notice of its intention not to renew the agreement. We expect to continue this supplier relationship for the foreseeable future.

All of the suppliers that produce unique or proprietary products for us have in place either contingency or disaster recovery plans or redundant production capabilities in other locations in order to safeguard against any unforeseen disasters. We review these plans and sites on a regular basis to ensure the

supplier's ability to maintain uninterrupted supply of materials and components.

Research and Development

Our research and development department continuously seeks to improve current product performance and benefits based on sleep science. Through customer surveys and consumer focus groups, we seek feedback on a regular basis to help enhance our products. Since the introduction of our first bed, we have continued to improve and expand our product line, including a quieter Firmness Control System, remote controls with digital settings, more luxurious fabrics and covers, new generations of foams and foundation systems and enhanced border walls. Our research and development expenses were $0.9 million in 2002, $1.1 million in 2001 and $0.9 million in 2000.

Customer Service

We maintain an in-house customer service department of over 40 customer service representatives who receive extensive training in sleep technology and all aspects of our products and operations. Our customer service representatives field customer calls and also interact with each of our retail stores to address customer questions and concerns raised with retail sales professionals. Our customer service department also makes outbound calls to new customers during our in-home trial phase to provide solutions to possible problems in order to enhance customer education, build customer satisfaction and reduce returns.

Consumer Credit Arrangements

Through a private label consumer credit facility provided by Mill Creek Bank, a subsidiary of Conseco Finance Corp., our qualified customers are offered a revolving credit arrangement to finance purchases from us. Mill Creek Bank sets the minimum acceptable credit ratings, the interest rates, fees and all other terms and conditions of the customer accounts, including collection policies and procedures, and is the owner of the accounts. In connection with all purchases financed under these arrangements, Mill Creek Bank pays us an amount equal to the total amount of such purchases, net of promotional related discounts.

Mill Creek Bank's right to set the minimum customer credit ratings could, if exercised, impact sales by affecting the number of customers who can finance purchases. The term of this facility expires in May 2004, subject to automatic one-year renewals, unless terminated by either party upon 150 days' notice prior to the end of the then-current term. We are liable to Mill Creek Bank for chargebacks arising out of (i) breach of our warranties relating to the underlying sale transaction, (ii) defective products or (iii) our failure to comply with applicable operating procedures under the facility. We have provided a standby letter of credit to Mill Creek Bank in the amount of $1.0 million to protect Mill Creek Bank against potential losses from unpaid chargebacks. We are not liable to Mill Creek Bank for credit losses arising out of our customers' credit defaults. If we replace Mill Creek Bank with an alternative third-party provider of consumer financing, Mill Creek Bank could request that we purchase its portfolio of our customer accounts based on a pre-determined formula, which reflects a discount to the face amount of these accounts. If we were to engage a replacement provider, we would likely require this new provider to purchase the portfolio from Mill Creek Bank, relieving us of our obligations under this facility.

COMPETITION

The bedding industry is highly competitive. Participants in the bedding industry compete primarily on price, quality, brand name recognition, product availability and product performance, including the perceived levels of comfort and support provided by a mattress. Our beds compete with a number of different types of bedding alternatives, including innerspring bedding, foam bedding, waterbeds, futons and other air-supported bedding that are sold through a variety of channels, including

home furnishing stores, specialty bedding stores, department stores, mass merchants, wholesale clubs, telemarketing programs, television infomercials and catalogs. We believe that our success depends in part on increasing consumer awareness and acceptance of our existing products and the continuing introduction of product improvements or new products with features or benefits that differentiate our products from those offered by other manufacturers.

Innerspring bedding sales represent approximately 85% of all bedding sales. The traditional bedding industry is characterized by a high degree of concentration among the four largest manufacturers of innerspring bedding with nationally recognized brand names, including Sealy, which also owns the Stearns & Foster brand name, Serta, Simmons and Spring Air. Numerous other manufacturers, primarily operating on a regional or niche basis, serve the balance of the bedding market.

INTELLECTUAL PROPERTY

We hold various U.S. and foreign patents and patent applications regarding certain elements of the design and function of our products, including air control systems, remote control systems, air chamber features, border wall and corner piece systems, foundation systems and features related to sofa sleepers with air mattresses, as well as other technology. We have 22 issued U.S. patents, expiring at various points between January 2005 and March 2020, and four U.S. patent applications pending. We also hold 16 foreign patents and 14 foreign patent applications pending. Notwithstanding these patents and patent applications, we cannot assure you that these patent rights will provide substantial protection or that others will not be able to develop products that are similar to or competitive with our products. To our knowledge, no third party has asserted a claim against us alleging that any element of our product infringes or otherwise violates any intellectual property rights of any third party.

"Select Comfort" and "Sleep Number" are trademarks registered with the U.S. Patent and Trademark Office. Applications for our new "Select Comfort" logos with the double arrow design have been approved for registration and published for opposition. We have a number of other registered marks, including "The Sleep Number Bed by Select Comfort" (logo), "The Sleep Number Store by Select Comfort" (logo), "Comfort Club" and "Sleep Better on Air." U. S. applications are pending for a number of other marks, including "Select Comfort Creator of the Sleep Number Bed," "What's Your Sleep Number?" and several other marks that incorporate our new logo design. Several of these trademarks have been registered, or are the subject of pending applications, in various foreign countries. Each federally registered mark is renewable indefinitely as long as the mark remains in use. We are not aware of any material claims of infringement or other challenges asserted against our right to use these marks.

GOVERNMENTAL REGULATION

Our operations are subject to state and local consumer protection and other regulations relating to the bedding industry. These regulations vary among the states in which we do business. The regulations generally impose requirements as to the proper labeling of bedding merchandise, restrictions regarding the identification of merchandise as "new" or otherwise, controls as to hygiene and other aspects of product handling and sale and penalties for violations. Our direct marketing operations are or may become subject to various adopted or proposed federal and state "do not call" list requirements.

The federal Consumer Product Safety Commission and various state regulatory agencies are considering new rules relating to fire retardancy standards for the bedding industry. The State of California plans to adopt, effective in the year 2004, new fire retardancy standards that have not yet been finally defined. If adopted, such new rules may adversely affect our costs, manufacturing processes and

materials. We are developing product solutions that are intended to enable us to meet the new standards. Because the new standards have not been finally determined, however, no assurance can be given that our solutions will enable us to meet the new standards. We expect that any required product modifications will add cost to our product.

A portion of our net sales consists of refurbished products that are assembled in part from components returned to us from customers. These refurbished products must be properly labeled and marketed as refurbished products under applicable state laws. Our sales of refurbished products are limited to approximately 24 states, as the balance of the states do not allow the sale of refurbished bedding products.

We believe we are in substantial compliance with each of these governmental regulations.

INFORMATION SYSTEMS

We use technology to support our business and reduce operating costs, enhance our customer experience and provide information to manage our business. We use technology platforms from market leaders such as Oracle, Microsoft, Dell, Sun and Cisco to run both packaged applications and internally developed systems. We have purchased upgraded replacements for the majority of our technology infrastructure over the past several years as equipment has come off of lease.

Our major systems include an in-store point of sale (POS), a retail portal system, direct marketing and customer service in-bound/out-bound telemarketing systems, e-commerce systems, retail partners support systems and Oracle ERP systems. Our in-store retail systems include one or two POS systems in each store, based on sales volume. The POS terminals are connected via a secured Internet connection back to our enterprise systems. That same communication connection is used to provide the stores with access to store productivity and reporting systems via our retail portal. The retail, direct marketing, customer service, e-commerce and retail partner applications are interfaced to provide a fully integrated view of our customer and their activities across sales channels. Our Oracle based ERP applications include modules in support of our finance, human resources and manufacturing operations. We are currently upgrading our Oracle applications to the 11i version to provide significantly more flexibility, functionality and productivity cost savings.

We use a combination of primarily internal employees, supplemented by consultants and contractors to deliver and maintain our technology systems and assets. Outsourcing is occasionally used for cost effectiveness or strategic reasons. We have a tested disaster recovery plan in place.

EMPLOYEES

At December 28, 2002, we employed 1,805 persons, including 1,046 retail store employees, 54 direct marketing sales employees, 66 customer service employees, 273 manufacturing employees, 181 home delivery employees and 185 management and administrative employees. Approximately 164 of our employees were employed on a part-time basis at December 28, 2002. Except for managerial employees and professional support staff, all of our employees are paid on an hourly basis plus commissions for sales associates. None of our employees is represented by a labor union or covered by a collective bargaining agreement. We believe that our relations with our employees are good.

CERTAIN RISK FACTORS

WE MAY BE UNABLE TO SUSTAIN GROWTH OR PROFITABILITY.

Our net sales grew in 2002 after two consecutive years of declining net sales. Our six most recent quarters have been profitable after eight consecutive quarters of losses. We may not be able to sustain growth or profitability on a quarterly or annual basis in future periods. Our future growth and profitability will depend upon a number of factors, including without limitation:

- Our ability to continue to successfully execute our strategic initiatives and growth strategy;
- The efficiency and effectiveness of our Sleep Number advertising campaign and other marketing programs in building product and brand awareness, driving traffic to our points of sale and increasing sales;
- The level of consumer acceptance of our products;
- Our ability to continue to realize the benefits of our cost savings initiatives;
- Our ability to realize increased sales and greater levels of profitability through our retail stores;
- Our ability to cost-effectively close under-performing or unprofitable store locations;
- Our ability to hire, train, manage and retain qualified retail store management and sales professionals;
- Our ability to cost-effectively sell our products through wholesale or other distribution channels in volumes sufficient to drive growth and leverage our cost structure and advertising spending;
- Our ability to continuously improve our products to offer new and enhanced consumer benefits, better quality and reduced costs;
- Our ability to maintain cost-effective sales, production and delivery of our products;
- Our ability to successfully expand our home delivery, assembly and mattress removal capability on a cost-effective basis;
- The ability of various third-party providers of delivery, assembly and mattress removal services to provide quality services on a cost-effective basis;
- Our ability to cost-effectively offer consumer credit options through third party credit providers;
- Our ability to successfully identify and respond to emerging trends in the bedding industry;
- The level of competition in the bedding industry; and
- General economic conditions and consumer confidence.

We cannot assure you that we will be successful in executing our growth strategy or that

achieving our strategic plan will enable us to sustain profitability. Failure to successfully execute any material part of our strategic plan or growth strategy could significantly harm our business, financial condition and operating results.

OUR COMPARABLE STORE SALES AND OTHER OPERATING RESULTS MAY FLUCTUATE SIGNIFICANTLY AND AN UNANTICIPATED DECLINE IN COMPARABLE STORE SALES OR OTHER OPERATING RESULTS MAY DISAPPOINT INVESTORS AND RESULT IN A DECLINE IN OUR STOCK PRICE.

Our comparable store sales results and other operating results have fluctuated significantly in the past. These fluctuations may continue and thus may not be a meaningful indicator of future performance. For example, our comparable store sales results have fluctuated significantly from quarter to quarter with (decreases)/increases ranging from (7.7)% to 38.3% from 1998 through 2002. Stores enter the comparable store calculation in the 13th full month of operation. Our annual comparable store sales (decreases)/increases were 26.8% for 2002, (3.8)% for 2001 and 0.2% for 2000. We cannot assure you that our comparable store sales and other operating results will not fluctuate significantly in the future. A variety of factors affect our comparable store sales results and other operating results, including:

- Levels of consumer awareness of our products, brand name and store locations;
- Levels of consumer acceptance of our existing and new products;
- Higher levels of sales in the first year of operations as each successive class of new stores is opened;
- Comparable store sales performance in prior periods;
- The maturation of our store base;
- The amount, timing and relative success of promotional events, advertising expenditures, new product introductions and product line extensions;
- The quality and tenure of store-level managers and sales professionals;
- The amount of competitive activity;
- The timing of new store openings and related expenses;
- Changes in the sales mix among our distribution channels;
- Our ability to offer effective consumer credit promotional offerings;
- The wholesale distribution of our products through home furnishings and specialty bedding retailers into markets with existing company-operated retail stores;
- Any increases in return rates or warranty claims;
- Any disruptions in third-party delivery services; and
- General economic conditions and consumer confidence.

Because of these fluctuations, our comparable store sales and other quarterly operating results may not be a meaningful indicator of future performance. Future decreases in our comparable store sales and other operating results could significantly harm our business, financial condition and operating results. In addition, an unanticipated decline in comparable store sales and other operating results may disappoint securities analysts or investors and result in a decline in our stock price.

OUR FUTURE GROWTH AND PROFITABILITY WILL DEPEND IN LARGE PART UPON THE EFFECTIVENESS AND EFFICIENCY OF OUR ADVERTISING EXPENDITURES AND OUR ABILITY TO SELECT THE RIGHT MARKETS IN WHICH TO ADVERTISE.

Our advertising expenditures were $39.5 million, $29.5 million and $31.3 million in 2002, 2001 and 2000, respectively. Our overall marketing budget is being managed with greater emphasis toward awareness-building advertising. Our future growth and profitability will depend in large part upon the effectiveness and efficiency of our advertising expenditures, including our ability to:

- Create greater awareness of our products and brand name;
- Identify the most effective and efficient level of spending in each markets;
- Determine the appropriate creative message and media mix for advertising expenditures;
- Effectively manage advertising costs (including creative and media) in order to maintain acceptable costs per inquiry, costs per order and operating margins;
- Select the right markets in which to advertise; and
- Convert consumer inquiries into actual orders.

We cannot assure you that our planned advertising expenditures will result in increased sales or will generate sufficient levels of product and brand name awareness or that we will be able to manage our advertising expenditures on a cost-effective basis.

THE BEDDING INDUSTRY IS HIGHLY COMPETITIVE. IF ANY OF OUR COMPETITORS OR A NEW ENTRANT INTO THE MARKET WITH SIGNIFICANT RESOURCES AGGRESSIVELY PURSUES THE AIR BED MARKET, OUR BUSINESS COULD BE SIGNIFICANTLY HARMED.

Our Sleep Number beds compete with a number of different types of bedding alternatives, including innerspring bedding, foam bedding, waterbeds, futons and other air-supported bedding that are sold through a variety of channels, including home furnishings stores, specialty bedding stores, department stores, mass merchants, wholesale clubs, telemarketing programs, television infomercials and catalogs. The bedding industry is characterized by a high degree of concentration among the four largest manufacturers with nationally recognized brand names, including Sealy, which also owns the Stearns & Foster brand, Serta, Simmons and Spring Air. Numerous other manufacturers, primarily operating on a regional or niche basis, serve the balance of the bedding market. A number of bedding manufacturers, including Simmons, have offered air beds and some of these manufacturers have recently increased their presence in the air bed market. Many of our competitors, including in particular the four largest bedding manufacturers, have greater financial, marketing and manufacturing resources and better brand name recognition than we do and sell products through broader and more established distribution channels. We cannot assure you that these competitors or new entrants into the market will not aggressively pursue the air bed market or be successful in obtaining a significant presence in the air bed market. Any such competition could significantly harm our business. In addition, should any of our competitors reduce its prices on premium bedding products, we may be required to implement similar price reductions in order to remain competitive, which could significantly harm our financial condition and operating results.

OUR PLAN TO PURSUE ADDITIONAL OR MAINTAIN EXISTING WHOLESALE RELATIONSHIPS WITH HOME FURNISHINGS RETAILERS, SPECIALTY BEDDING RETAILERS AND THE QVC SHOPPING CHANNEL MAY NOT YIELD THE BENEFITS WE EXPECT AND MAY INVOLVE OTHER RISKS THAT MAY HARM OUR BUSINESS.

An important element of our growth strategy is to expand profitable distribution by increasing sales through our existing channels and by increasing opportunities for consumers to become aware of, and to purchase, our products through additional points of distribution, such as wholesale distribution. We have only recently established a limited number of wholesale relationships with home furnishings retailers, specialty bedding retailers and the QVC shopping channel and therefore have limited wholesale experience. We cannot assure you that our wholesale relationships will result in the intended benefits. We also expect the gross margin from wholesale sales to be less than the gross margin we generate in our company-controlled channels. The success of our wholesale strategy will depend upon numerous factors, including the following:

- The ability of our personnel to adequately analyze and identify suitable wholesale distribution partners and markets in which our retail presence is underrepresented;

- Our ability to negotiate favorable distribution terms with our wholesale distribution partners;

- Our ability and the ability of our wholesale distribution partners to train, motivate, incentivize and retain sales professionals who are selling our products;

- Our ability to adapt our distribution and other operational and management systems to an expanded network of points of sale; and

- Our ability and the ability of our wholesale distribution partners to attract customers and generate sales sufficient to justify the expense of establishing the wholesale distribution relationship.

WE RELY UPON SEVERAL KEY SUPPLIERS THAT ARE, IN SOME INSTANCES, OUR SOLE SOURCE OF SUPPLY. THE FAILURE OF ONE OR MORE OF THESE SUPPLIERS OR OUR OTHER KEY SUPPLIERS TO SUPPLY COMPONENTS FOR OUR PRODUCTS ON A TIMELY BASIS, OR A MATERIAL CHANGE IN THE PURCHASE TERMS FOR OUR COMPONENTS, COULD SIGNIFICANTLY HARM OUR BUSINESS, FINANCIAL CONDITION AND OPERATING RESULTS.

The major components and raw materials that we purchase for our products are air chambers, foundations, remote controls, pumps, valves, foam and fabric. We currently obtain the air chambers and foundations for our beds from single supply sources. We have a supply agreement with the supplier of our air chambers that expires in October 2006, subject to automatic annual renewal thereafter unless either party gives 365 days' notice of non-renewal. We have a supply agreement with the supplier of our blow molded foundations that expires in October 2003, subject to automatic annual renewal thereafter unless either party gives 180 days' notice of non-renewal. If our relationship with the supplier of our air chambers or foundations is terminated, we could have difficulty in replacing these sources since there are few other suppliers capable of manufacturing these components.

We generally purchase many of our other components and raw materials centrally to obtain volume discounts and achieve economies of scale. We therefore obtain a large percentage of our components and raw materials from a small number of suppliers. We do not have any long-term purchase agreements with, or other contractual assurances of continued supply, pricing or access from, any of our suppliers, except as noted above. Other than our air chambers and foundations, we purchase most of our components and raw materials through purchase orders. If prices increase and we are unable to pass on the increase in our costs to our customers, then our financial condition or operating results may be significantly harmed.

The loss of one or more of our key suppliers, the failure of one or more of our key suppliers to supply components to our products on a timely basis, or a material change in the purchase terms for our components could significantly harm our business, financial condition and operating results.

We generally assemble our products after we receive orders from customers. Lead times for ordered components may vary significantly and depend upon factors, such as the location of the supplier, the complexity in manufacturing the component and general demand for the component. Some of our components, including our air chambers, have longer lead times. We generally do not maintain large volumes of component inventory, except for our air chambers, in which case we generally carry approximately four weeks of inventory. As a result, an unexpected and significant increase in the demand for our beds could lead to inadequate inventory and delays in shipping our beds to customers.

THE FOREIGN MANUFACTURING OF OUR AIR CHAMBERS AND SOME OF OUR OTHER COMPONENTS INVOLVES RISKS THAT COULD SUBSTANTIALLY HARM OUR BUSINESS.

Since our air chambers and some of our other components are manufactured outside the United States, our operations could be significantly harmed by the risks associated with foreign sourcing of materials, including without limitation:

- Political instability resulting in disruption of trade;
- Existing or potential duties, tariffs or quotas that may limit the quantity of certain types of goods that may be imported into the United States or increase the cost of such goods;
- Any significant fluctuation in the value of the U.S. dollar against foreign currencies; and
- Economic uncertainties, including inflation.

If any of these or other factors were to render the conduct of any of our suppliers' businesses in particular countries undesirable or impractical, our financial condition and operating results could be materially adversely affected because we would have difficulty sourcing the main components of our products.

OUR AIR BEDS REPRESENT A SIGNIFICANT DEPARTURE FROM TRADITIONAL INNERSPRING BEDDING AND THE FAILURE OF OUR BEDS TO ACHIEVE MARKET ACCEPTANCE WOULD SIGNIFICANTLY HARM OUR BUSINESS, FINANCIAL CONDITION AND OPERATING RESULTS.

Innerspring mattress sales represent approximately 85% of all mattress sales. Four large manufacturers of innerspring bedding dominate the U.S. bedding market. Our air chamber technology represents a significant departure from traditional innerspring bedding. Because no established air bed market existed prior to the introduction of our air bed in 1988, we faced the challenge of establishing the viability of this market, as well as gaining widespread acceptance of our air bed. The market for air beds is now evolving and the future success of our products will depend upon both the continued growth of this market and market acceptance of our air beds. The failure of our beds to achieve market acceptance for any reason would significantly harm our business, financial condition and operating results.

APPROXIMATELY ONE-THIRD OF OUR NET SALES ARE FINANCED BY A THIRD PARTY. THE TERMINATION OF OUR AGREEMENT WITH THIS THIRD PARTY, ANY MATERIAL CHANGE TO THE TERMS OF OUR AGREEMENT WITH THIS THIRD PARTY OR IN THE AVAILABILITY OR TERMS OF CREDIT OFFERED TO OUR CUSTOMERS BY THIS THIRD PARTY, OR ANY DELAY IN SECURING REPLACEMENT CREDIT SOURCES, COULD HARM OUR BUSINESS, FINANCIAL CONDITION AND OPERATING RESULTS.

Our qualified customers are offered a revolving credit arrangement to finance purchases from us

through a private label consumer credit facility provided by Mill Creek Bank, a subsidiary of Conseco Finance Corp. Mill Creek Bank sets the minimum acceptable credit ratings, the interest rates, fees and all other terms and conditions of the customer accounts, including collection policies and procedures and is the owner of the accounts. In connection with all purchases financed under these arrangements, Mill Creek Bank pays us an amount equal to the total amount of such purchases, net of promotional related discounts. Mill Creek Bank's right to set the minimum customer credit ratings could, if exercised, impact sales by affecting the number of customers who can finance purchases. The term of this facility expires in May 2004, subject to automatic one-year renewals, unless terminated by either party upon 150 days' notice prior to the end of the then-current term. We are liable to Mill Creek Bank for chargebacks arising out of (i) breach of our warranties relating to the underlying sale transaction, (ii) defective products or (iii) our failure to comply with applicable operating procedures under the facility. We have provided a standby letter of credit to Mill Creek Bank in the amount of $1.0 million to protect Mill Creek Bank against potential losses from unpaid chargebacks. We are not liable to Mill Creek Bank for losses arising out of our customers' credit defaults. If we replace Mill Creek Bank with an alternative third-party provider of consumer financing, Mill Creek Bank could request that we purchase its portfolio of our customer accounts based on a pre-determined formula, which reflects a discount to the face amount of these accounts. If we were to engage a replacement provider, we would likely require this new provider to purchase the portfolio from Mill Creek Bank, relieving us of our obligations under this facility.

Conseco Finance Corp., the parent corporation of Mill Creek Bank, has recently experienced financial and liquidity issues and has filed for protection under federal bankruptcy laws. Through its pending bankruptcy proceedings, Conseco Finance Corp. has proposed to sell various of its operating assets, including Mill Creek Bank. The sale process, including selection of the ultimate possible purchaser of these assets, is pending. Any new owner of Mill Creek Bank could attempt to exercise its discretion available to Mill Creek Bank under our facility that may adversely impact our reliance on it. These financial and liquidity issues could jeopardize the ability of Mill Creek Bank to continue to provide consumer credit financing for our customers. In that event, we would seek to secure consumer credit financing from other sources, but it may not be possible to secure such arrangements without some delay or on the same or better terms than have been available from Mill Creek Bank. Approximately 32.6% of our net sales during 2002 and 39.8% of our net sales during 2001 were financed by Mill Creek Bank. Termination of our agreement with Mill Creek Bank, any material change to the terms of our agreement with Mill Creek Bank or in the availability or terms of credit for our customers from Mill Creek Bank or any delay in securing replacement credit sources, could harm our business, financial condition and operating results.

OUR FUTURE GROWTH AND SUCCESS DEPEND UPON KEY PERSONNEL WHOM WE MAY NOT BE ABLE TO RETAIN OR HIRE.

We are currently dependent upon the continued services, ability and experience of our executive management team, particularly William R. McLaughlin, our President and Chief Executive Officer. The loss of the services of Mr. McLaughlin or other members of executive management could significantly harm our business. We do not maintain any key person life insurance on any members of our executive management team. Our future growth and success will also depend upon our ability to attract, retain and motivate other qualified personnel.

OUR FUTURE GROWTH AND SUCCESS WILL DEPEND, IN PART, UPON OUR ABILITY TO ENHANCE OUR EXISTING PRODUCTS AND TO DEVELOP AND MARKET NEW PRODUCTS, ON A TIMELY BASIS, THAT RESPOND TO CUSTOMER NEEDS AND ACHIEVE MARKET ACCEPTANCE.

One of our growth strategies is to continue to lead our industry in product innovation and sleep expertise by enhancing existing products and by developing and marketing new products that deliver personalized comfort and better sleep. We cannot assure you that we will be successful in developing or marketing enhanced or new products or that the market will accept any such products. Further, the resulting level of sales from any of our enhanced or new products may not justify the costs associated with the development and marketing.

IF WE ARE UNABLE TO PROTECT OUR INTELLECTUAL PROPERTY, WE MAY BE UNABLE TO PREVENT OTHER COMPANIES FROM USING OUR TECHNOLOGY IN COMPETITIVE PRODUCTS.

Certain elements of the design and function of our beds are the subject of U.S. and foreign patents and patent applications owned by us. We also own several registered and unregistered trademarks and trademark applications, including in particular our Sleep Number trademark, which we believe have significant value and are important to the marketing of our products to customers. In addition to patents and trademarks, we rely upon copyrights, trade secrets and other intellectual property rights and we have implemented several measures to protect our intellectual property and confidential information contained in our products, such as entering into assignment of invention and nondisclosure agreements. Our ability to compete effectively with other companies depends, to a significant extent, upon our ability to maintain the proprietary nature of our owned intellectual property and confidential information. We cannot assure you, however, that our intellectual property rights will provide us substantial protection or cannot and will not be circumvented by our competitors. We also cannot assure you that our protective measures will protect our intellectual property rights or confidential information or prevent our competitors from developing and marketing products that are similar to or competitive with our beds or other products. In addition, the laws of some foreign countries may not protect our intellectual property rights and confidential information to the same extent as the laws of the United States.

Intellectual property litigation, which could result in substantial costs to us and the diversion of significant time and effort by our executive management, may be necessary to enforce our patents and trademarks and to protect our trade secrets and proprietary technology. We cannot assure you that we will have the financial resources necessary to enforce or defend our intellectual property rights. Although we are unaware of any intellectual property infringement or invalidity claims asserted against us, we cannot assure you that third parties, including competitors, will not assert such claims against us or that, if asserted, such claims will not be upheld. We also cannot assure you that we would prevail in any such litigation or that, if we are unsuccessful, we would be able to obtain any necessary licenses on reasonable terms or at all.

WE DEPEND UPON UPS AND OTHER CARRIERS TO DELIVER OUR PRODUCTS TO CUSTOMERS ON A TIMELY AND COST-EFFECTIVE BASIS AND ANY SIGNIFICANT DELAY IN DELIVERIES TO OUR CUSTOMERS OR INCREASE IN FREIGHT CHARGES COULD SIGNIFICANTLY HARM OUR BUSINESS, FINANCIAL CONDITION AND OPERATING RESULTS.

Historically, we have relied almost exclusively on UPS for delivery of our products to customers. For a significant portion of the third quarter of 1997, UPS was unable to deliver our products within acceptable time periods due to a labor strike, causing delays in deliveries to customers and requiring us to use alternative carriers. No assurance can be given that UPS will be able to avert labor difficulties in the future or that UPS will not otherwise experience difficulties in meeting our requirements in the future. In 2000, we began to shift a portion of our product delivery business to FedEx. In

addition, we either provide directly, or contract with a third party to provide, in-home delivery, assembly and mattress removal services, and are in the process of increasing the availability of this service. Despite these alternative carriers, we cannot assure you that if UPS were to experience difficulties in meeting our requirements we would be able to deliver our products to our customers through any one or more of these or other alternative carriers on a timely or cost-effective basis. Any significant delay in deliveries to our customers or increase in freight charges could significantly harm our business, financial condition and operating results.

SIGNIFICANT AND UNEXPECTED RETURN RATES UNDER OUR 30-NIGHT TRIAL PERIOD AND WARRANTY CLAIMS UNDER OUR LIMITED 20-YEAR WARRANTY ON OUR BEDS, IN EXCESS OF OUR RETURNS AND WARRANTY RESERVES, COULD SIGNIFICANTLY HARM OUR BUSINESS, FINANCIAL CONDITION AND OPERATING RESULTS.

Part of our marketing and advertising strategy focuses on providing a 30-night trial in which customers may return their beds and obtain a refund of the purchase price if they are not 100% comfortable with our product. As we expand our sales, we cannot assure you that our return rates will remain within acceptable levels. A significant and unexpected increase in return rates could significantly harm our business, financial condition and operating results. Our marketing and advertising strategy also includes providing our customers with a limited 20-year warranty on our beds. However, since we have only been selling beds in significant quantities since 1992, we cannot assure you that we will not receive significant and unexpected claims under this warranty or that our warranty reserves will be adequate to cover future warranty claims. Significant warranty claims in excess of our warranty reserves could also significantly harm our business, financial condition and operating results.

WE MAY BE UNABLE TO EFFECTIVELY MANAGE OUR GROWTH, WHICH COULD SIGNIFICANTLY HARM OUR BUSINESS, FINANCIAL CONDITION AND OPERATING RESULTS.

Our growth strategy has placed, and will continue to place, a significant strain on our management, production, information systems and other resources. To manage growth effectively, we must maintain a high level of manufacturing quality and efficiency, continue to enhance our operational, financial and management systems, including our database management, tracking of inquiries, inventory control and distribution systems, and expand, train and manage our employee base. We cannot assure you that we will be able to effectively manage this expansion in any one or more of these areas, and any failure to do so could significantly harm our business, financial condition and operating results.

OUR MANAGEMENT INFORMATION SYSTEMS MAY PROVE INADEQUATE AND WE ARE IN THE PROCESS OF MIGRATING OUR CURRENT SYSTEMS TO AN UPGRADED VERSION, WHICH COULD CAUSE INTERRUPTIONS IN OUR BUSINESS IF THIS CONVERSION DOES NOT OCCUR SMOOTHLY.

We depend upon our management information systems for many aspects of our business. Some of our key software has been developed by our own programmers and this software may not be easily integrated with other software and systems. Our business will be materially and adversely affected if our management information systems are disrupted or if we are unable to improve, upgrade, integrate or expand upon our systems as we execute our growth strategy. We are in the process of migrating our management information systems to an upgraded version, which could cause interruptions in our business if this conversion does not occur smoothly.

DAMAGE TO EITHER OF OUR MANUFACTURING FACILITIES COULD SIGNIFICANTLY HARM OUR BUSINESS, FINANCIAL CONDITION AND OPERATING RESULTS.

We have two manufacturing plants which are located in Columbia, South Carolina and in Salt Lake City, Utah. Since we manufacture beds to fulfill orders rather than stocking inventory, our business, financial condition and operating results may be significantly harmed if either of our

manufacturing plants was destroyed or shut down for a significant period of time.

SIGNIFICANT AND LONG-TERM FAILURE OF OUR WEB SITE COULD HARM OUR BUSINESS, FINANCIAL CONDITION AND OPERATING RESULTS.

We depend on our web site for a certain percentage of our net sales and for advertising of our products. If our web site becomes unavailable for a significant period of time due to information technology or Internet failure, our net sales could be adversely affected.

OUR BUSINESS IS SUBJECT TO SEASONAL INFLUENCES AND A SUBSTANTIAL PORTION OF OUR NET SALES IS OFTEN REALIZED IN THE LAST MONTH OR LAST FEW WEEKS OF A QUARTER, DUE IN PART TO OUR PROMOTIONAL SCHEDULE AND COMMISSION STRUCTURE.

Our business is subject to some seasonal influences, with lower sales in the second quarter and higher sales during the fourth quarter holiday season due to greater mall traffic. Furthermore, a substantial portion of our sales is often realized in the last month or last few weeks of a quarter, due in part to our promotional schedule and commission structure. The level of sales and marketing expenses and new store opening costs is based, in significant part, on our expectations of future customer inquiries and net sales and cannot be adjusted quickly. If there is a shortfall in expected net sales or in the conversion rate of customer inquiries, we may be unable to adjust our spending in a timely manner and our business, financial condition and operating results may be significantly harmed.

WE ARE SUBJECT TO GOVERNMENT REGULATIONS RELATING TO THE BEDDING INDUSTRY AND CANNOT ASSURE YOU THAT WE WILL NOT BE REQUIRED TO INCUR EXPENSE AND MODIFY OUR OPERATIONS IN ORDER TO ENSURE COMPLIANCE WITH THESE REGULATIONS.

Our operations are subject to state and local consumer protection and other regulations relating to the bedding industry. These regulations vary among the states in which we do business. The regulations generally impose requirements as to the proper labeling of bedding merchandise, restrictions regarding the identification of merchandise as "new" or otherwise, controls as to hygiene and other aspects of product handling and sale and penalties for violations. Although we believe that we are in substantial compliance with these regulations and have implemented a variety of measures to promote continuing compliance, we cannot assure you that we will not be required in the future to incur expense and/or modify our operations in order to ensure compliance with these regulations which could harm our operating results.

Our direct marketing operations are or may become subject to various adopted or proposed federal and state "do not call" list requirements. We believe that we are in compliance with these requirements, but these requirements may be modified over time and may adversely affect our direct marketing sales or costs.

The federal Consumer Product Safety Commission and various state regulatory agencies are considering new rules relating to fire retardancy standards for the bedding industry. The State of California plans to adopt, effective in the year 2004, new fire retardancy standards that have not yet been finally defined. If adopted, such new rules may adversely affect our costs, manufacturing processes and materials. We are developing product solutions that are intended to enable us to meet the new standards. Because the new standards have not been finally determined, however, no assurance can be given that our solutions will enable us to meet the new standards. We expect that any required product modifications will add cost to our product.

A portion of our net sales consists of refurbished products that are assembled in part from components returned to us from customers. These refurbished products must be properly labeled and marketed as refurbished products under applicable state laws. Our sales of refurbished products are limited to approximately 24 states, as the remaining states

do not allow the sale of refurbished bedding products.

FAILURE TO COMPLY WITH HEALTH AND SAFETY REQUIREMENTS COULD EXPOSE US TO A MATERIAL LIABILITY.

We are subject to federal, state and local laws and regulations relating to occupational health and safety. There can be no assurance that we are at all times in compliance with all such requirements. We have made and will continue to make capital and other expenditures to comply with health and safety requirements.

WE MAY FACE EXPOSURE TO PRODUCT LIABILITY.

We face an inherent business risk of exposure to product liability claims in the event that the use of any of our products results in personal injury or property damage. In the event that any of our products proves to be defective, we may be required to recall or redesign such products. We maintain insurance against product liability claims, but there can be no assurance that such coverage will continue to be available on terms acceptable to us or that such coverage will be adequate for liabilities actually incurred. A successful claim brought against us in excess of available insurance coverage, or any claim or product recall that results in significant adverse publicity against us, may have a material adverse effect on our business.

WE DEPEND UPON ENDORSEMENTS BY NATIONAL RADIO PERSONALITIES TO PROMOTE OUR PRODUCTS.

Our integrated marketing program depends in part on national radio personalities, including Paul Harvey and Rush Limbaugh. The loss of either Paul Harvey or Rush Limbaugh or a reduction in the effectiveness of their endorsement could result in significant harm to our business, financial condition and operating results.

ADDITIONAL TERRORIST ATTACKS IN THE UNITED STATES OR AGAINST U.S. TARGETS OR ACTUAL OR THREATS OF WAR OR THE ESCALATION OF CURRENT HOSTILITIES INVOLVING THE UNITED STATES OR ITS ALLIES COULD SIGNIFICANTLY IMPACT OUR BUSINESS, FINANCIAL CONDITION, OPERATING RESULTS OR STOCK PRICE IN UNPREDICTABLE WAYS.

Additional terrorist attacks in the United States or against U.S. targets, or actual or threats of war or the escalation of current hostilities involving the United States or its allies, or military or trade disruptions impacting our domestic or foreign suppliers of components to our products, may impact our operations, including, among other things, causing delays or losses in the delivery of merchandise to us and decreased sales of our products. These events could cause an increase in oil or other commodity prices, which could adversely affect our materials or transportation costs, including delivery of our products to customers. More generally, any of these events could cause consumer confidence and spending to decrease or result in increased volatility in the U.S. and worldwide financial markets. These events also could cause an economic recession in the United States or abroad. Any of these occurrences could have a significant impact on our business, financial condition and operating results and may result in volatility of our stock price.

As a result of the terrorist attacks in the United States and the threat of war involving the United States, we believe many consumers have traveled less and purchased more products for their home. We believe these trends have contributed to an increase in our net sales. We cannot assure you that these trends will continue, that they will continue to positively affect our net sales or that we will be able to sustain our current net sales levels.

ITEM 2. PROPERTIES

Retail Locations

We currently lease all of our existing retail store locations and expect that our policy of leasing, rather than owning stores, will continue as we expand our store base. Our store leases generally provide for an initial lease term of 7 to 10 years with a mutual termination option if we do not achieve certain minimum annual sales thresholds. Generally, the store leases require us to pay minimum rent plus percentage rent based on net sales in excess of certain thresholds, as well as certain operating expenses.

The following table provides information regarding the 321 stores we currently operate in the following 46 states:

| STATE | STORES | STATE | STORES |
|---|---|---|---|
| Alabama | 2 | Montana | 2 |
| Arizona | 9 | Nebraska | 2 |
| Arkansas | 1 | Nevada | 3 |
| California | 40 | New Hampshire | 3 |
| Colordo | 10 | New Jersey | 9 |
| Connecticut | 5 | New Mexico | 2 |
| Delaware | 1 | New York | 4 |
| Floroda | 21 | North Carolina | 7 |
| Georgia | 7 | North Dakota | 1 |
| Idaho | 1 | Ohio | 10 |
| Illinois | 14 | Oklahoma | 2 |
| Indiana | 8 | Oregon | 6 |
| Iowa | 5 | Pennsylvania | 14 |
| Kansas | 5 | Rhode Island | 1 |
| Kentucky | 3 | South Carolina | 2 |
| Louisiana | 3 | South Dakota | 1 |
| Maine | 1 | Tennessee | 8 |
| Maryland | 9 | Texas | 25 |
| Massachusetts | 5 | Utah | 4 |
| Michigan | 13 | Virginia | 7 |
| Minnesota | 13 | Washington | 11 |
| Mississippi | 1 | West Virginia | 1 |
| Missouri | 10 | Wisconsin | 9 |

Manufacturing and Headquarters

We lease approximately 122,000 square feet in Minneapolis that includes our corporate headquarters, our direct marketing call center, our customer service group, our research and development department and a distribution center that accepts returns and processes warranty claims. This lease expires in 2004 and contains two five-year renewal options. We have subleased 20,000 square feet of our Minneapolis facility through March 2003. We also lease two additional manufacturing and distribution centers in Columbia, South Carolina and Salt Lake City, Utah of approximately 105,000 square feet and approximately 101,000 square feet, respectively. We lease the Columbia facility through February 2008, with a five-year renewal option thereafter, and the Salt Lake City facility through April 2009. We lease another 16,100 square feet of office space in the Minneapolis area through April 2004, which we have vacated, and a portion of which we have subleased to a third party.

ITEM 3. LEGAL PROCEEDINGS

In June 1999, we and certain of our former officers and directors were named as defendants in a class action lawsuit filed in U.S. District Court in Minnesota. The suit, filed on behalf of purchasers of our common stock between December 4, 1998 and June 7, 1999, alleges that we and the named former directors and officers failed to disclose or misrepresented certain information concerning our company in violation of federal securities laws. We believe that the suit is without merit and have vigorously defended the matter.

We have consented to a settlement of this litigation negotiated by our insurance carrier. The settlement is covered by insurance and involves no cash or other payment obligation by us, and no admission of liability or wrongdoing by us. The settlement is not expected to have any impact on our results of operations or financial condition. On December 13, 2002, the settlement agreement received preliminary approval from the U.S. District Court for the District of Minnesota. The Court issued an order setting February 28, 2003 for a hearing for final approval of the settlement agreement. At the hearing for final approval, the Court will hear any objections to the settlement or its terms.

We are involved in other various claims, legal actions, sales tax disputes and other complaints arising in the ordinary course of business. In the opinion of management, any losses that may occur from these other matters are adequately covered by insurance or are provided for in our consolidated financial statements and the ultimate outcome of these other matters will not have a material effect on our consolidated financial position or results of operations.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

None.

PART II

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ITEM 5. MARKET FOR THE REGISTRANT'S COMMON EQUITY AND RELATED STOCKHOLDER MATTERS

Our common stock trades on the Nasdaq Stock Market under the symbol "SCSS". The following table sets forth the quarterly high and low sales prices per share of our common stock as reported by the Nasdaq National Market for the two most recent fiscal years. These quotations reflect inter-dealer prices, without retail mark-up, mark-down or commission, and may not necessarily represent actual transactions.

| | FOURTH QUARTER | THIRD QUARTER | SECOND QUARTER | FIRST QUARTER |
|---|---|---|---|---|
| FISCAL 2002 | | | | |
| High | $10.20 | $6.22 | $6.99 | $4.57 |
| Low | $5.29 | $3.81 | $3.77 | $1.93 |
| FISCAL 2001 | | | | |
| High | $2.11 | $1.71 | $1.68 | $2.44 |
| Low | $0.89 | $0.81 | $0.45 | $1.13 |

NUMBER OF RECORD HOLDERS; DIVIDENDS

As of February 14, 2003, there were 189 record holders of our common stock. We did not declare or pay any cash dividends on the common stock during the fiscal years ended December 28, 2002 or December 29, 2001 and do not anticipate paying any cash dividends on our common stock in the foreseeable future.

ITEM 6. SELECTED FINANCIAL DATA

The data presented below have been derived from our Consolidated Financial Statements and should be read in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our Consolidated Financial Statements and Notes thereto included in this Annual Report on Form 10-K:

| | YEAR | | | | |
|---|---|---|---|---|---|
| | 2002 | 2001 | 2000 | 1999 | 1998 |
| CONSOLIDATED STATEMENTS OF OPERATIONS DATA: | | | | | |
| Net sales | $ 335,795 | $261,687 | $270,077 | $273,767 | $246,269 |
| Gross profit | 209,999 | 154,477 | 154,476 | 163,847 | 147,884 |
| Operating expenses: | | | | | |
| Sales and marketing | 155,890 | 138,417 | 149,283 | 147,929 | 116,696 |
| General and administrative | 32,854 | 25,296 | 29,211 | 29,213 | 19,723 |
| Store closings and asset impairments | 233 | 1,366 | 1,952 | 1,498 | 20 |
| Operating income (loss)(1) | 21,022 | (10,602) | (25,970) | (14,793) | 11,445 |
| Net income (loss) | 37,122 | (12,066) | (37,214) | (8,204) | 5,195 |
| Net income (loss) per share: | | | | | |
| Basic | $ 1.51 | $ (0.66) | $ (2.09) | $ (0.45) | $ 0.74 |
| Diluted | $ 1.09 | $ (0.66) | $ (2.09) | $ (0.45) | $ 0.19 |
| Pro forma (2) | $ 0.37 | $ (0.41) | $ (0.89) | $ (0.45) | $ 0.19 |
| Shares used in calculation of net income (loss) per share (2): | | | | | |
| Basic | 24,549 | 18,157 | 17,848 | 18,300 | 4,114 |
| Diluted and pro forma (2) | 34,532 | 18,157 | 17,848 | 18,300 | 15,928 |
| CONSOLIDATED BALANCE SHEET DATA: | | | | | |
| Cash, cash equivalents and marketable securities | $ 40,824 | $ 16,375 | $ 5,448 | $ 27,570 | $ 45,561 |
| Working capital | 26,765 | (3,739) | (12,431) | 14,470 | 42,249 |
| Total assets | 108,331 | 67,436 | 64,672 | 95,363 | 106,234 |
| Long-term debt, less current maturities | 2,991 | 17,109 | 2,322 | 36 | 29 |
| Total shareholders' equity | 54,515 | 6,772 | 16,600 | 52,872 | 70,691 |
| SELECTED OPERATING DATA: | | | | | |
| Stores open at period-end (3) | 322 | 328 | 333 | 341 | 264 |
| Stores opened during period | 15 | 11 | 19 | 79 | 65 |
| Stores closed during period | 21 | 16 | 27 | 2 | 1 |
| Average net sales per store (000's) (4) | $ 817 | $ 626 | $ 636 | $ 644 | $ 664 |
| Percentage of stores with more than $1.0 million in net sales(4) | 24.1% | 9.8% | 11.8% | 12.6% | 12.6% |
| Comparable store sales increase (decrease) (5) | 26.8% | (3.8)% | 0.2% | 4.7% | 23.5% |
| Average square footage per store open during period (4) | 972 | 941 | 913 | 893 | 894 |
| Net sales per square foot (4) | $ 841 | $ 666 | $ 697 | $ 721 | $ 743 |
| Average store age (in months at period end) | 61 | 51 | 41 | 31 | 26 |
| EBITDA (6) | $ 30,449 | $ 334 | $(15,628) | $ (6,600) | $ 16,816 |

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(1) Includes charges for store closings and asset impairments of $0.2 million, $1.4 million, $2.0 million, $1.5 million and $0.0 million for 2002, 2001, 2000, 1999 and 1998, respectively. See Note 4 to our Consolidated Financial Statements.

(2) Pro forma net income (loss) per share reflects the effects on net income from specific non-recurring items and from the recognition of an income tax benefit (provision) for years where a regular tax provision, at a rate of 38%, was not recorded. Generally accepted accounting principles (GAAP) did not allow us to reduce net income for income tax expense in 2002 or to provide an income tax benefit in 2001 or 2000. Because we expect to record income tax in future periods, we believe pro forma net income (loss) per share provides a more meaningful comparison than GAAP net income (loss) per share for the periods presented and future periods. In addition, we excluded the effect of the extraordinary after-tax, non-cash charges associated with early repayment of our $5.0 million of 12% senior secured debt in December 2002. A reconciliation of diluted net income (loss) per share (as determined in accordance with GAAP) to pro forma net income (loss) per share is as follows:

| | 2002 | 2001 | 2000 |
|---|---|---|---|
| GAAP diluted net income (loss) per share..... | $ 1.09 | $(0.66) | $(2.09) |
| Effect of: | | | |
| Income tax benefit (provision) at 38% of income before tax | (0.22) | 0.25 | 0.55 |
| Extraordinary loss..... | 0.02 | -- | -- |
| (Restoration) write-off of deferred tax asset..... | (0.52) | -- | 0.65 |
| Pro forma diluted net income (loss) per share..... | $ 0.37 | $(0.41) | $(0.89) |

(3) Includes stores operated in leased departments within other retail stores (13, 22, 25, 45 and 14 at the end of 2002, 2001, 2000, 1999 and 1998, respectively).

(4) For stores open during the entire period indicated.

(5) Stores enter the comparable store calculation in the 13th full month of operation. The number of comparable stores used to calculate such data was 307, 317, 314, 262 and 199 for 2002, 2001, 2000, 1999 and 1998, respectively. Our 1998 comparable store sales increase reflects adjustments for an additional week of sales in 1997. Without adjusting for the additional week, comparable store sales would have been 17.9% in 1998.

(6) Earnings before interest, income taxes, depreciation, amortization and other non-cash charges, including non-cash compensation (EBITDA) is a key financial measure but should not be construed as an alternative to operating income or cash flows from operating activities (as determined in accordance with GAAP). We believe that EBITDA is a useful supplement to net income and other income statement data in understanding cash flows generated from operations that are available for taxes, debt service and capital expenditures. A reconciliation of operating income (loss) to EBITDA for each of the fiscal years indicated is as follows:

| | 2002 | 2001 | 2000 | 1999 | 1998 |
|---|---|---|---|---|---|
| Operating income (loss)..... | $ 21,022 | $ (10,602) | $ (25,970) | $ (14,793) | $ 11,445 |
| Store closings and asset impairments. | 233 | 1,366 | 1,952 | 1,498 | 20 |
| Depreciation and amortization..... | 9,194 | 9,570 | 8,390 | 6,695 | 5,351 |
| EBITDA | $ 30,449 | $ 334 | $ (15,628) | $ (6,600) | $ 16,816 |

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

FORWARD LOOKING STATEMENTS

THE FOLLOWING DISCUSSION AND ANALYSIS SHOULD BE READ WITH THE CONSOLIDATED FINANCIAL STATEMENTS AND RELATED NOTES. THIS DISCUSSION CONTAINS FORWARD-LOOKING STATEMENTS WITHIN THE MEANING OF THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995. YOU CAN IDENTIFY FORWARD-LOOKING STATEMENTS BY THOSE THAT ARE NOT HISTORICAL IN NATURE, PARTICULARLY THOSE THAT USE TERMINOLOGY SUCH AS "MAY," "WILL," "SHOULD," "COULD," "EXPECT," "ANTICIPATE," "BELIEVE," "ESTIMATE," "PLAN," "PROJECT," "PREDICT," "INTEND," "POTENTIAL," "CONTINUE" OR THE NEGATIVE OF THESE OR SIMILAR TERMS. THESE STATEMENTS ARE SUBJECT TO CERTAIN RISKS AND UNCERTAINTIES THAT COULD CAUSE ACTUAL RESULTS TO DIFFER MATERIALLY DEPENDING ON A VARIETY OF FACTORS INCLUDING THOSE SET FORTH ABOVE IN PART I, ITEM 1 UNDER THE HEADING TITLED "CERTAIN RISK FACTORS."

OVERVIEW AND CRITICAL ACCOUNTING POLICIES

We are the leading developer, manufacturer and marketer of premium quality, adjustable-firmness beds. The air chamber technology of our proprietary Sleep Number bed allows adjustable firmness on each side of the mattress and provides a sleep surface that is clinically proven to provide better sleep quality and greater relief of back pain compared to traditional mattress products.

Our critical accounting policies relate to revenue recognition, accrued sales returns, accrued warranty costs and impairment of long-lived assets and long-lived assets to be disposed of by us. The effect of these policies on our financial statements is incorporated in the discussion below.

Net sales

We generate revenue by selling our products through four complementary distribution channels. Three of these channels, retail, direct marketing and e-commerce, are company-controlled and sell directly to consumers. Our wholesale channel sells to leading home furnishings retailers, specialty bedding retailers and the QVC shopping channel.

Revenue recognition. We record revenue at the time product is shipped to our customer, except when beds are delivered and set up by our home delivery employees, in which case revenue is recorded at the time the bed is delivered and set up in the home.

Accrued sales returns. We reduce sales at the time revenue is recognized for estimated returns. This estimate is based on historical return rates, which are reasonably consistent from period to period. If actual returns vary from expected rates, revenue in future periods is adjusted, which could have a material adverse effect on future results of operations.

Channel Sales. The proportion of our total net sales, by dollar volume, from each of our channels during the last three years is summarized as follows:

| | 2002 | 2001 | 2000 |
|---|---|---|---|
| Retail | 77% | 78% | 79% |
| Direct marketing | 14% | 15% | 18% |
| E-commerce | 4% | 3% | 3% |
| Wholesale | 5% | 4% | 0% |

The number of company-operated retail locations during the last three years is summarized as follows:

| | 2002 | 2001 | 2000 |
|---|---|---|---|
| Beginning of year | 328 | 333 | 341 |
| Opened | 15 | 11 | 19 |
| Closed | (21) | (16) | (27) |
| End of year | 322 | 328 | 333 |

We anticipate opening 20 to 30 new retail stores and expect to close approximately five stores in 2003. Company-operated stores included leased departments within 13, 22 and 25 Bed, Bath &

Beyond stores as of 2002, 2001 and 2000, respectively.

Comparable store sales increased (decreased) by 26.8%, (3.8)% and 0.2% in 2002, 2001 and 2000, respectively. In 2002, total net sales and comparable store sales were positively affected by the increased investment in advertising and improved product mix that resulted from improvements in our product line, the design of our promotional programs and improvements in our selling process.

Cost of sales

Cost of sales includes costs associated with purchasing materials, manufacturing costs and delivering our products to our customers. In 2002, we elected to reclassify costs associated with the delivery of our products to customers from sales and marketing expenses to cost of sales. As a result of this change, cost of sales increased and sales and marketing expenses decreased. This change in classification does not affect operating income or net income.

Accrued warranty costs. Cost of sales also includes estimated costs to service warranty claims of customers. This estimate is based on historical claim rates during the warranty period. Because this estimate covers an extended period of time, a revision of estimated claim rates could result in a significant adjustment of estimated future costs of fulfilling warranty commitments. An increase in estimated claim rates could have a material adverse effect on future results of operations.

Gross profit

Our gross profit margin is dependent on a number of factors and may fluctuate from quarter to quarter. These factors include the mix of products sold, the level at which we offer promotional discounts to purchase our products, the cost of materials and manufacturing and the mix of sales between wholesale and company-controlled distribution channels. Sales directly to consumers through company-controlled channels generally generate higher gross margins than sales through our wholesale channels because we capture both the manufacturer's and retailer's margin.

Sales and marketing expenses

Sales and marketing expenses include advertising and media production, other marketing and selling materials such as brochures, videos, customer mailings and in-store signage, sales compensation, store occupancy costs and customer service. In 2002, we elected to reclassify costs associated with the delivery of our products to customers from sales and marketing expenses to cost of sales. As a result of this change, cost of sales increased and sales and marketing expenses decreased. This change in classification does not affect operating income or net income. Store opening costs are expensed as incurred and advertising costs are expensed the first time the advertisement is aired.

Advertising expense was $39.5 million in 2002, $29.5 million in 2001 and $31.3 million in 2000. Future advertising expenditures will depend on the effectiveness and efficiency of the advertising in creating awareness of our products and brand name, generating consumer inquiries and driving consumer traffic to our points of sale. We anticipate that full year advertising expenditures in 2003 will approximate $50 million.

General and administrative expenses

General and administrative expenses include costs associated with management of functional areas, including information technology, investor relations, risk management and research and development. Costs include salary, bonus and benefits, information hardware, software and maintenance, office facilities, insurance and shareholder relations costs and other overhead.

Store closing and asset impairment expenses

We evaluate our long-lived assets, including leaseholds and fixtures in existing stores and stores expected to be remodeled, based on expected cash flows through the remainder of the lease term after considering the potential impact of planned operational improvements and marketing programs. Expected cash flows may not be realized, which could cause long-lived assets to become impaired in future periods and could have a material adverse effect on future results of operations. Store assets are written off when we believe these costs will not be recovered through future operations.

RESULTS OF OPERATIONS

The following table sets forth, for the periods indicated, our results of operations expressed as percentages of net sales.

| | PERCENTAGE OF NET SALES | | |
|---|---|---|---|
| | 2002 | 2001 | 2000 |
| Net sales | 100.0% | 100.0% | 100.0% |
| Cost of sales | 37.5 | 41.0 | 42.8 |
| Gross profit | 62.5 | 59.0 | 57.2 |
| Operating expenses: | | | |
| Sales and marketing | 46.4 | 52.9 | 55.3 |
| General and administrative | 9.8 | 9.7 | 10.8 |
| Store closings and asset impairments | 0.1 | 0.5 | 0.7 |
| Total operating expenses | 56.3 | 63.1 | 66.8 |
| Operating income (loss) | 6.3 | (4.0) | (9.6) |
| Other income (expense), net | (0.4) | (0.6) | 0.1 |
| Income (loss) before income taxes and extraordinary loss | 5.9 | (4.6) | (9.5) |
| Income tax (benefit) expense | (5.3) | 0.0 | 4.3 |
| Income (loss) before extraordinary loss | 11.2 | (4.6) | (13.8) |
| Extraordinary loss, net of tax | (0.1) | 0.0 | 0.0 |
| Net income (loss) | 11.1% | (4.6)% | (13.8)% |

Quarterly and annual operating results may fluctuate significantly as a result of a variety of factors, including increases or decreases in comparable store sales, the timing, amount and effectiveness of advertising expenditures, any changes in sales return rates or warranty experience, the timing of new store openings and related expenses, net sales contributed by new stores, competitive factors, any disruptions in supplies or third-party service providers and general economic conditions and consumer confidence. Furthermore, a substantial portion of net sales is often realized in the last month of a quarter, due in part to our promotional schedule and commission structure. As a result, we may be unable to adjust spending in a timely manner, and our business, financial condition and operating results may be significantly harmed. Our historical results of operations may not be indicative of the results that may be achieved for any future period.

COMPARISON OF 2002 AND 2001

Net sales

Net sales in 2002 increased 28% to $335.8 million from $261.7 million in 2001 due to a 15% increase in mattress unit sales and higher average selling prices resulting primarily from improvements in product mix and lower return rates. The increase in net sales by sales channel was attributable to (i) a $54.9 million increase in sales from company-controlled retail stores, including an increase in comparable store sales of $52.9 million, (ii) a $7.9 million increase in direct marketing sales, (iii) a $5.9 million increase in sales from our wholesale channel and (iv) a $5.4 million increase in sales from our e-commerce channel.

Gross profit

Gross profit margin increased to 62.5% in 2002 from 59.0% in 2001 primarily due to improved product sales mix, savings in processing returned product, reduced product delivery costs, reduced warranty claim rates resulting from improved product quality and greater manufacturing leverage.

Sales and marketing expenses

Sales and marketing expenses in 2002 increased 13% to $155.9 million from $138.4 million in 2001, but decreased as a percentage of net sales to 46.4% in 2002 from 52.9% in 2001. The $17.5 million increase was primarily due to additional media investments, sales-based compensation and retail occupancy costs. The decrease as a percentage of net sales was attributable to greater leverage in fixed selling expenses and lower cost promotional offerings.

General and administrative expenses

General and administrative (G&A) expenses increased 30% to $32.9 million in 2002 from $25.3 million in 2001. Of the increase, $5.9 million was due to additional incentive compensation costs resulting from our improved performance, with the remaining increase primarily resulting from an increased investment in information technology. We expect G&A growth rates to be lower in the future due to planned lower incentive compensation costs.

Store closing and asset impairment expenses

Store closing and asset impairment expenses in 2002 were $0.2 million compared to $1.4 million in 2001. In 2002, the entire amount represented impairments related to store closures. In 2001, the expenses included $1.0 million related to store closures and $0.4 million related primarily to the write-off of unusable fixtures for the merchandising of our sleeper sofa products.

Other income (expense), net

Other expense decreased $0.2 million to approximately $1.3 million in 2002 from $1.5 million in 2001. The decrease was primarily due to an increase in interest income from our improved cash position, partially offset by increased interest expense associated with our senior secured debt. This debt was paid off in December 2002.

Income tax (benefit) expense

Income tax benefit was $17.8 million in 2002 as compared to zero in 2001. The $17.8 million income tax benefit for 2002 was the result of recording a non-recurring, non-operating, non-cash addition to earnings due to the expected realization of tax benefits from net operating loss carryforwards and other deferred tax assets. We expect to begin recording income tax expense at an estimated rate of 38% during 2003.

COMPARISON OF 2001 AND 2000

Net sales

Net sales in 2001 decreased 3% to $261.7 million from $270.1 million in 2000 due primarily to a decrease in mattress unit sales and lower average selling prices. The average selling price per mattress set declined slightly as a result of lower selling prices for products sold to QVC and wholesale customers, slightly offset by higher average selling prices in our company-controlled distribution channels. The change in net sales was attributable to (i) an $8.5 million decrease in sales from company-controlled retail stores, including a decrease in comparable store sales of $7.7 million, (ii) an $8.6 million decrease in direct marketing sales, (iii) a $9.1 million increase in sales from our wholesale channel and (iv) a $0.1 million increase in sales from our e-commerce channel.

Gross profit

Gross profit margin in 2001 increased to 59.0% from 57.2% in 2000 primarily due to reduced warranty claim rates resulting from improved product quality, savings in processing returned product and improved product sales mix, partially offset by increased product delivery costs.

Sales and marketing expenses

Sales and marketing expenses in 2001 decreased 7% to $138.4 million from $149.3 million in 2000 and decreased as a percentage of net sales

to 52.9% in 2001 from 55.3% in 2000. The $10.9 million decrease in expenses and the decrease as a percentage of net sales were primarily due to reductions in promotional and fulfillment materials, reduced sales support staffing and lower retail occupancy costs, partially offset by increases in media production expense.

General and administrative expenses

General and administrative expenses decreased 13% to $25.3 million in 2001 from $29.2 million in 2000. The $3.9 million decrease was primarily due to staffing reductions and reduced occupancy expense resulting from the consolidation of our two corporate offices.

Store closings and asset impairment expenses

Store closing and asset impairment expenses in 2001 were $1.4 million compared to $2.0 million in 2000. In 2001, the expenses included $1.0 million related to store closures and $0.4 million related primarily to the write-off of unusable fixtures for merchandising of our sleeper sofa products. In 2000, the expenses included $1.4 million related to the write-off of assets associated with the relocation of our headquarter offices, the write-off of web development costs and $0.6 million related to store closures.

Other income (expense), net

Other expense changed $1.8 million to approximately $1.5 million in 2001 from $0.3 million of other income in 2000. The change was primarily due to $1.4 million of interest expense from long-term debt and lower interest income due to lower cash levels in 2001.

Income tax (benefit) expense

Income tax expense decreased $11.6 million to $0.0 million in 2001 from $11.6 million in 2000. Income tax expense decreased as a result of not recognizing an income tax benefit from operating losses in 2001 and from the write-off of $21.6 million of net deferred tax assets in 2000.

QUARTERLY RESULTS OF OPERATIONS

The following table sets forth, by quarter, statement of operations and percentage of net sales data for the two most recent years. Sales are subject to some seasonal influences, with lower sales in the second quarter and higher sales during the fourth quarter holiday season due primarily to increased mall traffic. Results of any period are not necessarily indicative of results for a full year (in thousands, except per share amounts).

| | 2002 | | | | 2001 | | | |
|---|---|---|---|---|---|---|---|---|
| | QUARTER | | | | QUARTER | | | |
| | DEC. | SEPT. | JUNE | MAR. | DEC. | SEPT. | JUNE | MAR. |
| STATEMENT OF OPERATIONS | | | | | | | | |
| Net sales | $92,263 | $85,056 | $77,281 | $81,195 | $69,341 | $64,148 | $62,742 | $65,456 |
| Cost of sales | 34,584 | 30,915 | 29,340 | 30,957 | 26,965 | 25,434 | 26,800 | 28,011 |
| Gross profit | 57,679 | 54,141 | 47,941 | 50,238 | 42,376 | 38,714 | 35,942 | 37,445 |
| Operating expenses: | | | | | | | | |
| Sales and marketing | 40,309 | 39,199 | 36,774 | 39,608 | 32,815 | 32,806 | 33,022 | 39,774 |
| General and administrative | 8,534 | 9,085 | 8,026 | 7,209 | 7,044 | 5,285 | 5,954 | 7,013 |
| Store closings and asset impairments | - | 24 | 157 | 52 | 858 | 20 | 142 | 346 |
| Total operating expenses | 48,843 | 48,308 | 44,957 | 46,869 | 40,717 | 38,111 | 39,118 | 47,133 |
| Operating income (loss) | 8,836 | 5,833 | 2,984 | 3,369 | 1,659 | 603 | (3,176) | (9,688) |
| Other income (expense), net | (268) | (120) | (421) | (473) | (709) | (376) | (354) | (25) |
| Income (loss) before income taxes and extraordinary loss | 8,568 | 5,713 | 2,563 | 2,896 | 950 | 227 | (3,530) | (9,713) |
| Income tax benefit (expense) | (477) | 17,891 | - | 348 | 115 | - | - | (115) |
| Income (loss) before extraordinary loss | 8,091 | 23,604 | 2,563 | 3,244 | 1,065 | 227 | (3,530) | (9,828) |
| Extraordinary loss, net of tax | (380) | - | - | - | - | - | - | - |
| Net income (loss) | $ 7,711 | $23,604 | $ 2,563 | $ 3,244 | $ 1,065 | $ 227 | $(3,530) | $(9,828) |
| Net income (loss) per share: | | | | | | | | |
| Basic | $ 0.25 | $ 0.80 | $ 0.13 | $ 0.18 | $ 0.06 | $ 0.01 | $ (0.19) | $ (0.54) |
| Diluted | $ 0.21 | $ 0.69 | $ 0.08 | $ 0.11 | $ 0.04 | $ 0.01 | $ (0.19) | $ (0.54) |
| Pro forma | $ 0.15 | $ 0.10 | $ 0.05 | $ 0.06 | $ 0.03 | $ 0.01 | $ (0.12) | $ (0.34) |
| Weighted average common shares: | | | | | | | | |
| Basic | 30,488 | 29,634 | 19,690 | 18,386 | 18,274 | 18,179 | 18,119 | 18,056 |
| Diluted and pro forma | 36,636 | 34,203 | 34,415 | 33,059 | 30,869 | 18,953 | 18,119 | 18,056 |
| PERCENTAGE OF NET SALES: | | | | | | | | |
| Net sales | 100.0% | 100.0% | 100.0% | 100.0% | 100.0% | 100.0% | 100.0% | 100.0% |
| Cost of sales | 37.5 | 36.3 | 38.0 | 38.1 | 38.9 | 39.6 | 42.7 | 42.8 |
| Gross profit | 62.5 | 63.7 | 62.0 | 61.9 | 61.1 | 60.4 | 57.3 | 57.2 |
| Operating expenses: | | | | | | | | |
| Sales and marketing | 43.7 | 46.1 | 47.6 | 48.8 | 47.3 | 51.1 | 52.6 | 60.8 |
| General and administrative | 9.2 | 10.7 | 10.4 | 8.9 | | | | |
| Store closings and asset impairments | 0.0 | 0.0 | 0.2 | 0.1 | 10.2<br>1.2 | 8.2<br>0.0 | 9.5<br>0.2 | 10.7<br>0.5 |
| Total operating expenses | 52.9 | 56.8 | 58.2 | 57.8 | 58.7 | 59.4 | 62.3 | 72.0 |
| Operating income (loss) | 9.6 | 6.9 | 3.8 | 4.1 | 2.4 | 1.0 | (5.0) | (14.8) |
| Other income (expense), net | (0.3) | (0.1) | (0.5) | (0.6) | (1.0) | (0.6) | (0.6) | (0.0) |
| Income (loss) before income taxes and extraordinary loss | 9.3 | 6.8 | 3.8 | 3.6 | 1.4 | 1.0 | (5.0) | (14.8) |
| Income tax benefit (expense) | (0.5) | 21.0 | 0.0 | 0.4 | 0.2 | 0.0 | 0.0 | (0.2) |

| | 2002 | | | | 2001 | | | |
|---|---|---|---|---|---|---|---|---|
| | QUARTER | | | | QUARTER | | | |
| | DEC. | SEPT. | JUNE | MAR. | DEC. | SEPT. | JUNE | MAR. |
| Income (loss) before extraordinary loss | 8.8 | 27.8 | 3.3 | 4.0 | 1.5 | 0.4 | (5.6) | (15.0) |
| Extraordinary loss, net of tax | (0.4) | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Net income (loss) | 8.4% | 27.8% | 3.3% | 4.0% | 1.5% | 0.4% | (5.6)% | (15.0)% |

Sales are subject to some seasonal influences, with lower sales in the second quarter and higher sales during the fourth quarter holiday season due to increased mall traffic.

Pro forma diluted net income (loss) per share reflects the effects on net income from specific non-recurring items and from the recognition of an income tax benefit (provision) for years where a regular tax provision, at a rate of 38%, was not recorded. Generally accepted accounting principles (GAAP) did not allow us to reduce net income for income tax expense in 2002 or to provide an income tax benefit in 2001. Because we expect to record income tax expense in future periods, we believe pro forma diluted net income (loss) per share provides a more meaningful comparison than GAAP net income (loss) per share for the periods presented and for future periods. In addition, we excluded the effect of the extraordinary after tax, non-cash charges associated with early repayment of our $5.0 million of 12% senior secured debt in December 2002. A reconciliation of diluted net income (loss) per share (as determined in accordance with GAAP) to pro forma diluted net income (loss) per share is as follows:

| | 2002 | | | | 2001 | | | |
|---|---|---|---|---|---|---|---|---|
| | QUARTER | | | | QUARTER | | | |
| | DEC. | SEPT. | JUNE | MAR. | DEC. | SEPT. | JUNE | MAR. |
| GAAP diluted net income (loss) per share | $ 0.21 | $ 0.69 | $ 0.08 | $ 0.11 | $ 0.04 | $ 0.01 | $ (0.19) | $ (0.54) |
| Effect of: | | | | | | | | |
| Income tax benefit (provision) at 38% of income before tax | $ (0.08) | $ (0.07) | $ (0.03) | $ (0.05) | $ (0.01) | $ (0.00) | $ 0.07 | $ 0.20 |
| Extraordinary loss | $ 0.02 | - | - | - | - | - | - | - |
| (Restoration) of deferred tax asset | - | $ (0.52) | - | - | - | - | - | - |
| Pro forma diluted net income (loss) per share | $ 0.15 | $ 0.10 | $ 0.05 | $ 0.06 | $ 0.03 | $ 0.01 | $ (0.12) | $ (0.34) |

LIQUIDITY AND CAPITAL RESOURCES

We generated cash from operations of $36.1 million in 2002 ($28.3 million of cash was generated after our $7.8 million investment in property and equipment). Historically, our primary source of capital has been from external sources, most recently from the completion of our $11.0 million convertible debt offering in June 2001 and our $5.0 million senior secured term debt financing in September 2001. The $11.0 million in convertible debt was converted to equity in the second quarter of 2002 and the $5.0 million of senior debt was prepaid in December 2002 with cash generated from operations. In February 2003, our board of directors approved an expanded share repurchase program of up to $12.5 million. We are currently pursuing a new bank revolving line of credit. While it is not currently anticipated that this line will be necessary for short- or long-term liquidity needs, the line would provide additional cash flexibility. Barring any unexpected significant external or internal developments, we expect current cash balances on hand and free cash flow generated from operations to be sufficient to meet our short-term and long-term liquidity needs.

Net cash provided by (used in) operating activities in 2002, 2001 and 2000 was $36.1 million, $0.4 million and ($10.3) million, respectively. Net cash provided by operating activities in 2002 consisted primarily of net income adjusted for non-cash expenses and an increase in accrued compensation and benefits, partially offset by an increase in prepaid expenses. The increase in accrued compensation and benefits was due primarily to higher incentive compensation costs resulting from improved company performance, which were paid in early 2003. Prepaid expenses increased in 2002 primarily due to the timing of payments related to marketing and advertising expenditures.

Net cash provided by operating activities in 2001 consisted primarily of a decrease in inventories and prepaid expenses, partially offset by the net loss adjusted for non-cash expenses and a decrease in accounts payable and accrued sales returns. Inventory levels were reduced in 2001 as a result of two primary activities: (i) the closure of one of our manufacturing plants and (ii) a focus on reducing supplier lead-times, resulting in lower in-stock raw material levels required at our manufacturing plants. Prepaid expenses were reduced in 2001 as a result of lower prepaid advertising levels, consistent with the timing and form of media placements at the end of 2001 versus those in place at the end of 2000. The decrease in accounts payable in 2001 was due primarily to a decrease in the number of stores open at the end of 2001 and to extended payment terms being in place with some of our key suppliers at the end of 2000. The terms with those key suppliers had normalized at the end of 2001. The balance in our accrued sales returns in 2001 decreased as a result of the change in our sales return policy from 90 days at the end of 2000 to 30 days at the end of 2001. The shorter return period resulted in a smaller balance of sales that had not yet been returned at the end of 2001.

Net cash used in 2000 operating activities consisted primarily of the net loss adjusted for non-cash expenses and an increase in accounts receivable, partially offset by an increase in accounts payable. The increase in accounts receivable at the end of 2000 was primarily due to the timing of credit card settlements. Payables increased at the end of 2000 due to additional retail stores being open as of year-end and extended payment terms with suppliers.

Net cash provided by (used in) investing activities for 2002, 2001 and 2000 was ($21.5) million, ($0.9) million and $3.7 million, respectively. Investing activities consisted of purchases of property and equipment related to investment in information technology and the opening of new retail stores in all periods. In 2002, we made investments of $24.8 million in marketable securities and had $11.1 million of marketable securities mature. In 2001 and 2000 we liquidated $4.0 million and $16.2 million, respectively, of marketable securities to support our continuing operations. In 2003, we expect

to open 20 to 30 new retail stores and to remodel approximately 100 stores. Our anticipated capital investment related to our new stores and remodeling is expected to be approximately $11.0 million. Total capital expenditures are expected to be approximately $18.0 million in 2003. We expect our new stores to be cash flow positive within the first 12 months of operation, and as a result, are not expected to have a significant negative effect on net cash provided by operations.

Net cash provided by (used in) financing activities for 2002, 2001 and 2000 was ($3.9) million, $15.4 million and $0.6 million, respectively. Net cash used in financing activities in 2002 resulted primarily from the repayment of our $5.0 million of senior secured debt. The total cash used in financing activities in 2002 was partially offset by cash received from the issuance of common stock related to the exercise of options and warrants. Net cash provided by financing activities in 2001 resulted from the issuance of common stock and from the financing of $11.0 million of convertible debt and $5.0 million of senior secured term debt. Fees and expenses of $1.0 million were netted against the proceeds from debt issuances. Net cash provided by financing activities in 2000 resulted from cash received from the issuance of common stock.

Our liquidity is impacted by minimum cash payment commitments resulting from long-term debt outstanding and operating leases. The table below outlines those minimum cash commitments, during the periods indicated (in thousands):

| | PAYMENTS DUE BY PERIOD | | | | |
|---|---|---|---|---|---|
| | TOTAL | < 1 YEAR | 1 - 3 YEARS | 3 - 5 YEARS | > 5 YEARS |
| Long-term debt | $ 4,011 | 11 | 4,000 | - | - |
| Operating leases | 76,519 | 15,641 | 27,853 | 21,037 | 11,988 |
| Total | $80,530 | 15,652 | 31,853 | 21,037 | 11,988 |

In addition, we have secured a $1.0 million stand-by letter of credit with cash.

At December 28, 2002, we had net operating loss carryforwards for federal income tax purposes of approximately $20.9 million, of which $103,000 will expire between 2003 and 2006 and the remainder will expire between 2020 and 2021. We have recorded a valuation allowance of $641,000 for capital loss carryforwards that are not likely to be utilized within the applicable carryforward periods.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURE ABOUT MARKET RISK

Our debt obligations consist of a $4 million non-interest bearing subordinated convertible debenture. As a result, we do not believe we have significant exposure to interest rate risk.

Other financial instruments that potentially subject us to concentrations of credit risk consist principally of investments. The counterparties to the agreements consist of government agencies and various major corporations of investment grade credit standing. We do not believe there is significant risk of non-performance by these counterparties because we limit the amount of credit exposure to any one financial institution and any one type of investment.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

Our Consolidated Financial Statements are listed under Item 15 of this report.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

## PART III

## ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT

### DIRECTORS, EXECUTIVE OFFICERS, PROMOTERS AND CONTROL PERSONS

Our executive officers and directors are as follows:

| NAME | AGE | SLEEP NUMBER | POSITION |
|---|---|---|---|
| William R. McLaughlin..... | 46 | 55 | Director, President and Chief Executive Officer |
| Keith C. Spurgeon..... | 48 | 90 | Senior Vice President, Sales |
| Noel F. Schenker..... | 49 | 35 | Senior Vice President, Marketing and New Business Development |
| Gregory T. Kliner..... | 65 | 35 | Senior Vice President, Operations |
| James C. Raabe..... | 42 | 25 | Senior Vice President and Chief Financial Officer |
| Mark A. Kimball..... | 44 | 35 | Senior Vice President, Human Resources and Legal, General Counsel and Secretary |
| Michael J. Thyken..... | 41 | 45 | Senior Vice President and Chief Information Officer |
| Tracey T. Breazeale..... | 36 | 25 | Senior Vice President, Special Projects |
| Patrick A. Hopf (1)..... | 53 | 35 | Chairman of the Board |
| Thomas J. Albani (2)..... | 60 | 90 | Director |
| Christopher P. Kirchen (3)..... | 60 | 35 | Director |
| David T. Kollat (2)..... | 64 | 40 | Director |
| Michael A. Peel (2)..... | 53 | 45 | Director |
| Trudy A. Rautio (3)..... | 50 | 45 | Director |
| Ervin R. Shames (2)(1)..... | 62 | 35 | Director |
| Jean-Michel Valette (3)..... | 42 | 35 | Director |

(1) Member of the Corporate Governance and Nominating Committee
(2) Member of the Compensation Committee
(3) Member of the Audit Committee

EXECUTIVE OFFICERS

William R. McLaughlin joined our company in March 2000 as President and Chief Executive Officer. From December 1988 to March 2000, Mr. McLaughlin served as an executive of PepsiCo Foods International, Inc., a snack food company and subsidiary of PepsiCo, Inc., in various capacities, including from September 1996 to March 2000 as President of Frito-Lay Europe, Middle East and Africa, and from June 1993 to June 1996 as President of Grupo Gamesa, S.A. de C.V., a cookie and flour company based in Mexico.

Keith C. Spurgeon joined our company as Senior Vice President, Sales in February 2002. From September 2000 to February 2002, Mr. Spurgeon served as an independent business consultant. From 1996 to September 2000 he was Chairman of the Board and Chief Executive Officer of Zany Brainy, Inc., a retailer of educational toys and books for children.. Zany Brainy filed for Chapter 11 bankruptcy protection in May 2001. He served as Vice President-Asia/Australia at Toys "R" Us, Inc. from 1991 to 1996 after holding various management positions from 1986 to 1991. Mr. Spurgeon began his career at Jewel Food Stores.

Noel F. Schenker joined our company as Senior Vice President, Marketing and New Business Development in November 2000. Ms. Schenker served as Senior Vice President of Marketing and Strategic Planning at Rollerblade, Inc., a sporting goods company, from 1992 to 1996, and as an independent consultant from 1996 to 2000. She was with The Pillsbury Company from 1981 to 1992, serving as Vice President of Marketing for the Green Giant business.

Gregory T. Kliner joined our company as Senior Vice President, Operations in August 1995. From October 1986 to August 1995, Mr. Kliner served as Director of Operations of the Irrigation Division for The Toro Company, a manufacturer of lawn care, snow removal products and irrigation systems.

James C. Raabe has served as Senior Vice President and Chief Financial Officer since April 1999. From September 1997 to April 1999, Mr. Raabe served as our Controller. From May 1992 to September 1997, he served as Vice President - Finance of ValueRx, Inc., a pharmacy benefit management provider. Mr. Raabe held various positions with KPMG LLP from August 1982 to May 1992.

Mark A. Kimball has served as Senior Vice President, Human Resources and Legal, General Counsel and Secretary since July 2000. From May 1999 to July 2000, Mr. Kimball served as our Senior Vice President, Chief Administrative Officer, General Counsel and Secretary. For more than five years prior to joining us, Mr. Kimball was a partner in the law firm of Oppenheimer Wolff & Donnelly LLP practicing in the area of corporate finance.

Michael J. Thyken has served as Senior Vice President and Chief Information Officer since July 2001. From July 2000 to July 2001, Mr. Thyken served as Vice President and Chief Information Officer. During 1999, he was Group Director of Application Development at Jostens, a manufacturer of scholastic recognition products. From 1994 to 1999, Mr. Thyken was Director of Technical Services for Target Stores, then a division of Dayton Hudson Corporation, a department store retailer. From 1984 to 1994, Mr. Thyken served in various positions with IBM Corporation.

Tracey T. Breazeale has served as Senior Vice President, Special Projects since February 2001. From July 1999 to February 2001, Ms. Breazeale served as our Senior Vice President of Strategic Planning and Branding. In February 2001, Ms. Breazeale's work schedule was reduced to 25% of full time and her title was changed to Senior Vice President, Special Projects. She was with the Boston Consulting Group from October 1993 to July 1999, initially as a consultant and the last three years as a manager, where Ms. Breazeale specialized in strategic and marketing oriented projects for retail and consumer product companies.

Patrick A. Hopf has served as Chairman of the Board of Directors since April 1999 and has served as a member of our board of directors since December 1991. Mr. Hopf also served as our Chairman of the Board of Directors from August 1993 to April 1996. Since April 2002, Mr. Hopf has been the President of Symmetry Growth Capital LLC, a venture capital firm. From August 1988 to February 2002, he was President of St. Paul Venture Capital, Inc., a venture capital firm, and from February 2002 to December 2002, he was Executive Vice President of St. Paul Venture Capital, Inc. From August 1988 to January 1999, Mr. Hopf served as Vice President of St. Paul Fire and Marine Insurance Company. Mr. Hopf also serves as a director of a number of privately held companies.

Thomas J. Albani has served as a member of our board of directors since February 1994. Mr. Albani served as President and Chief Executive Officer of Electrolux Corporation, a manufacturer of premium floor care machines, from June 1991 to May 1998. From September 1984 to April 1989, he was employed by Allegheny International Inc., a home appliance manufacturing company, in a number of positions, most recently as Executive Vice President and Chief Operating Officer. Mr. Albani also serves as a director of Igloo Products Corporation.

Christopher P. Kirchen has served as a member of our board of directors since December 1991. Mr. Kirchen is currently Managing General Partner of BEV Capital, a venture capital partnership that he co-founded in March 1997. From 1986 to December 2002, he was a General Partner of Consumer Venture Partners, a former investor in our company. Mr. Kirchen also serves as a director of a number of privately held companies.

David T. Kollat has served as a member of our board of directors since February 1994. Mr. Kollat has served as President and Chairman of 22 Inc., a research and consulting company for retailers and consumer goods manufacturers, since 1987. From 1976 until 1987, he served in various capacities for The Limited, a women's apparel retailer, including Executive Vice President of Marketing and President of Victoria's Secret Catalogue. Mr. Kollat also serves as a director of The Limited, Inc., Wolverine World Wide, Inc., Big Lots, Inc. and Cone Mills Corporation, as well as a number of privately held companies.

Michael A. Peel has served as a member of our board of directors since February 19, 2003. Mr. Peel has served as Senior Vice President, Human Resources and Corporate Services of General Mills, Inc., a manufacturer and marketer of packaged consumer foods, since 1991. From 1977 to 1991, Mr. Peel served in various capacities for PepsiCo, Inc., including as Senior Vice President, Human Resources for PepsiCo Worldwide Foods from 1987 to 1991.

Trudy A. Rautio has served as a member of our board of directors since December 2002. Ms. Rautio has served as Executive Vice President and Chief Financial Officer of Carlson Consumer Group, a division of Carlson Companies, Inc., a marketing, business and leisure travel and hospitality company, since 1997. From 1993 until 1997, she served in various capacities for Jostens, Inc., including as Senior Vice President Finance from 1994 until 1997. From 1982 until 1993, Ms. Rautio served in various capacities for The Pillsbury Company, including as Vice President Finance from 1992 until 1993.

Ervin R. Shames has served as a member of our board of directors since April 1996. From April 1996 to April 1999, Mr. Shames served as our Chairman of the Board of Directors. Since January 1995, Mr. Shames has served as an independent management consultant to consumer goods and services companies, advising on management and marketing strategy. Since 1996, he has been a visiting lecturer at the University of Virginia's Darden Graduate School of Business. From December 1993 to January 1995, he served as the Chief Executive Officer of Borden, Inc. and was President and Chief Operating Officer of Borden, Inc. from July 1993 until

December 1993. Mr. Shames serves as a director of Online Resources Corporation and Choice Hotels.

Jean-Michel Valette has served as a member of our board of directors since October 1994. Mr. Valette is an independent adviser to branded consumer companies. From August 1998 to May 2000, Mr. Valette served as President and Chief Executive Officer of Franciscan Estates, Inc., a Napa Valley winery. He was a Managing Director of Hambrecht & Quist LLC, an investment banking firm, from October 1994 to August 1998 and served as a Senior Analyst at Hambrecht & Quist LLC from November 1992 to October 1994. Hambrecht & Quist LLC was one of the underwriters of our initial public offering. Mr. Valette also serves as a director of The Boston Beer Company, Peet's Coffee and Tea, Inc. and Golden State Vintners, Inc., as well as a number of privately held companies.

BOARD COMPOSITION

Our board of directors is divided into three classes, each of whose members serve for a staggered three-year term. The terms of Patrick A. Hopf, Trudy A. Rautio and Ervin R. Shames expire at our 2003 annual meeting of shareholders. The terms of Thomas J. Albani, David T. Kollat and William R. McLaughlin expire at our 2004 annual meeting of shareholders. The terms of Christopher P. Kirchen, Michael A. Peel and Jean-Michel Valette expire at our 2005 annual meeting of shareholders.

INFORMATION ABOUT THE BOARD AND ITS COMMITTEES

Our board of directors met five times and took action by written consent on four occasions during 2002. All of the current directors attended 75% or more of the meetings of the board and all such committees on which they served during 2002.

Our board of directors has an Audit Committee, a Compensation Committee and a Corporate Governance and Nominating Committee.

The Audit Committee provides assistance to our board of directors in satisfying its fiduciary responsibilities relating to our accounting, auditing, operating and reporting practices, and reviews our annual financial statements, the selection and work of our independent certified public accountants and the adequacy of internal controls for compliance with corporate policies and directives. The Audit Committee consists of Messrs. Valette and Kirchen and Ms. Rautio.

