

**DESCRIPTION OF PROPOSED TRANSACTION, CHANGES IN
INTERESTS HELD, AND COMPLIANCE WITH MULTIPLE
OWNERSHIP RULES**

This application seeks Commission consent to the transfer of control of Cedar Rapids Television Company, licensee of KCRG-TV, Cedar Rapids, Iowa, from The Gazette Company ESOP Committee (“ESOP Committee”) (now consisting of Joseph Hladky III, John Hladky, and Kenneth Slaughter, collectively the “current ESOP Committee”) to an expanded ESOP Committee consisting of Joseph Hladky III, John Hladky, Kenneth Slaughter, and new members Donald Barry, Ivan Barry, Elizabeth Hladky Schott, and Charles Peters (the “Expanded ESOP Committee”). All of the current and proposed ESOP Committee members are members of the families that have controlled the licensee and its parent company for several generations and/or executives with long records of service.

Background

The Gazette Company (the “Company”), through its wholly-owned subsidiary Gazette Communications, Inc., publishes *The Gazette*, a daily newspaper in Cedar Rapids, Iowa. In addition, the Company is the sole shareholder of Cedar Rapids Television Company, licensee of KCRG-TV, also in Cedar Rapids.

When the Commission’s newspaper/broadcast cross-ownership rule (“NBCO Rule”) (now 47 C.F.R. § 73.3555(d)) was adopted in 1975, the Company owned both *The Gazette* and KCRG-TV, as well as KCRG(AM).¹ The FCC, however, permitted existing combinations (including

¹ The AM station was sold to a third party several years ago and is not a factor in this analysis.

The Gazette and KCRG-TV) to remain under common ownership pursuant to a “grandfathering” policy. In the years following the adoption of the NBCO Rule in 1975, majority ownership and control of *The Gazette* and KCRG-TV remained in the hands of members of the families who then owned the stock of the Company, either as individuals or through family trusts.

In 1986, the Company established an employees’ stock ownership trust (“ESOT”). At that time, the ESOT acquired approximately 43 percent of the Company’s outstanding stock. *See* FCC File Nos. BTCCT-860530KQ (Form 316) and BTCCT-870717KJ (Form 315). Although the Company’s employees obtained beneficial ownership of the shares held in the ESOT, the Company’s board of directors (“Board”) designated three officials of the Company – Joseph Hladky III, John Donnelly, and Kenneth Slaughter – as Trustees of the ESOT, who were authorized to act by majority vote. Mr. Donnelly was subsequently replaced by Charles Peters in 2002.

In December 2012, the Commission granted an application (the “December Application”) ² authorizing a reorganization in which the shares of the Company’s stock held by individuals and trusts for the benefit of members of the families that had owned the Company since its inception (the “Family Transferors”) were redeemed by the Company in exchange for cash, long-term notes, or a combination thereof, and subsequently were cancelled.³ Thus, upon consummation of the transaction between the Company and the Family Transferors on December 21, 2012, the ESOT became the 100 percent shareholder of the Company.

² *See* FCC File No. BTCCT-20121217ACI, approved December 21, 2012.

³ Attached hereto as Appendix A is a list of the shareholders of the Company and their respective ownership percentages prior to the redemption of their shares.

The trust agreement governing the operation of the ESOT and the management of the assets held by the ESOT was amended to provide for the appointment of an independent financial institution as the sole Trustee of the ESOT following the reorganization. *See* Appendix B hereto.

Importantly, the Trustee under the amended trust agreement is now a “directed” trustee. Unlike an “independent trustee,” which can act unilaterally, a directed trustee of an ESOT generally is required to follow the directions of the company sponsoring the ESOT or another person or entity appointed by the board of directors of the sponsoring company, acting in a fiduciary capacity with respect to the ESOT.⁴

In this case, the Trustee is subject to the direction of the ESOP Committee, selected in accordance with the ESOP Committee Membership Policy, a copy of which is attached as Appendix C. As indicated in that document, the parties intend that at least a majority of the ESOP Committee, which is appointed by the Company’s Board, will continue to be made up of members (or descendants) of the families that have owned and controlled the Company since before the adoption of the NBCO Rule, so long as such persons are willing, able and qualified to serve on the ESOP Committee. The ESOP Committee manages the ESOT on a day-to-day basis and, in accordance with the terms of the ESOP Committee Charter (a copy of which is attached hereto as Appendix D), has authority to direct the Trustee in all matters except (i) valuation of the Company stock in the ESOT and (ii) in the event the Trustee believes the Committee’s directives would cause the Trustee to act in a manner that is inconsistent with the terms of the ESOT or contrary to ERISA.⁵

⁴ Under the requirements of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), a directed trustee will follow the direction of the company or its appointed designee so long as the directed trustee determines the direction is made in accordance with the terms of the ESOT and is not contrary to ERISA.

⁵ In addition, certain major corporate decisions require approval of the ESOT as a shareholder of the Company under Iowa state law – e.g., sale of the Company, a reorganization of its capital structure, or liquidation. Similarly, the

The instant application seeks consent to expand the membership of the ESOP Committee to include the following individuals, in addition to the three members already approved by the Commission pursuant to the December Application:⁶

Donald Barry

Ivan Barry

Elizabeth Hladky Schott

Charles Peters

All of the above individuals are members of the current Board of the Company as well as the Board of the licensee subsidiary. Further, Donald Barry, Ivan Barry, and Elizabeth Hladky Schott are Family Transferors who, prior to the recent redemption, held stock interests in the Company. Moreover, Donald Barry was identified and passed upon by the FCC in a previous long form transaction (*see* FCC File No. BTCCT-870717KJ), is a fourth generation member of one of the families that have long controlled the Company and the licensee, and has been a member of the Board of Directors of the Company and the television licensee subsidiary since 2009. (Donald Barry's mother, Elizabeth Thompson Barry, also was identified and passed upon in the previous long form transaction. Ms. Barry passed away on March 1, 2013. Prior to her death, however, she had served for over thirty years on the Board of Directors of the Company

(Continued . . .)

Internal Revenue Code permits ESOT participants to direct the trustee on how to vote the shares in their individual accounts with respect to mergers, consolidations, recapitalizations, liquidation, and sale of substantially all assets or similar transactions. The right to vote on such extraordinary actions or events has been determined on numerous occasions by the FCC not to constitute control or to render an interest attributable.

⁶ The mailing address for the current and proposed new members of the ESOP Committee is P.O. Box 511, Cedar Rapids, Iowa 52406. All are United States citizens. Each of the ESOP Committee members (current and proposed) will have one vote.

and, more recently, as Director Emeritus. At the time of the pro forma transfer from the Family Transferors to the ESOT in December 2012, Ms. Barry held 6.9269 percent of the outstanding stock of the Company through an estate planning trust. *See* Appendix A. Upon her death, her sons, Donald Barry and Steven Barry, became the trustees of Ms. Barry's trust.)

Elizabeth Hladky Schott is the daughter of Joseph Hladky III, one of the designated beneficiaries of his estate, and a fifth generation member of one of the controlling families. She has been a member of the Board of Directors of the Company and the television licensee subsidiary since 2009. Ivan Barry, a fifth generation family member, is the son of Donald Barry and one of the designated beneficiaries of his estate, and the grandson of Elizabeth Thompson Barry. Finally, Charles Peters has been a member of the Board of Directors of the Company and of the licensee subsidiary since 1999. Further, as noted above, Mr. Peters was one of the trustees of the ESOT from 2002 until December 2012, when the previously approved pro forma transaction was consummated.

The expansion of the ESOP Committee is intended to help ensure continuity in the management and control of the Company, the licensee subsidiary, and KCRG-TV by members of the families that have owned the properties since well before the adoption of the NBCO Rule. All of the ESOP Committee members will be members of the original shareholder families or their designated representatives (i.e., officers/directors as well as prior trustees of the ESOT), and a substantial majority of the Expanded ESOP Committee members are also members of the Company's longstanding control group. No "new" parties are assuming ownership or control positions. Accordingly, the applicants respectfully submit that the proposed transfer falls within the intended scope of 47 C.F.R. § 73.3555, Note 4, and that the Commission should approve the proposed expansion of the ESOP Committee without implicating the grandfathered ownership

status of KCRG-TV and *The Gazette*. See, e.g., *McClatchy Newspapers*, 76 FCC 2d 324 (1980), in which the Commission held that the exception which permits transfers of grandfathered combinations to “heirs or legatees” by will or intestacy is not limited to short form applications, and that a transfer through conservatorship was analogous to a transfer “by will or intestacy.” Similarly, in 2008, the FCC approved the transfer of control of WDWS(AM) and WHMS-FM, Champaign, Illinois from Marajen S. Chinigo, the last member of the family that had owned the stations and the co-located *The News-Gazette*, to a charitable foundation she had established to receive the assets of her estate following her death, leaving the grandfathered status of the newspaper/radio combination undisturbed. *Application of D.W.S. Inc.*, FCC File No. BTC-20080910ABA (granted Oct. 23, 2008).

The applicants recognize that there will inevitably be further changes in the make-up of the ESOP Committee with the passage of time. As noted above, however, it is anticipated that at least a majority of the ESOP Committee will continue to be made up of members (or descendants) of the families that have owned and controlled the Company since before the adoption of the NBCO Rule. Thus, the Company anticipates that future changes will most likely be pro forma in nature and/or will fall within the scope of the grandfathering provision for assignments or transfers to heirs or legatees of the stockholders whose interests originally were grandfathered.

**SHAREHOLDERS OF THE GAZETTE COMPANY
PRIOR TO REDEMPTION OF SHARES ON DECEMBER 21, 2012**

<u>FAMILY/SHAREHOLDER</u>	<u>OWNERSHIP PERCENTAGE</u>
<u>Thompson Family</u>	
Janak Raj Adhikari	0.3810%
Cynthia A. Thompson-Adhikari & Janak R. Adhikari	4.3381%
Nancy L. Thompson	4.5308%
Alice T. Smith	7.3608%
Elizabeth T. Barry Revocable Trust (Elizabeth T. Barry – Trustee) ⁷	6.9269%
Donald T. Barry	1.0359%
Heather E. Barry	0.1467%
Ivan C. Barry	0.1467%
Keziban S. Barry	0.1467%
Steven M. Barry	1.0359%
<u>Cole Family</u>	
Anne Miller Cole Family Trust (First State Bank, Manchester, IA – Trustee)	7.0692%
Martin J. Cole Inter Vivos Trust (First State Bank, Manchester, IA – Trustee)	4.9773%
Melissa Jane Sheppard	3.6902%
Kathleen Marie Spillman	3.8167%
JoeyLynn M. Boyd	0.0630%
Heather Hansen	0.0630%
<u>Davis Family</u>	
Nan Elizabeth Davis	0.6297%
Rachel Anne Davis	0.6297%
Robert Davis Surviving Spouse's Trust (Robert Calder Davis, Jr. – Trustee)	0.6297%
Robert Calder Davis, III	0.6297%
<u>Hladky Family</u>	
Elizabeth P. Hladky Donor Trust (John M. Hladky – Trustee)	1.5057%
Katherine J. Hladky Donor Trust (John M. Hladky – Trustee)	1.5057%
John M. Hladky Revocable Trust (John M. Hladky – Trustee)	14.0881%
Joseph F. Hladky, Jr. Family Trust (John M. Hladky and Joseph Hladky III – Trustees)	2.3318%
Joseph Hladky III	8.4678%
Joseph Hladky III Family Unit Trust (Joseph Hladky III – Trustee)	1.6196%
Employees' Stock Ownership Trust (Joseph Hladky III, Charles Peters and Kenneth Slaughter, Jr. – Trustees)	22.2335%
Total Outstanding	<u>100.0000%</u>

⁷ Elizabeth T. Barry passed away on March 1, 2013. Upon her death, Ms. Barry's sons, Donald Barry and Steven Barry, became the co-trustees of Ms. Barry's trust.

APPENDIX B

**THE GAZETTE COMPANY
EMPLOYEES' STOCK OWNERSHIP AND 401(k) SAVINGS
PLAN TRUST AGREEMENT**

**As Amended and Restated
Effective December 22, 2012**

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THE GAZETTE COMPANY
EMPLOYEES' STOCK OWNERSHIP AND 401(k) SAVINGS PLAN TRUST AGREEMENT

(As Amended and Restated Effective December 22, 2012)

This agreement (the "Agreement") is entered into effective as of the 22nd day of December, 2012 by and between The Gazette Company ("**Employer**") and Bankers Trust Company of South Dakota, a South Dakota state chartered trust company ("**Trustee**"). The Controlled Group Members listed in Exhibit A attached hereto and made a part hereof by reference, as it may be amended from time to time, (collectively referred to as the "**Participating Affiliates**") have executed the appropriate adoption agreement (the "Adoption Agreement") approved by the Trustee and, thus, also shall be deemed to be parties to, and shall be bound by the terms of, this Agreement.

