

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

FORM 10-K

**ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 27, 2008

Commission file number 0-21835

SUN HYDRAULICS CORPORATION

(Exact Name of Registration as Specified in its Charter)

Florida
(State or Other Jurisdiction of
Incorporation or Organization)

59-2754337
(I.R.S. Employer
Identification No.)

1500 West University Parkway
Sarasota, Florida
(Address of Principal Executive Offices)

34243
(Zip Code)

941/362-1200
(Registrant's Telephone Number, Including Area Code)

Securities registered pursuant to Section 12(b) of the Act

Title of Each Class	Name of each exchange on which registered
Common Stock \$.001 Par Value	NASDAQ Stock Market, LLC

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Exchange Act. Yes No

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

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer Accelerated filer
Non-accelerated filer Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

The aggregate market value of the shares of voting common stock held by non-affiliates of the Registrant, computed by reference to the closing sales price of such shares on the Nasdaq Stock Market, LLC, as of the last business day of the Registrant's most recently completed second fiscal quarter was \$381,777,690.

As of February 27, 2009, there were 16,664,653 shares of common stock outstanding.

PART I
ITEM 1. BUSINESS

Overview

Sun Hydraulics (the “Company” or “We”) designs and manufactures screw-in hydraulic cartridge valves, manifolds and integrated packages for sale to international markets. These products are integral parts of hydraulic systems and are used by a variety of capital goods equipment manufacturers to control force, speed and motion.

The cartridge valves Sun Hydraulics produces are differentiated in the marketplace by their floating design. This design methodology provides benefits which include, but are not limited to, enhanced capacity, higher reliability, higher operating pressure capability, reduced size and greater installation flexibility. All of these benefits translate to the Company’s manifold and integrated package offerings.

The breadth and scope of Sun Hydraulics’ product offering is unparalleled in its industry. The Company believes this wide and diverse product offering acts as a barrier to entry for new competitors.

Sun Hydraulics’ products are used by a wide range of industries, most of which are considered capital goods producers. Product sales are broadly segmented by whether the product is used in a mobile or an industrial application. (see Products) Sun Hydraulics’ products are general purpose devices designed for use by a broad market. To a limited degree, the Company has designed specific products to a single customer’s specification.

The Company has operations in the United States, England, Germany, France, Korea, China and India (the Chinese operation is a joint venture and the Indian operation is contractual). Products are sold primarily through independent authorized distributors who often act as system integrators by supplying complete hydraulic systems to OEMs. Sun Hydraulics’ foreign operations sometimes deal directly with customers in addition to managing independent distributors in their respective geographic regions.

In 2008, 47% of consolidated sales went to customers in the Americas, 34% to customers in Europe, the Middle East and Africa, and 19% to customers in the Asia/Pacific Region. In 2008, sales to any single customer or distributor did not exceed 7%.

Sun Hydraulics attributes its success to the innovative design and diversity of its products, the consistent high quality of its products and services, its ability to reliably deliver products on time, the breadth and diversity of its end markets, its geographic presence and the brand recognition of its products. The Company has been profitable every year since 1972 and has paid a dividend every quarter since going public in January 1997.

The Company was organized as a Florida corporation in 1986 to take over the operations of the business of the Company’s predecessor, Suninco, Inc. (f/k/a Sun Hydraulics Corporation). Suninco, Inc. was founded in 1970. The Company’s executive offices are located at 1500 West University Parkway, Sarasota, Florida 34243, and its telephone number is (941) 362-1200. The Company’s website is www.sunhydraulics.com.

Industry Background

Sun Hydraulics is part of the hydraulics industry. Hydraulics is a form of fluid power that is used to achieve power transmission and motion control. Due to its mechanical advantage, hydraulics is widely employed to move and position materials, control machines, vehicles and equipment, and improve industrial efficiency and productivity. The primary products produced by this industry include; *pumps*, used to create the flow of fluids, *valves*, used to direct the flow and control pressure and the rate of flow, and *actuators*, which convert energy to work. The industry also produces other products including hose, fittings, sensors, accumulators, filters, regulators, lubricants, fluids and other items. The industry, in its present form, developed in the 1940s and 1950s.

Screw-in hydraulic cartridge valves provide a more desirable alternative to conventional forms of hydraulic valves. Conventional hydraulic valves are generally large, typically manufactured from iron castings,

limited in their interface flexibility and usually designed to control a single task. Screw-in cartridge valves provide the same functional characteristics as conventional valves, but in a smaller size and often at a smaller cost. They are made from machined steel parts, are lighter-weight and more compact than conventional valves and provide significant advantages in interface flexibility.

These advantages help screw-in cartridge valves to displace conventional valves. Hydraulic system design engineers are able to develop complete control systems with multiple screw-in cartridge valves grouped together in a manifold to create an integrated package (i.e. a hydraulic control system functionally analogous to an electronic integrated circuit). Integrated packages optimize the control system, are proprietary to the customer, are compact and lightweight and significantly reduce assembly time and expense for OEMs.

Strategy

Sun Hydraulics will continue to design, manufacture, market and support, on a worldwide basis, differentiated high-performance and high-quality products and systems. The Company believes this focus supports its business objectives of generating sustainable revenue growth that will consistently yield above-average returns on capital while achieving a high level of customer satisfaction. Key elements of the Company's strategy include the following:

Deliver Value Through High-Quality, High-Performance Products. The Company's products are designed with operating and performance characteristics that exceed those of many functionally similar products. The Company's products provide high value because they generally operate more reliably and at higher flow rates and pressures than competitive offerings of the same size.

Achieve a High Level of Customer Satisfaction. Sun Hydraulics schedules orders to the customer's request date. The Company believes that its long-term success is dependent upon its reputation in the marketplace, which in turn is a result of its ability to service its customers. The Company tests 100% of its screw-in cartridge valves to ensure the highest level of performance on a consistent basis.

Offer a Wide Variety of Standard Products. Sun Hydraulics offers the most comprehensive ranges of screw-in cartridge valves and manifolds in the world. The Company's products contain a high degree of common content to minimize work in process and maximize manufacturing efficiency. Products are designed for use by a broad base of industries to minimize the risk of dependence on any single market segment or customer.

Expand the Product Line. New products are designed to complement existing products, having a synergistic effect. Where possible, new products use existing parts and generally fit into existing cavities. The Company will continue to develop new non-electrical and electrically actuated cartridges, including solenoid and proportional valves. The Company believes its electrically-actuated cartridge valves help to increase sales of the Company's other cartridge valves and allow it to compete more effectively for integrated package business.

Capitalize on Integrated Package Opportunities. Sun Hydraulics designs and manufactures integrated packages which incorporate the Company's screw-in cartridge valves. To support this effort, the Company is able to design and manufacture manifolds at its operations in Sarasota, Florida, and Kansas City, Kansas, USA, Coventry, England, Erkelenz, Germany, Seoul, Korea and at its operation in Shanghai, China. Some of the Company's distributors also design and manufacture integrated packages which contain the Company's screw-in cartridge valves. Sun Hydraulics encourages competitive manifold manufacturers to utilize the Company's screw-in cartridge valves in their integrated package designs. The Company believes that customer requirements in the future will be for integrated packages more so than isolated components.

Expand Global Presence. Sun Hydraulics intends to continue to expand its global presence in the areas of distribution and international operations. The Company has strong distributor representation in most developed and developing markets, including North and South America, Western Europe, Asia, Australia, and South Africa. The Company will continue to expand its presence in key areas including, but not limited to, Eastern Europe, Russia, China and India. A strong local presence helps the Company compete for integrated package business, where proximity to the customer is beneficial.

Maintain a Horizontal Organization with Entrepreneurial Spirit. Sun Hydraulics believes that maintaining its horizontal management structure is critical to retaining key personnel and an important factor in attracting top talent. The Company believes this culture encourages communication, creativity, entrepreneurial spirit, and individual responsibility among employees, and has a large impact on operating results.

Leverage Manufacturing Capability and Know-how as Competitive Advantages. Sun Hydraulics believes its process expertise is a competitive advantage. The Company's strong process capability is critical in achieving the high performance characteristics of its screw-in cartridge valves and integrated packages. The Company's in-house heat-treatment capability, somewhat unique in the industry, is critical to the durability and differentiation of the Company's cartridge valve products.

Sell Through Distributors. Due to the variety of potential customers and the Company's desire to avoid overhead costs, the sales function is performed primarily by independent distributors. Many of the Company's distributors sell products manufactured by other companies and act as system integrators by providing complete hydraulic systems to customers.

Develop Closer Relations with Key Customers. The Company maintains close relationships with some OEMs and end users of its products. These relationships help the Company understand and predict future marketplace needs and provide a venue to test and refine new product offerings. The Company recognizes it may sometimes be required to enter into direct transactional relationships to gain business with certain large OEMs. The Company will be selective in developing these relationships to avoid unnecessary bureaucracy and cost.

Form Strategic Relationships/Acquisitions. When it is deemed to be of strategic benefit, Sun Hydraulics may enter into various relationships with other manufacturers including, but not limited to, marketing, brand labeling and other non-exclusive or exclusive agreements. In the future the Company expects to expand its internally developed products and capabilities via investments in outside firms. These investments could be full acquisitions, joint ventures, partial ownership investments or other agreements.

Develop Complete Control System Solutions. Historically, the Company's products have been purchased as components. Increasingly, the Company is engaged in developing complete integrated package system solutions that integrate more fully with OEMs' machinery and expects future customer requirements will be in this area.

Products

Screw-in Hydraulic Cartridge Valves

Sun Hydraulics' screw-in hydraulic cartridge valves are offered in five size ranges and include both electrically actuated and non-electrically actuated products. The floating construction pioneered by the Company results in a self alignment characteristic that provides performance and reliability advantages compared to most competitors' product offerings. This floating construction differentiates the Company's products from those of most of its competitors, who design and manufacture rigid screw-in cartridge valves that fit a common cavity. Some competitors manufacture certain products that fit the Company's cavity.

Standard Manifolds

A manifold is a solid block of metal, usually aluminum or ductile iron, which is machined to create threaded cavities and channels into which screw-in cartridge valves can be installed and through which the hydraulic fluid flows.

The variety of standard manifolds offered by Sun Hydraulics is unmatched by any screw-in cartridge valve or manifold competitor. These products allow customers to easily integrate the Company's screw-in cartridge valves into their machinery and equipment. Once designed, standard manifolds require minimal, if any, maintenance engineering over the life of the product and can be manufactured at each of the Company's manufacturing operations.

Integrated Packages (using custom designed manifolds)

An integrated package consists of multiple cartridges assembled into a custom designed manifold for a specific customer to provide the specific operating characteristics of a customer's circuit.

The advantages of Sun Hydraulics screw-in cartridge valves translate to integrated packages designed by the Company and result in products that are smaller in size with enhanced operating performance. Due to the self-alignment characteristic, the Company's integrated packages do not routinely require testing once assembled, something often required when using competitive cartridge valves. Additionally, the Company has internally-developed, proprietary expert system software that it uses to manufacture custom manifolds efficiently in low volumes. Integrated packages provide many benefits to end users and equipment manufacturers, including reduced assembly time, order simplification, reduced leakage points, aesthetics, potentially fewer hose and fitting connections, and more control functions in a single location.

Engineering

Sun Hydraulics' engineers play an important role in all aspects of the business, including design, manufacturing, sales, marketing and technical support. Engineers work within a disciplined set of design parameters that encourages the repeated incorporation of existing parts in new products. Engineers work closely with manufacturing personnel to define the processes required to manufacture products reliably and consistently.

Manufacturing

The Company is a process intensive manufacturing operation that makes extensive use of automated handling and assembly technology (including robotics) where possible to perform repetitive tasks, thus promoting manufacturing efficiencies and workplace safety. The Company is somewhat vertically integrated and has the capability to manufacture many of the parts that go into its products.

At its two Sarasota, Florida, manufacturing plants, the Company has extensive testing facilities that allow it to test fully all cartridge valve products. A metallurgist and complete metallurgical laboratory support the Company's design engineers and in-house heat treatment.

The Company does not hold finished goods inventory but relies on its distributors to purchase and maintain sufficient inventory to meet customers' demands. Most raw materials, including aluminum and steel, are delivered on a just-in-time basis. These and other raw materials are commercially available from multiple sources.

The Company controls most critical finishing processes in-house but relies on a small network of outside manufacturers to machine cartridge parts to varying degrees of completeness. Many high-volume machining operations are performed exclusively at outside suppliers. The Company is selective in establishing its supplier base and attempts to develop and maintain long-term relationships with suppliers.

The Company continually reviews all of its suppliers to improve the quality of incoming parts and to assess opportunities for better control of both price and quality. The Company's quality systems at the U.S. and U.K. facilities are in compliance with ISO 9001:2000 for design and manufacture of steel cartridge valves, aluminum and ferrous manifolds for hydraulic systems. Those in Germany are certified to ISO 9001:2000 for the design, distribution and manufacturing of hydraulic components for mobile and industrial applications. Those in Korea are certified to ISO 9001:2000 and 14001:2004 for the design, development, production, and after sales service of hydraulic valves.

Sales and Marketing

Sun Hydraulics products are sold globally, primarily through independent fluid power distributors. Technical support is provided by each of the Company's operations (Florida, Kansas, England, Germany, France, Korea, India and China).

The Company currently has 79 distributors, 55 of which are located outside the United States and a majority of which have strong technical backgrounds or capabilities, which enable them to develop practical, efficient, and cost-effective fluid power systems for their customers. In 2008, sales to the Company's largest distributor represented less than 7% of net sales.

In addition to distributors, the Company sells directly to other companies within the hydraulic industry, including competitors, who incorporate the Company's products into their hydraulic products or systems. The Company believes making it easy for other manufacturers to buy its products often offers them better alternatives than developing like products themselves.

The Company, to a limited degree, sells product directly to OEMs. Although the Company does not have any employee whose primary responsibility is direct sales, it may consider this in the future. The Company recognizes that to gain access to certain large OEM accounts it may have to deal directly with customers in the areas of sales and support.

The Company provides end users with technical information via its website and catalogues. This includes all information necessary to specify and obtain the Company's products. The Company believes this approach helps stimulate demand for the Company's products. The Company's website is complete and easy to use with product information available 24 hours a day, seven days a week around the world.

Customers

Customers are broadly classified by being mobile or industrial.

Mobile applications involve equipment that generally is not fixed in place and is often operated in an uncontrolled environment, such as construction, agricultural, mining, and fire and rescue and other utility equipment. Mobile customers historically account for approximately two thirds of the Company's net sales.

Industrial applications involve equipment that generally is fixed in place in a controlled environment. Examples include automation machinery, presses, plastics machinery such as injection molding equipment, and machine tools. Industrial applications historically account for approximately one third of the Company's net sales.

In recent years, new applications have emerged that do not fit conveniently into the mobile or industrial categories, often blending requirements of each. Some of these applications include animatronics, wind power, wave power, solar power and amusement park rides. The Company expects its products to continue to be applied in areas outside of traditional mobile or industrial markets.

The Company does not warrant its products for use in any of the following applications, (i) any product that comes under the Federal Highway Safety Act, such as steering or braking systems for passenger-carrying vehicles or on-highway trucks, (ii) aircraft or space vehicles, (iii) ordnance equipment, (iv) life support equipment, and (v) any product that, when sold, would be subject to the rules and regulations of the United States Nuclear Regulatory Commission. These "application limitations" have alleviated the need for the Company to maintain the internal bureaucracy necessary to conduct business in these market segments.

Competition

The Company's competitors include full-line producers and niche suppliers similar to the Company. Most competitors market globally. Full-line producers have the ability to provide total hydraulic systems to customers, including components functionally similar to those manufactured by Sun Hydraulics. The industry has experienced significant consolidation in recent years. Notably, large, full-line producers have acquired most of the independent screw-in hydraulic cartridge valve companies.

Most of the Company's competitors produce screw-in cartridge valves that fit an industry common cavity that sometimes allows their products to be interchangeable. The industry common cavity is not currently supported by any national or global standards organizations, although there is an ongoing effort to standardize a modified version of this cavity in the United States. The International Standards Organization (ISO) has a standard screw-in cartridge cavity that is different from the industry common cavity, but the Company is not aware of any major competitor that currently produces a full line of standard products conforming to the ISO standard. The Company does not manufacture a product that fits either the industry common or the ISO standard cavity. Some competitors manufacture selected screw-in cartridge valves that fit the Company's cavity. (see Risk Factors: The marketplace could adopt an industry standard cavity.)

The Company believes that it competes based upon the quality, reliability, price, value, speed of delivery and technological characteristics of its products and services.

Employees

As of December 27, 2008, Sun Hydraulics had 682 full-time employees in the United States, 75 in England, 36 in Germany, 3 in France and 42 in Korea. Over 90% of its employees are engaged in manufacturing, distribution, and engineering functions. No employees are represented by a union in any of the Company's operating units, and management believes that relations with its employees are good. Employees are paid either hourly or with an annual salary at rates that are competitive with other companies in the industry and geographic areas in which they operate. Management believes that Sun Hydraulics' culture, competitive salaries and wages, above average health and retirement plans, and a safe and pleasant working environment discourages employee turnover and encourages efficient, high-quality production. Nevertheless, due to the nature of the Company's manufacturing business, it is sometimes difficult to attract skilled personnel. (see Risk Factors: *Dependence on key employees and skilled personnel*)

Patents and Trademarks

The Company believes that the growth of its business is dependent upon the quality and functional performance of its products and its relationship with the marketplace, rather than the extent of its patents and trademarks. The Company's principal trademark is registered internationally in the following countries: Argentina, Australia, Brazil, Canada, Chile, China, France, Germany, India, Italy, Japan, Korea, Mexico, Peru, Spain, Sweden, Switzerland, the United Kingdom and the United States. While the Company believes that its patents have significant value, the loss of any single patent would not have a material adverse effect on the Company.

Available Information

The Company's annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to those reports, as well as its proxy statements and other materials which are filed with or furnished to the Securities and Exchange Commission ("SEC") are made available, free of charge, on or through the Sun Hydraulics website under the heading "Investor Relations—Reports—SEC Filings," as soon as reasonably practicable after they are filed with, or furnished to, the SEC.

ITEM 1A.—RISK FACTORS

FACTORS INFLUENCING FUTURE RESULTS—FORWARD-LOOKING STATEMENTS

This Annual Report contains "forward-looking statements" (within the meaning of the Private Securities Litigation Reform Act of 1995) that are based on current expectations, estimates, forecasts, and projections about us, our beliefs, and assumptions made by us, including (i) our strategies regarding growth, including our intention to develop new products; (ii) our financing plans; (iii) trends affecting our financial condition or results of operations; (iv) our ability to continue to control costs and to meet our liquidity and other financing needs; (v) the declaration and payment of dividends; and (vi) our ability to respond to changes in customer demand domestically and internationally, including as a result of standardization. In addition, we may make other written or oral statements, which constitute forward-looking statements, from time to time. Words such as "may," "expects," "projects," "anticipates," "intends," "plans," "believes," "seeks," "estimates," variations of such words, and similar expressions are intended to identify such forward-looking statements. Similarly, statements that describe our future plans, objectives or goals also are forward-looking statements. These statements are not guarantees of future performance and are subject to a number of risks and uncertainties, including those discussed below and elsewhere in this report. Our actual results may differ materially from what is expressed or forecasted in such forward-looking statements, and undue reliance should not be placed on such statements. All forward-looking statements are made as of the date hereof, and we undertake no obligation to update any forward-looking statements, whether as a result of new information, future events or otherwise.

Factors that could cause actual results to differ materially from what is expressed or forecasted in such forward-looking statements include, but are not limited to: (i) conditions in the capital markets, including the interest rate environment and the availability of capital; (ii) changes in the competitive marketplace

that could affect our revenue and/or cost bases, such as increased competition, lack of qualified engineering, marketing, management or other personnel, and increased labor and raw materials costs; (iii) new product introductions, product sales mix and the geographic mix of sales nationally and internationally; and the following risk factors:

Sales in our industry are subject to economic cycles. The capital goods industry in general, and the hydraulic industry in particular, are subject to economic cycles, which directly affect customer orders, lead times and sales volume. Economic downturns generally have a material adverse effect on our business and results of operations, as they did in 2001 through 2003 and they are now. Economic up cycles provide a context where demand for capital goods is stimulated, creating increased demand for the products we produce. In the future, continued weakening or improvement in the economy will directly affect orders and influence results of operations.

We are subject to intense competition. The hydraulic valve industry is intensely competitive, and competition comes from a large number of competitors, some of which are full-line producers and others that are niche suppliers like us. Full-line producers have the ability to provide total hydraulic systems to customers, including components functionally similar to those manufactured by us. We believe that we compete based upon quality, reliability, price, value, speed of delivery and technological characteristics. Many screw-in cartridge valve competitors are owned by corporations that are significantly larger and have greater financial resources than we have. We cannot assure that we will continue to be able to compete effectively with these companies.

Most competitors either manufacture manifolds or have sources that they use on a regular basis. In addition, there are many independent manifold suppliers that produce manifolds incorporating various manufacturers' screw-in cartridge valves, including those made by us. Finally, there are many small, independent machine shops that produce manifolds at very competitive prices. We believe that competition in the manifold and integrated package business is based upon quality, price, performance, proximity to the customer and speed of delivery. Many competitors have very low overhead structures and we cannot assure that we will be able to continue to compete effectively with these companies.

In addition, we compete in the sale of hydraulic valves, manifolds and integrated packages with certain of our customers, who also may be competitors. Generally, these customers purchase cartridge valves from us to meet a specific need in a system that cannot be filled by any valve they make themselves. To the extent that we introduce new products in the future that increase competition with such customers, it may have an adverse effect on our relationships with them.

The marketplace could adopt an industry standard cavity that would not accommodate our products. Our screw-in cartridge valves fit into a unique cavity for which, to date, few other manufacturers have designed products. Accordingly, our screw-in cartridge valves are not interchangeable with those of other manufacturers. Most competitive manufacturers produce screw-in cartridge valves that fit into an industry common cavity. There is an ongoing effort in the United States to produce a new standard for screw-in hydraulic cartridge valve cavities based on the industry common cavity. Additionally, the International Standards Organization ("ISO") has an existing industry standard for screw-in hydraulic cartridge valve cavities, which is different from our cavity and the industry common cavity. In our view, the industry common cavity, as well as the suggested standardized form of this cavity, and the ISO standard cavity, fail to address critical functional requirements, which could result in performance and safety problems of significant magnitude for end users. To our knowledge, no major competitor has converted its standard product line to fit the ISO standard cavity. Any move by a substantial number of screw-in cartridge valve and manifold manufacturers toward the adoption of ISO standard or another standard, based on the existing industry common cavity, could have a material adverse effect on our business, financial condition and results of operation. See "Item 1.—Business — Competition."

We are subject to risks relating to international sales. In 2008, approximately 58% of our net sales were outside of the United States. For the past ten years, international sales have continued to represent a greater proportion of our consolidated sales. We will continue to expand the scope of operations outside the United States, both through direct investment and distribution, and expect that international sales will continue to account for a substantial portion of net sales in future periods. International sales are subject to various risks, including unexpected changes in regulatory requirements and tariffs, longer payment

cycles, difficulties in receivable collections, potentially adverse tax consequences, trade or currency restrictions, and, particularly in emerging economies, potential political and economic instability and regional conflicts. Furthermore, our international operations generate sales in a number of foreign currencies, particularly British pounds, the Euro, and the Korean Won. Therefore, our financial condition and results of operations can be affected by fluctuations in exchange rates between the United States dollar and these currencies. Any or all of these factors could have a material adverse effect on our business, financial condition and results of operations.

We are subject to various risks relating to our growth strategy. In pursuing our growth strategy, we intend to expand our presence in existing markets and enter new markets. In addition, we may pursue acquisitions and joint ventures to complement our business. Many of the expenses arising from expansion efforts may have a negative effect on operating results until such time, if at all, that these expenses are offset by increased revenues. We cannot assure that we will be able to improve our market share or profitability, recover our expenditures, or successfully implement our growth strategy. See “Item 1.—Business — Strategy.”

The expansion strategy also may require substantial capital investment for the construction of new facilities and their effective operation. We may finance the acquisition of additional assets using cash from operations, bank or institutional borrowings, or through the issuance of debt or equity securities. We cannot assure that we will be able to obtain financing from bank or institutional sources or through the equity or debt markets or that, if available, such financing will be on acceptable terms.

We are dependent upon key employees and skilled personnel. Our success depends, to some extent, upon a number of key individuals. The loss of the services of one or more of these individuals could have a material adverse effect on our business. Future operating results depend to a significant degree upon the continued contribution of key technical personnel and the skilled labor force. Competition for management and engineering personnel is intense and other employers may have greater financial and other resources. We conduct a substantial part of our operations in Sarasota, Florida. Continued success is dependent on the Company’s ability to attract and retain a skilled labor force at this location. There are no assurances that we will continue to be successful in attracting and retaining the personnel required to develop, manufacture and market our products and expand our operations. See “Item 1.—Business — Employees.”

We are subject to the risk of liability for defective products. The application of many of our products entails an inherent risk of product liability. We cannot assure you that we will not face any material product liability claims in the future or that the product liability insurance we maintain at such time will be adequate to cover such claims.

We are subject to fluctuations in the prices of raw materials. The primary raw materials used in the manufacture of our products are aluminum, ductile iron and steel. We cannot assure you that prices for such materials will not increase or, if they do, that we will be able to increase the prices for our products to maintain our profit margins. If future price increases do not adequately cover material cost increases, our operating results may be adversely affected.

We are dependent upon our parts suppliers. Our largest expense in cost of sales is purchased cartridge valve parts. We cannot assure you that our manufacturing costs and output would not be materially and adversely affected by operational or financial difficulties experienced by one or more of our suppliers.

Hurricanes could cause a disruption in our operations which could adversely affect our business, results of operations, and financial condition. A significant portion of our operations are located in Florida, a region that is susceptible to hurricanes. Such weather events can cause disruption to our operations and could have a material adverse effect on our overall results of operations. While we have property insurance to partially reimburse us for wind losses resulting from a named storm, such insurance would not cover all possible losses.

We are subject to the cost of environmental compliance and the risk of failing to comply with environmental laws. Our operations involve the handling and use of substances that are subject to federal, state and local environmental laws and regulations that impose limitations on the discharge of

pollutants into the soil, air and water and establish standards for their storage and disposal. We believe that our current operations are in substantial compliance with applicable environmental laws and regulations, the violation of which could have a material adverse effect on our business, financial condition and results of operations. New laws and regulations, or stricter interpretations of existing laws or regulations, could have a material adverse affect on our business, financial condition and results of operations. We have not suffered any material adverse effects due to compliance with environmental laws and regulations in the past.

Our board may decide to reduce or eliminate dividends. Although we have paid a cash dividend each quarter since our common stock began publicly trading in 1997, we cannot assure that funds will be available for this purpose in the future. The declaration and payment of dividends is subject to the sole discretion of our board of directors and will depend upon our profitability, financial condition, capital needs, acquisition opportunities, future prospects and other factors deemed relevant by the board, and may be restricted by the terms of our credit facilities.

Certain anti-takeover provisions may hinder or prevent a change in control. Our Articles of Incorporation provide for a classified board of directors. In addition, the Articles give the board of directors the authority, without further action by the shareholders, to issue and fix the rights and preferences of a new class, or classes, of preferred stock. These and other provisions of the Articles and our Bylaws may deter or delay changes in control, including transactions in which shareholders might otherwise receive a premium for their shares over then current market prices. In addition, these provisions may limit the ability of shareholders to approve transactions that they may deem to be in their best interests.

We are subject to control by certain shareholders and management. Christine L. Koski, the daughter of the deceased founder of the Company, Robert E. Koski, is a member of the board of directors. She, along with other family members, own or control approximately 29% of the outstanding shares of our common stock. Accordingly, the members of the Koski family have the ability to influence significantly the election of our directors and the outcome of certain corporate actions requiring shareholder approval, and to influence our business. Such influence could preclude any acquisition of the Company and could adversely affect the price of our common stock. Our directors and executive officers as a group beneficially own or control approximately 29% of the outstanding shares of our common stock.

ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

ITEM 2. PROPERTIES

The Company owns major facilities in the United States, United Kingdom, Germany, and Korea, as set forth below.

The Company owns a 66,000 square foot facility in Sarasota, Florida, which houses manufacturing, design, marketing and other administrative functions. The Sarasota facility is well suited for the design, testing and manufacture of the Company's products.

The Company also owns a 77,000 square foot manufacturing facility in Manatee County, Florida. The Manatee County facility, constructed in 1997, has a productive capacity similar to the Sarasota facility.

The close proximity of the Florida facilities allows for quick change and the ability to shift resources, including machinery and people, to effectively meet changing business requirements.

Both facilities in Florida are encumbered by a revolving line of credit, which matures on August 1, 2011. Monthly payment of interest only is due on the revolving line of credit, with a variable interest rate based upon the Company's leverage ratio. At December 27, 2008, there was no outstanding balance on the line of credit.

The Company also owns 2 parcels of vacant land in Manatee County, Florida, for future expansion requirements. There is no mortgage on these properties and the Company believes the land to be well suited for additional manufacturing capacity.

The Company leases a 17,000 square foot manufacturing facility in Lenexa, Kansas, which is used to manufacture manifolds for the North American market.

The Company owns a 37,000 square foot facility in Coventry, England, free of any encumbrances. The facility, while primarily acting as a distributor, is also involved in cartridge assembly and manifold manufacturing.

The Company owns a 45,000 square foot distribution and manufacturing facility in Erkelenz, Germany, free of any encumbrances. This facility is well suited to house equipment used for manufacturing and testing of the Company's products. Currently, a small portion of the manufacturing area is utilized and the remainder is leased on an annual basis to an outside company.

The Company owns a 10,000 square foot distribution and manufacturing facility in Inchon, Korea, free of any encumbrances.

The Company believes that its properties have been adequately maintained, are generally in good condition, and are suitable and adequate for its business as presently conducted. The extent of utilization of the Company's properties varies from time to time and among its facilities.

ITEM 3. LEGAL PROCEEDINGS

The Company from time to time is involved in routine litigation incidental to the conduct of its business. The Company does not believe that any pending litigation will have a material adverse effect on its consolidated financial position or results of operations.

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

There were no matters submitted to a vote of the security holders of the Company through the solicitation of proxies or otherwise during the fourth quarter of the fiscal year ended December 27, 2008.

PART II

**ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY,
RELATED STOCKHOLDER MATTERS AND
ISSUER PURCHASES OF EQUITY SECURITIES**

Market Information

The Common Stock of the Company has been trading publicly under the symbol SNHY on the Nasdaq Global Select Market since the Company's initial public offering on January 9, 1997. The following table sets forth the high and low closing sale prices of the Company's Common Stock as reported by the Nasdaq Global Select Market and the dividends declared for the periods indicated. 2007 first quarter stock prices and dividend are adjusted for a three-for-two stock split, effected in the form of a 50% stock dividend, which became effective on July 15, 2007.

	<u>High</u>	<u>Low</u>	<u>Dividends declared</u>
<u>2008</u>			
First quarter	\$30.620	\$19.130	\$ 0.090
Second quarter	41.040	29.270	0.180
Third quarter	42.060	25.840	0.090
Fourth quarter	26.040	11.460	0.090
<u>2007</u>			
First quarter	\$18.300	\$13.307	\$ 0.067
Second quarter	32.833	17.460	0.090
Third quarter	37.990	22.520	0.090
Fourth quarter	35.990	25.130	0.090

Holdings

There were 116 shareholders of record of Common Stock on February 27, 2009. The number of record holders was determined from the records of the Company's transfer agent and does not include beneficial owners of Common Stock whose shares are held in the names of securities brokers, dealers, and registered clearing agencies. The Company believes that there are approximately 12,000 beneficial owners of Common Stock.

Dividends

Quarterly dividends were paid on the 15th day of each month following the date of declaration. Additionally, the Company declared a special cash dividend of \$0.09 per share to shareholders of record as of May 15, 2008, that was paid on May 30, 2008. The Company's board of directors currently intends to continue to pay a quarterly dividend of at least \$0.09 per share during 2009 and has announced a special cash dividend of \$0.09 per share to shareholders of record as of March 15, 2009, payable on March 31, 2009. However, the declaration and payment of future dividends is subject to the sole discretion of the board of directors, and any determination as to the payment of future dividends will depend upon the Company's profitability, financial condition, capital needs, acquisition opportunities, future prospects and other factors deemed pertinent by the board of directors.

Stock Split

On June 19, 2007, the Company declared a three-for-two stock split, effected in the form of a 50% stock dividend, to shareholders of record on June 30, 2007, which was paid on July 15, 2007. The Company issued approximately 5,500,000 shares of common stock as a result of the stock split. The effect of the stock split on outstanding shares, earnings per share and dividends per share has been retroactively applied to all periods presented.

On June 10, 2005, the Company declared a three-for-two stock split, effected in the form of a 50% stock dividend, to shareholders of record on June 30, 2005, payable on July 15, 2005. The Company issued approximately 3,600,000 shares of common stock as a result of the stock split. The effect of the stock split on outstanding shares, earnings per share and dividends per share has been retroactively applied to all periods presented.

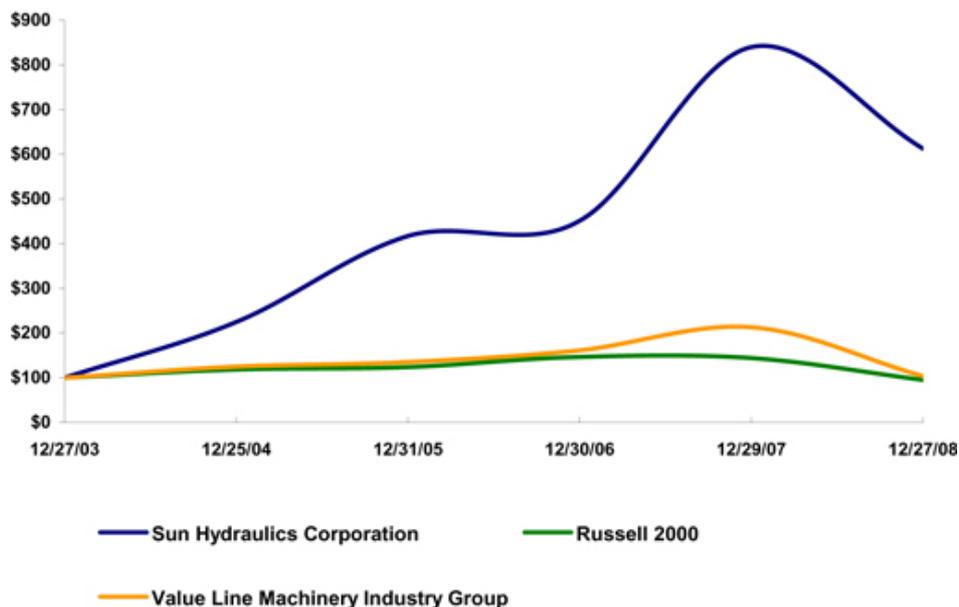
Issuer Purchases of Equity Securities

The Company did not repurchase any of its stock during the fourth quarter of 2008.

Five-Year Stock Performance Graph

The following graph compares cumulative total return among Sun Hydraulics Corporation, the Russell 2000 Index and the Value Line Machinery Industry Stock Index, from December 27, 2003, to December 27, 2008, assuming \$100 invested in each on December 27, 2003. Total return assumes reinvestment of any dividends for all companies considered within the comparison. The stock price performance shown in the graph is not necessarily indicative of future price performance.

COMPARISON OF 5 YEAR CUMULATIVE TOTAL RETURN*
 Among Sun Hydraulics Corporation, The Russell 2000 Index
 And Value Line Machinery Industry Group



*\$100 invested on 12/27/03 in stock & index-including reinvestment of dividends.

	<u>12/27/03</u>	<u>12/25/04</u>	<u>12/31/05</u>	<u>12/30/06</u>	<u>12/29/07</u>	<u>12/27/08</u>
Sun Hydraulics Corporation	100.00	224.95	417.03	451.29	839.78	612.91
Russell 2000	100.00	118.33	123.72	146.44	144.15	95.44
Value Line Machinery Industry Group	100.00	124.95	135.54	161.34	213.48	103.92

ITEM 6. SELECTED CONSOLIDATED FINANCIAL DATA

The following summary should be read in conjunction with the consolidated financial statements and related notes contained herein. See “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations” and “Item 1. Business.”

The Company reports on a fiscal year that ends on the Saturday closest to December 31st. Each quarter generally consists of two 4-week periods and one 5-week period. As a result of the 2005 fiscal year ending December 31, 2005, the quarter ended April 2, 2005, consisted of one 4-week period and two 5-week periods, resulting in a 53-week year.

	Year Ended				
	Dec 27, 2008	Dec 29, 2007	Dec 30, 2006	Dec 31, 2005	Dec 25, 2004
(in thousands except per share data)					
Statement of Operations:					
Net sales	\$ 178,278	\$ 167,374	\$ 142,282	\$ 116,757	\$ 94,503
Gross profit	59,117	54,850	43,932	36,918	28,535
Operating income	36,377	33,635	25,051	19,180	12,294
Income before income taxes	37,729	34,371	24,903	19,137	11,732
Net income	\$ 25,735	\$ 22,131	\$ 16,223	\$ 12,808	\$ 7,830
Basic net income per common share	\$ 1.55	\$ 1.35	\$ 0.99	\$ 0.79	\$ 0.51
Diluted net income per common share	\$ 1.55	\$ 1.34	\$ 0.99	\$ 0.78	\$ 0.50
Dividends per common share	\$ 0.45	\$ 0.34	\$ 0.27	\$ 0.20	\$ 0.10
Other Financial Data:					
Depreciation and amortization	\$ 7,096	\$ 6,341	\$ 5,849	\$ 5,604	\$ 5,465
Capital expenditures	10,874	12,591	9,525	8,813	4,987
Balance Sheet Data:					
Cash and cash equivalents	\$ 35,303	\$ 19,337	\$ 9,497	\$ 5,830	\$ 9,762
Working capital	50,217	36,198	24,015	16,391	16,723
Total assets	122,385	110,780	87,185	73,561	71,808
Total debt	272	701	1,072	2,384	12,254
Shareholders’ equity	106,556	91,882	70,800	56,440	45,403

Quarterly Results of Operations
(unaudited, in thousands)

	<u>For the Quarter Ended</u>			
	<u>Dec 27, 2008</u>	<u>Sep 27, 2008</u>	<u>Jun 28, 2008</u>	<u>Mar 29, 2008</u>
Net sales	\$32,936	\$44,771	\$51,563	\$49,008
Gross profit	8,210	14,738	19,075	17,094
Operating income	2,674	9,281	13,283	11,139
Income before income taxes	3,154	9,768	13,341	11,465
Net income	<u>\$ 2,480</u>	<u>\$ 6,657</u>	<u>\$ 8,908</u>	<u>\$ 7,690</u>
Basic net income per common share	\$ 0.15	\$ 0.40	\$ 0.54	\$ 0.46
Diluted net income per common share	\$ 0.15	\$ 0.40	\$ 0.54	\$ 0.46

	<u>For the Quarter Ended</u>			
	<u>Dec 29, 2007</u>	<u>Sep 29, 2007</u>	<u>Jun 30, 2007</u>	<u>Mar 31, 2007</u>
Net sales	\$41,289	\$41,809	\$43,422	\$40,854
Gross profit	13,346	13,324	14,297	13,883
Operating income	8,064	8,045	8,859	8,667
Income before income taxes	8,198	8,280	9,045	8,849
Net income	<u>\$ 5,127</u>	<u>\$ 5,246</u>	<u>\$ 5,952</u>	<u>\$ 5,806</u>
Basic net income per common share	\$ 0.31	\$ 0.32	\$ 0.36	\$ 0.35
Diluted net income per common share	\$ 0.31	\$ 0.32	\$ 0.36	\$ 0.35

	<u>For the Quarter Ended</u>			
	<u>Dec 30, 2006</u>	<u>Sep 30, 2006</u>	<u>Jul 1, 2006</u>	<u>Apr 1, 2006</u>
Net sales	\$34,967	\$36,202	\$36,928	\$34,185
Gross profit	11,051	10,662	11,239	10,981
Operating income	6,237	5,955	6,549	6,310
Income before income taxes	6,253	5,896	6,501	6,253
Net income	<u>\$ 3,813</u>	<u>\$ 3,916</u>	<u>\$ 4,314</u>	<u>\$ 4,180</u>
Basic net income per common share	\$ 0.23	\$ 0.24	\$ 0.26	\$ 0.25
Diluted net income per common share	\$ 0.23	\$ 0.24	\$ 0.26	\$ 0.25

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

OVERVIEW

Sun Hydraulics Corporation is a leading designer and manufacturer of high-performance screw-in hydraulic cartridge valves and manifolds, which control force, speed and motion as integral components in fluid power systems. The Company sells its products globally through wholly owned subsidiaries and independent distributors. Sales outside the United States for the year ended December 27, 2008, were approximately 58% of total net sales.

Approximately two thirds of product sales are used by the mobile market, which is characterized by applications where the equipment is not fixed in place, the operating environment is often unpredictable, and duty cycles are generally moderate to low. Some examples of the mobile market include equipment used in off-road construction, agriculture, fire and rescue, utilities, oil fields, and mining.

The remaining one third of sales are used by industrial markets, which are characterized by equipment that is fixed in place, typically in a controlled environment, and which operates at higher pressures and duty cycles. Power units, automation machinery, metal cutting machine tools and plastics machinery are some examples of industrial equipment. The Company sells to both markets with a single product line.

Industry Conditions

Demand for the Company's products is dependent on demand for the capital goods into which the products are incorporated. The capital goods industries in general, and the fluid power industry specifically, are subject to economic cycles. According to the National Fluid Power Association (the fluid power industry's trade association in the United States), the United States index of shipments of hydraulic products increased 8% and 1%, in 2008 and 2007, respectively.

The Company's order trend has historically tracked closely to the United States Purchasing Managers Index (PMI). The index was 32.9 at the end of December 2008 compared to 48.4 at the end of December 2007. When the PMI is below 50, it indicates economic contraction. PMI remained relatively flat throughout most of 2008 before declining by nearly 12% in September compared to August. PMI continued to drop throughout the fourth quarter with December down over 33% compared to August PMI. PMI increased 8% in January 2009 compared to December 2008.

Results for the 2008 fiscal year

(Dollars in millions except net income per share)

	December 27, 2008	December 29, 2007	Increase
Twelve Months Ended			
Net Sales	\$ 178.3	\$ 167.4	7%
Net Income	\$ 25.7	\$ 22.1	16%
Net Income per share:			
Basic	\$ 1.55	\$ 1.35	15%
Diluted	\$ 1.55	\$ 1.34	16%
Three Months Ended			
Net Sales	\$ 32.9	\$ 41.3	-20%
Net Income	\$ 2.5	\$ 5.1	-51%
Net Income per share:			
Basic	\$ 0.15	\$ 0.31	-52%
Diluted	\$ 0.15	\$ 0.31	-52%

The Company experienced another record year in 2008 with sales of \$178.3 million, net income of \$25.7 million, and cash flow from operations of \$38.5 million.

Demand from the Company's end markets was strong for the first three quarters of the year. Business began rapidly slowing in October. Because its book-to-ship cycle is so short, about four weeks, the Company began to feel the slowdown immediately. Fourth quarter sales to North America posted the smallest decline at 11%, Europe decreased 22%, and Asia was down 46%, resulting primarily from a drastic slowdown in Korea. Despite this slowdown, 2008 sales were still up 7% compared to 2007 and net income was up 16%. Current order levels in 2009 are as low as what we experienced at the end of 2003 and beginning of 2004.

Management is cognizant of the impact this recession has already had on the Company's business and what a protracted global downturn will mean for its business levels going forward. The Company has already experienced the reduction of sales in December 2008 and, as evidenced by the forecast, this will extend throughout the first quarter of 2009. The reduced sales, coupled with the Company's high fixed cost base, will ultimately result in a decrease in net income, which will exceed the decrease in sales. To address this decreased demand, the Company has eliminated overtime, frozen salaries for executives and key employees, intermittently shut down plants, and tightened discretionary spending.