The Compensation Committee reviews general programs of compensation and benefits for all of our employees, makes recommendations to our board of directors concerning such matters as compensation to be paid to our officers and directors, and administers our stock option and incentive plans, pursuant to which stock options and other incentive awards may be granted to eligible employees, officers, directors and consultants. The Compensation Committee consists of Messrs. Albani, Kollat, Peel and Shames.

The Corporate Governance and Nominating Committee develops and recommends Corporate Governance Principles to our board of directors to govern our board, its committees, our company and our employees, identifies and recommends to our board individuals qualified to become members of our board, and develops and oversees the annual board and board committee evaluation process. The Corporate Governance and Nominating Committee consists of Messrs. Hopf and Shames.

SECTION 16(a) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE

Section 16(a) of the Securities Exchange Act of 1934 requires our directors and executive officers and all persons who beneficially own more than 10% of our common stock to file with the Securities and Exchange Commission initial reports of ownership and reports of changes in ownership of our common stock.

Executive officers, directors and greater than 10% beneficial owners are also required to

furnish us with copies of all Section 16(a) forms they file.

To our knowledge, based upon a review of the copies of such reports furnished to us during the fiscal year ended December 28, 2002 and written representations by such persons, all transactions were reported on a timely basis in 2002.

ITEM 11. EXECUTIVE COMPENSATION

SUMMARY OF CASH AND CERTAIN OTHER COMPENSATION

The following table provides summary information concerning cash and non-cash compensation paid to or earned by our Chief Executive Officer and our four most highly compensated executive officers other than the CEO serving as executive officers at the end of 2002 (the "Named Executive Officers").

SUMMARY COMPENSATION TABLE

| | | ANNUAL COMPENSATION | | LONG-TERM COMPENSATION | |
|---|---|---|---|---|---|
| NAME AND PRINCIPAL POSITION | YEAR | SALARY($) | BONUS($) | SECURITIES UNDERLYING OPTIONS(#) | ALL OTHER COMPENSATION ($)(1) |
| William R. McLaughlin | 2002 | $ 500,000 | $ 937,500 (2) | 250,000 | $ 1,462 |
| President and Chief Executive Officer | 2001 | 500,000 | 281,250 | 375,000 | -- |
| | 2000 | 390,372 | 161,028 | 600,000 | 123,428 (3) |
| Noel F. Schenker | 2002 | 250,000 | 281,250 (2) | 50,000 | 135,182 (4) |
| Senior Vice President, Marketing and | 2001 | 250,000 | 84,375 | 115,000 | -- |
| New Business Development | 2000 | 41,346 | 20,466 | 100,000 | 577 |
| Keith C. Spurgeon (5) | 2002 | 206,731 | 237,981 (2) | 100,000 | 165,930 (6) |
| Senior Vice President of Sales | 2001 | -- | -- | -- | -- |
| | 2000 | -- | -- | -- | -- |
| Gregory T. Kliner | 2002 | 192,400 | 216,450 (2) | 50,000 | 50,125 (4) |
| Senior Vice President of Operations | 2001 | 192,400 | 64,935 | 112,500 | -- |
| | 2000 | 186,992 | 46,281 | 28,000 | 2,400 |
| Mark A. Kimball | 2002 | 200,000 | 225,000 (2) | 50,000 | 2,423 |
| Senior Vice President, Human | 2001 | 201,923 | 68,149 | 115,000 | -- |
| Resources and Legal, General Counsel and Secretary | 2000 | 201,243 | 49,808 | 36,000 | -- |

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(1) Except as noted, the amounts disclosed for each individual represent our contributions to the accounts of the named individuals in our 401(k) defined contribution plan.

(2) Represents bonuses accrued in 2002, the payment of which occurred in February 2003.

(3) Includes $2,106 in contributions to the account of Mr. McLaughlin in our defined contribution plan and $121,322 in payment for reimbursement of relocation expenses.

(4) $132,158 relates to the exercise of non-statutory stock options.

(5) Mr. Spurgeon joined us on February 25, 2002.

(6) Includes payment for reimbursement of Mr. Spurgeon's relocation expenses totalling $163,218.

OPTION GRANTS AND EXERCISES

The following tables summarize option grants and aggregated option exercises during the fiscal year ended December 28, 2002 to or by the Named Executive Officers.

OPTION GRANTS IN LAST FISCAL YEAR

| | INDIVIDUAL GRANTS (1) | | | | | |
|---|---|---|---|---|---|---|
| | | | | | POTENTIAL REALIZABLE VALUE AT ASSUMED ANNUAL RATES OF STOCK PRICE APPRECIATION FOR OPTION TERM (2) | |
| NAME | NUMBER OF SECURITIES UNDERLYING OPTIONS GRANTED (#) | PERCENT OF TOTAL OPTIONS GRANTED TO EMPLOYEES IN FISCAL YEAR | EXERCISE OR BASE PRICE ($/SH) | EXPIRATION DATE | 5% | 10% |
| William R. McLaughlin | 250,000 (3) | 26.2% | $2.73 | 01/30/12 | $429,221 | $1,087,729 |
| Noel F. Schenker | 50,000 (3) | 5.2% | 2.73 | 01/30/12 | 85,844 | 217,546 |
| Keith C. Spurgeon | 75,000 (3) | 7.9% | 3.13 | 02/25/12 | 147,633 | 374,131 |
| | 25,000 (4) | 2.6% | 3.13 | 02/25/12 | 49,211 | 124,710 |
| Gregory T. Kliner | 50,000 (3) | 5.2% | 2.73 | 01/30/12 | 85,844 | 217,546 |
| Mark A. Kimball | 50,000 (3) | 5.2% | 2.73 | 01/30/12 | 85,844 | 217,546 |

(1) All of the options granted to the Named Executive Officers were granted under our 1997 Stock Incentive Plan.

(2) In accordance with the rules of the Securities and Exchange Commission, the amounts shown on this table represent hypothetical gains that could be achieved for the respective options if exercised at the end of the option term. These gains are based on assumed rates of stock appreciation of 5% and 10% compounded annually from the date the respective options were granted to their expiration date and do not reflect our estimates or projections of future common stock prices. The gains shown are net of the option price, but do not include deductions for taxes or other expenses associated with the exercise. Actual gains, if any, on stock option exercises will depend upon the future performance of the common stock, the executive's continued employment with us or our subsidiaries and the date on which the options are exercised. The amounts represented in this table might not necessarily be achieved.

(3) These options become exercisable in as nearly equal as possible monthly installments over a 36-month period, so long as the executive remains employed by us or one of our subsidiaries at that date. To the extent not already exercisable, these options become immediately exercisable in full upon certain changes in control of our company and remain exercisable for the remainder of their term.

(4) These options become exercisable when the average of the high and low sales prices of our common stock, as reported by the Nasdaq National Market System, exceeds $12.00 per share for at least 30 consecutive trading days.

AGGREGATED OPTION EXERCISES IN
LAST FISCAL YEAR AND FISCAL YEAR-END OPTION VALUES

| NAME | SHARES ACQUIRED ON EXERCISE (#) | VALUE REALIZED ($)(1) | NUMBER OF SECURITIES UNDERLYING UNEXERCISED OPTIONS AT DECEMBER 28, 2002 EXERCISABLE | NUMBER OF SECURITIES UNDERLYING UNEXERCISED OPTIONS AT DECEMBER 28, 2002 UNEXERCISABLE | VALUE OF UNEXERCISED IN-THE-MONEY OPTIONS AT DECEMBER 28, 2002 (2) EXERCISABLE | VALUE OF UNEXERCISED IN-THE-MONEY OPTIONS AT DECEMBER 28, 2002 (2) UNEXERCISABLE |
|---|---|---|---|---|---|---|
| William R. McLaughlin | --- | $ --- | 519,444 | 705,556 | $2,709,636 | $3,770,114 |
| Noel F. Schenker | 40,700 | 192,078 | 80,272 | 144,028 | 554,311 | 1,034,161 |
| Keith C. Spurgeon | --- | --- | 45,833 | 54,167 | 271,331 | 320,669 |
| Gregory T. Kliner | --- | --- | 185,557 | 124,888 | 876,241 | 783,976 |
| Mark A. Kimball | --- | --- | 209,000 | 117,000 | 640,097 | 799,473 |

(1) Value based on the difference between the fair market value of one share of common stock on the date of exercise and the exercise price of the option.

(2) Value based on the difference between the fair market value of one share of common stock at December 28, 2002 ($9.05) and the exercise price of the options ranging from $1.00 to $17.00 per share. Options are in-the-money if the market price of the shares exceeds the option exercise price.

DIRECTOR COMPENSATION

All of our non-employee directors receive an annual retainer of $25,000, each committee chair receives additional compensation of $5,000 per year and each member of the Audit Committee receives additional compensation of $5,000 per year.

Each of our newly elected non-employee directors is eligible for an initial grant of options to purchase 20,000 shares of our common stock at an exercise price equal to the fair market value of our common stock on the date of grant. These initial options become exercisable in equal monthly increments over a 24-month period, so long as the director remains a director of our company. After the vesting of this initial grant, each of our non-employee directors is eligible for an annual grant, subject to action by our board of directors and coincident with the annual meeting of shareholders, of options to purchase 10,000 shares of our common stock at an exercise price equal to the fair market value of our common stock on the date of the annual meeting of shareholders. These annual options become exercisable in equal monthly increments over a 36-month period, so long as the director remains a director of our company. All of the options granted to our directors remain exercisable for a period of up to 10 years after the date of grant, subject to continuous service on our board of directors.

All of our directors are reimbursed for travel expenses for attending meetings of our board of directors and any board committees.

Our directors who are our employees do not receive additional compensation for their services as directors.

EMPLOYMENT AGREEMENTS

William R. McLaughlin. We have entered into a letter agreement with William R. McLaughlin pursuant to which he serves as President and CEO. Mr. McLaughlin receives a base salary and is entitled to participate in our incentive compensation plans. Upon involuntary termination of Mr. McLaughlin's employment by the Board or constructive dismissal, Mr. McLaughlin is entitled to one year's salary as severance compensation and the unvested portion of his initial grant of 300,000 options would become fully vested. Upon an involuntary termination or constructive dismissal of Mr. McLaughlin's employment following a change in control of our company, Mr. McLaughlin would be entitled to two years' salary as severance compensation and his stock options would become fully vested.

Keith C. Spurgeon. We have entered into a letter agreement with Keith C. Spurgeon pursuant to which he serves as Senior Vice President of Sales. Mr. Spurgeon's receives a base salary and is entitled to participate in our incentive compensation plans. Upon the involuntary termination of Mr. Spurgeon's employment following a change in control, a termination without cause or a constructive dismissal, Mr. Spurgeon is entitled to one year's salary as severance and the unvested portion of his initial grant of 100,000 options would become fully vested.

Noel F. Schenker. We have entered into a letter agreement with Noel F. Schenker pursuant to which she serves as Senior Vice President, Marketing and New Business Development. Ms. Schenker receives a base salary and is entitled to participate in our incentive compensation plans. Upon the involuntary termination of Ms. Schenker's employment following a change in control, a termination without cause or a constructive dismissal, Ms. Schenker is entitled to one year's salary as severance and the unvested portion of her initial grant of 100,000 options would become fully vested.

Gregory T. Kliner. We have entered into a letter agreement with Gregory T. Kliner pursuant to which he serves as Senior Vice President of Operations. Mr. Kliner receives a base salary and is entitled to participate in our incentive compensation plans.

James C. Raabe. We have entered into a letter agreement with James C. Raabe pursuant to which he serves as Senior Vice President and Chief Financial Officer. Mr. Raabe receives a base salary and is entitled to participate in our incentive compensation plans.

Mark A. Kimball. We have entered into a letter agreement with Mark A. Kimball pursuant to which he serves as Senior Vice President, Human Resources and Legal, General Counsel and Secretary. Mr. Kimball receives a base salary and is entitled to participate in our incentive compensation plans. Upon termination of Mr. Kimball's employment without cause, Mr. Kimball is entitled to one year's salary as severance compensation.

Michael J. Thyken. We have entered into a letter agreement with Michael J. Thyken pursuant to which he serves as Senior Vice President and Chief Information Officer. Mr. Thyken receives a base salary and is entitled to participate in our incentive compensation plans.

Tracey T. Breazeale. We have entered into a letter agreement with Tracey T. Breazeale pursuant to which she serves as a Senior Vice President. Ms. Breazeale receives a base salary and is entitled to participate in our incentive compensation plans. In February 2001, Ms. Breazeale's work schedule was reduced to 25% of full time, with a proportionate reduction in salary.

CHANGE IN CONTROL ARRANGEMENTS

Under our 1990 Omnibus Stock Option Plan and the 1997 Stock Incentive Plan, if a "change in control" of our company occurs, then, unless the Compensation Committee decides otherwise either at the time of grant of an incentive award or at any time thereafter, all outstanding options will become immediately exercisable in full and will remain exercisable for the remainder of their terms, regardless of whether the participant to whom such options have been granted remains in the employ or service of our company or any subsidiary.

In addition, under the 1997 Stock Incentive Plan, if a "change in control" of our company occurs, then, unless the Compensation Committee decides otherwise either at the time of grant of an incentive award or at any time thereafter:

- all outstanding stock appreciation rights will become immediately exercisable in full and will remain exercisable for the remainder of their terms, regardless of whether the participant to whom such stock appreciation rights have been granted remains in the employ or service of our company or any subsidiary;

- all outstanding restricted stock awards will become immediately fully vested and non-forfeitable; and

- all outstanding performance units and stock bonuses will vest and/or continue to vest in the manner determined by the Compensation Committee and set forth in the agreement evidencing such performance units or stock bonuses.

There are presently no outstanding stock appreciation rights, restricted stock awards, performance units or stock bonuses.

In addition, the Compensation Committee may pay cash for all or a portion of the outstanding options. The amount of cash the participants would receive will equal (a) the fair market value of such shares immediately prior to the change in control minus (b) the exercise price per share and any required tax withholding. The acceleration of the exercisability of options under both plans may be limited, however, if the acceleration would be subject to an excise tax imposed upon "excess parachute payments."

Under the both plans, a "change in control" will include any of the following:

- the sale, lease, exchange or other transfer of all or substantially all of our assets to a corporation not controlled by us;

- the approval by our shareholders of a plan or proposal for the liquidation or dissolution of our company;

- any change of control that is required by the Securities and Exchange Commission to be reported;

- any person who was not a shareholder of our company on the effective date of the plan becomes the beneficial owner of 50% or more of the voting power of our outstanding common stock; or

- the "continuity" directors (directors as of the effective date of the plan and their future nominees) ceasing to constitute a majority of the board of directors.

Notwithstanding anything in the foregoing to the contrary, solely for purposes of options granted under such plans prior to July 27, 1999, no change in control will be deemed to have occurred for purposes of both plans by virtue of any transaction which was approved by the affirmative vote of at least a majority of the "continuity" directors, as defined above. For options granted on or after July 27, 1999, each of the transactions constituting a change in control as defined above will constitute a change in control for purposes of the plans regardless of whether the transaction was approved by the continuity directors.

COMPENSATION COMMITTEE INTERLOCKS AND INSIDER PARTICIPATION

Messrs. Albani and Kollat served as members of the Compensation Committee of the Board of Directors throughout 2002. Messrs. Shames and

Peel joined the Compensation Committee of the Board of Directors in 2003. Except for any transactions described below under "Certain Relationships and Related Transactions," no other relationships existed during 2002 with respect to members of the Compensation Committee that would be required to be disclosed.

COMPENSATION COMMITTEE REPORT ON EXECUTIVE COMPENSATION

Responsibilities of the Compensation Committee. The Compensation Committee of the Board of Directors (the "Committee") is comprised entirely of independent, non-employee directors. The primary purpose of the Committee is to discharge the responsibilities of our Board relating to compensation of our executive officers. The responsibilities of the Committee include:

- Establishing corporate goals and objectives with respect to compensation for our CEO and other executive officers.

- Reviewing and approving salaries and other compensation applicable to our CEO and other executive officers.

- Administering our incentive compensation plans applicable to executive officers.

- Administering our stock option and stock purchase plans applicable to all employees.

Compensation Philosophy. The decisions of the Committee and our compensation programs are based on the following principles:

- As a performance-driven growth company, we favor variable compensation tied to results and achievement over fixed, base compensation.

- As a growth company, we need to attract, retain and motivate executives and key employees with the capability to enable us to achieve significantly greater scale. We therefore benchmark our compensation against larger companies.

- We seek to provide a compensation program that is competitive, motivating and predictable, with base pay targeted at the mid-point of our benchmarks.

- We seek to reward achievement of aggressive performance objectives that are aligned with the interests of our shareholders. Our incentive compensation programs are designed to provide significant earnings potential as aggressive performance targets are met or surpassed.

In discharging its responsibilities, the Committee considers factors such as our company's performance, both in isolation and in comparison to other companies; the individual performance of our executive officers; historical compensation levels; the overall competitive environment for executives; and the level of compensation necessary to attract and retain the talent necessary to achieve our objectives. The Committee places primary emphasis on our company's performance (rather than individual performance) as measured against goals approved by the Committee. In analyzing these factors, the Committee from time to time reviews competitive compensation data gathered in comparative surveys or collected by independent consultants.

Executive Compensation Program Elements. Our executive compensation program comprises base salary, annual incentive compensation, and long-term incentive compensation under our stock option plans.

Base Salary. The Committee's recommendations regarding the base salary of our executive officers, including the compensation of our CEO, are based on a number of factors, including: the level of skill and responsibility required to fulfill each executive's responsibilities; each executive's experience and qualifications; each executive's performance and the impact of such performance on our results; and competitive compensation data. Base salaries are reviewed

annually, and the Committee seeks to set executive officer base salaries at competitive levels in relation to the companies with which we compete for executives. Base salaries for our executive officers were increased at the beginning of 2000 in order to retain key members of the management team to pursue our turnaround plans. For 2001 and 2002, base salaries for our executive officers were essentially maintained at the same levels as in 2000, except that two members of our executive management team received modest increases in 2002 to bring their salaries in line with internal and external comparable positions. For 2003, base salaries of our senior vice presidents were increased modestly, at an average of approximately 3%, consistent with our philosophy of favoring variable, performance-based compensation over fixed, base compensation.

Annual Incentive Compensation. We provide annual incentive cash compensation for executive officers and other employees under our Executive and Key Employee Incentive Plan. This plan is designed to provide a direct financial incentive to our executive officers and other employees for achievement of specific performance goals of our company. Consistent with the requirements of this plan, at the beginning of each fiscal year, the Committee determines:

- The employees by grade level that are eligible to participate in the plan for the year;

- The quarterly and/or annual performance goal or goals for the year (from among sales growth and volume, net operating profit, cash flow, earnings per share, return on capital, and/or return on assets);

- For each eligible employee, (A) the target bonus level as a percentage of base compensation, (B) the portion of the target bonus level that is based on achievement of objective company performance goals, and (C) the portion of the target bonus level, if any, that is based on achievement of objective individual performance goals; and

- The range of actual bonus payment levels, expressed as percentages of the target bonus levels, to be paid based on various levels of achievement of the performance goal or goals for the year.

For each of the fiscal years 2002 and 2003, the Committee has established company-wide net operating profit as the exclusive performance goal for determining annual incentive compensation for executive officers. The target bonus level for senior vice presidents was set at 45% of base salary for 2002 and at 55% of base salary for 2003. The target bonus level for the CEO was set at 75% of base salary for each of 2002 and 2003. The actual bonus payment may range from 0% to 250% of the target bonus level, depending on the level of achievement versus company-wide net operating profit targets.

Long-Term Incentive Compensation. We make long-term incentive compensation available to our executive officers, as well as to many other of our employees, in the form of stock option awards. Through the grant of stock options, we seek to align the long-term interests of our executives and other employees with the long-term interests of our shareholders by creating a strong and direct nexus between compensation and shareholder return, and to enable significant ownership in our company by executive officers and key managers. Executive officers and other employees are eligible for stock option grants when they join us, and are also eligible for annual stock option grants. The total size of our annual stock option awards is reviewed against benchmark data. Individual awards are based on levels of responsibility and potential impact on the our results, individual performance and benchmark data.

All stock option grants have an exercise price equal to 100% of the fair market value of the common stock on the date of grant. In the past, stock option grants typically have become exercisable in 36 equal monthly installments over a 36-month period from the date of grant. Stock option grants awarded in 2003 will become exercisable in equal annual installments over three years from the date of grant. Options

typically remain exercisable for a period of 10 years from the date of grant, provided the individual continues to be employed by us during such period. Alternatively, some option grants have been "performance-based" and become fully exercisable upon the trading price of our common stock reaching or exceeding certain levels for at least 30 days or upon the end of a five-year period from the date of grant.

Chief Executive Officer Compensation. William R. McLaughlin was hired as President and CEO in March 2000. The principal terms of Mr. McLaughlin's compensation package include: (A) an annual base salary of $500,000; (B) a cash bonus at a target level of 75% of base salary (which bonus may range from 0% to 250% of such target amount, depending on company performance); and (C) long-term incentive stock options. When hired in March 2000, Mr. McLaughlin received options to purchase an aggregate of 600,000 shares of common stock exercisable at a price of $5.91 per share, including (i) 300,000 shares vesting in equal monthly increments over 36 months, (ii) 50,000 shares vesting upon the earlier of such time that the trading price of our common stock exceeds $12.00 per share for 30 consecutive trading days or five years from the date of grant, (iii) 100,000 shares vesting upon the earlier of such time that the trading price of our common stock exceeds $24.00 per share for 30 consecutive trading days or five years from the date of grant, and (iv) 150,000 shares vesting upon the earlier of such time that the trading price of our common stock exceeds $36.00 per share for 30 consecutive trading days or five years from the date of grant. Mr. McLaughlin is also eligible for additional annual stock option grants, and received stock option grants of 375,000 shares in 2001 and 250,000 shares in 2002, in each case vesting over a period of three years from the date of grant.

In addition to the foregoing, Mr. McLaughlin (i) is entitled to participate in standard employee benefit plans offered by us, (ii) was entitled to and received reimbursement of relocation and temporary living expenses aggregating $121,322 in 2000, (iii) is entitled to severance compensation in certain circumstances. See "Executive Compensation and Other Benefits - Employment and Consulting Agreements."

The terms of Mr. McLaughlin's compensation were determined in part on the basis of a survey completed by an independent consultant of compensation and benefits payable to CEOs for companies of comparable size and complexity to Select Comfort.

SECTION 162(m)

Section 162(m) of the Internal Revenue Code requires that we meet specific criteria, including stockholder approval of certain stock and incentive plans, in order to deduct, for federal income tax purposes, compensation over $1 million per individual paid to our CEO and each of our four other most highly compensated executives. Our 1997 Stock Incentive Plan and the Executive and Key Employee Incentive Plan are designed to permit stock awards or cash incentive awards granted under the respective plans to qualify as deductible performance-based compensation under the Internal Revenue Code. In reviewing and adopting other executive compensation programs, the Committee plans to continue to consider the impact of Section 162(m) limitations in light of the materiality of the deductibility of potential benefits and the impact of such limitations on other compensation objectives. Because the Committee seeks to maintain flexibility in accomplishing our company's compensation goals, however, it has not adopted a policy that all compensation must be fully deductible.

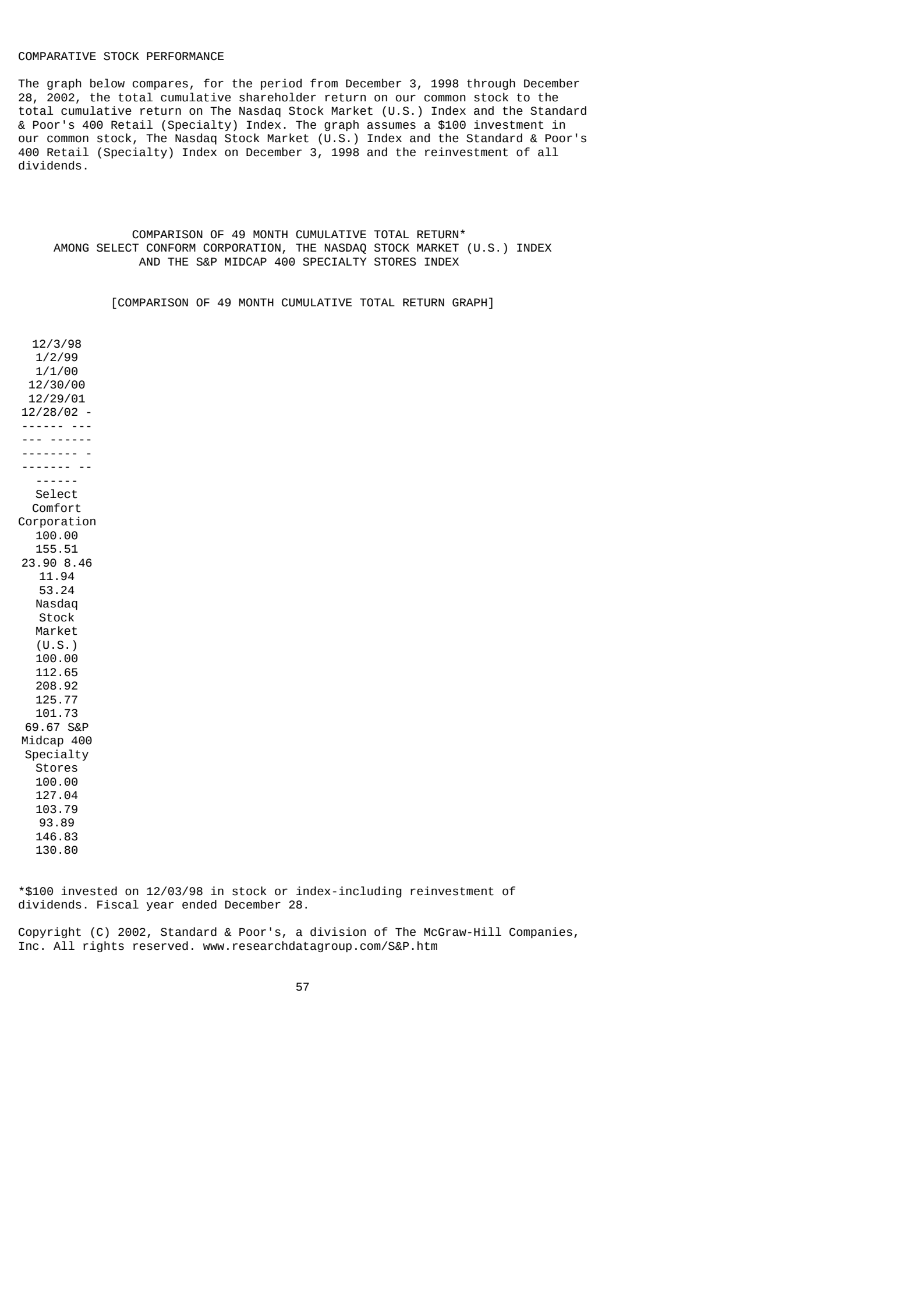
Compensation Committee

Thomas J. Albani, Chair
David T. Kollat
Michael A. Peel
Ervin R. Shames

COMPARATIVE STOCK PERFORMANCE

The graph below compares, for the period from December 3, 1998 through December 28, 2002, the total cumulative shareholder return on our common stock to the total cumulative return on The Nasdaq Stock Market (U.S.) Index and the Standard & Poor's 400 Retail (Specialty) Index. The graph assumes a $100 investment in our common stock, The Nasdaq Stock Market (U.S.) Index and the Standard & Poor's 400 Retail (Specialty) Index on December 3, 1998 and the reinvestment of all dividends.

COMPARISON OF 49 MONTH CUMULATIVE TOTAL RETURN*
AMONG SELECT CONFORM CORPORATION, THE NASDAQ STOCK MARKET (U.S.) INDEX
AND THE S&P MIDCAP 400 SPECIALTY STORES INDEX




*$100 invested on 12/03/98 in stock or index-including reinvestment of dividends. Fiscal year ended December 28.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table sets forth information regarding the beneficial ownership of our common stock as of February 14, 2003 by each person who was known by us to be the beneficial owner of more than 5% of our common stock, by each director, by each executive officer named in the Summary Compensation Table under the heading "Executive Compensation and Other Benefits" and by all directors and executive officers as a group.

| | SHARES OF COMMON STOCK BENEFICIALLY OWNED (1) | |
|---|---|---|
| NAME | AMOUNT | PERCENT OF CLASS |
| St. Paul Companies, Inc. (2) | 12,928,304 | 38.5% |
| NorthBay Partners, L.L.C. (3) | 2,535,000 | 8.0% |
| William R. McLaughlin (4) | 653,515 | 2.1% |
| Mark A. Kimball (5) | 255,033 | * |
| Gregory T. Kliner (6) | 209,588 | * |
| Noel F. Schenker (7) | 127,118 | * |
| Keith C. Spurgeon (8) | 27,562 | * |
| Patrick A. Hopf (9) | 13,036,320 | 38.8% |
| Thomas J. Albani (10) | 130,651 | * |
| Christopher P. Kirchen (11) | 271,541 | * |
| David T. Kollat (12) | 90,651 | * |
| Michael A. Peel (13) | 833 | * |
| Trudy A. Rautio (14) | 3,333 | * |
| Ervin R. Shames (15) | 338,056 | 1.1% |
| Jean-Michel Valette (16) | 114,156 | * |
| All directors and executive officers as a group (16 persons) (17) | 15,700,344 | 44.2% |

- ------------
* Less than 1% of the outstanding shares.

1) Except as otherwise indicated in the footnotes to this table, the persons named in the table have sole voting and dispositive power with respect to all shares of common stock indicated as beneficially owned. Shares of common stock subject to options or warrants currently exercisable or exercisable within 60 days are deemed

outstanding for computing the percentage of the person or group holding such options or warrants but are not deemed outstanding for computing the percentage of any other person or group.

2) Includes 4,886,022 shares held by St. Paul Fire and Marine Insurance Company, 321,017 shares held by St. Paul Venture Capital IV, LLC, 955,900 shares held by St. Paul Venture Capital V, LLC, 4,100,000 shares held by St. Paul Venture Capital VI, LLC and 275 shares held by St. Paul Venture Capital Affiliates Fund I, LLC. Includes (i) 97,753 shares issuable upon exercise of outstanding warrants held by St. Paul Fire and Marine Insurance Co., (ii) 18,009 shares issuable upon exercise of outstanding warrants and options held by St. Paul Venture Capital IV, LLC., (iii) 173,444 shares issuable upon exercise of outstanding options held by St. Paul Venture Capital V, LLC., (iv) 727,272 shares issuable upon conversion of a convertible debenture held by St. Paul Venture Capital V, LLC., and (v) 1,648,612 shares issuable upon exercise of outstanding warrants and options held by St. Paul Venture Capital VI, LLC. The St. Paul Companies, Inc. owns all of the issued and outstanding shares of capital stock of St. Paul Fire and Marine Insurance Co. St. Paul Fire and Marine Insurance Co. owns 99% of the membership interests in St. Paul Venture Capital IV, LLC, St. Paul Venture Capital V, LLC and St. Paul Venture Capital VI, LLC. Patrick A. Hopf, Chairman of the Board of Directors of Select Comfort, is a member of the investment committee responsible for the voting and acquisition and disposition of Select Comfort shares held by each of the St. Paul entities. The address of St. Paul Companies, Inc. is 385 Washington Street, St. Paul, MN 55102.

3) Includes 1,301,250 outstanding shares and 600,000 shares issuable upon exercise of an outstanding warrant held by NorthBay Opportunities, L.P. and 433,750 outstanding shares and 200,000 shares issuable upon exercise of an outstanding warrant held by NorthBay International Opportunities, Ltd. Northbay Partners, L.L.C. is the sole member of NorthBay Management, LLC which serves as the general partner of NorthBay Opportunities, L.P. and the sole member of NorthBay International Management, LLC, which serves as the investment manager of NorthBay International Opportunities, Ltd. The address for NorthBay Partners, L.L.C. is 1500 West Market Street, Suite 200, Mequon, WI 53092.

4) Includes 605,555 shares issuable upon exercise of outstanding options. Does not include 1,000,000 outstanding shares held and 400,000 shares issuable upon exercise of an outstanding warrant by BWSJ Corporation, for which Mr. McLaughlin serves as a director and is a shareholder.

5) Includes 226,555 shares issuable upon exercise of outstanding options.

6) Includes 201,667 shares issuable upon exercise of outstanding options.

7) Includes 105,272 shares issuable upon exercise of outstanding options.

8) Includes 27,083 shares issuable upon exercise of outstanding options.

9) Includes (i) 1,216 shares held by Mr. Hopf's wife and children and (ii) an aggregate of (A) 10,263,214 outstanding shares, (B) 1,937,818 shares issuable upon exercise of outstanding options and warrants, and (C) 727,272 shares issuable upon conversion of a convertible debenture, all of which are beneficially owned by St. Paul Fire and Marine Insurance Company. . See footnote (2). Mr. Hopf disclaims beneficial ownership of the shares held by the St. Paul entities, except to the extent of any pecuniary interest therein. Mr. Hopf's address is 775 Prairie Center Drive, Suite 210, Eden Prairie, MN 55344.

10) Includes 43,056 shares issuable upon exercise of outstanding options and warrants.

11) Includes 23,056 shares issuable upon exercise of outstanding options.

12) Includes 60,556 shares issuable upon exercise of outstanding options.

13) Includes 833 shares issuable upon exercise of outstanding options and warrants.

14) Includes 3,333 shares issuable upon exercise of outstanding options.

15) Includes 138,056 shares issuable upon exercise of outstanding options and warrants held by Mr. Shames and 100,000 shares issuable upon exercise of outstanding options held by Louise G. Shames, Trustee of the Ervin R. Shames Estate Reduction Family Trust U/A dated October 30, 1997.

16) Includes 43,056 shares issuable upon exercise of outstanding options and warrants.

17) Includes an aggregate of (i) 3,891,952 shares issuable upon exercise of outstanding options and warrants and (ii) 727,272 shares issuable upon conversion of a convertible debenture held by officers, directors and their affiliates. Also includes all shares beneficially owned by St. Paul Fire and Marine Insurance Company, Inc. See footnote (2).

TABLE OF EQUITY COMPENSATION PLAN INFORMATION

| EQUITY COMPENSATION PLANS | NUMBER OF SECURITIES TO BE ISSUED UPON EXERCISE OF OUTSTANDING OPTIONS AND WARRANTS (A) | WEIGHTED-AVERAGE EXERCISE PRICE OF OUTSTANDING OPTIONS AND WARRANTS (B) | NUMBER OF SECURITIES REMAINING AVAILABLE FOR FUTURE ISSUANCE UNDER EQUITY COMPENSATION PLANS (EXCLUDING SECURITIES REFLECTED IN COLUMN (A)) (C) |
|---|---|---|---|
| Approved by security holders | 10,037,693 | $3.26 | 1,355,658 |
| Not approved by security holders | 0 | -- | 0 |
| Total | 10,037,693 | $3.26 | 1,355,658 |

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

DIRECTOR RELATIONSHIPS

Patrick A. Hopf, our Chairman of the Board of Directors, was an Executive Vice President of St. Paul Venture Capital, Inc. from February 2002 to December 2002. Mr. Hopf was a Managing Member of St. Paul Venture Capital IV, LLC from January 1997 to December 2002 and St. Paul Venture Capital V, LLC from January 1999 to December 2002, and a Managing Director of SPVC Management VI, LLC, the Managing Member of St. Paul Venture Capital VI, LLC from October 2000 to December 2002. St. Paul Venture Capital IV, LLC, St. Paul Venture Capital V, LLC, St. Paul Venture Capital VI, LLC, St. Paul Venture Capital Affiliates Fund I, LLC (each of which funds is managed by St. Paul Venture Capital, Inc.) and St. Paul Fire and Marine Insurance Co. (whose holdings are managed by St. Paul Venture Capital, Inc.) are significant shareholders of ours. Mr. Hopf is a member of the investment committee responsible for the voting and acquisition and disposition of Select Comfort shares held by each of the St. Paul entities. Mr. Hopf has a continuing financial interest in the funds managed by the investment committee.

Christopher P. Kirchen, a member of our board of directors, was a general partner of Consumer Venture Associates II, L.P., which is the general partner of Consumer Venture Partners II, L.P., a former significant shareholder of ours.

Ervin R. Shames serves on the Board of Advisors for Avenue A, Inc. We have entered into an agreement with Avenue A pursuant to which Avenue A will provide us with certain Internet advertising services for budgeted fees of up to $100,000 in 2003.

REGISTRATION RIGHTS AGREEMENT

Several holders of our common stock and warrants to purchase shares of our common stock, including certain directors and holders of more than 5% of our common stock, have demand and incidental registration rights covering certain such shares held by them pursuant to a

Registration Rights Agreement dated June 6, 2001 among us and the other parties thereto.

PRIVATE PLACEMENT OF 8% SENIOR SECURED CONVERTIBLE NOTES AND WARRANTS

In June 2001, we completed a private placement of 8% senior secured convertible notes in the aggregate principal amount of $11.0 million, convertible into an aggregate of 11.0 million shares of our common stock, together with warrants to purchase an aggregate of 4.4 million shares of our common stock at an exercise price of $1.00 per share. St. Paul Venture Capital VI, LLC purchased $4.1 million of the 8% senior secured convertible notes. BWSJ Corporation, a company in which William R. McLaughlin has an ownership interest, purchased $1.0 million of the notes. Three of our independent directors, including Thomas J. Albani, Ervin R. Shames and Jean-Michel Valette, each purchased $50,000 of the notes. All of these notes were automatically converted into shares of our common stock in June 2002.

ITEM 14. DISCLOSURE CONTROLS AND PROCEDURES

(a) Within 90 days prior to the filing of this Annual Report on Form 10-K, our President and Chief Executive Officer ("CEO") and our Chief Financial Officer ("CFO") carried out an evaluation of the effectiveness of our disclosure controls and procedures. Based upon this evaluation, the CEO and CFO concluded that our disclosure controls and procedures are effective in:

- accumulating and communicating information to our management, including the CEO and CFO, to allow timely decisions regarding required disclosure; and

- recording, processing, summarizing and reporting information required to be included in our periodic reports filed with the SEC in a timely manner.

(b) There were no significant changes in our internal controls or in other factors that could significantly affect internal controls subsequent to the date of the evaluation described above.

## PART IV

ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES AND REPORTS ON FORM 8-K

(a) 1. INDEX TO CONSOLIDATED FINANCIAL STATEMENTS



2. INDEX TO CONSOLIDATED FINANCIAL STATEMENT SCHEDULES

The following Report and financial statement schedule are included in this Part IV and are found in this Report at the pages indicated.



All other schedules are omitted because they are not applicable or the required information is included in the consolidated financial statements or notes thereto.

3. EXHIBITS

The exhibits to this Report are listed in the Exhibit Index below.

We will furnish a copy of any of the exhibits referred to above at a reasonable cost to any shareholder upon receipt of a written request therefor. Requests should be sent to: Select Comfort Corporation, 6105 Trenton Lane North, Minneapolis, Minnesota 55442; Attn: Shareholder Information.

The following is a list of each management contract or compensatory plan or arrangement required to be filed as an exhibit to this Annual Report on Form 10-K pursuant to Item 15(c):

1. Form of Incentive Stock Option Agreement under the 1997 Stock Incentive Plan

2. Form of Performance Based Stock Option Agreement under the 1997 Stock Incentive Plan

3. Employment Letter dated July 11, 1995 between the Company and Gregory T. Kliner

4. Select Comfort Profit Sharing and 401(K) Plan

5. Select Comfort Corporation 1999 Employee Stock Purchase Plan

6. Select Comfort Corporation 1990 Omnibus Stock Option Plan, as amended and restated

7. Select Comfort Corporation 1997 Stock Incentive Plan, as amended and restated

8. Employment Letter dated July 21, 1999 between the Company and Tracey T. Breazeale

9. Employment Letter dated April 22, 1999 between the Company and Mark A. Kimball

10. Executive and Key Employee Incentive Plan

11. Employment Letter dated March 3, 2000 between the Company and William R. McLaughlin

12. Employment Letter dated July 11, 2000 between the Company and Michael J. Thyken

13. Employment Letter dated October 27, 2000 between the Company and Noel F. Schenker

14. Employment Letter dated February 1, 2002 between the Company and Keith C. Spurgeon

15. Select Comfort Executive Investment Plan

(b) REPORTS ON FORM 8-K

During the quarter ended December 28, 2002, we furnished four Current Reports on Form 8-K. The Reports consisted of the following:

(i) Current Report furnished under Item 9 of Form 8-K on October 3, 2002, announcing net sales and revised earnings guidance for the third quarter ended September 29, 2002.

(ii) Current Report furnished under Item 9 of Form 8-K on October 15, 2002, announcing comments on unaudited results for the third quarter ended September 29, 2002 and revised guidance for the fourth quarter.

(iii) Current Report furnished under Item 9 of Form 8-K on December 16, 2002, announcing election of Trudy Rautio to the board of directors.

(iv) Current Report furnished under Item 9 of Form 8-K on December 19, 2002, announcing $5 million debt repayment.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

SELECT COMFORT CORPORATION

Dated: February 26, 2003

By: /s/ William R. McLaughlin
---
William R. McLaughlin
President and Chief Executive Officer
(principal executive officer)

By: /s/ James C. Raabe
---
James C. Raabe
Chief Financial Officer
(principal financial and accounting officer)

Pursuant to the requirements of the Securities Exchange Act of 1934, this Report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the date or dates indicated.

| NAME | TITLE | DATE |
|---|---|---|
| /s/ Patrick A. Hopf<br>Patrick A. Hopf | Chairman of the Board | February 26, 2003 |
| /s/ William R. McLaughlin<br>William R. McLaughlin | President and Chief Executive Officer, Director | February 26, 2003 |
| /s/ Ervin R. Shames<br>Ervin R. Shames | Director | February 26, 2003 |
| /s/ Thomas J. Albani<br>Thomas J. Albani | Director | February 26, 2003 |
| /s/ Christopher P. Kirchen<br>Christopher P. Kirchen | Director | February 26, 2003 |

| | | |
|---|---|---|
| /s/ David T. Kollat<br>- ----------<br>David T. Kollat | Director | February 26, 2003 |
| /s/<br>- ----------<br>Jean-Michel Valette | Director | February , 2003 |
| /s/ Trudy A. Rautio<br>- ----------<br>Trudy A. Rautio | Director | February 26, 2003 |
| /s/ Michael A. Peel<br>- ----------<br>Michael A. Peel | Director | February 26, 2003 |

Certification by Chief Executive Officer

I, William R. McLaughlin, certify that:

1. I have reviewed this annual report on Form 10-K of Select Comfort Corporation;

2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;

3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:

   a) Designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;

   b) Evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this annual report (the Evaluation Date); and

   c) Presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):

   a) All significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officers and I have indicated in this annual report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: February 26, 2003

/s/ William R. McLaughlin
---
William R. McLaughlin
President and Chief Executive Officer

Certification by Chief Financial Officer

I, James C. Raabe, certify that:

1. I have reviewed this annual report on Form 10-K of Select Comfort Corporation;

2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;

3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:

   a) Designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;

   b) Evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this annual report (the Evaluation Date); and

   c) Presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):

   a) All significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officers and I have indicated in this annual report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: February 26, 2003

/s/ James C. Raabe
---
James C. Raabe
Senior Vice President and Chief
Financial Officer

SELECT COMFORT CORPORATION
EXHIBIT INDEX TO ANNUAL REPORT ON FORM 10-K
FOR THE YEAR ENDED DECEMBER 28, 2002

| EXHIBIT NO. | DESCRIPTION | METHOD OF FILING |
|---|---|---|
| 3.1 | Restated Articles of Incorporation of the Company, as amended.. | Incorporated by reference to Exhibit 3.1 contained in Select Comfort's Annual Report on Form 10-K for the fiscal year ended January 1, 2000 (File No. 0-25121) |
| 3.2 | Restated Bylaws of the Company..... | Incorporated by reference to Exhibit 3.2 contained in the Select Comfort's Registration Statement on Form S-1, as amended (Reg. No. 333-62793) |
| 4.1 | Form of Warrant issued in connection with the sale of Convertible Preferred Stock, Series E..... | Incorporated by reference to Exhibit 4.2 contained in Select Comfort's Registration Statement on Form S-1, as amended (Reg. No. 333-62793) |
| 4.2 | Form of Warrant issued in connection with the November 1996 Bridge Financing..... | Incorporated by reference to Exhibit 4.3 contained in the Select Comfort's Registration Statement on Form S-1, as amended (Reg. No. 333-62793) |
| 4.3 | Form of Warrant issued under the June 2001 Note Purchase Agreement..... | Incorporated by reference to Exhibit 10.3 contained in Select Comfort's Quarterly Report on Form 10-Q for the quarter ended June 30, 2001 (File No. 0-25121) |
| 4.4 | Registration Rights Agreement dated June 6, 2001 by and among Select Comfort Corporation and the securityholders named therein..... | Incorporated by reference to Exhibit 10.7 contained in Select Comfort's Quarterly Report on Form 10-Q for the quarter ended June 30, 2001 (File No. 0-25121) |
| 4.5 | Common Stock Purchase Warrant issued to Medallion Capital, Inc. under the Loan Agreement of September 28, 2001..... | Incorporated by reference to Exhibit 10.3 contained in Select Comfort's Quarterly Report on Form 10-Q for the quarter ended September 29, 2001 (File No.0-25121) |

| | | |
|---|---|---|
| 10.1 | Net Lease Agreement dated December 3, 1993 between the Company and Opus Corporation..... | Incorporated by reference to Exhibit 10.1 contained in Select Comfort's Registration Statement on Form S-1, as amended (Reg. No. 333-62793) |
| 10.2 | Amendment of Lease dated August 10, 1994 between the Company and Opus Corporation..... | Incorporated by reference to Exhibit 10.2 contained in the Select Comfort's Registration Statement on Form S-1, as amended (Reg. No. 333-62793) |
| 10.3 | Second Amendment to Lease dated May 10, 1995 between the Company and Rushmore Plaza Partners Limited Partnership (successor to Opus Corporation)..... | Incorporated by reference to Exhibit 10.3 contained in Select Comfort's Registration Statement on Form S-1, as amended (Reg. No. 333-62793) |
| 10.4 | Letter Agreement dated as of October 5, 1995 between The Company and Rushmore Plaza Partners Limited Partnership..... | Incorporated by reference to Exhibit 10.4 contained in Select Comfort's Registration Statement on Form S-1, as amended (Reg. No. 333-62793) |
| 10.5 | Third Amendment of Lease, Assignment and Assumption of Lease and Consent dated as of January 1, 1996 among the Company, Rushmore Plaza Partners Limited Partnership and Select Comfort Direct Corporation..... | Incorporated by reference to Exhibit 10.5 contained in Select Comfort's Registration Statement on Form S-1, as amended (Reg. No. 333-62793) |
| 10.6 | Lease Agreement dated as of September 19, 2002 between the Company and Frastacky (US) Properties Limited Partnership..... | Filed electronically herewith |
| 10.7 | Supply Agreement dated October 18, 2002 between the Company and Supplier (1)..... | Filed electronically herewith |
| 10.8 | Major Merchant Agreement dated December 19, 1997 among First National Bank of Omaha and the Company, Select Comfort SC Corporation, Select Comfort Retail Corporation and Select Comfort Direct Corporation..... | Incorporated by reference to Exhibit 10.13 contained in Select Comfort's Registration Statement on Form S-1, as amended (Reg. No. 333-62793) |
| 10.9 | Form of Incentive Stock Option Agreement under the 1997 Stock Incentive Plan..... | Incorporated by reference to Exhibit 10.16 contained in the Company's Registration Statement on Form S-1, as amended (Reg. No. 333-62793) |
| 10.10 | Form of Performance Based Stock Option Agreement under the 1997 Stock Incentive Plan..... | Incorporated by reference to Exhibit 10.17 contained in Select Comfort's Registration Statement on Form S-1, as amended (Reg. No. 333-62793) |

| | | |
|---|---|---|
| 10.11 | Employment Letter dated July 11, 1995 between the Company and Gregory T. Kliner..... | Incorporated by reference to Exhibit 10.20 contained in Select Comfort's Registration Statement on Form S-1, as amended (Reg. No. 333-62793) |
| 10.12 | Lease Agreement dated September 30, 1998 between the Company and ProLogis Development Services Incorporated..... | Incorporated by reference to Exhibit 10.28 contained in Select Comfort's Registration Statement on Form S-1, as amended (Reg. No. 333-62793) |
| 10.13 | Revolving Credit Program Agreement by and between Green Tree Financial Corporation and Select Comfort Corporation (2)..... | Incorporated by reference to Exhibit 10.3 contained in Select Comfort's Quarterly Report on Form 10-Q for the quarter ended July 3, 1999 (File No. 0-25121) |
| 10.14 | Letter of Agreement by and between Bed, Bath & Beyond Inc. and Select Comfort Retail Corporation (2)..... | Incorporated by reference to Exhibit 10.4 contained in Select Comfort's Quarterly Report on Form 10-Q for the quarter ended July 3, 1999 (File No. 0-25121) |
| 10.15 | Select Comfort Profit Sharing and 401(K) Plan..... | Filed electronically herewith |
| 10.16 | Select Comfort Corporation 1999 Employee Stock Purchase Plan, as amended..... | Incorporated by reference to Exhibit 10.17 contained in Select Comfort's Annual Report on Form 10-K for the fiscal year ended December 30, 2000 (File No. 0-25121) |
| 10.17 | Select Comfort Corporation 1990 Omnibus Stock Option Plan, as amended and restated..... | Incorporated by reference to Exhibit 10.1 contained in Select Comfort's Quarterly Report on Form 10-Q for the quarter ended October 2, 1999 (File No. 0-25121) |
| 10.18 | Select Comfort Corporation 1997 Stock Inventive Plan, as amended and restated through May 1, 2001..... | Incorporated by reference to Exhibit 10.8 contained in Select Comfort's Quarterly Report on Form 10-Q for the quarter ended June 30, 2001 (File No. 0-25121) |
| 10.19 | Employment Letter dated July 21, 1999 between the Company and Tracey T. Breazeale..... | Incorporated by reference to Exhibit 10.24 contained in Select Comfort's Annual Report on Form 10-K for the fiscal year ended January 1, 2000 (File No. 0-25121) |

| | | |
|---|---|---|
| 10.20 | Employment Letter dated April 22, 1999 between the Company and Mark A. Kimball..... | Incorporated by reference to Exhibit 10.25 contained in Select Comfort's Annual Report on Form 10-K for the fiscal year ended January 1, 2000 (File No. 0-25121) |
| 10.21 | Executive and Key Employee Incentive Plan..... | Incorporated by reference to Exhibit 10.22 contained in Select Comfort's Annual Report on Form 10-K for the fiscal year ended December 30, 2000 (File No. 0-25121) |
| 10.22 | Employment Letter dated March 3, 2000 between the Company and William R. McLaughlin..... | Incorporated by reference to Exhibit 10.1 contained in Select Comfort's Quarterly Report on Form 10-Q for the quarter ended April 1, 2000 (File No. 0-25121) |
| 10.23 | Employment Letter dated July 11, 2000 between the Company and Michael J. Thyken..... | Incorporated by reference to Exhibit 10.24 contained in Select Comfort's Annual Report on Form 10-K for the fiscal year ended December 30, 2000 (File No. 0-25121) |
| 10.24 | Employment Letter dated October 27, 2000 between the Company and Noel F. Schenker..... | Incorporated by reference to Exhibit 10.25 contained in Select Comfort's Annual Report on Form 10-K for the fiscal year ended December 30, 2000 (File No. 0-25121) |
| 10.25 | Employment Letter dated February 1, 2002 between the Company and Keith C. Spurgeon..... | Incorporated by reference to Exhibit 10.1 contained in Select Comfort's Quarterly Report on Form 10-Q for the quarter ended March 30, 2002 (File No. 0-25121) |
| 10.26 | Amendment to Revolving Credit Program Agreement with Conseco Bank, Inc. dated February 20, 2001..... | Incorporated by reference to Exhibit 10.1 contained in Select Comfort's Quarterly Report on Form 10-Q for the quarter ended March 31, 2001 (File No. 0-25121) |
| 10.27 | Second Amendment to Revolving Credit Program with Conseco Bank, Inc. dated April 13, 2001..... | Incorporated by reference to Exhibit 10.2 contained in Select Comfort's Quarterly Report on Form 10-Q for the quarter ended March 31, 2001 (File No. 0-25121) |

| | | |
|---|---|---|
| 10.28 | Third Amendment to Revolving Credit Program Agreement with Conseco Bank, Inc. dated June 19, 2002..... | Filed electronically herewith |
| 10.29 | Select Comfort Executive Investment Plan..... | Filed electronically herewith |
| 21.1 | Subsidiaries of the Company..... | Filed electronically herewith |
| 23.1 | Independent Auditors' Consent..... | Filed electronically herewith |
| 99.1 | Certification of Chief Executive Officer..... | Filed electronically herewith |
| 99.2 | Certification of Chief Financial Officer..... | Filed electronically herewith |

- ------------
(1) Confidential treatment has been requested with respect to designated portions of this document. Such portions have been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

(2) Confidential treatment has been granted by the Securities and Exchange Commission with respect to designated portions contained within document. Such portions have been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities and Exchange Act of 1934, as amended.

INDEX TO FINANCIAL STATEMENTS

## INDEPENDENT AUDITORS' REPORT

The Board of Directors and Shareholders
Select Comfort Corporation:

We have audited the accompanying consolidated balance sheets of Select Comfort Corporation and subsidiaries (the Company) as of December 28, 2002 and December 29, 2001 and the related consolidated statements of operations, shareholders' equity, and cash flows for each of the fiscal years in the three-year period ended December 28, 2002. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Select Comfort Corporation and subsidiaries as of December 28, 2002 and December 29, 2001, and the results of their operations and their cash flows for each of the fiscal years in the three-year period ended December 28, 2002 in conformity with accounting principles generally accepted in the United States of America.

/s/ KPMG LLP

Minneapolis, Minnesota
January 31, 2003

SELECT COMFORT CORPORATION
AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS
DECEMBER 28, 2002 AND DECEMBER 29, 2001
(IN THOUSANDS, EXCEPT SHARE AND PER SHARE AMOUNTS)

| 2002 | 2001 |
|---|---|
| ASSETS | |
| Current assets: | |
| Cash and cash equivalents | $ 27,176 |
| $ 16,375 | Marketable securities -- current (note 2) | 12,146 |
| -- | Accounts receivable, net of allowance for doubtful accounts of $340 and $311, respectively | 3,270 |
| 2,623 | Inventories (note 3) | 8,980 |
| 8,086 | Prepaid expenses | 5,467 |
| 3,588 | Deferred tax assets (note 8) | 12,955 |
| -- | Total current assets | 69,994 |
| 30,672 | Marketable securities -- non-current (note 2) | 1,502 |
| -- | Property and equipment, net (note 4) | 28,977 |
| 30,882 | Deferred tax assets (note 8) | 4,352 |
| -- | Other assets | 3,506 |
| 5,882 | Total assets | $108,331 |
| $ 67,436 | LIABILITIES AND SHAREHOLDERS' EQUITY | |
| Current liabilities: | | |
| Current maturities of long-term debt (note 6) | $ 11 |
| $ 28 | Accounts payable | 16,508 |
| 15,216 | Accruals: | |
| Sales returns | 3,181 |
| 3,624 | Compensation and benefits | 13,666 |
| 7,179 | Taxes and withholding | 2,779 |
| 3,032 | Consumer prepayments | 1,964 |
| 1,263 | Other | 5,120 |
| 4,069 | Total current liabilities | 43,229 |
| 34,411 | Long-term debt, less current maturities (note 6) | 2,991 |
| 17,109 | Warranty costs | 3,626 |
| 5,030 | Other liabilities | 3,970 |
| 4,114 | Total liabilities | 53,816 |
| 60,664 | Shareholders' equity (notes 6, 7 and 10): | |
| Undesignated preferred stock; 5,000,000 shares authorized, no shares issued and outstanding | -- |
| -- | Common stock, $0.01 par value; 95,000,000 shares authorized, 30,727,101 and 18,302,307 shares issued and outstanding, respectively | 307 |
| 183 | Additional paid-in capital | 92,184 |
| 81,687 | Accumulated deficit | (37,976) |
| (75,098) | Total shareholders' equity | 54,515 |
| 6,772 | Commitments and contingencies (notes 1, 5 and 11): | |
| Total liabilities and shareholders' equity | $108,331 |
| $ 67,436 | | |

See accompanying notes to consolidated financial statements.

SELECT COMFORT CORPORATION
AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS
YEARS ENDED DECEMBER 28, 2002, DECEMBER 29, 2001 AND DECEMBER 30, 2000
(IN THOUSANDS, EXCEPT PER SHARE AMOUNTS)

| 2002 | 2001 | 2000 |
|---|---|---|
| Net sales | $335,795 | $261,687 | $270,077 |
| Cost of sales (note 1) | 125,796 | 107,210 | 115,601 |
| Gross profit | 209,999 | 154,477 | 154,476 |
| Operating expenses: Sales and marketing (note 1) | 155,890 | 138,417 | 149,283 |
| General and administrative | 32,854 | 25,296 | 29,211 |
| Store closings and asset impairments (note 4) | 233 | 1,366 | 1,952 |
| Total operating expenses | 188,977 | 165,079 | 180,446 |
| Operating income (loss) | 21,022 | (10,602) | (25,970) |
| Other income (expense): Interest income | 571 | 237 | 1,082 |
| Interest expense (note 6) | (1,655) | (1,362) | (26) |
| Equity in loss of affiliate | -- | -- | (642) |
| Other, net | (198) | (339) | (66) |
| Other income (expense), net | (1,282) | (1,464) | 348 |
| Income (loss) before income taxes and extraordinary loss | 19,740 | (12,066) | (25,622) |
| Income tax (benefit) expense (note 8) | (17,762) | -- | 11,592 |
| Income (loss) before extraordinary loss | 37,502 | (12,066) | (37,214) |
| Extraordinary loss from early extinguishment of debt, net of tax of $234 (note 6) | (380) | -- | -- |
| Net income (loss) | $ 37,122 | $(12,066) | $(37,214) |
| Basic net income (loss) per share (note 9): Income (loss) before extraordinary loss | $ 1.53 | $ (0.66) | $ (2.09) |
| Extraordinary loss from early extinguishment of debt | (0.02) | -- | -- |
| Net income (loss) per share -- basic | $ 1.51 | $ (0.66) | $ (2.09) |
| Weighted average common shares -- basic | 24,549 | 18,157 | 17,848 |
| Diluted net income (loss) per share (note 9): Income (loss) before extraordinary loss | $ 1.10 | $ (0.66) | $ (2.09) |
| Extraordinary loss from early extinguishment of debt | (0.01) | -- | -- |
| Net income (loss) per share -- diluted | $ 1.09 | $ (0.66) | $ (2.09) |
| Weighted average common shares -- diluted | 34,532 | 18,157 | 17,848 |

See accompanying notes to consolidated financial statements.

SELECT COMFORT CORPORATION
AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY
YEARS ENDED DECEMBER 28, 2002, DECEMBER 29, 2001 AND DECEMBER 30, 2000
(IN THOUSANDS, EXCEPT SHARE AMOUNTS)

| | SHARES | AMOUNT | ADDITIONAL PAID-IN CAPITAL | ACCUMULATED DEFICIT | TOTAL |
|---|---|---|---|---|---|
| Balance at January 1, 2000 | 17,713,247 | $177 | $78,513 | $(25,818) | $ 52,872 |
| Exercise of common stock options (note 7) | 44,515 | 1 | 136 | -- | 137 |
| Issuance of common stock warrants | -- | -- | 278 | -- | 278 |
| Employee stock purchases (note 10) | 204,927 | 2 | 525 | -- | 527 |
| Net loss | -- | -- | -- | (37,214) | (37,214) |
| Balance at December 30, 2000 | 17,962,689 | 180 | 79,452 | (63,032) | 16,600 |
| Exercise of common stock options (note 7) | 694 | -- | 1 | -- | 1 |
| Issuance of common stock warrants | -- | -- | 1,868 | -- | 1,868 |
| Employee stock purchases (note 10) | 338,924 | 3 | 366 | -- | 369 |
| Net loss | -- | -- | -- | (12,066) | (12,066) |
| Balance at December 29, 2001 | 18,302,307 | 183 | 81,687 | (75,098) | 6,772 |
| Exercise of common stock options (note 7) | 166,238 | 2 | 279 | -- | 281 |
| Exercise of common stock warrants | 1,046,344 | 10 | (10) | -- | -- |
| Conversion of convertible debt (note 6) | 11,000,000 | 110 | 9,382 | -- | 9,492 |
| Employee stock purchases (note 10) | 212,212 | 2 | 846 | -- | 848 |
| Net income | -- | -- | -- | 37,122 | 37,122 |
| Balance at December 28, 2002 | 30,727,101 | $307 | $92,184 | $(37,976) | $ 54,515 |

See accompanying notes to consolidated financial statements.

SELECT COMFORT CORPORATION
AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
YEARS ENDED DECEMBER 28, 2002, DECEMBER 29, 2001 AND DECEMBER 30, 2000
(IN THOUSANDS)

| 2002 | 2001 | 2000 |
|---|---|---|
| Cash flows from operating activities: | | |
| Net income (loss) | $ 37,122 | $(12,066) | $(37,214) |
| Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities: | | |
| Depreciation and amortization | 9,194 | 9,570 | 8,390 |
| Amortization of debt discount and deferred finance fees | 1,279 | 512 | 19 |
| Loss on disposal of assets and impaired assets | 548 | 1,687 | 2,167 |
| Deferred tax (benefit) expense | (17,307) | -- | 10,887 |
| Change in operating assets and liabilities: | | |
| Accounts receivable | (647) | 70 | (1,637) |
| Inventories | (894) | 2,926 | 640 |
| Prepaid expenses | (1,879) | 2,023 | 80 |
| Other assets | 1,441 | (2,244) | 535 |
| Accounts payable | 1,292 | (2,055) | 1,360 |
| Accrued compensation and benefits | 6,487 | 1,154 | (182) |
| Other accruals and liabilities | (492) | (1,163) | 4,669 |
| Net cash provided by (used in) operating activities | 36,144 | 414 | (10,286) |
| Cash flows from investing activities: | | |
| Purchases of property and equipment | (7,802) | (4,859) | (12,084) |
| Investments in marketable securities | (24,780) | -- | -- |
| Proceeds from maturity of marketable securities | 11,132 | 3,950 | 16,179 |
| Investment in affiliate | -- | -- | (400) |
| Net cash (used in) provided by investing activities | (21,450) | (909) | 3,695 |
| Cash flows from financing activities: | | |
| Principal payments on long-term debt | (5,022) | (38) | (16) |
| Proceeds from issuance of common stock | 1,129 | 370 | 664 |
| Net proceeds from long-term debt | -- | 15,040 | -- |
| Net cash (used in) provided by financing activities | (3,893) | 15,372 | 648 |
| Increase (decrease) in cash and cash equivalents | 10,801 | 14,877 | (5,943) |
| Cash and cash equivalents, at beginning of year | 16,375 | 1,498 | 7,441 |
| Cash and cash equivalents, at end of year | $ 27,176 | $ 16,375 | $ 1,498 |
| SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION | | |
| Cash paid during the year for: | | |
| Interest | $ 585 | $ 182 | $ 7 |
| Income taxes | 495 | 188 | 175 |
| Non-cash impact of conversion of debt to equity | 9,492 | -- | -- |

See accompanying notes to consolidated financial statements.

## (1) BUSINESS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

### Business

Select Comfort Corporation and its wholly-owned subsidiaries (the Company) is the leading developer, manufacturer and marketer of premium quality, adjustable-firmness beds. The Company's fiscal year ends on the Saturday closest to December 31.

### Financial Statement Presentation

Fiscal years 2002, 2001 and 2000 each had 52 weeks. Certain prior-year amounts have been reclassified to conform to the current-year presentation. In particular, the Company has elected to reclassify costs associated with delivery of its products to customers, from sales and marketing expense to cost of sales. As a result of this change in presentation, cost of sales increased and sales and marketing expenses decreased by $17,134,000 and $16,677,000 in 2001 and 2000, respectively. This change in classification does not affect operating income or net income.

### Principles of Consolidation

The consolidated financial statements include the accounts of Select Comfort Corporation and its subsidiaries. All significant intercompany balances and transactions have been eliminated in consolidation.

### Cash and Cash Equivalents

Cash and cash equivalents include highly liquid investments with original maturities of three months or less. The Company had $1,000,000 of its cash and cash equivalents securing a standby letter of credit at December 28, 2002.

### Marketable Securities

Investments with an original maturity of greater than 90 days are classified as marketable securities. Marketable securities include highly liquid investment grade debt instruments issued by the U.S. government and related agencies and municipalities and commercial paper issued by companies with investment grade ratings. The Company's investments have an original maturity of up to 24 months. Marketable securities with a remaining maturity of greater than one year are classified as long-term.

### Inventories

Inventories include material, labor and overhead and are stated at the lower of cost or market. Cost is determined by the first-in, first-out method.

### Property and Equipment

Property and equipment, carried at cost, are depreciated using the straight-line method over the estimated useful lives of the assets, which range from three to seven years. Leasehold improvements are amortized over the shorter of the life of the lease, 10 years or the date a store remodel is expected to be completed.

### Other Assets

Other assets include security deposits, patents, investments, trademarks, debt issuance costs and goodwill. Patents and trademarks are amortized using the straight-line method over periods ranging from 10 to 17 years. Debt issuance costs are amortized using the straight-line method over the term of the debt.

(1) BUSINESS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES -- (CONTINUED)

Fair Value of Financial Instruments

The carrying value of cash and cash equivalents and accounts receivable approximate fair value because of the short-term maturity of those instruments. The fair value of long-term debt approximates carrying value based on the Company's estimate of rates that would be available to it for debt of the same remaining maturities.

Stock Compensation

The Company records compensation expense for option grants under its stock option plan if the current market value of the underlying stock at the grant date exceeds the stock option exercise price. Pro forma disclosure of the impact on net earnings (loss) of applying an alternative method of recognizing stock compensation expense over the vesting period based on the fair value of all stock-based awards on the date of grant is presented in Note 7. If the Company issues options to non-employees, compensation expense is recognized based on the fair market value method.

Research and Development Costs

Costs incurred in connection with research and development are charged to expense as incurred. Research and development expense was $936,000, $1,086,000 and $889,000 in 2002, 2001 and 2000, respectively.

Pre-opening Costs

Costs associated with the opening of new stores are expensed as incurred.

Advertising Costs

The Company incurs advertising costs associated with print and broadcast advertisements. Such costs are charged to expense the first time the advertisement airs. Advertising expense was $39,477,000, $29,451,000 and $31,265,000 in 2002, 2001 and 2000, respectively.

Income Taxes

The Company recognizes deferred tax assets and liabilities for the future tax consequences attributable to temporary differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date. A valuation allowance is recognized against any portion of deferred tax assets when realization of the deferred tax asset is not considered more likely than not.

Earnings Per Share

Basic earnings (loss) per share excludes dilution and is computed by dividing the net income (loss) attributable to common shareholders by the weighted average number of common shares during the period. Diluted earnings (loss) per share includes potentially dilutive common shares consisting of stock options and warrants determined by the treasury stock method and dilutive convertible securities.

(1) BUSINESS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES -- (CONTINUED)

Accounting Estimates and Critical Accounting Policies

The preparation of consolidated financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. Critical accounting policies consist of the following:

Revenue Recognition

Revenue is recognized at the time of shipment to customers for products shipped with outside, third party carriers. Revenue is recognized at the time of delivery for products delivered through our company-controlled home delivery system. In both cases, revenue is recognized net of estimated returns.

Impairment of Long-lived Assets and Long-lived Assets to be Disposed of

The Company reviews its long-lived assets, certain identifiable intangibles, and goodwill for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to future net cash flows expected to be generated by the asset. If such assets are considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceeds the fair value of the assets. Assets to be disposed of are reported at the lower of the carrying amount or fair value less costs to sell.

The Company reviews store assets for possible impairment considering such factors as estimated store cash flows, lease termination provisions, and opportunities to impact future store operating results.

The test for goodwill impairment is a two-step process, and is performed on at least an annual basis. The first step is a comparison of the fair value of the reporting unit with its carrying amount, including goodwill. If this step reflects impairment, then the loss would be measured as the excess of recorded goodwill over its implied fair value. Implied fair value is the excess of fair value of the reporting unit over the fair value of all identified assets and liabilities.

Beginning in 2002, the Company stopped amortizing goodwill according to SFAS Statement 142 "Goodwill and Other Intangible Assets." As a result, no amortization expense for goodwill was recorded in 2002. The carrying value of goodwill as of December 28, 2002 was $2,850,000. In 2001 and 2000, the Company recorded goodwill amortization expense of $374,000 ($0.02 per share) and $22,000 ($0.00 per share), respectively.

Accrued Warranty Costs

The Company provides a 20-year warranty on adjustable-firmness beds, the last 18 years of which are on a pro rated basis. Estimated warranty costs are expensed at the time of sale based on historical claims incurred by the Company. Actual warranty claim costs could differ from these estimates. The Company classifies as non-current those estimated warranty costs expected to be paid out in greater than one year.

(1) BUSINESS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES -- (CONTINUED)

As of December 28, 2002, $3,626,000 of the accrued warranty costs was considered long-term. The activity in the accrued warranty liability account is as follows (in thousands):

| BALANCE AT BEGINNING OF YEAR | ADDITIONS CHARGED TO COSTS AND EXPENSES | DEDUCTIONS FROM RESERVES | BALANCE AT END OF YEAR |
|---|---|---|---|
| 2002 | $6,287 | $2,433 | $3,540 | $5,180 |
| 2001 | 7,181 | 2,708 | 3,602 | 6,287 |
| 2000 | 5,841 | 5,397 | 4,057 | 7,181 |

Accrued Sales Returns

Estimated sales returns are provided at the time of sale based upon historical sales returns. Returns are allowed by the Company for 30 nights following the sale.

New Accounting Pronouncements

The Financial Accounting Standards Board has issued statement SFAS 146 "Accounting for Costs Associated with Exit or Disposal Activities." Statement 146 revises the timing of when costs associated with an exit or disposal activity are recognized. This statement requires that an entity recognize the liability for a cost associated with an exit or disposal activity when the liability is incurred, rather than at the date of an entity's commitment to an exit plan as was previously allowed. The Company will account for any exit or disposal activities after December 28, 2002 under SFAS 146.

(2) MARKETABLE SECURITIES

Securities classified as held to maturity, which consist of securities that management has the ability and intent to hold to maturity, are carried at amortized cost and are summarized as follows as of December 28, 2002 (in thousands):

| EFFECTIVE INTEREST RATE | AMORTIZED COST | FAIR VALUE |
|---|---|---|
| Corporate securities | 2.3% | $ 501 | $ 501 |
| U.S. government agencies | 2.0 | 10,098 | 10,139 |
| Commercial paper | 1.4 | 3,049 | 3,052 |
| | | $13,648 | $13,692 |

(3) INVENTORIES

Inventories consist of the following (in thousands):

| | DECEMBER 28, 2002 | DECEMBER 29, 2001 |
|---|---|---|
| Raw materials | $2,669 | $1,824 |
| Work in progress | 88 | 26 |
| Finished goods | 6,223 | 6,236 |
| | $8,980 | $8,086 |

(4) PROPERTY AND EQUIPMENT

Property and equipment are summarized as follows (in thousands):

DECEMBER 28, 2002 | DECEMBER 29, 2001
---|---
Leasehold improvements | $ 37,638 | $ 36,551
Office furniture and equipment | 4,083 | 3,496
Production machinery and computer equipment | 25,827 | 21,256
Less accumulated depreciation and amortization | (38,571) | (30,421)
 | $ 28,977 | $ 30,882

Store Closings and Asset Impairment Charges

Store closings and write-off expense was $233,000, $1,029,000 and $565,000 in 2002, 2001 and 2000, respectively.

In 2001 and 2000, the Company incurred charges of $337,000 and $1,387,000, respectively, related to the impairment of carrying values of certain non-store assets. In 2001, these charges related primarily to the write-off of unusable fixtures for merchandising of sleeper sofa products. In 2000, these charges included $741,000 related to asset write-offs resulting from the relocation of the Company's headquarters and $646,000 related to the write-off of web site software design costs.

(5) LEASES

The Company rents office and manufacturing space under four operating leases which, in addition to the minimum lease payments, require payment of a proportionate share of the real estate taxes and building operating expenses. The Company also rents retail space under operating leases which, in addition to the minimum lease payments, require payment of percentage rents based upon sales levels. Rent expense was as follows (in thousands):

2002 | 2001 | 2000
---|---|---
Minimum rents | $16,213 | $16,069 | $17,589
Percentage rents | 3,085 | 1,561 | 1,835
Total | $19,298 | $17,630 | $19,424
Equipment rent | $ 1,913 | $ 2,003 | $ 1,587

The aggregate minimum rental commitments under operating leases for subsequent years are as follows (in thousands):

| |
---|---
2003 | $15,641
2004 | 14,401
2005 | 13,452
2006 | 12,018
2007 | 9,019
Thereafter | 11,988
 | $76,519

(6) LONG-TERM DEBT

Long-term obligations under notes and capital leases are as follows (in thousands, except share and per share amounts):

DECEMBER 28, 2002 DECEMBER 29, 2001 ---------- -- ---------- 8% senior subordinated convertible notes due June 2006 (the Notes). Face amount of $11,000 net of $925 debt discount in 2001, with interest payable annually. Convertible into 11,000,000 shares of common stock at the rate of $1.00 per share..... $ -- $10,075 12% senior secured debt due September 2006 (the Debt). Face amount of $5,000 net of $616 debt discount in 2001, with interest payable monthly... -- 4,384 Non-interest bearing subordinated convertible debenture due November 2005. Face amount of $4,000 net of $1,009 debt discount, with an effective interest rate of 12% per annum. Convertible into 727,272 shares of common stock at the rate of $5.50 per share..... 2,991 2,645 Other..... 11 33 ------ ------- 3,002 17,137 Less current maturities..... 11 28 ----- - ------- $2,991 $17,109 ====== =======

The Notes were converted to 11,000,000 shares of common stock at the rate of $1.00 per share in 2002. The Debt was prepaid in 2002. All deferred financing costs were written off in connection with the early repayment of the Debt and have been reflected as an extraordinary loss.

The aggregate maturities of long-term debt for subsequent years are as follows (in thousands):

| | |
|---|---|
| 2003..... | $ 11 |
| 2004..... | -- |
| 2005..... | 4,000 |
| | $4,011 |

(7) SHAREHOLDERS' EQUITY

Stock Options

The Board of Directors has reserved 9,300,000 shares of common stock for options that may be granted to key employees, directors or others under the Company's stock option plans. Options available for grant at December 28, 2002 were 1,365,846.

(7) SHAREHOLDERS' EQUITY -- (CONTINUED)

A summary of the changes in the Company's stock option plans for each of the years in the three-year period ended December 28, 2002 is as follows:

WEIGHTED AVERAGE SHARES EXERCISE PRICE --------- --------
------ Outstanding at January 1, 2000 (including
1,311,133 shares
exercisable).....
2,685,353 $9.92
Granted.....
1,307,700 4.64
Exercised.....
(44,515) 3.09
Canceled.....
(429,267) 9.44 --------- ----- Outstanding at December
30, 2000 (including 1,726,097 shares
exercisable).....
3,519,271 8.08
Granted.....
1,766,900 1.03
Exercised.....
(694) 1.01
Canceled.....
(628,453) 8.74 --------- ----- Outstanding at December
29, 2001 (including 2,034,877 shares
exercisable).....
4,657,024 5.32
Granted.....
952,600 3.26
Exercised.....
(166,238) 1.69
Canceled.....
(123,267) 3.97 --------- ----- Outstanding at December
28, 2002 (including 2,980,786 shares
exercisable).....
5,320,119 $5.09 ========= =====

The following table summarizes information about options outstanding at December 28, 2002:

OPTIONS
OUTSTANDING
OPTIONS
EXERCISABLE - -
---
---
---
---
---------- ----
---
------- AVERAGE
REMAINING
WEIGHTED
WEIGHTED
CONTRACTUAL
LIFE AVERAGE
AVERAGE RANGE
OF EXERCISE
PRICE SHARES
(YEARS)
EXERCISE PRICE
SHARES EXERCISE
PRICE - -------
---
- --------- ---
---
---
--------- -----
--------- $0.45
-
1.00.....
398,887 7.79 $
0.99 142,804 $
0.97 1.01 -
2.75.....
2,107,216 8.59
1.75 898,538
1.64 2.76 -
7.00.....
1,798,796 6.52
5.22 1,164,224
5.23 7.01 -
14.00.....
398,245 6.40
8.38 368,245
8.28 14.01 -

28.63.....
616,975 6.28
16.69 406,975
17.33 - -------
---
- --- ---
---
---
---
---
$0.45
-
28.63.....
5,320,119 7.40
$ 5.09
2,980,786 $
5.97 =========
=========

No compensation cost has been recognized in the consolidated financial statements for employee stock option grants or the discount feature of the Company's employee stock purchase plan. Had the Company determined compensation cost based on the fair value at the grant date for its stock options and employee stock purchase plan under an alternative accounting method, the Company's net income (loss) would have been adjusted as outlined below (in thousands, except per share amounts):

2002 2001 2000 --
---
---
Net income (loss): As reported.....
$37,122 $(12,066)
$(37,214) Pro forma.....
$34,593 $(15,239)
$(39,763) Income (loss) per share -- basic: As reported.....
$ 1.51 $ (0.66) $
(2.09) Pro forma.....
$ 1.41 $ (0.84) $
(2.23) Income (loss) per share -- diluted: As reported.....
$ 1.09 $ (0.66) $
(2.09) Pro forma.....
$ 1.02 $ (0.84) $
(2.23)

(7) SHAREHOLDERS' EQUITY -- (CONTINUED)

The fair value of each option grant is estimated on the date of grant using the Black-Scholes option pricing model with the following assumptions:

| 2002 | 2001 | 2000 |
|---|---|---|
| Expected dividend yield | | |
| 0% | 0% | 0% |
| Expected stock price volatility | | |
| 90% | 90% | 40% |
| Risk-free interest rate | | |
| 2.0% | 4.9% | 5.9% |
| Expected life in years | | |
| 3.6 | 3.5 | 3.6 |
| Weighted-average fair value at grant date | $2.02 | $0.34 |
| | | $1.87 |

Warrants

The Company has issued warrants to various holders with outstanding issuances at December 28, 2002 summarized below:

| WARRANTS OUTSTANDING | WARRANT TYPE EXPIRATION DATE | EXERCISE PRICE |
|---|---|---|
| ---- | 2001 Senior Secured Convertible Notes Financing | |
| 1.00 | 3,380,000 6/6/11 | 2001 Senior Secured Debt Financing |
| 1.02 | 922,819 9/26/06 | Miscellaneous other warrants |
| 1.20 - 5.56 | 562,256 5/17/04 - 6/6/11 | |
| ------ | ---------- | $1.00 - 5.56 |
| 4,865,075 | 5/17/04 - 6/6/11 | |

The warrants issued in conjunction with the Notes and Debt were valued at $1,100,000 and $600,000, respectively, and were reflected in additional paid-in capital in the statement of shareholders' equity. The associated debt discount was amortized as interest expense over the term of the debt until the related debt was converted or was repaid (note 6).

Miscellaneous other warrants consist of warrants issued to various parties in lieu of cash payments. The value of these warrants was recognized as compensation expense with an offset to shareholders' equity utilizing the Black-Scholes pricing model with assumptions reflecting the market rates at the time of warrant issuance.

(8) INCOME TAXES

The (benefit) provision for income taxes consists of the following (in thousands):

| 2002 | 2001 | 2000 |
|---|---|---|
| Current: | | |
| Federal | | |
| $ -- | $-- | $ -- |
| State | | |
| (340) -- | 705 | (340) -- 705 |
| Deferred: | | |
| Federal | | |
| (12,739) -- | 10,397 | |
| State | | |
| (4,683) -- | 490 | (17,422) -- 10,887 |
| Income tax (benefit) expense | | |
| $(17,762) | $-- | $11,592 |

(8) INCOME TAXES -- (CONTINUED)

Effective tax rates differ from statutory federal income tax rates as follows:

| | 2002 | 2001 | 2000 |
|---|---|---|---|
| Statutory federal income tax rate | 35.0% | (35.0)% | (35.0)% |
| Change in valuation allowance | (123.3) | 31.4 | 82.2 |
| State income taxes, net of federal benefit | (1.8) | -- | (1.1) |
| Other | 0.1 | 3.6 | (0.9) |
| | (90.0)% | 0.0% | 45.2% |

The tax effects of temporary differences that give rise to deferred tax assets at December 28, 2002 and December 29, 2001 are as follows (in thousands):

| | 2002 | 2001 |
|---|---|---|
| Deferred tax assets: | | |
| Current: Net operating loss carryforwards | $ 7,904 | $ -- |
| Inventory, warranty and returns reserves | 3,208 | 3,849 |
| Allowance for doubtful accounts | 129 | 118 |
| Other | 2,164 | 2,409 |
| Long term: Net operating loss carryforwards | 29 | 15,662 |
| Depreciation | 3,765 | 2,624 |
| Other | 749 | 516 |
| Total gross deferred tax assets | 17,948 | 25,178 |
| Valuation allowance | (641) | (25,178) |
| Total net deferred tax assets | $17,307 | $ -- |

During 2002, the Company recorded a reduction in the valuation allowance of $24,537,000. The reduction in the valuation allowance follows the Company's return to profitability as a result of cost restructuring efforts in 2000 and 2001 and an increase in sales in 2002. The Company believes that it is more likely than not that it will generate sufficient taxable income to utilize its deferred tax assets, including net operating loss carryforwards, within any applicable carryover periods.

At December 28, 2002, the Company had net operating loss carryforwards for federal income tax purposes of approximately $20,900,000, of which $103,000 will expire between 2003 and 2006, with the remainder expiring between 2020 and 2021. The Company has recorded a valuation allowance of $641,000 for a capital loss carryforward that likely will not be utilized within its applicable carryforward period.

(9) NET INCOME (LOSS) PER COMMON SHARE

The following computations reconcile net income (loss) per share-basic with net income (loss) per share-diluted (in thousands, except share and per share amounts).

NET PER SHARE 2002 INCOME SHARES AMOUNT - ---- --- ---- ---------- --------- BASIC EPS Net income:..... $37,122 24,549,459 $1.51 ===== EFFECT OF DILUTIVE SECURITIES Options..... -- 1,882,807 Common stock warrants..... -- 2,885,441 Convertible debt..... 563 5,214,286 ------- ---------- DILUTED EPS Net income plus assumed conversions..... $37,685 34,531,993 $1.09 ======= ========== =====

NET PER SHARE 2001 AND 2000 LOSS SHARES AMOUNT - ------------ -------- ---------- --------- BASIC AND DILUTED EPS Net loss:
2001..... $(12,066) 18,157,005 $(0.66)
2000..... $(37,214) 17,848,375 $(2.09)

The following is a summary of those securities outstanding during the respective periods which have been excluded from the calculations because the effect on net income (loss) per common share would not have been dilutive:

2002 2001 2000 --------- ---------- --------- Options..... 1,870,220 4,657,024 3,519,271 Common stock warrants..... 40,000 6,124,529 1,344,378 Convertible debt..... 727,272 11,727,272 727,272

(10) EMPLOYEE BENEFIT PLANS

Under the Company's profit sharing and 401(k) plan eligible employees may defer up to 15% of their compensation on a pre-tax basis. Each year, the Company may make a discretionary contribution equal to a percentage of the employee's contribution. During 2002, 2001 and 2000, the Company expensed $485,000, $119,000 and $487,000, respectively, relating to its contribution to the 401(k) plan. During 2002, the Company issued 81,778 shares for its discretionary contribution.

Employee Stock Purchase Plan

Under the Company's Employee Stock Purchase Plan, employees can purchase Company common stock at a discount of 15% based on the average price of the stock on the last business day of the offering period (calendar-quarter.) The Company issued 145,434, 338,924 and 204,927 shares during 2002, 2001 and 2000, respectively.

(11) COMMITMENTS AND CONTINGENCIES

In June 1999, the Company and certain of its former officers and directors were named as defendants in a class action lawsuit filed in U.S. District Court in Minnesota. The suit, filed on behalf of purchasers

(11) COMMITMENTS AND CONTINGENCIES -- (CONTINUED)

of the Company's common stock between December 4, 1998 and June 7, 1999, alleges that the Company and the named former directors and officers failed to disclose or misrepresented certain information concerning the Company in violation of federal securities laws. The Company believes that the suit is without merit and has vigorously defended the matter.

The Company has consented to a settlement of this litigation negotiated by the Company's insurance carrier. The settlement is covered by insurance and involves no cash or other payment obligation by the Company and no admission of liability or wrongdoing by the Company. The settlement is not expected to have any impact on the Company's results of operations or financial condition.

On December 13, 2002, the settlement agreement received preliminary approval from the U.S. District Court for the District of Minnesota. The Court issued an order setting February 28, 2003 for a hearing for final approval of the settlement agreement. At the hearing for final approval, the Court will hear any objections to the settlement or its terms.