This Agreement is the Trust Agreement referred to in The Gazette Company Employees' Stock Ownership and 401(k) Plan ("**Plan**") and amends and supersedes any prior Trust Agreement adopted in connection with the Plan.

ARTICLE I
GENERAL

1.1 Definitions. Capitalized terms in this Agreement that are defined in the Plan shall have the same meanings as defined in the Plan unless and to the extent a different meaning is specifically specified in this Agreement. Capitalized terms in this Agreement that are not defined in the Plan or in the other provisions of this Agreement shall have the following meanings:

(a) "**Administrator**" or "**Plan Administrator**" are used interchangeably and mean the Person specified as such in the Plan.

(b) "**Authorized Person**" means any Person authorized by the terms of this Agreement to give investment directions to the Trustee or to vote or otherwise manage any asset of the Trust Fund. It includes the Employer, the Administrator, any Investment Manager appointed in accordance with Section 3.6, any Named Fiduciary appointed in accordance with Section 3.7 or any Independent Fiduciary appointed in accordance with Section 4.4.

(c) "**Business Day**" means any day other than a Saturday, Sunday, federal holiday, or holiday in the State of Iowa.

(d) "**Code**" means the Internal Revenue Code of 1986, as amended.

(e) "**Controlled Group Member**" means a corporation that is a member of a "controlled group of corporations" for purposes of Code Section 414(b).

(f) **"ERISA"** means the Employee Retirement Income Security Act of 1974, as amended.

(g) **"Investment Manager"** means any Person defined as such under ERISA Section 3(38) who has been appointed in accordance with Section 3.6 to manage the investment of all or any specified portion of the Trust Fund.

(h) **"Named Fiduciary"** means the Employer and any other Authorized Person.

(i) The word **"or"** shall be construed to mean **"and/or"** unless the context clearly indicates otherwise.

(j) **"Person"** means an individual, committee of individuals, partnership, limited liability partnership, joint venture, corporation, limited liability company, mutual company, joint stock company, non-profit or not-for-profit organization, trust, estate, unincorporated organization, association, employee organization, or other entity.

(k) **"Plan Administrator"** or **"Administrator"** are used interchangeably and mean the Person specified as such in the Plan.

(l) **"Qualified Employer Securities"** means the securities defined in ERISA Section 407.

(m) **"Qualified Employer Real Property"** means the real property defined in ERISA Section 407.

(n) **"Recordkeeper"** means any Person designated by the Plan Administrator to perform recordkeeping and other non-discretionary services for the Plan.

(o) **"Trust"** means the trust entitled to tax exemption under Code Section 501(a) that is a part of the Plan and is used as a funding vehicle for the Plan.

(p) **"Trust Asset"** means all of the money, securities, debt instruments, and other assets held in the Trust Fund.

(q) **"Trust Fund"** means all of the money, securities, debt instruments, and other assets which may be transferred, assigned, and delivered to the Trustee from time to time to be held in trust hereunder, together with the investments made with them, the proceeds received from them, and the gains and accumulations on them, and the portion thereof from time to time remaining, to be held and disposed of by the Trustee (without distinction between principal and interest) in accordance with the terms and provisions of this Agreement and proper directions received by the Trustee.

1.2 Plan and Trust.

(a) The Trust Fund shall constitute a single, separate, and independent trust fund. If other trust funds are established in relation to the Plan, those other trust funds are separate from this Trust Fund and are not governed by this Agreement. Trust Assets may be held by the Plan Administrator or such other entity as the Trustee may appoint as custodian or subcustodian on behalf of the Trustee.

(b) Exclusive Purpose; No Diversion. The Trust Fund will be used as provided in ERISA for the exclusive purpose of providing benefits to Participants and their Beneficiaries and defraying reasonable expenses of administering the Plan. The Trust Fund may not be used for, or diverted to, other purposes and no amendment will be effective if it causes such diversion; provided, however, this exclusive purpose requirement and prohibition on diversion will not prevent the return of Trust Assets to any source pursuant to Section 2.4 or to the Participating Affiliates pursuant to Section 2.5.

(c) Functions of Plan Administrator. The Plan Administrator is the Person responsible for the overall operation and administration of the Plan as more fully set out in the Plan.

(d) Employer or Plan Administrator Acts on Behalf of Participating Affiliates. The Employer and/or Plan Administrator are the designated representatives of the Participating Affiliates in matters relating to the Trust.

1.3 Appointment, Acceptance, and Role of Trustee.

(a) Appointment. The Employer and each Participating Affiliate appoints the Trustee to be the trustee of the Trust Fund, and represents that all necessary action has been taken for the appointment of the Trustee as such and that this Agreement constitutes a legal, valid, and binding obligation of the Employer and each Participating Affiliate.

(b) Acceptance. The Trustee accepts its appointment as the trustee of the Trust and agrees to perform its duties under this Agreement.

(c) Role. Except as otherwise set forth in this Agreement, the Trustee will serve as a non-discretionary, directed trustee of the Trust Fund as described in ERISA Section 403(a). The Trustee is responsible for maintaining custody of the assets held in the Trust Fund, for investing those assets as directed by an Authorized Person, and for making distributions to payees as directed by the Plan Administrator, all as more fully described in this Agreement.

The Trustee (in its capacity as such) will not be a Recordkeeper for the Plan nor an administrative or investment fiduciary of the Plan and nothing in this Agreement is to be interpreted as causing the Trustee to be responsible for the administration or investment of the Plan or the Trust Fund. The Trustee may refuse to exercise any power

that it believes, in its sole judgment, will cause it to become the "plan administrator" as defined under ERISA.

(d) Directions. The Trustee will have no duty to take any action, unless the Employer, Plan Administrator, or another Authorized Person provides the Trustee with instructions in a form and manner required by the Trustee, except to the extent expressly provided in this Agreement. The Trustee may require that any direction be in writing or in an electronic format and may recognize standing requests, directions, requisitions, or instructions. However, each direction is contingent upon the determination by the Trustee, in the Trustee's sole discretion, that the direction can be administered by the Trustee, that such direction is prudent and in the best interests of the Plan participants and that following such direction would not cause the Trustee to violate its fiduciary duties under ERISA.

The Trustee may conclusively rely upon and be protected in acting in good faith upon any written representation or direction from the Employer, Plan Administrator, or another Authorized Person, or any other notice, request, consent, certificate, or other instrument or paper believed by the Trustee to be genuine and properly executed, or any instrument or paper if the Trustee believes the signature thereon to be genuine.

The Trustee may, but is not required to, rely on a written direction given by the Employer, Plan Administrator, or an Authorized Person that addressed a particular topic for a single instance in any subsequent and similar instance, unless the prior direction expressly states to the contrary.

1.4 Parties. To the extent permitted by applicable law, the Employer and the Plan Administrator will have the exclusive right to enforce any and all provisions of this Agreement on behalf of Participants, Beneficiaries, Participating Affiliates, or other Persons having or claiming to have an interest in the Trust Fund or under the Plan. In any action or proceeding affecting the Trust Fund, any Trust Asset, the administration of the Trust Fund, or directions or instructions to the Trustee, the Employer, the Administrator, and the Trustee will be the only necessary parties and will be solely entitled to any notice or process in connection therewith. Any judgment that may be entered in such action or proceeding will be binding and conclusive on all Persons having or claiming to have any interest in the Trust Fund or under the Plan.

1.5 Employer Acts on Behalf of Participating Affiliates. A Participating Affiliate, by signing the Adoption Agreement, consents to and ratifies the appointment of the Trustee to serve pursuant to the terms this Agreement, appoints the Employer to act as its designated representative in all matters relating to the Trust Fund or this Agreement, and agrees that the acts of the Employer will bind the Participating Affiliate to the same extent as if the Participating Affiliate had taken those acts itself.

1.6 Identity of Persons Providing Directions. Each Person authorized to give a direction to the Trustee will be identified to the Trustee in such manner as the Trustee may reasonably require. The Trustee will be given prompt written notice of any change in the identity or authority of any Person authorized to give direction to the Trustee. Until written

notice of such change is received, the Trustee is entitled to rely on the latest identification provided to it without further inquiry or verification.

1.7 Tax Exemption. The Employer is responsible for ensuring that the Plan is a qualified plan under Code Section 401(a) and that the Trust Fund is entitled to tax exemption as a trust under Code Section 501(a), including ensuring that the trust is a qualified domestic trust because all substantial decisions of the trust are controlled by U. S. corporations, partnerships, citizens, or residents. The Trustee is entitled to assume that the Plan and Trust Fund are so qualified and exempt, unless and until the Trustee receives written notice to the contrary from the Employer.

1.8 Other Funding Vehicles. This Trust Fund constitutes a single and independent trust. Other funding vehicles (including other trust funds) may exist that hold other assets of the Plan. The Employer is responsible for establishing and supervising the funding vehicles for the Plan. The Trustee has no duty or authority to inquire into the existence or operation of any other funding vehicles, the Trustee will not be responsible for any assets of the Plan held in any other funding vehicle, and this Agreement will not govern any assets of the Plan held in any other funding vehicles.

1.9 Applicable Law.

(a) Choice of Law. This Agreement will be governed by the substantive laws of the State of Iowa (without giving effect to the choice or conflict of law principles of that state) to the fullest extent that such laws are not preempted by the laws of the United States of America.

(b) Choice of Venue. All controversies, disputes, and claims arising under this Agreement and not otherwise resolved will be submitted to the United States District Court in the State of Iowa, and, by signing the Trust Agreement, the Trustee, the Employer, and each Participating Affiliate consent to that court's exercise of personal jurisdiction over them and waive any claim or defense based on improper venue or forum non conveniens or any similar basis.

ARTICLE II CONTRIBUTIONS AND TRANSFERS

2.1 Receipt of Assets. Subject to Section 3.4, the Trustee will receive and accept for the Trust Fund all money, securities, and other assets transferred, assigned, and delivered to it from any source by or at the direction of the Employer or Plan Administrator. The Trustee has no duty or authority to inquire into the source of any assets transferred to it or the authority or right of the transferor of such assets to transfer them to the Trustee.

2.2 Role of Trustee with Respect to Trust Assets. The Trustee will maintain safe custody of such money, securities, and other assets as it actually receives for the Trust Fund. The Trustee has no duty or authority to require any contributions or transfers to be made under the

Plan to the Trustee, compute any amount to be contributed or transferred under the Plan to the Trustee, determine whether amounts received by the Trustee comply with the Plan, the Code, ERISA, or other applicable law, or enforce contribution amounts for sufficiency under the Code or ERISA. The Trustee will not be responsible for any asset until it receives control of such asset.

2.3 Location and Evidence of Ownership. Except as permitted by ERISA, the Trustee will not maintain the indicia of ownership of any Trust Assets outside the jurisdiction of the district courts of the United States.

2.4 Return of Unidentified Assets. If the Trustee receives any money, securities, or other assets from a source other than a Participating Affiliate and has not received appropriate notification that such assets are to be accepted for the Trust Fund, the Trustee is authorized to return such assets to the Person from whom they were received. The Trustee will not be liable for any assets returned in such circumstances.

2.5 Return of Amounts to the Participating Affiliates. The Trustee, at the direction of the Employer or Plan Administrator, will return contributions made to the Trust Fund if the Employer or Plan Administrator certifies in writing to the Trustee that one or more of the following circumstances exist:

(a) Contributions Made by Mistake. If any contribution (or portion thereof) is made by a mistake of fact, the Trustee will, upon written direction of the Employer or Plan Administrator, return such contribution within one year after the payment of the contribution to the Trust Fund; provided, however, gains attributable to such contribution (or portion thereof) will not be returned, but will remain in the Trust Fund, and the amount returned will be reduced by any losses attributable to such contribution (or portion thereof).

