

# SECURITIES AND EXCHANGE COMMISSION

## FORM S-8

Initial registration statement for securities to be offered to employees pursuant to employee benefit plans

Filing Date: **1994-01-19**  
SEC Accession No. **0000023304-94-000001**

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### FILER

#### **CONE MILLS CORP**

CIK: **23304** | IRS No.: **560367025** | State of Incorporation: **NC** | Fiscal Year End: **1231**  
Type: **S-8** | Act: **33** | File No.: **033-51953** | Film No.: **94501850**  
SIC: **2211** Broadwoven fabric mills, cotton

Mailing Address  
*1201 MAPLE STREET  
GREENSBORO NC 27405*

Business Address  
*1201 MAPLE ST  
GREENSBORO NC 27405  
9193796220*

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C.  
20549

FORM S-8  
REGISTRATION STATEMENT UNDER  
THE SECURITIES ACT OF 1933

CONE MILLS CORPORATION  
(Exact Name of Issuer as specified in its charter)

North Carolina  
(State or other jurisdiction  
of incorporation or organization)

56-0367025  
(I.R.S. Employer  
Identification No.)

1201 Maple Street  
Greensboro, North Carolina 27405  
(Address of Principal Executive Offices) (Zip Code)

CONE MILLS CORPORATION  
EMPLOYEE EQUITY PLAN - HOURLY  
(Full title of the plan)

TERRY L. WEATHERFORD, SECRETARY  
Cone Mills Corporation  
1201 Maple Street  
Greensboro, North Carolina 27405  
(Name and Address of agent for service)

(919) 379-6220  
(Telephone Number, including area code, of agent for service)

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered	Proposed Maximum Offering Price Per Share*	Proposed Maximum Aggregate Offering Price*	Amount of Registration Fee
Common Stock, par value \$.10 per share	250,000 shares	\$16.25	\$4,062,500	\$1,400.87*

In addition, pursuant to Rule 416(c) under the Securities Act of 1933, this registration statement also covers an indeterminate

amount of interests to be offered or sold pursuant to the employee benefit plan described herein.

\*Pursuant to Rule 457(h), the average of the high and low prices of the Common Stock as reported on the New York Stock Exchange on January 13, 1994, has been used to calculate the amount of the registration fee.

Approximate date of sale to the public: Upon effectiveness of this Registration Statement.

This Registration Statement on Form S-8 covers 250,000 shares of the Common Stock, par value \$.10 per share, (the "Common Stock") of Cone Mills Corporation (the "Registrant") issuable pursuant to the Registrant's Employee Equity Plan - Hourly (the "Plan") and an indeterminate amount of interests to be offered or sold pursuant to the Plan.

## PART II

### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

#### Item 3. Incorporation of Documents by Reference.

The Registrant is subject to the informational requirements of the Securities Exchange Act of 1934 (the "Exchange Act"), and in accordance therewith files reports and other information with the Securities and Exchange Commission. The following documents have previously been filed by the Registrant with the Commission and are incorporated herein by reference as of their respective dates:

- a) the Annual Report on Form 10-K of Registrant for the fiscal year ended January 3, 1993 (dated March 25, 1993), as amended by a Form 8, Amendment No. 1 (dated April 30, 1993).
- b) the Quarterly Report on Form 10-Q of Registrant for the quarter ended April 4, 1993 (dated May 11, 1993); the Quarterly Report on Form 10-Q of Registrant for the quarter ended July 4, 1993 (dated August 16, 1993); the Quarterly Report on Form 10-Q of Registrant for the quarter ended October 3, 1993.
- c) the Current Report on Form 8-K of Registrant dated February 8, 1993.
- d) the description of the Common Stock of the Registrant set forth under "Item 1. Description of Registrant's Securities to be Registered" in the Registrant's Amendment No. 1 on Form 8 to its Registration Statement on Form 8-A

with respect to the Common Stock, File No. 1-3634 (dated June 17, 1992).

All documents that are hereafter filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment which indicates that all securities offered pursuant to the Plan have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated herein by reference and to be a part hereof from the date of filing of such documents.

Item 4. Description of Securities.

Not Applicable.

Item 5. Interests of Named Experts and Counsel.

Certain legal matters in connection with the securities registered hereunder are being passed upon for the Registrant by Neil W. Koonce, Esq., Vice President and General Counsel for the Company.

Item 6. Indemnification of Directors and Officers.

Article 6 of the Company's Restated Articles of Incorporation, as amended, provides:

Article 6. INDEMNIFICATION

(a) Indemnification in Actions Other Than Actions by the Corporation or by a Person Suing Derivatively. When by reason of the fact that he is or was serving as a director, officer, employee or agent of the Corporation or while serving in any such or like capacity at the request of the Corporation in any other corporation, partnership, joint venture or other enterprise, any person is or was a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative (except any action, suit or proceeding brought by the Corporation or by any person seeking derivatively to enforce any liability of such person to the Corporation), such person shall be indemnified or reimbursed by the Corporation for the expenses (including attorneys' fees) which he actually and reasonably incurred and for any liabilities which he may have incurred in consequence of such action, suit or proceeding, subject to the following conditions:

(1) If, with respect to any action, suit or proceeding, or with respect to any claim, matter or issue therein, such person is wholly successful on the merits, or if the proceeding involving such person is an administrative or investigative proceeding and does not result in his indictment or a fine or

penalty imposed upon him, then the Corporation shall reimburse him for the expenses (including attorneys' fees) which he actually and reasonably incurred in consequence of his defense of or participation in such action, suit or proceeding, or of any claim, issue or matter therein.

(2) If, with respect to any action, suit or proceedings, or with respect to any claim, issue or matter therein, such person is wholly successful in his defense otherwise than solely on the merits, the Corporation shall reimburse him for the expenses (including attorneys' fees) which he actually and reasonably incurred, in consequence of his defense or participation in such action, suit or proceeding, or of any claim, issue or matter therein, if

(A) The Board of Directors, by vote of a majority of a quorum consisting of directors who were not parties to such action, suit or proceeding, shall approve such reimbursement, or

(B) If no such quorum be obtainable, by vote of a majority of the members of the Board of Directors then in office, acting pursuant to a written opinion of independent legal counsel. For this purpose, the General Counsel of the Corporation or members of his staff shall not be deemed to be "independent legal counsel", or

(C) In any event, by vote of the holders of a majority of the shares entitled to vote at a meeting of the shareholders.

(3) If, with respect to any action, suit or proceedings, or with respect to any claim, issue or matter therein, such person is not wholly successful or is unsuccessful in his defense, or if the proceeding to which he is a party results in his indictment, or in a fine or penalty imposed upon him then the Corporation shall reimburse him for the expenses (including attorneys' fees) which he actually and reasonably incurred and the amount of any judgment, money decree, fine, penalty or settlement for which he may have become liable, in either of the following instances:

(A) The Board of Directors, by vote of a majority of a quorum consisting of directors who are not parties to such action, suit or proceedings, shall have determined that such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, that he also had no reasonable cause to believe his conduct was unlawful, and the Corporation shall have given such information to the

shareholders of the Corporation with respect thereto as is required by applicable law.

The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of guilty or nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in the best interests of the Corporation, or, with respect to any criminal action, that he had no reasonable cause to believe that his conduct was unlawful.

(B) A plan for such payment is submitted to the shareholders for action at an annual or special meeting of the shareholders, and the plan is approved by the holders of a majority of the shares entitled to vote at such meeting, excluding shares held directly or indirectly by any persons to be benefited if the plan is approved. Whenever the Board of Directors is required by this Article to determine the facts requisite to awarding reimbursement or indemnification, their determination as to such facts shall be conclusive in the absence of fraud.

(b) Indemnification in Actions by the Corporation or by Any Person Suing Derivatively. When because of his duties or activities while serving as a director, officer, employee or agent of the Corporation or while serving in any such or like capacity at the request of the Corporation in any other corporation, partnership, joint venture or other enterprise, any person is a party to an action, suit or proceeding by the Corporation or by any person suing derivatively on behalf of the Corporation to establish his liability to the Corporation arising out of his alleged

dereliction of duty to the Corporation, such person shall be entitled to reimbursement or indemnification from the Corporation only to the extent permitted, and only pursuant to the procedure authorized, by the General Statutes of North Carolina or otherwise by law.

(c) General Provisions Relating to Indemnification Under this Article:

(1) In this Article 6 the term "officer" shall include any dominant shareholder engaged to perform services for the Corporation, whether as employee or independent contractor; and the term "dominant shareholder" shall mean a shareholder of the Corporation who by virtue of his share holdings has legal power, either directly or indirectly or through another corporation or series of corporations, domestic or foreign, to elect a majority of the directors of the Corporation.

(2) In this Article 6 the term "person" shall include the heirs, executor, administrator, or other legal representative of such person.

(3) Expenses incurred or to be incurred by a person in defending or participating in any action, suit or proceedings referred to in subsection (a) may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding if authorized by the Board of Directors in the specific case upon receipt of an undertaking by or on behalf of such person to repay such amount, unless it shall ultimately be determined that he is entitled to be indemnified by the Corporation as authorized by this Article.

(4) Whenever the Corporation, whether by action of the Board of Directors or by the shareholders, shall reimburse or indemnify a director, officer, agent or employee as permitted by this Article, the determination shall be made with respect to the particular case and the particular applicant for indemnity or reimbursement.

(5) The indemnification authorized by this Article shall not be deemed exclusive of any other rights to indemnification or reimbursement which are or may hereafter be permitted by law.

(d) Insurance. The Corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation or who is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power, pursuant to law or pursuant to this Article, to indemnify him against such liability.

Article XI of the Company's Bylaws, as amended, provides:

#### Article XI. INDEMNIFICATION

Section 11-1. Extent. In addition to the indemnification otherwise provided for by law or by the Articles of Incorporation the Corporation, the Corporation shall indemnify and hold harmless its directors and officers against all liability and litigation expense, including reasonable attorneys' fees, arising out of their status as directors or officers or their activities in any of such capacities or in any capacity in which any of them is or was serving, at the Corporation's request, in another corporation, partnership, joint venture, trust or other enterprise and the Corporation shall indemnify and hold harmless its directors,

officers, and employees who are deemed to be fiduciaries of the Corporation's employee pension and welfare benefit plans as defined under the Employee Retirement Income Security Act of 1974, as amended ("ERISA fiduciaries"), against all liability and litigation expense, including reasonable attorneys' fees, arising out of their status or activities as ERISA fiduciaries; provided, however, that the Corporation shall not indemnify a director or officer against liability or litigation expense that he may incur on account of his activities that at the time taken were known or reasonably should have been known by him to be clearly in conflict with the best interests of the Corporation, and the Corporation shall not indemnify an ERISA fiduciary against any liability or litigation expense that he may incur on account of his activities that at the time taken were known or reasonably should have been known by him to be clearly in conflict with the best interests of the employee benefit plan to which the activities relate. The Corporation shall also indemnify the director, officer or ERISA fiduciary for reasonable costs, expenses and attorneys' fees in connection with the enforcement of rights to indemnification granted herein, if it is determined in accordance with Section 11-2 of this Article that the director, officer or ERISA fiduciary is entitled to indemnification hereunder.

Section 11-2. Determination. Any indemnification under Section 11-1 shall be paid by the Corporation in any specific case only after a determination that the director, officer or ERISA fiduciary did not act in a manner, at the time the activities were taken, that was known or reasonably should have been known by him to be clearly in conflict with the best interests of the Corporation, or the employee benefit plan to which the activities relate, as the case may be. Such determination shall be made (a) by the affirmative vote of a majority (but not less than two) of directors who are or were not parties to such action, suit or proceeding or against whom any such claim is asserted ("disinterested directors") even though less than a quorum, or (b) if a majority (but not less than two) of disinterested directors so direct, by independent legal counsel in a written opinion, or (c) by the vote of a majority of all of the voting shares other than those owned or controlled by directors, officers or ERISA fiduciaries who were parties to such action, suit or proceeding or against whom such claim is asserted, or by a unanimous vote of all of the voting shares, or (d) by a court of competent jurisdiction.

Section 11-3. Advanced Expenses. Expenses incurred by a director, officer or ERISA fiduciary in defending a civil or criminal claim, action, suit or proceeding may, upon approval of a majority (but not less than two) of the disinterested directors, even though less than a quorum, or, if there are less than two disinterested directors, upon unanimous approval of the Board of Directors, be paid by the Corporation in advance of the final disposition of such claim, action, suit or proceeding upon receipt



of an undertaking by or on behalf of the director, officer or ERISA fiduciary to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified against such expenses by the Corporation.

Section 11-4. Corporation. For purposes of this Article, references to directors, officers or ERISA fiduciaries of the "Corporation" shall be deemed to include directors, officers and ERISA fiduciaries of Cone Mills Corporation, its subsidiaries, and all constituent corporations absorbed into Cone Mills Corporation or any of its subsidiaries by a consolidation or merger.

Section 11-5. Reliance And Consideration. Any director, officer or ERISA fiduciary who at any time after the adoption of this Bylaw serves or has served in any of the aforesaid capacities or any other capacity for or on behalf of the Corporation shall be deemed to be doing or to have done so in reliance upon, and as consideration for, the right of indemnification provided herein. Such right shall inure to the benefit of the legal representatives of any such person and shall not be exclusive of any other rights to which such person may be entitled apart from the provision of this Bylaw. No amendment, modification or repeal of this Article XI shall adversely affect the right of any director, officer or ERISA fiduciary to indemnification hereunder with respect to any activities occurring prior to the time of such amendment, modification or repeal.

Section 11-6. Insurance. The Corporation may purchase and maintain insurance on behalf of its directors, officers, employees and agents and those persons who were serving at the request of the Corporation as a director, officer, partner or trustee of, or in some other capacity in, another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of this Article or otherwise. Any full or partial payment made by an insurance company under any insurance policy covering any director, officer, employee or agent made to or on behalf of a person entitled to indemnification under this Article shall relieve the Corporation of its liability for indemnification provided for in this Article or otherwise to the extent of such payment, and no insurer shall have a right of subrogation against the Corporation with respect to such payment.

The North Carolina General Statutes contain provisions prescribing the extent to which directors and officers shall or may be indemnified. These statutory provisions are set forth below:

Part 5. Indemnification.

section 55-8-50. Policy Statement and Definitions.

(a) It is the public policy of this State to enable corporations organized under this Chapter to attract and maintain responsible, qualified directors, officers, employees and agents, and, to that end, to permit corporations organized under this Chapter to allocate the risk of personal liability of directors, officers, employees and agents through indemnification and insurance as authorized in this Part.

(b) Definitions in this Part:

- (1) "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.
- (2) "Director" means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director is considered to be serving an employee benefit plan at the corporation's request if his duties to the corporation also impose duties on, or otherwise involve services by, him to the plan or to participants in or beneficiaries of the plan. "Director" includes, unless the context requires otherwise, the estate or personal representative of a director.
- (3) "Expenses" means expenses of every kind incurred in defending a proceeding, including counsel fees.
- (4) "Liability" means the obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses incurred with respect to a proceeding.
- (5) "Official capacity" means: (i) when used with respect to a director, the office of director in a corporation; and (ii) when used with respect to an individual other than a director, as contemplated in G.S. 55-8-56, the office in a corporation held by the officer or the employment or agency relationship

undertaken by the employee or agent on behalf of the corporation. "Official capacity" does not include service for an other foreign or domestic corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise.

- (6) "Party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.
- (7) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

section 55-8-51. Authority to Indemnify.

(a) Except as provided in subsection (d), a corporation may indemnify an individual made a party to a proceeding because he is or was a director against liability incurred in the proceeding if:

- (1) He conducted himself in good faith; and
- (2) He reasonably believed (i) in the case of conduct in his official capacity with the corporation, that his conduct was in its best interests; and (ii) in all other cases, that his conduct was at least not opposed to its best interests; and
- (3) In the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful.