The Company is involved in other various claims, legal actions, sales tax disputes and other complaints arising in the ordinary course of business. In the opinion of management, any losses that may occur from these other matters are adequately covered by insurance or are provided for in the consolidated financial statements and the ultimate outcome of these other matters will not have a material effect on the consolidated financial position or results of operations of the Company.

(12) SUMMARY OF QUARTERLY FINANCIAL DATA (UNAUDITED)

The following is a condensed summary of actual quarterly results for 2002 and 2001 (in thousands, except per share amounts):

2002 DECEMBER SEPTEMBER JUNE MARCH - ---- -------- --------- ------- ------- Net sales..... $92,263 $85,056 $77,281 $81,195 Gross profit..... 57,679 54,141 47,941 50,238 Operating income..... 8,836 5,833 2,984 3,369 Income before extraordinary loss..... 8,091 23,604 2,563 3,244 Net income..... 7,711 23,604 2,563 3,244 Income per share before extraordinary loss -- diluted..... 0.22 0.69 0.08 0.11 Net income per share -- diluted..... 0.21 0.69 0.08 0.11

2001 DECEMBER SEPTEMBER JUNE MARCH - ---- -------- --------- ------- ------- Net sales..... $69,341 $64,148 $62,742 $65,456 Gross profit..... 42,376 38,714 35,942 37,445 Operating income (loss)..... 1,659 603 (3,176) (9,688) Net income (loss)..... 1,065 227 (3,530) (9,828) Net income (loss) per share -- diluted..... $ 0.04 $ 0.01 $ (0.19) $ (0.54)

INDEPENDENT AUDITORS' REPORT ON FINANCIAL STATEMENT SCHEDULE

The Board of Directors and Stockholders
Select Comfort Corporation:

Under date of January 31, 2003 we reported on the consolidated balance sheets of Select Comfort Corporation and subsidiaries as of December 28, 2002 and December 29, 2001 and the related statements of operations, shareholders' equity, and cash flows for each of the years in the three-year period ended December 28, 2002, as contained in the Annual Report on Form 10-K for the year 2002. In connection with our audits of the aforementioned consolidated financial statements, we also audited the related financial statement schedule as listed in the accompanying index. This financial statement schedule is the responsibility of the Company's management. Our responsibility is to express an opinion on this financial statement schedule based on our audits.

In our opinion, such financial statement schedule, when considered in relation to the basic consolidated financial statements taken as a whole, presents fairly, in all material respects, the information set forth therein.

/s/ KPMG LLP

Minneapolis, Minnesota
January 31, 2003

SELECT COMFORT CORPORATION AND SUBSIDIARIES
SCHEDULE II - VALUATION AND QUALIFYING ACCOUNTS
(IN THOUSANDS)

| DESCRIPTION | BALANCE AT BEGINNING OF PERIOD | ADDITIONS CHARGED TO COSTS AND EXPENSES | DEDUCTIONS FROM RESERVES | BALANCE AT END OF PERIOD |
|---|---|---|---|---|
| Allowance for doubtful accounts | | | | |
| - 2002 | $ 311 | $ 296 | $ 267 | $ 340 |
| - 2001 | 264 | 582 | 535 | 311 |
| - 2000 | 305 | 531 | 572 | 264 |

# LEASE

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FRASTACKY (US) PROPERTIES LIMITED PARTNERSHIP
AS LANDLORD

-AND-

SELECT COMFORT SC CORPORATION
AS TENANT

---

PREMISES:
COLUMBIA, SOUTH CAROLINA

DATE: SEPTEMBER 19, 2002

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THIS LEASE ("Lease") is made as of the 19th day of September 2002, by and between FRASTACKY (US) PROPERTIES LIMITED PARTNERSHIP, a Georgia limited partnership, having an office at 130 Bloor Street West, Suite 1200, Toronto, Ontario M5S 1N5 Canada ("Landlord"), and SELECT COMFORT SC CORPORATION, a Minnesota corporation, having an office at 6105 Trenton Lane North, Minneapolis, MN 55442 ("Tenant").

WITNESSETH:

1. DEFINITIONS. In addition to other terms which may be defined herein, the following terms shall have the meanings set forth in this Article 1 unless the context otherwise requires:

1.1 "Additional Rent" shall have the meaning set forth in Section 4.5.

1.2 "Building" shall mean the warehouse / manufacturing facility of approximately 105,000 total square feet located on the Land.

1.3 "Commencement Date" shall mean March 1, 2003.

1.4 "Demised Premises" shall mean the Land and the Improvements.

1.5 "Event of Default" shall have the meaning set forth in Article 21.

1.6 "Expiration" and "Expiration Date" shall mean the date upon which this Lease actually expires or terminates, whether at the end of the Term or upon any earlier termination hereof for any reason whatsoever.

1.7 "First Mortgage" shall mean any first mortgage lien which now or hereafter encumbers Landlord's fee interest in the Property, together with any increase, renewal, modification, consolidation, replacement or extension thereof.

1.8 "Fixed Rent" shall have the meaning set forth in Section 4.1.

1.9 "Governmental Authorities" shall mean all federal, state, county, municipal, town, village, and local governments, and all departments, commissions, boards, bureaus, agencies, offices, and officers thereof, having or claiming jurisdiction over all or any part of the Property or the use thereof.

1.10 "Impositions" shall mean all duties, taxes, water and sewer rents, rates and charges, assessments (including all assessments for public improvement or benefit), charges for public utilities, excises, levies, license and permit fees, sales tax on rent, commercial rent tax, gross receipts tax based on rent, fees and assessments imposed by any owners' association and other charges, ordinary or extraordinary, foreseen or unforeseen, of any kind and nature whatsoever, which prior to or during the Term have been or may be laid, levied, assessed or imposed upon or become due and payable out of or in respect of, or become a lien on, the Property, Tenant's Personal Property or any other property or rights included in the Property, or

any part thereof or appurtenances thereto, or which are levied or assessed against the rent and income received by Tenant from the Property, by virtue of any present or future law, order or ordinance of the United States of America, the State or of any state, county, city or local government or of any department, office or bureau thereof or any other Governmental Authority.

1.11 "Improvements" shall mean the building and improvements located on, over or under the Land, including, without limitation, the Building and all replacements thereof and additions thereto, all walkways, parking and road improvements of whatever nature, utility and sewage lines (to the extent of Landlord's interest therein) and all apparatus, machinery, devices, fixtures, appurtenances and equipment necessary for the proper operation and maintenance of the foregoing now owned by Landlord or hereafter acquired by Tenant pursuant hereto and attached to and used in connection with the Building and the Land.

1.12 "Land" shall mean Parcel A containing 15.665 acres and, until released as hereinafter provided, Parcel B containing 16.110 acres in Richland County, South Carolina, containing a total of 31.775 acres and the easements relating thereto, said parcels being collectively described in SCHEDULE A annexed hereto and incorporated herein by reference.

1.13 "Law" or "Laws" shall have the meaning set forth in Article 9.

1.14 "Lease Date" shall mean the date on which this Lease is executed and delivered by Landlord and Tenant.

1.15 "Lease Interest Rate" shall mean the lesser of (a) the highest lawful rate which at the time may be charged by Landlord to Tenant under the Laws of the State or (b) 11% per annum.

1.16 "Lease Year" shall mean the twelve (12) calendar month period commencing on the Commencement Date and thereafter on the anniversary date of the Commencement Date.

1.17 "Permits" shall have the meaning set forth in Article 9.

1.18 "Permitted Encumbrances" shall mean those certain liens, easements, rights of way and other encumbrances of record in the Office of the Register of Deeds for Richland County, South Carolina.

1.19 "Person" shall mean and include any individual, corporation, partnership, unincorporated association, trust, Governmental Authority, or other entity.

1.20 "Primary Term" shall have the meaning set forth in Article 3.

1.21 "Property" shall mean the Demised Premises.

1.22 "Provisions" shall have the meaning set forth in Article 28.

1.23 "Renewal Term" shall mean the five (5) year period commencing at the end of the Primary Term provided Tenant has duly exercised its renewal option.

1.24 "Repairs" shall have the meaning set forth in Article 8.

1.25 "State" shall mean the State of South Carolina, the state in which the Demised Premises are located.

1.26 "Tenant Alterations" shall mean each and every (a) demolition of the whole or any part of any Improvement now or hereafter erected upon the Land; (b) excavation at any time made or to be made in, on or about the Demised Premises; (c) repair, addition, betterment, improvement rebuilding made of, to, in, on or about the Property or any part thereof; and (d) construction of any additional Improvements upon the Land.

1.27 "Tenant's Architect" and "Tenant's Engineer" shall mean, respectively, a duly qualified architect and engineer, licensed in the State, selected and paid by Tenant.

1.28 "Tenant's Personal Property" shall mean (a) all items which would otherwise constitute part of the Improvements if the same are owned by third parties and leased to Tenant, (b) Tenant's trade fixtures and (c) all other items of personal property purchased or otherwise acquired by Tenant, except in discharge of Tenant's obligations hereunder.

1.29 "Term" shall mean and include the Primary Term and, where the context requires, the Renewal Term.

1.30 "Unavoidable Delays" shall mean causes or events which are beyond a party's reasonable control which prevent such party's performance under this Lease which events may include: acts of God, fire, earthquake, flood, storm, explosion, war, invasion, insurrection, civil commotion, embargo, riots, mob violence, vandalism, lockouts, strikes, sabotage, picketing, inability to procure or general shortage of labor, equipment, facilities, supplies or materials, failure of transportation, litigation, condemnation, requisition, governmental restriction, including inability or delay in obtaining governmental consents or approvals, weather delays, or any other cause, whether similar or dissimilar to the foregoing, not within such party's control; provided reasonably satisfactory evidence of the occurrence of each instance thereof shall be furnished by the party claiming Unavoidable Delays to the other party.

2. DEMISE. Landlord, for and in consideration of the rents hereinafter reserved by Landlord and the Provisions herein contained on the part of Tenant to be paid, kept and performed, has leased, rented, let and demised, and by these presents does hereby lease, rent, let and demise to Tenant, and Tenant does hereby take and hire from Landlord, the Property, upon and subject to the Provisions herein set forth.

TOGETHER with all right and interest, if any, of Landlord in and to the land lying in the streets and roads in front of and adjoining the Demised Premises and in and to any easement appurtenant to the Demised Premises.

SUBJECT, however, to the following:

2.1 Any state of facts an accurate survey or inspection of the Property may show.

2.2 Present and future building, environmental, zoning, use and other laws of all Governmental Authorities.

2.3 All violations of Laws that might be disclosed by an examination, inspection or search of the Property or any part thereof by Governmental Authorities.

2.4 Covenants, restrictions, easements (including any reciprocal parking easements and common area maintenance charges), agreements, conditions and party wall agreements, if any, affecting the Demised Premises.

2.5 The condition and state of repair the Property or any part thereof may be in at the Commencement Date, subject to the Landlord's obligations to rebuild the roof.

2.6 Rights, if any, of others relating to water, gas, sewer, electric, telephone and other utility lines, wires, poles, pipes, conduits and other equipment of any kind whatsoever and the maintenance thereof.

2.7 Liens for Impositions not yet due and payable.

2.8 The Permitted Encumbrances.

3. TERM. TO HAVE AND TO HOLD the Property unto Tenant, its legal representatives, successors and assigns, for a Primary Term commencing on the Commencement Date and ending at 11:59 pm on the day preceding the fifth (5th) anniversary thereof, unless sooner terminated as herein provided. Tenant may renew the Term hereof one time for the Renewal Term provided that no Event of Default exists. No renewal hereunder shall be effective unless Tenant gives written notice to Landlord of its election to renew not later than one hundred eighty (180) days prior to the expiration of the Primary Term. If Tenant fails to timely give notice of renewal this Lease shall terminate on the last day of the Primary Term.

4. RENT.

4.1 During the Primary Term and commencing on the Commencement Date, Tenant covenants and agrees to pay to Landlord rent for the Property ("Fixed Rent") as follows: During the Primary Term at the annual rate of $3.50 per square foot for 105,000 square feet, which is Three Hundred Sixty-seven Thousand Five Hundred Dollars ($367,500.00) per annum payable in equal monthly installments of Thirty Thousand Six Hundred Twenty-five Dollars ($30,625.00) each. During the Renewal Term at the rate of $3.75 per square foot for 105,000 square feet, which is Three Hundred Ninety-three Thousand Seven Hundred Fifty Dollars ($393,750.00) per annum payable in equal monthly installments of Thirty-two Thousand Eight Hundred Twelve and 50/100 Dollars ($32,812.50) each.

4.2 Fixed Rent shall be accounted for and paid by Tenant to Landlord in advance starting on the Commencement Date and thereafter on the first day of each calendar month during the Term.

4.3 All Fixed Rent and all Additional Rent (as hereinafter defined) payable to Landlord shall be paid by Tenant to Landlord at Landlord's address specified in or pursuant to Article 23 hereof, or to such other Person and/or at such other address as Landlord may direct by Notice to Tenant, by check of Tenant (subject to collection, or, at the request of Landlord, by wire transfer of immediately available funds to an account designated by Notice from Landlord to Tenant.

4.4 If Tenant shall fail to make payment of any installment of Fixed Rent or Additional Rent payable to Landlord hereunder within five (5) business days from the date upon which the same shall first have been due hereunder then and in each such event Tenant shall pay Landlord on demand, in addition to the installment or other payment due, as Additional Rent hereunder, a late payment fee to compensate Landlord for legal, accounting and other expenses incurred by Landlord in administering the delinquent account by reason of such late payment an additional sum of three percent (3%) of the amount due as a late charge. For the purposes of this Section 4.4, payments shall be deemed made upon the date of actual receipt by Landlord at the place specified in or pursuant to Section 4.3 hereof. The late payment fee required to be paid by Tenant pursuant to this Section 4.4 shall be in addition to all other rights and remedies provided herein or by Law to Landlord for such nonpayment.

4.5 It is the purpose and intent of Landlord and Tenant that the Fixed Rent shall be net to Landlord and that Tenant shall pay as additional rent ("Additional Rent"), without notice or demand, and without abatement, deduction or set-off, and save Landlord harmless from and against, all costs, Impositions, insurance premiums to which the Demised Premises is subject and all other expenses and obligations of every kind and nature whatsoever (including reasonable attorneys' fees and disbursements incurred in connection with any Event of Default hereunder, in the event that there is any Event of Default, whether or not a suit or proceeding is brought to enforce any right or remedy of Landlord) relating to the Property, or any part thereof, which may arise or become due prior to or during the Term, other than interest and principal payments under any mortgage of Landlord and obligations, if any, which are the responsibility of Landlord under the terms of this Lease. In the event of any nonpayment of any of the foregoing, Landlord shall have, in addition to all other rights and remedies, all of the rights and remedies provided for herein or by law in the case of nonpayment of Fixed Rent. Landlord agrees that it will give Tenant prompt notice of any intent to pay any sum which would be deemed Additional Rent and Landlord will make such payment only if it does not receive assurance to its reasonable satisfaction that such payment has been or is being timely made by or on behalf of Tenant within five (5) business days of Tenant's receipt of Landlord's notice; provided however, nothing herein shall be deemed to preclude Landlord from paying any amount which would otherwise be deemed to be Additional Rent directly and immediately if, in Landlord's judgment, there is an emergency or an extraordinary circumstance warranting such payment.

5. PAYMENT OF IMPOSITIONS

5.1 Tenant shall pay all Impositions, or cause the same to be paid, as and when due and payable, before any fine, penalty, interest or cost may be added thereto for the nonpayment thereof; provided however, that:

a. Any Imposition (including assessments which have been converted into installment payments by Tenant) relating to a fiscal period of a taxing authority, a part of which is included within the Term and a part of which is included in a period of time prior to the Lease Date or after the Expiration Date shall (whether or not such Imposition shall be assessed, levied, confirmed, imposed upon or in respect of or become a lien upon the Property, or any part thereof, or shall become due and payable during the Term) be prorated between Landlord and Tenant as of the Lease Date or the Expiration of this Lease, as the case may be so long as, in the case of any proration in favor of Tenant, no Event of Default shall then exist hereunder.

b. Landlord causes the notices of Impositions and/or bills to be directed to Tenant in sufficient time for Tenant to pay same as and when due and before any fine, penalty, interest or cost may be added thereto for the nonpayment thereof.

In the event of any delay in payment due to Landlord's acts, and such delay results in the imposition of any fine, penalty, interest or cost, then Landlord shall be solely responsible for the payment of the applicable fine, penalty, interest or cost.

Landlord shall provide a copy of the paid tax bill once annually to Tenant upon Tenant's written request.

5.2 Except as provided in this Section 5.2, Tenant shall not be required to pay income taxes assessed against Landlord, or any capital levy, corporation franchise, or gross receipts tax based on Landlord's income, excess profits, estate, succession, inheritance or transfer taxes of Landlord; provided, however, that if at any time during the Term, the present method of taxation shall be changed so that in lieu of or as a substitute for the whole or any part of any Impositions on real estate and the improvements thereon there shall be levied, assessed or imposed on Landlord a new capital levy or other tax directly on the rents received therefrom and/or a franchise tax, assessment, levy or charge measured by or based, in whole or in part, upon such rents or the present or future Improvements, then all such taxes, assessments, levies or charges, or the part thereof so measured or based, shall be deemed to be included within the term "Impositions" for the purposes hereof, but only to the extent that the same would be payable if the Property were the only property of Landlord, and Tenant shall pay and discharge the same as herein provided in respect of the payment of Impositions. In the event that the present method of taxation is changed as aforesaid, Landlord and Tenant agree to meet to equitably adjust the Impositions to be paid by Tenant.

5.3 Tenant shall obtain and after payment shall furnish to Landlord official receipts of the appropriate taxing authority, or other evidence reasonably satisfactory to Landlord, evidencing the payment of any Impositions.

6. USE AND OPERATION OF PROPERTY.

6.1 Tenant shall use and occupy the Property for the operation of a warehouse, distribution, and manufacturing facility. Tenant agrees that it will at all times maintain the Property (including the parking lots and other exterior areas) in a neat, attractive, and presentable condition, and that in the case of exterior areas, attractively landscaped and properly paved and striped. Notwithstanding the foregoing, Tenant's obligation to maintain the paved parking areas shall not be deemed to be an obligation to replace the pavement.

6.2 Tenant shall not use, maintain or allow the use or maintenance of the Demised Premised or any part thereof to treat, store, dispose of, transfer, release, convey or recover any hazardous, toxic or infectious waste nor shall Tenant otherwise, in any manner, possess or allow the possession of any hazardous, toxic or infectious waste on or about the Demised Premises, unless in compliance with all Laws. Hazardous, toxic or infectious waste shall mean any solid, liquid or gaseous waste, substance or emission or any combination thereof which may (x) cause or significantly contribute to an increase in mortality or in serious illness, or (y) pose the risk of a substantial present or potential hazard to human health, to the environment or otherwise to animal or plant life, and shall include without limitation hazardous substances and materials described in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended; the Resource Conservation and Recovery Act, as amended; and any other applicable Laws. Tenant shall immediately notify Landlord of the presence or suspected presence of any hazardous, toxic or infectious waste on or about the Demised Premises and shall deliver to Landlord any notice received by Tenant relating thereto.

6.3 Landlord and its agents shall have the right, but not the duty, to inspect the Demised Premises and conduct tests thereon at any time to determine whether or the extent to which there is hazardous, toxic or infectious waste on the Demised Premises. Landlord shall have the right to immediately enter upon the Demised Premises to remedy any contamination found thereon. In exercising its rights herein, Landlord shall use reasonable efforts to minimize interference with Tenant's business but such entry shall not constitute an eviction of Tenant, in whole or in part, and Landlord shall not be liable for any interference, loss, or damage to Tenant's property or business caused thereby, unless such loss or damage results from Landlord's gross negligence or willful misconduct. Notwithstanding the foregoing, in the event that Landlord, in exercising its rights hereunder, shall materially interfere with Tenant's business for a period in excess of sixty (60) days Tenant shall have the right to terminate this Lease upon thirty (30) days written notice to Landlord with no further liability to Landlord hereunder; provided, however, if the interference with Tenant's business ends within said thirty (30) day period this Lease shall not terminate. If any lender or governmental agency shall ever require testing to ascertain whether there has been a release of hazardous materials, then, the reasonable costs thereof shall be reimbursed by Tenant to Landlord upon demand as Additional Rent. Tenant shall execute affidavits, representations and estoppels from time to time, in form reasonably acceptable to Tenant, at Landlord's request, concerning Tenant's knowledge and belief regarding the presence of any hazardous, toxic or infectious waste on the Demised Premises or Tenant's intent to store or use hazardous or toxic materials on the Demised Premises. Tenant shall indemnify and hold harmless Landlord from any and all claims, loss, liability, costs, expenses or damage, including reasonable attorneys' fees and other costs of remediation, incurred by Landlord in connection with any breach by Tenant of its obligations under this section. The covenants and obligations of Tenant hereunder shall survive the expiration or earlier termination of this Lease.

6.3 Tenant shall not use or occupy or permit the Property or any part thereof to be used or occupied, for any unlawful purpose or in violation of any certificate of occupancy, certificate of compliance, Permit or Law covering or affecting the use of the Property or any part thereof. Tenant shall not suffer any act to be done or any condition to exist on the Demised Premises or any part thereof which may, in Law, constitute a nuisance, public or private, or which may make void or voidable any insurance with respect thereto.

6.5 Tenant shall not use, occupy or improve or permit the Property or any part thereof to be used, occupied or improved, so as to violate any of the terms, conditions or covenants of the Permitted Encumbrances or any other easements, restrictions, covenants or agreements now or hereafter affecting the Property.

6.6 Notwithstanding anything herein to the contrary, Tenant shall have no responsibility or liability for any environmental condition existing (whether known or unknown) prior to Tenant's initial occupancy of the Building as a subtenant of Landlord's previous tenant including, without limitation, possible release from underground storage tanks and Landlord shall hold Tenant harmless and indemnify it from same.

7. SURRENDER OF THE PROPERTY; HOLDING OVER.

7.1 Tenant shall and will on the Expiration of this Lease, or upon any re-entry by Landlord upon the Demised Premises pursuant to this Lease, well and truly surrender and deliver up the Property into the possession and use of Landlord, without delay and in good order, condition and repair, ordinary wear excepted and casualty damage excepted (provided Tenant is in compliance with Articles 10 and 11), free and clear of all lettings and occupancies, free and clear of all liens, charges and encumbrances except (i) those to which Landlord's title is subject on the Lease Date ("Permitted Encumbrances"), (ii) the First Mortgage, if any, together with any other instruments securing the indebtedness secured by the First Mortgage, and (iii) all those which Tenant causes after the Lease Date or to which Tenant expressly consents in writing (which, for the purposes hereof, shall be deemed to be additional Permitted Encumbrances). On the Expiration of this Lease, title to and ownership of the Improvements shall automatically vest in Landlord without the execution of any further instrument and without any payment therefor by Landlord. Tenant shall remove all its signs from the Property upon expiration of this Lease and shall promptly repair any damage to the Improvements and the Land resulting from such removal. Tenant shall remove Tenant's Personal Property upon Expiration of this Lease and Tenant shall promptly repair any damage to the Improvements and the Land resulting from such removal. Any of Tenant's signs or other Personal Property remaining on the Demised Premises in excess of sixty (60) days following the Expiration of this Lease shall, at the option of Landlord, be deemed abandoned and become Landlord's property. Tenant shall, on demand, execute, acknowledge and deliver to Landlord a written instrument, in recordable form, confirming such Expiration, as well as any further assurances of title to the Improvements as Landlord may reasonably request, together with instruments in recordable form evidencing the Expiration of this Lease and the Memorandum of this Lease of even date herewith.

7.2 In the event of any holding over by Tenant after expiration or other termination of this Lease or in the event Tenant continues to occupy the Property after the

termination of Tenant's right of possession pursuant to this Lease, occupancy of the Property subsequent to such termination or expiration shall be that of a tenancy at sufferance and in no event for month-to-month or year-to-year, but Tenant shall, throughout the entire holdover period, pay rent (on a per month basis without reduction for any partial months during any such holdover) equal to one hundred fifty percent (150%) of the Fixed Rent due for the period immediately preceding such holding over and the actual Additional Rent accruing on a prorata basis during the holdover period, provided that in no event shall Fixed Rent and Additional Rent during the holdover period be less than the fair market rental for the Property. No holding over by Tenant or payments of money by Tenant to Landlord after the expiration of the Term of this Lease shall be construed to extend the Term or prevent Landlord from recovery of immediate possession of the Property by summary proceedings or otherwise. Tenant shall be liable to Landlord for all actual damage which Landlord may suffer by reason of any holding over by Tenant, and Tenant shall indemnify Landlord against any and all proved claims made by any other tenant or prospective tenant against Landlord for delay by Landlord in delivering possession of the Property to such other tenant or prospective tenant.

7.3 The Provisions of this Article 7 shall survive the Expiration of this Lease.

8. REPAIRS AND MAINTENANCE.

8.1 Throughout the Term, Tenant, at its sole cost and expense, shall (a) maintain in good condition and repair the interior and exterior of the Demised Premises, including but not limited to the electrical systems, heating and air conditioning systems serving the Demised Premises, plate glass, windows and doors; sprinkler, plumbing and sewage systems and facilities; fixtures; interior walls; floors; ceilings; gutters, downspouts, sidewalks, parking lot pavement (other than replacement of paving), parking areas, grounds and landscaped areas of the Demised Premises; all electrical facilities and equipment including without limitation interior and exterior lighting fixtures, lamps, fans and any exhaust equipment and systems; electrical motors; and all other appliances, fixtures and equipment of every kind and nature located in, upon or about the Demised Premises; all glass, both interior and exterior; and any broken glass shall be promptly replaced at Tenant's expense by glass of like kind, size and quality. Tenant shall, at its expense, conduct seasonal preventive maintenance on the heating, ventilating and air conditioning systems serving the Demised Premises which shall be subject to the reasonable approval of Landlord; (b) keep the Property in the same order, repair and condition as of the Commencement Date, ordinary wear and tear excepted; and (c) make all necessary or appropriate repairs, replacements and renewals, and, subject to the provisions of Articles 11, 12 and 16 hereof, all necessary or appropriate alterations and restorations thereto, interior and exterior, ordinary and extraordinary, and foreseen and unforeseen (collectively, "Repairs").

8.2 The necessity for and adequacy of Repairs to the Property made or required to be made pursuant to Section 8.1 shall be measured by standards which are appropriate for commercial buildings of similar age and containing similar facilities in the locality and which are necessary to maintain the Property in a state of repair and maintenance as close as reasonably possible to the state of repair and maintenance of the Property as at the Commencement Date, ordinary wear and tear excepted. Tenant shall, within thirty (30) days after demand by Landlord, begin to make such Repairs, or perform such items of maintenance, to the Property as Landlord may reasonably require in order to maintain the Property at the

standards required by this Lease and thereafter Tenant shall diligently and continuously pursue and promptly complete such Repairs. Within three (3) months following the Commencement Date Landlord shall cause the roof of the Building to be rebuilt.

8.3 Landlord shall be responsible for the roof and structural components of the Building (except damage caused by Tenant), otherwise Landlord shall not be required to furnish any services or facilities or to make any Repairs in or about the Property or any part thereof, Tenant hereby assuming the full and sole responsibility for all Repairs to, and for the condition, operation, maintenance and management of, the Property as at the Commencement Date and during the Term.

8.4 Tenant shall, at its sole cost and expense, keep the sidewalks, curbs, entrances, passageways, roadways and parking spaces, planters and shrubbery and public areas adjoining (excluding areas not the responsibility of Landlord under applicable Law) or appurtenant to or constituting part of the Property in a clean and orderly condition, free of ice, snow, rubbish and obstructions.

8.5 Tenant shall be entitled to the benefit of any and all warranties given or running in favor of Landlord with respect to the Property which would in any way be useful to Tenant in fulfilling its obligations under this Article 8; and Landlord shall either assign to the Tenant all contractor and equipment warranties which Landlord has obtained in connection with the Premises or shall have them issued directly to the Tenant by the issuers, subject in each case to reconveyance to Landlord upon the Expiration or earlier termination of this Lease. Further, Landlord agrees that it will cooperate with Tenant in connection with claims against third parties regarding Tenant's repair and maintenance obligations hereunder upon Tenant's request and provided Tenant shall be responsible for the reasonable costs and expenses incurred by Landlord as a result of such cooperation.

## 9. COMPLIANCE WITH LAWS.

9.1 Throughout the Term, Tenant, at its own sole cost and expense, shall comply with all present and future laws, ordinances, statutes, administrative and judicial orders, rules, regulations and requirements, including, without limitation, the Americans with Disabilities Act (collectively, "Laws") of all Governmental Authorities, and all orders, rules and regulations of the National and Local Boards of Fire Underwriters or any other body or bodies exercising similar functions ("Insurance Boards"), foreseen and unforeseen, ordinary as well as extraordinary, applicable to the Property or any part thereof, the appurtenances thereof and, to the extent required by any Laws, the sidewalks, curbs, alleyways and passage-ways, adjoining the Demised Premises, or to the use or manner of use of the Property or the owners, tenants or occupants thereof whether or not any such Laws necessitate structural changes or improvements or interfere with the use or enjoyment of the Property. Tenant shall also procure, pay for and maintain all permits, licenses, approvals and other authorizations (collectively, "Permits") necessary for the lawful operation of its business at the Demised Premises and the lawful use and occupancy of the Property in connection therewith.

9.2 Tenant shall, at its own sole cost and expense, observe and comply with the requirements of the policies of public liability, fire and all other insurance at any time in force with respect to the Property.

10. INSURANCE.

10.1 Tenant, at its sole cost and expense, shall throughout the Term procure and maintain:

a. Comprehensive (direct physical loss) extended coverage multiperil casualty insurance on the Improvements and all parts or portions thereof including coverage against loss or damage by fire, collapse, lightning, electrical short circuit, water damage, windstorm, tornado, hail, flood, vandalism, sprinkler leakage, subsidence, debris removal, demolition and malicious mischief and against loss or damage by such other, further and additional risks as now are or hereafter may be embraced by the standard extended coverage forms of endorsements, in each case (i) in an amount equal to not less than 100% of their "Full Insurable Value," which for purposes of this Lease shall mean actual replacement value (exclusive in the case of the Improvements of costs of excavations, foundations and footings and shall not include the cost of the land); (ii) containing an agreed amount endorsement with respect to the Improvements or any part or portion thereof waiving all co-insurance provisions; and (iii) containing an endorsement that all covered losses will be paid on a replacement cost basis; and (iv) providing for reasonable deductibles per loss;

b. Comprehensive general liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Demised Premises, such insurance to (i) be on the so-called "occurrence" form; (ii) afford immediate protection at the Lease Date to the limit of not less than $2,000,000.00 per occurrence (including umbrella coverage), bodily injury and property damage; $5,000,000.00 general aggregate (including umbrella coverage); (iii) continue at not less than the said limits until required to be changed by Landlord in writing by reason of changed economic conditions making such protection inadequate; and (iv) cover at least the following hazards: (A) premises and operations; and (B) independent contractors on an "if any" basis;

c. Boiler and pressure vessel and miscellaneous equipment insurance, including steam pipes, air conditioning systems, electric motors, air tanks, compressors and pumps, in such amounts as Landlord may reasonably require;

d. Business interruption insurance which shall include all of the risks set forth in this Section 10.1 and shall be in an amount not less than the aggregate of Fixed Rent payable hereunder for the twelve (12) months preceding the insured casualty;

e. Workers' compensation insurance in an amount not less than the minimum amount required by applicable law and adequate employee's liability insurance covering all persons employed by Tenant at the Demised Premises;

f. At all times when Tenant Alterations are being made, Tenant shall have insurance providing the following coverage for its Tenant Alterations (i) owner's contingent

or protective liability insurance covering claims not covered by or under the terms or provisions of the above mentioned comprehensive general public liability insurance policy; (ii) contractual liability insurance covering the indemnity contained in Section 20 hereof; and (iii) builder's risk completed value coverage (A) for 100% of the contract price, (B) on a nonreporting form, (C) deleting all co-insurance provisions, (D) against all risks insured against pursuant to Section 10.1(a) hereof, and (E) including permission to occupy the Demised Premises; and

g. Such other insurance and in such amounts as may from time to time be reasonably required by Landlord, or the holder of the First Mortgage, if any, against other insurable hazards.

10.2 All insurance provided for in this Article 10 shall be effected under valid and enforceable policies, in such forms and, from time to time after the Lease Date, in such amounts as is required hereunder, issued by financially sound and responsible insurance companies having a Best Policyholder Rating of not less than "A-", a financial rating of not less than XII or such higher rating as the holder of the First Mortgage may require, and authorized to do business in the State. Simultaneously herewith and not less than 30 calendar days prior to the expiration dates of the policies theretofore furnished pursuant to this Article, Acord Form 27 certificates of insurance evidencing such policies and payment therefor shall be delivered by Tenant to Landlord. In addition, in the event that Landlord conveys its interest in the Property and this Lease, Tenant shall provide an Acord Form 27 certificate of insurance naming the grantee of such conveyance as an additional insured of the insurance required pursuant to this Article 10; such insurance certificate shall be delivered to Landlord within five (5) business days of its request therefor.

10.3 Intentionally Omitted

10.4 All policies of insurance provided for or contemplated by this Article shall name Tenant as the insured and Landlord as an additional insured, as their respective interests may appear. All policies of insurance required under Section 10.1 shall provide for payment of the loss to the holder of the First Mortgage and if there is no First Mortgage, as provided in Article 11.

10.5 All policies of insurance provided for in this Article shall, to the extent obtainable, contain clauses or endorsements to the effect that:

a. No act or negligence of Tenant, or anyone acting for Tenant, which might otherwise result in a forfeiture of such insurance or any part thereof shall in any way affect the validity or enforceability of such insurance insofar as Landlord, or the holder of the First Mortgage are concerned;

b. Such policies shall not be changed or canceled without at least 30 days' Notice to Landlord and; if required under the First Mortgage, to the holder thereof; and

c. Neither Landlord nor the holder of the First Mortgage shall be liable for any premiums thereon or subject to any assessments thereunder.

10.6 Losses under each policy of insurance provided for or contemplated by subsections 10.1(a) and 10.1(b) hereof shall be adjusted with the insurers and/or underwriters selected by Tenant subject to the rights of the holder of the First Mortgage. All costs and expenses of collecting or recovering any insurance proceeds under such policies, including, without limitation, any and all fees of attorneys, appraisers and adjusters, shall be paid by Tenant.

10.7 All insurance policies required hereunder shall provide for waiver of subrogation as to both Landlord and Tenant.

11. DAMAGE OR DESTRUCTION BY FIRE OR OTHER CASUALTY.

11.1 In the event of any partial damage (defined to mean damage or destruction, other than to Tenant owned Tenant Alterations, the repair cost of which damage or destruction is less than fifty percent (50%) of the then replacement value of the Demised Premises (not including the value of the Land) just prior to said damage or destruction) or loss by fire or other casualty whatsoever to the Improvements or any part or portion thereof during the Term, Tenant shall give immediate Notice thereof to Landlord if the same equals or exceeds $10,000.00, and shall, without regard to the availability and adequacy of insurance proceeds for such purposes, with reasonable diligence (subject to Unavoidable Delays) at Tenant's sole cost and expense, repair the Improvements or the portion thereof so damaged as nearly as possible to the condition the same were in immediately prior to such damage. Tenant covenants and agrees to commence efforts to settle the insurance claim promptly after any event of loss or casualty and to expeditiously, diligently and continuously prosecute such efforts to settlement, or failing settlement, the commencement of litigation. In the event that settlement or collection cannot be obtained within ninety (90) days after such casualty or loss, and Tenant has failed to commence Repairs, Landlord shall have the right, but not the obligation, to commence Repairs or to declare an Event of Default. If any part or portion of the Improvements is damaged or lost as a result of such fire or other casualty, Tenant shall likewise, without regard to the availability and adequacy of insurance proceeds for such purpose, repair the part or portion of the Improvements so damaged or lost. Such Repairs shall be without cost, charge or expense of any kind to Landlord. Notwithstanding any other provisions hereof, if the Improvements are partially damaged during the last two (2) years of this Lease, if the cost of repair exceeds twenty-five percent (25%) of the replacement value of all the Improvements, Landlord or Tenant shall have the right to terminate this Lease by written notice to the other not later than forty-five (45) days from the date of damage and all insurance proceeds (except for insurance proceeds for Tenant's Personal Property) resulting from such casualty shall be paid over to Landlord and Landlord shall have the right to adjust, compromise and settle any and all claims related thereto in its sole and absolute discretion without any liability to Tenant whatsoever, and Tenant shall have no further obligations under the Lease.

11.2 In the event that, during the Term, any of the Improvements shall be totally destroyed (defined to mean damage or destruction, other than to Tenant owned Tenant Alterations, the repair cost of which damage or destruction is fifty percent (50%) or more of the then replacement value of the Demised Premised (not including the value of the Land) just prior to said damage or destruction) or so substantially damaged by fire or other casualty whatsoever that the Repair thereof would be impracticable or the use of the Property would not be

economically feasible after the Repair, as determined by Tenant in its reasonable discretion, Tenant shall give prompt Notice thereof to Landlord, and shall either (a) without regard to the availability and adequacy of insurance proceeds, proceed with reasonable diligence (subject to Unavoidable Delays) to demolish and remove the ruins and complete the construction of replacement Improvements on the Demised Premises, or (b) within thirty (30) days of the date of the aforesaid Notice, give Landlord a further Notice electing to cancel this Lease with a termination date thirty (30) days after said further Notice. In the event that Tenant elects to cancel the Lease, all insurance proceeds (except for insurance proceeds for Tenant's Personal Property) resulting from such casualty shall be paid over to Landlord or the holder of the First Mortgage, if required to do so, and Landlord or the holder of the First Mortgage shall have the right to adjust, compromise and settle any and all claims related thereto in its sole and absolute discretion without any liability to Tenant whatsoever, and Tenant shall have no further obligations under the Lease. In any event, demolition, removal and construction (in the event that Tenant does not elect to cancel this Lease) shall be without cost, charge or expense of any kind to Landlord. The replacement Improvements so to be constructed shall be as nearly as possible of a size, type and character equal to the damaged or destroyed Improvements, shall have a net rentable area which is not less than the net rentable area of such Improvements, shall be of a quality of not less than the quality of such Improvements, as the same existed immediately prior to such damage or destruction, shall include all articles necessary for the operation of such replacement Improvements, and shall be of a quality not less than the quality of the items of the Improvements which were damaged or destroyed by such fire or other casualty. Before commencing the construction of any replacement Improvements, Tenant shall submit copies of the plans and specifications therefor to Landlord for Landlord's approval, which approval shall not be unreasonably withheld or delayed.

11.3 If any damage or destruction mentioned in Sections 11.1 or 11.2 hereof does not result in the termination of this Lease and the insurance proceeds are in an amount of $10,000.00 or less and are paid under any insurance policy, such insurance proceeds shall be paid over to Tenant, and Tenant shall hold the same to be used first for the payment of the entire cost of repairing the Improvements and any part or portion thereof before using the same for any other purpose.

11.4 In the event that the damage or destruction does not result in the termination of the Lease and if the aggregate insurance proceeds received by reason of any single instance of damage or destruction to the Improvements shall be greater than $10,000.00, such insurance proceeds shall be paid over to Landlord, and holder of the First Mortgage, as their respective interests may appear. All insurance proceeds so paid over to Landlord shall be held and disposed of as provided in Section 11.5.

11.5 The Landlord shall hold all insurance proceeds deposited with it pursuant to Section 11.4 hereof until receipt by the Landlord of:

a. A certificate of Tenant ("Repair Certificate") dated not more than 10 days prior to the date of such receipt (i) requesting the payment of a specified amount of insurance proceeds; (ii) describing in reasonable detail the work and materials applied to the Repair of the Improvements since the date of the last Repair Certificate; (iii) stating that such specified amount does not exceed the cost of such work and materials; and (iv) stating that such

work and materials have not previously been made the basis of any request for or any withdrawal of money; and

b. A certificate of Tenant's Architect or Tenant's Engineer stating (i) that the work and materials described in the accompanying Repair Certificate were satisfactorily performed and furnished and were necessary, appropriate or desirable to the Repair of the Improvements, in accordance with the plans and specifications therefor; (ii) that the amount specified in such Repair Certificates is not in excess of the cost of such work and materials; and (iii) the additional amount, if any, required to complete the Repair of the Improvements; and

c. The certification or insurance of a title company reasonably satisfactory to Landlord, dated not earlier that the Repair Certificate, that as of the date thereof: (i) there exists no filed or recorded lien, encumbrance or charge against the estate, rights and interests of Landlord (except for the First Mortgage and the Permitted Encumbrances); and (ii) the Property is not subject to any filed or recorded mechanic's, laborer's, materialmen's or other similar lien, encumbrance or charge which have not been bonded; and

d. Waivers of lien from all contractors and subcontractors for work performed and materials supplied, if requested by Landlord. The parties acknowledge that such waivers may be conditioned on receipt by the contractor or subcontractor of payment for the work performed and materials supplied.

11.6 Upon receipt by Landlord of all of the deliveries pursuant to Section 11.5 hereof, Landlord shall pay to Tenant the amount of the insurance proceeds specified in the Repair Certificate; provided however, that the balance of insurance proceeds shall not be reduced below the amount specified in the certificate of Tenant's Architect or Tenant's Engineer as the amount required to complete the Repair of the Improvements. Each such payment shall be held by Tenant in trust and shall be used solely by Tenant for the payment of the cost of the work and materials described in the Repair Certificate, or if such cost or any part thereof has theretofore been paid by Tenant out of its own funds, then for the reimbursement to Tenant of any such cost or part thereof so paid by it. If there shall remain on deposit with Landlord any balance of insurance proceeds after (a) the Improvements shall have been completely Repaired, as evidenced by a certificate of such Tenant's Architect or Tenant's Engineer delivered to Landlord, and (b) all work, materials and professional services supplied in connection therewith shall have been paid for in full, as evidenced by a certificate from Tenant, such balance of insurance proceeds shall be paid to Landlord (unless the holder of the First Mortgage shall require payment to it in reduction of the indebtedness secured by the First Mortgage, in which case such balance shall be paid to the holder of the First Mortgage in reduction of such indebtedness, and the remainder thereof, if any, shall be paid to Landlord). Notwithstanding anything to the contrary set forth in this Section 11.6, Landlord shall have no obligation to make further payment of insurance proceeds to Tenant following an Event of Default.

11.7 Upon the Expiration of this Lease however caused, any insurance proceeds then held by Landlord shall be retained by Landlord or if held by Tenant, shall be paid to Landlord; provided however, that if such Expiration occurs pursuant to Article 16 hereof, such insurance proceeds shall be deemed to be part of the condemnation award and shall be disposed of as provided in Article 16.

11.8 Subject to Tenant's right of termination under Sections 11.1 and 11.2, no destruction of or damage to the Improvements or any part or item thereof, by fire or other casualty whatsoever, whether such damage or destruction be partial or total or otherwise, shall entitle or permit Tenant to surrender or terminate this Lease or shall relieve Tenant from its liability to pay in full the Fixed Rent and Additional Rent hereunder, or from any of its other obligations under this Lease

12. TENANT ALTERATIONS.

12.1 a. Subject to the Provisions of this Article and to all other applicable Provisions of this Lease, Tenant shall have the right at any time and from time to time during the Term to make, at its sole cost and expense, Tenant Alterations, only with Landlord's prior consent.

b. No Tenant Alteration shall be made if the proposed Tenant Alteration would adversely affect the roof, floors or structural members of the Building, change the type or character of the Improvements or reduce the size of the Improvements or diminish the net area thereof or impair the structural integrity of the Improvements.

12.2 Tenant covenants and agrees that no Tenant Alterations will be made except in compliance with, and Tenant hereby covenants that it will comply with, each of the following Provisions:

a. All Tenant Alterations shall be made with reasonable diligence and dispatch in a first class manner and with materials and workmanship comparable to the quality of the original Improvements;

b. Before any Tenant Alterations are begun, Tenant shall procure, at its own sole cost and expense, all necessary Permits from all Governmental Authorities and shall deliver photocopies thereof to Landlord. Upon Tenant's request, Landlord shall join in the application for such Permits whenever such action is necessary, and Tenant covenants that Landlord will not suffer, sustain or incur any costs, expense or liability by reason thereof;

c. All Tenant Alterations shall be made in compliance and conformity with all applicable (a) Laws of all Governmental Authorities (including all building and zoning Laws); (b) Permits; and (c) rules, regulations, orders and requirements of Insurance Boards;

d. In making any Tenant Alterations, Tenant shall not violate the terms or conditions of any insurance policy obtained or required pursuant to the Provisions hereof affecting or relating to the Property or any part thereof, or the terms of any covenants, restrictions or easements affecting the Demised Premises;

e. Promptly after the completion of any Tenant Alterations, Tenant shall procure, at Tenant's sole cost and expense, all Permits of Governmental Authorities, if any, for the complete Tenant Alterations as may be required by any applicable Laws of Governmental

Authorities, and all Insurance Boards' approvals, if any, as may be required or customary in connection therewith, and on demand, shall promptly deliver photocopies thereof to Landlord;

f. Tenant shall pay all costs, expenses and liabilities arising out of, in connection with, or by reason of any Tenant Alterations, and shall keep the Property free and clear of all liens, claims and encumbrances in any way arising out of, in connection with, or by reason of, any Tenant Alterations, subject to the Provisions of Article 13 hereof;

g. No Tenant Alterations shall create any encroachment upon any easement, street or adjacent premises;

h. No Tenant Alterations shall be made which would render title to the Demised Premises or any part thereof unmarketable;

i. No Tenant Alterations shall be made which would tie in or connect any Improvement with any other building or structure located outside the boundary lines of the Demised Premises;

j. Unless Tenant Alterations (i) are performed entirely within the enclosure walls of any Improvement then existing on the Demised Premises, or (ii) would not be reflected on a survey of the Demised Premises, Tenant shall, upon completion thereof, promptly deliver to Landlord a copy of an ALTA "as built" survey of the Demised Premises showing such Tenant Alterations; and

k. No Tenant Alterations shall be made which would render title to the Demised Premises or any part thereof unmarketable, or which would reduce the value of the Property for the uses permitted herein below the value thereof immediately prior to the making of such Tenant Alterations.

12.3 Landlord shall not be required to make any contribution to the cost of any Tenant Alterations or any part thereof, and Tenant covenants that Landlord shall not be required to pay any cost, expense or liability arising out of or in connection with or by reason of any Tenant Alterations.

12.4 Tenant may install signage on the roof of the Building after the roof has been rebuilt by Landlord subject to Landlord's approval which shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Tenant shall not install signage in violation of applicable laws or regulations nor shall it install signage in any manner which would cause damage to the roof and/or Building or which would impair or be prohibited or excluded by Landlord's roof bond or warranty.

13. DISCHARGE OF LIENS.

13.1 Tenant shall not create or permit to be created or to remain, and shall discharge, any lien, encumbrance or charge levied on account of any Imposition or any mechanic's, laborer's, or materialman's lien, or, other than the First Mortgage, any mortgage, deed of trust or otherwise which might or does constitute a lien, encumbrance or charge upon the

Property or any part thereof, or the income therefrom, unless the same arises from any act of Landlord, and Tenant will not suffer any other matter or thing whereby the estate, rights and interests of Landlord in the Property or any part thereof might be impaired; provided that any Imposition may, after the same becomes a lien on the Property, be paid or contested in accordance with Article 5 hereof, and any mechanic's, laborer's, or materialman's lien may be discharged in accordance with Section 13.2 hereof.

13.2 If any such mechanic's, laborer's or materialman's lien shall at any time be filed against the Property or any part thereof, Tenant, within thirty (30) days after filing thereof, shall cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If Tenant shall fail to cause such lien to be discharged within such period then, in addition to any other right or remedy, Landlord may (after so notifying Tenant), but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings, and in any such event Landlord shall be entitled, if Landlord so elects, to compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of the judgment in favor of the lienor, with interest, costs and allowances. In any event, if any suit, action or proceedings shall be brought to foreclose or enforce any such lien (whether or not the prosecution thereof was so compelled by Landlord), Tenant shall, at its own sole cost and expense, promptly pay, satisfy and discharge any final judgment entered therein, in default of which Landlord, at its option, may so. Any and all amounts so paid by Landlord as in this Section provided, and all costs and expenses paid or incurred by Landlord in connection with any or all of the foregoing matters, including reasonable attorney's fees, together with interest thereon at the Lease Interest Rate from the respective dates of Landlord's making of such payments, shall be paid by Tenant to Landlord on demand as Additional Rent hereunder.

13.3 Nothing in this Lease contained shall be deemed or construed in any way as constituting the consent or request of Landlord, express or implied by inference or otherwise, to any contractor, subcontractor, laborer, materialman, architect or engineer for the performance of any labor or the furnishing of any materials or services for or in connection with the Property or any part thereof. Notice is hereby given that Landlord shall not be liable for any labor or materials or services furnished or to be furnished to Tenant upon credit, and that no mechanic's or other lien for any such labor, materials or services shall attach to or affect the fee or reversionary or other estate or interest of Landlord in the Property or in this Lease.

14. CONDITION OF AND TITLE TO PROPERTY. On the Commencement Date, Tenant shall execute and deliver to Landlord an estoppel certificate in the form requested by Landlord pursuant to Section 18.1. Tenant acknowledges and agrees that except as otherwise expressly set forth in this Lease, no representations, statements, or warranties, express or implied, as to merchantability, fitness for a particular purpose or use, or otherwise, have been made by or on behalf of Landlord in respect of the Demised Premises, the status of title, physical condition, income, profit potential or expenses of operation thereof, the zoning or other laws, regulations, rules and orders applicable thereto, Impositions, or of any other matter or thing affecting or relating to the Property, and that Tenant has relied on no such representations, statements or warranties. Tenant is currently in possession of the Demised Premises as a subtenant of BellSouth (Landlord's current tenant) and Tenant is familiar with the condition of the Demised

Premises. Subject to Landlord's obligation to rebuild the roof and Section 6.6 herein, Tenant agrees to accept the Demised Premises in its "AS IS" condition.

15. ENTRY ON PROPERTY BY LANDLORD.

15.1 Tenant shall permit Landlord and its authorized representatives and designees to enter the Property at all reasonable times for the purpose of (a) inspecting the same and (b) making any Repairs thereto and performing any work therein that may be necessary by reason of Tenant's failure to make any such Repairs or perform any such work or to commence the same for ten (10) days after Notice from Landlord (or without Notice in case of emergency). Nothing herein contained shall be construed as imposing any duty upon Landlord to do any work not otherwise required by the terms of this Lease. The performance thereof by Landlord shall not constitute a waiver of Tenant's default in failing to perform the same, and Landlord shall have the right to receive reimbursement in respect thereof as provided in Article 25.

15.2 Landlord may, during the progress of any work at the Demised Premises performed or caused to be performed by it in accordance with this Article, keep and store thereon all necessary materials, tools, supplies and equipment. Landlord shall not be liable for reasonable inconvenience, annoyance, disturbance, loss of business or other damage to Tenant by reason of the making of such Repairs or the performance of any such work, or on account of bringing materials, tools, supplies and equipment into or through the Demised Premises during the course thereof, except due to its gross negligence or willful misconduct, and the obligations of Tenant under this Lease shall not be affected thereby. In making any such Repairs or doing any such work, Landlord shall proceed with such work so as to avoid to the extent possible unreasonable inconvenience to Tenant.

15.3 Landlord and its designees shall have the right to enter the Demised Premises at all reasonable times during usual business hours for the purpose of showing the Property to prospective purchasers, tenants and mortgagees.

16. CONDEMNATION.

16.1 If at any time during the Term hereof all or a material portion (as defined in Section 16.7 hereof) of the Demised Premises shall be taken for any public or quasipublic purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement in lieu of condemnation among Landlord, Tenant and those authorized to exercise such right (a) the obligations of Tenant to comply with the Provisions of this Lease, affected by such taking shall continue unimpaired until the date of the taking; (b) this Lease and the Term shall Expire on the date of such taking; (c) the Fixed Rent and all Additional Rent hereunder shall be apportioned and paid to the date of such taking; and (d) the entire award received (exclusive of any portion of the award that Tenant is entitled to by virtue of the taking) shall be paid to the Landlord for distribution in the following order after deduction therefrom of all reasonable fees and expenses of collection, including reasonable attorneys' and experts' fees:

a. If and to the extent that the holder of the First Mortgage has a claim thereon, such holder or Mortgagee shall receive an amount equal to such claim; and

b. Landlord shall receive the entire balance remaining of such award.

16.2 If at any time during the Term (a) less than all or a material portion of the Demised Premises shall be taken, or (b) if any appurtenances to the Demised Premises or any areas outside the boundaries of the Demised Premises or rights in, under or above the streets adjoining the Demised Premises, or the rights and benefits of light, air or access from or to such streets, shall be so taken, or the grade of any such streets shall be changed, ("Partial Taking"), except as provided in Section 16.3 below, this Lease and the Term shall continue in full force and effect without reduction, abatement or effect of any nature whatsoever upon the Term or the liability of Tenant to pay in full the Fixed Rent or any Additional Rent hereunder. Tenant shall give prompt Notice of any Partial Taking to Landlord and shall proceed, with reasonable diligence, and to the full extent of the award for such Partial Taking, to perform any necessary Repairs and (subject to the Provisions of Article 12) any necessary or desirable Tenant's Alterations, at Tenant's sole cost and expense; provided however, that so long as Tenant expeditiously, diligently and continuously prosecutes settlement or collection of the award, Tenant shall not be required to commence Repair until it has received the award, but Tenant shall prior to the receipt of the award and at its own expense take any remedial steps required by applicable Law. In the event that settlement or collection cannot be obtained within ninety (90) days, and Tenant has failed to commence Repairs, Landlord shall have the right, but not the obligation, to commence Repairs. All awards payable as a result of any such Partial Taking shall be paid to Landlord for distribution as follows and in the following order, after deduction therefrom of all reasonable fees and expenses of collection, including reasonable attorneys' and experts' fees:

a. Tenant shall receive an amount equal to the cost of any Repairs and Tenant Alterations made by Tenant pursuant to this Section 16.2 upon receipt by Landlord of evidence satisfactory to it of the amount of such cost and the payment thereof in full; and

b. Landlord shall receive the balance of the award.

16.3 In the case of any Partial Taking, the Fixed Rent payable by Tenant hereunder shall be equitably reduced by an amount which takes into account the actual amount of the Improvements taken, the amount of parking area taken or any other right, privilege or easement appurtenant to the Demised Premises which materially and adversely interferes with Tenant's permitted uses of the Demised Premises.

16.4 If the temporary use of the whole or any part of the Demised Premises shall be taken at any time during the Term for any public or quasi-public purpose by any lawful power or authority or by the exercise of the right of condemnation or eminent domain or by agreement in lieu of condemnation between Tenant and those authorized to exercise such right, the Term shall not be affected in any way, and Tenant shall continue to pay in full Fixed Rent and Additional Rent hereunder and, subject to the other Provisions of this Section, and except as hereinafter provided, Tenant shall be entitled to receive any award or payment for such use. If such award or payment made for such use is paid in a lump sum, such award shall be paid to Landlord, and after deducting an amount equal to present value (computed on the basis of a discount equal to the current yield of United States Government securities having a term as near as possible to the period of such temporary taking) of Fixed Rent and Additional Rent due or

which will become due during the period covered by such lump-sum award, Landlord shall remit the balance to Tenant except to the extent allocable to a period subsequent to the Expiration of this Lease. In the event that such taking, condemnation or use is for the balance of the Term of this Lease and is for the entire Demised Premises, the provisions of Section 16.1 shall apply. If and to the extent that the amount of any Additional Rent for such period is not ascertained or ascertainable as at the date of the payment of such lump-sum award, Landlord shall estimate the amount thereof, subject to adjustment at such time as the amount thereof is ascertained. For the purposes of this Section, the Fixed Rent during the Primary Term shall be deemed to be as set forth in Section 4.1. If such taking results in changes or alterations in the Demised Premises which would necessitate an expenditure, after repossession, to repair the Demised Premises to their former condition, and such award or payment includes an amount to compensate for such expenditure and is made prior to the Expiration of this Lease, then the amount of such award or payment specified as compensation for the expenses of such Repair shall be paid to Landlord, and if possession of the Demised Premises shall revert to Tenant prior to the Expiration of this Lease, Tenant shall, at its sole cost and expense, repair the Demised Premises so that the Demised Premises in every material respect shall, upon completion of such restoration, be the same as though no such taking had occurred, and when Landlord shall have received evidence satisfactory to it that such Repair has been completed and paid for, the portion of such award or payment deposited with and held by Landlord for such purpose shall be paid over to Tenant. The foregoing Provisions relating to the repair of the Demised Premises shall apply with like effect to any item constituting part of the Improvements. If Tenant shall not so Repair the Demised Premises or any item constituting a part of the Improvements upon the Expiration of this Lease the sum so deposited with Landlord for such purpose shall be retained by Landlord to be applied by Landlord toward Landlord's damages occasioned by such default, or shall be paid over to Landlord absolutely and without apportionment, as the case may be.

16.5 If, for the purposes of Section 16.1 and 16.2 hereof Landlord and Tenant cannot agree on whether there has been a taking of all or a material portion of the Property, either party may submit the matter to binding appraisal by Notice to that effect to the other party and shall in such Notice appoint an MAI Appraiser who has been a member of The American Institute of Real Estate Appraisers for not less than ten (10) years and has performed appraisals of net leased commercial properties in the State throughout that period (an "Appraiser") who shall have had experience in appraising commercial properties for financial institutions, as appraiser on its behalf. Within twenty (20) days thereafter, the other party shall by Notice to the first party appoint a second disinterested Appraiser on its behalf. If the two appraisers thus appointed cannot reach agreement on the question presented on the basis aforesaid within forty-five (45) days after the appointment of the second appraiser, then the appraisers thus appointed shall appoint a third disinterested Appraiser possessing all of the other aforesaid qualifications, and such third appraiser shall alone as promptly as possible determine the question presented, provided that:

a. If the second appraiser shall not have been appointed as aforesaid, the first appraiser shall alone proceed to determine such matter; and

b. If the two appraisers appointed by the parties shall be unable to agree, within forty-five (45) days after the appointment of the second appraiser, either on the question presented or on the appointment of a third appraiser, they or either of them shall give

Notice of such failure to agree to the parties, and, if the parties fail to agree upon the selection of such third appraiser within fifteen (15) days after the appraisers appointed by the parties have given such Notice, then within thirty (30) days thereafter either of the parties, upon Notice to the other party, may request such appointment by the American Arbitration Association (or any successor thereto) in the State or on its failure, refusal or inability to act, may apply for such appointment to a court of competent jurisdiction.

c. The determination made as above provided shall be conclusive upon the parties and judgment upon the same may be entered in any court having jurisdiction thereof. The appraisers chosen by the parties, the sole appraiser, if the second party does not choose an appraiser, or the third appraiser appointed as above provided, as the case may be, shall give Notice to the parties stating their or his determination, and shall furnish to each party a signed copy of such determination.

d. Each party shall pay the fees and expenses of the Appraiser appointed by such party and one-half of the other expenses of the appraisal properly incurred hereunder.

16.6 Tenant shall have the right to seek an award from the condemning authority arising out of the complete or partial termination of this Lease or taking of all or any portion of the Property as a result of any taking of all or any portion of Tenants interest in the Property, as well as Tenant's interest in Tenant's Personal Property, if taken, and including, but not limited to, the right to an award based upon the value of the unexpired Term of this Lease, moving expenses or consequential damages to Tenant's interest in the Property not taken.

16.7 As used in this Article 16, a taking of all or a material portion of the Demised Premises (the consequences of which are set forth in Section 16.1 hereof) shall mean a taking at the option of either party, of: (a) twenty-five percent (25%) or more of the net area of the Improvements on the Demised Premises; or (b) which materially adversely affects access to the Demised Premises, and access reasonably equivalent to that in existence prior to such taking cannot be restored; or (c) which otherwise renders the continued permitted uses of the Property not economically feasible as determined by Tenant in its reasonable discretion; provided, however, that an election to treat a taking as a taking of all or a material portion of the Demised Premises, as hereinabove provided, shall be made by Notice to the other party given within forty-five (45) days after the taking; and provided further, however, that in the event of any Partial Taking of the Demised Premises, if the holder of the First Mortgage takes the award therefor or any portion thereof, then Tenant's obligation for repair under Section 16.2 shall be conditioned upon Landlord distributing pursuant to Section 16.2 an amount equal to that part of the award taken by the holder of the First Mortgage. Any dispute as to whether there has been a Partial Taking or a taking of all or a material portion of the Demised Premises shall be submitted to arbitration and appraisal in accordance with Section 16.5 hereof.

17. MEMORANDUM OF LEASE. This Lease shall not be recorded, however, upon Tenant's request, Landlord and Tenant will execute and acknowledge a Memorandum of Lease which may be recorded by either party.

18. ESTOPPEL CERTIFICATES.

18.1 Tenant agrees at any time and from time to time, upon not less than fifteen (15) days' Notice by Landlord, to execute, acknowledge and deliver, without charge, to Landlord or to any Person designated by Landlord, a statement in writing certifying that: (a) Tenant has, on or before the Acceptance Date, examined the Demised Premises, is satisfied with the physical condition and state of repair thereof, and has accepted the same in an "as is" condition (or if there are exceptions to Tenant's acceptance, noting the specific exceptions); (b) this Lease is unmodified (or if there have been modifications, identifying the same by the date thereof and specifying the nature thereof), (c) Tenant has not received any Notice of default or Notice of termination of this Lease (or if Tenant has received such a Notice, that it has been revoked, if such be the case), (d) that no Event of Default exists hereunder (or if any such Event of Default does exist, specifying the same and stating that the same has been cured, if such be the case), (e) that Tenant has no claims or offsets against Landlord hereunder (or if Tenant has any such claims or offsets, specifying the same), (f) the dates to which Fixed Rent and Additional Rent payable by Tenant hereunder have been paid and (g) such other information as may be requested by Landlord and can be supplied by Tenant without unreasonable expense. Failure to timely deliver the foregoing estoppel certificate shall constitute a material default under this Lease.

18.2 Landlord agrees at any time and from time to time, upon not less than fifteen (15) days' Notice by Tenant, to execute, acknowledge and deliver, without charge, to Tenant, or to any Person designated by Tenant, a statement in writing certifying that; (a) this Lease is unmodified (or if there be modifications, identifying the same by the date thereof and specifying the nature thereof) (b) that no Notice of default or Notice of termination of this Lease has been served on Tenant (or if Landlord has served such Notice, that the same has been revoked, if such be the case) (c) that to Landlord's knowledge, no Event of Default exists under this Lease (or if any such Event of Default does exist, specifying the same) and (d) the dates to which Fixed Rent and Additional Rent have been paid by Tenant.

19. ASSIGNMENT AND SUBLETTING.

19.1 Tenant shall not assign, sublease or transfer this Lease or any interest therein or grant any license, concession or other right of occupancy of the Property or any portion thereof or otherwise permit the use of the Property or any portion thereof by any party other than Tenant (any of which events is hereinafter called a "Transfer") without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed with respect to any proposed assignment or subletting. Any attempted Transfer in violation of the terms of this Article shall, at Landlord's option, be void. Consent by Landlord to one or more Transfers shall not operate as a waiver of Landlord's rights as to any subsequent Transfers.

19.2 In the event Landlord consents to any such Transfer, the Transfer shall be in a form approved by Landlord, including but not limited to, a written agreement satisfactory to Landlord wherein the Transferee assumes and agrees to be bound by all of the terms and conditions of this Lease, and Tenant shall bear all third party out-of-pocket costs and expenses incurred and paid by Landlord in connection with the review and approval of such documentation including reasonable attorneys' fees and expenses.

19.3 Any Transfer hereunder (regardless of whether the consent of Landlord is required) shall be only for the permitted use pursuant to Section 6.1 and for no other purpose, and in no event shall any Transfer release or relieve Tenant from any obligations under this Lease.

20. INDEMNIFICATION; SUBROGATION .

20.1 Tenant shall indemnify and save Landlord harmless from and against, and shall reimburse Landlord for, all liabilities, obligations, damages, fines, penalties, claims, demands, costs, charges, judgments and expenses, whether founded in tort, in contract or otherwise, including reasonable architects' and attorneys' fees and costs, which may be imposed upon or incurred or paid by or asserted against Landlord or Landlord's interest in the Property by reason of or in connection with any of the following occurring during the Term of this Lease:

a. The completion of any Tenant Alterations and anything done in, on or about the Property or any part thereof in connection therewith, other than Tenant Alterations performed by Landlord;

b. The use, non-use, possession, occupation, condition, operation, maintenance or management of the Property, or any part thereof, or to the extent that Tenant is legally responsible therefore, any street, alley, sidewalk, curb, passageway or space adjacent thereto;

c. Any negligent or tortious act on the part of Tenant or any of its agents, contractors, servants, employees, licensees or invitees;

d. Any accident, injury, death or damage to any Person or property occurring in, or about the Property or to the extent that Tenant is legally responsible therefor, any part thereof of any street, alley, sidewalk, curb, passageway or space adjacent thereto;

e. Any failure on the part of Tenant to perform or comply with any of the Provisions contained in this Lease on its part to be performed or complied with; and

f. Any violation of the Permitted Encumbrances or any other covenants, restrictions, easements, agreements or conditions affecting the Demised Premises.

20.2 Nothing contained in Section 20.1 shall be deemed to require Tenant to indemnify Landlord with respect to the negligence or willful misconduct of Landlord, its agents, contractors, servants, employees, licensees or invitees or breach of this Lease by Landlord.

20.3 In case any action or proceeding is brought against Landlord by reason of any claim referred to in this Article 20, Tenant, upon Notice from Landlord, shall, at Tenant's expense, resist or defend such action or proceeding, in Landlord's name, if necessary, by counsel for the insurance company, if such claim is covered by insurance, otherwise by counsel approved by Landlord, which approval shall not be unreasonably withheld or delayed. Landlord agrees to give Tenant prompt notice of any such claim or proceeding.

20.4 The Provisions of this Article 20 shall not in any way be affected by the absence in any case of any covering insurance or by the failure or refusal of any insurance company to perform any obligation on its part.

20.5 If any provision of this Lease requires that either Landlord or Tenant provide indemnification to the other with respect to any claim or liability identified therein, the indemnified party shall promptly give notice of any such claim or liability to the indemnifying party and said indemnifying party shall have the right to participate in the prosecution and/or settlement of any such claim or liability.

20.6 Landlord and Tenant hereby release the other from any and all liability or responsibility to the other or anyone claiming through or under them by way of subrogation or otherwise for any loss or damage to property covered by any insurance then in force, even if such loss or damage shall have been caused by the fault or negligence of the other party, or anyone from whom such party may be responsible; provided, however, that this release shall be applicable and in force and effect only with respect to any loss or damage occurring during such time as the policy or policies of insurance covering said loss shall contain a clause or endorsement to the effect that this release shall not adversely affect or impair said insurance or prejudice the right of the insured to recover thereunder.

21. DEFAULT PROVISIONS.

21.1 The following shall constitute events of default ("Events of Default") hereunder:

a. If default shall be made in the due and punctual payment to Landlord of any installment of Fixed Rent payable under this Lease or any part thereof when and as the same shall have become due and payable, and such default shall continue for a period of 10 days after notice from Landlord; or

b. If default shall be made in the due and punctual payment of any Additional Rent payable by Tenant under this Lease or any part thereof when and as the same shall become due and payable, and such default shall continue for a period of ten (10) business days after Notice from Landlord; or

c. If the Demised Premises shall be abandoned by Tenant or if default shall be made by Tenant in the performance of or compliance with any of the Provisions contained in this Lease (other than those referred to in the foregoing subsections 21.1(a) or 21.1(b)) and either such default shall continue for a period of thirty (30) days after Notice thereof from Landlord to Tenant, or, in the case of a default or a contingency which is susceptible of being cured but which cannot with due diligence be cured within such period of thirty (30) days, Tenant fails to commence with all due diligence within such period of thirty (30) days to cure the same and thereafter to continuously prosecute the curing of such default with all due diligence (it being intended that in connection with a default susceptible of being cured but which cannot with due diligence be cured within such period of thirty (30) days that the time of Tenant within which to cure the same shall be extended for such period as may be necessary to complete the

curing thereof continuously and with all due diligence but in no event to exceed one hundred twenty (120) days in the aggregate unless Tenant demonstrates that the default is not susceptible of a cure within one hundred twenty (120) days despite the due diligence of Tenant by reason of matters outside of Tenant's control (it being agreed that insufficient funds shall not excuse Tenant's performance), in which case the period allowed to cure such default shall be extended for a commercially reasonable time); or

d. Subject to the Provisions of Section 21.3 hereof, if Tenant shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent or shall file any petition or answer seeking any reorganization, arrangement, recapitalization, readjustment, liquidation, dissolution or similar relief under any present or future Federal Bankruptcy Code or any other present or future applicable Law ("Bankruptcy Law") that is not discontinued or otherwise vacated within ninety (90) days, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Tenant or of all or any substantial part of its properties or of the Property, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as the same become due (collectively, "Acts of Bankruptcy"); or

e. Subject to the Provisions of Section 21.3 hereof, if within ninety (90) days after the commencement of any proceedings against Tenant seeking any reorganization, arrangement, recapitalization, readjustment, liquidation, dissolution or similar relief under any Bankruptcy Law, such proceedings shall not have been dismissed, or if, within ninety (90) days after the appointment, without the consent or acquiescence of Tenant or any trustee, receiver or liquidator of Tenant or of all or any substantial part of its properties or the Property (other than a result of Landlord's acts unrelated to the enforcement of Landlord's rights under this Lease), such appointment shall not have been vacated or stayed on appeal or otherwise, or within ninety (90) days after the expiration of any such stay such appointment shall not have been vacated, or if within sixty (60) days, an execution, warrant, attachment, garnishment levied or fixed against the Property, or any part thereof, or against Tenant (other than as a result of Landlord's acts unrelated to the enforcement of Landlord's rights under this Lease) shall not be bonded, vacated or discharged.

21.2 Upon the occurrence of any Event of Default (it being understood that for purposes hereof an "Event of Default" does not occur until notice periods provided for above have run), Landlord at any time thereafter (but prior to the curing of such Event of Default) may give Notice to Tenant stating that this Lease and the Term shall Expire on the date specified in such Notice, which shall be at least five (5) days after the giving of such Notice, and on the date specified in such Notice this Lease and the Term shall Expire with the same force and effect as though the date so specified were the date herein originally fixed as the Expiration Date of the Term, but Tenant shall remain liable as hereinafter provided.

21.3 No Act of Bankruptcy of Tenant under any Bankruptcy Law set forth in subsection 21.1(d), and no proceeding or action of the nature described in subsection 21.1(e) occurring or taken by or against Tenant shall be grounds for the Expiration of this Lease pursuant to this Article unless the same shall be taken or brought by or against the Person which then is the owner of this Lease or an interest herein.

21.4 Upon any Expiration of this Lease pursuant to Section 21.2 hereof, or by or resulting from summary proceedings, re-entry or otherwise, Tenant shall quit and peaceably surrender the Property. Landlord, in addition to all other remedies herein reserved to it, upon or at any time after such Expiration, may, without further Notice, enter upon and re-enter the Demised Premises and possess and repossess itself thereof by summary proceedings, ejectment or otherwise, and may dispossess and remove Tenant and all other Persons and property from the Property, and may have, hold and enjoy the Property and the right to receive all income of and from the same.

21.5 At any time or from time to time after any such Expiration pursuant to Section 21.2 hereof, or by or resulting from summary proceedings or otherwise, Landlord may relet the Property or any part thereof, in the name of Landlord or otherwise, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term) and on such conditions (which may include concessions, free rent and alterations) as Landlord, in its reasonable discretion, may determine, and may collect and receive the rent therefor. Tenant agrees to pay Landlord on demand the amount of all loss and damage which Landlord may suffer by reason of such termination of the Lease, whether through inability to relet the Property on satisfactory terms or otherwise, including all costs of such reletting and any deficiency that may arise by reason of any reletting or failure to relet.

21.6 No Expiration of this Lease pursuant to Section 21.2 hereof, or by or resulting from summary proceedings or otherwise, shall relieve Tenant of its liability under this Lease, and such liability shall survive any such Expiration. In the event of any such Expiration, whether or not the Property or any part thereof shall have been relet, Tenant shall pay Landlord the Fixed Rent to be paid by Tenant up to the time of such Expiration of this Lease, and thereafter Tenant, until the end of what would have been the Term in the absence of such Expiration, shall be liable to Landlord for, and shall pay Landlord, as and for liquidated and agreed current damages for Tenant's default, (a) the equivalent of the amount of Fixed Rent which would be payable under this Lease by Tenant if this Lease were still in effect, less the proceeds, if any, of any reletting effected pursuant to the Provisions of Section 21.5 hereof, and (b) an amount equal to all of Landlord's actual expenses in connection with such reletting, including, but not limited to, brokerage commissions, attorneys' fees, the cost of cleaning, renovation, repair and alteration of the Demised Premises, advertisements, marketing, the cost of caring for the Property while vacant, free rent and other concessions to a new tenant. Tenant shall pay the damages provided for in subdivision (a) above ("Deficiency") to Landlord monthly on the days on which Fixed Rent would have been payable under this Lease if this Lease were still in effect, and Landlord shall be entitled to recover from Tenant each monthly Deficiency as the same shall arise or shall have the right to accumulate monthly Deficiencies and sue to recover the same from time to time as Landlord may determine. Tenant shall pay to Landlord the damages provided for in subdivision (b) above on demand. At any time after such Expiration, whether or not Landlord shall have collected any monthly Deficiency as aforesaid, Landlord shall be entitled to recover from Tenant, and Tenant shall pay to Landlord on demand, as and for liquidated and agreed final damages for Tenant's default, an amount equal to the then present worth of the excess of the Fixed Rent reserved under this Lease from the date of such Expiration over the fair and reasonable rental value of the Property for what would be the then unexpired portion of the Term if the same had remained in effect, said present worth to be computed on the basis of a discount equal to the current yield of United States Government securities having a

term as near as possible to the amount of time remaining on the Term of this Lease and on a net lease basis. For the purposes of this Section 21.6, the Fixed Rent shall be deemed to be the average annual Fixed Rent due from Tenant to Landlord during the three most recently ended Lease Years or, if fewer than three Lease Years shall have elapsed since the Lease Date, then during all prior Lease Years, or portions thereof, which have so elapsed.

21.7 Landlord agrees that it will refrain from exercising any legal or equitable remedy available to it until the expiration of the applicable cure periods provided in Section 21.1.

21.8 No failure by either party to insist upon the strict performance of any Provision of this Lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial rent during the continuance of any breach, shall constitute a waiver of any such breach or such Provision. No Provision of this Lease to be performed or complied with by either party, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by the other party. No waiver of any breach shall affect or alter this Lease, but each and every Provision of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

21.9 Except as may be otherwise provided in this Lease, in the event of any breach or if Landlord has knowledge of a threatened breach of any of the Provisions of this Lease, Landlord shall be entitled to enjoin such breach or threatened breach and shall have the right to invoke any right and remedy allowed by Law, in equity or otherwise, as though re-entry, summary proceedings and other remedies were not provided for in this Lease.

21.10 Each right and remedy of Landlord provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing by Law, in equity or otherwise, and, subject to the provisions of Section 21.7, the exercise or beginning of the exercise by Landlord of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing by Law, in equity or otherwise shall not preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies provided for in this Lease or now or hereafter existing by Law, in equity or otherwise.

21.11 Landlord shall not be deemed to be in default under this Lease unless (a) Tenant has given Notice to Landlord specifying the default claimed, and (b) Landlord has failed for thirty (30) days (or for such longer period as may be required with the exercise of due diligence) to cure such default, if curable, or to institute and diligently pursue reasonable corrective or ameliorative efforts towards a noncurable default.

21.12 In the event that Landlord or Tenant commences a suit for the collection of any amounts for which another party hereto may be in default or for the performance of any other covenant or agreement hereunder, the prevailing party, as determined by the court having jurisdiction over the suit, shall be entitled to recover its reasonable costs and expenses, including, but not limited to, all attorneys' fees and expenses incurred in enforcing such obligations and/or collecting such amounts, as determined by the Court.

22. INVALIDITY OF PARTICULAR PROVISIONS. If any Provision of this Lease or the application thereof to any Person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such Provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each Provision of this Lease shall be valid and be enforced to the fullest extent permitted by Law.

23. NOTICES.

23.1 All notices, requests, demands, consents, approvals and other communications which may or are required to be served or given hereunder ("Notices") shall be in writing and shall be personally delivered with a receipt signed by the recipient or sent by a nationally recognized courier service providing evidence of delivery addressed as follows:

a. If to Landlord, at the address first above set forth, with copies to:

Joel E. Gottlieb, Esquire
Gottlieb & Smith, P.A.
1901 Main Street, Suite 600
Columbia, SC 29201

b. If to Tenant, at the address first above set forth, with copies to:

Mark A. Kimball
Sr. VP & General Counsel
Select Comfort SC Corporation
6105 Trenton Lane North
Minneapolis, MN 55442

23.2 Either party may, by Notice, change its address for all subsequent Notices, except that neither party may require Notices to it to be sent to more than four addresses. Notice given by counsel for a party shall be deemed Notice by such party.

23.3 Except where otherwise expressly provided to the contrary in this Lease, Notices shall be deemed given when received or, when delivery is refused.

24. QUIET ENJOYMENT. Landlord covenants that Tenant, upon paying when due Fixed Rent and Additional Rent herein provided for and observing and keeping all Provisions of this Lease on its part to be observed and kept, shall quietly have and enjoy the Property during the Term of this Lease, without hindrance or molestation by anyone claiming by, through or under Landlord, subject, however, to the exceptions, reservations, and Provisions of this Lease.

25. LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS.

25.1 If Tenant shall at any time fail to pay any Imposition in accordance with the Provisions of Article 5 hereof, or to take out, pay for, maintain or deliver any of the insurance policies provided for in Article 10 hereof, or shall fail to make any other payment on its part to

be made, then Landlord, after five (5) business days' Notice to Tenant, except when other Notice is expressly provided for in this Lease (or without Notice in case of emergency) and without waiving or releasing Tenant from any obligation of Tenant contained in this Lease, may (but shall be under no obligation to):

a. Pay any Imposition payable by Tenant pursuant to the Provisions of Article 5 hereof; or

b. Take out, pay for and maintain any of the insurance policies provided for in Article 10 hereof; or

c. Make any other payments on Tenant's part to be made as provided in this Lease;

and may enter upon the Property for any such purpose and take all reasonable action thereon as may be necessary therefor.

25.2 All sums so paid by Landlord and all reasonable costs and expenses incurred by Landlord in connection with the performance of any such act, together with interest thereon at the Lease Interest Rate from the respective dates of Landlord's making of each such payment or incurring of each such cost and expense, shall be paid by Tenant to Landlord on demand as Additional Rent hereunder, and Landlord shall not be limited in the proof of any damages which Landlord may claim against Tenant arising out of or by reason of Tenant's failure to provide and keep in force insurance as aforesaid to the amount of the insurance premium or premiums not paid or incurred by Tenant and which would have been payable upon such insurance, but Landlord shall also be entitled to recover as damages for such breach the uninsured amount of any loss, to the extent of any deficiency in the minimum amount of insurance required by the Provisions of this Lease, and damages, costs and expenses of suit suffered or incurred by reason of damage to, or destruction of, the Improvements occurring during any period when Tenant shall have failed or neglected to provide such insurance.

## 26. LANDLORD'S RIGHT TO MORTGAGE, SELL OR ASSIGN RENTS.

26.1 Landlord shall have the right at any time and from time to time to place a First Mortgage on all or any part of the Property. In no event shall Tenant be required to pay any installment of principal or interest or other sums at any time due under any Landlord's Mortgage. In no event shall the amount of such First Mortgage exceed the Purchase Price as defined in Section 43.1.

26.2 Nothing contained in this Lease shall be deemed in any way to limit, restrict or otherwise affect Landlord's absolute right at any time or times to convey its interest in the Property, subject to this Lease, or to assign its interest in this Lease, or to assign from time to time the whole or any portion of Fixed Rent or Additional Rent at any time paid or payable hereunder by Tenant to Landlord, to a transferee designated by Landlord in a Notice to Tenant, and in any such case Tenant shall pay Fixed Rent and Additional Rent payable by Tenant to Landlord, or the portion thereof so assigned, subject to the Provisions of this Lease, to Landlord's designee at the address mentioned in any such Notice.

27. SUBORDINATION AND NON-DISTURBANCE.

27.1 Tenant accepts this Lease subject and subordinate to any First Mortgage, but Tenant agrees that any such mortgagee shall have the right at any time to subordinate such First Mortgage to this Lease on such terms and subject to such conditions as such mortgagee may deem appropriate in its discretion (it being understood that any document that Tenant is asked to execute shall be in a commercially reasonable form). This clause shall be self-operative and no further instrument of subordination shall be required. In the event Tenant fails to execute a subordination document consistent with this Article 27 within ten (10) business days of receipt of a request by Landlord and Tenant provides no reasonable objection to Landlord's request, Landlord is hereby irrevocably vested with full power and authority to subordinate this Lease to any First Mortgage, and Tenant agrees upon demand to execute such further instruments subordinating this Lease, acknowledging the subordination of this Lease or attorning to the holder of any such First Mortgage as Landlord may request. If any person shall succeed to all or part of Landlord's interests in the Property whether by purchase, foreclosure, deed in lieu of foreclosure, power of sale, termination of lease or otherwise, and if and as so requested or required by such successor-in-interest, Tenant shall, without charge, attorn to such successor-in-interest, provided said successor-in-interest shall agree that so long as no Default exists under the Lease, Tenant's right to quiet possession shall not be disturbed and the terms of the Lease shall remain unchanged.

27.2 It shall be a condition of the subordination of this Lease to any First Mortgage that the holder thereof shall enter into a mutually agreeable subordination, non-disturbance and attornment agreement (which, if such holder is a recognized lending institution, shall be in such holder's usual form; and otherwise shall be in a form reasonably satisfactory to Tenant) with Tenant which shall provide that Tenant's rights under this Lease shall not be disturbed in the event of foreclosure, sale or otherwise, so long as Tenant attorns to such mortgagee or transferee and there is not otherwise an Event of Default under this Lease; and Tenant shall promptly execute, acknowledge and deliver such agreement.

28. PROVISIONS DEEMED CONDITIONS AND COVENANTS. All of the terms, covenants, agreements, limitations, conditions and provisions of this Lease (collectively, "Provisions") shall be deemed and construed to be "conditions" and "covenants" as though the words specifically expressing or importing covenants and conditions were used in each separate Provision hereof.

29. REFERENCE TO TERMINATION.Any reference herein to the termination of this Lease shall be deemed to include any termination hereof by Expiration, or pursuant to Article 11, 16, or 21 hereof, or otherwise.

30. NO WASTE. Tenant shall not do or suffer any waste to the Property or any part thereof.

31. CAPTIONS AND CONSTRUCTION.

31.1 The captions and table of contents in this Lease are inserted only as a matter of convenience and for reference and in no way define, limit, enlarge or describe the

scope or intent of this Lease nor in any way shall affect this Lease or the construction of any Provision hereof.

31.2 The terms "include," "including" or words of like import shall be construed as meaning "including, without being limited to".

31.3 Wherever the context so requires in this Lease, the neuter gender includes the masculine and/or feminine gender, and the singular number includes the plural.

31.4 The phrase "provided no default shall exist hereunder... "shall be construed in this Lease as meaning "provided no uncured default exists as to the payment of a liquidated sum of money, and no other uncured default exists as to which Landlord has given Notice; however, if any such default exists and is later cured within the applicable time period set forth in this Lease, but in any event before the Expiration of this Lease, all remaining rights hereunder shall be restored, including but not limited to the right to receive funds or proceeds but for such default".

32. NO PARTNERSHIP OR JOINT VENTURE. Nothing contained in this Lease shall be deemed or construed as creating a partnership or joint venture between Landlord and Tenant or between Landlord and any other Person, or cause Landlord to be responsible in any way for the debts or obligations of Tenant or any other Person.

33. ORAL CHANGE OR TERMINATION. This Lease and the documents referred to herein contain the entire agreement between the parties pertaining to the subject matter hereof, and any executory agreement hereafter made shall be ineffective to change, modify or discharge it in whole or in part unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification or discharge is sought. This Lease cannot be changed or terminated orally.

34. SUCCESSORS AND ASSIGNS. The Provisions in this Lease shall bind and inure to the benefit of Landlord and Tenant and, except as otherwise provided in this Lease, their respective legal representatives, executors, successors and assigns.

35. GOVERNING LAW. This Lease shall be governed by, and interpreted under, the laws of the State applying to contracts made and to be performed fully therein.

36. LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, THE LIABILITY OF LANDLORD (AND OF ANY SUCCESSOR LANDLORD) HEREUNDER SHALL BE LIMITED TO THE INTEREST OF LANDLORD IN THE PROPERTY, AND TENANT AGREES TO LOOK SOLELY TO LANDLORD'S INTEREST IN THE PROPERTY FOR THE RECOVERY OF ANY JUDGMENT OR AWARD AGAINST THE LANDLORD, IT BEING INTENDED THAT LANDLORD SHALL NOT BE PERSONALLY LIABLE FOR ANY JUDGMENT OR DEFICIENCY. TENANT HEREBY COVENANTS THAT, PRIOR TO THE FILING OF ANY SUIT FOR AN ALLEGED DEFAULT BY LANDLORD HEREUNDER, IT SHALL GIVE LANDLORD AND ALL MORTGAGEES WHOM TENANT HAS BEEN NOTIFIED

HOLD MORTGAGES ON THE PROPERTY, NOTICE AND REASONABLE TIME TO CURE SUCH ALLEGED DEFAULT BY LANDLORD.

37. UNAVOIDABLE DELAYS. Except for the obligation to pay Fixed Rent and other charges payable hereunder which shall continue, whenever a party is required to perform an act under this Lease by a certain time, said time shall be deemed extended so as to take into account events of Unavoidable Delays.

38. FINANCIAL STATEMENTS. Tenant and its guarantor shall keep adequate records and books of account with respect to its business activities in which proper entries are made in accordance with generally accepted accounting principles ("GAAP") reflecting all its financial transactions, and cause to be prepared and furnished to Landlord the following (all to be prepared in accordance with GAAP applied on a consistent basis, unless the Tenant's certified public accountants concur in any change therein and such change is disclosed to Landlord and is consistent with GAAP):

a. not later than one hundred twenty (120) days after the close of each fiscal year Tenant's audited financial statements as of the end of such year, certified by a firm of independent certified public accountants of recognized standing selected by Tenant;

b. such other financial statements reasonably requested by Landlord in connection with a sale or financing of the Property.

Landlord shall execute such reasonable confidentiality agreements as may be requested by Tenant relative to such financial statements and documentation.

39. SECURITY DEPOSIT.

39.1 Upon execution of this Lease, Tenant is depositing with Landlord the sum of One Hundred Thousand Dollars ($100,000.00) as security for the full performance by Tenant of all the Provisions to be performed by Tenant (the "Security Deposit"). In the event of a default by Tenant in any Provision of this Lease, Landlord may disburse funds from the Security Deposit to or for the account of Landlord.

39.2 Landlord shall maintain the Security Deposit in an interest-bearing, federally insured deposit account reasonably agreeable to Tenant in accordance with Section 39.4, but Landlord shall have no liability for the amount of interest earned. At Tenant's request, all accrued interest shall be paid to Tenant on each anniversary date of this Lease; provided, however, no such interest payment shall be paid after a disbursement has been made pursuant to Section 39.1 or if there is an outstanding Event of Default by Tenant.

39.3 In lieu of maintaining a Security Deposit in the form of a cash deposit, Tenant may deliver an irrevocable letter of credit, in a form approved by Landlord, in the amount of One Hundred Thousand Dollars ($100,000.00) (the "Letter of Credit") to Landlord. The Letter of Credit shall be in favor of Landlord and shall be available for immediate drawdown by drafts on site and without condition except Landlord must deliver to the issuing bank a written certificate, certifying that the conditions for disbursement under this Lease have been satisfied.

Drafts drawn under and in compliance with the terms of the Letter of Credit shall be duly honored on due presentation to the issuing bank. The Letter of Credit shall have a term of at least one year. In the event that Tenant fails to deliver an amendment to the Letter of Credit or a replacement Letter of Credit by a date which is at least forty-five (45) days from its scheduled expiration, which amendment or replacement extends the term of the Letter of Credit for at least one year, Landlord shall cause the Letter of Credit to be drawn and the proceeds shall be held as the Security Deposit in accordance with this Section 39. Tenant may substitute the Letter of Credit for a cash deposit or a cash deposit for the Letter of Credit from time to time and at any time during the term of this Lease. The use of the term Security Deposit in this Lease shall refer to either the cash deposit or the Letter of Credit, as the case may be, which is then being held by Landlord.

39.4 Landlord and Tenant shall agree on the bank, branch, and type of account into which the Security Deposit is made prior to opening the account. To the extent that the Security Deposit is a cash deposit, Tenant shall have the right to reasonably direct the form of investment that will be made with the cash deposit while in escrow. All interest earned on the cash deposit while held in escrow shall be for the benefit and account of Tenant, subject to Section 39.2. Tenant shall provide such information and execute such forms as may be necessary to properly report such interest income. If Landlord proposes to disburse any amount from the Security Deposit in accordance with Section 39.1, Landlord shall give at least ten (10) days' written notice to the Tenant of its intention to disburse all or a portion of the Security Deposit on a stated date. Tenant covenants and agrees that no objection shall be made to any such disbursement unless there exists a reasonable basis for such objection and it is made in good faith.

39.5 In the event of a sale or other conveyance of the Property by Landlord, Landlord shall assign all its rights in the Security Deposit to the successor owner and Landlord shall have no further liability relating to the Security Deposit. If the Security Deposit is in the form of a Letter of Credit, Landlord and Tenant shall take such action as is reasonably necessary to cause the successor owner to be substituted for Landlord as beneficiary of the Letter of Credit and if such substitution is not made, Tenant shall substitute a cash deposit or cause a substitute Letter of Credit to be issued showing the successor owner as the beneficiary.

40. RELEASE OF PARCEL B. Landlord may at any time during the Term hereof release Parcel B (as shown on the plat described in SCHEDULE A) from this Lease whereupon the Land and Demised Premises shall no longer include Parcel B. The release may be accomplished by instrument signed only by Landlord provided Landlord has obtained subdivision plat approval from Richland County or other governmental agency having jurisdiction and Landlord has given notice of the release to Tenant. Landlord hereby reserves and establishes easements on Parcel A for the benefit of Parcel B for ingress, egress, storm drainage, and utility installation, operation, and maintenance provided that such easements shall not be located in such a way as to adversely impact Tenant's use of the Demised Premises in any material respect.

IN WITNESS WHEREOF, the parties hereto have duly executed this instrument as of the day and year first above written.

FRASTACKY (US) PROPERTIES LIMITED PARTNERSHIP, a Georgia limited partnership

By: Fras-Am, Inc., a Delaware corporation, general partner (SEAL)

By: /s/ Fedor Frastacky
---
Print Name: Fedor Frastacky
---
Title: President
---

SELECT COMFORT SC CORPORATION, a Minnesota corporation (SEAL)

By: Mark A. Kimball
---
Print Name: Mark A. Kimball
---
Title: SVP and General Counsel
---

Attest: Mitch Johnson
---
Assistant Secretary

For value received the undersigned, being the parent corporation of Select Comfort SC Corporation ("Tenant"), does hereby unconditionally guarantee the full payment and performance of all of Tenant's obligations hereunder. The undersigned agrees that notice to Tenant shall be deemed notice to the undersigned. In the event Landlord seeks the enforcement hereof the undersigned shall pay Landlord reasonable attorneys' fees and costs in addition to any other sums due hereunder or under the Lease.

SELECT COMFORT CORPORATION (SEAL)

By: Mark A. Kimball
---
Print Name: Mark A. Kimball
---
Title: SVP and General Counsel
---

Attest: Mitch Johnson
---
Assistant Secretary

SCHEDULE A

LEGAL DESCRIPTION OF DEMISED PREMISES,
INCLUDING ALL EASEMENTS

Those parcels of land, with improvements thereon, situate in Richland County, South Carolina, containing 31.775 acres and being shown as Parcels A and B on Site and Topographic Survey prepared for Frastacky Associates, Inc. by B.P. Barber & Associates, Inc. dated November 15, 2001, last revised April 24, 2002, said plat being incorporated herein by reference, said parcels being collectively described as follows:

BEGINNING at a rebar at the southernmost corner of Parcel A whereat said property corners with property of Broad River - Irmo Associates, Ltd. along the eastern margin of the right-of-way of U.S. Interstate 26 and running along said right-of-way as follows: N33(degree)49'34"W - 82.23 feet to a rebar; S56(degree)10'26'W - 5.00 feet to a rebar; N33(degree)49'34"W - 241.18 feet to a rebar; S56(degree)10'26"W - 18.23 feet to a rebar; N33(degree)31'32"W - 511.36 feet to a rebar; N33(degree)31'32"W - 33.44 feet to a concrete monument; N10(degree)28'49"W - 33.94 feet to a rebar; thence turning and running along properties of Bobby Joe & Joyce L. Monts and Roof E. Lowman Life Estate N69(degree)32'06"E - 412.78 feet to a rebar; thence turning and running along property of Roof E. Lowman N72(degree)51'20"E as follows: 548.54 feet to a rebar; 562.29 feet to a pipe; thence turning and running along property of R.E. & Eula M. Lowman N72(degree)51'20"E - 487.96 feet to a rock; thence turning and running along property of Roof E. Lowman S44(degree)25'02"E - 499.56 feet to a pipe; thence turning and running along property of Broad River - Irmo Associates, Ltd. S60(degree)19'58"W from rebar to rebar as follows: 1,138.24 feet; 875.06 feet to the Point of Beginning, be all measurements a little more or less.

[Portions of this Exhibit have been omitted pursuant to a request for confidential treatment under Rule 24b-2 of the Securities Exchange Act of 1934, as amended. A copy of this Exhibit with the portions intact has been filed separately with the Securities and Exchange Commission.]

# MASTER AGREEMENT

This Master Agreement, made and entered into this, by and between Select Comfort Corporation, a corporation organized and existing under the laws of the state of Minnesota, hereinafter referred to as "Buyer" and XXXXXX, organized under the laws of XXXXXXXX, hereinafter referred to as "Seller".

[Portions of this recital have been omitted pursuant to a request for confidential treatment under Rule 24b-2 of the Securities Exchange Act of 1934, as amended. A copy of this Exhibit with this recital intact has been filed separately with the Securities and Exchange Commission.]

WINTNESS:

WHEREAS, Buyer is a user of the goods hereinafter described and desires to establish a formal relationship for the purchase from Seller of such goods; and

WHEREAS, Seller is the manufacturer and supplier of such goods and is willing to provide and sell them to Buyer, all upon the terms and conditions hereinafter stated.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein set forth, the parties hereby agree as follows:

## ARTICLE 1.
## DEFINATIONS

For purposes of this Agreement, the following terms, word and phrases, where written with an initial capital letter, shall have the following meanings:

1.1 "Products" shall mean the air chambers manufactured by Seller according to the Master Specification Exhibit III attached;

1.2 "Improvements" shall mean modifications and/or enhancements to the design of products owned by Buyer, developed by either party during the term of this Agreement as per the Master Specification Exhibit III attached.

ARTICLE 2.
SUPPLY AND PURCHASE

2.1 During the term of this Agreement, Buyer agrees to purchase from Seller, and Seller agrees to supply to Buyer, at the prices determined in accordance herewith, and subject to the terms and conditions hereinafter set forth, the annual minimum volumes of Products set forth in Exhibit IV as defined by Exhibit III, Master Specification attached hereto from Seller.

2.2 Seller agrees that all air chamber "Products", as specified in Exhibit III, shall be delivered exclusively to Buyer or a company designated by the Buyer. All inquiries that Seller receives on a worldwide basis relative to Buyer's air chamber "Products" as specified in Exhibit III, shall be directed to Buyer.

ARTICLE 3.
ORDERS, DELIVERY AND MODIFICATION OF PRODUCTS

3.1 Purchase Orders. Buyer shall submit purchase orders for the Products a minimum of 14 days prior to the requested delivery date. The delivery date is the date the order is expected to leave the factory en-route to the FOB point. Seller shall advise within 2 business days of receipt of the order if they are unable to fulfill the order as requested. All purchase orders shall be mutually executed in accordance with the terms and conditions of this Agreement and at the prices established herein.

3.2 Delivery of Products. Seller shall deliver the Products within the times specified on the individual purchase orders, in the quantities specified on the individual purchase orders and at the prices specified herein, all in accordance with Buyer's instructions and Master Specifications (Exhibit III). Buyer reserves the right to adjust the mix of the product with a minimum of 14 days notice from the requested delivery date.

3.3 Stock outs: Buyer shall reserve the right to assert claims for actual costs incurred due to the Seller's failure to deliver the product against a confirmed purchase order on the confirmed ship date. All claims shall be submitted in writing to the Seller and accompanied with supporting documentation. Seller may reserve the right to have the claim audited by an independent 3rd party. This claim shall include, but not be limited to, the following costs: expedited freight, in-bound and out-bound, sales lost due to Buyer's inability to meet the 7-10 day delivery commitment to our Customers, or any additional handling or overtime costs incurred as a result of the late delivery.

3.4 Shipping Terms. The initial shipping term for Products delivered by Seller to Buyer pursuant to this agreement shall be the shipping term set forth in Exhibit I. Such shipping term may be changed by the parties upon mutual agreement in writing at any time during the term of this agreement. The shipping terms stipulated by the Parties shall be interpreted in accordance with the terms of the Incoterm '90 defined by the International Chamber of Commerce. In the event of a change in the shipping term, the parties shall adjust the prices for Products set forth in Exhibit I to reflect the changed shipping term.

3.5 Packaging and shipping will be done according to the Master Specification (Exhibit III) and Buyers instructions that will be in conformity with the other paragraphs of the Agreement.

## ARTICLE 4.
## QUALITY OF PRODUCTS

The quality of all Products delivered by Seller shall be in accordance with the Quality Requirements and Acceptance Criteria, Exhibit II.

## ARTICLE 5.
## COOPERATION

The parties agree to cooperate in value engineering and product development efforts relating to quality improvement and cost reduction of the Products. Such efforts shall take the form and extent as mutually agreed to by the parties in writing. A cost sharing formula for any savings achieved by these efforts shall be mutually determined and the unit pricing established under Exhibit I shall be revised accordingly to reflect such savings. It is Buyer's expectation that the Seller take a lead role in investigating and presenting new material and process improvements in the air chamber technology.

## ARTICLE 6.
## PRICES AND PAYMENT

Prices and Adjustments. The pricing to be paid by the Buyer for the Products purchased hereunder shall be the prices set forth in Exhibit I attached hereto. In addition to any changes to such prices pursuant to Paragraph 3.4, such prices may be subject to adjustments as agreed to by the parities. A minimum of 60 days written notice is required prior to the effective date of the requested price adjustment. The adjusted price shall be guaranteed for a minimum of 6 (six) months from the effective date of the price adjustment. Such adjusted prices shall be substituted for the prices set forth in Exhibit I, and a new Exhibit I, as so modified shall be attached to this Agreement.

6.1 Payment Terms. Payment for delivered Products shall be made via a wire transfer by Buyer in United States Dollars thirty (30) days from the date of the Bill of Lading for Products ordered and delivered. Such payment terms may be changed by the parties upon mutual agreement in writing at any time during the term of this agreement.

6.2 Late Payments. If the Buyer is in delay of payment to the Seller, Seller reserves the right to assert a claim to the buyer for interest incurred at the rate of 0.05% per day for each day payment is delayed beyond the original due date of the invoice.

6.2.1 In the event that payment is delayed beyond 30 days from the original due date of the invoice, Supplier reserves the right to withhold confirmed shipments to the Buyer until payment for outstanding invoices is received by the Seller.

ARTICLE 7.
TAXES

Except as otherwise provided in this Agreement Seller shall be responsible for and shall pay any and all (a) export duties, (b) gross receipt, income and pre-sale taxes and (c) other governmental charges which relate to the production, delivery and sale of the Products, as such are now or may hereafter be imposed under or by any state, local or municipal governmental authority or agency in the XXXXXXXXX. Seller shall not be responsible and shall not pay any taxes or charges as outlined in above levied after delivery to Buyer.

[A portion of this Article has been omitted pursuant to a request for confidential treatment under Rule 24b-2 of the Securities Exchange Act of 1934, as amended. A copy of this Exhibit with this Article intact has been filed separately with the Securities and Exchange Commission.]

ARTICLE 8.
ACCEPTANCE AND WARRANTY

8. Buyer shall accept all Product that meets the Select Comforts Air Chamber, Rubber/Cotton Vulcanized, Test and Inspection Specification SP-004, conducted at the Seller site prior to shipment to Buyer. Buyer may forego inspection at the point of receipt or in-coming and/or in-process quality acceptance tests at the time the products are being prepared for shipment to Buyer's customers at its principal place(s) of business in Minneapolis, Minnesota; Irmo, South Carolina; and, Salt Lake City, Utah. Buyer and Seller shall agree to a quality discount percentage that will be applied to invoices at the time the Product ships from the Seller to Buyer. This quality discount XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX The quality discount will be reviewed at least every XXXX and adjusted based on the last XXXXXX activity. A review of the quality discount will be warranted prior to XXXXXXX in the event the quality discount average varies more than XXXXX from the established quality discount over any XXXXXXX period. In the event of a change in the quality discount, Exhibit II will be updated to reflect the revised quality discount.

[Portions of this Exhibit have been omitted pursuant to a request for confidential treatment under Rule 24b-2 of the Securities Exchange Act of 1934, as amended. A

copy of this Exhibit with the portions intact has been filed separately with the Securities and Exchange Commission.] 9.

8.1.1. Seller warrants to the Buyer from the date of delivery of the Products to the Buyer in accordance with Section 3.2 of this Agreement that all Products sold hereunder shall (i) be free from any defects in material or workmanship and be of good and merchantable quality, (ii) conform to Buyer's specifications to any sample or prototype approved by Buyer and (iii) comply and have been produced, processed and delivered in conformity with Article 4 herein for the period defined in the warranty schedule contained in Exhibit II, Quality Requirements and Acceptance.

8.1.2. The foregoing warranties shall survive inspection of, delivery of and payment for the Products and shall run in favor of Buyer and its customers. If Seller breaches any of the foregoing warranties during the term of the warranty period specified in Exhibit II, or if Seller fails to perform or comply with any provision of this Agreement, Seller shall be liable to Buyer for any and all costs, expenses (including reasonable attorneys' fees, court costs and litigation expenses) and damages arising therefrom.

## ARTICLE 9.
## PROPRIETARY RIGHTS

9.1 Buyer retains all proprietary rights in and to all designs of the air chambers, as specified in the Master Specification, Exhibit III. The Seller agrees to continuously undertake efforts concerning the quality improvements of the Products taking into consideration the market requirements and the economical production.

9.2 The Seller agrees to continue to make process and development improvements to the product according to special requests made by Buyer. Such improvements are made for consideration on basis of mutual written agreements of the parties. The costs of these development activities are to be borne as agreed upon in writing by both parties prior to the actual development activities.

9.3 Seller retains all proprietary rights in and to all engineering details and other data pertaining to its manufacturing technology and processes.

## ARTICLE 10.
## TRADEMARKS

Nothing contained in the Agreement will be deemed to grant either party any right or interest in the trademarks, trade name, service marks, proprietary words, or symbols which the other may have adopted or used at any time in the course of its business.

ARTICLE 11.
CONFIDENTIALITY

Each party agrees that all information disclosed to it or any of its affiliates by other, whether verbally or in writing, shall be presumed to be proprietary and confidential to such party, unless otherwise stated in writing. Each party shall prevent the disclosure of any such proprietary information in strictest confidence absent service of compulsory process. Each party shall not during the term of this Agreement or thereafter, use any such proprietary information for any purpose other than as specifically set forth in the Agreement.

ARTICLE 12.
COMPETITIVE ACTIVITIES

During the term of this Agreement, Seller will not participate in the management or operations of any enterprise engaged in activities in competition with the business of Buyer.

ARTICLE 13.
TERM AND TERMINATION

13.1 Term of Agreement. This agreement shall take effect as of the date hereof and shall continue in full force and effect for a period of (4) years and thereafter shall be automatically renewed for successive terms or (1) one year each. Either party may provide written notice to the other party at least 365 days prior to the expiration of the initial term or any renewal term of its desire not to renew this Agreement upon the expiration of the relevant term.

13.2 Termination. This Agreement may be terminated only in accordance with the following provisions:

13.2.1 This Agreement may be terminated at any time upon the mutual written consent of the parties hereto;

13.2.2 Either party hereto may terminate this Agreement by giving notice in writing to the other party in the event that the other party is in material breach of this Agreement and shall have failed to cure such breach within (30) thirty days of receipt of written notice thereof from the first party specifying the nature of the breach; or

13.2.3 Either party hereto may terminate this Agreement at any time by giving notice in writing to the other party, if (1) the other party at any time (i) file or have filed against it a petition of any type as to its bankruptcy, (ii) be adjudged bankrupt or insolvent, (iii) make and assignment for the benefit of its creditors, or (iv) go into liquidation receivership; (2) a trustee, receiver or other equivalent officer is appointed for the other party by any

court or governmental authority or any third party to administrator or liquidate, who is not dismissed within (60) sixty days of the date of appointment; or (3) dissolution proceedings are commenced by or against the other party, which are not dismissed within (60) sixty days of commencement.

13.2.4 This Agreement may be terminated by Buyer or Seller with a minimum of (365) three hundred sixty five days written notice if either party discontinues using the Products in its business.

13.3 Rights and Obligations on Termination. In the event of the termination of this agreement, the parties hereto shall have the following rights and obligations:

13.3.1 The obligations of Seller and Buyer under the terms of Sections 4, 7, 8, 9, 10 and 11 hereof shall survive the termination of this Agreement.

13.3.2 Within (20) twenty days after the termination of this Agreement, each party shall either return to the other any and all proprietary or provide a written certification of destruction of such confidential information in its possession or under its control.

13.3.3 Termination or expiration of this Agreement shall not release either party from the obligation to make payment to the other party of all amounts then and thereafter due payable under this Agreement within (30) thirty days of termination.

## ARTICLE 14.
## FORCE MAJEURE

14.1 Definition. Force Majeure shall mean any event or condition, not existing as of the date of signature of this Agreement, not reasonably foreseeable as of such date and not reasonably within the control of either party, which prevents in whole or in material part the performance of such obligations so difficult or costly as to make such performance commercially unreasonable. Without limiting the foregoing, the following shall constitute events or conditions of Force Majeure: acts of State or, governmental action, riots, disturbance, war, strikes, lockouts, slowdowns, prolonged shortage of energy supplies, epidemics, fire, flood, hurricane, typhoon, earthquake, lightning and explosion.

14.2 Notice. Upon giving notice to the other party, a party affected by an event of Force Majeure shall be released without any liability on its part from the performance of its obligations under this Agreement, except for the obligation to pay any amounts due and owing hereunder, but only to the extent and only for the period that its performance of such obligations is prevented by the event of Force Majeure. Such notice shall include a description of the nature of the event of Force Majeure, its cause and possible consequences. The party claiming Force Majeure shall promptly notify the other party to the terminations of such event.

14.3 Suspension of Performance. During the period that the performance by one of the parties of its obligations under this Agreement has been suspended by reason of an event of Force

Majeure, the other party may likewise suspend the performance of all or part of its obligations hereunder.

## ARTICLE 15.
## DISPUTES AND GOVERNING LAW

15.1 Disputes. The parties hereto shall submit any disputes arising under this Agreement to arbitration. Such arbitration proceedings shall be conducted in English and shall be carried on in the city of Vienna, Austria or any other place mutually agreeable to the Parties, under the UNCITRAL Arbitration Rules. Judgement upon the award rendered by the arbitrator in favor of the prevailing party, which shall include an award for the payment of costs, attorneys' fees and expenses of the arbitration proceedings, may be entered in any court of competent jurisdiction and assets may be attached in any country in the world pursuant to such judgement.

## ARTICLE 16.
## GENERAL TERMS AND CONDITIONS

16.1 Relationship. This Agreement does not make either party hereto the employee, agent or legal representative of the other party for any purpose whatsoever. Neither party hereto is granted any right or authority to assume or to create any obligation or responsibility, expressed or implied, on behalf of or in the name of the other party. In fulfilling its obligations pursuant to the Agreement, each party hereto shall act as an independent contractor.

16.2 Assignment. Each party shall not assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the other party. This Agreement and the rights and obligation arising hereunder shall not be affected by any change in the corporate structure of ownership of the parties.

16.3 Notices. All notices permitted or required to be given hereunder shall be delivered personally or sent by telecopy or registered or certified air mail, postage prepaid, return receipt requested, addressed to the addresses of the parties hereto as set forth above or to such other addresses as the given parties may designate by like notice from time to time. Notices so given shall be effective (a) upon the date of personal delivery, (b) if sent by telecopy, concurrently with the transmission thereof if the sender's machine produces a transmission report without notice of a communication fault, (c) on the (3rd) third business day following the date on which such notice is mailed by registered or certified air mail.

16.4 Entire Agreement. This Agreement, including the Exhibits attached hereto and by this reference made an integral part hereof, constitute the entire agreement of the parties hereto with respect to the subject matter hereof and thereof, and supersede all previous proposals, verbal or written, expressed or implied, and all negotiations, conversations or discussions heretofore between the parties hereto related to the subject matter of this Agreement.

16.5 Amendment. This Agreement shall not be deemed or construed to be modified, amended, rescinded, canceled or waived, in whole or in part, except by written statement signed by both parties hereto.

16.6 Severability. In the event that any of the terms of this Agreement are in conflict with any rule of law or statutory provision or otherwise unenforceable under the laws or regulations of any government or subdivision thereof, such terms shall be deemed stricken from this Agreement, but such invalidity or unenforceability of any such provisions hereof does substantial violence to, or where the invalid or unenforceable provisions comprise an integral part of, or otherwise inseparable from, the remainder of this Agreement.

16.7 Compliance with Applicable Laws. The parties to this Agreement shall at all times conduct their activities hereunder in accordance with all applicable federal, state and local laws, rules and governmental regulations.

16.8 Waiver. No failure by either party hereto to take any action or assert any right hereunder shall be deemed to be a waiver of such right in the event of the continuation or repetition of the circumstances giving rise to such right.

16.9 Counterparts. This Agreement may be executed in (2) two or more counterparts in the English language, each of which shall be deemed an original, but all of which shall constitute (1) one and the same instrument.

16.10 Remedies Cumulative. Each of the right and remedies of the parties set forth in this Agreement shall be cumulative with all other rights and remedies, as well as with all rights and remedies of the partied hereto otherwise available at law or in equity.

16.11 Indemnification. Each party shall indemnify the other and hold it harmless from and against any and all costs including reasonable attorneys' fees, court costs and litigation expenses, losses, expenses and damages incurred by the other party in connection with any claim or cause of action brought by any third person or part against it which, in whole or in part is based upon or arises out of any breach of any of its obligations hereunder.

16.12 Captions. The captions of Articles and Sections of this Agreement are included for convenient reference only, shall not be construed as part of this Agreement and shall not be used to define, limit, extend or interpret the terms hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first written above.

SELECT COMFORT CORPERATION

By /s/ Kathleen Graber

Title VP Supply Chain Mgmt

Date:10/18/02

By /s/ Ing. Jiri Kaluzik

Title Managing Director

Date:10/22/02

EXHIBIT I
Product Part Number, Description and Pricing Structure

The following prices shall be in effect from January 2002 through December 2002 and shall only be amended in accordance with the provisions of Article 6.1, Prices and payments. The baseline exchange rate used to determine the pricing is $1.00 USD equals XXXX.

| ITEM NUMBER | DESCRIPTION | COST / EA. |
|---|---|---|
| 100133 | Mini Display | $xxxx |
| 100270 | Twin | $xxxx |
| 100271 | Full | $xxxx |
| 100272 | Queen Single | $xxxx |
| 100273 | Queen Dual | $xxxx |
| 100274 | E-King | $xxxx |
| 100275 | C-King | $xxxx |
| 100276 | TXL | $xxxx |
| 100277 | Super Single | $xxxx |
| 100278 | Super Queen | $xxxx |
| 100279 | Super King | $xxxx |

| ITEM NUMBER | DESCRIPTION | COST / EA. |
|---|---|---|
| 100281 | Euro | $xxxx |
| 105757 | Expanded Queen | $xxxx |
| 105758 | Flawed Twin | $xxxx |
| 105759 | Flawed Full | $xxxx |
| 105760 | Flawed Queen Dual | $xxxx |
| 105761 | Flawed E-King | $xxxx |

[Portions of this Exhibit I have been omitted pursuant to a request for confidential treatment under Rule 24b-2 of the Securities Exchange Act of 1934, as amended. A copy of this Exhibit with the portions intact has been filed separately with the Securities and Exchange Commission.]

DELIVERY/SHIPPING TERMS

o FOB German - Bremerhaven or Hamburg Ocean Port, full 20' or 40' container delivered

PRICING/DISCOUNT STRUCTURE

Each January 1st, for the years 2003 - 2005 Exhibit I will be updated to reflect the respective annual price reduction. In addition to the annual XXX reduction, there will be an annual rebate program based on the following volume:

400,001 - 500,000 air chambers per year (Jan 1 - Dec 31) XXX
500,001 + air chambers per year (Jan 1 - Dec 31) XXX

[Portions of this Exhibit have been omitted pursuant to a request for confidential treatment under Rule 24b-2 of the Securities Exchange Act of 1934, as amended. A copy of this Exhibit with the portions intact has been filed separately with the Securities and Exchange Commission.]

These rebates will be calculated only on the air chambers shipped within the calendar year, which exceed the volumes represented above. Eligible rebates will be applied to the invoice at the point of shipment on the chambers that exceed the volumes represented above.

EXHIBIT II

Quality Requirements and Acceptance Criteria

The Buyers engineering specifications and engineering drawing requirements take precedence over other requirements communicated to the Seller, whether such requirements are verbal or written, except where a Deviation From Specification (DFS) is approved and issued to the Seller by the Buyer.

The Seller shall review pre-production, prototype, first-piece, sample, or other initial part or product, with the Buyer. This review shall include representative samples, process data, and inspection and test data, for the purpose of determining if the part or product meets the Buyers engineering specifications and engineering drawing requirements, as well as safety and other regulatory requirements specific to the part or product supplied.

Either Seller or Buyer may initiate a DFS where there is a realized need to depart from requirements documented within the Buyers engineering specifications or engineering drawings.

The Seller shall review known part or product deficiencies with the Buyer prior to shipping the part or product to the Buyer. In some instances, Buyer may approve a DFS to allow the Seller to produce deficient parts or products for a limited period of time, or to ship a limited quantity of parts or products exhibiting a known deficiency.

Seller disputes concerning requirements, or whether part or product meets the Buyers engineering specifications or engineering drawing requirements, shall be reviewed and mediated by the Buyers representatives from the Quality Control, Manufacturing Engineering, R&D, and Supply Chain Management departments.

The Seller shall install appropriate controls and methods to ensure the part or product supplied meets the Buyers engineering specifications and engineering drawing requirements upon final delivery to the Buyer. Seller controls shall be considered for, but not limited to, operations within raw material receiving, work-in-process, finished goods, packaging, and shipping.

Buyer may, at any point, reject part or product that does not meet the Buyers engineering specifications, engineering drawing requirements, or deviated requirements (per an approved and issued DFS). This shall include at the receiving, storage, value-added operations, packaging, shipping, or customer service stages of Buyer's use, and/or sale of the supplied part or product.

Rejected part or product shall be reviewed by the Buyer with the Seller for the purpose of making a disposition of the part or product. The Seller shall have the opportunity to review rejected part or product, and to dispute the determination of rejection.

Where a rejection is found to be valid, the Seller shall perform an analysis of the part, product, process, or other element within the Seller's scope of operations, as necessary, and issue a report of corrective action to the Buyer.

The Seller shall allow buyer representatives to discuss, review, inspect, measure, test, or otherwise evaluate part or product issues with Seller representatives within the Seller's manufacturing facility(ies), at a Buyer's facility, or at a mutually agreed upon location. Upon suitable notification to the Seller, Buyer shall be allowed to verify compliance with this agreement, and to perform on-site audits of the Seller's

manufacturing processes related to part or product as specified and purchased by the Buyer.

Seller efforts to improve, cost-reduce, boost efficiencies, or otherwise change the part, product, or the process originally agreed to, shall be reviewed in advance with the Buyer, whether or not this activity has any affect or influence on the part or product meeting the Buyer's engineering specifications or engineering drawing requirements.

The Seller shall review plans to subcontract to another corporate entity, any part or product the Buyer has contracted with the Seller to supply. This review shall be completed prior to any such subcontracting, and shall include the review and approval by the buyer of the Seller's quality plan for the subcontracted part or product. In some instances, Buyer will require first piece samples, including inspection and test data, from the subcontractor prior to approval of part or product manufactured by the subcontractor. In any event, the Seller shall remain fully and completely responsible for supplying the part or product to the Buyer's engineering specification and engineering drawing requirements.

All air chamber testing shall be in accordance with Select Comfort's Air Chamber, Rubber/Cotton Vulcanized Construction, Test and Inspection Specification SP-004.

QUALITY DISCOUNT PERCENTAGE: as of February 2002 is XXX and shall remain in effect as outlined in Article 8.

[Portions of this Exhibit have been omitted pursuant to a request for confidential treatment under Rule 24b-2 of the Securities Exchange Act of 1934, as amended. A copy of this Exhibit with the portions intact has been filed separately with the Securities and Exchange Commission.]

WARRANTY SCHEDULE:

| | |
|---|---|
| January 1, 2002 - December 31, 2003 | 36 Month warranty period |
| January 1, 2004 - December 31, 2005 | 48 Month warranty period |
| January 1, 2006 and beyond | 60 Month warranty period |

EXHIBIT III
Master Specification

[The entire contents of this Exhibit III have been omitted pursuant to a request for confidential treatment under Rule 24b-2 of the Securities Exchange Act of 1934, as amended. A copy of this Exhibit with the contents intact has been filed separately with the Securities and Exchange Commission.

Exhibit IV
Forecasted Volume

| Fiscal Year | Volume Range |
|---|---|
| 2002 | 425,000 - 475,000 |
| 2003 | 450,000 - 500,000 |
| 2004 | 475,000 - 525,000 |
| 2005 | 525,000 - 575,000 |

Best effort will be made to submit standard purchase orders that represent 12 equal monthly quantities plus or minus 20% in any given month.

Fiscal Year means the twelve-month period from January 1 through December 31. Any changes to the volumes represented above shall be mutually agreed to with a minimum of three months notice prior to the requested change date.

METROPOLITAN LIFE INSURANCE COMPANY
ADOPTION AGREEMENT
FOR A
NON-STANDARDIZED
401(k)/PROFIT SHARING PLAN

BY SIGNING THIS ADOPTION AGREEMENT, YOU (THE EMPLOYER) ARE ADOPTING OR AMENDING A 401(k)/PROFIT SHARING PLAN FOR THE BENEFIT OF YOUR ELIGIBLE EMPLOYEES. THE TERMS OF THE PLAN ARE CONTAINED IN THE METROPOLITAN LIFE INSURANCE COMPANY DEFINED CONTRIBUTION BASIC PLAN DOCUMENT AND IN THIS ADOPTION AGREEMENT.

PLEASE FILL OUT THIS ADOPTION AGREEMENT COMPLETELY AND PROPERLY. FAILURE TO DO SO MAY RESULT IN PLAN DISQUALIFICATION. PLEASE TYPE OR PRINT CLEARLY WITH A PEN; DO NOT USE A PENCIL. PLEASE MAKE A COPY OF THIS ADOPTION AGREEMENT FOR YOUR RECORDS.

## PART A - GENERAL INFORMATION (PLAN SECTIONS 2.9, 2.20)

A.1 NAME OF PLAN: This Plan shall be known as the Select Comfort Profit Sharing and 401(k) Plan

A.2. NAME OF THE EMPLOYER: Select Comfort Corporation

A.3. EMPLOYER TAX IDENTIFICATION NUMBER: 41-1597886

A.4. EMPLOYER'S ADDRESS: 6104 Trenton Lane North, Plymouth, MN 55442

A.5. EMPLOYER'S TELEPHONE NUMBER: (763) 551-8770

A.6. TYPE OF BUSINESS ENTITY:

| | |
|---|---|
| [ ] Sole Proprietor | [ ] S Corporation |
| [ ] Partnership | \|X\| C Corporation |
| [ ] Limited Liability Partnership | [ ] Tax-Exempt Organization |
| [ ] Limited Liability Company | [ ] Governmental Entity |
| | [ ] Other |

A.7. DATE EMPLOYER'S BUSINESS COMMENCED: February 1987

A.8. LAST DAY OF EMPLOYER'S TAXABLE YEAR: December 31 (month/day)

A.9. PLAN NUMBER: 001

A.10. PLAN YEAR (PLAN SECTION 2.23)

The Plan Year is the Employer's Taxable Year unless another 12 consecutive month period is selected below.

[ ] Indicate last day of Plan Year if other than the Employer's Taxable Year _____
(month/day)

[ ] For short Plan Years created by this Adoption Agreement, the Plan Year will be the period commencing on _____ and ending on _____; (month/day)
(month/day)
thereafter, the Plan Year will be the 12 month period ending on _____.
(month/day)

A.11. LIMITATION YEAR (PLAN SECTION 13.1(h))

For the purpose of determining whether the Plan has limited the Participants' Annual Additions under IRC Section 415, the Limitation Year is the Plan Year.

A.12. NAME OF PLAN(S) BEING AMENDED: Select Comfort Profit Sharing and 401(k) Plan
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---
Original Effective Date(s): January 1, 1994
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A.13. ADOPTION OR AMENDMENT OF PLAN (COMPLETE ONE OF THE FOLLOWING.) (PLAN SECTION 2.6)

[ ] The Effective Date of the new Plan established by the execution of this Adoption Agreement is: _____ (CANNOT BE EARLIER THAN THE FIRST DAY OF THE PLAN YEAR IN WHICH THIS PLAN IS ADOPTED. PLEASE NOTE, HOWEVER, THAT UNDER NO CIRCUMSTANCES MAY 401(k) SAVINGS CONTRIBUTIONS COMMENCE PRIOR TO THE DATE THIS PLAN IS ADOPTED.)

|X| The Effective Date of Amendment(s) adopted by the execution of this Adoption Agreement is: January 1, 1997 unless specified otherwise.
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(SPECIAL NOTE: IF THIS PLAN IS ADOPTED OR AMENDED EFFECTIVE AS OF THE 1997, 1998, 1999, 2000 OR 2001 PLAN YEAR, THEN THE PROVISIONS OF SECTIONS C.3 (SAFE HARBOR CONTRIBUTIONS), C.6 (ADP/ACP TESTING METHOD), C.7, (DETERMINATION OF HIGHLY COMPENSATED EMPLOYEES) D.8 (MINIMUM DISTRIBUTIONS AND CASH-OUT OF ACCOUNT BALANCES) ARE EFFECTIVE FOR THE 2002 PLAN YEAR AND LATER. THE OPERATION OF THE PROVISIONS OF THESE SECTIONS DURING THE 1997-2001 PLAN YEARS, TO THE EXTENT APPLICABLE, IS REFLECTED IN SECTION G OF THIS ADOPTION AGREEMENT)

A.14. FROZEN PLAN AMENDMENT

[ ] EFFECTIVE _____, THIS PLAN IS FROZEN. ALL CONTRIBUTIONS TO THE PLAN WILL CEASE AND NO NEW PARTICIPANTS WILL BE ALLOWED TO ENTER THE PLAN. (If elected, skip Parts B and C.1 - C.5. Go directly to Part C.6.).

PART B - PARTICIPATION (PLAN SECTION 4)

B.1. ELIGIBILITY FOR 401(k) AND AFTER-TAX SAVINGS CONTRIBUTIONS

AGE REQUIREMENT

There will be no age requirement unless checked below.

|X| An Employee must have attained the age of 21 (MAY NOT BE GREATER THAN 21).

SERVICE REQUIREMENT

There will be no service requirement unless checked below.

|X| One Year of Service is required for part time employees (under 30 hours per week). (If elected, complete the "Year Of Service" information under B.4)

[ ] ____ Months of Service (NOT TO EXCEED 12. If the service requirement selected is less than 12 months, an Employee will not be required to complete any specified number of Hours of Service to receive credit for such eligibility period.)

B.2. SPECIAL ELIGIBILITY FOR EMPLOYER MATCHING AND SUPPLEMENTAL PROFIT SHARING CONTRIBUTIONS

|X| If elected, the following special eligibility conditions will apply for all Employer Matching Contributions and Supplemental Employer Profit Sharing Contributions, as elected below. Otherwise, the above eligibility requirements for 401(k) and After-Tax Savings Contributions will apply for all Employer Matching Contributions and Supplemental Employer Profit Sharing Contributions.

AGE REQUIREMENT

There will be no age requirement unless checked below.

|X| An Employee must have attained the age of 21 (MAY NOT BE GREATER THAN 21).

SERVICE REQUIREMENT

There will be no service requirement unless checked below.

[ ] One Year of Service. (If elected, complete the "Year Of Service" information under B.4)

[ ] Two Years of Service. (IF ELECTED COMPLETE THE "YEAR OF SERVICE" INFORMATION UNDER B.4, AND ELECT THE 100% VESTING (VESTING SCHEDULE C) UNDER D.1.)

[ ] ____ Months of Service (NOT TO EXCEED 12. If the service requirement selected is less than 12 months, an Employee will not be required to complete any specified number of Hours of Service to receive credit for such eligibility period.)

B.3. WAIVER OF ELIGIBILITY REQUIREMENTS FOR NEW OR AMENDED PLAN

[ ] If checked, each Employee employed by a participating Employer on the Effective Date or Amendment Date, is automatically eligible to participate without meeting any age or service requirement. Employees hired after the Effective Date or Amendment Date are eligible upon satisfying any service and/or age requirement.

B.4. SERVICE RULES FOR ELIGIBILITY

YEAR OF SERVICE (CHOOSE EITHER ELAPSED TIME OR HOURS OF SERVICE METHOD)

[ ] ELAPSED TIME METHOD (PLAN SECTION 3B)

An Employee's Service will be determined using the Elapsed Time Method.

|X| HOURS OF SERVICE METHOD (PLAN SECTION 3A)

An Employee's service will be determined by counting Hours of Service during the Computation Period.

The Employee must complete 1000 Hours of Service during a Computation Period to be credited with a Year of Service unless a lesser number is here indicated _____.
(INSERT NUMBER; CANNOT EXCEED 1,000.)

|X| ACTUAL HOURS COUNTING METHOD. The Plan Administrator will determine if the Participant is entitled to a Year of Service as defined above by counting the actual hours the Employee worked or for which he or she is paid during the Computation Period unless the Equivalency Method is elected below.

[ ] EQUIVALENCY METHOD. Instead of counting actual hours, the Employee is credited with the specified number of hours as elected:
[ ] 10 hours per day
[ ] 45 hours per week
[ ] 95 per half month
[ ] 190 hours per month

ELIGIBILITY COMPUTATION PERIODS

Computation Periods used to measure an Employee's Years of Service for eligibility purposes are:

[ ] An Employee's Employment Years.

|X| An Employee's first Employment Year, the first Plan Year beginning within his first Employment Year, and subsequent Plan Years. (CANNOT BE SELECTED IF THE ELAPSED TIME METHOD IS CHOSEN ABOVE.)

B.5. PRIOR SERVICE WITH OTHER BUSINESSES (PLAN SECTIONS 3A.10, 3B.6)

REQUIRED CREDITING OF PRIOR SERVICE WITH OTHER BUSINESSES

Service with the following employers described in this paragraph will automatically count as service for the purpose of determining eligibility and vesting: (a) Employers that are related in the manner described in Code Section 414 (b), (c), (m) or (o), limited to the time the entities were related, unless prior service is also elected below; or (b) predecessor employers who previously carried on the current Employer's business and maintained this Plan.

OPTIONAL CREDITING OF PRIOR SERVICE WITH OTHER BUSINESSES

[ ] RELATED EMPLOYERS - PRIOR SERVICE. Years of Service with the entities related to the Employer in the manner described in Code Section 414(b), (c), (m) or (o) shall include years BEFORE such entities were so related, only if such employers are listed below:

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[ ] OTHER EMPLOYERS.

(i) List any predecessor employer who previously carried on the Employer's business, but DID NOT previously maintain this Plan, for which service will be counted for eligibility and vesting:

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(ii) List any prior employer, other than an predecessor employer, for which service will be counted for eligibility and vesting. (In order to grant this pre-participation service, you must determine that such crediting of this service has met the requirements of Treasury Reg. Section 1.401(a)(4)-11(d)(3)(iii)).

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B.6. ENTRY DATES (PLAN SECTIONS 4.3, 4.5)

The Plan's Entry Dates will be the first day of each of the first and seventh months of the Plan Year, unless otherwise elected below:

[ ] Payroll Entry Dates. The first day of each payroll period is an Entry Date.

|X| Monthly Entry Dates. The first day of each month is an Entry Date.

[ ] Quarterly Entry Dates. The first day of each of the first, fourth, seventh and tenth months of the Plan Year is an Entry Date.

[ ] Annual Entry Date. The first day of each Plan Year is an Entry Date. (Service requirement may not be greater than 6 months and age requirement may not be greater than 20 1/2.)

[ ] The Effective Date of this plan amendment is an Entry Date. (This is a special one-time election to allow the effective date of this amendment to be an Entry Date. The Plan's subsequent Entry Dates will be as elected above.)

The original Effective Date of the Plan is an Entry Date.

B.7. CLASS EXCLUSIONS (PLAN SECTION 4.1)

The following classes of individuals are not eligible to participate:

|X| All Employees covered by a collective bargaining agreement, where retirement benefits were the subject of good faith bargaining with the Employer and the agreement does not call for inclusion in this Plan, except for the following unit(s) of Employees:
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[ ] All nonresident alien Employees who receive no compensation from the Employer which

constitutes income from sources within the United States.

|X| All individuals performing services for the Employer under an agreement, whether oral or written, by which they acknowledge their status as independent contractors, notwithstanding that such person is later determined by a court of competent jurisdiction or the Internal Revenue Service to be common law employees for tax purposes.

|X| All individuals performing services for the Employer under a leasing arrangement entered into between the Employer and some other person, notwithstanding the fact that he or she is later determined by a court of competent jurisdiction or the Internal Revenue Service to be a common law employee or a Leased Employee.

[ ] Employees who became Employees as the result of a "Section 410(b)(6)(C) transaction" during the period beginning on the date of the transaction and ending on the last day of the transition period. This class exclusion applies to all such Employees except Employees of the following prior Employer(s) or division(s):

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(IF APPLICABLE, LIST ANY PRIOR EMPLOYER(s) OR DIVISION(s) INVOLVED IN THE SECTION 410(b)(6)(c) TRANSACTION WHICH YOU WANT TO INCLUDE IN THE PLAN DURING THE TRANSITION PERIOD.)

|X| Other (specify): Employees hired for a specific period of time or for the completion of a specific project.

(NOTE: THE EXCLUSION SELECTED IN OTHER ABOVE CANNOT BE BASED UPON THE NUMBER OF HOURS WORKED BY PARTICIPANTS SUCH AS PART-TIME EMPLOYEES RELATED EMPLOYERS REQUIRED TO BE AGGREGATED WITH THE SPONSORING EMPLOYER UNDER CODE SECTION 414(b), (c), (m) OR (o), ARE AUTOMATICALLY EXCLUDED FROM THIS PLAN UNLESS THEY ADOPT THE PLAN AT F.4 OF THIS ADOPTION AGREEMENT. ALTHOUGH THE PLAN MAY EXCLUDE A RELATED EMPLOYER, THE PLAN WILL NEED TO PASS ALL THE REQUIRED COVERAGE AND NONDISCRIMINATION TESTS.)

## PART C - CONTRIBUTIONS

### C.1. 401(K) SAVINGS CONTRIBUTIONS (PLAN SECTION 5.1)

[ ] No 401(k) Savings Contributions will be permitted in this Plan. This Plan is a Profit Sharing Plan only.

|X| Each Participant may make 401(k) Savings Contributions in accordance with the provisions and limits in the Plan document. A Participant's 401(k) Savings Contributions shall be equal to at least (Check applicable box(es).):

[ ] $ ---------- (MINIMUM OF $1.00)

|X| one percent (1%) of Plan Compensation (MINIMUM OF 1%)

A Participant's 401(k) Savings Contributions in a Plan Year may not exceed fifty percent (50%) of his or her Plan Compensation for the year. (IF A LIMIT IS DESIRED, INSERT A PERCENTAGE THAT WILL NOT EXCEED THE SECTION 415(c) MAXIMUM PERCENTAGE).

[ ] If checked, notwithstanding the above limitation, a Participant who is a Highly Compensated Employee may not make 401(k) Savings Contributions in a Plan Year in

excess of_____% of his or her Plan Compensation for the year. (PLEASE NOTE: THE PERCENTAGE INSERTED IN THIS LIMITATION MUST BE LESS THAN THE PERCENTAGE INSERTED IN THE ABOVE LIMITATION. INSERT A PERCENTAGE THAT WILL NOT EXCEED THE SECTION 415(c) MAXIMUM PERCENTAGE ).

SPECIAL ELECTION FOR BONUS PAYMENTS.

|X| The Employer will permit the Participants to make a special deferral election applicable to the annual management bonus payment only. This election will OVERRIDE the Participant's then current 401(k) Savings Contribution election as it relates to bonus payments only. This election applies only to those bonuses identified as annual management bonuses.

By making this election, the Employer will allow the Participants to defer all or any portion of a bonus payment up to: (CHECK ONE BOX, IF A LIMIT IS DESIRED)

|X| 50 % (100% MAXIMUM)

[ ] $ ----------

(NOTE: 401(k) Savings Contributions and Deferrals from Bonus Payments are subject to regulatory limits. Such Deferrals from Bonus Payments may not cause a Participant's 401(k) Savings Contributions for the Plan Year to exceed his or her Plan Compensation times the Plan maximum allowable deferral percentage or the maximum dollar amount permitted under Section 402(g) of the Code.)

DEEMED 401(k) CONTRIBUTION ELECTION (PLAN SECTION 5.1)

[ ] Each eligible Participant will be deemed to make 401(k) Savings Contributions in accordance with Section 5.1 of the Plan at the rate of ___% of Plan Compensation for each payroll period, unless such Participant timely elects another percentage, including 0%, in a format authorized by the Employer. Otherwise, Participants must affirmatively elect to make 401(k) Savings Contributions. Deemed 401(k) Contributions and any attributable Employer Matching Contributions will be invested in the Plan's default investment election, which is selected by the Employer.

EMPLOYEES AFFECTED BY THE DEEMED 401(k) CONTRIBUTION ELECTION (CHOOSE ONE):

[ ] Employees first eligible to participate in the Plan on and after the Adoption Date or Amendment Date specified in Section A.13 of the Adoption Agreement.

[ ] Employees first eligible to participate in the Plan before, on or after the Adoption Date or Amendment Date specified in Section A.13 of the Adoption Agreement.

C.2. AFTER-TAX SAVINGS CONTRIBUTIONS (PLAN SECTION 6.1)

[ ] Participants may make After-Tax Savings Contributions to the Plan in accordance with the provisions and limits in the Plan document. A Participant's After-Tax Savings Contributions shall be equal to at least (CHECK APPLICABLE BOX(ES).):

[ ] $ ---------- (MINIMUM OF $1.00)

[ ] ----- % of Plan Compensation (MINIMUM OF 1%)

A Participant's After-Tax Savings Contributions in a Plan Year may not exceed _____% (MAXIMUM 10%) of his or her Plan Compensation for the year. (IF A LIMIT IS DESIRED, INSERT THE PERCENTAGE).

[ ] If checked, notwithstanding the above limitation, a Participant who is a Highly Compensated Employee may not make After-Tax Savings Contributions in a Plan Year in excess of ____% of his or her Plan Compensation for the year. (PLEASE NOTE: THE PERCENTAGE INSERTED IN THIS LIMITATION MUST BE LESS THAN THE PERCENTAGE INSERTED IN THE ABOVE LIMITATION. INSERT A PERCENTAGE THAT WILL NOT EXCEED THE SECTION 415(c) MAXIMUM PERCENTAGE ).

(NOTE: IF YOU ELECT TO USE THE SAFE HARBOR RULES UNDER C.3 FOR A PLAN YEAR BEGINNING ON OR AFTER JANUARY 1,1999, YOU MUST PERFORM ACP TESTING AT LEAST TO THE EXTENT OF AFTER-TAX SAVINGS CONTRIBUTIONS).

C.3. SAFE HARBOR EMPLOYER CONTRIBUTIONS (PLAN SECTIONS 5.10, 6.10)

THE PLAN WILL NOT BE SUBJECT TO THE ANNUAL ADP/ACP TESTING TO THE EXTENT THE EMPLOYER ELECTS THE SAFE HARBOR OPTION, ONE OF THE SAFE HARBOR CONTRIBUTION FORMULAS AND COMPLIES WITH ALL OF THE STATED RULES, EXCEPT THAT ACP TESTING OF AFTER-TAX SAVINGS CONTRIBUTIONS WILL BE REQUIRED IF ELECTED IN SECTION C.2 OF THIS ADOPTION AGREEMENT. THIS SECTION WILL APPLY TO ELECTIONS FOR PLAN YEARS BEGINNING ON OR AFTER JANUARY 1, 2002. Safe Harbor elections for the 1999, 2000 and/or 2001 Plan Year(s) are reflected in Section G.7. of this Adoption Agreement.

[ ] The Employer elects to satisfy the Safe Harbor Method under Plan Sections 5.10 and 6.10. The Employer elects to satisfy the contribution requirement either by an election under the following "(a) Employer Matching Contributions" formulas and/or under the "(b) Employer Qualified Non-Elective Contribution." These contributions are immediately 100% vested and subject to the same withdrawal restrictions as 401(k) Savings Contributions as described in IRC Section 401(k)(2)(B) (other than hardship withdrawals).

(NOTE: FOR ANY PLAN YEAR THAT THE EMPLOYER MAKES THIS SAFE HARBOR ELECTION, NO DISCRETIONARY EMPLOYER MATCHING CONTRIBUTION WHICH EXCEEDS 4% OF PLAN COMPENSATION OR ANY EMPLOYER MATCHING CONTRIBUTION WHICH MATCHES PLAN COMPENSATIONS OF MORE THAN 6% WILL BE ALLOWED IN ADDITION TO THE SAFE HARBOR EMPLOYER CONTRIBUTION.).

[ ] SAFE HARBOR EMPLOYER MATCHING CONTRIBUTIONS. The Employer elects to make a Safe Harbor Employer Matching Contribution under one of the following formulas (Choose one):

[ ] BASIC FORMULA. The Employer will contribute 100% of the 401(k) Savings Contributions on the first 3% of the Participant's Plan Compensation plus 50% of the 401(k) Savings Contributions on the next two percent of the Participant's Plan Compensation.

[ ] ALTERNATE FORMULA. The Employer will contribute a Matching Contribution of 100% of the 401(k) Savings Contributions up to _____% (CHOOSE 4, 5 OR 6) of the Participant's Plan Compensation.

MATCHING PERIODS

If the Employer has elected to make a Matching Contribution to meet the Safe

Harbor requirements for ADP/ACP, then the Employer should designate the Matching Contribution Period. The period elected will be used as the allocation period and the period for which Plan Compensation is determined. If the period elected is not the Plan Year, Safe Harbor Matching Contributions must be deposited by the last day of the following quarter. The Plan Year will be the Matching Period unless a different period is elected below:

[ ] Pay Period
[ ] Monthly
[ ] Quarterly
[ ] Semi-annually

[ ] SAFE HARBOR EMPLOYER NON-ELECTIVE CONTRIBUTIONS. The Employer elects to make Safe Harbor Employer Non-Elective Contributions, in lieu of Safe Harbor Employer Matching Contributions. The Employer will make a contribution equal to _____% (no less than 3%) of each eligible Participant's Plan Compensation to the Plan, regardless of whether such Participant has elected to make 401(k) Savings Contributions. This contribution will be made to this Plan, unless the box below is checked:

[ ] Instead of being made to this Plan, the Employer will make the Safe Harbor Non-Elective Contributions to another qualified defined contribution plan sponsored by the Employer and covering the same group of employees.

Name of Plan: ----------

C.4. EMPLOYER MATCHING CONTRIBUTIONS (PLAN SECTION 8.4)

If elected below, an Employer Matching Contribution may be made to the Plan. Each Plan Year, the Employer will make Employer Matching Contributions on behalf of each Participant who makes Matchable Savings Contributions during the Plan Year in accordance with whichever of the following boxes are checked below. (IF THE EMPLOYER ELECTS ANY OF THE MATCHING CONTRIBUTION OPTIONS BELOW, THE PLAN MUST PASS THE ACP TESTING ANNUALLY FOR THOSE CONTRIBUTIONS, UNLESS THE EMPLOYER MATCHING IS MADE IN ADDITION TO THE SAFE HARBOR EMPLOYER CONTRIBUTION AND MEETS SPECIFIC REQUIREMENTS.)

[ ] STATED MATCHING FORMULA. The Employer Matching Contribution will be equal to _____% (such as 50%, or 100%) of the Participant's Matchable Savings Contributions during the Matching Period, subject to any limit indicated below.

LIMIT ON EMPLOYER MATCHING CONTRIBUTIONS

[ ] Matchable Savings Contributions above $____ or ____% (such as 6%) of the Participant's Plan Compensation during the Matching Period will not be matched. (IF A LIMIT IS DESIRED, INSERT THE DOLLAR AMOUNT OR PERCENTAGE.)

[ ] STATED TIERED MATCHING FORMULA. The Matching Contribution will be based on a two-tiered formula as follows (NOTE: THE RATE OF THE EMPLOYER MATCHING CONTRIBUTIONS CANNOT INCREASE AS A PARTICIPANT'S RATE OF MATCHABLE SAVINGS CONTRIBUTIONS INCREASE.):

1) Provide a Matching Contribution of _____ % (such as 50%) of the Participant's Matchable Savings Contributions up to the first _____ % (such as 3%) of the Participant's Plan Compensation, plus

2) Provide a Matching Contribution of _____ % (such as 50%) of the Participant's Matchable Savings Contributions up to the next _____ % (such as 3%) of the Participant's Plan Compensation.

|X| DISCRETIONARY MATCHING FORMULA. The Employer may make Matching Contributions in a discretionary amount or percentage determined each Plan Year on behalf of each Participant who makes Matchable Savings Contributions. At the discretion of the Employer, the amount or percentage of Matchable Savings Contributions that will be matched each Plan Year may be limited.

[ ] ADDITIONAL ANNUAL DISCRETIONARY MATCHING FORMULA. An Employer who is making stated or discretionary Employer Matching Contributions under any of the above options may make an additional annual discretionary Employer Matching Contribution for the Plan Year in an amount determined each Plan Year on behalf of each Participant who makes Matchable Savings Contributions. At the discretion of the Employer, the amount or percentage of matchable savings that will be matched each Plan Year may be limited. The Additional Annual Discretionary Matching Contributions will be allocated in accordance with either of the allocation methods allowed above for the regular Discretionary Matching Formula.

(NOTE: FOR ANY PLAN YEAR THAT THE EMPLOYER MAKES A SAFE HARBOR ELECTION NO DISCRETIONARY EMPLOYER MATCHING CONTRIBUTION WHICH EXCEEDS 4% OF PLAN COMPENSATION OR ANY EMPLOYER MATCHING WHICH MATCHES PLAN COMPENSATION OF MORE THAN 6% WILL BE ALLOWED IN ADDITION TO THE SAFE HARBOR EMPLOYER CONTRIBUTION.)

MATCHABLE SAVINGS

The Employer will make all Employer Matching Contributions based on 401(k) Savings Contributions only.

MATCHING PERIODS

The Employer may make an Employer Matching Contribution for each Matching Period. The Matching Period will be the Plan Year, unless any one of the following boxes are checked:

[ ] Pay Period
[ ] Monthly
|X| Quarterly
[ ] Semi-annually
[ ] At the discretion of the Employer and so designated by the Board of Directors of the Employer in the resolution announcing the amount of the Matching Contribution. (MAY ONLY BE USED IF A DISCRETIONARY MATCHING CONTRIBUTION IS SELECTED.)

ANNUAL TRUE-UP MATCHING CONTRIBUTION.

|X| Where the Matching Period selected is not the Plan Year, the Employer may make an

additional Matching Contribution, which shall be allocated among those Participants whose Matchable Savings Contributions, when examined on an annual basis, was lower than the maximum percentage of Plan Compensation for which Matching Contributions could be made.

EMPLOYMENT REQUIREMENT FOR AN EMPLOYER MATCHING ALLOCATION

Unless the Employer checks any of the boxes below, a Participant who, during a Matching Contribution Period, was making Matchable Savings Contributions and was employed at any point during such period is entitled to share in the allocation of Matching Contributions for the Matching Contribution Period. (CHECK THE APPLICABLE BOX(ES))

[ ] A Participant must be employed by the Employer on the last day of the Plan Year or terminate employment during the Plan Year with more than 500 Hours of Service. (CAN ONLY BE ELECTED IF THE MATCHING CONTRIBUTION PERIOD IS THE PLAN YEAR AND YOU DO NOT ELECT ANY OTHER BOXES BELOW.)

|X| A Participant must be employed by the Employer on the last day of the Matching Contribution Period to share in the allocation of Employer Matching Contributions for such period.

[ ] Participant must have completed at least _____ Hours of Service (CANNOT EXCEED 1,000) for the Employer during the Plan Year to receive an Employer Matching Contribution for the Plan Year. (CAN ONLY BE ELECTED IF THE MATCHING CONTRIBUTION PERIOD IS THE PLAN YEAR).

[ ] At the discretion of the Employer, the employment requirements for an allocation will be designated by the Board of Directors of the Employer in the resolution announcing the amount of the Matching Contribution, but in no event shall a Matching Contribution be denied to any Participant who is employed on the last day of the Plan Year and who has completed at least 1,000 Hours of Service during the Plan Year. (MAY ONLY BE USED IF A DISCRETIONARY MATCHING CONTRIBUTION IS SELECTED.)

(EXCEPTION: A PARTICIPANT WHOSE EMPLOYMENT WITH THE EMPLOYER ENDS BECAUSE OF HIS OR HER RETIREMENT, DISABILITY, OR DEATH DURING A MATCHING CONTRIBUTION PERIOD IS NOT REQUIRED TO FULFILL THE FOREGOING EMPLOYMENT REQUIREMENTS TO RECEIVE AN EMPLOYER MATCHING CONTRIBUTION FOR SUCH PERIOD. ALSO, A PARTICIPANT WHO IS NOT ACTIVELY EMPLOYED BY THE EMPLOYER ON THE LAST DAY OF A MATCHING CONTRIBUTION PERIOD BECAUSE OF A FAMILY MEDICAL ABSENCE SHALL SHARE IN THE ALLOCATION OF MATCHING CONTRIBUTIONS FOR SUCH PERIOD.)

SPECIAL EMPLOYMENT REQUIREMENT FOR ADDITIONAL ANNUAL DISCRETIONARY EMPLOYER MATCHING ALLOCATION

[ ] If checked, the Employer elects to make a special allocation election for the Additional Annual Discretionary Employer Matching Contributions for the Plan Year, which is separate from the above Employment Requirements for Allocation.

Unless the Employer checks any of the boxes below, a Participant who during the Plan Year was making Matchable Savings Contributions, and was employed at any point during such period is entitled to share in the allocation of Additional Annual Discretionary Employer Matching Contributions for the Plan Year. (CHECK THE APPLICABLE BOX(ES))

[ ] A Participant must be employed by the Employer on the last day of the Plan Year or terminate employment during the Plan Year with more than 500 Hours of Service. (CAN ONLY BE ELECTED IF THE MATCHING CONTRIBUTION PERIOD IS THE PLAN YEAR AND YOU DO NOT ELECT ANY OTHER BOXES BELOW.)

[ ] A Participant must be employed by the Employer on the last day of the Matching Contribution Period to share in the allocation of Employer Matching Contributions for such period.

[ ] A Participant must have completed at least _____ Hours of Service (CANNOT EXCEED 1,000) for the Employer during the Plan Year to receive an Employer Matching Contribution for the Plan Year. (CAN ONLY BE ELECTED IF THE MATCHING CONTRIBUTION PERIOD IS THE PLAN YEAR).

[ ] At the discretion of the Employer, the employment requirements for an allocation will be designated by the Board of Directors of the Employer in the resolution announcing the amount of the Matching Contribution, but in no event shall a Matching Contribution be denied to any Participant who is employed on the last day of the Plan Year and who has completed at least 1,000 Hours of Service during the Plan Year. (MAY ONLY BE USED IF A DISCRETIONARY MATCHING CONTRIBUTION IS SELECTED.)

(EXCEPTION: A PARTICIPANT WHOSE EMPLOYMENT WITH THE EMPLOYER ENDS BECAUSE OF HIS OR HER RETIREMENT, DISABILITY, OR DEATH DURING THE PLAN YEAR IS NOT REQUIRED TO FULFILL THE FOREGOING EMPLOYMENT REQUIREMENTS TO RECEIVE AN ADDITIONAL ANNUAL DISCRETIONARY EMPLOYER MATCHING CONTRIBUTION FOR SUCH PERIOD. ALSO, A PARTICIPANT WHO IS NOT ACTIVELY EMPLOYED BY THE EMPLOYER ON THE LAST DAY OF A MATCHING CONTRIBUTION PERIOD BECAUSE OF A FAMILY MEDICAL ABSENCE SHALL SHARE IN THE ALLOCATION OF ADDITIONAL ANNUAL DISCRETIONARY EMPLOYER MATCHING CONTRIBUTIONS FOR SUCH PERIOD.)

C.5. SUPPLEMENTAL EMPLOYER PROFIT SHARING CONTRIBUTIONS (PLAN SECTION 8.2)

If elected below, a Supplemental Employer Profit Sharing Contribution may be made to the Plan. Each Plan Year, the Employer will make a Supplemental Employer Profit Sharing Contribution, which will be allocated in the manner described below.

[ ] NON-INTEGRATED FORMULA (DISCRETIONARY). The Supplemental Employer Profit Sharing Contribution (if any) for a Plan Year will be allocated so that each eligible Participant receives an equal contribution as a percentage of his or her Plan Compensation.

[ ] FLAT DOLLAR ALLOCATION. The Employer may make a Supplemental Employer Profit Sharing Contribution. Such contribution will be allocated in the amount of $_____ to each eligible Participant.

[ ] DISCRETIONARY FLAT DOLLAR ALLOCATION. The Employer may make a Supplemental Employer Profit Sharing Contribution. Such contribution will be allocated as a flat dollar amount to each eligible Participant.

[ ] INTEGRATED FORMULA (DISCRETIONARY). The Supplemental Employer Profit Sharing Contribution (if any) for a Plan Year will be allocated to eligible Participants using a formula that is integrated with Social Security.

The integration level will be the Social Security taxable wage base, unless another option is elected below:

[ ] The integration level will be equal to $_____(a dollar amount less than the Social Security taxable wage base).

[ ] The integration level will be equal to _____% (maximum 100%) of the Social Security taxable wage base.

(NOTE: IF YOU MAINTAIN ANY OTHER PLAN THAT IS INTEGRATED WITH SOCIAL SECURITY, YOU MAY NOT USE THE INTEGRATED CONTRIBUTION FORMULA.)

Unless checked below, the integrated allocation formula will NOT depend upon whether or not the Plan is Top-Heavy, and will be limited to the formula described in Section 8.6(c)(1)(A) of the Basic Plan Document.

[ ] The integrated allocation formula will depend upon whether or not the Plan is Top Heavy and will be allocated based on the formula described in Section 8.6(c)(1)(A) or (B) of the Basic Plan Document.

SUPPLEMENTAL EMPLOYER PROFIT SHARING ALLOCATION PERIODS

The period for allocating the Supplemental Employer Profit Sharing Contribution will be the Plan Year unless a different period is elected below.

[ ] Monthly

[ ] Quarterly

[ ] Semi-annually

EMPLOYMENT REQUIREMENT FOR A SUPPLEMENTAL EMPLOYER PROFIT SHARING ALLOCATION

Unless the Employer checks one of the boxes below, a Participant is entitled to share in the allocation of Supplemental Employer Profit Sharing Contributions for the Supplemental Employer Profit Sharing Allocation Period if he or she was a participant at any time during such period. (CHECK THE APPLICABLE BOX(ES))

[ ] A Participant must be employed by the Employer on the last day of the Plan Year or terminate employment during the Plan Year with more than 500 Hours of Service. (CAN ONLY BE ELECTED IF THE SUPPLEMENTAL EMPLOYER PROFIT SHARING ALLOCATION PERIOD IS THE PLAN YEAR.)

[ ] A Participant must be employed by the Employer on the last day of the Supplemental Employer Profit Sharing Allocation Period elected above to share in the allocation of Supplemental Employer Profit Sharing Contributions.

[ ] A Participant must have completed at least _____ Hours of Service (CANNOT EXCEED 1,000) for the Employer during the Plan Year to share in the allocation of Supplemental Employer Profit Sharing Contributions for the Plan Year. (CAN ONLY BE ELECTED IF THE SUPPLEMENTAL EMPLOYER PROFIT SHARING ALLOCATION PERIOD IS THE PLAN YEAR.)

(EXCEPTION: A PARTICIPANT WHOSE EMPLOYMENT WITH THE EMPLOYER ENDS BECAUSE OF HIS OR HER RETIREMENT, DISABILITY, OR DEATH DURING THE PLAN YEAR IS NOT REQUIRED TO FULFILL THE FOREGOING EMPLOYMENT REQUIREMENT TO SHARE IN THE ALLOCATION OF SUPPLEMENTAL EMPLOYER PROFIT SHARING CONTRIBUTIONS FOR SUCH PLAN YEAR. A PARTICIPANT WHO IS NOT ACTIVELY EMPLOYED BY THE EMPLOYER ON THE LAST DAY OF THE PLAN YEAR BECAUSE OF A FAMILY MEDICAL ABSENCE SHALL SHARE IN THE ALLOCATION OF SUPPLEMENTAL EMPLOYER PROFIT SHARING CONTRIBUTIONS FOR THE PLAN YEAR. )

C.6. ADP/ACP TESTING METHOD (PLAN SECTIONS 5.6, 6.6)

PRIOR OR CURRENT YEAR TESTING ELECTIONS

|X| The Plan is using the Prior Year Testing Method for purposes of the ADP and ACP tests.

[ ] The Plan is using the Current Year Testing Method for purposes of the ADP and ACP tests. (THIS BOX CANNOT BE "UNCHECKED" FOR A PLAN YEAR UNLESS (1) THE PLAN HAS BEEN USING THE CURRENT YEAR TESTING METHOD FOR THE PREVIOUS 5 PLAN YEARS, OR, IF LESSER, THE NUMBER OF PLAN YEARS THAT THE PLAN HAS BEEN IN EXISTENCE; OR (2) THE PLAN OTHERWISE MEETS ONE OF THE CONDITIONS SPECIFIED IN NOTICE 98-1 (OR SUPERCEDING GUIDANCE) FOR CHANGING FROM THE CURRENT YEAR TESTING METHOD.)

SPECIAL FIRST PLAN YEAR ELECTIONS FOR PLANS USING THE PRIOR YEAR ELECTION

If this agreement covers the first Plan Year and the Prior Year Testing Method was elected above, then the Employer should specify which of the following special Prior Year Testing Methods will be used. Since the first Plan Year does not actually have a prior Plan Year, the Employer may use either 3% or the actual first Plan Year's ADP/ACP percentages for the group of Non-Highly Compensated Employees when using the Prior Year Testing Method. Indicate which method will be utilized for the first Plan Year.

[ ] The ADP/ACP percentages for the group of Non-Highly Compensated Employees will be 3% for the first Plan Year.

[ ] The ADP/ACP percentages for the group of Non-Highly Compensated Employees will be the actual percentages for the first Plan Year.

C.7. DETERMINATION OF HIGHLY COMPENSATED EMPLOYEES (PLAN SECTION 2.15)

[ ] TOP-PAID GROUP ELECTION If this box is checked, in determining who is a Highly Compensated Employee, the Employer makes a Top-Paid Group Election. The effect of this election is that an Employee (who is not a 5 percent owner at any time during the determination year or the look-back year) with compensation in excess of $80,000 (as adjusted) for the look-back year is a Highly Compensated Employee only if the Employee was in the Top-Paid Group for the look-back year.

[ ] CALENDAR YEAR ELECTION: In determining who is a Highly Compensated Employee, the Employer makes the Calendar Year Election. The effect of this election is that the calendar year beginning within the Look-Back Year is treated as the Employer's Look-Back Year for purposes of determining whether an Employee is highly compensated on account of the Employee's compensation for the Look-Back Year. This Calendar Year Election does not apply in determining whether an Employee is highly compensated on account of being a 5-percent owner. (This option may NOT be elected if the Plan Year is the calendar year.)

(Note: Elections made under this Section C.7. will apply for the definition of Highly Compensated Employees for all testing purposes for the Plan Year (e.g., coverage testing)).

C.8. PLAN COMPENSATION (PLAN SECTION 2.22)

Plan Compensation will mean all of such Participant's Wages, Tips and Other Compensation as reported on Form W-2 and which is actually paid to the Participant, unless the Employer elects otherwise by completing the boxes below. If checked below, Plan Compensation will mean:

[ ] 3401(a) wages

[ ] 415 safe harbor compensation

DETERMINATION PERIOD

Plan Compensation shall be based on compensation paid to the Participant during the Plan Year.

PARTICIPANT STATUS

Unless checked below, Plan Compensation shall be limited to the period in which an Employee is eligible to participate in the Plan.

[X] Plan Compensation shall be determined over the entire determination period whether or not an Employee is eligible to participate provided that the Employee is designated as a Full Time Employee.

INCLUDING ELECTIVE DEFERRALS IN COMPENSATION

Unless otherwise checked below, Plan Compensation shall include Employer contributions made pursuant to a salary reduction agreement which are not includible in the gross income of the Participant under Code Sections 125, 132(f)(4), 402(e)(3), 402(h) or 403(b).

[ ] Plan Compensation shall NOT include employer contributions made pursuant to a salary reduction agreement which are not includible in the gross income of the Participant under Code Sections 125, 132(f)(4), 402(e)(3), 402(h) or 403(b).

EXCLUSIONS FROM COMPENSATION

A Participant's Plan Compensation (SOLELY FOR PURPOSES OF DETERMINING PLAN CONTRIBUTIONS) excludes the following checked items:

[ ] bonuses

[ ] commissions

[ ] overtime

[X] other items (SPECIFY): fringe benefits, moving expense reimbursements and other Welfare benefits.

(NOTE: THE EXCLUSION OF BONUSES, COMMISSIONS, OVERTIME AND/OR OTHER ITEMS MAY NOT BE PERMITTED IF SUCH EXCLUSION(s) WOULD RESULT IN USING, BY MORE THAN A DE MINIMIS AMOUNT, A HIGHER PERCENTAGE OF TOTAL COMPENSATION FOR HIGHLY COMPENSATED EMPLOYEES THAN FOR NON-HIGHLY COMPENSATED EMPLOYEES. ALSO, DO NOT EXCLUDE ANY ITEMS (OTHER THAN A DOLLAR CAP WHICH IS ABOVE THE SOCIAL SECURITY WAGE BASE IN EFFECT FOR THAT YEAR) IF YOU ELECTED SUPPLEMENTAL EMPLOYER PROFIT SHARING CONTRIBUTIONS WITH AN INTEGRATED ALLOCATION FORMULA. THE ABOVE EXCLUSION SHOULD NOT BE COMPLETED IF YOU ELECTED SAFE HARBOR EMPLOYER CONTRIBUTIONS IN SECTION C.3 ABOVE.)

C.9. INVESTMENT DIRECTION (PLAN SECTION 15.2)

Unless checked below, Participants will have investment direction over all of their accounts under the Plan.

[ ] The Plan Administrator will exercise investment control over the following accounts (CHECK APPLICABLE BOX(ES)):

[ ] Safe Harbor Employer Contributions.

[ ] Employer Matching Contributions.

[ ] Supplemental Employer Profit Sharing Contributions.

[ ] Qualified Non-Elective Contributions.

[ ] Qualified Matching Contributions.

C.10. FORFEITURES (PLAN SECTIONS 11.4, 11.5)

Indicate the method for disposing of forfeitures. (MUST ELECT ONE OF THE FOLLOWING METHODS: CONTRIBUTION REDUCTION, REALLOCATION, OR CONTRIBUTION REDUCTION AND REALLOCATION. MAY ALSO ELECT EXPENSE REDUCTION.)

[X] EXPENSE REDUCTION. Forfeitures will be applied to reduce administrative expenses properly payable by the Plan. (IF ELECTED, CHOOSE ONE OF THE THREE FOLLOWING METHODS FOR THE USE OF ANY REMAINING FORFEITURES AFTER PLAN EXPENSES HAVE BEEN PAID).

[X] CONTRIBUTION REDUCTION. Any forfeitures from Matching Contributions or Supplemental Employer Profit Sharing Contributions occurring during a Plan Year will be used to reduce the amount the Employer must contribute for the next payable Matching Contributions or Supplemental Employer Profit Sharing Contributions.

[ ] REALLOCATION. Forfeitures of Matching Contributions shall be allocated pro rata based on the Matching Contributions for the entire Plan Year. If no Matching Contributions have been allocated, then forfeitures of Matching Contributions shall be allocated pro rata based on the Matchable Savings Contributions for the entire year without regard to any allocation conditions set forth in the Adoption Agreement Section C.4. If for some reason, no Matchable Savings Contributions are made, forfeitures of Matching Contributions shall be allocated into the Matching Contribution Account, but calculated as if it were an additional forfeiture of Supplemental Employer Profit Sharing Contributions.

Forfeitures of Supplemental Employer Profit Sharing Contributions shall be allocated pro rata based on Plan Compensation for the Plan Year, using Plan Compensation as defined for allocation of Supplemental Profit Sharing Contributions and allocated to those Participants who have met the employment requirements for such Supplemental Employer Profit Sharing Contributions as elected in the Adoption Agreement section C.5.

[ ] CONTRIBUTION REDUCTION AND REALLOCATION METHOD. Any forfeitures from Matching Contributions occurring during the Plan Year will be used to reduce subsequent Employer Matching Contributions. Any forfeitures from Supplemental Employer Profit Sharing Contributions occurring during a Plan Year will be allocated pro rata based on Plan Compensation for the Plan Year, using Plan Compensation as defined for allocation of Supplemental Employer Profit Sharing Contributions and allocated to those Participants

who have met the employment requirements for such Supplemental Employer Profit Sharing Contributions as elected in the Adoption Agreement Section C.5.

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PART D - VESTING, LOANS, AND WITHDRAWALS / DISTRIBUTIONS

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D.1. VESTING (PLAN SECTION 11.1)

100% VESTING IN EMPLOYEE CONTRIBUTIONS:

Participants are 100% vested at all times in their 401(k) Savings Contributions and After-Tax Savings Contributions.

100% VESTING IN SAFE HARBOR MATCHING AND/OR SAFE HARBOR NON-ELECTIVE CONTRIBUTIONS:

Participants are 100% vested at all times in their Safe Harbor Matching Contributions and/or Safe Harbor Non-Elective Contributions.

VESTING IN EMPLOYER MATCHING CONTRIBUTIONS:

Participants are vested in Employer Matching Contributions (if any) on their behalf in accordance with Schedule D below. (INSERT A, B,C, D OR E). For the first Plan Year in which the Plan is Top Heavy and for all subsequent Plan Years (whether or not the Plan is Top Heavy) Participant account balances attributable to Employer Matching Contributions will vest in accordance with Vesting Schedule D below. (INSERT 1, 2, 3, OR 4).

VESTING IN SUPPLEMENTAL EMPLOYER PROFIT SHARING CONTRIBUTIONS:

Participants are vested in Supplemental Employer Profit Sharing Contributions (if any) on their behalf in accordance with Schedule 3 below. (INSERT A, B, C, D OR E). For the first Plan Year in which the Plan is Top Heavy and for all subsequent Plan Years (whether or not the Plan is Top Heavy) Participant account balances attributable to Supplemental Employer Profit Sharing Contributions will vest in accordance with Vesting Schedule 3 below. (INSERT 1, 2, 3, OR 4)

VESTING SCHEDULES

The following vesting schedules are available for Employer Matching and Supplemental Profit Sharing Contributions:

YEARS OF SERVICE | SCHEDULE A | SCHEDULE B | SCHEDULE C | SCHEDULE D | SCHEDULE E
---|---|---|---|---|---
Less than 1 | 0% | 0% | 100% | 0% | -
At least 1 | 0% | 0% | 100% | 25% | -
At least 2 | 0% | 0% | 100% | 50% | -
At least 3 | 0% | 20% | 100% | 75% | -

| |
|---|
| At least 40% 100% 100% % |
| At least 60% 100% 100% % |
| At least 80% 100% 100% % |
| At least 100% 100% 100% % |

*For Schedule D or Schedule E, fill in the spaces to specify the vesting percentages selected.

Schedule D or Schedule E must be at least as favorable at each level as either Schedule A or Schedule B. NOTE: SPACES LEFT BLANK ARE TREATED AS ZEROS.

TOP-HEAVY VESTING SCHEDULES: The following vesting schedules are available for the first Plan Year in which the Plan is Top Heavy and for all subsequent Plan Years (whether or not the Plan is Top Heavy) for Participant account balances attributable to Employer Matching Contributions and/or Supplemental Employer Profit Sharing Contributions. The Top Heavy Vesting Schedule selected below must be at least as favorable at each level as the regular Vesting Schedule selected above for each type of contribution.

| YEARS OF SERVICE | SCHEDULE 1 | SCHEDULE 2 | SCHEDULE 3 | SCHEDULE 4 |
|---|---|---|---|---|
| Less than 1 | 0% | 0% | 0% | % |
| At Least 1 | 0% | 0% | 25% | % |
| At Least 2 | 20% | 0% | 50% | % |
| At Least 3 | 40% | 100% | 75% | % |
| At Least 4 | 60% | 100% | 100% | % |
| At Least 5 | 80% | 100% | 100% | % |
| At Least 6 | 100% | 100% | 100% | % |
| At Least 7 | 100% | 100% | 100% | % |

* For Schedule 3 or Schedule 4, fill in the spaces to specify the vesting percentages selected. Schedule 3 or Schedule 4 must be at least as favorable at each level as either Schedule 1 or Schedule 2. NOTE: SPACES LEFT BLANK ARE TREATED AS ZEROS.

D.2. SERVICE FOR VESTING

All Years of Service are counted for vesting, unless otherwise elected below:

[ ] Years of Service completed before the Effective Date of this Plan (or a predecessor plan) shall be excluded when calculating a Participant's vested percentage.

[ ] Years of Service completed before the Participant's _____birthday (insert birthday not greater than Participant's 18th birthday).

D.3. YEARS OF SERVICE FOR VESTING

YEARS OF SERVICE (CHOOSE EITHER ELAPSED TIME OR HOURS OF SERVICE METHOD)

ELAPSED TIME METHOD (Plan Section 3B)

[ ] An Employee's Service will be determined using the Elapsed Time Method.

HOURS OF SERVICE METHOD (PLAN SECTION 3A)

[X] An Employee's service will be determined by counting Hours of Service during the Computation Period.

The Employee must complete 1000 Hours of Service during a Computation Period to be credited with a Year of Service unless a lesser number is here indicated _____. (INSERT NUMBER; CANNOT EXCEED 1,000.)

[ ] ACTUAL HOURS COUNTING METHOD. The Plan Administrator will determine if the Participant is entitled to a Year of Service as defined above by counting the actual hours the Employee worked or for which he or she is paid during the Computation Period unless the Equivalency Method is elected below:

[ ] EQUIVALENCY METHOD. Instead of counting actual hours, the Employee is credited with the specified number of hours as elected:

[ ] 10 hours per day

[ ] 45 hours per week

[ ] 95 hours per half month

[ ] 190 hours per month

VESTING COMPUTATION PERIODS

Computation Periods are used to measure an Employee's Years of Service for vesting purposes.

[ ] If checked, Computation Periods are an Employee's Employment Years.

[X] If checked, an Employee's Computation Periods are Plan Years. (CANNOT BE SELECTED IF THE ELAPSED TIME METHOD IS CHOSEN ABOVE.)

D.4. REINSTATEMENT OF ACCOUNT BALANCE (PLAN SECTION 11.5)

Unless checked below, the non-vested portion of the account balance of a Participant who received a distribution of the vested portion of his or her account balance following termination of employment will be automatically reinstated upon his or her reemployment prior to incurring five consecutive One-Year Breaks in Service.

[X] The non-vested portion of the account balance of a Participant who received a distribution of his or her vested account balance will be reinstated only if such Participant repays the amount of such distribution to the Plan by the earlier of (i) five years after the Participant is re-employed by the Employer or (ii) the close of the first period of five consecutive One-Year Breaks in Service commencing after the distribution.

D.5. LOANS (PLAN SECTION 12.5)

Unless checked below, loans to a Participant from the Plan will not be permitted.

[X] A Participant may borrow from the Plan, subject to the Plan's Loan Program.

D.6. IN-SERVICE WITHDRAWALS

In-service withdrawals from a Participant's 401(k) Savings Contributions account, After-Tax Savings Contributions account, Rollover account, Safe Harbor Employer Contributions account, Employer Matching Contributions account and/or Supplemental Employer Profit Sharing Contributions account will not be permitted unless you check one of the following box(es):

401(k) SAVINGS CONTRIBUTIONS (PLAN SECTION 12.3)

[X] In-service withdrawals will be permitted from a participant's 401(k) Savings Contributions account if he or she has a financial hardship.

[X] In-service withdrawals will be permitted from a Participant's 401(k) Savings Contributions account after attainment of age 59 1/2 without financial hardship.