(b) Contributions Conditioned on Deductibility. Each employer contribution is conditioned upon its deductibility under Code Section 404. To the extent the deduction is disallowed by the Internal Revenue Service, the Trustee will, upon written direction of the Employer or Plan Administrator, return such contribution (to the extent disallowed) within one year after the disallowance of the deduction; provided, however, gains attributable to such contribution (or disallowed portion thereof) will not be returned but will remain in the Trust Fund, and the amount returned will be reduced by any losses attributable to such contribution (or disallowed portion thereof).

ARTICLE III INVESTMENTS

3.1 Investment Control.

(a) Investment Authority. The Administrator will control and manage the investment of the Trust Assets except insofar as the Employer delegates investment

authority over part or all of the Trust Assets (with Trustee's consent), to one or more Investment Managers, to the Plan participants or to one or more other Named Fiduciaries.

(b) Investment Directions. All investment directions must be delivered to the Trustee in such manner as the Trustee may from time to time reasonably require.

3.2 Role of Trustee

(a) Processing Transactions. No investment transaction for the Trust Fund that is to be processed by the Trustee at the direction of an Authorized Person will be processed until the Trustee receives the direction in proper form. Investment transactions will be processed either as soon as administratively practicable thereafter or, if later, on the scheduled date for processing.

The Trustee may rely conclusively on any investment directions communicated to the Trustee by an Authorized Person and which the Trustee reasonably believes to be genuine, and the Trustee will have no responsibility to see that the investment directions comply with the terms of the Plan or ERISA. However, if the Trustee receives any direction from an Authorized Person that the Trustee deems, in its sole judgment, to be incomplete or unclear, the Trustee will not be required to act on such direction, may hold uninvested any Trust Asset until proper directions are received from an Authorized Person, and shall have no liability for not acting until such proper directions are received. If investment directions are incomplete or unclear, the Trustee must notify the Authorized Person or the Plan Administrator of such deficient directions within a reasonable period of time. In the absence of proper investment directions, the Trustee will not be liable for interest or market gains or losses on any cash balances or any other Trust Assets maintained in the Trust Fund.

(b) Legitimate Delay. The Trustee may delay the processing of any investment transaction for any legitimate business reason, including, but not limited to, failure of systems or computer programs, failure of the means of the transmission of data, force majeure, or the failure of a service provider to provide timely values or prices or to correct for any errors or omissions.

(c) Performance Standards. The Trustee will use reasonable efforts to process investment transactions on their scheduled processing dates, but the Trustee is not a guarantor of timely processing with respect to any Authorized Person, the Plan, or any Participant or Beneficiary.

(d) Other Limitations. Except as otherwise set forth in this Agreement and except as may otherwise be required by ERISA, the Trustee will invest the Trust Fund as directed by the Authorized Persons and the Trustee will have no discretionary control over, nor any other discretion regarding, the investment or reinvestment of any asset of the Trust Fund. Except as otherwise set forth in this Agreement and except as may otherwise be required by ERISA the Trustee has no duty or authority to provide investment advice with respect to the assets of the Trust Fund, monitor investment

performance or the diversification of assets, question any investment direction the Trustee receives in proper form, or inquire into the authority or right of any Authorized Person to make any investment direction which the Trustee receives in proper form. Except as otherwise set forth in this Agreement and except as may otherwise be required by ERISA, the Trustee will not be liable for any loss of any kind which may result from any action taken or not taken by the Trustee in accordance with an investment direction it receives in proper form or from any action taken or not taken because no such direction is received, including, but not limited to, the purchase, sale, or holding of Qualifying Employer Securities or Qualifying Employer Real Property.

3.3 Default Investment.

(a) Designation. The Administrator will designate an investment (the “**Default Investment**”) which will serve as the directed investment for any cash in the Trust Fund for which the Trustee has not received some other investment direction in proper form and which is not returned pursuant to Section 2.4 or 2.5.

(b) Compatibility. The Default Investment may be any mutual fund, common trust fund, or collective investment fund (whether or not maintained or advised by the Trustee or any of its affiliates), interest bearing account of the Trustee or an affiliated financial organization, or other investment. However, such investment must be compatible with the Trustee’s procedures for sweeping cash into the investment and for withdrawing cash from it for reinvestment in other assets, as directed, and must be agreed to in writing by the Trustee.

(c) Changes. The Default Investment will be designated in such manner as the Trustee may reasonably require. The Administrator may change that designation from time to time by delivering a new designation to the Trustee. Until a new designation is received, the Trustee is entitled to rely on the latest designation provided to it without further inquiry or verification.

3.4 Investment Restrictions. The Trustee will hold only those categories of assets designated by the Employer and agreed to in writing by the Trustee. The Administrator may add or remove types, categories, or classes of assets or investments with reasonable notice to, and the written consent of, the Trustee. Further, the Administrator may limit the available investment options under the Plan and may impose separate limitations for different Accounts or for terminated Participants.

3.5 No Investment Control by Participants or Beneficiaries. Except for assets of the Trust for which Participants are specifically permitted by the Plan Administrator to direct the investment thereof, no Participant or Beneficiary shall be entitled to direct the investment of any Trust Asset and the Trustee is directed to not act on, or respond to, any such direction.

3.6 Delegation of Investment Control to Investment Manager.

(a) Engagement of Investment Manager. The Employer may engage an Investment Manager to manage the investment of all or any specified portion of the Trust Fund. To effectuate such an engagement, an investment management agreement will be entered into between the Employer and the Investment Manager that sets forth the responsibilities and liabilities of the Investment Manager and a copy of such agreement will be provided to the Trustee.

(b) Authority of Investment Manager. An Investment Manager will have the authority to direct the Trustee as to (and have full responsibility for) the investment of that portion of the Trust Fund under its investment control for so long as the engagement of the Investment Manager remains in effect. The portion of the Trust Fund under the investment control of the Investment Manager will be segregated from the remaining portion of the Trust Fund, but the indicia of ownership will remain with the Trustee. The Investment Manager will have the same investment authority as the Employer under this Agreement unless otherwise limited by the investment management agreement. However, the Employer will have the voting power with respect to all stocks and other assets held in that portion of the Trust Fund under the investment control of the Investment Manager unless such voting control is expressly delegated under the investment management agreement to the Investment Manager.

The Trustee will act strictly in accordance with the directions of the Investment Manager unless and until the Trustee receives from the Employer written notice that the authority of the Investment Manager to direct the investment of the specified portion of the Trust Fund has been terminated. Such written notice of termination shall be effective at the later of the termination date specified in such written notice or the date such written notice actually is received by the Trustee. The Trustee will be fully protected in relying on and acting upon the investment directions of the Investment Manager which Trustee reasonably believes to be genuine. The Trustee will not have the authority to question any direction given by, review any investments directed or made by, make any suggestions to, or evaluate the performance of, any Investment Manager. The Investment Manager may issue orders for the purchase, conversion, or sale of securities directly to a broker-dealer, including a brokerage facility of the Investment Manager, and investments may be made in shares of investment companies and/or pooled investment funds for which the Investment Manager (or its affiliate) may be acting as an investment manager or is in some other way connected. Written notification of each order directed to a broker-dealer (or a copy thereof) will be given to the Trustee by the Investment Manager.

(c) Trustee as Investment Manager. The Employer may engage the Trustee or an affiliate of the Trustee as an Investment Manager to manage the investment of all or any specified portion of the Trust Fund in accordance with this Section 3.6 by entering into a separate written investment management agreement with the Trustee, or affiliate of the Trustee. Absent such a separate written investment management agreement, neither the Trustee nor any affiliate of the Trustee will have any duty or authority to control or manage the investment or reinvestment of the Trust Fund.

3.7 Delegation of Investment Control to Other Named Fiduciary.

(a) Appointment of Named Fiduciary. The Employer may delegate to one or more other Named Fiduciaries (that is, to an individual (other than to a Participant or to a Beneficiary), committee, or entity other than an Investment Manager) the authority to direct the Trustee as to the investment of all or any specified portion of the Trust Fund. To effectuate such a delegation, an agreement will be entered into between the Employer and the Named Fiduciary that sets forth the responsibilities and liabilities of the Named Fiduciary and a copy of such agreement will be provided to the Trustee.

(b) Authority of Named Fiduciary. A Named Fiduciary will have the authority to direct the Trustee as to (and full responsibility for) the investment of that portion of the Trust Fund under the investment control of the Named Fiduciary for so long as the appointment of the Named Fiduciary remains in effect. The portion of the Trust Fund under the investment control of the Named Fiduciary will be segregated from the remaining portion of the Trust Fund, but the indicia of ownership will remain with the Trustee. The Named Fiduciary will have the same investment authority as the Administrator under this Agreement unless otherwise limited by the agreement. However, the Administrator will have the voting power with respect to all stocks and other assets held in that portion of the Trust Fund under the investment control of the Named Fiduciary unless such voting control is expressly delegated under the investment management agreement to the Named Fiduciary.

The Trustee will act strictly in accordance with the directions of the Named Fiduciary unless and until the Trustee receives from the Employer written notice that the authority of the Named Fiduciary to direct the investment of the specified portion of the Trust Fund has been terminated. Such written notice of termination shall be effective at the later of the termination date specified in such written notice or the date such written notice actually is received by the Trustee. The Trustee will be fully protected in relying on and acting upon the investment directions of the Named Fiduciary which Trustee reasonably believes to be genuine. The Trustee will not have the authority to question any direction given by, review any investments directed or made by, make any suggestions to, or evaluate the performance of, any Named Fiduciary.

3.8 Life Insurance Policies. The Administrator may direct that the Trustee acquire, hold, or dispose of for the Trust Fund one or more life insurance policies on the life of any Participant and/or on the life of any other individual in whom the Participant has an insurable interest. The Plan Administrator will be responsible for directing the Trustee as to all matters regarding such policies, it being intended that the Trustee will have no discretion with respect to any such matter, and the Trustee will be fully protected in relying on such directions.

3.9 Loans Pursuant to Participant Loan Program. The Employer may establish a participant loan program under the Plan solely with respect to Participant elective contributions which are invested in investments other than Company stock, pursuant to which the Plan Administrator may direct the Trustee to make loans to Participants and Beneficiaries from the Trust Fund. The responsibility of the Trustee will be limited to implementing such directions as

it receives in proper form. The Plan Administrator shall be responsible for collecting any loan payments and making sure that the payments received by the Trust Fund are in accordance with the loan documents and the Trustee shall not be obligated to collect any loan payments or see that payments received by the Trust Fund are in accordance with the loan documents.

ARTICLE IV TRUSTEE POWERS

4.1 Non-discretionary Powers. Subject to the provisions of this Agreement, including Section 1.3, and ERISA, the Trustee shall, upon receiving proper direction of the Authorized Person responsible for such action, have the following powers, rights, and duties with respect to the Trust Fund, in addition to those provided elsewhere in this Agreement or by law:

(a) Investment in Securities and Other Assets. The Trustee may invest in any securities and other assets of whatsoever kind and nature, including, but not limited to, common, preferred, or other stocks of any corporation (including Qualifying Employer Securities), voting trust certificates, open-end or closed-end mutual funds, partnership interests, bonds, notes, and debentures (whether secured or unsecured), mortgages on real or personal property, conditional sales contracts, and improved or unimproved real estate and leases. The Trustee may make any such investments notwithstanding any resulting concentrations or lack of diversification. Without limiting the foregoing, the Trustee may purchase Qualifying Employer Securities from any person, including the Employer, at a price not more than the fair market value of the Qualifying Employer Securities purchased or sold as of the date of the purchase, as determined by the Trustee (in its sole discretion) based upon a valuation by an independent appraiser selected by the Trustee who meets the requirements of the regulations prescribed under Section 170(a)(1) of the Code; provided, however, that the Trustee will have no responsibility for determining whether such securities in fact constitute Qualifying Employer Securities; further provided that the Employer will be responsible for filing all reports required under federal or state securities laws with respect to the ownership of Qualifying Employer Securities by the Trust Fund (including without limitation any reports required under Section 13 or 16 of the Securities Exchange Act of 1934, as amended) unless the Trustee specifically agrees in writing to be responsible for filing any such report and the Employer will immediately notify the Trustee in writing of any requirement to stop purchases of Qualifying Employer Securities pending the filing of any report, and the Trustee will provide to the Employer such information on ownership of Qualifying Employer Securities by the Trust Fund as the Employer may reasonably request in order to comply with federal or state securities laws and ERISA.

