

**THE PENSION PLAN FOR CLERGYMEN AND  
LAY EMPLOYEES OF THE GREEK ORTHODOX  
ARCHDIOCESE OF AMERICA**

*2017 Amendment and Restatement*

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Table A

Table B

**THE PENSION PLAN FOR CLERGYMEN AND LAY EMPLOYEES OF THE  
GREEK ARCHDIOCESE OF AMERCA**

WHEREAS, The Greek Orthodox Archdiocese of America (hereinafter referred to as the “Employer”) heretofore adopted The Pension Plan for Clergymen and Lay Employees of the Greek Orthodox Archdiocese of America (hereinafter referred to as the “Plan”) for the benefit of its eligible Employees, effective as of January 1, 1973; and

WHEREAS, the Employer reserved the right to amend the Plan; and WHEREAS, the Employer heretofore amended the Plan from time to time; and

WHEREAS, the Employer desires to restate the Plan by incorporating all prior amendments, to further amend the Plan to the extent required to comply with changes required by the Internal Revenue Service’s 2015 Cumulative List of Changes in Plan Qualification Requirements, as set forth in Notice 2015-84 and as required for a Cycle A submission for a determination letter to the extent such requirements are applicable to a “church plan” (within the meaning of Section 4(b)(2) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”)); and

WHEREAS, it is intended that the Plan is to continue to be a qualified church plan under Section 401(a) of the Code and Section 4(b)(2) of ERISA, for the exclusive benefit of the Participants and their Beneficiaries;

NOW, THEREFORE, the Plan is hereby amended by restating the Plan, effective as of January 1, 2017 except where the provisions of the Plan (or the requirements of applicable law) shall otherwise specifically provide, in its entirety as follows:

## **ARTICLE ONE--DEFINITIONS**

For purposes of this Plan, unless the context or an alternative definition specified within another Article provides otherwise, the following words and phrases shall have the meanings indicated:

- 1.1. “ACCRUED BENEFIT” shall mean a monthly retirement benefit, commencing on a Participant’s Normal Retirement Date, in the form of a single life annuity, in an amount determined in accordance with the benefit formula under Section 4.1 based on the Participant’s Compensation and Period of Service to the date of determination.
- 1.2. “ACCUMULATED CONTRIBUTIONS” shall mean the aggregate of a Participant’s contributions compounded annually at the rate of five percent (5%) per annum for years prior to January 1, 1997 and thereafter at the rate of 120% of the Federal mid-term rate (as in effect under Code Section 1274) in effect on the first day of each Plan Year and ending on the determination date and the interest rate under Code Section 417(e)(3) (for determining lump sum distributions as of the determination date) for the period beginning on the determination date and ending on the date the Participant attains Normal Retirement Date credited to the earlier of (i) the date on which payments of benefits commence or (ii) the date on which such Accumulated Contributions shall otherwise be payable pursuant to the applicable provisions of the Plan.
- 1.3. “ACTUARIAL EQUIVALENT” shall mean:
  - (a) with respect to the distribution to a Participant of a benefit under the Plan in the form of an  
  
Actuarial Equivalent lump sum, such lump sum shall be the amount determined as follows:
    - (i) by using an interest rate equal to the “applicable interest rate” (as defined in Section 417(e)(3) of the Code and regulatory guidance issued thereunder) in effect for the second calendar month preceding the first day of the Plan Year during which the annuity starting date (as defined in Section 5.2(d)) occurs; and
    - (ii) by using the “applicable mortality table” (as defined in Section 417(e)(3) of the Code and regulatory guidance issued thereunder).
  - (b) with respect to a distribution to a Participant of a benefit under the Plan or for the purpose of making any other determinations under the Plan (except under Section 9.2), the Actuarial Equivalent shall be based on the factors set forth in Table A.
  - (c) In the event the definition used to determine Actuarial Equivalent is modified, a Participant’s benefit, on or after the effective date of such change, shall be the greater of (1) the Actuarial Equivalent of the Accrued Benefit determined as of the day before the effective date of the change in such definition, or (2) the Actuarial Equivalent of the total Accrued Benefit as of the date of determination computed using the new definition.

- 1.4. “ACTUARY” shall mean an actuary enrolled under Federal practice, or a firm of actuaries which has on its staff such an actuary as appointed by the Investment Committee pursuant to Section 8.2, under whose supervision valuation reports and benefit calculations are performed for the Plan.
- 1.5. “ARCHDIOCESE” means the Greek Orthodox Archdiocese of America.
- 1.6. “ARCHDIOCESE BENEFITS COMMITTEE” means the committee established under the bylaws of such committee.
- 1.7. “ADMINISTRATION COMMITTEE” means the Committee referred to in Section 8.1.
- 1.8. “BENEFICIARY” shall mean any person, trust, organization or estate entitled to receive a death benefit under the Plan on the death of a Participant (pursuant to Article 5 with respect to the Participant’s death after commencement of benefits to the Participant, and pursuant to Article 6 with respect to the Participant’s death before commencement of benefits to the Participant).
- 1.9. “BREAK IN SERVICE” shall have the meaning as set forth in Section 2.2.
- 1.10. “CODE” shall mean the Internal Revenue Code of 1986, as amended from time to time.
- 1.11. “COMPENSATION” shall mean the compensation paid to a Participant by the Employer for the Plan Year, including any bonus, overtime, commission, incentive compensation, or any other form of extra compensation, but excluding contributions to this or any other pension benefit plan to which the Employer contributes directly or indirectly. The Compensation of each Participant in the Plan for any Plan Year shall be limited to an amount which is not greater than the maximum amount set forth in Table B. However, Compensation shall not include compensation during any period in which contributions were required under Section 7.1 but not made.

For Plan Years beginning after December 31, 1996, Compensation shall include amounts not includible in gross income by reason of Section 401(k) 403(b), 125, 132(f) and 401(e)(3) of the Code.

In addition to other applicable limitations set forth in the Plan, and notwithstanding any other provision of the Plan to the contrary, the annual Compensation of each Participant taken into account under the Plan shall not exceed \$270,000 for the 2017 calendar year, as adjusted by the Secretary of the Treasury or his delegate 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 period, not exceeding twelve (12) months, over which Compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than twelve (12) months, the annual compensation limit shall be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is twelve (12).

For purposes of determining who is a Highly-Compensated Employee, Compensation shall mean compensation as defined in Section 414(q)(4) of the Code.

Any Compensation paid after the Participant's severance from employment with the Employer (except for Compensation attributable to the pay period in which the severance from employment occurred) shall not be taken into account for purposes of determining a Participant's Accrued Benefit.

- 1.12. "DEFERRED RETIREMENT DATE" shall mean the date of retirement of a Participant after his Normal Retirement Date as provided in Section 4.2.
- 1.13. "DISABILITY" or "DISABLED" shall mean a "permanent and total disability" incurred by a Participant while in the employ of the Employer. For this purpose, a Participant shall be deemed permanently and totally disabled if he is eligible for disability benefits under the Archdiocese LongTerm Disability Plan, as determined by the insurer under such plan.
- 1.14. "DISABILITY RETIREMENT DATE" shall mean the first day of any month coincident with or next following the date the Participant became Disabled.
- 1.15. "EARLY RETIREMENT DATE" shall mean the first day of any month, preceding a Participant's Normal Retirement Date, which is coincident with or following the date the Participant has both attained age fifty-five (55) and completed at least a five (5) year Period of Service.
- 1.16. "EFFECTIVE DATE." The Plan's initial Effective Date was January 1, 1973. The Effective Date of this restated Plan, on and after which it supersedes the terms of the existing Plan document, is January 1, 2017, except where the provisions of the Plan (or the requirements of applicable law) shall otherwise specifically provide. The rights of any Participant who terminated employment with the Employer prior to the applicable effective date shall be established under the terms of the Plan and Trust as in effect at the time of the Participant's termination from employment, unless the Participant subsequently returns to employment with the Employer, or unless otherwise provided under the terms of the Plan. Rights of spouses and Beneficiaries of such Participants shall also be governed by those documents.
- 1.17. "EMPLOYEE" shall mean a member of the Clergy and any other person who is an employee of the Employer.
- 1.18. "EMPLOYER" shall mean the Archdiocese, the Direct Archdiocesan District, each Metropolis of the Archdiocese, the Hellenic College/Holy Cross School of Theology, and any affiliate which, with the approval of the Archdiocese Benefits Committee, and subject to such conditions as the Archdiocese Benefits Committee may impose, adopt the Plan, and any successor or successors of any of them.
- 1.19. "EMPLOYMENT COMMENCEMENT DATE" shall mean the first date as of which an Employee is credited with an "Hour of Service" provided that in the case of a Break in Service, his Employment Date shall be the first date thereafter as of which he is credited with an Hour of Service.

1.20. “HIGHLY-COMPENSATED EMPLOYEE” shall mean any Employee of the Employer who:

- (a) was a five percent (5%) owner of the Employer (as defined in Code Section 416(i)(1)) at any time during the “determination year” or “look-back year”; or
- (b) earned more than \$120,000 of Compensation from the Employer during the “look-back year”. The \$120,000 amount shall be adjusted at the same time and in the same manner as under Section 415(d) of the Code.

An Employee who separated from Service prior to the “determination year” shall be treated as a Highly-Compensated Employee for the “determination year” if such Employee was a Highly-Compensated Employee when such Employee separated from Service, or was a Highly-Compensated Employee at any time after attaining age fifty-five (55).

For purposes of this Section, the “determination year” shall be the Plan Year for which a determination is being made as to whether an Employee is a Highly-Compensated Employee. The “look-back year” shall be the twelve (12)-month period immediately preceding the “determination year”.

1.21. “HOUR OF SERVICE” shall have the meaning set forth below:

- (a) An Hour of Service is each hour for which an Employee is paid, or entitled to payment, for the performance of duties for the Employer, during the applicable computation period.
- (b) An Hour of Service is each hour for which an Employee is paid, or entitled to payment, by the Employer on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty, maternal, paternal or other leave of absence. Notwithstanding the preceding sentence,
  - (i) No more than five hundred and one (501) Hours of Service shall be credited under this paragraph (b) to any Employee on account of any single continuous period during which the Employee performs no duties (whether or not such period occurs in a single computation period). Hours under this paragraph shall be calculated and credited pursuant to Section 2530.200b-2 of the Department of Labor Regulations which is incorporated herein by reference;
  - (ii) An hour for which an Employee is directly or indirectly paid, or entitled to payment, on account of a period during which no duties are performed shall not be credited to the Employee if such payment is made or due under a plan maintained solely for the purpose of complying with

applicable workmen's compensation, or unemployment compensation or disability insurance laws; and

- (iii) Hours of Service shall not be credited for a payment which solely reimburses an Employee for medical or medically related expenses incurred by the Employee.
  - (c) An Hour of Service is each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Employer. The same Hours of Service shall not be credited both under paragraph (a) or paragraph (b), as the case may be, and under this paragraph (c). Thus, for example, an Employee who receives a back pay award following a determination that he was paid at an unlawful rate for Hours of Service previously credited shall not be entitled to additional credit for the same Hours of Service. Crediting of Hours of Service for back pay awarded or agreed to with respect to periods described in paragraph (b) shall be subject to the limitations set forth in that paragraph.
  - (d) Hours of Service under this Section shall be determined under the terms of the Family and Medical Leave Act of 1993 and the Uniformed Services Employment and Reemployment Rights Act of 1994.
- 1.22. "INVESTMENT COMMITTEE" means the Committee referred to in Section 8.2.
- 1.23. "LEASED EMPLOYEE" shall mean any person who, pursuant to an agreement between the Employer and any other person or organization, has performed services for the Employer (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, where such services are performed under the primary direction or control of the Employer. A person shall not be considered a Leased Employee if the total number of Leased Employees does not exceed twenty percent (20%) of the Nonhighly-Compensated Employees employed by the Employer, and if any such person is covered by a money purchase pension plan providing (a) a nonintegrated employer contribution rate of at least ten percent (10%) of compensation as defined in Section 9.2(b)(2) of the Plan; (b) immediate participation; and (c) full and immediate vesting.
- 1.24. "NONHIGHLY-COMPENSATED EMPLOYEE" shall mean any Employee of the Employer who is not a Highly-Compensated Employee.
- 1.25. "NORMAL RETIREMENT AGE" shall mean a Participant's sixty-fifth (65th) birthday or, if later, the fifth (5th) anniversary of the Participant's initial date of Plan participation.
- 1.26. "NORMAL RETIREMENT DATE" shall mean the first day of the month coincident with or next following the date the Participant attains his Normal Retirement Age.
- 1.27. "PARTICIPANT" shall mean any Employee who becomes a Participant pursuant to Section 3.1.