AFTER-TAX SAVINGS CONTRIBUTIONS (PLAN SECTION 12.1)

[ ] In-service withdrawals will be permitted from a Participant's After-Tax Savings Contributions account for any reason.

ROLLOVER CONTRIBUTIONS (PLAN SECTION 7.3)

[X] A Participant or an Employee who is not yet a Participant but has made a Rollover Contribution will be permitted to make in-service withdrawals from his or her Rollover Contributions account for if he or she has a financial hardship or has attained age 59 1/2 without financial hardship.

SAFE HARBOR EMPLOYER CONTRIBUTIONS, QUALIFIED NON-ELECTIVE CONTRIBUTIONS, AND QUALIFIED MATCHING CONTRIBUTIONS (PLAN SECTIONS 2.24, 2.25, 5.10

[ ] In-service withdrawals will be permitted from a Participant's Safe Harbor Employer Contributions account, Qualified Non-Elective Contribution account, and Qualified Matching Contribution account after attainment of age 59 1/2 without financial hardship.

EMPLOYER MATCHING CONTRIBUTIONS (PLAN SECTION 12.3)

[X] In-service withdrawals will be permitted from the vested portion of a Participant's Matching Contributions account if he or she has a financial hardship.

[ ] In-service withdrawals will be permitted from the vested portion of a Participant's Employer Matching Contribution account prior to attainment of age 59 1/2 for any reason. Such in-service withdrawals are limited to a Participant's Employer Matching Contributions that have been on deposit for at least two years unless the Employee has been a Participant in the Plan for five years or more.

[X] In-service withdrawals will be permitted from the vested portion of a Participant's Employer Matching Contributions account after attainment of age 59 1/2 without financial hardship.

[X] In-service withdrawals will be permitted from the vested portion of a Participant's Matching Employer Contributions account by a Participant who has attained (CHECK APPLICABLE BOX)

[X] Normal Retirement Date

[ ] Early Retirement Date

SUPPLEMENTAL EMPLOYER PROFIT SHARING CONTRIBUTIONS (PLAN SECTION 12.3)

[ ] In-service withdrawals will be permitted from the vested portion of a Participant's Supplemental Employer Profit Sharing Contributions account if he or she has a financial hardship.

[ ] In-service withdrawals will be permitted from the vested portion of a Participant's Supplemental Employer Profit Sharing Contribution account prior to attainment of age 59 1/2 for any reason. Such in-service withdrawals are limited to a Participant's Supplemental Employer Profit Sharing Contributions that have been on deposit for at least two years unless the Employee has been a Participant in the Plan for five years or more.

[ ] In-service withdrawals will be permitted from the vested portion of a Participant's Supplemental Employer Profit Sharing Contributions account after attainment of age 59 1/2 without financial hardship.

[ ] In-service withdrawals will be permitted from the vested portion of a Participant's Supplemental Employer Profit Sharing Contributions account by a Participant who has attained (CHECK APPLICABLE BOX)

[ ] Normal Retirement Date

[ ] Early Retirement Date

D.7. RETIREMENT DATE (PLAN SECTION 9.1)

NORMAL RETIREMENT DATE

Unless specified below, a Participant will be fully vested and may retire upon reaching age 65.

A Participant will be fully vested and may retire upon reaching

[X] age 65 (CANNOT EXCEED 65)

[ ] age _____ (CANNOT EXCEED 65) or, if later, the ___ th (CANNOT EXCEED THE 5TH) anniversary of the time he/she commenced participation in the Plan.

If this Plan is a successor plan, the Normal Retirement Date selected above must be at least as favorable as that under the predecessor plan.

EARLY RETIREMENT DATE

If checked, a Participant will be fully vested and may retire prior to Normal Retirement upon reaching

[ ] age _____

[ ] age _____ or, if later, after completing _____ Years of Service.

If this Plan is a successor plan, the Early Retirement Date selected above must be at least as favorable as that under the predecessor plan.

D.8. PLAN DISTRIBUTIONS (PLAN SECTION 9.3)

(LUMP SUM DISTRIBUTIONS ARE PROVIDED UNDER THE TERMS OF THE PLAN. THE EMPLOYER MAY ELECT ANY OR ALL OF THE FOLLOWING OPTIONAL FORMS OF DISTRIBUTIONS.)

OPTIONAL FORMS OF DISTRIBUTIONS AVAILABLE UNDER THE PLAN

[X] A fixed or variable annuity contract with payments over a period not exceeding the lifetime of the Participant or the lifetimes of the Participant and his/her designated beneficiary.

[ ] Installments over a period not exceeding the life expectancy of the Participant or the joint life and last survivor expectancy of the Participant and his/her designated beneficiary.

[ ] A single sum distribution of a portion of a Participant's vested account balance.

[ ] Other: (SPECIFY) _____

QUALIFIED JOINT AND SURVIVOR ANNUITY (QJSA) ELECTION
(ONLY AVAILABLE IF THIS PLAN IS A TRANSFEREE PLAN (AS DEFINED IN CODE SECTION 401(a)(11)(B)(III)(III).)

Unless a fixed or variable annuity contract is selected above:

|X| The QJSA provisions do not apply to this Plan.

[ ] The QJSA provisions do apply to this Plan as follows

QJSA benefit.

[ ] The survivor benefit will equal 50%.

[ ] The survivor benefit will equal _____%. (MUST BE GREATER THAN 50% BUT NOT MORE THAN 100%)

CASH-OUT OF ACCOUNT BALANCE (PLAN SECTION 9.5(e))

If a Participant's total vested account balance does not exceed $ 5,000, then upon separation from service with the Employer, the Employer will immediately distribute the Participant's vested account balance in the form of a single sum, unless the Employer checks the box below.

[ ] The Employer will delay distribution of the Participant's account balance until the Participant requests (or required to begin to receive) a distribution under the Plan.

MINIMUM DISTRIBUTIONS (PLAN SECTION 9.7, 9.8)

REQUIRED BEGINNING DATE

The Required Beginning Date of a Participant (other than a 5-percent owner) is:

[ ] The April 1 of the calendar year following the calendar year in which such Participant attains age 70 1/2.

[X] The later of the April 1 of the calendar year following the calendar year in which such Participant attains age 70 1/2 or the April 1 of the calendar year following the calendar year in which such Participant retires.

DISTRIBUTIONS TO MISSING PERSONS

If the Plan Administrator is unable to locate any person to whom an account balance under this Plan is required to be either distributed under the Plan or by law, such person's account balance shall be handled by either of the following methods: 1) deposited into a federally-insured interest-bearing bank account for the benefit of such person, or 2) forfeited, subject to reinstatement if such person files a claim for benefits, the Plan is required to commence distribution to such person pursuant to Section 401(a)(9) of the Code, or upon the termination of the plan.

## PART E - MISCELLANEOUS

E.1. TRUST AGREEMENT (Plan Sections 2.29, 2.30)

By signing this Adoption Agreement, you are also establishing a Trust to hold the Plan's assets. The terms of the Trust are contained in the Metropolitan Life Insurance Company Prototype Plan Trust which is incorporated by reference into this Adoption Agreement.

E.2. OTHER PLANS (PLAN SECTIONS 13, 14)

If you maintained or later adopt any plan in addition to this Plan, you may need special provisions to comply with Code Sections 415 and 416 (involving limits on contributions and benefits and top-heavy minimum contributions and benefits). Such special provisions should be set forth below.

If you maintain or ever maintained another qualified plan in which any Participant in this Plan is (or was) a participant or could become a participant, you must complete this section. You must also complete this section if you maintain a welfare benefit fund, as defined in section 419(e) of the Code, or an individual medical account, as defined in section 415(1)(2) of the Code, under which amounts are treated as Annual Additions with respect to any Participant in this Plan.

If the Participant is covered under another qualified defined contribution plan maintained by you, other than a master or prototype plan, the provisions of section 13.3 through 13.6 of Article 13 will apply as if the other plan were a master or prototype plan, unless otherwise specified below: (PROVIDE THE METHOD UNDER WHICH THE PLANS WILL LIMIT TOTAL ANNUAL ADDITIONS TO THE MAXIMUM PERMISSIBLE AMOUNT, AND WILL PROPERLY REDUCE ANY EXCESS AMOUNTS, IN A MANNER THAT PRECLUDES EMPLOYER DISCRETION.)

==========

E.3. TOP-HEAVY STATUS

The Top-Heavy tests are applied each Plan Year to determine whether the Plan is Top-Heavy. If the Plan is Top-Heavy, the requirements for Top-Heavy Plans apply (SEE ARTICLE 14 OF THE PLAN DOCUMENT). As a result, there may be a requirement for minimum contributions on behalf of certain Participants in addition to other Employer Contributions. Increased vesting may also be required for the first Plan year the Plan is considered Top-Heavy and for all subsequent Plan Years. (See Section D.1.)

E.4. VALIDITY OF THIS PLAN

This Adoption Agreement does not create a valid Plan until it is signed by all appropriate parties below and receipt is acknowledged by the Sponsor.

E.5. LEGAL DUTIES; UNDERTAKING OF EMPLOYER

You understand and agree that, by establishing this Plan, you (the Employer) are the legal "Plan Administrator" under the pension law, and you will incur certain duties and responsibilities as Employer maintaining the Plan and as Plan Administrator and under tax and other laws for which neither the Trustee nor the Sponsor will be responsible.

You warrant that:

(a) You also have read and signed the service agreement and you agree to the terms contained in that agreement. You understand your duties and responsibilities under this Plan and the applicable legal rules.

(b) You have obtained any legal and tax advice you deemed necessary before signing this Adoption Agreement.

(c) You have received a prospectus(es) (where applicable) or other materials describing the funding vehicles currently available for this Plan, and you have shown copies of such prospectus(es) or other materials to all Participants

E.6. ADMINISTRATIVE MATTERS: The Plan Administrator may establish rules governing such matters as the timing and frequency of changes in Participants' Savings Contributions elections, changes in Participants' investment elections, loans, in-service withdrawals and the like, by specifying such in the Appendices to the Adoption Agreement.

E.7. RELIANCE ON SPONSOR'S OPINION LETTER

The adopting employer may rely on an opinion letter issued by the Internal Revenue Service as evidence that the Plan is qualified under Section 401 of the Code only to the extent provided in Announcement 2001-77, 2001-30 I.R.B.

The Employer may not rely on the opinion letter in certain other circumstances or with respect to certain qualification requirements, which are specified in the opinion letter issued with respect to the Plan and in Announcement 2001-77.

In order to have reliance in such circumstances or with respect to such qualification requirements, application for a determination letter must be made to Employee Plans Determinations of the Internal Revenue Service.

## PART F - SIGNATURES

F.1. EMPLOYER SIGNATURE

Signed _____

Print name and title _____

Date _____

F.2. TRUSTEE(S) SIGNATURE

Signed _____

Print Name of Trustee(s): _____

Date _____

F.3. SPONSOR SIGNATURE

Signed _____

Print name and title _____

Name of Sponsor: Metropolitan Life Insurance Company _____

Date _____

F.4. ADOPTION BY RELATED EMPLOYERS

All related employers of the named Employer in Part A of this Adoption Agreement will be excluded from participation in this Plan unless they adopt the Plan below.

If other employers become related employers, they may also adopt this Plan. In order to participate in this Plan, the related employer must adopt the Plan below. Otherwise, they will be excluded from the Plan.

THE FOLLOWING EMPLOYER HEREBY ADOPTS THE PLAN:

Name of related employer
---

Employer identification number
---

Signed
---

Print name and title
---

Date
---

TYPE OF BUSINESS ENTITY

| | |
|---|---|
| [ ] Sole Proprietor | |
| [ ] Partnership | [ ] C Corporation |
| [ ] Limited Liability Partnership | [ ] Tax-Exempt Organization |
| [ ] Limited Liability Company | [ ] Governmental Entity |
| [ ] S Corporation | [ ] Other _____ |

THE IDENTIFYING NUMBER FOR THE METROPOLITAN LIFE INSURANCE COMPANY DEFINED CONTRIBUTION BASIC PLAN DOCUMENT IS 01 AND FOR THIS ADOPTION AGREEMENT IS 004. THIS ADOPTION AGREEMENT MAY BE USED ONLY WITH SUCH DOCUMENT. THE SPONSOR OF THE PROTOTYPE PLAN IS METROPOLITAN LIFE INSURANCE COMPANY, 1125 17TH STREET, SUITE 500, DENVER, CO 80202, (303) 672-3558. THE SPONSOR WILL NOTIFY YOU IF THE SPONSOR AMENDS OR DISCONTINUES THIS PROTOTYPE PLAN.

- ---
PART G - GUST REMEDIAL AMENDMENT PERIOD ELECTIONS
- ---

Complete the following if this Plan is a restatement of a plan that was in effect during 1997, 1998, 1999, 2000 and/or 2001 (GUST Remedial Amendment Period). The Employer is required to identify which operational methods were utilized during that period. Please complete all applicable categories below:

G.1 MINIMUM DISTRIBUTIONS (PLAN SECTION 9.8)

REQUIRED BEGINNING DATE. The Required Beginning Date of a Participant (other than a 5-Percent Owner) is:

[ ] The April 1 of the calendar year following the calendar year in which such Participant attains age 70 1/2. For Plan Year(s): (CHECK ALL THAT APPLY)
[ ] 1997 [ ] 1998 [ ] 1999 [ ] 2000 [ ] 2001.

[X] The April 1 of the calendar year following the calendar year in which occurs the later of (i) the date on which such Participant attains age 70 1/2 or (ii) the date on which the Participant retires. For Plan Year(s): (CHECK ALL THAT APPLY)
[X] 1997 [X] 1998 [X] 1999 [X] 2000 [X] 2001.

REQUIRED BEGINNING DATE TRANSITION RULES. The following rules apply to a Participant other than a 5-percent owner if the Required Beginning Date is the April 1st of the calendar year following the calendar year in which occurs the later of (i) the date on which the Participant attains age 70 1/2 or (ii) the date the Participant retires:

[X] Participant attaining age 70 1/2 may elect by April 1 of the calendar year following the calendar year in which the Participant attained age 70 1/2 to defer distributions until the April 1 of the calendar year following the calendar year in which the Participant retires. If no such election is made the Participant will begin receiving distributions by the April 1 of the calendar year following the calendar year in which the Participant attained age 70 1/2 .
For Plan Year(s): (CHECK ALL THAT APPLY):
[X] 1997 [X] 1998 [X] 1999 [X] 2000 [X] 2001.

[ ] Elimination of Preretirement Age 70 1/2 Distribution: Preretirement Distribution after Age 59 1/2. This box should be checked for years before the calendar year beginning after the later of December 31, 1998 or the adoption date of the amendment only if the Plan permits in-service distributions on or after attainment of age 59 1/2. For Plan Year(s): (CHECK ALL THAT apply):
[ ] 1997 [ ] 1998 [ ] 1999 [ ] 2000 [ ] 2001.

[X] Election to Stop Minimum Distributions. If checked, any Participant attaining age 70 1/2 in Plan Years prior to 1997 may elect to stop distributions and recommence by the April 1 of the calendar year following the calendar year in which the Participant retires. There is either (SELECT ONE): [ ] a new annuity starting date upon recommencement or [ ] no annuity starting date upon recommencement. Effective for Plan Year(s): (CHECK ALL THAT APPLY):
[X] 1997 [X] 1998 [X] 1999 [X] 2000 [X] 2001.

MINIMUM DISTRIBUTION CALCULATION METHOD. For the Plan Years beginning in 1997, 1998, 1999 and 2000, state which method was used to determine life expectancy: (CHOOSE ONE):

[ ] A Participant may elect whether the life expectancy of the Participant and his or her spouse will be recalculated or determined at the Required Beginning Date and reduced by one for each succeeding distribution calendar year.

[X] Minimum distributions payable for the life expectancy of the Participant and the Participant's surviving spouse shall be recalculated.

G.2. INVOLUNTARY DISTRIBUTIONS (PLAN SECTION 9.5(e))

The involuntary distributions threshold was raised to $5000 effective the first day of the first Plan Year beginning on or after August 5, 1997 unless a later date is elected below.

[ ] The involuntary distribution threshold was raised to $5000 effective for distributions made after_____.

G.3. FAMILY AGGREGATION REPEAL

For allocation purposes, the family aggregation rules were repealed for Plan Years beginning on or after January 1, 1997 unless a later date is elected below.

[ ] For allocation purposes, the family aggregation rules were repealed for Plan Years beginning _____.

G.4. HIGHLY COMPENSATED EMPLOYEE DETERMINATION (PLAN SECTION 2.15)

[ ] The Top-paid Group Election was utilized for the following Plan Years:
[ ] 1997 [ ] 1998 [ ] 1999 [ ] 2000 [ ] 2001.

[ ] The Calendar Year Election was utilized for the following non-calendar Plan Years:
[ ] 1997 [ ] 1998 [ ] 1999 [ ] 2000 [ ] 2001.

[ ] If checked, the Old-Law Calendar Year Election was utilized for the 1997 Plan Year (may be either calendar of fiscal Plan Years):

G.5. ADP TESTING METHODS (PLAN SECTION 5.6)

ADP TESTING METHODS

Check the applicable testing method for each Plan Year of the GUST Remedial Amendment Period in which 401(k) Savings Contributions were permitted, except for Plan Years in which the Plan was operated as a Safe Harbor 401(k) Plan.

| PLAN YEAR | PRIOR YEAR TESTING METHOD | CURRENT YEAR TESTING METHOD |
|---|---|---|
| 1997 | [X] | [ ] |
| 1998 | [X] | [ ] |
| 1999 | [X] | [ ] |
| 2000 | [X] | [ ] |
| 2001 | [X] | [ ] |

SPECIAL FIRST PLAN YEAR ELECTION FOR PLANS USING THE PRIOR YEAR METHOD

If the first Plan Year occurred during the GUST Remedial Amendment Period and the Employer elected the Prior Year Testing Method, the Employer must indicate which of the special Prior Year Testing Methods was used. Since the first Plan Year did not actually have a prior Plan Year, IRS Notice 98-1 allowed the Employer to use either 3% or the actual first Plan Year's ADP percentages for the group of Non-Highly Compensated Employees when using the Prior Year Testing Method. Indicate which method was utilized for the first Plan Year.

[ ] The ADP percentage for the group of Non-Highly Compensated Employees was 3% for the first Plan Year.

[ ] The ADP percentage for the group of Non-Highly Compensated Employees was the actual percentage for the first Plan Year.

G.6. ACP TESTING METHODS (PLAN SECTION 6.6)

ACP TESTING METHODS

Check the applicable testing method for each Plan Year of the GUST Remedial Amendment Period for which After-Tax Savings Contributions or Matching Contributions were permitted, except for Plan Years in which the Plan was operated as a Safe Harbor 401(m) Plan.

| PLAN YEAR | PRIOR YEAR TESTING METHOD | CURRENT YEAR TESTING METHOD |
|---|---|---|

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1997
[X] [
] 1998
[X] [
] 1999
[X] [
] 2000
[X] [
] 2001
[X] [
]

SPECIAL FIRST PLAN YEAR ELECTION FOR PLANS USING THE PRIOR YEAR METHOD

If the first Plan Year occurred during the GUST Remedial Amendment Period and the Employer elected the Prior Year Testing Method, the Employer must indicate which of the special Prior Year Testing Methods was used. Since the first Plan Year did not actually have a prior Plan Year, IRS Notice 98-1 allowed the Employer to use either 3% or the actual first Plan Year's ACP percentages for the group of Non-Highly Compensated Employees when using the Prior Year Testing Method. Indicate which method was utilized for the first Plan Year.

[ ] The ACP percentage for the group of Non-Highly Compensated Employees was 3% for the first Plan Year.

[ ] The ACP percentage for the group of Non-Highly Compensated Employees was the actual percentage for the first Plan Year.

G.7 SAFE HARBOR 401(k) ELECTIONS (PLAN SECTIONS 5.10, 6.10)

If the Employer maintained a Safe Harbor 401(k) Plan prior to this amendment, please complete the following chart with the applicable information.

| 1999 PLAN YEAR | 2000 PLAN YEAR | 2001 PLAN YEAR |
|---|---|---|
| --- | --- | --- |
| --- The Plan utilized the ADP Indicate either Yes or No Indicate either Yes or No Indicate either Yes or No Safe Harbor during the 1999, 2000 and/or 2001 Plan Year/s as indicated. The Plan utilized the ACP Indicate either Yes or No Indicate either Yes or No Indicate either Yes or No Safe Harbor during the 1999, 2000 and/or 2001 Plan Year/s as indicated. The Safe Harbor Matching Contribution Formula used during 1999, 2000 and/or 2001 Plan Year/s as stated. | Check Applicable Box [ ] Basic Matching Formula [ ] Basic Matching Formula [ ] Basic Matching Formula [ ] Enhanced Matching Formula [ ] Enhanced Matching Formula [ ] Enhanced Matching Formula | Check Applicable Box |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| The Safe Harbor Non-Elective Formula. | State the Safe Harbor Non-Elective Formula. | State the Safe Harbor Non-Elective Formula. |
| _____% (At least 3%) of Compensation | _____% (At least 3%) of Compensation | _____% (At least 3%) of Compensation |

G.8 PARTNERSHIPS & MATCHING CONTRIBUTIONS

Unless checked below, for Plan Years beginning before January 1, 1998, if the Employer is a partnership

(or an entity treated as a partnership for tax purposes), Employer Matching Contributions WERE allocated on behalf of a partner.

[ ] Employer Matching Contributions WERE NOT allocated on behalf of a partner.

G.9 SECTION 415(e) LIMITATIONS FOR EMPLOYERS WHO MAINTAINED A DEFINED BENEFIT PLAN PRIOR TO THE 2000 PLAN YEAR. (PLAN SECTION 13.1)

[] If the Participant is or has ever been a Participant in a defined benefit plan maintained by you:

---

---

(PROVIDE THE METHOD YOU WILL USE TO SATISFY CODE SECTION 415(e). SUCH LANGUAGE MUST PRECLUDE EMPLOYER DISCRETION.)

G.10 EFFECTIVE DATE OF AMENDMENTS ELIMINATING OPTIONAL FORMS OF DISTRIBUTION.

If the first two boxes under Section D.8 Optional Forms of Distribution Available under the Plan are not checked, indicate the effective date of the amendment: _____.

G.11 EFFECTIVE DATE OF INCLUSION OF QUALIFIED TRANSPORTATION FRINGE BENEFITS IN COMPENSATION DEFINITION. (PLAN SECTIONS 2.22, 13.1(b))

Pre-tax contributions of qualified transportation fringe benefits will be included in the definition of compensation for purposes of Sections 2.22 and 13.1(b) on the first day of the Plan Year beginning in 2001.For the 1998 through 2000 Plan Years, the Employer must check the applicable boxes.

1998 PLAN YEAR

[ ] Pre-tax contributions of qualified transportation fringe benefits were included in the definition of Compensation.

[ ] Pre-tax contributions of qualified transportation fringe benefits were not included in the definition of Compensation.

[X] Not applicable as the Employer does not offer its Employees qualified transportation fringe benefits.

1999 PLAN YEAR

[ ] Pre-tax contributions of qualified transportation fringe benefits were included in the definition of Compensation.

[ ] Pre-tax contributions of qualified transportation fringe benefits were not included in the definition of Compensation.

[X] Not applicable as the Employer does not offer its Employees qualified transportation fringe benefits.

2000 PLAN YEAR

[ ] Pre-tax contributions of qualified transportation fringe benefits were included in the definition of Compensation.

[ ] Pre-tax contributions of qualified transportation fringe benefits were not included in the definition of Compensation.

[X] Not applicable as the Employer does not offer its Employees qualified transportation fringe benefits.

SNAP-ON AMENDMENT

- ---
PART H - EGTRRA GOOD FAITH AMENDMENT
- ---

This amendment of the Plan is adopted to reflect certain provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"). This amendment is intended as good faith compliance with the requirements of EGTRRA and is to be construed in accordance with EGTRRA and guidance issued thereunder. Except as otherwise provided, this amendment shall be effective as of the first day of the first Plan Year beginning after December 31, 2001.

Pursuant to Plan Section 17.1, the Sponsor of this prototype plan hereby adopts this amendment on behalf of all adopting Employers. This amendment shall supersede the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this amendment.

Complete this Part to timely adopt good faith EGTRRA plan amendments, as required by IRS Notices 2001-42 and 2001-57.

H.1. PLAN LOANS FOR OWNER-EMPLOYEES AND SHAREHOLDER EMPLOYEES (PLAN SECTION 12.5(a))

Effective for Plan loans made after December 31, 2001, Plan provisions prohibiting loans to any Owner-Employee or Shareholder-Employee shall cease to apply.

H.2 LIMITATIONS ON CONTRIBUTIONS (PLAN ARTICLE 13)

1. Effective Date. This section shall be effective for Limitation Years beginning after December 31, 2001.

2. Maximum Annual Addition. The maximum Annual Addition that may be contributed or allocated to a Participant's Account under the Plan for any Limitation Year shall not exceed the lesser of:

a. $40,000, as adjusted for increases in the cost-of-living under Code Section 415(d), or

b. 100% of the Participant's Compensation, within the meaning of Code Section 415(c)(3), for the Limitation Year.

The Compensation limit referred to in (b.) above, shall not apply to any contribution for medical benefits after separation from service (within the meaning of Code Section 401(h) or Code Section 419A(f)(2)) which is otherwise treated as an Annual Addition.

H.3 ELECTIVE DEFERRALS - CONTRIBUTION LIMITATION (PLAN SECTION 5.2)

No Participant shall be permitted to have Elective Deferrals made under this Plan, or any other qualified plan maintained by the Employer during any taxable year, in excess of the dollar limitation contained in Code Section 402(g) in effect for such taxable year, except to the extent permitted under Section H.5 and Code Section 414(v), if applicable.

H.4 INCREASE IN COMPENSATION LIMIT (PLAN SECTION 2.22(a))

The annual Plan Compensation of each Participant taken into account in determining allocations for any Plan Year beginning after December 31, 2001, shall not exceed $200,000, as adjusted for cost-of-living increases in accordance with Code Section 401(a)(17)(B). Annual Compensation means compensation during the Plan Year or such other consecutive 12-month period over which compensation is otherwise determined under the Plan ("Determination Period"). The cost-of-living adjustment in effect for a calendar year applies to Annual Compensation for the Determination Period that begins with or within such calendar year.

H.5 CATCH-UP CONTRIBUTIONS

If elected by the Employer below, all Employees who are eligible to make Elective Deferrals under this Plan and who have attained age 50 before the close of the Plan Year shall be eligible to make Catch-Up Contributions in accordance with, and subject to the limitations of, Code Section 414(v). Such Catch-Up Contributions shall not be taken into account for purposes of the provisions of the Plan implementing the

required limitations of Code Sections 402(g) and 415. The Plan shall not be treated as failing to satisfy the provisions of the Plan implementing the requirements of Code Section 401(k)(3), Section 401(k)(11), Section 401(k)(12), Section 410(b), or Section 416, as applicable, by reason of the making of such Catch-Up Contributions. (CHOOSE ONE.)

[ ] Catch-up Contributions shall not apply.

[X] Catch-up Contributions shall apply to contributions after January 1, 2002. (Enter December 31, 2001 or a later date).

[X] Employer Matching Contributions shall apply to Catch-up Contributions and are treated as Employer Matching Contributions for purposes of the Actual Contribution Percentage Test and other requirements of Code Section 401(m).

H.6 MODIFICATION OF TOP-HEAVY RULES (PLAN ARTICLE 14)

1. Effective Date. This section shall apply for purposes of determining whether the Plan is a Top-Heavy Plan under Code Section 416(g) for Plan Years beginning after December 31, 2001, and whether the Plan satisfies the minimum benefits requirements of Code Section 416(c) for such years. This section amends Article 14 of the Plan.

2. Determination of Top-Heavy Status.

2.1 Key Employee. Key Employee means any Employee or former Employee (including any deceased Employee) who at any time during the Plan Year that includes the Determination Date was an officer of the Employer having Annual Compensation greater than $130,000 (as adjusted under Code Section 416(i)(1) for Plan Years beginning after December 31, 2002), a 5-percent owner of the Employer, or a 1- percent owner of the Employer having Annual Compensation of more than $150,000. For this purpose, Annual Compensation means Compensation within the meaning of Code Section 415(c)(3). The determination of who is a Key Employee will be made in accordance with Code Section 416(i)(1) and the applicable regulations and other guidance of general applicability issued thereunder.

2.2 Determination of Present Values and Amounts. This section 2.2 shall apply for purposes of determining the Present Values of Accrued Benefits and the amounts of account balances of Employees as of the Determination Date.

2.2.1 Distributions during Year ending on the Determination Date. The Present Values of Accrued Benefits and the amounts of Account balances of an Employee as of the Determination Date shall be increased by the distributions made with respect to the Employee under the Plan and any Plan aggregated with the Plan under Code Section 416(g)(2) during the 1-year period ending on the Determination Date. The preceding sentence shall also apply to distributions under a terminated Plan which, had it not been terminated, would have been aggregated with the Plan under Code Section 416(g)(2)(A)(i). In the case of a distribution made for a reason other than separation from service, death, or disability, this provision shall be applied by substituting "5-year period" for "1-year period."

2.2.2 Employees Not Performing Services during Year Ending on the Determination Date. The accrued benefits and Accounts of any individual who has not performed services for the Employer during the 1-year period ending on the Determination Date shall not be taken into account.

3. Minimum Benefits.

3.1 Matching Contributions. Employer Matching Contributions shall be taken into account for purposes of satisfying the minimum contribution requirements of Code Section 416(c)(2) and the Plan. The preceding sentence shall apply with respect to Employer Matching Contributions under the Plan or, if the Plan provides that the minimum contribution requirement shall be met in another plan, such other plan. Employer Matching Contributions that are used to satisfy the minimum contribution requirements shall be treated as Employer Matching Contributions for purposes of the Actual Contribution Percentage Test and other requirements of Code Section 401(m).

3.2 Contributions under Other Plans. Unless designated below, the minimum benefit requirement will be satisfied under this Plan, even if the Employer maintains one or more other defined contribution plans.

[ ] If checked, the minimum benefit requirement will be satisfied under the following plan:

Plan Name:
---

Minimum contribution provided: _____% of Plan Compensation

Employees entitled to receive minimum contribution

---

4. Top-Heavy Rules Not to Apply to Safe-Harbor 401(k)/(m) Plans. The Top-Heavy requirements of Code Section 416 and Article 14 of the Plan shall not apply in any year beginning after December 31, 2001, in which the Plan consists solely of a cash or deferred arrangement which meets the requirements of Code Section 401(k)(12) and matching contributions with respect to which the requirements of Code Section 401(m)(11) are met.

H.7 REPEAL OF THE MULTIPLE USE TEST (PLAN SECTION 6.9)

The Multiple Use Test described in Treasury Regulation Section 1.401(m)-2 and Plan Section 6.9 shall not apply for Plan Years beginning after December 31, 2001.

H.8 VESTING OF EMPLOYER MATCHING CONTRIBUTIONS
(PLAN SECTION 11.1, ADOPTION AGREEMENT PART D)

1. Applicability. Unless elected otherwise below, this section shall apply only to Participants who complete an Hour of Service under the Plan in a Plan Year beginning after December 31, 2001, for all Employer Matching Contributions credited to Participants' Accounts for Plan Years prior to and after December 31, 2001. (To apply new schedule to active participants on and after January 1, 2002 for their entire Employer Matching Contribution account.)

[ ] This section shall apply to all Participants with accrued benefits derived from Employer Matching Contributions for all Employer Matching Contributions credited to such Participants' Accounts for Plan Years prior to and after December 31, 2001. (To apply new schedule to both active and terminated Participants for their entire Employer Matching Contribution account.)

[ ] This section shall apply only to Participants who complete an Hour of Service under the Plan in a Plan Year beginning after December 31, 2001 for Employer Matching Contributions credited to such Participants' Accounts for Plan Years after December 31, 2001. (To apply new schedule to Employer Matching Contributions accrued on and after January 1, 2002.)

[X] Not applicable, the vesting schedule in effect prior to the Plan Year beginning after December 31, 2001 is at least as rapid as that required under EGTRRA. Therefore, such schedule remains in effect for Employer Matching Contributions credited to Participants' accounts on and after January 1, 2002.

2. Vesting Schedule. Employer Matching Contributions indicated in Section H.8.1 above shall vest as provided below, for those Participants indicated in Section H.8.1 above. (If the vesting schedule for Employer Matching Contributions in Option 3 is elected, Plan Section 17.3(d) shall apply.)

Vesting Schedule for Employer Matching Contributions:

[ ] Option 1. A Participant's accrued benefit derived from Employer Matching Contributions shall be fully and immediately vested.

[ ] Option 2. A Participant's accrued benefit derived from Employer Matching Contributions shall be nonforfeitable upon the Participant's completion of three (3) Years of Vesting Service.

[ ] Option 3. A Participant's accrued benefit derived from Employer Matching Contributions shall vest according to the following schedule:

| Years of Vesting Service | Vested Percentage |
|---|---|
| --- | --- |
| Less than 2 | 0% |
| 2 but less than 3 | 20% |
| 3 but less than 4 | 40% |
| 4 but less than 5 | 60% |
| 5 but less than 6 | 80% |
| 6 or more | 100% |

H.9 DIRECT ROLLOVERS OF PLAN DISTRIBUTIONS (PLAN SECTION 9.6A)

1. Effective Date. This section shall apply to distributions made after December 31, 2001.

2. Modification of Definition of Eligible Retirement Plan. For purposes of the direct rollover provisions in Plan Section 9.6A, an eligible retirement plan shall also mean an annuity contract described in Code Section 403(b) and an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in Code Section 414(p).

3. Modification of Definition of Eligible Rollover Distribution to Exclude Hardship Distributions. For purposes of the direct rollover provisions in Plan Section 9.6A, any amount that is distributed on account of hardship shall not be an Eligible Rollover Distribution and the Distributee may not elect to have any portion of such a distribution paid directly to an Eligible Retirement Plan.

4. Modification of Definition of Eligible Rollover Distribution to include After-Tax Employee Contributions. For purposes of the direct rollover provisions in Plan Section 9.6A, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of After-Tax Employee Contributions, which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Code Sections 408(a) or (b), or to a qualified defined contribution plan described in Code Sections 401(a) or 403(a) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

H.10 ROLLOVERS FROM OTHER PLANS (PLAN ARTICLE 7)

1. Direct Rollovers. The Plan will accept direct rollovers of eligible rollover distributions from: (check all that apply)

[X] A qualified plan described in Code Sections 401(a) or 403(a), excluding After-Tax Employee Contributions.

[ ] A qualified plan described in Code Sections 401(a) or 403(a), including After-Tax Employee Contributions.

[X] An annuity contract described in Code Section 403(b),

excluding After-Tax Employee Contributions.

[X] An eligible plan under Code Section 457(b), which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

2. Participant Rollover Contributions from Other Plans. The Plan will accept a Participant contribution of an eligible rollover distribution from: (check all that apply)

[X] A qualified plan described in Code Sections 401(a) or 403(a).

[X] An annuity contract described in Code Section 403(b).

[X] An eligible plan under Code Section 457(b), which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

3. Participant Rollover Contributions from IRAs. The Plan (choose one):

[X] will

[ ] will not

accept a Participant rollover contribution of the portion of a distribution from an individual retirement account or annuity described in Code Sections 408(a) or 408(b) that is eligible to be rolled over and would otherwise be includible in gross income.

4. Effective Date of Direct Rollover and Participant Rollover Contribution Provisions. This section H.10, will become effective _____ (Enter a date no earlier than January 1, 2002).

H.11 ROLLOVERS DISREGARDED IN INVOLUNTARY CASH-OUTS

1. Applicability and Effective Date. This section shall apply if elected by the Employer below, and shall be effective as specified below.

2. Rollovers Disregarded in Determining Value of Account Balance for Involuntary Distributions. If elected by the Employer below, for purposes of Plan Section 9.5(e), the value of a Participant's nonforfeitable account balance shall be determined without regard to that portion of the account balance that is attributable to Rollover Contributions (and earnings allocable thereto) within the meaning of Code Section 402(c), Section 403(a)(4), Section 403(b)(8), Section 408(d)(3)(A)(ii), and Section 457(e)(16). If the value of the Participant's nonforfeitable account balance as so determined is $5,000 or less, whether the Plan shall make an immediate distribution of the Participant's nonforfeitable account balance shall be determined under Adoption Agreement Section D.7.

The Employer: (choose one)

[ ] elects

[X] does not elect

to exclude Rollover Contributions in determining the value of the Participant's nonforfeitable account balance for purposes of the Plan's involuntary cash-out rules.

3. Effective Date. If the Employer has elected to exclude Rollover Contributions, the election shall apply with respect to distributions made after:

_____ (Enter a date no earlier than December 31, 2001.) with respect to Participants who separated from service prior to:

_____ (Enter a date earlier than January 1, 2002.)

H.12 SUSPENSION PERIOD FOLLOWING HARDSHIP DISTRIBUTION (PLAN SECTIONS 5.2(b), 12.3)

A Participant who receives a distribution of Elective Deferrals after December 31, 2001, on account of hardship shall be prohibited from making Elective Deferrals and After-Tax Employee Contributions under this and all other plans of the Employer for 6 months after receipt of the distribution. A Participant who receives a distribution of Elective Deferrals in calendar year 2001 on account of hardship shall be prohibited from making Elective Deferrals and After-Tax Employee Contributions under this and all other plans of the Employer for the period specified by the Employer below.

Suspension Period for Hardship Distributions Received during 2001:
(choose one)

[X] A Participant who receives a distribution of Elective Deferrals in calendar year 2001 on account of hardship shall be prohibited from making Elective Deferrals and After-Tax Employee

Contributions under this and all other plans of the Employer for 6 months after receipt of the distribution or until January 1, 2002, if later.

[ ] A Participant who receives a distribution of Elective Deferrals in calendar year 2001 on account of hardship shall be prohibited from making Elective Deferrals and After-Tax Employee Contributions under this and all other plans of the Employer for the period specified in the provisions of the Plan relating to suspension of Elective Deferrals that were in effect prior to this amendment.

H.13 DISTRIBUTION UPON SEVERANCE FROM EMPLOYMENT (PLAN SECTION 11.3)

1. Effective Date. This section shall apply for distributions and transactions made after December 31, 2001, regardless of when the severance from employment occurred.

2. New Distributable Event. A Participant's Elective Deferrals, Qualified Nonelective Contributions, Qualified Matching Contributions, and earnings attributable to these contributions shall be distributed on account of the Participant's severance from employment. However, such a distribution shall be subject to the other provisions of the Plan regarding distributions, other than provisions that require a separation from service before such amounts may be distributed.

Plan Sponsor
Signature:
---

Print Name and Title:
---

Date: ---

Effective/
Amendment Date: ---

METROPOLITAN LIFE INSURANCE COMPANY

DEFINED CONTRIBUTION BASIC PLAN DOCUMENT

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NOVEMBER, 2001

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## ARTICLE 1: INTRODUCTION

1.1 ESTABLISHMENT OF PLAN: The Employer established this plan under the name specified in the Adoption Agreement.

1.2 PLAN DOCUMENTS: The Plan consists of this Defined Contribution Basic Plan Document, the Adoption Agreement executed by the Employer, and the related Trust instrument, as each may be amended from time to time.

In this Basic Plan Document, cross references that are Arabic numbers are to an article or section of this document, and cross references that begin with a capital letter are to the Adoption Agreement.

1.3 PAIRED PLANS:

(a) Two or more plans established using this Basic Plan Document (or the Sponsor's Defined Benefit Basic Plan Document) and Standardized Adoption Agreements may be Paired Plans. The Code requirements for qualification of multiple plans will automatically be satisfied for Paired Plans, and the Employer who complies with the Plans' provisions may rely upon their qualification without obtaining individual determination letters from the Internal Revenue Service.

(b) The requirements for Paired Plans are as follows:

(i) Each Plan uses one of the Sponsor's Pairable Standardized Adoption Agreements. The following are Pairable Standardized Adoption Agreements: adoption agreements numbered, 001, 002, 007 and 008.

(ii) Such Plans are (a) a profit sharing plan, (b) a money purchase pension plan, or (c) a defined benefit pension plan.

(iii) Only one of such plans is integrated with Social Security.

(iv) Each Adoption Agreement specifies the Employer's other Paired Plan(s).

## ARTICLE 2: DEFINITIONS

A word or term defined in this article (or in any other article) will have the same meaning throughout the Plan unless the context clearly requires a different meaning.

2.1 ACTUAL CONTRIBUTION PERCENTAGE: (ACP) shall mean, for a specified group of participants for a Plan Year, the average of the Contribution Percentages of the Eligible Participants in a group.

2.2 ACTUAL DEFERRAL PERCENTAGE: (ADP) shall mean, for a specified group of participants for a Plan Year, the average of the ratios (calculated separately for each Participant in such group) of (1) the amount of Employer contributions actually paid over to the Trust on behalf of such Participant for the Plan Year to (2) the Participant's Plan Compensation or compensation (based on a definition of compensation selected by the Employer for the Plan Year that satisfies Code Section 414(s)) for such Plan Year. Employer contributions on behalf of any Participant shall include: any elective deferrals made pursuant to the participant's deferral election, including Excess Elective Deferrals of Highly Compensated Employees, but excluding (a) Excess Elective Deferrals of the Non-Highly Compensated Employees that arise solely from Elective Deferrals made under the Plan or Plans of this Employer and (b) Elective Deferrals that are taken into account in the Contribution Percentage Test (provided the ADP test is satisfied both with and without exclusion of these Elective Deferrals); and at the election of the Employer, Qualified Non-elective Contributions and Qualified Matching Contributions. For purposes of computing Actual Deferral Percentages, an Employee who would be a Participant but for the failure to make Elective Deferrals shall be treated as a Participant on whose behalf no Elective Deferrals are made.

2.3 ADOPTION AGREEMENT: means the Metropolitan Life Insurance Company Adoption Agreement executed by the Employer to establish or amend the Employer's Plan and its related Trust and to specify optional provisions as part of the Employer's Plan.

2.4 BENEFICIARY: means the individual(s) or entity(ies) designated by a Participant or Beneficiary, or by the Plan, to receive any benefit payable upon the death of the Participant or Beneficiary.

2.5 CODE: means the Internal Revenue Code of 1986, as amended.

2.6 EFFECTIVE DATE: shall mean the date specified in the initial Adoption Agreement, but no earlier than the first day of the Plan Year in which the initial Adoption Agreement is executed, except as otherwise provided in this section. In the event that this Plan is an amended Plan, the Plan Effective Date shall remain the initial Effective Date of the Plan. In addition, if a section of the Plan or the Adoption Agreement specifies an Effective Date, such provision shall be effective on the later of the date specified in such section or the initial Effective Date of the Plan. Notwithstanding the foregoing, if the Employer is adopting this Plan as an amended and restated plan, then, except as otherwise specifically provided in the Plan, the Effective Date of the amendment and restatement of this Plan shall be the first day of the Plan Year beginning in 1997. However, the operation of specified portions of the Plan during the Plan Years beginning in 1997 and ending for the Plan Year beginning in 2000 will be reflected in Part G of the Adoption Agreement.

2.7 ELECTIVE DEFERRALS: (or 401(k) Savings Contributions) shall mean any Employer Contributions made to the Plan at the election of the Participant, in lieu of cash compensation,

and shall include contributions made pursuant to a salary reduction agreement or other deferral mechanism. With respect to any taxable year, a Participant's Elective Deferral is the sum of all Employer Contributions made on behalf of such Participant pursuant to an election to defer under any qualified CODA as described in section 401(k) of the Code, any simplified employee pension cash or deferred arrangement as described in section 408(k)(6)), any SIMPLE IRA Plan described in Section 408(p), any eligible deferred compensation plan under section 457, any plan as described under section 501(c)(18), and any employer contributions made on the behalf of a participant for the purchase of an annuity contract under section 403(b) pursuant to a salary reduction agreement. Elective Deferrals shall not include any deferrals properly distributed as Excess Amounts.

2.8 EMPLOYEE: means (i) a person employed by the Employer and, (ii) an individual described in Section 19.12 who is deemed to be an Employee of any such Employer under Code Sections 414(n) or 414(o). Employee includes a self-employed individual.

2.9 EMPLOYER: means, with respect to a Nonstandardized Plan, the Employer named in Part A of the Adoption Agreement and any related employer which has specifically adopted the Plan in Part F of the Adoption Agreement.

No Employer may adopt a Standardized Plan unless each related employer that is part of the same Controlled Group (as defined in Section 19.9) or the same Affiliated Service Group (as defined in Section 19.10), or that is aggregated under Section 19.11, with the Employer designated in Part A of the Adoption Agreement joins the Plan. The failure of any such related employer to join the plan will cause it to be considered a Nonstandardized Plan so that the Employers may not rely upon the Plan's qualification under Code Section 401(a) unless they obtain an individual determination letter to such effect from the Internal Revenue Service.

Where specifically provided in this Plan, the term Employer will include the Employer named in Part A of the Adoption Agreement, each related employer which has specifically adopted this Plan in Part F of the Adoption Agreement and each related employer that is part of the same Controlled Group (as defined in Section 19.9) or the same Affiliated Service Group (as defined in Section 19.10), or that is aggregated under Section 19.11, with the Employer designated in Part A of the Adoption Agreement. General rules of construction appear in Section 16.7, "More than One Employer."

2.10 ERISA: means the Employee Retirement Income Security Act of 1974, as amended.

2.11 EXCESS AGGREGATE CONTRIBUTIONS: shall mean, with respect to any Plan Year, the excess of:

(a) The aggregate Contribution Percentage Amounts taken into account in computing the Actual Contribution Percentage actually made on behalf of the group of HCEs for such Plan Year, minus

(b) The maximum Contribution Percentage Amounts permitted by the ACP test (determined by hypothetically reducing contributions made on behalf of members of the group of HCEs in order of their Contribution Percentages beginning with the highest of such percentages).

Such determination shall be made after first determining Excess Elective Deferrals pursuant to section 5.8(b), Excess Amounts pursuant to Section 13.7 and then determining Excess Contributions pursuant to section 5.8(a).

2.12 EXCESS CONTRIBUTIONS: shall mean, with respect to any Plan Year, the excess of:

a. The aggregate amount of Employer Contributions actually taken into account in computing the ADP of the group of HCEs for such Plan Year, minus

b. The maximum amount of such contributions permitted by the ADP test (determined by hypothetically reducing contributions made on behalf of the group of HCEs in order of the ADPs, beginning with the highest of such percentages).

Such determination shall be made after first determining Excess Elective Deferrals pursuant to section 5.8(b) and then determining Excess Amounts pursuant to Section 13.7.

2.13 EXCESS ELECTIVE DEFERRALS OR EXCESS 401(K) SAVINGS CONTRIBUTIONS: shall mean those Elective Deferrals or 401(k) savings contributions that are includible in a Participant's gross income under section 402(g) of the Code to the extent such Participant's Elective Deferrals or 401(k) Savings Contributions for a taxable year exceed the dollar limitation under such Code section. Excess Elective Deferrals or Excess 401(k) Savings Contributions shall be treated as Annual Additions under the Plan unless such amounts are distributed no later than the first April 15 following the close of the Participant's taxable year.

2.14 FAMILY MEDICAL ABSENCE: means, with respect to an Employee who satisfies the notice, medical certification and reemployment provisions of the Family and Medical Leave Act of 1993, an unpaid absence not in excess of twelve workweeks in any year of service (a) for purposes of caring for the Employee's spouse, child, or parent with a serious health condition (as defined in Section 101(11) of the Family and Medical Leave Act of 1993) or (b) because of a serious health condition that makes the Employee unable to perform one or more of the essential functions of his or her job.

2.15 HIGHLY COMPENSATED EMPLOYEE: (HCE) means, for Plan Years beginning after December 31, 1996, any employee of the Employer and with all entities related to the Employer as described in Sections 19.9, 19.10 and 19.11,who (1) was a 5-percent owner at any time during the Determination Year or the Look-back Year; or (2) had compensation from the Employer in

excess of $80,000 for the Lookback Year, and, if the Employer so elects in the Adoption Agreement, was in the Top-Paid Group for the preceding year. The $80,000 amount is adjusted at the same time and in the same manner as under Code Section 415(d), except that the base period is the calendar quarter ending September 30, 1996. For this purpose, the applicable Plan Year of the Plan for which a determination is being made is called a Determination Year and the preceding 12-month period is called the Look-Back Year. A Highly Compensated Former Employee is based on the rules applicable to determining Highly Compensated Employee status as in effect for that Determination Year, in accordance with section 1.414(q)-1T, A-4 of the Temporary Income Tax Regulations and Notice 97-45. In determining whether an Employee is a Highly Compensated Employee for years beginning in 1997, the amendments to Section 414(q) stated above are treated as having been in effect for years beginning in 1996. If elected in the Adoption Agreement, the Employer may determine which Employees who may be described in (2) are Highly Compensated Employees by way of the calendar year election described in Section 1.414(q)-1T, Q&A-14(b) of the Temporary Income Tax Regulations.

2.16 MILITARY ABSENCE: means any unpaid leave of absence not in excess of five years' duration (unless extended in accordance with the Uniformed Services Employment and Reemployment Rights Act ("USERRA")) taken by an Employee for purposes of serving in the uniformed services of the United States, with respect to an Employee who satisfies the conditions for reemployment specified by the USERRA following the expiration of such leave.

2.17 NON-HIGHLY COMPENSATED EMPLOYEE: (NHCE) means any Employee who is not a Highly Compensated Employee.

2.18 OWNER-EMPLOYEE: means an individual who is the sole proprietor (if the Employer is a proprietorship), or who is a partner or shareholder owning more than 10 percent of either the

capital or profits interest (if the Employer is a partnership or a limited liability partnership or a limited liability company that is treated as a partnership under the Code).

2.19 PARTICIPANT: means an Employee who has become a Participant in the Plan, a former Employee who has an account balance under the Plan and an Employee who has not yet satisfied the age and service requirements of Section 4.2 but has made a rollover contribution into the Plan, pursuant to Section 7.1(c). A Participant's participation will end on the earlier of the date on which (i) he or she receives a total distribution from the Plan in the form of a single sum or (ii) he or she has no vested interest in the Plan and a period of five consecutive One-Year Breaks in Service has occurred.

A Participant is treated as benefiting under the Plan for any Plan Year during which the Participant received or is deemed to receive an allocation in accordance with Treasury Regulation Section 1.410(b)-3(a).

2.20 PLAN: means the Employer's Plan as set forth in this Metropolitan Life Insurance Company Basic Plan Document and the Adoption Agreement signed by the Employer, including all amendments to either document.

2.21 PLAN ADMINISTRATOR: means the person or persons designated in the Adoption Agreement as Plan Administrator to control and manage the operation and administration of the Employer's Plan as provided in Article 16.

2.22 PLAN COMPENSATION:

(a) General Definition. A Participant's Plan Compensation for a Plan Year means compensation as that term is defined in Section 13.1(b) of the Plan for services actually rendered by the Participant as an Employee of the Employer, as modified in the Adoption Agreement. Solely for purposes of determining the amount of a Participant's 401(k) Savings Contributions, After-Tax Savings Contributions and their related Matching Contributions, Plan Compensation shall include Employer Contributions made pursuant to a salary reduction agreement or other arrangement which are not includible in the gross income of the participant under Code Sections 125, 132(f)(4), 402(e)(3), 402(h)(1)(B) or 403(b). Compensation shall include only that compensation which is actually paid to the Participant during the Determination Period. Except as provided elsewhere in the Plan, the Determination Period shall be the period elected by the Employer in the Adoption Agreement. If the Employer makes no election, the Determination Period shall be the Plan Year. For a self-employed individual, Plan compensation means his or her Earned Income. Except as otherwise provided in the Adoption Agreement, Plan Compensation shall include any amount which is contributed by the Employer pursuant to a salary reduction agreement or other arrangement and which is not includible in the gross income of the Employee under sections 125, 132(f)(4), 402(e)(3), 402(h)(1)(B), or 403(b) of the Code.

For purposes of this subsection, Earned Income means net earnings from self employment in the trade or business with respect to which the Plan is established, for which the personal services of the individual are a material income producing factor. Net earnings will be determined without regard to items excluded from gross income and the deductions allocable to such items. Net earnings are reduced by contributions by the Employer to a qualified plan to the extent deductible under Code Section 404. Net earnings shall be determined with regard to the

deduction allowed to the taxpayer by Code Section 164(f) for taxable years beginning after December 31, 1989.

Notwithstanding the foregoing, the annual compensation of each Participant taken into account for determining all benefits provided under the Plan for any Plan Year shall not exceed $150,000, as adjusted for increases in the cost-of-living in accordance with section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to any Determination Period beginning in such calendar year.

If the Determination Period consists of fewer than 12 months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short plan year, and the denominator of which is 12. If compensation for any prior Determination Period is taken into account in determining an Employee's allocations or benefits for the current Plan Year, the compensation for such prior year is subject to the applicable annual compensation limit in effect for that prior year. For this purpose, for years beginning before January 1, 1990, the applicable annual compensation limit is $200,000. In addition, in determining allocations in Plan Years beginning on or after January 1, 1994, the annual compensation limit in effect for Determination Periods beginning before that date is $150,000.

(b) Exception. For Plan Years beginning before January 1, 1998, for purposes of Article 13 (Code Section 415 limits), the foregoing definition of Plan Compensation will not apply (see Section 13.1(b) for the applicable definition).

2.23 PLAN YEAR: means the year specified in the Adoption Agreement.

2.24 QUALIFIED MATCHING CONTRIBUTIONS: shall mean employer matching contributions which are subject to the distribution (other than those specified in Section 12.3) and nonforfeitability requirements of Code Section 401(k) when made.

2.25 QUALIFIED NON-ELECTIVE CONTRIBUTIONS: shall mean Contributions (other than Matching Contributions or Qualified Matching Contributions) made by the Employer and allocated to Participants' accounts that the Participants may not elect to receive in cash until distributed from the plan; that are nonforfeitable when made; and that are distributable only in accordance with the distribution provisions (other than those specified in Section 12.3) that are applicable to Elective Deferrals and Qualified Matching Contributions.

2.26 SELF-EMPLOYED INDIVIDUAL: means an individual who has Earned Income for the taxable year from the trade or business for which the Plan is established (or who would have had Earned Income but for the fact that the trade or business had no net profits for the taxable year).

2.27 SHAREHOLDER-EMPLOYEE: in any year means an Employee or officer of an S corporation (as defined in Code Section 1361(a)) who owns, directly or indirectly, more than five percent of the outstanding stock of the Employer during such year.

2.28 SPONSOR: means Metropolitan Life Insurance Company or its successor.

2.29 TRUST: means the trust established under the instrument entitled - Trust Agreement or such other trust agreement entered into by the Employer and the Trustee for the payment of the benefits provided by the plan or such custodial accounts or annuity contracts which meet the requirements of Code Section 401(f).

2.30 TRUSTEE: means the trustee named in the trust agreement to serve as trustee under the plan, or any successor trustee serving under the Trust Agreement.

2.31 STRAIGHT LIFE ANNUITY: means an annuity payable in equal installments for the life of the Participant and that terminates upon the Participant's death.

## ARTICLE 3: DEFINITIONS AND RULES RELATING TO SERVICE
## PART A: HOURS OF SERVICE METHOD:

3A.1 APPLICABILITY OF PART A: The definitions and rules in this Part A of Article 3 will apply unless in the Adoption Agreement the Employer elected to have Employees' service determined entirely or partly using the elapsed time method.

3A.2 YEAR OF SERVICE: A year of service of an Employee is a 12 consecutive month computation period in which he or she completes at least 1,000 Hours of Service, or a smaller number of hours specified in the Adoption Agreement.

3A.3 HOUR OF SERVICE:

(a) Except as provided in subsection (b) below, an Employee's Hours of Service will be counted by giving the Employee credit for:

(1) each hour for which he or she is paid, or entitled to payment, for the performance of duties for the Employer. These hours will be credited to him or her for the computation period in which the duties are performed; and

(2) each hour for which he or she is paid, or entitled to payment, by the Employer on account of a period of time during which no duties are performed (regardless of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence. No more than 501 Hours of Service will be credited under this subsection (2) for any single continuous period (whether or not such period occurs within a single computation period). Hours under this subsection (2) will he calculated and credited

under Department of Labor Regulations, 29 C.F.R. Section 2530.200-2(b) and (c), which are incorporated herein by this reference; and

(3) each hour for which back pay, regardless of mitigation of damages, is either awarded or agreed to by the Employer. The same Hours of Service will not he credited both under subsection (1) or subsection (2), as the case may be, and under this subsection (3). These hours will he credited to the Employee for the computation period or periods to which the award or agreement pertains rather than the computation period in which the award, agreement or payment is made.

(4) In addition to hours credited to an employee under subsections (1) through (3) above, he or she will be credited with the number of hours (not exceeding 40 for a full week or a pro rata portion of 40 for a partial week) he or she normally would have worked except for the fact that he or she was absent on one of the following types of unpaid absence: (A) leave of absence for a period authorized by the Employer under a leave policy applied uniformly to all Employees, provided he or she returns to service with the Employer at or before the expiration of such period; or (B) a Military Absence.

(5) Solely for purposes of determining whether a One-Year Break in Service, as defined in section 3A.4, has occurred in a computation period, an Employee who is absent from work for maternity or paternity reasons, by reason of a Family Medical Absence or by reason of a Military Absence will receive credit for the Hours of Service which would otherwise have been credited to such Employee but for such absence, (or in any case in which such hours cannot be determined, eight Hours of Service per day of such absence). For purposes of this subsection (5), an absence from work for maternity or paternity reasons means an absence (A) by reason of the pregnancy of the Employee,

(B) by reason of a birth of a child of the Employee, (C) by reason of the placement of a child with the Employee in connection with the Employee's adoption of such child, or (D) for purposes of caring for such child for a period beginning immediately following such birth or placement. The hours of service credited under this subsection (5) will be credited (i) in the computation period in which the absence begins if the crediting is necessary to prevent a One-Year Break in Service in that period, or (ii) in all other cases, in the following computation period if necessary to prevent a One-Year Break in Service in that computation period.

(b) If the Employer so elects in the Adoption Agreement, an Employee will be credited with the number of Hours of Service specified in this subsection (b) for a period if the Employee would have been credited with at least one Hour of Service during such period under subsection (a) above:

(1) 10 Hours of Service per day;

(2) 45 Hours of Service per week;

(3) 95 Hours of Service per semi-monthly payroll period; or

(4) 190 Hours of Service per month.

Only one such method may be elected and it must apply to all Employees.

3A.4 ONE-YEAR BREAK IN SERVICE: A One-Year Break in Service of an Employee is a 12-consecutive month computation period during which he or she completes one-half or fewer of the number of Hours of Service required for a Year of Service under Section 3A.2. The 12-month computation period will be the same period used to determine a Year of Service under Section 3A.6 or Section 3A.7.

3A.5 EMPLOYMENT YEARS DEFINED: Employment Years of an Employee are 12-consecutive month periods beginning on the date he or she first completes an Hour of Service and on subsequent anniversaries of such date.

3A.6 ELIGIBILITY COMPUTATION PERIOD: For purposes of determining whether an Employee has completed the service requirement (if any) for participation:

(a) The initial Computation Period will be his or her first Employment Year.

(b) Subsequent Computation Periods will be either (i) his or her subsequent Employment Years, or (ii) if the Adoption Agreement so specifies, Plan Years beginning with the Plan Year that starts during his first Employment Year regardless of whether the Employee is entitled to be credited with 1,000 Hours of Service during his or her first Employment Year. For purposes of clause (ii) of the preceding sentence, an Employee who is credited with 1,000 Hours of Service in both his or her first Employment Year and the Plan Year that starts during his or her first Employment Year will (unless his or her Employment Year and the Plan Year coincide) be credited with two Years of Service for purposes of eligibility to participate.

(c) If an Employee has a One-Year Break in Service, his or her 12-consecutive month Eligibility Computation Periods will begin with his or her first Employment Year after such break. If necessary for purposes of measuring Years of Service for participation, subsequent 12-consecutive month Computation Periods will be either (i) if the Adoption Agreement so specifies under subsection (b)(i) above, subsequent Employment Years, or otherwise (ii) Plan Years beginning with the Plan Year which begins during his or her first Employment Year after such break.

3A.7 VESTING COMPUTATION PERIOD: For purposes of computing an Employee's nonforfeitable right to his or her Employer Contributions account, an Employee's Computation Periods will be either (a) Plan Years, or (b) if the Adoption Agreement so specifies, Employment Years.

3A.8 COUNTING YEARS OF SERVICE FOR PARTICIPATION: All of an Employee's Years of Service with the Employer are counted toward meeting the Plan's participation eligibility requirement (if any), except that, if the Plan provides for 100% vesting after two years or less of service, service before a One-Year Break In Service which occurs before the Employee satisfies the Plan's requirement for eligibility will be disregarded unless the Adoption Agreement specifies otherwise. However, the preceding sentence will not apply if the Employer's plan is a 401(k) plan.

If the service requirement to become a Participant as specified in the Adoption Agreement includes a fractional year, an Employee will not be required to complete any minimum number of hours of service to receive credit for such fractional year.

3A.9 YEARS OF SERVICE FOR VESTING: For purposes of determining a Participant's vested percentage, all of his or her Years of Service will be counted, including any period of Military Absence, except that, if the Adoption Agreement specifically so provides, the following Years of Service will not be counted:

(a) Years of Service completed before age 18;

(b) Years of Service before the Employer maintained this Plan or a predecessor plan.

A Plan is a predecessor plan if it was terminated on or after the date it was required to comply with ERISA and within five years before or after the effective date of this Plan. A plan is not treated as a predecessor plan with respect to an Employee unless he or she was a participant in such plan.

3A.10 SERVICE WITH OTHER ORGANIZATIONS:

(a) To determine whether an Employee is a Participant and to determine his or her vested percentage, he or she will receive credit for Hours of Service under Section 3A.3 with the following entities (or as a leased employee under Code Section 414(n) or Code Section 414(o)) as if those Hours of Service were credited to the Employee for service with the Employer: any member of an Affiliated Service Group (under Code Section 414(m)) including the Employer, any corporation which is included in a Controlled Group of Corporations (under Code Section 414(b)) with the Employer or any unincorporated trade or business which is under common control (under Code Section 414(c)) with the Employer, and any entity required to be aggregated with the Employer under Code Section 414(o). Service credited under this subsection (a) shall be limited to the period that the other entities were related to the Employer in the manner described in the applicable Code section, unless the Employer has elected in the Adoption Agreement to recognize service with any such entity for any period prior to the time such relationship commenced.

(b) If the Employer maintains a plan of a predecessor employer, service with the predecessor employer will be treated as service with the Employer.

(c) If not treated as service with the Employer under subsection (b) above, service with any entity specifically so designated in the Adoption Agreement will be treated as service with the Employer.

(d) Notwithstanding any provision in this Section to the contrary, in the case of a standardized plan, the Service credited under this Section to any Participant shall not exceed five (5) years.

## PART B: ELAPSED TIME METHOD

3B.1 APPLICABILITY OF PART B: If in the Metropolitan Life Insurance Company Adoption Agreement the Employer elected to have Employees' service determined entirely or partly using the elapsed time method, then to that extent the definitions and rules in this Part B will apply.

3B.2 SERVICE:

(a) In General. Service of an employee includes all of the following:

(1) any period of his or her employment, whether or not continuous;

(ii) for a reemployed Employee, any Period of Severance provided that his or her Reemployment Date occurs within one year after his Severance Date.

(b) Years of Service. To determine an Employee's Years of Plan Service, all of his or her Plan service will be aggregated and each 365 days of such aggregated Plan service will constitute one Year of Plan service. If any provision of the Plan calls for completion of a fractional Year of Plan Service, such fraction of 365 days of his or her aggregated Plan Service will satisfy the provision; for example, if one-half Year of Plan Service is required, then such requirement will be met when the Employee's aggregated Plan Service equals 183 days.

3B.3 DEFINITIONS RELATING TO SERVICE:

(a) Employment. An Employee's Employment means his or her service as an Employee, beginning on his or her Employment Date or Reemployment Date and ending on his or her Severance Date.

(b) Employment Date. An Employee's Employment Date or Reemployment Date is the date on which he or she first completes an Hour of Service.

(c) Reemployment Date. In the case of an Employee who has a Period of Severance which is not taken into account under Section 3B.2(a) (ii), the Reemployment Date is the date on which he or she first completes an Hour of Service after such Period of Severance.

(d) Period of Severance. A Period of Severance of an employee means a period beginning on his or her Severance Date and, if applicable, ending on his or her Reemployment Date.

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

Subject to the requirements of the Adoption Agreement, each Employee will share in Employer Contributions for the period beginning on the date the Employee commences participation under the Plan and ending on the date on which such Employee severs Employment with the Employer or is no longer a member of an eligible class of Employees.

If the Employer is a member of an Affiliated Service Group (under section 414(m)), a Controlled Group of Corporations (under section 414(b)), a group of trades or businesses under common control (under section 414(c)) or any other entity required to be aggregated with the employer pursuant to section 414(o) and the regulations thereunder, service will be credited for any Employment for any period of time for any other member of such group. Service will also be

credited for any individual required under section 414(n) or section 414(o) and the regulations thereunder to be considered an Employee of any Employer aggregated under section 414(b), (c), or (m).

(e) Severance Date. An Employee's Severance Date is the earlier of:

(1) the date on which he or she quits, retires, is discharged or dies, or

(2) the first anniversary of the first day of a period during which he or she is absent (with or without compensation) from performing duties for the Employer for any reason other than quit, retirement, discharge or death, such as vacation, holiday, sickness, leave of absence or layoff.

(f) Hour of Service. For purposes of this Part B of Article 3, an Hour of Service is an hour for which the Employee is paid or entitled to payment for the performance of duties for the Employer.

3B.4 CERTAIN SERVICE BEFORE ELIGIBILITY DISREGARDED: If the Plan provides for 100% vesting after two years or less of Plan Service, Plan Service will be disregarded if it was completed before a Period of Severance of one year or more which occurs before the Employee satisfied the Plan's service requirement for eligibility. However, this section does not apply if the Employer's plan is a 401(k) plan.

3B.5 SERVICE FOR VESTING: For purposes of determining a Participant's vested percentage, all of his or her Service will be counted, including any period of Military Absence, except that, if the Adoption Agreement so provides, the following Service will not be counted:

(a) Service completed before age 18;

(b) Service before the Employer maintained this Plan or a predecessor plan.

A plan is a predecessor plan if it was terminated on or after the date it was required to comply with ERISA and within five years before or after the effective date of this plan. A plan is not treated as a predecessor plan with respect to an Employee unless he or she was a participant in such plan.

3B.6 SERVICE WITH OTHER ORGANIZATIONS:

(a) To determine whether an Employee is a Participant and to determine his or her vested percentage, Service with the following entities (or as a Leased Employee under Code Section 414(n)) will count as Service with the Employer: any member of an Affiliated Service Group (under Code Section 414(m)), any corporation which is included in a Controlled Group of Corporations (under Section Code 414(b)) with the Employer, any unincorporated trade or business which is under common control (under Section Code 414(c)) with the Employer, and any entity aggregated with the Employer under Code Section 414(o)). Service credited under this subsection (a) shall be limited to the period that the other entities were related to the Employer in the manner described in the applicable Code section, unless the Employer has elected in the Adoption Agreement to recognize Service with any such entity for any period prior to the time such relationship commenced.

(b) If the Employer maintains a plan of a predecessor employer, service with the predecessor employer will be treated as Service with the Employer.

(c) If not treated as Plan Service with the Employer under subsection (b) above, service with any entity specifically so designated in the Adoption Agreement will be treated as Service with the Employer.

(d) Notwithstanding any provision in this Section to the contrary, in the case of a standardized plan, the Service credited under this Section to any Participant shall not exceed five (5) years.

## ARTICLE 4: PARTICIPATION

4.1 ELIGIBLE EMPLOYEES: Except as otherwise provided in this section, each Employee is eligible to participate in the Plan (an Eligible Employee). If the Adoption Agreement so provides, an individual who is included in one of the following classes of employees or workers is not eligible if:

(a) he or she is employed in a unit covered by a collective bargaining agreement between the Employer and employee representatives where retirement benefits were the subject of good faith bargaining with the Employer and the agreement does not call for his or her inclusion in the Plan and if less than two percent of the Employees of the Employer who are covered pursuant to that agreement are professionals as defined in section 1.410(b)-9(g) of the proposed regulations; the term "employee representatives" does not include any organization more than half of whose members are employees who are owners, officers or executives of the Employer; or

(b) he or she is a nonresident alien (within the meaning of Section 7701(b)(1)(B) of the Code) and receives no earned income (within the meaning of Section 911(d)(2) of the Code) from the Employer which constitutes income from sources within the United States (within the meaning of Section 861(a)(3) of the Code); or

(c) in the case of a Non-Standardized Plan, he or she is performing services for the Employer under an agreement, whether written or oral, which acknowledges his or her status as

an independent contractor and that he or she is not eligible to participate in the Employer's employee benefit plans, notwithstanding that he or she is later determined by a court of competent jurisdiction or the Internal Revenue Service to be a common law employee for tax purposes.

(d) In the case of a Non-Standardized Plan, he or she is performing services for the Employer under a leasing arrangement entered into between the Employer and some other person, notwithstanding the fact that he or she is later determined by a court of competent jurisdiction or the Internal Revenue Service to be a common law employee or a Leased Employee.

(e) he or she is an Employee who became an Employee as the result of a "Section 410(b)(6)(C) transaction." Such Employees will be excluded during the period beginning on the date of the transaction and ending on the last day of the first Plan Year beginning after the date of the transaction. A "Section 410(b)(6)(C) transaction" is an asset or stock acquisition, merger or similar transaction involving a change in the employer of the Employees of a trade or business.

(f) in the case of a Non-Standardized Plan, he or she is a member of a class of employees explicitly excluded from eligibility in the Adoption Agreement.

4.2 AGE AND SERVICE REQUIREMENTS: Any minimum age and service requirements are set forth in the Metropolitan Life Insurance Company Adoption Agreement.

The minimum service requirement may not exceed one Year of Service (one-half year in the case of a Plan with annual entry dates); however, if the Employer's Plan provides for full and immediate vesting after two years or less of service, the minimum service requirement may not exceed two Years of Service (one and one-half years in the case of a Plan with annual entry

dates). If applicable, the Employer shall elect in Section B.2 of the Adoption Agreement whether to use the "Hours of Service" method or the "Elapsed Time" method.

The minimum age requirement may not exceed 21 (20-1/2 in the case of a Plan with annual entry dates).

4.3 PARTICIPATION:

(a) Each Employee who, on the Effective Date of the Plan, is an Eligible Employee and has fulfilled the Plan's age and service requirements (if any) will become a Participant as of such date.

(b) Each Employee (other than one who is a Participant under subsection (a) above) will become a Participant on the Entry Date when he or she is an Eligible Employee and satisfies the Plan's age and service requirements (if any).

(c) Unless specified otherwise in the Adoption Agreement, the Entry Dates will be the first day of the first and seventh months of the Plan Year (January 1 and July 1 for calendar year plans). If the Adoption Agreement provides for additional or other Entry Dates, the entry dates will be as so specified; provided that the first day of the Plan Year will always be an Entry Date.

(d) If the Employer's Plan permits 401(k) Savings Contributions or After-Tax Saving Contributions, each Employee who has become a Participant under the preceding subsections of this section will be eligible to make 401(k) Savings Contributions and/or After-Tax Savings Contributions subject to the applicable provisions of the Plan and the Adoption Agreement, and such an Employee will be considered a Participant even if he or she elects not to make 401(k) Savings Contributions or After-Tax Savings Contributions. However, an Employee may not

make 401(k) Savings Contributions and/or After-Tax Savings Contributions before the date the Employer signs the Plan.

4.4 TERMINATION OF PARTICIPATION: An Employee's participation will end when he or she is no longer an Eligible Employee due either to a change in his or her employment status or to the termination of his or her service as an Employee because of disability, death, retirement or any other reason.

4.5 RE-ENTRY OF FORMER PARTICIPANT: If a former Participant returns to service with the Employer as an Eligible Employee, he or she will resume participation in the Plan immediately upon his or she return.

4.6 TRANSFERS:

(a) If a non-eligible Employee who satisfies the Plan's age and service requirements (if any) for participation becomes an Eligible Employee due to a change in his or her employment status, he or she will become a Participant immediately if he or she would have become a Participant on a previous Entry Date had he or she always been an Eligible Employee.

(b) If a Participant becomes ineligible due to a change in his or her employment status, such Employee will be a Participant again immediately upon returning to an eligible class of employees.

## ARTICLE 5: EMPLOYEE 401(k) SAVINGS CONTRIBUTIONS: AVERAGE DEFERRAL PERCENTAGE TEST

5.1 ELIGIBILITY: If the Metropolitan Life Insurance Company Adoption Agreement so provides, an Employee who meets the requirements of Section 4.3 may elect to make 401(k) Savings Contributions by payroll deduction. If elected in the Adoption Agreement under

"Special Election for Bonus Payments," the Employer will permit Participants to make a special deferral election applicable to bonus payments only. This election will override the Participant's then current salary reduction election as it relates to bonus payments only. 401(k) Savings Contributions are voluntary and no Employee is required to make such contributions. Notwithstanding the foregoing, if elected in the Adoption Agreement, the Plan Administrator may deem each Participant as having elected to make 401(k) Savings Contributions equal to a specified percentage of such Participant's Plan Compensation as elected in the Adoption Agreement, provided, that the Plan Administrator has furnished such Participant with materials on the election and deemed election of 401(k) Savings Contributions and of such Participant's right to cease or change the percentage or dollar amount of future 401(k) Savings Contributions, including the procedure for exercising that right and the timing for implementation of any such election within a reasonable period of time before such Participant becomes eligible to make 401(k) Savings Contributions or, as applied to current Participants, within a reasonable period of time before the date on which deemed elections are first implemented under the Plan. The Plan Administrator shall annually notify each Participant of his or her 401(k) Savings Contributions, if any, and the Participant's right to change the percentage, including the procedure for exercising that right and the timing for implementation of any such election.

5.2 LIMITS ON AMOUNT:

(a) In General. 401(k) Savings Contributions in any Plan Year may not exceed whichever of the following is smallest: (i) the maximum amount permitted under Section 5.6 for a Highly Compensated Employee; (ii) the maximum amount that, with other amounts allocated to his or her accounts hereunder, does not violate the limitations on Annual Additions under Article 13; (iii) any maximum or other limitation imposed by the Plan Administrator; or (iv) the

dollar limitation contained in section 402(g) of the Code in effect at the beginning of such taxable year.

(b) Hardship Withdrawals. Notwithstanding Section 5.1 and subsection (a)(iv) above, a Participant who makes a hardship withdrawal under Section 12.3 may not make 401(k) Savings Contributions or After-Tax Savings Contributions hereunder (or under any other plan maintained by the Employer) for a period of 12 months following the date of the in-service withdrawal. Also, in the taxable year following the date of the withdrawal, such a Participant may not make 401(k) Savings Contributions which, when added to his or her 401(k) Savings Contributions during the taxable year of the withdrawal, exceed the amount specified in subsection (a)(iv) above.

(c) Nonforfeitability. The Participant's accrued benefit from Elective Deferrals, Qualified Non-elective Contributions, After-Tax Savings Contributions and Qualified Matching Contributions is non-forfeitable.

(d) Distribution Requirements. Elective Deferrals are subject to the distribution requirements of Code Section 401(k)(2)(B).

(e) Make-up Contributions. As soon as practicable following the timely reemployment of a Participant who has taken a Military Absence, the Plan Administrator shall notify such Participant of his or her right to make up 401(k) Savings Contributions to which he or she would have been entitled to make but for the period of Military Absence. 401(k) Savings Contributions made in accordance with this subsection (e) shall be known as 401(k) Savings Make-Up Contributions. Subject to the limitation of Article 13 in effect in each year of such Participant's Military Absence to which 401(k) Savings Make-Up Contributions relate, and provided that the maximum amount of 401(k) Savings Make-Up Contributions attributable to

each year of Military Absence does not exceed the dollar limitation contained in section 402(g) of the Code in effect during each such year, the amount of 401(k) Savings Make-Up Contributions permitted by this subsection (e) shall be equal to (i) the maximum amount of 401(k) Savings Contributions, unadjusted by any earnings thereon, that such Participant would have been permitted to make under subsection (a) during the period of Military Absence if such Participant had continued to be employed by and received Plan Compensation from the Employer during such period, (ii) reduced by the amount of 401(k) Savings Contributions, if any, actually made during the period of Military Absence. For purposes of the preceding sentence, a Participant will be treated as having received Plan Compensation during the period of Military Absence equal to (i) the compensation such Participant would have received during such period if he or she had not taken a Military Absence, determined based on the rate of pay the Participant would have received from the Employer but for the Military Absence, or (ii) if the Plan Compensation the Participant would have received during such period was not reasonably certain, the Participant's average Plan Compensation during the 12-month period immediately preceding the Military Absence or, if shorter, the period of employment immediately preceding the Military Absence. Notwithstanding any provision in this Plan to the contrary, 401(k) Savings Make-Up Contributions shall not be subject to the limitations of Article 13 in the year such contributions are made and shall not be taken into account, during either the year in which such contributions were made or the years to which such contributions relate during the period of Military Absence, for purposes of applying Sections 5.6, 6.6 or 6.9 or the provisions of Article 14.

The Participant shall contribute to the Plan the amount of 401(k) Savings Make-Up Contributions elected by him or her (not to exceed the amount described in the preceding

paragraph) during the period beginning with the date of reemployment with the Employer and extending to the lesser of (i) three times the period of Military Absence or (ii) 5 years.

5.3 PROCEDURES:

The Participant must make an election in the method specified by the Plan Administrator indicating the amount of 401(k) Savings Contributions he or she wishes to make and agreeing to reduce his or her compensation by such amount. Subject to any rules specified in the Adoption Agreement or established by the Plan Administrator or Sponsor, a Participant may increase, decrease, discontinue or resume his or her 401(k) Savings Contributions during a Plan Year in accordance with procedures established by the Plan Administrator. A discontinuance of 401(k) Savings Contributions will be effective in accordance with procedures established by the Plan Administrator. An increase or decrease of 401(k) Savings Contributions, or a resumption after a discontinuance, will be effective in accordance with any rules specified in the Adoption Agreement or established by the Plan Administrator or Sponsor. No change under the preceding paragraph may cause a Participant's 401(k) Savings Contributions to exceed the maximum provided for under Section 5.2.

Either the Plan Administrator or the Sponsor may establish reasonable rules of uniform application governing Participants' elections and changes. Such rules may include the number and frequency of elections or changes during any Plan Year, effective dates for elections or changes (for example, the first day of the payroll period coinciding with or next following the applicable election or change date), cutoff dates for timely filing of elections or changes, and other rules to facilitate operation of this article.

Notwithstanding the preceding, an eligible employee will be permitted to change his or her election at least once each year.

5.4 COLLECTION OF 401(k) SAVINGS CONTRIBUTIONS: The Employer will collect Participants' 401(k) Savings Contributions using payroll or other procedures, including deductions from bonus payments, if elected in the Adoption Agreement. The Employer will transfer the amounts collected to the Trustee as of the earliest date when such contributions can reasonably be segregated from the Employer's general assets, but not later than the maximum number of days prescribed by Department of Labor regulations from the date on which such amounts would otherwise have been payable to the Participant in cash.

For purposes of Code Section 414(h), it is specifically provided that Participants' 401(k) savings contributions under this article are employer contributions.

5.5 SAVINGS CONTRIBUTIONS ACCOUNT: A Participant's 401(k) Savings Contributions will be credited to his or her 401(k) Savings Contributions Account. Such account will be fully vested and nonforfeitable at all times

5.6 401(k) LIMITS:

(a) ADP Test.

(1) Prior Year Testing. The Actual Deferral Percentages (ADP) for a Plan Year for Participants who are Highly Compensated Employees for each Plan Year ("HCE ADP") may not exceed the prior Plan Year's ADP for Participants who were Non-Highly Compensated Employees for the prior Plan Year ("NHCE ADP") by more than the amount specified in the following table:

| If NHCE ADP for Prior Plan Year is: | HCE ADP for Current Plan Year may not exceed: |
|---|---|
| less than 2% | two times NHCE Prior Plan Year ADP |
| 2% but less than 8% | two percentage points more than NHCE Prior Plan Year ADP |
| 8% or higher | l.25 times NHCE Prior Plan Year ADP |

For the first Plan Year the Plan permits any Participant to make 401(k) Savings Contributions and this is not a successor plan, for purposes of the foregoing limits, the prior Plan Year's NHCE ADP shall be 3 percent unless the Employer has elected in the Adoption Agreement to use the current Plan Year's NHCE ADP.

(2) Current Year Testing. If elected by the Employer in the Adoption Agreement, the ADP test in (1) above will be applied by comparing the current Plan Year's ADP for Participants who are Highly Compensated Employees ("HCE ADP") with the current Plan Year's ADP for Participants who are Non-highly Compensated Employees ("NHCE ADP"). Once made, this election can only be undone if the Plan meets the requirements for changing to Prior Year Testing set forth in Notice 98-1 (or superseding guidance).

See Section 6.9 for additional 401(k) limits that may be applicable in certain situations.

(b) Special Rules:

1. A Participant is a Highly Compensated Employee for a particular Plan Year if he or she meets the definition of a Highly Compensated Employee in effect for that Plan Year. Similarly, a Participant is a Non-Highly Compensated Employee for a particular Plan Year if he or she does not meet the definition of a Highly Compensated Employee in effect for that Plan Year.

2. The ADP for any Participant who is a Highly Compensated Employee for the Plan Year and who is eligible to have Elective Deferrals (and Qualified Non-Elective Contributions or Qualified Matching Contributions, or

both, if treated as Elective Deferrals for purposes of the ADP Test) allocated to his or her accounts under two or more arrangements described in Code Section 401(k), that are maintained by the Employer, shall be determined as if such Elective Deferrals (and, if applicable, such Qualified Non-Elective Contributions or Qualified Matching Contributions or both) were made under a single arrangement. If a Highly Compensated Employee participates in two or more cash or deferred arrangements that have different Plan Years, all cash or deferred arrangements ending with or within the same calendar year shall be treated as a single arrangement. Notwithstanding the foregoing, certain plans shall be treated as separate if mandatorily disaggregated under regulations under Section 401(k) of the Code.

3. In the event that this Plan satisfies the requirements of sections 401(k), 401(a)(4), or 410(b) of the Code only if aggregated with one or more other plans, or if one or more other plans satisfy the requirements of such sections of the Code only if aggregated with this Plan, then this section shall be applied by determining the ADP of Employees as if all such plans were a single plan. Any adjustments to the NHCE ADP for the prior Plan Year will be made in accordance with Notice 98-1 and any superseding guidance, unless the Employer has elected in the Adoption Agreement to use the Current Year Testing Method. Plans may be aggregated in order to satisfy Code section 401(k) only if they have the same Plan Year and use the same ADP testing method.

4. For purposes of determining the ADP test, Elective Deferrals, Qualified Non-Elective Contributions and Qualified Matching Contributions must

be made before the end of the twelve-month period immediately following the Plan Year to which contributions relate.

5. The Employer shall maintain records sufficient to demonstrate satisfaction of the ADP test and the amount of Qualified non-Elective Contributions or Qualified Matching Contributions, or both, used in such test.

5.7 DEFERRAL PERCENTAGE:

(a) Basic Definition. For purposes of Section 5.6, the Deferral Percentage of a Participant for a Plan Year means his or her 401(k) Savings Contributions for such year computed as a percentage of his or her Plan Compensation or compensation (based on a definition of compensation selected by the Employer for the Plan Year that satisfies Code Section 414(s)) for such year (to the nearest one-hundredth of a percentage point). If an Employee is eligible to participate in 401(k) Savings Contributions but has not elected to make such contributions, he or she will nevertheless be taken into account as having made zero 401(k) Savings Contributions.

Notwithstanding the preceding paragraph, in the Plan Administrator's discretion, 401(k) Savings Contributions of a Participant will not be included when determining his or her Deferral Percentage to the extent that the requirements of Section 5.6 are met without taking such contributions into account, and such contributions may be used in performing the 401(m) tests if applicable to the Employer's Plan. See Section 6.7(b).

(b) Qualified Non-Elective Contributions. Except as otherwise provided in the Adoption Agreement, an Employer may make Qualified Non-Elective Contributions to the Plan utilizing the Current-Year Testing Method in accordance with the provisions of this subsection (b). In addition, if the Employer has elected in the Adoption Agreement to use the Current Year

Testing method, in lieu of distributing excess contributions as provided in Section 5.9 of the plan, or excess aggregate contributions as provided in Section 6.8 of the plan, the Employer may make Qualified Non-Elective Contributions on behalf of Participants that are sufficient to satisfy either the Actual Deferral Percentage test or the Actual Contribution Percentage test, or both. Qualified Non-Elective Contributions are nonintegrated Employer Contributions that are always fully vested when made, and are subject to the limitations on distribution of Code Section 401(k)(2)(B) (which means that such contributions made after December 31,1988 and earnings thereon are not available for in-service withdrawals before age 59-1/2). In addition, other Non-Elective Employer Contributions must be nondiscriminatory, determined both by taking Qualified Non-Elective Contributions into account and by disregarding Qualified Nonelective Contributions.