For the past five years, the Company has benefited from a robust economic environment. The Company positioned itself to capitalize on this environment by having the appropriate products, services, and capacity to be able to satisfy our customers' needs. The Company's focus remains on preparation for the next growth cycle, developing new products, and enhancing productivity. During this period, the Company will not stop investing for future growth.

Maintaining the Company's strong balance sheet and financial flexibility remains a key strategy. The Company ended 2008 with cash of \$35.3 million, up \$16.0 million from the previous year, an unused line of credit of \$35.0 million, and less than half a million dollars of long-term debt. The Company continued to invest in its business in 2008 with capital expenditures for the year of approximately \$10.9 million. The Company estimates capital expenditures in 2009 will be \$7.0 million. The Company has ample cash to do the things management believes are necessary to position the Company to take the next step in its growth.

Dividends and Shared Distribution

The Company continues to share its success with both employees and shareholders. In May 2008, the Board introduced and declared its first shared distribution dividend. The shared distribution dividend rewards employees through a contribution into their retirement accounts and concurrently rewards shareholders with a special cash dividend. The Company declared a cash dividend of \$0.09 per share, relating to the shared distribution, to shareholders of record as of May 15, 2008, that was paid on May 30, 2008. In addition to 6% of 2007 wages, U.S. employees received another 3% of wages in conjunction with the shared distribution dividend. The Company developed plans for international employees to participate in these shared distributions and they will receive their first contributions in 2009. Three percent of 2008 wages was accrued for international employees throughout 2008. The Company also declared its regular quarterly dividends of \$0.09 per share for each quarter of 2008. These dividends were paid on the 15th day of each month following the date of declaration. Total dividends paid were \$0.45 per share in 2008 for a total of \$7.5 million.

In accordance with the Company's performance for 2008, the board of directors felt it was appropriate to reward the Company's employees for their diligent work and its shareholders for their support. This decision is consistent with Sun's focus on long-term sustainable growth. The board of directors again declared a shared distribution dividend of \$0.09 per share to shareholders of record on March 15, 2009, payable on March 31, 2009. Employees worldwide will receive 9% of their 2008 wages in accordance with the shared distribution, which amounts to approximately \$3.0 million. The majority of employees will receive their shared distribution in the form of Company stock into qualified retirement accounts. The employee portion of the shared distribution reduced EPS for the fourth quarter and for the year by approximately \$0.06 per share.

Outlook

The slowdown in business activity that began in October continued in the first two months of 2009. During this slowdown Sun has taken actions to reduce discretionary expenses while continuing to invest in people, processes, equipment, and product development. Sun's 2009 first quarter sales are expected to be approximately \$25.0 million with net income near breakeven. As in past business cycles, Sun's investments throughout the business cycle directly translate into new business and increased market share as the economy recovers and that recovery in the business cycle often happens unannounced and at a rapid pace.

Results of Operations

The following table sets forth, for the periods indicated, certain items in the Company's statements of operations as a percentage of net sales.

	For the Year Ended				
	Dec 27, 2008	Dec 29, 2007	Dec 30, 2006	Dec 31, 2005	Dec 25, 2004
Net sales	100.0%	100.0%	100.0%	100.0%	100.0%
Gross profit	33.2%	32.8%	30.9%	31.6%	30.2%
Operating income	20.4%	20.1%	17.6%	16.4%	13.0%
Income before income taxes	21.2%	20.5%	17.5%	16.4%	12.4%

Segment Information (in thousands)

	United States	Korea	Germany	United Kingdom	Elimination	Consolidated
2008						
Sales to unaffiliated customers	\$111,180	\$17,455	\$27,356	\$22,287	\$ —	\$ 178,278
Intercompany sales	28,656	—	245	2,282	(31,183)	—
Operating income	24,531	1,148	7,693	3,231	(226)	36,377
Total assets	91,855	6,680	10,980	15,049	(2,179)	122,385
Depreciation and amortization	5,139	151	572	1,234		7,096
Capital expenditures	9,904	39	298	633		10,874
2007						
Sales to unaffiliated customers	\$ 99,516	\$20,567	\$24,164	\$23,127	\$ —	\$ 167,374
Intercompany sales	30,344	—	142	2,621	(33,107)	—
Operating income	22,408	2,103	5,955	3,205	(36)	33,635
Total assets	74,026	9,067	12,710	17,079	(2,102)	110,780
Depreciation and amortization	4,488	178	556	1,119		6,341
Capital expenditures	9,339	284	125	2,843		12,591
2006						
Sales to unaffiliated customers	\$ 89,077	\$16,368	\$19,128	\$17,709	\$ —	\$ 142,282
Intercompany sales	25,809	—	106	2,990	(28,905)	—
Operating income	16,608	2,212	4,046	2,330	(145)	25,051
Total assets	59,505	7,580	8,187	13,756	(1,843)	87,185
Depreciation and amortization	4,206	150	510	983		5,849
Capital expenditures	8,408	122	238	757		9,525

Comparison of Years Ended December 27, 2008 and December 29, 2007**Net Sales**

Net sales were \$178.3 million, an increase of \$10.9 million, or 6.5%, compared to \$167.4 million in 2007. Net sales increased 7.2% excluding the effect of exchange rates. The increase in net sales was primarily driven by increased demand in our end markets, which primarily include capital goods equipment. Price increases in 2008 accounted for approximately 1% of total sales. New product sales (defined as products introduced within the last five years) generally make up 15% of total sales.

North American sales increased 5.7% or \$4.5 million, to \$83.1 million in 2008, Asian sales increased 2.3% or \$0.7 million, to \$30.9 million in 2008, and European sales increased 9.2% or \$5.0 million, to \$59.3 million in 2008.

The U.S. reporting segment had sales of \$111.2 million during 2008, up \$11.7 million or 11.7%, compared to sales of \$99.5 million during 2007. The increase was driven by demand in our end markets. International sales out of the U.S. were \$37.1 million during 2008, up 26.6% or \$7.8 million, compared to \$29.3 million during 2007. Significant increases in sales were noted in Italy, China, and Australia.

The Korean reporting segment had sales of \$17.5 million during 2008, down \$3.1 million or 15.1%, compared to sales of \$20.6 million during 2007. Currency effect reduced 2008 sales by approximately \$2.0 million. The remaining decrease was related to a slowdown in sales to four major Korean customers that are in the construction equipment industry.

The German reporting segment had sales of \$27.4 million during 2008, up \$3.2 million or 13.2%, compared to sales of \$24.2 million during 2007. Currency effect contributed approximately \$2.1 million to sales in 2008. The remaining increase is primarily related to demand within Germany and in Austria.

The U.K. reporting segment had sales of \$22.3 million during 2008, down \$0.8 million or 3.6%, compared to sales of \$23.1 million during 2007. Currency effect reduced 2008 sales by approximately \$0.7 million, primarily related to sales in U.S. Dollars. The U.K. experienced reduced sales within the U.K. and in Ireland, while increasing sales to Netherlands, Norway, and United Arab Emirates.

Gross Profit

Gross profit increased \$4.3 million or 7.8% to \$ 59.1 million in 2008, compared to \$54.9 million in 2007. Gross profit as a percentage of net sales increased to 33.2% in 2008, compared to 32.8% in 2007. Margins were very strong in the first and second quarter of 2008, at 34.9% and 37.0%, respectively. The Company experienced some deterioration in the third quarter of 2008 when margins slipped to 32.9%. The sharp decline in 2008 fourth quarter sales resulted in gross margins of 24.9%. The Company has a large fixed cost base. This worked to its advantage over the last few years when the Company was able to leverage these fixed costs against consistently rising revenue. However, it has the opposite effect as the Company gets into periods of rapidly declining sales. The fixed costs remain, but cannot be absorbed as quickly by the lower revenue.

For 2008, the gross profit increases were primarily related to higher sales volume, which contributed \$3.6 million of the increase. The remaining gains in gross profit were attributed to productivity improvements of approximately \$0.8 million, primarily in the U.S. and U.K., and lower material costs of approximately \$0.4 million, primarily in the U.S. and Europe. Decreases in overhead expenses as a percent of sales of approximately \$1.2 million were offset by the increased retirement benefits primarily relating to the shared distributions of approximately \$1.7 million.

Selling, Engineering, and Administrative Expenses

Selling, engineering and administrative expenses in 2008 were \$22.7 million, a \$1.5 million, or 7.2%, increase, compared to \$21.2 million in 2007. The change is primarily a result of increases in compensation of \$0.6 million, fringe benefit costs of \$0.7 million, and professional fees of \$0.2 million. The fringe benefits include an increase in retirement benefits primarily relating to the shared distributions of approximately \$0.8 million. The increase in professional fees is related to additional tax services for the R&D tax credit study.

Operating Income

Operating income increased \$2.7 million or 8.2% to \$36.4 million in 2008, compared to \$33.6 million in 2007, with operating margins of 20.4% and 20.1% for 2008 and 2007, respectively.

The U.S. reporting segment contributed \$24.5 million to our consolidated operating income during 2008 compared to \$22.4 million during 2007, an increase of \$2.1 million. Record sales volume contributed \$2.6 million to operating income. Additional increases resulted from decreased material costs, relating to redesign and resourcing of products, and productivity improvements. Increases in operating income were partially offset by increases in retirement benefits primarily relating to the shared distributions of approximately \$1.8 million.

The Korean reporting segment contributed \$1.1 million to our consolidated operating income during 2008 compared to \$2.1 million during 2007, a decrease of \$1.0 million. Reduction in sales resulted in a \$0.3 million decrease in operating income. The remaining decrease resulted from increased material costs primarily related to the devaluation of the Korean Won against the U.S. Dollar for purchases made in U.S. Dollars.

The German reporting segment contributed \$7.7 million to our consolidated operating income during 2008 compared to \$6.0 million during 2007, an increase of \$1.7 million. Record sales volume contributed \$0.8 million to operating income. The remaining increase is primarily related to material costs due to the strength of the Euro against the U.S. Dollar for material purchases made in U.S. Dollars during the first nine months of the year. Increases in operating income were partially offset by the shared distributions of approximately \$0.2 million.

The U.K. reporting segment contributed \$3.2 million to our consolidated operating income during 2008 and 2007. The reduction in sales and shared distributions reduced operating income by approximately \$0.5 million. These decreases were offset by gains in productivity and a reduction in fixed costs.

Interest Income, Net

Net Interest income for 2008 was \$0.8 million compared to net interest income of \$0.4 million for 2007. Total average debt for 2008, was \$0.5 million compared to \$0.9 million for 2007. Total average cash for 2008, was \$27.3 million compared to \$14.4 million for 2007. The Company did not have any outstanding variable debt during 2008.

Foreign Currency Transaction Gain, Net

Net foreign currency transaction gain was \$0.5 million in 2008 compared to a minimal amount in 2007. While the Euro, the Korean Won and the British Pound weakened against the U.S. Dollar, the UK operations experienced gains related to sales conducted in U.S. dollars and from the revaluation of Sun Ltd. balance sheet items, which were held in U.S. dollars.

Miscellaneous Income, Net

Miscellaneous income was \$0.1 million in 2008 compared to \$0.3, million in 2007. The decrease is primarily related to a reduction in equity method investment earnings from the prior year. The current year income was primarily a result of proceeds from an insurance claim. This amount was partially offset by a loss on disposal of assets and charitable contributions.

Income Taxes

The provision for income taxes for the year ended December 27, 2008, was 31.8% of pretax income compared to 35.6% for the year ended December 29, 2007. The change was primarily due to the relative levels of income and different tax rates in effect among the countries in which the Company sells its products and the decrease in the German Statutory tax rate. The 2008 U.S. provision includes tax expense of \$0.8 million related to the repatriation of cash from the German subsidiary and a tax benefit of \$0.8 million for R&D tax credits for the years 2004 through 2007.

Comparison of Years Ended December 29, 2007 and December 30, 2006***Net Sales***

Net sales were \$167.4 million, an increase of \$25.1 million, or 17.6%, compared to \$142.3 million in 2006. Net sales increased 14.5% excluding the effect of exchange rates.

The increase was due in large part to the continued growth of international sales, particularly in Europe where sales increased 31.4%, or \$13.0 million, to \$54.3 million. Sales to France increased 27.0%, to Germany 30.5%, and to the U.K. 38.6%. Significant increases were also noted in Finland, Norway, Italy and Sweden.

Asian sales increased 28.5%, or \$6.7 million, to \$30.2 million. Domestic sales in Korea increased 25.7%, and sales to China increased 52.3%. A significant increase was also noted in Singapore.

North American sales increased 6.4%, or \$4.7 million, to \$78.7 million.

Gross Profit

Gross profit increased 24.9% to \$54.9 million in 2007, compared to \$43.9 million in 2006. Gross profit as a percentage of net sales increased to 32.8% in 2007, compared to 30.9% in 2006. Gross profit percentage increases were due to fixed cost absorption from higher sales volume, a sales price increase that occurred in July 2006, productivity improvements in the U.S. and improvements in selective material pricing on high volume purchased parts. Lower material costs in the U.K. and German operations due to the strength of local currencies against the U.S. dollar for material purchases made in U.S. dollars were also recognized.

Selling, Engineering, and Administrative Expenses

Selling, engineering and administrative expenses in 2007 were \$21.2 million, a \$2.3 million, or 12.4%, increase, compared to \$18.9 million in 2006. The change is primarily a result of increased compensation expenses, which includes stock based compensation awards, advertising, and professional fees relating to tax, legal matters, and outside information technology services.

Interest (Income)/Expense, Net

Net Interest income for 2007 was \$0.4 million compared to net interest expense of \$0.1 million for 2006. Total average debt for 2007, was \$0.9 million compared to \$1.7 million for 2006. Total average cash for 2007, was \$14.4 million compared to \$7.7 million for 2006. The Company did not have any outstanding variable debt during 2007.

Foreign Currency Transaction (Gain)/Loss, Net

Foreign currency transaction gain was minimal in 2007, compared to a loss of \$0.2 million in 2006. While the Euro, the Korean Won and the British Pound made gains against the U.S. dollar during the periods, the European operations experienced losses related to sales conducted in U.S. dollars and from the revaluation of Sun Ltd. balance sheet items, which were held in U.S. dollars.

Miscellaneous Income, Net

Miscellaneous income was \$0.3 and \$0.2, in 2007 and 2006, respectively. The increase was primarily a result of earnings from joint ventures.

Income Taxes

The provision for income taxes for the year ended December 29, 2007, was 35.6% of pretax income compared to 34.9% for the year ended December 30, 2006. The change was primarily due to the relative levels of income and different tax rates in effect among the countries in which the Company sells its products and an increase in the U.S. effective rate of approximately 1.3%. The increase was primarily a result of the phase-out of graduated rates and a change in permanent items, primarily related to the decreased benefit from joint venture earnings. These amounts were partially offset by the reversal of an unrecognized tax benefit during the period.

Liquidity and Capital Resources

Historically, the Company's primary source of capital has been cash generated from operations, although short-term fluctuations in working capital requirements have been met through borrowings under revolving lines of credit as needed. The Company's principal uses of cash have been to pay operating expenses, pay dividends to shareholders, make capital expenditures, and service debt.

Net cash flow from operations in 2008 was \$38.5 million, compared to \$28.2 million in 2007 and \$19.6 million in 2006. The \$10.3 million increase in the Company's net cash flow from operations in 2008 was due primarily to the increase in net income of \$3.6 million, and decreases in accounts receivable and inventory totaling \$6.0 million compared to increases in the prior year totaling \$4.5 million. Cash on hand increased \$16.0 million from \$19.3 million in 2007 to \$35.3 million in 2008. Days sales outstanding decreased to 30 in 2008 from 38 in 2007 and inventory turns increased to 11.1 in 2008 from 9.9 in 2007. The decrease in days sales outstanding is primarily attributed to the steep decline in sales during the fourth quarter. The Company has not had, nor does it anticipate, any significant issues with collectability even in this difficult economic environment. As evidenced by the inventory turns, the Company has and continues to manage inventory levels, as it manufactures and ships product on a just in time basis. The increase in the Company's net cash flow from operations in 2007, compared to 2006 was due primarily to the increase in net income of \$5.9 million, and increases in accounts payable, and accrued expenses. In addition, the Company did not experience as much of an increase in inventory compared to the prior year.

Total capital expenditures for 2008 were \$10.9 million. Capital expenditures, consisting primarily of purchases of machinery and equipment, were \$8.4 million in 2008, compared to \$12.6 million in 2007 and \$9.5 million in 2006. Also included in capital expenditures for the year ended December 27, 2008, was the purchase of land for \$2.5 million. Capital expenditures in 2009 are projected to be \$7.0 million.

On August 11, 2005, the Company completed a refinancing of its existing debt in the U.S. with Fifth Third Bank (the "Bank"). The new financing consists of a secured revolving line of credit of \$35 million (the "Line of Credit"). The Line of Credit is secured by the Company's U.S. assets, including its manufacturing facilities, and requires monthly payments of interest. The Line of Credit has a floating interest rate based upon LIBOR plus 1.5% or the Bank's Base Rate, whichever is more advantageous. The Line of Credit is payable in full on August 1, 2011, but maturity may be accelerated by the Bank upon an Event of Default (as defined). Prepayment may be made without penalty or premium at any time upon the required notice to the Bank. At December 27, 2008, the Line of Credit had no outstanding balance.

The Line of Credit is subject to debt covenants including: 1) Debt (as defined) to Tangible Net Worth (as defined) ratio of not more than 1.5:1.0, 2) Funded Debt (as defined) to EBITDA (as defined) ratio of not more than 2.5:1.0, and 3) EBIT (as defined) to Interest Expense (as defined) ratio of not less than 1.1:1.0; and requires the Company to maintain its primary domestic deposit accounts with the Bank. As of December 27, 2008, the Company was in compliance with all debt covenants.

The Company declared the following regular quarterly dividends to shareholders of record on the last day of the respective quarter:

	<u>2008</u>	<u>2007</u>	<u>2006</u>
First quarter	\$0.090	\$0.067	\$0.067
Second quarter	0.090	0.090	0.067
Third quarter	0.090	0.090	0.067
Fourth quarter	0.090	0.090	0.067

These dividends were paid on the 15th day of each month following the date of declaration. In addition, the Company declared a special cash dividend of \$0.09 per share to shareholders of record as of May 15, 2008, that was paid on May 30, 2008.

The declaration and payment of future dividends is subject to the sole discretion of the Board of Directors, and any determination as to the payment of future dividends will depend upon the Company's profitability, financial condition, capital needs, acquisition opportunities, future prospects and other factors deemed pertinent by the board of directors.

The Company believes that cash generated from operations and its borrowing availability under the revolving Line of Credit will be sufficient to satisfy the Company's operating expenses and capital expenditures for the foreseeable future. In the event that economic conditions were to severely worsen for a protracted period of time, the Company would have several options available to ensure liquidity in addition to increased borrowing. Capital expenditures could be postponed since they primarily pertain to long-term improvements in operations. Additional operating expense reductions also could be made. Finally, the dividend to shareholders could be reduced or suspended.

OTHER MATERIAL COMMITMENTS. Our contractual obligations and debt obligations as of December 27, 2008, are summarized in the table below (in thousands):

<u>CONTRACTUAL OBLIGATIONS</u>	<u>Payments due by Period</u>				
	<u>TOTAL</u>	<u>LESS THAN 1 YEAR</u>	<u>1-3 YEARS</u>	<u>3-5 YEARS</u>	<u>MORE THAN 5 YEARS</u>
Debt	\$ 272	147	125	—	—
Operating leases	182	149	33	—	—
Other long term liabilities (1)	383	50	28	—	305
Total contractual obligations	\$ 837	\$ 346	\$ 186	\$ —	\$ 305

- (1) Other long term liabilities consist of deferred income of \$78 and deferred compensation of \$305. The deferred income is a result of a non-exclusive supply agreement with Bosch Rexroth, A.G., a German full-line hydraulic component and systems manufacturer, under which the Company will manufacture selected products carrying the Rexroth logo. In addition, the Company has a non-exclusive licensing agreement whereby Rexroth may manufacture some of the Company's products for use in its own fluid power systems. The licensing agreement was entered into in 1999 and will expire in 2010. Currently, Rexroth has elected not to manufacture any products under the licensing agreement, but continues to purchase these same products from the Company. The original amount received with regard to the licensing agreement was \$500,000, which is being recognized over the life of the agreement. Deferred compensation relates to Director compensation for attendance at Board meetings. Amounts will be paid upon an individual ceasing to be a Director of the Company.

Critical Accounting Policies and Estimates

The Company currently only applies judgment and estimates which may have a material effect on the eventual outcome of assets, liabilities, revenues and expenses for impairment of long-lived assets, accounts receivable, inventory, goodwill and accruals. The following explains the basis and the procedure for each account where judgment and estimates are applied.

Revenue Recognition

The Company reports revenues, net of sales incentives, when title passes and risk of loss transfers to the customer. The effect of material non-recurring events related to product liabilities is provided for when they become known. The Company has not experienced any material product liabilities in the past.

Impairment of Long-Lived Assets

In accordance with Statement of Financial Accounting Standards ("SFAS") No. 144, *Accounting for Impairment or Disposal of Long-lived Assets* ("SFAS 144"), long-lived assets, such as property and equipment, and purchased intangibles subject to amortization, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of the asset is measured by comparison of its carrying amount to future net cash flows the asset is expected to generate. If such assets are considered to be impaired, the impairment to be recognized is measured as the amount by which the carrying amount of the asset exceeds its fair value.

The Company assesses the recoverability of goodwill and intangible assets not subject to amortization under SFAS No. 142, *Goodwill and Other Intangible Assets* ("SFAS 142"). See Goodwill below.

Accounts Receivable

The Company sells to most of its customers on a recurring basis, primarily through distributors with which the Company maintains long-term relationships. As a result, bad debt experience has not been material. The allowance for doubtful accounts is determined on a specific identification basis by a review of those accounts that are significantly in arrears. There can be no assurance that a distributor or a large direct sale customer with overdue accounts receivable balances will not develop financial difficulties and default on payment. See Consolidated Balance Sheets for allowance amounts.

Inventory

The Company offers a wide variety of standard products and as a matter of policy does not discontinue products. On an ongoing basis, component parts found to be obsolete through design or process changes are disposed of and charged to material cost. The Company reviews on-hand balances of products and component parts against specific criteria. Products and component parts without usage or that have excess quantities on hand are evaluated. An inventory reserve is then established for the full inventory carrying value of those products and component parts deemed to be obsolete or slow moving. See Note 6 to the Financial Statements for inventory reserve amounts.

Goodwill

The Company acquired its Korean operations in September 1998 using the purchase method. As a result, goodwill is reflected on the Consolidated Balance Sheet. A valuation based on the cash flow method was performed at December 27, 2008 and December 29, 2007. It was determined that the value of the goodwill was not impaired. There is no assurance that the value of the acquired company will not decrease in the future due to changing business conditions. See Note 8 to the Financial Statements for goodwill amounts.

Accruals

The Company makes estimates related to certain employee benefits and miscellaneous accruals. Estimates for employee benefit accruals are based on management's assessments of estimated liabilities related to workers' compensation, health care benefits and annual contributions to an employee stock ownership plan ("ESOP"), established in 2004 as part of the Company's retirement plan. Estimates for miscellaneous accruals are based on management's assessment of estimated liabilities for costs incurred.

The Company accrues for health care benefit costs under a self-funded plan. The Company purchases re-insurance for both specific and aggregate stop losses on claims that exceed \$115 thousand on an individual basis and approximately \$6.3 million on an aggregate basis.

New Accounting Pronouncements

In September 2006, the Financial Accounting Standards Board ("FASB") issued SFAS No. 157. SFAS 157 defines fair value, establishes a framework for measuring fair value in accordance with generally accepted accounting principles, and expands disclosures about fair value measurements. SFAS 157 is effective for fiscal years beginning after November 15, 2007. In February 2008, the FASB deferred the effective date of SFAS No. 157 until the fiscal year beginning after November 15, 2008 for all non-financial assets and non-financial liabilities, except those that are recognized or disclosed at fair value in the financial statements on a recurring basis (at least annually). The partial adoption of SFAS No. 157 for financial assets and liabilities did not have a material effect on the Company's Consolidated Financial Statements. The remaining requirements of SFAS 157 are not expected to have a material effect on the Company's Consolidated Financial Statements.

In December 2007, the FASB issued SFAS No. 141 (revised 2007), *Business Combinations* ("SFAS 141R"). SFAS 141R establishes principles and requirements for an acquiring entity to recognize and measure in its financial statements the identifiable assets acquired, the liabilities assumed, any noncontrolling interest in the acquiree and the goodwill acquired. SFAS 141R expands on required disclosures to improve the statement users' abilities to evaluate the nature and financial effects of business combinations. SFAS 141R is effective for fiscal years beginning after December 15, 2008. The adoption of SFAS 141R is not expected to have a material impact on the Company's Consolidated Financial Statements.

In December 2007, the FASB issued SFAS No. 160, *Noncontrolling Interests in Consolidated Financial Statements—an amendment of ARB No. 51* ("SFAS 160"). SFAS 160 requires that a noncontrolling interest in a subsidiary be reported within equity and the amount of consolidated net income attributable to the noncontrolling interest be identified in the consolidated financial statements. SFAS 160 calls for consistency in the manner of reporting changes in the parent's ownership interest and requires fair value measurement of any noncontrolling equity investment retained in a deconsolidation. SFAS No. 160 also establishes disclosure requirements that clearly identify and distinguish between the interests of the parent and the interests of the noncontrolling owners. SFAS No. 160 is effective for fiscal years beginning after December 15, 2008. The adoption of SFAS 160 is not expected to have a material impact on the Company's Consolidated Financial Statements.

In March 2008, the FASB issued SFAS No. 161, *Disclosures about Derivative Instruments and Hedging Activities — an amendment of FASB Statement No. 133* (“SFAS 161”). This statement amends SFAS No. 133 by requiring enhanced disclosures about an entity’s derivative instruments and hedging activities, but does not change SFAS No. 133’s scope or accounting. SFAS 161 requires increased qualitative, quantitative and credit-risk disclosures about the entity’s derivative instruments and hedging activities. SFAS 161 is effective for fiscal years, and interim periods within those fiscal years, beginning after November 15, 2008, with earlier adoption permitted. The adoption of SFAS 161 is not expected to have a material impact on the Company’s Consolidated Financial Statements.

In April 2008, The FASB issued FASB Staff Position (“FSP”) 142-3, *Determination of the Useful Life of Intangible Assets* (“FSP 142-3”), which amends the factors that should be considered in developing renewal or extension assumptions used to determine the useful life of a recognized intangible asset under FASB Statement No. 142, *Goodwill and Other Intangible Assets*. (“SFAS 142”) The intent of this FSP is to improve the consistency between the useful life of a recognized intangible asset under SFAS 142 and the period of expected cash flows used to measure the fair value of the asset under FASB Statement No. 141 (revised 2007), *Business Combinations*, and other U.S. generally accepted accounting principles (GAAP). FSP 142-3 is effective for fiscal years beginning after December 15, 2008. The adoption of FSP 142-3 is not expected to have a material impact on the Company’s Consolidated Financial Statements.

In June 2008, the FASB issued FSP EITF 03-6-1, *Determining Whether Instruments Granted in Share-Based Payment Transactions Are Participating Securities*, which addresses whether instruments granted in share-based payment transactions are participating securities prior to vesting and, therefore, need to be included in the earnings allocation in computing earnings per share (EPS) under the two-class method described in paragraphs 60 and 61 of FASB Statement No. 128, *Earnings per Share*. FSP EITF 03-6-1 is effective for fiscal years beginning after December 15, 2008, and interim periods within those years. The adoption of FSP EITF 03-6-1 is not expected to have a material impact on the Company’s Consolidated Financial Statements.

Off Balance Sheet Arrangements

The Company does not engage in any off balance sheet financing arrangements. In particular, the Company does not have any interest in variable interest entities, which include special purpose entities and structured finance entities.

The Company uses the equity method of accounting to account for its investments in Sun China, WhiteOak and High Country Tek. The Company does not have a majority ownership in or exercise control over any of the entities. The Company does not believe that its investments in Sun China, WhiteOak, or High Country Tek qualify as Variable Interest Entities, within the scope of FASB Interpretation (FIN) No. 46(R), *Consolidation of Variable Interest Entities (revised December 2003)*, an interpretation of ARB No. 51, nor are they material to the financial statements of the Company at December 27, 2008.

Seasonality

The Company generally has experienced increased sales during the second quarter of the year largely as a result of the order patterns of our customers. As a result, the Company’s second quarter net sales, income from operations, and net income historically are the highest of any quarter during the year.

Inflation

The impact of inflation on the Company’s operating results has been moderate in recent years, reflecting generally lower rates of inflation in the economy. While inflation has not had, and the Company does not expect that it will have, a material impact upon operating results, there is no assurance that the Company’s business will not be affected by inflation in the future.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

The Company is exposed to market risk from changes in interest rates on borrowed funds, which could affect its results of operations and financial condition. The Company has managed this risk by its ability to select the interest rate on its debt financing at LIBOR plus 1.5% or the Bank's Base Rate, whichever is more advantageous. The Company had no variable-rate debt outstanding at December 27, 2008, and December 29, 2007.

The Company's exposure to foreign currency exchange fluctuations relates primarily to the direct investment in its facilities in the United Kingdom, Germany, and Korea. The Company does not use financial instruments to hedge foreign currency exchange rate changes.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

Index to financial statements:

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REPORT OF INDEPENDENT REGISTERED CERTIFIED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of
Sun Hydraulics Corporation:

We have audited the accompanying consolidated balance sheets of Sun Hydraulics Corporation (a Florida corporation) and subsidiaries (collectively, The Company) as of December 27, 2008 and December 29, 2007, and the related consolidated statements of operations, shareholders' equity and comprehensive income, and cash flows for each of the three years in the period ended December 27, 2008. We also have audited Sun Hydraulics Corporation and subsidiaries internal control over financial reporting as of December 27, 2008, based on criteria established in *Internal Control – Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The Company's management is responsible for these financial statements, for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting. Our responsibility is to express an opinion on these financial statements and an opinion of the Company's internal control over financial reporting based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement and whether effective internal control over financial reporting was maintained in all material respects. Our audits of the consolidated financial statements included examining, on a test basis, evidence supporting the amounts and disclosures in the consolidated financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall consolidated financial statement presentation. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the consolidated financial statements.

Because of its inherent limitation, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Sun Hydraulics Corporation and subsidiaries as of December 27, 2008 and December 29, 2007, and the results of its operations and its cash flows for each of the three years in the period ended December 27, 2008 in conformity with accounting principles generally accepted in the United States of America. Also, in our opinion, Sun Hydraulics Corporation and subsidiaries maintained, in all material respects, effective internal control over financial reporting as of December 27, 2008, based on criteria established in *Internal Control – Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

/s/ Kirkland, Russ, Murphy & Tapp, P.A.
Clearwater, Florida
February 27, 2009

Sun Hydraulics Corporation
Consolidated Balance Sheets
(in thousands, except for share information)

	December 27, 2008	December 29, 2007
Assets		
Current assets:		
Cash and cash equivalents	\$ 35,176	\$ 19,191
Restricted cash	127	146
Accounts receivable, net of allowance for doubtful accounts of \$92 and \$215	12,502	17,029
Inventories	9,960	11,421
Income taxes receivable	1,353	—
Deferred income taxes	259	301
Other current assets	1,290	1,210
Total current assets	60,667	49,298
Property, plant and equipment, net	57,726	56,999
Other assets	3,992	4,483
Total assets	\$ 122,385	\$ 110,780
Liabilities and shareholders' equity		
Current liabilities:		
Accounts payable	\$ 3,258	\$ 5,668
Accrued expenses and other liabilities	5,546	4,857
Long-term debt due within one year	147	417
Dividends payable	1,499	1,484
Income taxes payable	—	674
Total current liabilities	10,450	13,100
Long-term debt due after one year	125	284
Deferred income taxes	4,871	5,108
Other noncurrent liabilities	383	406
Total liabilities	15,829	18,898
Commitments and contingencies (Note 19)	—	—
Shareholders' equity:		
Preferred stock, 2,000,000 shares authorized, par value \$0.001, no shares outstanding	—	—
Common stock, 20,000,000 shares authorized, par value \$0.001, 16,658,271 and 16,493,300 shares outstanding	17	16
Capital in excess of par value	38,042	34,390
Retained earnings	70,099	51,844
Accumulated other comprehensive income	(1,602)	5,632
Total shareholders' equity	106,556	91,882
Total liabilities and shareholders' equity	\$ 122,385	\$ 110,780

The accompanying Notes to the Consolidated Financial Statements are an integral part of these financial statements.

Sun Hydraulics Corporation
Consolidated Statements of Operations
(in thousands, except per share data)

	For the year ended		
	December 27, 2008	December 29, 2007	December 30, 2006
Net sales	\$ 178,278	\$ 167,374	\$ 142,282
Cost of sales	119,161	112,524	98,350
Gross profit	59,117	54,850	43,932
Selling, engineering and administrative expenses	22,740	21,215	18,881
Operating income	36,377	33,635	25,051
Interest (income)/expense, net	(793)	(411)	126
Foreign currency transaction (gain) loss, net	(467)	(42)	187
Miscellaneous income, net	(92)	(283)	(165)
Income before income taxes	37,729	34,371	24,903
Income tax provision	11,994	12,240	8,680
Net income	\$ 25,735	\$ 22,131	\$ 16,223
Basic net income per common share	\$ 1.55	\$ 1.35	\$ 0.99
Weighted average basic shares outstanding	16,603	16,437	16,317
Diluted net income per common share	\$ 1.55	\$ 1.34	\$ 0.99
Weighted average diluted shares outstanding	16,634	16,498	16,408
Dividends declared per share	\$ 0.450	\$ 0.337	\$ 0.267

The accompanying Notes to the Consolidated Financial Statements are an integral part of these financial statements.

Sun Hydraulics Corporation
Consolidated Statement of Shareholders' Equity and Comprehensive Income
(in thousands)

	Preferred Shares	Preferred Stock	Common Shares	Common stock	Capital in excess of par value	Unearned Compensation related to restricted stock	Retained earnings	Accumulated other comprehensive income	Treasury stock	Total
Balance, December 31, 2005	—	\$ —	16,340	\$ 16	\$32,466	\$ (741)	\$23,401	\$ 1,647	\$ (349)	\$ 56,440
Adjustment of unearned compensation, restricted stock					(741)	741				—
Forfeitures, restricted stock			(3)							
Shares issued, Restricted Stock			45							—
Shares issued, Stock Options			47		162					162
Shares issued, ESPP			21		238					238
Shares issued, ESOP			87		1,183					1,183
Shares retired, Repurchase Agreement			(263)		(3,300)				923	(2,377)
Purchase of treasury stock									(574)	(574)
Stock-based compensation					573					573
Tax benefit of stock-based compensation					381					381
Dividends issued							(4,345)			(4,345)
Comprehensive income:										
Net income							16,223			16,223
Foreign currency translation adjustments								2,896		2,896
Comprehensive income:										19,119
Balance, December 30, 2006	—	\$ —	16,274	\$ 16	\$30,962	\$ —	\$35,279	\$ 4,543	\$ —	\$ 70,800
Forfeitures, restricted stock			(2)							
Shares issued, Restricted Stock			27							—
Shares issued, Stock Options			73		287					287
Shares issued, ESPP			18		272					272
Shares issued, ESOP			103		1,386					1,386
Stock-based compensation					735					735
Tax benefit of stock-based compensation					748					748
Dividends issued							(5,566)			(5,566)
Comprehensive income:										
Net income							22,131			22,131
Foreign currency translation adjustments								1,089		1,089
Comprehensive income:										23,220
Balance, December 29, 2007	—	\$ —	16,493	\$ 16	\$34,390	\$ —	\$51,844	\$ 5,632	\$ —	\$ 91,882
Shares issued, Restricted Stock			40	1						1
Shares issued, Other Comp			3							—
Shares issued, Stock Options			17		87					87
Shares issued, ESPP			16		359					359
Shares issued, ESOP			89		2,255					2,255

Sun Hydraulics Corporation
Consolidated Statements of Cash Flows
(in thousands)

	For the year ended		
	December 27, 2008	December 29, 2007	December 30, 2006
Cash flows from operating activities:			
Net income	\$ 25,735	\$ 22,131	\$ 16,223
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization	7,096	6,341	5,849
(Gain) loss on disposal of assets	138	(74)	12
Stock-based compensation expense	896	735	573
Stock options income tax benefit	(55)	(748)	(381)
Allowance for doubtful accounts	(123)	75	30
Provision for slow moving inventory	102	251	157
Provision for deferred income taxes	(195)	575	326
(Increase) decrease in:			
Accounts receivable	4,650	(3,187)	(2,972)
Inventories	1,359	(1,286)	(2,673)
Income tax receivable	(1,353)	—	236
Other current assets	(80)	(224)	(122)
Other assets, net	465	(310)	(29)
Increase (decrease) in:			
Accounts payable	(2,410)	856	(10)
Accrued expenses and other liabilities	2,944	2,184	1,385
Income taxes payable	(619)	814	989
Other noncurrent liabilities	(23)	108	17
Net cash from operating activities	<u>38,527</u>	<u>28,241</u>	<u>19,610</u>
Cash flows from investing activities:			
Investment in High Country Tek	—	(2,375)	—
Capital expenditures	(10,874)	(12,591)	(9,525)
Proceeds from dispositions of equipment	99	192	28
Net cash used in investing activities	<u>(10,775)</u>	<u>(14,774)</u>	<u>(9,497)</u>
Cash flows from financing activities:			
Proceeds from debt	—	—	7,000
Repayment of debt	(416)	(371)	(8,312)
Proceeds from exercise of stock options	87	287	162
Stock options income tax benefit	55	748	381
Proceeds from stock issued	359	272	238
Payments for purchase of treasury stock	—	—	(2,951)
Dividends to shareholders	(7,465)	(5,167)	(4,349)
Net cash used in financing activities	<u>(7,380)</u>	<u>(4,231)</u>	<u>(7,831)</u>
Effect of exchange rate changes on cash and cash equivalents	<u>(4,406)</u>	<u>604</u>	<u>1,385</u>
Net (decrease) increase in restricted cash	(19)	28	(295)
Net increase in cash and cash equivalents	<u>15,985</u>	<u>9,812</u>	<u>3,962</u>
Cash and cash equivalents, beginning of period	<u>19,337</u>	<u>9,497</u>	<u>5,830</u>
Cash and cash equivalents, end of period	<u>\$ 35,303</u>	<u>\$ 19,337</u>	<u>\$ 9,497</u>
Supplemental disclosure of cash flow information:			
Cash paid:			
Interest	\$ 31	\$ 51	\$ 312
Income taxes	\$ 14,216	\$ 11,599	\$ 7,510
Supplemental disclosure of noncash transactions:			
Common stock issued to ESOP through accrued expenses and other liabilities	\$ 2,255	\$ 1,386	\$ 1,183

The accompanying Notes to the Consolidated Financial Statements are an integral part of these financial statements.

SUN HYDRAULICS CORPORATION
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS
(in thousands, except per share data)

1. BUSINESS

Sun Hydraulics Corporation, and its wholly-owned subsidiaries and joint ventures, design, manufacture, and sell screw-in cartridge valves and manifolds used in hydraulic systems. The Company has facilities in the United States, the United Kingdom, Germany, Korea, France, and China. Sun Hydraulics Corporation (“Sun Hydraulics”), with its main offices located in Sarasota, Florida, designs, manufactures, and sells primarily through distributors. Sun Hydraulik Holdings Limited (“Sun Holdings”), a wholly-owned subsidiary of Sun Hydraulics, was formed to provide a holding company for the European market operations; its wholly-owned subsidiaries are Sun Hydraulics Limited (a British corporation, “Sun Ltd.”) and Sun Hydraulik GmbH (a German corporation, “Sun GmbH”). Sun Ltd. operates a manufacturing and distribution facility located in Coventry, England, and Sun GmbH operates a manufacturing and distribution facility located in Erkelenz, Germany. Sun Hydraulics Korea Corporation (“Sun Korea”), a wholly-owned subsidiary of Sun Hydraulics, located in Inchon, South Korea, operates a manufacturing and distribution facility. Sun Hydraulics, SARL (“Sun France”), a wholly-owned subsidiary of Sun Hydraulics, located in Bordeaux, France, operates a sales and engineering support facility. Sun Hydraulics Systems (Shanghai) Co., Ltd. (“Sun China”), a 50/50 joint venture between Sun Hydraulics and Links Lin, the owner of Sun Hydraulics’ Taiwanese distributor, is located in Shanghai, China, and operates a manufacturing and distribution facility. WhiteOak Controls, Inc. (“WhiteOak”), a 40% equity method investment, located in Mediapolis, Iowa, designs and produces complementary electronic control products. Sun Hydraulics acquired a 48% equity method investment in High Country Tek, Inc. (“HCT”), on November 30, 2007 (see Note 3). HCT, located in Nevada City, California, designs and manufactures ruggedized electronic/hydraulic control solutions for mobile equipment markets. Sun Hydraulics opened a sales office in Bangalore, India during 2007 to develop new business opportunities in the Indian market.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

A summary of the significant accounting policies followed in the preparation of the Company’s consolidated financial statements is set forth below:

Principles of Consolidation

The consolidated financial statements include the accounts and operations of Sun Hydraulics and its direct and indirect subsidiaries. All significant intercompany accounts and transactions are eliminated in consolidation. The Company uses the equity method of accounting for its investments in Sun China, WhiteOak, and HCT. The Company does not have a majority ownership in or exercise control over these entities.

Critical Accounting Policies and Estimates

The Company currently only applies judgment and estimates, which may have a material effect on the eventual outcome of assets, liabilities, revenues and expenses, for impairment of long-lived assets, accounts receivable, inventory, goodwill and accruals. The following explains the basis and the procedure for each account where judgment and estimates are applied.

Revenue Recognition

The Company reports revenues, net of sales incentives, when title passes and risk of loss transfers to the customer. The effect of material non-recurring events is provided for when they become known.

Impairment of Long-Lived Assets

In accordance with Statement of Financial Accounting Standards (“SFAS”) No. 144, *Accounting for Impairment or Disposal of Long-lived Assets* (“SFAS 144”), long-lived assets, such as property and equipment, and purchased intangibles subject to amortization, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of the asset is measured by comparison of its carrying amount to future net cash flows the asset is expected to generate. If such assets are considered to be impaired, the impairment to be recognized is measured as the amount by which the carrying amount of the asset exceeds its fair market value.

The Company assesses the recoverability of goodwill and intangible assets not subject to amortization under SFAS No. 142, *Goodwill and Other Intangible Assets* (“SFAS 142”). See Goodwill below.

Accounts Receivable

The Company sells to most of its customers on a recurring basis, primarily through distributors with which the Company maintains long-term relationships. As a result, bad debt experience has not been material. The allowance for doubtful accounts is determined on a specific identification basis by a review of those accounts that are significantly in arrears. There can be no assurance that a distributor or a large direct sale customer with overdue accounts receivable balances will not develop financial difficulties and default on payment. See the consolidated balance sheets for allowance amounts.

Inventory

The Company offers a wide variety of standard products and as a matter of policy does not discontinue products. On an ongoing basis, component parts found to be obsolete through design or process changes are disposed of and charged to material cost. The Company reviews on-hand balances of products and component parts against specific criteria. Products and component parts without usage or that have excess quantities on hand are evaluated. An inventory reserve is then established for the full inventory carrying value of those products and component parts deemed to be obsolete or slow moving. See Note 6 to the Financial Statements for inventory reserve amounts.

Goodwill

The Company acquired its Korean operations in September 1998 using the purchase method. As a result, goodwill is reflected on the consolidated balance sheet. A valuation based on the cash flow method was performed at December 27, 2008 and December 29, 2007. It was determined that the value of the goodwill was not impaired. There is no assurance that the value of the acquired company will not decrease in the future due to changing business conditions. See Note 8 to the Financial Statements for goodwill amounts.

Accruals

The Company makes estimates related to certain employee benefits and miscellaneous accruals. Estimates for employee benefit accruals are based on management’s assessments of estimated liabilities related to workers’ compensation, health care benefits and annual contributions to an employee stock ownership plan (“ESOP”), established in 2004 as part of the Company’s retirement plan. Estimates for miscellaneous accruals are based on management’s assessment of estimated liabilities for costs incurred.

