AMENDMENT NO. 1
TO THE
ELECTRICAL WORKERS LOCAL NO. 292
DEFINED CONTRIBUTION AND 401(k) PLAN
(2015 Restatement)

WHEREAS, Section 11.1 of the Electrical Workers Local No. 292 Defined Contribution and 401(k) Plan, amended and restated as of May 1, 2015 (Plan), provides that the Trustees may amend the Plan; and

WHEREAS, the Trustees believe it in the best interest of the Plan's participants to amend the Plan by adding a Roth 401(k) feature to the Plan;

NOW, THEREFORE, BE IT RESOLVED that the Plan is hereby amended as provided in the attached replacement pages.

This amendment is effective on May 1, 2016.

IN WITNESS WHEREOF, we hereby approve and adopt this amendment on May 13, 2016.

UNION TRUSTEES	**EMPLOYER TRUSTEES**
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ARTICLE ONE
DEFINITIONS

For purposes of the Plan, unless the context or an alternative definition specified within another Article provides otherwise, the following words and phrases will have the definitions provided:

1.1 **"ACCOUNT"** means the individual bookkeeping accounts maintained for a Participant under the Plan which shall consist of the following three sub-Accounts:

Account P will be credited with any Profit Sharing contributions made on behalf of the Participant pursuant to Section 3.1, any voluntary after-tax contributions made by the Participant pursuant to Section 3.2, any reciprocity contributions made on behalf of the Participant pursuant to Section 3.4, and any rollover contributions made pursuant to Section 3.6 (except for rollovers of designated Roth contributions and related earnings), as adjusted for investment experience and decreased by Plan fees and expenses.

Effective June 30, 2010, Participants are not permitted to make voluntary after-tax contributions to Account P under the Plan. The portion of a Participant's Account P attributable to voluntary after-tax contributions will continue to be adjusted for investment experience and decreased by Plan fees and expenses associated with those contributions.

Account K will be credited with any amounts of Compensation deferred to the Plan pursuant to Section 3.3, as adjusted for investment experience and decreased by Plan fees and expenses.

Account R will be credited with any amounts of Compensation deferred to the Plan that are designated as after-tax Roth Elective Deferral Contributions as provided under Treasury Regulation 26 CFR §1.401(k)-1(f) and with rollovers of designated Roth contributions and other related earnings, as adjusted for investment experience and decreased by Plan fees and expenses.

Account A will be credited with no contributions made under the Plan after October 19, 2003 but its balance as of October 20, 2003 will be adjusted for investment experience and decreased by Plan fees and expenses.

1.2 **"ADMINISTRATION"** means the Trustees, unless a person or committee is appointed in accordance with the provisions of Article eight hereof.

1.3 **"ALUMNI EMPLOYEE"** means an employee of a contributing Employer who satisfies the requirements of one or more of the following sections (a) through (c).

(a) Employees who were Collectively Bargained Employees during a portion of the current Plan Year. An employee described in section 1.7 who performs services for one or more Employers or for the Plan, or for the Union both as a Collectively Bargained Employee and as a Non-Collectively Bargained Employee during a Plan Year, provided that at least half of the employee's hours of service during the Plan Year are performed as a Collectively bargained Employee.

(b) Employees who were Collectively Bargained Employees during the collective bargaining agreement. An Employee described in Section 1.7 who was a Collectively Bargained Employee with respect to all of the employee's hours of service during a Plan Year (including employees who are treated as Collectively Bargained Employees with respect to all of their hours of service during a Plan Year under paragraph (a)). For this purpose, a collective bargaining agreement is

1.17 **"NON-COLLECTIVELY BARGAINING EMPLOYEE"** means any employee who does not satisfy the definition of Collectively Bargained Employee contained in Section 1.7; provided, however, that an Alumni Employee as defined in Section 1.3 may be treated as a Collectively Bargained Employee for purposes of non-discrimination testing, as allowed by Internal Revenue Regulation Section 1.410(b)-6(d)(2)(ii).

1.18 **"NON-HIGHLY COMPENSATED EMPLOYEE"** means an Employee of the Employer who is not a Highly-Compensated Employee.

1.19 **"NORMAL RETIREMENT DATE"** means the Participant's sixty-second (62nd) birthday.

1.20 **"PARTICIPANT"** means any Employee who has satisfied the eligibility requirements of Article Two and who is participating in the Plan and those participating pursuant to Section 3.4.

1.21 **"PLAN"** means the Electrical Workers Local No. 292 Defined Contribution and 401(k) Plan.