- 1.28. “PLAN” shall mean The Pension Plan for Clergymen and Lay Employees of the Greek Orthodox Archdiocese of America as set forth herein and as it may be amended from time to time.
- 1.29. “PERIOD OF SERVICE” shall have the meaning set forth in Section 2.1.
- 1.30. “PLAN YEAR” shall mean the twelve (12)-consecutive month period beginning January 1 and ending December 31.
- 1.31. “TRUST” shall mean the Trust Agreement entered into between the Archdiocese and the Trustee forming part of this Plan, together with any amendments thereto. “TRUST FUND” shall mean any and all property held by the Trustee pursuant to the trust agreement, together with income therefrom.
- 1.32. “TRUSTEE” shall mean the Trustee or Trustees appointed by the Archdiocese, and any successors thereto.
- 1.33. “VALUATION DATE” shall mean the annual date selected by the Actuary, in accordance with the requirements of applicable law, as of which Plan assets are valued and liabilities determined for purposes of an actuarial valuation.

## **ARTICLE TWO—SPECIAL SERVICE RULES**

Service is the period of employment credited under the Plan. Definitions and special rules related to Service are as follows:

- 2.1. **PERIOD OF SERVICE.** An Employee shall receive credit for the aggregate of all time period(s) commencing on his Employment Date (or re-employment date) (or for purposes of benefit accrual, or determining his Early Retirement Date, commencing on the date the Employee became a Participant in the Plan pursuant to Section 3.1, or the date the Employee became a Participant following a “period of severance” (within the meaning of Section 2.2)) and ending on the earlier of (i) the date a “period of severance” (within the meaning of Section 2.2) commences or (ii) his Age 70 Commencement Date (within the meaning of Section 4.2). However, except for purposes of benefit accrual, Employee shall also receive credit for any period of severance of less than twelve (12)-consecutive months; provided, however, that if an Employee is absent from Service for any reason other than a quit, discharge, retirement or death, and during the absence the Employee quits, is discharged, or retires, the period of time between the date the Employee quits, is discharged, or retires and the first anniversary of the date on which the Employee was first absent shall be credited hereunder if the Employee returns to Service on or before such first anniversary date. “Years(s) of Service” shall mean the number of whole years of the Participant’s Period of Service, whether or not such Periods of Service were completed consecutively. Non-consecutive Periods of Service (which are not disregarded under Section 2.3) shall be aggregated on the basis that 365 days of Service equal a whole year.

For purposes of determining eligibility to participate in the Plan, eligibility for retirement under Article Four, and vesting of benefits, the Employee’s service shall also include periods of service with a company heretofore or hereafter merged or consolidated or otherwise absorbed by the Employer, or all or a substantial part of the assets or business of which have been or shall be acquired by the Employer (hereafter, “Predecessor Company”);

- (i) if the Employer continues to maintain an employee benefit pension plan of such Predecessor Company; or
- (ii) if, and to the extent, such employment with the Predecessor Company is required to be treated as employment with the Employer under regulations prescribed by the ‘Secretary of the Treasury; or
- (iii) if, and to the extent, granted by the Archdiocese Benefits Committee in its sole discretion, effected on a non-discriminatory basis as to all persons similarly situated.

Notwithstanding the foregoing, there shall be disregarded any month of a Period of Service for which the Participant is treated as having made “late contributions” (within the meaning of Section 7.1).

- 2.2. **BREAK IN SERVICE.** Except as otherwise provided in this Article Two, a Break in Service is a “period of severance” of at least twelve (12) consecutive months. For this purpose, a period of severance shall be a continuous period in which an Employee is not employed by the Employer. Such period shall begin on the date the Employee retires, quits, is discharged or dies or, if earlier, the twelve (12)-month anniversary of the date on which the Employee is otherwise absent from Service.
- 2.3. **CESSATION OF EMPLOYMENT AND RETURN TO SERVICE.** An Employee who returns to employment after a Break in Service shall retain credit for his pre-Break Periods of Service; provided, however, that:
- (a) If, when the Employee incurred his Break in Service, he had not completed sufficient Years of Service to be credited with a vested benefit under Article Four, his pre-Break Years of Service shall be disregarded if the number of consecutive one (1)-year Breaks in Service equals or exceeds the greater of five (5) or the number of pre-Break Years of Service.
  - (b) Subject to (a) above, if the Participant received full or partial payment of his vested interest in the Plan, his pre-Break Years of Service for which contributions were required under Section 7.1 shall be restored for accrual purposes only if the full amount of the distribution is repaid, with interest compounded annually at the rate of five percent (5%) per annum for years prior to January 1, 1997 and thereafter at the rate of 120% of the Federal Mid Term Rate (as in effect under Code Section 1274) in effect on the benefit commencement date, as of the earlier of (i) the date which is five (5) years after the Participant’s reemployment date or (ii) the date which is the last day of the period in which the Participant incurs five (5) consecutive one (1)- year Breaks in Service commencing as of his date of distribution. For this purpose, if the Participant was treated as receiving a distribution because his vested Accrued Benefit was zero, he shall be treated as having repaid the amount of the distribution on the date of his reemployment.

It is the intention of the Employer that no Employee receive a duplication of benefits and this Section shall be so interpreted.

If an Employee incurred a Break in Service prior to the Plan Year commencing in 1985, the determination of such Participant’s Years of Service, as of the end of the Plan Year beginning in 1984 shall be governed by the rules in effect at his pre-1985 termination.

- 2.4. **MATERNITY/PATERNITY LEAVE OF ABSENCE.** For any individual who is absent from work for any period by reason of the individual’s pregnancy, birth of the individual’s child, placement of a child with the individual in connection with the individual’s adoption of the child, or by reason of the individual’s caring for the child for a period beginning immediately following such birth or adoption, the twelve (12)-consecutive month period beginning on the first annual anniversary of the first date of such absence shall not constitute a Break in Service.

- 2.5. **COMPLIANCE WITH USERRA.** Notwithstanding any provisions of the Plan to the contrary, Employees shall receive Service credit with respect to periods of qualified military service (within the meaning of Section 414(u)(5) of the Code) to the extent required under said Section 414(u).
- 2.6. **HEART ACT TREATMENT OF DIFFERENTIAL WAGE PAYMENTS.** For years beginning after December 31, 2008, (i) a Participant receiving a differential wage payment, as defined by Code Section 3401(h)(2), shall be treated as an Employee of the Employer making the payment, (ii) the differential wage payment shall be treated as Compensation, and (iii) the Plan shall not be treated as failing to meet the requirements of any provision described in Code Section 414(u)(1)(C) by reason of any contribution or benefit which is based on the differential wage payment.

### **ARTICLE THREE—PLAN PARTICIPATION**

- 3.1. PARTICIPATION. All Employees participating in the Plan prior to the Plan's restatement shall continue to participate, subject to the terms hereof.

Each other Employee shall become a Participant under the Plan effective as of the first day of the month coincident with or following:

- (i) if a lay Employee (i.e., not a member of the Clergy), his Employment Commencement Date and filing with the Administration Committee an authorized form prescribed by such Committee, for the deduction from his Compensation of the contributions required under Section 7.1;
- (ii) if a member of the Clergy, following the date of ordination and assignment and filing of an authorized form, prescribed by the Administration Committee, for the deduction from his Compensation of the contributions required under Section 7.1;

For purposes hereof, Clergy shall mean individuals who are under the jurisdiction of and assigned by the Archdiocese and shall exclude clergy with a lay profession.

## **ARTICLE FOUR—PLAN BENEFITS**

### **4.1. NORMAL RETIREMENT BENEFIT.**

- (a) Subject to the following provisions hereof, each Participant who retires at his Normal Retirement Date shall be entitled to receive a monthly retirement benefit determined as of such date. A Participant's right to his benefit shall be nonforfeitable upon reaching his Normal Retirement Age and shall be payable under the rules specified in Article Five. The amount of such monthly benefit expressed as a straight life annuity shall be equal to the greater of (i) or (ii) below:
- (i) the Participant's Future Service Retirement Benefit, as determined pursuant to Section 4.1(A), plus his Past Service Retirement Benefit as determined pursuant to Section 4.1(B), plus the Accrued Benefit Adjustment as determined pursuant to Section 4.1(C), or
  - (ii) \$500; provided, however, that this subsection (ii) shall not apply to a Participant who is treated as having made "late contributions" (within the meaning of Section 7.1) for a period of six (6) or more months during any calendar Year of Service commencing on or after July 1, 2003; provided, further, that subsection (ii) shall also not apply to a Participant who has, at any time, elected or been paid a distribution of his Accumulated Contributions under Section 4.5.
- (A) For each Plan Year in a Period of Service on and after January 1, 1983, a Participant's Future Service Retirement Benefit shall be equal to 1/12th of 2% of his Compensation or, if applicable under the next succeeding paragraph, his "Deemed Compensation" for such Plan Year; provided, however, that effective January 1, 2004, such Retirement Benefit shall be (i) 1/12th of 2% of such Compensation, if the Participant makes the election under Section 7.1(a)(A), or (ii) 1/12th of 1-1/2% of such Compensation, if the Participant makes the election under Section 7.1(a)(B).

For purposes of the preceding paragraph, for any period on and after January 1, 2001, for any Participant who is a clergyman, his "Deemed Compensation" shall be used in determining his Future Service Retirement Benefit if his "Deemed Compensation" exceeds his Compensation.

For this purpose, the "Deemed Compensation" of a Participant who is a clergyman shall be determined as follows:

- (i) If such Participant has been an Employee for less than six (6) years, his Deemed Compensation shall be \$40,000 per year; and
- (ii) If such Participant has been an Employee for six (6) or more years, his Deemed Compensation shall be \$45,000 per year.

In the event that (i) an Employee becomes a Participant or resumes active participation following a period of authorized leave absence or a period of severance (within the meaning of Section 2.2) on other than the first day of a Plan Year, or (ii) a Participant retires or otherwise terminates employment on other than the last day of the Plan Year, he shall receive credit for Future Service Retirement Benefit for such Plan Year based on his Compensation during that portion of such Plan Year (a) subsequent to the date on which he became a Participant or resumed active participation, or (b) prior to his retirement date or other termination of employment, whichever is appropriate.

Notwithstanding the foregoing to the contrary, under Section 4.1(a)(A)(i) and (ii) “2%” shall be replaced with “1.5%” and “1-1/2%” shall be replaced with “1-1/4%”, respectively, for the following individuals:

- (1) an eligible employee who first commences contributions after January 1, 2016 and more than twenty-four (24) consecutive months measured from the date he is first eligible to make contributions under section 7.1(a);
- (2) a Participant who terminated employment, is rehired, and first recommences contributions under Section 7.1(a) after January 1, 2016 and more than twenty-four (24) consecutive months measured from the date he again becomes eligible after rehire, but only for contributions which recommence after January 1, 2016 and after such twenty-four consecutive month period; and
- (3) a Participant who stops contribution under Section 7.1(a) other than by reason of termination of employment, for a period of more than twenty-four (24) consecutive months and recommences contributions after January 1, 2016 but only for contributions which recommence after January 1, 2016 and after such twenty-four (24) consecutive month period.

A participant who becomes subject to a reduced accrual rate described above shall remain subject to a reduced accrual rate for the remainder of his participation in the Plan.

- (B) The monthly Past Service Retirement Benefit of a Participant who was a Participant under the Plan on December 31, 1982, and who had not then attained his retirement date or otherwise terminated employment with an Employer, shall be equal to the greater of:

- (i) The monthly benefit accrued by the Participant prior to January 1, 1983 under the terms of the Plan then in effect; or
- (ii) One and one-quarter percent (1.25%) of the Participant's Compensation as of January 1, 1973, multiplied by his Period of Service through December 31, 1972, plus

One and one-quarter percent (1.25%) of the Participant's Compensation between January 1, 1973 and December 31, 1980, plus

One and seven-eighths percent (1.875%) of the Participant's Compensation between January 1, 1981 and December 31, 1982.