The Company accrues for health care benefit costs under a self-funded plan. The Company purchases re-insurance for both specific and aggregate stop losses on claims that exceed \$115 on an individual basis and approximately \$6,300 on an aggregate basis.

Stock Split

On June 19, 2007, the Company declared a three-for-two stock split, effected in the form of a 50% stock dividend, to shareholders of record on June 30, 2007, payable on July 15, 2007. The Company issued approximately 5,500,000 shares of common stock as a result of the stock split. The effect of the stock split on outstanding shares, earnings per share and dividends per share has been retroactively applied to all periods presented.

Management Estimates and Assumptions

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

Cash and Cash Equivalents

The Company considers all short-term highly liquid investments purchased with an original maturity of three months or less to be cash equivalents.

Inventories

Inventories are valued at the lower of cost or market, cost being determined on a first-in, first-out basis. Obsolete and slow moving inventory is evaluated and reserves are established based on specific criteria determined by management.

Property, Plant and Equipment

Property, plant and equipment is stated at cost. Expenditures for repairs and improvements that significantly add to the productive capacity or extend the useful life of an asset are capitalized. Repairs and maintenance are expensed as incurred. Depreciation is computed using the straight line method over the following useful lives:

	<u>Years</u>
Computer equipment	3 - 5
Machinery and equipment	4 - 12
Furniture and fixtures	4 - 10
Leasehold and land improvements	5 - 15
Buildings	40

Gains or losses on the retirement, sale, or disposition of property, plant, and equipment are reflected in the Consolidated Statement of Operations in the period in which the assets are taken out of service.

Valuation Assessment of Long-Lived Assets

Management periodically evaluates long-lived assets for potential impairment and will provide for impairment whenever events or changes in circumstances indicate the carrying amount of the assets may not be fully recoverable. Assets are reviewed for utilization on a monthly basis by management in conjunction with employees who work directly with the assets.

Goodwill

Goodwill, which represents the excess of the purchase price of acquisition over the fair value of the net assets acquired and other acquisition costs, is carried at cost. In accordance with SFAS 142, goodwill is not amortized by the Company. Instead, SFAS 142 requires goodwill to be reviewed for impairment on an annual basis, or more frequently if events or circumstances indicate possible impairment.

Other Assets

Other assets consist of equity investments in the Company's joint ventures in Sun China, WhiteOak and HCT. The equity investments were recorded at cost and have been adjusted for investment income or loss and dividend distributions for each quarterly period since their origin.

Revenue Recognition

Sales are recognized when products are shipped and title to the products is passed to the customer. Sales incentives are granted to customers based upon the volume of purchases. These sales incentives are recorded at the time of sales as a reduction of gross sales.

Shipping and Handling Costs

Shipping and handling costs billed to distributors and customers are recorded in revenue. Shipping costs incurred by the Company are recorded in cost of goods sold.

Foreign Currency Translation and Transactions

The Company follows the translation policy provided by SFAS No. 52, *Foreign Currency Translation*. The Pound Sterling is the functional currency of Sun Ltd. The Euro is the functional currency of Sun GmbH. The South Korean Won is the functional currency of Sun Korea. The U.S. Dollar is the functional currency for Sun Hydraulics and the reporting currency for the consolidated group. The assets and liabilities of Sun Ltd., Sun GmbH, and Sun Korea are translated at the exchange rate in effect at the balance sheet date, and income and expense items are translated at the average annual rate of exchange for the period. The resulting unrealized translation gains and losses are included as a

component of shareholders' equity designated as "accumulated other comprehensive income." Realized gains and losses from foreign currency transactions are included in the Consolidated Statement of Operations.

Income Taxes

The Company follows the income tax policy provided by SFAS No. 109, Accounting for Income Taxes ("SFAS 109"). This Statement provides for a liability approach under which deferred income taxes are provided for based upon enacted tax laws and rates applicable to the periods in which the taxes become payable. These differences result from items reported differently for financial reporting and income tax purposes, primarily depreciation, accrued expenses and reserves.

In July 2006, the FASB issued FIN 48, *Accounting for Uncertainty in Income Taxes, and Related Implementation Issues* ("FIN 48"). FIN 48 clarifies the accounting for uncertainty in income taxes recognized in a Company's financial statements in accordance with FASB No. 109, *Accounting for Income Taxes*. FIN 48 prescribes a recognition threshold and measurement attribute for a tax position taken or expected to be taken in a tax return. FIN 48 also provides guidance on derecognition, classification, interest and penalties, accounting in interim periods, disclosure, and transition. The Company adopted FIN 48 effective January 1, 2007. The adoption of FIN 48 did not have a material effect on the Company's Consolidated Financial Statements. The Company had unrecognized tax benefits of \$36 and \$34, including accrued interest, at December 27, 2008, and December 29, 2007, respectively. See Note 13 to the Financial Statements for tax amounts.

Stock-Based Compensation

The Company accounts for stock compensation in accordance with Statement of Financial Accounting Standard ("SFAS") No. 123R, *Share-Based Payment*, ("SFAS 123R") for its share-based compensation plans. All share-based compensation cost is measured at the grant date, based on the fair value of the award, and is recognized as an expense in earnings over the requisite service period. Benefits of tax deductions in excess of recognized compensation costs are reported as a financing cash inflow.

3. ACQUISITIONS

On November 30, 2007, Sun Hydraulics acquired shares of preferred and common stock totaling 48% of the outstanding shares of HCT. HCT designs and manufactures ruggedized electronic/hydraulic control solutions for mobile equipment markets; products include digital valve controllers, designed specifically for the hydraulic industry, and a patented suite of software products called Intella(TM). The products' modular architecture allows customers to add functionality, reliability, and precision, while preserving their investment in prior application development. HCT complements the Company's electro-hydraulic efforts, including its earlier investment in WhiteOak Controls. The acquisition price paid by the Company was \$2,375. The excess paid over pro rata share of net assets of \$1,363 is for developed technology, which is included within the investment account, and is being amortized over a period of 10 years. Sun Hydraulics will have the option to purchase the remaining outstanding stock of HCT after December 31, 2009, at a purchase price that will approximate fair market value.

4. FAIR VALUE OF FINANCIAL INSTRUMENTS

SFAS No. 157, *Fair Value Measurements* ("SFAS 157"), defines fair value, establishes a framework for measuring fair value in accordance with generally accepted accounting principles, and expands disclosures about fair value measurements. SFAS 157 establishes a three-tier fair value hierarchy which prioritizes the inputs used in measuring fair value as follows:

Level 1. Observable inputs such as quoted prices in active markets;

Level 2. Inputs, other than the quoted prices in active markets, that are observable either directly or indirectly; and

Level 3. Unobservable inputs in which there is little or no market data, which require the reporting entity to develop its own assumptions.

The Company does not have any assets or liabilities measured at fair value on a recurring basis at December 27, 2008. The Company did not have any fair value adjustments for assets and liabilities measured at fair value on a nonrecurring basis during the year ended December 27, 2008.

The carrying amounts of cash and cash equivalents, restricted cash, accounts receivable, other current assets, accounts payable, accrued expenses and other liabilities approximate fair value based on their short-term status.

The carrying amount of long-term debt approximates fair value, as the interest rates on the debt approximate rates currently available to the Company for debt with similar terms and remaining maturities.

5. RESTRICTED CASH

On December 27, 2008 and December 29, 2007, the Company had restricted cash of \$127 and \$146, respectively. \$44 and \$60 of the 2008 and 2007 restricted cash balance, respectively, consisted of reserves for customs and excise taxes in the U.K. operation. The restricted amount was calculated as an estimate of two months of customs and excise taxes for items coming into the Company's U.K. operations and was held with Lloyd's TSB in the U.K. The remaining 2008 and 2007 amounts relate to a guarantee of VAT in our France operation. The guarantee is held with Cr dit Agricole Bank in France.

6. INVENTORIES

	December 27, 2008	December 29, 2007
Raw materials	\$ 4,428	\$ 4,577
Work in process	2,757	3,863
Finished goods	3,523	3,627
Provision for slow moving inventory	(748)	(646)
Total	\$ 9,960	\$ 11,421

7. PROPERTY, PLANT, AND EQUIPMENT

	December 27, 2008	December 29, 2007
Machinery and equipment	\$ 69,337	\$ 69,152
Office furniture and equipment	9,712	10,475
Buildings	25,025	26,635
Leasehold and land improvements	2,599	1,816
Land	5,334	2,974
	\$ 112,007	\$ 111,052
Less: Accumulated depreciation	(59,217)	(59,910)
Construction in progress	4,936	5,857
Total	\$ 57,726	\$ 56,999

Depreciation expense for the years ended December 27, 2008, December 29, 2007, and December 30, 2006 totaled \$7,069, \$6,314, and \$5,822, respectively.

8. GOODWILL

On December 27, 2008 and December 29, 2007, the Company had \$715 of goodwill related to its acquisition of Sun Korea.

Valuation models reflecting the expected future cash flow projections were used to value Sun Korea at December 27, 2008 and December 29, 2007. The analysis indicated that there was no impairment of the carrying value of the goodwill.

9. OTHER ASSETS

	December 27, 2008	December 29, 2007
Goodwill	\$ 715	\$ 715
Equity investment in joint venture		
Sun China	1,081	874
WhiteOak Controls, Inc.	33	64
High Country Tek, Inc.	1,744	2,325
Loan acquisition costs, net of amortization of \$94 and \$66	76	104
Developed technology, net of accumulated amortization of \$94 and \$67	176	203
Deposits with suppliers	143	166
Other	24	32
Total	<u>\$ 3,992</u>	<u>\$ 4,483</u>

10. ACCRUED EXPENSES AND OTHER LIABILITIES

	December 27, 2008	December 29, 2007
Compensation and benefits	\$ 4,277	\$ 3,058
Insurance	723	1,006
Other	546	793
Total	<u>\$ 5,546</u>	<u>\$ 4,857</u>

11. LONG-TERM DEBT

	December 27, 2008	December 29, 2007
\$35,000 revolving line of credit, collateralized by U.S. assets, interest rate Libor + 1.5% or Bank's Base Rate at Company's discretion (1.97% at December 27, 2008), due August 1, 2011.	\$ —	\$ —
\$2,400 12-year mortgage note on the German facility, fixed interest rate of 6.05%, due September 30, 2008.	—	260
10-year notes, fixed interest rates ranging from 3.5-5.1%, collateralized by equipment in Germany, due between 2009 and 2011.	272	441
	272	701
Less amounts due within one year	(147)	(417)
Total	<u>\$ 125</u>	<u>\$ 284</u>

The remaining principal payments are due as follows: 2009—\$147; 2010—\$93; 2011—\$32.

On August 11, 2005, the Company completed a refinancing of its existing debt in the U.S. with Fifth Third Bank (the "Bank"). The new financing consists of a secured revolving line of credit of \$35 million (the "Line of Credit"). The Line of Credit is secured by the Company's U.S. assets, including its manufacturing facilities, and requires monthly payments of interest. The Line of Credit has a floating interest rate based on LIBOR plus 1.5% or the Bank's Base Rate, whichever is more advantageous. The Line of Credit is payable in full on August 1, 2011, but maturity may be accelerated by the Bank upon an Event of Default (as defined). Prepayment may be made without penalty or premium at any time upon the required notice to the Bank. At December 27, 2008, there was no outstanding balance on the Line of Credit.

The Line of Credit is subject to debt covenants including: 1) Debt (as defined) to Tangible Net Worth (as defined) ratio of not more than 1.5:1.0, 2) Funded Debt (as defined) to EBITDA (as defined) ratio of not more than 2.5:1.0, and 3) EBIT (as defined) to Interest Expense (as defined) ratio of not less than 1.1:1.0; and requires the Company to maintain its primary domestic deposit accounts with the Bank. As of December 27, 2008, the Company was in compliance with all debt covenants.

12. DIVIDENDS TO SHAREHOLDERS

The Company declared dividends of \$7,480, \$5,566, and \$4,345 to shareholders in 2008, 2007, and 2006, respectively.

The Company declared the following regular quarterly dividends to shareholders of record on the last day of the respective quarter:

	<u>2008</u>	<u>2007</u>	<u>2006</u>
First quarter	\$0.090	\$0.067	\$0.067
Second quarter	0.090	0.090	0.067
Third quarter	0.090	0.090	0.067
Fourth quarter	0.090	0.090	0.067

These dividends were paid on the 15th day of each month following the date of declaration. In addition, the Company declared a special cash dividend of \$0.09 per share to shareholders of record as of May 15, 2008, that was paid on May 30, 2008.

13. INCOME TAXES

Deferred income tax assets and liabilities are provided to reflect the future tax consequences of differences between the tax basis of assets and liabilities and their reported amounts in the financial statements.

For financial reporting purposes, income before income taxes includes the following components:

	For the year ended		
	December 27, 2008	December 29, 2007	December 30, 2006
United States	\$ 24,820	\$ 22,789	\$ 16,341
Foreign	12,909	11,582	8,562
Total	\$ 37,729	\$ 34,371	\$ 24,903

The components of the income tax provision (benefit) are as follows:

	For the year ended		
	December 27, 2008	December 29, 2007	December 30, 2006
Current tax expense:			
United States	\$ 7,711	\$ 7,853	\$ 5,355
State and local	503	464	269
Foreign	3,975	3,348	2,730
Total current	12,189	11,665	8,354
Deferred tax expense (benefit):			
United States	42	217	324
State and local	13	(4)	(7)
Foreign	(250)	362	9
Total deferred	(195)	575	326
Total income tax provision	\$ 11,994	\$ 12,240	\$ 8,680

The reconciliation between the effective income tax rate and the U.S. federal statutory rate is as follows:

	For the year ended		
	December 27, 2008	December 29, 2007	December 30, 2006
U.S. federal taxes at statutory rate	\$ 13,205	\$ 12,043	\$ 8,467
Increase(decrease)			
Net residual tax on foreign distributions	827	—	169
Foreign tax credit	—	(27)	—
Benefit of ETI exclusion	—	—	(217)
Domestic production activity deduction	(519)	(381)	(110)
Research and Development Tax Credit—Current Year	(241)	—	—
Research and Development Tax Credit—Prior Years	(849)	—	—
Foreign income taxed at lower rate	(793)	(344)	(172)
Nondeductible items	94	116	—
Effect of federal rate change	—	106	—
State and local taxes, net	516	460	262
Change in reserve	2	(174)	—
Korea withholding tax	—	107	—
Other	(248)	334	281
Income tax provision	\$ 11,994	\$ 12,240	\$ 8,680

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income taxes. The temporary differences that give rise to significant portions of the deferred tax assets and liabilities as of December 27, 2008 and December 29, 2007 are presented below:

	<u>December 27, 2008</u>	<u>December 29, 2007</u>
Deferred tax assets:		
Current:		
Accrued expenses and other	\$ 259	\$ 301
Total current deferred tax assets	<u>259</u>	<u>301</u>
Noncurrent:		
Accrued expenses and other	387	57
Deferred royalty income	<u>29</u>	<u>47</u>
Total noncurrent deferred tax assets	<u>416</u>	<u>104</u>
Deferred tax liabilities:		
Noncurrent:		
Depreciation	(5,287)	(5,137)
Other	<u>—</u>	<u>(75)</u>
Total noncurrent deferred tax liabilities	<u>(5,287)</u>	<u>(5,212)</u>
Net noncurrent deferred tax liability	<u>\$ (4,871)</u>	<u>\$ (5,108)</u>

A valuation allowance to reduce the deferred tax assets reported is required if, based on the weight of the evidence, it is more likely than not that some portion or all of the deferred tax assets will not be realized. For the fiscal years ended 2008 and 2007, management has determined that a valuation allowance is not required.

The Company intends and has the ability to indefinitely reinvest the earnings of its non-U.S. subsidiaries, which reflect full provision for non-U.S. income taxes, to expand its international operations. These earnings relate to ongoing operations and, at December 27, 2008, cumulative earnings were approximately \$28 million. Accordingly, no provision has been made for U.S. income taxes that might be payable upon repatriation of such earnings. In the event any earnings of non-U.S. subsidiaries are repatriated, the Company will provide U.S. income taxes upon repatriation of such earnings, which will be offset by applicable foreign tax credits, subject to certain limitations. Due to specific circumstances, during the years ended December 27, 2008 and December 30, 2006, the Company repatriated \$6,000 and \$5,000, respectively, from its foreign subsidiaries. U.S. income taxes due based on the repatriations have been provided for in the above income tax provisions.

In July 2006, the FASB issued FIN 48, *Accounting for Uncertainty in Income Taxes, and Related Implementation Issues* ("FIN 48"). FIN 48 clarifies the accounting for uncertainty in income taxes recognized in a Company's financial statements in accordance with FASB No. 109, *Accounting for Income Taxes*. FIN 48 prescribes a recognition threshold and measurement attribute for a tax position taken or expected to be taken in a tax return. FIN 48 also provides guidance on derecognition, classification, interest and penalties, accounting in interim periods, disclosure, and transition. The Company adopted FIN 48 effective January 1, 2007. The adoption of FIN 48 did not have a material effect on the Company's Consolidated Financial Statements.

The following is a roll-forward of the Company's unrecognized tax benefits:

Unrecognized tax benefits—January 1, 2007	\$ 208
Increases from positions taken during prior periods	34
Lapse of statute of limitations	(208)
Unrecognized tax benefits—December 29, 2007	\$ 34
Increases from positions taken during prior periods	2
Lapse of statute of limitations	—
Unrecognized tax benefits—December 27, 2008	\$ 36

As of January 1, 2007, the Company had an unrecognized tax benefit of \$208 including accrued interest. During 2007, the Company recognized the tax benefit of \$208, which had a favorable effect on the effective tax rate for the period ended December 29, 2007.

At December 27, 2008, the Company had an unrecognized tax benefit of \$36 including accrued interest. If recognized, the unrecognized tax benefit would have a favorable effect on the effective tax rate in future periods. The Company recognizes interest and penalties related to income tax matters in income tax expense. Interest related to the unrecognized tax benefit has been recognized and included in income tax expense. Interest accrued as of December 27, 2008, is not considered material to the Company's Consolidated Financial Statements.

The Company files U.S. federal income tax returns as well as income tax returns in various states and foreign jurisdictions. The Company is no longer subject to income tax examinations by tax authorities for years before 2004 for the majority of tax jurisdictions.

The Company's federal returns are currently under examination in the United States for the periods 2004 through 2007. To date, there have been no material assessments related to this audit.

14. STOCK OPTION PLANS

During 1996, the Company adopted the 1996 Stock Option Plan (the "Stock Option Plan"), which provides for the grant of incentive stock options and nonqualified stock options for the purchase of up to an aggregate of 2,250,000 shares of the Company's common stock by officers, employees and directors of the Company. Under the terms of the plan, incentive stock options may be granted to employees at an exercise price per share of not less than the fair value per common share on the date of the grant (not less than 110% of the fair value in the case of holders of more than 10% of the Company's voting stock). Nonqualified stock options may be granted at the discretion of the Company's Board of Directors. The maximum term of an option may not exceed 10 years, and options become exercisable at such times and in such installments as determined by the Board of Directors.

A summary of the Company's stock option plan for the years ended December 27, 2008, December 29, 2007, and December 30, 2006 is summarized as follows:

	Number of shares	Exercise price range		Weighted average exercise price
		(share amounts are in thousands)		
Under option, December 31, 2005 (61 shares exercisable)	160	\$3.00	— 12.27	\$ 4.24
Granted	(45)	\$3.00	— 5.49	\$ 3.61
Exercised	(2)	\$5.49	— 5.49	\$ 5.49
Forfeitures	—	\$—	—	\$ —
Under option, December 30, 2006 (84 shares exercisable)	113	\$3.00	— 12.27	\$ 4.47
Granted	—	\$—	—	\$ —
Exercised	(72)	\$3.00	— 12.27	\$ 3.97
Forfeitures	(5)	\$3.11	— 5.49	\$ 3.39
Under option, December 29, 2007 (32 shares exercisable)	36	\$3.00	— 12.27	\$ 5.62
Granted	—	\$—	—	\$ —
Exercised	(17)	\$3.00	— 12.27	\$ 5.23
Forfeitures	—	\$—	—	\$ —
Under option, December 27, 2008 (16 shares exercisable)	19	\$3.00	— 12.27	\$ 5.95

All options listed above vest over three to five years with a maximum term of seven to ten years.

A summary of outstanding and exercisable options at December 27, 2008 is summarized as follows:

Options Outstanding				Options Exercisable	
Range of exercise prices	Number of shares	Weighted-average		Number of shares	Weighted average exercise price
		Remaining contractual life	Exercise price		
\$ 3.00	5	1.83	3.00	5	3.00
3.11	1	2.83	3.11	1	3.11
3.15	2	1.75	3.15	2	3.15
5.49	7	2.75	5.49	7	5.49
12.27	4	3.92	12.27	1	12.27

There were no stock options granted during 2008, 2007 and 2006.

In September 2006, the Company adopted the 2006 Stock Option Plan ("2006 Plan"), which provides for the grant of incentive stock options and nonqualified stock options for the purchase of up to an aggregate of 750,000 shares of the Company's common stock by officers, employees and directors of the Company. The Company adopted the 2006 Plan due to the expiration of the Company's 1996 Stock Option Plan in 2006. Under the terms of the plan, incentive stock options may be granted to employees at an exercise price per share of not less than the fair value per common share on the date of the grant (not less than 110% of the fair value in the case of holders of more than 10% of the Company's voting stock). Nonqualified stock options may be granted at the discretion of the Company's Board of Directors. The maximum term of an option may not exceed 10 years, and options become exercisable at such times and in such installments as determined by the Board of Directors. No awards have been granted under the 2006 Plan.

During 2001, the Company adopted the 2001 Restricted Stock Plan, which provides for the grant of restricted stock of up to an aggregate of 618,750 shares of the Company's common stock to officers, employees, consultants and directors of the Company. Under the terms of the plan, the minimum period before any shares become non-forfeitable may not be less than six months. Restricted stock granted prior to January 1, 2006, was accounted for using the measurement and recognition principles of APB 25. Effective January 1, 2006, the company adopted the provisions of SFAS 123R. Accordingly, compensation cost has been measured at the date of the grant and is recognized in earnings over the

period in which the shares vest. Restricted stock expense for the years ended December 27, 2008, December 27, 2007, and December 30, 2006 totaled \$722, \$507, and \$413, respectively. At December 27, 2008, 127,589 shares remained available to be issued through the Restricted Stock Plan.

A summary of the Company's restricted stock plan for the years ended December 27, 2008, December 29, 2007, and December 30, 2006 is summarized as follows:

	<u>Number of shares</u>	<u>Weighted average grant-date fair value</u>
Nonvested balance at December 31, 2005	142	\$ 6.30
Granted	45	13.48
Vested	(92)	4.92
Forfeitures	(3)	8.21
Nonvested balance at December 30, 2006	92	\$ 11.14
Granted	27	33.75
Vested	(49)	9.40
Forfeitures	(2)	12.90
Nonvested balance at December 29, 2007	68	\$ 21.22
Granted	40	18.90
Vested	(35)	18.24
Forfeitures	—	—
Nonvested balance at December 27, 2008	<u>73</u>	<u>\$ 21.45</u>

The Company has \$1,310 of total unrecognized compensation cost related to restricted stock awards granted under the Plan as of December 27, 2008. That cost is expected to be recognized over a weighted average period of 1.48 years. Pursuant to SFAS 123R, the \$741 of unearned compensation recorded as a reduction to stockholders' equity as of December 31, 2005, was reversed against the Company's additional paid-in-capital.

During 2001, the Company adopted the Employee Stock Purchase Plan ("ESPP"), which became effective August 1, 2001. Most employees are eligible to participate. Employees who choose to participate are granted an opportunity to purchase common stock at 85 percent of market value on the first or last day of the quarterly purchase period, whichever is lower. The ESPP authorizes the issuance, and the purchase by employees, of up to 731,250 shares of common stock through payroll deductions. No employee is allowed to buy more than \$25,000 of common stock in any year, based on the market value of the common stock at the beginning of the purchase period. Employees purchased 15,971 shares at an average price of \$22.50 and 17,987 shares at an average price of \$15.10, under the ESPP during 2008 and 2007, respectively. The Company recognized \$92 and \$137 of compensation expense during 2008 and 2007, respectively, in accordance with SFAS 123R. At December 27, 2008, 567,771 shares remained available to be issued through the ESPP.

The Company has a Nonemployee Director Equity and Deferred Compensation Plan (the "Plan"), which originally was adopted by the Board of Directors and approved by the shareholders in 2004. The Plan was amended on March 1, 2008 and was approved by the shareholders at the 2008 Annual Meeting. Under the Plan, Directors who are not officers of the Company are paid 250 shares of Company common stock and \$3 in fees for attendance at each meeting of the Board of Directors, as well as each meeting of each Board Committee on which they serve when the committee meeting is not held within one day of a meeting of the Board of Directors. Additionally, the Board of Directors has the authority to increase from time to time, as it deems desirable or appropriate, the number of shares of stock awarded to all or any one or more of the Nonemployee Directors. No more than 25,000 shares of stock, in the aggregate, may be issued under the Plan during any single calendar year. Committee Chairmen currently receive additional fees equal to 25% of normal compensation and the Chairman of the Board is paid twice the amount of normal compensation, with such additional compensation payable in Company common stock. Previously under the Plan, Nonemployee Directors were paid \$5 of which half was paid in Company common stock.

Directors may elect under the Plan to receive all or part of their cash fees in Company stock and to defer receipt of their fees until a subsequent year. The Plan authorizes the issuance of up to 180,000 shares of common stock.

Directors were granted 7,961 and 3,854 shares during 2008 and 2007, respectively. At December 27, 2008, there were 16,907 deferred stock units outstanding. Deferred stock units are treated as liabilities in accordance with FAS 123R. The Company recognized director stock compensation expense of \$79 and \$189, for 2008 and 2007, respectively. At December 27, 2008, 153,653 shares remained available to be issued through the Plan.

15. STOCK REPURCHASE PLANS

In June 2006, the Company's Board of Directors authorized the repurchase of up to \$2.5 million of Company stock, to be completed no later than January 15, 2007. The stock purchases were made in the open market. Market purchases were made subject to restrictions relating to volume, price and timing in an effort to minimize the impact of the purchases on the market for the Company's securities. The amount of the stock repurchased was used to continue to fund the Company's employee stock ownership and employee stock purchase plans. Under the plan, which was completed in July 2006, the Company had repurchased 203,073 shares at an average price of \$12.31. All shares were retired during the year.

In December 2005, the Company's Board of Directors authorized the repurchase of up to \$2.0 million of Company stock, to be completed no later than January 15, 2007. The stock purchases were made in the open market. Market purchases were made subject to restrictions relating to volume, price and timing in an effort to minimize the impact of the purchases on the market for the Company's securities. The amount of the stock repurchases was set based upon the anticipated number of shares that were required to fund the Company's ESOP, and employee stock purchase plan, through fiscal year 2006. The Company had repurchased 123,750 shares at an average cost of \$12.58 per share and 34,047 shares at an average cost of \$13.01 for the periods ending December 31, 2005 and December 30, 2006, respectively. Of the 123,750 shares purchased in 2005, 97,500 were retired prior to December 31, 2005. All remaining shares and purchases were retired during 2006.

16. EARNINGS PER SHARE

The following table represents the computation of basic and diluted net income per common share as required by SFAS No. 128 "Earnings Per Share" (in thousands, except per share data):

	<u>December 27, 2008</u>	<u>December 29, 2007</u>	<u>December 30, 2006</u>
Net income	\$ 25,735	\$ 22,131	\$ 16,223
Basic weighted average number of common shares outstanding	16,603	16,437	16,317
Basic net income per common share	\$ 1.55	\$ 1.35	\$ 0.99
Effect of dilutive stock options	31	61	91
Diluted weighted average number of common shares outstanding	16,634	16,498	16,408
Diluted net income per common share	\$ 1.55	\$ 1.34	\$ 0.99

17. EMPLOYEE BENEFITS

The Company has a defined contribution retirement plan covering substantially all of its eligible United States employees. Employer contributions under the retirement plan amounted to approximately \$4,333, \$2,573, and \$2,452 during 2008, 2007, and 2006, respectively.

The Company provides supplemental pension benefits to its employees of foreign operations in addition to mandatory benefits included in local country payroll tax statutes. These supplemental pension benefits amounted to approximately \$256, \$348, and \$425 during 2008, 2007, and 2006, respectively.

In June 2004, the Company's Board of Directors approved the establishment of an Employee Stock Ownership Plan ("ESOP") as the discretionary match portion of its 401(k) retirement plan. Prior to 2004, discretionary matches to the 401(k) plan were made in cash. The Company contributes to the ESOP for all eligible United States employees. Under the ESOP, which is 100% company funded, the Company allocates common stock to each participant's account. The allocation is generally a percentage of a participant's compensation as determined by the Board of Directors on an annual basis. The ESOP is accounted for under Statement of Position 93-6 *Employer's Accounting for Employee Stock Ownership Plans*.

The Company made annual contributions to the ESOP of 69,311 and 102,989 shares in January of 2008 and 2007, related to fiscal years 2007 and 2006, respectively. Contributions were based on annual compensation. All shares receive regular quarterly dividends payable to the ESOP to cover plan expenses.

In May 2008, the Board declared its first shared distribution dividend. The shared distribution dividend rewards employees through a contribution into their retirement accounts and concurrently rewards shareholders with a special cash dividend. As a result of the shared distribution, the Company contributed 20,185 shares to the ESOP in May 2008.

The Company incurred retirement benefit expense under the ESOP of approximately \$3,221, \$1,498 and \$1,407 during 2008, 2007 and 2006, respectively. The 2008 amount includes both the 3% and 9% shared distributions announced in May 2008, and March 2009, respectively. These amounts are included in the total employer contributions to the retirement plan noted above.

As of January 1, 2007, there were no restrictions on the shares contributed to the ESOP. This allows participants to sell their shares to enable diversification within their individual 401(k) accounts. The Company does not have any repurchase obligations under the ESOP.

During 2008, the Company developed plans for international employees to participate in the shared distributions. Three percent of 2008 wages was accrued for international employees throughout the year. Additionally 9% of 2008 wages was accrued in accordance with the shared distribution announced in March 2009. The Company's foreign operations recognized total expense of approximately \$753. Employees will receive their first contributions in 2009.

The Company awards deferred cash bonuses to key employees of its foreign operations. The deferred cash bonuses are similar to phantom stock units, in that such bonuses are tied to the value of the Company's common stock. Awards are recognized over the deferral period as variable plan awards. The Company recognized approximately \$35, \$539 and \$219 of compensation expense in 2008, 2007 and 2006, respectively, related to the awards.

18. SEGMENT REPORTING

The individual subsidiaries comprising the Company operate predominantly in a single industry as manufacturers and distributors of hydraulic components. The Company is multinational with operations in the United States, and subsidiaries in the United Kingdom, Germany, Korea, and France. Amounts for France, due to their immateriality, are included with the U.S. In computing operating profit for the foreign subsidiaries, no allocations of general corporate expenses have been made. Management bases its financial decisions by the geographical location of its operations.

Total assets of the foreign subsidiaries are those assets related to the operation of those companies. United States assets consist of all other operating assets of the Company. Segment information is as follows:

	United States	Korea	Germany	United Kingdom	Elimination	Consolidated
2008						
Sales to unaffiliated customers	\$111,180	\$17,455	\$27,356	\$22,287	\$ —	\$ 178,278
Intercompany sales	28,656	—	245	2,282	(31,183)	—
Operating income	24,531	1,148	7,693	3,231	(226)	36,377
Total assets	91,855	6,680	10,980	15,049	(2,179)	122,385
Depreciation and amortization	5,139	151	572	1,234		7,096
Capital expenditures	9,904	39	298	633		10,874
2007						
Sales to unaffiliated customers	\$ 99,516	\$20,567	\$24,164	\$23,127	\$ —	\$ 167,374
Intercompany sales	30,344	—	142	2,621	(33,107)	—
Operating income	22,408	2,103	5,955	3,205	(36)	33,635
Total assets	74,026	9,067	12,710	17,079	(2,102)	110,780
Depreciation and amortization	4,488	178	556	1,119		6,341
Capital expenditures	9,339	284	125	2,843		12,591
2006						
Sales to unaffiliated customers	\$ 89,077	\$16,368	\$19,128	\$17,709	\$ —	\$ 142,282
Intercompany sales	25,809	—	106	2,990	(28,905)	—
Operating income	16,608	2,212	4,046	2,330	(145)	25,051
Total assets	59,505	7,580	8,187	13,756	(1,843)	87,185
Depreciation and amortization	4,206	150	510	983		5,849
Capital expenditures	8,408	122	238	757		9,525

Sales to unaffiliated customers represent sales from each of the individual subsidiaries. For information on sales to geographic locations, see the Comparisons of the Years Ended December 27, 2008, and December 29, 2007, in Management's Discussion and Analysis of Financial Condition and Results. Operating income is total sales and other operating income less operating expenses. Segment operating income does not include interest income/expense, foreign currency transaction gain/loss, and net miscellaneous income/expense.

Included in U.S. sales to unaffiliated customers were export sales of \$37,073, \$29,283, and \$23,110, during 2008, 2007, and 2006, respectively. Export sales to Canada and Asia/Pacific totaling, \$24,824, \$19,981, and \$15,853, during 2008, 2007, and 2006, respectively, make up the majority of these export sales. Additionally, export sales to Europe were \$10,708, \$8,027 and \$5,346 during 2008, 2007, and 2006, respectively.

19. COMMITMENTS AND CONTINGENCIES

The Company is not a party to any legal proceedings other than routine litigation incidental to its business. In the opinion of management, the amount of ultimate liability with respect to these actions will not materially affect the results of operations, financial position or cash flows of the Company.

OPERATING LEASES — The Company leases a manufacturing facility in Lenexa, Kansas and production support facilities in Sarasota, Florida under operating leases having initial terms expiring between 2009 and 2010. The lease for the manufacturing facility in Kansas is expiring in May, 2009, and represents approximately 17,000 square feet of space. The lease for the production support facilities in Florida is expiring in April, 2010, and represents approximately 10,000 square feet. Total rental expense for the years ended December 27, 2008, 2007 and 2006 was approximately \$236, \$221 and \$226, respectively.

Future minimum lease payments on operating leases are as follows:

2009	149
2010	<u>33</u>
Total minimum lease payments	<u>\$182</u>

INSURANCE — The Company accrues for health care benefit costs under a self-funded plan. The Company purchases re-insurance for both specific and aggregate stop losses on claims that exceed \$115 on an individual basis and approximately \$6,300 on an aggregate basis. The Company records a liability for all unresolved claims at the anticipated cost to the Company at the end of the period based on management’s assessment. The Company believes it has adequate reserves for all self-insurance claims.

20. NEW ACCOUNTING PRONOUNCEMENTS

In September 2006, the Financial Accounting Standards Board (“FASB”) issued SFAS No. 157. SFAS 157 defines fair value, establishes a framework for measuring fair value in accordance with generally accepted accounting principles, and expands disclosures about fair value measurements. SFAS 157 is effective for fiscal years beginning after November 15, 2007. In February 2008, the FASB deferred the effective date of SFAS No. 157 until the fiscal year beginning after November 15, 2008 for all non-financial assets and non-financial liabilities, except those that are recognized or disclosed at fair value in the financial statements on a recurring basis (at least annually). The partial adoption of SFAS No. 157 for financial assets and liabilities did not have a material effect on the Company’s Consolidated Financial Statements. The remaining requirements of SFAS 157 are not expected to have a material effect on the Company’s Consolidated Financial Statements.

In December 2007, the FASB issued SFAS No. 141 (revised 2007), *Business Combinations* (“SFAS 141R”). SFAS 141R establishes principles and requirements for an acquiring entity to recognize and measure in its financial statements the identifiable assets acquired, the liabilities assumed, any noncontrolling interest in the acquiree and the goodwill acquired. SFAS 141R expands on required disclosures to improve the statement users’ abilities to evaluate the nature and financial effects of business combinations. SFAS 141R is effective for fiscal years beginning after December 15, 2008. The adoption of SFAS 141R is not expected to have a material impact on the Company’s Consolidated Financial Statements.

In December 2007, the FASB issued SFAS No. 160, *Noncontrolling Interests in Consolidated Financial Statements—an amendment of ARB No. 51* (“SFAS 160”). SFAS 160 requires that a noncontrolling interest in a subsidiary be reported within equity and the amount of consolidated net income attributable to the noncontrolling interest be identified in the consolidated financial statements. SFAS 160 calls for consistency in the manner of reporting changes in the parent’s ownership interest and requires fair value measurement of any noncontrolling equity investment retained in a deconsolidation. SFAS No. 160 also establishes disclosure requirements that clearly identify and distinguish between the interests of the parent and the interests of the noncontrolling owners. SFAS No. 160 is effective for fiscal years beginning after December 15, 2008. The adoption of SFAS 160 is not expected to have a material impact on the Company’s Consolidated Financial Statements.

In March 2008, the FASB issued SFAS No. 161, *Disclosures about Derivative Instruments and Hedging Activities — an amendment of FASB Statement No. 133* (“SFAS 161”). This statement amends SFAS No. 133 by requiring enhanced disclosures about an entity’s derivative instruments and hedging activities, but does not change SFAS No. 133’s scope or accounting. SFAS 161 requires increased qualitative, quantitative and credit-risk disclosures about the entity’s derivative instruments and hedging activities. SFAS 161 is effective for fiscal years, and interim periods within those fiscal years, beginning after November 15, 2008, with earlier adoption permitted. The adoption of SFAS 161 is not expected to have a material impact on the Company’s Consolidated Financial Statements.

In April 2008, The FASB issued FASB Staff Position (“FSP”) 142-3, *Determination of the Useful Life of Intangible Assets* (“FSP 142-3”), which amends the factors that should be considered in developing renewal or extension assumptions used to determine the useful life of a recognized intangible asset under

FASB Statement No. 142, *Goodwill and Other Intangible Assets*. (“SFAS 142”) The intent of this FSP is to improve the consistency between the useful life of a recognized intangible asset under SFAS 142 and the period of expected cash flows used to measure the fair value of the asset under FASB Statement No. 141 (revised 2007), *Business Combinations*, and other U.S. generally accepted accounting principles (GAAP). FSP 142-3 is effective for fiscal years beginning after December 15, 2008. The adoption of FSP 142-3 is not expected to have a material impact on the Company’s Consolidated Financial Statements.

In June 2008, the FASB issued FSP EITF 03-6-1, *Determining Whether Instruments Granted in Share-Based Payment Transactions Are Participating Securities*, which addresses whether instruments granted in share-based payment transactions are participating securities prior to vesting and, therefore, need to be included in the earnings allocation in computing earnings per share (EPS) under the two-class method described in paragraphs 60 and 61 of FASB Statement No. 128, *Earnings per Share*. FSP EITF 03-6-1 is effective for fiscal years beginning after December 15, 2008, and interim periods within those years. The adoption of FSP EITF 03-6-1 is not expected to have a material impact on the Company’s Consolidated Financial Statements.

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

None.

ITEM 9A. CONTROLS AND PROCEDURES

Controls and Procedures

The Company's management, with the participation of the Chief Executive Officer and Chief Financial Officer, after evaluating the effectiveness of the Company's "disclosure controls and procedures" (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended) as of the end of the period covered by this report, have concluded that our disclosure controls and procedures are effective and are designed to ensure that the information we are required to disclose is recorded, processed, summarized and reported within the necessary time periods. Our disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by us in reports that we file or submit pursuant to the Securities Exchange Act of 1934, as amended, are accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

Internal Control Over Financial Reporting

Management is responsible for establishing and maintaining adequate internal control over financial reporting.

There were no changes in the Company's internal control over financial reporting during the quarter ended December 27, 2008, that materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

Management's Report on Internal Control over Financial Reporting

Management of the Company is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Exchange Act Rule 13a-15(f). The Company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. Internal control over financial reporting includes those policies and procedures that:

- pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Company;
- provide reasonable assurance that transactions are recorded, as necessary, to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the Company are being made only in accordance with authorizations of management and directors of the Company; and
- provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Management, with the participation of the Chief Executive Officer and Chief Financial Officer, conducted an evaluation of the effectiveness of the Company's internal control over financial reporting based on the criteria set forth in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on this evaluation under the Internal Control—Integrated Framework, management, with the participation of the Chief Executive Officer and Chief Financial Officer, concluded that the internal control over financial reporting was effective as of December 27, 2008.

The effectiveness of the Company's internal control over financial reporting as of December 27, 2008 has been audited by Kirkland, Russ, Murphy and Tapp, P.A., an independent registered certified public accounting firm, as stated in their report.

ITEM 9B. OTHER INFORMATION

None.

PART III.

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS OF THE REGISTRANT AND CORPORATE GOVERNANCE MATTERS

Executive Officers

The information required by this item with respect to our executive officers is set forth in our 2009 Proxy Statement under the caption “Governance of the Company” and is incorporated herein by reference.

Directors

The information required by this item with respect to our board of directors and committees thereof is set forth in our 2009 Proxy Statement under the caption “Governance of the Company” and is incorporated herein by reference.

Section 16(a) Beneficial Ownership Reporting Compliance

The information required by this item with respect to Section 16(a) beneficial ownership reporting compliance is set forth in our 2009 Proxy Statement under the caption “Compliance with Section 16(a) of the Securities Exchange Act of 1934” and is incorporated herein by reference.

Code of Business Conduct and Ethics

The information required by this item with respect to our Code of Business Conduct and Ethics is set forth in our 2009 Proxy Statement under the caption “Governance of the Company” and is incorporated herein by reference.

ITEM 11. EXECUTIVE COMPENSATION

The information required by this item is set forth under the caption “Executive Compensation” in our 2009 Proxy Statement and is incorporated herein by reference.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

The information required by this item with respect to equity compensation plans is set forth under the caption “Equity Compensation Plan Information” in our 2009 Proxy Statement and with respect to security ownership of certain beneficial owners, directors and executive officers is set forth under the caption “Security Ownership of Certain Beneficial Owners and Management” in our 2009 Proxy Statement and is incorporated herein by reference.

ITEM 13. CERTAIN RELATIONSHIPS, RELATED TRANSACTIONS AND DIRECTOR INDEPENDENCE

The information required by this item is set forth under the captions “Compensation Committee Interlocks and Insider Participation,” “Certain Relationships and Related Transactions” and “Independence and Committees of the Board of Directors” in our 2009 Proxy Statement and is incorporated herein by reference.

ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES

The information required by this item is set forth under the caption “Independent Registered Public Accounting Firm” in our 2009 Proxy Statement and is incorporated herein by reference.

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

1. The following financial statements are included in Part II, Item 8:

Report of Independent Registered Certified Public Accounting Firm	28
Consolidated Balance Sheets as of December 27, 2008 and December 29, 2007	29
Consolidated Statements of Operations for the years ended December 27, 2008, December 29, 2007, and December 30, 2006	30
Consolidated Statements of Shareholders' Equity and Comprehensive Income for the years ended December 27, 2008, December 29, 2007, and December 30, 2006	31
Consolidated Statements of Cash Flows for the years ended December 27, 2008, December 29, 2007, and December 30, 2006	32
Notes to the Consolidated Financial Statements	33

All other schedules are omitted as the required information is inapplicable or the information is presented in the consolidated financial statements and notes thereto in Item 8 above.

2. Exhibits:

Exhibit Number	Exhibit Description
3.1	Amended and Restated Articles of Incorporation of the Company (previously filed as Exhibit 3.1 in the Pre-Effective Amendment No. 4 to the Company's Registration Statement on Form S-1 filed on December 19, 1996 (File No. 333-14183) and incorporated herein by reference).
3.2	Amended and Restated Bylaws of the Company (previously filed as Exhibit 3.2 in the Company's Quarterly report on Form 10-Q for the quarter ended October 2, 1999 and incorporated herein by reference).
3.2.1	Certificate of Amendment to Amended and Restated Bylaws of the Company (previously filed as Exhibit 3.2.1 in the Company's Quarterly report on Form 10-Q for the quarter ended March 27, 2004 and incorporated herein by reference).
3.2.2	Certificate of Amendment of Bylaws of the Company (previously filed as Exhibit 3.1 in the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2007 and incorporated herein by reference).
10.1+	Form of Indemnification Agreement (previously filed as Exhibit 10.4 in the Pre-Effective Amendment No. 4 to the Company's Registration Statement on Form S-1 filed on December 19, 1996 (File No. 333-14183) and incorporated herein by reference).
10.2	Form of Distributor Agreement (Domestic) (previously filed as Exhibit 10.1 in the Company's Registration Statement on Form S-1 filed on October 15, 1996 (File No. 333-14183) and incorporated herein by reference).