1.22 **"PLAN DOCUMENT"** means this written document entitled the "Electrical Workers Local No. 292 Defined Contribution and 401(k) Plan as amended and restated from time to time.

1.23 **"PLAN YEAR"** means the twelve (12)-consecutive month period beginning May 1 and ending April 30.

1.23 **"ROTH ELECTIVE DEFERRAL CONTRIBUTION"** means an elective deferral that is designated irrevocably by the Participant at the time of their cash or deferred election as a Roth Elective Deferral Contribution that is made in lieu of all or a portion of the pre-tax elective deferrals the Participant is otherwise eligible to make under the Plan and that are treated by the Participant's Employer as includable in the Participant's income at the time the Participant would have received that amount in cash if the Participant had not made a cash or deferred election.

1.24 **"TERMINATION OF SERVICE"** means a significant interruption in a Participant's employment in the industry occurring when the Participant is no longer an employee of any Employer (in any job classification) and following the latest of the following events:

In the case of Account A or P:

(a) the passage of sixty (60) consecutive months during which no contributions are required to be made for allocation to either the Participant's A or P Accounts;

(b) the passage of sixty (60) consecutive calendar months during which the Participant is continuously unavailable for work in the Jurisdiction of the Union; or

(c) the passage of sixty (60) consecutive calendar months during which the Participant is continuously unavailable for work in the electrical industry in the State of Minnesota.

In the case of Account K or Account R:

(a) the passage of six (6) consecutive calendar months during which no contributions are required to be made to either the Participant's A or P Accounts.

(b) the passage of six (6) consecutive calendar months during which the Participant has been out of work within the jurisdiction of the Union (regardless of whether the Participant has signed the out-of-work book); and

(c) the passage of six (6) consecutive calendar months during which the Participant is no otherwise employed in the electrical industry in the State of Minnesota; or

(d) the passage of twenty-four (24) consecutive calendar months during which:

(i) no contributions are made to the Participant's Account K or Account R, and

(ii) the Participant is continuously working for an Employer which is signatory to a collective bargaining agreement with the Union which does not require the Employer to make contribution to Account K or Account R for any of its Employees and does not permit the Employer's Employees to make salary deferral contributions to Account K or Account R.

1.25 **"TRUST"** means the Trust Agreement entered into between the Employer and the Trustees forming part of this Plan, together with any amendments thereto. "Trust Fund" means any and all property held by the Trustees pursuant to the Trust Agreement, together with income from that property.

1.26 **"TRUST AGREEMENT"** means the agreement entitled "Restated Agreement and Declaration of Trust of the Electrical Workers Local No. 292 Defined Contribution and 401(k) Plan" as amended and restated from time to time.

1.27 **"TRUSTEES"** means the Trustees appointed pursuant to the Trust Agreement.

1.28 **"UNION"** means Local Union No. 292 of the International Brotherhood of Electrical Workers AFL-CIO.

1.29 **"VALUATION DATE"** means the date or dates established by the Administrator for the valuation of the assets of the Plan. In no event will the assets of the Plan be valued less frequently than once each Plan Year.

ARTICLE THREE
CONTRIBUTIONS

3.1 PROFIT SHARING CONTRIBUTIONS. Subject to the provisions of Article Nine, for each Plan Year the Employer will contribute to the Account P of each Participant employed by such Employer an amount determined under the terms of the Contribution Agreement. Any such contribution will be made at the time and in the manner prescribed by the Contribution Agreement.

Notwithstanding the foregoing, unless otherwise specified in the Contribution Agreement, any Contribution Agreement, any Profit Sharing contribution made pursuant to this Section 3.1 on behalf of a Participant who is an Alumni Employee or a Non-Collectively Bargained Employee will be determined (i) as though the employee were working normal straight time hours under the applicable collective bargaining agreement at that time or, if less, (ii) by multiplying the applicable contribution rate in that collective bargaining agreement by the actual hours worked or wages earned, as that agreement requires.

3.2 VOLUNTARY AFTER-TAX CONTRIBUTIONS. On or before June 29, 2010, a Participant could elect to make voluntary after-tax contributions in accordance with procedures established by the Administrator which were consistently applied and which were subject to change from time to time. A Participant was able to prospectively elect to change or revoke the amount (or percentage) of the Participant's voluntary after-tax contributions during the Plan Year in accordance with procedures established by the Administrator.

