

EXHIBIT 5

THE CONTINENTAL RETIREMENT PLAN

(As Amended and Restated Effective January 1, 2007)

THE CONTINENTAL RETIREMENT PLAN
(Amended and Restated as of January 1, 2007)

THIS AGREEMENT by Continental Airlines, Inc., a Delaware corporation (the “Sponsor”),

W I T N E S S E T H:

WHEREAS, the Sponsor previously adopted the plan known as “The Continental Retirement Plan” (the “Plan”);

WHEREAS, the Sponsor reserved the right to amend the Plan from time to time;

WHEREAS, it has been determined that the Plan should be completely amended and restated to reflect the terms of the Plan as currently in effect and to comply with the requirements of the Internal Revenue Code of 1986, the Employee Retirement Income Security Act of 1974, and all other applicable laws, as currently in effect; and

WHEREAS, it is intended that the amended and restated Plan be effective as of January 1, 2007, applicable only to Employees who, on or after January 1, 2007, have at least one Hour of Service (as defined below) for the performance of duties with the Sponsor or other Employer that has adopted the Plan, and that the Plan as in effect prior to January 1, 2007 continue to apply to other Employees;

NOW, THEREFORE, the Sponsor hereby adopts the plan hereinafter set forth as a complete amendment and restatement of the Plan.

ARTICLE I
DEFINITIONS

The terms defined in this Article shall have the meanings attributed to them unless the context obviously requires another meaning:

1.1 Accrual Computation Period. “Accrual Computation Period” shall mean the periods described in Section 2.19 for determining an Employee’s right to credit for a Year of Credited Service.

1.2 Accrued Benefit. “Accrued Benefit” shall mean as of any date, the Normal Retirement Pension of a Participant calculated on the basis of his or her Years of Credited Service, Final Average Compensation, and Average Social Security Wage Base as of such date.

Notwithstanding the preceding provisions of this Section, the Accrued Benefit of a Participant who is included in a Fresh-Start Group shall be the greater of (a) the Participant’s Frozen Accrued Benefit, or (b) the amount determined under the preceding provisions of this Section if the annual benefit commencing at Normal Retirement Age is determined without regard to Section 4.3, and if the Participant’s total Years of Credited Service (before and after the Fresh-Start Date) taken into account under Section 4.2 are taken into account.

Notwithstanding the preceding provisions of this Section, a Participant's Accrued Benefit shall be the amount determined as of the day immediately preceding the day on which any amendment to the Plan is adopted or effective, whichever occurs later, if such determination results in a larger Accrued Benefit than the preceding provisions of this Section. Such determination shall be made under the Plan without regard to such amendment.

The Accrued Benefit as of April 30, 2005 of active Participants and Participants who terminated covered employment prior to April 30, 2005 and who are, or were, classified as pilots (line and management) or as flight instructors, including the Accrued Benefits of alternate payees under qualified domestic relations orders related thereto, but excluding Accrued Benefits attributable to the Texas International Airlines, Inc. Fixed Pension Plan for Pilots, shall be transferred to the Continental Pilots' Retirement Plan, effective as of April 30, 2005.

With respect to Participants after April 30, 2005, who were classified as a pilot (line or management) or as a flight instructor as of April 30, 2005, the Accrued Benefits of such Participants shall be determined based upon such Participants' service in both a pilot and non-pilot and a flight instructor and non-flight instructor capacity (with non-pilot and non-flight instructor service and compensation continuing through retirement, but with pilot and flight instructor service and compensation frozen as of May 31, 2005), reduced by the benefit of such Participants under the Continental Pilot's Retirement Plan.

1.3 Actuarially Equivalent. "Actuarially Equivalent" shall mean equality in value of the aggregate amounts expected to be received under different forms of payment based upon the same mortality and interest rate assumptions. The mortality and interest rate assumptions used in computing benefits and optional forms shall be:

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|------------|--|
| Interest: | Pre-retirement - 8.5 percent per annum, compounded annually |
| | Post-retirement - 8.5 percent per annum, compounded annually |
| Mortality: | Pre-retirement - UP-1984 Mortality Table |
| | Post-retirement - UP-1984 Mortality Table |

Notwithstanding the preceding provisions of this Section, the Applicable Interest Rate and Applicable Mortality Table shall be used in calculating the amount of a single sum payment if they result in a greater benefit than the interest assumption and mortality table specified above in this Section.

For purposes of this Section, the "Applicable Interest Rate" is an interest rate equal to the annual rate of interest on 30-year U.S. Treasury securities pursuant to Section 417(e)(3)(A)(ii)(II) of the Code for the month determined under the following provisions of this Section, and the "Applicable Mortality Table" is the mortality table prescribed by the Secretary of the Treasury under Section 417(e)(3)(A)(ii)(I) of the Code.

With respect to Benefit Commencement Dates occurring during the months of January through June, the Applicable Interest Rate shall be determined as of the immediately preceding August. With respect to Benefit Commencement Dates occurring during the months of July through December, the Applicable Interest Rate shall be determined as of the immediately preceding February.

Actuarially Equivalent single sum distribution amounts shall be calculated by applying the foregoing interest and mortality assumptions on a deferred to Normal Retirement Age basis to the benefit payable at the later of the Participant's Normal Retirement Date or Benefit Commencement Date.

If an amendment first establishes or changes the time for determining the Applicable Interest Rate, any distribution in the period commencing with the effective date of the amendment and ending one year after the effective date of the amendment shall use the Applicable Interest Rate determined under the Plan, either before or after the amendment, that results in the larger Accrued Benefit.

If any of the actuarial assumptions specified in this Section are changed by an amendment to the Plan (other than one described in the immediately preceding paragraph), the actuarial equivalent of the Accrued Benefit on or after the date of the change shall be the greater of (a) the actuarial equivalent of the Accrued Benefit as of the date of change computed on the old basis or (b) the actuarial equivalent of the total Accrued Benefit computed on the new basis.

1.4 Actuary. "Actuary" shall mean the independent actuary or actuarial firm selected by the Employer to service this Plan and related Trust. All actuarial service required under ERISA and the regulations thereunder shall be performed only by an enrolled actuary.

1.5 Administrative Committee. "Administrative Committee" shall mean the committee appointed by the Sponsor pursuant to Section 12.1 to administer the Plan.

1.6 Adverse Benefit Determination. "Adverse Benefit Determination" means any of a denial, reduction or termination of or failure to provide or make payment (in whole or in part) for a Plan benefit, including any denial, reduction, termination or failure to provide or make payment that is based on a determination of a Claimant's eligibility to participate in the Plan. Further, any invalidation of a claim for failure to comply with the claim submission procedure will be treated as an Adverse Benefit Determination.

1.7 Affiliated Employer. "Affiliated Employer" shall mean the Employer and any other business organization required to be aggregated with the Employer under Sections 414(b), 414(c), 414(m), or 414(o) of the Code. In determining whether a business organization is an Affiliated Employer for purposes of Section 415 of the Code and any provisions of the Plan relating to Section 415 of the Code, the modification required under Section 415(h) of the Code shall be given effect in applying Sections 414(b) and 414(c) of the Code.

1.8 Aggregation Group. "Aggregation Group" shall mean (a) each plan of any Affiliated Employer in which a Key Employee is a participant and (b) each other plan of any Affiliated Employer which enables any plan described in clause (a) of this sentence to meet the requirements of either Section 401(a)(4) or 410 of the Code. Any Employer may treat a plan not required to be included in the Aggregation Group as being a part of the group if the group would continue to meet the requirements of Sections 401(a)(4) and 410 of the Code with that plan being taken into account.

1.9 Annual Compensation. "Annual Compensation" shall mean all wages, salaries, fees for professional services, and other amounts received during a Limitation Year (without

regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with an Affiliated Employer to the extent that the amounts are includable in gross income for federal income tax purposes. "Annual Compensation" includes, but is not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements or other expense allowances under a nonaccountable plan (as described in Reg. §1.62-2(c)). In the case of an Employee who is an employee within the meaning of Section 401(c)(1) of the Code and the regulations thereunder, "Annual Compensation" includes such Employee's earned income. "Annual Compensation" also includes amounts includable in income that are described in Sections 104(a)(3), 105(a), and 105(h) of the Code; amounts paid or reimbursed by an Affiliated Employer for moving expenses to the extent that at the time of payment it is reasonable to believe that such amounts are not deductible by the Employee under Section 217 of the Code; the value of a nonqualified stock option to the extent the value of the option is includable in income in the year of grant; the amount includable in income upon making an election under Section 83(b) of the Code, and effective as of January 1, 2008, amounts that are includable in the gross income of an Employee under the rules of Section 409A or Section 457(f)(1)(A) of the Code or because the amounts are constructively received by the Employee. "Annual Compensation" also includes elective contributions under a cafeteria plan described in Section 125 of the Code and elective contributions to any plan qualified under Sections 401(k), 408(k), 403(b), or 132(f) of the Code. "Annual Compensation" includes foreign earned income (as defined in Section 911(b) of the Code), whether or not excludable from gross income under Section 911 of the Code. "Annual Compensation" shall be determined without regard to the exclusions from gross income in Sections 931 and 933 of the Code. "Annual Compensation" excludes the following:

(a) contributions (other than elective contributions described in Sections 402(e)(3), 408(k)(6), 408(p)(2)(A)(i) or 457(b) of the Code) made by the Employer to a plan of deferred compensation (including a simplified employee pension described in Section 408(k) of the Code or a simple retirement account described in Section 408(p) of the Code, and whether or not qualified) to the extent that, before the application of the limitation of Section 415 of the Code to that plan, the contributions are not included in the Employee's gross income for the taxable year in which contributed, and any distributions from a plan of deferred compensation (whether or not qualified);

(b) amounts realized from the exercise of a nonqualified stock option and the value of restricted stock or property held by the Employee when it becomes freely transferable or is no longer subject to a substantial risk of forfeiture;

(c) amounts realized from the sale, exchange, or other disposition of stock acquired under a qualified stock option; and

(d) other amounts that receive special tax benefits, such as premiums for group term life insurance (to the extent premiums are excludable from income) and contributions (whether or not under a salary reduction agreement) towards the purchase of an annuity contract described in Section 403(b) of the Code (whether or not the contributions are actually excludable from the gross income of the Employee).

Notwithstanding the preceding provisions of this Section, amounts in excess of the Section 401(a)(17) Limitation for the Limitation Year or Plan Year with respect to which Annual Compensation is being determined shall be disregarded.

Further notwithstanding the provisions of this Section, the Annual Compensation of a Participant shall not include any amounts earned or paid for service or employment with ExpressJet from and after the date of consummation of the initial public offering of common stock of ExpressJet Holdings, Inc. (April 23, 2002) other than with respect to those Participants who are being credited from and after such date with service pursuant to Section 2.25.

1.10 Average Social Security Wage Base. “Average Social Security Wage Base” shall mean the average of the taxable wage bases in effect under Section 230 of the Social Security Act for each calendar year during the 35-year period ending with the last day of the calendar year preceding the calendar year in which the Employee attains social security retirement age. In determining an Employee’s Average Social Security Wage Base for a Plan Year, the taxable wage base for all calendar years beginning after the first day of the Plan Year shall be assumed to be the same as the taxable wage base in effect as of the beginning of the Plan Year. An Employee’s Average Social Security Wage Base for a Plan Year beginning after the 35-year period applicable under this Section shall be the Employee’s Average Social Security Wage Base for the Plan Year during which the 35-year period ends. An Employee’s Average Social Security Wage Base for a Plan Year beginning before the 35-year period applicable under this Section shall be the taxable wage base in effect as of the beginning of the Plan Year. Each Participant’s Average Social Security Wage Base shall be adjusted for each Plan Year.

1.11 Beneficiary. “Beneficiary” shall mean any person(s), trust(s), or other entity(ies), including the Participant’s estate, entitled to receive any benefits payable hereunder upon the Participant’s death.

1.12 Benefit Commencement Date. “Benefit Commencement Date” shall mean the first day of the first period for which an amount is paid as an annuity or in any other form.