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- 10.3 Form of Distributor Agreement (International) (previously filed as Exhibit 10.2 in the Company's Registration Statement on Form S-1 filed on October 15, 1996 (File No. 333-14183) and incorporated herein by reference).
- 10.4 Mortgage, dated April 11, 1996, between Sun Hydraulik GmbH and Dresdner Bank (previously filed as Exhibit 4.19 in the Company's Registration Statement on Form S-1 filed on October 15, 1996 (File No. 333-14183) and incorporated herein by reference).
- 10.5 Credit and Security Agreement dated August 11, 2005, between the Company, as Borrower, and Fifth Third Bank, as Lender (previously filed as Exhibit 4.1 to the Company's Quarterly Report on Form 10-Q for the quarter ended October 1, 2005 and incorporated herein by reference).
- 10.6 Renewal and Future Advance Revolving Line of Credit Promissory Note dated August 11, 2005, between the Company, as Borrower, and Fifth Third Bank, as Lender (previously filed as Exhibit 4.2 to the Company's Quarterly Report on Form 10-Q for the quarter ended October 1, 2005 and incorporated herein by reference).
- 10.7 Renewed, Amended and Restated Mortgage and Security Agreement dated August 11, 2005, between the Company, as Mortgagor, and Fifth Third Bank, as Mortgagee (previously filed as Exhibit 4.3 to the Company's Quarterly Report on Form 10-Q for the quarter ended October 1, 2005 and incorporated herein by reference).
- 10.8+ 1996 Sun Hydraulics Corporation Stock Option Plan (previously filed as Exhibit 10.3 in the Pre-Effective Amendment No. 4 to the Company's Registration Statement on Form S-1 filed on December 19, 1996 (File No. 333-14183) and incorporated herein by reference).
- 10.9+ Amendment No. 1 to 1996 Stock Option Plan (previously filed as Exhibit 10.4 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 1997 and incorporated herein by reference).
- 10.10+ Forms of agreement for grants under the Sun Hydraulics Corporation 1996 Stock Option Plan (previously filed as Exhibit 10.12+ to the Company's Quarterly Report on Form 10-Q for the quarter ended September 25, 2004 and incorporated herein by reference).
- 10.11+ Sun Hydraulics Corporation 2006 Stock Option Plan (previously filed as Exhibit 99.2 to the Company's Form 8-K filed on September 14, 2006 and incorporated herein by reference).
- 10.12+ Sun Hydraulics Corporation Employee Stock Award Program (previously filed as Exhibit 4 to the Company's registration statement on Form S-8 filed on July 20, 1999, and incorporated herein by reference).
- 10.13+ 2001 Sun Hydraulics Corporation Restricted Stock Plan (previously filed as Exhibit 4 to the Company's registration statement on Form S-8 filed on June 12, 2001 (file No. 333-62816), and incorporated herein by reference).
- 10.14+ Sun Hydraulics Corporation Employee Stock Purchase Plan (previously filed as Exhibit 4 to the Company's registration statement on Form S-8 filed on July 27, 2001 (file No. 333-66008), and incorporated herein by reference).

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- 10.15+ Sun Hydraulics Corporation 2004 Nonemployee Director Equity and Deferred Compensation Plan (As Amended and Restated Effective March 1, 2008) (previously filed as Appendix A to the Company's Proxy Statement for the 2008 Annual Meeting of Shareholders filed with the Commission on April 25, 2008 and incorporated herein by reference).
- 10.16+ Form of Performance Share Agreement (previously filed as Exhibit 99.1 to the Company's Form 8-K filed on December 16, 2004 and incorporated herein by reference).
- 10.17+ The Sun Hydraulics Corporation 401(k) and ESOP Retirement Plan dated December 12, 2007.
- 10.18+ First Amendment to Sun Hydraulics Corporation 401(K) and ESOP Retirement Plan dated September 22, 2008.
- 10.19+ Second Amendment to Sun Hydraulics Corporation 401(K) and ESOP Retirement Plan dated December 16, 2008.
- 10.20 Securities Purchase Agreement between Sun Hydraulics Corporation and High Country Tek, Inc., dated November 30, 2007 (previously filed as Exhibit 99.1 in the Company's Form 8-K filed on November 30, 2007 and incorporated herein by reference).
- 14 Code of Ethics (previously filed as Exhibit 14 in the Company's Annual report on Form 10-K for the year ended December 31, 2005 and incorporated herein by reference).
- 21 Subsidiaries of the Registrant (previously filed as Exhibit 21 in the Company's Annual report on Form 10-K for the year ended December 31, 2005 and incorporated herein by reference).
- 23.1 Kirkland, Russ, Murphy and Tapp, P.A. Consent of Independent Registered Certified Public Accounting Firm.
- 31.1 CEO Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 31.2 CFO Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 32.1 CEO Certification pursuant to 18 U.S.C. § 1350.
- 32.2 CFO Certification pursuant to 18 U.S.C. § 1350.
- + Executive management contract or compensatory plan or arrangement.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Sarasota, State of Florida on March 11, 2009.

SUN HYDRAULICS CORPORATION

By: /s/ Allen J. Carlson

Allen J. Carlson, President and
Chief Executive Officer

Pursuant to requirements of the Securities Exchange Act of 1934, this Report has been signed by the following persons on behalf of the Registrant and in the capacities indicated as of March 11, 2009.

<u>Signature</u>	<u>Title</u>
<u>/s/ Allen J. Carlson</u> Allen J. Carlson	President, Chief Executive Officer and Director
<u>/s/ Tricia L. Fulton</u> Tricia L. Fulton	Chief Financial Officer (Principal Financial and Accounting Officer)
<u>/s/ Marc Bertoneche</u> Marc Bertoneche	Director
<u>/s/ John S. Kahler</u> John S. Kahler	Director
<u>/s/ Christine L. Koski</u> Christine L. Koski	Director
<u>/s/ Philippe Lemaitre</u> Philippe Lemaitre	Director
<u>/s/ Ferdinand E. Megerlin</u> Ferdinand E. Megerlin	Director, Chairman of the Board of Directors
<u>/s/ David N. Wormley</u> David N. Wormley	Director

THE SUN HYDRAULICS CORPORATION 401(K) AND ESOP RETIREMENT PLAN

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THE SUN HYDRAULICS CORPORATION 401(K) AND ESOP RETIREMENT PLAN

THIS SUN HYDRAULICS CORPORATION 401(K) AND ESOP RETIREMENT PLAN is hereby amended and restated by Sun Hydraulics Corporation (herein referred to as the "Employer"). The Sun Hydraulics Corporation 401(k) and ESOP Retirement Plan (hereinafter referred to as the "Plan") and its related Trust are intended to qualify as a profit-sharing plan and trust under Code Sections 401(a) and 501(a); the cash or deferred arrangement forming part of the Plan is intended to qualify under Code Section 401(k); and the ESOP component forming part of the Plan is intended to be an employee stock ownership plan as defined in Code Section 4975(e)(7). The Plan is intended also to comply with Title I of the Act. Contribution in Employer Stock to the ESOP portion of the Plan shall be made as determined by the Board. The provisions of the Plan and Trust shall be construed and applied consistent with the foregoing.

WITNESSETH:

WHEREAS, the Employer heretofore established the Plan effective January 1, 1979, (hereinafter called the "Effective Date"), then known as Sun Hydraulics Corporation Retirement Plan, in recognition of the contribution made to its successful operation by its employees and for the exclusive benefit of its eligible employees; and

WHEREAS, under the terms of the Plan, the Employer has the ability to amend the Plan, provided the Trustee joins in such amendment if the provisions of the Plan affecting the Trustee are amended;

WHEREAS, effective January 1, 2004, except as otherwise provided, the Employer in accordance with the provisions of the Plan pertaining to amendments thereof, amended and restated the Plan to establish as a part thereof, an employee stock ownership plan as defined by Code Section 4975(e)(7) within the Plan, and to rename the Plan as "The Sun Hydraulics Corporation 401(k) and ESOP Retirement Plan.

NOW, THEREFORE, the Employer, in accordance with the provisions of the Plan pertaining to amendments thereto, hereby further amends and restates the Plan in its entirety, effective January 1, 2007, except as expressly provided otherwise herein, to provide as follows:

ARTICLE I
DEFINITIONS

1.1 “Act” means the Employee Retirement Income Security Act of 1974, as it may be amended from time to time.

1.2 “Acquisition Loan” means an installment obligation incurred by the Trustee in connection with the purchase of Employer Stock, either made by the Employer or guaranteed by the Employer, as more fully described in Article V.

1.3 “Administrator” means the person or entity designated by the Employer pursuant to Section 2.2 to administer the Plan on behalf of the Employer.

1.4 “Affiliated Employer” means any corporation which is a member of a controlled group of corporations (as defined in Code Section 414(b)) which includes the Employer; any trade or business (whether or not incorporated) which is under common control (as defined in Code Section 414(c)) with the Employer; any organization (whether or not incorporated) which is a member of an affiliated service group (as defined in Code Section 414(m)) which includes the Employer; and any other entity required to be aggregated with the Employer pursuant to Regulations under Code Section 414(o).

1.5 “Aggregate Account” means, with respect to each Participant, the value of all accounts maintained on behalf of a Participant, whether attributable to Employer or Employee contributions, subject to the provisions of Article VIII.

1.6 “Anniversary Date” means the last day of the Plan Year.

1.7 “Beneficiary” means the person (or entity) to whom the share of a deceased Participant’s total account is payable, subject to the restrictions of Sections 7.2 and 7.6.

1.8 “Board” means the Board of Directors of the Employer.

1.9 “Catch-up Contributions” means elective deferrals that are made to this Plan by a Participant pursuant to Section 4.3 below that are in excess of an otherwise applicable plan limit and that are made by a Participant who is aged 50 or over by the end of his or her taxable year. An otherwise applicable plan limit is a limit in the Plan that applies to elective deferrals without regard to Catch-up Contributions, such as the limit on Annual Additions imposed by Section 4.10, the annual dollar limit on elective deferrals under Section 402(g) of the Code, and the limit imposed on elective deferrals to this Plan by the actual deferral percentage (ADP) test described in Section 401(k)(3) of the Code and Section 4.6 of this Plan.

1.10 “Code” means the Internal Revenue Code of 1986, as amended or replaced from time to time.

1.11 “Compensation” with respect to any Participant means such Participant’s wages as defined in Code Section 3401(a) and all other payments of compensation by the Employer (in the course of the Employer’s trade or business) for a Plan Year for which the Employer is required to furnish the Participant a written statement under Code Sections 6041(d), 6051(a)(3) and 6052.

Compensation must be determined without regard to any rules under Code Section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the

(a) excluding (even if includible in gross income) reimbursements or other expense allowances, fringe benefits (cash or noncash), moving expenses, deferred compensation, and welfare benefits. Effective May 1, 2002, severance pay is excluded from compensation. Effective July 1, 2002, the following items are excluded from compensation: unrestricted stock grants, restricted stock grants, and non-statutory stock options. Notwithstanding the foregoing, effective January 6, 2004, this Section 1.11(a) is hereby restated to provide as follows: excluding (even if includible in gross income) reimbursements or other expense allowances, fringe benefits (cash or noncash), moving expenses, deferred compensation, welfare benefits, severance pay, unrestricted stock grants, restricted stock grants, non-statutory stock options, and compensation in lieu of notice.

(b) including amounts which are contributed by the Employer pursuant to a salary reduction agreement and which are not includible in the gross income of the Participant under Code Sections 125, 132(f)(4) for Plan Years beginning after December 31, 2000, 402(e)(3), 402(h)(1)(B), 403(b) or 457(b), and Employee contributions described in Code Section 414(h)(2) that are treated as Employer contributions.

For a Participant's initial year of participation, Compensation shall be recognized as of such Employee's effective date of participation pursuant to Section 3.2.

Compensation in excess of \$150,000 (or such other amount provided in the Code) shall be disregarded for all purposes other than for purposes of salary deferral elections pursuant to Section 4.2. Such amount shall be adjusted for increases in the cost of living in accordance with Code Section 401(a)(17)(B), except that the dollar increase in effect on January 1 of any calendar year shall be effective for the Plan Year beginning with or within such calendar year. For any short Plan Year the Compensation limit shall be an amount equal to the Compensation limit for the calendar year in which the Plan Year begins multiplied by the ratio obtained by dividing the number of full months in the short Plan Year by twelve (12). Notwithstanding the foregoing, the annual Compensation of each Participant taken into account in determining allocations for any Plan Year beginning after December 31, 2001, shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with Code Section 401(a)(17)(B).

For Plan Years beginning after December 31, 1996, for purposes of determining Compensation, the family member aggregation rules of Code Section 401(a)(17) and Code Section 414(q)(6) (as in effect prior to the Small Business Job Protection Act of 1996) are eliminated.

If any class of Employees is excluded from the Plan, then Compensation for any Employee who becomes eligible or ceases to be eligible to participate during a Plan Year shall only include Compensation while the Employee is an Eligible Employee.

1.12 “Contract” or “Policy” means any life insurance policy, retirement income policy or annuity contract (group or individual) issued pursuant to the terms of the Plan. In the event of any conflict between the terms of this Plan and the terms of any contract purchased hereunder, the Plan provisions shall control.

1.13 “Deferred Compensation” with respect to any Participant means the amount of the Participant’s total Compensation which has been contributed to the Plan in accordance with the Participant’s deferral election pursuant to Section 4.2 excluding any such amounts distributed as excess “annual additions” pursuant to Section 4.11(a).

1.14 “Designated Investment Alternative” means a specific investment identified by name by the Employer (or such other Fiduciary who has been given the authority to select investment options) as an available investment under the Plan to which Plan assets may be invested by the Trustee pursuant to the investment direction of a Participant. Employer Stock shall not be a Designated Investment Alternative.

1.15 “Directed Investment Option” means one or more of the following:

(a) a Designated Investment Alternative.

(b) any other investment permitted by the Plan and the Participant Direction Procedures to which Plan assets may be invested by the Trustee pursuant to the investment direction of a Participant. For purposes of this subsection, such other investment shall not include Employer Stock.

1.16 “Early Retirement Date” This Plan does not provide for a retirement date prior to Normal Retirement Date.

1.17 “Elective Deferrals” shall mean any contributions made to this Plan, or any other 401(k) savings plan or other cash or deferred arrangement under Sections 401(k), 408(k)(6), 409(p) or 403(b) of the Code, at the election of the Participant in lieu of amounts otherwise payable to the Participant as cash compensation. Elective deferrals shall not, however, include any deferrals properly distributed as excess annual additions.

1.18 “Elective Contribution” means the Employer contributions to the Plan of Deferred Compensation excluding any such amounts distributed as excess “annual additions” pursuant to Section 4.11(a). In addition, any Employer Qualified Non-Elective Contribution made pursuant to Section 4.7(b) which is used to satisfy the “Actual Deferral Percentage” tests shall be considered an Elective Contribution for purposes of the Plan. Any contributions deemed to be Elective Contributions (whether or not used to satisfy the “Actual Deferral Percentage” tests or the “Actual Contribution Percentage” tests) shall be subject to the requirements of Sections 4.2(b) and 4.2(c) and shall further be required to satisfy the nondiscrimination requirements of Regulation 1.401(k)-1(b)(5) and Regulation 1.401(m)-1(b)(5), the provisions of which are specifically incorporated herein by reference.

1.19 “Eligible Employee” means any Employee, subject to the following:

Employees whose employment is governed by the terms of a collective bargaining agreement between Employee representatives (within the meaning of Code Section 7701(a)(46)) and the Employer under which retirement benefits were the subject of good faith bargaining between the parties will not be eligible to participate in this Plan unless such agreement expressly provides for coverage in this Plan.

Employees classified by the Employer as “Interns” shall not be eligible to participate in this Plan.

Employees of Affiliated Employers shall not be eligible to participate in this Plan unless such Affiliated Employers have specifically adopted this Plan in writing.

Employees classified by the Employer as independent contractors who are subsequently determined by the Internal Revenue Service to be Employees shall not be Eligible Employees.

1.20 “Employee” means any person who is employed by the Employer or Affiliated Employer, and excludes any person who is employed as an independent contractor. Employee shall include Leased Employees within the meaning of Code Sections 414(n)(2) and 414(o)(2) unless such Leased Employees are covered by a plan described in Code Section 414(n)(5) and such Leased Employees do not constitute more than 20% of the recipient’s non-highly compensated work force.

1.21 “Employer” means Sun Hydraulics Corporation and any successor which shall maintain this Plan; and any predecessor which has maintained this Plan. The Employer is a corporation, with principal offices in the State of Florida.

1.22 “Employer Stock” means:

(a) Common stock issued by the sponsoring employer (or by a corporation which is a member of the same controlled group) which is readily tradable on an established securities market.

(b) If there is no common stock which meets the requirement of paragraph (a) above, the term Employer Stock means common stock issued by the sponsoring employer (or by a corporation which is a member of the same controlled group) having a combination of voting power and dividend rights equal to or in excess of:

(i) that class of common stock of the sponsoring employer (or of any other such corporation) having the greatest voting power, and

(ii) that class of common stock of the sponsoring employer (or of any other such corporation) having the greatest dividend rights.

(c) Non-callable preferred stock shall be treated as Employer Stock if such stock is convertible at any time into stock, which meets the requirements of (a) and (b) above, and if such conversion is at a conversion price, which (as of the date of the acquisition by the Plan) is reasonable. For purposes of the last preceding sentence, preferred stock shall be treated as non-callable if, after the call, there will be a reasonable opportunity for a conversion which meets the requirements of the last preceding sentence.

(d) For purposes of this Section 1.22, the term “controlled group of corporations” has the meaning given to such term by Code Section 1563(a) (determined without regard to subsections (a)(4) and (e)(3)(C) of Code Section 1563).

(i) For purposes of paragraph (d) above, if the common parent owns directly stock possessing at least fifty (50) percent of the voting power of all classes of stock and at least fifty (50) percent of each class of nonvoting stock in the first tier subsidiary, such subsidiary (and all other corporations below it in the chain which would meet the eighty (80) percent test of Code Section 1563(a) if the first tier subsidiary were the common parent) shall be treated as includible corporations.

(ii) For purposes of paragraph (d) above, if the common parent owns directly stock possessing all of the voting power of all classes of stock and all of the nonvoting stock, in a first tier subsidiary, and if the first tier subsidiary owns directly stock possessing at least fifty (50) percent of the voting power of all classes of stock, and at least fifty (50) percent of each class of nonvoting stock, in a second-tier subsidiary of the common parent, such second-tier subsidiary (and all other corporations below it in the chain which would meet the eighty (80) percent test of Code Section 1563(a) if the second-tier subsidiary were the common parent) shall be treated as includible corporations.

1.23 “ESOP” means the employee stock ownership plan pursuant to Article V satisfying the requirements of Code Sections 409 and 4975(e)(7).

1.24 “Excess Aggregate Contributions” means, with respect to any Plan Year, the excess of the aggregate amount of the Employer matching contributions made pursuant to Section 4.1(b) and any qualified non-elective contributions or elective deferrals taken into account pursuant to Section 4.8(c) on behalf of Highly Compensated Participants for such Plan Year, over the maximum amount of such contributions permitted under the limitations of Section 4.8(a) (determined by hypothetically reducing contributions made on behalf of Highly Compensated Participants in order of the actual contribution ratios beginning with the highest of such ratios). Such determination shall be made after first taking into account corrections of any Excess Deferred Compensation pursuant to Section 4.2 and taking into account any adjustments of any Excess Contributions pursuant to Section 4.7.

1.25 “Excess Contributions” means, with respect to a Plan Year, the excess of Elective Contributions used to satisfy the “Actual Deferral Percentage” tests made on behalf of Highly Compensated Participants for the Plan Year over the maximum amount of such contributions permitted under Section 4.6(a) (determined by hypothetically reducing contributions made on behalf of Highly Compensated Participants in order of the actual deferral ratios beginning with the highest of such ratios). Excess Contributions shall be treated as an “annual addition” pursuant to Section 4.10(b).

1.26 “Excess Deferred Compensation” means, with respect to any taxable year of a Participant, the excess of the aggregate amount of such Participant’s Deferred Compensation and the elective deferrals pursuant to Section 4.2(f) actually made on behalf of such Participant for such taxable year, over the dollar limitation provided for in Code Section 402(g), which is incorporated herein by reference. Excess Deferred Compensation shall be treated as an “annual addition” pursuant to Section 4.10(b) when contributed to the Plan unless distributed to the affected Participant not later than the first April 15th following the close of the Participant’s taxable year. Additionally, for purposes of Article VIII and Section 4.5(g), Excess Deferred Compensation shall continue to be treated as Employer contributions even if distributed pursuant to Section 4.2(f). However, Excess Deferred Compensation of Non-Highly Compensated Participants is not taken into account for purposes of Section 4.6(a) to the extent such Excess Deferred Compensation occurs pursuant to Section 4.2(d).

1.27 “Fiduciary” means any person who (a) exercises any discretionary authority or discretionary control respecting management of the Plan or exercises any authority or control respecting management or disposition of its assets, (b) renders investment advice for a fee or other compensation, direct or indirect, with respect to any monies or other property of the Plan or has any authority or responsibility to do so, or (c) has any discretionary authority or discretionary responsibility in the administration of the Plan.

1.28 “Financed Shares” means shares of Employer Stock acquired by the Trust with the proceeds of an Acquisition Loan.

1.29 “Fiscal Year” means the Employer’s accounting year of 12 months commencing on January 1 of each year and ending the following December 31.

1.30 “Forfeiture” means that portion of a Participant’s Account and Participant’s ESOP Account that is not Vested, and occurs on the earlier of:

(a) the distribution of the entire Vested portion of the Participant’s Account and Participant’s ESOP Account of a Former Participant who has severed employment with the Employer, or

(b) the last day of the Plan Year in which a Former Participant who has severed employment with the Employer incurs five (5) consecutive 1-Year Breaks in Service.

Regardless of the preceding provisions, if a Former Participant is eligible to share in the allocation of Employer contributions or Forfeitures in the year in which the Forfeiture would otherwise occur, then the Forfeiture will not occur until the end of the first Plan Year for which the Former Participant is not eligible to share in the allocation of Employer contributions or Forfeitures. Furthermore, the term “Forfeiture” shall also include amounts deemed to be Forfeitures pursuant to any other provision of this Plan.

1.31 “Former Participant” means a person who has been a Participant, but who has ceased to be a Participant for any reason.

1.32 “415 Compensation” with respect to any Participant means such Participant’s wages as defined in Code Section 3401(a) and all other payments of compensation by the Employer (in the course of the Employer’s trade or business) for a Plan Year for which the Employer is required to furnish the Participant a written statement under Code Sections 6041(d), 6051(a)(3) and 6052. “415 Compensation” must be determined without regard to any rules under Code Section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code Section 3401(a)(2)).

For “limitation years” beginning after December 31, 1997, for purposes of this Section, the determination of “415 Compensation” shall include any elective deferral (as defined in Code Section 402(g)(3)), and any amount which is contributed or deferred by the Employer at the election of the Participant and which is not includible in the gross income of the Participant by reason of Code Sections 125, 132(f)(4) for “limitation years” beginning after December 31, 2000 or 457.

1.33 “414(s) Compensation” means any definition of compensation that satisfies the nondiscrimination requirements of Code Section 414(s) and the Regulations thereunder. The period for determining 414(s) Compensation must be either the Plan Year or the calendar year ending with or within the Plan Year. An Employer may further limit the period taken into account to that part of the Plan Year or calendar year in which an Employee was a Participant in the component of the Plan being tested. The period used to determine 414(s) Compensation must be applied uniformly to all Participants for the Plan Year.

For Plan Years beginning after December 31, 1996, for purposes of this Section, the family member aggregation rules of Code Section 414(q)(6) (as in effect prior to the Small Business Job Protection Act of 1996) are eliminated.

1.34 “Highly Compensated Employee” means, for Plan Years beginning after December 31, 1996, an Employee described in Code Section 414(q) and the Regulations thereunder, and generally means any Employee who:

(a) was a “five percent owner” as defined in Section 1.39(c) at any time during the “determination year” or the “look-back year”;
or

(b) for the “look-back year” had “415 Compensation” from the Employer in excess of \$80,000. The \$80,000 amount is adjusted at the same time and in the same manner as under Code Section 415(d), except that the base period is the calendar quarter ending September 30, 1996.

The “determination year” means the Plan Year for which testing is being performed, and the “look-back year” means the immediately preceding twelve (12) month period.

A highly compensated former Employee is based on the rules applicable to determining Highly Compensated Employee status as in effect for the “determination year,” in accordance with Regulation 1.414(q)-1T, A-4 and IRS Notice 97-45 (or any superseding guidance).

In determining whether an Employee is a Highly Compensated Employee for a Plan Year beginning in 1997, the amendments to Code Section 414(q) stated above are treated as having been in effect for years beginning in 1996.

For purposes of this Section, for Plan Years beginning prior to January 1, 1998, the determination of "415 Compensation" shall be made by including amounts that would otherwise be excluded from a Participant's gross income by reason of the application of Code Sections 125, 402(e)(3), 402(h)(1)(B), and, in the case of Employer contributions made pursuant to a salary reduction agreement, Code Section 403(b).

In determining who is a Highly Compensated Employee, Employees who are non-resident aliens and who received no earned income (within the meaning of Code Section 911(d)(2)) from the Employer constituting United States source income within the meaning of Code Section 861(a)(3) shall not be treated as Employees. Additionally, all Affiliated Employers shall be taken into account as a single employer and Leased Employees within the meaning of Code Sections 414(n)(2) and 414(o)(2) shall be considered Employees unless such Leased Employees are covered by a plan described in Code Section 414(n)(5) and are not covered in any qualified plan maintained by the Employer. The exclusion of Leased Employees for this purpose shall be applied on a uniform and consistent basis for all of the Employer's retirement plans. Highly Compensated Former Employees shall be treated as Highly Compensated Employees without regard to whether they performed services during the "determination year."

1.35 "Highly Compensated Participant" means any Highly Compensated Employee who is eligible to participate in the component of the Plan being tested.

1.36 "Hour of Service" means each hour for which an Employee is paid or entitled to payment for the performance of duties for the Employer.

1.37 "Income" means the income or losses allocable to "excess amounts" which shall equal the allocable gain or loss for the "applicable computation period". The income allocable to "excess amounts" for the "applicable computation period" is determined by multiplying the income for the "applicable computation period" by a fraction. The numerator of the fraction is the "excess amount" for the "applicable computation period." The denominator of the fraction is the total "account balance" attributable to "Employer contributions" as of the end of the "applicable computation period", reduced by the gain allocable to such total amount for the "applicable computation period" and increased by the loss allocable to such total amount for the "applicable computation period". The provisions of this Section shall be applied:

(a) For purposes of Section 4.2(1), by substituting:

- (1) "Excess Deferred Compensation" for "excess amounts";
- (2) "taxable year of the Participant" for "applicable computation period";
- (3) "Deferred Compensation" for "Employer contributions"; and
- (4) "Participant's Elective Account" for "account balance."

-
- (b) For purposes of Section 4.7(a), by substituting:
- (1) “Excess Contributions” for “excess amounts”;
 - (2) “Plan Year” for “applicable computation period”;
 - (3) “Elective Contributions” for “Employer contributions”; and
 - (4) “Participant’s Elective Account” for “account balance.”

(c) For purposes of Section 4.9(a), by substituting:

- (1) “Excess Aggregate Contributions” for “excess amounts”;
- (2) “Plan Year” for “applicable computation period”;
- (3) “Employer matching contributions made pursuant to Section 4.1(b) and any qualified non-elective contributions or elective deferrals taken into account pursuant to Section 4.8(c)” for “Employer contributions”; and
- (4) “Participant’s Account and Participant’s ESOP Account” for “account balance.”

Income allocable to any distribution of Excess Deferred Compensation on or before the last day of the taxable year of the Participant shall be calculated from the first day of the taxable year of the Participant to the date on which the distribution is made pursuant to either the “fractional method” or the “safe harbor method.” Under such “safe harbor method,” allocable Income for such period shall be deemed to equal ten percent (10%) of the Income allocable to such Excess Deferred Compensation multiplied by the number of calendar months in such period. For purposes of determining the number of calendar months in such period, a distribution occurring on or before the fifteenth day of the month shall be treated as having been made on the last day of the preceding month and a distribution occurring after such fifteenth day shall be treated as having been made on the first day of the next subsequent month.

1.38 “Investment Manager” means an entity that (a) has the power to manage, acquire, or dispose of Plan assets and (b) acknowledges fiduciary responsibility to the Plan in writing. Such entity must be a person, firm, or corporation registered as an investment adviser under the Investment Advisers Act of 1940, a bank, or an insurance company.

1.39 “Key Employee” means an Employee as defined in Code Section 416(i) and the Regulations thereunder. Generally, any Employee or former Employee (as well as each of the Employee’s or former Employee’s Beneficiaries) is considered a Key Employee if the Employee, at any time during the Plan Year that contains the “Determination Date” or any of the preceding four (4) Plan Years, has been included in one of the following categories:

- (a) an officer of the Employer (as that term is defined within the meaning of the Regulations under Code Section 416) having annual “415 Compensation” greater than 50 percent of the amount in effect under Code Section 415(b)(1)(A) for any such Plan Year.

(b) one of the ten employees having annual “415 Compensation” from the Employer for a Plan Year greater than the dollar limitation in effect under Code Section 415(c)(1)(A) for the calendar year in which such Plan Year ends and owning (or considered as owning within the meaning of Code Section 318) both more than one-half percent interest and the largest interests in the Employer.

(c) a “five percent owner” of the Employer. “Five percent owner” means any person who owns (or is considered as owning within the meaning of Code Section 318) more than five percent (5%) of the outstanding stock of the Employer or stock possessing more than five percent (5%) of the total combined voting power of all stock of the Employer or, in the case of an unincorporated business, any person who owns more than five percent (5%) of the capital or profits interest in the Employer. In determining percentage ownership hereunder, employers that would otherwise be aggregated under Code Sections 414(b), (c), (m) and (o) shall be treated as separate employers.

(d) a “one percent owner” of the Employer having an annual “415 Compensation” from the Employer of more than \$150,000. “One percent owner” means any person who owns (or is considered as owning within the meaning of Code Section 318) more than one percent (1%) of the outstanding stock of the Employer or stock possessing more than one percent (1%) of the total combined voting power of all stock of the Employer or, in the case of an unincorporated business, any person who owns more than one percent (1%) of the capital or profits interest in the Employer. In determining percentage ownership hereunder, employers that would otherwise be aggregated under Code Sections 414(b), (c), (m) and (o) shall be treated as separate employers. However, in determining whether an individual has “415 Compensation” of more than \$150,000, “415 Compensation” from each employer required to be aggregated under Code Sections 414(b), (c), (m) and (o) shall be taken into account.

For purposes of this Section, the determination of “415 Compensation” shall be made by including amounts which are contributed by the Employer pursuant to a salary reduction agreement and which are not includible in the gross income of the Participant under Code Sections 125, 132(f)(4) for Plan Years beginning after December 31, 2000, 402(e)(3), 402(h)(1)(B), 403(b) or 457(b), and Employee contributions described in Code Section 414(h)(2) that are treated as Employer contributions.

Notwithstanding the foregoing, effective for Plan Years beginning after December 31, 2001, the definition of Key Employee is as provided in Section 9.3(a).

1.40 “Late Retirement Date” means a Participant’s actual Retirement Date after having reached Normal Retirement Date.

1.41 “Leased Employee” means, for Plan Years beginning after December 31, 1996, any person (other than an Employee of the recipient Employer) who pursuant to an agreement between the recipient Employer and any other person or entity (“leasing organization”) has performed services for the recipient (or for the recipient and related persons determined in

accordance with Code Section 414(n)(6)) 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 Employer. Contributions or benefits provided a Leased Employee by the leasing organization which are attributable to services performed for the recipient Employer shall be treated as provided by the recipient Employer. Furthermore, Compensation for a Leased Employee shall only include Compensation from the leasing organization that is attributable to services performed for the recipient Employer. A Leased Employee shall not be considered an Employee of the recipient Employer:

(a) if such employee is covered by a money purchase pension plan providing:

(1) a nonintegrated employer contribution rate of at least 10% of compensation, as defined in Code Section 415(c)(3), but for Plan Years beginning prior to January 1, 1998, including amounts which are contributed by the Employer pursuant to a salary reduction agreement and which are not includible in the gross income of the Participant under Code Sections 125, 402(e)(3), 402(h)(1)(B), 403(b) or 457(b), and Employee contributions described in Code Section 414(h)(2) that are treated as Employer contributions, and for Plan Years beginning prior to January 1, 2001, excluding amounts that are not includible in gross income under Code Section 132(f)(4);

(2) immediate participation;

(3) full and immediate vesting; and

(b) if Leased Employees do not constitute more than 20% of the recipient Employer's nonhighly compensated work force.

1.42 "Loan Suspense Account" means the Account to which the Employer Stock acquired with the proceeds of an Acquisition Loan are initially allocated, as provided in Section 5.2(d).

1.43 "Non-Elective Contribution" means the Employer contributions to the Plan excluding, however, contributions made pursuant to the Participant's deferral election provided for in Section 4.2 and any Qualified Non-Elective Contribution used in the "Actual Deferral Percentage" tests.

1.44 "Non-Highly Compensated Participant" means, for Plan Years beginning after December 31, 1996, any Participant who is not a Highly Compensated Employee. However, for purposes of Section 4.6(a) and Section 4.7, if the prior year testing method is used, a Non-Highly Compensated Participant shall be determined using the definition of Highly Compensated Employee in effect for the preceding Plan Year.

1.45 "Non-Key Employee" means any Employee or former Employee (and such Employee's or former Employee's Beneficiaries) who is not, and has never been a Key Employee.

1.46 “Normal Retirement Age” means the Participant’s 65th birthday. A Participant shall become fully Vested in the Participant’s Account and Participant’s ESOP Account upon attaining Normal Retirement Age.

1.47 “Normal Retirement Date” means the Participant’s Normal Retirement Age.

1.48 “1-Year Break in Service” means a Period of Severance of at least 12 consecutive months.

1.49 “Participant” means any Eligible Employee who participates in the Plan and has not for any reason become ineligible to participate further in the Plan.

1.50 “Participant Direction Procedures” means such instructions, guidelines or policies, the terms of which are incorporated herein, as shall be established pursuant to Section 4.14 and observed by the Administrator and applied and provided to Participants who have Participant Directed Accounts.

1.51 “Participant’s Account” means the account established and maintained by the Administrator for each Participant with respect to such Participant’s total interest in the Plan and Trust resulting from the Employer Non-Elective Contributions. Notwithstanding the foregoing, the Participant’s Account shall not include Employer Stock resulting from Employer Non-Elective Contributions.

1.52 “Participant’s Combined Account” means the total aggregate amount of each Participant’s Elective Account, Participant’s Account, and Participant’s ESOP Account.

1.53 “Participant’s Directed Account” means that portion of a Participant’s interest in the Plan with respect to which the Participant has directed the investment in accordance with the Participant Direction Procedure.

1.54 “Participant’s Elective Account” means the account established and maintained by the Administrator for each Participant with respect to the Participant’s total interest in the Plan and Trust resulting from the Employer Elective Contributions used to satisfy the “Actual Deferral Percentage” tests. A separate accounting shall be maintained with respect to that portion of the Participant’s Elective Account attributable to such Elective Contributions pursuant to Section 4.2 and any Employer Qualified Non-Elective Contributions.

1.55 “Participant’s ESOP Account” means the account established and maintained by the Administrator for each Participant with respect to such Participant’s total interest in the Plan and Trust resulting from Employer Non-Elective Contributions that are made in Employer Stock or that resulted in an allocation of Employer Stock or allocations of Employer Stock Forfeitures, and which currently is invested in Employer Stock.

1.56 “Participant’s Transfer/Rollover Account” means the account established and maintained by the Administrator for each Participant with respect to the Participant’s total interest in the Plan resulting from amounts transferred to this Plan from a direct plan-to-plan transfer and/or with respect to such Participant’s interest in the Plan resulting from amounts transferred from another qualified plan or “conduit” Individual Retirement Account in accordance with Section 4.12.

A separate accounting shall be maintained with respect to that portion of the Participant's Transfer/Rollover Account attributable to transfers (within the meaning of Code Section 414(1)) and "rollovers."

1.57 "Period of Service" means the aggregate of all periods commencing with the Employee's first day of employment or reemployment with the Employer or Affiliated Employer and ending on the date a 1-Year Break in Service begins. The first day of employment or reemployment is the first day the Employee performs an Hour of Service. An Employee will also receive partial credit for any Period of Severance of less than twelve (12) consecutive months. Fractional periods of a year will be expressed in terms of days.

1.58 "Period of Severance" means a continuous period of time during which the Employee is not employed by the Employer. Such period begins on the date the Employee retires, quits or is discharged, or if earlier, the twelve (12) month anniversary of the date on which the Employee was otherwise first absent from service.

In the case of an individual who is absent from work for maternity or paternity reasons, the twelve (12) consecutive month period beginning on the first anniversary of the first day of such absence shall not constitute a 1-Year Break in Service. For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence (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.

1.59 "Plan" means this instrument, including all amendments thereto.

1.60 "Plan Year" means the Plan's accounting year of twelve (12) months commencing on January 1 of each year and ending the following December 31.

1.61 "Qualified Non-Elective Contribution" means any Employer contributions made pursuant to Section 4.7(b) and Section 4.9(f). Such contributions shall be considered an Elective Contribution for the purposes of the Plan and used to satisfy the "Actual Deferral Percentage" tests or the "Actual Contribution Percentage" tests.

1.62 "Regulation" means the Income Tax Regulations as promulgated by the Secretary of the Treasury or a delegate of the Secretary of the Treasury, and as amended from time to time.

1.63 "Retired Participant" means a person who has been a Participant, but who has become entitled to retirement benefits under the Plan.

1.64 "Retirement Date" means the date as of which a Participant retires for reasons other than Total and Permanent Disability, whether such retirement occurs on a Participant's Normal Retirement Date or Late Retirement Date (see Section 7.1).

1.65 “Terminated Participant” means a person who has been a Participant, but whose employment has been terminated other than by death, Total and Permanent Disability or retirement.

1.66 “Top Heavy Plan” means a plan described in Article VIII.

1.67 “Top Heavy Plan Year” means a Plan Year during which the Plan is a Top Heavy Plan.

1.68 “Total and Permanent Disability” means a condition, certified by a physician selected by the Employer, in which a person is unable to engage in any substantial gainful activity due to physical or mental impairment. The physician must certify that the condition:

- (a) has lasted (or is expected to last) at least 12 consecutive months; or
- (b) is expected to result in death.

1.69 “Trust” means the trust or trusts established between the Employer and the Trustee in connection with the Plan.

1.70 “Trustee” means the person or entity named as trustee herein or in any separate trust forming a part of this Plan, and any successors.

1.71 “Trust Fund” means the assets of the Plan and Trust as the same shall exist from time to time.

1.72 “Valuation Date” means the Anniversary Date and may include any other date or dates deemed necessary or appropriate by the Administrator for the valuation of the Participants’ accounts during the Plan Year, which may include any day that the Trustee, any transfer agent appointed by the Trustee or the Employer or any stock exchange used by such agent, are open for business.

1.73 “Vested” means the nonforfeitable portion of any account maintained on behalf of a Participant.

1.74 “Voluntary Contribution Account” means the account established and maintained by the Administrator for each Participant with respect to the Participant’s total interest in the Plan resulting from the Participant’s after-tax voluntary Employee contributions made pursuant to Section 4.13.

ARTICLE II
ADMINISTRATION

2.1 POWERS AND RESPONSIBILITIES OF THE EMPLOYER

(a) In addition to the general powers and responsibilities otherwise provided for in this Plan, the Employer shall be empowered to appoint and remove the Trustee and the Administrator from time to time as it deems necessary for the proper administration of the Plan to ensure that the Plan is being operated for the exclusive benefit of the Participants and their Beneficiaries in accordance with the terms of the Plan, the Code, and the Act. The Employer may appoint counsel, specialists, advisers, agents (including any nonfiduciary agent) and other persons as the Employer deems necessary or desirable in connection with the exercise of its fiduciary duties under this Plan. The Employer may compensate such agents or advisers from the assets of the Plan as fiduciary expenses (but not including any business (settlor) expenses of the Employer), to the extent not paid by the Employer.

(b) The Employer may, by written agreement or designation, appoint at its option an Investment Manager (qualified under the Investment Company Act of 1940 as amended), investment adviser, or other agent to provide direction to the Trustee with respect to any or all of the Plan assets. Such appointment shall be given by the Employer in writing in a form acceptable to the Trustee and shall specifically identify the Plan assets with respect to which the Investment Manager or other agent shall have authority to direct the investment.

(c) The Employer shall establish a “funding policy and method,” i.e., it shall determine whether the Plan has a short run need for liquidity (e.g., to pay benefits) or whether liquidity is a long run goal and investment growth (and stability of same) is a more current need, or shall appoint a qualified person to do so. The Employer or its delegate shall communicate such needs and goals to the Trustee, who shall coordinate such Plan needs with its investment policy. The communication of such a “funding policy and method” shall not, however, constitute a directive to the Trustee as to the investment of the Trust Funds. Such “funding policy and method” shall be consistent with the objectives of this Plan and with the requirements of Title I of the Act.

(d) The benefit plan committee of the Employer shall periodically review the performance of any Fiduciary or other person to whom duties have been delegated or allocated by it under the provisions of this Plan or pursuant to procedures established hereunder. This requirement may be satisfied by formal periodic review by the Employer or by a qualified person specifically designated by the Employer, through day-to-day conduct and evaluation, or through other appropriate ways.

2.2 DESIGNATION OF ADMINISTRATIVE AUTHORITY

The Employer shall appoint one or more Administrators. Any person, including, but not limited to, the Employees of the Employer, shall be eligible to serve as an Administrator. Any person so appointed shall signify acceptance by filing written acceptance with the Employer. An

Administrator may resign by delivering a written resignation to the Employer or be removed by the Employer by delivery of written notice of removal, to take effect at a date specified therein, or upon delivery to the Administrator if no date is specified.

The Employer, upon the resignation or removal of an Administrator, shall promptly designate a successor to this position. If the Employer does not appoint an Administrator, the Employer will function as the Administrator.

2.3 ALLOCATION AND DELEGATION OF RESPONSIBILITIES

If more than one person is appointed as Administrator, the responsibilities of each Administrator may be specified by the Employer and accepted in writing by each Administrator. In the event that no such delegation is made by the Employer, the Administrators may allocate the responsibilities among themselves, in which event the Administrators shall notify the Employer and the Trustee in writing of such action and specify the responsibilities of each Administrator. The Trustee thereafter shall accept and rely upon any documents executed by the appropriate Administrator until such time as the Employer or the Administrators file with the Trustee a written revocation of such designation.

2.4 POWERS AND DUTIES OF THE ADMINISTRATOR

The primary responsibility of the Administrator is to administer the Plan for the exclusive benefit of the Participants and their Beneficiaries, subject to the specific terms of the Plan. The Administrator shall administer the Plan in accordance with its terms and shall have the power and discretion to construe the terms of the Plan and to determine all questions arising in connection with the administration, interpretation, and application of the Plan. Any such determination by the Administrator shall be conclusive and binding upon all persons. The Administrator may establish procedures, correct any defect, supply any information, or reconcile any inconsistency in such manner and to such extent as shall be deemed necessary or advisable to carry out the purpose of the Plan; provided, however, that any procedure, discretionary act, interpretation or construction shall be done in a nondiscriminatory manner based upon uniform principles consistently applied and shall be consistent with the intent that the Plan shall continue to be deemed a qualified plan under the terms of Code Section 401(a) and that the ESOP component shall continue to be deemed an ESOP as defined by Code Section 4975(e)(7), and shall comply with the terms of the Act and all regulations issued pursuant thereto. The Administrator shall have all powers necessary or appropriate to accomplish the Administrator's duties under the Plan.