(b) A director's conduct with respect to an employee benefit plan for a purpose he reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of subsection (a) (2) (ii).

(c) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of no contest or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in this section.

(d) A corporation may not indemnify a director under this section:

- (1) In connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation; or
- (2) In connection with any other proceeding charging improper personal benefit to him, whether or not

involving action in his official capacity, in which he was adjudged liable on the basis that personal benefit was improperly received by him.

(e) Indemnification permitted under this section in connection with a proceeding by or in the right of the

corporation that is concluded without a final adjudication on the issue of liability is limited to reasonable expenses incurred in connection with the proceeding.

(f) The authorization, approval or favorable recommendation by the board of directors of a corporation of indemnification, as permitted by this section, shall not be deemed an act or corporate transaction in which a director has a conflict of interest, and no such indemnification shall be void or voidable on such ground.

#### section 55-8-52. Mandatory Indemnification.

Unless limited by its articles of incorporation, a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which he was a party because he is or was a director of the corporation against reasonable expenses incurred by him in connection with the proceeding.

#### section 55-8-53. Advance For Expenses.

Expenses incurred by a director in defending a proceeding may be paid by the corporation in advance of the final disposition of such proceeding as authorized by the board of directors in the specific case or as authorized or required under any provision in the articles of incorporation or bylaws or by any applicable resolution or contract upon receipt of an undertaking by or on behalf of the director to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the corporation against such expenses.

#### section 55-8-54. Court-ordered Indemnification.

Unless a corporation's articles of incorporation provide otherwise, a director of the corporation who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court after giving any notice the court considers necessary may order indemnification if it determines:

- (1) The director is entitled to mandatory indemnification under G.S. 55-8-52, in which case the court shall

also order the corporation to pay the director's reasonable expenses incurred to obtain court-ordered indemnification; or

- (2) The director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he met the standard of conduct set forth in G.S. 55-8-51 or was adjudged liable as described in G.S. 55-8-51(d), but if he was adjudged so liable his indemnification is limited to reasonable expenses incurred.

section 55-8-55. Determination and Authorization of Indemnification.

(a) A corporation may not indemnify a director under G.S. 55-8-51 unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because he has met the standard of conduct set forth in G.S. 55-8-51.

(b) The determination shall be made:

- (1) By the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding;
- (2) If a quorum cannot be obtained under subdivision (1), by majority vote of a committee duly designated by the board of directors (in which designation directors who are parties may participate), consisting solely of two or more directors not at the time parties to the proceeding;
- (3) By special legal counsel (i) selected by the board of directors or its committee in the manner prescribed in subdivision (1) or (2); or (ii) if a quorum of the board of directors cannot be obtained under subdivision (1) and a committee cannot be designated under subdivision (2), selected by majority vote of the full board of directors (in which selection directors who are parties may participate); or
- (4) By the shareholders, but shares owned by or voted under the control of directors who are at the time parties to the proceeding may not be voted on the determination.

(c) Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subsection (b) (3) to select counsel.

section 55-8-56. Indemnification of Officers, Employees, and Agents.

Unless a corporation's articles of incorporation provide otherwise:

- (1) An officer of the corporation is entitled to mandatory indemnification under G.S. 55-8-52, and is entitled to apply for court-ordered indemnification under G.S. 55-8-54, in each case to the same extent as a director.
- (2) The corporation may indemnify and advance expenses under this Part to an officer, employee, or agent of the corporation to the same extent as to a director; and
- (3) A corporation may also indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent, consistent with public policy, that may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract.

section 55-8-57. Additional Indemnification and Insurance.

(a) In addition to and separate and apart from the indemnification provided for in G.S. 55-8-51, 55-8-52, 55-8-54, 55-8-55 and 55-8-56, a corporation may in its articles of incorporation or bylaws or by contract or resolution indemnify or agree to indemnify any one or more of its directors, officers, employees, or agents against liability and expenses in any proceeding (including without limitation a proceeding brought by or on behalf of the corporation itself) arising out of their status as such or their activities in any of the foregoing capacities; provided, however, that a corporation may not indemnify or agree to indemnify a person against liability or expenses he may incur on account of his activities which were at the time taken known or believed by him to be clearly in conflict with the best interests of the corporation. A corporation may likewise and to the same extent indemnify or agree to indemnify any person who, at the request of the corporation, is or was serving as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust or other enterprise or as a trustee or administrator under an employee benefit plan. Any provision in any articles of incorporation, bylaw, contract, or resolution permitted under this section may include provisions for recovery from the corporation of reasonable costs, expenses, and attorneys' fees in connection with the enforcement of rights to indemnification granted therein and may further include provisions establishing reasonable procedures for determining and enforcing the rights granted therein.

(b) The authorization, adoption, approval, or favorable recommendation by the board of directors of a public corporation of any provision in any articles of incorporation, bylaw, contract or resolution, as permitted in this section, shall not be deemed an act or corporate transaction in which a director has a conflict of interest, and no such articles of incorporation or bylaw provision or contract or resolution shall be void or voidable on such grounds. The authorization, adoption, approval, or favorable recommendation by the board of directors of a nonpublic corporation of any provision in any articles of incorporation, bylaw, contract or resolution, as permitted in this section, which occurred prior to July 1, 1990, shall not be deemed an act or corporate transaction in which a director has a conflict of interest, and no such articles of incorporation, bylaw provision, contract or resolution shall be void or voidable on such grounds. Except

as permitted in G.S. 55-8-31, no such bylaw, contract, or resolution not adopted, authorized, approved or ratified by shareholders shall be effective as to claims made or liabilities asserted against any director prior to its adoption, authorization, or approval by the board of directors.

(c) A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation, or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by him in that capacity or arising from his status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify him against the same liability under any provision of this Chapter.

section 55-8-58. Application of Part.

(a) If articles of incorporation limit indemnification or advance for expenses, indemnification and advance for expenses are valid only to the extent consistent with the articles.

(b) This Part does not limit a corporation's power to pay or reimburse expenses incurred by a director in connection with his appearance as a witness in a proceeding at a time when he has not been made a named defendant or respondent to the proceeding.

(c) This Part shall not affect rights or liabilities arising

out of acts or omissions occurring before July 1, 1990.

Item 7. Exemption from Registration Claimed.

Not Applicable.

Item 8. Exhibits.

The Exhibits to this Form S-8 are listed in the accompanying Index to Exhibits.

In lieu of filing an opinion of counsel concerning compliance with the requirements of ERISA or an Internal Revenue Service ("IRS") determination letter that the Plan is qualified under Section 401 of the Internal Revenue Code, the Registrant hereby undertakes to submit the Plan and any amendment thereto to the IRS in a timely manner and to make all changes required by the IRS in order to qualify the Plan.

Item 9. Undertakings.

The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change in such information in the Registration Statement.

Provided, however, that paragraphs (1)(i) and (1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the Registrant pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment



shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

The undersigned Registrant hereby undertakes that, for the purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such

indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

#### SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Greensboro, North Carolina on January 18, 1994.

CONE MILLS CORPORATION

Date: January 18, 1994

By: /s/J. Patrick Danahy  
 J. Patrick Danahy  
 President and Chief  
 Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the following capacities on August 19, 1993.

<TABLE>

<S> Signature	<C> Title	<C> Date
(Dewey L. Trogdon)	Chairman of the Board	
/s/J. Patrick Danahy (J. Patrick Danahy)	Director, President and Chief Executive Officer (Principal Executive Officer)	January 18, 1994
/s/John L. Bakane (John L. Bakane)	Director, Vice President and Chief Financial Officer (Principal Financial Officer)	January 18, 1994
/s/Richard S. Vetack (Richard S. Vetack)	Director	January 18, 1994
/s/Bud W. Willis, III (Bud W. Willis, III)	Director	January 18, 1994

</TABLE>

<TABLE>

<S> Signature	<C> Title	<C> Date
------------------	--------------	-------------

/s/Doris R. Bray  
(Doris R. Bray)

Director

January 18, 1994

(Leslie W. Gaulden)

Director

(Jeanette C. Kimmel)

Director

/s/Charles M. Reid  
(Charles M. Reid)

Director

January 18, 1994

/s/J. D. Holder  
J. D. Holder

Controller  
(Principal Accounting  
Officer)

January 18, 1994

</TABLE>

## EXHIBITS

### INDEX TO EXHIBITS

Exhibit No.	DESCRIPTION	Sequential Page No.
* 4.1	Restated Articles of Incorporation of the Registrant effective August 25, 1993, filed as Exhibit 4.1 to the Registrant's report on Form 10-Q for the quarter ended October 3, 1993.	
* 4.2	Amended and Restated Bylaws of Registrant, effective June 18, 1992, filed as Exhibit 3.5 to the Registrant's Registration Statement on Form S-1 (File No. 33-46907).	
* 4.3	Note Agreement dated as of August 13, 1992, between Cone Mills Corporation and The Prudential Insurance Company	

of America, with form of 8% promissory note attached, filed as Exhibit 4.01 to the Registrant's report on Form 8-K dated August 13, 1992.

- \* 4.4 Credit Agreement dated as of August 13, 1992, among Cone Mills Corporation, the banks listed therein and Morgan Guaranty Trust Company of New York, as Agent, with form of note attached, filed as Exhibit 4.02 to the Registrant's report on Form 8-K dated August 13, 1992.
- \* 4.5 Specimen Class A Preferred Stock Certificate, filed as Exhibit 4.5 to the Registrant's Registration Statement on Form S-1 (File No. 33-46907).
- \* 4.6 Specimen Common Stock Certificate, effective June 18, 1992, filed as Exhibit 4.7 to the Registrant's Registration Statement on Form S-1 (File No. 33-46907).
- \* 4.7 Registration rights agreement dated as of March 30, 1992, among the Registrant and the shareholders listed therein, filed as Exhibits 4.8 to the Registrant's Registration Statement on Form S-1 (File No. 33-46907).

Exhibit  
No.

Sequential  
Page No.

- 4.8 Supplemental Retirement Program of Registrant as amended and restated effective September 1, 1993.
- 4.9 The 401(k) Program (formerly the Supplemental Retirement Program) as amended and restated effective January 1, 1994.
- 5 Opinion of Neil W. Koonce, Esq., General Counsel of the Registrant regarding legality of issuance of Common Stock.
- 23.1 Consent of Neil W. Koonce, Esq. contained in the Opinion, filed as

Exhibit 5 hereto.

23.2 Consent of Robinson, Bradshaw &  
Hinson, P.A.

23.3 Consent of McGladery & Pullen,  
independent auditor.

\*Incorporated by reference to the statement or  
report indicated.

EXHIBIT 4.8

THE 401 (K) PROGRAM  
OF  
CONE MILLS CORPORATION

EMPLOYEE EQUITY PLAN  
EMPLOYEE EQUITY PLAN - HOURLY  
SUPPLEMENTAL RETIREMENT PLAN  
SUPPLEMENTAL RETIREMENT PLAN - HOURLY

As Amended and Restated January 1, 1994

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## INTRODUCTION

Cone Mills Corporation ("Cone") initially adopted the Supplemental Retirement Plan of Cone Mills Corporation (the "Supplemental Plan") effective January 1, 1947. Its purposes were to supplement pension benefits for salaried employees of Cone and its affiliates and to promote strong employee interest in successful business operations.

The Supplemental Plan was amended a number of times since inception; several of the more significant changes are described below. Amendments effective January 1, 1983, provided for salary-reduction contributions pursuant to a qualified cash or deferred arrangement under Section 401 (k) of the Internal Revenue Code, of 2% to 6% of members' salaries. Limited in-service withdrawal rights and investment choices and a shortened vesting period of five years instead of 15 years were also instituted. Amendments effective January 1, 1984, to permit after-tax voluntary contributions of 2% to 6% of salary and to grant authority to the Advisory Committee to reduce or suspend salary-reduction elections were adopted.

On November 11, 1986, the Board of Directors of Cone authorized amendments which increased member cash or deferred elections to 2% to 10% of salary and discontinued after-tax contributions effective January 1, 1987. Other changes became effective as a result of the Retirement Equity Act of 1984 and the Tax Reform Act of 1986. On December 8, 1987, the Board of Directors of

Cone again approved amendments to the Plan which established matching Cone contributions equal to 25% of member salary-reduction contributions not in excess of 6% of salaries, permitted additional matching Cone contributions at the discretion of the Board of Directors and added semi-annual member investment and contributions elections.

Effective May 1, 1989, the Supplemental Retirement Plan of Cone Mills Corporation was amended, restated, and renamed, and operated as and became known as the Supplemental Retirement Program of Cone Mills Corporation. As amended and restated, the Program consisted thereafter through December 31, 1993, of two separate plans: the Cone Mills Corporation Supplemental Retirement Plan (SRP), which was a continuation of the prior plan, and the Cone Mills Corporation Employee Equity Plan (EEP), which was a new stock bonus plan that invests primarily in Common Stock of Cone Mills Corporation. Members were afforded the opportunity of transferring from the SRP to the EEP all or any portion of their SRP account balances as of June 30, 1989. Effective July 1, 1989 members could make salary-reduction

contributions of 2% to 10% of salary and direct that the contribution be made to the SRP or EEP or divided between the two plans. Cone's matching contributions remained at 25% of salary reduction contributions not in excess of 6% of salary to the SRP and were set at 50% of such members' contributions to the EEP. If a member contributes more than 6% to both Plans, the 6% limitation is divided between the SRP and EEP in the same proportion as the member elects to divide his salary reduction contribution.

Effective January 1, 1993 hourly employees were added to the class of employees eligible to participate in the Plan. In addition, amendments to the Plan required quarterly valuation and reporting of member account balances, gave members the right to change their contribution percentages and SRP investment fund selection quarterly, added a third investment choice in the SRP and subject to certain restrictions, provided limited rights to transfer funds from the EEP to the SRP.

The Plan document was amended and restated to incorporate all amendments that became effective on or before September 1, 1993.

The effective date of the amended and restated Plan document was September 1, 1993 except with respect to those provisions that were required to be effective earlier pursuant to the Tax Reform Act of 1986 and except as otherwise provided therein.

Effective January 1, 1994, the Supplemental Retirement Program of Cone Mills Corporation was amended, restated and renamed The 401(K) Program of Cone Mills Corporation. An amendment to the Program increased the amount members could contribute from 10% to 15% of compensation on the same terms and conditions as previously provided. As amended and restated, the Program consists of four separate plans: the Supplemental Retirement Plan, a newly adopted Supplemental Retirement Plan - Hourly ("SRP - - Hourly"), the Employee Equity Plan, and a newly adopted

Employee Equity Plan - Hourly ("EEP - Hourly"). Accounts as of December 31, 1993, in the SRP and EEP of Members who were compensated on an hourly wage basis were transferred to the respective SRP - Hourly and EEP - Hourly. Members who were compensated on an hourly wage basis as of December 31, 1993, became Members of such hourly plans and employees who were compensated on a salary basis remained as members of the Supplemental Retirement Plan and Employee Equity Plan. The account of a Member whose classification of pay status changes during a calendar quarter shall be allocated to the respective plans in accordance with his or her classification at the end of

the calendar quarter.

Cone intends to continue the SRP as a profit-sharing plan (assigned plan number 003) and to maintain the SRP-Hourly as a profit-sharing plan (assigned plan number 17) by incorporating all amendments described above and any other changes required by applicable law or regulation effective or to become effective at the time of adoption of this amended and restated 401(k) Program.

Cone intends to maintain the EEP as a stock bonus plan (assigned plan number 016) and the EEP-Hourly as a stock bonus plan (assigned plan number 18) by incorporating all provisions required by applicable law effective or to become effective at the time of adoption of this amended and restated 401(k) Program.