1.13 Benefits Administrator. “Benefits Administrator” means the person or office to whom the Plan Administrator has delegated day-to-day Plan administration responsibilities and who, pursuant to such delegation, processes claims for benefits under the Plan in the ordinary course.

1.14 Claimant. “Claimant” means Participant or Beneficiary or an authorized representative of such Participant or Beneficiary who has filed or desires to file a claim for a Plan benefit.

1.15 Code. “Code” shall mean the Internal Revenue Code of 1986, as amended.

1.16 Computation Period. “Computation Period” shall mean the Eligibility Computation Period, the Accrual Computation Period, and/or the Vesting Computation Period.

1.17 Considered Compensation. “Considered Compensation” shall mean the regular pay paid with respect to an Employee during employment by an Employer during a Plan Year (including that portion of regular pay represented by Employer contributions pursuant to a salary

deferral election under Sections 125 or 401(k) of the Code and shift differential and gainsharing (as defined by the Sponsor's payroll policy in effect on December 28, 1988), but excluding bonuses, commissions, taxable income derived from group term life insurance, overtime pay, severance pay, reimbursements or allowances or advances for expenses (including per diem expenses, relocation expenses and increased cost of living allowances), Employer contributions to or benefits under the Continental Airlines, Inc. Flexible Benefits Program or any other welfare plan, contributions to or benefits under any profit sharing plan including the Continental Airlines, Inc. Profit Sharing Plan (whether distributed currently or contributed to the plan), contributions to or benefits under the Continental Airlines, Inc. Variable Pension Plan II and any form of non-cash or incentive compensation. For purposes of determining a Participant's Considered Compensation, any amounts earned or paid for service or employment with Continental Express, Inc. with respect to those Participants who are being credited with service pursuant to Section 2.25 shall be deemed to be paid with respect to an Employee during employment by an Employer.

For the Plan Year ending December 27, 1992, Considered Compensation shall mean 104 percent of the amount determined under the preceding paragraph of this Section. For the Plan Year ending December 27, 1993, Considered Compensation shall mean 105 percent of the amount determined under the preceding paragraph of this Section. For the Plan Year ending December 27, 1994, Considered Compensation shall mean 101 percent of the amount determined under the preceding paragraph of this Section.

Effective for amounts paid after December 31, 1998, Considered Compensation shall include overtime pay paid to all Employees.

The determination of Considered Compensation will be in accordance with records maintained by the Employer and shall be conclusive.

Notwithstanding the preceding provisions of this Section, amounts in excess of the Section 401(a)(17) Limitation for the Plan Year with respect to which Considered Compensation is being determined shall be disregarded.

Further notwithstanding the provisions of this Section, the Considered Compensation of a Participant shall not include any amounts earned or paid for service or employment with ExpressJet from and after the date of consummation of the initial public offering of common stock of ExpressJet Holdings, Inc. (April 23, 2002) other than with respect to those Participants who are being credited from and after such date with service pursuant to Section 2.25.

1.18 *Deferred Retirement Date.* "Deferred Retirement Date" shall mean the earlier of (a) the first day of the month coincident with or next following the day on which occurs the Participant's Separation after his or her Normal Retirement Date or (b) the Participant's Required Beginning Date.

1.19 *Deferred Retirement Pension.* "Deferred Retirement Pension" shall mean the pension described in Section 4.5.

1.20 *Deferred Vested Pension.* "Deferred Vested Pension" shall mean the pension to which a Participant becomes entitled upon Separation for any reason other than death or

Disability prior to the occurrence of either his or her Early Retirement Date or his or her attainment of Normal Retirement Age, as described in Section 5.2.

1.21 Determination Date. “Determination Date” shall mean, for a given Plan Year, the last day of the preceding Plan Year or, in the case of the first Plan Year, the last day of that Plan Year.

1.22 Disability. “Disability” shall mean in the case of an illness or injury sustained by a Participant prior to attainment of age 55, his or her total and presumably permanent inability to perform the duties of any occupation or employment due to such illness or injury. In the case of an illness or injury sustained by a Participant on or after attaining age 55, “Disability” shall mean his or her total and presumably permanent inability to perform the duties of his or her actual or any comparable occupation or employment due to such illness or injury. Notwithstanding the foregoing, a Participant shall not be considered to have incurred a Disability on account of a self-inflicted illness or injury or a condition with no objective medical finding (such as fear-of-flying syndrome).

1.23 Disability Pension. “Disability Pension” shall mean the pension to which a Participant becomes entitled upon Separation on account of Disability, as described in ARTICLE VI.

1.24 Disqualifying Employment. “Disqualifying Employment” shall mean, with respect to any calendar month ending prior to the Participant’s attainment of Normal Retirement Age, any employment that results in the Participant’s entitlement to credit for at least one Hour of Service for such calendar month. “Disqualifying Employment” shall mean, with respect to any calendar month beginning on or after the Participant’s attainment of Normal Retirement Age, any employment that results in the Participant’s entitlement to credit for (a) at least forty Hours of Service for such calendar month; or (b) at least one Hour of Service performed on each of eight or more days (or separate work shifts) in such month, if the Plan has not for any purpose determined or used the actual number of Hours of Service which would be required to be credited to the Participant under Section 2.7. For purposes of the immediately preceding sentence, the Affiliated Employers with respect to which Hours of Service shall be credited shall be those, and only those, that were Affiliated Employers at the time that the payment of benefits commenced, or would have commenced if the Participant had not remained in or returned to employment.

1.25 Earliest Retirement Age. “Earliest Retirement Age” shall mean the Participant’s age on the earlier of his or her attainment of Early Retirement Age or Normal Retirement Age.

1.26 Early Retirement Age. “Early Retirement Age” shall mean the Participant’s age on the earlier of:

- (a) the first date on which he or she has both attained the age of 55 years and completed 10 Years of Vesting Service; or
- (b) the first date on which he or she has both attained the age of 50 years and completed 20 Years of Vesting Service.

1.27 Early Retirement Date. “Early Retirement Date” shall mean the first day of the month coincident with or next following the Participant’s Separation (a) after his or her attainment of Early Retirement Age, (b) prior to his or her Normal Retirement Date, and (c) without having incurred a Disability.

1.28 Early Retirement Pension. “Early Retirement Pension” shall mean the pension described in Section 4.4.

1.29 Eligibility Computation Period. “Eligibility Computation Period” shall mean the periods described in Sections 2.16 and 2.17 for determining an Employee’s right to credit for a Year of Eligibility Service.

1.30 Eligible Class. “Eligible Class” shall mean all Employees who are classified as common-law employees of the Employer in the Employer’s records and who receive a payroll check through payroll and not a check through accounts payable, without regard to any reclassification resulting from any controversy concerning the employment status of the Employee, other than (a) individuals employed in a job category identified on the Employer’s payroll system as part of the Chelsea Catering Division of Continental Airlines, Inc.; (b) Employees included in a unit of employees covered by a collective bargaining agreement between the Employer and the employee representatives (not including any organizations more than half of whose members are owners, officers or executives of the Employer) in the negotiation of which retirement benefits were the subject of good faith bargaining, unless such bargaining agreement provides for participation in the Plan; (c) individuals providing consulting services pursuant to a contract or other arrangement with an Employer; (d) Leased Employees; (e) non-resident aliens; and (f) United States expatriates who are not paid through the Sponsor’s U.S. payroll system. Notwithstanding the foregoing, effective as of April 30, 2005, active Employees classified as pilots (line and management) or as flight instructors shall no longer be members of the Eligible Class. Notwithstanding the foregoing, individuals employed by ExpressJet (or any business organization that is an Affiliated Employer with respect to ExpressJet) from and after April 23, 2002 who are not being credited with service on April 23, 2002 pursuant to Section 2.25 shall not be members of the Eligible Class.

1.31 Eligible Retirement Plan. “Eligible Retirement Plan” shall mean (a) an individual retirement account described in Section 408(a) of the Code, (b) an individual retirement annuity described in Section 408(b) (other than an endowment contract), (c) an employees’ trust described in Section 401(a) of the Code which is exempt from tax under Section 501(a) of the Code, provided that it is a defined contribution plan that permits the acceptance of rollover contributions, and (d) an annuity plan described in Section 403(a) of the Code. Effective January 1, 2002, “Eligible Retirement Plan” shall also mean (a) an annuity contract described in Section 403(b) of the Code and an (b) eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan.

1.32 Eligible Rollover Distribution. “Eligible Rollover Distribution” shall mean any distribution to a Participant of all or any portion of the Participant’s interest in the Plan; except that such term shall not include (a) any distribution which is one of a series of substantially equal

periodic payments (not less frequently than annually) made (i) for the life (or life expectancy) of the Participant or the joint lives (or joint life expectancies) of the Participant and the Participant's designated beneficiary, or (ii) for a specified period of ten years or more, (b) any distribution to the extent such distribution is required under Section 401(a)(9) of the Code, and (c) any hardship distribution. A distribution made prior to January 1, 2002 shall not be deemed a hardship distribution for purposes of clause (c) of the immediately preceding sentence unless such distribution is described in Section 401(k)(2)(B)(i)(IV) of the Code. Effective January 1, 2002, Employee Contributions may be part of the Eligible Rollover Distribution provided the Eligible Retirement Plan separately accounts for such contributions.

1.33 Employee. "Employee" shall mean an individual who is (a) a common law employee of an Affiliated Employer, including officers and directors who are common-law employees, or (b) a Leased Employee with respect to an Affiliated Employer.

1.34 Employer. "Employer" shall mean the Sponsor and any other business organization that has adopted this Plan.

1.35 Employment Commencement Date. "Employment Commencement Date" shall mean the date on which an Employee is first paid or entitled to payment for the performance of duties for an Affiliated Employer.

1.36 Equitable Share. "Equitable Share" shall mean that portion of the Fund that is equal to the present value of the Accrued Benefit, to the extent funded, of all Participants employed by a withdrawing or terminating Employer, or any designated group of its Employees, as determined by the Actuary.

1.37 ERISA. "ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended.

1.38 ExpressJet. "ExpressJet" shall mean ExpressJet Holdings, Inc., XJT Holdings, Inc. (formerly ExpressJet Airlines, Inc.), ExpressJet Airlines, Inc. (formerly New ExpressJet Airlines, Inc. and successor employer to Continental Express, Inc.). From and after the date of consummation of the initial public offering of the common stock of ExpressJet Holdings, Inc. (April 23, 2002), references in the Plan to "ExpressJet" shall be substituted for references to "Continental Express, Inc." unless it is inappropriate (as determined by the Administrative Committee in its sole discretion) for such substitution to occur.

1.39 Final Average Compensation. "Final Average Compensation" shall mean the larger of:

(a) the highest average of the Participant's annual Considered Compensation (without annualization) for any five consecutive (or all if such Participant has less than five consecutive) full and complete calendar years of active paid Employment of at least 48 weeks during the ten calendar years after January 1, 1984 and immediately preceding the Participant's termination of Employment or Disability, whichever is applicable; or

(b) the highest average of the Participant's annual Considered Compensation (without annualization) for any five consecutive (or all if such Participant has less than

five consecutive) calendar years of active paid Employment during the ten calendar years after January 1, 1984 and immediately preceding the Participant's termination of Employment or Disability, whichever is applicable.

For purposes of clause (a) of the first sentence of this Section, a Participant's annual Considered Compensation (without annualization) during his or her last year of active paid employment with the Employer if less than 48 weeks may be treated as his or her annual Considered Compensation for a full and complete calendar year of active paid employment with the Employer if that would increase his or her Final Average Compensation. Notwithstanding any other provision of this Section, if a Participant has no years of full-time active paid employment with the Employer of at least 48 weeks, the Participant's Considered Compensation shall be annualized for any year ending after January 31, 1999, that is included in the period that is (or would have been) taken into account under the first sentence of this Section. Effective January 1, 2002, (a) any calendar year during which the Participant is absent from active employment due to an unpaid leave of absence for a period in excess of four weeks shall be disregarded in determining the ten calendar years after January 1, 1984 and immediately preceding the Participant's termination of Employment or Disability; and (b) a Participant's annual Considered Compensation (without annualization) during any calendar year described in clause (a) of this sentence may be treated as his or her annual Considered Compensation for a full and complete calendar year of active paid employment with the Employer if that would increase his or her Final Average Compensation.