The Administrator shall be charged with the duties of the general administration of the Plan as set forth under the terms of the Plan, including, but not limited to, the following:

- (a) the discretion to determine all questions relating to the eligibility of Employees to participate or remain a Participant hereunder and to receive benefits under the Plan;
- (b) to compute, certify, and direct the Trustee with respect to the amount and the kind of benefits to which any Participant shall be entitled hereunder;

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- (c) to authorize and direct the Trustee with respect to all discretionary or otherwise directed disbursements from the Trust;
 - (d) to maintain all necessary records for the administration of the Plan;
 - (e) to interpret the provisions of the Plan and to make and publish such rules for regulation of the Plan as are consistent with the terms hereof
 - (f) to determine the size and type of any Contract to be purchased from any insurer, and to designate the insurer from which such Contract shall be purchased;
 - (g) to compute and certify to the Employer and to the Trustee from time to time the sums of money necessary or desirable to be contributed to the Plan;
 - (h) to consult with the Employer and the Trustee regarding the short and long-term liquidity needs of the Plan in order that the Trustee can exercise any investment discretion in a manner designed to accomplish specific objectives;
 - (i) to prepare and implement a procedure to notify Eligible Employees that they may elect to have a portion of their Compensation deferred or paid to them in cash;
 - (j) to act as the named Fiduciary responsible for communications with Participants as needed to maintain Plan compliance with Act Section 404(c), including, but not limited to, the receipt and transmitting of Participant's directions as to the investment of their account(s) under the Plan and the formulation of policies, rules, and procedures pursuant to which Participants may give investment instructions with respect to the investment of their accounts;
 - (k) to determine the validity of, and take appropriate action with respect to, any qualified domestic relations order received by it; and
 - (1) to assist any Participant regarding the Participant's rights, benefits, or elections available under the Plan.

2.5 RECORDS AND REPORTS

The Administrator shall keep a record of all actions taken and shall keep all other books of account, records, policies, and other data that may be necessary for proper administration of the Plan and shall be responsible for supplying all information and reports to the Internal Revenue Service, Department of Labor, Participants, Beneficiaries and others as required by law.

2.6 APPOINTMENT OF ADVISERS

The Administrator, or the Trustee with the consent of the Administrator, may appoint counsel, specialists, advisers, agents (including nonfiduciary agents) and other persons as the Administrator or the Trustee deems necessary or desirable in connection with the administration of this Plan, including but not limited to agents and advisers to assist with the administration and management of the Plan, and thereby to provide, among such other duties as the Administrator may appoint, assistance with maintaining Plan records and the providing of investment information to the Plan's investment fiduciaries and to Plan Participants.

2.7 INFORMATION FROM EMPLOYER

The Employer shall supply full and timely information to the Administrator on all pertinent facts as the Administrator may require in order to perform its function hereunder and the Administrator shall advise the Trustee of such of the foregoing facts as may be pertinent to the Trustee's duties under the Plan. The Administrator may rely upon such information as is supplied by the Employer and shall have no duty or responsibility to verify such information.

2.8 PAYMENT OF EXPENSES

All expenses of administration may be paid out of the Trust Fund unless paid by the Employer. Such expenses shall include any expenses incident to the functioning of the Administrator, or any person or persons retained or appointed by any named Fiduciary incident to the exercise of their duties under the Plan, including, but not limited to, fees of accountants, counsel, Investment Managers, agents (including nonfiduciary agents) appointed for the purpose of assisting the Administrator or the Trustee in carrying out the instructions of Participants as to the directed investment of their accounts and other specialists and their agents, the costs of any bonds required pursuant to Act Section 412, and other costs of administering the Plan. Until paid, the expenses shall constitute a liability of the Trust Fund.

2.9 MAJORITY ACTIONS

Except where there has been an allocation and delegation of administrative authority pursuant to Section 2.3, if there is more than one Administrator, then they shall act by a majority of their number, but may authorize one or more of them to sign all papers on their behalf.

2.10 CLAIMS PROCEDURE

Claims for benefits under the Plan may be filed in writing with the Administrator. Written notice of the disposition of a claim shall be furnished to the claimant within ninety (90) days after the application is filed, or such period as is required by applicable law or Department of Labor regulation. In the event the claim is denied, the reasons for the denial shall be specifically set forth in the notice in language calculated to be understood by the claimant, pertinent provisions of the Plan shall be cited, and, where appropriate, an explanation as to how the claimant can perfect the claim will be provided. In addition, the claimant shall be furnished with an explanation of the Plan's claims review procedure.

2.11 CLAIMS REVIEW PROCEDURE

Any Employee, former Employee, or Beneficiary of either, who has been denied a benefit by a decision of the Administrator pursuant to Section 2.10 shall be entitled to request the Administrator to give further consideration to a claim by filing with the Administrator a written request for a hearing. Such request, together with a written statement of the reasons why the claimant believes the claim should be allowed, shall be filed with the Administrator no later than sixty (60) days after receipt of the written notification provided for in Section 2.10. The

Administrator shall then conduct a hearing within the next sixty (60) days, at which the claimant may be represented by an attorney or any other representative of such claimant's choosing and expense and at which the claimant shall have an opportunity to submit written and oral evidence and arguments in support of the claim. At the hearing (or prior thereto upon five (5) business days written notice to the Administrator) the claimant or the claimant's representative shall have an opportunity to review all documents in the possession of the Administrator which are pertinent to the claim at issue and its disallowance. Either the claimant or the Administrator may cause a court reporter to attend the hearing and record the proceedings. In such event, a complete written transcript of the proceedings shall be furnished to both parties by the court reporter. The full expense of any such court reporter and such transcripts shall be borne by the party causing the court reporter to attend the hearing. A final decision as to the allowance of the claim shall be made by the Administrator within sixty (60) days of receipt of the appeal (unless there has been an extension of sixty (60) days due to special circumstances, provided the delay and the special circumstances occasioning it are communicated to the claimant within the sixty (60) day period). Such communication shall be written in a manner calculated to be understood by the claimant and shall include specific reasons for the decision and specific references to the pertinent Plan provisions on which the decision is based.

ARTICLE III
ELIGIBILITY

3.1 CONDITIONS OF ELIGIBILITY

Any Eligible Employee who has completed a three (3) month Period of Service (or, prior to January 1, 2008, a six (6) month Period of Service) and has attained age 18 shall be eligible to participate hereunder as of the date such Employee has satisfied such requirements. However, any Employee who was a Participant in the Plan prior to the effective date of this amendment and restatement shall continue to participate in the Plan.

3.2 EFFECTIVE DATE OF PARTICIPATION

An Eligible Employee shall become a Participant effective as of the first day of the Plan Year quarter coinciding with or next following the date such Employee met the eligibility requirements of Section 3.1, provided said Employee was still employed as of such date (or if not employed on such date, as of the date of rehire if a 1-Year Break in Service has not occurred or, if later, the date that the Employee would have otherwise entered the Plan had the Employee not terminated employment).

If an Employee, who has satisfied the Plan's eligibility requirements and would otherwise have become a Participant, shall go from a classification of a noneligible Employee to an Eligible Employee, such Employee shall become a Participant on the date such Employee becomes an Eligible Employee or, if later, the date that the Employee would have otherwise entered the Plan had the Employee always been an Eligible Employee.

If an Employee, who has satisfied the Plan's eligibility requirements and would otherwise become a Participant, shall go from a classification of an Eligible Employee to a noneligible class of Employees, such Employee shall become a Participant in the Plan on the date such Employee again becomes an Eligible Employee, or, if later, the date that the Employee would have otherwise entered the Plan had the Employee always been an Eligible Employee.

However, if such Employee incurs a 1-Year Break in Service, eligibility will be determined under the Break in Service rules set forth in Section 3.7.

3.3 DETERMINATION OF ELIGIBILITY

The Administrator shall determine the eligibility of each Employee for participation in the Plan based upon information furnished by the Employer. Such determination shall be conclusive and binding upon all persons, as long as the same is made pursuant to the Plan and the Act. Such determination shall be subject to review pursuant to Section 2.11.

3.4 TERMINATION OF ELIGIBILITY

In the event a Participant shall go from a classification of an Eligible Employee to an ineligible Employee, such Former Participant shall continue to vest in the Plan for each Period of Service completed while a noneligible Employee, until such time as the Participant's Account and Participant's ESOP Account are forfeited or distributed pursuant to the terms of the Plan. Additionally, the Former Participant's interest in the Plan shall continue to share in the earnings of the Trust Fund.

3.5 OMISSION OF ELIGIBLE EMPLOYEE

If, in any Plan Year, any Employee who should be included as a Participant in the Plan is erroneously omitted and discovery of such omission is not made until after a contribution by the Employer for the year has been made and allocated, then the Employer shall make a subsequent contribution, if necessary after the application of Section 4.5(c), so that the omitted Employee receives a total amount which the Employee would have received (including both Employer contributions and earnings thereon) had the Employee not been omitted. Such contribution shall be made regardless of whether it is deductible in whole or in part in any taxable year under applicable provisions of the Code.

3.6 INCLUSION OF INELIGIBLE EMPLOYEE

If, in any Plan Year, any person who should not have been included as a Participant in the Plan is erroneously included and discovery of such inclusion is not made until after a contribution for the year has been made and allocated, the Employer shall be entitled to recover the contribution made with respect to the ineligible person provided the error is discovered within twelve (12) months of the date on which it was made. Otherwise, the amount contributed with respect to the ineligible person shall constitute a Forfeiture for the Plan Year in which the discovery is made. Notwithstanding the foregoing, any Deferred Compensation made by an ineligible person shall be distributed to the person (along with any earnings attributable to such Deferred Compensation).

3.7 REHIRED EMPLOYEES AND BREAKS IN SERVICE

(a) If any Participant becomes a Former Participant due to severance from employment with the Employer and is reemployed by the Employer before a 1-Year Break in Service occurs, the Former Participant shall become a Participant as of the reemployment date.

(b) If any Participant becomes a Former Participant due to severance from employment with the Employer and is reemployed after a 1-Year Break in Service has occurred, Periods of Service shall include Periods of Service prior to the 1-Year Break in Service subject to the following rules:

(1) In the case of a Former Participant who under the Plan does not have a nonforfeitable right to any interest in the Plan resulting from Employer contributions, Periods of Service before a period of 1 -Year Break in Service will not be taken into account if the number of consecutive 1-Year Breaks in Service equal or exceed the greater of (A) five (5) or (B) the aggregate number of pre-break Periods of Service. Such aggregate number of Periods of Service will not include any Periods of Service disregarded under the preceding sentence by reason of prior 1-Year Breaks in Service.

(2) A Former Participant shall participate in the Plan as of the date of reemployment.

(c) After a Former Participant who has severed employment with the Employer incurs five (5) consecutive 1-Year Breaks in Service, the Vested portion of said Former Participant's Account and Participant's ESOP Account attributable to pre-break service shall not be increased as a result of post-break service. In such case, separate accounts will be maintained as follows:

(1) one account for nonforfeitable benefits attributable to pre-break service; and

(2) one account representing the Participant's Employer derived account balance in the Plan attributable to post-break service.

(d) If any Participant becomes a Former Participant due to severance of employment with the Employer and is reemployed by the Employer before five (5) consecutive 1-Year Breaks in Service, and such Former Participant had received a distribution of the entire Vested interest prior to reemployment, then the forfeited account shall be reinstated only if the Former Participant repays the full amount which had been distributed. Such repayment must be made before the earlier of five (5) years after the first date on which the Participant is subsequently reemployed by the Employer or the close of the first period of five (5) consecutive 1-Year Breaks in Service commencing after the distribution. If a distribution occurs for any reason other than a severance of employment, the time for repayment may not end earlier than five (5) years after the date of distribution. In the event the Former Participant does repay the full amount distributed, the undistributed forfeited portion of the Participant's Account and Participant's ESOP Account must be restored in full but may not be reinvested in Employer Stock, unadjusted by any gains or losses occurring subsequent to the Valuation Date preceding the distribution. The source for such reinstatement may be Forfeitures occurring during the Plan Year. If such source is insufficient, then the Employer will contribute an amount which is sufficient to restore any such forfeited Accounts.

ARTICLE IV
CONTRIBUTION AND ALLOCATION

4.1 FORMULA FOR DETERMINING EMPLOYER CONTRIBUTION

For each Plan Year, the Employer shall contribute to the Plan:

(a) The amount of the total salary reduction elections of all Participants made pursuant to Section 4.2(a), which amount shall be deemed an Employer Elective Contribution.

(b) On behalf of each Participant who is eligible to share in matching contributions for the Plan Year as specified in Section 4.5(b), a matching contribution equal to 100% of each such Participant's Deferred Compensation, which amount shall be deemed an Employer Non-Elective Contribution. Such matching contribution shall be made in cash.

Except, however, in applying the matching percentage specified above, only salary reductions up to the following percentage of payroll period Compensation, based on the Participant's whole year Periods of Service, shall be considered.

<u>Periods of Service</u>	<u>% of Compensation</u>
Less than 3 years	3%
At least 3 years but less than 5 years	4%
At least 5 years but less than 7 years	5%
7 or more years	6%

In addition to the above matching contributions, the Employer may contribute to the Plan, on behalf of each Participant who is eligible to share in matching contributions for the Plan Year as specified in Section 4.5(b), a discretionary matching contribution equal to a uniform percentage of each such Participant's Deferred Compensation, the exact percentage, if any, to be determined each year by the Employer, which amount, if any, shall be deemed an Employer Non-Elective Contribution. Such discretionary matching contribution may be made in Employer Stock or cash, as determined by the Board.

(c) In addition, the Employer in its sole discretion may contribute to the Plan on behalf of each Participant a discretionary profit-sharing contribution. The exact amount, if any, of such discretionary profit-sharing contribution shall be determined each year by the Employer and such amount, if any, shall be deemed an Employer Non-Elective Contribution. Such discretionary profit-sharing contribution may be made in Employer Stock or cash, as determined by the Board, and will be allocated to each Participant in accordance with the following formula: $(\text{Participant Compensation} / \text{Total Participant Compensation}) \times \text{profit-sharing contribution}$.

(d) The funding of the ESOP component of the Plan shall be the responsibility of the Board.

(e) To the extent necessary, the Employer shall also contribute to the Plan the amount necessary to provide the top heavy minimum contribution. All contributions by the Employer shall be made in cash or in such property as is acceptable to the Trustee.

4.2 PARTICIPANT'S SALARY REDUCTION ELECTION

(a) Each Participant may elect to defer from 1% to 100% of Compensation which would have been received in the Plan Year, but for the deferral election. A deferral election (or modification of an earlier election) may not be made with respect to Compensation which is currently available on or before the date the Participant executed such election. For purposes of this Section, Compensation shall be determined prior to any reductions made pursuant to Code Sections 125, 132(f)(4) for Plan Years beginning after December 31, 2000, 402(e)(3), 402(h)(1)(B), 403(b) or 457(b), and Employee contributions described in Code Section 414(h)(2) that are treated as Employer contributions.

The amount by which Compensation is reduced shall be that Participant's Deferred Compensation and be treated as an Employer Elective Contribution and allocated to that Participant's Elective Account.

(b) The balance in each Participant's Elective Account shall be fully Vested at all times and, except as otherwise provided herein, shall not be subject to Forfeiture for any reason.

(c) Notwithstanding anything in the Plan to the contrary, amounts held in the Participant's Elective Account may not be distributable (including any offset of loans) earlier than:

(1) a Participant's separation from service, Total and Permanent Disability, or death;

(2) a Participant's attainment of age 59 ¹/₂;

(3) the termination of the Plan without the existence at the time of Plan termination of another defined contribution plan or the establishment of a successor defined contribution plan by the Employer or an Affiliated Employer within the period ending twelve months after distribution of all assets from the Plan maintained by the Employer. For this purpose, a defined contribution plan does not include an employee stock ownership plan (as defined in Code Section 4975(e)(7) or 409), a simplified employee pension plan (as defined in Code Section 408(k)), or a simple individual retirement account plan (as defined in Code Section 408(p));

(4) the date of disposition by the Employer to an entity that is not an Affiliated Employer of substantially all of the assets (within the meaning of Code

Section 409(d)(2)) used in a trade or business of such corporation if such corporation continues to maintain this Plan after the disposition with respect to a Participant who continues employment with the corporation acquiring such assets;

(5) the date of disposition by the Employer or an Affiliated Employer who maintains the Plan of its interest in a subsidiary (within the meaning of Code Section 409(d)(3)) to an entity which is not an Affiliated Employer but only with respect to a Participant who continues employment with such subsidiary; or

(6) the proven financial hardship of a Participant, subject to the limitations of Section 7.11.

(d) For each Plan Year, a Participant's Deferred Compensation made under this Plan and all other plans, contracts or arrangements of the Employer maintaining this Plan shall not exceed, during any taxable year of the Participant, the limitation imposed by Code Section 402(g), as in effect at the beginning of such taxable year. If such dollar limitation is exceeded, a Participant will be deemed to have notified the Administrator of such excess amount which shall be distributed in a manner consistent with Section 4.2(f). The dollar limitation shall be adjusted annually pursuant to the method provided in Code Section 415(d) in accordance with Regulations.

(e) In the event a Participant has received a hardship distribution from the Participant's Elective Account pursuant to Section 7.11(b) or pursuant to Treasury Regulation 1.401(k)-1(d)(2)(iv)(B) from any other plan maintained by the Employer, then such Participant shall not be permitted to elect to have Deferred Compensation contributed to the Plan for a period of twelve (12) months following the receipt of the distribution. Effective after December 31, 2001, the period during which the Participant shall not be permitted to have Deferred Compensation contributed to this Plan shall be limited to six (6) months following the receipt of the distribution. Furthermore, for taxable years beginning prior to January 1, 2002, the dollar limitation under Code Section 402(g) shall be reduced, with respect to the Participant's taxable year following the taxable year in which the hardship distribution was made, by the amount of such Participant's Deferred Compensation, if any, pursuant to this Plan (and any other plan maintained by the Employer) for the taxable year of the hardship distribution.

(f) If a Participant's Deferred Compensation under this Plan together with any elective deferrals (as defined in Regulation 1.402(g)-1 (b)) under another qualified cash or deferred arrangement (as described in Code Section 401(k)), a simplified employee pension (as described in Code Section 408(k)(6)), a simple individual retirement account plan (as described in Code Section 408(p)), a salary reduction arrangement (within the meaning of Code Section 3121(a)(5)(D)), a deferred compensation plan under Code Section 457(b), or a trust described in Code Section 501(c)(18) cumulatively exceed the limitation imposed by Code Section 402(g) (as adjusted annually in accordance with the method provided in Code Section 415(d) pursuant to Regulations) for such Participant's taxable year, the Participant may, not later than March 1 following the close of the Participant's taxable year, notify the Administrator in writing of such excess and request that the Participant's Deferred Compensation under this Plan be reduced by an amount

specified by the Participant. In such event, the Administrator shall recharacterize the amount specified by the Participant as a Catch-up Contribution pursuant to Section 4.3 below, or, to the extent Catch-up Contributions are not available to the Participant, may direct the Trustee to distribute such excess amount (and any Income allocable to such excess amount) to the Participant not later than the first April 15th following the close of the Participant's taxable year. Any distribution of less than the entire amount of Excess Deferred Compensation and Income shall be treated as a pro rata distribution of Excess Deferred Compensation and Income. The amount distributed shall not exceed the Participant's Deferred Compensation under the Plan for the taxable year (and any Income allocable to such excess amount). Any distribution on or before the last day of the Participant's taxable year must satisfy each of the following conditions:

- (1) the distribution must be made after the date on which the Plan received the Excess Deferred Compensation;
- (2) the Participant shall designate the distribution as Excess Deferred Compensation; and
- (3) the Plan must designate the distribution as a distribution of Excess Deferred Compensation.

Any distribution made pursuant to this Section 4.2(f) shall be made first from unmatched Deferred Compensation and, thereafter, from Deferred Compensation which is matched. Matching contributions which relate to such Deferred Compensation shall be forfeited.

(g) Notwithstanding Section 4.2(f) above, a Participant's Excess Deferred Compensation shall be reduced, but not below zero, by any distribution of Excess Contributions pursuant to Section 4.7(a) for the Plan Year beginning with or within the taxable year of the Participant.

(h) At Normal Retirement Date, or such other date when the Participant shall be entitled to receive benefits, the fair market value of the Participant's Elective Account shall be used to provide additional benefits to the Participant or the Participant's Beneficiary.

(i) Employer Elective Contributions made pursuant to this Section may be segregated into a separate account for each Participant in a federally insured savings account, certificate of deposit in a bank or savings and loan association, money market certificate, or other short-term debt security acceptable to the Trustee until such time as the allocations pursuant to Section 4.5 have been made.

(j) The Employer and the Administrator shall implement the salary reduction elections provided for herein in accordance with the following:

- (1) A Participant must make an initial salary deferral election within a reasonable time, not to exceed thirty (30) days, after entering the Plan pursuant to Section 3.2. If the Participant fails to make an initial salary deferral election

within such time, then such Participant may thereafter make an election in accordance with the rules governing modifications. The Participant shall make such an election by entering into a written salary reduction agreement with the Employer and filing such agreement with the Administrator. Such election shall initially be effective beginning with the pay period following the acceptance of the salary reduction agreement by the Administrator, shall not have retroactive effect and shall remain in force until revoked.

(2) A Participant may modify a prior election at any time during the Plan Year and concurrently make a new election by filing a written notice with the Administrator within a reasonable time before the pay period for which such modification is to be effective. Any modification shall not have retroactive effect and shall remain in force until revoked.

(3) A Participant may elect to prospectively revoke the Participant's salary reduction agreement in its entirety at any time during the Plan Year by providing the Administrator with thirty (30) days written notice of such revocation (or upon such shorter notice period as may be acceptable to the Administrator). Such revocation shall become effective as of the beginning of the first pay period coincident with or next following the expiration of the notice period. Furthermore, the termination of the Participant's employment, or the cessation of participation for any reason, shall be deemed to revoke any salary reduction agreement then in effect, effective immediately following the close of the pay period within which such termination or cessation occurs.

(k) **Automatic Enrollment by Negative Election.** Notwithstanding anything to the contrary in this Plan, effective for Plan Years beginning on and after January 1, 2007, the Employer shall apply the automatic enrollment provisions of this subsection 4.2(k) to each of the Eligible Employees described in Subsection 4.2(k)(1) of this Plan. Under such procedures for automatic enrollment by negative election as the Administrator may adopt, the Employer shall automatically enroll each Eligible Employee described in subsection (k) (1) in the Plan, and each such Eligible Employee shall be deemed to have made a Salary Reduction Agreement to reduce his or her Compensation by the amount specified in subsection 4.2(k)(2) below, unless the Eligible Employee has filed a contrary election under Section 4.2(k)(3). Amounts contributed to the Plan under such a deemed election shall be treated as Elective Contributions for all purposes under the Plan.

(1) **Covered Eligible Employees.** The negative election provisions of this subsection 4.2(k) shall apply to:

- (A) each Eligible Employee who first becomes eligible to participate in the Plan on or after January 1, 2007,
- (B) each other Eligible Employee who has not elected to make Elective Contributions to this Plan, and

(C) each other Eligible Employee who is deferring less than 3.0 percent of his or her Compensation.

(2) **Contributions under Negative Elections.** Unless an Eligible Employee described in Subsection 4.2(k)(1) files a contrary election under Subsection 4.2(k)(3) below, the Eligible Employee shall be deemed to have elected to reduce his or her Compensation for each pay period by the following percentage of payroll period Compensation, based on the Eligible Employee's whole year Periods of Service:

<u>Periods of Service</u>	<u>% of Compensation</u>
Less than 3 years	3%
At least 3 years, but less than 5 years	4%
At least 5 years, but less than 7 years	5%
7 or more years	6%

(3) **Contrary election.** An Eligible Employee may at any time elect not to defer any Compensation or to defer an amount which is less than or more than the negative election amount specified in subsection 4.2(k)(2) ("contrary election"). An Eligible Employee's contrary election generally is effective as of the first payroll period which follows delivery of the Eligible Employee's contrary election to the Administrator. However, an Eligible Employee may make a contrary election which is effective: (1) for the first payroll period in which he/she becomes a Participant if the Eligible Employee makes a contrary election within a reasonable period following the Participant's entry date and before the Compensation to which the election applies becomes currently available; or (2) for the first payroll period following January 1, 2007, if the Eligible Employee makes a contrary election not later than December 31, 2006. An Eligible Employee's contrary election continues in effect until the Eligible Employee subsequently changes his/her Salary Reduction Agreement.

(4) **Negative election notice.** The Administrator must provide a notice to each Eligible Employee which explains the effect of the negative election and an Eligible Employee's right to make a contrary election, including the procedure and timing applicable to the contrary election. The Administrator must provide the notice to an Eligible Employee a reasonable period prior to that Eligible Employee's commencement of participation in the Plan subject to the negative election. The Administrator also must notify annually those Eligible Employees then subject to the negative election of the existing negative election deferral percentage and the Eligible Employee's right to make a contrary election, including the procedure and timing applicable to the contrary election.

(5) **Default investment.** In the event an Eligible Employee has Elective Contributions withheld pursuant to this subsection 4.2(k) and has not submitted any investment directive, any cash received as Elective Contributions on his or her behalf shall be invested in the default Directed Investment Option, as provided for in Section 4.14.

4.3 CATCH-UP CONTRIBUTIONS

This Section 4.3 shall apply to catch-up contributions made on and after January 1, 2002. All Employees who are eligible to make salary reductions under this Plan and who have attained age 50 before the close of the Plan Year shall be eligible to make catch-up contributions in accordance with, and subject to the limitations of, Code Section 414(v). Such catch-up contributions shall not be taken into account for purposes of the provisions of the Plan implementing the required limitations of Code Sections 402(g) and 415. The Plan shall not be treated as failing to satisfy the provisions of the Plan implementing the requirements of Code Section 401(k)(3), 401(k)(11), 401(k)(12), 410(b), or 416, as applicable, by reason of the making of such catch-up contributions. Notwithstanding any other provision of the Plan, effective January 6, 2004, a Participant may elect to make catch-up contributions pursuant to this Section 4.3 as a percentage of compensation or as a stated amount of compensation.

If an Employee is eligible to make Catch-up Contributions under this Section 4.3 and the Employee's Elective Deferrals to this Plan for a Plan Year exceed the annual limit imposed by the actual deferral percentage test under Section 4.6 with respect to the Plan Year or would otherwise exceed the annual limit on Elective Deferrals imposed by Code Section 402(g), the Administrator may recharacterize that part of the Deferred Compensation made on behalf of the Employee with respect to the Plan Year which exceeds the limit imposed by the actual deferral percentage test imposed by Section 4.6 (as determined under Section 4.7(a) below) (the "excess contributions") or that part of the Employee's Deferred Compensation requested by the Participant pursuant to Section 4.2(f) (the "excess deferrals") as Catch-up Contributions, to the maximum extent possible under this Section 4.3. Any recharacterization of excess contributions or excess deferrals as Catch-up Contributions shall be completed within 2-1/2 months after the end of the Plan Year. Any excess contributions or excess deferrals recharacterized as Catch-up Contributions shall be fully vested and nonforfeitable at all times, and shall remain subject to the restrictions on early withdrawals set forth in Section 4.2(c) above.

4.4 TIME OF PAYMENT OF EMPLOYER CONTRIBUTION

The Employer may make its contribution to the Plan for a particular Plan Year at such time as the Employer, in its sole discretion, determines. If the Employer makes a contribution for a particular Plan Year after the close of that Plan Year, the Employer will designate to the Trustee the Plan Year for which the Employer is making its contribution.

Notwithstanding anything contained herein to the contrary, Deferred Compensation must be remitted to the Trust no later than the 15th business day of the month following the month in which the Participant's Deferred Compensation would otherwise have been payable to such Participant in cash as set forth in DOL Regulation §2510.3-102(b)(1).

4.5 ALLOCATION OF CONTRIBUTION AND EARNINGS

(a) The Administrator shall establish and maintain an account in the name of each Participant to which the Administrator shall credit as of each Anniversary Date, or other Valuation Date, all amounts allocated to each such Participant as set forth herein.

(b) The Employer shall provide the Administrator with all information required by the Administrator to make a proper allocation of the Employer contributions for each Plan Year. Within a reasonable period of time after the date of receipt by the Administrator of such information, the Administrator shall allocate such contribution as follows:

(1) With respect to the Employer Elective Contribution made pursuant to Section 4.1(a), to each Participant's Elective Account in an amount equal to each such Participant's Deferred Compensation for the year.

(2) With respect to the Employer Non-Elective Contribution made pursuant to Sections 4.1(b) and 4.1(c) that are made in cash, to each Participant's Account in accordance with Sections 4.1(b) and 4.1(c).

Any Participant actively employed during the Plan Year shall be eligible to share in the tiered matching contribution for the Plan Year. However, only Participants who are employed on the last day of the Plan Year shall be eligible to share in the discretionary matching contribution and discretionary profit-sharing contribution for the Plan Year.

(3) With respect to the Employer Non-Elective Contribution made pursuant to Sections 4.1(b) and 4.1(c) that are made in Employer Stock, to each Participant's ESOP Account in accordance with Sections 4.1(b) and 4.1(c). Only Participants who are employed on the last day of the Plan Year shall be eligible to share in the discretionary matching contribution and discretionary profit-sharing contribution for the Plan Year.

(c) On or before each Anniversary Date any amounts which became Forfeitures since the last Anniversary Date may be made available to reinstate previously forfeited account balances of Former Participants, if any, in accordance with Section 3.7(d), be used to satisfy any contribution that may be required pursuant to Section 3.5 and/or 7.9, or be used to pay any administrative expenses of the Plan. The remaining Forfeitures, if any, shall be used to reduce the contribution of the Employer hereunder for the Plan Year in which such Forfeitures occur.

(d) For any Top Heavy Plan Year, Non-Key Employees not otherwise eligible to share in the allocation of contributions as provided above, shall receive the minimum allocation provided for in Section 4.5(g) if eligible pursuant to the provisions of Section 4.5(i).

(e) Notwithstanding the foregoing, Participants who are not actively employed on the last day of the Plan Year due to Retirement (Normal or Late), Total and Permanent Disability or death shall share in allocation of contributions for that Plan Year.

(f) As of each Valuation Date, before the current valuation period allocation of Employer contributions, any earnings or losses (net appreciation or net depreciation) of the Trust Fund shall be allocated in the same proportion that each Participant's and Former Participant's nonsegregated accounts bear to the total of all Participants' and Former Participants' nonsegregated accounts as of such date. Earnings or losses with respect to a Participant's Directed Account shall be allocated in accordance with Section 4.14.

Participants' transfers from other qualified plans deposited in the general Trust Fund shall share in any earnings and losses (net appreciation or net depreciation) of the Trust Fund in the same manner provided above. Each segregated account maintained on behalf of a Participant shall be credited or charged with its separate earnings and losses.

(g) Minimum Allocations Required for Top Heavy Plan Years: Notwithstanding the foregoing, for any Top Heavy Plan Year, the sum of the Employer contributions allocated to the Participant's Combined Account of each Non-Key Employee shall be equal to at least three percent (3%) of such Non-Key Employee's "415 Compensation" (reduced by contributions and forfeitures, if any, allocated to each Non-Key Employee in any defined contribution plan included with this Plan in a Required Aggregation Group). However, if (1) the sum of the Employer contributions allocated to the Participant's Combined Account of each Key Employee for such Top Heavy Plan Year is less than three percent (3%) of each Key Employee's "415 Compensation" and (2) this Plan is not required to be included in an Aggregation Group to enable a defined benefit plan to meet the requirements of Code Section 401(a)(4) or 410, the sum of the Employer contributions allocated to the Participant's Combined Account of each Non-Key Employee shall be equal to the largest percentage allocated to the Participant's Combined Account of any Key Employee. However, in determining whether a Non-Key Employee has received the required minimum allocation, such Non-Key Employee's Deferred Compensation and matching contributions needed to satisfy the "Actual Contribution Percentage" tests pursuant to Section 4.8(a) shall not be taken into account.

However, no such minimum allocation shall be required in this Plan for any Non-Key Employee who participates in another defined contribution plan subject to Code Section 412 included with this Plan in a Required Aggregation Group.

(h) For purposes of the minimum allocations set forth above, the percentage allocated to the Participant's Combined Account of any Key Employee shall be equal to the ratio of the sum of the Employer contributions allocated on behalf of such Key Employee divided by the "415 Compensation" for such Key Employee.

(i) For any Top Heavy Plan Year, the minimum allocations set forth above shall be allocated to the Participant's Combined Account of all Non-Key Employees who are Participants and who are employed by the Employer on the last day of the Plan Year,

including Non-Key Employees who have (1) failed to complete a Period of Service; and (2) declined to make mandatory contributions (if required) or, in the case of a cash or deferred arrangement, elective contributions to the Plan.

(j) For the purposes of this Section, "415 Compensation" in excess of \$150,000 (or such other amount provided in the Code) shall be disregarded. Such amount shall be adjusted for increases in the cost of living in accordance with Code Section 401(a)(17)(B), except that the dollar increase in effect on January 1 of any calendar year shall be effective for the Plan Year beginning with or within such calendar year. If "415 Compensation" for any prior determination period is taken into account in determining a Participant's minimum benefit for the current Plan Year, the "415 Compensation" for such determination period is subject to the applicable annual "415 Compensation" limit in effect for that prior period. For this purpose, in determining the minimum benefit in Plan Years beginning on or after January 1, 1989, the annual "415 Compensation" limit in effect for determination periods beginning before that date is \$200,000 (or such other amount as adjusted for increases in the cost of living in accordance with Code Section 415(d) for determination periods beginning on or after January 1, 1989, and in accordance with Code Section 401(a)(17)(B) for determination periods beginning on or after January 1, 1994). For determination periods beginning prior to January 1, 1989, the \$200,000 limit shall apply only for Top Heavy Plan Years and shall not be adjusted. For any short Plan Year the "415 Compensation" limit shall be an amount equal to the "415 Compensation" limit for the calendar year in which the Plan Year begins multiplied by the ratio obtained by dividing the number of full months in the short Plan Year by twelve (12).

(k) Notwithstanding anything herein to the contrary, Participants who terminated employment for any reason during the Plan Year shall share in the salary reduction contributions made by the Employer for the year of termination without regard to the Hours of Service credited.

(l) Notwithstanding anything in this Section to the contrary, all information necessary to properly reflect a given transaction may not be available until after the date specified herein for processing such transaction, in which case the transaction will be reflected when such information is received and processed. Subject to express limits that may be imposed under the Code, the processing of any contribution, distribution or other transaction may be delayed for any legitimate business reason (including, but not limited to, failure of systems or computer programs, failure of the means of the transmission of data, force majeure, the failure of a service provider to timely receive values or prices, and the correction for errors or omissions or the errors or omissions of any service provider). The processing date of a transaction will be binding for all purposes of the Plan.

(m) Notwithstanding anything to the contrary, if this is a Plan that would otherwise fail to meet the requirements of Code Section 410(b)(1) and the Regulations thereunder because Employer contributions would not be allocated to a sufficient number or percentage of Participants for a Plan Year, then the following rules shall apply:

(1) The group of Participants eligible to share in the Employer's contribution for the Plan Year shall be expanded to include the minimum number of Participants who would not otherwise be eligible as are necessary to satisfy the applicable test specified above. The specific Participants who shall become eligible under the terms of this paragraph shall be those who have not separated from service prior to the last day of the Plan Year and have completed the greatest Period of Service in the Plan Year.

(2) If after application of paragraph (1) above, the applicable test is still not satisfied, then the group of Participants eligible to share in the Employer's contribution for the Plan Year shall be further expanded to include the minimum number of Participants who have separated from service prior to the last day of the Plan Year as are necessary to satisfy the applicable test. The specific Participants who shall become eligible to share shall be those Participants who have completed the greatest Period of Service in the Plan Year before terminating employment.

(3) Nothing in this Section shall permit the reduction of a Participant's accrued benefit. Therefore any amounts that have previously been allocated to Participants may not be reallocated to satisfy these requirements. In such event, the Employer shall make an additional contribution equal to the amount such affected Participants would have received had they been included in the allocations, even if it exceeds the amount which would be deductible under Code Section 404. Any adjustment to the allocations pursuant to this paragraph shall be considered a retroactive amendment adopted by the last day of the Plan Year.

4.6 ACTUAL DEFERRAL PERCENTAGE TESTS

(a) Maximum Annual Allocation: For each Plan Year beginning after December 31, 1996, the annual allocation derived from Employer Elective Contributions to a Highly Compensated Participant's Elective Account shall satisfy one of the following tests:

(1) The "Actual Deferral Percentage" for the Highly Compensated Participant group shall not be more than the "Actual Deferral Percentage" of the Non-Highly Compensated Participant group (for the preceding Plan Year if the prior year testing method is used to calculate the "Actual Deferral Percentage" for the Non-Highly Compensated Participant group) multiplied by 1.25, or

(2) The excess of the "Actual Deferral Percentage" for the Highly Compensated Participant group over the "Actual Deferral Percentage" for the Non-Highly Compensated Participant group (for the preceding Plan Year if the prior year testing method is used to calculate the "Actual Deferral Percentage" for the Non-Highly Compensated Participant group) shall not be more than two percentage points. Additionally, the "Actual Deferral Percentage" for the Highly Compensated Participant group shall not exceed the "Actual Deferral Percentage" for the Non-Highly Compensated Participant group (for the preceding Plan Year

if the prior year testing method is used to calculate the “Actual Deferral Percentage” for the Non-Highly Compensated Participant group) multiplied by 2. The provisions of Code Section 401(k)(3) and Regulation 1.401(k)-1(b) are incorporated herein by reference.

However, in order to prevent the multiple use of the alternative method described in (2) above and in Code Section 401(m)(9)(A), any Highly Compensated Participant eligible to make elective deferrals pursuant to Section 4.2 and to make Employee contributions or to receive matching contributions under this Plan or under any other plan maintained by the Employer or an Affiliated Employer shall have a combination of such Participant’s Elective Contributions and Employer matching contributions reduced pursuant to Section 4.7(a) and Regulation 1.401(m)-2, the provisions of which are incorporated herein by reference.

(b) For the purposes of this Section “Actual Deferral Percentage” means, with respect to the Highly Compensated Participant group and Non-Highly Compensated Participant group for a Plan Year, the average of the ratios, calculated separately for each Participant in such group, of the amount of Employer Elective Contributions allocated to each Participant’s Elective Account for such Plan Year, to such Participant’s “414(s) Compensation” for such Plan Year. The actual deferral ratio for each Participant and the “Actual Deferral Percentage” for each group shall be calculated to the nearest one-hundredth of one percent. Employer Elective Contributions allocated to each Non-Highly Compensated Participant’s Elective Account shall be reduced by Excess Deferred Compensation to the extent such excess amounts are made under this Plan or any other plan maintained by the Employer.

Notwithstanding the above, if the prior year test method is used to calculate the “Actual Deferral Percentage” for the Non-Highly Compensated Participant group for the first Plan Year of this amendment and restatement, the “Actual Deferral Percentage” for the Non-Highly Compensated Participant group for the preceding Plan Year shall be calculated pursuant to the provisions of the Plan then in effect.

(c) For the purposes of Sections 4.6(a) and 4.7, a Highly Compensated Participant and a Non-Highly Compensated Participant shall include any Employee eligible to make a deferral election pursuant to Section 4.2, whether or not such deferral election was made or suspended pursuant to Section 4.2.

Notwithstanding the above, if the prior year testing method is used to calculate the “Actual Deferral Percentage” for the Non-Highly Compensated Participant group for the first Plan Year of this amendment and restatement, for purposes of Section 4.6(a) and 4.7, a Non-Highly Compensated Participant shall include any such Employee eligible to make a deferral election, whether or not such deferral election was made or suspended, pursuant to the provisions of the Plan in effect for the preceding Plan Year.

(d) For the purposes of this Section and Code Sections 401(a)(4), 410(b) and 401(k), if two or more plans which include cash or deferred arrangements are considered one plan for the purposes of Code Section 401(a)(4) or 410(b) (other than Code Section

410(b)(2)(A)(ii)), the cash or deferred arrangements included in such plans shall be treated as one arrangement. In addition, two or more cash or deferred arrangements may be considered as a single arrangement for purposes of determining whether or not such arrangements satisfy Code Sections 401(a)(4), 410(b) and 401(k). In such a case, the cash or deferred arrangements included in such plans and the plans including such arrangements shall be treated as one arrangement and as one plan for purposes of this Section and Code Sections 401(a)(4), 410(b) and 401(k). Any adjustment to the Non-Highly Compensated Participant actual deferral ratio for the prior year shall be made in accordance with Internal Revenue Service Notice 98-1 and any superseding guidance. Plans may be aggregated under this paragraph (d) only if they have the same plan year. Notwithstanding the above, for Plan Years beginning after December 31, 1996, if two or more plans which include cash or deferred arrangements are permissively aggregated under Regulation 1.410(b)-7(d), all plans permissively aggregated must use either the current year testing method or the prior year testing method for the testing year.

Notwithstanding the above, an employee stock ownership plan described in Code Section 4975(e)(7) or 409 may not be combined with this Plan for purposes of determining whether the employee stock ownership plan or this Plan satisfies this Section and Code Sections 401(a)(4), 410(b) and 401(k).

(e) For the purposes of this Section, if a Highly Compensated Participant is a Participant under two or more cash or deferred arrangements (other than a cash or deferred arrangement which is part of an employee stock ownership plan as defined in Code Section 4975(e)(7) or 409) of the Employer or an Affiliated Employer, all such cash or deferred arrangements shall be treated as one cash or deferred arrangement for the purpose of determining the actual deferral ratio with respect to such Highly Compensated Participant. However, if the cash or deferred arrangements have different plan years, this paragraph shall be applied by treating all cash or deferred arrangements ending with or within the same calendar year as a single arrangement. For Plan Years beginning on or after January 1, 2006, if any Highly Compensated Participant participates in two or more qualified 401(k) savings plans or other "cash or deferred arrangements" maintained by the Employer that have different plan years, all elective deferrals made to any of the plans during the Plan Year of this Plan shall be treated as elective deferrals made to this Plan for purposes of the average deferral percentage test prescribed by this Section 4.6.

(f) For the purpose of this Section, for Plan Years beginning after December 31, 1996, unless otherwise provided below, when calculating the "Actual Deferral Percentage" for the Non-Highly Compensated Participant group, the prior year testing method shall be used. Any change from the current year testing method to the prior year testing method shall be made pursuant to Internal Revenue Service Notice 98-1, Section VII (or superseding guidance), the provisions of which are incorporated herein by reference.

For the Plan Year beginning after December 31, 1996, the current year testing method shall be used.

For the Plan Year beginning after December 31, 1997, the current year testing method shall be used.

For the Plan Year beginning after December 31, 1998, the prior year testing method shall be used.

For the Plan Year beginning after December 31, 1999, the current year testing method shall be used.

For the Plan Year beginning after December 31, 2000, the prior year testing method shall be used.

(g) Notwithstanding anything in this Section to the contrary, the provisions of this Section and Section 4.7 may be applied separately (or will be applied separately to the extent required by Regulations) to each plan within the meaning of Regulation 1.401(k)-1(g)(11). Furthermore, for Plan Years beginning after December 31, 1998, the provisions of Code Section 401(k)(3)(F) may be used to exclude from consideration all Non-Highly Compensated Employees who have not satisfied the minimum age and service requirements of Code Section 410(a)(1)(A).

4.7 ADJUSTMENT TO ACTUAL DEFERRAL PERCENTAGE TESTS

In the event (or if it is anticipated) that the initial allocations of the Employer Elective Contributions made pursuant to Section 4.5 do (or might) not satisfy one of the tests set forth in Section 4.6(a) for Plan Years beginning after December 31, 1996, the Administrator shall adjust Excess Contributions pursuant to the options set forth below:

(a) On or before the fifteenth day of the third month following the end of each Plan Year, but in no event later than the close of the following Plan Year, the Highly Compensated Participant having the largest dollar amount of Elective Contributions shall have a portion of such Participant's Elective Contributions distributed (or recharacterized as Catch-Up Contributions pursuant to Section 4.3, if possible) until the total amount of Excess Contributions has been distributed or recharacterized, or until the amount of such Participant's Elective Contributions equals the Elective Contributions of the Highly Compensated Participant having the second largest dollar amount of Elective Contributions. This process shall continue until the total amount of Excess Contributions has been distributed or recharacterized. In determining the amount of Excess Contributions to be distributed or recharacterized with respect to an affected Highly Compensated Participant as determined herein, such amount shall be reduced pursuant to Section 4.2(f) by any Excess Deferred Compensation previously distributed to such affected Highly Compensated Participant for such Participant's taxable year ending with or within such Plan Year.