The Supplemental Retirement Plan and the SRP - Hourly are funded

through the Master Trust Agreement for the Supplemental Retirement Plan and the Supplemental Retirement Plan - Hourly of Cone Mills Corporation. The Employee Equity Plan and the Employee Equity Plan - Hourly are funded through the Master Trust Agreement for the Employee Equity Plan and Employee Equity Plan of Cone Mills Corporation.

Any word in this Plan with an initial capital not expected by ordinary capitalization rules is a defined term. Definitions not found in the Plan are in the Internal Revenue Code or the Employee Retirement Income Security Act, both laws as amended to the present time. The masculine gender where appearing in the Plan includes the feminine gender unless the context clearly indicates otherwise. Article and Section headings are included for convenience of reference and do not affect the Plan terms in any way.

#### ARTICLE I DEFINITIONS

- 1.01. Account means a Member's interest under the Plan according to Plan provisions. A Member may have several named accounts in this Plan. When Account is used without modification, it means the sum of all the Member's Accounts in this Plan. See also: CODA Account, Cone Contributions Account and Voluntary Account. Accounts as of December 31, 1993, in the SRP and EEP of Members who were compensated on an hourly wage basis were transferred as of January 1, 1994, to the respective SRP - Hourly and EEP - Hourly. Accounts of Members who were compensated on a salary basis remained in the Supplemental Retirement Plan and the Employee Equity Plan. An account of a member whose pay classification changes during a calendar quarter shall

be credited to the hourly or salary plans according to his or her status as of the end of the calendar quarter.

- 1.02. Actual Deferral Percentage or ADP is defined in Plan Section 3.04(b).
- 1.03. Advisory Committee means the committee appointed by Cone Mills Corporation which is responsible for general administration of the Plan.
- 1.04. Affiliate means a member of the same controlled group of corporations as defined in Code Section 1563(a) as Cone Mills Corporation.
- 1.05. Alternate Payee means a Member's Spouse, former Spouse, child or other dependent who is recognized by a Qualified Domestic Relations Order as having a right to receive all or a portion of the benefits payable under the Plan with respect to a Member.
- 1.06. Annual Additions is defined in Plan Section 4.06.
- 1.07. Approved Leave means an individual's nonworking period granted by an Employer for reasons relating to:
- (a) accident, sickness or disability;
  - (b) job-connected education or training;
  - (c) government service, including jury duty, whether elective or by appointment; or
  - (d) terminal leave, with or without pay.

Approved Leaves shall be granted pursuant to policies that are uniformly applied to all individuals, with no discrimination in favor of Highly Compensated Employees as defined in Code Section 414(q). Approved Leave also means an individual's nonworking period during which he is absent from work due to compulsory service in the Armed Forces of the United Services and such period thereafter as his job rights are protected by law.

- 1.08. Beneficiary or Beneficiaries means one or more individuals or other entities so designated by a Member according to Plan Section 6.07, or if there is no effective designation, then as specified in that

Section. Despite the preceding, to the extent provided in a Qualified Domestic Relations Order as defined in Code Section 414(p), or to the extent provided in any domestic relations order entered before January 1, 1985, under which payments have begun, Beneficiary means the Spouse, former Spouse, child or other dependent of a Member who is recognized by that order as having a right to receive all or a portion of any benefits payable under the Plan on behalf of such Member.

- 1.09. Board of Directors means the Board of Directors of Cone Mills Corporation.
- 1.10. Break in Service is defined for Full-Time Employees in subsection (a) and is defined for Part-Time Employees in subsection (b).
- (a) A Full-Time Employee has a one-year Break in Service for each twelve-consecutive-month Period of Severance.
- (b) A Part-Time Employee has a one-year Break in Service during each Plan Year in which he receives credit for fewer than 501 Hours of Service after crediting Hours of Service according to Internal Revenue Code Sections 410(a)(3)(E) and 411(a)(6)(E) regarding maternity and paternity absences.
- 1.11. CODA Account means the sum of a Member's EEP CODA Account and his SRP CODA Account.
- 1.12. CODA Contributions means the Employers' contributions

described in Plan Section 3.01 caused by Salary-Reduction Elections and includes both EEP CODA Contributions and SRP CODA Contributions.

- 1.13. Code means the Internal Revenue Code as amended by the Tax Reform Act of 1986, as amended from time to time.
- 1.14. Compensation means base Salary, wages, overtime earnings, vacation pay, holiday pay, service awards, severance pay, incentive pay, bonuses, commissions, supervisors' supplement and other similar compensation, but does not include pension or profit sharing benefits or other benefits and contributions paid by any Employer (other than contributions caused by the Member's salary-reduction elections that are not includable in his gross income by reason of Code Sections 125 or 402(e)(3)), stock option payments, moving or regular expense allowances, moving expense reimbursements, retainers, fees under contract, mortgage interest differential payments, imputed income resulting from personal use of company cars or from group term life insurance coverage, or any other similar compensation not related to actual earnings as an employee. Notwithstanding the foregoing, the annual Compensation of each member taken into account under the Plan for any Plan Year shall not exceed \$200,000 (\$150,000, effective for Plan Years beginning January 1, 1994) as adjusted for increases in cost-of-living in accordance with Code Sections 401(a)(17) and 415(d).

In determining the compensation of a Member for purposes of this limitation, the rules of Code Section



414(q) (6) shall apply, except in applying such rules, the term "family" shall mean only the Spouse of the Member and any lineal descendants of the member who have not attained age 19 before the close of the Plan Year. If as a result of the application of such rules the adjusted \$200,000 (\$150,000, effective for Plan Years beginning January 1, 1994) limitation is exceeded, the limitation shall be prorated among the affected individuals in proportion to each such individual's Compensation determined under this Section 1.14 prior to application of the limitation. The Compensation of an Employee described in the last sentence of Section 1.28 of the Plan shall be determined in accordance with the special rules set forth in Code Section 406(b) (2).

- 1.15. Computation Period means a consecutive twelve-month period beginning with an Employee's Employment Commencement Date and succeeding anniversaries of such date and in addition, for Part-Time Employees, a Plan Year.
- 1.16. Cone means Cone Mills Corporation, a North Carolina corporation, the Plan sponsor.
- 1.17. Cone Contributions means the Employer Contributions described in Plan Section 3.02 and includes both EEP Cone Contributions and SRP Cone Contributions.
- 1.18. Cone Contributions Account means the sum of a Member's EEP Cone Contributions Account and his SRP Cone Contributions Account.
- 1.19. Continuous Service means an Employee's period of employment with an Employer or an Affiliate beginning with his Employment Commencement Date and continuing until his Severance from Service Date. If an Employee is reemployed or returns to work after a Severance from Service and his Continuous Service completed before his Severance from Service is not required to be recognized under this Plan, his period of employment with an Employer or an Affiliate is Continuous Service beginning on the date on which he again is credited with an Hour of Service for the performance of duties and continuing until his later Severance from Service Date. Continuous Service includes all employment even though as a non-Member. For purposes of eligibility to participate in the Plan and vesting, the Continuous Service of an Employee who quits, retires or is discharged includes his Period of Severance (up to a maximum of 12 months) if he again performs an Hour of Service with an Employer or an Affiliate before the first anniversary of the date he quit, retired or was

discharged, and the Continuous Service of an Employee who is absent for any reason other than quit, retirement or discharge and who has a Severance from Service before the first anniversary of such absence

includes the period of time between the Severance from Service Date and the first anniversary of the absence if he again performs an Hour of Service with an Employer or an Affiliate before the first anniversary of the absence.

- 1.20. EEP and defined terms incorporating EEP means the Cone Mills Corporation Employee Equity Plan when used with respect to an employee compensated on a salaried basis and the Cone Mills Corporation Employee Equity Plan - Hourly ("EEP - Hourly") when used with respect to an employee compensated on an hourly wage basis.
- 1.21. EEP CODA Contributions means CODA Contributions made to the EEP pursuant to Salary-Reduction Elections.
- 1.22. EEP CODA Contributions Account means a Member's Account to which his EEP CODA Contributions are allocated.
- 1.23. EEP Cone Contributions means Cone Contributions made to the EEP pursuant to Plan Section 3.02.
- 1.24. EEP Cone Contributions Account means a Member's Account to which EEP Cone Contributions are allocated.
- 1.25. EEP Voluntary Contributions Account means a Member's Account to which amounts transferred from the Member's Supplemental Retirement Plan Voluntary Contributions Account pursuant to Member elections in accordance with the Plan provisions in effect on May 1, 1989 are allocated.
- 1.26. Effective Date means with respect to this amended and

restated Plan, January 1, 1994, except with respect to those provisions that have an earlier effective date pursuant to the Tax Reform Act of 1986, or as otherwise provided. The trust for each plan has an effective date contained in the first trust agreement executed for that plan.

- 1.27. Eligible Employee is defined in Plan Section 2.02.
- 1.28. Employee is an individual who renders personal services for an Employer or an Affiliate, in an employer-employee relationship, as defined for Federal Insurance Contribution Act purposes and Federal Employment Tax purposes, including Code Section 3401(c). A Full-Time Employee is an individual who, according to a policy uniformly applied in similar situations, is scheduled to work the standard number of hours for his job classification. A Part-Time Employee is one who, according to a policy uniformly applied in similar

situations, is scheduled to work less than the standard number of hours for full-time job classifications. Employee shall include Leased Employees within the meaning of Code Sections 404(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 nonhighly compensated work force. For purposes of the Plan, a citizen or resident of the United States who

an employee of a foreign entity in which Cone directly or through other entities has not less than a ten percent (10%) interest in the voting stock thereof (or, in the case of an entity other than a corporation, in the profits thereof) shall be treated as an Employee of Cone if Cone has entered into an agreement under Code Section

3121(l) with respect to such foreign entity and if no contributions under a funded plan of deferred compensation are provided by any person other than Cone

with respect to the remuneration paid to such individual by the foreign entity.

- 1.29. Employer means an entity described in Plan Section 10.01.
- 1.30. Employment Commencement Date means the first day for which an Employee is credited with an Hour of Service. The Employment Commencement Date for any Employee who has Rule of Parity Years is the first day after those Rule of Parity Years for which that Employee is credited with an Hour of Service for the performance of duties.
- 1.31. ERISA means the Employee Retirement Income Security Act of 1974, as amended from time to time.
- 1.32. Forfeiture refers to any part of a Member's Account under this Plan to which he is not entitled to receive by reason of the vesting rules of Plan Article V.
- 1.33. Hour of Service
  - (a) An Hour of Service is each hour for which an Employee is paid or is entitled to payment for the

performance of duties for an Employer or an Affiliate during the applicable Computation Period.

- (b) An Hour of Service is each hour for which an Employee is paid or is entitled to payment by an Employer or an Affiliate in a period during which no duties are performed (regardless of whether the relationship has terminated) because of vacation,

holiday, illness, incapacity, layoff or Approved Leave, but:

- (1) no more than 501 Hours of Service are credited under this subsection (b) to an individual for any single continuous period during which he performs no duties (whether or not the period occurs in a single Computation Period);
- (2) an hour for which an individual is directly or indirectly paid, or is entitled to payment, because of a period during which no duties are performed, is not credited to him if that payment is made or is due under a plan maintained solely for the purpose of complying with applicable worker's compensation, unemployment compensation or disability insurance laws; and
- (3) Hours of Service are not credited for a payment that solely reimburses an individual for his medical or medically related expenses

incurred.

For purposes of this subsection (b), a payment is deemed to be made by or be due from an Employer or an Affiliate regardless of whether it is made by or due from that entity directly or indirectly through a trust fund or insurer to which that entity contributes or pays premiums, and regardless of whether contributions made or due to the trust fund or insurer or other funding vehicle are for the benefit of particular individuals or are on behalf of a group of individuals.

- (c) An Hour of Service is each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by an Employer or an Affiliate. The same Hours of Service must not be credited both under subsection (a) or (b) and also under this subsection (c). Thus, for example, if an individual receives a back-pay award following a determination that he was paid at an unlawful rate for Hours of Service previously credited, he is not entitled to additional credit for the same Hours of Service. Crediting of Hours of Service for back pay awarded or agreed to with respect to periods described in subsection (b) is subject to the limitations set forth in the subsection. For

example, not more than 501 Hours of Service are required to be credited for payments of back pay, to the extent that the back pay is agreed to or awarded for a period of time during which an individual did not or would not have performed duties.

- (d) For determining Hours of Service for reasons other than the performance of duties, the special rule in 29 C.F.R. section 2530.200b-2(b) is incorporated by reference. That rule provides that Hours of Service are credited on the basis of the number of hours in the individual's regular work schedule or, in the case of a payment not calculated by the units of time, by dividing the payment in question by the individual's most recent hourly rate of pay.
- (e) When crediting Hours of Service to Computation Periods, the special rule in 29 C.F.R. section 2530.200b-2(c) is incorporated by reference. That rule provides that Hours of Service are credited to individuals in the Computation Periods covered by the individual's regular work schedule during the period of nonperformance of duties.
- (f) The determination of Hours of Service must be made from records of hours worked and hours for which payment is made or due.
- (g) For purposes of determining Hours of Service

credited according to the maternity and paternity absence provisions of Code Section 410(a)(5)(E) and Code Section 411(a)(6)(E), those provisions are first effective for Plan Years beginning after 1984.

1.34. Investment Committee means the Committee appointed by Cone that, prior to August 20, 1992, had authority to manage, acquire or dispose of the assets of the Plan then in effect in accordance with and subject to Plan Section 8.08 (as in effect prior to August 20, 1992) or to appoint one or more Investment Managers for such purpose. The Investment Committee was discontinued effective August 20, 1992.

1.35. Investment Earnings means the net gain or loss of an Investment Fund from interest and dividends received or accrued, realized and unrealized gains and losses on securities and any other investment transactions, less expenses paid or chargeable to the Investment Fund for a Plan Year or such interim period within a Plan Year for which the assets of the Investment Fund are being

valued. Investment Earnings shall be determined on the basis of generally accepted accounting principles and assets of an Investment Fund as of any Valuation Date shall be valued on the basis of their current fair market value.

- 1.36. Investment Fund means a fund established for the investment of Trust Fund assets pursuant to Article VII.
- 1.37. Investment Manager means an individual, firm or other entity appointed by the Board of Directors and assigned duties as described in Plan Section 8.08.
- 1.38. Member is defined in Plan Section 2.01.
- 1.39. Period of Severance means the period of time beginning on an Employee's Severance from Service Date and ending on the date on which he is next credited with an Hour of Service for the performance of duties.
- 1.40. Plan means the 401(K) Program of Cone Mills Corporation as described in this document. The Program consists of the Employee Equity Plan, a stock bonus plan (plan number 016), the Employee Equity Plan - Hourly, a stock bonus plan (plan number 18) the Supplemental Retirement Plan, a profit sharing plan (plan number 003), and the Supplemental Retirement Plan - Hourly, a profit sharing plan (plan number 17).
- 1.41. Plan Year means a twelve (12) month period beginning on January 1 and ending on December 31 and shall be the "limitation year" for purposes of Code Section 415.
- 1.42. Prior Plan means the Supplemental Retirement Program of Cone Mills Corporation as in effect on September 1, 1993.
- 1.43. Rule of Parity Years means Years of Service which are disregarded for eligibility, vesting or other service credit under the Plan. Rule of Parity Years only apply to an Employee: (1) who has not joined either the EEP or the SRP, (2) who has at least five consecutive one-year Breaks in Service, and (3) whose total consecutive one-year Breaks in Service exceed prior Years of Service.
- 1.44. Salary means compensation which is fixed in amount and stipulated to be regularly paid by one or more Employers for a definite period, which shall be a week or more in duration as differentiated from wages, commissions, bonuses or the guaranty of earnings for wage earners over any stated period.
- 1.45. Salary-Reduction Election means the election described

in Plan Section 3.01, regardless of whether the election is made with respect to base Salary, wages, or other Compensation.