The Employer may make Qualified Non-elective Contributions under the plan by designating in the board of directors resolution (or records of the employer authorizing the making of the contribution, if the Employer is not a corporation) the amount of the Qualified Non-Elective Contribution and any one of the following methods of allocation: (1) such amount as is needed to meet the Actual Deferral Percentage test and/or Actual Contribution Percentage test, allocated, in the Employer's absolute discretion, selectively on behalf of any one or a number of Non-highly Compensated Employees; or (2) a specified dollar amount or a specified percentage of compensation to be allocated to (A) each Participant who is a Non-Highly Compensated Employee or (B) all Participants.

Notwithstanding any provision in this Plan to the contrary, if the Employer determines that the Plan does not satisfy one or more of the qualification requirements imposed by the Code and the making of a Qualified Non-Elective Contribution to affected Participants would help the

Plan satisfy such qualification requirements, the Employer may make a Qualified Non-Elective Contribution to the account of each affected Participant equal to the Average Deferral Percentage of the group (Highly Compensated Employee group or Non-highly Compensated Employee group) to which each such Participant belongs.

(c) Qualified Matching Contributions. Except as otherwise provided in the Adoption Agreement, an Employer may make Qualified Matching Contributions to the Plan utilizing the Current-Year Testing Method in accordance with the provisions of this subsection (c). Qualified Matching Contributions are matching employer contributions that are always fully vested when made, and are subject to the limitations on distribution of Code Section 401(k)(2)(B) (which means that such contributions made after December 31, 1988 and earnings thereon are not available for in-service withdrawals before age 59-1/2).

The employer may make Qualified Matching Contributions under the plan by designating in the board of directors resolution (or records of the employer authorizing the making of the contribution, if the Employer is not a corporation) the amount of the Qualified Matching Contribution and any one of the following methods of allocation: (i) such amount as is needed to meet the actual deferral percentage test and/or actual contribution percentage test, allocated, in the Employer's absolute discretion, selectively on behalf of any one or a number of Non-highly Compensated Employees; or (ii) a specified dollar amount or a specified percentage of compensation to be allocated to (A) each participant who is a Non-highly Compensated Employee who makes matchable savings contributions that are 401(k) savings contributions and/or employee after-tax contributions to the plan or (B) all participants who make matchable savings contributions that are 401(k) savings contributions and/or employee after-tax contributions to the plan.

Qualified Matching Contributions which are used in determining an employee's deferral percentage under subsection (a) above will not be used in determining his contribution percentage under Section 6.7.

Notwithstanding any provision in this Plan to the contrary, if the Employer determines that the Plan does not satisfy one or more of the qualification requirements imposed by the Code and the making of a Qualified Matching Contribution to affected participants would help the Plan satisfy such qualification requirements, the Employer may make a Qualified Matching Contribution to the account of each affected participant equal to the average deferral percentage of the group (Highly Compensated Employee group or Non-highly Compensated Employee group) to which each such participant belongs.

(d) If a Highly Compensated Employee makes 401(k) Savings Contributions or if Qualified Non-Elective Contributions or Qualified Matching Contributions that are used in determining such an Employee's Deferral Percentage under subsection (a) above are made on his or her behalf to another plan maintained by the Employer, his or her Deferral Percentage will be determined as if all such 401(k) Savings Contributions and Qualified Non-Elective Contributions and Qualified Matching Contributions (whichever may be applicable) were made under a single plan.

Notwithstanding the foregoing, certain plans shall be treated as separate if mandatorily disaggregated under regulations under Code Section 401(k).

5.8 MONITORING PARTICIPANTS' DEFERRAL PERCENTAGES: ADJUSTMENTS: The Plan Administrator (or an administrative services provider - which may be the Trustee or the Sponsor - retained by the Plan Administrator to perform Participant recordkeeping and other administrative duties) will monitor Participants' Deferral Percentages to insure compliance with

the requirements of Section 5.6 above. Any adjustments in Participants' elections or actual 401(k) Savings Contributions necessary to meet the requirements of Section 5.6 will be made as follows. Excess contributions are allocated to the Highly Compensated Employees with the largest dollar amounts of employer contributions taken into account in calculating the ADP test for the year in which the excess arose, beginning with the Highly Compensated Employee with the largest dollar amount of such employer contributions and continuing in descending order until all the excess contributions have been allocated. For purposes of the preceding sentence, the "largest amount" is determined after distribution of any Excess Contributions.

(a) Excess Contributions. The Plan Administrator will adjust 401(k) Savings Contributions elections by Participants who are Highly Compensated Employees in accordance with the preceding paragraph at such time or times before or during a Plan Year as the Plan Administrator deems advisable to insure that the requirements of Section 5.6 are met as of the last day of the Plan Year. If, notwithstanding the preceding sentence, the requirements of Section 5.6 are not met as of the last day of a Plan Year, such adjustments may be made after the end of a Plan Year in one or a combination of the following ways: (1) paying to a Participant the amount of his or her Excess Contributions plus earnings (or losses) on such excess, (2) recharacterizing the Excess Contributions of such a Participant as After-Tax Savings Contributions during such year, (3) in the Employer's discretion, by making a Qualified Non-Elective Contribution that meets the requirements of Section 5.7(b) on behalf of Non-highly Compensated Employees (or all Employees, if provided in the Adoption Agreement) in the amount needed so that the requirements of Section 5.6 are met, or (4) in the Employer's discretion, by making a Qualified Matching Contribution that meets the requirements of Section 5.7(c) on behalf of Non-highly Compensated Employees (or all Employees, if provided in the Adoption Agreement) in the

amount needed so that the requirements of Section 5.6 are met. For purposes of the preceding sentence, Excess Contributions means 401(k) Savings Contributions by a Highly Compensated Employee in excess of the amount that would satisfy the requirements of Section 5.6 above. Also, for purposes of such sentence, any such payment of Excess Contributions will be designated as such by the Employer, and will be made by the end of the succeeding plan year to avoid plan disqualification (and must be made within 2-1/2 months after the end of the current Plan Year to avoid an excise tax on the employer equal to 10 percent of the excess). However, the amount to be paid or recharacterized will be reduced by any amounts relating to such plan year previously withdrawn by the Participant under Section 5.8(b). For purposes of clause (ii) of such sentence, recharacterizing will be available only if the Plan permits After-Tax Savings Contributions.

A Participant may treat his or her Excess Contributions allocated to him or her as an amount distributed to the Participant and then contributed by the Participant to the plan. Recharacterized amounts will remain nonforfeitable and subject to the same distribution requirements as Elective Deferrals. Amounts may not be recharacterized by a Highly Compensated Employee to the extent that such amount in combination with other After-Tax Savings Contributions made by that Employee would exceed any stated limit under the plan on After-Tax Savings Contributions.

Recharacterization must occur no later than two and one-half months after the last day of the Plan Year in which such Excess Contributions arose and is deemed to occur no earlier than the date the last Highly Compensated Employee is informed of the amount recharacterized and the consequences thereof. Recharacterized amounts will be taxable to the Participant for the Participant's tax year in which the Participant would have received them in cash.

Determination of Income or Loss: Excess Contributions shall be adjusted for any income or loss for the Plan Year in which such contributions were made. Income or loss attributable to the period between the end of the Plan Year and the date of distribution will be disregarded in determining income or loss.

Accounting for Excess Contributions: Excess Contributions allocated to a Participant shall be distributed from the Participant's Elective Deferral Account and Qualified Matching Contribution Account (if applicable) in proportion to the participant's Elective Deferrals and Qualified Matching Contributions (to the extent used in the ADP test) for the Plan Year. Excess Contributions shall be distributed from the Participant's Qualified Non-elective Contribution account only to the extent that such Excess Contributions exceed the balance in the Participant's Elective Deferral account and Qualified Matching Contribution account.

A distribution of Excess Contributions under this section may be made notwithstanding any otherwise applicable restrictions or spousal consent requirements on in-service withdrawals or distributions.

Any Excess Contributions distributed under this subsection will nevertheless be considered as Annual Additions for purposes of applying the limitations of Article 13.

The Plan Administrator will maintain records to show that the Plan met the requirements of Section 5.6 (and Section 6.6) for each Plan Year (including records that show the extent to which Qualified Non-elective Contributions and/or Qualified Matching Contributions and/or 401(k) Savings Contributions were used in performing the tests).

(b) Excess Elective Deferrals. A Participant may request that excess Elective Deferrals be distributed from this Plan by notifying the Plan Administrator on or before March 1 following such taxable year of the amount of the Excess Elective Deferrals to be assigned to the

Plan. A Participant is deemed to notify the Plan Administrator of any Excess Elective Deferrals that arise by taking into account only those Elective Deferrals made to this Plan and any other plans of this Employer.

Notwithstanding any other provision of the Plan, Excess Elective Deferrals, plus any income and minus any loss allocable thereto, shall be distributed no later than April 15 to any Participant to whose account Excess Elective Deferrals were assigned for the preceding year and who claims Excess Elective Deferrals for such taxable year.

Determination of income or loss: Excess Elective Deferrals shall be adjusted for any income or loss for the Plan Year in which such contributions were made. Income or loss attributable to the period between the end of the Plan Year and the date of distribution will be disregarded in determining income or loss.

A withdrawal of an excess under this section may be made notwithstanding any otherwise applicable restrictions or spousal consent requirement on in-service withdrawals.

Any amounts withdrawn under this section will nevertheless be considered as Annual Additions for purposes of applying the limitations of Article 13 unless such amounts are distributed no later than the first April 15 following the close of the participant's taxable year.

The amount of any 401(k) Savings Contributions to be withdrawn under this section will be reduced by any amounts previously distributed or recharacterized under Section 5.8.

5.9 TREATMENT OF PARTICIPANT WHO REACHES $7,000 LIMIT: If a Participant makes 401(k) Savings Contributions to the Plan (including all qualified plans of entities described in Section 19.9, 19.10 and 19.11) in a calendar year equal to $7,000 as adjusted in accordance with Code Section 402(g)), his or her 401(k) Savings Contributions will immediately cease.

5.10 SAFE HARBOR CASH OR DEFERRED ARRANGEMENT: .

(a) Application; Effect on Other Provisions in Articles 5 and 6. If the Employer has elected the Safe Harbor Rules in the Adoption Agreement, the provisions of this Section 5.10 shall apply for the Plan Year and the provisions of Sections 5.6, 5.7 and 5.8 shall not apply. If the provisions of this Section 5.10 apply for the Plan Year and Matching Contributions also satisfy the requirements of Section 6.10 for the Plan Year, then the provisions of Sections 6.6, 6.7, 6.8 and 6.9 shall not apply.

(b) Manner of Adopting Provisions of Sections 5.10 and 6.10.

(1) In General. Except for Plan Years beginning prior to January 1, 2001 (in which case, the provisions of this Section and/or Section 6.10 shall be adopted in Part G of the Adoption Agreement) and except for the manner of adopting the provisions of this Section and Section 6.10 described in Paragraph (2), the Employer must adopt the provisions of this Section and Section 6.10 no later than the last day of the Plan Year preceding the Plan Year in which they are to become effective.

(2) Late Adoption of Safe Harbor Nonelective Contribution Method. Notwithstanding the provisions of Paragraph (1), if the Plan provides that it will satisfy the requirements of Section 5.6 for the Plan Year using the Current Year Testing Method, the Plan may be amended no later than 30 days before the last day of the Plan Year to specify that the requirements of this Section and/or Section 6.10 will be satisfied by making Safe Harbor Nonelective Contributions, provided that the Plan otherwise satisfies the requirements of this Section and Section 6.10, if applicable for the Plan Year.

(c) Definitions. The following definitions apply for purposes of this Section 5.10 and Section 6.10:

(1) "ACP TEST SAFE HARBOR" is the method described in Section 6.10 of the Plan for satisfying the ACP test of Section 401(m)(2) of the Code.

(2) "ACP TEST SAFE HARBOR MATCHING CONTRIBUTIONS" are Matching Contributions described in Section 6.10() of the Plan.

(3) "ADP TEST SAFE HARBOR" is the method described in subsection (b) of this Section for satisfying the ADP test of Section 401(k)(3) of the Code.

(4) "ADP TEST SAFE HARBOR CONTRIBUTIONS" are Matching Contributions and Nonelective Contributions described in subsection (d).

(5) "COMPENSATION" is defined as Plan Compensation in Section 2.22 of the Plan, except, for purposes of this Section, no dollar limit, other than the limit imposed by Section 401(a)(17) of the Code, applies to the compensation of a Non-Highly Compensated Employee. However, solely for purposes of determining the Compensation subject to a Participant's deferral election, the Employer may use an alternative definition to the one described in the preceding sentence, provided such alternative definition is a reasonable definition within the meaning of Section 1.414(s)-1(c)(2) of the regulations and permits each Participant to elect sufficient Elective Deferrals to receive the maximum amount of Matching Contributions (determined using the definition of compensation described in the preceding sentence) available to the Participant under the Plan.

(6) "ELIGIBLE EMPLOYEE" means an Employee eligible to make Elective Deferrals under the Plan for any part of the Plan Year or who would be eligible to make Elective Deferrals but for a suspension due to a hardship distribution described in Section 12.3 of the Plan or to statutory limitations, such as Sections 402(g) and 415 of the Code. IF (i) the Employer has elected in Part B of the Adoption Agreement to provide age and/or

service requirements of less than age 21 and/or one Year of Service and (ii) the Employer elects to treat those Participants who have not yet attained age 21 and/or who have not yet completed one Year of Service as covered under a separate plan for coverage purposes, then the Employer may elect in the Adoption Agreement to limit the definition of Eligible Employee to those Participants who have attained age 21 and/or who have completed one or more Years of Service.

(7) "MATCHING CONTRIBUTIONS" are contributions made by the Employer on account of an Eligible Employee's Elective Deferrals.

(d) ADP Test Safe Harbor Contributions.

(1) Unless the Employer elects in the Adoption Agreement to make Enhanced Matching Contributions or Safe Harbor Nonelective Contributions, the Employer will contribute for the Matching Period a Safe Harbor Matching Contribution to the Plan on behalf of each Eligible Employee equal to (i) 100 percent of the amount of the Employee's Elective Deferrals that do not exceed 3 percent of the Employee's Compensation for the Matching Period, plus (ii) 50 percent of the amount of the Employee's Elective Deferrals that exceed 3 percent of the Employee's Compensation but that do not exceed 5 percent of the Employee's Plan Compensation for the Matching Period ("Basic Matching Contributions.") If the Safe Harbor Matching Contribution is determined on the basis of a Matching Period other than the Plan Year, then such Matching Contributions which are made with respect to 401(k) Savings Contributions made during a Plan Year quarter beginning after May 1, 2000 must be contributed to the Plan by the last day of the following Plan Year quarter.

(2) Notwithstanding the requirement in (1) above that the Employer make the ADP Test Safe Harbor Contributions to this Plan, if the Employer so provides in the Adoption Agreement, but only if this Plan is a Nonstandardized Plan or is a Paired Plan with another defined contribution plan, the ADP Test Safe Harbor Contributions will be made to the defined contribution plan indicated in the Adoption Agreement. However, such contributions will be made to this Plan unless (i) each Employee eligible under this Plan is also eligible under the other plan and (ii) the other plan has the same Plan Year as this Plan.

(3) The Participant's accrued benefit derived from ADP Test Safe Harbor Contributions is nonforfeitable and may not be distributed earlier than separation from service, death, disability, an event described in Section 401(k)(10) of the Code or, in the case of a profit-sharing plan, the attainment of age 59 -1/2. In addition, such contributions must satisfy the ADP Test Safe Harbor without regard to permitted disparity under Section 401(l) of the Code.

(e) Notice Requirements.

(1) Annual Notice Requirement. At least 30 days, but not more than 90 days, before the beginning of the Plan Year, the Employer will provide each Eligible Employee a comprehensive notice (which may, for certain requirements of the notice, be satisfied by cross-referencing portions of the update summary plan description) of the Employee's rights and obligations under the Plan, worded in a manner calculated to be understood by the average Eligible Employee. If an Employee becomes eligible after the 90th day before the beginning of the Plan Year and does not receive the notice for that reason, the notice must be provided no more than 90 days before the Employee becomes eligible but not later than the date the Employee becomes eligible.

Notwithstanding the foregoing, (i) for a Plan Year beginning on or before April 1, 1999, the notice for such Plan Year shall be deemed to be timely provided if it was provided on or before March 1, 1999; and (ii) for an Employer that adopts the provisions of this Section and/or Section 6.10 for a Plan Year beginning on or after January 1, 2000 and on or before June 1, 2000, the notice for such Plan Year shall be deemed to be timely provided if it was provided on or before May 1, 2000.

If the provisions of subsection (b)(2) apply, then the notice provided to Eligible Employees before the beginning of the Plan Year in which the Plan is amended to adopt the provisions of this Section and Section 6.10 shall provide that (i) the Plan may be amended during the Plan Year to provide that the Employer will make a Safe Harbor Nonelective Contribution to the Plan for the Plan Year, and (ii) if the Plan is so amended, a supplemental notice will be given to Eligible Employees 30 days prior to the last day of the Plan Year informing them of such amendment.

(2) Supplemental Notice Requirement. The Employer shall provide a supplemental notice to Participants in the following situations: (i) if the provisions of subsection (b)(2) apply, and the Plan is amended to provide that the requirements of this Section and/or Section 6.10 will be satisfied by making Safe Harbor Nonelective Contributions a supplemental notice shall be provided to Eligible Employees no later than 30 days before the end of the Plan Year and such supplemental notice shall state that the Plan has been amended to provide that a Safe Harbor Nonelective Contribution will be made for the Plan Year; or (ii) an Employer satisfying the requirements of this Section and/or Section 6.10 by making Safe Harbor Matching Contribution amends the Plan

during the Plan Year to reduce or eliminate Matching Contributions, provided that (A) a supplemental notice is given to all Participants explaining the consequences of the amendment and informing them of the effective date of such amendment and that they will have a reasonable opportunity to change their 401(k) Savings Contributions elections; (B) the amendment is effective no earlier than the later of 30 days after the supplemental notice is provided and the date the amendment is adopted; (C) Participants are given a reasonable opportunity prior to the reduction or elimination of Matching Contributions to change their 401(k) Savings Contributions elections; (D) the Plan is amended to provide that the ADP Test and, if applicable, the ACP Test will be performed and satisfied for the entire Plan Year using the Current Year Testing Method; and (E) all other safe harbor requirements are satisfied through the effective date of such amendment.

(f) Election Periods. In addition to any other election periods provided under the Plan, each Eligible Employee may make or modify a deferral election during the 30-day period immediately following receipt of the notice described in subsection (c) above.

ARTICLE 5A: COORDINATION OF QUALIFIED PLAN LIMITS AND TESTS Notwithstanding any provision of this Plan to the contrary, the various qualified plan limits and tests shall be applied in the following order:

(a) First, the limitation set forth in Section 5.2(a)(iv) shall be applied and, if necessary, corrected in accordance with Section 5.8(b);

(b) Next, the limitation set forth in Sections 13.2 through 13.4 shall be applied and, if necessary, corrected in accordance with Section 13.7;

(c) Next, unless Section 5.10 applies, the limitation set forth in Section 5.6 shall be applied and, if necessary, corrected in accordance with Section 5.8(a);

(d) Next, unless Section 6.10 applies, the limitation set forth in Section 6.6 shall be applied and, if necessary, corrected in accordance with Section 6.8(b) and (c);

(e) Next, unless Sections 5.10 and 6.10 apply, the limitation set forth in Section 6.9 shall be applied and, if necessary, corrected in accordance with Section 6.9(c); and

(f) Finally, any matching employer contribution that is related to any 401(k) Savings Contribution or After-Tax Savings Contribution that is an Excess Contribution or an Excess Aggregate Contribution shall be forfeited and disposed of in accordance with Section 8.4(e).

## ARTICLE 6: AFTER-TAX SAVINGS CONTRIBUTIONS; AVERAGE CONTRIBUTION PERCENTAGE TEST

6.1 ELIGIBILITY: If the Metropolitan Life Insurance Company Adoption Agreement so provides, an Employee who meets the requirements of Section 4.3 may elect to make After-Tax Savings Contributions by payroll deduction and, if the Adoption Agreement so provides, by deduction from a bonus payment. After-Tax Savings Contributions are voluntary and no Employee will be required to make such contributions. After-Tax Savings Contributions and earnings thereon are nonforfeitable at all times.

6.2 LIMITS ON AMOUNT:

(a) In General. Unless otherwise elected in the Adoption Agreement, the minimum amount of After-Tax Savings Contributions the employee may elect is 1 percent of his or her Plan Compensation. A Participant's after-tax Savings Contributions for any Plan Year may not exceed whichever of the following is the smallest: (a) the maximum amount permitted under

Section 6.6 for Highly Compensated Employee; (b) the maximum amount that, with other amounts allocated to his or her accounts hereunder, does not violate the limitations on Annual Additions under Article 13; (c) any maximum or other limitation imposed by the Plan Administrator.

(b) Make-up Contributions. As soon as practicable following the timely reemployment of a Participant who has taken a Military Absence, the Plan Administrator shall notify such Participant of his or her right to make up After-Tax Savings contributions to which he or she would have been entitled to make but for the period of Military Absence. After-Tax Savings contributions made in accordance with this subsection (b) shall be known as After-Tax Savings Make-Up Contributions. Subject to the limitation of Article 13 in effect in each year of such Participant's Military Absence to which After-Tax Savings Make-Up Contributions relate, the amount of After-Tax Savings Make-Up Contributions permitted by this subsection (b) shall be equal to (i) the maximum amount of After-Tax Savings Contributions, unadjusted by any earnings thereon, that such Participant would have been permitted to make under subsection (a) during the period of Military Absence if such Participant had continued to be employed by and received Plan Compensation from the Employer during such period, (ii) reduced by the amount of After-Tax Savings Contributions, if any, actually made during the period of Military Absence. For purposes of the preceding sentence, a Participant will be treated as having received Plan Compensation during the period of Military Absence equal to (i) the compensation such Participant would have received during such period if he or she had not taken a Military Absence, determined based on the rate of pay the Participant would have received from the Employer but for the Military Absence, or (ii) if the Plan Compensation the Participant would have received during such period was not reasonably certain, the Participant's average Plan

Compensation during the 12-month period immediately preceding the Military Absence or, if shorter, the period of employment immediately preceding the Military Absence. Notwithstanding any provision in this Plan to the contrary, After-Tax Savings Make-Up Contributions shall not be subject to the limitations of Article 13 in the year such contributions are made and shall not be taken into account, during either the year in which such contributions were made or the years to which such contributions relate during the period of Military Absence, for purposes of applying Sections 5.6, 6.6 or 6.9 or the provisions of Article 14.

The Participant shall contribute to the Plan the amount of After-Tax Savings Make-Up Contributions elected by him or her (not to exceed the amount described in the preceding paragraph) during the period beginning with the date of reemployment with the Employer and extending to the lesser of (i) three times the period of Military Absence or (ii) 5 years.

See the first sentence of Section 5.2(b) for an additional restriction on After-Tax Savings Contributions that applies in certain cases to Participants who made a hardship withdrawal.

6.3 PROCEDURES; PLAN ADMINISTRATOR RULES: The procedures for electing and changing After-Tax Savings Contributions, and Plan Administrator rules therefore, will be similar to those described in Section 5.3.

6.4 COLLECTION OF AFTER-TAX SAVINGS CONTRIBUTIONS: The Employer will collect Participants' After-Tax Savings Contributions using payroll or other procedures, including deductions from bonus payments, if elected in the Adoption Agreement. The Employer will transfer the amounts collected to the Trustee as of the earliest date on which such contributions can reasonably be segregated from the Employer's general assets, but not later than the maximum number of days prescribed by Department of Labor regulations from the date on which such

amounts are received by the Employer or the date on which such amounts would otherwise have been payable to the Participant in cash.

6.5 AFTER-TAX SAVINGS CONTRIBUTIONS ACCOUNT: A participant's After-Tax Savings Contributions will be credited to his After-Tax Savings Contributions Account. Such account will be fully vested and nonforfeitable at all times.

6.6 401(m) LIMITS:

(a) Prior Year Testing. The ACP for a Plan Year for Participants who are Highly Compensated Employees (HCE ACP) for each plan year may not exceed the prior year's ACP for Participants who were Non-highly Compensated Employees (NHCE ACP) for the prior Plan Year by more than the amount specified in the following table:

| If NHCE ACP for the Prior Plan Year is | HCE ACP for the current Plan Year may not exceed |
|---|---|
| less than 2% | two times NHCE Prior Plan Year ACP |
| 2% but less than 8% | two percentage points more than NHCE Prior Plan YearACP |
| 8% or more | 1.25 times NHCE Prior Plan Year ACP |

For the first Plan Year this Plan permits any Participant to make After-Tax Savings Contributions, provides for Matching Contributions or both, and this is not a successor plan, for purposes of the foregoing tests, the prior year's NHCE ACP shall be 3% unless the Employer has elected in the Adoption Agreement to use the current Plan Year's NHCE ACP for these Participants. See Section 6.9 for additional 401(m) limits that may be applicable in certain situations.

(b) Current Year Testing. If elected by the Employer in the Adoption Agreement, the ACP test in (a) above will be applied by comparing the current year's HCE ACP with the current year's NHCE ACP. Once made, this election can only be undone if the Plan meets the requirements for changing to Prior Year Testing set forth in Notice 98-1 (or superseding guidance).

6.7 CONTRIBUTION PERCENTAGE DEFINED:

(a) Contribution Percentage. The Contribution Percentage shall mean the ratio (expressed as a percentage) of the Participant's Contribution Percentage Amounts to the Participant's Plan Compensation or compensation (based on a definition of compensation selected by the Employer for the Plan Year that satisfies Code Section 414(s) for such year (to the nearest one-hundredth of a percentage point).

(b) Contribution Percentage Amount. The Contribution Percentage Amount shall mean the sum of After-Tax Savings Contributions and any Employer Matching Contributions made under the Plan on behalf of the Participant for the Plan Year. If an Employee is eligible to make After-Tax Savings Contributions but has not elected to make such contributions, he or she will nevertheless be taken into account as having made zero After-Tax Savings Contributions.

The Employer may take into account and include as Contribution Percentage Amounts, Qualified Non-elective Contributions under this Plan or any other plan of the Employer, as provided by this section and the regulations for the Plan Year to the extent that, under Section 5.6(b), such contributions are not used in determining the Participant's Deferral Percentage. The Employer may also elect to use Elective Deferrals in the Contribution Percentage Amounts so long as the ADP test is met before the Elective Deferrals are used in the ACP test and continues to be met following the exclusion of those Elective Deferrals that are used to meet the ACP test.

The Employer may also elect to use Qualified Matching Contributions in the Contribution Percentage Amounts to the extent that, under Section 5.6(c), such contributions are not used in determining the Participant's Deferral Percentage.

6.8 SPECIAL RULES:

(a) A Participant is a Highly Compensated Employee for a particular Plan Year if he or she meets the definition of a Highly Compensated Employee in effect for that Plan Year. Similarly, a Participant is a Non-highly Compensated Employee for a particular Plan Year if he or she does not meet the definition of a Highly Compensated Employee in effect for that Plan Year.

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

In addition, if the Employer's Plan meets the requirements of Code Sections 401(m), 401(a)(4) or 410(b) only if aggregated with one or more other plans, or if one or more other plans meet the requirements of such sections of the Code only if aggregated with this Plan, then the Contribution Percentage of a Participant will be determined by treating all such plans as a single

plan. Any adjustments to the NHCE ACP for the prior year will be made in accordance with Notice 98-1 and any superseding guidance, unless the Employer has elected in the Adoption Agreement to use the Current Year Testing method. Plans may be aggregated in order to satisfy section 401(m) of the Code only if they have the same Plan Year and use the same ACP testing method.

(c) The Plan Administrator will monitor and adjust Participants' Contribution Percentages to insure compliance with the requirements of Section 6.6. Such monitoring and adjustments will be accomplished under procedures similar to those specified in the first paragraph of Section 5.7.

(c) (i) If necessary, the Plan Administrator will reduce Contribution Percentage Amounts in the following order: (A) After-Tax Savings Contributions for which there is no related Employer Matching Contribution; (B) After-Tax Savings Contributions for which there is a related Employer Matching Contribution; (C) 401(k) Savings Contributions for which there is no related Employer Matching Contribution; (D) Qualified Non-elective Contributions; (E) 401(k) Savings Contributions for which there is a related Matching Contribution; and (F) Employer Matching Contributions.

(ii) Excess Aggregate Contributions. Notwithstanding any other provision of this plan, Excess Aggregate Contributions, plus any income and minus any loss allocable thereto, shall be distributed no later than the last day of each Plan Year to Participants to whose accounts such Excess Aggregate Contributions were allocated for the preceding Plan Year. Excess Aggregate Contributions are allocated to the Highly Compensated Employees with the largest Contribution Percentage Amounts taken into account in calculating the ACP test for the year in which the excess arose, beginning with the Highly

Compensated Employee with the largest amount of such Contribution Percentage Amounts and continuing in descending order until all the Excess Aggregate Contributions have been allocated. For purposes of the preceding sentence, the "largest amount" is determined after distribution off any Excess Aggregate Contributions. If such Excess Aggregate Contributions are distributed more than 2-1/2 months after the last day of the Plan Year in which such excess amounts arose, a ten (10) percent excise tax will be imposed on the Employer maintaining the Plan with respect to those amounts. Excess Aggregate Contributions shall be treated as Annual Additions under the Plan.

Determination of Income or Loss: Excess Aggregate Contributions shall be adjusted for any income or loss for the Plan Year in which such contributions were made. Income or loss allocable to the period between the end of the Plan Year and the date of distribution will be disregarded in determining income or loss.

Accounting for Excess Aggregate Contributions: Excess Aggregate Contributions allocated to a Participant shall be distributed on a pro-rata basis from the participant's After-Tax Savings Contribution Account, Matching Contribution Account, and Qualified Matching Contribution Account (and, if applicable, the participant's Qualified Non-elective Contribution account or Elective Deferral Account, or both).

(d) Multiple Use: If one or more Highly Compensated Employees participate in both a CODA and a plan subject to the ACP test maintained by the Employer and the sum of the ADP and ACP of those Highly Compensated Employees subject to either or both tests exceeds the Combined Limit, then the ACP or ADP, as determined in the sole discretion of the Plan Administrator, of those Highly Compensated Employees who also participate in a CODA will be reduced (beginning with such Highly Compensated Employee with the highest dollar amount of

401(k) Savings Contributions and/or Contribution Percentage Amounts) so that the limit is not exceeded. The amount by which each Highly Compensated Employee's Contribution Percentage Amounts is reduced shall be treated as an Excess Aggregate Contribution and/or an Excess Contribution. The ADP and ACP of the Highly Compensated Employees are determined after any corrections required to meet the ADP and ACP tests and are deemed to be the maximum permitted under such tests for the Plan Year. Multiple use does not occur if either the ADP or ACP of the Highly Compensated Employees does not exceed 1.25 multiplied by the ADP and ACP of the Non-highly Compensated Employees or such other limitations pursuant to regulations under the Code.

(e) For purposes of determining the Contribution Percentage test, Employee After-Tax Savings Contributions are considered to have been made in the Plan Year in which contributed to the Trust. Matching Contributions and Qualified Non-elective Contributions will be considered made for a Plan Year if made no later than the end of the twelve-month period beginning on the day after the close of the Plan Year.

(f) The determination and treatment of the Contribution Percentage of any Participant shall satisfy such other requirements as may be prescribed by the Secretary of the Treasury.

(g) A Participant is a Highly Compensated Employee for a particular Plan Year if he or she meets the definition of Highly Compensated Employee in effect for that Plan Year. Similarly, a Participant is in a Non-highly Compensated Employee if he or she does not meet the definition of Highly Compensated Employee in effect for that Plan Year.

6.9 ADDITIONAL LIMITS FOR PLANS SUBJECT TO BOTH 401(k) AND 401(m) LIMITS:

(a) Applicability of this Section. This section will apply if this Plan (or any other plan which is aggregated with this plan under applicable regulations) provides for both 401(k)

Savings Contributions and either After-Tax Savings Contributions or Employer Matching Contributions) (or both) on behalf of any Highly Compensated Employee. If so, the limitations specified in subsection (b) below will apply in addition to the limitations set forth in Sections 5.6 and 6.6.

(b) Combined Limit. The sum of the HCE ADP under Sections 5.6 and 5.7 and the HCE ACP under Sections 6.6 and 6.7 cannot exceed the sum of the following:

(i) 125 percent of the NHCE ADP (under Sections 5.6 and 5.7) for the prior Plan Year or the NHCE ACP (under Sections 6.6 and 6.7) for the prior Plan Year; and

(ii) two percentage points more than such NHCE ADP or such NHCE ACP, whichever is not used in (i), but in no event more than twice such smaller amount. If the Employer has elected in the Adoption Agreement to use the Current Year Testing method, then, in calculating the Combined Limit for a particular plan year, the NHCE ADP or NHCE ACP for that Plan Year, instead of for the prior Plan Year, is used.

(c) Correction of Violation. If the sum of the HCE ADP and the HCE ACP exceed the limit specified in subsection (b), the Employer will reduce the Contribution Percentages and/or Deferral Percentages of Participants who are Highly Compensated Employees, in accordance with Section 6.8(c) and Section 5.7, to the extent necessary to meet subsection (b). Subject to the multiple use rules of Section 6.8(d), the Employer may limit the Participants affected by such reductions to those Participants who are subject to both the 401(k) limits and the 401(m) limits. If any other plan maintained by the Employer is also taken into account in applying the limits specified in this section, the Employer may designate the Plan, which will, be involved in correcting any violation of the limits.

6.10 ACP TEST SAFE HARBOR: If the Employer has elected the Safe Harbor Rules in the Adoption Agreement and the provisions of Section 5.10 apply, then except to the extent After-Tax Savings Contributions are made to the Plan during the Plan Year, the provisions of this Section 6.10 shall apply for the Plan Year and the provisions of Sections 6.6, 6.7, 6.8 and 6.9 shall not apply.

(a) ACP Test Safe Harbor Matching Contributions. In addition to the ADP Test Safe Harbor Contributions described in Section 5.10(d), the Employer will make the ACP Test Safe Harbor Matching Contributions, if any, indicated in the Adoption Agreement for the Matching Period.

(b) ACP Test Safe Harbor Matching Contributions will be vested as indicated in the Adoption Agreement, but, in any event, such contributions shall be fully vested at Normal Retirement Date, Early Retirement Date, upon the complete or partial termination of the Plan, or upon the complete discontinuance of Employer contributions. Forfeiture of nonvested ACP Test Safe Harbor Matching Contributions will be used to reduce the Employer's ACP Test Safe Harbor Matching Contributions.

## ARTICLE 7: ROLLOVERS, TRANSFERS AND DEDUCTIBLE EMPLOYEE CONTRIBUTIONS

7.1 ROLLOVER CONTRIBUTIONS:

(a) With the approval of the Plan Administrator, an Employee may make a Rollover Contribution to the Plan in an amount which constitutes (i) an eligible rollover distribution (as defined in Section 402(c)(4) or Section 403(a)(4) of the Code) or (ii) a rollover contribution (as defined in Section 408(d)(3) of the Code). Any amounts rolled over to this Plan from an

individual retirement account or annuity must consist solely of amounts originally transferred to such account or annuity from another qualified plan and may not include any nondeductible contributions by the Employee to such account or annuity.

(b) The Employer, the Plan Administrator and the Trustee have no responsibility for determining the propriety of, proper amount or time of, or status as a tax free transaction of any transfer under subsection (a) above.

(c) If an Employee who is not yet a Participant makes a transfer under subsection (a) above, he or she will be considered to be a Participant with respect to administering such transferred amount only. He or she will not be a Participant for any other purpose of the plan until he or she completes the requirements for participation under Article 4. If loans are permitted under the Adoption Agreement for Participants, such an Employee may take loans secured by his or her rollover contribution account.

(d) Notwithstanding any provision in this Plan to the contrary, if the Plan accepts an invalid rollover contribution, the contribution will be treated as a valid rollover contribution if (i) at the time the Plan Administrator accepted the rollover contribution from the Employee, the Plan Administrator reasonably concluded that such contribution was a valid rollover contribution and (ii) the Plan Administrator subsequently determines that such contribution was an invalid rollover contribution, the amount of the invalid rollover contribution, plus any earnings thereon, are distributed to the Employee within a reasonable time after such determination. For purposes of this subsection (d), a "valid rollover contribution" is a contribution that is accepted by the Plan as a rollover within the meaning of Treasury Regulation Section 1.402(c)-2, Q&A-1 or as a rollover contribution within the meaning of section 408(d)(3) of the Code and that satisfies the requirements of Section 401(a)(31), 402(c), or 408(d)(3) of the Code for treatment as a rollover or a rollover contribution. An "invalid rollover contribution" is an amount that is accepted by the Plan as a rollover within the meaning of Treasury Regulation Section 1.402(c)-2, Q&A-1 (or as a rollover contribution within the meaning of section 408(d)(3)(A)(ii) of the Code) but that is not an eligible rollover distribution from a qualified plan (or an amount described in section 408(d)(3)(A)(ii) of the Code) or that does not satisfy the other requirements of section 401(a)(31), 402(c), or 408(d)(3) for treatment as a rollover

or a rollover contribution. (f) The Plan Administrator will maintain a Rollover Account in the name of each Employee who makes a rollover contribution under this section, and will credit such rollover to his or her Rollover Account as soon as practicable after receipt thereof by the Trustee. An Employee's Rollover Account and all amounts credited thereto (including earnings) will be fully vested and nonforfeitable at all times.

7.2 TRANSFERS:

(a) Definitions. The following definitions apply for purposes of this Section and Section 18.2:

(1) "Distribution Elective Transfer" shall mean the transfer of a Participant's vested account balance from another qualified plan into this Plan if the following requirements are satisfied:

(i) the transfer occurs at a time when the Participant is eligible, under the terms of the plan from which the benefits are transferred, to receive an immediate distribution of his or her account balance under such plan;

(ii) for a transfer occurring on or after January 1, 2002, the transfer occurs at a time at which the Participant is not eligible to receive an immediate distribution of the Participant's vested account balance in the form of a single sum

that would consist entirely of an eligible rollover distribution, within the meaning of Code Section 401(a)(31)(C);

(iii) the plan from which the benefits are transferred provides that the transfer is conditioned upon a voluntary, fully-informed election by the Participant to transfer the Participant's vested account balance to the other qualified plan; provided that the Participant is offered the opportunity to retain the Participant's account balance under such plan, unless such plan is terminating, in which case the Participant is eligible to receive any optional form of distribution under such plan;

(iv) the Participant is fully vested under this Plan in the transferred benefit; and

(v) the amount of the benefit transferred, together with the amount of any contemporaneous direct rollover to the Plan, equals the Participant's vested account balance under the transferor plan.

(2) "Elective Plan Transfer" shall mean the transfer of a Participant's entire account balance from another qualified defined contribution plan into this Plan if the following requirements are satisfied:

(i) the transfer occurs in connection with (A) an asset or stock acquisition, merger, or other similar transaction involving a change in employer of the employees of a trade or business; or (B) the Participant's change in employment status to an employment status with respect to which the Participant is not entitled to additional allocations under the transferor plan;

(ii) the plan from which the benefits are transferred provides that the transfer is conditioned upon a voluntary, fully-informed election by the Participant to transfer the Participant's entire account balance to the other qualified plan; provided that the Participant is offered the opportunity to retain the Participant's account balance under such plan, unless such plan is terminating, in which case the Participant is eligible to receive any optional form of distribution under such plan; and

(iii) if this Plan is a 401(k) plan, the transferor plan is also a 401(k) plan, a profit-sharing plan or stock bonus plan (other than an ESOP); if this Plan is a money purchase plan, the transferor plan is a money purchase plan, a profit sharing plan without a cash or deferred arrangement or a stock bonus plan (other than an ESOP); and if this Plan is a profit-sharing plan, the transferor plan is a profit sharing plan without a cash or deferred arrangement or a stock bonus plan (other than an ESOP).

(3) "Plan to Plan Transfer" shall mean the transfer of a Participant's vested account balance from another qualified plan in connection with a merger, consolidation or spinoff of plan assets described in Section 414(l) of the Code.

(b) With the approval of the Plan Administrator, an Employee may cause any amount to be transferred directly to the Trustee of this Plan from the trustee or custodian of a qualified plan or annuity or individual retirement account or annuity in a Distribution Elective Transfer, an Elective Plan Transfer or a Plan to Plan Transfer.

(c) If an Employee who is not yet a Participant makes a Distribution Elective Transfer, an Elective Plan Transfer or a Plan to Plan Transfer under subsection (b) above, he or

she will be considered to be a Participant with respect to administering such transferred amount only. He or she will not be a Participant for any other purpose of the plan until he or she completes the requirements for participation under Article 4. If loans are permitted under the Adoption Agreement for Participants, such an Employee may take loans secured by his or her transfer account.

(d) The Plan Administrator will maintain any Distribution Elective Transfers and Elective Plan Transfers as part of a Participant's Rollover Account, and will credit such Distribution Elective Transfer or Elective Plan Transfer to his or her Rollover Account as soon as practicable after receipt thereof by the Trustee. The Plan Administrator will maintain a Transfer Account in the name of each Employee on whose behalf a Plan to Plan Transfer is made under this section, and will credit such transferred amount to his or her Transfer Account as soon as practicable after receipt thereof by the Trustee. In the case of a Plan to Plan Transfer, amounts consisting of the following will be separately accounted for: employer contributions to a defined benefit or money purchase plan, employer contributions to a profit-sharing or 401(k) plan, employee 401(k) savings contributions, after-tax employee contributions, and qualified voluntary employee contributions. The employer sponsoring the transferor plan will be responsible for providing the Plan Administrator with records that will reflect such amounts separately. An Employee's Rollover Account and all amounts credited thereto (including earnings) will be fully vested and nonforfeitable at all times. An Employee's Transfer Account and all amounts credited thereto (including earnings) will be fully vested and nonforfeitable at all times.

7.3 QUALIFIED VOLUNTARY EMPLOYEE CONTRIBUTIONS:

(a) The provisions of this section apply if the Employer's execution of the Adoption Agreement constitutes the amendment and restatement of an existing qualified plan under which participants made Qualified Voluntary Employee Contributions for taxable years before 1987.

(b) Any such Qualified Voluntary Employee Contributions by a Participant will be held in a separate subaccount for such Participant within his Rollover Account which will be fully vested and nonforfeitable at all times.

(c) No part of a Participant's Qualified Voluntary Employee Contributions Account will be used to purchase life insurance or will be taken into account in determining the Participant's eligibility for or the amount of any loan hereunder to the Participant.

7.4 WITHDRAWALS:

(a) Amounts. Unless the Adoption Agreement otherwise provides, a Participant may upon reasonable advance notice to the Plan Administrator withdraw all or any portion of his or her Rollover Account or Qualified Voluntary Employee Contributions subaccount. Unless such withdrawals are not permitted under the Adoption Agreement, an Employee who is not yet a Participant and has made a rollover contribution may withdraw all or any portion of his or her Rollover Account. The Plan Administrator may establish reasonable minimum withdrawal amounts.

Notwithstanding the preceding paragraph, amounts separately accounted for under a Transfer Account will be subject to restrictions on withdrawal as follows (unless the plan from which such amounts were transferred imposes more or less restrictive conditions upon in-service withdrawals): employer contributions to a defined benefit or money purchase plan are not available for in-service withdrawal; employee 401(k) savings contributions are available for in-

service withdrawal only under Section 12.3; employer contributions to a 401(k) plan which were used in determining the deferral percentages of participants are not available for in-service withdrawal; other employer contributions to a profit-sharing plan, after-tax employee contributions (however, after-tax employee contributions on which employer matching contributions were made shall be subject to a minimum 6-month suspension) and qualified voluntary employee contributions are available for in-service withdrawal.

(b) Payment. Any withdrawal under this section will be paid to the Participant as soon as practicable after the valuation date following the date the Plan Administrator receives the Participant's withdrawal request, including a form or an electronic communication; however, the Plan Administrator may approve an earlier payment of all or some of the amount to be withdrawn if such earlier payment would not be detrimental to the interests of the other Participants. Unless limited by the investment vehicle, the investments to be liquidated to pay such withdrawal to the Participant will be liquidated pro rata from the Participant's accounts. However, if the Participant's account is invested in the self-directed brokerage account option, then the self-directed brokerage account is not subject to proration and will be the last investment vehicle to be liquidated.

ARTICLE 8: EMPLOYER CONTRIBUTIONS; AMOUNT AND ALLOCATION

8.1 AMOUNT OF EMPLOYER CONTRIBUTION:

(a) For each Plan Year that the Plan is in effect, the Employer will contribute the amount (if any) determined according to the provisions of this article. If, due to miscalculation or error, the Employer's contribution exceeds the amount prescribed or determined by the Employer, such excess may, at the election of the Employer, be treated as a contribution for the succeeding Plan Year or years.

(b) Except as otherwise provided under this Plan, the Employer's contribution may be paid in a single sum or installments, but the total amount will be paid to the Trustee not later than the time (including extensions thereof) prescribed by law for filing the Employer's federal income tax return for its taxable year beginning with or within the Plan Year.

8.2 PROFIT-SHARING PLANS: If the Employer's plan is a profit-sharing plan, the following provisions will apply:

(a) Amount. Unless specified otherwise in the adoption agreement, for each Plan Year the Employer will contribute whatever amount (if any) the Employer determines in its discretion. The Employer will not be obligated to contribute any particular amount in a Plan Year or to make any contribution at all in any particular Plan Year. However, if in the Adoption Agreement the Employer elected a formula for determining the contribution for a Plan Year, the Employer will contribute the amount determined under such formula. Such a formula may include the contribution of a flat dollar amount to the account of each Participant who is eligible to share in the allocation of the Employer's contribution. If in the Adoption Agreement, the Employer elected to make a minimum contribution, the Employer will contribute the amount of such minimum contribution.

For each Contribution Period the Employer will contribute an amount which will equal the contribution the Employer determined to make for all Participants entitled to receive an allocation for such period in the Metropolitan Life Insurance Company Adoption Agreement.

Unless otherwise elected in the Adoption Agreement, the Contribution Period shall be the Plan Year. The Employer may elect in the Adoption Agreement a Contribution Period shorter than the Plan Year. Employer contributions for a Contribution Period will be transferred to the Trustee within a reasonable time after the end of such period. However, the total amount of the Employer's contributions for a Plan Year will be paid to the Trustee by the time specified in Section 8.1(b).

(b) Source of Contributions. Unless the Metropolitan Life Insurance Company Adoption Agreement provides otherwise, the Employer's contribution for any year will not be limited to the Employer's net profits for such year or its accumulated earnings.

(c) Persons Entitled to Share in Contributions. The persons entitled to share in any Employer contributions for a Plan Year are described in Section 8.6.

(d) Crediting Employer Contributions: Allocation Formula. Any Employer contributions for a Plan Year will be credited to the Employer Contributions Accounts of each person entitled to share therein (determined under Section 8.5) in accordance with Section 8.6.

(e) Forfeitures. Forfeitures will be disposed of in accordance with the Employer's election under the Adoption Agreement. Subject to Section 11.4, forfeitures will be released as soon as practicable following the Participant's separation from service.

(f) Employer Contributions Account. The Plan Administrator will maintain a separate Employer Contributions Account for each participant. Employer contributions allocated

to a Participant will be credited to his or her Employer Contributions Account. No forfeitures will occur solely as a result of an Employee's withdrawal of employee contributions.

(g) Make-up Contributions. Following reemployment of a Participant after a Military Absence, the Employer shall make an Employer Contribution ("Employer Make-Up Contribution") in the amount, unadjusted by earnings and forfeitures, that the Employer would have been permitted to make under subsection (a) during the period of Military Absence if such Participant had continued to be employed by and received compensation from the Employer during such period, subject to the limitation of Article 13 in effect during each year of such Participant's Military Absence to which such contribution relates. For purposes of the preceding sentence, a Participant will be treated as having received Plan Compensation during the period of Military Absence equal to (i) the Plan Compensation such Participant would have received during such period if he or she had not taken a Military Absence, determined based on the rate of pay the Participant would have received from the Employer but for the Military Absence, or (ii) if the Plan Compensation the participant would have received during such period was not reasonably certain, the Participant's average compensation during the 12-month period immediately preceding the Military Absence or, if shorter, the period of employment immediately preceding the Military Absence. Notwithstanding any provision in this plan to the contrary, Employer Make-Up Contributions shall not be subject to the limitations of Article 13 in the year such contributions are made and shall not be taken into account, during either the year in which such contributions were made or the years to which such contributions relate during the period of Military Absence, for purposes of applying Sections 5.6, 6.6 or 6.9 or the provisions of Article 14.

(h) Supplemental Profit Sharing Contributions. If in the Metropolitan Life Insurance Company Adoption Agreement the Employer elects profit sharing contributions or supplemental contributions, the Employer may make such contributions. Such contributions (if any) are in addition to any matching contributions the employer makes. Such contributions will be allocated to separate Employer Profit Sharing Contributions Accounts on behalf of Participants in accordance with the Adoption Agreement and Section 8.2, except that any forfeitures from such accounts will be applied in accordance with subsection (c) above instead of Section 8.2(e).

8.3 MONEY PURCHASE PENSION PLANS: If the Employer's Plan is a money purchase pension plan, the following provisions will apply:

(a) Amount. For each Contribution Period the Employer will contribute an amount which will equal the contribution required for all Participants entitled to receive an allocation for such period under the contribution formula elected by the Employer in the Metropolitan Life Insurance Company Adoption Agreement.

Unless otherwise elected in the Adoption Agreement, the Contribution Period shall be the Plan Year. The Employer may elect in the Adoption Agreement a Contribution Period shorter than the Plan Year. Employer contributions for a Contribution Period will be transferred to the Trustee within a reasonable time after the end of such period. However, the total amount of the Employer's contributions for a Plan Year will be paid to the Trustee by the time specified in Section 8.1(b).

(b) Persons Entitled to Share in Contributions. The persons entitled to receive an allocation of Employer contributions for a Contribution Period are described in Section 8.5. However, if the Adoption Agreement provides for a Contribution Period more frequent than the plan year, a participant may be required to have completed a minimum period of service and/or

be an Employee on the last day of a Contribution Period (or to have left employment during such period because of retirement, death or disability) in order to receive an Employer contribution for such period.

(c) Crediting Employer Contributions: Allocation Formula. Employer contributions for a Contribution Period will be credited to the Employer Contributions Accounts of each person entitled to share therein (determined under Section 8.5) in accordance with the allocation formula selected in Section 8.6.

(d) Forfeitures. Any forfeitures occurring during a Contribution Period will be disposed of in accordance with the Employer's election under the Adoption Agreement. No forfeitures will occur solely as a result of an Employee's withdrawal of After-Tax Savings Contributions. Subject to section 11.4, forfeitures will be released as soon as practicable following the Participant's separation from service.

(e) Employer Contributions Account. The Plan Administrator will maintain a separate Employer Contributions Account for each Participant. Employer contributions allocated to a Participant will be credited to his or her Employer Contributions Account.

(f) Make-up Contributions. Following reemployment of a Participant after a Military Absence, the Employer shall make an Employer Contribution ("Employer Make-Up Contribution") in the amount, unadjusted by earnings and forfeitures, that the Employer would have been permitted to make under subsection (a) during the period of Military Absence if such Participant had continued to be employed by and received Plan Compensation from the Employer during such period, subject to the limitation of Article 13 in effect during each year of such Participant's Military Absence to which such contribution relates. For purposes of the preceding sentence, a Participant will be treated as having received Plan Compensation during the period of

Military Absence equal to (i) the Plan Compensation such Participant would have received during such period if he or she had not taken a Military Absence, determined based on the rate of pay the participant would have received from the Employer but for the Military Absence, or (ii) if the Plan Compensation the Participant would have received during such period was not reasonably certain, the Participant's average compensation during the 12-month period immediately preceding the Military Absence or, if shorter, the period of employment immediately preceding the Military Absence. Notwithstanding any provision in this Plan to the contrary, Employer Make-Up Contributions shall not be subject to the limitations of Article 13 in the year such contributions are made and shall not be taken into account, during either the year in which such contributions were made or the years to which such contributions relate during the period of Military Absence, for purposes of applying Sections 5.6, 6.6 or 6.9 or the provisions of Article 14.

8.4 EMPLOYER MATCHING CONTRIBUTIONS:

(a) Matching Contributions. Matching Contribution shall mean an Employer contribution made to this or any other defined contribution plan on behalf of a Participant on account of an After-Tax Savings Contribution made by such Participant, or on account of a Participant's Elective Deferral, under a Plan maintained by the Employer.

(b) Allocation Period. The Employer will select the Matching Period, which will be the Plan Year, unless, in the Adoption Agreement, the Employer selects a period shorter than the Plan Year, such as each pay period, month, three months (quarterly), or six months (semi-annually). For each Matching Period the employer will make a Matching Contribution on behalf of each Participant who made 401(k) Savings Contributions and/or After-Tax Savings Contributions during such Matching Period. However, if the Adoption Agreement so provides, a

Participant will be required to have completed a minimum period of service (not to exceed 1,000 hours) and/or be an Employee on the last day of a Matching Period (or to have left employment during such period because of retirement, death or disability or to be absent from employment on the last day of a Matching Period as a result of a Family Medical Absence) in order to receive an Employer Matching Contribution for such period. In the case of a short Plan Year, the minimum period of service will be prorated by multiplying the minimum number of hours by a fraction, the numerator of which is the number of months of the short Plan Year and the denominator of which is 12.

(c) Annual Matching Contribution. Notwithstanding the Matching Period elected by the Employer in the Adoption Agreement, the Employer may make, in its absolute discretion, an additional Matching Contribution for the Plan Year in an amount to be determined under this paragraph ("Annual Matching Contribution"), unless the Employer has elected, in the Adoption Agreement, not to make an Annual Matching Contribution. The Annual Matching Contribution shall be allocated solely to the accounts of those Participants who made matchable Savings Contributions at any time during the Plan Year, but either did not make Matchable Savings Contributions during the entire Plan Year or made Matchable Savings Contributions as a percentage of Plan Compensation which was lower than the maximum percentage of Plan Compensation for which Matching Contributions could be made at any point during the Plan Year. The Annual Matching Contribution shall be based on an Annual Matching Period. The amount of the Annual Matching Contribution shall be equal to (i) the maximum percentage of Plan Compensation for which Matching Contributions that could be made during the Plan Year, based on the rate of Matchable Savings Contributions, expressed as an annualized percentage of Plan Compensation Minus (ii) the actual amount of Matching Contributions made on behalf of

such Participant during the Plan Year. An Annual Matching Contributions shall be based on less than the entire Plan Year in the case for Participants (iii) who separated from service or (iv) whose Plan Compensation reaches the limitation of Section 401(a)(17) of the Code during the Plan Year.

(d) Limitations on Matching Contributions.

Matching contributions will be limited as follows: (1) Matching Contributions on behalf of Participants who are Highly Compensated Employees will be made only to the extent that such contributions do not cause the average of the Deferral Percentages or the Contribution Percentages of such Participants to exceed the limits provided under Section 5.6 or 6.6 (whichever may be applicable); and (2) the Employer will not make an Annual Matching Contribution with respect to any 401(k) Savings Contributions or After-Tax Savings Contributions that are distributed to the Participant under Section 5.8 or Section 6.8, or with respect to any 401(k) Savings Contributions that are recharacterized as After-Tax Savings Contributions under Section 5.8 (unless under the terms of the Employer's Plan such After-Tax Savings Contributions would also be matched). (3) For Plan Years beginning prior to January 1, 1998, if the Employer is a partnership or is treated as a partnership under the Code, the Employer may elect in the Adoption Agreement not to allocate Matching Contributions to partners or stockholders (in the case of an entity treated under the Code as a partnership). If the Employer is a partnership or is treated as a partnership under the Code and the Employer elects to allocate Matching Contributions to partners or stockholders, all Matching Contributions are required to be 100% vested at all times and those Matching Contributions allocable to partners or shareholders are subject to the withdrawal limitations of Section 12.3.

(e) Discretionary Matching Contribution Allocation Formulas. If the Employer has selected a discretionary Matching Contribution formula in the Adoption Agreement, such contributions shall be allocated under one or more of the following methods, unless the Employer has elected in the Adoption Agreement to restrict the allocation method to one of the following:

(1) each eligible Participant shall receive an equal allocation as a percentage of the Participant's Matchable Savings Contributions during such Plan Year or Matching Period;

(2) each eligible Participant who is a Non-highly Compensated Employee shall receive an equal allocation as a percentage of such Participant's Matchable Savings Contributions during such Plan Year or Matching Period, and each eligible Participant who is a Highly Compensated Employee shall receive an equal allocation as a percentage of such Participant's Matchable Savings Contributions during such Plan Year or Matching Period, provided that the percentage of Matchable Savings Contributions allocated to the eligible Participants who are Non-Highly Compensated Employees is greater than the percentage of Matchable Savings Contributions allocated to the eligible participants who are Highly Compensated Employees.

(3) such contributions will be allocated solely among the eligible Participants who are Non-highly Compensated Employees as an equal percentage of such Participant's Matchable Savings Contributions during such Plan Year or Matching Period;

(4) two or more salary ranges will be established such that the Employer Matching Contribution as a percentage of Plan Compensation which is

allocated to the Participants in the lowest salary range is the greatest and the allocation of Employer Matching Contributions as a percentage of Plan Compensation decreases as the salary ranges increase;

(5) two or more rates of Matching Contributions based on the percentage of Matchable Savings Contributions to Plan Compensation will be established such that the Participants making the lowest level of Matchable Savings Contributions, as a percentage of Plan Compensation, receive the greatest rate of Matching Contribution, and the rate of Matching Contributions, decreases as the Matchable Savings Contributions increase;

(6) A flat dollar amount established by the Employer. The employer may limit such discretionary Matching Contributions to a specified percentage of each Participant's Matchable Savings Contributions, to a specified percentage of each Participant's Plan Compensation or to a specified dollar amount.

(f) Time for Remitting Matching Contributions. Matching Contributions for a Matching Period will be transferred to the Trustee within a reasonable time after the end of such period. However, the total amount of the Employer's Matching Contributions for a Plan Year will be paid to the Trustee by the time specified in Section 8.1(b).

(g) Matching Contributions Account. The Plan Administrator will maintain a Matching Contributions Account for each Participant for whom the Employer makes a Matching Contribution. Matching Contributions on behalf of the Participant for a Matching Period will be credited to his or her Matching Contributions Account.

(h) Use of Forfeitures. Forfeitures occurring during a Matching Period will be applied according to the method specified in the Adoption Agreement.

(i) Source of Contributions. Unless specified otherwise in the Adoption Agreement, the Employer will make the Matching Contributions required under this section regardless of whether the Employer has current or accumulated profits.

(j) Matching Make-up Contributions. If a Participant has elected to make After-Tax Savings Make-Up Contributions pursuant to Section 6.2(b) and/or 401(k) Savings Make-Up Contributions pursuant to Section 5.2(e), following reemployment after a Military Absence, the Employer shall make a Matching Contribution ("Matching Make-Up Contribution") in the amount, unadjusted by earnings and forfeitures, that the Employer would have been permitted to make under subsection (a) during the period of Military Absence if such Participant had continued to be employed by and received Plan Compensation from the Employer during such period, subject to the limitation of Article 13 in effect during each year of such Participant's Military Absence to which such Matching Contribution relates. For purposes of the preceding sentence, a Participant will be treated as having received Plan Compensation during the period of Military Absence equal to (i) the Plan Compensation such Participant would have received during such period if he or she had not taken a Military Absence, determined based on the rate of pay the Participant would have received from the Employer but for the Military Absence, or (ii) if the Plan Compensation the Participant would have received during such period was not reasonably certain, the Participant's average compensation during the 12-month period immediately preceding the Military Absence or, if shorter, the period of employment immediately preceding the Military Absence.

Notwithstanding any provision in this plan to the contrary, Matching Make-Up Contributions shall not be subject to the limitations of Article 13 in the year such contributions are made and shall not be taken into account, during either the year in which such contributions

were made or the years to which such contributions relate during the period of Military Absence, for purposes of applying Sections 5.6, 6.6 or 6.9 or the provisions of Article 14.

The Employer shall make Matching Make-Up Contributions during the same period in which the Participant makes After-Tax Savings Make-Up Contributions and/or 401(k) Savings Make-Up Contributions.

8.5 PERSONS ENTITLED TO SHARE IN ALLOCATIONS:

(a) Application of this Section. The rules in this section will determine which persons are entitled to an allocation of Employer Contributions for a Plan Year under a profit-sharing or a money purchase pension plan or of Employer Supplemental Profit-Sharing Contributions under a 401(k) plan. See Section 8.4 for entitlement to an Employer Matching Contribution.

(b) Last Day of Contribution Period Rule. If provided in the Adoption Agreement, a person will not be entitled to an allocation of Employer Contributions unless he or she was still an active employee on the last day of the Contribution Period.

(c) Year of Service Rule. If provided in the Adoption Agreement, a person will not be entitled to an allocation of Employer Contributions unless during such Plan Year he or she completed at least 1,000 Hours of Service (or such smaller number of Hours of Service as is specified in the Adoption Agreement for a Year of Service). In the case of a person who first became an Employee during a Plan Year, the number of Hours of Service required will be prorated based on the date when he or she became an Employee. In the case of a Short Plan Year, the minimum period of service will be prorated by multiplying the minimum number of hours of service by a fraction, the numerator of which is the number of months of the short plan year and the denominator of which is 12.

(d) Last Day of Contribution Period and Year of Service. If provided in the Adoption Agreement, a person will not be entitled to an allocation of Employer Contributions unless he or she satisfies the requirements of subsections (b) and (c) as of the end of the Contribution Period.

(e) Exception. The requirements of subsections (b), (c) and (d) above will not apply to a person who terminated employment with the Employer during the Plan Year because of

retirement, death or disability. The requirements of subsection (b) and that portion of subsection (d) (but only to the extent it refers to subsection (b)) will not apply to a person who is not actively employed with the Employer on the last day of the Contribution Period due to a Family Medical Absence.

(f) Standardized Plans. Notwithstanding the above, a Participant must be employed by the Employer on the last day of the Plan Year or must have completed more than 500 Hours of Service during the Plan Year to share in the allocation of money purchases profit sharing or matching contributions, unless the Employer has elected in the Adoption Agreement to impose less restrictive conditions for sharing in the allocation of money purchases, profit sharing or matching contributions.

8.6 ALLOCATION RULES:

(a) Application of this Section. This section governs the allocation of Employer Contributions for a Plan Year under a profit sharing or money purchase pension plan or Employer Supplemental Profit-Sharing Contributions under a 401(k) plan. See Section 8.4(a) for the allocation of Employer Matching Contributions (and any forfeitures used to reduce Employer Matching Contributions).

As used in this section, the term Participant includes any person entitled to share in the allocation of Employer Contributions (and/or forfeitures) for the Plan Year.

(b) Non-Integrated Formula. If in the Adoption Agreement the Employer elected a non-integrated formula, Employer Contributions will be allocated so that each Participant who is entitled to receive an allocation of the employer's contribution receives an equal contribution as either a percentage of his or her Plan Compensation or a flat dollar amount for the Plan Year (Employer Contributions to a profit-sharing plan or Employer Supplemental Profit-Sharing

Contributions to a 401(k) plan), or so that each Participant receives the percentage of his or her Plan Compensation for the Plan Year specified in the Adoption Agreement (money purchase pension plan). However, notwithstanding the above, if selected in the Adoption Agreement, a nonstandardized plan may require a Participant to satisfy the requirements of subsection (b), (c), or (d) of Section 8.5.

(c) Integrated Formula.

(1) Notwithstanding any section of the Plan to the contrary, this subsection (1) applies to the allocation of Employer Contributions under a profit-sharing plan or Employer Supplemental Profit-Sharing Contributions to a 401(k) plan where the Employer elected an Integrated Formula in the Adoption Agreement. However, the Integrated Formula shall not be taken into account with respect to 401(k) Savings Contributions. Employer Contributions for the Plan Year plus any forfeitures will be allocated to a Participant's account as follows:

(A) Solely for Plan Years in which this Plan is a Top-Heavy Plan, as follows:

Step One: Contributions and forfeitures will be allocated to each Participant's account in the ratio that each Participant's Plan Compensation bears to all Participants' total Plan Compensation, but not in excess of 3% of each Participant's Plan Compensation.

Step Two: Any contributions and forfeitures remaining after the allocation in Step One will be allocated to each Participant's account in the ratio that each participant's Plan Compensation for the Plan Year in excess of the Integration Level bears to the Excess Compensation of all Participants but not in excess of 3% of each Participant's Excess Compensation. For purposes of this Step Two, in the case of any Participant who

has exceeded the Cumulative Permitted Disparity limit described below, such Participant's Plan Compensation for the Plan Year will be taken into account.

Step Three: Any contributions and forfeitures remaining after the allocation in Step Two will be allocated to each Participant's account in the ratio that the sum of each participant's Plan Compensation and Excess Compensation bears to the sum of all Participants Plan Compensation and Excess Compensation, but not in excess of the Profit-Sharing Maximum Disparity Rate. For purposes of this Step Three, in the case of any Participant who has exceeded the Cumulative Permitted Disparity Limit described below, two times such Participant's Plan Compensation for the Plan Year will be taken into account.

Step Four: Any remaining Employer Contributions or forfeitures will be allocated to each Participant's Account in the ratio that each Participant's Plan Compensation for the Plan Year bears to all Participants' Plan Compensation for that year.

Except as otherwise provided in the Adoption Agreement, the Profit-Sharing Maximum Disparity Rate will be equal to 2.7%. If the Adoption Agreement so provides, the Profit-Sharing Maximum Disparity Rate will be equal to the lesser of:

(A) 2.7%; or

(B) the applicable percentage determined in accordance with the table below:

| If the integration level is more than | but not more than | the applicable percentage is: |
|---|---|---|
| $0 | X* | 2.7% |
| X* | 80% of TWB | 1.3% |
| 80% of TWB | Y** | 2.4% |

*X = the greater of $ 10,000 or 20 percent of the TWB

**Y = any amount more than 80% of the TWB but less than 100% of the TWB.

TWB = the Social Security Taxable Wage Base.

(B) For Plan Years in which this Plan is not a Top-Heavy Plan, as follows:

Step One: Contributions and forfeitures will be allocated to each Participant's account in the ratio that the sum of each Participant's Plan Compensation and Excess Compensation bears to the sum of all Participants' Plan Compensation and Excess Compensation, but not in excess of the Profit Sharing Maximum Disparity Rate. In the case of any Participant who has exceeded the Cumulative Permitted Disparity Limit described below, two times such Participant's Plan Compensation for the Plan Year will be taken into account. Step Two: Any remaining Employer Contributions or forfeitures will be allocated to each Participant's Account in the ratio that each Participant's Plan Compensation for the Plan Year bears to all Participants' Plan Compensation for that year.

Except as otherwise provided in the Adoption Agreement, the Profit Sharing Maximum Disparity Rate is 5.7%. If the Adoption Agreement so provides, the Profit Sharing Maximum Disparity Rate will be equal to the lesser of:

(A) 5.7%; or

(B) the applicable percentage determined in accordance with the table below:

| If the integration level is more than | but not more than | the applicable percentage is: |
|---|---|---|
| $0 | X* | 5.7% |
| X* | 80% of TWB | 4.3% |
| 80% of TWB | Y** | 5.4% |

*X = the greater of $ 10,000 or 20 percent of the TWB

**Y = any amount more than 80% of the TWB but less than 100% of the TWB.

TWB = the Social Security Taxable Wage Base.

(2) This subsection (2) applies to the allocation of Employer Contributions under a money purchase pension plan where the Employer elected an Integrated Formula in the Adoption Agreement. Such allocations will be performed so that each Participant receives the percentage of his or her Plan Compensation for the Plan Year specified in the Adoption Agreement (the "Base Contribution Percentage"), plus a percentage not to exceed the lesser of the Base Contribution Percentage or the Money Purchase Maximum Disparity Rate of such Participant's Plan Compensation in excess of the Integration Level.

Except as otherwise provided in the Adoption Agreement, the Money Purchase Maximum Disparity Rate is 5.7%. If the Adoption Agreement so provides, the Money Purchase Maximum Disparity Rate will be equal to the lesser of:

(A) 5.7%; or

(B) the applicable percentage determined in accordance with the table below:

| If the integration level is more than | but not more than | the applicable percentage is: |
|---|---|---|
| $0 | X* | 5.7% |
| X* | 80% of TWB | 4.3% |
| 80% of TWB | Y** | 5.4% |

*X = the greater of $ 10,000 or 20 percent of the TWB

**Y = any amount more than 80% of the TWB but less than 100% of the TWB.

TWB = the Social Security Taxable Wage Base.

(3) Unless the Employer elects a lower Maximum Disparity Rate in (1) or (2) above, the Integration Level shall be equal to the Taxable Wage Base. The Taxable Wage Base is the contribution and benefit base under section 230 of the Social Security Act as of the beginning of the Plan Year.

(iv) Overall Permitted Disparity Limits.

(A) Annual Overall Permitted Disparity Limit. Notwithstanding the preceding paragraphs, for any Plan Year this Plan benefits any Participant who benefits under another qualified plan or simplified employee pension, as defined in Section 408(k) of the Code, maintained by the Employer that provides for permitted disparity (or imputes disparity), Employer contributions and forfeitures will be allocated to the account of each Participant who either completes more than 500 Hours of Service during the Plan Year or who is employed on the last day of the Plan Year in the ratio that such Participant's total Plan Compensation bears to the total Plan Compensation of all Participants.

(B) Cumulative Permitted Disparity Limit. Effective for Plan Years beginning on or after January 1, 1995, the Cumulative Permitted Disparity Limit for a Participant is 35 total Cumulative Permitted Disparity Years. Total Cumulative Permitted Disparity Years means the number of years credited to the Participant for allocation or accrual purposes under this Plan, any other qualified plan or simplified employee pension plan (whether or not terminated) ever maintained by the Employer. For purposes of determining the Participant's

Cumulative Permitted Disparity Limit, all years ending in the same calendar year are treated as the same year. If the Participant has not benefited under a defined benefit or target benefit plan for any year beginning on or after January 1, 1994, the Participant has no Cumulative Permitted Disparity Limit.

(e) Plan Compensation. For purposes of determining allocations to a Participant's account under this section (and, if applicable, under Section 8.4(c)) Plan Compensation means the Participant's Plan Compensation for the Plan Year under Section 2.22, adjusted as follows:

(1) Unless otherwise provided in the Adoption Agreement, excluding any Plan Compensation paid to the Participant before he or she became Participant under Section 4.3 or after he or she ceased to be a Participant under Section 4.4.

(2) Excluding any Plan Compensation during the Plan Year above the cap (if any) specified in the Adoption Agreement.

(3) Excluding any items of Plan Compensation specified in the Adoption Agreement. However, no items of Plan Compensation will be excluded if the effect of such exclusion would be to use for Plan purposes a higher percentage of the total Plan Compensation of Highly Compensated Employees the percentage of total Plan Compensation used for Plan purposes for Non-Highly Compensated Employees.

Notwithstanding subsections (2) and (3) above, no items of compensation will be excluded if in the Adoption Agreement the Employer elects an Integrated Formula for allocations to Participants' accounts (provided that the Employer may in the Adoption Agreement elect a dollar cap on compensation which is above the Social Security wage base for such year).

## ARTICLE 9: BENEFITS UPON RETIREMENT OR DISABILITY

9.1 RETIREMENT DATES:

(a) Normal Retirement Date. A Participant may retire on his or her Normal Retirement date. His or her Normal Retirement Date is his or her 65th birthday unless the Employer specifies another date in the Adoption Agreement; any other date may not be later than his or her 65th birthday or, if later, the 5th anniversary of the first day of the Plan Year in which he or she commenced participation. If a Participant's Normal Retirement Date is the date he or she completes a specified number of Years of Participation, Years of Participation in any predecessor plan will be counted toward meeting the requirement. If, for Plan Years beginning before January 1, 1988, Normal Retirement Age was determined with reference to the anniversary of the Participation Commencement Date (more than 5 but not to exceed 10 years), the anniversary date for Participants who first commenced participation under the Plan before the first Plan Year beginning on or after January 1, 1988, shall be the earlier of (i) the tenth anniversary of the date the Participant commenced participation in the Plan (or such anniversary as had been elected by the Employer, if less than 10) or (B) the fifth anniversary of the first day of the first plan year beginning on or after January 1, 1988. The participation commencement date is the first day of the first Plan Year in which the Participant commenced participation in the Plan.

(b) Early Retirement Date. If the Employer selects an Early Retirement provision in the Adoption Agreement, a Participant may retire on any date on or after he or she meets the age and service requirements specified in the Adoption Agreement for early retirement. A Participant who terminates his or her employment after having satisfied the service but not the

age requirement for early retirement specified in the Adoption Agreement will become eligible to receive early retirement benefits upon satisfaction of the age requirement.

(c) Late Retirement Date. If a Participant continues in employment after his or her Normal Retirement Date, he or she may continue to make 401(k) Savings Contributions and/or After-Tax Savings Contributions (if applicable in the Employer's Plan) until his or her Later Retirement Date, and he or she will continue to share in Employer Contributions and forfeitures in accordance with the Plan's allocation formula until his or her Late Retirement Date.

9.2 DISABILITY RETIREMENT:

(a) A Participant will be considered to have retired if he or she leaves the Employer's service because of Total and Permanent Disability. Total and Permanent Disability means a permanent physical or mental impairment which prevents the Participant from engaging in any substantial gainful occupation or employment. The permanence and degree of such impairment shall be supported by medical evidence.

(b) The Plan Administrator will determine whether a Participant has a Total and Permanent Disability under uniform rules of general application, and the Plan Administrator's determination will be final.

9.3 RETIREMENT BENEFITS:

(a) A Participant who retires will be fully vested and will receive benefit payments based upon the total amount credited to his or her account. The Participant will receive: (1) in the case of a single sum payment, the total amount credited to his or her accounts at the date the distribution is made; (2) in the case of a profit sharing plan or 401(k) plan, if elected by the Employer in the Adoption Agreement, but only if a Participant elects such optional form of distribution, such total amount will be used to purchase an annuity contract; or (3) if elected by

the Employer in the Adoption Agreement, in the case of installment payments, the first such installment will be based on such total amount, and subsequent installments will be based on the total amount credited to the Participant's accounts at the date of each such installment. If the Adoption Agreement so provides, a Participant who has attained the normal or early (but in no event prior to the attainment of age 59 1/2 with respect to 401(k) contributions) retirement age under the Plan may elect to withdraw all or any portion of his or her account balance while still employed by the Employer.

(b) The date of distribution to a retired Participant (or the date of the first install-ment payment to the retired Participant) will be the earliest practicable date after the valuation date coincident with or next following either (i) the Participant's retirement date or, (ii) such later date as the Participant designates, subject to the required distribution date rules of Section 9.8. However, if payment in the form of a Qualified Joint and Survivor Annuity is required with respect to a Participant and either the Participant's vested account balance(s) exceeds $5,000, or there are remaining payments to be made with respect to a particular distribution option that previously commenced, and the account balance is immediately distributable, the Participant and his or her spouse must consent to any distribution of such account balance. If payment in the form of a Qualified Joint and Survivor Annuity is not required with respect to a Participant and the value of the Participant's vested account balance exceeds $5,000, and the account balance is immediately distributable, the Participant must consent to any distribution of such account balance.

(c) Except in the case of an exempt profit-sharing or 401(k) plan (as defined in Section 9.5(d)) and except in the case of a small account (as defined in Section 9.5(e)), the consent of the Participant and the Participant's spouse shall be obtained within the 90-day period

ending on the Annuity Starting Date. The Annuity Starting Date is the first day of the first period for which an amount is paid as an annuity or any other form. The Plan Administrator shall notify the Participant and the Participant's spouse of the right to defer any distribution until the Participant's account balance is no longer immediately distributable. Such notification shall include a general description of the material features, and an explanation of the relative values of, the optional forms of benefit available under the Plan in a manner that would satisfy the notice requirements of section 417(a)(3), and shall be provided no less than 30 days and no more than 90 days prior to the Annuity Starting Date. However, distribution may commence less than 30 days after the notice described in the preceding sentence is given, provided the distribution is one to which sections 401(a)(11) and 417 of the Code do not apply, the Plan Administrator clearly informs the Participant that the Participant has a right to a period of at least 30 days after receiving the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular distribution option), and the Participant, after receiving the notice, affirmatively elects a distribution. The Plan Administrator may substitute the date distribution commences for the Annuity Starting Date in applying this subsection (c).

Notwithstanding the foregoing, if, in the case of a profit sharing plan or 401(k) plan for which the Employer has elected, in the Adoption Agreement, to provide an annuity distribution, only the Participant need consent to the commencement of a distribution in the form of a Qualified Joint and Survivor Annuity while the account balance is immediately distributable. (Furthermore, if payment in the form of a Qualified Joint and Survivor Annuity is not required with respect to the Participant pursuant to section 10.6 of the Plan, only the Participant need consent to the distribution of an account balance that is immediately distributable.) Neither the consent of the Participant nor the Participant's spouse shall be required to the extent that a

distribution is required to satisfy section 401(a)(9) or section 415 of the Code. In addition, upon termination of this Plan if the Plan does not offer an annuity option (purchased from a commercial provider) and if the Employer or any entity within the same controlled group as the Employer does not maintain another defined contribution plan (other than an employee stock ownership plan as defined in section 4975(e)(7) of the Code), the Participant's account balance may, without the Participant's consent, be distributed to the Participant. However, if any entity within the same controlled group as the Employer maintains another defined contribution plan (other than an employee stock ownership plan as defined in section 4975(e)(7) of the Code) then the Participant's account balance will be transferred, without the Participant's consent, to the other plan if the Participant does not consent to an immediate distribution.

An account balance is immediately distributable if any part of the account balance could be distributed to the Participant (or surviving spouse) before the Participant attains or would have attained if not deceased) the later of Normal Retirement Age or age 62.

(d) This subsection provides transitional rules with regard to the cash out limits for distributions made prior to October 17, 2000.

(1) If payment in the form of a Qualified Joint and Survivor Annuity is required with regard to a Participant, the rule in this subsection (d)(1) is substituted for the second sentence in subsection (b). If the value of a Participant's vested account balance derived from Employer and Employee contributions exceeds (or at the time of any prior distribution (1) in Plan Years beginning before August 6, 1997, exceeded $3,500 or (2) in Plan Years beginning after August 5, 1997, exceeded $5,000, and the account balance is immediately distributable, the Participant and the Participant's spouse must consent to any distribution of such account balance.

(2) If payment in the form of a Qualified Joint and Survivor Annuity is not required with respect to a Participant, the rule in this subsection (d)(2) is substituted for the rule in the third sentence in subsection (b). If the value of the Participant's vested account balance derived from Employer and Employee contributions: (i) for Plan Years beginning before August 6, 1997, exceeds $3,500 (or exceeded $3,500 at the time of any prior distribution), (ii) for Plan Years beginning after August 5, 1997, and for a distribution made prior to March 22, 1999, exceeds $5,000 (or exceeded $5,000 at the time of any prior distribution); (iii) and for Plan Years beginning after August 5, 1997 and for a distribution made after March 21, 1999, that either exceeds $5,000 or is a remaining payment under a selected optional form of payment that exceeded $5,000 at the time the selected payment began, and the account balance is immediately distributable, the Participant and the Participant's spouse must consent to any distribution of such account balance.

9.4 METHOD OF PAYMENT: Subject to the rules specified in this article, a Participant's retirement benefit will be paid to him or her in one or more of the following methods, as elected by the Participant:

(a) one or more payments within one taxable year of the Participant;

(b) if elected by the Employer in the Adoption Agreement, approximately equal monthly, quarterly, semi-annual or annual installments over a period certain not exceeding the life expectancy of the Participant or the joint life and last survivor expectancy of the Participant and his or her designated beneficiary;

(c) in the case of a profit sharing plan or a 401(k) plan for which the Employer has made the appropriate election in the Adoption Agreement, applied toward the purchase of a fixed

or variable annuity contract with payments over a period of time not exceeding the lifetime of the Participant or the lifetimes of the Participant and his or her designated beneficiary.

(d) if elected in the Adoption Agreement, a partial distribution of a flat dollar amount or a percentage of the entire account balance, which is not part of a substantially equal periodic payment, alone or in combination with any one of the methods described in subsections (a)-(c).

9.5 MARRIED PARTICIPANTS:

(a) Qualified Joint and Survivor Annuity. Except in the case of a Participant in an exempt profit sharing or 401(k) plan (as defined in subsection (d) below) or in the case of a Participant with a small account (as defined in subsection (e) below), retirement benefits to a married Participant will be paid in the form of the purchase and delivery of a Qualified Joint and Survivor Annuity unless the Participant elects otherwise during the 90-day period ending on the annuity starting date. The Participant may elect to have such annuity distributed upon retirement on or after attainment of the earliest retirement age under the Plan. The earliest retirement age is the earliest date on which, under the Plan, the Participant could elect to receive retirement benefits. Such an election must be accompanied by his or her spouse's qualified consent (other than the Participant's election of a joint and survivor annuity giving the spouse a 50% or greater survivorship interest). At any time before the commencement of benefits, the Participant may make and revoke such an election without limit as to the number of elections. The making of such an election requires his or her spouse's qualified consent; revocation of such an election does not.

A Qualified Joint and Survivor Annuity is an immediate annuity for the life of the Participant with a survivor annuity for the life of the Participant's spouse which is 50 percent (or greater than 50 percent if elected in the Adoption Agreement) of the amount of the annuity

payable during the joint lives of the Participant and the Participant's spouse. The Qualified Joint and Survivor Annuity is the amount of benefit that can be purchased with the Participant's vested interest in his or her accounts.

(b) Joint and Survivor Notice.

(1) The Plan Administrator will provide each married Participant no less than 30 days and no more than 90 days prior to the Annuity Starting Date with a detailed explanation of: the terms and conditions of a Qualified Joint and Survivor Annuity; the participant's right to make and the effect of an election to waive the Qualified Joint and Survivor Annuity form of benefit; the rights of a Participant's spouse; and the right to make, and the effect of, a revocation of a previous election to waive the Qualified Joint and Survivor Annuity. A Participant may waive the requirement that the detailed explanation be provided no less than 30 days before the Annuity Starting Date if the following requirements are satisfied: (A) the Participant affirmatively elects, after having received the detailed explanation, a form of distribution and the Participant's spouse consents to such election, if necessary; (B) the Plan Administrator provides information to the Participant clearly indicating that the Participant has a right to at least 30 days to consider whether to waive the Qualified Joint and Survivor Annuity and consent to a form of distribution other than a Qualified Joint and Survivor Annuity; (C) the Participant is permitted to revoke such affirmative distribution election at least until the Annuity Starting Date, or, if later, at any time prior to the expiration of the 7-day period beginning after the detailed explanation is provided to the Participant; (D) the Annuity Starting Date is after the date that the detailed explanation is provided to the Participant; and (E) distribution in accordance with the affirmative election does not commence before the

expiration of the 7-day period beginning on the day after the explanation is provided to the Participant. The Annuity Starting Date may precede the affirmative election and the 7-day period described in (E).

(2) Notwithstanding the other requirements of the notice requirements prescribed by this section and section 10.3 with respect to a Qualified Preretirement Survivor Annuity; notice need not be given to a Participant if (A) the Plan "fully subsidizes" the costs of a Qualified Joint and Survivor Annuity or Qualified Preretirement Survivor Annuity, and (B) the plan does not allow the Participant to waive the Qualified Joint and Survivor Annuity or Qualified Preretirement Survivor Annuity and does not allow a married Participant to designate a nonspouse Beneficiary. For purposes of this section, a plan fully subsidizes the costs of a benefit if no increase in cost, or decrease in benefits to the participant may result from the participant's failure to elect another benefit.

(c) Qualified Consent. A waiver of a Qualified Joint and Survivor Annuity or a Qualified Preretirement Survivor Annuity. Any waiver of a Qualified Joint and Survivor Annuity or a Qualified Preretirement Survivor Annuity shall not be effective unless: (1) the Participant's spouse consents to the election; (2) the election designates a specific Beneficiary, including any class of Beneficiaries or any contingent Beneficiaries, which may not be changed without spousal consent (or the spouse expressly permits designations by the Participant without any further spousal consent); (3) the spouse's consent acknowledges the effect of the election; and (4) the spouse's consent is witnessed by a Plan representative or notary public. Additionally, a Participant's waiver of the Qualified Joint and Survivor Annuity shall not be effective unless the election designates a form of benefit payment which may not be changed without spousal consent (or the spouse expressly permits designations by the Participant without any further

spousal consent). If it is established to the satisfaction of a Plan representative that there is no spouse or that the spouse cannot be located, a waiver will be deemed a qualified consent.

Any consent by a spouse obtained under this provision (or establishment that the consent of a spouse may not be obtained) shall be effective only with respect to such spouse. A consent that permits designations by the Participant without any requirement of further consent by such spouse must acknowledge that the spouse has the right to limit consent to a specific Beneficiary, and a specific form of benefit where applicable, and that the spouse voluntarily elects to relinquish either or both of such rights. A revocation of a prior waiver may be made by a Participant without the consent of the spouse at any time before the commencement of benefits. The number of revocations shall not be limited. No consent obtained under this provision shall be valid unless the Participant has received notice as provided in Section 9.5(b) with respect to a Qualified Joint and Survivor Annuity or Section 10.3(b) with respect to a Qualified Pre-retirement Survivor Annuity.