(b) Investment in Common Trust Funds or Collective Investment Funds. The Trustee may invest in any common trust fund or collective investment fund (whether or not the Trustee acts as, or is affiliated with, the trustee or investment manager thereof) for the collective investment of assets of qualified retirement trusts, individual retirement accounts and plans of governmental units. The provisions of the document governing any such common trust fund or collective investment fund, as they may be amended from

time to time, will govern any investment therein and are hereby made a part of this Agreement for so long as any portion of the Trust Fund is so invested.

(c) Investment in Time Deposits. The Trustee may invest in time deposits, savings accounts, certificates of deposit, or similar investments bearing reasonable rates of interest which are maintained by the Trustee, an affiliate of the Trustee, or any financial organization.

(d) Investment in Insurance Contracts. The Trustee may apply for any contract (including, but not limited to, a group annuity contract or a guaranteed investment contract) issued by an insurance company, may accept and hold any such contract, and may assign and deliver any such contract. Any such contract may provide for the allocation of amounts received by the insurance company to its general account and/or to one or more of its separate accounts. Such separate accounts may include separate accounts maintained for the collective investment of assets of qualified retirement trusts and may be invested, without distinction between principal and income, in securities and other assets, or part interest (including any partnership interest) in property, real or personal, foreign or domestic, and any rights, warrants and options to acquire any of the foregoing. The insurance company will have exclusive responsibility for the investment and management of any amounts held under such contract, subject to the right of the Authorized Person to specify how amounts held under the contract are to be allocated among the accounts provided for in the contract.

(e) Investment in Qualifying Employer Real Property. The Trustee may acquire and hold property which constitutes Qualifying Employer Real Property with respect to the Plan. However, the Trustee will have no responsibility for determining whether such assets in fact constitute Qualifying Employer Real Property

(f) Investment on a Commingled Basis. The Trustee may commingle for investment all or any part of the Trust Assets with assets of other trusts entitled to tax exemption under Code Section 501(a) established by a Participating Affiliate; provided that records are at all times maintained of the portion of the commingled properly allocable to each trust.

(g) Investment in Option Contracts. The Trustee may engage in the writing, sale, and purchase of option contracts; and may acquire and exercise options to purchase or sell securities, futures contracts, or other assets.

(h) Transactions Involving Futures Contracts. The Trustee may purchase and sell financial or other futures contracts in transactions executed through a generally recognized commodities or securities exchange.

(i) Foreign Exchange Transactions. The Trustee may convert any monies into any currency through foreign exchange transactions (which may be effected with the Trustee or an affiliate of the Trustee to the extent permitted by ERISA).

(j) To Transfer Trust Assets. The Trustee may sell, grant options to buy, transfer, assign, convey, exchange, mortgage, pledge, lease, or otherwise dispose of, any of the Trust Assets comprising the Trust Fund. Without limiting the foregoing, the Trustee may sell Qualifying Employer Securities to any person, including the Employer, at a price not less than the fair market value of the Qualifying Employer Securities purchased or sold as of the date of the sale, as determined by the Trustee (in its sole discretion) based upon a valuation by an independent appraiser selected by the Trustee who meets the requirements of the regulations prescribed under Section 170(a)(1) of the Code.

(k) To Contract. The Trustee may renew or extend or participate in the renewal or extension of any note, bond, or other evidence of indebtedness, or any other contract or lease, or may exchange the same, or may agree to a reduction in the rate of interest or rent thereon or to any other modification or change in the terms thereof, or of the security therefor, or any guaranty thereof, may waive any default, whether in the performance of any covenant or condition of any such note, bond or other evidence of indebtedness, or any other contract or lease, or of the security therefor, and may carry the same past due or may enforce any such default; may exercise and enforce any and all rights to foreclose; may bid on property in foreclosure; may exercise and enforce in any action, suit, or proceeding at law or in equity any rights or remedies in respect to any such note, bond, or other evidence of indebtedness, or any other contract or lease, or the security therefor; may pay, compromise, and discharge with the funds of the Trust Fund any and all liens, charges, or encumbrances upon the same; and may make, execute, and deliver any and all instruments, contracts, or agreements necessary or proper for the accomplishment of any of the foregoing powers.

(l) To Borrow Money. The Trustee may borrow money for the benefit of the Trust Fund from any lender; may secure any loan so made by pledge or mortgage of Trust Assets; and may renew existing loans. This authorization includes, but is not limited to, the Trust Fund borrowing money for the purpose of acquiring Qualifying Employer Securities, subject to the following conditions:

(i) The loan must be for a specific term.

(ii) The rate of interest payable on the loan may be fixed or variable, but the rate must not exceed a reasonable rate of interest taking into account all relevant factors, including the amount and duration of the loan, the security for and any guarantee of the loan, and the creditworthiness of the Plan and of any guarantor of the loan.

(iii) Within a reasonable time after receipt of the loan proceeds, the Trustee shall use the proceeds to purchase Qualifying Employer Securities or to repay all or any portion of the loan or of any prior outstanding loan that has been used to acquire Qualifying Employer Securities.

(iv) The only assets of the Plan which may be pledged as collateral for the loan are the Qualifying Employer Securities that were acquired either with the loan proceeds or with the proceeds of any prior loan, to the extent that the prior loan is repaid

with the loan proceeds. Any Qualifying Employer Securities which are pledged as collateral for a loan shall be released from the pledge and allocated to the accounts of the Participants in the manner provided for in Article Nine of the Plan.

(v) The loan agreement shall provide that no person entitled to payment under the agreement shall have any right to assets of the Plan other than: (i) collateral given for the loan, in accordance with subparagraph (iv) above; (ii) contributions made by the Employer to the Plan to enable the Trustee to meet its obligations under the loan agreement (other than contributions of Qualifying Employer Securities); and (iii) earnings attributable to the Qualifying Employer Securities pledged as collateral to secure the loan and earnings attributable to the contributions made by the Employer to the Plan to enable the Trustee to meet its obligations under the loan agreement (other than contributions of Qualifying Employer Securities).

(vi) Except as provided in subparagraph (v) above, the loan must be without recourse against the Plan.

(vii) The payments made by the Trustee during any Plan Year on all outstanding indebtedness incurred by the Trustee for the purpose of acquiring Qualifying Employer Securities shall not exceed an amount equal to the sum of (1) all contributions made by the Employer to the Plan for the purpose of enabling the Trustee to meet its obligations under the loan agreement during or prior to the applicable Plan Year, plus (2) all earnings on those contributions and all earnings on the Qualifying Employer Securities pledged as collateral to secure the loans in accordance with subparagraph (iv) above during or prior to the applicable Plan Year, less (3) all prior payments made on the loans.

(viii) The loan agreement must provide that the value of the Plan assets to be transferred in satisfaction of the loan in the case of a default shall not exceed the amount of the default. If the lender is a "disqualified person" (as that term is defined in Section 4975(e) of the Code) or is a "party in interest" to the Plan (as that term is defined in Section 3(14) of ERISA), the loan agreement must provide for a transfer of Plan assets upon a default only upon and to the extent of the failure of the Plan to meet the payment schedule set forth in the loan agreement.

(ix) Except as provided in the Plan, Qualifying Employer Securities acquired with the proceeds of a loan shall not be subject to a put, call, or other option and shall not be subject to a buy-sell or similar arrangement, either while the Qualifying Employer Securities are held in the Trust Fund or after distribution to or on account of any Plan Participants.

(m) To Lend Money. To the extent permitted under the Plan, the Trustee may make loans to individual Participants and Beneficiaries of the Plan on such terms and in such amounts as directed by the Employer or the Plan Administrator.

(n) To Improve, Maintain, and Protect Trust Assets. The Trustee may use the Trust Assets for the purpose of improving, maintaining, or protecting property acquired

by the Trust Fund, including the purchase of insurance thereon, and may pay, compromise, and discharge with Trust Assets any and all liens, charges, or encumbrances at any time upon the same.

(o) To Hold Uninvested Cash. The Trustee may hold uninvested cash to meet the anticipated cash requirements of the Plan from time to time and may deposit the same or any part thereof, either separately or together with other trust funds held by the Trustee, in its own deposit department or with an affiliate of the Trustee or may deposit the same in its name as Trustee in other depositories.

(p) To Vote Stock and Mutual Fund Shares. The Trustee may vote all shares of stock and all shares of mutual funds and may issue proxies to vote such shares. The Trustee may also give general or special proxies or powers of attorney, with or without substitution.

The Trustee will transmit to the Plan Administrator (or its designee) copies of any notices of shareholders' meetings, proxies or proxy-soliciting materials, prospectuses or the annual or other reports to shareholders received by the Trustee, with respect to shares of stock (other than Qualifying Employer Securities) or shares of mutual funds held in the Trust Fund and the Trustee shall prescribe in such transmission the date by which the Trustee needs to receive directions as to the voting of such shares. The Plan Administrator will direct the Trustee how to vote such shares, unless voting decisions with respect thereto have been passed through to an Authorized Person, in which case the Plan Administrator will deliver such materials to the Authorized Person entitled to make such decisions. Directions to the Trustee as to the voting of shares must be in writing on a form approved by the Trustee or such other manner acceptable to the Trustee, signed by the Authorized Person (or Plan Administrator, to the extent voting is not passed through) and delivered to the Trustee on or before the date prescribed by the Trustee. The Trustee will not vote those shares of stock (other than Qualifying Employer Securities) or shares of mutual funds for which no voting directions are timely received.

Subject to the provisions of Section 1.3(d), without limiting the foregoing, but except as set forth below, the Trustee will vote shares of Qualifying Employer Securities only when and as directed in writing by the Plan Administrator. Notwithstanding the foregoing, each Plan Participant will be entitled to direct the Trustee as to how to vote Qualifying Employer Securities allocated to his or her Plan accounts with respect to any proposed merger or consolidation, recapitalization, reclassification, liquidation, dissolution, sale of substantially all of the assets of a trade or business, or similar transaction specified in Section 409(e)(3) of the Code or a Tender Offer (as such term is defined in Section 7.8(d) of the Plan). The instructions received by the Trustee from Plan participants shall be held by the Trustee in strict confidence and shall not be divulged or released to any person, including officers or employees of the Employer. In the event that the Trustee is a member of management of the Employer, the Trustee shall have an independent agent (such as a certified public accountant or attorney) conduct such an election. Any designee of the Trustee who assists in the solicitation or tabulation of the directions or instructions of Participants and any record-keeper, auditor or other person

providing services to the Plan to whom the Trustee releases such directions or instructions as necessary for the operation of the Plan, shall certify that he or she will maintain the confidentiality of all such directions and instructions. The Trustee shall vote the Qualifying Employer Securities which are not allocated to any Plan participant's accounts, and the Qualifying Employer Securities with respect to which no direction is received from the Plan participants to whose accounts the Qualifying Employer Securities are allocated, on the matters described in the preceding sentence only when and as directed in writing by the Plan Administrator.

(q) To Exercise Other Powers With Respect to Stock and Mutual Fund Shares. The Trustee may exercise any conversion privilege and/or subscription right available in connection with any securities or other assets at any time held by it, to oppose or to consent to the reorganization, consolidation, merger, or readjustment of the finances of any corporation, company, association, or other entity or to the sale, mortgage, pledge, or lease of the property of any corporation, company, association, or other entity, the securities of which may at any time be held by it, and to do any act with reference thereto, including the exercise of options, the making of agreements or subscriptions, and the payment of expenses, assessments, or subscriptions which may be deemed necessary or advisable in connection therewith, and to hold and retain any securities or other assets which it may so acquire, and to deposit any assets with any protective, reorganization, or similar committee or with depositories designated thereby, to delegate power thereto, and to pay or agree to pay part of the expenses and compensation of any such committee and any assessments levied with respect to assets so deposited.

Notwithstanding the above, the Trustee will not be responsible for taking any action or exercising any right described in this subsection with respect to securities or other assets of the Trust Fund unless, at least three Business Days prior to the date on which such power is to be exercised, it or its agents are in actual possession or control of such securities or assets (if such possession or control is necessary to exercise any such power) and have received written instructions to exercise any such power from an Authorized Person.

(r) To Prosecute and Defend Legal Actions. The Trustee may institute, prosecute, maintain, or defend any proceeding at law or in equity concerning the Trust Fund or any Trust Asset, at the sole cost and expense of the Trust Fund, and may compromise, settle, and adjust any claims and liabilities asserted against, or in favor of, the Trust Fund or the Trustee, but the Trustee will be under no duty or obligation to institute, maintain, or defend any action, suit, or other legal proceeding unless it has been indemnified to its satisfaction against any and all loss, cost, expense, and liability it may sustain or anticipate by reason thereof.