A Participant's voluntary after-tax contributions were subject to the limitations under Section 9.1 and Section 10.3 and the total voluntary after-tax contribution made by a Participant for any Plan Year could not exceed ten percent (10%) of the Participant's Compensation for the Plan Year.

Effective June 30, 2010, Participants are not permitted to make voluntary after-tax contributions to their Account P under the Plan. The Plan will no longer accept voluntary after-tax contributions to Account P.

3.3 ELECTIVE DEFERRALS.

(a) *Elections*. A Participant may elect to defer a portion of his Compensation for a Plan Year. The Participant must elect which deferrals are designated for Account K and which deferrals are designated for Account R. The amount of a Participant's Compensation that is deferred in accordance with the Participant's election will be withheld by the Employer from the Participant's Compensation. For purposes of making elective deferrals, only Compensation earned while eligible to make such deferrals will be considered. The amount deferred on behalf of each Participant must be contributed by the Employer to the Plan and allocated to the Participant's Account K or Account R based on the Participant's election.

(b) *Changes in Election*. A Participant may prospectively elect to change or revoke the amount (or percentage) of his elective deferrals during the Plan Year by filing

months prior to entering Military Service, the monthly average hours worked will be calculated over that shorter period.

(ii) Next, multiply the Total Hours to be Credited by the applicable wage rate (including scheduled wage increases), and calculate contributions due on those wages according to the provisions of the collective bargaining agreement. This yields the total dollars to be credited to a Participant's Account.

(f) *Make-up Contributions.* A Participant who is entitled to the allocation of contributions to his Account A due to qualifying Military Service is also entitled to make-up elective deferrals that could have been made during that period.

Make-up Deferrals will be permitted for the period beginning on the employee's return to employment, and continuing for the lesser of:

(i) the Participant's Military Service, plus three (3) years; or

(ii) five (5) years.

Make-up deferrals may not exceed the amount the Participant would have been allowed to defer if the Participant had remained employed rather than entered qualifying Military Service. For purposes of contribution limitations, an employee will be credited with the compensation he would have received but for the period of qualifying Military Service.

(g) Differential Wage Payment. A Differential Wage Payment is any payment made by an Employer to a Participant who is performing active military service that represents all or some of the wages that the Participant would have received from the Employer if the Participant were still actively employed. Participants may also make contributions to this Plan from Differential Wage Payments or become entitled to additional benefits under the Plan on the basis of the Differential Wage Payments. Differential Wage Payments are considered Compensation. This provision is effective on the first day of the Plan Year beginning in 2009.

(h) Benefit Accruals Based Upon Participant Death or Disability. All Participants who die or become disabled on or after January 1, 2007, while performing active military service, are deemed to have been rehired on the day before the date of death or disability and will be treated in the same manner as the current rules apply to military personnel that are rehired.

The Employer must determine the benefit by looking at the average of the contributions or deferrals actually made by the Participant during the twelve months prior to military service, or, if less, the length of time the Participant was employed.

3.6 ROLLOVERS AND TRANSFERS OF FUNDS FROM OTHER PLANS.

(a) *Trustee Discretion*. The provisions of this Section 3.6 are subject to such conditions and limitations as the Trustees may prescribe from time to time for administrative convenience and to preserve the tax-qualified status of the Plan.

(b) *Eligible Contributions*. A Participant may cause a Direct Rollover to be contributed to the Plan in accordance with applicable provisions of federal law relating to rollover contributions. Subject to the conditions and limitations prescribed by the Trustees and applicable federal law, the Plan may accept such rollover contributions only from the following types of plans, and only if the plan from which the rollover contribution is to be made is sponsored jointly by affiliates of the National Electrical Contractors Association ("NECA") and the International Brotherhood of Electrical Workers ("IBEW") (or, in the case of a plan described under section 403(b) or section 457(b) of the Code, the Participant's account balance to be transferred is derived entirely from contributions made on account of a collective bargaining agreement between the NECA and the IBEW):

(i) a qualified plan described in section 401(a) or 403(a) of the Code, excluding voluntary after-tax contributions other than designated Roth contributions described in section 401A of the Code;

(ii) an annuity contract described in section 403(b) of the Code, excluding voluntary after-tax contributions other than designated Roth contributions described in section 401A of the Code;

(iii) an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or agency or instrumentality of a state or political subdivision of a state; or

(iv) an individual retirement account or annuity in section 408(a) or 408(b) of the Code; provided, however, that the assets of such account or annuity are comprised solely of amounts previously held in a plan described in subparagraphs (i), (ii), or (iii), and earnings thereon.