The requirement for a qualified consent is waived if the Participant establishes to the Plan Administrator's satisfaction that there is no spouse or that the spouse cannot be located or under other circumstances described in regulations under Code Section 417. The requirement of a qualified consent is also waived for any election or revocation by a Participant which has the effect of increasing the survivorship interest of the spouse.

(d) Exempt Profit Sharing Plans. An exempt profit sharing plan is a Plan which meets the Safe Harbor Rules under Section 10.6. In a profit sharing plan or 401(k) plan, the sole Beneficiary of a married Participant in the event of his or her death before retirement benefits commence is his or her spouse, unless his or her spouse has agreed otherwise in a qualified consent (as defined in subsection (c) above) (see Section 10.5(a)). Therefore, such a Plan is

exempt from the Qualified Joint and Survivor Annuity requirement of subsection (a) above. Under an exempt profit sharing or 401(k) plan, a Participant will receive his or her retirement benefit in the form of a lump sum payment under Section 9.4(a) unless the Participant elects otherwise.

However, if the Employer elects in the Adoption Agreement that an annuity is an optional form of distribution under the plan, then a profit sharing or 401(k) plan is not exempt from the Qualified Joint and Survivor Annuity requirements with respect to a Participant who in fact elects an annuity form of payment under Section 9.4(c). Also a profit sharing or 401(k) plan is not exempt from such requirement with respect to any Participant for whom the Plan is a direct or indirect transferee (including an Elective Plan Transfer) of a defined benefit pension plan, a money purchase pension plan (including a target benefit plan) or a stock bonus or profit sharing plan which provides for a life annuity form of payment to the Participant; however, this Plan will not be treated as a transferee plan solely by reason of a rollover or Distribution Elective Transfer from any such other plan. In addition, a profit sharing plan will not be considered exempt unless the Participant's spouse is the Beneficiary of any insurance on the Participant's life, unless his or her spouse agrees otherwise in a qualified consent.

(e) Small Account Defined. A small account is an account with a vested balance that does not exceed, in Plan Years beginning before August 6, 1997, $3,500, or in Plan Years beginning after August 5, 1997, $5,000, except that the $3,500 limitation shall apply in any situation where the $3,500 limitation was in effect at the commencement of a series of benefit payments and where there remained, as of the first day of the Plan Year beginning after August 5, 1997, at least one periodic distribution yet to be made. In applying the dollar threshold, all accounts or portions of accounts from which the claimant is entitled to payment are added

together except for accounts attributable to qualified voluntary employee contributions. If the present value of a Participant's account balance is zero, such Participant shall be deemed to have received a distribution of such vested account balance. Except as otherwise provided in the Adoption Agreement, a small account will be distributed as soon as practicable following termination of employment or retirement in the form of a single sum payment. If a Participant would have received a distribution under this subsection (e) but for the fact the Participant's vested account balance exceeded $5,000 when the Participant terminated service and if a later time such account balance is reduced such that it is not greater than $5,000, the Participant will receive a distribution of such account balance and the nonvested portion will be treated as a forfeiture.

(f) Transition Rules. The provisions of this section apply to any Participant who is credited with at least one hour of service on or after August 23, 1984. They apply to any other Participant in accordance with section 10.7 who was credited with at least one Hour of Service between September 1, 1974, and August 23, 1984 (a transition participant).

9.6 UNMARRIED PARTICIPANTS: Except in the case of an exempt profit sharing or 401(k) plan (as defined in Section 9.5(d)) or as provided in Section 9.5(f), unless the Participant elects otherwise, benefits to an unmarried Participant will be paid in the form of an annuity providing periodic payments for the lifetime of the Participant in the amount that can be purchased with the Participant's vested interest in his or her accounts.

9.6A. DIRECT ROLLOVER REQUIREMENTS: This Section applies to distributions made on or after January 1, 1993.

(a) Election to Make Direct Rollover. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Article, a Distributee

may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

(b) Definitions.

(1) Eligible Rollover Distribution. An Eligible Rollover Distribution is any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include: (A) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; (B) any distribution to the extent such distribution is required under section 401(a)(9) of the Code; (C) the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and (D) any hardship distribution described in Section 401(k)(2)(B(I)(iv) of the Code received after December 31, 1999.

(2) Eligible Retirement Plan. An Eligible Retirement Plan is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code, or a qualified plan described in section 401(a) of the Code, that accepts the Distributee's Eligible Rollover Distribution. However, in the case of an Eligible Rollover Distribution to the surviving spouse, an Eligible Retirement Plan is an individual retirement account or individual retirement annuity.

(3) Distributee. A Distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code, are Distributees with regard to the interest of the spouse or former spouse.

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

9.7 DISTRIBUTION REQUIREMENTS:

(a) Rules Applicable to Installment Payments. The following rules will apply to benefits payable in the form of installments under Section 9.4(b).

In the absence of a contrary election by the Participant, the Participant's installment payment will be payable over the Participant's life expectancy as of the Required Beginning Date. Life expectancy of the Participant and the Participant's spouse is calculated as of the Required Beginning Date (see Section 9.8). Unless the Adoption Agreement provides otherwise, the Participant may elect to determine the life expectancy of the Participant and/or the Participant's spouse under either the Recalculation Method or the Declining Method. If the Participant fails to make any election, the Participant will be deemed to have elected to determine life expectancy under the Recalculation Method. The life expectancy of a designated Beneficiary other than the Participant's spouse will be calculated as of the Required Beginning Date and payments for any 12 consecutive month period after such date will be based on such life expectancy less the number of whole years passed since such date. Life expectancy and joint and last survivor expectancy are computed using the return multiples in Section 1.72-9 of the Income Tax Regulations.

(1) Subject to 9.5, Joint and Survivor Annuity Requirements, the requirements of this article shall apply to any distribution of a Participant's interest and will take precedence over any inconsistent provisions of this Plan. Unless otherwise specified, the provisions of this article apply to calendar years beginning after December 31, 1984.

(2) All distributions required under this article shall be determined and made in accordance with the Proposed Regulations under section 401(a)(9), including the minimum distribution incidental benefit requirement of section 1.401(a)(9)-2 of the Proposed Regulations.

(b) Required Beginning Date. The entire interest of a Participant must be distributed or begin to be distributed no later than the Participant's Required Beginning Date.

(c) Limits on Distribution Periods. As of the First Distribution Calendar Year, distributions, if not made in a single-sum, may only be made over one of the following periods (or a combination thereof):

(1) the life of the Participant,

(2) the life of the Participant and a Designated Beneficiary,

(3) a period certain not extending beyond the life expectancy of the Participant, or

(4) a period certain not extending beyond the joint and last survivor expectancy of the Participant and a Designated Beneficiary. (d) Determination of amount to be distributed each year. If the Participant's interest is to be distributed in other than a single sum, the following minimum distribution rules shall apply on or after the required beginning date.

(1) Individual account.

(A) If a Participant's benefit is to be distributed over (i) a period not extending beyond the life expectancy of the Participant or the joint life and last survivor expectancy of the Participant and the Participant's Designated Beneficiary or (ii) a period not extending beyond the life expectancy of the Designated Beneficiary, the amount required to be distributed for each calendar year beginning with distributions for the First Distribution Calendar Year, must at least equal the quotient obtained by dividing the Participant's benefit by the Applicable Life Expectancy.

(B) For calendar years beginning before January 1, 1989, if the Participant's spouse is not the Designated Beneficiary, the method of distribution selected must assure that at least 50% of the present value of the amount available for distribution is paid within the life expectancy of the Participant.

(c) For calendar years beginning after December 31, 1988, the amount to be distributed each year, beginning with distributions for the First Distribution Calendar Year shall not be less than the quotient obtained by dividing the participant's benefit by the lesser of (i) the Applicable Life Expectancy or (ii) if the Participant's spouse is not the Designated Beneficiary, the applicable divisor determined from the table set forth in Q&A-4 of section 1.401(a)(9)-2 of the Proposed Regulations. Distributions after the death of the Participant shall be distributed using the Applicable Life Expectancy in section 9.7(d)(2)(a) above as the relevant divisor without regard to Proposed Regulations section 1.401(a)(9)-2.

(D) The minimum distribution required for the Participant's First Distribution Calendar Year must be made on or before the Participant's Required

Beginning Date. The minimum distribution for other calendar years, including the minimum distribution for the Distribution Calendar Year in which the Employee's Required Beginning Date occurs, must be made on or before December 31 of that Distribution Calendar Year.

(2) Other Forms.

If the Participant's benefit is distributed in the form of an annuity purchased from an insurance company, distributions thereunder shall be made in accordance with the requirements of Section 401(a)(9) of the Code and the Proposed Regulations thereunder.

9.7A MINIMUM DISTRIBUTIONS DETERMINED USING 2001 PROPOSED REGULATIONS.

Notwithstanding Sections 9.7(d) and 10.4(b), with respect to distributions under the Plan made for calendar years beginning on or after January 1, 2001, the Plan will apply the minimum distribution requirements of section 401(a)(9) of the Internal Revenue Code in accordance with the regulations under section 401(a)(9) that were proposed on January 17, 2001, notwithstanding any provision of the Plan to the contrary. This amendment shall continue in effect until the end of the last calendar year beginning before the effective date of final regulations under section 401(a)(9) or such other date as may be specified in guidance published by the Internal Revenue Service.

9.8 REQUIRED BEGINNING DATE: (a) General One of the following as selected by the Employer in the Adoption Agreement:

(1) The Required Beginning Date of a Participant is the April 1 of the calendar year following the calendar year in which the Participant attains age 70-1/2.

(2) The Required Beginning Date of a Participant is the later of the April 1 of the calendar year following the calendar year in which the Participant attains age 70-1/2, except that benefit distributions to a Participant (other than a 5-Percent Owner) with respect to benefits accrued after the later of the adoption or effective date of the amendment to the Plan must commence by the later of the April 1 of the calendar year following the calendar year in which such Participant attains age 70-1/2 or retires.

(3) The Required Beginning Date of a Participant is the later of the April 1 of the calendar year following the calendar year in which the Participant attains age 70-1/2 or retires, except that benefit distributions to a 5-Percent Owner must commence by the April 1 of the calendar year following the calendar year in which the Participant attains age 70-1/2.

(b) Transitional Rules.

(1) Any Participant attaining age 70-1/2 in years after 1995 may elect by April 1 of the calendar year following the calendar year in which the Participant attains age 70-1/2 (or by December 31, 1997, in the case of a Participant attaining age 70-1/2 in 1996) to defer distributions until the calendar year following the calendar year in which the Participant retires. If no such election is made the Participant will begin receiving distributions by the April 1 of the calendar year following the calendar year in which the participant attained age 70-1/2 (or by December 31, 1997 in the case of a participant attaining age 70-1/2 in 1996); however, if elected in the Adoption Agreement, this paragraph will not apply if the Plan is a 401(k) or profit sharing plan permitting all contributions to be withdrawn after age 59-1/2 while the Participant is still employed.

(2) Any Participant attaining age 70-1/2 in years prior to 1997 may elect to stop distributions and recommence by the April 1 of the calendar year following the calendar year in which the participant retires. The Employer will elect in the Adoption Agreement whether or not there is a new Annuity Starting Date upon recommencement.

(3) The preretirement age 70-1/2 distribution option is only eliminated with respect to Employees who reach age 70-1/2 in or after a calendar year that begins after the later of December 31, 1998 or the adoption date of the amendment. The preretirement age 70-1/2 distribution option is an optional form of benefit under which benefits payable in a particular distribution form (including any modifications that may be elected after benefit commencement) commence at a time during the period that begins on or after January 1 of the calendar year in which an Employee attains age 70-1/2 and ends April 1 of the immediately following calendar year.

9.9 TRANSITIONAL RULE:

(a) In General. This section will apply if the Employer's execution of the Adoption Agreement constitutes an amendment and restatement of an existing plan that was in effect before 1984, and with respect to which one or more Participants had made the designations described in this section. Notwithstanding the requirements of Sections 9.7, but subject to the spousal protection and small benefits provisions of Section 9.5, distributions on behalf of any Employee may be made provided that each of the following requirements is satisfied (regardless of when such distribution commences):

(1) the distribution is one which would not have disqualified the Plan under Code Section 401(a)(9) as in effect before amendment by the Deficit Reduction Act of 1984;

(2) the distribution is in accordance with a method of distribution designated by the employee whose interest in the Plan is being distributed or, if the Employee is deceased, by a Beneficiary of such Employee;

(3) such designation was in writing, was signed by the Employee or the Beneficiary, and was made before January 1, 1984;

(4) the Employee had accrued a benefit under the Plan as of December 31, 1983; and

(5) the method of distribution designated by the Employee or the Beneficiary specifies the time at which distribution will commence, the period over which distributions will be made, and in the case of any distribution upon the employee's death, the beneficiaries of the employee listed in order of priority.

(b) Distributions on Death. A distribution upon death will not be covered by this transitional rule unless the designation contains the information described in subsection (a) above with respect to the distributions to be made upon the death of the Employee.

(c) Presumption of Designation. For any distribution which commenced before January 1, 1984, and continued after December 31, 1983, the Employee, or the Beneficiary, to whom such distribution is being made will be presumed to have designated the method of distribution under which the distribution is being made if the method of distribution was specified in writing and the distribution satisfies the requirement in subsections (a)(i) and (v) above.

(d) Revocation of Designation. If such a designation is revoked, any subsequent form of distribution must satisfy the requirements of Code Section 401(a)(9) and the Proposed Regulations thereunder as in effect at the time of distribution. If a designation is revoked subsequent to the date distributions are required to begin, the Plan must distribute by the end of the calendar year following the calendar year in which the revocation occurs the total amount not yet distributed which would have been required to have been distributed to satisfy section 401(a)(9) of the Code and the Proposed Regulations thereunder, but for the section 242(b)(2) election. For calendar years beginning after December 31, 1988, such distributions must meet the minimum distribution incidental benefit requirements in section 1.401(a)(9)-2 of the Proposed Regulations. Any changes in the original or a subsequent designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another Beneficiary (one not named in the designation) under the designation will not be considered to be a revocation of the designation, so long as such substitution or addition does not alter directly or indirectly the period over which distributions are to be made under the

designation (for example, by altering the relevant measuring life). In the case in which an amount is transferred or rolled over from one plan to another plan, the rules in Q&A J-2 and Q&A J-3 in section 1.401(a)(9) of the Proposed Regulations shall apply.

9.10 DATE BENEFIT PAYMENTS BEGIN: Unless the Participant elects otherwise (but subject to the required distribution date rule in Section 9.7), distribution of benefits under the Plan will begin no later than the 60th day following the close of the Plan Year in which the latest of the following events occurs:

(a) the termination of the Participant's employment with the Employer;

(b) the Participant attains age 65 or the Participant's Normal Retirement Date, if earlier;

(c) the tenth anniversary of the year in which the Participant began participation in the Plan.

Notwithstanding the foregoing, the failure of a Participant and spouse to consent to a distribution while a benefit is immediately distributable, within the meaning of section 9.3 of the plan, shall be deemed to be an election to defer commencement of payment of any benefit sufficient to satisfy this section.

9.11 ANNUITIES NONTRANSFERABLE: Any annuity contract distributed to a Participant, spouse or Beneficiary under the Plan must be nontransferable. The terms of any annuity contract purchased and distributed by the plan to a participant or spouse shall comply with the requirements of this Plan.

9.12 DUTIES AND OBLIGATIONS OF PARTICIPANTS. Each Participant shall advise the Plan Administrator of each change in (a) his or her name, (b) his or her address, (c) his or her marital status, or (d) of each other event or circumstance which may be material to the Participant's

entitlement to benefits hereunder or the amount or timing thereof. Until such notice has been provided to the Plan Administrator, the Plan Administrator shall be fully protected in not complying with, and in conducting the affairs of the Plan in a manner inconsistent with, the information set forth in such notice. When such notice is received by the Plan Administrator, the Plan Administrator shall be required to act with respect to such notice prospectively only. The Plan Administrator shall not be required to modify or reverse any payment, transaction or application of funds occurring before the receipt of any notice that would have affected such payment, transaction or application of funds, nor shall the Plan Administrator or any other party be liable for any such payment, transaction or application of funds.

## ARTICLE 10: BENEFITS UPON DEATH

10.1 BENEFITS UPON DEATH:

(a) Death During Employment or After Retirement.

(1) In General. If a Participant dies while employed by the Employer or after retirement (including disability retirement), his or her Beneficiary will receive: (i) in the case of a single sum payment, the total amount credited to the Participant's accounts at the date distribution is made; (ii) if elected by the Employer in the Adoption Agreement (in the case of an exempt profit-sharing or 401(k) plan described in Section 9.5 (d)), in the case of an annuity contract, such total amount will be used to purchase such annuity contract; or (iii) if elected by the Employer in the Adoption Agreement, in the case of installment payments, the first such installment will be based on such total amount, and subsequent installments will be based on the total amount credited to the Participant's accounts at the date of each such installment.

(2) Special Rule for Accounts Invested in Certain Annuity Contracts. If all or any portion of the Participant's account is invested in an annuity contract, and the terms of the contract so provide, the Participant's Beneficiary will receive a death benefit equal to the sum of (A) the total amount credited to the Participant's accounts which is not invested in such annuity contract as of the distribution date and (B) the greatest of: (i) the total amount credited to the Participant under the contract at the date distribution is made; (ii) the excess of the total contributions to the contract over total withdrawals from the contract; or (iii) the highest amount credited to the contract as of the end of the calendar year in which any fifth anniversary of the initial acquisition of the contract occurred. This paragraph (2) will become effective on the date that a contract providing for such death benefit is acquired.

(b) Death After Other Termination of Employment. If a Participant dies after termination of employment for any reason other than retirement (including disability retirement), his or her Beneficiary will receive death benefits determined as follows:

(1) If the Participant died before forfeiture of the nonvested portion of his or her accounts under Section 11.4, the vested amount in the Participant's accounts will be determined and the balance will be forfeited immediately, death benefits will be based upon the vested amounts remaining after such forfeiture, and such amount will be applied as provided in subsection (a) above.

(2) if the Participant died after forfeiture of the nonvested portion of his or her accounts under Section 11.4, death benefits will be based upon the vested amounts remaining after such forfeiture, and such amount (reduced by any prior payments to the Participant before his or her death) will be applied as provided in subsection (a) above.

(c) Date of Distribution. The date of distribution to a Beneficiary (or the date of the first installment payment to the Beneficiary) will be the earliest practicable date after the valuation date coincident with or next following either (i) the date when the Plan Administrator has received such evidence of the Participant's death and such evidence of the Beneficiary's (or Beneficiaries') right to receive such distribution as the Plan Administrator deems necessary, or (ii) such later date as the Beneficiary designates, subject to Section 10.4. However, where the Participant's spouse is the Beneficiary under Section 10.5(a), payment will be made within 90 days after the Participant's death (unless under the circumstances, 90 days is unreasonably short); however, the spouse may elect to defer payment subject to Section 10.4.

10.2 METHOD OF PAYMENT: Subject to the requirements of Section 10.3, death benefits will be paid in one or a combination of the following methods:

(a) one or more payments within one taxable year of the beneficiary;

(b) if elected by the Employer in the Adoption Agreement, approximately equal monthly, quarterly, semi-annual or annual installments over a period certain permitted under Section 10.4;

(c) if elected by the Employer in the Adoption Agreement (in the case of an exempt profit sharing or 401(k) plan described in Section 9.5(d)), applied toward the purchase of a fixed or variable annuity contract providing for payments over a period permitted under Section 10.4.

The method of payment will be elected by the Beneficiary unless the Participant in his or her designation of Beneficiary form designated the form of payment.

10.3 QUALIFIED PRERETIREMENT SURVIVOR ANNUITY:

(a) Unless an optional form of benefit has been selected within the election period pursuant to a qualified consent as defined in 9.5(c) if a Participant dies before the Annuity

Starting Date, then the Participant's vested account balance shall be applied toward the purchase of an annuity for the life of the surviving spouse. The surviving spouse may elect to have such annuity distributed within a reasonable period after the Participant's death.

(b) Notice. In the case of a Qualified Preretirement Survivor Annuity as described in section (a), the Plan Administrator shall provide each Participant within the applicable period for such Participant a detailed explanation of the Qualified Preretirement Survivor Annuity in such terms and in such manner as would be comparable to the explanation provided for meeting the requirements of section 9.5(b)(i) applicable to a Qualified Joint and Survivor Annuity.

The applicable period for a Participant is whichever of the following periods ends last: (i) the period beginning with the first day of the Plan Year in which the Participant attains age 32 and ending with the close of the Plan Year preceding the Plan Year in which the Participant attains age 35; (ii) a reasonable period ending after the individual becomes a Participant; (iii) a reasonable period ending after section 9.5(b)(ii) ceases to apply to the Participant; (iv) a reasonable period ending after this article first applies to the Participant. Notwithstanding the foregoing, notice must be provided within a reasonable period ending after separation from service in the case of a Participant who separates from service before attaining age 35.

For purposes of applying the preceding paragraph, a reasonable period ending after the enumerated events described in (ii), (iii) and (iv) is the end of the two-year period beginning one year prior to the date the applicable event occurs, and ending one year after that date. In the case of a Participant who separates from service before the plan year in which age 35 is attained, notice shall be provided within the two-year period beginning one year prior to separation and ending one year after separation. If such a Participant thereafter returns to employment with the Employer, the applicable period for such Participant shall be redetermined.

(c) Definitions. For purposes of Section 10.3, the following definitions shall apply:

(1) Election Period: The period which begins on the first day of the Plan Year in which the Participant attains age 35 and ends on the date of the Participant's death. If a Participant separates from service prior to the first day of the Plan Year in which age 35 is attained, with respect to the account balance as of the date of separation, the election period shall begin on the date of separation.

(2) Pre-Age 35 Waiver: A Participant who will not yet attain age 35 as of the end of any current Plan Year may make a special qualified election to waive the Qualified Preretirement Survivor Annuity for the period beginning on the date of such election and ending on the first day of the Plan Year in which the Participant will attain age 35. Such election shall not be valid unless the Participant receives a detailed explanation of the Qualified Preretirement Survivor Annuity in such terms as are comparable to the explanation required under section 9.5(b)(i). Qualified Preretirement Survivor Annuity coverage will be automatically reinstated as of the first day of the plan year in which the Participant attains age 35. Any new waiver on or after such date shall be subject to the full requirements of this article.

(3) Spouse (Surviving Spouse): The Spouse or Surviving Spouse of the Participant, provided that a former spouse will be treated as the Spouse or Surviving Spouse and a current spouse will not be treated as the Spouse or Surviving Spouse to the extent provided under a qualified domestic relations order as described in section 414(p) of the Code.

(4) Annuity Starting Date: The first day of the first period for which an amount is paid as an annuity or any other form.

(5) Vested Account Balance: The aggregate value of the Participant's vested account balances derived from Employer and Employee contributions (including rollovers), whether vested before or upon death, including the proceeds of insurance contracts, if any, on the Participant's life. The provisions of this article shall apply to a Participant who is vested in amounts attributable to Employer Contributions, Employee Contributions (or both) at the time of death or distribution.

10.4 LIMITATION ON DEATH BENEFIT DISTRIBUTIONS:

(a) In General. This section 10.4 governs payment of death benefits where the form of payment is not covered by an election made before January 1, 1984 by a Participant or Beneficiary as described in Section 9.9.

(b) Death Distribution Provisions.

(1) Distribution beginning before death. If the Participant dies after distribution of his or her interest has begun, the remaining portion of such interest will continue to be distributed at least as rapidly as under the method of distribution being used prior to the Participant's death.

(2) Distribution beginning after death. If the Participant dies before distribution of his or her interest begins, distribution of the Participant's entire interest shall be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death except to the extent that an election is made to receive distributions in accordance with (A) or (B) below:

(A) if any portion of the Participant's interest is payable to a Designated Beneficiary, distributions may be made over the life or over a period certain not greater than the life expectancy of the Designated Beneficiary commencing on or

before December 31 of the calendar year immediately following the calendar year in which the Participant died;

(B) if the Designated Beneficiary is the Participant's Surviving Spouse, the date distributions are required to begin in accordance with (2)(A) above shall not be earlier than the later of (1) December 31 of the calendar year immediately following the calendar year in which the Participant died and (2) December 31 of the calendar year in which the Participant would have attained age 70 1/2.

If the Participant has not made an election pursuant to this section 10.4(b)(2) by the time of his or her death, the Participant's Designated Beneficiary must elect the method of distribution no later than the earlier of (1) December 31 of the calendar year in which distributions would be required to begin under this section, or (2) December 31 of the calendar year in which contains the fifth anniversary of the date of death of the participant. If the Participant has no Designated Beneficiary, or if the Designated Beneficiary does not elect a method of distribution, distribution of the Participant's entire interest must be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(3) For purposes of Section 10.4(b)(2) above, if the Surviving Spouse dies after the Participant, but before payments to such spouse begin, the provisions of section 10.4(b)(2) with the exception of paragraph (b) therein, shall be applied as if the Surviving Spouse were the Participant.

(4) For purposes of this section 10.4(b), any amount paid to a child of the Participant will be treated as if it had been paid to the Surviving Spouse if the amount becomes payable to the Surviving Spouse when the child reaches the age of majority.

(5) For the purposes of this section 10.4(b), distribution of a Participant's interest is considered to begin on the Participant's Required Beginning Date (or, if section 10.4(b)(3) above is applicable, the date distribution is required to begin to the Surviving Spouse pursuant to section 10.4(b)(2) above). If distribution in the form of an annuity irrevocably commences to the Participant before the Required Beginning Date, the date distribution is considered to begin is the date distribution actually commences.

(c) Definitions for this section and section 9.7.

(1) Applicable Life Expectancy. The Life Expectancy (or joint and last survivor expectancy) as recalculated using the attained age of the Participant (or Designated Beneficiary) as of the Participant's (or Designated Beneficiary's) birthday in the applicable calendar year. Unless the Adoption Agreement otherwise provides, the Participant may elect to determine Applicable Life Expectancy under either the Recalculation Method or the Declining Method. If the Participant fails to make any election, then the Participant will be deemed to have elected to determine his or her Applicable Life Expectancy under the Recalculation Method.

(2) Designated Beneficiary. The individual(s) designated as the Beneficiary under the Plan in accordance with section 401(a)(9) and the Proposed Regulations thereunder.

(3) Distribution Calendar Year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the

first Distribution Calendar Year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin pursuant to section 10.4(b) above.

(4) Life Expectancy. Life Expectancy and joint and last survivor expectancy are computed by use of the expected return multiples in Tables V and VI of section 1.72-9 of the Federal Income Tax Regulations.

(5) Participant's Benefit.

(a) The account balance as of the last valuation date in the calendar year immediately preceding the Distribution Calendar Year (Valuation Calendar Year) increased by the amount of any contributions or forfeitures allocated to the account balance as of dates in the Valuation Calendar Year after the valuation date and decreased by distributions made in the Valuation Calendar Year after the valuation date.

(b) Exception for second Distribution Calendar Year. For purposes of paragraph (a) above, if any portion of the minimum distribution for the first Distribution Calendar Year is made in the second Distribution Calendar Year on or before the Required Beginning Date, the amount of the minimum distribution made in the second distribution calendar year shall be treated as if it had been made in the immediately preceding Distribution Calendar Year.

(6) Required Beginning Date. The Required Beginning Date of a Participant is the date set forth in Section 9.8.

(7) 5-Percent Owner. A Participant is treated as a 5-Percent Owner for purposes of this section if such Participant is a 5-Percent Owner as defined in section 416 of the Code at any time during the Plan year ending with or within the calendar year in which such owner attains age 70 1/2.

(8) Once distributions have begun to a 5-Percent Owner under this section, they must continue to be distributed, even if the Participant ceases to be a 5-Percent Owner in a subsequent year.

10.5 BENEFICIARY:

(a) Designation of Beneficiary and Method of Payment. A Participant may designate one or more Beneficiaries on a form or other instrument filed with, and acceptable to, the Plan Administrator, and may revoke or change such designation in like manner at any time. The Beneficiary may elect the form of payment under Section 10.2 (subject to the requirements of Section 10.3); however, the Participant may in the designation of Beneficiary form or other instrument specify the form of payment (subject to Section 10.3) and death benefits will be paid in such form. If a Beneficiary is permitted to elect the method of payment of a benefit payable to him or her, he or she may designate one or more Beneficiaries to receive any amount remaining undistributed at his or her death.

Notwithstanding the preceding paragraph, in an exempt profit sharing plan or 401(k) plan as described in section 9.5(d), the sole Beneficiary of a married Participant is the Participant's Spouse, unless the Spouse consents or has consented to the designation of another Beneficiary in a Qualified Consent (as defined in Section 9.5(c)).

(b) Payment in Absence of Designation of Beneficiary. Any portion of a Participant's death benefit which is not disposed of by a designation of Beneficiary, for any reason

whatsoever, will be paid to the Participant's Spouse if the Spouse survives him, otherwise to the Participant's estate in a lump sum.

(c) Payment Under Prior Designation of Beneficiary. The Plan Administrator will be fully protected in directing payment in accordance with a prior designation of Beneficiary if such direction (i) is given before receipt by the Plan Administrator of a later designation or (ii) is due to the inability of the Plan Administrator to verify the authenticity of a later designation.

(d) Multiple Beneficiaries. If a Participant designates two or more primary beneficiaries and does not specify their respective interests, their interests shall be several and equal. If any designated beneficiary predeceases the Participant, the rights and interest of the beneficiary and of any one claiming through him or her shall automatically terminate and the interest of the deceased Beneficiary will be divided among the surviving Beneficiaries.

(e) Order of Death. If it is impossible to ascertain with certainty the order of death of the Participant and any Beneficiary, the Participant shall be deemed to have survived such Beneficiary unless the Participant has specifically indicated to the contrary on his or her beneficiary designation form. If it is impossible to ascertain with certainty the order of death of two or more Beneficiaries, deceased primary Beneficiaries shall be deemed to have survived deceased contingent Beneficiaries.

(f) Effect of Disclaimers. To the extent that the Participant's surviving spouse or any other Beneficiary disclaims in a writing that is notarized, or that has been witnessed and authenticated to the satisfaction of the Plan Administrator, all or part of any interest in a benefit payable by reason of the death of a Participant, such Beneficiary shall cease to be considered a Beneficiary for Plan purposes.

10.6 SAFE HARBOR RULES:

(a) This section shall apply to a Participant in a profit-sharing plan and 401(k) plan, and to any distribution, made on or after the first day of the first plan year beginning after December 31, 1988, from or under a separate account attributable solely to accumulated deductible employee contributions, as defined in section 72(o)(5)(B) of the Code, and maintained on behalf of a Participant in a money purchase pension plan, (including a target benefit plan) if the following conditions are satisfied:

(1) the Participant does not or cannot elect payments in the form of a life annuity; and

(2) on the death of a Participant, the Participant's Vested Account Balance will be paid to the Participant's Surviving Spouse, but if there is no Surviving Spouse, or if the Surviving Spouse has consented in a manner conforming to a qualified election, then to the Participant's Designated Beneficiary. The Surviving Spouse may elect to have distribution of the Vested Account Balance commence within the 90-day period following the date of the Participant's death. The account balance shall be adjusted for gains or losses occurring after the Participant's death in accordance with the provisions of the plan governing the adjustment of account balances for other types of distributions. This section 10.6 shall not be operative with respect to a Participant in a profit-sharing plan or 401(k) plan if the Plan is a direct or indirect transferee of a defined benefit plan, money purchase plan, a target benefit plan, stock bonus, or profit-sharing plan which is subject to the survivor annuity requirements of section 401(a)(11) and section 417 of the Code. If this section 10.6 is operative, then the provisions of section 10.3 shall be inoperative.

(b) The Participant may waive the spousal death benefit described in this section at any time provided that no such waiver shall be effective unless it satisfies the conditions of section 9.5(c) that would apply to the Participant's waiver of the Qualified Preretirement Survivor Annuity.

(c) For purposes of this section 10.6, Vested Account Balance shall mean, in the case of a money purchase pension plan, the Participant's separate account balance attributable solely to accumulated deductible employee contributions within the meaning of section 72(o)(5)(B) of the Code. In the case of a profit-sharing plan, Vested Account Balance shall have the same meaning as provided in section 10.3(c)(4)

10.7 TRANSITIONAL RULES:

(a) Any living Participant not receiving benefits on August 23, 1984, who would otherwise not receive the benefits prescribed by the previous sections of this article must be given the opportunity to elect to have the prior sections of this article and section 9.5 apply if such Participant is credited with at least one Hour of Service under this Plan or a predecessor plan in a Plan Year beginning on or after January 1, 1976, and such Participant had at least 10 years of vesting service when he or she separated from service.

(b) Any living Participant not receiving benefits on August 23, 1984, who was credited with at least one Hour of Service under this Plan or a predecessor plan on or after September 2, 1974, and who is not otherwise credited with any service in a Plan Year beginning on or after January 1, 1976, must be given the opportunity to have his or her benefits paid in accordance with section (d) of 10.7.

(c) The respective opportunities to elect (as described in sections (a) and (b) above) must be afforded to the appropriate Participants during the period commencing on August 23, 1984, and ending on the date benefits would otherwise commence to said Participants.

(d) Any Participant who has elected pursuant to section (b) of this Section and any Participant who does not elect under section (a) or who meets the requirements of section (a) except that such Participant does not have at least 10 years of vesting service when he or she separates from service, shall have his or her benefits distributed in accordance with all of the following requirements if benefits would have been payable in the form of a life annuity:

(1) Automatic joint and survivor annuity. If benefits in the form of a life annuity become payable to a married Participant who:

(A) begins to receive payments under the plan on or after Normal Retirement Age; or

(B) dies on or after Normal Retirement Age while still working for the Employer; or

(C) begins to receive payments on or after the Qualified Early Retirement Age; or

(D) separates from service on or after attaining Normal Retirement Age (or the Qualified Early Retirement Age) and after satisfying the eligibility requirements for the payment of benefits under the Plan and thereafter dies before beginning to receive such benefits; then such benefits will be received under this Plan in the form of a Qualified Joint and Survivor Annuity, unless the Participant has elected otherwise during the Election Period. The Election Period must begin at least 6 months before the Participant attains qualified early retirement age and

end not more than 90 days before the commencement of benefits. Any election hereunder will be in writing and may be changed by the Participant at any time.

(2) Election of Early Survivor Annuity. A Participant who is employed after attaining the Qualified Early Retirement Age will be given the opportunity to elect, during the Election Period, to have a Survivor Annuity payable on death. If the Participant elects the Survivor Annuity, payments under such annuity must not be less than the payments which would have been made to the Spouse under the Qualified Joint and Survivor Annuity if the Participant had retired on the day before his or her death. Any election under this provision will be in writing and may be changed by the Participant at any time. The Election Period begins on the later of (1) the 90th day before the Participant attains the Qualified Early Retirement Age, or (2) the date on which participation begins, and ends on the date the Participant terminates employment.

(3) For purposes of this section (d):

(A) Qualified Early Retirement age is the latest of:

(i) the earliest date, under the Plan, on which the Participant may elect to receive retirement benefits,

(ii) the first day of the 120th month beginning before the Participant reaches Normal Retirement Age, or

(iii) the date the Participant begins participation.

(B) Qualified Joint and Survivor Annuity is an annuity for the life of the Participant with a survivor annuity for the life of the Spouse as described in Plan section 9.5(a).

## ARTICLE 11: TERMINATION OF EMPLOYMENT AND VESTED INTEREST

11.1 VESTED INTEREST IN ACCRUED BENEFIT:

(a) Vesting Schedule. A Participant will have a vested and nonforfeitable interest in that percentage of his or her Employer Contributions Account or Matching Contributions Account determined under the vesting schedule specified in the Adoption Agreement.

(b) Full Vesting. Regardless of a Participant's vesting under the vesting schedule, the Participant becomes fully vested in his or her Employer Contributions Account or Matching Contributions Account upon the earlier of (1) his or her attaining his or her Normal Retirement Date while he or she is still employed by the Employer; (2) his or her attaining his or her Early Retirement Date as specified in the Adoption Agreement while he or she is still employed by the Employer; or (3) upon disability retirement under Section 9.2, or upon his or her death while he or she is still an Employee.

11.2 CHANGES IN VESTING SCHEDULE: After the adoption of any amendment that changes the vesting schedule or that directly or indirectly affects the computation of a Participant's vested percentage, or any shift in or out of a vesting schedule because of a Plan's top-heavy status, any Participant having three or more years of Service will have his or her vested percentage determined under whichever schedule gives him or her the higher vested percentage.

11.3 PAYMENT OF VESTED INTEREST: A Participant's vested interest in his or her accrued benefit will be paid to him or her, or payments will begin, on a date elected by the Participant and will be paid to him or her following his or her separation from service in one or more of the methods described in Section 9.4 as elected by the Participant. The Participant's election as to either time or form of payment will be subject to the rules, other than sections 9.1, 9.2, and 9.3 of Article 9. At the Participant's election, the Participant's vested account balance will be paid to him or her

or payments will begin, as soon as administratively feasible following his or her separation from service. The value of the Participant's vested account balance will be based on the latest valuation immediately preceding the date of distribution.

11.4 FORFEITURE OF NON-VESTED INTEREST: A Participant will forfeit the non-vested portion of his or her account balance on the earlier of the date on which he or he or she (i) incurs a period of five consecutive One-Year Breaks in Service (or, if the Employer's Plan counts service for vesting purposes using the elapsed time rules of Article 3B, a Period of Severance of 60 months in length) or (ii) receives a distribution of his or her vested account balance. Forfeitures will first be applied to restore the non-vested portion of the account of a Participant described in the preceding sentence in accordance with Section 11.5 and then as specified in the Adoption Agreement.

11.5 PROTECTIONS UPON RESUMPTION OF EMPLOYMENT: A former Participant who returns to employment with the Employer after a period of one or more One-Year Breaks in Service will nevertheless receive credit for all his or her prior Years of Service for vesting purposes. Unless otherwise elected in the Adoption Agreement, with respect to a former Participant who returns to employment before five consecutive One-Year Breaks in Service (or, if the Employer's Plan counts service for vesting purposes using the elapsed time rules of Article 3B, a Period of Severance of 60 months in length), and such former Participant received a distribution of his or her entire vested interest prior to his or her reemployment, the Employer shall reinstate such Participant's forfeited account balance. If elected in the Adoption Agreement, the Employer may elect to reinstate the forfeited account balance of a Participant described in the preceding sentence only if he or she repays the full amount distributed to him or her before the earlier of (1) five years after the first date on which such Participant is subsequently reemployed by the

Employer or (2) the close of the first period of five consecutive One-Year Beaks in Service (a Period of Severance of 60 months, in the event the elapsed time method is being applied) commencing after the distribution. In the event such Participant does repay the full amount distributed to him or her, the undistributed portion of the Participant's account balance must be restored in full, unadjusted by any gains or losses occurring subsequent to the date of his or her termination. The source of such reinstatement shall first be any forfeitures occurring during the year. If such source is insufficient, then the Employer shall contribute an amount that is sufficient to restore any such forfeited account. The Employer shall reinstate the reemployed Participant's account balance no later than the end of the Plan Year following the plan year of reemployment (or repayment of the vested portion of the account balance that was distributed, as the case may be).

11.6 CALCULATING VESTED INTEREST AFTER ACCOUNT DISTRIBUTION: Where a Participant's Employer Contributions Account or Matching Contributions Account is charged with a withdrawal or distribution at a time when he or she is not fully vested in such account, the remaining balance of the Participant in such account will be credited to a separate account within the Participant's Employer Contributions Account or Matching Contributions Account, or accounting records will be maintained in a manner which has the same effect as establishing a separate account. The Participant's vested interest in any such separate account at any subsequent time will be equal to an amount ("Y") determined by the formula:

$$Y = P(AB + D) - D$$

where P is his or her vested percentage at such time; AB is the account balance in such separate account at such time; and D is the amount of the withdrawal or distribution. The term remaining balance as used in this section means a Participant's interest in his or her Employer Contributions

Account or Matching Withholdings Account remaining after a withdrawal or distribution of a portion or all of his or her vested interest therein.

## ARTICLE 12: IN-SERVICE DISTRIBUTIONS AND WITHDRAWALS; LOANS

### 12.1 WITHDRAWAL OF AFTER-TAX SAVINGS CONTRIBUTIONS:

(a) Amount. Except as otherwise provided in this section or in the Adoption Agreement, a Participant whose employment has not terminated may upon reasonable advance notice to the Plan Administrator (and spousal consent, if applicable) withdraw all or any portion of his or her After-Tax Savings Contributions Account to the extent not previously withdrawn.

(b) Payment and Plan Administrator Rules. Any withdrawal under this section will be paid to the Participant as soon as practicable after the valuation date next following the Plan Administrator's receipt of the Participant's withdrawal request; however the Plan Administrator may approve an earlier payment of some or all of the amount to be withdrawn if such earlier payment would not be detrimental to the interests of the other Participants. If elected in the Adoption Agreement, in addition to Section 5.2(b), a Participant who makes an in-service withdrawal under this section may not make 401(k) Savings Contributions or After-Tax Savings contributions for a period of up to 12 months following the date of such in-service withdrawal. Notwithstanding the foregoing provisions of this section, a Participant who makes an in-service withdrawal of After-Tax Savings Contributions that are Matchable Savings Contributions may not make After-Tax Savings Contributions for a period of at least 6 months following the date of such in-service withdrawal. However, the Employer may elect in the Adoption Agreement to limit the suspension of After-Tax Savings Contributions to in-service withdrawals made prior to the date that the Participant attains age 59 1/2. The Plan Administrator or the Sponsor may

establish reasonable minimum or maximum withdrawal amounts and reasonable limitations on the frequency or number of withdrawals during a plan year. No forfeitures will occur solely as a result of Participant's making of an in-service withdrawal.

(c) Separate Contract. For purposes of Code Section 72, a participant's After-Tax Savings Contributions Account attributable to post-1986 After-Tax Savings Contributions will be accounted for separately and will be treated as a separate contract under the Plan for income tax purposes.

(d) Special Rules. If the Employer's execution of the Adoption Agreement constitutes the amendment and restatement of an existing Plan to which one or more participants made After-Tax Contributions before 1987, such contributions will be accounted for separately, and for federal income tax purposes any withdrawals or distributions from the Plan will be deemed to be a withdrawal or distribution of such contributions until they are exhausted.

12.2 IN-SERVICE WITHDRAWALS FROM PROFIT SHARING PLANS:

(a) In General. This section applies only if the Employer's plan is a profit sharing plan (other than a 401(k) plan). To the extent provided in the Adoption Agreement, a Participant whose employment has not terminated may make withdrawals from his or her accounts. The Adoption Agreement may limit such in-service withdrawals to financial hardship situations, or, as long as the requirements set forth in section 12.2(c) are met, may permit in-service withdrawals for reasons other than financial hardship.

Notwithstanding the preceding paragraph, an in-service withdrawal will be permitted under the following circumstances: (i) termination of the Plan without the establishment of a successor plan; (ii) the sale or other disposition to an unrelated entity of at least 85 percent of the assets used by the employer in a trade or business, provided the employee continues in

employment with the purchaser of the assets; or (iii) the sale or other disposition to an unrelated entity of a subsidiary of the Employer, provided the Employee continues in employment with the subsidiary.

(b) Financial Hardship. For purposes of this section, Financial Hardship means any of the circumstances specified in Section 12.3(c). The request for a hardship withdrawal under this section will be made in such manner as the Plan Administrator may prescribe. The Plan Administrator may require a Participant to submit such information or other evidence as is necessary to make the determination of Financial Hardship. The Plan Administrator may rely upon the accuracy of any information or materials submitted by the Participant. The Plan Administrator will determine the existence of a Financial Hardship and the amount necessary to meet such Financial Hardship, and any such determination will be binding on the Participant.

(c) Amount. A Participant may withdraw the amount he or she specifies, provided that a withdrawal may not exceed the smallest of whichever the following limitations applies:

(1) the Participant's total vested account balances;

(2) in the case of a hardship withdrawal, the amount determined by the Plan Administrator as necessary to meet the Participant's Financial Hardship; or

(3) in the case of a non-hardship withdrawal, the amount attributable to Employer Contributions which have been on deposit in the Plan for at least two years; provided that this limitation will apply only to Employees who have been Participants in the plan for less than five years. The limitation in this Section 12.2(c)(3) will not apply to withdrawals after a Participant has attained age 59-1/2, or if such participant has attained early or Normal Retirement Age, if such withdrawals are permitted in the Adoption Agreement.

(d) Spousal Consent to In-Service Withdrawals. Unless the Plan is an Exempt Profit Sharing Plan (as defined in Section 9.5(d)), a married Participant's Spouse must consent to an in-service withdrawal under this section in a Qualified Consent meeting the requirements of Section 9.5(c).

(e) Payment and Plan Administrator Rules. Provisions governing the payment of a withdrawal under this section and Plan Administrator rules for such withdrawals are found at Section 12.1(b).

12.3 IN-SERVICE WITHDRAWALS FROM 401(K) PLANS:

(a) In General. This section applies only if the Employer's Plan is a 401(k) plan. Except as otherwise provided in the Adoption Agreement, a Participant whose employment has not terminated may make withdrawals from his or her accounts subject to the limitations of this section and the Adoption Agreement.

(b) Availability and Amount. The availability and amount of in-service withdrawals will be subject to the restrictions specified below.

(1) 401(k) Savings Contributions Account. A Participant may make in-service withdrawals from his or her 401(k) Savings Contributions Account in the event of Financial Hardship. The maximum withdrawal from the Participant's 401(k) Savings Contributions Account is the smaller of the amount of his or her 401(k) Savings Contributions, without earnings or investment gains (except any income allocable to 401(k) Savings Contributions as of no later than the later of December 31, 1988 and the end of the last Plan Year ending before July 1, 1989), or the amount needed to alleviate his or her Financial Hardship.

If elected in the Adoption Agreement, in addition to Sections 5.2(b), a Participant who makes an in-service withdrawal under this section may not make a 401(k) Savings Contribution or After-Tax Savings Contribution for a period of up to 12 months following such in-service withdrawal. However, the Employer may elect in the Adoption Agreement to limit the suspension of 401(k) Savings Contributions and After-Tax Savings Contributions to in-service withdrawals made prior to the date that the Participant attains age 59 1/2.

(2) Employer Contributions and Matching Contributions Accounts. To the extent provided in the Adoption Agreement, a Participant may make in-service withdrawals from his or her Employer Contributions Account (Employer Supplemental Profit-Sharing Contributions) and/or Matching Contributions Account. The Adoption Agreement may limit such in-service withdrawals to Financial Hardship situations, or may permit in-service withdrawals for reasons other than Financial Hardship; there may be different rules for withdrawals from Employer Contributions Accounts and Matching Contributions Accounts. The maximum in-service withdrawal from a Participant's Employer Contributions Account or Matching Contributions Account is determined under the same limitations set forth in Section 12.2(c).

(c) Financial Hardship.

(1) An in-service withdrawal will be on account of Financial Hardship only if the Participant has an immediate and heavy financial need and the withdrawal is necessary to meet the need.

(2) A withdrawal will be deemed to be on account of an immediate and heavy need if it is occasioned by (A) a deductible medical expense (within the meaning of Code

Section 213(d)) incurred by or necessary for the Participant or his or her spouse, child or dependent; (B) purchase of the Participant's principal residence (not including mortgage payments); (C) tuition, room and board and related educational fees for the next 12 months of post-secondary education for the Participant or his or her spouse, child or dependent; or (D) rent or mortgage payments to prevent the Participant's eviction from or the foreclosure of the mortgage on his or her principal residence.

(3) A withdrawal will be deemed necessary to satisfy the Participant's financial needs if the Participant has made all non-hardship withdrawals and obtained all nontaxable loans available under all of the Employer's qualified retirement plans, unless obtaining all nontaxable loans under such plans would result in an increase in the Participant's immediate and heavy need; and each such other plan which provides for 401(k) savings contribution contains restrictions similar to those in Section 5.2(b).

(4) A Participant must establish to the Plan Administrator's satisfaction both that the Participant has an immediate and heavy financial need and that the withdrawal is necessary to meet the need (including amounts necessary to pay any federal, state or local income taxes or penalties reasonably anticipated to result from the distribution), as provided in subsections (2) and (3) above.

A Participant's application for a hardship withdrawal will be in such form and containing such information (or other evidence or materials establishing the Participant's Financial Hardship) as the Plan Administrator may require. The Plan Administrator's determination of the existence of and the amount needed to meet a Financial Hardship will be binding on the participant.

(d) Notwithstanding subsection (b) above,

(1) to the extent provided in the Adoption Agreement, a Participant may make in-service withdrawals from his or her 401(k) Plan accounts after he or she has reached age 59-1/2; and

(2) a participant may make in-service withdrawals from his or her 401(k) accounts under the circumstances described in the second paragraph of 12.2(a).

(e) Miscellaneous. The spousal consent requirements are as specified in Section 12.2(d), and the payment procedures and Plan Administrator rules for withdrawals are as specified in Section 12.1(b).

12.4 IN-SERVICE WITHDRAWALS FROM MONEY PURCHASE PLAN: Except as otherwise provided in this section, in-service withdrawals are not permitted from Employer Contribution Accounts under a money purchase plan. If elected in the Adoption Agreement, in-service withdrawals of Employer Contributions may be made to a Participant who has attained early or Normal Retirement Age under the Plan.

12.5 LOANS: If the Metropolitan Life Insurance Company Adoption Agreement so provides, loans will be available from the Plan. If loans are available, the Plan Administrator will establish guidelines and procedures for loans from the Plan to Participants in specific instances, which guidelines may include limitations on the number of loans that may be outstanding to a Participant at any time or on the frequency of loans. Each loan must conform to the loan guidelines and procedures prescribed by the Plan Administrator. The guidelines and procedures must be formulated and administered so that they conform with ERISA Section 408(b)(1) and ERISA Reg. Section 2550.408-1(d). In addition, the following requirements of this Section must be satisfied:

(a) Loans are available to all active Employees who are Participants and to all other Participants and Beneficiaries who are parties in interest (as defined in Section 3(14) of ERISA) on a reasonably equivalent basis. However, no loan will be made to a Participant who is an Owner-Employee or a Shareholder Employee unless such person has at his or her expense has obtained an administrative exemption from ERISA's prohibited transaction rules from the Department of Labor with respect to such loan (unless the Department of Labor has issued a prohibited transaction class exemption covering such loans).

(b) Loans shall not be made available to Highly Compensated Employees (as defined in section 5.8 of the Plan) in an amount greater than the amount made available to other employees.

(c) Loans are adequately secured and bear a reasonable rate of interest. However, no more than 50% of a Participant's nonforfeitable accrued benefit may be pledged as collateral.

Each loan hereunder will be a Participant-directed investment for the benefit of the Participant requesting such loan; accordingly, any default in the repayment of principal or interest of any loan hereunder will reduce the amount available for distribution to such Participant (or his or her Beneficiary). Thus, any loan hereunder will be effectively and adequately secured by the Participant's accounts.

(d) (1) No Participant loan exceeds the lesser of $50,000 or 50% of the Participant's vested account balances (excluding his or her qualified voluntary employee contributions account, if any), as of the valuation date immediately preceding the date when the loan is made, determined under the following table:

| Vested Amount in Accounts | Maximum Loan |
|---|---|
| 0-$100,000 | 50% of vested accounts |
| Over $100,000 | $50,000 |

The $50,000 maximum loan limit in the above table will be reduced by the highest outstanding loan balance (including outstanding loans under plans maintained by an entity described in Sections 19.9, 19.10 and 19.11 as the Employer) in the prior 12-month period. The 50% vested account limit is reduced by the current outstanding loan balance (including outstanding loans under plans maintained by an entity described in Sections 19.9, 19.10 and 19.11 as the Employer).

(2) Except as provided in the next sentence, the maximum term of a loan will be five years. If a Participant requests a loan for the acquisition of the principal residence of the Participant, the maximum repayment period will be determined by reference to bank loans for the same purpose. (

e) Except for a profit sharing plan or a 401(k) plan (which are exempt from the spousal consent requirements - see Section 9.5(d)), a Participant obtains the consent of his or her Spouse, if any, within the 90 day period before the time the account balance is used as security for the loan. A new consent is required if the account balance is used as security for any increase in the loan balance, for renegotiation, extension, renewal, or other revision of the loan. However, spousal consent is not necessary if the total amount of loans outstanding hereunder does not exceed $3,500 (for plan years beginning before August 6, 1997) or $5,000 (for plan years beginning after August 5, 1997). The consent will comply with the requirements of Section 9.5(c). The consent of any subsequent spouse will not be necessary in order to foreclose the Plan's security interest in the Participant's account balance if the Participant's then Spouse validly consented to the original use of the account balance as security (or if the Participant was unmarried at such time).

If a valid spousal consent has been obtained in accordance with this section, then, notwithstanding any other provision of this Plan, the portion of the Participant's vested account balance used as a security interest held by the Plan by reason of a loan outstanding to the Participant shall be taken into account for purposes of determining the amount of the account balance payable at the time of death or distribution, but only if the reduction is used as repayment of the loan. If less than 100% of the Participant's vested account balance (determined without regard to the preceding sentence) is payable to the surviving spouse, then the account balance shall be adjusted by first reducing the vested account balance by the amount of the security used as repayment of the loan, and then determining the benefit payable to the surviving spouse.

(f) The Plan Administrator may require a Participant to agree to repay the principal and interest of a loan through regular payroll deduction payments from the Participant's compensation. The Plan Administrator may establish back-up repayment procedures for Participants who do not make payroll deduction repayment; except as may otherwise be permitted under Treasury regulations, any such back-up procedures will provide for substantially level amortization payments made quarterly or more frequently. If a Participant defaults on any payment of interest or principal of a loan hereunder or defaults upon any other obligation relating to such loan, the Plan Administrator may take (or direct the Trustee to take) such action or actions as it determines to be necessary to protect the interest of the Plan. Such actions may include commencing legal proceedings against the Participant, or foreclosing on any security interest in the participant's account or other security given in connection with a loan hereunder. In the event of a default, foreclosure on the Participant's note and attachment of one or more of the Participant's accounts given as security will not occur until a distributable event occurs in the Plan. An assignment or pledge of any portion of the Participant's interest in the Plan and a loan,

pledge, or assignment with respect to any insurance contract purchased under the Plan, will be treated as a loan under this section.

(g) In the case of any Participant with one or more loans outstanding hereunder, the amount available for distribution to such Participant (or his or her Beneficiary) will consist of the Participant's vested account balance(s) (not including the outstanding principal and accrued but unpaid interest on such loans), plus the notes representing such loans.

## ARTICLE 13: MAXIMUM LIMITATIONS ON ALLOCATIONS

13.1 SECTION 415 DEFINITIONS: For purposes of this Article 13, the following definitions apply:

(a) Annual Additions means the sum of the following amounts allocated on behalf of a Participant for a Limitation Year:

(1) all Employer Contributions (including compensation reduction amounts under any profit-sharing plan with a qualified compensation reduction feature under Code Section 401(k)),

(2) all forfeitures,

(3) all After-Tax Savings Contributions. For this purpose, any Excess Amount applied under Section 13.7 to reduce Employer Contributions will be considered Annual Additions for such limitation year;

(4) Amounts allocated after March 31, 1984, to an individual medical account (as defined in Code Section 415(1)(2)) which is part of a pension or annuity plan maintained by the Employer are treated as Annual Additions to a defined contribution plan. Also, amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after such date which are attributable to post-retirement medical benefits allocated to the separate account of a Key Employee (as defined in Code Section 419A(d)(3) under a welfare benefit fund (as defined in Code Section 419(e)) maintained by the Employer, are treated as Annual Additions to a defined contribution plan; and

(5) allocations under a simplified employee pension.

(b) Compensation. As elected by the Employer in the Adoption Agreement,

Compensation shall mean all of the Participant's Compensation as defined below:

(1) Information required to be reported under sections 6041, 6051, and 6052 of the Code. (Wages, Tips and Other Compensation as reported on Form W-2) Compensation is defined as wages as defined in section 3401(a) and all other payments of compensation to an employee by the Employer (in the course of the Employer's trade or business) for which the Employer is required to furnish an Employee a statement under sections 6041(d), 6051(a)(3) and 6052 of the Code. Compensation must be determined without regard to any rules under section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in section 3401(a)(2)).

(2) Section 3401(a) wages. Compensation is defined as wages within the meaning of section 3401(a) for the purposes of income tax withholding at the source but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in section 3401(a)(2)).

(3) 415 safe-harbor compensation. Compensation is defined as wages, salaries, and fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer maintaining the Plan to the extent that the amounts are includable in gross income (including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements, or other expense allowances under a nonaccountable plan (as described in Reg. Sec. 1.62-2(c))), and excluding the following:

(A) employer contributions to a plan of deferred compensation which are not includible in the employee's gross income for the taxable year in which contributed, or employer contributions under a simplified employee pension plan to the extent such contributions are deductible by the employee, or any distributions from a plan of deferred compensation;

(B) amounts realized from the exercise of a non-qualified stock option or when restricted stock (or property) held by the employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;

(C) amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option; and

(D) other amounts which received special tax benefits or contributions made by the employer (whether or not under a salary reduction agreement) towards the purchase of an annuity described in Section 403(b) of the Code (whether or not the amounts are actually excludable from the gross income of the employee).

(4) For any self-employed individual Compensation will mean earned income.

(5) For Limitation Years beginning after December 31, 1991, for purposes of applying the limitations of this article, Compensation for a Limitation Year is the Compensation actually paid or includible in gross income during such year.

Notwithstanding the preceding sentence, Compensation for a Participant who is permanently and totally disabled (as defined in Section 22(e)(3) of the Code) is the Compensation such Participant would have received for the Limitation Year if the Participant had been paid at the rate of Compensation paid immediately before becoming permanently and totally disabled; for limitation years beginning before January 1, 1997

but not for limitation years beginning after December 31, 1996, such imputed compensation for the disabled Participant may be taken into account only if the Participant is not a Highly Compensated Employee (as defined in Section 5.8 of the Plan) and contributions made on behalf of such Participant are nonforfeitable when made.

(6) For Limitation Years beginning after December 31, 1997, for purposes of applying the limitations of this article, Compensation paid or made available during such Limitation Year shall include any elective deferral (as defined in Code Section 402(g)(3)), and any amount which is contributed or deferred by the Employer at the election of the Employee and which is not includible in the gross income of the Employee by reason of Section 125 or 457 of the Code. For Limitation Years beginning after December 31, 2000 (unless an earlier Limitation Year (but in no event earlier than the Limitation Year beginning after December 31, 1997) is elected in the Adoption Agreement), for purposes of applying the limitations of this article, Compensation paid or made available during such Limitation Years shall include elective amounts that are not includible in the gross income of the Employee by reason of Section 132(f)(4) of the Code.

(c) Employer means the Employer that adopts this plan and all members of a controlled group of corporations (as defined in Section 414(b) of the Code as modified by Section 415(h)), all trades or businesses (whether or not incorporated) which are under common control as defined in Section 414(c) of the Code as modified by Section 415(h)), all affiliated service groups (as defined in Section 414(m) of the Code) of which the adopting Employer is a part, and all entities aggregated with the Employer under Code Section 414(o).

(d) Defined Benefit Fraction for any Limitation Year prior to January 1, 2000, means a fraction:

(1) whose numerator is the sum of the Participant's Projected Annual Benefits under all the defined benefit plans (whether or not terminated) maintained by the Employer, and

(2) whose denominator of which is the lesser of 125 percent of the dollar limitation determined for the Limitation Year under sections 415(b) and (d) of the Code or 140 percent of the highest average compensation, including any adjustments under section 415(b) of the Code. Notwithstanding the above, if the Participant was a Participant as of the first day of the first Limitation Year beginning after December 31, 1986, in one or more defined benefit plans maintained by the Employer which were in existence on May 6, 1986, the denominator of this fraction will not be less than 125 percent of the sum of the annual benefits under such plans which the Participant had accrued as of the close of the last Limitation Year beginning before January 1, 1987, disregarding any changes in the terms and conditions of the plan after May 5, 1986. The preceding sentence applies only if the defined benefit plans individually and in the aggregate satisfied the requirements of section 415 for all Limitation Years beginning before January 1, 1987.

(e) Defined Contribution Fraction for any Limitation Year prior to January 1, 2000, means a fraction:

(i) whose numerator is the sum of the Annual Additions to the Participant's account under all the defined contribution plans (whether or not terminated) maintained by the Employer for the current and all prior Limitation Years (including the Annual

Additions attributable to the Participant's nondeductible employee contributions to all defined benefit plans, whether or not terminated, maintained by the Employer and the Annual Additions attributable to all welfare benefit funds (as defined in Section 419(e) of the Code), individual medical accounts as defined in section 415(l)(2) of the Code and simplified employee pensions as defined in section 408(k) of the Code, and

(ii) whose denominator is the sum of the maximum aggregate amounts for the current and all prior Limitation Years of service with the Employer (regardless of whether a defined contribution plan was maintained by the Employer). The maximum aggregate amount in any limitation year is the lesser of (A) 1.25 multiplied by the dollar limitation determined under sections 415(b) and (d) of the Code, or (B) 35% of the Participant's Compensation for such year.

If the Employee was a Participant as of the end of the first day of the first Limitation Year beginning after December 31, 1986, in one or more defined contribution plans maintained by the Employer which were in existence on May 6, 1986, the numerator of the Defined Contribution Fraction will be adjusted if the sum of the Defined Contribution Fraction and the Defined Benefit Fraction would otherwise exceed 1.0 under the terms of this Plan. Under the adjustment an amount equal to the product of (i) the excess of the sum of the fractions over 1.0 times (ii) the denominator of the Defined Contribution Fraction will be permanently subtracted from the numerator of the Defined Contribution Fraction. The adjustment is calculated using the fractions as they would be computed as of the end of the last Limitation Year beginning before January 1, 1987, and disregarding any changes in the terms and conditions of the plan made after May 5, 1986, but using the section 415 limitation applicable to the first Limitation Year beginning on

or after January 1, 1987. The Annual Addition for any Limitation Year beginning before January 1, 1987 shall not be recomputed to treat all After-Tax Savings Contributions as Annual Additions.

(f) Excess Amount means the excess of the Participant's Annual Additions for the Limitation Year over the Maximum Permissible Amount.

(g) Highest Average Compensation means the average Compensation for the three consecutive years of plan service with the Employer that produce the highest average.

(h) Limitation Year means the Plan Year unless another period is elected by the Employer in the Adoption Agreement. All qualified prototype plans of the Employer must use the same Limitation Year. If the Limitation Year is amended to a different period, the new Limitation Year must begin on a date within the Limitation Year in which the amendment is made (or any other period adopted for all plans of the Employer pursuant to a resolution adopted by the Employer).

(i) Master or Prototype Plan means a plan the form of which is the subject of a favorable opinion letter from the Internal Revenue Service.

(j) Maximum Permissible Amount. The maximum Annual Addition that may be contributed or allocated to a Participant's account under the Plan for any Limitation Year shall not exceed the lesser of (i) the Defined Contribution Dollar Limitation or (ii) 25 percent of the Participant's Compensation for the Limitation Year. The Compensation limitation referred to in (ii) shall not apply to any contribution for medical benefits (within the meaning of section 401(h) or section 419A(f)(2) of the Code) which is otherwise treated as an Annual Addition under section 415(l)(1) or 419A(d)(2) of the

Code. If a short Limitation Year is created because of an amendment changing the Limitation Year to a different 12 consecutive month period, the Maximum Permissible Amount for the short Limitation Year will not exceed the amount set forth in clause (i) of the preceding sentence multiplied by a fraction whose numerator is the number of months in the short Limitation Year and whose denominator is 12.

(k) Projected Annual Benefit means, for Limitation Years beginning before January 1, 2000, the annual retirement benefit (adjusted to an actuarially equivalent straight life annuity if such benefit is expressed in a form other than a straight life annuity or Qualified Joint and Survivor Annuity) to which the Participant would be entitled under the terms of the Plan assuming his or her employment continues until Normal Retirement Age under the Plan (or current age, if later), and his or her Compensation for the current Limitation Year and all other relevant factors used to determine benefits under the Plan will remain constant for all future Limitation Years.

(l) Defined Contribution Dollar Limitation means $30,000 as adjusted under Code Section 415(d).

13.2 NO PARTICIPATION IN OTHER QUALIFIED PLANS: If the Participant does not participate in, and has never participated in another qualified plan or a welfare benefit fund, as defined in Code Section 419(e), maintained by the Employer, an individual medical account, as defined in section 415(1)(2) of the Code, or a simplified employee pension, as defined in section 408(k) of the Code, maintained by the Employer, which provides an Annual Addition as defined in section 13.1(a), the amount of Annual Additions which may be allocated under this Plan on a Participant's behalf for a Limitation Year may not exceed the lesser of the Maximum Permissible Amount or any other limitation contained in this Plan. If the Employer Contribution that would

otherwise be contributed or allocated to the Participant's account would cause the Annual Additions for the Limitation Year to exceed the Maximum Permissible Amount, the amount contributed or allocated will be reduced under Section 13.7 so that the Annual Additions for the Limitation Year will equal the Maximum Permissible Amount.

13.3 PARTICIPATION IN OTHER QUALIFIED MASTER OR PROTOTYPE DEFINED CONTRIBUTION PLANS: If, in addition to this Plan, the Participant is covered under any other qualified Master or Prototype defined contribution plan maintained by the Employer, a welfare benefit fund (as defined in Code Section 419(e)) or a simplified employee pension, as defined in section 408(k) of the Code, maintained by the Employer or an individual medical account as defined in Code Section 415(l)(2), maintained by the Employer which provides an Annual Addition as defined in Section 13.1 during any Limitation Year, the amount of Annual Additions which may be credited under this Plan on a Participant's behalf for a Limitation Year may not exceed the Maximum Permissible Amount, reduced by the sum of any Annual Additions allocated to the Participant's accounts for the same Limitation Year under such other defined contribution plans and welfare benefit funds. If the Annual Additions with respect to the Participant under other defined contribution plans and welfare benefit funds maintained by the Employer are less that the Maximum Permissible Amount and the Employer contribution that would otherwise be contributed or allocated to the Participant's account under this Plan would cause the Annual Additions for the Limitation Year to exceed this limitation, the amount contributed or allocated will be reduced so that the Annual Additions under all such Plans and funds for the Limitation Year will equal the Maximum Permissible Amount. If the Annual Additions with respect to the Participant under such other defined contribution plans and welfare benefit funds in the aggregate

are equal to or greater than the Maximum Permissible Amount, no amount will be contributed or allocated to the Participant's account under this Plan for the Limitation Year.

13.4 PARTICIPATION IN ANOTHER QUALIFIED PLAN, OTHER THAN MASTER OR PROTOTYPE PLANS: If the Participant is covered by another plan which is a qualified defined contribution plan other than a Master or Prototype Plan, Annual Additions allocated under this Plan on behalf of any Participant will be limited in accordance with the provisions of Section 13.3 through 13.6, as though the other plan were a Master or Prototype Plan, unless the Employer provides other limitations in the Adoption Agreement.

13.5 ESTIMATED LIMITATION: Before determining a Participant's actual Compensation for the Limitation Year, the Employer may determine the Maximum Permissible Amount on the basis of a reasonable estimation of the Participant's annual Compensation for such Limitation Year uniformly determined for all Participants similarly situated. Any Employer contribution (including allocation of forfeitures) based on estimated annual Compensation will be reduced by any Excess Amounts carried over from prior years. As soon as administratively feasible after the end of the Limitation Year, the Maximum Permissible Amount for the Limitation Year will be determined on the basis of the Participant's actual Compensation for such Limitation Year.

13.6 APPORTIONMENT BETWEEN PLANS:

(a) If pursuant to section 13.5 or as a result of the allocation of forfeitures, a Participant's Annual Additions under this Plan and such other plans would result in an Excess Amount for a Limitation Year, the Excess Amount will be deemed to consist of the Annual Additions last allocated, except that Annual Additions attributable to a simplified employee pension will be deemed to have been allocated first regardless of the actual allocation date.

(b) If, in the application of Section 13.3, an Excess Amount was allocated to a Participant on an allocation date of this Plan which coincides with an allocation date of another plan, the Excess Amount attributed to this Plan will be the product of:

(i) the total Excess Amount allocated as of such date, times

(ii) the ratio of (A) Annual Additions allocated to the Participant for the Limitation Year as of such date under this Plan, to (B) the total Annual Additions allocated to the Participant for the Limitation Year as of such date under this and all other qualified master or prototype defined contribution plans.

(c) Any Excess Amounts attributed to this Plan will be disposed of as provided in Section 13.7.

13.7 EXCESS AMOUNTS: If there is an Excess Amount with respect to a Participant for a Limitation year, such Excess Amount will be disposed of as follows:

(a) Any after tax Savings Contributions (including any earnings thereon for which no Matching Employer Contributions are made will be returned to the Participant to the extent that the distribution or return would reduce the Excess Amounts in the Participant's account.

(b) If after the application of subsection (a) an Excess Amount still exists, any Elective Deferrals (including any earnings thereon) for which no Matching Employer Contributions are made will be returned to the Participant to the extent that the distribution or return would reduce the Excess Amounts in the Participant's account.

(c) If after the application of subsection (b) an Excess Amount still exists, the Excess Amounts will be equal to the sum of (1), (2) and (3), as follows: (1) any After Tax Savings Contributions (including any earnings thereon) with respect to which Employer Matching Contributions are made will be returned to the Participant, (2) any Elective Deferrals (including

any earnings thereon) with respect to which Employer Matching Contributions are made will be returned to the Participant and (3) the proportionate amount of Employer Matching Contributions relating to such After Tax Savings Contributions and/or Elective Deferrals will be held unallocated in a suspense account. The suspense account will be applied to reduce future employer contributions for all remaining Participants in the next Limitation Year, and each succeeding Limitation Year if necessary. Any such suspense account will not participate in the allocation of the Trust's investment gains and losses.

(d) If after the application of subsection (c) an Excess Amount still exists, the Excess Amounts attributable to Employer contributions (other than Matching Contributions) will be held unallocated in a suspense account. The suspense account will be applied to reduce future Employer Contributions (including allocation of any forfeitures) for all remaining participants in the next Limitation Year, and each succeeding Limitation Year if necessary. Any such suspense account will not participate in the allocation of the Trust's investment gains and losses.

13.8 DEFINED BENEFIT AND DEFINED CONTRIBUTION PLAN: For plan years beginning before January 1, 2000, if the employer maintains or at any time maintained, a qualified defined benefit plan (other than a defined benefit plan which is a paired plan with this plan) covering any Participant in this Plan, the sum of the Participant's Defined Benefit Plan Fraction and Defined Contribution Plan Fraction will not exceed 1.0 in any Limitation Year. The Annual Additions which may be credited to the Participant's account under this Plan for any Limitation Year will be limited in accordance with the Adoption Agreement.

## ARTICLE 14: TOP-HEAVY PROVISIONS

14.1 APPLICATION OF ARTICLE: If the Plan is or becomes Top-Heavy in any plan year beginning after December 31, 1983, the provisions of this Article 14 will supersede any conflicting provision in the Plan or Adoption Agreement (except provisions added or attached to the Adoption Agreement to coordinate the Top-heavy minimum contributions or benefits with another plan of the Employer).

14.2 TOP-HEAVY DEFINITIONS:

(a) Key Employee means any Employee or former Employee (and the beneficiaries of such Employee) who at any time during the Determination Period was (i) an officer of the Employer, if such individual's Annual Compensation exceeds 50 percent of the dollar limitation under Code Section 415(b)(1)(A); (ii) an owner (or considered an owner under Section 318 of the Code) of one of the ten largest interests in the Employer, if such individual's Annual Compensation exceeds 100 percent of the dollar limitation under Section 415(c)(1)(A) of the Code; (iii) a 5-Percent Owner of the Employer; or (iv) a 1 percent owner of the Employer who has an Annual Compensation of more than $150,000. Annual Compensation means Compensation as defined in section C of the Adoption Agreement, but including amounts contributed by the Employer pursuant to a salary reduction agreement which are excludable from the Employee's gross income under section 125, section 132(f)(4), section 402(e)(3), section 402(h)(1)(B) or section 403(b) of the Code. The Determination Period is the Plan Year containing the Determination Date and the 4 preceding Plan Years. The determination of who is a Key Employee will be made in accordance with Section 416(i)(1) of the Code and the regulations thereunder.

(b) Top-Heavy Plan means this Plan if any of the following conditions exist for any Plan Year:

(i) If the Top-Heavy Ratio for this Plan exceeds 60% and this Plan is not part of any Required Aggregation Group or Permissive Aggregation Group of plans.

(ii) If this Plan is a part of a Required Aggregation Group of plans but not part of a Permissive Aggregation Group and the Top-Heavy Ratio for the group of plans exceeds 60%.

(iii) If this Plan is a part of a Required Aggregation Group and part of a Permissive Aggregation Group of plans and the Top-Heavy Ratio for the Permissive Aggregation Group exceeds 60%.

(c) Top-Heavy Ratio means the following:

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

(2) If, for Plan Years prior to January 1, 2000, the Employer maintains one or more defined contribution plans (including any simplified employee pension plan) and the Employer maintains or has maintained one or more defined benefit plans which during the 5-year period ending on the Determination Date(s) has or has had any accrued benefits, the Top-Heavy Ratio for any Required Aggregation Group or Permissive Aggregation Group as appropriate is a fraction, the numerator of which is the sum of account balances under the aggregated defined contribution plan or plans for all Key Employees, determined in accordance with (1) above, and the Present Value of Accrued Benefits under the aggregated defined benefit plan or plans for all Key Employees as of the Determination Date(s), and the denominator of which is the sum of the account balances under the aggregated defined contribution plan or plans for all Participants determined in accordance with (1) above, and the Present Value of Accrued Benefits under the aggregated defined benefit plan or plans for all Participants as of the Determination Date(s), all determined in accordance with Section 416 of the Code and the regulations thereunder. The accrued benefits under a defined benefit plan in both the numerator and denominator of the Top-Heavy Ratio are increased for any distribution of an accrued benefit made in the 5-year period ending on the Determination Date.

(3) For purposes of (1) and (2) above the value of account balances and the Present Value of Accrued Benefits will be determined as of the most recent valuation date that falls within or ends with the 12 month period ending on the Determination Date, except as provided in Code Section 416 and the regulations thereunder for the first and second plan years of a defined benefit plan. The account balances and accrued benefits of a Participant who is not a Key Employee but who was a Key Employee in a prior year, or

who has not been employed by any Employer maintaining the Plan at any time during the 5-year period ending on the Determination Date will be disregarded. The calculation of the Top-Heavy Ratio, and the extent to which distributions, rollovers, and transfers are taken into account will be made in accordance with Code Section 416 and the regulations thereunder. Qualified voluntary employee contributions will not be taken into account for purposes of computing the Top-Heavy Ratio. When aggregating plans, the value of account balances and accrued benefits will be calculated with reference to the Determination Dates that fall within the same calendar year.

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

(d) Permissive Aggregation Group means the Required Aggregation Group of plans plus any other plan of the Employer which, when considered as a group with the Required Aggregation Group, would continue to satisfy the requirements of Code Sections 401(a)(4) and 410.

(e) Required Aggregation Group means (1) each qualified plan of the Employer in which at least one Key Employee participates or participated at any time during the Determination Period (regardless of whether the plan has terminated), and (2) any other qualified plan of the Employer which enables a plan described in subsection (1) to meet the requirements of Code Sections 401(a)(4) or 410.

(f) Determination date for any Plan Year subsequent to the first Plan Year means the last day of the preceding Plan Year, and for the first plan year of the plan, the last day of that year.

(g) Valuation Date is the date as of which account balances or accrued benefits are valued for purposes of calculating the Top-Heavy Ratio. The valuation date is the Determination Date.

(h) Present Value of benefits for purposes of computing the Top-Heavy Ratio will be discounted only for mortality and interest. Unless adopted otherwise, the following factors will apply: five percent interest and the UP-1984 mortality table.

14.3 MINIMUM ALLOCATION:

(a) Except as otherwise provided in (b) and (c) below, the Employer contributions and forfeitures allocated on behalf of any Participant who is not a Key Employee shall not be less than the lesser of (i) 3% of such Participant's compensation, or (ii) in the case where the Employer has no defined benefit plan which designates this plan to satisfy Section 401 of the Code, the largest percentage of Employer contributions and forfeitures, as a percentage of the Key Employee's Compensation, as limited by section 401(a)(17) of the Code, allocated on behalf of any Key Employee for that year. The minimum allocation is determined without regard to any social security contribution. This minimum allocation shall be made even though, under other Plan provisions, the Participant would not otherwise be entitled to receive an allocation or would have received a lesser allocation for the year because of the Participant's failure to complete any required amount of service (or any equivalent provided in the Plan), the Participant's failure to make mandatory employee contributions to the Plan or Compensation less than a stated amount. However, this section does not apply to any Participant who was not employed by the Employer

on the last day of the Plan Year. Neither Elective Deferrals nor Matching Contributions may be taken into account for the purpose of satisfying the minimum top-heavy contribution requirement.

(b) For purposes of computing the minimum allocation, Compensation will mean Compensation as defined in Section 13.1(b), as limited by section 401(a)(17) of the Code. Compensation for this purpose will include any compensation to a Participant during a Plan Year before he or she became a Participant or after he or she ceased to be a Participant.

(c) The minimum allocation required (to the extent required to be nonforfeitable under Code Section 416(b) may not be forfeited under Code Section 411(a)(3)(B) or 411(a)(3)(D).

14.4 APPORTIONMENT OF MINIMUM BENEFITS BETWEEN MULTIPLE PLANS:

(a) To prevent duplication of the minimum allocation required under Section 14.3(a) above, if any Participant in this Plan is covered under any other defined contribution plan or plans of the Employer (whether or not such plans are paired plans), the required minimum allocation will be satisfied first from the money purchase plan, if any, and the minimum required allocation from the profit-sharing plan (or plans) will be reduced by the minimum allocation provided under the money purchase plan.

(b) For Plan Years prior to January 1, 2000, the provisions in Section 14.3(a) will not apply to any Participant to the extent the Participant is covered under a defined benefit plan (or plans) of the Employer and the Employer has provided in the Adoption Agreement that the minimum allocation or benefit requirement applicable to top-heavy plans will be met in the other plan or plans.

14.5 MINIMUM VESTING SCHEDULE: For any Plan Year in which this plan is Top-Heavy, one of the top-heavy vesting schedules elected by the Employer in the Adoption Agreement will automatically apply to the Plan. The Top-Heavy vesting schedule applies to all accrued benefits within the meaning of Section 411(a)(7) of the Code except those attributable to 401(k) Savings Contributions or After-Tax Savings Contributions, including benefits accrued before the effective date of Code Section 416 and benefits accrued before the Plan became Top-Heavy. Further, no decrease in a Participant's nonforfeitable percentage may occur in the event the Plan's status as Top-Heavy changes for any plan year. However, this section does not apply to the account balances of any Employee who does not have an Hour of Service after the Plan has initially become Top-Heavy and such Employee's account balance attributable to Employer contributions and forfeitures will be determined without regard to this section.

14.6 TOP HEAVY ADJUSTMENTS IN SECTION 415 FRACTIONS: For Plan Years prior to January 1, 2000, if the Plan is a Top-Heavy Plan for any Plan Year, the denominators of the Defined Benefit Fraction and the Defined Contribution Fraction will be determined for a Plan Year by substituting "1.0" for "1.25" each time it appears in Section 13.1, unless the Employer provides in the Adoption Agreement for the additional top heavy minimum benefit requirements of Code Section 416(h) and provided further that this Plan is not Super Top-Heavy. This Plan is Super Top-Heavy in any Plan Year if it would be Top-Heavy under Section 14.2(b) by substituting 90% for 60% wherever 60% appears.

14.7 ADDITIONAL PROVISIONS FOR PAIRED DEFINED CONTRIBUTION AND DEFINED BENEFIT PLANS:

(a) For Plan Years prior to January 1, 2000, this section is applicable if the Employer has adopted Paired Plans of the Sponsor which include a defined benefit plan and one or more defined contribution plans.

(b) (i) This subsection (b) will apply in any plan year for which the Plan is Top-Heavy but not Super Top-Heavy unless in the Adoption Agreement for the Employer's paired defined benefit plan, the Employer has elected to apply the defined benefit fraction and the defined contribution fraction in all plan years by substituting "1.0" for "1.25" in each place it appears in Section 13.1.

(ii) The defined contribution plan employer contributions and forfeitures allocated on behalf of any participant who is not a key employee will not be less than the amount provided in (A) below unless in the adoption agreement for the employer's paired defined benefit plan the employer elects to provide the top-heavy minimum accrued benefit in such defined benefit plan and to have (B) below apply in this plan:

(A) For each non-key employee who is not a participant in paired defined benefit plan, 4% of his compensation; or for each non-key employee who is also a participant in the paired defined benefit plan, 7-1/2% of his compensation.

(B) For each non-key employee who is not a participant in the paired defined benefit plan, 4% of his compensation; or for each plan, no minimum contribution (because he will receive the 3% minimum accrued benefit under the paired defined benefit plan).

(c) (i) This subsection (c) will apply in any plan year in which the plan is super top-heavy or in all plan years if in the adoption agreement for the employer's paired defined benefit plan, the employer has elected to apply the defined benefit fraction and the defined contribution fraction in all plan years by substituting "1.0" for "1.25" in each place it appears in Section 13.1.

(ii) The defined contribution plan employer contributions and forfeiture allocated on behalf of any participant who is not a key employee will not be less than the amount provided in (A) below unless in the adoption agreement for the employer's paired defined benefit plan the Employer elects to provide the top-heavy minimum accrued benefit in such defined benefit plan and to have (B) below apply in this Plan:

(A) For each Non-Key Employee who is not a Participant in the paired de-fined benefit plan, 3% of his or her Compensation; or for each Non-Key Employee who is also a Participant in the Paired Defined Benefit Plan, 5% of his or her Compensation.

(B) For each Non-Key Employee who is not a participant in the paired defined benefit plan, 3% of his or her Compensation; or for each Non-Key Employee who is also a participant in the paired defined benefit plan, no minimum contribution (because he or she will receive the 2% minimum accrued benefit under the paired defined benefit plan).

(d) Provisions similar to Sections 14.3(b) and (c) and 14.4(a) will apply to minimum allocations under this section.

## ARTICLE 15: ACCOUNTS AND INVESTMENTS

15.1 SEPARATE ACCOUNTS:

(a) The Plan Administrator shall create and maintain separate accounts for each Participant's 401(k) Savings Contributions, After-Tax Savings Contributions, Employer Contributions, Matching Employer Contributions, and rollover contributions (and any qualified voluntary employee contributions); a Participant's rollover account may contain subaccounts as provided in Section 7.1(a)(ii). Earnings will be credited to such accounts (and subaccounts) in accordance with the provisions of this article. Such accounts will be primarily for accounting purposes and will not restrict the operation of the Trust or require separate earmarked investments for any account; however, specific investments may be earmarked to Participants' accounts if a permitted investment medium under Section 15.2 so provides.

(b) The Plan Administrator may itself maintain records of Participants' accounts or the Plan Administrator may arrange for such records to be maintained by an outside service provider (which may be the Sponsor or Trustee or a contractor of the Sponsor or Trustee). If the Plan Administrator arranges with a service provider to maintain records of Participants' accounts, the Plan Administrator will provide such information as is necessary for the service provider to maintain such accounts as required herein.

15.2 INVESTMENT MEDIA; PARTICIPANT INVESTMENT DIRECTIONS:

(a) Metropolitan Life Insurance Company may impose requirements concerning the investment media or vehicles in which contributions to the Employer's plan must be invested, and the Employer agrees to observe such requirements as a condition of participating in this Prototype Plan.

(b) Subject to any requirements imposed under subsection (a) above, permissible investment media may include, but are not limited to, contracts issued by an insurance company (including such contracts providing for investments in a separate account maintained by the insurance company), segregated accounts invested in one or more of savings or notice accounts, deposits in or certificates issued by a bank, insurance or annuity contracts, assets specified by the participant (Section 15.4), or shares of one or more investment companies or mutual funds (Section 15.6). In addition, the Plan may invest in qualifying employer securities as permitted under ERISA Section 407(d)(3).

(c) Unless the Adoption Agreement otherwise provides, the Participant shall have the sole discretion to direct the investment of After-Tax Savings Contributions and/or Rollover Contributions and the Employer shall have the sole discretion to direct the investment of the Employer's contributions to a money purchase plan among the permissible investment media. Unless the Adoption Agreement otherwise provides, Participants shall have the sole discretion to direct the investment of all contributions to a profit-sharing plan or 401(k) plan among the permissible investment media.

(d) Subject to the Sponsor's requirements under subsection (a) above, the Employer will determine the investment of any account over which the Participant does not exercise investment control under subsection (c) above. In making such investment determinations, the Employer will establish investment policies or rules of general application which do not discriminate among Participants.