- (C) The Accrued Benefit Adjustment shall be an amount equal to a Participant's Future Service Benefit and Past Service Benefit determined as of December 31, 1990 multiplied by five percent (5%). No Accrued Benefit Adjustment shall be made for any Participant who elects a distribution of, or has been paid a distribution of, his Accumulated Contributions under Section 4.5.

In addition, the Accrued Benefit Adjustment shall include an amount equal to the Future Service Benefit and Past Service Benefit as of January 1, 1987, multiplied by five percent (5%) and an amount equal to the Past Service Benefit as of January 1, 1982 multiplied by five percent (5%).

- (D) In determining a Participant's Future Service Retirement Benefit and Past Service Retirement Benefit, there shall be disregarded any month in a Period of Service, in which the Participant failed to make required contributions under Section 7.1.

- (b) Effective January 1, 1991, the monthly benefit for each former Participant who on January 1, 1991 was in receipt of a monthly benefit or entitled to a monthly benefit but had not yet commenced payment, shall be increased five percent (5%), effective with the first monthly payment due on or after January 1, 1991; except that no such increase shall be due any Participant who has received or will receive a distribution of Accumulated Contributions under Section 4.5.
- (c) Effective January 1, 1997, the monthly benefit for: (i) each Participant actively employed by the Employer as of January 1, 1997, and (ii) each Participant who, as of January 1, 1997, was in receipt of a monthly benefit, shall be increased by five percent (5%), effective with the first monthly payment due on or after August 1, 1997 made retroactive to January 1, 1997
- (d) Effective January 1, 1999, the monthly benefit for: (i) each Participant actively employed by the Employer as of January 1, 1999, and (ii) each Participant who, as of January 1, 1999, was in receipt of a monthly benefit shall be increased by five percent (5%), effective with the first monthly payment due on January 1, 1999.

- (e) Effective January 1, 2000, the monthly benefit being paid to each Participant, joint annuitant and Beneficiary under the Plan on such date shall be increased to a minimum of \$575.
- (f) Effective January 1, 2001, the monthly benefit or survivor benefit for:
  - (i) each Participant actively employed by the Employer as of January 1, 2001 who is making contributions to the Plan pursuant to Section 7.1(a), and
  - (ii) each Participant, joint annuitant and Beneficiary who, on January 1, 2001, was in receipt of a monthly benefit or survivor benefit shall be increased by five percent (5%).

#### 4.2. DEFERRED RETIREMENT BENEFIT.

A Participant may continue in the employ of the Employer beyond his Normal Retirement Date. In such case, his Accrued Benefit shall be payable to such Participant commencing on the first day of the month coincident with or next following the date prior to such Participant's seventieth (70<sup>th</sup>) birthday on which (i) such Participant ceases to be an Employee, or (ii) if earlier, in the case of a Participant who is a lay employee, such employment ceases to be "substantial" (which date shall be his "Deferred Retirement Date"), provided he has completed five (5) Years of Service on such date. For this purpose, employment shall be considered "substantial" if the Participant is employed for at least eight (8) days in a calendar month.

For a Participant who is or remains as an Employee on and after his seventieth (70<sup>th</sup>) birthday, his Accrued Benefit shall be payable to such Participant commencing on the date (which date shall be his "Age 70 Commencement Date") which is the later of:

- (i) January 1, 2001; or
- (ii) the first day of the month coincident with or next following such Participant's seventieth
- (iii) (70<sup>th</sup>) birthday; provided, however, that
- (iv) The Age 70 Commencement Date of a Participant shall not occur before such Participant has completed five (5) Years of Service.

#### 4.3. EARLY RETIREMENT BENEFIT. A Participant who has attained his Early Retirement Date may retire from employment with the Employer. Upon his retirement, the Participant shall be entitled to his Accrued Benefit commencing upon his Normal Retirement Date or, at his election, a reduced benefit commencing on the first day of any month on or after his Early Retirement Date and prior to his Normal Retirement Date. The reduced benefit shall be his vested Accrued Benefit, determined as of his Early Retirement Date, multiplied by the applicable factor contained in Table A for each year

or fraction thereof by which his benefit commencement date precedes the Participant's sixty-fifth (65th) birthday.

#### 4.4. DISABILITY.

A Participant who terminates employment as a result of his Disability may elect to receive a disability retirement benefit equal to his vested Accrued Benefit, reduced as provided below, which shall consist of a monthly benefit, paid as a single life annuity (within the meaning of Section 5.1) commencing on his Disability Retirement Date. Distribution of such disability benefit shall cease upon the earlier of the Participant's death, attainment of age 65, retirement or other termination of employment. Upon retirement or termination subsequent to a Disability Retirement Date, the Participant shall be eligible to elect a mode of payment pursuant to Article 5. Upon the Participant's death while in receipt of a disability retirement benefit, the survivor benefit provisions of Section 6.1 shall apply based on the Participant's Accrued Benefit on the date of death (based on his Compensation and Years of Service determined in accordance with (C) below).

If such Participant's Disability shall cease so that he is no longer Disabled and:

- (A) Such Participant does not then resume active employment with the Employer within 60 days, he shall be considered to have retired or terminated on such sixtieth (60<sup>th</sup>) day with an Accrued Benefit based on upon his Compensation and Years of Service as determined in accordance with (C) below.
- (B) If such Participant again becomes an Employee within sixty (60) days, then as of his subsequent retirement or termination, he shall be entitled to receive a benefit based on his Compensation and Period of Service while an Employee and taking the provisions of (C) below into account.
- (C) In determining the amount of Accrued Benefit under (A) and (B) above, a Participant who is receiving a disability benefit under this Section shall be deemed to continue to make the required contributions under Section 7.1 based on his Compensation immediately prior to his Disability Retirement Date and his applicable election under Section 7.1 (a) or (b) in effect immediately prior to his Disability Retirement Date and Years of Service during the period of deemed contributions shall be credited and taken into account.

- 4.5. VESTING. In the event that a Participant's Service with the Employer terminates for reasons other than death, Early, Normal, Disability or Deferred Retirement, such Participant shall have a nonforfeitable right to a percentage of his Accrued Benefit as determined under the following schedule:

Years of Service

Vested Percentage

<i>Less than 5years</i>	<i>0%</i>
<i>5years and thereafter</i>	<i>100%</i>

In the event the Participant terminates with a vested Accrued Benefit, the Participant shall be entitled to his vested Accrued Benefit commencing on his Normal Retirement Date. Notwithstanding the foregoing, a Participant who terminates employment with the Employer after meeting the Service requirement for receipt of Early Retirement benefits under Section 4.3 may elect to commence benefits on the first day of any month on or after meeting the age requirement for receipt of such Early Retirement benefits, with such benefits being adjusted in accordance with the provisions of Section 4.3 for commencement prior to the Participant's sixty-fifth (65<sup>th</sup>) birthday.

A Participant may request, by written notice to the Administration Committee, that the Committee distribute his Accumulated Contributions to him in a single sum cash payment on any date after his termination of employment but prior to his "annuity starting date" (within the meaning of Section 5.2(d)). In such event, the Participant's Accrued Benefit shall be reduced by the Actuarial Equivalent of such single sum cash payment.

The nonvested portion of a Participant's Accrued Benefit shall be forfeited as of the earlier of (i) the last day of the plan Year in which the Participant receives distribution of his vested Accrued Benefit, or (ii) the last day of the Plan Year in which the Participant incurs five (5) consecutive one-year Breaks in Service. For this purpose, a Participant who is not vested in any portion of his Accrued Benefit as of the date he separates from Service shall be deemed to have received distribution of his Accrued Benefit as of the end of the Plan Year following the Plan Year in which he terminates employment.

A Participant, who terminates employment prior to his completion of five (5) Year of Service, or prior to otherwise becoming vested in his Accrued Benefit, shall receive his Accumulated Contributions in a lump sum payment in accordance with rules and procedures prescribed by the Administration Committee. In such event, he shall thereupon cease to be a Participant, and he shall not be entitled to any further benefits under the Plan, unless he is reemployed and again becomes a Participant.

## **ARTICLE FIVE—TIME AND MODE OF DISTRIBUTION OF PLAN BENEFITS**

- 5.1. **NORMAL FORM OF BENEFIT.** In the case of an unmarried Participant, the normal form of benefit shall be a single-life annuity. Under such form, monthly benefits shall be paid for the lifetime of the Participant. For a married Participant, the provisions of Section 5.2 shall apply in lieu of this Section. Alternatively, a married Participant shall be permitted to select the available options in Section 5.3.

Provided, however, that if the monthly benefit payable under the Plan would be less than twenty dollars (\$20.00), the Administration Committee shall cause payments to be made at such intervals as will make the payments amount to at least twenty dollars (\$20.00) each.

Provided, further, that if the Actuarial Equivalent lump sum value of the Participant's vested Accrued Benefit does not exceed \$5,000, the Participant's entire vested Accrued Benefit shall be normally distributed to the Participant (or, in the event of the Participant's death, his Beneficiary) in a lump-sum payment as soon as administratively practicable following the date the Participant retires, dies or otherwise terminates from employment. However, in the event of a mandatory distribution to a Participant whose vested Accrued Benefit is greater than \$1,000, if the Participant does not elect to have such automatic distribution paid directly to an eligible retirement plan specified by the Participant in a direct rollover or to receive the distribution directly, then the Plan Administrator shall pay the distribution in a direct rollover to an individual retirement plan designated by the Administration Committee.

- 5.2. **JOINT AND SURVIVOR ANNUITY.** For any Participant who is married at his "annuity starting date," his benefit under the Plan shall be paid in the form of a "qualified joint and survivor annuity" (defined below) unless the Participant, with the consent of his spouse, elects to waive such form of benefit during the election period described in paragraph (d) below; provided, however, that the consent of the Participant's spouse shall not be required if the Participant selects the one hundred percent (100%) joint and survivor annuity in Section 5.3 for the Participant and his spouse.

- (a) The "qualified joint and survivor annuity" means an annuity for the life of the Participant with a survivor annuity for the life of the Participant's surviving spouse equal to one hundred percent (100%) (fifty percent (50%) for a Participant whose benefit commencement date is before November 1, 2012) 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 shall be the Actuarial Equivalent of the Participant's Accrued Benefit payable in the normal form specified under Section 5.1 for an unmarried Participant.

Notwithstanding the foregoing, the minimum annuity payable to a spouse after the death of the Participant beginning on the date the Participant attained or would have attained age sixty-five (65) shall not be less than five hundred dollars (\$500.00) a month, but only if the Participant did not fail to contribute under Section 7.1 for a period of six (6) or more consecutive months.

- (b) The Participant may elect to waive the qualified joint and survivor annuity form of benefit at any time during the election period. Such an election must be made in writing on a form acceptable to the Administration Committee. However, an election to waive the qualified joint and survivor annuity shall not take effect unless (1) the Participant's spouse consents in writing to the election, (2) the election designates a specific alternate Beneficiary, if applicable, which may not be changed without spousal consent (unless the Participant's 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 notary public. In addition, 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 Participant's spouse expressly permits designation by the Participant without any further spousal consent). Notwithstanding the foregoing, spousal consent hereunder shall not be required if it is established to the satisfaction of the Administration Committee that the spouse's consent cannot be obtained because such spouse cannot be located, or because of such other circumstances as may be prescribed in Section 417 of the Code or regulatory guidance promulgated thereunder.
- (c) Any consent by a spouse obtained under this Section (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/or a specific form of benefit where applicable, and that the spouse voluntarily elects to relinquish either or both of such rights. No consent obtained under this provision shall be valid unless the Participant has received notice as provided below. In addition, any waiver made in accordance with this Section may be revoked at any time prior to the commencement of benefits under the Plan in accordance with procedures established by the Administration Committee. A Participant is not limited to the number of revocations or elections that may be made hereunder.
- (d) The "election period" under this Section shall be the one hundred eighty (180) days period prior to the "annuity starting date," which date shall be the first day of the first period in which an amount is payable as an annuity or, if such benefit is not payable as an annuity, the first day on which the Participant may begin to receive a distribution from the Plan.
- (e) The Administration Committee shall provide to each Participant, not less than thirty (30) days, and not more than one hundred eighty (180) days, prior to the annuity starting date, a written explanation of:
- (1) the terms and conditions of the qualified joint and survivor annuity;
  - (2) the Participant's right to make, and the effect of, an election to waive such annuity;

- (3) the right of the Participant's spouse regarding the required spousal consent to an election to waive the qualified joint and survivor annuity; and
- (4) the right to make, and the effect of, a revocation of an election to waive such annuity.