- 1.46. Severance from Service Date means the earliest of:
- (a) the date an Employee quits, retires, is discharged or dies; or
  - (b) the first anniversary of the date from which an Employee remains absent from work (with or without pay) for any other reason such as layoff, disability, or Approved Leave; except that, for an Employee who is absent from work by reason of a maternity or paternity absence described in Code Section 410(a)(5)(i)(E) or Code Section 411(a)(6)(i)(E) and who continues to be absent from work beyond the first anniversary of the first day of such maternity or paternity absence, his Severance from Service Date is the second

anniversary of the first day of such absence and the period between the first day and second anniversaries is neither a period of Continuous Service nor a Period of Severance; and except that, for an Employee who is absent from work by reason of compulsory military service, his Severance from Service Date is the 91st day following his discharge from active duty.

An Employee's Severance from Service Date may be postponed by the Advisory Committee under established policy uniformly applied in similar situations. For purposes of this Plan, an Employee has a Severance from Service on his Severance from Service Date.

- 1.47. Spouse means the individual legally married to a Member. Surviving Spouse means the individual legally married to a Member on the date of such Member's death. An individual is not a Spouse or a Surviving Spouse after the marriage to the Member is legally ended for reasons other than death of the Member.

- 1.48. SRP and define terms incorporating SRP means the Cone Mills Corporation Supplemental Retirement Plan when used with respect to an employee compensated on a salaried basis and the Cone Mills Corporation Supplemental Retirement Plan - Hourly ("SRP - Hourly") when used with respect to an employee compensated on an hourly wage basis.

- 1.49. SRP CODA Contributions means CODA Contributions made to the SRP pursuant to Salary-Reduction Elections.

- 1.50. SRP CODA Contributions Account means a Member's Account

- to which his SRP CODA Contributions (including all CODA Contributions made prior to May 1, 1989) are allocated.
- 1.51. SRP Cone Contributions means Cone Contributions made to the SRP pursuant to Plan Section 3.02.
- 1.52. SRP Cone Contributions Account means a Member's Account to which his SRP Cone Contributions (including all Cone Contributions made prior to May 1, 1989) are allocated.
- 1.53. SRP Voluntary Contributions Account means a Member's Account to which his Voluntary Contributions are allocated.
- 1.54. Trust and Trust Fund refers to a Trust Fund established for this Plan and the Trust Agreement(s) executed under this Plan.
- 1.55. Trust Agreement means any agreement including amendments executed by a Trustee or Co-Trustee with Cone to be used in connection with this Plan.
- 1.56. Trustee of SRP means Trustee designated in Master Trust Agreement of Supplemental Retirement Plan and Supplemental Retirement Plan - Hourly dated as of January 1, 1994 and any amendatory agreements thereto.

Trustee of EEP means Trustee designated in Master Trust Agreement of Employee Equity Plan and Employee Equity Plan - Hourly dated as of January 1, 1994 and any amendatory agreements thereto. A Co-Trustee is one of several Trustees so designated under a Trust Agreement.

Unless the context clearly indicates otherwise, the term Trustee also means Co-Trustees.

- 1.57. Valuation Date for this Plan means March 31, June 30, September 30 and December 31 of each Plan Year and any other date on which a valuation is made in connection with the payment of benefits.
- 1.58. Voluntary Contribution means any nondeductible Member contribution that is not made pursuant to a Salary Reduction Election.
- 1.59. Year of Service is defined in (a) for a Part-Time Employee and in (b) for a Full-Time Employee, but a Year of Service does not include: (1) service with an Employer before any termination of employment that occurred before January 1, 1976; and (2) Rule of Parity Years.
- (a) for a Part-Time Employee, a Plan Year following a Part-Time Employee's Employment Commencement Date during which he is credited with at least 1,000 Hours of Service. A Part-Time Employee will be credited with one Year of Service for his first full Plan Year if he is credited with at least 1,000 Hours of Service during his initial



Computation Period, regardless of whether he is credited with at least 1,000 Hours of Service during such first full Plan Year, provided

however, a Year of Service shall not be given for both the initial Computation Period and the first full Plan Year of employment.

- (b) for a Full-Time Employee, twelve months of Continuous Service (whether or not consecutive). Months of Continuous Service are aggregated yield Years of Service.

If a Part-Time Employee becomes a Full-Time Employee during his initial Computation Period and is credited with at least 1,000 Hours of Service in such Computation Period as of the date his change of status occurred, he is granted a Year of Service and his Continuous Service shall begin on the first day of the Computation Period after which the change to Full-Time status occurred. If he is not credited with at least 1,000 Hours of Service as of the date the change in status occurred, then he is credited with service as if he had been a Full-Time Employee during the entire Computation period.

After completing his initial Computation Period, a Part-Time Employee who becomes a Full-Time Employee and who had been credited with at least 1,000 Hours of Service for the Plan Year during which the change occurs, retains his Years of Service for pre-change Plan Years, is credited with a Year of Service for the Plan Year in which the change occurs, and is credited

with Continuous Service beginning on the first day of the Plan Year following the date on which the change occurs. If a Part-Time Employee becomes a Full-Time Employee, after completing one Computation Period, and had not been credited with at least 1000 Hours of Service for the Plan Year during which the change occurs, his Continuous Service is credited from the beginning of the Plan Year in which the change occurs.

If a Full-Time Employee becomes a Part-Time Employee, he shall receive credit for the number of full years of Continuous Service completed as of the date the change occurred and will be deemed to become a Part-Time Employee on the first day of the Plan Year in which the date of change occurs. For the Plan Year in which the

change occurs, he shall receive credit, on the basis of 190 Hours of Service per month or fraction thereof, for the period from the end of his last full year of Continuous Service to the date of his change in status.

A Full-Time Employee who quits, retires, is discharged or is otherwise absent from work and who returns as a Part-Time Employee within 12 months is treated as if he had changed from a Full-Time Employee to a Part-Time Employee on the date of his reemployment.

A Full-Time Employee who quits, retires, is discharged or is otherwise absent from work and who returns after the first anniversary of the date on which he quit, retired, was discharged or otherwise absent from work as a Part-Time Employee shall have an initial Computation Period begin on the date of return.

A Part-Time Employee who quits, retires, is discharged or is otherwise absent from work and who returns as a Full-Time Employee before the end of the Plan Year in which such event occurred is treated as if he had been a Part-Time Employee for the entire Plan Year and is credited with 190 Hours of Service for each month in which he is a Full-Time Employee; his Continuous Service as a Full-Time Employee begins on the first day of the next Plan Year.

## ARTICLE II PARTICIPATION

### 2.01. MEMBER

A Member is an Employee or former Employee who has begun participation in this Plan or the Prior Plan according to this Article II. A Member of the Supplemental Retirement Plan or the Employee Equity Plan who was compensated as of December 31, 1993 on an hourly wage basis became as of January 1, 1994 members of the Supplemental Retirement Plan - Hourly or the Employee Equity Plan - Hourly. A Member whose classification of pay status changes during a calendar quarter shall be deemed to be a Member of the hourly or salaried plan for that quarter based upon his or her pay classification as of the end of the calendar quarter.

An individual whose Account Balance is greater than zero continues to be a Member for purposes of provisions relating to allocation of earnings and losses to his Account and to distributions from his Account, but is a Member for purposes of allocations of Cone Contributions only if he was an Eligible Employee at any time during the Plan Year and CODA Contributions

pursuant to Salary-Reduction Elections in effect during such Plan Year were made on his behalf and not withdrawn.

2.02. CONDITIONS OF PARTICIPATION

(a) An Employee shall become an Eligible Employee on

the January 1 or July 1 coinciding with or next following his attainment of age twenty-one (21) and completion of one (1) Year of Service.

- (b) An Eligible Employee who is compensated on an hourly wage basis shall only be eligible to participate in and shall become a Member of the SRP - Hourly by electing an SRP CODA Contribution and shall become a Member of the EEP - Hourly by electing an EEP CODA Contribution. An Eligible Employee who is compensated on a salary basis shall only be eligible to participate in and shall become a Member of the SRP by electing an SRP CODA Contribution and shall become a Member of the EEP by electing an EEP CODA Contribution. An Eligible Employee's compensation classification as of the participation date set forth in sub-paragraph (a) above shall determine to which plan he can enroll but the Member's pay classification at the end of each calendar quarter shall be determinative of which plan his Accounts will be maintained.
- (c) Employees who are Leased Employees within the meaning of Code Sections 414(n)(2) and 414(o)(2) cannot be Eligible Employees.
- (d) Employees who contribute to the Defined Contribution Pension Plan of the Machine Printers' and Engravers' Association of the United States

cannot be Eligible Employees.

2.03. EMPLOYMENT AND ELIGIBILITY STATUS CHANGES

- (a) If a Member does not have a Severance from Service Date but becomes an Employee of an Affiliate that does not participate in the Plan, or ceases to make CODA Contributions, he shall become a suspended Member at the end of the pay period the change in status occurs.
- (b) If an Employee has attained age twenty-one (21) and has at least one (1) Year of Service and becomes an Eligible Employee due to transfer from an Affiliate not participating in the Plan to an Employer, he may participate in the Plan on the

January 1 or July 1 coinciding with or next following such transfer. If he is not an Eligible Employee at the time of such transfer, he shall become an Eligible Employee according to Plan Section 2.02.

2.04. PARTICIPATION UPON REEMPLOYMENT

- (a) If a Member or Eligible Employee has a Severance from Service Date and is reemployed, such Member shall become an Eligible Employee when he first performs an Hour of Service, unless all of his Prior Years of Service are disregarded as Rule of Parity Years.
- (b) A Member or Eligible Employee who has a Severance from Service Date and whose prior Years of Service

are all disregarded as Rule of Parity Years is treated as a new Employee for all purposes under the Plan and participates according to Plan Section 2.02.

- (c) An Employee who is not an Eligible Employee or Member when he has a Severance from Service Date shall be treated as a new Employee upon reemployment and shall participate according to Plan Section 2.02.

ARTICLE III  
CONTRIBUTIONS

3.01. CODA CONTRIBUTIONS

- (a) The Employer's CODA Contribution for a Plan Year is the total of all reductions in Members' Compensation for the Plan Year by way of Salary-Reduction Elections. Each Eligible Employee may elect to have his Employer make CODA Contributions on his behalf for a Plan Year in an amount, expressed as a whole percentage, of not less than 2% or more than 15% of his Compensation, provided, however, that no Member shall be permitted to have "Excess Elective Deferrals", which shall mean CODA Contributions made under this Plan, or any other qualified plan maintained by an Employer, during any taxable year, in excess of the dollar limitation contained in Section 402(g) of the Code in effect at the beginning of such taxable year. All CODA Contributions shall be credited to the Member's EEP CODA Contributions Account or to his SRP CODA Contributions Account, as directed by the Member. A Member may divide his CODA

Contributions between the SRP and the EEP provided that at least 2% of his Compensation is contributed to each plan.

- (b) CODA Contributions elections shall be made on a form provided by the Advisory Committee.

Such forms shall authorize the Employer to remit the aggregate amount of CODA Contributions designated to be made from Compensation payable to the Employee by the Employer to the EEP or to the SRP or to divide such CODA Contributions between the EEP and SRP. The Employer shall remit CODA Contributions as soon as practicable, but in no event later than ninety (90) days following the end of the pay period for which such contributions were made.

- (c) Members and Eligible Employees will be allowed to make or change CODA Contributions as of January 1, April 1, July 1 and October 1 of each Plan Year. Employees who are or become Eligible Employees during the Plan Year may become Members of the Plan by executing the appropriate Salary-Reduction Election forms authorizing CODA Contributions to become effective on the January 1 or July 1 next following the date the election forms are delivered to the Advisory Committee.
- (d) Any Member may elect to cease CODA Contributions to the Plan by delivering written notice to the Advisory Committee, such election to be effective as soon as possible after receipt. Should such Member desire to rejoin the Plan, he may do so by submitting a new Salary-Reduction Election to the

Advisory Committee provided, however, that such reinstatement will not become effective until the July 1 or January 1 next following the effective date on which his earlier CODA Contributions terminated.

- (e) As provided in Section 3.04, the Advisory Committee may suspend or revoke any Salary-Reduction Election of any member or cause refunds of CODA Contributions previously made in the Plan Year by a Member if it is determined that such suspension, revocation or refund is necessary to comply with the limitations and discrimination tests contained in Section 401(k) of the Internal Revenue Code.

- (f) A Member may assign to this Plan any Excess Elective Deferrals made during a taxable year of the Member by notifying the Advisory Committee on or before March 15 of the following year of the amount of the excess CODA Contributions to be assigned to the Plan. A Member is deemed to notify the Advisory Committee of any Excess Elective Deferrals that result solely from CODA Contributions made to this Plan and any other plans of an Employer. Notwithstanding any other provisions of the Plan, excess CODA Contributions, plus any income and minus any loss allocable thereto, shall be distributed no later than

April 15 to any Member to whose Account excess CODA Contributions were assigned for the preceding year and who claims excess CODA Contributions for such taxable year.

### 3.02. CONE CONTRIBUTIONS

- (a) The Employer shall contribute respectively to the EEP and the EEP - Hourly for each Plan Year an amount equal to 50% of the EEP CODA Contributions made on behalf of Members of each plan for such Plan Year. The Employer shall contribute respectively to the SRP and SRP - Hourly for each Plan Year an amount equal to 25% of the SRP CODA Contributions made on behalf of Members of each Plan for such Plan Year; however, CODA Contributions made on behalf of any Member in excess of 6% of his Compensation shall not be taken into account in determining the Cone Contribution. If the total CODA Contributions made on behalf of any Member exceed 6% of his Compensation, then the 6% of Compensation limitation will be divided between the EEP and SRP in the same proportion as the Member elects to divide the CODA Contributions made on his behalf.
- (b) Additional Cone Contributions may be made to the EEP, the SRP or both, with respect to a Plan Year or with respect to any three-month period ending

March 31, June 30, September 30 or December 31, in such amount as the Board of Directors in its sole discretion may determine.

- (c) Current or accumulated earnings and profits of the Employer are not required in order for Cone Contributions to be made. In no event,

however, shall Cone Contributions for any Plan Year exceed the amount allowed as a deduction for its fiscal year ended with or nearest the Plan Year end for which such Cone Contributions are made under applicable provisions of the Code.

- (d) All Cone Contributions shall be paid not later than the time prescribed in the Code for filing the federal income tax return of the Employer including extensions which have been granted for the filing of such return. The Trustee is not required to collect Cone Contributions or payments required by an Employer and is responsible only for assets received as Trustee.
- (e) All contributions to the Trust Fund are conditioned on their being deductible under applicable provisions of the Code. If any deduction for any contribution is not allowed in whole or in part, then that disallowed portion must be returned to the contributor, but repayment must be made no later than one year after the disallowance. To the extent such disallowance

represents CODA Contributions made pursuant to Salary-Reduction Elections of Members, such contribution shall be returned to the appropriate Members. For purposes of this Section 3.02, the disallowance may be made by the opinion of any court whose decision has become final or by any disallowance asserted by the Internal Revenue Service to which Cone agrees.

- (f) If any excess contribution is made by an Employer because of a mistake-of-fact, then the portion of the contribution due to the mistake-of-fact must be returned to the contributor. To the extent such mistake-of-fact contribution represents CODA Contributions made pursuant to Salary-Reduction Elections of Members, such contributions shall be returned to the appropriate Members. Earnings of the Trust Fund attributable to the excess contribution may not be returned but any losses attributable thereto must reduce the amount returned.

