

**Supplemental Amendment #1 to the
Post-EGTRRA "Good Faith" Amendment for Defined Contribution Plans
Covering Applicable Provisions of the HEART Act of 2008 and WRERA 2008**

Plan Name _____

This Supplemental Amendment #1 (the "Supplemental Amendment") to the Post-EGTRRA "Good Faith" Amendment (the "Amendment") is intended as good faith compliance with certain provisions of the Heroes Earnings Assistance and Tax Relief Act of 2008 (HEART) and the Worker, Retiree and Employer Recovery Act of 2008 (WRERA), including Technical Corrections to the Pension Protection Act of 2006. This Amendment supersedes any conflicting provisions of the Plan, any administrative policy, the Plan's funding policy, and/or any previously-adopted "good faith" amendment of the same subject matter, as applicable. This Amendment is a "good faith" amendment, is not part of the pre-approved EGTRRA document, and has not been reviewed by the Internal Revenue Service for compliance with post-EGTRRA statutory and Regulatory changes. Furthermore, pursuant to Revenue Procedure 2007-44, this Amendment does not affect the status of reliance upon the Plan.

Section 1. WRERA Technical Corrections to the Pension Protection Act of 2006

- 1.1 Elimination of Gap Period Income Upon Distribution of Excess Elective Deferrals.** This Section supersedes Section 2.8 of the Amendment. If the Plan is a Code §401(k) Plan, then Excess Elective Deferrals (as defined in Code §402(g)(2)(A)) which are distributed with respect to the 2008 Plan Year, or with respect to any later Plan Year, will be adjusted for any income or loss up to the last day of the Plan Year to which the distribution relates, without regard to the gap period (the period between the end of the Plan Year and the date of distribution) or any adjustment for income or loss during the gap period.
- 1.2 Rollover by a Non-Spouse Designated Beneficiary.** This Section supersedes Section 2.9 of the Amendment. Notwithstanding any election previously made by the Sponsoring Employer in the Election Form to the Amendment, effective for Plan Years beginning on or after January 1, 2009, a Beneficiary who (a) is other than the Participant's Spouse and (b) is considered to be a Designated Beneficiary under Code §401(a)(9)(E) (known as a "Non-Spouse Designated Beneficiary") may establish an individual retirement account under Code §408(a) or an individual retirement annuity under Code §408(b) (known as an "Inherited IRA") into which all or a portion of a death benefit (to which such Non-Spouse Designated Beneficiary is entitled) can be transferred in a direct trustee-to trustee transfer (a direct rollover). Notwithstanding the above, any amount payable to a Non-Spouse Designated Beneficiary that is deemed to be a required minimum distribution pursuant to Code §401(a)(9) may not be transferred into such Inherited IRA. The Non-Spouse Designated Beneficiary may deposit into such Inherited IRA all or any portion of the death benefit that is deemed to be an eligible rollover distribution (but for the fact that the distribution is not an eligible rollover distribution because the distribution is being paid to a Non-Spouse Designated Beneficiary). In determining the portion of such death benefit that is considered to be a required minimum distribution that must be made from the Inherited IRA, the Non-Spouse Designated Beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to Regulation §1.401(a)(9)-3, Q&A-4(c). Any distribution made pursuant to this Section is not subject to the direct rollover requirements of Code §401(a)(31), the notice requirements of Code §402(f), or the mandatory withholding requirements of Code §3405(c). If a Non-Spouse Designated Beneficiary receives a distribution from the Plan, then the distribution is not eligible for the "60-day" rollover rule, which is available to a Beneficiary who is a Spouse. If the Participant's Non-Spouse Designated Beneficiary is a trust, then the Plan may make a direct rollover to an IRA on behalf of the trust, provided the trust satisfies the requirements to be a Designated Beneficiary within the meaning of Code §401(a)(9)(E). In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of an eligible rollover distribution. Any distribution made prior to January 1, 2010 is not subject to the direct rollover requirements of Code §401(a)(31) (including Code §401(a)(31)(B), the notice requirements of Code §402(f) or the mandatory withholding requirements of Code §3405(c)). If a non-spouse Beneficiary receives a distribution from the Plan, the distribution is not eligible for a "60-day" rollover. If the Participant's named Beneficiary is a trust, the Plan may make a direct rollover to an individual retirement account on behalf of the trust, provided the trust satisfies the requirements to be a Designated Beneficiary within the meaning of Code §401(a)(9)(E).

- 1.3 Qualified Default Investment Alternative.** This Section supersedes Section 2.6 of the Amendment Election Form. If elected here by the Sponsoring Employer, then, effective _____, if the Plan gives Participants or Beneficiaries the opportunity to direct the investment of any assets in the Participant's Account (or any sub-account) and if any Participant or Beneficiary does not direct the investment of such assets, then such assets in the Participant's Account (or such sub-account(s)) will be invested in a Qualified Default Investment Alternative ("QDIA"), subject to the provisions of Section 2.11 of the Amendment.