The description of a Participant's right, if any, to defer distribution shall also describe the consequences of failing to defer receipt of the distribution in accordance with the requirements of applicable law.

- (f) *Restrictions:* Notwithstanding anything contained herein to the contrary, if the Actuarial Equivalent lump sum value of a Participant's Accrued Benefit does not exceed \$5,000, distribution of the Participant's vested Accrued Benefit shall be made, in the form of a lump-sum payment, in accordance with the provisions of Section 5.1 above.

5.3. **OPTIONAL FORMS OF BENEFIT PAYMENTS.** In lieu of the normal form of benefit described under Sections 5.1 and 5.2, a Participant may elect to receive a reduced monthly benefit payable to and during the lifetime of the Participant with the provision that after his death, a monthly benefit at the rate of fifty percent (50%) or one hundred percent (100%) of his reduced monthly benefit shall then be paid to and during the life of the Participant's dependent (as defined in Code Section 152), if such dependent is living at the time of death of the Participant.

A married Participant may instead elect to receive a monthly benefit payable as a single life annuity (with no survivor benefit).

A married Participant whose benefit commencement date is before November 1, 2012 may elect to receive a reduced monthly benefit in the form of a one hundred percent (100%) joint and survivor annuity (an annuity for the life of the Participant with a survivor annuity for the life of the Participant's surviving spouse equal to one hundred percent (100%) of the amount of the annuity payable during the joint lives of the Participant and the Participant's spouse).

A married Participant whose benefit commencement date is on or after November 1, 2012 may elect to receive a reduced monthly benefit in the form of a fifty percent (50%) joint and survivor annuity (an annuity for the life of the Participant with a survivor annuity for the life of the Participant's surviving spouse equal to fifty percent (50%) of the amount of the annuity payable during the joint lives of the Participant and the Participant's spouse).

The monthly benefit payable under any of the foregoing options shall be the Actuarial Equivalent of the Participant's Accrued Benefit payable in the normal form specified in Section 5.1 for an unmarried Participant. Provided, however, that payment under any of the foregoing options shall be restricted to the extent required (and to the extent applicable) to ensure compliance with the minimum distribution incidental death benefit requirements of Section 401(a)(9) of the Code and the regulations thereunder.

Benefit elections shall be made and filed in accordance with uniform administrative procedures established by the Administration Committee.

If the Beneficiary dies after the election of an option but prior to the commencement of payments to the Participant, the election shall be null and void and the Participant may elect any applicable alternative form of payment, subject to the foregoing provisions of this Article Five. If the spouse or dependent, as the case may be, dies following the commencement of monthly payments to a Participant under Section 5.3, payment of the monthly benefit shall continue only to the Participant.

- 5.4. **REVOCATION OR CHANGE OF OPTIONAL FORM.** A Participant may revoke or change any election previously made, or deemed to be made under this Article Five, at any time prior to benefit commencement in accordance with procedures established by the Administration Committee. A Participant is not limited to the number of revocations or elections that may be made hereunder. Once payments commence, there can be no revocation or change to the form of benefit or, if applicable, to the Beneficiary under a joint and survivor form of benefit.
- 5.5. **TIME OF COMMENCEMENT OF RETIREMENT PAYMENTS.** Subject to the following provisions of this Section, and subject to the provisions of Section 4.2, unless the Participant elects otherwise, distribution of the Participant's vested Accrued Benefit shall normally be made or commence no later than the sixtieth (60) day after the latest of the close of the Plan Year in which: the Participant attains age sixty-five (65) (or Normal Retirement Date, if earlier), (b) occurs the 10th anniversary of the year in which the Participant commenced participation in the Plan, or (c) the Participant terminates service with the Employer. However, if the Actuarial Equivalent lump-sum value of the Participant's vested Accrued Benefit exceeds \$5,000, distribution of his benefit shall not commence prior to such Participant's Normal Retirement Date unless the Participant otherwise elects in writing.

In no event, however, shall distribution of the Participant's vested Accrued Benefit be made or commence later than the Participant's required beginning date, as defined in Section 5.8(f)(iv).

Notwithstanding the foregoing, the provisions of this paragraph shall be subject to any prior election complying with the provisions of Section 242(b)(2) of TEFRA.

- 5.6. **SUSPENSION OF BENEFITS.** If a Participant returns to employment and again becomes an Employee after his Early, Normal or Deferred Retirement Date, but prior to his seventieth (70th) birthday, and for a Participant who is a lay employee, such employment is substantial (as defined in Section 4.2), such Participant's monthly benefit shall be suspended during each calendar month of such employment. Upon the earlier of a subsequent retirement date or his Age 70 Commencement Date (within the meaning of Section 4.2), his Accrued Benefit shall be recomputed based on his Period of Service prior to and subsequent to such return to employment, reduced by the Actuarial Equivalent of any monthly benefit payment previously received by the Participant.

5.7. NOTICE TO EMPLOYEES. If a Participant's monthly retirement benefits are suspended under Section 5.6, the Administration Committee shall notify the Participant of the suspension; such notice shall contain such information and shall be given at such time as may be required by applicable law or regulation.

5.8. MINIMUM DISTRIBUTION RULES.

(a) General Rules.

- (i) Application. The provisions of this Section 5.8 shall apply for purposes of determining required minimum distributions, to the extent required by applicable law.
- (ii) Precedence. The requirements of this Section 5.8 shall take precedence over any inconsistent provisions of the Plan; provided, however, that this Section 5.8 shall not require the Plan to provide any form of benefit, or any option, not otherwise provided under Section 5.1, 5.2, or 5.3.
- (iii) Requirements of Treasury Regulations Incorporated. All distributions required under this Section shall be determined and made in accordance with the Treasury regulations under Section 401(a)(9) of the Code, including the incidental death benefit requirement in Section 401(a)(9)(G) and regulatory guidance issued thereunder.
- (iv) TEFRA Section 242(b)(2) Elections. Notwithstanding the other provisions of this Section, other than subsection (i) above, distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the Plan that relate to Section 242(b)(2) of TEFRA.

(b) Time and Manner of Distributions.

- (i) Required Beginning Date. The Participant's entire interest shall be distributed, or begin to be distributed, to the Participant no later than the Participant's required beginning date.
- (ii) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest shall be distributed, or begin to be distributed, no later than as follows:
  - (1) If the Participant's surviving spouse is the Participant's sole designated Beneficiary, then, except as provided in the Plan, distributions to the surviving spouse shall begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70 1/2, if later.

- (2) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, and if distribution is to be made over the life of, or over a period certain not exceeding the life expectancy of, the designated Beneficiary (if permitted or required under Section 5.3 or Article Six), distribution to the designated Beneficiary shall begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
- (3) If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, or if the provisions of subsection (A) and (B) do not otherwise apply, the Participant's entire interest shall be distributed by December 31 of the calendar year containing the fifth annual anniversary of the Participant's death.
- (4) If the Participant's surviving spouse is the Participant's sole designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Section 5.8(b)(ii), other than Section 5.8(b)(ii)(1), shall apply as if the surviving spouse were the Participant.

For purposes of this Section 5.8(b)(ii) and Section 5.8(e), distributions are considered to begin on the Participant's required beginning date (or, if Section 5.8(b)(ii)(4) applies, the date distributions are required to begin to the surviving spouse under Section 5.8(b)(ii)(1)).

If annuity payments irrevocably commence to the Participant before the Participant's required beginning date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under Section 5.8(b)(ii)(1)), the date distributions are considered to begin is the date distributions actually commence.

- (iii) Form of Distribution. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year, distributions shall be made in accordance with Sections 5.8(c), 5.8(d) and 5.8(e). If the Participant's interest 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 Treasury regulations. Any part of the Participant's interest which is in the form of an individual account described in Section 414(k) of the Code shall be distributed in a manner satisfying the requirements of Section 401(a)(9) of the Code and the Treasury regulations that apply to individual accounts.

- (c) Determination of Amount to be Distributed Each Year.

- (i) General Annuity Requirements. If the Participant's interest is paid in the form of an annuity under the Plan, payments under the annuity shall satisfy the following requirements:
  - (1) the annuity distributions shall be paid in periodic payments made at intervals not longer than one year;
  - (2) the distribution period shall be over a life (or lives) or over a period certain not longer than the period described in Section 5.8(d) or 5.8(e);
  - (3) once payments have begun over a period certain, the period certain shall not be changed even if the period certain is shorter than the maximum permitted;
  - (4) payments shall either be nonincreasing or increase only as follows:
    - (A) by an annual percentage increase that does not exceed the annual
    - (B) percentage increase in a cost-of-living index that is based on prices of all items and issued by the Bureau of Labor Statistics;
    - (C) to the extent of the reduction in the amount of the Participant's
    - (D) payments to provide for a survivor benefit upon death, but only if the Beneficiary whose life was being used to determine the distribution period described in Section 5.8(d) dies or is no longer the Participant's Beneficiary pursuant to a qualified domestic relations order within the meaning of Section 414(p);
    - (E) to provide cash refunds of employee contributions upon the
    - (F) Participant's death; or
    - (G) to pay increased benefits that result from a Plan amendment.
- (ii) Amount Required to be Distributed by Required Beginning Date. The amount that must be distributed on or before the Participant's required beginning date (or, if the Participant dies before distributions begin, the date distributions are required to begin under Section 5.8(b)(ii)(1) or (ii)(2)) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the Participant's benefit accruals as of the last day of the first distribution calendar year shall be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Participant's required beginning date.

- (iii) **Additional Accruals After First Distribution Calendar Year.** Any additional benefits accruing to the Participant in a calendar year after the first distribution calendar year shall be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.
- (d) **Requirements for Annuity Distributions that Commence During Participant's Lifetime.**
  - (i) **Joint Life Annuities Where the Beneficiary Is Not the Participant's Spouse.** If the Participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the Participant and a nonspouse Beneficiary, annuity payments to be made on or after the Participant's required beginning date to the designated Beneficiary after the Participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the Participant using the table set forth in Q&A-2 of Section 1.401(a) (9)-6 of the Treasury regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the Participant and a nonspouse Beneficiary and a period certain annuity, the requirement in the preceding sentence shall apply to annuity payments to be made to the designated Beneficiary after the expiration of the period certain.
  - (ii) **Period Certain Annuities.** Unless the Participant's spouse is the sole designated Beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the Participant's lifetime may not exceed the applicable distribution period for the Participant under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the Participant reaches age 70, the applicable distribution period for the Participant is the distribution period for age 70 under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations plus the excess of 70 over the age of the Participant as of the Participant's birthday in the year that contains the annuity starting date. If the Participant's spouse is the Participant's sole designated Beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the Participant's applicable distribution period, as determined under this Section 5.8(d), or the joint life and last survivor expectancy of the Participant and the Participant's spouse as determined under the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the calendar year that contains the annuity starting date.
- (e) **Requirements for Minimum Distributions Where Participant Dies Before Distributions Begin.**

- (i) Participant Survived by Designated Beneficiary. Except as provided in the Plan, if the Participant dies before the date distribution of his or her interest begins and there is a designated Beneficiary, the Participant's entire interest shall be distributed, beginning no later than the time described in Section 5.8(b) (ii)(1) or (ii) (2), over the life of the designated Beneficiary or over a period certain not exceeding:
    - (1) unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated Beneficiary determined using the Beneficiary's age as of the Beneficiary's birthday in the calendar year immediately following the calendar year of the Participant's death; or
    - (2) if the annuity starting date is before the first distribution calendar year, the life expectancy of the designated Beneficiary determined using the Beneficiary's age as of the Beneficiary's birthday in the calendar year that contains the annuity starting date.
  - (ii) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest shall be completed by December 31 of the calendar year containing the fifth annual anniversary of the Participant's death.
  - (iii) Death of Surviving Spouse Before Distributions to Surviving Spouse Begin. If the Participant dies before the date distribution of his or her interest begins, the Participant's surviving spouse is the Participant's sole designated Beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, this Section 5.8(e) shall apply as if the surviving spouse were the Participant, except that the time by which distributions must begin shall be determined without regard to Section 5.8(b) (ii)(1).
- (f) Definitions.
- (i) Designated Beneficiary. The individual who is designated as the Beneficiary under Section 6.4 of the Plan, and is the designated Beneficiary under Section 401(a)(9) of the Internal Revenue Code and Section 1.401(a)(9)-4 of the Treasury regulations.
  - (ii) 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 5.8(b) (ii).