### 3.03. CASH AND NONCASH CONTRIBUTIONS

- (a) Cone Contributions and CODA Contributions to the SRP Trust Fund shall be in cash.
- (b) CODA Contributions to the EEP Trust Fund shall be in cash.
- (c) Cone Contributions to the EEP Trust Fund may be in

the form of either cash or Qualifying Employer Securities as defined in Section 407(d)(5) of ERISA. All noncash property contributed to the Trustee must be valued at its fair market value on the actual date of acceptance of the property by the Trustee.

3.04. DEFERRAL PERCENTAGE TEST - CODA CONTRIBUTIONS

- (a) CODA Contributions under this Plan are intended to qualify as cash or deferred arrangements according to Section 401(k) of the Code. For purposes of measuring compliance with Section 401(k), the Supplemental Retirement Plan and the Employee Equity Plan shall be treated as an aggregated group and CODA contributions to those plans shall be aggregated and the Supplemental Retirement Plan - Hourly and the Employee Equity Plan - Hourly shall be treated as an aggregated group and CODA contributions to those plans shall be aggregated. The deferral percentage tests as described in this Section 3.04 shall be made for each Plan Year and shall be applied separately to each aggregated group. Compliance with such tests will be secured as provided in this Section 3.04 and in accordance with applicable provisions of the Code.
- (b) Definitions for purposes of deferral percentage tests are:

- (1) Actual Deferral Percentage (ADP) means the percentage determined by dividing the sum of CODA Contributions made on behalf of a Member which are allocated to his Account for the Plan Year or portion thereof by his Compensation for the Plan Year or portion thereof. The ADP of an Eligible Employee who does not elect to have CODA Contributions made on his behalf is zero.
- (2) Average ADP means the arithmetic average of the ADP of all Members and Eligible Employees as a group.
- (3) For any Plan Year, compensation may be given any meaning which satisfies Code Section 414(s).
- (4) Highly Compensated Employee includes highly compensated active Employees and highly compensated former Employees.  
A highly compensated active Employee includes any Employee who performs services for the



Employer during the determination year and who, during the look-back year: (i) received compensation from the Employer in excess of \$75,000 (as adjusted pursuant to Section 415(d) of the Code); (ii) received compensation from the Employer in excess of

\$50,000 (as adjusted pursuant in Section 415(d) of the Code) and was a member of the top-paid group for such year; or (iii) was an officer of the Employer and received Compensation during such year that is greater than 150 percent of the dollar limitation in effect under Section 415(b)(1)(A) of the Code. The term highly compensated active Employee also includes: (i) any Employee who is both described in the preceding sentence if the term "determination year" is substituted for the term "look-back year" and is one of the 100 Employees who received the most Compensation from the Employer during the determination year; and (ii) Employees who are 5 percent owners at any time during the look-back year or determination year. If no officer has satisfied the Compensation requirement of (iii) above during either a determination year or look-back year, the highest paid officer for such year shall be treated as a Highly Compensated Employee.

For this purpose, the determination year shall be the Plan Year. The look-back year shall be the twelve-month period immediately

preceding the determination year.

A highly compensated former Employee includes any Employee who has a Severance from Service (or was deemed to have a Severance from Service) prior to the determination year, performs no services for the Employer during the determination year, and was a highly compensated active Employee for either his severance year or any determination year ending on or after the Employee's 55th birthday.

If an Employee is, during a determination year or look-back year, a family member of

either a 5 percent owner who is an active or former Employee or of a Highly Compensated Employee who is one of the 10 most Highly Compensated Employees ranked on the basis of compensation paid by the Employer during such year, then the combined ADP for the family group of which such Employee is a member (which is treated as one Highly Compensated Employee) must be determined by combining the compensation and CODA Contributions of all the eligible family members, and the combined

ACP for the family group must be determined by combining the compensation and Cone Contributions of all the eligible family members. For purposes of the Section, family member includes the Spouse, lineal ascendants and descendants of the Employee or former Employee and the Spouses of such lineal ascendants and descendants.

The determination of who is a Highly Compensated Employee, including the determinations of the number and identity of Employees in the top-paid group, the top 100 Employees, the number of Employees treated as officers and the compensation that is considered, will be made in accordance with Code Section 414(q) and the regulations thereunder.

- (5) Non-Highly Compensated Employee means an Employee who is neither a Highly Compensated Employee nor a family member of a Highly Compensated Employee as defined in Plan Section 3.04(b)(4).

- (c) The average ADP for any Plan Year cannot exceed the allowance set forth in the following table:

(A)	(B)
If Average Actual Deferral Percentage for Eligible Non-Highly Compensated Employees is:	The Average Actual Deferral Percentage for Eligible Highly Compensated Employees can be:
2% or less.....	2 times Column A
2% to 8%.....	Column A plus 2 percentage points
Over 8%.....	1.25 times Column A

- (d) Notwithstanding the foregoing table, to avoid duplicate use of the limit for any Highly Compensated Employee in violation of Code Section 401(m)(9), the actual contribution ratio for Highly Compensated Employees shall be reduced pursuant to Treasury Regulation 1.401(m)-2 and Plan Section 3.05(f).
- (e) In the case of a Highly Compensated Employee who is a Member or Eligible Employee and who is eligible to have CODA Contributions made on his behalf to individual accounts under two or more Employer plans described in Section 401(a) or 401(k) of the Code, all such contributions shall be treated as if made to a single plan for purposes of determining the ADP for any Plan Year.
- (f) CODA Contributions made on behalf of any Member who is a Highly Compensated Employee, that in the aggregate for any Plan Year, exceed the maximum amount that can be allocated based on the

application of the deferral percentage test for such Plan Year, shall be distributed, to the extent practicable within two and one half months, but in no event later than the last day of the Plan Year next following the year in which such excess CODA Contributions were made. Such distributions shall include any income or be reduced by any loss applicable to the excess CODA Contributions and shall be made in cash to the Members on whose behalf excess CODA Contributions were made. If it appears during a Plan Year that excess CODA Contributions will be made on behalf of Highly Compensated Employees, the Advisory Committee, upon appropriate notice, may reduce, or suspend entirely current Salary Reduction Elections in effect for Highly Compensated Employees or refund a portion of CODA Contributions previously made in the Plan Year to the extent necessary to comply with the deferral percentage tests. The amount of excess CODA Contributions for a Member who is a Highly Compensated Employee shall be determined in accordance with Treasury Regulation 1.401(k)-1(f)(2). No "gap period" income or loss will be distributed.

3.05. CONTRIBUTIONS PERCENTAGE TEST - EMPLOYEE AFTER-TAX CONTRIBUTIONS AND CONE CONTRIBUTIONS

- (a) Contributions by Members on an after-tax basis are

not permitted by this Plan. If such Member contributions are allowed in the future, they shall be taken into account for purposes of applying the tests described in this Section 3.05.

For purposes of measuring compliance with Section 401(m) the Supplemental Retirement Plan and the Employee Equity Plan shall be treated as an aggregated group and Cone Contributions to those plans shall be aggregated and the Supplemental Retirement Plan - Hourly and the Employee Equity Plan - Hourly shall be treated as an aggregated group and Cone Contributions to those plans shall be aggregated. The contribution percentages tests as described in this Section 3.05 shall be made for each Plan Year and shall be applied separately to each aggregated group. Compliance with such tests will be secured as provided in this Section 3.05 and in accordance with applicable provisions of the Code.

(b) Definitions for purposes of contributions percentage tests are:

(1) Actual Contributions Percentage (ACP) means the percentage determined by dividing the sum of Cone Contributions and Member contributions, if any, allocated to his

Account for the Plan Year or portion thereof by his Compensation for the Plan Year or portion thereof. The ACP of an Eligible Employee who does not receive Cone Contributions or make Member contributions is zero.

(2) Average ACP means the arithmetic average of the ACP for all Members and Eligible Employees as a group.

(3) Compensation has the meaning given such term by Plan Section 3.04(b)(3).

(4) Highly Compensated Employee means an Employee described in Plan Section 3.04(b)(4).

(5) Non-Highly Compensated Employee means an Employee who is neither a Highly Compensated Employee nor a family member of a Highly Compensated Employee as defined in Plan Section 3.05(b)(5).

(c) The average ACP for any Plan Year cannot exceed the allowance set forth in the following table:

(A)

(B)

If Average Actual Contributions The Average Actual Contributions  
Percentage for Eligible Non- Percentage for Eligible Highly  
Highly Compensated Employees is: Compensated Employees can be:

2% or less.....	2 times Column A
2% to 8%.....	Column A plus 2 percentage points
Over 8%.....	1.25 times Column A

- (d) Notwithstanding the foregoing table, to avoid duplicate use of the limit for any Highly Compensated Employee in violation of Code Section 401(m)(9), the actual contribution ratio for Highly Compensated Employees shall be reduced pursuant to Treasury Regulation 1.401(m)-2 and Plan Section 3.05(f).
- (e) In the case of a Highly Compensated Employee who is a Member or Eligible Employee and who is eligible to receive matching Employer Contributions and to make Member contributions to individual accounts under two or more Employer plans described in Section 401(a) or 401(m) of the Code, all such contributions shall be treated as if made to a single plan for purposes of determining the ACP for any Plan Year.
- (f) Cone Contributions made on behalf of any Member who is a Highly Compensated Employee and Member contributions that in the aggregate for any Plan Year exceed the maximum amount that can be allocated based on the application of the contributions percentage test for such Plan Year, shall be distributed, to the extent practicable within two and one-half months, but in no event later than the last day of the Plan Year next following the year in which such excess Cone Contributions and Member contributions were made.

Such distributions shall include any income or be reduced by any loss applicable to the excess Cone Contributions and Member Contributions and shall be made in cash to the Members on whose behalf excess Cone Contributions and Member contributions were made. If it appears during a Plan Year that excess Cone Contributions and member contributions will be made on behalf of Highly Compensated Employees, the Advisory Committee, upon appropriate notice, may reduce or suspend entirely

current Member contribution elections in effect for Highly Compensated Employees or refund a portion of such contributions previously made in the Plan Year to the extent necessary to comply with the contributions percentage tests. The amount of excess CODA Contributions for a Member who is a Highly Compensated Employee shall be determined in accordance with Treasury Regulation 1.401(m)-1(e)(2) and 1.401(m)-2. No "gap period" income or loss will be distributed.

3.06. DISTRIBUTION RESTRICTIONS

Except as permitted by Plan Section 3.04(f) or 3.05(f), no distribution from the Plan shall be made to a Member or his or her Beneficiary or Beneficiaries, in accordance with such Member's or Beneficiary or Beneficiaries election, earlier than upon Severance

from Service, death, disability or the hardship of the Member as described in Plan Section 6.10.

ARTICLE IV  
ACCOUNTS AND ALLOCATIONS

4.01. INDIVIDUAL ACCOUNTS.

The Advisory Committee shall maintain individual accounts for each Member in which all amounts allocated to such Member shall be credited and all distributions and other withdrawals shall be charged in accordance with applicable provisions of this Plan. Individual accounts shall contain the following components or subaccount as applicable: CODA Contributions Account consisting of the Member's EEP CODA Contributions Account and his SRP CODA Contributions Account; Cone Contributions Account consisting of the Member's EEP Cone Contributions Account and his SRP Cone Contributions Account; and Voluntary Contributions Account consisting of the Member's EEP Voluntary Contribution Account and his SRP Voluntary Contribution Account. Each Member's individual account shall reflect the Investment Funds in which his account balances are invested pursuant to Plan Article VII.

4.02. CODA CONTRIBUTIONS ACCOUNT.

As of each Valuation Date, the Advisory Committee shall credit the total value of the contributions made during the period ending on such Valuation Date by each Member pursuant to his Salary-Reduction Election to his CODA Contributions Account.

4.03. CONE CONTRIBUTIONS ACCOUNT.

(a) As of each Valuation Date, the Advisory Committee shall compute each Member's share of Cone Contributions determined for the period ending on such Valuation Date under Plan Section 3.02 and allocate such amount to his Cone Contributions Account as provided herein. Cone Contributions shall be allocated and credited to the Cone Contributions Accounts of Members employed on each Valuation Date and Members who retired, terminated employment, suspended CODA Contributions or died during the period ending on such Valuation Date and who had made CODA Contributions pursuant to Salary-Reduction Elections in effect during such period.

(b) Each Member described in paragraph (a) above shall receive an allocation of Cone Contributions made pursuant to Plan Section 3.02(a) as follows:

(1) With respect to Cone Contributions made to the SRP pursuant to Section 3.02(a), each Member shall be credited with 25% of the aggregate SRP CODA Contributions made on his behalf for the applicable Plan Year and not withdrawn, provided, however, that CODA Contributions in excess of 6% of his Compensation shall not be taken into account.

(2) With respect to Cone Contributions made to the EEP pursuant to Section 3.02(a), each Member shall be credited with 50% of the aggregate EEP CODA Contributions made on his behalf for the applicable Plan Year and not withdrawn, provided, however, that CODA Contributions in excess of 6% of his Compensation shall not be taken into account.

If the total CODA Contributions made on behalf of any Member exceed 6% of his Compensation then the 6% of Compensation limitation will be divided between the SRP and the EEP in the same proportion as the Member elects to have divided the CODA Contributions made on his behalf.

(c) Each Member described in paragraph (a) above shall receive an allocation of Cone Contributions made pursuant to Plan Section 3.02(b) as follows:

(1) With respect to Cone Contributions made to the SRP pursuant to Section 3.02(b), each Member shall be credited with the same proportion of the additional Cone Contributions as the SRP CODA Contributions made on his behalf for the applicable Plan

Year or other period and not withdrawn bears to the total CODA Contributions made on

behalf of all Members for such Plan Year or period and not withdrawn; provided, however, that in its resolutions authorizing any additional Cone Contributions to the SRP pursuant to Section 3.02(b), the Board of Directors may direct that SRP CODA Contributions in excess of a specified percentage of Compensation shall be disregarded, in which case each Member shall be credited with the same proportion of the additional Cone Contributions as the SRP CODA Contributions made on his behalf not in excess of the specified percentage of Compensation bears to the total CODA Contributions made on behalf of all members, not in excess of the specified percentage of each individual's Compensation.

- (2) With respect to Cone Contributions made to the EEP pursuant to Section 3.02(b), each Member shall be credited with the same proportion of the additional Cone Contributions as the EEP CODA Contributions made on his behalf for the applicable Plan Year or other period and not withdrawn bears to the total CODA Contributions made on behalf of all Members for such Plan Year or period and not

withdrawn; provided, however, that in its resolutions authorizing any additional Cone Contributions to the EEP pursuant to Section 3.02(b), the Board of Directors may direct that EEP CODA Contributions in excess of a specified percentage of Compensation shall be disregarded, in which case each Member shall be credited with the same proportion of the additional Cone Contributions as the EEP CODA Contributions made on his behalf not in excess of the specified percentage of Compensation bears to the total CODA Contributions made on behalf of all members, not in excess of the specified percentage of each individual's Compensation.

If the total CODA Contributions made on behalf of any Member for any applicable Plan Year or other period exceed the percentage limitation specified



by the Board of Directors in its resolution authorizing additional Cone Contributions pursuant to Section 3.02(a), then the percentage of Compensation Limitation will be divided between the SRP and the EEP in the same proportion as the Member elects to have divided the CODA Contributions made on his behalf.

4.04. VOLUNTARY CONTRIBUTIONS ACCOUNT.

Members who made Voluntary Contributions as previously permitted under the Plan shall have a Voluntary Contributions Account, which shall have as its opening balance, the amount carried forward from the previous Plan. Voluntary Member Contributions are not permitted by this Plan; such Accounts will only share in Investment Earnings as hereafter provided.