(s) To Exercise Other Directed Powers. The Trustee may also make such other investments and take such other actions with respect to the Trust Fund as an Authorized Person may direct.

Notwithstanding any other provision of this Agreement to the contrary, the Trustee will not be required to follow any investment, voting or other direction if it would require that the Trustee obtain a license, permit, or other authorization the Trustee does not already possess, if it would require that the Trustee be or become a resident of a state, country, or other political subdivision in which the Trustee is not a resident, or if the investment is of a type not otherwise handled by the Trustee in the normal course of its business.

4.2 Ministerial Powers. The Trustee may, but shall not be required to, exercise (without the additional approval of, or any direction from, an Authorized Person) all such powers as the Trustee may determine from time to time to be appropriate and helpful to the exercise of its duties under this Agreement, including, but not limited to, the following:

(a) To Execute Documents. The Trustee may make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or desirable to carry out the Trustee's duties under this Agreement.

(b) To Hold Title in Nominee Form. The Trustee may purchase and hold securities, debt instruments, and other assets in its name or in the name of a nominee with depositories or agent depositories or in another form as the Trustee may deem appropriate, or to deposit any securities or other assets in a depository, clearing corporation, or similar corporation, either domestic or foreign, with or without disclosing any fiduciary relationship. However, on the books and records of the Trustee, such securities, debt instruments, and other assets will be shown to be a part of the Trust Fund, and the purchase or holding by the Trustee in the name of a nominee will not relieve the Trustee from liability for the safe custody and proper disposition of such securities, debt instruments, and properties in accordance with the terms of this Agreement.

(c) To Use Federal Book-Entry Account System. The Trustee may participate in and use any federal book-entry account system provided by the Federal Reserve Bank for its member banks.

(d) To Employ Agents, Counsel, Etc. The Trustee may employ such agents, custodians, subcustodians, experts, counsel, and other persons (any of whom may also be employed by or represent the Employer or a Participating Affiliate) deemed by the Trustee in its sole discretion to be necessary or desirable for compliance with the terms of this Agreement; to rely and act on information and advice furnished by such agents, custodians, subcustodians, experts, counsel, and other persons; and to pay their reasonable expenses and compensation for services to the Trust or to the Trustee from the Trust Fund.

(e) To Pay Taxes on Trust Fund. The Trustee may pay out of the Trust Fund all property taxes, income taxes, and other taxes of any and all kinds levied or assessed under existing or future laws on, against, or in respect of, the Trust Fund, and to prepare and file any tax returns or reports incident thereto.

The Trustee may assume that any taxes assessed on, against, or in respect of, the Trust Fund are lawfully assessed unless the Employer or Plan Administrator advises the Trustee in writing that, in the opinion of counsel for the Employer or the Plan, such taxes are not lawfully assessed. If the Employer or Plan Administrator so advises the Trustee, the Trustee, if so directed by the Employer or Plan Administrator and suitable provision for the Trustee's indemnity has been made, will contest the validity of such taxes in any manner deemed appropriate by the Employer or Plan Administrator. The word "taxes" in this subsection will be deemed to include any interest or penalties that may be levied or imposed in respect to any taxes assessed. Any taxes, including transfer taxes incurred in connection with the investment or reinvestment of the Trust Assets that may be levied or assessed in respect to such assets will, if allocable to the Accounts of specific Participants or Beneficiaries, be charged to such Accounts, and if not so allocable, will be equitably apportioned among all Accounts.

(f) To Pay Taxes on Benefit Payments. The Trustee may pay any estate, inheritance, income, or other tax, charge, or assessment which the Trustee will be or may be required to pay out of any benefit payments.

(g) To Retain Trust Assets in Dispute. The Trustee may retain any funds or other Trust Assets subject to any dispute without liability for the payment of interest and to decline to make payment or delivery of the funds or other Trust Assets until final adjudication is made by a court of competent jurisdiction.

(h) To Provide Ancillary Services. The Trustee may provide ancillary services to the Trust Fund for not more than reasonable compensation, provided the requirements of ERISA Section 408(b)(6) are satisfied.

(i) To Bring Legal Action. The Trustee may bring action before any court of competent jurisdiction for instructions with respect to any matter pertaining to the interpretation of this Agreement or the administration of the Trust Fund, to deposit money into court or bring interpleader actions, and, to the maximum extent permitted under ERISA, to pay the fees, costs, and other expenses of such actions (including, without limitation, attorneys' fees) from the Trust Fund.

(j) To Defend Legal Actions. The Trustee may defend any proceeding at law or in equity with respect to any matter pertaining to the Trustee's rights, duties, obligations, and services in connection with this Agreement; to compromise, settle, and adjust any claims and liabilities asserted against the Trustee; and, to the maximum extent permitted under ERISA, pay the reasonable fees, costs, and other expenses (including, without limitation, attorneys' fees) of such defense from the Trust Fund.

4.3 Use of Affiliates. The Trustee is authorized to contract or make arrangements with any affiliate of the Trustee for the provision of necessary or desirable services to the Trust Fund. Without limiting the scope of the previous sentence, the Trustee is specifically authorized to place securities orders, settle securities trades, hold securities in custody, and perform related

activities on behalf of the Trust Fund through a broker-dealer that is an affiliate of the Trustee ("**Affiliate Broker**"); provided, however, such Affiliate Broker will perform such acts for the Trust Fund only if the Employer and/or other Authorized Person has designated the Affiliate Broker as a broker-dealer for the Trust Fund and the Employer and/or other Authorized Person have received necessary disclosure under ERISA.

4.4 Independent Fiduciary. Notwithstanding anything contained in this Agreement, an "Independent Fiduciary" may be appointed from time to time for such purposes as shall be determined by the Board of Directors of the Company, the Plan Administrator or the Trustee. An Independent Fiduciary may be appointed to serve in such capacity as may be deemed appropriate to act on behalf of the Plan and Trust with respect to issues which involve a real or perceived conflict of interest among certain parties, or for such other purposes as the Board of Directors of the Company, the Plan Administrator or the Trustee may determine to be in the best interest of the Plan and Trust. The Independent Fiduciary shall be granted such power, authority and discretion as may be necessary and appropriate for it to carry out its duties and responsibilities, including, but not limited to, any and all powers and discretion granted the Plan Administrator and the Trustee under the Plan and Trust, including the authority to direct the Plan Administrator and/or the Trustee to take such action as the Independent Fiduciary determines to be appropriate. For the purposes of this Trust Agreement, the term "Independent Fiduciary" shall refer to any entity or individual, which is unrelated to any party to the Plan or Trust and which may be appointed from time to time by the Board of Directors of the Company, the Plan Administrator or the Trustee to act on behalf of the Plan and/or Trust with respect to any issue involving a real or perceived conflict of interest among the parties to the Plan and/or Trust, or for such other purposes as the Board of Directors of the Company, the Plan Administrator or the Trustee may determine to be in the best interest of the Plan and/or Trust. The Independent Fiduciary shall have such rights, powers, duties and discretion as the Employer may delegate with respect to the designated portion of the Trust Fund, subject to any limitations or directions specified in the instrument evidencing the appointment of the Independent Fiduciary, and to the terms of this Agreement and of ERISA. The investment powers delegated to the Independent Fiduciary may include any investment powers available under this Agreement, including, but not limited to, the right to invest or reinvest the designated portion of the Trust Fund in Qualifying Employer Securities. The Independent Fiduciary may resign its position at any time by providing at least thirty (30) days advance written notice to the Employer, unless the Employer waives such notice. The Employer, in writing, may remove the Independent Fiduciary at any time. In the event of resignation or removal, the Employer may appoint another Independent Fiduciary, or may return the designated portion of the Trust Fund to the control and management of the Trustee. If an Independent Fiduciary is appointed under this provision, then such Independent Fiduciary shall only be liable for any loss to the Plan arising from the acts or omissions of such Independent Fiduciary with respect to the portion of the Trust Fund for which the Independent Fiduciary has been allocated fiduciary responsibility, and not for any acts or omissions of the Trustee with respect to the remaining portion of the Trust Fund. In addition, the Trustee shall only be liable for any loss to the Plan arising from the acts or omissions of the Trustee with respect to the portion of the Trust Fund for which fiduciary responsibility has not been allocated to the Independent Fiduciary, and not for the acts or omissions of the Independent Fiduciary with respect to the portion of the Trust Fund for which the Independent Fiduciary has been allocated fiduciary responsibility.

ARTICLE V DISTRIBUTIONS

5.1 Direction by Plan Administrator. The Trustee will distribute money, securities, and other assets from the Trust Fund as, when, and to whom directed by the Plan Administrator, provided that such directions are given in writing in such form as the Trustee may reasonably require.

5.2 Role of Trustee. The Trustee has no duty or authority to determine whether any payee is in fact entitled to a distribution or the amount or form of any distribution under the terms of the Plan, or whether a direction by the Plan Administrator complies with the Plan, the Code, ERISA, or other applicable law. The Trustee will not be liable for any distribution made by it in accordance with the Plan Administrator's directions.

5.3 Benefits May Not Be Assigned or Alienated. A Participant's or Beneficiary's interest in the Plan and the Trust Fund may not in any manner whatsoever be assigned or alienated, whether voluntarily or involuntarily, or directly or indirectly, except as expressly permitted by the Plan or otherwise required by law.

5.4 Tax Withholding. The Plan Administrator will be responsible for the withholding of all taxes which are required to be withheld from any payment under the Plan and will direct the Trustee regarding any such withholding.

5.5 Missing Payees. If any check, share certificate, or other document in payment of a benefit hereunder which has been mailed by regular U.S. mail to the last address of the payee furnished to the Trustee by the Plan Administrator is returned unclaimed, the Trustee will notify the Plan Administrator and will discontinue any further payments to such payee until it receives further instruction from the Employer or the Plan Administrator.

5.6 Disputed Payments. If a dispute arises over the propriety of the Trustee making any payment from the Trust Fund, the Trustee may withhold the payment until the dispute has been resolved by a court of competent jurisdiction or settled by the parties to the dispute. The Trustee also may deposit any Trust Assets into court or commence an interpleader action or take whatever other steps it deems appropriate. The Employer and the Participating Affiliates will indemnify the Trustee for any and all actions the Trustee takes under this Section, including, but not limited to, all claims, judgments, orders, fees, costs, expenses, and disbursements (including attorneys' fees). The Plan Administrator will be responsible for explaining to the claimants the nature of the dispute and why payment has not been made.

ARTICLE VI ADMINISTRATIVE MATTERS

6.1 Records; Inspection and Audit. The Trustee will keep accurate and detailed records and accounts of all receipts, investments, disbursements, and other transactions as

required by law with respect to the Trust Fund. All records, books, and accounts relating to the Trust Fund will be open to inspection at all reasonable times by any Person designated by the Employer or Plan Administrator, provided the Trustee is given reasonable notice by the Employer or Plan Administrator of such inspection.

6.2 Accounting. As soon as reasonably practicable following the close of each Plan Year, and as soon as reasonably practicable after the resignation or removal of the Trustee has become effective, the Trustee will provide the Plan Administrator with a written account setting forth all receipts, investments, disbursements, and other transactions during such year, or during the part of the year to the date the resignation or removal is effective, and containing a description of all securities purchased and sold, the cost or net proceeds of sale, the securities and investments held at the end of such period, and the cost of each item thereof as carried on the books of the Trustee. The accounting will include a listing of the assets of the Trust Fund showing, subject to Section 6.3, the value of each such asset at the close of the period covered by the accounting.

An accounting automatically will be deemed to have been approved by the Plan Administrator unless and to the extent the Employer or Plan Administrator objects to the contents of an accounting within 60 days of its mailing to the Plan Administrator by the Trustee. Any objections must be in writing and set forth the specific grounds on which the objections are based.

On direction of the Employer or Plan Administrator, and if agreed to in writing by the Trustee, the Trustee will provide interim accountings, valuations, or other reports concerning the Trust Fund.

The Trustee also will furnish the Plan Administrator with such other information as the Trustee possesses and which is necessary for the Plan Administrator to comply with the reporting requirements of ERISA.

6.3 Valuation of Assets. The assets of the Trust Fund will be valued at their fair market value on the appropriate valuation dates.