(c) *Specific Review*. The Trustees have the right to reject, or to return, any rollover contribution if, in the opinion of the Trustees, the acceptance thereof might jeopardize the tax-qualified status of the Plan or unduly complicate its administration, but the acceptance of any rollover contribution may not be regarded as an opinion or guarantee on the part of the Employer, the Trustees, or the Plan as to the tax consequences which may result to the contributing Participant thereby. As a condition of approving a rollover contribution or other transfer, the Trustees may require from the Participant or employee any documents or opinions of counsel which the Trustees, in their discretion, deem necessary to establish that the rollover contribution or transfer is permissible under the Plan document and applicable law.

(d) *Allocation*. The rollover contribution made by a Participant to the Plan will be allocated to his Account and will be credited to that Account as of the Valuation Date coincident with or next following the date on which the contribution is

received by Trustees. Rollovers of designated Roth contributions and related earnings will be allocated to Account R.

purposes of this Subsection, Publicly Traded Employer Securities means securities issued by an employer of employees covered by the Plan that are readily tradable on an established securities market.

(f) *Separate Accounting for Roth Elective Deferral Contributions.* Contributions and withdrawals of Roth Elective Deferral Contributions will be credited and debited to the Account R. The Plan will maintain a record of the amount of Roth Elective Deferral Contributions in each Participant's Account. Gains, losses, and other credits or charges will be separately allocated on a reasonable and consistent basis to each participant's Account R and to each Participant's other Accounts under the Plan. No contributions other than Roth Elective Deferral Contributions and rollovers of designated Roth contributions described in section 402A of the Code will be credited to any Participant's Account R.

death benefit in accordance with Section 6.13 above, any death benefit otherwise payable on behalf of such Participant shall be paid in a single-sum distribution; provided, however, that if the Participant's Account exceeds $5,000, the Participant's surviving spouse or other Beneficiary may elect to receive distribution of any such benefit in annual, quarterly or monthly installments over a period not exceeding the life expectancy of the Beneficiary or the Participant's surviving spouse, as the case may be. In such event, the amount to be distributed each year shall be at least equal to the balance because of the Participant's Account as of the preceding Valuation Date multiplied by the following fraction: the numerator will be one (1) and the denominator will be the life expectancy of the Participant's surviving spouse or other Beneficiary, as the case may be, computed as of the Valuation Date preceding the first payment and reduced by one (1) for each succeeding year. In no event, however, will such period be subject to recalculation. The Participant's surviving spouse or other Beneficiary may also elect to receive any death benefit under this Section 6.14 in the form of a partial payment, with the balance distributed in a single-sum or in installments as described above.

Nothing within this Section will invalidate any Participant's previous designation of a mode of paying death benefit, provided such designation was made prior to January 1, 1984 and was in accordance with all requirements announced by the Internal Revenue Service with respect to the transitional rule established under Section 242(b) of TEFRA.

6.15 ELIGIBLE ROLLOVER DISTRIBUTIONS. Notwithstanding the foregoing provisions of this Article Six, the provisions of this Section 6.15 shall apply to any distributions made under the Plan.

(a) A distribute may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(b) Definitions:

(i) *Eligible Rollover Distribution*. An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: 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 of the joint lives (or joint life expectancies) of the distribute 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 the Section 401(a)(9) of the Code; the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and any amount distributed on account of hardship. Further, "eligible rollover distribution" may include voluntary after-tax contributions and Roth Elective Deferral Contributions which are not includable in gross income. However, such portion may be transferred to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in Section 401(a) or 403(b) or 408A(e) of the Code that agrees to separately account for amounts so transferred,

including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(ii) *Eligible Retirement Plan*. An eligible retirement plan is an individual retirement account described in Section 408(a) and 408A(e) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code or a qualified trust described in Section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity. "Eligible retirement plan" also means 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. The definition of eligible retirement plan also applies in the case of a distribution to a surviving spouse or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in Section 414(p) of the Code.

(iii) *Distributee*. A distributee includes an Employer or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the code, are distributes with regard to the interest of the spouse or former spouse.

(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 Administrator 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 1.411(a)-11(c) 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.

If the deadline for the election described in this Subsection would occur in 2009 in the absence of Code Section 401(a)(9)(H), the deadline instead will occur on September 30, 2010.