4.05. ALLOCATION OF INVESTMENT EARNINGS.

Investment Earnings as of each Valuation Date shall be allocated to the individual Accounts of Members as provided below:

- (a) The Trustee shall determine the net Investment Earnings as of each Valuation Date separately for each Investment Fund in accordance with generally accepted accounting principles. The determination by the Trustee may be accepted as conclusive by the Advisory Committee.
- (b) Investment Earnings for each Investment Fund shall be allocated as of each Valuation Date to the individual Accounts of Members in the same proportion that the dollar value investment of each Member's individual Account in such Investment Fund bears to the total dollar value investment of all Member's individual Accounts in such Investment Fund. The dollar value investment eligible to

share in the allocation of net Investment Earnings shall be determined by deducting from the value of each individual Account as of the preceding Valuation Date the total amount of all single sum payments or withdrawals and one-half (1/2) the amount of all installment payments out of such individual Account; provided however, that the total amount of all installment payments shall be deducted if the total amount in an individual Account as of the preceding Valuation Date is to be paid out prior to the next succeeding Valuation Date. The amount eligible to share in the allocation of net Investment Earnings shall be increased by adding to the value of each Member's

individual accounts as of the preceding Valuation Date, one-half of the amount of CODA Contributions made to such accounts with respect to each Member, but not withdrawn during the period after the preceding Valuation Date.

- (c) Notwithstanding the foregoing provisions of this Section 4.05, unrealized gains and losses with respect to Qualifying Employer Securities held in the Company Stock Fund shall not be allocated, but the value of Qualifying Employer Securities allocated to a Member's EEP Accounts shall be

determined as of each Valuation Date and reported to the Member. Qualifying Employer Securities traded on the New York Stock Exchange with be valued at their closing price on the Exchange on the Valuation Date or, if that date is not a business day, on the immediately preceding business day.

#### 4.06. MAXIMUM ANNUAL ADDITIONS.

- (a) Notwithstanding any other provision of this Plan, the maximum "Annual Additions" credited to a Member's Account for any "limitation year" shall equal the lesser of: (1) \$30,000 (or, if greater, one-fourth of the dollar limitation in effect under Code Section 415(b)(1)(A)) or (2) twenty-five percent (25%) of the Member's "415 Compensation" for such "limitation year."
- (b) For purposes of applying the limitations of Code Section 415, "Annual Additions" means the sum credited to a Member's individual Accounts in the SRP and the EEP, taken together, for any "limitation year" of: (1) Cone Contributions, (2) CODA Contributions, (3) Voluntary Contributions, (4) Forfeitures, (5) amounts allocated, after March 31, 1984, to an individual medical account, as defined in Code Section 415 (1)(2) which is

part of a pension or annuity plan maintained by the Employer and (6) 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)(2) 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(1)(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 CODA Contributions or Voluntary Contributions for the purposes of Plan Sections 4.06(b)(2) and (3): (1) rollover contributions (as defined in Code Sections 402(a)(5), 403(a)(4), 403(b)(8) and 408(d)(3)); (2)

repayments of loans made to a Member 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, "415 Compensation" shall include the Member's wages, salaries, fees for professional service and other amounts for personal services actually rendered in the course of employment with an Employer maintaining the Plan (including, but not limited to, commissions paid salesmen, compensation for service on the basis of a percentage of profits, commissions on insurance premiums, tips and bonuses and in the case of a Member who is an Employee within the meaning of Code Section 401(c)(1) and the regulations thereunder, the Member's earned income (as described in Code Section 401(c)(2) and the regulations thereunder)) paid during the "limitation year".

"415 Compensation" shall exclude: (1)(A)

contributions made by the Employer to a plan of deferred compensation to the extent that, before the application of the Code Section 415 limitations to the Plan, the contributions are not includable in the gross income of the Employee for the taxable year in which contributed (including contributions not includable in gross income under

Code Section 402(e)(3)), (B) contributions made by the Employer to a plan of deferred compensation to the extent that all or a portion of such contributions are recharacterized as a voluntary Employee contribution, (C) Employer contributions made on behalf of an Employee to a simplified employee pension plan described in Code Section 408(k) to the extent such contributions are excludable from the Employee's gross income, (D) any distributions from a plan of deferred compensation regardless of whether such amounts are includable in the gross income of the Employee when distributed except any amounts received by an Employee pursuant to an unfunded non-qualified plan to the extent such amounts are includable in the gross income of the Employee; (2) amounts realized from the exercise of a non-qualified stock option or when restricted stock (or property) held by an Employee either

becomes freely transferable or is no longer subject to a substantial risk of forfeiture; (3) amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option; and (4) other amounts which receive special tax benefits, such as premiums for group term life insurance (but only to the extent that the premiums are not includable in the gross income of the Employee), contributions not includable in gross income under Code Section 125, and contributions made by the Employer (whether or not under a salary reduction agreement) towards the purchase of any annuity contract described in Code Section 403(b) (whether or not the contributions are excludable from the gross income of the Employee). "415 Compensation" shall be limited to \$200,000 (\$150,000, effective for Plan Year beginning January 1, 1994) (unless adjusted in the same manner as permitted under Code Section 415(d).

- (e) For purposes of applying the limitations of Code Section 415, the "limitation year" shall be the Plan Year.
- (f) The dollar limitation under Code Section 415(b)(1)(A) stated in paragraph (a)(1) above shall be adjusted annually as provided in Code Section 415(d) pursuant to the Regulations. The

adjusted limitation is effective as of January 1st

of each calendar year and is applicable to "limitation years" ending with or within that calendar year.

- (g) For the purpose of this Section, all qualified defined benefit plans (whether terminated or not) ever maintained by the Employer shall be treated as one defined benefit plan, and all qualified defined contribution plans (whether terminated or not) ever maintained by the Employer shall be treated as one defined contribution plan.
- (h) 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) or is a member of an affiliated service group (as defined by Code Section 414(m)), all Employees of such Employers shall be considered to be employed by as single Employer.
- (i) For the purpose of this Section, if this Plan is a Code Section 413(c) plan, all Employers of a Member who maintain this Plan will be considered to be a single Employer.
- (j) (1) If a Member 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 Member's accounts during the "limitation year."

- (2) If a Member 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 Member's accounts under the defined contribution plan subject to Code Section 412 prior to crediting "Annual Additions" to the Member's accounts under the defined contribution plan not subject to Code Section 412.
- (3) If a Member 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 Member'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.

- (k) Subject to the exception in Section 4.06(p) below, if an Employee is (or has been) a Member in one or more defined benefit plans and one or more defined contribution plans maintained by the Employer, the sum of the defined benefit plan fraction and the defined contribution plan fraction for any "limitation year" may not exceed 1.0.
- (l) (1) The defined benefit plan fraction for any "limitation year" is a fraction (A) the numerator of which is the "projected annual benefit" of the Member under the Plan (determined as of the close of the "limitation year"), and (B) the denominator of which is the greater of the product of 1.25 multiplied by the "protected current accrued benefit" or the lesser of: (i) the product of 1.25 multiplied by the maximum dollar limitation provided under Code Section 415(b)(1)(A) for such "limitation year," or (ii) the product of 1.4 multiplied by the amount which may be taken into account under Code Section 415(b)(1)(B) for such "limitation year."
- (2) For purposes of applying the limitation of Code Section 415, the "projected annual benefit" for any Member is the benefit, payable annually, under the terms of the Plan determined pursuant to Regulation 1.415-7(b)(3).
- (3) For purposes of applying the limitations of Code Section 415, "protected current accrued benefit" for any Member in a defined benefit plan in existence on July 1, 1982, shall be the accrued benefit, payable annually, provided for under question T-3 of Internal Revenue Service Notice 83-10.:
- (m) (1) The defined contribution plan fraction for

any "limitation year" is a fraction (A) the numerator of which is the sum of the "Annual Additions" to the Member's accounts as of the close of the "limitation year" and (B) the denominator of which is the sum of the lesser of the following amounts determined for such year and each prior year of service with the Employer: (i) the product of 1.25 multiplied by the dollar limitation in effect under Code Section 415(c)(1)(A) for such "limitation year" (determined without regard to Code

Section 415(c)(6)), or (ii) the product of 1.4 multiplied by the amount which may be taken into account under Code Section 415(c)(1)(B) for such "limitation year."

- (2) Notwithstanding the foregoing, the numerator of the defined contribution plan fraction shall be adjusted pursuant to Regulation 1.415-7(d)(1) and questions T-6 and T-7 of Internal Revenue Service Notice 83-10.
- (3) For defined contribution plans in effect on or before July 1, 1982, the Administrator may elect, for any "limitation year" ending after December 31, 1982, that the amount taken into account in the denominator for every Member for all "limitation years" ending before January 1, 1983 shall be an amount equal to the product of (A) the denominator for the "limitation year" ending in 1982 determined under the law in effect for the "limitation year" ending in 1982 multiplied by (B) the "transition fraction."
- (4) For purposes of the preceding paragraph, the term "transition fraction" shall mean a fraction (A) the numerator of which is the lesser of (i) \$51,875 or (ii) 1.4 multiplied by twenty-five percent (25%) of the Member's

"415 Compensation" for the "limitation year" ending in 1981, and (B) the denominator of which is the lesser of (i) \$41,500 or (ii) twenty-five percent (25%) of the Member's "415 Compensation" for the "limitation year" ending in 1981.

- (5) Notwithstanding the foregoing, for any "limitation year" in which the Plan is a Top

Heavy Plan, \$41,500 shall be substituted for \$51,875 in determining the "transition fraction."

- (n) Notwithstanding the foregoing, for any "limitation year" in which the Plan is a Top Heavy Plan, 1.0 shall be substituted for 1.25 in paragraph 1(1) and m(1).
- (o) If the sum of the defined benefit plan fraction and the defined contribution plan fraction shall exceed 1.0 in any "limitation year" for any Member in this Plan for reasons other than described in Section 4.06(p), the Advisory Committee shall then adjust the numerator of the defined benefit plant fraction so that the sum of both fractions shall not exceed 1.0 in any "limitation year" for such Member.
- (p) If (1) the substitution of 1.00 for 1.25 and \$41,500 for \$51,875 above or (2) the excess benefit accruals or "Annual Additions" provided

for in Internal Revenue Service Notice 82-19 cause the 1.0 limitation to be exceeded for any Member in any "limitation year," such Member shall be subject to the following restrictions for each future "limitation year" until the 1.0 limitation is satisfied: (A) the Member's accrued benefit under the defined benefit plant shall not increase, (B) no "Annual Additions" may be credited to a Member's account and (C) no Employee contributions (voluntary or mandatory) shall be made under any defined benefit plan or any defined contribution plan of the Employer.

- (q) 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, the terms of which are specifically incorporated herein by reference.

#### 4.07. ADJUSTMENTS FOR EXCESSIVE ANNUAL ADDITIONS.

- (a) If, as a result of a reasonable error in estimating a Member's Compensation 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 Member,



the Advisory Committee shall (1) return any CODA Contributions credited for the "limitation year" to the extent that the return would reduce the "excess amount", in the Member's accounts, (2) hold any "excess amount" remaining after the return of any CODA contributions in a "Section 415 suspense account", (3) use the "Section 415 suspense account" in the next "limitation year" (and succeeding "limitation years" if necessary) to reduce CODA Contributions for that Member if that Member is covered by the Plan as of the end of the "limitation year," or if the Member is not so covered, allocate and reallocate the "Section 415 suspense account" in the next "limitation year" (and succeeding "limitation years" if necessary) to all Members in the Plan before any Cone or CODA Contributions which would constitute "Annual Additions" are made to the Plan for such "limitation year", (4) reduce Cone Contributions to the Plan for such "limitation year" by the amount of the "Section 415 suspense account" allocated and reallocated during such "limitation year."

- (b) For purposes of this Section, "excess amount" for any Member for a "limitation year" shall mean the excess, if any, of: (1) the "Annual Additions" which would be credited to his 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 4.06.

- (c) For purposes of this Section, "Section 415 suspense account" shall mean an unallocated account equal to the sum of "excess amounts" for all Members in the Plan during the "limitation year." The "Section 415 suspense account" shall not share in any earnings or losses of the Trust Fund.
- (d) The Plan may not distribute "excess amounts," other than CODA Contributions as provided by the Code and regulations thereunder, to Members or former Members.

#### 4.08 DETERMINATION OF TOP HEAVY STATUS.

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, exceed

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.

This Plan shall be a Super 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, exceed ninety percent (90%) 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 Member is a Non-Key Employee for any Plan Year, but such Member was a Key Employee for any prior Plan Year, such Member's Present Value of Accrued Benefits and/or Aggregate Account balance shall not be taken into account for purposes of determining whether this Plan is a Top Heavy or Super Top Heavy Plan (or whether any Aggregation Group which includes this Plan is a Top Heavy Group). In addition, if a Member or Former Member 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 Member or former Member shall not be taken into account for the purposes of determining whether this Plan is a Top Heavy or Super Top Heavy Plan.

The following definitions apply in determining whether the Plan is a Top Heavy Plan or a Super Top Heavy Plan:

(a) Aggregate Account: A Member's Aggregate Account as of the Determination Date is the sum of:

(1) the Member's Account balance as of the most recent Valuation Date 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 most recent 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 most recent 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 Member'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 Member'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 Member'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.
- (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 Member'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.
- (b) 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 member 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.
- (c) 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.
- (d) 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 his Beneficiaries) is considered a Key Employee if he, 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:
  - (i) 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 150 percent (150%) of the amount in effect under Code Section 415(b)(1)(A) for any such Plan Year.

- (ii) 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 (0.5%) interest and the largest interests in the Employer.
- (iii) 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.

- (iv) a "one percent owner" of the Employer having 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, "415 Compensation" means Compensation as defined in Plan Section 4.06(d), except that the

determination of "415 Compensation" shall be made without regard to Code Sections 125, 402(e) (3), 402(h) (1) (B) and, in the case of Employer contributions made pursuant to a salary reduction agreement without regard to Code Section 403(b).

- (e) Non-Key Employee means any Employee or former

Employee (and his Beneficiaries) who is not a Key Employee.

- (f) Present Value of Accrued Benefit In the case of a defined benefit plan, the Present Value of Accrued Benefit for a Member 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).
- (g) 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 Members.

#### 4.09. TOP HEAVY REQUIREMENTS.

- (a) Minimum Allocations Required for Top Heavy Plan Years. For any Top Heavy Plan Year, the sum of the Employer's contributions and Forfeitures allocated to the 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 (i) the sum of the Employer's contributions and Forfeitures allocated to the 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 (ii) 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's contributions and Forfeitures allocated to the Account of each Non-Key Employee shall be equal to the largest percentage allocated to the Account of any Key Employee. For the purposes of this Section, "415 Compensation" shall be limited to \$200,000 (\$150,000 effective for Plan Years beginning January 1, 1994) unless adjusted in such

manner as permitted under Code Section 415(d).)

For purposes of the minimum allocations set forth above, the percentage allocated to the Account of any Key Employee shall be equal to the ratio of the sum of the Employer's contributions and Forfeitures allocated on behalf of such Key Employee divided by the "415 Compensation" for such Key Employee. For any Top Heavy Plan Year, the minimum allocations set forth above shall be allocated to the Accounts of all Non-Key Employees who are Members and who are employed by the Employer on the last day of the Plan Year. In lieu of the above, in any Plan Year in which a Non-Key Employee is a Member in both this Plan and a defined benefit pension plan included in a Required Aggregation Group which is top heavy, the Employer shall not be required to provide such Non-Key Employee with both the full separate defined benefit plan minimum benefit and the full separate defined contribution plan minimum allocation.

For purposes of determining minimum allocations, the CODA Contributions and Cone Contributions for Highly Compensated Employees shall be taken into account but the CODA Contributions for Non-Highly

Compensated Employees shall not be taken into account.