(1) With respect to the distribution of Excess Contributions pursuant to (a) above, such distribution:

(i) may be postponed but not later than the close of the Plan Year following the Plan Year to which they are allocable;

(ii) shall be adjusted for Income; and

(iii) shall be designated by the Employer as a distribution of Excess Contributions (and Income).

(2) Any distribution of less than the entire amount of Excess Contributions shall be treated as a pro rata distribution of Excess Contributions and Income.

(3) Matching contributions which relate to Excess Contributions shall be forfeited unless the related matching contribution is distributed as an Excess Aggregate Contribution pursuant to Section 4.9.

(b) Notwithstanding the above, within twelve (12) months after the end of the Plan Year, the Employer may make a special Qualified Non-Elective Contribution in accordance with one of the following provisions which contribution shall be allocated to the Participant's Elective Account of each Non-Highly Compensated Participant eligible to share in the allocation in accordance with such provision. The Employer shall provide the Administrator with written notification of the amount of the contribution being made and for which provision it is being made pursuant to:

(1) A special Qualified Non-Elective Contribution may be made on behalf of Non-Highly Compensated Participants in an amount sufficient to satisfy (or to prevent an anticipated failure of) one of the tests set forth in Section 4.6(a). Such contribution shall be allocated in the same proportion that each Non-Highly Compensated Participant's 414(s) Compensation for the year (or prior year if the prior year testing method is being used) bears to the total 414(s) Compensation of all Non-Highly Compensated Participants for such year.

(2) A special Qualified Non-Elective Contribution may be made on behalf of Non-Highly Compensated Participants in an amount sufficient to satisfy (or to prevent an anticipated failure of) one of the tests set forth in Section 4.6(a). Such contribution shall be allocated in the same proportion that each Non-Highly Compensated Participant electing salary reductions pursuant to Section 4.2 in the same proportion that each such Non-Highly Compensated Participant's Deferred Compensation for the year (or at the end of the prior Plan Year if the prior year testing method is being used) bears to the total Deferred Compensation of all such Non-Highly Compensated Participants for such year.

(3) A special Qualified Non-Elective Contribution may be made on behalf of Non-Highly Compensated Participants in an amount sufficient to satisfy (or to prevent an anticipated failure of) one of the tests set forth in Section 4.6(a). Such contribution shall be allocated in equal amounts (per capita).

(4) A special Qualified Non-Elective Contribution may be made on behalf of Non-Highly Compensated Participants electing salary reductions pursuant to Section 4.2 in an amount sufficient to satisfy (or to prevent an anticipated failure of) one of the tests set forth in Section 4.6(a). Such

contribution shall be allocated for the year (or at the end of the prior Plan Year if the prior year testing method is used) to each Non-Highly Compensated Participant electing salary reductions pursuant to Section 4.2 in equal amounts (per capita).

(5) A special Qualified Non-Elective Contribution may be made on behalf of Non-Highly Compensated Participants in an amount sufficient to satisfy (or to prevent an anticipated failure of) one of the tests set forth in Section 4.6(a). Such contribution shall be allocated to the Non-Highly Compensated Participant having the lowest 414(s) Compensation, until one of the tests set forth in Section 4.6(a) is satisfied (or is anticipated to be satisfied), or until such Non-Highly Compensated Participant has received the maximum "annual addition" pursuant to Section 4.10. This process shall continue until one of the tests set forth in Section 4.6(a) is satisfied (or is anticipated to be satisfied). This Subsection 4.7(b)(5) shall not be utilized for any Plan Year beginning on or after January 1, 2006.

Notwithstanding the above, at the Employer's discretion, Non-Highly Compensated Participants who are not employed at the end of the Plan Year (or at the end of the prior Plan Year if the prior year testing method is being used) shall not be eligible to receive a special Qualified Non-Elective Contribution and shall be disregarded.

Notwithstanding the above, for Plan Years beginning after December 31, 1998, if the testing method changes from the current year testing method to the prior year testing method, then for purposes of preventing the double counting of Qualified Non-Elective Contributions for the first testing year for which the change is effective, any special Qualified Non-Elective Contribution on behalf of Non-Highly Compensated Participants used to satisfy the "Actual Deferral Percentage" or "Actual Contribution Percentage" test under the current year testing method for the prior year testing year shall be disregarded.

(c) If during a Plan Year, it is projected that the aggregate amount of Elective Contributions to be allocated to all Highly Compensated Participants under this Plan would cause the Plan to fail the tests set forth in Section 4.6(a), then the Administrator may automatically reduce the deferral amount of affected Highly Compensated Participants, beginning with the Highly Compensated Participant who has the highest deferral ratio until it is anticipated the Plan will pass the tests or until the actual deferral ratio equals the actual deferral ratio of the Highly Compensated Participant having the next highest actual deferral ratio. This process may continue until it is anticipated that the Plan will satisfy one of the tests set forth in Section 4.6(a). Alternatively, the Employer may specify a maximum percentage of Compensation that may be deferred.

(d) Any Excess Contributions (and Income) which are distributed on or after 2 1/2 months after the end of the Plan Year shall be subject to the ten percent (10%) Employer excise tax imposed by Code Section 4979.

4.8 ACTUAL CONTRIBUTION PERCENTAGE TESTS

(a) The “Actual Contribution Percentage” for Plan Years beginning after December 31, 1996 for the Highly Compensated Participant group shall not exceed the greater of:

(1) 125 percent of such percentage for the Non-Highly Compensated Participant group (for the preceding Plan Year if the prior year testing method is used to calculate the “Actual Contribution Percentage” for the Non-Highly Compensated Participant group); or

(2) the lesser of 200 percent of such percentage for the Non-Highly Compensated Participant group (for the preceding Plan Year if the prior year testing method is used to calculate the “Actual Contribution Percentage” for the Non-Highly Compensated Participant group), or such percentage for the Non-Highly Compensated Participant group (for the preceding Plan Year if the prior year testing method is used to calculate the “Actual Contribution Percentage” for the Non-Highly Compensated Participant group) plus 2 percentage points. However, to prevent the multiple use of the alternative method described in this paragraph and Code Section 401(m)(9)(A), any Highly Compensated Participant eligible to make elective deferrals pursuant to Section 4.2 or any other cash or deferred arrangement maintained by the Employer or an Affiliated Employer and to make Employee contributions or to receive matching contributions under this Plan or under any plan maintained by the Employer or an Affiliated Employer shall have a combination of Elective Contributions and Employer matching contributions reduced pursuant to Regulation 1.401(m)-2 and Section 4.9(a). The provisions of Code Section 401(m) and Regulations 1.401(m)-1(b) and 1.401(m)-2 are incorporated herein by reference. The multiple use test described in Treasury Regulation Section 1.401(m)-2 and this Section 4.7(a)(2) of the Plan shall not apply for Plan Years beginning after December 31, 2001.

(b) For the purposes of this Section and Section 4.9, “Actual Contribution Percentage” for a Plan Year means, with respect to the Highly Compensated Participant group and Non-Highly Compensated Participant group (for the preceding Plan Year if the prior year testing method is used to calculate the “Actual Contribution Percentage” for the Non-Highly Compensated Participant group), the average of the ratios (calculated separately for each Participant in each group and rounded to the nearest one-hundredth of one percent) of:

(1) the sum of Employer matching contributions made pursuant to Section 4.1(b) on behalf of each such Participant for such Plan Year; to

(2) the Participant’s “414(s) Compensation” for such Plan Year.

Notwithstanding the above, if the prior year testing method is used to calculate the “Actual Contribution Percentage” for the Non-Highly Compensated Participant group for the first Plan Year of this amendment and restatement, for purposes of Section 4.8(a), the

“Actual Contribution Percentage” for the Non-Highly Compensated Participant group for the preceding Plan Year shall be determined pursuant to the provisions of the Plan then in effect.

(c) For purposes of determining the “Actual Contribution Percentage,” only Employer matching contributions contributed to the Plan prior to the end of the succeeding Plan Year shall be considered. In addition, the Administrator may elect to take into account, with respect to Employees eligible to have Employer matching contributions pursuant to Section 4.1(b) allocated to their accounts, elective deferrals (as defined in Regulation 1.402(g)-1(b)) and qualified non-elective contributions (as defined in Code Section 401(m)(4)(C)) contributed to any plan maintained by the Employer. Such elective deferrals and qualified non-elective contributions shall be treated as Employer matching contributions subject to Regulation 1.401(m)-1(b)(5) which is incorporated herein by reference. However, the Plan Year must be the same as the plan year of the plan to which the elective deferrals and the qualified non-elective contributions are made.

(d) For purposes of this Section and Code Sections 401(a)(4), 410(b) and 401(m), if two or more plans of the Employer to which matching contributions, Employee contributions, or both, are made are treated as one plan for purposes of Code Sections 401(a)(4) or 410(b) (other than the average benefits test under Code Section 410(b)(2)(A)(ii)), such plans shall be treated as one plan. In addition, two or more plans of the Employer to which matching contributions, Employee contributions, or both, are made may be considered as a single plan for purposes of determining whether or not such plans satisfy Code Sections 401(a)(4), 410(b) and 401(m). In such a case, the aggregated plans must satisfy this Section and Code Sections 401(a)(4), 410(b) and 401(m) as though such aggregated plans were a single plan. Any adjustment to the Non-Highly Compensated Participant actual contribution ratio for the prior year shall be made in accordance with Internal Revenue Service Notice 98-1 and any superseding guidance. Plans may be aggregated under this paragraph (d) only if they have the same plan year. Notwithstanding the above, for Plan Years beginning after December 31, 1996, if two or more plans which include cash or deferred arrangements are permissively aggregated under Regulation 1.410(b)-7(d), all plans permissively aggregated must use either the current year testing method or the prior year testing method for the testing year.

Notwithstanding the above, an employee stock ownership plan described in Code Section 4975(e)(7) or 409 may not be aggregated with this Plan for purposes of determining whether the employee stock ownership plan or this Plan satisfies this Section and Code Sections 401(a)(4), 410(b) and 401(m).

(e) If a Highly Compensated Participant is a Participant under two or more plans (other than an employee stock ownership plan as defined in Code Section 4975(e)(7) or 409) which are maintained by the Employer or an Affiliated Employer to which matching contributions, Employee contributions, or both, are made, all such contributions on behalf of such Highly Compensated Participant shall be aggregated for purposes of determining such Highly Compensated Participant’s actual contribution ratio. However, if the plans have different plan years, this paragraph shall be applied by treating all plans ending with or within the same calendar year as a single plan. For Plan

Years beginning on or after January 1, 2006, if any Highly Compensated Employee participates in two or more qualified plans maintained by the Company that have different plan years, all matching Contributions or Employee contributions made to any of the plans during the 12-month Plan Year of this Plan shall be treated as made to this Plan for purposes of the average percentage test prescribed by this Section 4.8.

(f) For purposes of Sections 4.8(a) and 4.9, a Highly Compensated Participant and Non-Highly Compensated Participant shall include any Employee eligible to have Employer matching contributions (whether or not a deferral election was made or suspended) allocated to the Participant's account for the Plan Year.

Notwithstanding the above, if the prior year testing method is used to calculate the "Actual Contribution Percentage" for the Non-Highly Compensated Participant group for the first Plan Year of this amendment and restatement, for the purposes of Section 4.8(a), a Non-Highly Compensated Participant shall include any such Employee eligible to have Employer matching contributions (whether or not a deferral election was made or suspended) allocated to the Participant's account for the preceding Plan Year pursuant to the provisions of the Plan then in effect.

(g) For the purpose of this Section, for Plan Years beginning after December 31, 1996, unless otherwise provided below, when calculating the "Actual Contribution Percentage" for the Non-Highly Compensated Participant group, the prior year testing method shall be used. Any change from the current year testing method to the prior year testing method shall be made pursuant to Internal Revenue Service Notice 98-1, Section VII (or superseding guidance), the provisions of which are incorporated herein by reference.

For the Plan Year beginning after December 31, 1996, the current year testing method shall be used.

For the Plan Year beginning after December 31, 1997, the current year testing method shall be used.

For the Plan Year beginning after December 31, 1998, the prior year testing method shall be used.

For the Plan Year beginning after December 31, 1999, the current year testing method shall be used.

For the Plan Year beginning after December 31, 2000, the prior year testing method shall be used.

(h) Notwithstanding anything in this Section to the contrary, the provisions of this Section and Section 4.9 may be applied separately (or will be applied separately to the extent required by Regulations) to each plan within the meaning of Regulation 1.401(k)-1(g)(11). Furthermore, for Plan Years beginning after December 31, 1998, the provisions of Code Section 401(k)(3)(F) may be used to exclude from consideration all Non-Highly Compensated Employees who have not satisfied the minimum age and service requirements of Code Section 410(a)(1)(A).

4.9 ADJUSTMENT TO ACTUAL CONTRIBUTION PERCENTAGE TESTS

(a) In the event (or if it is anticipated) that, for Plan Years beginning after December 31, 1996, the “Actual Contribution Percentage” for the Highly Compensated Participant group exceeds (or might exceed) the “Actual Contribution Percentage” for the Non-Highly Compensated Participant group pursuant to Section 4.8(a), the Administrator (on or before the fifteenth day of the third month following the end of the Plan Year, but in no event later than the close of the following Plan Year) shall direct the Trustee to distribute to the Highly Compensated Participant having the largest dollar amount of contributions determined pursuant to Section 4.8(b)(1), the Vested portion of such contributions (and Income allocable to such contributions) and, if forfeitable, forfeit such non-Vested contributions attributable to Employer matching contributions (and Income allocable to such forfeitures) until the total amount of Excess Aggregate Contributions has been distributed, or until the Participant’s remaining amount equals the amount of contributions determined pursuant to Section 4.8(b)(1) of the Highly Compensated Participant having the second largest dollar amount of contributions. This process shall continue until the total amount of Excess Aggregate Contributions has been distributed.

If the correction of Excess Aggregate Contributions attributable to Employer matching contributions is not in proportion to the Vested and non-Vested portion of such contributions, then the Vested portion of the Participant’s Account or Participant’s ESOP Account attributable to Employer matching contributions after the correction shall be subject to Section 7.5(h).

(b) Any distribution and/or forfeiture of less than the entire amount of Excess Aggregate Contributions (and Income) shall be treated as a pro rata distribution and/or forfeiture of Excess Aggregate Contributions and Income.

Distribution of Excess Aggregate Contributions shall be designated by the Employer as a distribution of Excess Aggregate Contributions (and Income).

Forfeitures of Excess Aggregate Contributions shall be treated in accordance with Section 4.5.

(c) Excess Aggregate Contributions, including forfeited matching contributions, shall be treated as Employer contributions for purposes of Code Sections 404 and 415 even if distributed from the Plan.

Forfeited matching contributions that are reallocated to Participants’ Accounts or Participant’s ESOP Account for the Plan Year in which the forfeiture occurs shall be treated as an “annual addition” pursuant to Section 4.10(b) for the Participants to whose Accounts they are reallocated and for the Participants from whose Accounts they are forfeited.

(d) The determination of the amount of Excess Aggregate Contributions with respect to any Plan Year shall be made after first determining the Excess Contributions, if any, to be treated as after-tax voluntary Employee contributions due to recharacterization for the plan year of any other qualified cash or deferred arrangement (as defined in Code Section 401(k)) maintained by the Employer that ends with or within the Plan Year or which are treated as after-tax voluntary Employee contributions due to recharacterization pursuant to Section 4.7(a).

(e) If during a Plan Year the projected aggregate amount of Employer matching contributions to be allocated to all Highly Compensated Participants under this Plan would, by virtue of the tests set forth in Section 4.8(a), cause the Plan to fail such tests, then the Administrator may automatically reduce proportionately or in the order provided in Section 4.9(a) each affected Highly Compensated Participant's projected share of such contributions by an amount necessary to satisfy one of the tests set forth in Section 4.8(a).

(f) Notwithstanding the above, within twelve (12) months after the end of the Plan Year, the Employer may make a special Qualified Non-Elective Contribution in accordance with one of the following provisions which contribution shall be allocated to the Participant's Account of each Non-Highly Compensated eligible to share in the allocation in accordance with such provision. The Employer shall provide the Administrator with written notification of the amount of the contribution being made and for which provision it is being made pursuant to:

(1) A special Qualified Non-Elective Contribution may be made on behalf of Non-Highly Compensated Participants in an amount sufficient to satisfy (or to prevent an anticipated failure of) one of the tests set forth in Section 4.8. Such contribution shall be allocated in the same proportion that each Non-Highly Compensated Participant's 414(s) Compensation for the year (or prior year if the prior year testing method is being used) bears to the total 414(s) Compensation of all Non-Highly Compensated Participants for such year.

(2) A special Qualified Non-Elective Contribution may be made on behalf of Non-Highly Compensated Participants in an amount sufficient to satisfy (or to prevent an anticipated failure of) one of the tests set forth in Section 4.8. Such contribution shall be allocated in the same proportion that each Non-Highly Compensated Participant electing salary reductions pursuant to Section 4.2 in the same proportion that each such Non-Highly Compensated Participant's Deferred Compensation for the year (or at the end of the prior Plan Year if the prior year testing method is being used) bears to the total Deferred Compensation of all such Non-Highly Compensated Participants for such year.

(3) A special Qualified Non-Elective Contribution may be made on behalf of Non-Highly Compensated Participants in an amount sufficient to satisfy (or to prevent an anticipated failure of) one of the tests set forth in Section 4.8. Such contribution shall be allocated in equal amounts (per capita).

(4) A special Qualified Non-Elective Contribution may be made on behalf of Non-Highly Compensated Participants electing salary reductions pursuant to Section 4.2 in an amount sufficient to satisfy (or to prevent an anticipated failure of) one of the tests set forth in Section 4.6(a). Such contribution shall be allocated for the year (or at the end of the prior Plan Year if the prior year testing method is used) to each Non-Highly Compensated Participant electing salary reductions pursuant to Section 4.2 in equal amounts (per capita).

(5) A special Qualified Non-Elective Contribution may be made on behalf of Non-Highly Compensated Participants in an amount sufficient to satisfy (or to prevent an anticipated failure of) one of the tests set forth in Section 4.8. Such contribution shall be allocated to the Non-Highly Compensated Participant having the lowest 414(s) Compensation, until one of the tests set forth in Section 4.8 is satisfied (or is anticipated to be satisfied), or until such Non-Highly Compensated Participant has received the maximum "annual addition" pursuant to Section 4.10. This process shall continue until one of the tests set forth in Section 4.8 is satisfied (or is anticipated to be satisfied). This Subsection 4.9(f)(5) shall not be utilized for any Plan Year beginning on or after January 1, 2006.

Notwithstanding the above, at the Employer's discretion, Non-Highly Compensated Participants who are not employed at the end of the Plan Year (or at the end of the prior Plan Year if the prior year testing method is being used) shall not be eligible to receive a special Qualified Non-Elective Contribution and shall be disregarded.

Notwithstanding the above, for Plan Years beginning after December 31, 1998, if the testing method changes from the current year testing method to the prior year testing method, then for purposes of preventing the double counting of Qualified Non-Elective Contributions for the first testing year for which the change is effective, any special Qualified Non-Elective Contribution on behalf of Non-Highly Compensated Participants used to satisfy the "Actual Deferral Percentage" or "Actual Contribution Percentage" test under the current year testing method for the prior year testing year shall be disregarded.

(g) Any Excess Aggregate Contributions (and Income) which are distributed on or after 2 1/2 months after the end of the Plan Year shall be subject to the ten percent (10%) Employer excise tax imposed by Code Section 4979.

4.10 MAXIMUM ANNUAL ADDITIONS

(a) Notwithstanding the foregoing, for "limitation years" beginning after December 31, 1994, the maximum "annual additions" credited to a Participant's accounts for any "limitation year" shall equal the lesser of: (1) \$30,000 adjusted annually as provided in Code Section 415(d) pursuant to the Regulations, or (2) twenty-five percent (25%) of the Participant's "415 Compensation" for such "limitation year." If the Employer contribution that would otherwise be contributed or allocated to the Participant's accounts would cause the "annual additions" for the "limitation year" to

exceed the maximum “annual additions,” the amount contributed or allocated will be reduced so that the “annual additions” for the “limitation year” will equal the maximum “annual additions,” and any amount in excess of the maximum “annual additions,” which would have been allocated to such Participant may be allocated to other Participants. For any short “limitation year,” the dollar limitation in (1) above shall be reduced by a fraction, the numerator of which is the number of full months in the short “limitation year” and the denominator of which is twelve (12). Notwithstanding the foregoing, for “limitation years” beginning after December 31, 2001, except to the extent permitted under Section 4.3 and Code Section 414(v), the “annual addition” that may be contributed or allocated to a Participant’s account under the Plan for any “limitation year” shall not exceed the lesser of: (a) \$40,000, as adjusted for increases in the cost-of-living under Code Section 415(d), or (b) one-hundred percent (100%) of the Participant’s “415 Compensation” for the “limitation year.” The “415 Compensation” limit referred to in (b) of the previous sentence shall not apply to any contribution for medical benefits after separation from service (within the meaning of Code Section 401(h) or Code Section 419A(f)(2)) which is otherwise treated as an “annual addition.”

(b) For purposes of applying the limitations of Code Section 415, “annual additions” means the sum credited to a Participant’s accounts for any “limitation year” of (1) Employer contributions, (2) Employee contributions, (3) forfeitures, (4) amounts allocated, after March 31, 1984, to an individual medical account, as defined in Code Section 415(l)(2) which is part of a pension or annuity plan maintained by the Employer and (5) amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after such date, which are attributable to post-retirement medical benefits allocated to the separate account of a key employee (as defined in Code Section 419A(d)(3)) under a welfare benefit plan (as defined in Code Section 419(e)) maintained by the Employer. Except, however, the “415 Compensation” percentage limitation referred to in paragraph (a) above shall not apply to: (1) any contribution for medical benefits (within the meaning of Code Section 419A(f)(2)) after separation from service which is otherwise treated as an “annual addition,” or (2) any amount otherwise treated as an “annual addition” under Code Section 415(l)(1).

(c) For purposes of applying the limitations of Code Section 415, the transfer of funds from one qualified plan to another is not an “annual addition.” In addition, the following are not Employee contributions for the purposes of Section 4.10(b)(2): (1) rollover contributions (as defined in Code Sections 402(e)(6), 403(a)(4), 403(b)(8) and 408(d)(3)); (2) repayments of loans made to a Participant from the Plan; (3) repayments of distributions received by an Employee pursuant to Code Section 411 (a)(7)(B) (cash-outs); (4) repayments of distributions received by an Employee pursuant to Code Section 411(a)(3)(D) (mandatory contributions); and (5) Employee contributions to a simplified employee pension excludable from gross income under Code Section 408(k)(6).

(d) For purposes of applying the limitations of Code Section 415, the “limitation year” shall be the Plan Year.

(e) For the purpose of this Section, all qualified defined contribution plans (whether terminated or not) ever maintained by the Employer shall be treated as one defined contribution plan.

(f) For the purpose of this Section, if the Employer is a member of a controlled group of corporations, trades or businesses under common control (as defined by Code Section 1563(a) or Code Section 414(b) and (c) as modified by Code Section 415(h)), is a member of an affiliated service group (as defined by Code Section 414(m)), or is a member of a group of entities required to be aggregated pursuant to Regulations under Code Section 414(o), all Employees of such Employers shall be considered to be employed by a single Employer.

(g) For the purpose of this Section, if this Plan is a Code Section 413(c) plan, each Employer who maintains this Plan will be considered to be a separate Employer.

(1) If a Participant participates in more than one defined contribution plan maintained by the Employer which have different Anniversary Dates, the maximum "annual additions" under this Plan shall equal the maximum "annual additions" for the "limitation year" minus any "annual additions" previously credited to such Participant's accounts during the "limitation year."

(2) If a Participant participates in both a defined contribution plan subject to Code Section 412 and a defined contribution plan not subject to Code Section 412 maintained by the Employer which have the same Anniversary Date, "annual additions" will be credited to the Participant's accounts under the defined contribution plan subject to Code Section 412 prior to crediting "annual additions" to the Participant's accounts under the defined contribution plan not subject to Code Section 412.

(3) If a Participant participates in more than one defined contribution plan not subject to Code Section 412 maintained by the Employer which have the same Anniversary Date, the maximum "annual additions" under this Plan shall equal the product of (A) the maximum "annual additions" for the "limitation year" minus any "annual additions" previously credited under subparagraphs (1) or (2) above, multiplied by (B) a fraction (i) the numerator of which is the "annual additions" which would be credited to such Participant's accounts under this Plan without regard to the limitations of Code Section 415 and (ii) the denominator of which is such "annual additions" for all plans described in this subparagraph.

(h) Notwithstanding anything contained in this Section to the contrary, the limitations, adjustments and other requirements prescribed in this Section shall at all times comply with the provisions of Code Section 415 and the Regulations thereunder.

4.11 ADJUSTMENT FOR EXCESSIVE ANNUAL ADDITIONS

(a) If, as a result of a reasonable error in estimating a Participant's Compensation, a reasonable error in determining the amount of elective deferrals (within the meaning of Code Section 402(g)(3)) that may be made with respect to any Participant under the limits of Section 4.10 or other facts and circumstances to which Regulation 1.415-6(b)(6) shall be applicable, the "annual additions" under this Plan would cause the maximum "annual additions" to be exceeded for any Participant, the "excess amount" will be disposed of in one of the following manners, as uniformly determined by the Administrator for all Participants similarly situated.

(1) Any unmatched Deferred Compensation and, thereafter, proportionately from Deferred Compensation which is matched and matching contributions which relate to such Deferred Compensation, will be reduced to the extent they would reduce the "excess amount." The Deferred Compensation (and for "limitation years" beginning after December 31, 1995, any gains attributable to such Deferred Compensation) will be distributed to the Participant and the Employer matching contributions (and for "limitation years" beginning after December 31, 1995, any gains attributable to such matching contributions) will be used to reduce the Employer contribution in the next "limitation year";

(2) If, after the application of subparagraph (1) above, an "excess amount" still exists, and the Participant is covered by the Plan at the end of the "limitation year," the "excess amount" will be used to reduce the Employer contribution for such Participant in the next "limitation year," and each succeeding "limitation year" if necessary;

(3) If, after the application of subparagraphs (1) and (2) above, an "excess amount" still exists, and the Participant is not covered by the Plan at the end of the "limitation year," the "excess amount" will be held unallocated in a "Section 415 suspense account." The "Section 415 suspense account" will be applied to reduce future Employer contributions for all remaining Participants in the next "limitation year," and each succeeding "limitation year" if necessary;

(4) If a "Section 415 suspense account" is in existence at any time during the "limitation year" pursuant to this Section, it will not participate in the allocation of investment gains and losses of the Trust Fund. If a "Section 415 suspense account" is in existence at any time during a particular "limitation year," all amounts in the "Section 415 suspense account" must be allocated and reallocated to Participants' accounts before any Employer contributions or any Employee contributions may be made to the Plan for that "limitation year." Except as provided in (1) above, "excess amounts" may not be distributed to Participants or Former Participants.

(b) For purposes of this Article, “excess amount” for any Participant for a “limitation year” shall mean the excess, if any, of (1) the “annual additions” which would be credited to the Participant’s account under the terms of the Plan without regard to the limitations of Code Section 415 over (2) the maximum “annual additions” determined pursuant to Section 4.10.

(c) For purposes of this Section, “Section 415 suspense account” shall mean an unallocated account equal to the sum of “excess amounts” for all Participants in the Plan during the “limitation year.”

4.12 ROLLOVERS AND PLAN-TO-PLAN TRANSFERS FROM QUALIFIED PLANS

(a) With the consent of the Administrator, amounts may be transferred (within the meaning of Code Section 414(1)) to this Plan from other tax qualified plans under Code Section 401(a) by Eligible Employees, provided the trust from which such funds are transferred permits the transfer to be made and the transfer will not jeopardize the tax exempt status of the Plan or Trust or create adverse tax consequences for the Employer. Prior to accepting any transfers to which this Section applies, the Administrator may require an opinion of counsel that the amounts to be transferred meet the requirements of this Section. The amounts transferred shall be set up in a separate account herein referred to as a Participant’s Transfer/Rollover Account. The Participant’s Transfer/Rollover Account may not be reinvested in Employer Stock. Furthermore, for vesting purposes, the Participant’s portion of the Participant’s Transfer/Rollover Account attributable to any transfer shall be subject to Section 7.4(b).

Except as permitted by Regulations (including Regulation 1.411(d)-4), amounts attributable to elective contributions (as defined in Regulation 1.401(k)-1(g)(3)), including amounts treated as elective contributions, which are transferred from another qualified plan in a plan-to-plan transfer (other than a direct rollover) shall be subject to the distribution limitations provided for in Regulation 1.401(k)-1(d).

(b) With the consent of the Administrator, the Plan may accept a “rollover” by Eligible Employees, provided the “rollover” will not jeopardize the tax exempt status of the Plan or create adverse tax consequences for the Employer. Prior to accepting any “rollovers” to which this Section applies, the Administrator may require the Employee to establish (by providing opinion of counsel or otherwise) that the amounts to be rolled over to this Plan meet the requirements of this Section. The amounts rolled over shall be set up in a separate account herein referred to as a “Participant’s Transfer/Rollover Account.” Such account shall be fully Vested at all times and shall not be subject to Forfeiture for any reason.

For purposes of this Section, the term “qualified plan” shall mean any tax qualified plan under Code Section 401(a), or, any other plans from which distributions are eligible to be rolled over into this Plan pursuant to the Code. The term “rollover” means: (i) amounts transferred to this Plan directly from another qualified plan; (ii) distributions received by an Employee from other “qualified plans” which are eligible for tax-free rollover to a “qualified plan” and which are transferred by the Employee to this

Plan within sixty (60) days following receipt thereof; (iii) amounts transferred to this Plan from a conduit individual retirement account provided that the conduit individual retirement account has no assets other than assets which (A) were previously distributed to the Employee by another “qualified plan,” (B) were eligible for tax-free rollover to a “qualified plan” and (C) were deposited in such conduit individual retirement account within sixty (60) days of receipt thereof (iv) amounts distributed to the Employee from a conduit individual retirement account meeting the requirements of clause (iii) above, and transferred by the Employee to this Plan within sixty (60) days of receipt thereof from such conduit individual retirement account; and (v) any other amounts which are eligible to be rolled over to this Plan pursuant to the Code.

(c) Amounts in a Participant’s Transfer/Rollover Account shall be held by the Trustee pursuant to the provisions of this Plan and may not be withdrawn by, or distributed to the Participant, in whole or in part, except as provided in Section 7.10 and paragraph (d) of this Section. The Trustee shall have no duty or responsibility to inquire as to the propriety of the amount, value or type of assets transferred, nor to conduct any due diligence with respect to such assets; provided, however, that such assets are otherwise eligible to be held by the Trustee under the terms of this Plan.

(d) At such date when the Participant or the Participant’s Beneficiary shall be entitled to receive benefits, the Participant’s Transfer/Rollover Account shall be used to provide additional benefits to the Participant or the Participant’s Beneficiary. Any distributions of amounts held in a Participant’s Transfer/Rollover Account shall be made in a manner which is consistent with and satisfies the provisions of Section 7.5, including, but not limited to, all notice and consent requirements of Code Section 411(a)(11) and the Regulations thereunder. Furthermore, such amounts shall be considered as part of a Participant’s benefit in determining whether an involuntary cash-out of benefits may be made without Participant consent.

(e) The Administrator may direct that Employee transfers and rollovers made after a Valuation Date be segregated into a separate account for each Participant until such time as the allocations pursuant to this Plan have been made, at which time they may remain segregated or be invested as part of the general Trust Fund or be directed by the Participant pursuant to Section 4.14.

(f) This Plan shall not accept any direct or indirect transfers (as that term is defined and interpreted under Code Section 401(a)(11) and the Regulations thereunder) from a defined benefit plan, money purchase plan (including a target benefit plan), stock bonus or profit sharing plan which would otherwise have provided for a life annuity form of payment to the Participant.

(g) Notwithstanding anything herein to the contrary, a transfer directly to this Plan from another qualified plan (or a transaction having the effect of such a transfer) shall only be permitted if it will not result in the elimination or reduction of any “Section 411(d)(6) protected benefit” as described in Section 8.1.

(h) Effective as of the first day of the first plan year beginning after December 31, 2001, the Administrator, operationally and on a nondiscriminatory basis, may limit the source of rollover contributions that may be accepted by this Plan.

4.13 VOLUNTARY CONTRIBUTIONS

(a) Any prior after-tax voluntary Employee contributions shall be maintained in each Participant's Voluntary Contribution Account. The balance in each Participant's Voluntary Contribution Account shall be fully Vested at all times and shall not be subject to Forfeiture for any reason.

(b) A Participant may elect at any time to withdraw after-tax voluntary Employee contributions from such Participant's Voluntary Contribution Account and the actual earnings thereon in a manner which is consistent with and satisfies the provisions of Section 7.5, including, but not limited to, all notice and consent requirements of Code Section 411(a)(11) and the Regulations thereunder. If the Administrator maintains sub-accounts with respect to after-tax voluntary Employee contributions (and earnings thereon) which were made on or before a specified date, a Participant shall be permitted to designate which sub-account shall be the source for withdrawal. Forfeitures of Employer contributions shall not occur solely as a result of an Employee's withdrawal of after-tax voluntary Employee contributions.

4.14 DIRECTED INVESTMENT ACCOUNT

(a) Participants may, subject to a procedure established by the Administrator (the Participant Direction Procedures) and applied in a uniform nondiscriminatory manner, direct the Trustee, in writing (or in such other form which is acceptable to the Trustee), to invest all of their accounts, excluding the Participants' ESOP Accounts, in specific assets, specific funds or other investments permitted under the Plan and the Participant Direction Procedures. That portion of the interest of any Participant so directing will thereupon be considered a Participant's Directed Account. All contributions to a Participant's ESOP Account shall be invested in Employer Stock. However, any amount of the Participant's ESOP Account that the Participant subsequently elects to direct the investment of pursuant to Section 5.8 shall be transferred from the Participant's ESOP Account to the Participant's Account.

(b) As of each Valuation Date, all Participant Directed Accounts shall be charged or credited with the net earnings, gains, losses and expenses as well as any appreciation or depreciation in the market value using publicly listed fair market values when available or appropriate as follows:

(1) to the extent that the assets in a Participant's Directed Account are accounted for as pooled assets or investments, the allocation of earnings, gains and losses of each Participant's Directed Account shall be based upon the total amount of funds so invested in a manner proportionate to the Participant's share of such pooled investment; and

(2) to the extent that the assets in the Participant's Directed Account are accounted for as segregated assets, the allocation of earnings, gains and losses from such assets shall be made on a separate and distinct basis.

(c) Investment directions will be processed as soon as administratively practicable after proper investment directions are received from the Participant. No guarantee is made by the Plan, Employer, Administrator or Trustee that investment directions will be processed on a daily basis, and no guarantee is made in any respect regarding the processing time of an investment direction. Notwithstanding any other provision of the Plan, the Employer, Administrator or Trustee reserves the right to not value an investment option on any given Valuation Date for any reason deemed appropriate by the Employer, Administrator or Trustee. Furthermore, the processing of any investment transaction may be delayed for any legitimate business reason (including, but not limited to, failure of systems or computer programs, failure of the means of the transmission of data, force majeure, the failure of a service provider to timely receive values or prices, and correction for errors or omissions or the errors or omissions of any service provider). The processing date of a transaction will be binding for all purposes of the Plan and considered the applicable Valuation Date for an investment transaction.

(d) The Participant Direction Procedures shall provide an explanation of the circumstances under which Participants and their Beneficiaries may give investment instructions, including, but need not be limited to, the following:

(1) the conveyance of instructions by the Participants and their Beneficiaries to invest Participant Directed Accounts in Directed Investment Options;

(2) the name, address and phone number of the Fiduciary (and, if applicable, the person or persons designated by the Fiduciary to act on its behalf) responsible for providing information to the Participant or a Beneficiary upon request relating to the Directed Investment Options;

(3) applicable restrictions on transfers to and from any Designated Investment Alternative;

(4) any restrictions on the exercise of voting, tender and similar rights related to a Directed Investment Option by the Participants or their Beneficiaries;

(5) a description of any transaction fees and expenses which affect the balances in Participant Directed Accounts in connection with the purchase or sale of Directed Investment Options; and

(6) general procedures for the dissemination of investment and other information relating to the Designated Investment Alternatives as deemed necessary or appropriate, including but not limited to a description of the following:

(i) the investment vehicles available under the Plan, including specific information regarding any Designated Investment Alternative;

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- (ii) any designated Investment Managers; and
 - (iii) a description of the additional information which may be obtained upon request from the Fiduciary designated to provide such information.

(e) Any information regarding investments available under the Plan, to the extent not required to be described in the Participant Direction Procedures, may be provided to the Participant in one or more written documents (or in any other form including, but not limited to, electronic media) which are separate from the Participant Direction Procedures and are not thereby incorporated by reference into this Plan.

(f) The Administrator may, in its discretion, include in or exclude by amendment or other action from the Participant Direction Procedures such instructions, guidelines or policies as it deems necessary or appropriate to ensure proper administration of the Plan, and may interpret the same accordingly.

4.15 QUALIFIED MILITARY SERVICE

Notwithstanding any provision of this Plan to the contrary, effective December 12, 1994, contributions, benefits and service will be provided in accordance with Code Section 414(u).

4.16 ELIGIBLE INDIVIDUAL ACCOUNT PLAN

Notwithstanding any provision of this Plan to the contrary, effective January 1, 2003, the Plan may acquire and hold qualifying employer securities (as defined in Act Section 407(d)(5)). The Plan is explicitly designed to be an eligible individual account plan as defined in Act Section 407(d)(3) with respect to the acquisition and holding of qualifying employer securities. The discretionary matching stock contribution for Plan Year 2003 shall be invested in Employer Stock as required under the Plan, as amended, effective January 1, 2004.

4.17 ROTH DEFERRAL CONTRIBUTIONS

(1) General Application.

(A) This Section 4.17 will apply to contributions beginning with the first day of the first taxable year beginning on or after January 1, 2007.

(B) As of the effective date under subsection 4.17(1)(A) hereof, the Plan will accept Roth Deferral Contributions made on behalf of Participants. A Participant's Roth Deferral Contributions will be allocated to a separate account maintained for such contributions as described in subsection 4.17(2).

(C) Unless specifically stated otherwise, Roth Deferral Contributions will be treated as Elective Contributions for all purposes under the Plan.

(2) Separate Accounting.

(A) Contributions and withdrawals of Roth Deferral Contributions will be credited and debited to the Roth Deferral Contributions sub-account maintained for each Participant within the Participant's Elective Account.

(B) The Plan will maintain a record of the amount of Roth Deferral Contributions in each such sub-account.

(C) Gains, losses, and other credits or charges must be separately allocated on a reasonable and consistent basis to each Participant's Roth Deferral Contributions sub-account and the Participant's other sub-accounts within the Participant's Elective Account under the Plan.

(D) No contributions other than Roth Deferral Contributions and properly attributable earnings will be credited to each Participant's Roth Deferral Contributions sub-account.

(3) Direct Rollovers.

(A) Notwithstanding anything to the contrary in Section 7.13, a direct rollover of a distribution from a Roth Deferral Contributions sub-account under the Plan will only be made to another Roth Deferral Contributions account under an applicable retirement plan described in Code section 402A(e)(1) or to a Roth IRA described in Code section 408A and only to the extent the rollover is permitted under the rules of Code section 402(c).

(B) Notwithstanding anything to the contrary in Section 4.12, the Plan will accept a rollover contribution to a Roth Deferral Contributions sub-account, but only if it is a direct rollover from another Roth Deferral Contributions account under an applicable retirement plan described in Code section 402A(e)(1) and only to the extent the rollover is permitted under the rules of Code section 402(c).

(C) The Plan will not provide for a direct rollover (including an automatic rollover) for distributions from a Participant's Roth Deferral Contributions sub-account if the amounts of the distributions that are eligible rollover distributions are reasonably expected to total less than \$200 during a year. In addition, any distribution from a Participant's Roth Deferral Contributions sub-account is not taken into account in determining whether distributions from a Participant's other sub-accounts are reasonably expected to total less than \$200 during a year. However, eligible rollover distributions from a Participant's Roth Deferral Contributions sub-account are taken into account in determining whether the total amount of the Participant's account balances under the Plan exceeds \$1,000 for purposes of mandatory distributions from the Plan.

(D) The provisions of the Plan that allow a Participant to elect a direct rollover of only a portion of an eligible rollover distribution but only if the amount rolled over is at least \$500 is applied by treating any amount distributed from the Participant's Roth Deferral Contributions sub-account as a separate distribution from any amount distributed from the Participant's other sub-accounts in the Plan, even if the amounts are distributed at the same time.

(4) Correction of Excess Contributions. In the case of a distribution of excess contributions, a Highly Compensated Employee may designate the extent to which the excess amount is composed of pre-tax Elective Contributions and Roth Elective Deferrals but only to the extent such types of deferrals were made for the year.

If the Highly Compensated Employee does not designate which type of Elective Contributions are to be distributed, the Plan will distribute pre-tax Elective Contributions first.

(5) Roth Deferral Contributions Defined. A Roth Deferral Contribution is an Elective Contribution that is:

(A) Designated irrevocably by the Participant at the time of the cash or deferred election as a Roth Deferral Contribution that is being made in lieu of all or a portion of the pre-tax Elective Contributions the Participant is otherwise eligible to make under the Plan; and

(B) Treated by the Employer as includible in the Participant's income at the time the Participant would have received that amount in cash if the Participant had not made a cash or deferred election.

(6) Hardship and In-Service Distributions. The Plan permits hardship distributions of Elective Contributions. Roth Deferral Contributions may be withdrawn for a hardship distribution subject to the same conditions that apply to pre-tax Elective Contributions. Roth Deferral Contributions may be withdrawn for an in-service distribution subject to the same conditions that apply to other Elective Contributions.

(7) Ordering Rules for Distributions. The Administrator operationally may implement an ordering rule procedure for withdrawals (including, but not limited to, hardship or other in-service withdrawals) from a Participant's accounts attributable to pre-tax Elective Contributions or Roth Deferral Contributions. Pursuant to such procedure, the Administrator may determine whether the pre-tax Elective Contributions or Roth Deferral Contributions are distributed first, provided any such determination is made in a uniform nondiscriminatory manner. Alternatively, such procedure may permit the Participant to elect which type of Elective Deferrals shall be distributed first. Further, a terminated

participant may elect a distribution of all or a portion of his or her account balance attributable to Roth Deferral Contributions in a different form or at a different time than a distribution of all or a portion of his or her other accounts under the Plan.

(8) Participant Loans. Roth Deferral Contributions shall be treated in the same manner as pre-tax Elective Contributions for purposes of the Plan's participant loan policy regarding limitations on the ability to borrow from or use a Participant's Account as security. Furthermore, the loan policy or program may be modified to provide for an ordering rule with respect to the default of a loan that is made from the Participant's Roth Deferral Contributions sub-account and other Accounts under the Plan.

(9) Automatic Enrollment. Whenever a Participant is contributing to the Plan pursuant to an automatic enrollment feature (i.e., in the absence of an affirmative election by a Participant, a certain amount or percentage of Compensation will automatically be contributed to the Plan as an Elective Deferral), then such Elective Deferral shall be made as a pre-tax Elective Contribution, not as a Roth Deferral Contribution.

(10) Operational Compliance. The Administrator will administer Roth Deferral Contributions in accordance with applicable regulations or other binding authority not reflected in this amendment. Any applicable regulations or other binding authority shall supersede any contrary provisions of this amendment.

ARTICLE V
SPECIAL PROVISIONS RELATING TO THE ESOP

5.1 ESTABLISHMENT OF ESOP

The portion of the Plan comprised of Participant's ESOP Accounts and of the Loan Suspense Account, if any, is hereby established and segregated as a stock bonus plan as defined in Regulation Section 1.401-1(b)(1)(iii) and a leveraged employee stock ownership plan ("ESOP") satisfying the requirements of Code Sections 409 and 4975(e)(7). The ESOP is intended to be invested primarily in Employer Stock.