1.40 Five Percent Owner. "Five Percent Owner" shall mean an Employee who is a 5-percent owner as defined in Section 416(i) of the Code.

1.41 Fresh-Start Compensation. "Fresh-Start Compensation" shall mean compensation determined under the compensation definition and formula of the Plan as in effect on the Fresh-Start Date, without regard to any amendment to the Plan adopted after that date, other than amendments recognized as effective as of or before that date under Section 401(b) of the Code or Regulation §1.401(a)(4)-11(g). Notwithstanding the preceding sentence, the Section 401(a)(17) Limitation shall be given effect in determining Fresh-Start Compensation for the current Plan Year for members of the Section 401(a)(17) Fresh-Start Group and the OBRA '93 Fresh-Start Group.

1.42 Fresh-Start Date. "Fresh-Start Date" shall mean the date designated as such in Section 1.43 with respect to each Fresh-Start Group.

1.43 Fresh-Start Group. "Fresh-Start Group" shall mean each group of Participants specified in this Section. The Section 401(a)(17) Fresh-Start Group shall consist of all Section 401(a)(17) Employees. The Fresh-Start Date applicable to such group shall be the Section 401(a)(17) Fresh-Start Date. The OBRA '93 Fresh-Start Group shall consist of all OBRA '93 Employees. The Fresh-Start Date applicable to such group shall be the OBRA '93 Fresh-Start Date. Notwithstanding the preceding provisions of this Section, in order to be a member of a Fresh-Start Group, an individual must have accrued benefits as of the applicable Fresh-Start Date and must have at least one Hour of Service after that date.

1.44 Frozen Accrued Benefit. “Frozen Accrued Benefit” shall mean the amount determined under this Section with respect to a Participant included in a Fresh-Start Group. The Participant’s accrued benefit under the Plan shall be determined as if the Participant terminated employment with the Employer as of the Fresh-Start Date (or the date the Participant actually terminated employment with the Employer, if earlier), and without regard to any amendment to the Plan adopted after that date, other than amendments recognized as effective as of or before that date under Section 401(b) of the Code or Regulation §1.401(a)(4)-11(g). If the amount so determined for a Participant includes Top-Heavy minimum benefits, that amount shall be increased to the extent necessary to comply with the average compensation requirement of Section 416(c)(1)(D)(i) of the Code.

1.45 Frozen Plan. “Frozen Plan” shall mean the Continental Airlines, Inc. Pension Plan for Employees Represented by the International Association of Machinists; the Texas International Airlines, Inc. Fixed Pension Plan for Pilots; the Texas International Airlines, Inc. Pension Plan for Flight Attendants; the Texas International Airlines, Inc. Fixed Pension Plan for Maintenance and Related Employees; and/or the Texas International Airlines, Inc. Fixed Pension Plan for Station and Related Employees.

1.46 Highly Compensated Employee. “Highly Compensated Employee” shall mean a highly compensated employee within the meaning of Section 414(q) of the Code, including an Employee who, during the Plan Year or the preceding Plan Year, (a) was at any time a Five Percent Owner, and (b) received Annual Compensation in excess of the amount in effect under Section 414(q)(1)(B) of the Code for the Plan Year.

A former Employee shall be treated as a Highly Compensated Employee if such former Employee separated from service (or was deemed to have separated) prior to the determination year, performs no service for the Employer during the determination year, and was a Highly Compensated Employee for either the separation year or any determination year ending on or after the Employee’s 55th birthday.

The determination of who is a Highly Compensated Employee, including the determination of the compensation that is considered, shall be made in accordance with Section 414(q) of the Code and the regulations thereunder.

1.47 Hour of Service. “Hour of Service” shall mean an hour for which an Employee is entitled to credit under Section 2.8.

1.48 Investment Committee. “Investment Committee” shall mean the committee appointed by the Sponsor pursuant to Section 13.1 to monitor the investment of the assets of the Plan.

1.49 Key Employee. Effective with respect to Plan Years beginning prior to January 1, 2002, “Key Employee” shall mean an individual who at any time during the Plan Year containing the Determination Date or any of the four preceding Plan Years is (a) an officer of any Affiliated Employer whose Annual Compensation is greater than 50 percent of the amount in effect under Section 415(b)(1)(A) of the Code for the Plan Year, (b) one of the Employees having Annual Compensation greater than the limitation in effect under Section 415(c)(1)(A) of the

Code for the Plan Year and owning (or considered as owning within the meaning of Section 318 of the Code) one of the 10 largest interests in any Affiliated Employer, treated separately, (c) a Five Percent Owner of any Affiliated Employer, treated separately, or (d) a 1-percent owner of any Affiliated Employer, treated separately, having Annual Compensation of more than \$150,000.00. No more than 50 employees or, if lesser, the greater of three employees or 10 percent of the employees, shall be treated as officers. The rules of Section 416(i) of the Code shall be applied in determining percentage of ownership. If two or more employees have the same interest in an Affiliated Employer, the employee with the greater Annual Compensation from the Affiliated Employer shall be treated as having the larger interest. For purposes of determining the number of officers taken into account under clause (a), Employees described in Section 414(q)(5) of the Code shall be excluded.

Effective with respect to Plan Years beginning after December 31, 2001, "Key Employee" shall mean an individual who at any time during the Plan Year containing the Determination Date is (a) an officer of any Affiliated Employer whose Annual Compensation is greater than \$130,000 (as adjusted under Section 416(i)(1)(A) of the Code), (b) a Five Percent Owner of any Affiliated Employer, treated separately, or (c) a 1-percent owner of any Affiliated Employer, treated separately, having Annual Compensation of more than \$150,000. No more than 50 Employees or, if lesser, the greater of three Employees or 10 percent of the Employees, shall be treated as officers. The rules of Section 416(i) of the Code shall be applied in determining percentage of ownership. If two or more Employees have the same interest in an Affiliated Employer, the Employee with the greater Annual Compensation from the Affiliated Employer shall be treated as having the larger interest. Such term shall not include any officer or Employee of an entity referred to in Section 414(d) of the Code (relating to governmental plans). For purposes of determining the number of officers taken into account under clause (a), Employees described in Section 414(q)(5) of the Code shall be excluded.

1.50 Leased Employee. "Leased Employee" shall mean any person (a) who is not a common law employee of an Affiliated Employer, and (b) who (pursuant to an agreement between the Employer and any other person) has performed services for the Employer (or for the Employer and related persons determined in accordance with Section 414(n)(6) of the Code) on a substantially full-time basis for a period of at least one year, and such services are performed under primary direction or control by the recipient.

1.51 Leasing Organization. "Leasing Organization" shall mean the common law employer of a Leased Employee.

1.52 Life Only Annuity. "Life Only Annuity" shall mean an annuity for the life of the Participant with no further payments from the Plan on his or her behalf after his or her death.

1.53 Limitation Year. "Limitation Year" shall mean the calendar year. All qualified plans maintained by any Affiliated Employer must use the same Limitation Year. If the Limitation Year is amended to a different 12-consecutive month period, the new Limitation Year must begin on a date within the Limitation Year in which the amendment is made.

1.54 Non-Key Employee. "Non-Key Employee" shall mean any Employee who is not a Key Employee.

1.55 Normal Form. “Normal Form” shall mean a monthly annuity for the life of the Participant with no period of payments guaranteed.

1.56 Normal Retirement Age. “Normal Retirement Age” shall mean the age of 65.

1.57 Normal Retirement Date. “Normal Retirement Date” shall mean the first day of the month coincident with or next following a Participant’s attainment of Normal Retirement Age. If the Employer enforces a mandatory retirement age, the Normal Retirement Age shall be the lesser of that mandatory age or the age specified above in this Section.

1.58 Normal Retirement Pension. “Normal Retirement Pension” shall mean the pension described in Sections 4.2 and 4.3.

1.59 OBRA ‘93 Effective Date. “OBRA ‘93 Effective Date” shall mean the first day of the first Plan Year beginning after December 31, 1993.

1.60 OBRA ‘93 Employee. “OBRA ‘93 Employee” shall mean an Employee whose current Accrued Benefit as of a date on or after the OBRA ‘93 Effective Date is based on compensation for a year prior to the OBRA ‘93 Effective Date that exceeded the annual compensation limit for the first Plan Year beginning on or after the OBRA ‘93 Effective Date.

1.61 OBRA ‘93 Fresh-Start Date. “OBRA ‘93 Fresh-Start Date” shall mean the day immediately preceding the OBRA ‘93 Effective Date.

1.62 One Year Break in Service. “One Year Break in Service” shall mean a break in service described in Section 2.20.

1.63 Parental Absence. “Parental Absence” shall mean an absence from work that begins on or after the first day of the first Plan Year beginning after December 31, 1984 (a) by reason of the pregnancy of the individual, (b) by reason of the birth of a child of the individual, (c) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or (d) for purposes of caring for such child for a period beginning immediately following such birth or placement.

1.64 Participant. “Participant” shall mean a person who qualifies as such under the provisions of ARTICLE III.

1.65 PBGC. “PBGC” shall mean the Pension Benefit Guaranty Corporation.

1.66 Plan. “Plan” shall mean all aspects of the program known as The Continental Retirement Plan, the purpose of which is to provide retirement, death, and other deferred benefits to Participants, Surviving Spouses, and other Beneficiaries. The Plan comprehends the Plan Document and the Trust Agreement under which it is maintained; the assets of the Trust Fund used to fund benefits; and the rights, powers, duties, and obligations of the Affiliated Employers, the Trustee, the Participants, the Beneficiaries, and all other interested parties.

1.67 Plan Document. “Plan Document” shall mean this agreement, as amended from time to time.

1.68 Plan Year. “Plan Year” shall mean the 12-consecutive-month annual accounting period of the Plan, which shall end on December 27 of each calendar year.

1.69 Projected Annual Benefit. “Projected Annual Benefit” shall mean the annual retirement benefit (adjusted to an actuarially equivalent straight life annuity if such benefit is expressed in a form other than a straight life annuity or Qualified Joint and Survivor Annuity) to which the Participant would be entitled under the terms of the Plan, assuming (a) the Participant will continue employment until Normal Retirement Age under the Plan (or current age, if later), and (b) the Participant’s Annual Compensation for the current Limitation Year and all other relevant factors used to determine benefits under the Plan will remain constant for all future Limitation Years.

1.70 Qualified Domestic Relations Order. “Qualified Domestic Relations Order” shall mean any order determined by the Administrative Committee to be a qualified domestic relations order within the meaning of Section 414(p) of the Code.

1.71 Qualified Joint and Survivor Annuity. “Qualified Joint and Survivor Annuity” shall mean an annuity that is payable for the life of the Participant, with a survivor annuity for the life of the Participant’s spouse that is 50 percent of the amount of the annuity that is payable during the joint lives of the Participant and his or her spouse, and is Actuarially Equivalent to the Normal Form of the Normal Retirement Pension.

1.72 Qualified Military Service. “Qualified Military Service” shall mean any military service with respect to which the Employee has reemployment rights with the Affiliated Employers under applicable federal law.