- (iii) Life expectancy. Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury regulations.
- (iv) Required beginning date In no event shall distribution of the Participant's vested Accrued Benefit be made or commence later than the April 1st following the end of the calendar year in which the Participant attains age seventy and one-half (70½).

5.9. ELIGIBLE ROLLOVER DISTRIBUTIONS. Notwithstanding the foregoing provisions of this Article Five, the provisions of this Section 5.9 shall apply to distributions made under the Plan.

- (a) A "Distributee" (as hereinafter defined) may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an "eligible rollover distribution" (as hereinafter defined) paid directly to an eligible retirement plan specified by the Distributee in a direct rollover.
- (b) Definitions:
  - (i) Eligible Rollover Distribution. An eligible rollover distribution is any distribution made to the Distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated Beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; any hardship distribution described in Section 401(k)(2)(B)(i)(IV) of the Code. 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
  - (ii) 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, a Roth IRA described in Code Section 408A(b) (subject to the requirement of applicable law), an annuity plan described in Section 403(a) of the Code, a qualified trust described in Section 401(a) of the Code, an annuity contract described in Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan, that accepts the Distributee's eligible rollover distribution. 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 an alternate payee under a qualified domestic

relations order, as defined in Section 414(p) of the Code. Notwithstanding the foregoing, (A) with respect to any aftertax contributions, an eligible retirement plan is an individual retirement account or annuity described in Section 408(a) or 408(b) of the Code, a qualified plan or a 403(b) plan that agrees to separately account for amounts so transferred, including accounting separately for the portion(s) of such distribution which are includable, and not includable, in gross income, and (B) for a Distributee who is a non-spouse “designated beneficiary,” an eligible retirement plan is an individual retirement account (or other permissible eligible retirement plan) established by or for the Beneficiary for purposes of receiving the distribution.

- (iii) 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 an 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 and former spouse. Moreover, a non-spousal Beneficiary who is a “designated beneficiary” under Code Section 401(a)(9)(E) and the regulations promulgated thereunder is a Distributee.
- (iv) Direct Rollover. A direct rollover is a payment by the Plan to the eligible retirement plan specified by the Distributee.
- (c) If a distribution is one to which Sections 401(a)(11) and 417 of the Code do not apply, such distribution may commence less than thirty (30) days after the notice required under Section 1.411 (a)-11 (c) of the Income Tax Regulations is given, provided that:
  - (i) the Administration Committee clearly informs the Participant that the Participant has a right to a period of at least thirty (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
  - (ii) the Participant, after receiving the notice, affirmatively elects a distribution.
- (d) If a distribution is one to which Sections 401(a)(11) and 417 of the Code applies, the distribution may commence less than thirty (30) days, but not less than seven (7) days, after the notice required under Section 1.417(a)(3)-1 of the Income Tax Regulations is given, provided, that the requirements of paragraphs (c)(i) and (c) (ii) above are satisfied with respect to both the Participant and the Participant’s spouse, if applicable.

5.10. **RETROACTIVE BENEFIT PAYMENTS.** In the event that the amount of a monthly benefit to any retired or terminated Participant cannot be determined for any reason

(including lack of information as to whether the Participant is still living or whether he is married) on the date payment is to commence under this Article Five, payment shall be made retroactive to such date no later than sixty (60) days after the date on which the amount of such monthly benefit can be determined, and shall be adjusted in accordance with procedures established by the Administration Committee from time to time to reflect delayed payment.

## **ARTICLE SIX—DEATH BENEFITS**

- 6.1. **DEATH BENEFIT FOR VESTED MARRIED PARTICIPANTS.** Except as otherwise provided below, if a vested married Participant dies before commencement of benefits under the Plan, and is survived by his spouse, his surviving spouse shall be entitled to a death benefit payable monthly in the form of a “preretirement survivor annuity”.

In the event the Participant dies prior to attaining age fifty-five (55), such preretirement survivor annuity shall provide a survivor benefit to the Participant’s spouse equal to five hundred dollars (\$500.00) per month; provided, however, that, this benefit shall not apply to a Participant who is treated as having made “late contributions” (as defined in Section 7.1) for a period of six (6) or more months during any calendar Year of Service commencing on or after July 1, 2003. Such survivor benefit shall be payable to the surviving spouse until the time the Participant would have attained age sixty-five (65) or until the spouse remarries, whichever occurs first, at which time such survivor benefit payments shall cease. At such time that the Participant would have attained age sixty-five (65), the Participant’s surviving spouse shall receive a survivor benefit equal to the benefit the spouse would have received had the Participant retired and elected a fifty percent (50%) joint and survivor annuity (as defined in Section 5.3) and died on the next day.

In the event the Participant dies after attaining age fifty-five (55) but prior to age sixty-five (65), such preretirement survivor annuity shall provide a survivor benefit to the Participant’s surviving spouse equal to the benefit the spouse would have received had the Participant retired with a one hundred percent (100%) joint and survivor annuity (as defined in Section 5.3) (a fifty percent (50%) joint and survivor annuity (as defined in Section 5.3) for deaths before November 1, 2012) and died on the next day.

In the event the Participant dies after attaining age sixty-five (65), such preretirement survivor annuity shall provide a survivor benefit to the Participant’s surviving spouse equal to the benefit the spouse would have received had the Participant retired and elected a one hundred percent (100%) joint and survivor annuity (as defined in Section 5.3) and died on the next day.

If a surviving spouse is eligible to receive a preretirement survivor annuity in any month that is less than five hundred dollars (\$500.00), then the monthly benefit payable to such spouse shall be equal to \$500; provided, however, that this paragraph shall not apply to a Participant who is treated as having made late contributions (as defined in Section 7.1) for a period of six (6) or more months during any calendar Year of Service commencing on or after July 1, 2003.

Notwithstanding the foregoing, in no event shall a survivor benefit be payable under this Section 6.1 with respect to a Participant who previously received distribution of his Accumulated Contributions under Section 4.5.

Provided, however, that in the event the Participant and his spouse die prior to the date that the Actuarial Equivalent of the payments made to date is less than the value of his

Accumulated Contributions, then the excess of the value of his Accumulated Contributions over the value of the payments received shall be distributed to the estate of the Participant or, if applicable the estate of such spouse, whichever is last to survive.

- 6.2. **DEATH BENEFIT FOR UNMARRIED OR NONVESTED PARTICIPANTS.** If a Participant dies before commencement of benefits under the Plan, and he is not entitled to a death benefit under Section 6.1, such Participant's Accumulated Contribution shall be paid to his Beneficiary, in a single sum cash payment, as soon as administratively possible following the Participant's date of death.
- 6.3. **DEATH AFTER COMMENCEMENT OF BENEFIT.** If a Participant dies after payment of benefits has commenced, no death benefit shall be payable except as provided in the form of benefit elected by the Participant under Article Five, provided, however, that in the event the Participant and, if applicable, his spouse die prior to the date the Actuarial Equivalent of the payments made to date is less than the value of the Accumulated Contributions, then the excess of the value of the Accumulated Contributions over the value of the payments received shall be distributed to the estate of the Participant or, if applicable, the estate of the spouse, whichever is the last to survive.
- 6.4. **DESIGNATION OF BENEFICIARY.** Each Participant shall designate a Beneficiary in a manner acceptable to the Administration Committee to receive payment of any death benefit payable under this Article Six if such Beneficiary should survive the Participant. However, no Participant who is married shall be permitted to designate a Beneficiary other than his spouse unless the Participant's spouse has signed a written consent which provides for the designation of an alternate Beneficiary.

Subject to the above, Beneficiary designations may include primary and contingent Beneficiaries, and may be revoked or amended at any time in similar manner or form, and the most recent designation shall govern. A designation of a Beneficiary made by a Participant shall cease to be effective upon his marriage or remarriage. In addition, a spousal Beneficiary designation shall cease to be effective upon the divorce of the Participant and such spouse. In the absence of an effective designation of Beneficiary, or if no designated Beneficiary is surviving as of the date of the Participant's death, any death benefit shall be paid to the surviving spouse of the Participant, or, if no surviving spouse, to the Participant's estate. Notification to Participants of the death benefits under the Plan and the method of designating a Beneficiary shall be given at the time and in the manner provided by regulations and rulings under the Code.

In the event a Beneficiary survives the Participant, but dies before receipt of all payments due that Beneficiary hereunder, any benefits remaining to be paid to the Beneficiary shall be paid to the Beneficiary's estate.

- 6.5. **HEART ACT DEATH BENEFITS UNDER USERRA.** In accordance with the provisions of the Heroes Earnings Assistance and Relief Act of 2008 ("HEART Act") and solely in the case of a Participant's death occurring on or after January 1, 2007, if a Participant dies while performing qualified military service (as defined in Code Section 414(u)), the Beneficiary(ies) (or surviving spouse, if the qualified joint and survivor

annuity or qualified pre-retirement survivor annuity rules apply) of the Participant shall be entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Participant had resumed employment and then terminated employment on account of death. In addition, vesting service credit for the deceased Participant's period of qualified military service shall be credited to the extent required by Code Section 401(a)(37).

The provisions of this Section 6.5 shall be interpreted consistent with, and governed by, Section 414(u)(9) of the Code and regulatory guidance issued thereunder.

## **ARTICLE SEVEN—FINANCING THE PLAN**

- 7.1. **PARTICIPANT CONTRIBUTIONS.** (a) For each month during which an Employee is a Participant in the Plan, a Participant shall make contributions under the Plan equal to 2-1/2% of his Compensation for such month; provided, however, that, effective January 1, 2004, a Participant may elect to make such contributions in an amount equal (A) 5% of his Compensation, or (B) 3 1/2% of his Compensation in accordance with rules established by the Administration Committee. Such contributions must be made monthly and must be received by and deposited in the Archdiocese Benefits Office lockbox on or before the last day of each month, except as otherwise provided by rules of the Administration Committee relating to the January 1, 2004 election referred to in the next preceding sentence. Late contributions for any month shall not be accepted by the Plan for such month and shall be applied to the following month or returned to the Participant in accordance with rules established by the Administration Committee.
- (b) For any lay Employee (i) whose Employment Commencement Date was after January 1, 2000 and prior to January 1, 2001, and who elected to become a Participant on January 1, 2001 or (ii) whose Employment Commencement Date was on or prior to January 1, 2000 and who elected to become a Participant on the first day he was eligible therefore, such Employee may elect to make contributions to the Plan in an amount equal to 2-1/2% of his Compensation from his Employment Date to the date he becomes a Participant. Such contributions must be paid in a lump sum (or such other manner acceptable to the Administration Committee) to the Plan not later than December 31, 2002 or by such earlier date determined by the Administration Committee and communicated to the eligible lay Employee not later than 60 days prior to such earlier date. The monthly benefit attributable to contributions pursuant to this paragraph shall be deemed to have been accrued during the Period of Service from the applicable Employee's Employment Commencement Date to his participation commencement date.
- 7.2. **EMPLOYER CONTRIBUTIONS.** The Employer shall make such contributions from time to time, which, in addition to Participant contributions pursuant to Section 7.1, it shall deem necessary to provide the benefits of this Plan. It is the intention of the Archdiocese and the other Employers that the minimum amount of such contribution shall be that amount which is required to meet the minimum funding standards of The Employee Retirement Income Security Act of 1974 ('ERISA') as originally enacted, as if such standards were applicable to the Plan. However, the Employer is under no obligation to make such contributions or to make any contributions under the Plan after the Plan is terminated, whether or not benefits accrued or vested prior to such date of termination have been fully funded.
- 7.3. **FUNDING POLICY.** The Investment Committee shall have the fiduciary responsibility for establishing a funding policy and method which satisfies the requirements of Part 3 of Title I of ERISA, if such requirements were applicable, and shall meet annually at a stated time of the year to review such funding policy and method. All actions taken with respect to such funding policy and method, and the reasons therefore, shall be recorded in the minutes of such Committee.

- 7.4. TRUST FUND. (a) The Trust shall be part of the Plan. All payments made pursuant to this Article shall be paid to the Trust Fund. All such payments and increments thereon shall be held and disbursed in accordance with the provisions of the Plan and the underlying Trust as each shall be applicable in the circumstances. No person shall have any interest in, or right to, any part of the funds, so held in the Trust Fund, except as expressly provided in the Plan, or underlying Trust.
- (b) Except as otherwise provided herein, the assets of the Plan shall never inure to the benefit of the Employer, and shall be held for the exclusive purposes of providing benefits to Participants and/or their joint annuitants and Beneficiaries, and for defraying the reasonable expenses of administering the Plan.