6.22 DISTRIBUTIONS FROM ACCOUNT R. A Participant's Account R becomes distributable to the Participant upon the occurrence of a "distributable event" (within the meaning of Section 6.1). If a distribution from Account R is not a "qualified distribution" (as defined below), the earnings attributable to the Roth Elective Deferral Contributions that are distributed will be taxable to the Participant at the time of distribution (unless the Participant rolls over the distribution to a Roth IRA or other 401(k) plan or 403(b) plan that will accept the rollover). There also may be a ten percent (10%) excise tax on the earnings that are distributed.

A "qualified distribution" is a distribution from Account R that satisfies the following requirements:

(a) The distribution must occur after one of the following: (i) the Participant's attainment of age 59½; (ii) the Participant's disability; or (iii) the Participant's death; and

(b) The distribution must occur after the expiration of a five (5) year participation period.

The five (5) year participation period is the five (5) year period beginning on the first day of the calendar year in which the Participant first makes a Roth Elective Deferral Contribution to the Plan (or to another 401(k) Plan or 403(b) plan if such amount was rolled over into the Plan) and ending on the last day of the calendar year that is five (5) years later.

ARTICLE SEVEN
LOANS/WITHDRAWALSError! Bookmark not defined.

7.1 LOANS.

(a) *Permissible Amount and Procedures*. Upon the application of a Participant, the Administrator may, in accordance with a uniform and nondiscriminatory policy, direct the Trustees to grant a loan to the Participant, which loan must be secured by the Participant's Account K and/or Account R balance. The Participant's signature is required on a promissory note. In addition, if the Participant is married, such Participant's spouse is required to consent in writing to the making of the loan. Such written consent must (1) be obtained within the ninety (90)-day period preceding the granting of the loan, (2) acknowledge the effect of the loan, and (3) be witnessed by a Plan representative or notary public. Such consent will thereafter be binding with respect to the consenting spouse or any subsequent spouse with respect to that loan. In determining a rate of interest on such loan, the Administrator may refer to the rate of interest used for obligations of a comparable nature by lending institutions within a radius of fifty (50) miles of the Employer's principal place of business. Participant loans will be treated as segregated investments, and interest repayments will be credited only to the Participant's Account K and Account R.

(b) *Limitation on Amount of Loans*. A Participant's loan must not exceed the lesser of:

(1) $50,000, which amount will be reduced by the highest outstanding loan balance during the preceding twelve (12)-month period; or

(2) one-half (½) of the vested values of the Participant's Account K and Account R combined, determined as of the Valuation Date preceding the date of the Participant's loan.

Any loan must be repaid within five (5) years. The repayment of any loan must be made in at least quarterly installments of principal and interest; provided, however, that this requirement will not apply for a period, not longer than one year, that a Participant is on a leave of absence ("Leave"), either without pay from the Employer or at a rate of pay (after income and employment tax withholding) that is less than the amount of the installment payments required under the terms of the loan. However, the loan must be repaid by the latest date permitted under Section 72(p)(2)(B) of the code and the installments due after the Leave ends (or, if earlier, upon the expiration of the first year of the Leave) must not be less than those required under the terms of the original loan.

If a Participant defaults on any outstanding loan, the unpaid balance, and any interest due thereon, shall become due and payable in accordance with the terms of the underlying promissory note; provided, however, that such foreclosure on the promissory note and attachment of security may not occur until a distributable event occurs in accordance with the provisions of Article Six. If a Participant ceases Covered Employment with an outstanding loan balance, the Participant may, subject to terms and conditions of the underlying promissory

For purposes of the above tests, the "actual deferral percentage" means the ratio (expressed as a percentage) that the deferred amounts, which are allocated to the Participant's Accounts K and R as of any day in the Plan Year, on behalf of each eligible Participant for the Plan Year bears to the eligible Participant's compensation (within the meaning of Section 1.414(s)-1(d)(2) of the Income Tax Regulations) for the Plan Year. The "average actual deferral percentage" means the average (expressed as a percentage) of the actual deferral percentages of the eligible Participants in each group. "Eligible Participant" means each Employee who is eligible to make elective deferrals to the Plan under Section 2.1.

For purposes of this Section 10.2, the actual deferral percentage for any eligible Participant who is a Highly Compensated Employee for the Plan Year and who is eligible to have elective deferrals allocated to his account under two (2) or more plans or arrangements described in Code Section 401(k) that are maintained by the Employer or any employer who is a related group member (within the meaning of Section 414 of the Code) will be determined as if all such deferrals were made under a single arrangement. In the event that the Plan satisfies the requirements of Code Section 401(k), 401(a)(4) or 410(b) only if aggregated with one (1) or more other plans, or if one (1) or more other plans satisfy the requirements of such Sections of the Code only if aggregated with the Plan, then the provisions of this Section 10.2 will be applied by determining the actual deferral percentage of eligible Participants as if all such plans were a single plan. Any adjustments to the Non-Highly Compensated Employee actual deferral percentage for the prior year will be made in accordance with Notice 98-1 and any superseding guidance, unless the Employer has elected to use the current year testing method. Plans may be aggregated in order to satisfy Section 401(k) of the Code only if they have the same Plan Year and use the same average actual deferral percentage testing method.