(a) Assets Managed by Investment Manager or Named Fiduciary. With respect to the portion of the Trust Fund that is invested by an Investment Manager or Named Fiduciary, the Investment Manager or Named Fiduciary will certify in writing to the Trustee the value of any securities or other assets in that portion of the Trust Fund. Such certification will be regarded as a direction with respect to the fair market value of such assets and the Trustee will be entitled to conclusively rely upon such valuation for all purposes under this Agreement.

(b) Other Assets. With respect to the assets in any portion of the Trust Fund that is not managed by an Investment Manager or Named Fiduciary, or any assets for which an Investment Manager or Named Fiduciary refuses or fails to provide a certification, if the fair market value can be determined administratively by reference to readily available public information, the Trustee may, but shall not be required to,

determine the fair market value of those assets based on such public information. For those assets whose value cannot be determined administratively by reference to readily available public information or those assets whose value the Trustee elects not to determine, the Trustee will identify those assets for the Plan Administrator and the Plan Administrator will direct the Trustee in writing as to the fair market value of those assets. Should the Plan Administrator, in its sole discretion, determine that an independent appraisal of some or all of such assets is necessary, the Plan Administrator will (except as otherwise specifically provided in Section 6.3(c)) be responsible for hiring a qualified independent appraiser, providing all necessary information to the appraiser, reviewing the report of the appraiser, determining the value of the asset based on the report of the appraiser, and reporting in writing the value of the assets to the Trustee, which value the Trustee shall rely on as a direction from the Plan Administrator for all purposes under this Agreement.

(c) Qualified Employer Securities. Notwithstanding the provisions of Section 6.3(b), with respect to assets in any portion of the Trust Fund consisting of Qualified Employer Securities whose fair market value cannot be determined administratively by reference to readily available public information, the Trustee will be responsible for hiring a qualified independent appraiser, reviewing the report of the appraiser, determining the fair market value of the Qualified Employer Securities (in the Trustee's sole discretion) based on the report of the appraiser, and reporting in writing the fair market value of the Qualified Employer Securities to the Plan Administrator and the Employer and the Participating Affiliates will be responsible for providing to the appraiser all information requested by the appraiser in a timely manner and otherwise cooperating with the appraiser.

6.4 Record Retention. The Trustee will retain its records relating to the Trust Fund as long as necessary for the proper administration of the Plan and Trust Fund and at least for any period required by ERISA (or other applicable law) as directed in writing by the Employer. Writing, photostating, photographing, microfilming, magnetic media, mechanical or electrical recording, or other forms of data retention will be acceptable means of record retention.

6.5 No Responsibility for Participant Level Recordkeeping or Communications with Participants. Unless and only to the extent otherwise agreed in a separate written agreement between the Employer and the Trustee, the Trustee will not be responsible for participant level recordkeeping or reporting, including, but not limited to, allocating contributions or gains or losses to recordkeeping accounts of Participants, processing loan or distribution requests, or preparing or providing benefit statements to Participants. Similarly, unless and only to the extent otherwise agreed in a separate written agreement between the Employer and the Trustee, the Trustee will not be responsible for any communications to Participants and Beneficiaries regarding the Plan or the Trust Fund.

6.6 Information and Evidence. Information or evidence required of anyone under this Agreement may be furnished by certificate, affidavit, facsimile, e-mail, or other form which the Person acting in reliance thereon considers to be pertinent and reliable and made, executed, and presented by the proper Person.

ARTICLE VII COMPENSATION, EXPENSES, AND INDEMNIFICATION

7.1 Compensation and Expenses. The Trustee or any Independent Fiduciary will be entitled to receive such reasonable compensation for its services in connection with the Plan as may be agreed upon from time to time with the Employer. The Trustee or any Independent Fiduciary will be entitled to reimbursement for all reasonable fees, costs, disbursements, and other expenses incurred by it in the performance of such services, including, without limitation, reasonable attorneys' fees. Any written agreement entered into between the Trustee or any Independent Fiduciary and the Employer relating to the payment of compensation and reimbursement of expenses automatically shall become a part of this Agreement. Compensation to the Trustee or any Independent Fiduciary and expense reimbursements will be paid from the Trust Fund unless paid directly by the Employer within a reasonable time as specified by the Trustee or any Independent Fiduciary. However, the Employer will pay such compensation and expense reimbursements if ERISA or other applicable law prohibits the Trustee or any Independent Fiduciary from being paid out of the Trust Fund.

Any expense paid from the Trust Fund which is specifically allocable to one or more investment funds maintained under the Plan will be charged against such investment funds; otherwise such expense will be equitably apportioned across all investment funds maintained under the Plan.

(a) Interest on Disbursement Accounts. The Employer and the Participating Affiliates understand and acknowledge that the compensation otherwise charged by the Trustee for services hereunder would be higher if the Trustee did not receive credit and/or interest on aggregate cash balances that the Trustee has on deposit in a disbursement account with a payor bank to accommodate distributions from the Plan. The compensation of the Trustee will therefore include such credit or interest unless a separate written agreement with the Employer expressly provides otherwise, and subject to the Trustee timely providing to the Administrator the disclosures described in U.S. Department of Labor Field Assistance Bulletin 2002-3.

(b) 12b-1 and Other Fees. The Employer and the Participating Affiliates understand and acknowledge that certain mutual funds (or their servicing agents, advisers, or distributors) which may be held in the Trust Fund may pay, directly or indirectly, fees or other compensation to the Trustee (or its related entities) as administrative expenses of the mutual fund or pursuant to a written plan described in Securities and Exchange Commission Rule 12b-1. Such fees or other compensation are described in the fee schedules, prospectuses and/or other disclosure materials provided to the Employer or other Authorized Person. The compensation of the Trustee will include such payments made to the Trustee (or its related entities) unless a separate written agreement with the Employer expressly provides otherwise, and subject to the Trustee timely providing to the Administrator to the disclosures required pursuant to ERISA Section 408(b)(2) and the regulations issued thereunder.

7.2 Indemnification of Trustee and Independent Fiduciary. The Employer and Participating Affiliates, jointly and severally, hereby indemnify the Trustee and any Independent Fiduciary (including any officer, employee, agent, advisor or representative thereof) and any parent, subsidiary, related corporation, or affiliate of the Trustee (including any officer, employee, agent, advisor or representative thereof) (the Trustee and other indemnified entities and individuals are collectively referred to as the “**Indemnified Parties**”) from, and hold each of them harmless against, any and all claims, liabilities, losses, fees, costs, disbursements, and expenses (including, without limitation, legal fees) of whatsoever kind and nature which may be imposed on, incurred by, or asserted against (whether or not suit be commenced) the Indemnified Parties at any time with respect to any action taken or not taken in connection with, or related to, the Plan or this Agreement, including, but not limited to:

(a) Following Directions of Authorized Persons. The Indemnified Parties will be indemnified with respect to any matter for which the Indemnified Parties are subject to direction by any Authorized Person. This includes both actions taken by the Indemnified Parties in accordance with such directions and actions not taken because no direction was given.

(b) Payment of Benefits in Excess of Account Balance. The Indemnified Parties will be indemnified for claims for benefits that exceed the value of the Participant’s (or Beneficiary’s) Account or amounts that exceed the value of the Trust Fund.

(c) Plan Operation. The Indemnified Parties will be indemnified for claims that the Plan was not operated in compliance with applicable law.

(d) Negligence, Misconduct, or Breaches of Duty of Others. Each Indemnified Party will be indemnified with respect to any matter relating to the negligence, misconduct, or breach of any statutory or other duty owed to the Plan by the Employer, any Participating Affiliate, the Plan Administrator, any Investment Manager, any Named Fiduciary, any Recordkeeper, or any other Person other than such Indemnified Party.

(e) Trust or Plan not Tax Exempt. If the Trust Fund and the Plan, after initially qualifying as a tax exempt trust and plan under Code Sections 501(a) and 401(a), respectively, shall thereafter cease to be a qualified trust and Plan, the Indemnified Parties shall be indemnified and held harmless against any liability for federal, state, or other taxes (including penalties and interest) as a result.

(f) Predecessor and Successor Trustees. The Indemnified Parties will be indemnified for claims relating to, resulting from, or with respect to any rights, duties, responsibilities, acts, or omissions of any predecessor or successor trustee.

The right of indemnification provided for in this Section 7.2 shall extend to all reasonable costs and expenses incurred by the Indemnified Parties in enforcing their rights to receive indemnification hereunder, including, but not limited to, reasonable attorneys’ fees and court costs. This indemnification provision will not apply to any Indemnified Party to the extent that

any such liabilities, losses, costs, or expenses are incurred by the Indemnified Party as a result of the gross negligence, willful misconduct, or breach of fiduciary duty of such Indemnified Party as determined by a court of competent jurisdiction, in a final judgment from which no appeal can be taken.

If one or more of the Indemnified Parties receives notice of any legal proceeding with respect to which indemnification may be sought against the Employer pursuant to this Section 7.2 (a "Proceeding"), an Indemnified Party shall notify the Employer of the Proceeding in writing within thirty (30) days of the commencement of the Proceeding. However, the failure to so notify the Employer shall not relieve the Employer from its indemnification obligations, except to the extent that the failure to so notify the Employer shall actually have prejudiced the defense of any Proceeding. The Employer will be entitled to assume the defense of the Proceeding with counsel reasonably satisfactory to the Indemnified Parties or to otherwise participate in the Proceeding. If the Employer elects to assume the defense of the Proceeding, it then shall pay all costs of defense. The Employer shall pay all reasonable costs as they are incurred by the Indemnified Parties in connection with any Proceeding, including (but not limited to) costs of investigation, of testifying in any hearing, of responding to discovery proceedings, and of consulting with the Employer or the attorneys for the Employer. The Indemnified Parties shall have the right to employ their own counsel in any Proceeding, and the fees and expenses of the Indemnified Parties' counsel shall be paid by the Employer as they are incurred, if any one or more of the following conditions are satisfied: (i) the employment by the Indemnified Parties of their own counsel shall be authorized by the Employer; (ii) the Indemnified Parties are advised by their counsel that there may be one or more legal defenses available to them which are different from or additional to defenses available to the Employer (in which case the Employer shall not have the right to assume the defense of the Proceeding on behalf of the Indemnified Parties); (iii) the Employer fails to assume the defense of the Proceeding and to employ counsel satisfactory to the Indemnified Parties within fourteen (14) days after being notified of the commencement of the Proceeding; or (iv) the Indemnified Parties shall be informed by their counsel that a conflict exists with the counsel selected by the Employer.

This indemnification provision will survive the termination of this Agreement and/or the termination of the services of the Trustee and any Independent Fiduciary.

ARTICLE VIII CHANGE IN TRUSTEE

8.1 Resignation or Removal. The Trustee may resign at any time by giving 30 days' advance written notice to the Employer, and the Employer may remove the Trustee at any time by giving 30 days' advance written notice to the Trustee (in either event, a shorter notice period may be agreed to by the Employer and the Trustee). If the Trustee resigns or is removed, the Trustee shall be entitled to receive payment for any unpaid fees and expenses incurred prior to the date of the Trustee's resignation or removal and the Employer will promptly appoint a successor trustee, and, if no successor trustee is appointed within a reasonable period of time, which period shall not exceed 30 days after the notice of resignation or removal is given, the

Plan Administrator shall automatically become successor trustee and shall continue to act as such until a successor is properly appointed as provided herein. The Employer will furnish the Trustee with written notice of the appointment of a successor trustee and written evidence of the acceptance by the successor trustee of such appointment and the Trustee will cease to be Trustee upon the earlier of receipt by the Trustee of such evidence of acceptance by the successor trustee or the expiration of the resignation or removal notice period.

The appointment of any successor trustee will immediately and automatically vest title to the assets of the Trust Fund in the successor trustee without any separate instrument or conveyance. However, upon request of the successor trustee, the Employer and the Trustee will execute and deliver any instruments of conveyance and do anything else reasonably required to fully vest and confirm in the successor trustee all the rights, title, and interest of the resigning or removed Trustee in the Trust Fund. The resigning or removed Trustee will have no duties, responsibilities, or liability with respect to, or as a result of, the acts or omissions of any successor trustee.

8.2 Duties on Succession. A successor trustee will have all the rights, titles, powers, duties, exemptions, and limitations of the predecessor trustee under this Agreement. The Trustee will, upon the appointment and acceptance of a successor trustee, transfer and deliver the assets of the Trust Fund to the successor trustee after reserving such reasonable amount as the Trustee deems necessary to provide for its fees and expenses and any other sums chargeable against the Trust Fund. If any assets in the Trust Fund have been invested in a common trust fund or collective investment fund, the Trustee will cause such investment to be liquidated at the earliest practical time after notice has been given or received by the Trustee of its resignation or removal. No Person becoming a trustee hereunder will be in any way liable or responsible for anything done or omitted to be done by any trustee prior to such Person's acceptance of the trusteeship.