(e) This subsection will apply where Participants' accounts under the Employer's Plan are commingled for investment purposes (in contrast to segregated accounts whose valuation is governed by Section 15.4). In such a case, the assets of the Plan (or each separate investment

fund thereunder consisting of investments in a particular investment vehicle) will be valued at their fair market value as of each Valuation Date. As of each Valuation Date, the investment earnings and gains or losses in asset value since the preceding Valuation Date will be allocated to Participants' accounts in the Plan (or in each separate investment fund) in proportion to the balance in each such account as a fraction of the aggregate account balances as of the preceding Valuation Date. The last business day of the Plan Year is a Valuation Date; the Sponsor or Employer may designate other Valuation Dates. To the extent that the assets of the Plan are valued on a daily basis, such valuation will be conducted in a manner similar to that described in Section 15.4(a). To the extent that the assets of the Plan are valued on a daily basis, such valuation generally will be determined as of the close of each business day. However, such valuation may be determined up to five business days in certain circumstances, including, but not limited to, heavy volume market trading and temporary telephone or computer technical difficulties.

15.3 RULES FOR EXERCISE OF INVESTMENT OPTIONS: Any designation of investments by Participants will be subject to nondiscriminatory general rules established by the Plan Administrator or the [NAME OF SPONSOR]; such rules may include:

(a) restrictions on the minimum amount or percentage of any contribution which may be placed in any particular investment medium;

(b) restrictions on the use of different amounts or percentages for different types of contributions;

(c) minimums or maximums (or both) on the amount which may be invested or transferred to or from any particular investment medium; and

(d) restrictions on the time and frequency of designations, changes in designations and transfers from one investment medium to another including the required advance notice. These rules may differ for different types of contributions. The effective date of any change in a participant's election respecting allocation of contributions among investment options or any transfer from one option to another must coincide with a Valuation Date for each option.

15.4 SEGREGATED ACCOUNTS:

(a) The provisions of this section will apply to the extent that the Sponsor or Employer designates Segregated Accounts as permitted investment media. A Segregated Account is one in which all or a portion of one or more of a Participant's accounts are invested in individual investments which are not commingled with investments for other Participants' accounts. Examples of investments for Segregated Accounts include, but are not limited to, interest bearing savings or notice accounts or certificates or other savings instruments maintained or issued by a bank or other thrift institution, life insurance or annuity contracts issued by a life insurance company authorized to issue such contracts in the state, or self-directed investment accounts. Earnings and investment gains and losses of assets held in a Segregated Account and dividends or credits earned on insurance contracts will be credited solely to such account.

(b) Where the Employer designates self-directed accounts as a permissible investment medium, the Participant will be subject to such administrative rules and restrictions on permissible investments as the Sponsor may impose. However, such rules and restrictions will not conflict with the terms of this Plan.

(c) The last business day of the Plan Year is a Valuation Date for Segregated Accounts. The Sponsor or Employer may designate other Valuation Dates. The Trustee will determine the fair market value of the Plan's Segregated Accounts as of each Valuation Date and

will report such value of the Plan Administrator. Each Participant with a self-directed account will arrange for a statement of the value of the assets therein as of each Valuation Date and will provide such statement to the Trustee; the Trustee may rely upon such statement in making the valuations referred to in the preceding sentence.

15.5 LIFE INSURANCE CONTRACTS: Where the permits and the Employer designates life insurance contracts as permissible investment media, such contracts will be treated as segregated investments held in a Segregated Account under Section 15.4, and the following restrictions and rules will apply:

(a) Ownership of Contract. The trustee, if the Plan is trusteed, or custodian, if the Plan has a custodial account, shall apply for and will be the owner of any insurance contract purchased under the terms of this Plan. The insurance contract(s) must provide that proceeds will be payable to the trustee (or custodian, if applicable), however, the trustee (or custodian) shall be required to pay over all proceeds of the contract(s) to the participant's beneficiary in accordance with the distribution provisions of this plan. A participant's spouse will be the designated beneficiary of the proceeds in all circumstances unless a qualified election has been made in accordance with section 9.5, Joint and Survivor Annuity Requirements, if applicable. Under no circumstances will the trust (or custodial account) retain any part of the proceeds. Any dividends or credits earned on life insurance contracts will be allocated to the account of the participant derived from employer contributions in which the contract is held.

(b) Limits on Amounts. Except to the extent that premiums on life insurance contracts are paid from (1) a participant's after-tax savings contribution account, (2) earnings on contributions held under the plan, (3) in the event that the plan is a profit sharing plan, the amount attributable to employer contributions which have been on deposit in the plan for at least

two years, or (4) in the event that the plan is a profit sharing plan, employer contributions with respect to a participant who has participated in the plan for at least 5 years, employer contributions used to pay premiums on life insurance will be subject to the following limitations:

(1) Ordinary life - For purposes of this subsection, ordinary life insurance contracts are contracts with both nondecreasing death benefits and nonincreasing premiums. If such contracts are purchased, less than 1/2 of the aggregate Employer contributions allocated to the Participant will be used to pay the premiums attributable to them.

(2) Term and universal life - no more than 1/4 of the aggregate Employer contributions allocated to the Participant will be used to pay the premiums on term life insurance contracts, universal life insurance contracts, and all other life insurance contracts which are not ordinary life.

(3) Combination. The sum of 1/2 of the ordinary life insurance premiums and all other life insurance premiums will not exceed 1/4 of the aggregate Employer contributions allocated to the Participant.

(c) Distributions. Upon commencement of benefits, life insurance contracts on a Participant's life will be converted to cash or an annuity and distributed to the Participant, subject to the Plan's provisions on distributions.

(d) Conflicts. In the event of any conflict between the terms of this Plan and the terms of any insurance contract hereunder, the Plan provisions will control.

(e) Transaction with Participant. The purchase and sale of policies between a Participant and the Trustee will be permitted in conformance with the applicable class exemption from prohibited transactions issued by the Department of Labor.

15.6 MUTUAL FUND SHARES:

(a) The provisions of this section will apply to the extent that the Sponsor or Employer designates share of one or more investment companies or mutual funds as permitted investment media.

(b) The Trustee will as soon as reasonably practicable after receipt of a contribution invest such contribution in shares and fractional shares of such mutual funds in accordance with the investment instructions applicable to such contribution.

(c) Upon receipt of instructions to transfer an amount invested in one mutual fund to another mutual fund, the Trustee will as soon as reasonably practicable thereafter redeem sufficient shares of one mutual fund and purchase shares of the other mutual fund in order to carry out such instructions; such transfer may be carried out by exchange or shares if permitted by the mutual funds involved.

(d) Upon receipt of instructions to redeem shares, the Trustee will redeem shares in one or more mutual funds as instructed in order to make a cash disbursement, whether a plan distribution or withdrawal, loan, payment of expenses or otherwise.

(e) The Trustee will reinvest all dividends and capital gains or other distributions received on shares of a mutual fund in additional shares of such fund; where permitted such investment will be carried out by the Trustee's electing to receive such dividends and distributions in the form of additional shares.

(f) All mutual fund shares purchased, received, redeemed or exchanged by the Trustee under the foregoing subsections of this section will be credited to or debited from the appropriate account as directed by the Plan Administrator. All such transactions will be effected at the current public offering price or net asset value of the mutual fund shares or as otherwise described in the then current prospectus pertaining to such mutual fund.

(g) Investment income and gains or losses in value of each mutual fund in which Participants' accounts are invested will automatically and continuously be credited or debited as a function of the net asset value of the shares of such fund and the reinvestment of dividends and other distributions in additional shares of such fund. Accordingly, to the extent that the assets of the Employer's plan are invested in shares of such mutual funds, each business day will be a Valuation Date.

With respect to mutual funds which are not open end funds, the last business day of the Plan Year is a Valuation Date. The Employer may designate other Valuation Dates with the consent of the Trustee. The Trustee will determine the fair market value of the shares of such mutual funds as of each Valuation Date and will report such value to the Plan Administrator.

(h) The Trustee will deliver to the Plan Administrator any notices of shareholder meetings, proxy and proxy-soliciting materials, prospectuses and annual or other reports to shareholders received by the Trustee relating to shares of a mutual fund held in the trust fund. The Plan Administrator will exercise voting rights with respect to the shares, unless the Plan Administrator has elected to pass voting rights through to Participants, in which case the Plan Administrator will deliver such items to each Participant whose account is invested in such shares. Within the time limit imposed by the Trustee or the Plan Administrator, each Participant may indicate how the shares credited to his or her accounts are to be voted. The Plan Administrator will deliver such instructions to the Trustee who will vote the shares in the manner indicated.

Alternatively, arrangements may be made whereby the mutual fund or investment company sends any such materials directly to the Participant and the Participant sends voting instructions directly to the mutual fund or investment company.

15.7 QUALIFYING EMPLOYER SECURITIES:

(a) Application. The provisions of this section will apply to the extent that the Sponsor or Employer designates Qualified Employer Securities (as defined in Section 407(d)(5) of ERISA) as permitted investment media.

(b) Limitations on Investment in Qualifying Employer Securities. The Plan's investment in Qualifying Employer Securities shall be subject to the following limitations:

(1) In the case of a money purchase plan, the aggregate fair market value of the Plan's investment in Qualifying Employer Securities shall not exceed 10% of the fair market value of the assets of the Plan. Immediately after the acquisition of Qualifying Employer Securities, no more than 25% of the aggregate amount of stock of the same class issued and outstanding at the time of the acquisition may be held by the Plan, and at least 50% of the aggregate amount of stock of the same class issued and outstanding at the time of the acquisition must be held by persons independent of the issuer.

(2) In the case of a 401(k) plan, to the extent that 401(k) Savings Contributions and the earnings thereon are required to be invested in Qualifying Employer Securities pursuant to the terms of the Plan or at the direction of a person other than the Participant or his or her Beneficiary, then the aggregate fair market value of the Plan's investment in Qualifying Employer Securities shall not exceed 10% of the fair market value of the assets of the Plan. Immediately after the acquisition of Qualifying Employer Securities, no more than 25% of the aggregate amount of stock of the same class issued and outstanding at the time of the acquisition may be held by the Plan, and at least 50% of the aggregate amount of stock of the same class issued and outstanding at the time of the acquisition must be held by persons independent of the issuer. This

Paragraph (2) shall not apply if (i) on the last day of the preceding Plan Year, the fair market value of all defined contribution plans maintained by the Employer equals not more than 10% of the fair market value of the assets of all pension plans (as defined in ERISA Section 3(2)) other than multiemployer plans maintained by the Employer; or (ii) if pursuant to the terms of this Plan, the portion of the 401(k) Savings Contributions which is required to be invested in Qualifying Employer Securities for any Plan Year may not exceed 1% of the Participant's Plan Compensation which is taken into account in determining the maximum amount of the Participant's 401(k) Savings Contributions for such Plan Year

(3) Except as provided in Paragraph (2), unless the terms of the Plan impose a limitation on the acquisition of Qualifying Employer Securities, there shall be no limitation on the acquisition or retention of Qualifying Employer Securities by a 401(k) or profit sharing plan, subject to the fiduciary responsibility requirements of ERISA.

(c) Proxy and Voting of Qualifying Employer Securities. The Trustee will deliver to the Plan Administrator any notices of shareholder meetings, proxy and proxy-soliciting materials, prospectuses and annual or other reports to shareholders received by the Trustee relating to Qualifying Employer Securities held by the Trust. The Plan Administrator will exercise voting rights with respect to the shares, unless the Plan Administrator has elected to pass voting rights through to Participants, in which case the Plan Administrator will deliver such items to each Participant and Beneficiary may direct the Trustee in writing, or in any other manner permissible under the Trust Agreement, as to the manner in which the shares of such Qualifying Employer Securities allocated to his or her account are to be voted. The Trustee will vote such allocated shares of Qualifying Employer Securities in accordance with the timely written instructions (or,

if the Trust Agreement so provides, the timely electronic or other instructions) of such Participants and Beneficiaries, except to the extent that the Trustee has determined that following such instructions would result in a violation of the terms of the Plan, the Adoption Agreement or ERISA. With respect to allocated shares of Qualifying Employer Securities for which the Trustee or its Agent has not received timely written or other permissible voting instructions, and with respect to shares of Qualifying Employer Securities that have not been allocated to the accounts of Participants and Beneficiaries, if any, the Trustee shall vote all such shares in the same proportion as the allocated shares for which proper voting instructions are received are voted, or as provided in the Adoption Agreement, all in accordance with the applicable provisions of ERISA. The foregoing rules shall be subject to any applicable provisions of the Trust Agreement.

(d) Tender or Exchange Offer. In the event of a tender or exchange offer for any Qualifying Employer Securities held by the Trust, the Trustee will deliver to the Plan Administrator any tender or exchange offer materials received by the Trustee. The Plan Administrator will determine whether to tender or exchange shares of Qualifying Employer Securities with respect to such tender or exchange offer, unless the Plan Administrator has elected to pass the decision whether to tender or exchange shares through to Participants, in which case the Plan Administrator will deliver such items to each Participant whose account is invested in such shares. Within the time limit imposed by the Trustee or the Plan Administrator, if the right to tender or exchange shares is passed through to Participants, each Participant and Beneficiary may direct the Trustee in writing, or in any other manner permissible under the Trust Agreement, as to the number of shares of Qualifying Employer Securities that are allocated to his or her account that he or she wishes the Trustee to tender or exchange. The Trustee will follow

the timely written instructions (or, if the Trust Agreement so provides, the timely electronic or other instructions) of such Participants and Beneficiaries regarding the tender or exchange of such allocated shares of Qualifying Employer Securities, except to the extent that the Trustee has determined that following such instructions would result in a violation of the terms of the Plan, the Adoption Agreement or ERISA. With respect to allocated shares of Qualifying Employer Securities for which the Trustee or its Agent has not received timely written or other permissible tender or exchange instructions, and with respect to shares of Qualifying Employer Securities that have not been allocated to the accounts of Participants and Beneficiaries, the Trustee shall tender or exchange such shares in the same proportion as the allocated shares for which proper tender or exchange instructions are received are tendered or exchanged, or as provided in the Adoption Agreement, all in accordance with the applicable provisions of ERISA. The foregoing rules shall be subject to any applicable provisions of the Trust Agreement, the corporate law of the state governing the construction of the terms of the Trust Agreement and the terms of any such tender or exchange offer.

15.8 EXPENSES: Any administrative fees and expenses will be paid by the Trust except to the extent that such fees and expenses are paid by the Employer. If the Employer has elected in the Adoption Agreement to apply forfeitures to the payment of administrative expenses under the Plan, such fees and expenses will be paid from the forfeitures under the Plan, if any. Fees or expenses will be allocated to the accounts of Participants in any administratively reasonable manner. Approximations may be used whenever it is not feasible to allocate such expenses on an exact basis. The Employer may reimburse the Trust for any fees and expenses paid by the Trust. Such reimbursement shall not be deemed to be a contribution for purposes of Code Sections 404 and 415.

## ARTICLE 16: ADMINISTRATION OF THE PLAN

16.1 PLAN ADMINISTRATOR: The Employer will be the Plan Administrator for purposes of ERISA, and any reference in this document or the Adoption Agreement to the Plan Administrator means the Employer. The Employer may in the Adoption Agreement designate an individual or a group of individuals acting as a committee to act of the Employer's behalf in carrying out its duties as Plan Administrator. Such persons may, but need not, be Plan Participants or Employees, partners, or officers of the Employer. The Employer will notify the Trustee of any such appointment. The Employer may remove any such individual or committee member at any time with or without cause, by filing notice of his or her removal with the Trustee. Any such individual or committee member may resign at any time by filing his or her resignation with the Employer and the Trustee. A vacancy however arising, will be filled by the Employer. If the Employer does not appoint an individual or committee to act for the Employer, the Employer will carry out the responsibilities of the Plan Administrator. If the Employer is a sole proprietorship, in the event of the sole proprietor's death, his or her executor or administrator will be the Plan Administrator. If the Employer is a partnership, in the event of the death of all the partners, the executor or administrator of the last to die will be the Plan Administrator.

16.2 ADMINISTRATION OF PLAN: The Plan Administrator is a named fiduciary of the Plan and will be the agent for receiving service of legal process on the Plan. He or she will control and manage the operation and administration of the Plan and will have all powers and authority necessary or appropriate to carry out its provisions. He or she will interpret and apply all terms of the Plan to particular cases or circumstances. He or she will make all final determinations concerning eligibility and status of Employees, Participants, vested interests, the right to benefits and all other rights hereunder, and all other matters concerning Plan Administration and

interpretation. All determinations and actions of the Plan Administrator are conclusive and binding upon the Employer, Employees, Beneficiaries, and all other persons, except as otherwise provided herein or by law. The Plan Administrator will exercise his or her powers in a non-discriminatory manner and will apply uniform administrative rules of general application to insure that persons in similar circumstances are treated alike.

In the event of a mistake or misstatement as to the age, eligibility, years of service or participation of an Employee, or the amount of distribution(s) made or to be made to a Participant or Beneficiary, including distributions for hardship, the Plan Administrator or his or her delegate may make such adjustments (including in the case of overpayments, offsets, recoupment or reduction in benefit payments) to the extent the Plan Administrator or its delegate deems possible, and in the Plan Administrator's sole judgment, grant to such Participant the credits or distributions to which he or she is properly entitled under the Plan. In the event that this mistake requires that additional amounts be allocated to a Participant's account, upon notice from the Plan Administrator, the Employer shall make a supplemental contribution to the Plan.

16.3 REPORTING AND DISCLOSURE: The Plan Administrator will prepare, file, submit, distribute or make available any documents, plan descriptions, reports, statements, forms or other information to any government agency, Employee, former Employee, or Beneficiary as may be required by law or by the Plan.

16.4 RECORDS: The Plan Administrator will record his or her acts and decisions, and will prepare and maintain all data and records necessary or helpful to the Plan's administration. The Employer will supply all information required by the Plan Administrator to administer the Plan, and the Plan Administrator may rely upon the accuracy of such information.

16.5 COMPENSATION AND EXPENSES: The Plan Administrator will serve without compensation unless otherwise determined by the Employer, but no Employee of the Employer will be compensated for his or her service as Plan Administrator. All reasonable expenses of operating and administering the Plan will be paid by the Employer or from the assets of the Trust fund, as provided in Section 15.7. Such expenses include the compensation of all persons employed or retained by the Plan Administrator (such as attorneys, accountants, actuaries, or other consultants or specialists), premiums for insurance or bonds protecting the Plan or Trust and required by law or deemed advisable by the Plan Administrator, and all other fees, expenses or costs of Plan Administration.

16.6 CLAIMS PROCEDURE: Any request for benefits (the claim) by a Participant or his or her Beneficiary (the claimant) will be filed with the Plan Administrator. Within a reasonable period after receipt of a claim, the Plan Administrator will provide notice to any claimant whose claim has been wholly or party denied, including:

(a) the reasons for denial;

(b) the Plan provisions on which the denial is based;

(c) any additional material or information necessary to perfect the claim and the reasons it is necessary; and

(d) the plan's claims review procedure.

A claimant will be given a full and fair review by the Plan Administrator of the denial of his or her claim if he or she makes a request for review within sixty (60) days after notification of the denial. The claimant may review pertinent documents and may submit issues and comments. The Plan Administrator will render a decision on review promptly and will include specific reasons for the decision and references to the Plan provisions on which the decision is based.

16.7 MORE THAN ONE EMPLOYER: If more than one employer has adopted the plan, the Employer designated in Part A of the Adoption Agreement will be considered the Employer for purposes of exercising certain powers and administrative duties. In joining the plan, other employers delegate authority to such Employer to complete and select options in the Adoption Agreement and to select permissible investment media under Article 15; to designate the Plan Administrator and any other fiduciary; to amend or terminate the Plan without a separate instrument from each joining employer, provided that any such amendment or termination must apply equally to all adopting employers; to determine the appropriate basis under which Plan administrative expenses will be shared or to redelegate that authority to the Plan Administrator; and to take, or redelegate authority to the Plan Administrator to take, such other action as may be necessary for the efficient and proper administration of the Plan. Each joining employer will retain the authority to terminate the Plan for its own Employees. However, any amendment or termination of the Plan which does not uniformly apply to all members of a controlled group or affiliated service group or other aggregated group (within the meaning of Sections 19.9, 19.10 and 19.11 hereof) will cause any standardized plan to be considered a non-standardized plan so that the Employers may not rely upon the plan's qualification under Code Section 401(a) unless they obtain a determination letter to such effect from the Internal Revenue Service. Any entity shall cease to participate in the plan on the date on which it ceases to be a member of the same controlled group, affiliated service group or other aggregated group (within the meaning of Sections 19.9, 19.10 and 19.11, respectively) as the Employer designated in Part A of the Adoption Agreement.

16.8 CORRECTION OF ADMINISTRATIVE ERRORS. The Plan Administrator shall take such steps as it considers necessary and appropriate to remedy any inequity that results from incorrect

information received or communicated in good faith, or as a consequence of administrative or operational error. Such steps may include, but shall not be limited to, taking any action required under the employee plans compliance resolution system of the Internal Revenue Service, any asset management or fiduciary conduct error correction program available through the Department of Labor, any similar correction program instituted by the IRS, DOL or other administrative agency, reallocation of Plan assets, adjustments in amount of future payments to Participants and Beneficiaries, and institution and prosecution of actions to recover benefit payments made in error or on the basis of incorrect or incomplete information.

## ARTICLE 17: AMENDMENT, TERMINATION OR MERGER OF PLAN

17.1 AMENDMENT BY SPONSOR: The Sponsor may amend any or all provisions of this Prototype Plan at any time without obtaining the consent of the Employer, and the Employer (and each other adopting employer) hereby expressly delegates authority to amend this Plan to the Sponsor.

17.2 AMENDMENT BY EMPLOYER: Except for (a) changes of design options selected in the Adoption Agreement, (b) amendments stated in the Adoption Agreement which allow the Plan to satisfy Section 415 of the Code or to avoid duplication of minimums under Section 416 of the Code because of the required aggregation of multiple plans, and (c) adding certain model amendments published by the Internal Revenue Service which specifically provide that their adoption will not cause the Plan to be treated as individually designed, if the Employer amends the Plan or non-elective portions of the Adoption Agreement, for any other reason, it will no longer participate in this prototype plan, but will be considered to have an individually designed plan.

17.3 RESTRICTIONS ON AMENDMENTS: No amendment under Section 17.1 or 17.2 will:

(a) cause or permit any part of the assets of the Trust to be diverted to purposes other than the exclusive benefit of Participants and their Beneficiaries, or cause or permit any portion of such assets to revert to or become the property of the Employer;

(b) retroactively deprive any Participant of any benefit to which he or she was entitled hereunder by reason of contributions made by the Employer or the Participant before the amendment, unless such amendment is necessary to conform the Trust or Plan to, or satisfy the conditions of any law, governmental regulation or ruling or to permit the Plan and Trust to meet the requirements of Sections 401(a) and 501(a) of the Code;

(c) decrease a Participant's account balance, except to the extent permitted under Section 412(c)(8) of the Code. For purposes of this paragraph, a Plan amendment which has the effect of decreasing a Participant's account balance, with respect to benefits attributable to service before the amendment shall be treated as reducing an accrued benefit;

(d) if the vesting schedule of a Plan is amended, for an Employee who is a Participant as of the later of the date such amendment is adopted or the date it becomes effective, cause the nonforfeitable percentage (determined as of such date) of such Employee's right to his or her Employer-derived accrued benefit to be less than his percentage computed under the Plan without regard to such amendment; also, in the event of an amendment affecting the vesting schedule of the Employer's Plan, any Participant with three or more Years of Service will have his or her vesting determined under the pre-amendment vesting schedule if this would result in such Participant having a greater vested interest than under the amended vesting schedule.

(e) eliminate or restrict an optional form of benefit. The preceding sentence shall not apply to a Plan amendment that eliminates or restricts the ability of a Participant to receive

payment of his or her account balance under a particular optional form of benefit if the amendment satisfies the conditions in (1) and (2) below:

(1) The amendment provides a single-sum distribution form that is otherwise identical to the optional form of benefit eliminated or restricted. For purposes of this condition (1), a single-sum distribution form is otherwise identical only if it is identical in all respects to the eliminated or restricted optional form of benefit (or would be identical except that it provides greater rights to the Participant) except with respect to the timing of payments after commencement.

(2) The amendment is not effective unless the amendment provides that the amendment shall not apply to any distribution with an annuity starting date earlier than the earlier of: (i) the 90th day after the date the Participant receiving the distribution has been furnished a summary that reflects the amendment and that satisfies the ERISA requirements at 29 C.F.R. Section 2520.104-2 relating to a summary of material modifications or (ii) the first day of the second Plan Year following the Plan Year in which the amendment is adopted.

(f) increase or otherwise affect the duties, liabilities or rights of the Trustee unless the Trustee consents thereto.

17.4 TERMINATION OF PLAN: The Employer has established this Plan with the bona fide expectation and intention that it will continue to make contributions indefinitely. However, circumstances not now foreseen or beyond the control of the Employer may make it impossible or inadvisable for the Employer to continue the Plan. The Employer may, therefore, in its discretion, discontinue contributions or terminate the Plan completely or partially at any time with respect to its Employees by delivering to the Trustee a notice of complete or partial

termination specifying the date of termination of the Plan and in the case of a partial termination the Participants affected by such partial termination. The Employer will be deemed to have completely terminated the Plan in the case of (a) complete discontinuance of contributions or (b) termination of the Employer's legal existence. The Employer will incur no liability to any person as a result of any discontinuance of contributions or complete or partial termination of the Plan. In the event of a termination or partial termination of the Plan, or in the event of complete discontinuance of contributions under a profit-sharing plan, the account balance of each affected Employee will be fully vested and nonforfeitable.

17.5 DISPOSITION AND TERMINATION OF TRUST:

(a) Upon complete or partial termination of the Plan, the Plan Administrator will determine subject to the joint and survivor rules of this plan, whether to direct the Trustee to continue to hold the accounts of Participants affected by the termination or partial termination, to disburse them as immediate benefit payments, to purchase immediate or deferred annuity contracts, or to follow any other procedure he deems advisable. The Trustee will follow the directions of the Plan Administrator.

(b) The Trust created hereunder will terminate when all the assets of the Trust have been distributed.

17.6 MERGER OF PLANS: A merger or consolidation with, or transfer of assets or liabilities to, any other plan will be permitted only if the benefit each Participant would receive if the Plan were terminated immediately after the merger, consolidation or transfer is not less than the benefit he or she would have received if the Plan had terminated immediately before the merger, consolidation or transfer.

## ARTICLE 18: TRANSFERS FROM OR TO OTHER QUALIFIED PLANS

18.1 TRANSFERS FROM ANOTHER PLAN OF THE EMPLOYER:

(a) Notwithstanding any other provision hereof, the Employer may cause to be transferred to the Trustee all or any of the assets held (whether by a trustee, custodian, or otherwise) under any other defined contribution plan which satisfies the requirements of Section 401(a) of the Code and which is maintained by the Employer for the benefit of any of the Participants hereunder. If the Trustee is keeping separate accounts for each Participant, any such assets so transferred will be accompanied by instructions from the Employer or Plan Administrator naming the Participants for whose benefit such assets have been transferred and showing separately the respective contributions by the Employer and by the Participants and the current value of the assets attributable thereto.

(b) Upon receipt of any assets transferred to it under subsection (a), the Trustee may sell any non-cash assets and invest the proceeds and any cash transferred to it. The Trustee will make appropriate credits to the proper accounts in accordance with the Employer's or Plan Administrator's instructions.

18.2 TRANSFERS TO OTHER PLANS: Upon the request of the Employer, the Trustee will transfer an amount designated by the Employer to the Trustee or custodian of any other qualified plan under which Plan Participants are covered. With the consent of the Plan Administrator and the plan administrator of the transferee plan, a Participant described in Section 7.2(a)(1) may make a Distribution Elective Transfer of his or her account balance under this Plan to the trustee or custodian of any other qualified plan under which such Participant is or will become covered as a participant. With the consent of the Plan Administrator and the plan administrator of the transferee plan, a Participant described in Section 7.2(a)(2) may make an Elective Plan Transfer

of his or her account balance under this Plan to the trustee or custodian of any other qualified defined contribution plan of the same type (as described in Section 7.2(a)(2)(iii).

## ARTICLE 19: MISCELLANEOUS

19.1 PROHIBITED DIVERSION: Except as provided in Section 19.6, no portion of the corpus or income of the Trust will be used or diverted to purposes other than for the exclusive benefit of Participants, former Participants and their Beneficiaries, and to defray administrative expenses of the Plan and Trust. However, payment of sales charges, administrative expenses and taxes from the Trust assets is expressly permitted.

No contract will be purchased under the Plan unless such contract or a separate agreement between the Employer and the insurer provides that: (1) no value under contracts providing benefits under the Plan or credits determined by the insurer (on account of dividends, earnings, or other experience rating credits, or surrender or cancellation credits) with respect to such contracts may be paid or returned to the Employer or diverted to or used for other than the exclusive benefit of the Participants or their Beneficiaries. However, any contribution made by the Employer because of a mistake of fact must be returned to the Employer within one year of the contribution. If this Plan is funded by individual contracts that provide a Participant's benefit under the Plan, such individual contracts shall constitute the participant's account balance. If this plan is funded by group contracts, under the group annuity or group insurance contract, premiums or other consideration received by the insurance company must be allocated to Participants' accounts under the Plan.

19.2 FAILURE TO ATTAIN OR RETAIN QUALIFICATION: If the employer's plan fails to attain or retain qualification, such plan will no longer participate in this prototype plan and will be considered an individually designed plan.

19.3 NONALIENATION:

(a) In General. Except as provided in subsection (b) and Section 19.4, no benefit or interest of any participant, former Participant or Beneficiary hereunder will be subject to assignment or alienation, either voluntary or involuntary.

(b) Exceptions. The following shall not be precluded by the operation of subsection (a) hereof:

(1) the withholding of income taxes from distributions (whether by legal mandate or by election of the prospective distributee;

(2) the pledge by a borrower from the Plan (and foreclosure on the pledged amount by the lender or other holder of the borrower's debt obligation) of any portion of his or her interest in the Plan as security for the repayment of the amounts borrowed, pursuant to Section 12.5, interest payable in respect thereto, and costs and expenses associated therewith;

(3) any arrangement for the recovery by the Plan of overpayments of benefits previously made to or for the benefit of the Participant or other person with respect to whom such an arrangement applies;

(4) transfer of any eligible rollover distribution amount from the Plan to any other benefit plan qualified under section 401(a) of the Code or to an individual retirement arrangement established under section 408 of the Code;

(5) direct deposit arrangements with respect to benefits if the direct deposits are authorized by such arrangement is to an account of the payee (or a joint account of the payee and his or her spouse) at a bank or other financial institution;

(6) any assignment or alienation of benefits in pay status to the extent that such assignment or alienation (i) is voluntary and revocable, (ii) is not for the purpose of, nor has the effect of, defraying plan administration costs; and (iii) does not, when combined with all other such assignments in the aggregate, exceed ten percent of any benefit payment;

(7) any assignment to the Employer if (i) such assignment is revocable at any time, and (ii) the Employer files with the Plan Administrator an acknowledgement meeting the requirements of Treas. Reg.Section1.401(a)-13(e)(2) (or a successor regulation of similar purpose);

(8) the enforcement of a federal tax levy made pursuant to section 6331 of the Code or the collection by the United States on a judgment resulting from an unpaid tax assessment; and

(9) any amount that a Participant is ordered or required to pay to the Plan if the order or requirement to pay arises under (A) a judgment or conviction for a crime involving the Plan, (B) a civil judgment (including a consent order or decree) entered by a court in an action brought in connection with a violation or alleged violation of Part 4 of Title I of ERISA by a fiduciary or any other person, or (C) a settlement agreement between the Secretary of Labor and the Participant or a settlement; the judgment, order, decree or settlement agreement expressly provides for the offset of all or part of the amount ordered or required to be paid to the Plan against the Participant's account under

the Plan and, if applicable, the requirements of Section 401(a)(13)(C)(iii) of the Code are satisfied.

19.4 QUALIFIED DOMESTIC RELATIONS ORDERS:

(a) A qualified domestic relations order (QDRO) is a judgment, decree, or order which meets the requirements of Code Section 414(p). An Alternate Payee is an individual named in the QDRO who is to receive some or all of the participant's benefit.

(b) Upon receipt of an order which appears to be a QDRO, the Plan Administrator will notify the Participant involved and each Alternate Payee under the order (and under any previous QDRO covering the participant's benefits). The Plan Administrator will determine whether the order is a QDRO and will notify each affected individual of his or her determination. In general, the Plan's claims procedure rules under Section 16.6 apply to this determination and any subsequent determination relating to the order. In applying these rules, an individual who is or may be an Alternate Payee enjoys the status of a claimant. However, the Plan Administrator may take any action or delay contemplated in Code Section 414(p) and the regulations under it, whether or not contemplated in the Plan's claims procedure rules.

(c) To the maximum extent permitted by law, the Plan Administrator's determination that an order is or is not a QDRO is final. Any subsequent change in this determination is applied only prospectively, unless the Plan Administrator rules otherwise.

(d) Certain conflicts between a domestic relations order and the Plan's provisions will cause the order to fail to be a QDRO. However, once an order is determined to be a QDRO, the provisions of the QDRO take precedence over any conflicting provisions of the Plan.

(e) Except as otherwise provided under the terms of the QDRO, all benefits under a QDRO will be payable in the form of a single sum commencing as soon as practicable after the

Plan Administrator determines that a domestic relations order is a QDRO. For purposes of determining the accounts from which benefits under a QDRO will be distributed, the Trustee will distribute a pro rata amount from each of the Participant's Employer Contribution, After-Tax Savings Contribution, 401(k) Savings Contribution, Matching Contribution, rollover contribution, and all other accounts maintained on behalf of the Participant, unless the QDRO otherwise provides. To the extent provided in a QDRO (assuming that the QDRO does not provide for the form of distribution described in the preceding sentence), a former spouse will be treated as the spouse or surviving spouse of a Participant for purposes of the spousal protection and any other relevant provisions of the Plan.

(f) A domestic relations order entered before January 1, 1985, will be treated as a QDRO if payment of benefits pursuant to the order has commenced as of that date. At the Plan Administrator's discretion, it may be treated as a QDRO if payment of benefits has not commenced as of that date, even though the order does not satisfy the requirement of Code Section 414(p).

19.5 LIMITATION ON RIGHTS CREATED BY PLAN:

(a) The adoption and maintenance of the Plan and Trust will not be construed to give a Participant the right to continue in the employ of the Employer or to interfere with the right of the Employer to discharge, lay off or discipline a Participant at any time, or give the Employer the right to require any Participant to remain in its employ or to interfere with the Participant's right to terminate his or her employment.

(b) The adoption and maintenance of the Plan and Trust, the creation of any account or the payment of any benefit will not be construed as creating any legal or equitable right against the Employer or the Trust except as this Plan specifically provides.

(c) The Employer, the Trustee, the Plan Administrator and the Sponsor do not guaranty the payment of benefits hereunder and benefits will be paid only to the extent of the assets of the trust. It is a condition of participation in the Plan that each Participant (and his or her Beneficiary or anyone else claiming through him or her) will look only to the assets of the Trust for the payment of any benefit to which he or she or his or her Beneficiary or other person is entitled.

19.6 ALLOCATION OF RESPONSIBILITIES: The Employer, the Trustee and the Plan Administrator will each have only those duties and responsibilities specifically allocated to each of them under the Plan. There will be no joint fiduciary responsibility between or among fiduciaries unless specifically stated otherwise. Any person may serve in more than one fiduciary capacity.

19.7 RETURN OF CONTRIBUTIONS:

(a) If the Commissioner of Internal Revenue determines that the Plan is not initially qualified under the Code, any contribution made conditionally subject to such initial qualification will be returned to the Employer if demand therefor is made within one year after the date initial qualification is denied, but only if application for a determination concerning the Plan's initial qualification was made within the time prescribed by law for filing the Employer's tax return for the taxable year in which the Plan was adopted or within such longer time as the Secretary of the Treasury may prescribe.

(b) All Employer contributions are conditioned upon their deductibility under Code Section 404. A contribution which is made because of a mistake of fact or the deduction of which is disallowed, will be returned to the Employer within one year thereafter.

(c) If the Trustee is keeping separate accounts for each Participant, Participants' accounts will be adjusted in accordance with instructions from the Plan Administrator to the Trustee to reflect any returns under this Section 19.6.

19.8 CURRENT ADDRESS OF PAYEE: The Plan Administrator shall make reasonable efforts to locate any Participant, Beneficiary, or Alternate Payee to whom benefits are required to be paid under the terms of the Plan or applicable law. If, as a result of the exercise of reasonable efforts to locate any such person, the plan administrator is unable to locate such person, unless otherwise provided in the Adoption Agreement, the Plan Administrator shall forfeit such person's benefit, which benefit will be reinstated if a claim is made by the Participant or Beneficiary.

19.9 CONTROLLED GROUP: All employees of all corporations which are members of a controlled group of corporations (as defined in Section 414(b) of the Code) and all employees of all trades or businesses, whether or not incorporated, which are under common control (as defined in Section 414(c) of the Code) will be treated as employed by a single employer.

19.10 AFFILIATED SERVICE GROUPS: All employees of all members of an affiliated service group (as defined in Section 414(m) of the Code) will be treated as employed by a single employer.

19.11 OTHER AGGREGATED GROUPS: Employees of employers which are aggregated in accordance with regulations under Code Section 414(o) will be treated as employed by one employer to the extent provided in such regulations.

19.12 LEASED EMPLOYEES: Any Leased Employee shall be treated as an Employee of the recipient employer. The term "Leased Employee" means any person (other than an Employee of the recipient) who pursuant to an agreement between the recipient and any other person ("leasing organization") has performed services for the recipient (or for the recipient and related persons determined in accordance with section 414(n)(6) of the Code) on a substantially full time basis

for a period of at least one year, and such services are performed under the primary direction and control by the recipient employer. Contributions or benefits provided a Leased Employee by the leasing organization which are attributable to services performed for the recipient employer shall be treated as provided by the recipient employer.

A Leased Employee shall not be considered an Employee of the recipient if: (i) such Employee is covered by a money purchase pension plan providing: (1) a nonintegrated employer contribution rate of at least 10 percent of compensation, as defined in section 415(c)(3) of the Code, but including amounts contributed pursuant to a salary reduction agreement which are excludable from the Employee's gross income under section 125, section 402(e)(3), section 402(h)(1)(B) or section 403(b) of the Code, (2) immediate participation, and (3) full and immediate vesting; and (ii) Leased Employees do not constitute more than 20 percent of the recipient's nonhighly compensated workforce.

19.13 APPLICATION OF PLAN'S TERMS:

(a) If an Employee retired, died or otherwise terminated his or her service before the effective date of the Employer's Plan, the Employee and his or her Beneficiaries will receive no benefits and will have no rights under the Plan.

(b) If an Employee retires, dies or otherwise terminates his or her service on or after the effective date of the Employer's Plan, the benefits and rights of the Employee and his or her Beneficiaries will be determined in accordance with the terms of the Plan that are in effect on the date of such termination of service.

(c) The allocations to a Participant's account for any year of reference will be determined in accordance with the terms of the Plan that are in effect for such year.

19.14 RULES OF CONSTRUCTION:

(a) This Plan is intended to qualify as a profit sharing plan or a pension plan under Section 401(a) of the Code to be an eligible individual account plan as defined in Section 407(d)(3) of ERISA, and to comply with all applicable requirements of both statutes. The terms of the plan will be construed to carry out this intent.

(b) A word or phrase defined or explained in any section has the same meaning throughout the Plan unless the context indicates otherwise.

(c) Where the context so requires the masculine includes the feminine, the singular includes the plural, and the plural includes the singular.

(d) Unless the context indicates otherwise, the words "herein", "hereof", "hereunder", and words of similar import refer to the Plan as a whole and not only to the section in which they appear.

(e) Headings and titles are for convenience only, and the text will control in all matters.

(f) Reference to any section of the Code or ERISA includes reference to a similar provision of a successor statute.

19.15 GOVERNING LAW: To the extent that state law applies, the provisions of the Plan will be construed enforced and administered according to the laws of the state where the principal offices of the Trustee are located.

19.16 PAYMENT FOR MINOR OR INCOMPETENT: In the event that any amount is payable under the plan to a minor or to any person deemed by a court of competent jurisdiction to be incompetent, either mentally or physically, such payment shall be made for the benefit of such minor or incompetent person by payment to a person who has been designated by a court of competent jurisdiction to receive such amount.

# THIRD AMENDMENT TO REVOLVING CREDIT PROGRAM AGREEMENT

This Third Amendment to Revolving Credit Program Agreement is made as of the 19th day of June, 2002 (the "Amendment"), by and between Conseco Bank, Inc. ("Conseco Bank") and Select Comfort Corporation ("Select Comfort").

Whereas the Conseco Bank (as assignee of Green Tree Financial Corporation) and Select Comfort entered into a Revolving Credit Program Agreement dated May 17, 1999, as amended on February 20, 2001 and April 13 2001, also referred to as Program Agreement, (the "Agreement") governing the terms and conditions under which Conseco Bank would provide a Program (as defined in the Agreement, provided furthermore, that all capitalized terms used herein shall have the meaning attributable to them in the Agreement, unless otherwise defined herein) to Select Comfort's customers;

Whereas, the Agreement provides for a Reserve Account of One Million Dollars ($1,000,000.00) in cash held by Conseco Bank as collateral for Chargeback Liability;

Whereas, the parties hereto desire to amend the agreement so that the cash can be exchanged for a Standby Letter of Credit (the "Letter of Credit");

Now, therefore, in consideration of the above premises and the mutual considerations contained herein the parties hereto agree to amend the Agreement as follows:

1. Upon receipt of the Letter of Credit in the amount of ONE MILLION DOLLARS ($1,000,000.00), in form acceptable to Conseco Bank (substantially in the form of Exhibit A attached hereto), Conseco Bank will release to Select Comfort funds in the Reserve Account in the amount of ONE MILLION DOLLARS ($1,000,000.00), plus any accrued but unpaid interest thereon as provided in the Agreement and thereafter the provisions of Section 4.05(d) will terminate and the provisions of Section 4.05 (e) will apply only as provided in Section 4.05(f).

2. Sections 4.05 of the Agreement is amended by adding new Section 4.05(f), which shall read as follows: "Section 4.05(f). To permit the release to Select Comfort of the funds held in the Reserve Account and to still insure the performance and payment of Select Comfort's Chargeback Liability to Conseco Bank under Section 4.05(b) and Section 5, Select Comfort shall cause to be issued to Conseco Bank on or before execution of this Amendment a Letter of Credit, in form and from a bank acceptable to Conseco Bank (substantially in the form of Exhibit A attached hereto) in the amount of ONE MILLION DOLLARS ($1,000,000.00) naming Conseco Bank as beneficiary of the Letter of Credit. If both that Select Comfort defaults in paying any Chargeback Liability to Conseco Bank and Conseco Bank is unable to set off such Chargeback

Liability against amounts owing Select Comfort, Conseco Bank may make draws (multiple draws if necessary) on the Letter of Credit for such unpaid Chargeback Liability of Select Comfort. In the event that the Letter of Credit is not renewed or replaced for the then current undrawn amount prior to the expiry date of the Letter of Credit, Conseco Bank may draw upon the whole amount of the Letter of Credit and deposit the proceeds thereof in the Reserve Account where the funds will be subject to the provisions of 4.05(e). The proceeds of the Letter of Credit shall at all times be construed as a continuation of the collateral in which Select Comfort granted a security interest in pursuant to Section 4.05(e). Upon the earlier of (i) ninety (90) days after termination of this Agreement or (ii) when Select Comfort purchases the Accounts pursuant to Section 8.03, then in each case, Conseco Bank shall either surrender the Letter of Credit to Select Comfort or the issuing Bank or otherwise authorize the termination of the Letter of Credit as Select Comfort may direct."

3. Select Comfort expressly agrees that 1) Conseco Bank's release to Select Comfort of the funds in the Reserve Account as provided herein and the replacement thereof with the issuance of the Letter of Credit is done at the request of Select Comfort to allow it free access to such funds, and 2) the replacement of the funds in the Reserve Account with the issuance of the Letter of Credit and the proceeds thereof is a continuation of equivalent value of Conseco Bank's collateral in which Select Comfort granted a security interest pursuant to Section 4.05(e) and shall not be construed as the giving of any greater value or preference to Conseco Bank as a creditor than it had before this Amendment.

4. Except as expressly amended herein, all terms and conditions of the Agreement shall remain in full force and effect. Nothing herein shall constitute a waiver of any of Conseco Bank's rights and remedies under the Agreement or be construed as a course of conduct to grant any waiver of any of Conseco Bank's rights and remedies under the Agreement in the future.

5. This Amendment may be executed in any number of counterparts and delivered by facsimile, all of which shall constitute but one and the same original.

In witness hereof, the parties hereto have executed this Amendment as of the first date written above.

| | |
|---|---|
| CONSECO BANK, INC. | SELECT COMFORT CORPORATION |
| By: /s/ | By: Mitch Johnson |
| Its: SVP and CFO | Its: VP Tax, Treasury and Insurance |

SELECT COMFORT
EXECUTIVE INVESTMENT PLAN

TABLE OF CONTENTS

ADOPTION CERTIFICATE

Select Comfort Corporation hereby adopts the Select Comfort Executive Investment Plan in the form attached hereto pursuant to the authority granted by Select Comfort Corporation's Board of Directors.

SELECT COMFORT CORPORATION

Attest: By

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Secretary Its ----------

December , 2002

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# SELECT COMFORT
# EXECUTIVE INVESTMENT PLAN

As Adopted Effective as of December 20, 2002

SELECT COMFORT
EXECUTIVE INVESTMENT PLAN

ARTICLE 1.
DESCRIPTION

1.1 PLAN NAME.

The name of the Plan is the "Select Comfort Executive Investment Plan."

1.2 PLAN PURPOSE.

The purposes of the Plan are to:

(a) assist the Participating Employers in attracting and retaining Qualified Employees,

(b) provide a tax-deferred capital accumulation vehicle for Qualified Employees, and

(c) encourage additional retirement savings by Qualified Employees

1.3 PLAN TYPE.

The Plan is an unfunded plan maintained primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees. It is intended that the Plan is exempt from the provisions of Parts 2, 3 and 4 of Subtitle B of Title I of ERISA by operation of sections 201(2), 301(a)(3) and 401(a)(4) thereof, respectively, and from the provisions of Title IV of ERISA, to the extent otherwise applicable, by operation of section 4021(b)(6) thereof. The Plan is also intended to be unfunded for tax purposes. The Plan will be construed and administered in a manner that is consistent with and gives effect to the foregoing.

1.4 PLAN EFFECTIVE DATE.

The Plan is effective as of December 20, 2002.

## ARTICLE 2.
## PARTICIPATION

2.1 ELIGIBILITY.

(a) First Day of Plan Year. Prior to the beginning of each Plan Year, the Administrator will determine which Qualified Employees, if any, are eligible to defer Base Salary pursuant to Section 3.2(a) and Bonus pursuant to Section 3.2(b) with respect to the Plan Year.

(b) During Plan Year. At any time during a Plan Year, the Administrator may determine that an individual who becomes a Qualified Employee after the first day of a Plan Year is eligible to defer Base Salary pursuant to Section 3.2(a) and Bonus pursuant to Section 3.2(b) with respect to the remainder of the Plan Year.

(c) Annual Determination. The fact that an individual has been eligible to make deferral elections with respect to any particular Plan Year does not give the individual any right to make deferral elections with respect to any other Plan Year.

2.2 LOSS OF ELIGIBILITY.

(a) Reasons.
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(i) Ceasing to be Qualified Employee. An Active Participant will cease to be eligible to defer Base Salary and Bonus as of the date on which he or she ceases to be a Qualified Employee.

(ii) Unforeseeable Emergency. A Participant who, pursuant to Section 3.2(b)(iii), has revoked a deferral election of Bonus in connection with an Unforeseeable Emergency, or pursuant to Section 4.1(a), has received a distribution due to an Unforeseeable Emergency, is not eligible to defer Base Salary or Bonus with respect to the remainder of the Plan Year during which the revocation occurs or the distribution is received, as the case may be, and the immediately following Plan Year.

(iii) 401(k) Hardship Withdrawal. A Qualified Employee who receives a hardship withdrawal from a 401(k) plan maintained by a Participating Employer, or by any other employer required to be aggregated with the Participating Employer under Code section 414(b), (c), (m) or (o), is not eligible to defer Base Salary or Bonus under the Plan to the extent required to comply with the terms of the 401(k) Plan.

(b) Affect on Deferral Elections. An Active Participant who, pursuant to Subsection (a), loses his or her eligibility to defer for a Plan Year is not eligible for further deferral credits relating to deferral elections made pursuant to Section 3.2 for the Plan Year other than credits relating to Base Salary with respect to the period before the loss of eligibility, and any other Base Salary or Bonus that would have otherwise been deferred in connection with a deferral election made pursuant to Section 3.2 for the Plan Year will be paid to the Participant as if he or she had not made the deferral election.

2.3 TRANSFER AMONG PARTICIPATING EMPLOYERS.

An Active Participant who transfers employment from one Participating Employer to another Participating Employer and who continues to be a Qualified Employee after the transfer will, for the duration of the Plan Year during which the transfer occurs, continue to participate in the Plan, in accordance with the election in effect for the portion of the Plan Year before the transfer, as a Qualified Employee of such other Participating Employer.

2.4 MULTIPLE EMPLOYMENT.

An Active Participant who is simultaneously employed as a Qualified Employee with more than one Participating Employer will participate in the Plan as a Qualified Employee of all such Participating Employers on the basis of a single deferral election pursuant to Section 3.2 applied ratably to his or her Base Salary or Bonus from each Participating Employer if his or her deferral election was made in a dollar amount or applied separately to his or her Base Salary or Bonus from each Participating Employer if his or her deferral election was made in a percentage.

2.5 CONDITIONS OF PARTICIPATION.

Each Qualified Employee, as a condition of participation in the Plan, is bound by all the terms and conditions of the Plan and the Plan Rules, and must furnish to the Administrator such pertinent information and execute such election forms and other instruments as the Administrator or Plan Rules may require by such dates as the Administrator or Plan Rules may establish. All elections, directions, designations and similar actions required in connection with the Plan must be made in accordance with and are subject to the terms of the Plan and Plan Rules.

2.6 TERMINATION OF PARTICIPATION.

A Participant will cease to be such as of the date on which he or she is not then eligible to make deferrals and his or her entire vested Account balances have been distributed.

ARTICLE 3.
BENEFITS

3.1 PARTICIPANT ACCOUNTS.

(a) Participant Accounts. For each Participant, the Administrator will establish and maintain one or more separate bookkeeping accounts as follows:

(i) deferrals elected by the Participant pursuant to Section 3.2 will be credited to his or her Savings Account; and

(ii) credits made on the Participant's behalf (if any) pursuant to Section 3.3 will be credited to his or her Retirement Account,

3.2 PARTICIPANT DEFERRAL CREDITS.

(a) Base Salary. Base Salary deferrals will be made in accordance with the following rules:

(i) An Active Participant may elect to defer his or her Base Salary for a Plan Year from a minimum percentage or dollar amount to a maximum percentage or dollar amount, as specified in Plan Rules. Plan Rules may specify minimum and maximum deferral amounts for a Plan Year, any period within a Plan Year or both.

(ii) An election made pursuant to this subsection will not be effective unless it is made on a properly completed election form received by the Administrator by a date specified by the Administrator which is prior to the first day of the Plan Year to which the election relates or, in the case of an individual who becomes eligible to participate after the first day of a Plan Year, within 30 days after he or she becomes eligible to participate.

(iii) An Active Participant may revoke a deferral election made pursuant to this subsection at any time. The revocation will be effective as of the first payroll period that follows by at least 30 days (or such shorter period as Plan Rules may allow) the Administrator's receipt of a properly completed form. Upon making a revocation, the Active Participant will be unable to make further deferrals of Base Salary until the next Plan Year.

(v) Any election pursuant to this subsection applies only to Base Salary relating to services performed after the effective date of the election.

(b) Bonus. Bonus deferrals will be made in accordance with the following rules:

(i) An Active Participant may elect to defer all or any portion of his or her Bonus for the Plan Year from a minimum percentage or dollar amount to a maximum percentage or dollar amount, as specified in Plan Rules.

(ii) An election made by an Active Participant pursuant to this subsection will not be effective unless it is made on a properly completed election form received by the Administrator by a date specified in Plan Rules but not later than 30 days after the date on which the Company or Participating Employer officially announces the terms of the bonus plan and its application to the Active Participant for such Plan Year or, in the case of an individual who becomes a Qualified Employee after the date the bonus plan is announced, within 30 days after he or she becomes a Qualified Employee.

(iii) An Active Participant may revoke a deferral election made pursuant to this subsection after the election becomes effective if, and only if, the Participant submits a written request to the Administrator and the Administrator determines that the Participant has

experienced an Unforeseeable Emergency. The revocation will be effective as soon as administratively practicable after the Administrator's determination that the Participant has experienced an Unforeseeable Emergency.

(iv) Notwithstanding the foregoing provisions of this Subsection (b), an Active Participant may elect to defer all or any portion of his or her Bonus that is to be determined and paid to such Active Participant in 2003, by submitting a properly completed election form to the Administrator by December 20, 2002.

(c) Administrative Reduction. The Administrator may reduce the amount of any deferral that would otherwise be made pursuant to this section to the extent determined by the Administrator to be necessary to effect any required payroll withholding, contributions or deferrals pursuant to any other plan maintained by any Affiliate or any other deductions. In addition, Plan Rules may specify individual or aggregate annual or lifetime deferral limitations.

(d) Allocation to Savings Account. An Active Participant's deferrals pursuant to this section will

be allocated to his or her Savings Account.

(e) Timing of Credits. Deferrals of an Active Participant's Base Salary and Bonus pursuant to this section will be credited to his or her Savings Account as of the date on which the Participant would have otherwise received the Base Salary or Bonus but for his or her deferral election pursuant to this section.

3.3 PARTICIPATING EMPLOYER CREDITS

A Participating Employer may from time to time credit the Retirement Account of any Participant with an amount determined by the Participating Employer. If a Participating Employer chooses to make such a credit, the Company will provide the Participant with a written notice that specifies the amount of the credit, the timing of the credit and, any conditions that the Participant must satisfy to be entitled to the credit. Credits pursuant to this subsection will be made, if at all, on a Participant-by-Participant basis. If a Participating Employer chooses to credit the Retirement Account of a Participant pursuant to this subsection, the Participating Employer is not, as a result, required to make any credit to the Retirement Account of any other Participant, whether or not he or she is otherwise similarly situated.

3.4 EARNINGS CREDITS.

(a) Designation of Investment Funds. The Administrator will designate two or more investment funds which will serve as the basis for determining adjustments pursuant to this section. The Administrator may, from time to time, designate additional investment funds or eliminate any previously designated investment funds. The designation or elimination of a fund pursuant to this subsection is not a Plan amendment. The Administrator will not be responsible in any manner to any Participant or other person for any damages, losses, liabilities, costs or expenses of any kind arising in connection with any designation or elimination of an investment fund.

(b) Participant Direction. A Participant must direct the manner in which amounts credited to his or her Accounts pursuant to Section 3.2 or 3.3 will be deemed to be invested among the investment funds designated pursuant to Subsection (a). Amounts will be deemed to be invested in accordance with the Participant's direction on or as soon as administratively practicable after the amounts are credited to the Participant's Account. To the extent a Participant fails to direct the manner in which amounts credited to his or her Accounts will be deemed to be invested, such amounts will deemed to be invested in the manner specified in Plan Rules.

(c) Change in Direction for Future Credits. A Participant may direct a change in the manner in which future credits to his or her Accounts pursuant to Section 3.2 or 3.3 will be deemed to be invested among the investment funds designated pursuant to Subsection (a). The direction will be effective

for deferrals credited to the Participant's Account pursuant to Section 3.2 or 3.3 at least 30 days (or such shorter period as Plan Rules may allow) after the date on which the Administrator receives the direction from the Participant.

(d) Change in Direction for Existing Account Balance. A Participant may direct a change in the manner in which his or her existing Account balances are deemed to be invested among the investment funds designated pursuant to Subsection (a). The direction will be effective as soon as administratively practicable after the date on which the Administrator receives the direction from the Participant.

(e) Account Adjustment. As of the close of business on each day on which the New York Stock Exchange is open for regular business, the Administrator will cause Participants' Accounts to be separately adjusted, in a manner determined by the Administrator to be uniform and equitable, to reflect the income, expense, gains, losses, fees and the like (other than taxes) that would have resulted since the last adjustment had the Participant's investment directions pursuant to this section actually been implemented. For purposes of this subsection, an amount will be deemed to have been invested in accordance with a Participant's direction by the fifth business day after (i) the date on which the amount is credited to the Participant's Account in the case of a direction pursuant to Subsection (b) or Subsection (c) or (ii) the effective date of a direction pursuant to Subsection (d). To the extent determined by the Administrator to be necessary in conjunction with any distribution pursuant to the Plan, the Administrator will cause the Account from which the distribution is to be made to be adjusted to reflect a good faith estimate by the Administrator of any fees and other expenditures payable after the date of the distribution in connection with deemed investment activity in the Account through and including the date of the distribution. Any such estimate is binding on the Participating Employer and the person to whom the distribution is made.

(f) Obligations and Responsibilities of Administrator. The sole obligation of the Administrator with respect to the designation or elimination of any investment fund designated pursuant to Subsection (a) is to act in accordance with the express terms of Subsection (a). By way of example and without limiting the previous sentence, the Administrator is not required, and no course of conduct will cause it to be required, to investigate or monitor any designated fund to any extent or for any purpose or to take or refrain from taking any action with respect to a fund because of any aspect of the performance of the fund. The designation of a limited number of investment funds is solely for administrative convenience and in no way reflects any endorsement of any such funds by the Administrator.

(g) Deemed Investment. Trust assets are not required to be invested in accordance with a Participant's directions and the balance of all Accounts pursuant to the Plan will be determined pursuant to this section and other applicable sections of the Plan without regard to the actual amount of Trust assets.

(h) Participant Responsibilities. Each Participant is solely responsible for any and all consequences of his or her investment directions made pursuant to this section. Neither any Participating Employer, any of its directors, officers or employers, the Company's Board nor the Administrator has any responsibility to any Participant or other person for any damages, losses, liabilities, costs or expenses of any kind arising in connection with any investment direction made by a Participant pursuant to this section.

3.5 VESTING.

(a) Each Participant always has a fully vested nonforfeitable interest in his or her Savings Account.

(b) A Participant will acquire a fully vested nonforfeitable interest in his or her Retirement Account if he or she dies or becomes disabled on or prior to his or her Termination Date.

(c) A Participant whose Retirement Account is not otherwise fully vested will acquire a vested nonforfeitable interest in the portion of his or her Retirement Account to the extent provided in the following schedule based on the Participant's Years of Service:

| Vested Full Years of Service | Interest |
|---|---|
| Less than One Year | 0% |
| At least One Year | 25% |
| At least Two Years | 50% |
| At least Three Years | 75% |
| Four or More Years | 100% |

ARTICLE 4.
DISTRIBUTION

4.1 DISTRIBUTION TO PARTICIPANT BEFORE SEVERANCE OR DISABILITY.

(a) Withdrawals Due to Unforeseeable Emergency. Prior to a Participant's Termination Date, a distribution will be made to a Participant from his or her vested Accounts if the Participant submits a written distribution request to the Administrator and the Administrator determines that the Participant has experienced an Unforeseeable Emergency. The amount of the distribution may not exceed the lesser of (i) the amount necessary to satisfy the emergency, as determined by the Administrator or (ii) the vested balance of the Accounts. The distribution will be made in the form of a lump sum cash payment as soon as administratively practicable after the Administrator's determination that the Participant has experienced an Unforeseeable Emergency. Any distribution pursuant to this subsection will be made first from the Participant's Savings Account and then, if necessary, from his or her Retirement Account.

(b) Reduction of Account Balance. The balances of a Participant's Accounts will be reduced (but not below zero) by the amount of the distribution as of the date of the distribution.

4.2 DISTRIBUTION TO PARTICIPANT AFTER TERMINATION DATE.

(a) Time. Distribution to a Participant will be made or commence as soon as administratively practicable after the last day of the Plan Year that includes the Participant's Termination Date.

(b) Form. Distribution to the Participant will be made in the form of a lump sum cash payment unless (i) the Participant made a written election, on a form provided by the Administrator, to receive his or her distribution in the form of ten annual installment cash payments, (ii) his or her properly completed election form is filed with the Administrator before the first day of the Plan Year immediately preceding the Plan Year that includes his or her Termination Date, and (iii) the aggregate vested balance of the Participant's Accounts as of the date of such election is not less than $10,000. Not more than once during any 12-month period, a Participant may change an election made pursuant to this subsection, but the change will not be valid and will not have any effect unless it is made on a properly completed form received by the Administrator before the first day of the Plan Year immediately preceding the Plan Year that includes the Participant's Termination Date. Until an election becomes effective, it will have no effect on any prior election whether or not such prior election became effective before or after the Administrator received the later election. When an election becomes effective, it will automatically supersede any prior election then in effect.

c) Amount.

(i) Lump Sum. The amount of a lump sum payment from a Participant's Accounts will be equal to the vested balances of the Accounts.

(ii) Installments. The amount of an installment payment from a Participant's Accounts will be determined by dividing the vested balances of the Accounts by the total number of remaining payments (including the current payment). The undistributed portion of an Account distributed in the form of installment payments will continue to be credited with earnings in accordance with Section 3.4.

(d) Reduction of Account Balances. The balance of the Accounts will be reduced (but not below zero) by the amount of the distribution as of the date of the distribution.

4.3 DISTRIBUTION TO BENEFICIARY.

(a) Time. Distribution to a Beneficiary will be made as soon as administratively practicable after the date on which the Administrator receives notice of the Participant's death and determines that the Beneficiary is entitled to receive the distribution.

(b) Form. Distribution to the Beneficiary will be made in the form of a lump sum cash payment whether or not payments had commenced to the Participant in the form of installments prior to his or her death.

(c) Amount. The amount of a lump sum payment will be equal to the balance of the deceased Participant's Accounts.

(d) Reduction of Account Balance. The balances of the Accounts will be reduced (but not below zero) by the amount of the distribution as of the date of the distribution.

(e) Beneficiary Designation.

(i) Each Participant may designate, on a form furnished by the Administrator, one or more primary Beneficiaries or alternative Beneficiaries to receive all or a specified part of his or her Accounts after his or her death, and the Participant may change or revoke any such designation from time to time. No such designation, change or revocation is effective unless executed by the Participant and received by the Administrator during the Participant's lifetime.

(ii) If a Participant--

(1) fails to designate a Beneficiary, or

(2) revokes a Beneficiary designation without naming another Beneficiary, or

(3) designates one or more Beneficiaries, none of whom survives the Participant or exists at the time in question,

for all or any portion of his or her Account, such Account or portion will be paid to the Participant's surviving spouse or, if the Participant is not survived by a spouse, to the representative of the Participant's estate.

(iii) The automatic Beneficiaries specified above and, unless the designation otherwise specifies, the Beneficiaries designated by the Participant, become fixed as of the Participant's death so that, if a Beneficiary survives the Participant but dies before the

receipt of the payment due such Beneficiary, the payment will be made to the representative of such Beneficiary's estate. Any designation of a Beneficiary by name that is accompanied by a description of relationship or only by statement of relationship to the Participant is effective only to designate the person or persons standing in such relationship to the Participant at the Participant's death.

4.4 NONDEDUCTIBILITY.

If the Company determines in good faith that there is a reasonable likelihood that any compensation paid to a Participant by an Affiliate for a taxable year of the Affiliate would not be deductible by the Affiliate solely by reason of the limitation under Code section 162(m), to the extent deemed necessary by the Company to ensure that the entire amount of any distribution to the Participant pursuant to the Plan is deductible, notwithstanding any other provision of the Plan or any election by the Participant to the contrary, all or any portion of the distribution may be deferred. Any amounts deferred pursuant to this section will continue to be credited with earnings in accordance with Section 3.4. The deferred amounts and earnings thereon will be distributed to the Participant, or to his or her Beneficiary in the case of the Participant's death, at the earliest possible date, as determined by the Company in good faith, on which the deductibility of compensation paid or payable to the Participant for the taxable year of the Affiliate during which the distribution is made will not be limited by Code section 162(m).

4.5 PAYMENT IN EVENT OF INCAPACITY.

If any individual entitled to receive any payment under the Plan is, in the judgment of the Administrator, physically, mentally or legally incapable of receiving or acknowledging receipt of the payment, and no legal representative has been appointed for the individual, the Administrator may (but is not required to) cause the payment to be made to any one or more of the following as may be chosen by the Administrator: the Beneficiary (in the case of the incapacity of a Participant); the institution maintaining the individual; a custodian for the individual under the Uniform Transfers to Minors Act of any state; or the individual's spouse, children, parents, or other relatives by blood or marriage. The Administrator is not required to see to the proper application of any such payment and the payment completely discharges all claims under the Plan against the Participating Employer, the Plan and Trust to the extent of the payment.

4.6 SUSPENSION.

If a Participant who is receiving installment payments again becomes an employee of an Affiliate, the installment payments will stop. The remaining vested balance of the Participant's Accounts will be distributed upon the Participant's subsequent Termination Date in accordance with Article 4 without regard to any election made pursuant to Section 4.2(b)(i) prior to the Participant's last preceding Termination Date.

## ARTICLE 5.
## SOURCE OF PAYMENTS; NATURE OF INTEREST

5.1 ESTABLISHMENT OF TRUST.

Each Participating Employer will establish a Trust, or become covered by a Trust established by another Participating Employer, with an independent corporate trustee. The Trust must (a) be a grantor trust with respect to which the Participating Employer is treated as the grantor for purposes of Code section 677, (b) not cause the Plan to be funded for purposes of Title I of ERISA and (c) provide that the Trust assets will, upon the insolvency of a Participating Employer, be used to satisfy claims of the Participating Employer's general creditors. The Participating Employers may from time to time transfer to the Trust cash, marketable securities or other property acceptable to the Trustee in accordance with the terms of the Trust. The Participating Employers will pay all taxes of any kind whatsoever payable in respect of Trust assets or any transaction with respect to Trust assets, other than taxes payable by a Participant or Beneficiary, or any other person claiming by, under or through a Participant or Beneficiary, in connection with a distribution from the Plan.

5.2 SOURCE OF PAYMENTS.

(a) Each Participating Employer will pay, from its general assets, the portion of any benefit pursuant to Article 4 or Section 6.3 or 6.4 attributable to a Participant's Accounts with respect to that Participating Employer, and all costs, charges and expenses relating thereto.

(b) The Trustee will make distributions to Participants and Beneficiaries from the Trust in satisfaction of a Participating Employer's obligations under the Plan in accordance with the terms of the Trust. The Participating Employer is responsible for paying any benefits attributable to a Participant's Account with respect to that Participating Employer that are not paid by the Trust.

5.3 STATUS OF PLAN.

Nothing contained in the Plan or Trust is to be construed as providing for assets to be held for the benefit of any Participant or any other person or persons to whom benefits are to be paid pursuant to the terms of this Plan, the Participant's or other person's only interest under the Plan being the right to receive the benefits set forth herein. The Trust is established only for the convenience of the Participating Employers and the Participants, and no Participant has any interest in the assets of the Trust prior to distribution of such assets pursuant to the Plan. To the extent the Participant or any other person acquires a right to receive benefits under this Plan or the Trust, such right is no greater than the right of any unsecured general creditor of the Participating Employer.

5.4 NON-ASSIGNABILITY OF BENEFITS.

The benefits payable under the Plan and the right to receive future benefits under the Plan may not be anticipated, alienated, sold, transferred, assigned, pledged, encumbered, or subjected to any charge or legal process.

## ARTICLE 6.
## AMENDMENT, TERMINATION

6.1 ADOPTION.

With the prior approval of the Administrator, an Affiliate may adopt the Plan and become a Participating Employer by furnishing to the Administrator a certified copy of a resolution of its Board adopting the Plan.

6.2 AMENDMENT.

(a) Right. The Company reserves the right to amend the Plan at any time to any extent that it may deem advisable.

(b) Method. To be effective, an amendment must be stated in a written instrument approved in advance or ratified by the Company's Board and executed in the name of the Company by two of its officers.

(c) Binding Effect. An amendment adopted in accordance with Subsection (b) is binding on all interested parties as of the effective date stated in the amendment; provided, however, that no amendment may retroactively deprive any Participant, or the Beneficiary of a deceased Participant, of any benefit to which he or she is entitled under the terms of the Plan in effect immediately prior to the effective date of the amendment or the date on which the amendment is adopted, whichever is later.

(d) Certain Amendments to Earnings Credit Method. Any amendment that materially changes the method of determining the adjustments to Participants' Accounts pursuant to Section 3.4 is effective with respect to the portion of the Accounts attributable to credits made before the date on which the amendment is adopted only if the Company's Board determines in good faith that on that date, it is reasonably likely that, in the long run, the new method will not result in materially lower credit rate than the old method.

(e) Applicability to Participants Who Have Terminated Employment. The provisions of the Plan in effect on a Participant's Termination Date will, except as otherwise expressly provided by a subsequent amendment, continue to apply to such Participant.

6.3 TERMINATION OF PARTICIPATION.

Notwithstanding any other provision of the Plan to the contrary, if determined by the Administrator to be necessary to ensure that the Plan is exempt from ERISA to the extent contemplated by Section 1.3, or upon the Administrator's determination that a Participant's interest in the Plan has been or is likely to be includable in the Participant's gross income for federal income tax purposes prior to the actual payment of benefits pursuant to the Plan, the Administrator may take any or all of the following steps:

(a) terminate the Participant's future participation in the Plan;

(b) cause the Participant's entire vested interest in the Plan to be distributed to the Participant in the form of an immediate lump sum cash payment; and/or

(c) transfer the benefits that would otherwise be payable pursuant to the Plan for all or any of the Participants to a new plan that is similar in all material respects (other than those which require the action in question to be taken.)

6.4 TERMINATION.

The Company reserves the right to terminate the Plan in its entirety at any time. Each Participating Employer reserves the right to cease its participation in the Plan at any time. The Plan will terminate in its entirety or with respect to a particular Participating Employer as of the date specified by the Company or such Participating Employer in a written instrument adopted in the same manner as an amendment. Upon the termination of the Plan in its entirety or with respect to any Participating Employer, the Company or Participating Employer, as the case may be, will either cause (a) any benefits to which Participants have become entitled prior to the effective date of the termination to continue to be paid in accordance with the provisions of Article 4 or (b) the vested Account balances of any or all Participants, or the Beneficiaries of any or all deceased Participants, to be distributed in the form of an immediate lump sum payment.

## ARTICLE 7.
## DEFINITIONS, CONSTRUCTION AND INTERPRETATION

The definitions and rules of construction and interpretation set forth in this article apply in construing the Plan unless the context otherwise indicates.

7.1 ACCOUNT.

"Account" means the bookkeeping account maintained with respect to a Participant pursuant to Section 3.1 and may mean the Savings Account, the Retirement Account or both, as the context requires.

7.2 ACTIVE PARTICIPANT.

"Active Participant" with respect to a Plan Year means a Qualified Employee who is eligible to make deferrals pursuant to the Plan for the Plan Year, for the portion of the Plan Year during which he or she remains eligible.

7.3 ADMINISTRATOR.

"Administrator" means the Company or the person to whom administrative duties are delegated pursuant to the provisions of Section 8.1, as the context requires.

7.4 AFFILIATE.

"Affiliate" means the Company and any other company or trade or business, whether or not incorporated, that together with the Company is treated as a single employer pursuant to Code section 414(b) or 414(c).

7.5 BASE SALARY.

"Base Salary" for a Plan Year means the base salary payable in cash to an Active Participant by a Participating Employer for the Participant's services during the Plan Year as a Qualified Employee, net of any contributions or deductions specified in Plan Rules

7.6 BENEFICIARY.

"Beneficiary" with respect to a Participant is the person designated or otherwise determined under the provisions of Section 4.3(e) as the distributee of benefits payable after the Participant's death. A person designated or otherwise determined to be a Beneficiary under the terms of the Plan has no interest in or right under the Plan until the Participant in question has died. A Beneficiary will cease to be such on the day on which all benefits to which he, she or it is entitled under the Plan have been distributed.

7.7 BOARD.

"Board" means the board of directors of the Affiliate in question. When the Plan provides for an action to be taken by the Board, the action may be taken by any committee or individual authorized to take such action pursuant to a proper delegation by the board of directors in question.

7.8 BONUS.

"Bonus" for a Plan Year means the annual bonus earned by an Active Participant during the Plan Year for his or her services during the Plan Year as a Qualified Employee and paid in cash to the Participant by a Participating Employer during the Plan Year first following the Plan Year, net of any contributions or deductions specified in Plan Rules.

7.9 CODE.

"Code" means the Internal Revenue Code of 1986, as amended. Any reference to a specific provision of the Code includes a reference to that provision as it may be amended from time to time and to any successor provision.

7.10 COMPANY.

"Company" means Select Comfort Corporation, a Minnesota corporation.

7.11 CROSS REFERENCE.

References within a section of the Plan to a particular subsection refer to that subsection within the same section and references within a section or subsection to a particular clause refer to that clause within the same section or subsection, as the case may be.

7.12 DISABLED.

A Participant will be considered to be "Disabled" only if (i) in the case of a Participant who is participating in the Company's long-term disability plan, he or she is receiving disability benefits under such plan, or (ii) in the case of any other Participant, he or she is certified as being disabled by the Social Security Administration and is receiving disability benefits under the disability provisions of the Social Security Act.

7.13 ERISA.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended. Any reference to a specific provision of ERISA includes a reference to that provision as it may be amended from time to time and to any successor provision.

7.14 GOVERNING LAW.

To the extent that state law is not preempted by the provisions of ERISA, or any other laws of the United States, all questions pertaining to the construction, validity, effect and enforcement of the Plan will be determined in accordance with the internal, substantive laws of the State of Minnesota without regard to the conflict of law rules of the State of Minnesota or any other jurisdiction.

7.15 HEADINGS.

The headings of articles and sections are included solely for convenience of reference; if there exists any conflict between such headings and the text of the Plan, the text will control.

7.16 NUMBER AND GENDER.

Wherever appropriate, the singular may be read as the plural, the plural may be read as the singular and one gender may be read as the other gender.

7.17 PARTICIPANT.

"Participant" means a current or former Active Participant to whose Account amounts have been credited pursuant to Article 3 and who has not ceased to be a Participant pursuant to Section 2.6.

7.18 PARTICIPATING EMPLOYER.

"Participating Employer" means the Company and any other Affiliate that has adopted the Plan, or all of them collectively, as the context requires. An Affiliate will cease to be a Participating Employer upon a termination of the Plan as to its employees and the satisfaction in full of all of its obligations under the Plan or upon its ceasing to be an Affiliate.

7.19 PLAN.

"Plan" means the Select Comfort Executive Investment Plan, as from time to time amended or restated.

7.20 PLAN RULES.

"Plan Rules" are rules, policies, practices or procedures adopted by the Administrator pursuant to Section 8.2.

7.21 QUALIFIED EMPLOYEE.

"Qualified Employee" means an individual who performs services for a Participating Employer as an employee of the Participating Employer (as classified by the Participating Employer at the time the services are performed without regard to any subsequent reclassification) and who is determined by the Administrator to be a management or highly compensated employee of the Participating Employer.

7.22 RETIREMENT ACCOUNT.

"Retirement Account" with respect to a Participant means the Account maintained on his or her behalf pursuant to Section 3.1(a)(ii).

7.23 SAVINGS ACCOUNT.

"Savings Account" with respect to a Participant means the Account maintained on his or her behalf pursuant to Section 3.1(a)(i).

7.24 TERMINATION DATE.

"Termination Date" means the date on which a Participant has completely severed his or her employment relationship with all Affiliates.

7.25 TRUST.

"Trust" means any trust or trusts established by a Participating Employer pursuant to Section 5.1.

7.26 TRUSTEE.

"Trustee" means the independent corporate trustee or trustees that at the relevant time has or have been appointed to act as Trustee of the Trust.

7.27 UNFORESEEABLE EMERGENCY.

"Unforeseeable Emergency" means an unanticipated emergency that is caused by an event beyond the Participant's control resulting in a severe financial hardship that cannot be satisfied through other means. The existence of an unforeseeable emergency will be determined by the Administrator in its sole discretion.

7.28 YEARS OF SERVICE.

"Years of Service" for purposes of determining a Participant's vested interest in his or her Retirement Account pursuant to Section 3.5, means the sum of a Qualified Employee's periods of service as an employee with the Affiliates (measured in the case of any Affiliate from not earlier than the date on which it became an Affiliate), commencing as of the Qualified Employee's employment commencement date and ending with the Employee's Termination Date.

## ARTICLE 8.
## ADMINISTRATION

8.1 ADMINISTRATOR.

The general administration of the Plan and the duty to carry out its provisions is vested in the Company. The Company may delegate such duty or any portion thereof to a named person or persons and may from time to time revoke such authority and delegate it to another person or persons.

8.2 PLAN RULES AND REGULATIONS.

The Administrator has the discretionary power and authority to make such Plan Rules as the Administrator determines to be consistent with the terms, and necessary or advisable in connection with the administration, of the Plan and to modify or rescind any such Plan Rules.

8.3 ADMINISTRATOR'S DISCRETION.

The Administrator has the discretionary power and authority to make all determinations necessary for administration of the Plan, except those determinations that the Plan requires others to make, and to construe, interpret, apply and enforce the provisions of the Plan and Plan Rules whenever necessary to carry out its intent and purpose and to facilitate its administration, including, without limitation, the discretionary power and authority to remedy ambiguities, inconsistencies, omissions and erroneous benefit calculations. In the exercise of its discretionary power and authority, the Administrator will treat all similarly situated persons uniformly.

8.4 SPECIALIST'S ASSISTANCE.

The Administrator may retain such actuarial, accounting, legal, clerical and other services as may reasonably be required in the administration of the Plan, and may pay reasonable compensation for such services. All costs of administering the Plan will be paid by the Participating Employers.

8.5 INDEMNIFICATION.

The Participating Employers jointly and severally agree to indemnify and hold harmless, to the extent permitted by law, each director, officer, and employee of any Affiliates against any and all liabilities, losses, costs and expenses (including legal fees) of every kind and nature that may be imposed on, incurred by, or asserted against such person at any time by reason of such person's services in connection with the Plan, but only if such person did not act dishonestly or in bad faith or in willful violation of the law or regulations under which such liability, loss, cost or expense arises. The Participating Employers have the right, but not the obligation, to select counsel and control the defense and settlement of any action for which a person may be entitled to indemnification under this provision.

8.6 BENEFIT CLAIM PROCEDURE.

(a) The Administrator will notify a Participant in writing, within 90 days of the Participant's written application for benefits, of the Participant's eligibility or noneligibility for benefits under the Plan. If the Administrator determines that a Participant is not eligible for benefits or full benefits, the notice will:

(1) state the specific reasons for the denial of any benefits;

(2) provide a specific reference to the provision of the Plan on which the denial is based;

(3) provide a description of any additional information or material necessary for the claimant to perfect the claim, and a description of why it is needed;

(4) state that the claimant will be provided, on request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claim;

(5) state the claimant's right to bring a civil action under ERISA Section 502(a) following a continued denial of a claim after appeal review; and

(6) provide an explanation of the Plan's claims review procedure and other appropriate information as to the steps to be taken if the Participant wishes to have the claim reviewed. If the Administrator determines that there are special circumstances requiring additional time to make a decision, the Administrator will notify the Participant of the special circumstances and the date by which a decision is expected to be made, and may extend the time for up to an additional 90-day period.

(b) If a Participant is determined by the Administrator not to be eligible for benefits or if the Participant believes that he or she or she is entitled to greater or different benefits, the Participant will be provided the opportunity to have his or her claim reviewed by the Administrator by filing a petition for review with the Administrator within 60 days after the Participant receives the notice issued by the Administrator. The petition must state the specific reasons the Participant believes he or she or she is entitled to benefits or greater or different benefits. Within 60 days after the Administrator receives the petition, the Administrator will give the Participant (and his or her counsel, if any) an opportunity to present his or her position to the Administrator in writing, and the Participant (or his or her counsel) may review the pertinent documents, and the Administrator will notify the Participant of its decision in writing within such 60-day period, stating specifically the basis of the decision written in a manner calculated to be understood by the Participant and the specific provisions of the Plan on which the decision is based. If because of special circumstances requiring additional time to make a decision, the 60-day period is not sufficient, the decision may be deferred for up to another 60-day period at the election of the Administrator, but notice of this deferral must be given to the Participant.

(c) The same procedure applies to the Beneficiary of a deceased Participant.

(d) A claimant must exhaust the procedure described in this section before pursuing the claim in any other proceeding.

8.7 DISPUTES.

(a) In the case of a dispute between a Participant or his or her Beneficiary and a Participating Employer, the Administrator or other person relating to or arising from the Plan, the United States District Court for the District of Minnesota is a proper venue for any action initiated by or against the Participating Employer, Administrator or other person and such court will have personal jurisdiction over any Participant or Beneficiary named in the action.

(b) Regardless of where an action relating to or arising from the participation in the Plan by any Participant is pending, the law as stated and applied by the United States Court of Appeals for the Eighth Circuit or the United States District Court for the District of Minnesota will apply to and control all actions relating to the Plan brought against the Plan, a Participating Employer, the Administrator or any other person or against any such Participant or his or her Beneficiary.

## ARTICLE 9.
## MISCELLANEOUS

9.1 WITHHOLDING AND OFFSETS.

The Participating Employers and the Trustee retain the right to withhold from any compensation, deferral and/or benefit payment pursuant to the Plan, any and all income, employment, excise and other tax as the Participating Employers or Trustee deems necessary and the Participating Employers may offset against amounts then payable to a Participant or Beneficiary under the Plan any amounts then owing to the Participating Employers by such Participant or Beneficiary.

9.2 OTHER BENEFITS.

Neither amounts deferred nor amounts paid pursuant to the Plan constitute salary or compensation for the purpose of computing benefits under any other benefit plan, practice, policy or procedure of a Participating Employer unless otherwise expressly provided thereunder.

9.3 NO WARRANTIES REGARDING TAX TREATMENT.

The Participating Employers make no warranties regarding the tax treatment to any person of any deferrals or payments made pursuant to the Plan and each Participant will hold the Administrator and the Participating Employers and their officers, directors, employees, agents and advisors harmless from any liability resulting from any tax position taken in good faith in connection with the Plan.

9.4 NO RIGHTS TO CONTINUED EMPLOYMENT OR SERVICE CREATED.

Neither the establishment of nor participation in the Plan gives any individual the right to continued employment or service on the Company's board of directors or limits the right of the Participating Employer to discharge, transfer, demote, modify terms and conditions of employment or service on the Company's board of directors or otherwise deal with any individual without regard to the effect which such action might have on him or her with respect to the Plan.

9.5 SPECIAL PROVISIONS.

Special provisions of the Plan applicable only to certain Participants may be set forth on an exhibit to the Plan adopted in the same manner as an amendment to the Plan. In the event of a conflict between the terms of the exhibit and the terms of the Plan, the exhibit controls. Except as otherwise expressly provided in the exhibit, the generally applicable terms of the Plan control all matters not covered by the exhibit.

9.6 SUCCESSORS.

Except as otherwise expressly provided in the Plan, all obligations of the Participating Employers under the Plan are binding on any successor to the Participating Employer whether the existence of such successor is the result of a direct or indirect purchase, merger, consolidation or otherwise of all or substantially all of the business and/or assets of the Participating Employer.

EXHIBIT 21.1

LIST OF SUBSIDIARIES

Select Comfort Direct Corporation

Select Comfort Retail Corporation

Select Comfort SC Corporation

selectcomfort.com corporation

Select Comfort Wholesale Corporation

Direct Call Centers, Inc.

EXHIBIT 23.1

INDEPENDENT AUDITORS' CONSENT

The Board of Directors
Select Comfort Corporation:

We consent to incorporation by reference in the registration statements on Form S-8 (No. 333-70493, No. 333-79157, No. 333-74876, No. 333-84329 and No. 333-85914) of Select Comfort Corporation, of our reports dated January 31, 2003, relating to the consolidated balance sheets of Select Comfort Corporation and subsidiaries, as of December 28, 2002 and December 29, 2001, and the related consolidated statements of operations, shareholders' equity, and cash flows and the related financial statement schedule for each of the fiscal years in the three-year period ended December 28, 2002, which reports appear in the Annual Report on Form 10-K of Select Comfort Corporation for the fiscal year ended December 28, 2002.

KPMG LLP

Minneapolis, Minnesota
February 26, 2003

Exhibit 99.1

CERTIFICATION PURSUANT TO
18 U.S.C. ss.1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of Select Comfort Corporation (the "Company") on Form 10-K for the period ended December 28, 2002 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, William R. McLaughlin, Chief Executive Officer of the Company, solely for the purposes of 18 U.S.C. ss.1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, does hereby certify that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ William R. McLaughlin
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William R. McLaughlin
Chief Executive Officer
February 26, 2003

Exhibit 99.2

CERTIFICATION PURSUANT TO
18 U.S.C. ss.1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of Select Comfort Corporation (the "Company") on Form 10-K for the period ended December 28, 2002 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, James C. Raabe, Chief Financial Officer of the Company, solely for the purposes of 18 U.S.C. ss.1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, does hereby certify that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ James c. Raabe
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James C. Raabe
Chief Financial Officer
February 26, 2003