- (b) Minimum Vesting: In accordance with Plan Section 5.01, a Member is 100% vested in his Account at all times.
- (c) Impact on Maximum Benefits: For any Plan Year in which the Plan is a Top-Heavy Plan, Plan Section 4.06 shall be applied by substituting the number "1.00" for the number "1.25" wherever it appears therein except such substitution shall not have the effect of reducing any benefit accrued under a defined benefit plan prior to the first day of the Plan Year in which this provision becomes applicable.
- (d) Notwithstanding anything contained herein to the contrary, the requirements prescribed in this Section shall at all times comply with the provisions of Code Section 416 and the Regulations thereunder, the terms of which are specifically



incorporated herein by reference.

ARTICLE V  
VESTING

5.01. VESTED ACCOUNTS.

- (a) Each Member's CODA Contributions Account and Voluntary Contributions Account, if applicable, are nonforfeitable (100% vested).
- (b) (1) If, before January 1, 1989, a Member had a voluntary Severance from Service Date (other than by retirement or death) and had incurred a one-year Break in Service, his Cone Contributions Accounts are vested (nonforfeitable) according to the following schedule:

Years of Service After age 18	Vested Percentage Cone Contributions Account
Less than 4,	0%
4 but less than 5	50%
5 or more	100%

Before January 1, 1989, a Member's Cone Contributions Accounts were 100% vested on the earlier of his 65th birthday (normal retirement date) or his death, or at his involuntary Severance from Service Date.

- (2) Each Member of the Plan who is employed by an Employer on or after January 1, 1989, and each Member of the Plan on January 1, 1989,

who was not then employed by an Employer but who had not yet incurred a one-year Break in Service is 100% vested in his Cone Contributions Accounts.

5.02. FORFEITURES.

For Plan Years beginning on and after January 1, 1989, each Member's Accounts in the SRP and EEP are nonforfeitable (100% vested); therefore, no Forfeitures shall occur or shall be subject to allocation in such Plan Years.

ARTICLE VI  
DISTRIBUTION OF BENEFITS

6.01. CLAIM PROCEDURE.

The Advisory Committee may require any person entitled to benefits to complete an application for payment and to select the method under which benefits are to be paid. If a claim is wholly or partially denied, the Advisory Committee will furnish the claimant a written explanation within ninety days unless special circumstances require an extension of time. If an extension is needed, the Advisory Committee will notify the claimant before the ninety-day period expires informing him that the written explanation will be sent within the second ninety-day period. The written notice will state: (1) the specific reason or reasons for denial; (2) specific reference to pertinent Plan provisions on which the denial is based; (3) a description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and (4) appropriate information as to the steps to be taken if the member or Beneficiary wishes to submit the claim for review.

6.02. REVIEW OF CLAIMS.

The claimant or a duly authorized representative may, within sixty days after receipt by the claimant of a written notification or denial of a claim: (1) request

a review by the Advisory Committee upon written application to the Committee; (2) review pertinent documents; and (3) submit issues and comments in writing. A decision by the Advisory Committee shall be made promptly but in any event not later than sixty days after receipt of a request for review unless special circumstances require an extension of time, in which event a decision shall be rendered not later than one hundred twenty days after receipt of such request. Written notice of any such extension shall be furnished to the claimant prior to the commencement of the extension. The decision on review shall be in writing, shall include specific reasons for the decision and shall be furnished to the claimant within the appropriate time described in this Section 6.02.

6.03. DISTRIBUTION DEFINITIONS.

(a) Spousal Consent means with respect to a Member's election to designate a Beneficiary other than his Spouse, the Spouse's written consent to the Beneficiary or Beneficiaries designated, which

Beneficiary or Beneficiaries may not be changed without a further Spousal Consent (unless the Spousal Consent expressly permits changes without a further Spousal Consent).

(b) Spouse or Surviving Spouse is defined in Plan Section 1.47.

6.04. METHODS OF PAYMENT.

(a) After a Member has a Severance from Service Date and submits the appropriate claim forms, election forms and income tax withholding forms, and subject to the rights of any Alternate Payee under a Qualified Domestic Relations Order, the Advisory Committee shall direct the Trustee to distribute the vested portion of the Member's Accounts by one of the following methods as elected by such Member:

- (1) In a single, lump sum distribution.
- (2) In monthly installments of a specified amount over a fixed period not to exceed the life expectancy of the Member or the joint life expectancies of the Member and his designated Beneficiary.
- (3) By a combination of the methods set forth in (1) and (2) above.

The Advisory Committee may adjust installment elections so as not to be administratively burdensome.

Not earlier than 90 days, but (except as hereinafter provided) not later than 30 days, before a distribution is made or begun, the Advisory Committee must provide a benefit notice

to a Member who is eligible to make an election under this Section 6.04. The benefit notice must explain the optional forms of benefit and the Member's right to defer distribution until he attains age 65. If a distribution is one to which Code Sections 401(a)(11) and 417 do not apply, such distribution may commence less than 30 days after the notice required under Section 1.411(a)-11(c) of the Income Tax Regulations is given, provided that (i) the Advisory Committee clearly informs the Member that the Member has a right to a period of at least 30 days after receiving the notice to consider the decision of whether or not to elect a distribution or a particular distribution option and (ii) the Member, after

receiving the notice, affirmatively elects a distribution.

- (b) If a Member has a Severance from Service and the vested portion of his Cone Contributions Account is \$3,500 or less, distribution will only be made in a single lump sum amount or direct trustee-to-trustee transfer; in such event, the Member shall not be entitled to elect any other method of payment pursuant to paragraph (a) above. If the vested portion of such Member's Account is over \$3,500, distribution before the Member's sixty-fifth birthday shall be made only with the consent

of the Member.

- (c) If a Member's Beneficiary is not the Member's Spouse, a monthly installment distribution method may not be elected if it provides for payments during the Member's life expectancy that are less than 50% of the present value of the total payments to be made to the Member and his Beneficiary. Life expectancy shall be determined by use of tables, prepared on a unisex basis, and contained in U. S. Treasury Department Regulations.

- (d) Distributions from the Plan must be in cash, except that the receiving Member may elect to receive his distribution from the EEP in the form of Qualifying Employer Securities unless such a distribution is restricted according to the Employer's bylaws or articles of incorporation. If a Member entitled to a stock distribution has assets other than Qualifying Employer Securities forming part of the vested portion of his EEP Accounts, and if he exercises his right to elect to receive such Qualifying Employer Securities, those other assets must be converted at fair market value (in accordance with Plan Section 6.11) into any Qualifying Employer Securities to which he may be entitled by Code Section 401(a)(23) or 409(h), as selected by the Advisory Committee, and then distributed. Balances

representing fractional shares may be paid in cash. The Advisory Committee may direct the Trustee of the EEP to obtain Qualifying Employer Securities necessary for distribution from whatever source might be available to the Trustee.

If the Trustee cannot find other Qualifying Employer Securities available for conversion, the Advisory Committee may direct the Trustee to purchase Qualifying Employer Securities from the EEP Accounts of other Members. The issuer of a security to be distributed may impose any transfer restrictions allowable under state or federal securities laws on any stock distributed pursuant to this subsection.

- (e) In the case of a distribution of Qualifying Employer Securities which are not readily tradable on an established securities market, the EEP shall provide the Member with a put option that complies with the requirements of Section 409(h) of the Code. Such put option shall provide that if a Member exercises the put option, the Employer, or the EEP if the EEP elects to assume the Employer's obligation, shall repurchase the Qualifying Employer Securities as follows:

- (1) If the distribution constitutes a total distribution of the vested portion of a

Member's EEP Accounts, payment of the fair market value of the Member's account balance shall be made in a lump sum or in annual installments over a period not exceeding five years. If paid in installments, the first installment shall be paid not later than 30 days after the Member exercises the put option. The purchaser will pay a reasonable rate of interest and provide adequate security on amounts not paid after 30 days.

- (2) If the distribution does not constitute a total distribution of the vested portion of a Member's EEP Account, the purchaser shall pay the Member an amount equal to the fair market value of the Qualifying Employer Securities repurchased no later than 30 days after the Member exercises the put option.

- (f) Shares of Qualifying Employer Securities distributed by the Plan shall be subject to the "right of first refusal" described in this Section 6.04(f) so long as they are not readily tradable on an established securities market. Prior to any transfer of such shares, the shares must first be offered in writing to the Trustee of the EEP and then if refused by the Trustee, to Cone at a price equal to the purchase price offered by a third

party buyer (other than the Trustee of the EEP or Cone) making a good faith (as determined by the Advisory Committee) offer to purchase such shares; provided, however, that the Trustee shall in no event purchase shares at a price in excess of their fair market value. The Trustee of the EEP or Cone, as the case may be, may accept the offer as to part or all of the Qualifying Employer Securities at any time during the period not exceeding 14 days after receipt of such offer by the Trustee, on terms and conditions no less favorable to the shareholder than those offered by the third-party buyer. Any installment purchase shall be made pursuant to a note secured by the shares purchased and shall bear a reasonable rate of interest. If the offer is not accepted by the Trustee of the EEP, Cone, or both, then the proposed transfer may be completed within a 30-day period following the end of the aforementioned 14-day period, but only upon terms and conditions no less favorable than the terms and conditions of the third-party buyer's original offer. If the proposed transfer is not completed within the aforementioned 30-day period, then the shares will again be subject to the right of first refusal described in this Section 6.04(f).

6.05. COMMENCEMENT OF BENEFITS.

- (a) Subject to Plan Section 6.11, the valuation of a Member's Accounts for purposes of determining the amount of benefit payment(s) is made as of the Valuation Date immediately following the date on which he becomes eligible for such payment(s) pursuant to this Section 6.05.
- (b) Unless a Member elects otherwise, benefit payments must begin no later than 60 days after the close of the Plan Year in which occurs the latest of:
  - (1) his 65th birthday;
  - (2) the 10th anniversary of the date he became a Member of the Plan; or
  - (3) his Severance from Service.
- (c) A Member who has an involuntary Severance from Service and who receives Approved Leave with or without pay shall be eligible to receive a distribution of the balance in his Accounts in accordance with Plan Section 6.04 within 75 days

of the Valuation Date immediately following his last day of active employment, provided that the Member terminates his election to have CODA Contributions made on his behalf to the Plan so that no further CODA Contributions will be made after such Valuation Date.

- (d) If for any reason the benefit amount cannot be accurately determined before payment is required,

or if it is not possible to pay when required because the Advisory Committee has been unable to locate the Member, after making reasonable efforts to do so, a payment retroactive to the required date may be made not later than 60 days after the earliest date on which the amount of that payment can be determined, or the date on which the Member is located (whichever is applicable).

- (e) Distributions pursuant to this Section 6.05(e) may be requested by a Member who has a Severance from Service date prior to January 1, 1993, and by the Beneficiary of a Member who dies before January 1, 1993. A distribution pursuant to this Section 6.05(e) shall begin or be made, subject to Section 6.05(d), within 90 days of the Valuation Date immediately following such Severance from Service Date or Death. At the election of the Member or Beneficiary, up to 90% of the value of the Member's Accounts as of the Valuation Date immediately preceding the Severance from Service Date or death will be distributed within 15 days after the Valuation Date immediately following such Severance from Service Date or death, with the balance distributed by April 1 or October 1 following the applicable Valuation Date.

- (f) Distributions pursuant to this Section 6.05(f) may

be requested by a Member who has a Severance from Service Date after December 31, 1992, and by the Beneficiary of a Member who dies after December 31, 1992. A distribution pursuant to this Section 6.05(f) shall begin or be made, subject to Section 6.05(d), within 75 days of the Valuation Date immediately following such Severance from Service Date or death.

#### 6.06. SPECIAL DISTRIBUTION PROVISIONS.

- (a) Distribution of the entire interest of a Member must be or begin no later than April 1 of the

calendar year following the calendar year in which he attains age 70-1/2 whether or not he has a Severance from Service. If distribution has not started by the required beginning date described in the preceding sentence, it must begin not later than that required beginning date and be payable over a period not exceeding the life of the Member, or the life expectancy of the Member, or the lives of the Member and a designated Beneficiary, or the life expectancies of the Member and a designated Beneficiary. Life expectancy shall be determined in accordance with U. S. Treasury Department regulations and may be redetermined annually.

- (b) If the distribution of a Member's account has begun in accordance with paragraph (a) and the

Member dies before his entire Account balance has been distributed, the remaining portion of his Account balance must be distributed at least as rapidly as under the method of distribution being used as of the date of the Member's death. If a Member dies before the distribution of his Account balance has begun, his entire Account balance must be

distributed within five years after his death.

6.07. DEATH BENEFITS.

- (a) Subject to the rights of any Alternate Payee under a Qualified Domestic Relations Order, if a Member having a vested interest in the Plan dies before receiving a distribution of his Account balance with a Surviving Spouse, his vested Account balance, valued in accordance with Plan Section 6.11, shall be distributed to the Surviving Spouse in accordance with subsection (b), unless the Member had made an effective election pursuant to subsection (c).
- (b) Unless the Surviving Spouse elects a later date, distribution of the Member's vested Account balance shall be made or begin no later than 60 days after the end of the Plan Year in which death occurs, except as permitted under Plan Section 6.05(d). Payment shall be made under one of the methods provided in Plan Section 6.04.

Notwithstanding the foregoing, if the aggregate amount of the Member's vested Account balance is



\$3,500 or less, such amount shall be distributed to the Surviving Spouse in a single lump-sum payment. No distribution shall be made pursuant to this subsection (b) until the Advisory Committee has received proof of the Member's death and appropriate claim, election and tax withholding forms.

- (c) A Member may designate a Beneficiary or Beneficiaries (other than his Spouse) in accordance with subsection (d) to receive death benefits under this Plan; provided, however, that no Beneficiary designation in accordance with subsection (d) shall be effective unless accompanied by a Spousal Consent. A Member may revoke any Beneficiary designation and, subject to any required Spousal Consent, may designate another Beneficiary or Beneficiaries.
- (d) On forms provided by the Advisory Committee, each Member without a Spouse and, subject to Spousal Consent, each Member with a Spouse may designate or change a Beneficiary or Beneficiaries to receive death benefits under the Plan. A Beneficiary designation is effective when received by the Advisory Committee. Any designation of a Beneficiary by a Member without a Spouse shall

become void and of no further force and effect if the Member later marries. If a Beneficiary or Beneficiaries are designated in accordance with this subsection (d), and if distribution of benefits under this Plan has not begun before a Member's death, then, after the Advisory Committee receives proof of the Member's death, it shall request his Beneficiary or Beneficiaries to submit claim, election and tax withholding forms. Subject to the rights of any Alternate Payee under a Qualified Domestic Relations Order, the Advisory Committee, upon receiving these forms, shall direct the Trustee to distribute the Member's Account, valued no later than the end of the Plan Year during which death occurs, to his Beneficiary or Beneficiaries. Distribution will be made or begin no later than 60 days after the end of the Plan Year in which death occurs, except as permitted under Plan Section 6.05(d), and, subject to Plan Section 6.06(b), shall be made by one of the methods described in Plan Section 6.04, as elected by the Beneficiary or Beneficiaries. Notwithstanding the foregoing, if the amount

distributable under this subsection (d) is \$3,500 or less, such amount shall be distributed in a single lump sum payment. If a Member had elected

installment payments pursuant to Plan Section 6.04 and had designated a Beneficiary or Beneficiaries in accordance with this subsection (d), then any installment payments becoming due after his death shall be made to the Beneficiary or Beneficiaries so designated, unless they elect to accelerate payment thereof. If there is no effective beneficiary designation in effect at the time of a Member's death, then subject to any required Spousal Consent and to the rights of any Alternate Payee, the Member's estate shall be entitled to receive his vested Account balance.