1.73 Qualified Preretirement Survivor Annuity. “Qualified Preretirement Survivor Annuity” shall mean an immediate annuity payable to the Participant’s Surviving Spouse for the life of the Surviving Spouse, under which the payments to the Surviving Spouse are equal to the amounts that would have been payable as a survivor annuity under the Qualified Joint and Survivor Annuity. In determining the amount that would have been payable under the Qualified Joint and Survivor Annuity, if a Participant dies after the date on which he or she attained his or her Earliest Retirement Age he or she shall be deemed to have retired with an immediate Qualified Joint and Survivor Annuity on the day before he or she died. If a Participant dies on or before the date on which he or she would have attained his or her Earliest Retirement Age, he or she shall be deemed to have incurred a Separation on the earlier of his or her date of actual Separation or the day he or she died, survived to his or her Earliest Retirement Age, retired with an immediate Qualified Joint and Survivor Annuity at the Earliest Retirement Age, and died on the day after the day on which he or she would have attained his or her Earliest Retirement Age. For purposes of this Section, a Participant who has incurred a Separation while suffering from a Disability shall be deemed to have accumulated Credited Service for the period commencing on the date of his or her Separation and ending on the date of his or her death. If the Participant elects before the Benefit Commencement Date a form of joint and survivor annuity that satisfies the requirements for a Qualified Joint and Survivor Annuity and dies before the Benefit Commencement Date, the elected form is treated as the Qualified Joint and Survivor Annuity and the Qualified Preretirement Survivor Annuity shall be based on such form. A surviving former spouse of a Participant shall be treated as the Surviving Spouse as necessary to comply

with a Qualified Domestic Relations Order, and, to the same extent, any spouse of the Participant shall not be treated as a spouse of the Participant.

1.74 *Qualified Title IV Plan.* “Qualified Title IV Plan” shall mean a defined benefit pension plan that is qualified under Section 401(a) of the Code and that is covered by Section 4021(a) of ERISA.

1.75 *Reemployment Commencement Date.* “Reemployment Commencement Date” shall mean the date on which an Employee is first paid or entitled to payment for the performance of duties for an Affiliated Employer following a One Year Break in Service.

1.76 *Regulation.* “Regulation” shall mean the Internal Revenue Service regulation specified, as it may be changed from time to time.

1.77 *Required Beginning Date.* “Required Beginning Date” shall mean April 1 of the calendar year following the later of (a) the calendar year in which the individual attains age 70½, or (b) the calendar year in which occurs the individual’s Separation. Clause (b) of the immediately preceding sentence shall not apply in the case of an individual who is a Five Percent Owner with respect to the Plan Year ending in the calendar year in which such individual attains age 70½.

1.78 *Restricted Employee.* “Restricted Employee” shall mean any Highly Compensated Employee (including both current and former Employees) who is among the 25 such persons with the greatest Annual Compensation in the current or any prior Plan Year.

1.79 *Section 401(a)(17) Effective Date.* “Section 401(a)(17) Effective Date” shall mean the first day of the first Plan Year beginning after December 31, 1988.

1.80 *Section 401(a)(17) Employee.* “Section 401(a)(17) Employee” shall mean an Employee whose current Accrued Benefit as of a date on or after the Section 401(a)(17) Effective Date is based on compensation for a year prior to the Section 401(a)(17) Effective Date that exceeded the annual compensation limit for the first Plan Year beginning on or after the Section 401(a)(17) Effective Date.

1.81 *Section 401(a)(17) Fresh-Start Date.* “Section 401(a)(17) Fresh-Start Date” shall mean the last day of the last Plan Year beginning before the Section 401(a)(17) Effective Date.

1.82 *Section 401(a)(17) Limitation.* “Section 401(a)(17) Limitation” shall mean (a) with respect to any Plan Year beginning before the OBRA ‘93 Effective Date, \$150,000, and (b) with respect to any Plan Year beginning on or after the OBRA ‘93 Effective Date, \$150,000, adjusted as provided in Section 401(a)(17)(B) of the Code, as in effect after December 31, 1993. Notwithstanding the preceding provisions of this Section, for purposes of determining the terms of the Plan in effect on or after the Section 401(a)(17) Effective Date and prior to the OBRA ‘93 Effective Date, “Section 401(a)(17) Limitation” shall mean (a) with respect to any Plan Year beginning before the Section 401(a)(17) Effective Date, \$200,000, and (b) with respect to any Plan Year beginning on or after the Section 401(a)(17) Effective Date, \$200,000, adjusted in the manner provided in Section 401(a)(17) of the Code, as in effect prior to January 1, 1994. Notwithstanding the preceding provisions of this Section, for purposes of determining the terms

of the Plan in effect prior to the Section 401(a)(17) Effective Date, “Section 401(a)(17) Limitation” shall mean (a) \$200,000 for purposes of Section 10.4, and (b) compensation as determined under the Plan without any dollar limitation for all other purposes of the Plan. The cost-of-living adjustment in effect for a calendar year shall apply to any period, not exceeding 12 months, over which Considered Compensation is determined (the “determination period”) beginning in such calendar year. With respect to each Participant, the determination periods shall be the 12-month period ending on the last day of the last month included in the period of highest average Considered Compensation taken into account in determining Final Average Compensation and the 12-month periods ending on the last day of the same month in all prior years. If the Plan determines Annual Compensation or Considered Compensation on a period of time that contains fewer than 12 calendar months, then the dollar limitation for the calendar year in which the compensation period begins shall be multiplied by the ratio obtained by dividing the number of full months in the period by 12.

1.83 Separation. “Separation” shall mean an individual’s termination of employment with an Affiliated Employer without commencing or continuing employment with any other Affiliated Employer.

1.84 Sponsor. “Sponsor” shall mean Continental Airlines, Inc., a Delaware corporation, or any other business organization that assumes the primary responsibility for maintaining this Plan with the consent of the last preceding Sponsor.

1.85 Substantial Owner. “Substantial Owner” shall mean an individual who is a substantial owner within the meaning of Section 4022(b)(5) of ERISA.

1.86 Surviving Spouse. “Surviving Spouse” shall mean the person lawfully married to a Participant on the earlier of:

- (a) the date of the Participant’s death; or
- (b) the Participant’s Benefit Commencement Date.

1.87 Top-Heavy Plan. “Top-Heavy Plan” shall mean any plan that has been determined to be top-heavy under the test described in this Plan.

1.88 Trust Agreement. “Trust Agreement” shall mean that certain instrument executed on March 25, 1999 by the Sponsor and Frank Russell Trust Company, as amended from time to time hereafter.

1.89 Trust Fund. “Trust Fund” shall mean all of the assets (and related liabilities) held by the Trustee under the terms of the Trust Agreement to fund this Plan.

1.90 Trustee. “Trustee” shall mean collectively one or more persons or corporations with trust powers which have been appointed by the Sponsor and have accepted the duties of Trustee under the Trust Agreement and any and all successors appointed by the Sponsor.

1.91 Vesting Computation Period. “Vesting Computation Period” shall mean the period described in Section 2.18 for determining an Employee’s right to credit for a Year of Vesting Service.

1.92 Year of Credited Service. “Year of Credited Service” shall mean a Year of Service taken into account for accrual purposes, as determined under ARTICLE II.

1.93 Year of Eligibility Service. “Year of Eligibility Service” shall mean a Year of Service taken into account for eligibility purposes, as determined under ARTICLE II.

1.94 Year of Service. “Year of Service” shall mean a Year of Eligibility Service, a Year of Vesting Service, and/or a Year of Credited Service, as determined under ARTICLE II.

1.95 Year of Vesting Service. “Year of Vesting Service” shall mean a Year of Service as taken into account for vesting purposes, as determined under ARTICLE II.

ARTICLE IX PAYMENT OF BENEFITS

9.1 *Standard Form of Lifetime Benefits.* Except as otherwise provided in Section 9.3, each Participant (a) who does not die before the Benefit Commencement Date and (b) who is married on the Benefit Commencement Date shall be paid in the form of a Qualified Joint and Survivor Annuity, unless he or she elects otherwise with the consent of his or her spouse. Except as otherwise provided in Section 9.3, each Participant who would be described in the immediately preceding sentence except that he or she is not married on the Benefit Commencement Date shall be paid in the form of a Life Only Annuity unless he or she elects otherwise.

9.2 *Standard Form of Death Benefits.* Except as otherwise provided in Section 9.3, a Surviving Spouse who is entitled to receive a death benefit under Section 7.1 and who does not waive such benefit shall receive such benefit in the form of a Qualified Preretirement Survivor Annuity.

9.3 *Single Sum Payment of Small Amounts.* Each Participant (a) who does not die before the Benefit Commencement Date and (b) whose vested Accrued Benefit is Actuarially Equivalent to an immediate single sum payment of \$1,000 or less, and (c) effective September 20, 2001, who is not in furlough status shall be paid in the form of an immediate single sum payment. A Surviving Spouse whose death benefit is Actuarially Equivalent to an immediate single sum payment of \$1,000 or less shall be paid in the form of a single sum payment.

9.4 *Commencement of Lifetime Benefits.* A Participant's Deferred Vested Pension or Disability Pension shall commence on his or her Normal Retirement Date. A Participant's Early Retirement Pension shall commence on the first day of the month specified by the Participant that occurs on or after his or her Early Retirement Date. A Participant's Normal Retirement Pension or Deferred Retirement Pension shall commence on the Participant's Normal Retirement Date or Deferred Retirement Date, whichever is applicable. Notwithstanding the preceding provisions of this Section, (a) a Participant who has satisfied the service requirements for an Early Retirement Pension may direct that any Deferred Vested Pension or Disability Pension payable to him or her under the Plan shall be paid or commenced on the first day of any month on or after the date on which he or she satisfies the age requirement for an Early Retirement Pension, and (b) no distribution shall be made or commence before the first day of the month next following the first date on which commencement of distributions would be in compliance with the notice and consent requirements of this Article. A Participant shall be entitled to no benefits under the Plan unless he or she shall survive until his or her Benefit Commencement Date specified in this Section.

9.5 *Actuarial Reduction of Payments Prior to Normal Retirement.* Except as otherwise specifically provided, any pension that becomes payable hereunder prior to the Participant's Normal Retirement Date shall be Actuarially Equivalent to a pension of the same type commencing on the Participant's Normal Retirement Date.

9.6 Effect of Death Prior to Commencement of Payment. The Participant or Beneficiary shall not be entitled to any benefit under the Plan unless he or she shall survive until his or her Benefit Commencement Date.

9.7 Participant Consent to Early Distributions. Notwithstanding any other provision of the Plan except the last sentence of this Section, no lifetime benefit shall be distributed or commence to be distributed to a Participant prior to his or her Normal Retirement Date without his or her consent, unless the benefit is payable in a single sum under Section 9.3. Any such consent shall be valid only if given not more than 90 days prior to the Participant's Benefit Commencement Date and after his or her receipt of the notice regarding lifetime benefits described in Section 9.11. The Participant's Consent shall not be required for a distribution required by Section 401(a)(9) or Section 415 of the Code.

9.8 Commencement of Death Benefits. A Participant's Surviving Spouse may direct that monthly payments under the Participant's death benefit commence on the first day of any month coincident with or next following the date on which the Participant would have attained his or her Earliest Retirement Age.

9.9 Compliance with Statutory Requirements. Notwithstanding any other provision of the Plan, all benefits payable under the Plan shall be distributed, or commence to be distributed, in compliance with the following provisions:

(a) Distribution of Lifetime Benefits. The entire interest of each Participant (i) shall be distributed to such Participant not later than the Required Beginning Date; or (ii) shall be distributed, not later than the Required Beginning Date, in accordance with Regulations, over the life of such Participant or over the lives of such Participant and a Surviving Spouse (or over a period not extending beyond the life expectancy of such Participant or the life expectancy of such Participant and a Surviving Spouse).

(b) Death Benefits After Commencement of Distribution. If the distribution of the Participant's interest has begun in accordance with clause (ii) of Section 9.9(a) and the Participant dies before his or her entire interest has been distributed to him or her, the remaining portion of such interest shall be distributed at least as rapidly as under the method of distribution being used under such clause as of the date of his or her death.

(c) Death Benefits Prior to Commencement of Distribution. If a Participant dies before the distribution of the Participant's interest has begun in accordance with clause (ii) of Section 9.9(a), the entire interest of the Participant shall be distributed in accordance with Section 9.23.

(d) Limitations on Death Benefits. Benefits payable under the Plan shall not be provided in any form that would cause a Participant's death benefit to be more than incidental. Any distribution required to satisfy the incidental benefit requirement shall be considered a required distribution for purposes of Section 401(a)(9) of the Code.