8.3 Changes in Organization of Trustee. If the Trustee is succeeded by another corporation or entity, through merger, consolidation, or otherwise, the acquiring corporation or entity automatically will thereupon become the Trustee under this Agreement. If the Trustee sells and transfers substantially all of its assets and business to another corporation or entity, the acquiring corporation or entity automatically will become the Trustee under this Agreement as though specifically so named herein. In each case, the acquiring corporation or entity will give the Employer written notice of such succession or acquisition. Notwithstanding the foregoing provisions of this Section, a succeeding or acquiring corporation or entity will become the trustee hereunder only if it has trust powers and is formed under the laws of the United States of America or any subdivision thereof.

ARTICLE IX AMENDMENT, WAIVER, AND TERMINATION

9.1 Amendment of Plan. It is understood that the Employer may amend the Plan at any time and from time to time. Promptly upon the adoption of any amendment, the Employer will furnish the Trustee with a copy of the amendment with appropriate evidence of its adoption.

However, no such amendment will change the rights, duties, or responsibilities of the Trustee without the written consent of the Trustee. The Trustee may rely on the latest Plan documents furnished it as above provided without further inquiry or verification.

9.2 Amendment of Agreement. No amendment of this Agreement shall be effective unless it is in writing and executed both by the Employer and the Trustee. Any such amendment may be retroactive or prospective.

9.3 Termination of Trust Fund. The Trust Fund will continue in effect until all assets of the Trust Fund have been distributed or until all assets of the Trust Fund are merged with, or transferred into, a trust fund other than this Trust Fund.

9.4 Termination of Plan. If the Plan is terminated, this Agreement will nevertheless continue in effect both as otherwise provided in this Agreement, including, but not limited to, Section 7.2, and also until all assets of the Trust Fund have been distributed.

9.5 Bankruptcy, Etc. of Employer.

(a) Notification of Trustee. If the Employer becomes insolvent or files for, or becomes subject to, bankruptcy or a similar proceeding in state or federal court, the Employer will notify the Trustee of such event in writing as soon as possible. The notification will include confirmation of the individual(s) who will direct the Trustee on an on-going basis. If the Employer does not notify the Trustee of such event within 60 days of such event, the Trustee may invoke the provisions of Section 9.5(b).

(b) Appointment of New Trustee. In the case of the bankruptcy, insolvency, or dissolution of the Employer, or, if the Employer or Plan Administrator does not respond to requests from the Trustee for confirmation of the individuals who will provide direction to the Trustee, the Trustee (notwithstanding the provisions of Section 8.1) shall have the right, but not the obligation, to resign effective immediately upon delivery of notice of such resignation to the Employer or the Plan Administrator and/or to petition a court of competent jurisdiction to appoint a new trustee. The fees, costs, and other expenses of such actions shall be payable from the Trust Fund.

(c) Deduction of Expenses from Trust Fund. If the Trustee receives from the Employer or a court of competent jurisdiction notice of the Employer's bankruptcy, insolvency, or dissolution, or, if the Employer or Plan Administrator does not respond to requests from the Trustee for confirmation of the individuals who will provide direction to the Trustee, the Trustee may immediately deduct from the Trust Fund any fees, costs, and other expenses relating to the provision of services under this Agreement (whether current or overdue).

ARTICLE X MISCELLANEOUS

10.1 Dealings of Others with Trustee. No Person dealing with the Trustee will be required to see to the application of any money paid or assets delivered to the Trustee or to determine whether the Trustee is acting pursuant to any authority granted to it under the Plan or this Agreement.

10.2 Insurance Company Not Responsible for Validity of Agreement. No insurance company that issues a contract to the Trustee will be construed to be a party to the Plan or this Agreement, nor will it have any responsibility for the validity of this Agreement. An insurance company to which an application may be submitted hereunder may accept such application and will have no duty to make any investigation or inquiry regarding the authority of the applicant to make such application or any amendment thereto or to inquire as to whether an individual on whose life any contract is to be issued is entitled to such contract under the Plan.

10.3 Successors. This Agreement will be binding on the Employer, each of the Participating Affiliates, and their respective successors. If a purchaser of all or substantially all of the assets of the Employer or a Participating Affiliate elects in writing to continue to participate in the Plan, such purchaser will be bound by this Agreement. Neither the Employer, any Participating Affiliate, nor the Trustee may assign any of its rights, duties, or obligations under this Agreement unless and to the extent otherwise provided in this Agreement or agreed to in writing by both the Employer and the Trustee.

10.4 Trustee Warranty Against Conviction. A Person accepting trusteeship hereunder warrants that such Person has not been convicted of a crime which, under the provisions of ERISA Section 411, prevents such Person from serving as Trustee hereunder.

10.5 Trustee Warranty Regarding Bonding. To the extent the Trustee is required to be bonded by ERISA Section 412, the Trustee warrants that it has such a bond.

10.6 Headings. Headings at the beginning of Articles and Sections are for convenience of reference, will not be considered a part of the text of this Agreement, and will not influence its construction.

10.7 Singular/Plural. References to the singular include the plural and vice versa whenever the context so indicates.

10.8 Waiver of Notice. Waiver of any notice required under this Agreement may be effected only by a writing executed by the Person entitled to the notice.

10.9 Directions, Instructions, Elections, Notices, Etc. In Writing. All directions, instructions, elections, notices, and other communications required, provided for, or allowed by this Agreement shall be in writing, signed by each Person required by this Agreement, and delivered personally, sent by facsimile transmission, or mailed by certified mail, return receipt requested and postage prepaid, to the Person specified in this Agreement at the last known

address (or, in the case of a facsimile transmission, to the last known facsimile number) of such Person. Each such communication shall be deemed to be received when personally delivered, when both the facsimile transmission and a paper copy actually have been received, or, if sent by certified mail in accordance with the aforesaid requirements, on the date shown on the return receipt (unless no such date appears on the return receipt in which case receipt shall be conclusively presumed to have occurred on the third day after the date of postmark on the mailing receipt for certified mail), as the case may be.

10.10 Agreement Construed as a Whole. The provisions of this Agreement will be construed as a whole in such manner as to carry out the provisions thereof and will not be construed separately without relation to the context.

10.11 Resolution of Conflicting Provisions. In the event any provision of this Trust is inconsistent with any provision of the Plan, the provision of the Plan shall control.

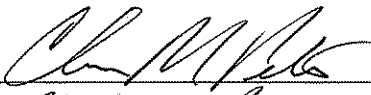
10.12 Trustee Discretion. All actions permitted to the Trustee may be exercised or not exercised by the Trustee in its sole discretion unless and only to the extent specifically provided otherwise in this Agreement.

10.13 Severance. If a court of competent jurisdiction determines any provision of this Agreement to be illegal or unenforceable, the remaining provisions of this Agreement will remain in force and be interpreted as nearly as possible to the original terms.

[Signature Page Follows]

IN WITNESS WHEREOF, the Employer has caused this Agreement to be signed by its duly authorized officer, and the Trustee has signed, not in its corporate capacity, but solely in its capacity as Trustee, as of the day and year first above written.

THE GAZETTE COMPANY

By: 
Name: Charles M. Peters
Its: President

Bankers Trust Company of South Dakota

By: _____
Name: _____
Its: _____

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IN WITNESS WHEREOF, the Employer has caused this Agreement to be signed by its duly authorized officer, and the Trustee has signed, not in its corporate capacity, but solely in its capacity as Trustee, as of the day and year first above written.

THE GAZETTE COMPANY

By: _____
Name: _____
Its: _____

Bankers Trust Company of South Dakota

By: Debra Williams
Name: Debra Williams
Its: Vice President

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EXHIBIT A

PARTICIPATING AFFILIATES

1. Gazette Communications, Inc.
2. Cedar Rapids Television Company

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APPENDIX C

THE GAZETTE COMPANY
ESOP COMMITTEE CHARTER

COMMITTEE'S PURPOSE

The ESOP Committee (the "Committee") is appointed by the Board of Directors (the "Board") of The Gazette Company (the "Company") to serve as the administrator for The Gazette Company Employees' Stock Ownership and 401(k) Savings Plan (the "ESOP"). The Committee shall adopt policies and procedures and make such rules, regulations, computations, interpretations, and decisions, and shall maintain such records and accounts as may be necessary to administer the ESOP in a nondiscriminatory manner, in accordance with the terms of the ESOP, for the exclusive benefit of the ESOP participants and their beneficiaries.

COMMITTEE MEMBERSHIP

The Committee shall consist of no fewer than three (3) members as designated by written resolution of a majority of the members of the Board. It is intended that the Board shall adopt an ESOP Committee Membership Policy ("Policy"). The Policy will provide guidelines for eligibility of individuals to serve on the Committee. Unless a chairperson is appointed by a majority of the full Board, the members of the Committee may designate a chairperson. Committee members shall serve on the Committee until they resign or are removed by a majority of the full Board and their successor is appointed.

MEETINGS

The Committee shall meet at least once annually or more frequently as circumstances dictate. Meetings may be in person or by telephone as needed to conduct the business of the Committee. At a meeting, decisions by a majority of the members shall control. The Committee may take action by the unanimous written consent of the members in the absence of a meeting. Meetings may be called by any member of the Committee.

COMMITTEE AUTHORITY AND RESPONSIBILITY

1. *General Standard for ESOP Administration.* The Committee shall discharge its duties solely in the interests of the ESOP participants and their beneficiaries, and: (a) for the exclusive purpose of providing benefits to ESOP participants and their beneficiaries; and (b) with the care, skill, prudence,

and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

2. *Interpretation of Plan Provisions.* The Committee shall, in its sole and absolute discretion, interpret the Plan, determine questions of eligibility, vesting, participation and entitlement to benefits. The Committee shall construe any ambiguities or conflicts in the Plan.

3. *Amendment of ESOP Plan Documents.* The Committee shall periodically review the provisions of the ESOP plan documents and, in consultation with legal counsel, recommend to the Board that amendments to the ESOP plan documents be adopted to conform with administrative policies developed by the Committee and to comply with changes to legislation or regulatory authority applicable to the ESOP.

4. *Investment of ESOP Assets.* Except as set forth in Section 8 below, the Committee shall be responsible for directing the trustee of the ESOP (the "Trustee") as to the investment of the assets of the ESOP ("ESOP Assets").

5. *Purchase of Insurance for ESOP Fiduciaries.* The Committee shall direct the Company to purchase fiduciary liability insurance for the Committee, the Trustee and other fiduciaries of the ESOP to cover liability or loss occurring by reason of the act or omission of a fiduciary. If such insurance is purchased with ESOP Assets, the insurance must permit recourse by the insurer against the fiduciary in case of a breach of a fiduciary obligation by such fiduciary.

6. *Determination of Eligibility to Receive ESOP Benefits.* The Committee shall make all determinations with respect to whether participants and beneficiaries of the ESOP are entitled to receive payment of the benefits from the ESOP; provided, however, that no member of the Committee may participate in the determination of any matter or question concerning his or her own benefits under the ESOP or as to how his or her benefits are to be paid unless either: (a) the determination could be made by him or her under the ESOP if he or she were not a member of the Committee; or (b) the determination applies to all ESOP participants similarly. If a member of the Committee is disqualified to act, and the remaining members of the Committee cannot agree on a decision, the Board may appoint a temporary member to exercise the powers of the interested member of the Committee concerning the matter as to which he or she is disqualified.

7. *Development of ESOP Administration Procedures.* The Committee shall establish reasonable procedures with respect to the following matters: (a) the manner and timing of payment of

benefits from the ESOP; (b) the manner for determining whether a “domestic relations order” (as such term is defined in the ESOP plan documents) constitutes a “QDRO” (as such term is defined in the ESOP plan documents) and the administration of distributions under QDROs; and (c) any other procedures for the administration of the ESOP as required under the ESOP plan documents or as deemed necessary by the Committee.