## **ARTICLE EIGHT—ADMINISTRATION OF THE PLAN**

### 8.1. NAMED FIDUCIARY AND ADMINISTRATION OF THE PLAN

The Administration Committee (the “Committee”) shall control and manage the operation and administration of the Plan, and shall be the “named fiduciary” and Plan Administrator, as such terms are defined in The Employee Retirement Income Security Act of 1974, (“ERISA”), as if such provisions were applicable. The Committee shall consist of six (6) persons, three of which shall be appointed by the Archdiocese Benefits Committee and three of which shall be appointed by the Archbishop (or the delegate of the Archbishop).

The membership of, and all actions by the Administration Committee shall be conducted in accordance with and shall be subject to the by-laws of the Committee.

The Committee shall have the power and the duty to take all action and to make all decisions necessary or proper to carry out the Plan. The determination of the Committee as to any question involving the general administration and interpretation of the Plan shall be final, conclusive and binding. Any discretionary actions to be taken under the Plan by the Committee with respect to the classification of Employees, Participants, joint or contingent annuitants, Beneficiaries, contributions, or benefits shall be uniform in their nature and applicable to all persons similarly situated. Without limiting the generality of the foregoing, the Committee shall have the following powers and duties:

- (a) To require any person to furnish such information as it may request for the purpose of the proper administration of the Plan as a condition to receiving any benefits under the Plan;
- (b) To make and enforce such rules and regulations and prescribe the use of such forms as it shall deem necessary for the efficient administration of the Plan;
- (c) In its absolute discretion, to interpret the Plan, and to resolve ambiguities, inconsistencies and omissions, which findings shall be binding, final, and conclusive;

- (d) To decide on questions concerning the Plan and the eligibility of an Employee to participate in the Plan, in accordance with the provisions of the Plan;
- (e) To determine the amount of benefits which shall be payable to any person in accordance with the provisions of the Plan; and to provide a full and fair review to any Participant whose claim for benefits has been denied in whole or in part;
- (f) The power to designate a person who may or may not be a member of the Committee as Plan Administrator; if the Committee does not so designate an Administrator, the Archdiocese shall be the Plan Administrator;
- (g) To allocate any such powers and duties to or among individual members of the Committee,
- (h) To designate persons other than Committee members to carry out any duty or power which would otherwise be a fiduciary responsibility of the Committee or Administrator, under the terms of the Plan.

8.2. **INVESTMENT COMMITTEE.** The Investment Committee (the “Committee”) shall be responsible for the management and control of Plan assets and shall appoint and retain the power to replace a Trustee. The Investment Committee shall consist of six (6) members. Three members shall be appointed by the Archdiocese Benefits Committee and three members shall be appointed by the Archbishop or the Archbishop’s delegate.

The membership of, and all actions by the Investment Committee, shall be conducted in accordance with and shall be subject to the by-laws of such Committee.

The Committee shall have the power and duty to take such action as follows:

- (a) To appoint and remove the Trustee as funding agent,
- (b) To appoint and remove investment managers for part or all of the Trust,
- (c) To establish investment objectives and strategies for the Trust,
- (d) To establish and monitor investment guidelines, including diversification of the Trust,
- (e) To review and monitor the investment performance of the Trust and each investment manager,
- (f) To appoint and remove any persons as advisors to the Committee, and
- (g) To delegate to such persons as it may select all or part of its duties hereunder, to retain counsel, and employ agents to provide clerical, accounting, actuarial, consulting, administrative and other services as it may require in carrying out duties hereunder.

The Committee shall appoint the Actuary (or shall engage an actuarial firm which shall designate the Actuary) to make actuarial valuations of the liabilities under the Plan; to recommend to it the actuarial funding method and the actuarial assumptions for use from time to time in actuarial and other computations for any purposes of the Plan; to recommend to it the range of permissible contributions to be made by the Employer; and to perform such other services as the Committee shall deem necessary or desirable in connection with the administration of the Plan. The Committee may employ counsel, a qualified public accountant, agents and such clerical, medical and other accounting services as it may require in carrying out the provisions of the Plan.

The Investment Committee may appoint, and shall retain the power to discharge or replace, an investment manager or managers to manage any assets of the Plan, including the power to acquire and dispose of Trust Fund assets and to perform such other services as the Committee shall deem necessary or desirable in connection with the management of the Trust Fund. Such investment manager or managers shall (i) be registered as an investment adviser under the Investment Advisers Act of 1940; (ii) be a bank, as defined in the Investment Advisers Act of 1940; or (iii) be an insurance company qualified to manage, acquire or dispose of qualified plan assets under the laws of more than one State; and shall acknowledge in writing to the Investment Committee that such investment manager is a fiduciary with respect to the Plan. Anything in this Article or elsewhere in the Plan to the contrary notwithstanding, the Trustee and the Committee shall be relieved of the authority and discretion to manage and solely control the assets of the Plan to the extent that authority to acquire, dispose of, or otherwise manage the assets of the Plan is delegated to one or more investment managers in accordance with this Section.

- 8.3. RELIANCE. To the extent permitted by law, the Investment and Administration Committees and any person to whom it may delegate any duty or power in connection with administering the Plan, the Employer, and the officers and directors thereof, shall be entitled to rely conclusively upon, and shall be fully protected in any action taken or suffered by them in good faith in the reliance upon, the Actuary, counsel, accountant, other specialist, or other person selected by the Committee(s), or in reliance upon any tables, valuations, certificates, opinions or reports which shall be furnished by any of them or by the Trustee, as applicable. Further, to the extent permitted by law, no member of the Committee, nor the Employer, nor the officers or directors thereof, shall be liable for any neglect, omission or wrongdoing of the Trustee, or any other member of the Committee.
- 8.4. EXPENSES. All expenses incurred prior to the termination of the Plan that shall arise in connection with the administration of the Plan, including, but not limited to, the compensation of the Trustee, if any, administrative expenses and proper charges and disbursements of the Trustee, if any, and compensation and other expenses and charges of any, Actuary, counsel, accountant, specialist, or other person who shall be employed by the Committee in connection with the administration thereof, shall be paid from the Trust Fund to the extent not paid by the Archdiocese.

- 8.5. **DISBURSEMENT.** Subject to the provisions of the Trust, the Administration Committee shall determine the manner by which the funds of the Plan shall be disbursed pursuant to the Plan.
- 8.6. **COMPENSATION.** The members of any Committee established under the Plan shall serve without compensation for services as such, but all reasonable expenses incurred in the performance of their duties shall, to the extent not paid by the Archdiocese, be paid from the Trust Fund, if applicable. Unless otherwise determined by the Archdiocese or unless required by any Federal or State law, no member of the Committee shall be required to give any bond or other security in any jurisdiction.
- 8.7. **CLAIMS PROCEDURE.** Pursuant to procedures established by the Administration Committee (the “Committee”), claims for benefits under the Plan made by a Participant or Beneficiary (the “claimant”) must be submitted in writing to the Administration Committee. Approved claims shall be processed and instructions issued to the Trustee or custodian authorizing payment as claimed.

If a claim is denied in whole or in part, the Administration Committee, shall notify the claimant within ninety (90) days after receipt of the claim (or within one hundred eighty (180) days, if special circumstances require an extension of time for processing the claim, and provided written notice indicating the special circumstances and the date by which a final decision is expected to be rendered is given to the claimant within the initial ninety (90) day period).

The notice of the denial of the claim shall be written in a manner calculated to be understood by the claimant and shall set forth the following:

- (i) the specific reason or reasons for the denial of the claim;
- (ii) the specific references to the pertinent Plan provisions on which the denial is based;
- (iii) a description of any additional material or information necessary to perfect the claim, and an explanation of why such material or information is necessary;
- (iv) a statement that any appeal of the denial must be made by giving to the Administration Committee, within sixty (60) days after receipt of the denial of the claim, written notice of such appeal, such notice to include a full description of the pertinent issues and basis of the claim; and

Upon denial of a claim in whole or part, the claimant (or his duly authorized representative) shall have the right to submit a written request to the Administration Committee, for a full and fair review of the denied claim, to be permitted to review documents (free of charge) pertinent to the denial, and to submit issues and comments in writing. Any appeal of the denial must be given to the Committee, within the period of time prescribed under (a)(iv) above. If the claimant (or his duly authorized

representative) fails to appeal the denial to the Committee, within the prescribed time, the Committee's adverse determination shall be final, binding and conclusive.

The Committee may hold a hearing or otherwise ascertain such facts as it deems necessary and shall render a decision which shall be binding upon both parties. The Committee shall advise the claimant of the results of the review within sixty (60) days after receipt of the written request for the review, unless special circumstances require an extension of time for processing, in which case a decision shall be rendered as soon as possible but not later than one hundred twenty (120) days after receipt of the request for review. If such extension of time is required, written notice of the extension shall be furnished to the claimant prior to the commencement of the extension. The decision of the review shall be written in a manner calculated to be understood by the claimant and shall include specific reasons for the decision, specific references to the pertinent Plan provisions on which the decision is based, and the claimant's right to receive free of charge upon written request, reasonable access to and copies of, all Plan documents, records, and other information relevant to the claim. The decision of the Committee shall be final, binding and conclusive.

## **ARTICLE NINE—EARLY TERMINATION RESTRICTIONS/BENEFIT LIMITATIONS**

### **9.1. BENEFIT RESTRICTIONS.**

- (a) Restriction of Benefits upon Plan Termination. Notwithstanding any other provision of the Plan to the contrary, and to the extent required by applicable law, in the event the Plan is terminated, the benefit of any Highly-Compensated Employee shall be limited to a benefit that is nondiscriminatory under Code Section 401(a)(4).
- (b) Restrictions on Distributions. Notwithstanding any other provision of the Plan to the contrary, in any Plan Year, and to the extent required by applicable law, the payment of benefits to or on behalf of a Restricted Employee shall not exceed an amount equal to the payments that would be made to or on behalf of the Restricted Employee in that Plan Year under a single life annuity that is the Actuarial Equivalent of the sum of the Participant's Accrued Benefit and the Participant's other benefits, if any, under the Plan; provided, however, that this limitation shall not apply in any Plan Year in which any one of the following requirements is satisfied:
  - (1) After taking into account payment to or on behalf of the Restricted Employee of all benefits payable to or on behalf of that Restricted Employee under the Plan, the value of Plan assets must equal or exceed 110 percent of the value of current liabilities (determined in accordance with the Code and regulatory guidance).
  - (2) The value of the benefits payable to or on behalf of the Restricted Employee must be less than one percent of the value of current liabilities (determined in accordance with the Code and regulatory guidance) before distribution.
  - (3) The value of the benefits payable to or on behalf of the Restricted Employee must not exceed the amount described in Code Section 411(a)(11)(A).
- (c) "Restricted Employee" Defined. For purposes of this Section 9.1, the term "Restricted Employee" means any of the twenty-five (25) highest paid Highly

### **9.2. LIMITATION ON BENEFITS.**

- (a) Rules: Except as otherwise provided herein, the provisions of this Section 9.2 shall apply with respect to annuity starting dates (as defined in Section 5.2(d)) commencing on or after the first day of the limitation year or Plan Year beginning on or after July 1, 2007 to the extent required by law to non-electing church plans. The following rules shall limit benefits payable under the Plan:

- (1) The annual benefit otherwise payable to a Participant at any time shall not exceed the maximum permissible amount (as hereinafter defined). No Participant may accrue a benefit in excess of that amount.
- (2) If the Participant makes nondeductible Employee contributions under the terms of the Plan, such contributions, which are credited for the limitation year, shall, except for purposes of subsection (3) below, be treated as an annual addition to a qualified defined contribution plan for purposes of these rules.
- (3) The limitation in subsection (1) shall be deemed satisfied if the annual benefit payable to a Participant is not more than \$1,000 multiplied by the Participant's number of years of participation or portions thereof (not to exceed ten (10)) with the Employer, provided the Participant has never participated in a qualified defined contribution plan maintained by the Employer.
- (4) If a Participant is, or has ever been, covered under more than one defined benefit plan maintained by the Employer, the sum of the Participant's annual benefits from all such plans may not exceed the maximum permissible amount. Benefits shall be reduced under any other defined benefit plan before under this Plan unless such other plan(s) is terminated, in which event liabilities shall be limited in this Plan.