(e) Compliance with Section 401(a)(9). All distributions under the Plan shall be made in accordance with the requirements of Section 401(a)(9) of the Code and all Regulations promulgated thereunder. Effective for Participants who retire or reach age

70 ½, whichever is later, on or after January 1, 2002, the Plan will apply the minimum distribution requirements of Section 401(a)(9) of the Code in accordance with the Regulations under Section 401(a)(9) of the Code that were proposed in January 2001, except that the applicable distribution period shall be determined without regard to the spouse's age. The preceding sentence shall continue in effect until the end of the last calendar year beginning before the effective date of final Regulations under Section 401(a)(9) of the Code or such other date specified in guidance published by the Internal Revenue Service. The provisions of the Plan reflecting Section 401(a)(9) of the Code override any distribution options in the Plan inconsistent with such Section, other than those complying with Sections 401(a)(1) and 417 of the Code.

(f) Compliance with Section 401(a)(14). Unless the Participant otherwise elects, the payment of benefits under the Plan to the Participant shall begin not later than the 60th day after the close of the Plan Year in which occurs the latest of (i) the date on which the Participant attains the earlier of age 65 or the Normal Retirement Age, (ii) the 10th anniversary of the year in which the Participant commenced participation in the Plan, or (iii) the Participant's Separation.

9.10 Waiver of Standard Forms. A valid election to waive the Qualified Joint and Survivor Annuity, the Life Only Annuity, or the Qualified Preretirement Survivor Annuity may be made only in accordance with the following provisions:

(a) General Requirements. Any such election shall be made in writing by the Participant and consented to by the Participant's spouse (if any). Any consent executed by the spouse shall be witnessed by a notary public. The consent to a waiver is valid only with respect to the spouse who signs it; and if the Participant remarries after executing the waiver, the Participant's new spouse must execute a new consent. An unmarried Participant shall be deemed to have waived the Qualified Preretirement Survivor Annuity; however, this deemed waiver shall be null and void if the Participant later marries.

(b) Terms of Waiver and Specific Consent. Except as otherwise provided in this Section, in the case of a waiver of the Qualified Joint and Survivor Annuity or the Life Only Annuity, both the Participant's waiver and the spouse's consent shall specify the particular optional form of benefit.

(c) Terms of General Consent. In lieu of a specific consent in the form described in Section 9.10(b) the spouse may execute a general consent permitting the Participant to waive the standard form of payment and change the optional form of benefit payment without any further consent by such spouse. Any such general consent shall acknowledge that the spouse has the right to limit consent to a specific optional form of benefit, if applicable, and that the spouse voluntarily elects to relinquish such right. A general consent may be limited to certain forms of benefit payment.

(d) Exceptions to Consent Requirement. If the Participant establishes to the satisfaction of the Administrative Committee that the spouse's written consent cannot be obtained because there is no spouse or the spouse cannot be located, a waiver signed only

by the Participant shall be considered a valid election. If the Participant's spouse is legally incompetent to give consent, the legal guardian of the spouse may give consent. If the Participant is legally separated or the Participant has been abandoned (within the meaning of local law) and the Participant has a court order to such effect, spousal consent shall not be required unless a Qualified Domestic Relations Order provides otherwise. Spousal consent shall not be required for a distribution required by Section 401(a)(9) or Section 415 of the Code.

(e) Election Period for Lifetime Benefits. An election to waive the Qualified Joint and Survivor Annuity or the Life Only Annuity shall be valid only if it is made after the Participant has received the explanation described in Section 9.11(a) and prior to his or her Benefit Commencement Date. In the case of a Benefit Commencement Date that occurs on or after the Participant's Normal Retirement Date, an election to waive the Qualified Joint and Survivor Annuity or the Life Only Annuity shall apply to any benefits that accrue after the Benefit Commencement Date. In the case of a Benefit Commencement Date that occurs prior to the Participant's Normal Retirement Date, an election to waive the Qualified Joint and Survivor Annuity or the Life Only Annuity shall not apply with respect to any benefits accrued after such Benefit Commencement Date. An election to waive the Qualified Joint and Survivor Annuity or the Life Only Annuity with respect to such subsequently accrued benefits shall be valid only if it is made within the 90-day period that ends on the Benefit Commencement Date applicable to such benefits.

(f) Pre-Age 35 Election Period for Qualified Preretirement Survivor Annuity. A Participant who will not yet attain age 35 as of the end of any current Plan Year may make a special qualified election to waive the Qualified Preretirement Survivor Annuity for the period beginning on the date of such election and ending on the first day of the Plan Year in which the Participant will attain age 35. Such election shall not be valid unless the Participant receives a written explanation of the Qualified Preretirement Survivor Annuity in such terms as are comparable to the information provided under Section 9.11. Qualified Preretirement Survivor Annuity coverage shall be automatically reinstated as of the first day of the Plan Year in which the Participant attains age 35. Any new waiver on or after such day shall be subject to the full requirements of this Section.

(g) Post-Age 35 or Post-Separation Election Period for Qualified Preretirement Survivor Annuity. Except as otherwise provided in Section 9.10(f) and this Subsection, an election to waive the Qualified Preretirement Survivor Annuity shall be valid only if it is made on or after the first day of the Plan Year in which the Participant attains age 35 and before the Participant's death. If a Participant's Separation occurs prior to the first day of the Plan Year in which he or she attains age 35, with respect to the Participant's Accrued Benefit as of the date of Separation, the election period shall begin on the date of Separation.

(h) Revocability. The spouse's consent to the waiver of the Qualified Joint and Survivor Annuity or the Qualified Preretirement Survivor Annuity shall be irrevocable. The Participant may revoke a prior waiver without his or her spouse's consent at any time during the election period described in Section 9.10(e).

9.11 Information Provided to Participants. Information regarding the form of benefits available under the Plan shall be provided to Participants in accordance with the following provisions;

(a) General Information. Except as otherwise provided in Section 9.11(e), each Participant shall be provided with a written general explanation or description of (i) the Qualified Joint and Survivor Annuity and the Qualified Preretirement Survivor Annuity (in the case of a married Participant) or the Life Only Annuity (in the case of an unmarried Participant), (ii) the circumstances in which benefits shall be provided in such forms unless the Participant has elected otherwise (with the consent of his or her spouse, if applicable), (iii) the rights of a Participant's spouse, (iv) the availability of such elections, (v) the relative financial effect on the Participant's benefit of any such election (vi) the eligibility conditions and other material features of the optional forms of benefit available under the Plan, (vii) the relative values of the optional forms of benefit available under the Plan (viii) the Participant's right, if any, to defer receipt of the distribution, (ix) the availability of the specific information described in Section 9.11(b), and (x) the procedures for obtaining the specific information described in Section 9.11(b).

(b) Specific Information. A Participant shall be furnished, upon receipt by the Administrative Committee of a timely written request, with a written explanation of the terms and conditions of the Qualified Joint and Survivor Annuity and the Qualified Preretirement Survivor Annuity (in the case of a married Participant) or the Life Only Annuity (in the case of an unmarried Participant) and the financial effect upon the particular Participant's annuity of making any election under Section 9.10. Such financial effect shall be given in terms of dollars per annuity payment. A Participant shall be entitled to make only one such request with respect to either the Qualified Joint and Survivor Annuity or the Life Only Annuity, and one such request with respect to the Qualified Preretirement Survivor Annuity. The response to the Participant's request shall be personally delivered or mailed (first class mail, postage prepaid) to the Participant within 30 days from the date of the Participant's written request.

(c) Time for Giving Notice Regarding Qualified Preretirement Survivor Annuity. The written general explanation or description regarding the Qualified Preretirement Survivor Annuity shall be provided to the Participant during whichever of the following periods ends last:

(i) The period beginning with the first day of the Plan Year in which the Participant attains age 32 and ending with the close of the Plan Year in which the Participant attains age 34;

(ii) The two-year period beginning one year prior to the date on which the Participant commences participation in the Plan;

(iii) The two-year period beginning one year prior to the date on which the Participant and his or her spouse become legally married; and

(iv) In the case of a Participant who incurs a Separation before attaining age 35, the two-year period beginning one year before such Separation.

(d) Time for Giving Notice Regarding Lifetime Benefits. Except as otherwise provided in this Section, the written general explanation or description regarding the Qualified Joint and Survivor Annuity (in the case of a married Participant), the Life Only Annuity (in the case of an unmarried Participant), and any optional forms of benefit available under the Plan shall be provided to Participants no less than 30 days and no more than 90 days before the Benefit Commencement Date. A participant may elect (with any applicable spousal consent) to waive the requirement that the written explanation be provided at least 30 days before the Benefit Commencement Date, in which case the distribution shall commence not less than eight days after such explanation is provided.

(e) Exception for Participants with Small Benefit Amounts. Notwithstanding the preceding provisions of this Section, no information regarding any form of benefit payable in whole or in part during the life of the Participant shall be provided to the Participant if his or her benefit is payable in a single sum under Section 9.3.

9.12 Optional Forms of Payment. A Participant who makes an election (with the consent of his or her spouse, if necessary) under Section 9.10 or a Beneficiary entitled to a Qualified Preretirement Survivor Annuity under Section 7.1 may elect to receive the benefits payable under the Plan in one of the following forms:

(a) Life Only Annuity. An annuity for the life of the Participant with no further payments from the Plan on his or her behalf after his or her death.

(b) Contingent Annuity. An annuity under which reduced Actuarially Equivalent payments are made to the Participant during the Participant's lifetime, with payments continuing after the Participant's death to his or her Spouse, in an amount equal to 50%, 66⅔%, 75% or 100% of the payments previously payable to the Participant, for the lifetime of the Spouse.

(c) Lump Sum. The Actuarially Equivalent value of the Participant's Accrued Benefit is paid in one sum; provided, however, that a lump sum can be elected by the Participant only with respect to the Normal Retirement Pension, Early Retirement Pension, Deferred Retirement Pension, and Disability Pension payable under Sections 4.2, 4.4, 4.5, and 6.3, respectively. A lump sum can be elected by the Surviving Spouse of a Participant with respect to the death benefit payable under Section 7.1 only if the Participant's death occurs on or after his or her attainment of either Early Retirement Age or Normal Retirement Age.

(d) ExpressJet Lump Sum. Solely for purposes of determining whether such Participant qualifies for a lump sum payment pursuant to Section 9.12(c), a Participant who, as of the date of consummation of the initial public offering of ExpressJet Holdings, Inc. (April 23, 2002), (i) was a Participant in the Plan and (ii) an employee of ExpressJet,

shall be given age and service credit for all such Participant's continuous employment from and subsequent to the date of such initial public offering with ExpressJet (and any successor thereto), the Sponsor, and any Affiliated Employer of the Sponsor as though such service were with the Sponsor. For purposes of this Section 9.12(d) only, any such credit shall cease on the earlier of (i) the first date such Participant ceases to be actively employed by or on an approved leave of absence from ExpressJet (or any successor thereto), the Sponsor, or any Affiliated Employer of the Sponsor for more than 30 consecutive days, or (ii) the date of the distribution. The Administrative Committee may, in its discretion, require any Participant claiming to qualify for a lump sum pursuant to this Section 9.12(d) to supply proof of such continuous service. The Administrative Committee shall have sole discretion to determine whether such service is continuous for purposes of this Section 9.12(d). For purposes of determining the first date that a Participant described in this Section 9.12(d) is entitled to a lump sum payment pursuant to Section 9.12(c), a Participant shall be deemed to have had a separation as of the earlier of (i) the date he or she terminates his or her employment with ExpressJet, or (ii) the date that ExpressJet ceases to be an Employer under the Plan.

An election of an option available under this Section shall be made, revoked, or changed by a Participant (with the consent of his or her spouse, if required) within the time period specified in Section 9.10. An election of an option or a change or rescission of one must be made by executing and properly filing the form or forms approved by the Administrative Committee. Proof of age and other information may be required by the Administrative Committee.