Section 2. HEART Act of 2008

- 2.1 Contributions and Allocations.** If elected here by the Sponsoring Employer, then the following provisions apply to a Qualified Reservist's rights to contributions and allocations under the Plan:
- (a) **Determination of Amount.** If a Qualified Reservist dies or incurs a Disability on or after January 1, 2007 while performing Qualified Military Service, then in determining any contribution or allocation such Participant is otherwise entitled to under the terms of the Plan, such Participant will be deemed to have resumed employment with the Employer in accordance with the individual's reemployment rights under USERRA on the day preceding such death or Disability, and will be deemed to have Terminated Employment on the actual date of death or Disability.
 - (b) **Amount of Elective Deferrals and/or Voluntary Employee Contributions.** The amount of a Qualified Reservist's Elective Deferrals and/or Voluntary Employee Contributions which are considered for purposes of this Section 2.1 will be determined on the basis of the Qualified Reservist's average Elective Deferrals and/or Voluntary Employee Contributions which are actually made for the lesser of the following two computation periods: (1) the 12-month period of service with the Employer immediately prior to Qualified Military Service; or (2) the actual length of continuous service with the Employer.
- 2.2 Differential Wage Payment.** For computation periods beginning after December 31, 2008, the following applies:
- (a) **Employee Status.** An individual receiving a differential wage payment, as defined by Code §3401(h)(2), will be treated as an Employee of the Employer making such payment. Notwithstanding the foregoing, for purposes of Code §401(k)(2)(B)(i)(I), a Participant is treated as having Terminated Employment during any period he or she is performing service in the uniformed services described in Code §3401(h)(2)(A).
 - (b) **Treatment as Compensation.** Any amounts received by a Qualified Reservist as differential wage payments will be treated as Compensation (to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering Qualified Military Service).
 - (c) **Coordination With USERRA.** The Plan will not be treated as failing to meet the requirements of any provision described in Code §414(u)(1)(C) by reason of any contribution or benefit which is based on the Differential Wage Payments. However, this paragraph only applies if all Employees of the Employer performing service in the uniformed services described in Code §3401(h)(2)(A) are entitled to receive differential wage payments (as defined in Code §3401(h)(2)) on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the employer, to make contributions based on the payments on reasonably equivalent terms (taking into account Code §§410(b)(3), (4), and (5)).
- 2.3 Suspension of Elective Deferrals.** If a Qualified Reservist elects to receive a distribution of all or a portion of his or her Participant's Account under the provisions of Sections 5.1, 5.2 and/or 5.3 of the Plan by reason of death, Disability or Termination of Employment, such Participant will not be permitted to contribute Elective Deferrals and/or Employee Voluntary Contributions to the Plan for a period of 6 months. Such 6 month period will commence on the date of the distribution.
- 2.4 Death Benefits.** If a Participant dies on or after January 1, 2007 while performing Qualified Military Service, such Participant will be deemed to have resumed employment with the Employer in accordance with the individual's reemployment rights under USERRA on the day preceding death, and will be deemed to have Terminated Employment on the actual date of death.

- 2.5 Definition of Qualified Reservist.** The term "Qualified Reservist" means an individual who is a member of a reserve component, as defined in §101 of title 37, United States Code, and who is ordered or called to active duty after September 11, 2001 either for a period in excess of 179 days or for an indefinite period.
- 2.6 Definition of Qualified Military Service.** The term "Qualified Military Service" means military service as that term is used in Code §414(u)(1).

Section 3. 2009 Required Minimum Distributions (RMDs)

- 3.1 2009 RMDs Will Be Made Unless the Participant or Beneficiary Elect Not to Receive Them.** If this Section 3.1 is checked here , then notwithstanding Section 5.9 of the Plan to the contrary, a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code §401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2009 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's Designated Beneficiary, or for a period of at least 10 years ("Extended 2009 RMDs"), will receive those distributions for 2009 unless the Participant or Beneficiary chooses not to receive such distributions.
- 3.2 2009 RMDs Will Not Be Made Unless the Participant or Beneficiary Elect to Receive Them.** If this Section 3.2 is checked here , then notwithstanding Section 5.9 of the Plan, a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code §401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2009 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's Designated Beneficiary, or for a period of at least 10 years ("Extended 2009 RMDs"), will not receive those distributions for 2009 unless the Participant or Beneficiary chooses to receive such distributions.
- 3.3 Direct Rollovers.** Notwithstanding Section 5.14 of the Plan to the contrary, and solely for purposes of applying the direct rollover provisions of the Plan, the additional distributions in 2009 checked below (if any) will be treated as eligible rollover distributions. However, if no election is made below, a direct rollover will be offered only for distributions that would be eligible rollover distributions without regard to Code §401(a)(9)(H).

- 2009 RMDs and Extended 2009 RMDs (both as defined in Sections 3.1 and 3.2 above).
- 2009 RMDs (as defined in Sections 3.1 and 3.2 above) but only if paid with an additional amount that is an eligible rollover distribution without regard to Code §401(a)(9)(H).

SIGNATURE OF THE SPONSORING EMPLOYER

By _____ Title _____

Print Name _____ Date _____