(b) Definitions: The following definitions are applicable to this Section:

- (1) Annual benefit: A retirement benefit under the Plan which is payable annually in the form of a straight life annuity. A benefit payable in a form other than a straight life annuity shall be adjusted pursuant to the rules of Section 1.415(b)-1 (c) of the Income Tax Regulations before applying the limitations of this Section.
- (2) Compensation: For purposes of determining maximum permitted benefits under this Section, all of a Participant's earned income, wages, salaries, 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 includible in gross income (or to the extent amounts would have been received and includible in gross income but for an election under Code Sections 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k) or 457(b)), including, but not limited to, commissions paid to salespersons, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, reimbursements or other expense allowances under a nonaccountable plan (as described in Section 1.62-2(c) of the Income Tax Regulations), and excluding the following:

- (A) Contributions (other than elective contributions described in Code Section 402(e)(3), 408(k)(6), 408(p)(2)(A)(i), or 457(b)), made by the Employer to a plan of deferred compensation (including a simplified employee pension described in Code Section 408(k) or a simple retirement account described in Code Section 408(p), and whether or not qualified) which are not included in the Employee's gross income for the taxable year in which contributed, and any distributions from a plan of deferred compensation (whether or not qualified).
- (B) Amounts realized from the exercise of a nonstatutory stock option, or when restricted stock (or other 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 statutory stock option;
- (D) Other amounts that receive special tax benefits, such as premiums for group-term life insurance (but only to the extent that the premiums are not includible in the gross income of the Participant and are not salary reduction amounts that are described in Code Section 125);
- (E) Other items of remuneration that are similar to any of the items listed in A, B, C or D; and
- (F) Amounts in excess of the limitation under Code Section 401(a)(17) in effect for the calendar year in which the limitation year begins.

Compensation shall be measured on the basis of compensation paid in the limitation year and shall include Compensation paid by the later of two and one-half (2U) months after a Participant's severance from employment with the Employer maintaining the Plan or the end of the limitation year that includes the date of the Participant's severance from employment with the Employer maintaining the Plan, if the payment is regular Compensation for services during the Participant's regular working hours, or Compensation for services outside the Participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments, and, absent a severance from employment, the payments would have been paid to the Participant while the Participant continued in employment with the Employer. Any payments not described above shall not be considered Compensation if paid after severance from employment, even if they are paid by the later of two and one-half (2U) months after the date of severance from employment or the end of the limitation year that includes the date of severance from employment, except, payments to an individual

who does not currently perform services for the Employer by reason of qualified military service (within the meaning of Code Section 414(u)(1)) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service.

For years beginning after December 31, 2008, Compensation shall also include differential wage payments as defined by Code Section 3401(h)(2).

- (3) **Defined Benefit Dollar Limitation:** The “defined benefit dollar limitation” is \$215,000 as adjusted, effective January 1 of each year, under Section 415(d) of the Code in such manner as the Secretary shall prescribe, and payable in the form of a straight life annuity. A limitation as adjusted under Code Section 415(d) shall apply to limitation years ending with or within the calendar year for which the adjustment applies.
- (4) **Employer:** This term refers to the Employer that adopts the Plan, and all members of a controlled group of corporations (as defined in Section 414(b) of the Code, as modified by Code Section 415(h)), commonly-controlled trades or businesses (as defined in Code Section 414(c) as modified by Code Section 415(h)), or affiliated service groups (as defined in Code Section 414(m)) of which the Employer is a part, or any other entity required to be aggregated with the Employer under Code Section 414(o).
- (5) **Highest Average Compensation:** This means the average Compensation for the three consecutive limitation years with the Employer that produces the highest average.
- (6) **Limitation year:** This shall mean the Plan Year.
- (7) **Maximum permissible amount:** The “maximum permissible amount” is the lesser of the defined benefit dollar limitation or one hundred percent (100%) of the Participant’s Highest Average Compensation (the “defined benefit compensation limitation”) (both adjusted where required, as provided in (A) and, if applicable, in (B) or (C) below).
  - (A) If the Participant has fewer than 10 years of participation in the Plan, the defined benefit dollar limitation shall be multiplied by a fraction, (i) the numerator of which is the number of years (or part thereof) of participation in the Plan and (ii) the denominator of which is 10. In the case of a Participant who has fewer than 10 years of service with the Employer, the defined benefit compensation limitation shall be multiplied by a fraction, (i) the numerator of which is the number of years (or part thereof) of service with the Employer and (ii) the denominator of which is 10.

- (B) If the benefit of a Participant begins prior to age 62, the defined benefit dollar limitation shall be adjusted in accordance with the rules set forth in Section 1.415(b)-1 (d) of the Income Tax Regulations, including the use of the applicable mortality table (within the meaning of Section 417(e)(3) of the Code).
- (C) If the benefit of a Participant begins after the Participant attains age 65, the defined benefit dollar limitation shall be adjusted in accordance with the rules set forth in Section 1.415(b)-1 (e) of the Income Tax Regulations, including the use of the applicable mortality table (within the meaning of Section 417(e)(3) of the Code).

Notwithstanding the foregoing, a benefit that is payable in a form other than a straight life annuity and that is subject to Section 417(e)(3) of the Code shall be adjusted to an actuarial straight life annuity that is equal to:

- (i) **Annuity Starting Date in Plan Years Beginning After 2005.** If the annuity starting date of the Participant's form of benefit is in a Plan Year beginning after 2005, the actuarially equivalent straight life annuity is equal to the greatest of (I) the annual amount of straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using the interest rate specified in the Plan and the mortality table (or other tabular factor) specified in the Plan for adjusting benefits in the same form; (II) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using a 5.5 percent interest rate assumption and the applicable mortality table under Section 417(e)(3) of the Code and (III) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using the applicable interest rate under Regulation Section 1.417(e)-1(d)(3) and the applicable mortality table under Section 417(e)(3) of the Code, divided by 1.05. Notwithstanding the foregoing, in the case of a plan maintained by an eligible employer (as defined in Section 408(p)(2)(C)(i) of the Code), clause (III) of the preceding sentence shall not apply.
- (ii) **Annuity Starting Date in Plan Years Beginning 2004 or 2005.** If the annuity starting date of the Participant's form of benefit is in a Plan Year beginning 2004 or 2005, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using whichever of the following produces the greater annual amount: (I) the interest rate specified in the Plan and the mortality table (or other tabular factor) specified in the Plan for adjusting benefits in the same form; and (II) a 5.5 percent interest rate

assumption and the applicable mortality table under Regulation Section 1.417(e)-1(d)(2).

## **ARTICLE TEN—AMENDMENT AND TERMINATION**

- 10.1. **AMENDMENT.** The Archdiocese Benefits Committee reserves the right at any time and from time to time (and retroactively if deemed necessary or appropriate to meet the requirements of Section 401(a) of the Code, and any similar provisions of subsequent revenue or other laws, or the rules and regulations from time to time in effect under any of such laws or to conform with governmental regulations or other policies), to modify or amend in whole or in part any or all of the provisions of the Plan; provided, however, that no such modification or amendment shall make it possible for any part of the corpus or income of the Trust Fund, to be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their contingent annuitants and Beneficiaries under the Plan prior to the satisfaction of all liabilities with respect to participants and their joint annuitants and Beneficiaries under the Plan, nor shall any amendment or modification make it possible to deprive any Participant of a previously accrued benefit, except to the extent permitted by the Code, and applicable regulations thereunder.

In the event of any merger or consolidation with, or transfer of assets or liabilities to, any other plan, each Participant shall be entitled to receive a benefit if the Plan were to terminate immediately after the merger, consolidation, or transfer, which is not less than the benefit such Participant would have been entitled to receive if the Plan had terminated immediately before the merger, consolidation, or transfer.

- 10.2. **TERMINATION OF PLAN.** While the Archdiocese intends to continue the Plan indefinitely, nevertheless it assumes no contractual obligation as to its continuance and the Archdiocese Benefits Committee may terminate the Plan at any time. In the event the Plan is terminated (or partially terminated as determined by the Internal Revenue Service) the benefits of effecting Participants shall be 100% vested. In the event of Plan termination the assets of the Trust Fund shall be allocated to the extent of the sufficiency of such assets, for the purpose of providing benefits accrued under the Plan to the date of termination of the Plan for such Participants and their joint or contingent annuitants and Beneficiaries for whom and/or to the extent that such benefit has not already been purchased in accordance with the Trust Agreement and which will be payable in accordance with the provisions of the Plan and said Trust.

The allocation of all such remaining assets for each Employer with respect to Participants of this Plan shall be in the manner and order described in the following paragraph, after deduction of any and all appropriate expenses incurred in connection with the Plan's termination:

The Employer reserves the right to discontinue contributions under the Plan and to terminate the Plan in whole or in part with respect to a specific group of Employees. In the event of full or partial termination, Employees affected thereby shall have a nonforfeitable right to their Accrued Benefits, to the extent funded. The Administration Committee, upon full termination, shall cause the assets of the Plan to be allocated for the purposes set forth in, and in the order of priorities established by, Section 4044 of ERISA. Any residual assets remaining thereafter shall be returned to the Employer. The

Employer shall not be liable to Participants for benefits other than those which can be provided by the Plan's assets.

## **ARTICLE ELEVEN—TOP-HEAVY PROVISIONS**

- 11.1. **APPLICABILITY.** Only to the extent required by applicable law, the provisions of this Article shall become applicable in any Plan Year in which the Plan is a Top-Heavy Plan. The determination of whether the Plan is a Top-Heavy Plan shall be made each Plan Year by the Administration Committee.
- 11.2. **DEFINITIONS.** For purposes of this Article, the following definitions shall apply:
- (a) “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 \$175,000 (as adjusted under Section 416(i)(1) of the Code), a five percent (5%) owner of the Employer, or a one percent (1%) owner of the Employer having annual Compensation of more than \$175,000. For this purpose, annual Compensation means Compensation within the meaning of Section 415(c)(3) of the Code. The determination of who is a Key Employee (including the terms “five percent (5%) owner” and “one percent (1%) owner”) shall be made in accordance with Section 416(i)(1) of the Code and the applicable regulations and other guidance of general applicability issued thereunder.
  - (b) “Top-Heavy Plan”:
    - (1) The Plan shall constitute a “Top-Heavy Plan” if any of the following conditions exist:
      - (A) The top-heavy ratio for the Plan exceeds sixty percent (60%) and the Plan is not part of any required aggregation group or permissive aggregation group of plans; or
      - (B) The Plan is a part of a required aggregation group of plans (but is not part of a permissive aggregation group) and the top-heavy ratio for the group of plans exceeds sixty percent (60%); or
      - (C) The Plan is a part of a required aggregation group of plans and part of a permissive aggregation group and the top-heavy ratio for the permissive aggregation group exceeds sixty percent (60%).
    - (2) If the Employer maintains one or more defined contribution plans (including any simplified employee pension plan funded with individual retirement accounts or annuities) and the Employer maintains or has maintained one or more defined benefit plans which have covered or could cover a Participant in this Plan, the top-heavy ratio is a fraction, the numerator of which is the sum of account balances under the defined contribution plans for all Key Employees and the actuarial equivalents of accrued benefits under the defined benefit plans for all Key Employees,

and the denominator of which is the sum of the account balances under the defined contribution plans for all Participants and the actuarial equivalents of accrued benefits under the defined benefit plans for all Participants. Both the numerator and denominator of the top-heavy ratio shall include any distribution of an account balance or an accrued benefit made in the one (1)-year period ending on the determination date and any contribution due to a defined contribution pension plan but unpaid as of the determination date. In determining the accrued benefit of a non-Key Employee who is participating in a plan that is part of a required aggregation group, the method of determining such benefit shall be either (a) in accordance with the method, if any, that uniformly applies for accrual purposes under all plans maintained by the Employer or any related employer under Code Section 414, 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 accrual rate of Code Section 411(b)(1)(C).