9.13 *Death of Joint Annuitant.* If a Participant's joint annuitant dies before a Participant's Benefit Commencement Date, any otherwise applicable joint and survivor form of pension shall become inapplicable, and the Participant shall instead receive the benefit payable under Section 9.1. If the Participant's joint annuitant dies on or after the date any joint and survivor annuity is to begin, that annuity shall continue under its terms and the amount of the Participant's pension shall not be increased.

9.14 *Direct Transfer of Eligible Rollover Distribution.* If the distributee of any Eligible Rollover Distribution (a) elects to have such distribution paid directly to an Eligible Retirement Plan, and (b) specifies the Eligible Retirement Plan to which such distribution is to be paid (in such form and at such time as the Administrative Committee may prescribe), such distribution shall be made in the form of a direct trustee-to-trustee transfer to the Eligible Retirement Plan so specified. The immediately preceding sentence shall apply only to the extent that the Eligible Rollover Distribution would be includable in gross income if not transferred as provided in such sentence (determined without regard to Sections 402(c) and 403(a)(4) of the Code).

9.15 *Qualified Domestic Relations Order.* Payment shall be made in accordance with the provisions of any Qualified Domestic Relations Order.

9.16 *Distributions to Disabled.* If the Administrative Committee determines that any person to whom a payment is due is unable to care for his or her affairs because of physical or mental disability, it shall have the authority to cause the payments to be made to the spouse, brother, sister, or other person the Administrative Committee determines to have incurred, or to

be expected to incur, expenses for that person unless a prior claim is made by a qualified guardian or other legal representative. The Administrative Committee shall not be responsible to oversee the application of those payments. Payments made pursuant to this power shall be a complete discharge of all liability under the Plan. Any amount payable to a minor under any provision of this Plan including the foregoing provisions of this Section may be paid directly to the minor. The receipt by the minor shall be a complete discharge of all liability under the Plan.

9.17 *Missing Recipients.* The Administrative Committee shall make reasonable efforts to locate any person entitled to a distribution. Such efforts shall include utilization of the services of the Social Security Administration and the Internal Revenue Service to attempt to ascertain the current mailing address of any such person or for the purpose of forwarding correspondence from the Plan to any such person. If the efforts to locate a person entitled to a distribution are unsuccessful, the Administrative Committee may instruct the Trustee to distribute such benefits into an interest-bearing federally-insured bank account opened in such person's name or to purchase an annuity for such person. Such person shall have an unconditional right to withdraw funds from any such bank account. All ordinary and reasonable expenses incurred in connection with attempting to locating a person entitled to benefits under the Plan and in establishing an account or purchasing an annuity for a person who cannot be located shall be deducted from the benefit payable to such person.

In the event of the termination of the Plan, amounts payable to persons who cannot be located that have not previously been forfeited and reallocated shall be transferred to the Pension Benefit Guaranty Corporation in accordance with section 4050 of ERISA.

If a person who is entitled to a distribution cannot be located within 60 days after the commencement of efforts to locate such person by the Administrative Committee, payment of that person's benefit shall be suspended. Any such person may file a claim for benefits at any time prior to the termination of the Plan and the complete distribution of the Trust Fund. Upon receipt of such a claim, the suspended benefit shall be paid to the claimant in the manner provided in the Plan Document. If the Plan is joined as a party to any escheat proceeding involving such a benefit, the Plan shall comply with the final judgment and shall treat the judgment as if it were a claim filed by the Participant or Beneficiary and shall pay in accordance with that judgment.

9.18 *Reemployment After Commencement of Benefit Payments.*

(a) *Suspension of Benefit Payments.* Notwithstanding any other provision of the Plan, any pension payments otherwise payable to a Participant for any calendar month during which he or she is engaged in Disqualifying Employment shall be permanently withheld.

(b) *Resumption of Payments.* Pension payments that have been suspended under this Section shall resume no later than the first day of the third calendar month after the calendar month in which the Participant ceases to be engaged in Disqualifying Employment, provided that the Participant has complied with any procedure adopted by the Administrative Committee for notifying the Plan that he or she has ceased such employment. The initial payment upon resumption shall include the payment scheduled

to occur in the calendar month when payments resume and any amounts withheld during the period between the cessation of employment and the resumption of payments, less any amounts which are subject to offset.

(c) *Recalculation of Retirement Benefit.* The benefit payable upon resumption of benefit payments shall be equal to the Participant's benefit as of the date of his or her subsequent Separation reduced by the Actuarial Equivalent of payments previously made to him or her.

(d) *Offset of Erroneous Payments.* Any payments erroneously made by the Plan in violation of Section 9.18(a) shall be deducted from future benefit payments to be made by the Plan to the Participant or his or her Beneficiary, provided that such deduction does not exceed in any one month 25 percent of that month's total benefit payment which would have been due but for the offset (excluding the initial payment described in Section 9.20(b), which shall be subject to offset without limitation).

(e) *Notice of Suspension.* The Plan shall notify the Participant by personal delivery or first class mail during the first calendar month or payroll period in which the Plan withholds payments that his or her benefits are suspended. Such notification shall contain a description of the specific reasons why benefit payments are being suspended, a general description of the Plan provisions relating to the suspension of payments, a copy of such provisions, and a statement to the effect that applicable Department of Labor regulations can be found in section 2530.203-3 of the Code of Federal Regulations. The suspension notification shall also inform the Participant of the Plan's procedure for affording a review of the suspension of benefits. Request for such reviews shall be considered in accordance with the claims procedure set forth in Sections 9.20 and 9.20(b). The suspension notification shall also describe the procedure for filing a benefit resumption notice and include the forms (if any) which must be filed. If the Plan intends to offset any suspendible amounts actually paid during the Participant's period of Disqualifying Employment, the notification shall identify specifically the period Disqualifying Employment, the suspendible amounts which are subject to offset, and the manner in which the Plan intends to offset such suspendible amounts. If the Plan's summary plan description contains information which is substantially the same as information required by this Section, the suspension notification may refer the Participant to relevant pages of the summary plan description for information as to a particular item, provided that the Participant is informed of how to obtain a copy of the summary plan description, or relevant pages thereof, and provided requests for referenced information are honored within a reasonable period of time, not to exceed 30 days.

(f) *Participant Required to Notify Plan of Employment.* A Participant must notify the Plan of any employment. The Plan may request from a Participant access to reasonable information for the purpose of verifying such employment. A Participant must, at such time and with such frequency as may be reasonable, as a condition to receiving future benefit payments, either certify that he or she is unemployed or provide factual information sufficient to establish that any employment does not constitute Disqualifying Employment if specifically requested by the Administrative Committee. Once a Participant has furnished the required certification or information, the Plan shall

forward, at the next regularly scheduled time for payment of benefits, all payments which had been withheld pursuant to this Section except to the extent that payments may be withheld and offset pursuant to other provisions of this section.

(g) *Advance Determination Regarding Contemplated Employment.* The Administrative Committee shall adopt a procedure, and so inform Participants, whereunder a Participant may request, and the Administrative Committee in a reasonable amount of time will render, a determination of whether specific contemplated employment will be Disqualifying Employment. Requests for status determinations may be considered in accordance with the claims procedure set forth in Sections 9.20 and 9.20(b).

(h) *Presumption of Disqualifying Employment.* Whenever the Administrative Committee becomes aware that a Participant is engaged in Disqualifying Employment and the Participant has not complied with the Plan's reporting requirements with regard to that employment, the Administrative Committee may, unless it is unreasonable under the circumstances to do so, act on the basis of a rebuttable presumption that the Participant had worked a period exceeding the Plan's minimum number of hours for that month.

(i) *Disclosure.* The employment verification requirements and the nature and effect of the presumption described in Section 9.18(h) shall be described in the Plan's summary plan description and in any communication to Participants which relates to such verification requirements (for example, employment reporting reminders or forms), and retirees must be furnished with such disclosure, whether through receipt of the above communications or by special distribution, at least once every 12 months.

9.19 *Recoupment of Overpayments.* In the event of a mistaken payment or an overpayment of a benefit by the Plan, the Administrative Committee shall attempt to recoup such overpayment and may also reduce payment of benefits hereunder to recover such overpayment, with interest at a rate determined by the Administrative Committee.

9.20 *Claims Procedure Prior to January 1, 2002.*

(a) *Initial Claims.* When a benefit is or is about to be due, the Participant or Beneficiary must submit a claim to the personnel office of his or her most recent Employer. Under normal circumstances, a final decision shall be made as to a claim within 90 days after receipt of the claim. If the Administrative Committee notifies the claimant in writing during the initial 90-day period, it may extend the period up to 180 days after the initial receipt of the claim. The written notice must contain the circumstances necessitating the extension and the anticipated date for the final decision. If a claim is denied during the claims period, the Administrative Committee must notify the claimant in writing. The denial must include the specific reasons for it, the Plan provisions upon which the denial is based, and the claims review procedure. If no action is taken during the claims period, the claim is treated as if it were denied on the last day of the claims period.

(b) Claims Appeals. If a Participant's or Beneficiary's claim is denied and he or she wants a review, he or she must apply to the Administrative Committee in writing. That application can include any comment or argument the claimant wants to make. The claimant can either represent himself or appoint a representative, either of whom has the right to inspect all documents pertaining to the claim and its denial. The Administrative Committee can schedule any meeting with the claimant or his or her representative that it finds necessary or appropriate to complete its review. If the claimant does file a request for review, his or her request shall include a description of the issues and evidence he or she deems relevant. Failure to raise issues or present evidence on review will preclude those issues or evidence from being presented in any subsequent proceeding or judicial review of the claim. The request for review must be filed within 90 days after the denial. If it is not, the denial becomes final. If a timely request is made, the Administrative Committee must make its decision, under normal circumstances, within 60 days of the receipt of the request for review. However, if the Administrative Committee notifies the claimant prior to the expiration of the initial review period, it can extend the period of review up to 120 days following the initial receipt of the request for a review. All decisions of the Administrative Committee must be in writing and must include the specific reasons for its action and the Plan provisions on which its decision is based. If a decision is not given to the claimant within the review period, the claim is treated as if it were denied on the last day of the review period.

(c) Claims Regarding ERISA. A Participant or Beneficiary alleging a violation of or seeking any remedy under any provision of ERISA shall also be subject to the claims procedure described in this Section. Any such claim shall be filed within 90 days of the time the claim arises or it shall be deemed waived and abandoned.

(d) Exhaustion of Administrative Remedies and Deadline for Commencing Legal Action. A Participant or Beneficiary must follow the procedures described in this Section before taking action in any other forum regarding a claim for benefits under the Plan. Any suit or legal actions initiated by a Participant or Beneficiary for benefits under the Plan shall be brought by the Participant or Beneficiary no later than one year following a final decision on the claim for benefits. The one year statute of limitations on suits for benefits shall apply in any forum where a Participant or Beneficiary initiates such a suit.

9.21 Claims Procedure on and After January 1, 2002.

(a) Filing of Benefit Claim. To file a claim for a Plan benefit, a Claimant must file a written claim for a Plan benefit with the Benefits Administrator. If the Claimant needs additional information regarding his or her Plan benefit, he or she may obtain any relevant information (including, but not limited to, a copy of the Plan document and the Summary Plan Description) by submitting a written request to the Benefits Administrator describing the additional information needed.

(b) Processing of Benefit Claims. Upon receipt of a written claim for a Plan benefit from a Claimant, the Benefits Administrator shall determine if the Claimant's right to the requested Plan benefit, payable at the time or times and in the form requested

is clear and, if so, shall process such claim without resort to the Administrative Committee. If the Benefits Administrator determines that the Claimant's right to the requested Plan benefit, payable at the time or times and in the form requested is not clear, it shall refer the claim to the Administrative Committee for review and determination, which referral shall include:

- (i) All materials submitted to the Benefits Administrator by the Claimant in connection with the claim;
- (ii) A written description of why the Benefits Administrator was of the view that the Claimant's right to the Plan benefit, payable at the time or times and in the form requested, was not clear;
- (iii) A description of all Plan provisions pertaining to the Plan benefit claim;
- (iv) Where appropriate, a summary as to whether such Plan provisions have in the past been consistently applied with respect to other similarly situated Claimants; and
- (v) Such other information as may be helpful or relevant to the Administrative Committee in its consideration of the claim.