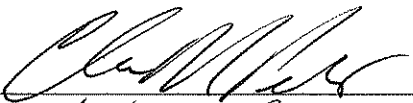
8. *Direction of Trustee.* The Committee will give instructions to the Trustee on all matters which require instructions or directions, as provided in the ESOP plan documents; provided, however, that the Trustee or an “Independent Fiduciary” (as such term is defined in the ESOP plan documents) shall act without the direction of the Committee with regard to: (a) the valuation of the Company stock in the ESOP; (b) any matter concerning the investment of the assets of the ESOP, including the purchase or sale of Company stock and the financing and other matters incidental to such purchase or sale of Company stock, in situations where one or more members of the Board and/or the Committee or the Trustee has a conflict of interest; or (c) in the event the Trustee or an Independent Fiduciary believes the Committee’s directives would cause the Trustee or the Independent Fiduciary, as applicable, to act in a manner that is inconsistent with the terms of the ESOP plan documents or contrary to the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), in which case the Committee shall have no authority or responsibility whatsoever with regard to the matters so delegated to the Trustee or the Independent Fiduciary, as applicable.

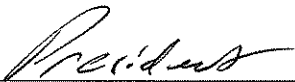
9. *Allocation of Fiduciary Responsibility.* The Committee may allocate its fiduciary responsibilities among its members and may designate other persons (including the Trustee) to carry out its fiduciary responsibilities. Without limiting the foregoing, the Committee may delegate to the Trustee or an “investment manager” (as such term is defined in ERISA) the responsibility for investing ESOP Assets in accordance with the terms of the ESOP plan documents and all fees of an investment manager shall be paid by Company or from ESOP Assets.

10. *Retention of Consultants.* Except as set forth below, the Committee shall have sole authority to retain and terminate any consultants or other advisors to be used to assist in the administration of the ESOP; provided, however that the Trustee or an “Independent Fiduciary” (as such term is defined in the ESOP plan documents) shall have the full discretion to hire a consultant to assist the Trustee or the “Independent Fiduciary” to determine the value of the shares of Company stock held by the ESOP and such other advisors, consistent with subsection 4.2(d) of the Trust Agreement. All fees and other retention items for such consultants and other advisors shall be paid by the Company or from ESOP Assets.

11. *Additional Activities.* The Committee shall perform any other activities consistent with this Charter, as the Committee deems appropriate to carry out its assigned duties or as requested by the Board.

Adopted this 22 day of December, 2012, but effective as of December 22, 2012.


Name Charles M. Peters


Title President

APPENDIX D

THE GAZETTE COMPANY ESOP COMMITTEE MEMBERSHIP POLICY

BACKGROUND:

In 1975, the Federal Communications Commission (“FCC”) adopted rules on newspaper/broadcast cross-ownership (the “NBCO Rules”) generally prohibiting parties from owning or holding “attributable” interests in a daily newspaper and a television or radio broadcast station in the same market.

When the NBCO Rules were adopted in 1975, The Gazette Company (the “Company”) owned (directly or through subsidiaries) both *The Gazette* newspaper and KCRG-TV, as well as KCRG (AM)¹, which would not have been permissible under the new restriction. With a handful of exceptions for “egregious” or “monopoly” situations, however, the FCC permitted existing combinations (including *The Gazette* newspaper and KCRG-TV) to remain under common ownership pursuant to a “grandfathering” policy, without requiring divestiture.

Under the grandfathering policy, the grandfathering only continues so long as the combination continues under the ownership at the time the NBCO was adopted, in 1975. The FCC made allowance for passage of the commonly-owned combinations to heirs or legatees of the parties who owned them as of the 1975 grandfathering date. See 47 CFR § 73.3555, Note 4. Further, the FCC’s rules state that divestiture will not be required in the case of “pro forma” assignments or transfers that do not effect a substantial change in ultimate ownership or control, nor in involuntary transactions such as entry into bankruptcy or receivership. *Id.*

Following the adoption of the NBCO Rules in 1975, majority ownership and control of *The Gazette* newspaper and KCRG-TV has remained in the hands of members of the families who then owned the stock of the Company, either as individuals or through trusts.

In 1986, the Company established an employee stock ownership plan and its related trust (“ESOT”). At that time, the ESOT acquired approximately 43 percent of the Company’s outstanding stock. Although the Company’s employees obtained beneficial ownership of the shares held in the ESOT, the Company’s board of directors (“Board”) designated three officers of the Company – Joseph Hladky III, John Donnelly², and Kenneth Slaughter, Jr. – as Trustees of the ESOT, who were authorized to act by majority vote. As a result, the shares held by the ESOT have been effectively under the control of the remaining (family) shareholders, through their elected representatives on the Board and the Board-appointed Trustees of the ESOT.

On or about December 21, 2012, the Company consummated a transaction in which all of the shares of stock in the Company held by individuals and trusts for the benefit of members of the families that have owned the Company since its inception were redeemed by the Company in exchange for cash, long-term debt instruments or a combination thereof, and such stock was

¹ The AM station was sold to a third party several years ago.

² Mr. Donnelly was succeeded as a trustee of the ESOT by Charles Peters following Mr. Donnelly’s death in 2002.

cancelled (such transaction, the "Transaction"). As a result of the Transaction, the ESOT is the sole shareholder of the Company.³

Effective as of the consummation of the Transaction, the Company has amended and restated the ESOT trust agreement ("Restated ESOT") and Bankers Trust Company of South Dakota has been appointed as the directed trustee of the ESOT (the "Directed Trustee"). In accordance with the provisions of the Restated ESOT, the Directed Trustee is subject to the direction of the "ESOP Committee."

The ESOP Committee, subject to the provisions of the ESOP Committee Charter and the Restated ESOT, directs the Directed Trustee in all matters except: (i) valuation of the Company stock in the ESOT; (ii) in any matter concerning the investment of the assets of the ESOT, including the purchase or sale of Company stock and the financing and other matters incidental to such purchase or sale of Company stock, in situations where one or more members of the Board and/or the ESOP Committee or the Directed Trustee has a conflict of interest; and (iii) in the event the Directed Trustee believes the ESOP Committee's directives would cause the Directed Trustee to act in a manner that is inconsistent with the terms of the Restated ESOT or contrary to the Employee Retirement Income Security Act of 1974, as amended ("ERISA").⁴

Effective as of the date following consummation of the Transaction, the Board has appointed the following individuals to the ESOP Committee: Joseph Hladky III, John Hladky and Kenneth Slaughter, Jr. As a result, the ESOP Committee consists of members of the families and Company executives that prior to the Transaction held the controlling equity interests in the Company.

The Board has concluded that it is in the best interests of the Company and its shareholder, the Directed Trustee as the trustee of the ESOT, and the participants and beneficiaries of the ESOT, to adopt this ESOP Committee Membership Policy in order to retain grandfathered status under the NBCO Rules and avoid a required divestiture of either *The Gazette* or KCRG-TV.

ESOP COMMITTEE MEMBERSHIP POLICY:

The Company hereby adopts the following policy with respect to the membership of the ESOP Committee:

Until such time as the rules of the Federal Communications Commission ("FCC") regarding newspaper/broadcast cross-ownership (the "NBCO Rules") are either: (i) eliminated; or (ii) would not require the divestiture by the Company of its ownership of either *The Gazette* or KCRG-TV if this policy of the ESOP Committee were not in effect, a majority of the members

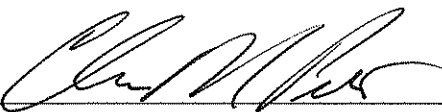
³ The Board appointed an independent institutional trustee of the ESOT, solely for purposes of considering the Transaction to assure fairness and independent representation of the ESOT for this limited purpose.

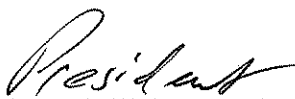
⁴ In addition, certain major corporate decisions require approval of the ESOT as a shareholder of the Company under Iowa state law – e.g., sale of the Company, a further reorganization of its capital structure, or a liquidation. Similarly, the Internal Revenue Code permits ESOT participants to direct the trustee on how to vote the shares in their individual accounts with respect to mergers, consolidations, recapitalizations, liquidation, sale of substantially all assets or similar transactions.

of the ESOP Committee shall consist of members or descendants of members of the families that have owned and controlled The Gazette Company since before the adoption of the NBCO Rules (each such person, a "Family Member"), provided any such person is willing, able and qualified to serve on the ESOP Committee.

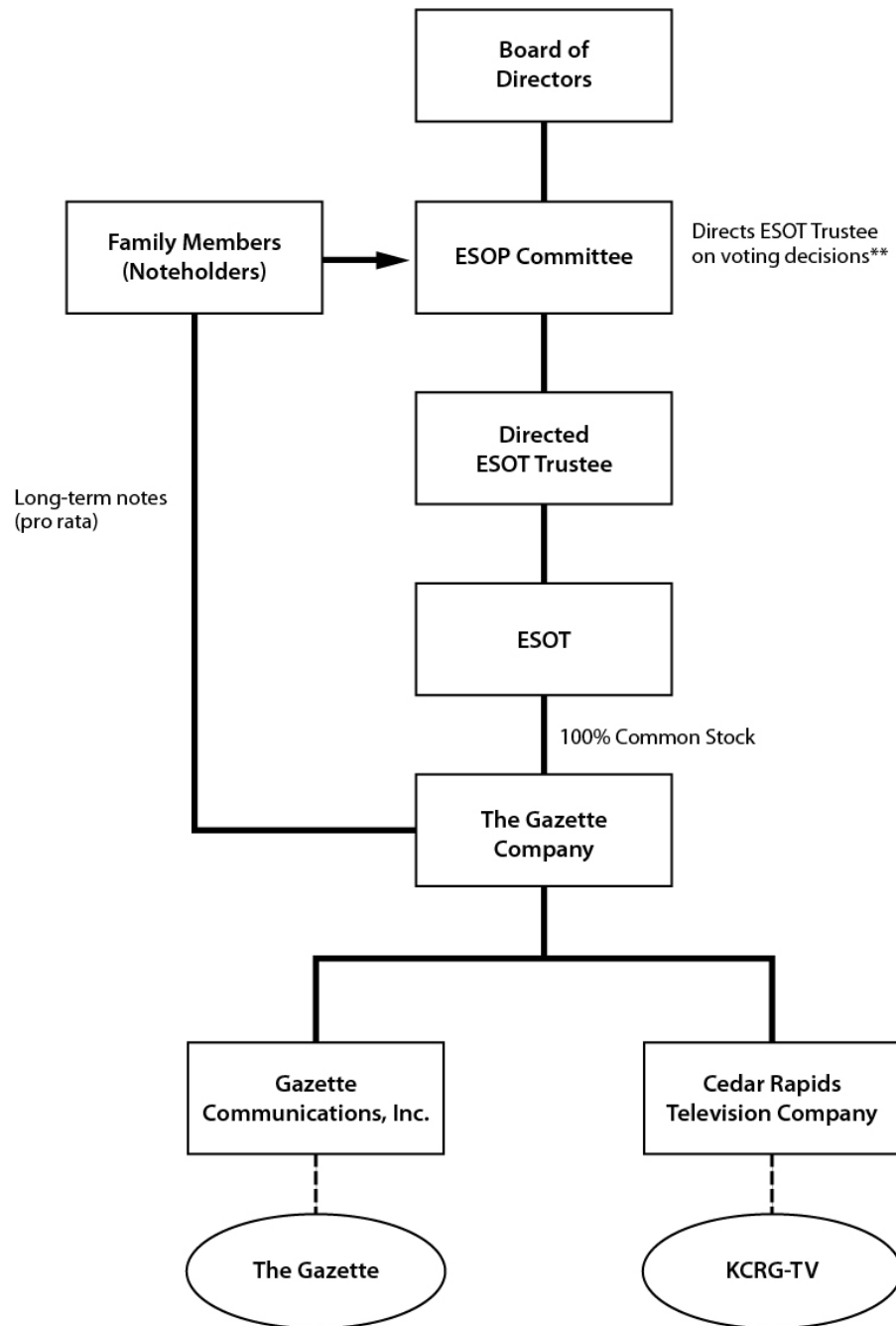
For purposes of this policy, a Family Member shall be "qualified" to serve on the ESOP Committee if in the reasonable determination of the Board of Directors of the Company such person is skilled, capable or competent to so serve based on prior or current service as an employee, consultant or director of the Company or its affiliates, or by reason of education, training or prior experience.

Adopted this 22 day of December, 2012, but effective as of December 22, 2012.


Name


Title

OWNERSHIP STRUCTURE



**The ESOT Trustee will follow the direction of the Committee unless the Trustee believes that following such directions would be inconsistent with the terms of the Plan or that following such directions would be contrary to ERISA.