5.2 ACQUISITION LOANS

The Trustee as directed by the Board may incur Acquisition Loans, in accordance with the Trust Agreement, from time to time, which Acquisition Loans may either be made by the Employer to the Plan or made by another lender to the Plan and guaranteed by the Employer. An Acquisition Loan may be a direct loan of cash, a purchase-money transaction or an assumption of an obligation of the Plan. Within a reasonable time after receipt of the proceeds from an Acquisition Loan, such proceeds will be used by the Plan to finance (i) the acquisition of shares of Employer Stock, which are either newly issued shares, outstanding shares held by the Employer or outstanding shares held by a shareholder and purchased by the Trust, (ii) the prepayment of an Acquisition Loan; or (iii) the repayment of a prior Acquisition Loan. An Acquisition Loan shall be for a specific term, shall bear a reasonable rate of interest, and shall not be payable on demand except in the event of default. If the lender with respect to an Acquisition Loan is a disqualified person, as defined in Code Section 4975, the Acquisition Loan must provide that Trust assets will be transferred upon default only upon and to the extent of the failure of the Plan to meet the repayment schedule of the Acquisition Loan.

(a) Financed Shares. Shares of Employer Stock acquired by the Trustee with the proceeds of an Acquisition Loan shall be described as Financed Shares, as defined in Section 1.26. Except as provided in Code Sections 409(l) or Regulation Section 54.4975-7(b)(9) and (10), or as otherwise provided by applicable law, no shares acquired by the Trustee with the proceeds of an Acquisition Loan may be subject to a put, call or other option or buy-sell or similar arrangement while held by and when distributed from the Plan. The restriction contained in the preceding sentence is nonterminable, whether or not this Plan continues to be an employee stock ownership plan as described in Code Section 4975(e)(7).

(b) Collateral. An Acquisition Loan may be secured by a collateral pledge of the Financed Shares so acquired and any other Plan assets, which are a permissible security within the provisions of Regulation Section 54.4975-7(b). No other assets of the Plan or Trust may be pledged as collateral for an Acquisition Loan, and no lender shall have recourse against any other Plan assets.

(c) Loan Payment. Repayment of principal and interest on any Acquisition Loan shall be made by the Trustee from contributions made pursuant to Article IV which are designated to be used for the repayment of the Acquisition Loan and may be made

pursuant to the provisions of Section 5.10(b) from (i) to the extent permitted by law, cash dividends on Employer Stock acquired with the proceeds of an Acquisition Loan, which are allocated to Participant's ESOP Accounts and earnings, if any, thereon; and (ii) cash dividends on Employer Stock held in the Loan Suspense Account and earnings, if any, thereon. Notwithstanding the foregoing, in the event that an Acquisition Loan is a purchase-money loan from the Employer to the Plan, contributions may be in the form of forgiveness of indebtedness by such Employer.

(d) Release of Financed Shares. Financed Shares shall initially be credited to a Loan Suspense Account and shall be transferred for allocation to the Participant's ESOP Accounts only as payments of principal and interest are made on the Acquisition Loan by the Trustee, and any pledge of Financed Shares must be provided for the release of shares so pledged on a consistent basis.

The number of Financed Shares to be released from the Loan Suspense Account for allocation to Participants' ESOP Accounts as of each Valuation Date, shall equal the number of Financed Shares held in the Loan Suspense Account immediately prior to such Valuation Date multiplied by a fraction, the numerator of which is equal to the payments of principal and interest on the Acquisition Loan on such date (or, if the requirements of Regulation Section 54.4975-7(b)(8)(ii) are satisfied, payments of principal only), and the denominator of which is equal to the numerator plus the total projected payments of principal and interest on the Acquisition Loan over the duration of the Acquisition Loan repayment period (or, if the requirements of Regulation Section 54.4975-7(b)(8)(ii) are satisfied, total projected payments of principal only), subject to the provisions of Section 4.10.

(e) Prepayment of Acquisition Loan. In the event that the Acquisition Loan permits prepayment prior to final maturity, the Employer may sell Financed Shares and apply the proceeds to prepay the ESOP Loan in accordance with its terms.

5.3 VOTING OF EMPLOYER STOCK

(a) If the Employer Stock is a registration-type class of securities, as defined in paragraph (c) below, the Plan meets the requirements of this paragraph only if each Participant or Beneficiary in the Plan is entitled to direct the Plan as to the manner in which Employer Stock which is entitled to vote and is allocated to the Account of such Participant or Beneficiary is to be voted. Any allocated Employer Stock with respect to which voting instructions are not given, and shares of Employer Stock, which are not then allocated to Participants' ESOP Accounts, shall be voted by the Trustee as provided in section 2.3(r) of the Schwab Plan Directed Employee Benefit Trust Agreement between the Employer and the Charles Schwab Trust Company dated September 27, 2002 (the "Schwab Trust Agreement").

(b) If the Employer Stock is not a registration-type class of securities, as defined in paragraph (c) below, Employer Stock in the Trust shall be voted by the Trustee as provided in section 2.3(r) of the Schwab Trust Agreement. However, each Participant (or Beneficiary) will be entitled to give confidential instructions as to the voting of shares

of Employer Stock then allocated to his Participant's ESOP Account on corporate matters which involve the voting of such shares with respect to the approval or disapproval of a corporate merger or consolidation, recapitalization, reclassification, liquidation, dissolution, sale of substantially all the assets of a trade or business, or such similar transaction as the Secretary of the Treasury may prescribe in regulations, in accordance with procedures established by the Administrator. In that event, any allocated Employer Stock with respect to which voting instructions are not given, and shares of Employer Stock, which are not then allocated to Participants' ESOP Accounts, shall be voted by the Trustee as provided in section 2.3(r) of the Schwab Trust Agreement.

Instructions to the Trustee for voting of allocated shares of Employer Stock shall be made by written ballot distributed pursuant to procedures ensuring confidentiality established by the Administrator. Participants and Beneficiaries shall be named fiduciaries under the Act to the extent they exercise rights pursuant to this Section 5.3. The Trustee shall honor the instructions of the Participants and Beneficiaries given in accordance with this Section 5.3 to the extent that doing so does not violate the Trustee's duties under the Act.

(c) For purposes of this Section 5.3, the term "registration-type class of securities" means (i) a class of securities required to be registered under Section 12 of the Securities Exchange Act of 1934, and (ii) a class of securities which would be required to be so registered except for the exemption from registration provided in Subsection (g)(2)(H) of Section 12 of the Securities Exchange Act of 1934.

5.4 RIGHT OF FIRST REFUSAL

Shares of the Employer Stock when held and distributed by the Trustee shall not be subject to a "right of first refusal," as provided in Regulation Section 54.4975-7(b)(9).

5.5 RIGHT TO DEMAND EMPLOYER STOCK

Distribution of a vested Participant's ESOP Accounts will be made in-kind in whole shares of Employer Stock, cash or a combination of both, as determined by the Administrator, provided, however, that the Administrator shall notify the Participant of his right to demand distribution of his vested Participant's ESOP Account entirely in kind in whole shares of Employer Stock (with the value of any fractional share paid in cash). If the charter or by-laws of the Employer restrict ownership of substantially all of the outstanding Employer Stock to Employees and the Trust, or if the sponsoring employer is an S Corporation as defined in Code Section 1361(a), the Participant is not entitled to a distribution in the form of Employer Stock and the distribution of a Participant's ESOP Account shall be made entirely in the form of cash.

5.6 PUT OPTION

If the shares of Employer Stock are not readily tradable on an established market, the Employer shall issue a "put option" to each Participant or Beneficiary receiving a distribution of Employer Stock from the Plan. The put option shall permit the Participant or Beneficiary to sell such Employer Stock at its then fair market value, as determined by an independent appraiser (as defined in Section 6.3), to the Employer, at any time during the 60 day period commencing on

the date the Employer Stock was distributed to the recipient and, if not exercised within that period, the put option will temporarily lapse. Upon the close of the Plan Year in which such temporary lapse of the put option occurs, the independent appraiser shall determine the value of the Employer Stock, and the Administrator shall notify each distributee who did not exercise the initial put option prior to its temporary lapse in the preceding Plan Year of the revised value of the Employer Stock. The time during which the put option may be exercised shall recommence on the date such notice or revaluation is given and shall permanently terminate 60 days thereafter. The Trustee may be permitted by the Employer to purchase Employer Stock put to the Employer under a put option. At the option of the Employer, as the case may be, the payment for Employer Stock sold pursuant to a put option shall be made, as determined in the discretion of the Employer, as the case may be, in the following forms:

(a) if the Employer Stock was distributed as part of a total distribution, then payment will be made with a promissory note which provides for substantially equal annual installments commencing within 30 days from the date of the exercise of the put option and over a period not exceeding 5 years, with interest payable at a reasonable rate (as determined by the Employer) on any unpaid installment balance, with adequate security provided, and without penalty for any prepayment of such installments; or

(b) in a lump sum no later than 30 days after such Participant exercises the put option.

5.7 DISTRIBUTION AND PAYMENT REQUIREMENTS

(a) If the Participant, and, if applicable pursuant to Code Sections 401(a)(11) and 417, with the consent of the Participant's spouse, elects the distribution of the Participant's ESOP Account balance in the Plan, such distribution shall be made in a lump sum at the times described in Article VII.

(b) Notwithstanding Section 5.7(a), if the Participant, and, if applicable pursuant to Code Section 401(a)(11) and 417, with the consent of the Participant's spouse, elects the distribution of the Participant's ESOP Account balance in the Plan shall commence not later than one year after the close of the Plan Year:

(i) in which the Participant separates from service by reason of the attainment of Normal Retirement Age under the Plan, disability or death, or

(ii) which is the fifth Plan Year following the Plan Year in which the Participant otherwise separates from service, except that this paragraph (ii) shall not apply if the Participant is reemployed by the Employer before distribution is required to begin under this paragraph (ii).

(c) For purposes of this Section 5.7, the distribution of a Participant's ESOP Account balance that includes Employer Stock acquired with the proceeds of a loan described in Code Section 404(a)(9) shall not be delayed until the close of the Plan Year in which such loan is repaid in full.

(d) The distribution of the Participant's ESOP Account balance shall be in a lump sum. Notwithstanding the previous sentence, the distribution of the Participant's ESOP Account balance shall not be delayed beyond distributions made in substantially equal periodic payments (not less frequently than annually) over a period not longer than the greater of:

(i) five (5) years, or

(ii) in the case of a Participant with a Participant's ESOP Account balance in excess of \$800,000, five (5) years plus one (1) additional year (but not more than five (5) additional years) for each \$160,000 or fraction thereof by which such balance exceeds \$800,000.

5.8 DIVERSIFICATION OF INVESTMENTS

(a) One year after the date upon which the Employer makes an Employer Non-Elective Contribution in Employer Stock to a Participant's ESOP Account, the Participant shall have the right to make an election to diversify and direct the investment of such portion of his Participant's ESOP Account.

(b) Notwithstanding Section 5.8(a), any qualified participant shall have the right to make an election to direct the investment of a portion of his Participant's ESOP Account. Any Participant who has completed at least ten (10) years of participation in the Plan and who has attained the age of fifty-five (55) is a "qualified participant". Such qualified participant may elect within ninety (90) days after the close of each Plan Year in the six (6) Plan Year period beginning with the first Plan Year in which he becomes a qualified participant, to diversify the investment of at least twenty five percent (25%) of his Participant's ESOP Account, less any amount to which a prior diversification election applies. In the case of the last year of such six (6) Plan Year period, fifty percent (50%) shall be substituted for twenty five percent (25%) in the preceding sentence. The portion of a qualified participant's Participant's ESOP Account which is eligible for diversification pursuant to this Section 5.8 may be invested in any of the Directed Investment Options, as described in Section 1.14.

(c) Effective on and after January 1, 2007, any Participant (whether a qualified participant under Subsection 5.8(b) above or not) and any Beneficiary or other person who has an ESOP Account under this Plan, shall have the right to elect to direct the investment of a portion of the ESOP Account to the following extent. For both that portion of his or her Participant's ESOP Account attributable to employer contributions (other than elective deferrals) which is invested in Employer Stock and that portion (if any) of his or her Participant's ESOP Account attributable to elective deferrals which is invested Employer Stock, the person may elect to direct the Plan to divest any such Employer Stock and to reinvest the proceeds in any of the Directed Investment Options, as described in Section 1.14. The Plan shall offer not less than three (3) Directed Investment Options (other than Employer Stock), each of which is diversified and has materially different return and risk

characteristics. The Administrator may adopt such procedures as he determines to be necessary or appropriate imposing timing restrictions or similar conditions on Participant elections to divest Employer Stock; provided that the Plan shall provide for reasonable periodic opportunities occurring no less frequently than quarterly, and shall not impose restrictions or conditions on elections to divest which are not imposed on the Directed Investment Options except to the extent such additional restrictions are imposed by reason of applicable securities laws.

Not later than 30 days before the first date on which a Participant (or other individual) is eligible to exercise the right to direct the divestiture of any Employer Stock in his or her ESOP Account pursuant to this Section 5.8(c) of the Plan and Section 204(j) of ERISA, the Administrator shall provide such individual with a notice:

- (1) setting forth such right to elect to diversify under this Section 5.8(c); and
- (2) describe the importance of diversifying the investment of retirement account assets.

5.9 NONTERMINABLE RIGHTS

The provisions of Section 5.6 shall continue to be applicable to shares of Employer Stock even if the Plan ceases to be an employee stock ownership plan within the meaning of Code Section 4975(e)(7).

5.10 DISTRIBUTION OF DIVIDENDS ON EMPLOYER STOCK

(a) Dividends Paid to Participants. Any dividends paid with respect to shares of Employer Stock allocated to Participant's ESOP Accounts may, as determined by the Administrator, be either (i) paid by the Employer directly in cash to Participants or their Beneficiaries, on a non-discriminatory basis; (ii) paid to the Trustee and distributed by the Trustee to the Participants or their Beneficiaries no later than 90 days after the end of the Plan Year in which paid to the Trustee; or (iii) at the election of the Participant or their Beneficiaries, paid as provided in clause (i) or (ii), or paid to the Trustee and reinvested in Employer Stock. At the discretion of the Administrator, any dividends paid with respect to shares of Employer Stock allocated to Participant's ESOP Accounts may be used to pay Plan expenses.

(b) Dividends Used to Repay Acquisition Loan. To the extent permitted by applicable law, any cash dividends paid with respect to shares of Employer Stock acquired with the proceeds of the Acquisition Loan and allocated to the Participant's ESOP Accounts or held in the Loan Suspense Account may only as directed by the Board be used to repay the principal balance of an outstanding Acquisition Loan or interest thereon in whole or in part as provided in Section 5.2(c). Financed Shares released from the Loan Suspense Account by reason of dividends paid with respect to such Employer Stock shall be allocated to Participant's ESOP Accounts by allocating Financed Shares

with a fair market value equal to the dividends paid and by allocating any remaining shares so released in the same manner as discretionary profit-sharing contributions of the Plan.

5.11 PROHIBITED ALLOCATIONS OF SECURITIES IN AN S CORPORATION

(a) If at any time the Plan holds Employer Stock consisting of stock in an S corporation, no portion of the assets of the Plan attributable to (or allocable in lieu of) such Employer Stock may, during a nonallocation year, accrue (or be allocated directly or indirectly under any plan of the Employer meeting the requirements of Code Section 401(a)) for the benefit of any disqualified person.

(b) If the Plan fails to meet the requirements of subsection (a), the Plan shall be treated as having distributed to any disqualified person the amount allocated to the account of such person in violation of paragraph (a) at the time of such allocation. The Plan shall also be subject to an excise tax, as provided in Code Section 4979A, for violations of subsection (a).

(c) Nonallocation Year.

(1) For purposes of Section 5.11, the term “nonallocation year” shall mean any Plan Year of the Plan if, at any time during such Plan Year (i) the Plan holds Employer Stock consisting of stock in an S corporation, and (ii) disqualified persons own at least 50 percent of the number of shares of stock in the S corporation.

(2) For purposes of subsection (c)(1), the rules of Code Section 318(a) shall apply for purposes of determining ownership, except that (i) in applying paragraph (1) thereof, the members of an individual’s family shall include members of the family described in paragraph (4)(D), and (ii) paragraph (4) thereof shall not apply. For purposes of subsection (c)(1), notwithstanding the employee trust exception in Code Section 318(a)(2)(B)(i), an individual shall be treated as owning deemed-owned shares of the individual. Solely for purposes of applying subsection 5.11(e), this subparagraph (c)(2) shall be applied after the attribution rules of subsection 5.11(e) have been applied.

(d) Disqualified Person.

(1) For purposes of Section 5.11, the term “disqualified person” shall mean any person if (i) the aggregate number of deemed-owned shares of such person and the members of such person’s family is at least 20 percent of the number of deemed-owned shares of stock in the S corporation, or (ii) in the case of a person not described in clause (i), the number of deemed-owned shares of such person is at least 10 percent of the number of deemed-owned shares of stock in such corporation.

(2) In the case of a disqualified person described in clause (i) of subsection (d)(1), any member of such person’s family with deemed-owned shares shall be treated as a disqualified person if not otherwise treated as a disqualified person under subsection (d)(1).

(3) The term “deemed-owned shares” generally means, with respect to any person (I) the stock in the S corporation constituting Employer Stock of an employee stock ownership plan which is allocated to such person under the plan, and (II) such person’s share of the stock in such corporation which is held by such plan but which is not allocated under the plan to participants. For purposes of clause (II) in the previous sentence, a person’s share of unallocated S corporation stock held by such plan is the amount of the unallocated stock which would be allocated to such person if the unallocated stock were allocated to all participants in the same proportions as the most recent stock allocation under the plan.

(4) For purposes of this subsection 5.11(d), the term “member of the family” means, with respect to any individual (i) the spouse of the individual, (ii) an ancestor or lineal descendant of the individual or the individual’s spouse, (iii) a brother or sister of the individual or the individual’s spouse and any lineal descendant of the brother or sister, and (iv) the spouse of any individual described in clause (ii) or (iii). A spouse of an individual who is legally separated from such individual under a decree of divorce or separate maintenance shall not be treated as such individual’s spouse for purposes of this subsection 5.11(d)(4).

(e) Treatment of Synthetic Equity. For purposes of subsections (c) and (d), in the case of a person who owns synthetic equity in the S corporation, except to the extent provided in regulations, the shares of stock in such corporation on which such synthetic equity is based shall be treated as outstanding stock in such corporation and deemed-owned shares of such person if such treatment of synthetic equity of 1 or more such persons results in (A) the treatment of any person as a disqualified person, or (B) the treatment of any year as a nonallocation year. For purposes of this subsection 5.11(e), synthetic equity shall be treated as owned by a person in the same manner as stock is treated as owned by a person under the rules of paragraphs (2) and (3) of Code Section 318(a). If, without regard to this subsection 5.11(e), a person is treated as a disqualified person or a year is treated as a nonallocation year, this subsection shall not be construed to result in the person or year not being so treated.

(f) The term “synthetic equity” means any stock option, warrant, restricted stock, deferred issuance stock right, or similar interest or right that gives the holder the right to acquire or receive stock of the S corporation in the future. Except to the extent provided in regulations, synthetic equity also includes a stock appreciation right, phantom stock unit, or similar right to a future cash payment based on the value of such stock or appreciation in such value.

ARTICLE VI
VALUATIONS

6.1 VALUATION OF THE TRUST FUND

The Administrator shall direct the Trustee, as of each Valuation Date, to determine the net worth of the assets comprising the Trust Fund as it exists on the Valuation Date. In determining such net worth, the Trustee shall value the assets comprising the Trust Fund at their fair market value (or their contractual value in the case of a Contract or Policy) as of the Valuation Date and shall deduct all expenses for which the Trustee has not yet obtained reimbursement from the Employer or the Trust Fund. The Trustee may update the value of any shares held in the Participant Directed Account by reference to the number of shares held by that Participant, priced at the market value as of the Valuation Date.

6.2 METHOD OF VALUATION

In determining the fair market value of securities held in the Trust Fund which are listed on a registered stock exchange, the Administrator shall direct the Trustee to value the same at the prices they were last traded on such exchange preceding the close of business on the Valuation Date. If such securities were not traded on the Valuation Date, or if the exchange on which they are traded was not open for business on the Valuation Date, then the securities shall be valued at the prices at which they were last traded prior to the Valuation Date. Any unlisted security held in the Trust Fund shall be valued at its bid price next preceding the close of business on the Valuation Date, which bid price shall be obtained from a registered broker or an investment banker. In determining the fair market value of assets other than securities for which trading or bid prices can be obtained, the Trustee may appraise such assets itself, or in its discretion, employ one or more appraisers for that purpose and rely on the values established by such appraiser or appraisers. Notwithstanding the foregoing, Employer Stock that is not readily tradable on an established market shall be valued as provided in Section 6.3.

6.3 VALUATION OF EMPLOYER STOCK

If the Employer Stock is not readily tradable on an established securities market, the Trustee shall, as of each Valuation Date, make a good faith determination of the fair market value of the Employer Stock by obtaining the advice of an "independent appraiser," as defined in Code Section 401(a)(28)(C) and in regulations issued pursuant to Act Section 3(18). If applicable, the Trustee shall promptly notify the Administrator as to the valuation of the Employer Stock.

ARTICLE VII
DETERMINATION AND DISTRIBUTION OF BENEFITS

7.1 DETERMINATION OF BENEFITS UPON RETIREMENT

Every Participant may terminate employment with the Employer and retire for the purposes hereof on the Participant's Normal Retirement Date. However, a Participant may postpone the termination of employment with the Employer to a later date, in which event the participation of such Participant in the Plan, including the right to receive allocations pursuant to Section 4.5, shall continue until such Participant's Late Retirement Date. Upon a Participant's Retirement Date or attainment of Normal Retirement Date without termination of employment with the Employer, or as soon thereafter as is practicable, the Trustee shall distribute, at the election of the Participant, all amounts credited to such Participant's Combined Account in accordance with Section 7.5.

7.2 DETERMINATION OF BENEFITS UPON DEATH

(a) Upon the death of a Participant before the Participant's Retirement Date or other termination of employment, all amounts credited to such Participant's Combined Account shall become fully Vested. The Administrator shall direct the Trustee, in accordance with the provisions of Sections 7.6 and 7.7, to distribute the value of the deceased Participant's accounts to the Participant's Beneficiary.

(b) Upon the death of a Former Participant, the Administrator shall direct the Trustee, in accordance with the provisions of Sections 7.6 and 7.7, to distribute any remaining Vested amounts credited to the accounts of a deceased Former Participant to such Former Participant's Beneficiary.

(c) Any security interest held by the Plan by reason of an outstanding loan to the Participant or Former Participant shall be taken into account in determining the amount of the death benefit.

(d) The Administrator may require such proper proof of death and such evidence of the right of any person to receive payment of the value of the account of a deceased Participant or Former Participant as the Administrator may deem desirable. The Administrator's determination of death and of the right of any person to receive payment shall be conclusive.

(e) The Beneficiary of the death benefit payable pursuant to this Section shall be the Participant's spouse. Except, however, the Participant may designate a Beneficiary other than the spouse if:

(1) the spouse has waived the right to be the Participant's Beneficiary, or

(2) the Participant is legally separated or has been abandoned (within the meaning of local law) and the Participant has a court order to such effect (and there is no "qualified domestic relations order" as defined in Code Section 414(p) which provides otherwise), or

-
- (3) the Participant has no spouse, or
 - (4) the spouse cannot be located.

In such event, the designation of a Beneficiary shall be made on a form satisfactory to the Administrator. A Participant may at any time revoke a designation of a Beneficiary or change a Beneficiary by filing written (or in such other form as permitted by the Internal Revenue Service) notice of such revocation or change with the Administrator. However, the Participant's spouse must again consent in writing (or in such other form as permitted by the Internal Revenue Service) to any change in Beneficiary unless the original consent acknowledged that the spouse had the right to limit consent only to a specific Beneficiary and that the spouse voluntarily elected to relinquish such right.

(f) In the event no valid designation of Beneficiary exists, or if the Beneficiary is not alive at the time of the Participant's death, the death benefit will be paid in the following order of priority to:

- (1) the Participant's surviving spouse;
- (2) the Participant's children, including adopted children, per stirpes;
- (3) the Participant's surviving parents, in equal shares; or
- (4) the Participant's estate.

If the Beneficiary does not predecease the Participant, but dies prior to distribution of the death benefit, the death benefit will be paid to the Beneficiary's estate.

(g) Any consent by the Participant's spouse to waive any rights to the death benefit must be in writing (or in such other form as permitted by the Internal Revenue Service), must acknowledge the effect of such waiver, and be witnessed by a Plan representative or a notary public. Further, the spouse's consent must be irrevocable and must acknowledge the specific nonspouse Beneficiary.

7.3 DETERMINATION OF BENEFITS IN EVENT OF DISABILITY

In the event of a Participant's Total and Permanent Disability prior to the Participant's Retirement Date or other termination of employment, all amounts credited to such Participant's Combined Account shall become fully Vested. In the event of a Participant's Total and Permanent Disability, the Administrator, in accordance with the provisions of Sections 7.5 and 7.7, shall direct the distribution to such Participant of all Vested amounts credited to such Participant's Combined Account.

7.4 DETERMINATION OF BENEFITS UPON TERMINATION

(a) If a Participant's employment with the Employer is terminated for any reason other than death, Total and Permanent Disability or retirement, then such Participant shall be entitled to such benefits as are provided hereinafter pursuant to this Section 7.4.

Distribution of the funds due to a Terminated Participant shall be made on the occurrence of an event which would result in the distribution had the Terminated Participant remained in the employ of the Employer (upon the Participant's death, Total and Permanent Disability or Normal Retirement). However, at the election of the Participant, the Administrator shall direct the Trustee that the entire Vested portion of the Terminated Participant's Combined Account be payable to such Terminated Participant. Any distribution under this paragraph shall be made in a manner which is consistent with and satisfies the provisions of Section 7.5, including, but not limited to, all notice and consent requirements of Code Section 411(a)(11) and the Regulations thereunder.

If, for Plan Years beginning after August 5, 1997, the value of a Terminated Participant's Vested benefit derived from Employer and Employee contributions does not exceed \$5,000 (\$3,500 for Plan Years beginning prior to August 6, 1997) and, if the distribution is made prior to March 22, 1999, has never exceeded \$5,000 (\$3,500 for Plan Years beginning prior to August 6, 1997) at the time of any prior distribution, then the Administrator shall direct the Trustee to cause the entire Vested benefit to be paid to such Participant in a single lump sum.

Effective on and after March 28, 2005, there will be no mandatory lump sum cashout distributions out of this Plan. Notwithstanding any other provision of the Plan, the Participant's consent to the distribution shall now be required before the Plan may make any immediate lump sum cashout distribution.

(b) The Vested portion of any Participant's Account and Participant's ESOP Account shall be a percentage of the total amount credited to the Participant's Account and Participant's ESOP Account determined on the basis of the Participant's number of whole year Periods of Service according to the following schedule:

Vesting Schedule

<u>Periods of Service</u>	<u>Percentage</u>
1	20%
2	40%
3	60%
4	80%
5	100%

(c) Notwithstanding the vesting schedule above, the Vested percentage of a Participant's Account and Participant's ESOP Account shall not be less than the Vested percentage attained as of the later of the effective date or adoption date of this amendment and restatement. The above vesting schedule also applies to Participants who terminated employment with a vested benefit as of October 1, 1997.

(d) Notwithstanding the vesting schedule above, upon the complete discontinuance of the Employer contributions to the Plan or upon any full or partial termination of the Plan, all amounts then credited to the account of any affected Participant shall become 100% Vested and shall not thereafter be subject to Forfeiture.

(e) The computation of a Participant's nonforfeitable percentage of such Participant's interest in the Plan shall not be reduced as the result of any direct or indirect amendment to this Plan. In the event that the Plan is amended to change or modify any vesting schedule, or if the Plan is amended in any way that directly or indirectly affects the computation of the Participant's nonforfeitable percentage, or if the Plan is deemed amended by an automatic change to a top heavy vesting schedule, then each Participant with at least three (3) whole year Periods of Service as of the expiration date of the election period may elect to have such Participant's nonforfeitable percentage computed under the Plan without regard to such amendment or change. If a Participant fails to make such election, then such Participant shall be subject to the new vesting schedule. The Participant's election period shall commence on the adoption date of the amendment and shall end sixty (60) days after the latest of:

- (1) the adoption date of the amendment,
- (2) the effective date of the amendment, or
- (3) the date the Participant receives written notice of the amendment from the Employer or Administrator.

7.5 DISTRIBUTION OF BENEFITS

(a) The Administrator, pursuant to the election of the Participant, shall direct the Trustee to distribute to a Participant or such Participant's Beneficiary any amount to which the Participant is entitled under the Plan in one or more of the following methods:

(1) One lump-sum payment in cash or in property allocated to the Participant's account except, however, for property distributions made prior to the earlier of (A) the effective date of an amendment limiting distribution in property to property allocated to the Participant's account, or (B) the adoption date of this amendment and restatement, distributions in property are not limited to property in the Participant's account.

(2) For distributions other than distributions of Employer Stock, payments over a period certain in monthly, quarterly, semiannual, or annual cash installments. In order to provide such installment payments, the Administrator may (A) segregate the aggregate amount thereof in a separate, federally insured savings account, certificate of deposit in a bank or savings and loan association, money market certificate or other liquid short-term security or (B) purchase a nontransferable annuity contract for a term certain (with no life contingencies) providing for such payment. The period over which such payment is to be made shall not extend beyond the Participant's life expectancy (or the life expectancy of the Participant and the Participant's designated Beneficiary).

(b) Any distribution to a Participant, for Plan Years beginning after August 5, 1997, who has a benefit which exceeds \$5,000 (\$3,500 for Plan Years beginning prior to August 6, 1997) or, if the distribution is made prior to March 22, 1999, has ever exceeded \$5,000 (\$3,500 for Plan Years beginning prior to August 6, 1997) at the time of any prior distribution, shall require such Participant's written (or in such other form as permitted by the Internal Revenue Service) consent if such distribution commences prior to the time the benefit is "immediately distributable." A benefit is "immediately distributable" if any part of the benefit could be distributed to the Participant (or surviving spouse) before the Participant attains (or would have attained if not deceased) the later of the Participant's Normal Retirement Age or age 62. However, for distributions prior to October 17, 2000, if a Participant has begun to receive distributions pursuant to an optional form of benefit under which at least one scheduled periodic distribution has not yet been made, and if the value of the Participant's benefit, determined at the time of the first distribution under that optional form of benefit, exceeded \$5,000 (\$3,500 for Plan Years beginning prior to August 6, 1997), then the value of the Participant's benefit prior to October 17, 2000 is deemed to continue to exceed such amount.

Effective on and after March 28, 2005, there will be no mandatory lump sum cashout distributions out of this Plan. Notwithstanding any other provision of the Plan, the Participant's consent to the distribution shall now be required before the Plan may make any immediate lump sum cashout distribution.

(c) The following rules will apply to the consent requirements set forth in subsection (b):

(1) The Participant must be informed of the right to defer receipt of the distribution. If a Participant fails to consent, it shall be deemed an election to defer the commencement of payment of any benefit. However, any election to defer the receipt of benefits shall not apply with respect to distributions which are required under Section 7.5(d).

(2) Notice of the rights specified under this paragraph shall be provided no less than thirty (30) days and no more than ninety (90) days before the date the distribution commences.

(3) Written (or such other form as permitted by the Internal Revenue Service) consent of the Participant to the distribution must not be made before the Participant receives the notice and must not be made more than ninety (90) days before the date the distribution commences.

(4) No consent shall be valid if a significant detriment is imposed under the Plan on any Participant who does not consent to the distribution.

Any such distribution may commence less than thirty (30) days after the notice required under Regulation 1.411(a)-11(c) is given, provided that: (1) the Administrator clearly informs the Participant that the Participant has a right to a period of at least thirty (30) days after receiving the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular distribution option), and (2) the Participant, after receiving the notice, affirmatively elects a distribution.

(d) Notwithstanding any provision in the Plan to the contrary, the distribution of a Participant's benefits made on or after January 1, 1997 shall be made in accordance with the following requirements and shall otherwise comply with Code Section 401(a)(9) and the Regulations thereunder (including Regulation 1.401(a)(9)-2), the provisions of which are incorporated herein by reference:

(1) A Participant's benefits shall be distributed or must begin to be distributed not later than April 1st of the calendar year following the later of (i) the calendar year in which the Participant attains age 70 1/2 or (ii) the calendar year in which the Participant retires, provided, however, that this clause (ii) shall not apply in the case of a Participant who is a "five (5) percent owner" at any time during the Plan Year ending with or within the calendar year in which such owner attains age 70 1/2. Such distributions shall be equal to or greater than any required distribution.

Alternatively, distributions to a Participant must begin no later than the applicable April 1st as determined under the preceding paragraph and must be made over a period certain measured by the life expectancy of the Participant (or the life expectancies of the Participant and the Participant's designated Beneficiary) in accordance with Regulations.

(2) Distributions to a Participant and the Participant's Beneficiaries shall only be made in accordance with the incidental death benefit requirements of Code Section 401(a)(9)(G) and the Regulations thereunder.

With respect to distributions under the Plan made for calendar years beginning on or after January 1, 2001, the Plan will apply the minimum distribution requirements of Code Section 401(a)(9) in accordance with the Regulations under Code Section 401(a)(9) that were proposed on January 17, 2001, notwithstanding any provision of the Plan to the contrary. This amendment shall continue in effect until the end of the last calendar year beginning before the effective date of final Regulations under Code Section 401(a)(9) or such other date specified in guidance published by the Internal Revenue Service.

(e) For purposes of this Section, the life expectancy of a Participant and a Participant's spouse shall not be redetermined in accordance with Code Section 401(a)(9)(D). Life expectancy and joint and last survivor expectancy shall be computed using the return multiples in Tables V and VI of Regulation 1.72-9.

(f) The restrictions imposed by this Section shall not apply if a Participant has, prior to January 1, 1984, made a written designation to have retirement benefits paid in an alternative method acceptable under Code Section 401(a)(9) as in effect prior to the enactment of the Tax Equity and Fiscal Responsibility Act of 1982.

(g) All annuity Contracts under this Plan shall be non-transferable when distributed. Furthermore, the terms of any annuity Contract purchased and distributed to a Participant or spouse shall comply with all of the requirements of the Plan.

(h) If a distribution is made to a Participant who has not severed employment and who is not fully Vested in the Participant's Account and Participant's ESOP Account and the Participant may increase the Vested percentage in such account, then, at any relevant time the Participant's Vested portion of the account will be equal to an amount ("X") determined by the formula:

$$X \text{ equals } P(\text{AB plus D}) - D$$

For purposes of applying the formula: P is the Vested percentage at the relevant time, AB is the account balance at the relevant time, and D is the amount of distribution.

7.6 DISTRIBUTION OF BENEFITS UPON DEATH

(a) (1) The death benefit payable pursuant to Section 7.2 shall be paid to the Participant's Beneficiary within a reasonable time after the Participant's death by either of the following methods, as elected by the Participant (or if no election has been made prior to the Participant's death, by the Participant's Beneficiary) subject, however, to the rules specified in Section 7.6(b):

(i) One lump-sum payment in cash or in property allocated to the Participant's account except, however, for property distributions made prior to the earlier of (A) the effective date of an amendment limiting distribution in property to property allocated to the Participant's account, or (B) the adoption date of this amendment and restatement, distributions in property are not limited to property in the Participant's account.

(ii) Payment in monthly, quarterly, semi-annual, or annual cash installments over a period to be determined by the Participant or the Participant's Beneficiary. After periodic installments commence, the Beneficiary shall have the right to direct the Trustee to reduce the period over which such periodic installments shall be made, and the Trustee shall adjust the cash amount of such periodic installments accordingly.

(1) In the event the death benefit payable pursuant to Section 7.2 is payable in installments, then, upon the death of the Participant, the Administrator may direct the Trustee to segregate the death benefit into a separate account, and the Trustee shall invest such segregated account separately, and the funds accumulated in such account shall be used for the payment of the installments.

(b) Notwithstanding any provision in the Plan to the contrary, distributions upon the death of a Participant shall be made in accordance with the following requirements and shall otherwise comply with Code Section 401(a)(9) and the Regulations thereunder. If it is determined, pursuant to Regulations, that the distribution of a Participant's interest has begun and the Participant dies before the entire interest has

been distributed, the remaining portion of such interest shall be distributed at least as rapidly as under the method of distribution selected pursuant to Section 7.5 as of the date of death. If a Participant dies before receiving any distributions of the interest in the Plan or before distributions are deemed to have begun pursuant to Regulations, then the death benefit shall be distributed to the Participant's Beneficiaries by December 31st of the calendar year in which the fifth anniversary of the Participant's date of death occurs.

However, the 5-year distribution requirement of the preceding paragraph shall not apply to any portion of the deceased Participant's interest which is payable to or for the benefit of a designated Beneficiary if the designated beneficiary elects to receive benefits under the 1-year rule (including the spousal exception), as explained below. In such event, such portion shall be distributed over a period not extending beyond the life expectancy of such designated Beneficiary provided such distribution begins not later than December 31st of the calendar year immediately following the calendar year in which the Participant died. However, in the event the Participant's spouse (determined as of the date of the Participant's death) is the designated Beneficiary, the requirement that distributions commence within one year of a Participant's death shall not apply. In lieu thereof, distributions must commence on or before the later of:

(1) December 31st of the calendar year immediately following the calendar year in which the Participant died; or

(2) December 31st of the calendar year in which the Participant would have attained age 70 1/2. If the surviving spouse dies before distributions to such spouse begin, then the 5-year distribution requirement of this Section shall apply as if the spouse was the Participant.

(c) For purposes of this Section, the life expectancy of a Participant and a Participant's spouse shall not be redetermined in accordance with Code Section 401(a)(9)(D). Life expectancy and joint and last survivor expectancy shall be computed using the return multiples in Tables V and VI of Regulation 1.72-9.

(d) For purposes of this Section, any amount paid to a child of the Participant will be treated as if it had been paid to the surviving spouse if the amount becomes payable to the surviving spouse when the child reaches the age of majority.

(e) Subject to the spouse's right of consent afforded under the Plan, the restrictions imposed by this Section shall not apply if a Participant has, prior to January 1, 1984, made a written designation to have death benefits paid in an alternative method acceptable under Code Section 401(a)(9) as in effect prior to the enactment of the Tax Equity and Fiscal Responsibility Act of 1982.

7.7 TIME OF SEGREGATION OR DISTRIBUTION

Except as limited by Sections 7.5 and 7.6, whenever the Trustee is to make a distribution or to commence a series of payments the distribution or series of payments may be made or begun on such date or as soon thereafter as is practicable. However, unless a Former Participant elects in writing to defer the receipt of benefits (such election may not result in a death benefit

that is more than incidental), the payment of benefits shall begin not later than the sixtieth (60th) day after the close of the Plan Year in which the latest of the following events occurs: (a) the date on which the Participant attains the earlier of age 65 or the Normal Retirement Age specified herein; (b) the tenth (10th) anniversary of the year in which the Participant commenced participation in the Plan; or (c) the date the Participant terminates service with the Employer.

Notwithstanding the foregoing, the failure of a Participant to consent to a distribution that is "immediately distributable" (within the meaning of Section 7.5), shall be deemed to be an election to defer the commencement of payment of any benefit sufficient to satisfy this Section.

7.8 DISTRIBUTION FOR MINOR OR INCOMPETENT BENEFICIARY

In the event a distribution is to be made to a minor or incompetent Beneficiary, then the Administrator may direct that such distribution be paid to the legal guardian, or if none in the case of a minor Beneficiary, to a parent of such Beneficiary or a responsible adult with whom the Beneficiary maintains residence, or to the custodian for such Beneficiary under the Uniform Gift to Minors Act or Gift to Minors Act, if such is permitted by the laws of the state in which said Beneficiary resides. Such a payment to the legal guardian, custodian or parent of a minor Beneficiary shall fully discharge the Trustee, Employer, and Plan from further liability on account thereof.

7.9 LOCATION OF PARTICIPANT OR BENEFICIARY UNKNOWN

In the event that all, or any portion, of the distribution payable to a Participant or Beneficiary hereunder shall, at the later of the Participant's attainment of age 62 or Normal Retirement Age, remain unpaid solely by reason of the inability of the Administrator, after sending a registered letter, return receipt requested, to the last known address, and after further diligent effort, to ascertain the whereabouts of such Participant or Beneficiary, the amount so distributable shall be treated as a Forfeiture pursuant to the Plan. Notwithstanding the foregoing, effective January 1, 2002, or if later, the adoption date of this amendment and restatement, if the value of a Participant's Vested benefit derived from Employer and Employee contributions does not exceed \$5,000 (\$3,500 for Plan Years beginning prior to August 6, 1997), then the amount distributable may, in the sole discretion of the Administrator, either be treated as a Forfeiture, or be paid directly to an individual retirement account described in Code Section 408(a) or an individual retirement annuity described in Code Section 408(b) at the time it is determined that the whereabouts of the Participant or the Participant's Beneficiary cannot be ascertained. In the event a Participant or Beneficiary is located subsequent to the Forfeiture, such benefit shall be restored, first from Forfeitures, if any, and then from an additional Employer contribution if necessary. However, regardless of the preceding, a benefit which is lost by reason of escheat under applicable state law is not treated as a Forfeiture for purposes of this Section nor as an impermissible forfeiture under the Code.

7.10 PRE-RETIREMENT DISTRIBUTION

Unless otherwise provided, at such time as a Participant shall have attained the age of 59-1/2 years, the Administrator, at the election of the Participant who has not severed employment with the Employer, shall direct the Trustee to distribute all or a portion of the Vested amount

then credited to the accounts maintained on behalf of the Participant. In addition, a Participant may withdraw all or a portion of the amount in his Voluntary Contribution Account (after-tax account) at any time prior to severance of employment. In the event that the Administrator makes an in-service distribution, the Participant shall continue to be eligible to participate in the Plan on the same basis as any other Employee. Any distribution made pursuant to this Section shall be made in a manner consistent with Section 7.5, including, but not limited to, all notice and consent requirements of Code Section 411(a)(11) and the Regulations thereunder.

Notwithstanding the above, pre-retirement distributions from a Participant's Elective Account shall not be permitted prior to the Participant attaining age 59 1/2 except as otherwise permitted under the terms of the Plan.

7.11 ADVANCE DISTRIBUTION FOR HARDSHIP

(a) The Administrator, at the election of the Participant, shall direct the Trustee to distribute to any Participant in any one Plan Year up to the lesser of 100% of the Participant's Elective Account and Participant's Transfer/Rollover Account valued as of the last Valuation Date or the amount necessary to satisfy the immediate and heavy financial need of the Participant. Any distribution made pursuant to this Section shall be deemed to be made as of the first day of the Plan Year or, if later, the Valuation Date immediately preceding the date of distribution, and the Participant's Elective Account and Participant's Transfer/Rollover Account shall be reduced accordingly. Withdrawal under this Section is deemed to be on account of an immediate and heavy financial need of the Participant only if the withdrawal is for:

- (1) Medical expenses described in Code Section 213(d) incurred by the Participant, the Participant's spouse, or any of the Participant's dependents (as defined in Code Section 152) or necessary for these persons to obtain medical care as described in Code Section 213(d);
- (2) The costs directly related to the purchase (excluding mortgage payments) of a principal residence for the Participant;
- (3) Payment of tuition, related educational fees, and room and board expenses for the next twelve (12) months of post-secondary education for the Participant and the Participant's spouse, children, or dependents; or
- (4) Payments necessary to prevent the eviction of the Participant from the Participant's principal residence or foreclosure on the mortgage on that residence; or
- (5) payments for burial or funeral expenses for the Participant's deceased parent, spouse, child, or dependent (as defined in Code section 152 without regard to subsection (d)(1)(B) thereof);
- (6) expenses for the repair of damage to the Participant's principal residence that would qualify for the casualty deduction under Code section 165 (determined without regard to whether the loss exceeds 10% of adjusted gross income).