If the Claimant's claim is referred to the Administrative Committee, the Claimant may examine any relevant document relating to his or her claim and may submit written comments or other information to the Administrative Committee to supplement his or her claim for a Plan benefit. Within 30 days of receipt from the Benefits Administrator of a benefit claim referral or such longer period as may be necessary due to unusual circumstances or to enable the Claimant to submit comments but in any event not later than will permit the Administrative Committee sufficient time to rally and fairly consider the claim and make a determination within the time frame provided in Section 9.21(c) below, the Administrative Committee shall consider the referral regarding the claim of the Claimant and make a decision as to whether it is to be approved, modified or denied. If the claim is approved, the Administrative Committee shall direct the Benefits Administrator to process the approved claim as soon as administratively practicable.

(c) Upon Notification of Adverse Benefit Determination. In any case of an Adverse Benefit Determination of a claim for a Plan benefit, the Benefits Administrator or the Administrative Committee, as applicable, shall furnish written notice to the affected Claimant within a reasonable period of time but not later than ninety days after receipt of such claim for Plan benefits (or within 180 days if special circumstances necessitate an extension of the ninety-day period and the Claimant is informed of such extension in writing within the ninety-day period and is provided with an extension notice consisting of an explanation of the special circumstances requiring the extension of time and date by which the benefit determination will be rendered). Any notice denying a benefit claim in whole or in part shall, in a manner calculated to be understood by the Claimant:

- (i) State the specific reason or reasons for the adverse determination;
- (ii) Provide specific reference to pertinent Plan provisions on which the adverse determination is based;
- (iii) Describe any additional material or information necessary for the Claimant to perfect the claim and explain why such material or information is necessary; and
- (iv) Describe the review procedures and the time limits applicable to such procedures, including a statement of the Claimant's right to bring a civil action under section 502(a) of ERISA following an adverse benefit determination on review.

(d) Review of Adverse Benefit Determination. A Claimant has the right to have a Adverse Benefit Determination reviewed in accordance with the following claims review procedure:

- (i) The Claimant must submit a written request for such review to the Administrative Committee not later than 60 days following receipt by the Claimant of the Adverse Benefit Determination notification;
- (ii) The Claimant shall have the opportunity to submit written comments, documents, records, and other information relating to the claim for Plan benefits to the Administrative Committee;
- (iii) The Claimant shall have the right to have all comments, documents, records, and other information relating to the claim for Plan benefits that have been submitted by the Claimant considered on review without regard to whether such documents, records or information were considered in the initial benefit determination; and
- (iv) The Claimant shall have reasonable access to, and copies of, all documents, records, and other information relevant to the claim for Plan benefits free of charge upon request, including (A) documents, records or other information relied upon for the benefit determination, (B) documents, records or other information submitted, considered, or generated without regard to whether such document, record or other information was relied upon in making the benefit determination, and (C) documents, records or other information that demonstrates compliance with the standard claims procedure.

The decision on review by the Administrative Committee will be binding and conclusive upon all persons and the Claimant shall neither be required nor permitted to pursue further appeals to the Administrative Committee.

(e) Notification of Benefit Determination on Review. Notice of the Administrative Committee's final benefit determination regarding an Adverse Benefit

Determination will be furnished in writing or electronically to the Claimant after a full and fair review. Notice of an Adverse Benefit Determination upon review will:

- (i) State the specific reason or reasons for the Adverse Benefit Determination;
- (ii) Provide specific reference to pertinent Plan provisions on which the Adverse Benefit Determination is based;
- (iii) State that the Claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of all documents, records, and other information relevant to (within the meaning of Department of Labor Regulations § 2560.503-1(m)(8)) the Claimant's claim for Plan benefits;
- (iv) Describe the Claimant's right to bring an action under section 502(a) of ERISA; and
- (v) Include the following statement: "You and your plan may have other voluntary alternative dispute resolution options, such as mediation. One way to find out what may be available is to contact your local U.S. Department of Labor."

The Administrative Committee shall notify a Claimant of its determination on review with respect to the Adverse Benefit Determination of the Claimant within a reasonable period of time but not later than 60 days after the receipt of the Claimant's request for review unless the Administrative Committee determines that special circumstances require an extension of time for processing the review of the Adverse Benefit Determination. If the Administrative Committee determines that such extension of time is required, written notice of the extension (which shall indicate the special circumstances requiring the extension and the date by which the Administrative Committee expect to render the determination on review) shall be furnished to the Claimant prior to the termination of the initial 60-day review period. In no event shall such extension exceed a period of 60 days from the end of the initial 60-day review period.

(f) Exhaustion of Administrative Remedies. Completion of the claims procedures described in this Article will be a condition precedent to the commencement of any legal or equitable action in connection with a claim for Plan benefits by a Claimant or by any other person or entity claiming rights individually or through a Claimant; provided, however, that the Administrative Committee may, in its sole discretion, waive compliance with such claims procedures as a condition precedent to any such action.

(g) Payment of Benefits. If the Administrative Committee determines that a Claimant is entitled to a Plan benefit hereunder, payment of such Plan benefit will be made to such Claimant as soon as administratively practicable after the date the Administrative Committee determines that such Claimant is entitled to such Plan benefit or on any other later date designated by and in the discretion of the Administrative Committee.

(h) *Authorized Representative.* An authorized representative may act on behalf of a Claimant in pursuing a benefit claim or an appeal of an Adverse Benefit Determination. An individual or entity will only be determined to be a Claimant's authorized representative for such purposes if the Claimant has provided the Administrative Committee with a written statement identifying such individual or entity as his or her authorized representative and describing the scope of the authority of such authorized representative. In the event a Claimant identifies an individual or entity as his or her authorized representative in writing to the Administrative Committee but fails to describe the scope of the authority of such authorized representative, the Administrative Committee shall assume that such authorized representative has full powers to act with respect to all matters pertaining to the Claimant's benefit claim under the Plan or appeal of an Adverse Benefit Determination with respect to such benefit claim.

9.22 *Corrective Process.* In the event the Sponsor determines that compliance corrections are appropriate to maintain the qualified status of the Plan or to comply with fiduciary obligations, corrective procedures shall be determined by the Sponsor in a manner consistent with appropriate correction principles to correct the effects of past administrative, operational, or other errors relating to Plan administration. To the extent that the Sponsor determines that amounts have been distributed from the Plan in excess of benefits payable by the Plan, the Sponsor shall take appropriate steps to recover such amounts from the individuals who have received such overpayments unless the Employer pays such amounts to the Trust Fund on such individuals' behalf. In the event such amounts are not recovered from such individuals, restoration shall be made by the Employer, or if appropriate, another person. In the event benefits have been underpaid, the calculation of the corrective distribution shall be made in accordance with established corrective principles, and such distribution shall, unless otherwise specifically specified in the Plan, be adjusted with interest using Plan Actuarially Equivalent assumptions considering the time of the underpayment and the time of the corrective distribution.

9.23 *Minimum Distribution Requirements.*

(a) The provisions of this Section 9.23 will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 Distribution Calendar Year. The foregoing notwithstanding, distributions made from the Plan for Distribution Calendar Years 2003, 2004 and 2005 will not fail to satisfy the requirements and rules of this Section 9.23 if they were based upon a reasonable and good faith interpretation of section 401(a)(9) of the Code.

(b) The requirements of this Section 9.23 will take precedence over any inconsistent provisions of the Plan.

(c) All distributions required under this Section 9.23 will be determined and made in accordance with the Regulations under Section 401(a)(9) of the Code.

(d) If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

(i) If the Participant's Surviving Spouse is the Participant's sole Designated Beneficiary, distributions to the Surviving Spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later.

(ii) If the Participant's Surviving Spouse is not the Participant's sole Designated Beneficiary, distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(iii) If there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(iv) If the Participant's Surviving Spouse is the Participant's sole Designated Beneficiary and the Surviving Spouse dies after the Participant but before distributions to the Surviving Spouse begin, this Section 9.23(d) (disregarding item (i) above), will apply as if the Surviving Spouse were the Participant.

For purposes of this Section 9.23(d) and Section 9.23(g) below, distributions are considered to begin on the Participant's Required Beginning Date (or, if item (iv) applies, the date distributions are required to begin to the Surviving Spouse under item (i) above). If annuity payments irrevocably commence to the Participant before the Participant's Required Beginning Date (or to the Participant's Surviving Spouse before the date distributions are required to begin to the Surviving Spouse under item (i) above), the date distributions are considered to begin is the date distributions actually commence. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first Distribution Calendar Year, distributions will be made in accordance with Sections 9.23(e), (f) and (g), whichever is applicable. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Code and the Regulations promulgated thereunder and, if the annuity contract is purchased after the Required Beginning Date, the first payment interval must begin on or before the annuity contract purchase date and the payment required for one payment interval must be made no later than the end of such payment interval.

(e) If the Participant's interest is paid in the form of annuity distributions under the Plan, payments under the annuity must satisfy the following requirements:

(i) The annuity distributions will be paid in periodic payments made at uniform intervals not longer than one year.

(ii) The distribution period will be over a life (or lives) with or without a period certain or over a period certain only, not longer than the period described in Sections 9.23(f) or (g).

(iii) Once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted unless such change is permitted under and complies with A-13 of Regulation section 1.401(a)(9)-6.

(iv) Payments will either be nonincreasing (disregarding ancillary death benefits in the case of payments made upon the death of the Participant) or increase only as follows:

1) by an annual percentage increase that does not exceed the annual percentage increase in an Eligible Cost-of-Living Index for a twelve-month period ending in the year in which the increase occurs or the prior year;

2) by a percentage increase that occurs at specified times and does not exceed the cumulative total of annual percentage increases in an Eligible Cost-of-Living Index since the Benefit Commencement Date or, if later, the date of the most recent percentage increase;

3) to the extent of the reduction in the amount of the Participant's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period described in Section 9.23(f) dies or is no longer the Participant's beneficiary pursuant to a qualified domestic relations order within the meaning of Section 414(p) of the Code;

4) to provide cash refunds of employee contributions upon the Participant's death;

5) to pay increased benefits that result from a Plan amendment;

6) to allow a beneficiary to convert the survivor portion of a joint and survivor annuity into a single sum distribution upon the Participant's death; or

7) to the extent permitted under items (c) and (d) of A-14 of Regulation section 1.401(a)(9)-6 (regarding permitted increases under certain annuity contracts purchased from an insurance company and additional permitted increases for annuities payable from a trust for certain de minimis increases, payments upon death or as a result of certain dividend payments).

The amount that must be distributed on or before the Participant's Required Beginning Date (or, if the Participant dies before distributions begin, the date distributions are required to begin under item (i) or (ii) of Section 9.23(d)) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the bi-monthly, monthly, semi-annually, annually or other, as applicable, periods for which payments are received. All of the Participant's benefit accruals as of the last day of the first Distribution Calendar Year must be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Participant's Required Beginning Date. Any additional benefits accruing to the Participant in a calendar year after the first Distribution Calendar Year must commence to be distributed in accordance with the provisions of this Section 9.23 beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such additional benefit amount accrues.