- (3) For purposes of (1) and (2) above, the value of accrued benefits and the actuarial equivalents of accrued benefits shall be determined as of the most recent Valuation Date that falls within or ends with the twelve (12)-month period ending on the determination date. 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 shall be disregarded. The accrued benefits and account balances of Participants who have performed no Hours of Service with any employer maintaining the plan for the one (1)-year period ending on the determination date shall be disregarded. The calculations of the top-heavy ratio, and the extent to which distributions, rollovers, and transfers are taken into account shall be made under Section 416 of the Code and regulations issued thereunder. Deductible Employee contributions shall not be taken into account for purposes of computing the top-heavy ratio. When aggregating plans, the value of account balances and accrued benefits shall be calculated with reference to the determination dates that fall within the same calendar year.

- (4) Definition of terms for Top-Heavy status:

- (A) “Top-heavy ratio” shall mean the following:

- (1) If the Employer maintains one (1) or more defined benefit plans and the Employer has never maintained any defined contribution plans which have covered or could cover a Participant in this Plan, the top-heavy ratio is a fraction, the numerator of which is the sum of the Accrued benefits of all Key Employees as of the determination date (including any part of any Accrued benefit distributed in the one (1)-year period ending on the determination date), and the denominator of which is the sum of the Accrued benefits

(including any part of any such benefit distributed in the one (1)-year period ending on the determination date) of all Participants as of the determination date.

- (B) “Permissive aggregation group” shall mean the required aggregation group of plans plus any other plan or plans of the Employer which, when considered as a group with the required aggregation group, would continue to satisfy the requirements of Section 401(a)(4) and 410 of the Code.
  - (C) “Required aggregation group” shall mean (1) each qualified plan of the Employer (including any terminated plan) in which at least one Key Employee participates, and (2) any other qualified plan of the Employer which enables a plan described in (1) to meet the requirements of Section 401(a)(4) or 410 of the Code.
  - (D) “Determination date” shall mean, for any Plan Year subsequent to the first Plan Year, the last day of the preceding Plan Year. For the first Plan Year of the Plan, “determination date” shall mean the last day of that Plan Year.
  - (E) “Valuation Date” shall mean the last day of the Plan Year.
  - (F) Actuarial equivalence shall be based on the interest and mortality rates utilized to determine actuarial equivalence when benefits are paid from any defined benefit plan. If no rates are specified in said plan, the following shall be utilized: pre- and post-retirement interest -- five percent (5%); post-retirement mortality based on the Unisex Pension (1984) Table.
- (5) Determination of Present Values and Amounts. This paragraph 5 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.
- (A) 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 Section 416(g)(2) of the Code 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 termination, would have been aggregated with the Plan under Section 416(g)(2) (A)(i) of the Code. In the case of a distribution made for a reason other than severance from employment, death,

or disability, this provision shall be applied by substituting a “5-year period” for “1-year period.”

- (B) 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.

**11.3. MINIMUM BENEFIT FOR ANY PLAN YEAR IN WHICH THE PLAN IS A TOP-HEAVY PLAN.**

- (a) This minimum benefit shall be provided in the Plan for any Plan Year in which the Plan is a Top-Heavy Plan, subject to the provisions below. Each Participant who is a non-Key Employee and who has been credited with at least one thousand (1,000) Hours of Service shall accrue a benefit, to be provided solely by Employer contributions and expressed as a life annuity commencing at Normal Retirement Date, of two percent (2%) of his or her highest compensation averaged for the five (5) consecutive years for which the Participant had the highest compensation (as that term is defined in Section 9.2(b)). The minimum accrual shall be determined without regard to any Social Security benefit provided by Employer contributions under that system. If the benefit is received by such Participant in a form other than a single life annuity, such Participant must receive an amount that is that form of benefit’s Actuarial Equivalent. If the benefit commences at a date other than at Normal Retirement Date, it must be equal to the Actuarial Equivalent of the minimum single life annuity benefit commencing at Normal Retirement Date.
- (b) A non-Key Employee shall mean any Employee or former Employee including the Beneficiary of a deceased Employee or former Employee who was not a Key Employee during the Plan Year ending on the determination date.
- (c) The minimum accrued benefit, when expressed as a life annuity commencing at Normal Retirement Date, shall not exceed twenty percent (20%) of the Participant’s average compensation.
- (d) The provisions in subsection (a) shall be applied so that there is no duplication of minimum benefits under this Plan and any defined contribution plan. The minimum benefit shall be offset by the Actuarial Equivalent of any amount payable to the participant from a defined contribution plan of the Employer.
- (e) Any minimum accrued benefit required (to the extent required to be nonforfeitable under Section 416(b)) may not be forfeited under Code Sections 411(a)(3)(B) or 411 (a)(3)(D).
- (f) For purposes of satisfying the minimum benefit requirements of Section 416(c)(1) of the Code and the Plan, in determining years of service with the Employer, any service with the Employer shall be disregarded to the extent that such service

occurs during a Plan Year when the Plan benefits (within the meaning of Section 410(b) of the Code) no Key Employee or former Key Employee.

- 11.4. VESTING. The minimum vesting schedule set forth in this Section 11.4 shall apply in any Plan Year in which the Plan is a Top-Heavy Plan, and apply to all benefits within the meaning of Section 411(a)(7) of the Code except those attributable to Employee contributions, if any, including benefits accrued before the effective date of Section 416 and benefits accrued before the Plan became a Top-Heavy Plan. Further, no reduction in vested benefits may occur in the event the Plan's status as a Top-Heavy Plan changes for any Plan Year and the vesting schedule is amended. In addition, if a Plan's status changes from a Top-Heavy Plan to that of a non-top-heavy plan, a Participant with three (3) or more Years of Service for vesting purposes shall continue to have his vested rights determined under the schedule which he selects, in the event the vesting schedule is subsequently amended. For vesting to be determined under this schedule, an Employee must be credited with at least one (1) Hour of Service in any Plan Year in which the Plan is a Top-Heavy Plan. Payment of a Participant's vested Accrued Benefit under this Section shall be made in accordance with the provisions of Article Five.

<u>Years of Service</u>	<u>Vested Percentage</u>
<i>Less than 2years</i>	<i>0%</i>
<i>2years but less than 3</i>	<i>20%</i>
<i>3 years but less than 4</i>	<i>40%</i>
<i>4years but less than 5</i>	<i>60%</i>
<i>5years and thereafter</i>	<i>100%</i>

## **ARTICLE TWELVE—MISCELLANEOUS PROVISIONS**

- 12.1. **PLAN DOES NOT AFFECT EMPLOYMENT.** Neither the creation of this Plan nor any amendment of it nor the creation of any fund or amount nor the payment of benefits hereunder shall be construed as giving any legal or equitable right to any Employee or Participant against the Employer, its officers or Employees, or against the Trustee, and all liabilities under this Plan shall be satisfied, if at all, only out of the Trust Fund held by the Trustee. Participation in the Plan shall not give any Participant any right to be retained in the employ of the Employer, and the Employer hereby expressly retains the right to hire and discharge any Employee at any time with or without cause, as if the Plan had not been adopted, and any such discharged Participant shall have only such rights or interests in the Trust Fund as may be specified herein.
- 12.2. **SUCCESSOR TO THE EMPLOYER.** In the event of the merger, consolidation, reorganization or sale of assets of the Employer, under circumstances in which a successor person, firm or corporation shall carry on all or a substantial part of the business of the Employer, and such successor shall employ a substantial number of Employees of the Employer and shall elect to carry on the provisions of the Plan, such successor shall be substituted for the Employer under the terms and provisions of the Plan upon the filing in writing with the Trustee of its election to do so.
- 12.3. **MERGER OF PLANS.** In the case of any merger or consolidation of this Plan with, or transfer of the assets or liabilities of the Plan to, any other plan, the terms of such merger, consolidation or transfer shall be such that each Participant would receive (in the event of termination of this Plan or its successor immediately thereafter) a benefit which is not less than he would have received in the event of termination of this Plan immediately before such merger, consolidation or transfer.
- 12.4. **REPAYMENTS TO THE EMPLOYER.** Notwithstanding any provisions of this Plan to the contrary:
- (a) Any Plan assets attributable to any contribution made to this Plan by the Employer because of a mistake of fact shall be returned to the Employer within one (1) year after the date of contribution.
  - (b) All Employer contributions hereunder are expressly contributed based upon such contributions' deductibility under Code Section 404. Any Plan assets attributable to any contributions made to this Plan by the Employer shall be refunded to the Employer, to the extent the income tax deduction for such contribution is disallowed. Such amount shall be refunded within one (1) taxable year after the date of such disallowance or within one (1) year of the resolution of any judicial or administrative process with respect to the disallowance.
- 12.5. **BENEFITS NOT ASSIGNABLE.** Except as provided in Section 414(p) of the Code with respect to "qualified domestic relations orders," or as provided in Section 401(a)(13)(C) of the Code with respect to certain judgments and settlements, the right of any Participant

or his Beneficiary to any benefit or payment hereunder shall not be subject to voluntary or involuntary alienation or assignment.

- 12.6. DISTRIBUTION TO LEGALLY INCAPACITATED. In the event any benefit is payable to a minor or to a person deemed to be incompetent or otherwise under legal disability, or who is by sole reason of advanced age, illness, or other physical or mental incapacity, incapable of handling the disposition of his property, the Administration Committee may direct the Trustee to apply all or any portion of such benefits, directly to the care, comfort, maintenance, support, education or use of such person or to pay or distribute all or any portion of such benefit to (a) the spouse of such person, (b) the parent of such person, (c) the guardian, committee or other legal representative, wherever appointed, of such person, (d) the person with whom such person shall reside, (e) any other person having the care and control of such person, or (f) such person. The receipt of any such payment or distribution shall be a complete discharge of liability for Plan obligations.
- 12.7. GOVERNING DOCUMENTS. A Participant's rights shall be determined under the terms of the Plan as in effect at his date of separation from eligible service.
- 12.8. GOVERNING LAW. The provisions of this Plan shall be construed under the laws of the state of the situs of the Trust, except to the extent such laws are pre-empted by Federal law.
- 12.9. CONSTRUCTION. Wherever appropriate, the use of the masculine gender shall be extended to include the feminine or neuter or vice versa; and the singular form of words shall be extended to include the plural; and the plural shall be restricted to mean the singular.
- 12.10. HEADINGS. The Article headings and Section numbers are included solely for ease of reference. If there is any conflict between such headings or numbers and the text of the Plan, the text shall control.
- 12.11. COUNTERPARTS. This Plan may be executed in any number of counterparts, each of which shall be deemed an original; said counterparts shall constitute but one and the same instrument, which may be sufficiently evidenced by any one counterpart.

IN WITNESS WHEREOF, the Employer, by its duly authorized officer, has caused this Plan to be executed on the 30<sup>th</sup> day of January, 2017.

ADMINISTRATION COMMITTEE OF THE  
ARCHDIOCESE BENEFITS COMMITTEE

By: 

TABLE A

JOINT AND SURVIVOR ANNUITY FACTORS  
(SECTIONS 5.2(A) AND 5.3)

Effective for Annuity Commencement Dates which occur on or after January 1, 2001, Joint and Survivor Annuity Factors shall be determined in accordance with the following table:

For all 50% Joint and Survivor Annuities	91%
For all 100% Joint and Survivor Annuities	83%

Notwithstanding the foregoing, for any annuity starting date (as defined in Section 5.2(d)) which occurs on or after January 1, 2001, the amount of the monthly benefit payable in the form of 50% or 100% Joint and Survivor Annuity shall not be less than the amount of his monthly benefit payable in the applicable form of Joint and Survivor Annuity as if he had retired or terminated employment on December 31, 2000 or the actual date thereof, if earlier, based on the Contingent Annuity Factors as in effect on December 31, 2000.

ACTUARIAL EQUIVALENT FACTORS

Early retirement and Terminated Employee Reduction Factors  
(Sections 4.3 and 4.5)

<u>Age</u>	<u>Factor</u>
64	.933
63	.866
62	.800
61	.733
60	.667
59	.633
58	.600
57	.566
56	.533
55	.500

Factors for partial ages shall be interpolated from the above age and factors.

TABLE B  
ANNUAL MAXIMUM EARNINGS AMOUNT

Effective January 1, 2004,	\$100,632
Effective January 1, 2006,	\$103,656
Effective January 1, 2007,	\$107,808
Effective January 1, 2008,	\$111,048
Effective January 1, 2009,	\$115,512
Effective January 1, 2011,	\$120,144

Effective for Plan Years beginning after January 1, 2011, the Plan shall incorporate by reference any increase in the annual maximum earnings benefit amount as specified in The Clergy Compensation Plan for the applicable year.