(b) No distribution shall be made pursuant to this Section unless the Administrator, based upon the Participant's representation and such other facts as are known to the Administrator, determines that all of the following conditions are satisfied:

(1) The distribution is not in excess of the amount of the immediate and heavy financial need of the Participant. The amount of the immediate and heavy financial need may include any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution;

(2) The Participant has obtained all distributions, other than hardship distributions, and all nontaxable (at the time of the loan) loans currently available under all plans maintained by the Employer;

(3) The Plan, and all other plans maintained by the Employer, provide that the Participant's elective deferrals and after-tax voluntary Employee contributions will be suspended for at least twelve (12) months after receipt of the hardship distribution or, the Participant, pursuant to a legally enforceable agreement, will suspend elective deferrals and after-tax voluntary Employee contributions to the Plan and all other plans maintained by the Employer for at least twelve (12) months after receipt of the hardship distribution; and

(4) The Plan, and all other plans maintained by the Employer, provide that the Participant may not make elective deferrals for the Participant's taxable year immediately following the taxable year of the hardship distribution in excess of the applicable limit under Code Section 402(g) for such next taxable year less the amount of such Participant's elective deferrals for the taxable year of the hardship distribution.

(c) Notwithstanding the above, distributions from the Participant's Elective Account pursuant to this Section shall be limited, as of the date of distribution, to the Participant's Elective Account as of the end of the last Plan Year ending before July 1, 1989, plus the total Participant's Deferred Compensation after such date, reduced by the amount of any previous distributions pursuant to this Section and Section 7.10.

(d) Any distribution made pursuant to this Section shall be made in a manner which is consistent with and satisfies the provisions of Section 7.5, including, but not limited to, all notice and consent requirements of Code Section 411(a)(11) and the Regulations thereunder.

(e) Notwithstanding the above, a Participant who, after December 31, 2001, receives a distribution of elective deferrals on account of hardship, shall be prohibited from making elective deferrals and Employee contributions under this and all other plans of the Employer for six (6) months after receipt of the distribution. A Participant who, in calendar year 2001, receives a distribution of elective deferrals on account of hardship

shall be prohibited from making elective deferrals and Employee contributions under this and all other plans of the Employer for the period specified in the provisions of the Plan relating to suspension of elective deferrals that were in effect prior to this amendment.

(f) Special Rules Hurricane-Related Hardship Distributions. The following provisions shall apply to distributions on account of financial hardship to qualified Plan Participants whose principal residence was in a federally proclaimed disaster area affected by Hurricane Katrina, Hurricane Rita or Hurricane Wilma, and as a result of any or all of such Hurricanes incurred an economic loss (a "Qualified Hurricane-related Distribution"). For purposes of these provisions, such rules will apply to Qualified Hurricane-related Distributions that took place at any time on or after August 25, 2005 and before January 1, 2007 with respect to Hurricane Katrina, at any time on or after September 23, 2005 and before January 1, 2007, with respect to Hurricane Rita, and at any time on or after October 23, 2005 and before January 1, 2007, with respect to Hurricane Wilma.

(1) Such Qualified Hurricane-related Distribution(s) on account of financial hardship from the Plan, when combined with all distributions obtained from all qualified plans maintained by the Employer or any other member of the Employer's controlled group shall not exceed \$100,000. Further, the aggregate amount of Qualified Hurricane-related Distribution(s) received by a Participant for any taxable year shall not exceed the excess of \$100,000, over the aggregate amounts treated as Qualified Hurricane-related Distributions received by the Participant for all previous taxable years

(2) Repayment Rights. A Participant-recipient of a Qualified Hurricane-related Distribution shall have the right at any time during a three-year period commencing as of the day after the date that the Qualified Hurricane-related Distribution is received to make a repayment or repayments of said distribution to the Plan (or another Eligible Retirement Plan) in an amount not exceeding the principal amount of the Qualified Hurricane-related Distribution. Further, a Participant-recipient of a Qualified Hurricane-related Distribution for the purchase of a principal residence may make a repayment or repayments of said distribution to the Plan (or another Eligible Retirement Plan) in an amount not exceeding the principal amount of the Qualified Hurricane-related Distribution if said repayment occurred during the period commencing on August 25, 2005 and ending February 28, 2006 with respect to a Hurricane Katrina-related distribution, during a period commencing on September 23, 2005 and ending February 28, 2006 with respect to a Hurricane Rita-related distribution, or during a period commencing on October 23, 2005 and ending February 28, 2006 with respect to a Hurricane Wilma-related distribution.

(3) A Qualified Hurricane-related Distribution shall be deemed to not violate the prohibitions on early distribution under Section 4.2 that apply to elective contributions made to Code Section 401(k) plans.

(4) The Plan provides for special hurricane-related distributions to Plan Participants who lived or worked in the Hurricane Katrina disaster area that qualified for individual relief from the Federal Emergency Management Agency. Similar relief is not available for Hurricanes Rita and Wilma. These special distributions could also have been made available to Participants residing outside the disaster area if they had a child, parent, grandparent or other dependent that lived or worked in the disaster area. In order to qualify for the special relief provided herein, the distribution had to be made by March 31, 2006. The six-month suspension on further deferrals is not applicable. These distributions were not restricted to the reasons specified in subparagraph 4.2(c). Plan Participants who received a distribution under this paragraph who themselves were not the victim of Hurricane Katrina may not take advantage of the special repayment rules provided in paragraph (2) above. The increase in the withdrawal limit to \$100,000 as specified in paragraph (1) above also did not apply to these withdrawals.

7.12 QUALIFIED DOMESTIC RELATIONS ORDER DISTRIBUTION

All rights and benefits, including elections, provided to a Participant in this Plan shall be subject to the rights afforded to any "alternate payee" under a "qualified domestic relations order." Furthermore, a distribution to an "alternate payee" shall be permitted if such distribution is authorized by a "qualified domestic relations order," even if the affected Participant has not separated from service and has not reached the "earliest retirement age" under the Plan. For the purposes of this Section, "alternate payee," "qualified domestic relations order" and "earliest retirement age" shall have the meaning set forth under Code Section 414(p).

7.13 DIRECT ROLLOVER

(a) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a "distributee's" election under this Section, a "distributee" may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an "eligible rollover distribution" that is equal to at least \$500 paid directly to an "eligible retirement plan" specified by the "distributee" in a "direct rollover."

(b) For purposes of this Section the following definitions shall apply:

(1) An "eligible rollover distribution" is any distribution of all or any portion of the balance to the credit of the "distributee," except that an "eligible rollover distribution" does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the "distributee" or the joint lives (or joint life expectancies) of the "distributee" and the "distributee's" designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); the portion of any other distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); any hardship distribution described in Code Section 401(k)(2)(B)(i)(IV) made

after December 31, 1999; and any other distribution that is reasonably expected to total less than \$200 during a year. For distributions made after December 31, 2001, any amount that is distributed on account of hardship shall not be an eligible rollover distribution and the distributee may not elect to have any portion of such a distribution paid directly to an eligible retirement plan. In addition, for distributions made after December 31, 2001, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax Employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Code Section 408(a) or (b), or to a qualified defined contribution plan described in Code Section 401(a) or 403(a) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(2) An “eligible retirement plan” is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), or a qualified trust described in Code Section 401(a), that accepts the “distributee’s” “eligible rollover distribution.” However, in the case of an “eligible rollover distribution” to the surviving spouse, an “eligible retirement plan” is an individual retirement account or individual retirement annuity. For distributions made after December 31, 2001, an eligible retirement plan shall also mean an annuity contract described in Code Section 403(b) and an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. For distributions made after December 31, 2001, the definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in Code Section 414(p).

(3) A “distributee” includes an Employee or former Employee. In addition, the Employee’s or former Employee’s surviving spouse and the Employee’s or former Employee’s spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p), are “distributees” with regard to the interest of the spouse or former spouse.

(4) A “direct rollover” is a payment by the Plan to the “eligible retirement plan” specified by the “distributee.”

7.14 NEW DISTRIBUTION EVENT

This Section 7.14 shall apply for distributions occurring on and after January 1, 2002 for severance from employment occurring on or after January 1, 2002. A Participant’s Elective Contributions and earnings attributable to these contributions shall be distributed on account of

the Participant's severance from employment. However, such a distribution shall be subject to the other provisions of the Plan regarding distributions, other than provisions that require a separation from service before such amounts may be distributed.

7.15 SPECIAL RULES WITH RESPECT TO THE ESOP

Article V provides special rules with respect to distributions that relate to the ESOP portion of the Plan. If a provision of this Article VII conflicts with any provision of Article V, the provisions of Article V shall supersede the Article VII provisions.

7.16 MINIMUM REQUIRED DISTRIBUTIONS

(a) General Rules.

1. Effective Date. Unless a later effective date is specified in subsection (f) below, the provisions of this Section 7.16 will apply for purposes of determining required minimum distributions for calendar years beginning with the 2002 calendar year.

2. Coordination with Minimum Distribution Requirements Previously in Effect. If the effective date of this Section 7.16 is earlier than calendar years beginning with the 2003 calendar year, required minimum distributions for 2002 under this Section 7.16 will be determined as follows. If the total amount of 2002 required minimum distributions under the Plan made to the distributee prior to the effective date of this Section 7.16 equals or exceeds the required minimum distributions determined under this Section 7.16, then no additional distributions will be required to be made for 2002 on or after such date to the distributee. If the total amount of 2002 required minimum distributions under the Plan made to the distributee prior to the effective date of this Section 7.16 is less than the amount determined under this Section 7.16, then required minimum distributions for 2002 on and after such date will be determined so that the total amount of required minimum distributions for 2002 made to the distributee will be the amount determined under this Section 7.16.

3. Precedence. The requirements of this Section 7.16 will take precedence over any inconsistent provisions of the Plan.

4. Requirements of Treasury Regulations Incorporated. All distributions required under this Section 7.16 will be determined and made in accordance with the Regulations under Code Section 401(a)(9).

5. TEFRA Section 242(b)(2) Elections. Notwithstanding the other provisions of this Section 7.16, distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the Plan that relate to Section 242(b)(2) of TEFRA.

(b) Time and Manner of Distribution

1. Required Beginning Date. The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's required beginning date.

2. Death of Participant Before Distributions Begin. 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:

A. If the Participant's surviving spouse is the Participant's sole designated beneficiary, then, except as provided in subsection (f) of this Section 7.16, 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 70 1/2, if later.

B. If the Participant's surviving spouse is not the Participant's sole designated beneficiary, then, except as provided in subsection (f) of this Section 7.16, distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

C. 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.

D. 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 subsection 7.16(b)(2), other than paragraph A, will apply as if the surviving spouse were the Participant.

For purposes of this subsection (b)(2) and subsection (d) of this Section 7.16, unless paragraph D of this subsection (b)(2) applies, distributions are considered to begin on the Participant's required beginning date. If paragraph D applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under paragraph A above. If distributions under an annuity purchased from an insurance company 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 paragraph A of this subsection (b)(2), the date distributions are considered to begin is the date distributions actually commence.

3. Forms of Distribution. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be

made in accordance with subsections (c) and (d) of this Section 7.16. 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.

(c) Required Minimum Distributions During Participant's Lifetime.

1. Amount of Required Minimum Distribution For Each Distribution Calendar Year. During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

A. the quotient obtained by dividing the Participant's account balance by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Regulations, using the Participant's age as of the Participant's birthday in the distribution calendar year; or

B. if the Participant's sole designated beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's account balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.

2. Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under this subsection 7.16(c) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

(d) Required Minimum Distributions After Participant's Death.

1. Death On or After Date Distributions Begin.

A. Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated beneficiary, determined as follows:

B. The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

C. If the Participant's surviving spouse is the Participant's sole designated beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's

death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

D. If the Participant's surviving spouse is not the Participant's sole designated beneficiary, the designated beneficiary's remaining life expectancy is calculated using the age of the beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

E. No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no designated beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

2. Death Before Date Distributions Begin.

A. Participant Survived by Designated Beneficiary. Except as provided in subsection (f) below, if the Participant dies before the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the remaining life expectancy of the Participant's designated beneficiary, determined as provided in subsection (d)(1) of this Section 7.16.

B. No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

C. Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under subsection 7.16(b)(2)(A), this subsection (d)(2) will apply as if the surviving spouse were the Participant.

(e) Definitions.

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

2. 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 under subsection (b)(2) of this Section 7.16. The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.

3. Life expectancy. Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Regulations.

4. Participant's account balance. The account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

5. Required beginning date. The date specified in the Plan when distributions under Section 401(a)(9) of the Code are required to begin.

(f) Overriding Elections.

The following provisions apply:

1. Effective Date. This Section 7.16 applies for purposes of determining required minimum distributions for distribution calendar years beginning with the 2003 calendar year.

2. Election to permit Participants or Beneficiaries to elect 5-Year Rule or Life Expectancy Rule. Participants or beneficiaries may elect on an individual basis whether the 5-year rule or the life expectancy rule in this Section 7.16 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 subsection 7.16(b)(2), 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 paragraph, distributions will be made in accordance with subsections (b)(2) and (d)(2).

ARTICLE VIII
AMENDMENT, TERMINATION, MERGERS AND LOANS

8.1 AMENDMENT

(a) The Employer shall have the right at any time to amend this Plan, subject to the limitations of this Section. However, any amendment which affects the rights, duties or responsibilities of the Trustee or Administrator may only be made with the Trustee's or Administrator's written consent. Any such amendment shall become effective as provided therein upon its execution. The Trustee shall not be required to execute any such amendment unless the amendment affects the duties of the Trustee hereunder.

(b) No amendment to the Plan shall be effective if it authorizes or permits any part of the Trust Fund (other than such part as is required to pay taxes and administration expenses) to be used for or diverted to any purpose other than for the exclusive benefit of the Participants or their Beneficiaries or estates; or causes any reduction in the amount credited to the account of any Participant; or causes or permits any portion of the Trust Fund to revert to or become property of the Employer.

(c) Except as permitted by Regulations (including Regulation 1.411(d)-4) or other IRS guidance, no Plan amendment or transaction having the effect of a Plan amendment (such as a merger, plan transfer or similar transaction) shall be effective if it eliminates or reduces any "Section 411(d)(6) protected benefit" or adds or modifies conditions relating to "Section 411(d)(6) protected benefits" which results in a further restriction on such benefits unless such "Section 411(d)(6) protected benefits" are preserved with respect to benefits accrued as of the later of the adoption date or effective date of the amendment. "Section 411(d)(6) protected benefits" are benefits described in Code Section 411(d)(6)(A), early retirement benefits and retirement-type subsidies, and optional forms of benefit. A Plan amendment that eliminates or restricts the ability of a Participant to receive payment of the Participant's interest in the Plan under a particular optional form of benefit will be permissible if the amendment satisfies the conditions in (1) and (2) below:

(1) The amendment provides a single-sum distribution form that is otherwise identical to the optional form of benefit eliminated or restricted. For purposes of this condition (1), a single-sum distribution form is otherwise identical only if it is identical in all respects to the eliminated or restricted optional form of benefit (or would be identical except that it provides greater rights to the Participant) except with respect to the timing of payments after commencement.

(2) The amendment is not effective unless the amendment provides that the amendment shall not apply to any distribution with an annuity starting date earlier than the earlier of: (i) the ninetieth (90th) day after the date the Participant receiving the distribution has been furnished a summary that reflects

the amendment and that satisfies the Act requirements at 29 CFR 2520.104b-3 (relating to a summary of material modifications) or (ii) the first day of the second Plan Year following the Plan Year in which the amendment is adopted.

8.2 TERMINATION

a. The Employer shall have the right at any time to terminate the Plan by delivering to the Trustee and Administrator written notice of such termination. Upon any full or partial termination, all amounts credited to the affected Participants' Combined Accounts shall become 100% Vested as provided in Section 7.4 and shall not thereafter be subject to forfeiture, and all unallocated amounts, including Forfeitures, shall be allocated to the accounts of all Participants in accordance with the provisions hereof

b. Upon the full termination of the Plan, the Employer shall direct the distribution of the assets of the Trust Fund to Participants in a manner which is consistent with and satisfies the provisions of Section 7.5. Distributions to a Participant shall be made in cash or in property allocated to the Participant's account or through the purchase of irrevocable nontransferable deferred commitments from an insurer except, however, for property distributions made prior to the earlier of (A) the effective date of an amendment limiting distribution in property to property allocated to the Participant's account, or (B) the adoption date of this amendment and restatement, distributions in property are not limited to property in the Participant's account. Except as permitted by Regulations, the termination of the Plan shall not result in the reduction of "Section 411(d)(6) protected benefits" in accordance with Section 8.1(c).

8.3 MERGER, CONSOLIDATION OR TRANSFER OF ASSETS

This Plan may be merged or consolidated with, or its assets and/or liabilities may be transferred to any other plan and trust only if the benefits which would be received by a Participant of this Plan, in the event of a termination of the Plan immediately after such transfer, merger or consolidation, are at least equal to the benefits the Participant would have received if the Plan had terminated immediately before the transfer, merger or consolidation, and such transfer, merger or consolidation does not otherwise result in the elimination or reduction of any "Section 411(d)(6) protected benefits" in accordance with Section 8.1(c).

8.4 LOANS TO PARTICIPANTS

(a) The Trustee may, in the Trustee's discretion, make loans to Participants and Beneficiaries under the following circumstances: (1) loans shall be made available to all Participants and Beneficiaries on a reasonably equivalent basis; (2) loans shall not be made available to Highly Compensated Employees in an amount greater than the amount made available to other Participants and Beneficiaries; (3) loans shall bear a reasonable rate of interest; (4) loans shall be adequately secured; and (5) loans shall provide for periodic repayment over a reasonable period of time.

(b) Loans made pursuant to this Section (when added to the outstanding balance of all other loans made by the Plan to the Participant) may, in accordance with a uniform and nondiscriminatory policy established by the Administrator, be limited to the lesser of:

(1) \$50,000 reduced by the excess (if any) of the highest outstanding balance of loans from the Plan to the Participant during the one year period ending on the day before the date on which such loan is made, over the outstanding balance of loans from the Plan to the Participant on the date on which such loan was made, or

(2) one-half (1/2) of the present value of the non-forfeitable accrued benefit of the Participant under the Plan.

For purposes of this limit, all plans of the Employer shall be considered one plan. Additionally, with respect to any loan made prior to January 1, 1987, the \$50,000 limit specified in (1) above shall be unreduced.

(c) Loans shall provide for level amortization with payments to be made not less frequently than quarterly over a period not to exceed five (5) years. However, loans used to acquire any dwelling unit which, within a reasonable time, is to be used (determined at the time the loan is made) as a "principal residence" of the Participant shall provide for periodic repayment over a reasonable period of time that may exceed five (5) years, if the loan program provides for an extended repayment period for such "principal residence" loans. For this purpose, a "principal residence" has the same meaning as a "principal residence" under Code Section 1034. Loan repayments may be suspended under this Plan as permitted under Code Section 414(u)(4).

(d) Any loans granted or renewed shall be made pursuant to a Participant loan program. Such loan program shall be established in writing and must include, but need not be limited to, the following:

- (1) the identity of the person or positions authorized to administer the Participant loan program;
- (2) a procedure for applying for loans;
- (3) the basis on which loans will be approved or denied;
- (4) limitations, if any, on the types and amounts of loans offered;
- (5) the procedure under the program for determining a reasonable rate of interest;
- (6) the types of collateral which may secure a Participant loan; and
- (7) the events constituting default and the steps that will be taken to preserve Plan assets.

Such Participant loan program shall be contained in a separate written document which, when properly executed, is hereby incorporated by reference and made a part of the Plan. Furthermore, such Participant loan program may be modified or amended in writing from time to time without the necessity of amending this Section.

(e) Notwithstanding anything in this Section to the contrary, any loans made prior to the date this amendment and restatement is adopted shall be subject to the terms of the plan in effect at the time such loan was made.

ARTICLE IX
TOP HEAVY

9.1 TOP HEAVY PLAN REQUIREMENTS

For any Top Heavy Plan Year, the Plan shall provide the special vesting requirements of Code Section 416(b) pursuant to Section 7.4 of the Plan and the special minimum allocation requirements of Code Section 416(c) pursuant to Section 4.5 of the Plan.

9.2 DETERMINATION OF TOP HEAVY STATUS

(a) This Plan shall be a Top Heavy Plan for any Plan Year in which, as of the Determination Date, (1) the Present Value of Accrued Benefits of Key Employees and (2) the sum of the Aggregate Accounts of Key Employees under this Plan and all plans of an Aggregation Group, exceeds sixty percent (60%) of the Present Value of Accrued Benefits and the Aggregate Accounts of all Key and Non-Key Employees under this Plan and all plans of an Aggregation Group.

If any Participant is a Non-Key Employee for any Plan Year, but such Participant was a Key Employee for any prior Plan Year, such Participant's Present Value of Accrued Benefit and/or Aggregate Account balance shall not be taken into account for purposes of determining whether this Plan is a Top Heavy Plan (or whether any Aggregation Group which includes this Plan is a Top Heavy Group). In addition, if a Participant or Former Participant has not performed any services for any Employer maintaining the Plan at any time during the five year period ending on the Determination Date, any accrued benefit for such Participant or Former Participant shall not be taken into account for the purposes of determining whether this Plan is a Top Heavy Plan.

(b) Aggregate Account: A Participant's Aggregate Account as of the Determination Date is the sum of:

(1) the Participant's Combined Account balance as of the most recent valuation occurring within a twelve (12) month period ending on the Determination Date.

(2) an adjustment for any contributions due as of the Determination Date. Such adjustment shall be the amount of any contributions actually made after the Valuation Date but due on or before the Determination Date, except for the first Plan Year when such adjustment shall also reflect the amount of any contributions made after the Determination Date that are allocated as of a date in that first Plan Year.

(3) any Plan distributions made within the Plan Year that includes the Determination Date or within the four (4) preceding Plan Years. However, in the case of distributions made after the Valuation Date and prior to the Determination Date, such distributions are not included as distributions for top heavy purposes to the extent that such distributions are already included in the Participant's Aggregate Account balance as of the Valuation Date. Notwithstanding anything

herein to the contrary, all distributions, including distributions made prior to January 1, 1984, and distributions under a terminated plan which if it had not been terminated would have been required to be included in an Aggregation Group, will be counted. Further, distributions from the Plan (including the cash value of life insurance policies) of a Participant's account balance because of death shall be treated as a distribution for the purposes of this paragraph.

(4) any Employee contributions, whether voluntary or mandatory. However, amounts attributable to tax deductible qualified voluntary employee contributions shall not be considered to be a part of the Participant's Aggregate Account balance.

(5) with respect to unrelated rollovers and plan-to-plan transfers (ones which are both initiated by the Employee and made from a plan maintained by one employer to a plan maintained by another employer), if this Plan provides the rollovers or plan-to-plan transfers, it shall always consider such rollovers or plan-to-plan transfers as a distribution for the purposes of this Section. If this Plan is the plan accepting such rollovers or plan-to-plan transfers, it shall not consider such rollovers or plan-to-plan transfers as part of the Participant's Aggregate Account balance. However, rollovers or plan-to-plan transfers accepted prior to January 1, 1984 shall be considered as part of the Participant's Aggregate Account balance.

(6) with respect to related rollovers and plan-to-plan transfers (ones either not initiated by the Employee or made to a plan maintained by the same employer), if this Plan provides the rollover or plan-to-plan transfer, it shall not be counted as a distribution for purposes of this Section. If this Plan is the plan accepting such rollover or plan-to-plan transfer, it shall consider such rollover or plan-to-plan transfer as part of the Participant's Aggregate Account balance, irrespective of the date on which such rollover or plan-to-plan transfer is accepted.

(7) For the purposes of determining whether two employers are to be treated as the same employer in (5) and (6) above, all employers aggregated under Code Section 414(b), (c), (m) and (o) are treated as the same employer.

(c) "Aggregation Group" means either a Required Aggregation Group or a Permissive Aggregation Group as hereinafter determined.

(1) Required Aggregation Group: In determining a Required Aggregation Group hereunder, each plan of the Employer in which a Key Employee is a participant in the Plan Year containing the Determination Date or any of the four preceding Plan Years, and each other plan of the Employer which enables any plan in which a Key Employee participates to meet the requirements of Code Sections 401(a)(4) or 410, will be required to be aggregated. Such group shall be known as a Required Aggregation Group.

In the case of a Required Aggregation Group, each plan in the group will be considered a Top Heavy Plan if the Required Aggregation Group is a Top Heavy Group. No plan in the Required Aggregation Group will be considered a Top Heavy Plan if the Required Aggregation Group is not a Top Heavy Group.

(2) Permissive Aggregation Group: The Employer may also include any other plan not required to be included in the Required Aggregation Group, provided the resulting group, taken as a whole, would continue to satisfy the provisions of Code Sections 401(a)(4) and 410. Such group shall be known as a Permissive Aggregation Group.

In the case of a Permissive Aggregation Group, only a plan that is part of the Required Aggregation Group will be considered a Top Heavy Plan if the Permissive Aggregation Group is a Top Heavy Group. No plan in the Permissive Aggregation Group will be considered a Top Heavy Plan if the Permissive Aggregation Group is not a Top Heavy Group.

(3) Only those plans of the Employer in which the Determination Dates fall within the same calendar year shall be aggregated in order to determine whether such plans are Top Heavy Plans.

(4) An Aggregation Group shall include any terminated plan of the Employer if it was maintained within the last five (5) years ending on the Determination Date.

(d) "Determination Date" means (a) the last day of the preceding Plan Year, or (b) in the case of the first Plan Year, the last day of such Plan Year.

(e) Present Value of Accrued Benefit: In the case of a defined benefit plan, the Present Value of Accrued Benefit for a Participant other than a Key Employee, shall be as determined using the single accrual method used for all plans of the Employer and Affiliated Employers, or if no such single method exists, using a method which results in benefits accruing not more rapidly than the slowest accrual rate permitted under Code Section 411(b)(1)(C). The determination of the Present Value of Accrued Benefit shall be determined as of the most recent Valuation Date that falls within or ends with the 12-month period ending on the Determination Date except as provided in Code Section 416 and the Regulations thereunder for the first and second plan years of a defined benefit plan.

(f) "Top Heavy Group" means an Aggregation Group in which, as of the Determination Date, the sum of:

- (1) the Present Value of Accrued Benefits of Key Employees under all defined benefit plans included in the group, and
- (2) the Aggregate Accounts of Key Employees under all defined contribution plans included in the group, exceeds sixty percent (60%) of a similar sum determined for all Participants.

9.3 DETERMINATION OF TOP HEAVY STATUS FOR PLAN YEARS BEGINNING AFTER DECEMBER 31, 2001

This Section 9.3 shall apply for purposes of determining whether the Plan is a top-heavy plan under Code Section 416(g) for Plan Years beginning after December 31, 2001.

(a) Key employee. Key employee means any Employee or former Employee (including any deceased Employee) who at any time during the Plan Year that includes the determination date was an officer of the Employer having "415 Compensation" greater than \$ 130,000 (as adjusted under Code Section 416(i)(1) for Plan Years beginning after December 31, 2002), a 5-percent owner of the Employer, or a 1 -percent owner of the Employer having "415 Compensation" of more than \$150,000. The determination of who is a key employee will be made in accordance with Code Section 416(i)(1) and the applicable regulations and other guidance of general applicability issued thereunder.

(b) Determination of present values and amounts. This section (b) shall apply for purposes of determining the present values of accrued benefits and the amounts of account balances of Employees as of the determination date.

(1) Distributions during year ending on the determination date. The present values of accrued benefits and the amounts of account balances of an Employee as of the determination date shall be increased by the distributions made with respect to the Employee under the Plan and any plan aggregated with the Plan under Code Section 416(g)(2) during the 1-year period ending on the determination date. The preceding sentence shall also apply to distributions under a terminated plan which, had it not been terminated, would have been aggregated with the Plan under Code Section 416(g)(2)(A)(i). In the case of a distribution made for a reason other than separation from service, death, or disability, this provision shall be applied by substituting "5-year period" for "1-year period."

(2) Employees not performing services during year ending on the determination date. The accrued benefits and accounts of any individual who has not performed services for the Employer during the 1-year period ending on the determination date shall not be taken into account.

9.4 MINIMUM BENEFITS FOR PLAN YEARS BEGINNING AFTER DECEMBER 31, 2001

This Section shall apply for purposes of determining whether the Plan satisfies the minimum benefits requirements of Code Section 416(c) for Plan Years beginning after December 31, 2001. Employer matching contributions shall be taken into account for purposes of satisfying the minimum contribution requirements of Code Section 416(c)(2) and the Plan. The preceding sentence shall apply with respect to matching contributions under the Plan or, if the Plan provides that the minimum contribution requirement shall be met in another plan, such other plan. Employer matching contributions that are used to satisfy the minimum contribution requirements shall be treated as matching contributions for purposes of the actual contribution percentage test and other requirements of Code Section 401(m).

ARTICLE X
MISCELLANEOUS

10.1 PARTICIPANT'S RIGHTS

This Plan shall not be deemed to constitute a contract between the Employer and any Participant or to be a consideration or an inducement for the employment of any Participant or Employee. Nothing contained in this Plan shall be deemed to give any Participant or Employee the right to be retained in the service of the Employer or to interfere with the right of the Employer to discharge any Participant or Employee at any time regardless of the effect which such discharge shall have upon the Employee as a Participant of this Plan.

10.2 ALIENATION

(a) Subject to the exceptions provided below, and as otherwise permitted by the Code and the Act, no benefit which shall be payable out of the Trust Fund to any person (including a Participant or the Participant's Beneficiary) shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, or charge the same shall be void; and no such benefit shall in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any such person, nor shall it be subject to attachment or legal process for or against such person, and the same shall not be recognized by the Trustee, except to such extent as may be required by law.

(b) Subsection (a) shall not apply to the extent a Participant or Beneficiary is indebted to the Plan, by reason of a loan made pursuant to Section 8.4. At the time a distribution is to be made to or for a Participant's or Beneficiary's benefit, such proportion of the amount to be distributed as shall equal such indebtedness shall be paid to the Plan, to apply against or discharge such indebtedness. Prior to making a payment, however, the Participant or Beneficiary must be given written notice by the Administrator that such indebtedness is to be so paid in whole or part from the Participant's Combined Account. If the Participant or Beneficiary does not agree that the indebtedness is a valid claim against the Vested Participant's Combined Account, the Participant or Beneficiary shall be entitled to a review of the validity of the claim in accordance with procedures provided in Sections 2.10 and 2.11.

(c) Subsection (a) shall not apply to a "qualified domestic relations order" defined in Code Section 414(p), and those other domestic relations orders permitted to be so treated by the Administrator under the provisions of the Retirement Equity Act of 1984. The Administrator shall establish a written procedure to determine the qualified status of domestic relations orders and to administer distributions under such qualified orders. Further, to the extent provided under a "qualified domestic relations order," a former spouse of a Participant shall be treated as the spouse or surviving spouse for all purposes under the Plan.

(d) Subsection (a) shall not apply to an offset to a Participant's accrued benefit against an amount that the Participant is ordered or required to pay the Plan with respect to a judgment, order, or decree issued, or a settlement entered into, on or after August 5, 1997, in accordance with Code Sections 401(a)(13)(C) and (D).

10.3 CONSTRUCTION OF PLAN

This Plan shall be construed and enforced according to the Code, the Act and the laws of the State of Florida, other than its laws respecting choice of law, to the extent not pre-empted by the Act.

10.4 GENDER AND NUMBER

Wherever any words are used herein in the masculine, feminine or neuter gender, they shall be construed as though they were also used in another gender in all cases where they would so apply, and whenever any words are used herein in the singular or plural form, they shall be construed as though they were also used in the other form in all cases where they would so apply.

10.5 LEGAL ACTION

In the event any claim, suit, or proceeding is brought regarding the Trust and/or Plan established hereunder to which the Trustee, the Employer or the Administrator may be a party, and such claim, suit, or proceeding is resolved in favor of the Trustee, the Employer or the Administrator, they shall be entitled to be reimbursed from the Trust Fund for any and all costs, attorney's fees, and other expenses pertaining thereto incurred by them for which they shall have become liable.

10.6 PROHIBITION AGAINST DIVERSION OF FUNDS

(a) Except as provided below and otherwise specifically permitted by law, it shall be impossible by operation of the Plan or of the Trust, by termination of either, by power of revocation or amendment, by the happening of any contingency, by collateral arrangement or by any other means, for any part of the corpus or income of any Trust Fund maintained pursuant to the Plan or any funds contributed thereto to be used for, or diverted to, purposes other than the exclusive benefit of Participants, Former Participants, or their Beneficiaries.

(b) In the event the Employer shall make an excessive contribution under a mistake of fact pursuant to Act Section 403(c)(2)(A), the Employer may demand repayment of such excessive contribution at any time within one (1) year following the time of payment and the Trustees shall return such amount to the Employer within the one (1) year period. Earnings of the Plan attributable to the contributions may not be returned to the Employer but any losses attributable thereto must reduce the amount so returned.

(c) Except for Sections 3.5, 3.6, and 4.1(e), any contribution by the Employer to the Trust Fund is conditioned upon the deductibility of the contribution by the Employer under the Code and, to the extent any such deduction is disallowed, the Employer may, within one (1) year following the final determination of the disallowance, whether by agreement with the Internal Revenue Service or by final decision of a competent jurisdiction, demand repayment of such disallowed contribution and the Trustee shall return such contribution within one (1) year following the disallowance. Earnings of the Plan attributable to the contribution may not be returned to the Employer, but any losses attributable thereto must reduce the amount so returned.

10.7 EMPLOYER'S AND TRUSTEE'S PROTECTIVE CLAUSE

The Employer, Administrator and Trustee, and their successors, shall not be responsible for the validity of any Contract issued hereunder or for the failure on the part of the insurer to make payments provided by any such Contract, or for the action of any person which may delay payment or render a Contract null and void or unenforceable in whole or in part.

10.8 INSURER'S PROTECTIVE CLAUSE

Except as otherwise agreed upon in writing between the Employer and the insurer, an insurer which issues any Contracts hereunder shall not have any responsibility for the validity of this Plan or for the tax or legal aspects of this Plan. The insurer shall be protected and held harmless in acting in accordance with any written direction of the Trustee, and shall have no duty to see to the application of any funds paid to the Trustee, nor be required to question any actions directed by the Trustee. Regardless of any provision of this Plan, the insurer shall not be required to take or permit any action or allow any benefit or privilege contrary to the terms of any Contract which it issues hereunder, or the rules of the insurer.

10.9 RECEIPT AND RELEASE FOR PAYMENTS

Any payment to any Participant, the Participant's legal representative, Beneficiary, or to any guardian or committee appointed for such Participant or Beneficiary in accordance with the provisions of the Plan, shall, to the extent thereof, be in full satisfaction of all claims hereunder against the Trustee and the Employer, either of whom may require such Participant, legal representative, Beneficiary, guardian or committee, as a condition precedent to such payment, to execute a receipt and release thereof in such form as shall be determined by the Trustee or Employer.

10.10 ACTION BY THE EMPLOYER

Whenever the Employer under the terms of the Plan is permitted or required to do or perform any act or matter or thing, it shall be done and performed by a person duly authorized by its legally constituted authority.

10.11 NAMED FIDUCIARIES AND ALLOCATION OF RESPONSIBILITY

The “named Fiduciaries” of this Plan are (1) the Employer, (2) the Administrator, and (3) any Investment Manager appointed hereunder. The named Fiduciaries shall have only those specific powers, duties, responsibilities, and obligations as are specifically given them under the Plan including, but not limited to, any agreement allocating or delegating their responsibilities, the terms of which are incorporated herein by reference. In general, the Employer shall have the sole responsibility for making the contributions provided for under Section 4.1; and shall have the authority to appoint and remove the Trustee and the Administrator; to formulate the Plan’s “funding policy and method”; and to amend or terminate, in whole or in part, the Plan. The Administrator shall have the sole responsibility for the administration of the Plan, including, but not limited to, the items specified in Article II of the Plan, as the same may be allocated or delegated thereunder. The Administrator shall act as the named Fiduciary responsible for communicating with the Participant according to the Participant Direction Procedures. The Trustee shall have the sole responsibility of management of the assets held under the Trust, except to the extent directed pursuant to Article II or with respect to those assets, the management of which has been assigned to an Investment Manager, who shall be solely responsible for the management of the assets assigned to it, all as specifically provided in the Plan. Each named Fiduciary warrants that any directions given, information furnished, or action taken by it shall be in accordance with the provisions of the Plan, authorizing or providing for such direction, information or action. Furthermore, each named Fiduciary may rely upon any such direction, information or action of another named Fiduciary as being proper under the Plan, and is not required under the Plan to inquire into the propriety of any such direction, information or action. It is intended under the Plan that each named Fiduciary shall be responsible for the proper exercise of its own powers, duties, responsibilities and obligations under the Plan as specified or allocated herein. No named Fiduciary shall guarantee the Trust Fund in any manner against investment loss or depreciation in asset value. Any person or group may serve in more than one Fiduciary capacity.

10.12 HEADINGS

The headings and subheadings of this Plan have been inserted for convenience of reference and are to be ignored in any construction of the provisions hereof

10.13 APPROVAL BY INTERNAL REVENUE SERVICE

Notwithstanding anything herein to the contrary, if, pursuant to an application for qualification filed by or on behalf of the Plan by the time prescribed by law for filing the Employer’s return for the taxable year in which the Plan is adopted, or such later date that the Secretary of the Treasury may prescribe, the Commissioner of Internal Revenue Service or the Commissioner’s delegate should determine that the Plan does not initially qualify as a tax-exempt

plan under Code Sections 401 and 501, and such determination is not contested, or if contested, is finally upheld, then if the Plan is a new plan, it shall be void ab initio and all amounts contributed to the Plan by the Employer, less expenses paid, shall be returned within one (1) year and the Plan shall terminate, and the Trustee shall be discharged from all further obligations. If the disqualification relates to an amended plan, then the Plan shall operate as if it had not been amended.

10.14 UNIFORMITY

All provisions of this Plan shall be interpreted and applied in a uniform, nondiscriminatory manner. In the event of any conflict between the terms of this Plan and any Contract purchased hereunder, the Plan provisions shall control.

SIGNATURE PAGE

IN WITNESS WHEREOF, this amendment and restatement of the Sun Hydraulics Corporation 401(k) and ESOP Retirement Plan has been executed on the day and year written below.

Signed, sealed, and delivered in the presence of:

SUN HYDRAULICS CORPORATION

By _____ /s/ Tricia Fulton, CFO
Title _____

Witnesses As To Employer

Date 12/12/07

**FIRST AMENDMENT TO
SUN HYDRAULICS CORPORATION 401(K) AND ESOP RETIREMENT PLAN**

(Final Section 415 Limit Regulations)

The Sun Hydraulics Corporation 401(k) and ESOP Retirement Plan (hereinafter referred to as the "Plan") provides in Section 8.1 for subsequent plan amendments. Sun Hydraulics Corporation ("Company") now wishes to amend the Plan in the manner described below to make the changes required by the 2007 final Treasury Regulations under Code section 415. The Plan is therefore, amended as follows:

1. Section 4.10 of the Plan, entitled "Maximum on Annual Additions." is revised effective as of January 1, 2008 by the addition of the following paragraph at the end of such Section 4.10:

"(i) For purposes of this Section 4.10 of the Plan and Section 415(c) of the Code, "415 Compensation" shall be the Participant's Compensation but shall not include any payments the Employer makes to a retired or terminated Participant after the Participant's date of severance from employment (within the meaning of Section 401(k)(2)(B)(i)(I) of the Code) with the Employer, except that for Plan Years beginning on or after January 1, 2008, post-severance payments shall be included in 415 Compensation for purposes of this Section to the extent that such payments:

(i) are made to the Participant within 2- 1/2 months after the date of severance from employment with the Employer or, if later, by the end of the limitation year which includes such date of severance;

(ii) would have been paid to the Participant while the Participant continued in employment with the Employer, absent a severance from employment; and

(iii) consist of (A) regular salary or wage payments for services during the Participant's regular employment (including overtime or shift differential, commissions, bonuses, or other similar regularly scheduled components of the Participant's regular pay), (B) payments of vacation pay, sick time or other paid time off accrued during the Participant's active employment with the Employer but not yet paid by the last day of active employment, or (C) military differential pay."

2. In all other respects, the terms of the Plan, as amended to date, are hereby ratified and confirmed.

IN WITNESS WHEREOF, Sun Hydraulics Corporation has caused this First Amendment to the Plan to be executed by its duly authorized representative this 22 day of September, 2008.

SUN HYDRAULICS CORPORATION

Witness:

By: /s/ Tricia Fulton

Tricia Fulton, Chief Financial Officer

**SECOND AMENDMENT TO
SUN HYDRAULICS CORPORATION 401(K) AND ESOP RETIREMENT PLAN**

(Non-spousal Rollovers)

The Sun Hydraulics Corporation 401(k) and ESOP Retirement Plan (hereinafter referred to as the "Plan") provides in Section 8.1 for subsequent plan amendments. Sun Hydraulics Corporation ("Company") now wishes to amend the Plan in the manner described below to permit non-spouse beneficiaries to elect to transfer death benefits payable from the Plan to Individual Retirement Accounts. The Plan is therefore, amended as follows:

1. Section 7.13 of the Plan, entitled "Direct Rollover," is revised effective as of January 1, 2009 by the addition of the following paragraph at the end of Subsection 7.13(b)(3):

"(3) Effective for distributions payable after December 31, 2008 as a result of an Employee's death, the term distributee shall also include an individual who is the deceased Employee's designated beneficiary but is not the surviving spouse of the deceased Employee, and a direct trustee-to-trustee transfer to an Individual Retirement Account established on behalf of such non-spousal beneficiary shall be treated as an eligible rollover distribution for purposes of this Section 7.13 and Code Section 402(c), to the extent permitted by Treasury Regulations or other guidance published under section 402(c) of the Code."

2. In all other respects, the terms of the Plan, as amended to date, are hereby ratified and confirmed.

IN WITNESS WHEREOF, Sun Hydraulics Corporation has caused this Second Amendment to the Plan to be executed by its duly authorized representative this 16th day of December, 2008.

SUN HYDRAULICS CORPORATION

Witness:

By: /s/ Tricia Fulton

Title: CFO

CONSENT OF INDEPENDENT REGISTERED CERTIFIED PUBLIC ACCOUNTING FIRM

We have issued our report dated February 27, 2009, accompanying the consolidated financial statements included in the Annual Report of Sun Hydraulics Corporation on Form 10-K for the years ended December 27, 2008 and December 29, 2007. We hereby consent to the incorporation by references of said report in the Registration Statements of Sun Hydraulics Corporation on Forms S-8 (File No. 333-30801, effective July 3, 1997, File No. 333-83269, effective July 20, 1999, File No. 333-62816, effective June 12, 2001, File No. 333-66008 effective July 27, 2001, File No. 333-119367, effective September 29, 2004, and File No. 333-124174, effective April 19, 2005).

/s/ Kirkland, Russ, Murphy & Tapp, P.A.

Clearwater, Florida

March 11, 2009

CERTIFICATION

I, Allen J. Carlson, certify that:

1. I have reviewed this Annual Report on Form 10-K for the year ended December 27, 2008, of Sun Hydraulics Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

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

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 11, 2009

/s/ Allen J. Carlson

Allen J. Carlson

President, Chief Executive Officer

CERTIFICATION

I, Tricia L. Fulton, certify that:

1. I have reviewed this Annual Report on Form 10-K for the year ended December 27, 2008, of Sun Hydraulics Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 11, 2009

/s/ Tricia L. Fulton

Tricia L. Fulton
Chief Financial Officer

CERTIFICATION PURSUANT TO 18 U.S.C. § 1350

I, Allen J. Carlson, the Chief Executive Officer of Sun Hydraulics Corporation (the "Company"), certify that (i) the Annual Report on Form 10-K for the Company for the year ended December 27, 2008 (the "Report"), fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and (ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Allen J. Carlson
Chief Executive Officer
March 11, 2009

CERTIFICATION PURSUANT TO 18 U.S.C. § 1350

I, Tricia L. Fulton, the Chief Financial Officer of Sun Hydraulics Corporation (the "Company"), certify that (i) the Annual Report on Form 10-K for the Company for the year ended December 27, 2008 (the "Report"), fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and (ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Tricia L. Fulton

Chief Financial Officer
March 11, 2009