The determination and treatment of deferred amounts and the actual deferral percentage of any Participant is subject to the prescribed requirements of the Secretary of Treasury.

In the event the actual deferral percentage test is not satisfied for a Plan Year, the Employer, in its discretion, may make a Fail-Safe Contribution for eligible Participants who are Non-Highly Compensated Employees and who are employed on the last day of the Plan Year, to be allocated among their Accounts in proportion to their compensation for the Plan Year. For purposes of this paragraph, "compensation" shall mean compensation used for the actual deferral percentage test.

(b) *Distributions of Excess Contributions.*

(1) In General. If the average actual deferral percentage test of Section 10.2(a) is not satisfied for a Plan Year, then the "excess contributions," and income allocable thereto, will be distributed, to the extent required under Treasury Regulations, no later than the last day of the Plan Year following the Plan Year for which the excess contributions were made. However, if such excess contributions are distributed later than two and one-half (2 1'2) months following the last day of the Plan Year in which such excess contributions were made, a ten percent (10%) excise tax will be imposed upon the Employer with respect to such contributions.

multiplied by the number of whole calendar months between the end of the Plan Year and the date of distribution, counting the month of distribution if distribution occurs after the fifteenth (15th) of such month.

(4) Maximum Distributable Amount. The excess contributions to be distributed to a Participant will be adjusted for income and, if there is a loss allocable to the excess contribution, must, in no event, be less than the lesser of the Participant's Account K and Account R combined or the Participant's deferred amounts for the Plan Year. Express contributions shall be distributed from that portion of the Participant's Account of the Participant's Account K and Account R attributable to such deferred amounts to the extent allowable under Treasury regulations.

(5) Participant Election of Returns of Excess (Account K or Account R). In the case of a return of excess contributions, a Participant who is a Highly Compensated Employee may designate the extent to which the excess amount is composed of pre-tax elective deferrals to Account K and Roth Elective Deferral Contributions to Account R, but only to the extent such types of deferrals were made for the Plan Year. If the Highly Compensated Employee does not designate which type of elective deferrals are to be distributed, the Plan will distribute pre-tax elective deferrals to Account K first.

10.3 NON-DISCRIMINATION TEST FOR VOLUNTARY AFTER-TAX CONTRIBUTIONS.

Compliance with Non-Discrimination Requirements. In administering the types of coverage provided in this Section, the Trustees will not permit any coverage inclusions or exclusions which would contravene the non-discrimination requirements of the Code and applicable regulations. The Trustees are authorized to take any and all steps as outlined herein and otherwise to ensure compliance with such non-discrimination requirements and with the terms of any Contribution Agreement, including, but not limited to, requiring an Employer retroactively to include in its coverage one or more of its eligible employees and to make contributions on behalf of such employee(s) in accordance with the terms of this Agreement.

(a) *Average Contribution Percentage Test*. The provisions of this Section apply if Voluntary After-Tax Contributions are made to the Plan under Section 3.2.

As of the last day of each Plan Year, the average contribution percentage for Highly-Compensated Employees for the Plan Year must satisfy either of the following tests:

(1) The average contribution percentage for eligible Participants who are Highly Compensated Employees for the Plan Year must not exceed the average contribution percentage for the Plan Year of eligible Participants who were Non-Highly Compensated Employees for the prior Plan Year multiplied by 1.25; or

(2) The average contribution percentage for eligible Participants who are Highly Compensated Employees for the Plan year must not exceed the

average contribution percentage for the prior Plan Year of eligible Participants who were Non-Highly Compensated Employees the prior Plan Year multiplied by two (2) provided that the average contribution percentage for eligible Participants who are highly-Compensated Employees for the Plan Year does not exceed the average percentage for the prior Plan Year of eligible Participants who were Non-Highly Compensated Employees for the prior Plan Year by more than two (2) percentage points or such lesser amount as the Secretary of the Treasury prescribes to prevent the multiple use of this alternative limitation with respect to any Highly Compensated Employee.