(f) If the Participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the Participant and a nonspouse beneficiary, the periodic annuity payment payable to the Designated Beneficiary after the Participant's death must not at any time after the Participant's Required Beginning Date exceed the applicable percentage of the annuity payment payable to the Participant using the table set forth in A-2 of Regulation section 1.401(a)(9)-6. If the form of distribution combines a joint and survivor annuity for the joint lives of the Participant and a nonspouse beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the Designated Beneficiary after the expiration of the period certain. Unless the Participant's spouse is the sole Designated Beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the Participant's lifetime may not exceed the applicable distribution period for the Participant under the Uniform Lifetime Table set forth in A-2 of Regulation section 1.401(a)(9)-9 for the calendar year that contains the Participant's Benefit Commencement Date. If the Benefit Commencement Date precedes the year in which the Participant reaches age 70, the applicable distribution period for the Participant is the distribution period for age 70 under the Uniform Lifetime Table set forth in A-2 of Regulation section 1.401(a)(9)-9 plus the excess of 70 over the age of the Participant as of the Participant's birthday in the year that contains the Benefit Commencement Date. If the Participant's spouse is the Participant's sole Designated Beneficiary, the period certain may not exceed the Joint and Last Survivor Expectancy of the Participant and the Participant's spouse, if longer than the applicable distribution period for the Participant as determined under this Section 9.23(f), provided the period certain is not provided in conjunction with a life annuity.

(g) If the Participant dies before the date distribution of his or her interest begins and there is a Designated Beneficiary, the Participant's entire interest will be distributed, beginning no later than the time described in item (i) or (ii) of Section 9.23(d), whichever is applicable, over the life of the Designated Beneficiary or over a period certain not exceeding:

(i) Unless the Benefit Commencement Date is before the first Distribution Calendar Year, the Life Expectancy of the Designated Beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the Participant's death determined for the Distribution Calendar Year that contains the Benefit Commencement Date; or

(ii) If the Benefit Commencement Date is before the first Distribution Calendar Year, the Life Expectancy of the Designated Beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the Benefit Commencement Date. If the Participant dies before the date distributions begin and there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death. If the Participant dies before the date distribution of his or her interest begins, the Participant's Surviving Spouse is the participant's sole Designated Beneficiary, and the Surviving Spouse dies before distributions to the Surviving Spouse begin, this Section 9.23(g) will apply as if the Surviving Spouse were the Participant, except that the time by which distributions must begin will be determined without regard to item (i) of Section 9.23(d). Notwithstanding the foregoing, Participants or beneficiaries may elect on an individual basis whether the 5-year rule or the life expectancy rule in Section 9.23(d) and the foregoing provisions of this Section 9.23(g) applies to distributions after the death of a Participant who has a Designated Beneficiary. The election must be made no later than the earlier of September 30 of the calendar year in which distribution would be required to begin under Section 9.23(d), or by September 30 of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, Surviving Spouse's) death. If neither the Participant nor beneficiary makes an election under this Section 9.23(g), distributions will be made in accordance with Section 9.23(d) and the foregoing provisions of this Section 9.23(g).

(h) For purposes of this Section 9.23, payments made by the Plan to a Participant's child following the death of the Participant are treated as if made to a Surviving Spouse of the Participant until the child reaches the age of majority under applicable state law (or dies, if earlier) provided that such payments become payable to the Participant's Surviving Spouse upon cessation of such payments to the child if such Surviving Spouse is then living. A child who has not completed a specified course of education and is under the age of 26 or who is disabled within the meaning of Section 72(m)(7) of the Code is not deemed to have reached the age of majority for purposes of the preceding sentence.

(i) For purposes of this Section 9.23, the following terms shall be defined as follows:

(i) Designated Beneficiary. The individual who is the Beneficiary under the Plan and is a Designated Beneficiary under Section 401(a)(9) of the Code and section 1.401(a)(9)-1, Q&A-4, of the Regulations.

(ii) Distribution Calendar Year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin pursuant to Section 9.22(d) above.

(iii) Eligible Cost-in-Living Index. Any index described in items (b)(2), (b)(3) or (b)(4) of A-14 of Regulation section 1.401(a)(9)-6.

(iv) Joint and Last Survivor Expectancy. Joint and last survivor expectancy as computed by use of the Joint and Last Survivor Table in Regulation section 1.401(a)(9)-9A-3.

(v) Life Expectancy. Life expectancy as computed by use of the Single Life Table in Regulation section 1.401(a)(9)-9A-1."

ARTICLE XII ADMINISTRATIVE COMMITTEE

12.1 Appointment, Term of Service and Removal. The President of the Sponsor shall appoint an Administrative Committee which shall consist of such number of persons, not less than two (2), as the President shall from time to time determine. Participants of the Administrative Committee shall hold office at the pleasure of the President and without compensation. Any person appointed a member of the Administrative Committee shall signify his or her acceptance by filing a written acceptance with the Sponsor. Any member of the Administrative Committee may resign by giving notice thereof to the Sponsor and to the Administrative Committee, and such resignation shall become effective at delivery or at any later date specified therein. A vacancy in the Administrative Committee shall be filled by the President of the Sponsor.

12.2 Powers. The Administrative Committee is a fiduciary. It has the exclusive responsibility for the general administration of the Plan and Trust Fund, and has all powers necessary to accomplish that purpose, including but not limited to the following rights, powers, and authorities:

(a) To make rules for administering the Plan and Trust Fund so long as they are not inconsistent with the terms of the Plan;

(b) To construe all provisions of the Plan and Trust or Trusts, and any construction the Administrative Committee adopts in good faith shall be final and conclusive as to all parties;

(c) To correct any defect, supply any omission, or reconcile any inconsistency which may appear in the Plan or Trust or Trusts; and any correction the Administrative Committee makes in good faith shall be final and conclusive as to all parties;

(d) To select, employ, and compensate at any time any consultants, actuaries, accountants, attorneys, and other agents and employees the Administrative Committee believes necessary or advisable for the proper administration of the Plan and Trust Fund; any firm or person selected may be a disqualified person but only if the requirements of Section 4975(d) of the Code have been met;

(e) To determine all questions relating to eligibility, Eligibility Service, Vesting Service, Credited Service, Considered Compensation, Final Average Compensation and all other matters relating to benefits or Participants' entitlement to benefits;

(f) To determine all questions relating to whether a Participant has incurred a Disability and the date thereof, and the Administrative Committee may rely upon such evidence as it deems reasonable including, but not limited to, medical examinations, physicians' statements or a finding of eligibility for benefits by the Social Security Administration or by any insurance carrier under any policy maintained by the Employer that provides long term disability benefits and covers the Participant;

(g) To determine all controversies relating to the administration of the Plan and Trust Fund, including but not limited to any differences of opinion arising between an Employer and the Trustee or a Participant, or any combination of them and any questions it believes advisable for the proper administration of the Plan and Trust Fund;

(h) To direct the Trustee in all matters relating to the payment of Plan benefits; and

(i) To delegate any clerical or recordation duties of the Administrative Committee as the Administrative Committee believes is advisable to properly administer the Plan and Trust Fund.

12.3 Organization. The Administrative Committee may select, from among its members, a chairman, and may select a secretary. The secretary need not be a member of the Administrative Committee. The secretary shall keep all records, documents and data pertaining to its administration of the Plan and Trust Fund.

12.4 Quorum and Majority Action. A majority of the Administrative Committee constitutes a quorum for the transaction of business. The vote of a majority of the members present at any meeting shall decide any question brought before that meeting. In addition, the Administrative Committee may decide any question by a vote, taken without a meeting, of a majority of its members.

12.5 Signatures. The chairman, the secretary, and any one or more of the members of the Administrative Committee to which the Administrative Committee has delegated the power, shall each, severally, have the power to execute any document on behalf of the Administrative Committee, and to execute any certificate or other written evidence of the action of the Administrative Committee. The Trustee, after it is notified of any delegation of power in writing, shall accept and may rely upon any document executed by the appropriate member or members as representing the action of the Administrative Committee until the Administrative Committee files a written revocation of that delegation of power with the Trustee.

12.6 Disqualification of Administrative Committee Member. A member of the Administrative Committee who is also a Participant shall not vote or act upon any matter relating solely to himself.

12.7 Disclosure to Participants. The Administrative Committee shall make available to each Participant and Beneficiary for his or her examination those records, documents and other data required under ERISA, but only at reasonable times during business hours. No Participant or Beneficiary has the right to examine any data or records reflecting the compensation paid to any other Participant or Beneficiary. The Administrative Committee is not required to make any other data or records available other than those required by ERISA.

12.8 Standard of Performance. The Administrative Committee and each of its members shall use the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man, acting in a like capacity and familiar with such matters, would use in conducting his or her business as the administrator of the Plan, shall, when exercising its power to direct investments, diversify the investments of the Plan so as to minimize the risk of large

losses, unless under the circumstances it is clearly prudent not to do so, and shall otherwise comply with the provisions of this Plan and ERISA.

12.9 Reliance. The members of the Administrative Committee and the Sponsor shall be entitled to rely upon all valuations, certificates, and reports furnished by an actuary, accountant or physician selected by the Administrative Committee and approved by the Sponsor, and upon all opinions given by any legal counsel selected by the Administrative Committee and approved by the Sponsor, and the members of the Administrative Committee and the Sponsor shall be fully protected with respect to any action taken or suffered by their having relied in good faith upon such Trustee, actuary, physician, accountant, or counsel and all action so taken or suffered shall be conclusive upon each of them and upon all Participants and their Beneficiaries and all other persons.

12.10 Liability. No member of the Administrative Committee shall be liable for any act or omission of any other member of the Administrative Committee, the Investment Committee, the Trustee, any investment manager or any other agent unless required by the terms of ERISA or another applicable state or federal law, under which liability cannot be waived. No member of the Administrative Committee shall be liable for any act or omission of his or her own unless required by ERISA or another applicable state or federal law under which liability cannot be waived.

12.11 Insurance. If the Administrative Committee directs the Trustee to do so, it may purchase out of the Trust Fund insurance for the members of the Administrative Committee, the members of the Investment Committee, any other Plan fiduciaries, and the Trust Fund itself to cover liability or losses occurring because of the act or omission of any one or more of the members of such Committees or other fiduciary. Such insurance must permit recourse by the insurer against the members of the Committees or the other fiduciaries concerned if the loss is caused by breach of a fiduciary obligation by one or more members of the Committees or other fiduciary.

12.12 Exemption from Bond. No member of the Administrative Committee is required to give bond for the performance of his or her duties unless required by a law which cannot be waived.

12.13 Compensation. The Administrative Committee shall serve without compensation but shall be reimbursed by the Employer for all expenses properly incurred in the performance of their duties unless the Employer elects to have those expenses paid from the Trust Fund. Each Employer shall pay that part of the expense as is determined by the Administrative Committee.

12.14 Persons Serving in Dual Fiduciary Roles. Any person, group of persons, corporations, firm or other entity, may serve in more than one fiduciary capacity with respect to this Plan, including serving as both Trustee and as a member of the Administrative Committee.

12.15 Administrator. For all purposes of ERISA, the administrator of the Plan is the Sponsor. The administrator has the final responsibility for compliance with all reporting and disclosure requirements imposed under all applicable federal or state laws and regulations.

12.16 Named Fiduciary. The members of the Administrative Committee shall be the “named fiduciary” for purposes of Section 402(a)(1) of the ERISA, and as such shall have the authority to control and manage the operation and administration of the Plan, except to the extent such authority and control is allocated or delegated to other parties pursuant to the terms of the Plan.

12.17 Standard of Judicial Review of Administrative Committee Actions. The Administrative Committee has full and absolute discretion in the exercise of each and every aspect of its authority under the Plan, including without limitation, the authority to determine any person’s right to benefits under the Plan, the correct amount and form of any such benefits, the authority to decide any appeal, the authority to review and correct the actions of any prior committee, and all of the rights, powers, and authorities specified in Sections 9.20, 9.20(b), and 12.2. Notwithstanding any provision of law or any explicit or implicit provision of the Plan Document, any action taken, or ruling or decision made, by the Administrative Committee in the exercise of any of its powers and authorities under the Plan shall be final and conclusive as to all parties, including without limitation all Participants and Beneficiaries, regardless of whether the Administrative Committee or one or more members thereof may have an actual or potential conflict of interest with respect to the subject matter of such action, ruling, or decision. No such final action, ruling, or decision of the Administrative Committee shall be subject to de novo review in any judicial proceeding; and no such final action, ruling, or decision of the Administrative Committee may be set aside unless it is held to have been arbitrary and capricious by a final judgment of a court having jurisdiction with respect to the issue.