6.08. QUALIFIED DOMESTIC RELATIONS ORDER.

Except as provided in this Section 6.08, Plan benefits may not be assigned, alienated or in any other way made subject to debts or other obligations of Members or Beneficiaries. Notwithstanding the above, the Advisory Committee must comply with the terms of a Qualified Domestic Relations Order which is a judgment, decree or order (including approval of a property settlement agreement) made pursuant to a state domestic relations law (including community property law), that relates to the provision of child support, alimony payments or marital property rights of a Spouse, former Spouse, child or other dependent ("Alternate Payee") of a Member. A Qualified Domestic Relations Order creates

or recognizes the existence of an Alternate Payee's right to, or assigns to an Alternate Payee the right to, receive all or a portion of the benefits payable to a Member under his Plan and specifies the following:

- (1) the name and last know mailing address of the Member and each Alternate Payee;
- (2) the amount or percentage of the Member's Plan benefits to be paid to any Alternate Payee, or the manner in which such amount or percentage is to be determined; and
- (3) the number of payments or the period to which the Order applies and the name of the plan(s) to which the Order relates.

Plan benefits will be paid pursuant to a Qualified Domestic Relations Order to such Alternative Payee(s) at such times and in such amounts as are stated

therein, provided however, that such Qualified Domestic Relations Order may not require the Plan to provide any type or form of benefit, or any option not otherwise provided. It also may not require the Plan to provide increased benefits and may not require the payment of benefits to an Alternate Payee prior to the Member's "earliest retirement age" as defined in Code Section 414(p). The Advisory Committee shall establish reasonable procedures to determine the qualified status of domestic relations orders and to administer distributions under such Orders.

6.09. WITHHOLDING OF BENEFITS.

If a Member has a Severance from Service and returns to regular employment of the Employer, the Advisory Committee may suspend payment of any benefit which such Member would have received from the Plan during any such period of reemployment.

6.10. HARDSHIP WITHDRAWAL.

(a) Upon written application on forms provided by the Advisory Committee and subject to the provisions of this Section 6.10, a Member shall be permitted to withdraw a specified whole dollar amount from the vested balance in his individual Accounts to the extent such withdrawal is necessary to meet the following documented immediate and heavy financial need of the Member:

- (1) medical expenses described in Code Section 213(d) of the Member, his Spouse or dependents;
- (2) purchase (excluding mortgage payments) of a principal residence of the Member;
- (3) tuition and related education fees (but not room and board) for the next twelve (12) months of post-secondary education for the Member, his Spouse, or dependents;
- (4) the need to prevent eviction of the Member from his principal residence or foreclosure

on the mortgage of his principal residence; plus, any amounts necessary to pay any federal state or local income taxes or penalties reasonably anticipated to result from the distribution.

No such withdrawal shall be permitted to the extent that the immediate and heavy financial need proposed to be met thereby may be met from other

resources that are reasonably available to the Member and, for this purpose, the Member's resources shall be deemed to include those assets of his Spouse and minor children that are reasonably available to the Member. Accordingly, no withdrawal from a Member's Accounts shall be permitted unless the Member has represented to the Advisory Committee in writing that his immediate and heavy financial need cannot be relieved: (1) through reimbursement or compensation by insurance or otherwise; (2) by reasonable liquidation of the Employee's assets, to the extent such liquidation would not itself cause an immediate and heavy financial need; (3) by cessation of elective contributions or Employee contributions under the Plan; (4) by other distributions or nontaxable loans from plans maintained by Cone or by any

other Employer of the Member; or (5) by borrowing from commercial sources on reasonable commercial terms. Amounts withdrawn shall be in the following order: (1) a portion or all of the SRP Voluntary Contributions Account; (2) a portion or all of the EEP Voluntary Contributions Account; (3) a portion or all of the SRP Cone Contributions Account; (4) a portion or all of the SRP CODA Contributions Account; (5) a portion or all SRP Investment Earnings attributable to Plan Years ending before January 1, 1989; (6) a portion or all of the EEP Cone Contributions Account; (7) a portion or all of the EEP CODA Contributions Account. Subject to paragraph (b), the maximum amount subject to withdrawal is the vested balance in the Member's Accounts as of the end of the Plan Year immediately preceding the date of application, but in no event shall a withdrawal be in excess of the amount necessary to meet the immediate and heavy financial need of the Member, and a withdrawal of less than \$300 shall not be permitted.

b) Beginning January 1, 1989, the amount of any hardship withdrawal cannot exceed the sum of the Member's Accounts, including Investment Earnings thereon attributable to Plan Years ending before January 1, 1989, (but excluding

Investment Earnings thereon attributable to

- Plan Years ending after December 31, 1988, and all Investment Earnings attributable to the EEP Company Stock Fund). The order of withdrawal rules in paragraph (a) will apply.
- (c) The determination required to be made under this Section 6.10 by the Advisory Committee shall be made in a uniform and non-discriminatory manner on the basis of all relevant facts and circumstances.

Hardship withdrawals are not subject to the Advisory Committee's discretion, except to the extent reasonably necessary to determine whether the conditions set forth in paragraph (a) have been met, and the Claim Procedure set forth in Section 6.01 shall apply. The Advisory Committee shall be entitled to rely on information and documentation supplied by a Member in connection with his written application for a hardship withdrawal, pursuant to this Plan Section 6.10.

#### 6.11. VALUATION OF ACCOUNT BALANCES.

For purposes of determining the amount of any distribution, a Member's Accounts will be determined as of the Valuation Date immediately preceding the date of the distribution, except that cash distributions from the EEP after December 31, 1992, that are attributable to common stock of Cone will be based on the closing

price of the common stock on the sixtieth day following such Valuation Date or, if the sixtieth day is not a business day, the immediately preceding business day.

#### 6.12. WITHHOLDING OF TAXES.

Notwithstanding any other term or provision of this Article VI, the Advisory Committee will direct the Trustee to deduct from any distribution made to a Member such amount as is required to be withheld under Code Section 3405 and the corresponding provision of any applicable state law.

#### 6.13. ELIGIBLE ROLLOVER DISTRIBUTIONS.

- (a) This Section 6.13 applies to distributions made on or after January 1, 1993. 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 Advisory Committee, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.
- (b) Definitions.

- (1) Eligible rollover distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an

eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee 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 Section 401(a)(9) of the Code; and the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

- (2) Eligible retirement plan: An eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, or a qualified trust described in Section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover

distribution to the Surviving Spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

- (3) Distributee: 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 section 414(p) of the Code, are distributed with regard to the interest of the Spouse or former Spouse.
- (4) Direct rollover: A direct rollover is a

payment by the Plan to the eligible retirement plan specified by the distributee.

ARTICLE VII  
INVESTMENT OF ACCOUNTS

7.01. INVESTMENT FUNDS.

- (a) The Trustee of the SRP shall establish and maintain three Investment Funds. The first fund, known as the Fixed Income Fund, shall be invested in interest bearing accounts, certificates of deposit, money market securities and other interest bearing investments which involve a minimum or no risk to principal. The second fund, known as the Balanced Fund, shall be invested primarily in common and preferred stocks, corporate and government bonds, debentures and other evidences of indebtedness. The third fund, known as the Diversified Common Stock Fund, shall be invested primarily in common stocks. The Trustee of the SRP shall establish and maintain other Investment Funds if directed to do so by the Board of Directors. The Investment Funds maintained by the Trustee of the SRP shall be utilized in investing the individual SRP Accounts of Members and Beneficiaries.
- (b) Plan assets held in the SRP Trust Fund and attributable to Members' SRP CODA Contributions and SRP Voluntary Contributions, that is, any funds allocated or allocable to SRP CODA Contributions Accounts or SRP Voluntary

Contributions Accounts shall not be invested in any securities or other properties whatsoever of Cone or Affiliates.

- (c) The Trustee of the EEP shall establish and maintain two Investment Funds. The first fund, known as the Company Stock Fund, shall be invested solely in Qualifying Employer Securities (as defined in Section 407(d)(5) of ERISA). The second fund, known as the Other Investments Fund shall be invested in interest bearing accounts, certificates of deposit, money market securities and other interest bearing investments which involve a minimum or no risk to principal. The Investment Funds maintained by the Trustee of the EEP shall be utilized in investing the individual EEP Accounts of Members and Beneficiaries.

7.02. DIRECTING INVESTMENT OF INDIVIDUAL ACCOUNTS.

- (a) At least 30 days prior to each January 1, April 1,

July 1 and October 1 each Member shall have the right to direct the Advisory Committee as to the investment of all funds in his individual SRP Accounts during the next three months. Such election shall be in writing on a form provided by the Advisory Committee and shall indicate which amounts, in 25% increments, are to be invested in each of the SRP Investment Funds. In the event no election is made on a timely basis, the Member's

individual Accounts shall remain invested in the same manner as during the prior period in accordance with his last election.

- (b) Members shall not have the right to direct the investment of EEP Accounts. EEP Accounts shall be invested by the Trustee of the EEP primarily in the Company Stock Fund, and the Other Investments Fund will be used primarily as a temporary fund whose assets will be used to purchase Qualifying Employer Securities or to make distributions in accordance with Article VI.
- (c) Notwithstanding any other provisions of this Section 7.02, effective January 1, 1991, a Member who has attained age 60 and who has an EEP Account balance may elect on forms provided by the Advisory Committee, to transfer such balance to the SRP Investment Funds. Transfers as permitted by this Section 7.02(c) shall be effective on January 1 of each Plan Year, with respect to Members who are age 60 or older on or before the December 31 Valuation Date immediately preceding such January 1. The initial transfer by any Member shall be 50% of the value of his EEP Account balance as of the December 31 Valuation Date immediately preceding the January 1 effective date. A Member shall be allowed a second transfer effective no sooner than one year after such

initial transfer; the second transfer shall be the Member's remaining EEP Account balance. A Member shall not be allowed more than two transfers pursuant to this Section 7.02(c). The Advisory Committee shall restrict rights to transfer by Highly Compensated Employees which may otherwise be permitted by this Section 7.02(c) to the extent necessary to cause compliance with Treasury Regulation 1.401(a)(4)-4. If restricting transfer



rights by Highly Compensated Employees becomes necessary, then to the extent required to comply with Treasury Regulation 1.401(a)(4)-4, the Advisory Committee shall not allow transfer rights to be elected by Highly Compensated Employees as of any applicable December 31 Valuation Date in the following order:

- First - by those Highly Compensated Employees who have attained age 60.
- Second - by those Highly Compensated Employees who have attained age 61.
- Third - by those Highly Compensated Employees  
- who have attained age 62.
- Fourth - by those Highly Compensated Employees who have attained age 63.
- Fifth - by those Highly Compensated Employees who have attained age 64 or any older

age.

(d) Effective January 1, 1993, in accordance with uniform and nondiscriminatory procedures adopted from time to time by the Advisory Committee, a Member who has an EEP Account balance may elect to transfer such balance to the SRP Investment Funds over a period of four Plan Years as follows:

- (1) For the first Plan Year in which a transfer is elected, 25% of the Member's total EEP Account balance as of the Valuation Date immediately preceding the date on which the transfer is made;
- (2) For the second Plan Year in which a transfer is elected, 33-1/3% of the Member's total EEP Account balance as of the Valuation Date immediately preceding the date on which the transfer is made;
- (3) For the third Plan Year in which a transfer is elected, 50% of the Member's total EEP Account balance as of the Valuation Date immediately preceding the date on which the transfer is made; and
- (4) For the fourth Plan Year in which a transfer is elected, 100% of the Member's total EEP Account balance as of the Valuation Date immediately preceding the date on which the

transfer is made.

Notwithstanding the foregoing, if the total value

of a Member's EEP Account balance does not exceed \$5,000 as of any Valuation Date, he may elect to have such balance transferred to the SRP Investment Funds, provided that only one transfer shall be permitted of an EEP Account balance that does not exceed \$5,000. The Advisory Committee shall restrict rights to transfer by Highly Compensated Employees which may otherwise be permitted by this Section 7.02(d) to the extent necessary to cause compliance with Treasury Regulation 1.401(a)(4)-4. If restricting transfer rights by Highly Compensated Employees becomes necessary, then to the extent required to comply with the Treasury Regulation 1.401(a)(4)-4, the Advisory Committee shall not allow transfer rights to be elected by Highly Compensated Employees as of any applicable Valuation Date in the following order:

- (i) By those Highly Compensated Employees described in Code Section 414(q)(1)(A) or (B).
- (ii) By those Highly Compensated Employees described in Code Section 414(q)(1)(C) and not included in category (i) above.
- (iii) By those Highly Compensated Employees

described in Code Section 414(q)(1)(D) and not included in category (i) or (ii) above.

7.03. SEGREGATED ACCOUNT.

If a terminated Member's or Beneficiary's distribution is payable in installments which extend more than 6 months after the normal payment date for a lump sum distribution, then, as of the January 1 coinciding with or next following the date on which the election to receive installment payments is made, the individual SRP Accounts shall be invested in the Fixed Income Fund and, subject to Plan Section 6.04(d), the individual EEP Accounts shall be invested in the Other Investments Fund.

ARTICLE VIII

TRUST FUND AND ADMINISTRATION OF THE PLAN

8.01. NAMED FIDUCIARIES AND ALLOCATION OF RESPONSIBILITY.

- (a) Plan Fiduciaries are Cone (acting through the Board of Directors), each Trustee or Co-Trustee, the Advisory Committee and any other Committee appointed pursuant to Plan Section 8.06. Each Fiduciary shall have only those powers, duties,

responsibilities and obligations that are specifically assigned under the Plan or Trust Agreement. A Fiduciary may serve in more than one capacity with respect to the Plan. The Board of Directors shall appoint the Advisory Committee and any Trustee or successor Trustees or Co-Trustees and any other Fiduciaries.

- (b) Each Trustee has custody and sole responsibility for administration of the Trust Fund of which it is the Trustee, but a Trustee's authority to manage, acquire or dispose of assets of the Plan is subject to such investment policies and guidelines as may be adopted from time to time by the Board of Directors and communicated to such Trustee. If an Investment Manger is appointed according to a Trust Agreement, the Trustee or each Co-Trustee under that Trust Agreement is released from any obligation or liability for the

investment of the assets for which the appointment is made.

- (c) The Advisory Committee has only the responsibilities described in this Plan and those delegated by Cone. The Advisory Committee has no responsibility for the control or management of the Trust Fund.
- (d) Other Committees appointed pursuant to Plan Section 8.06 shall have such authority and responsibilities as may be delegated by the Board of Directors.
- (e) All responsibilities not specifically delegated to a Fiduciary remain with Cone, including designating other Fiduciaries not named in this Plan or the Trust Agreement. A Fiduciary serves at the pleasure of Cone and may employ one or more persons to render advice with regard to any responsibility such Fiduciary has under the Plan. Each Fiduciary may rely upon any direction, information or action of another Fiduciary, as being proper under the Plan or Trust Agreement and shall not be required to inquire into the propriety of any such direction, information or action. It is intended that each Fiduciary be responsible for the proper exercise of its own power, duties, responsibilities and obligations and shall not be responsible for any act or omission of another Fiduciary except to the extent that he has knowledge of a breach of Fiduciary

responsibility by another Fiduciary and fails to make reasonable effort to remedy the breach.

8.02. DUTIES AND RESPONSIBILITIES.

Each Fiduciary shall discharge his duties with respect to the Plan solely in the interest of Members and Beneficiaries for the exclusive purpose of providing benefits to Members and Beneficiaries and for defraying reasonable expenses in administering the Plan, with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, and in accordance with the documents and instruments governing the Plan insofar as such documents and instruments are consistent with the provisions of applicable law or regulation.

Notwithstanding the foregoing, the diversification requirement of ERISA Section 404(a)(1)(C) and the prudence requirement of ERISA Section 404(a)(1)(B) (to the extent it requires diversification) shall not apply to the acquisition and holding of Qualifying Employer Securities as defined in ERISA Section 407(d) by the EEP.

8.03. TRUST FUND.

All of the assets of the Plan shall be held in a Trust Fund or Funds under a Trust Agreement or Agreements

which shall be a part of the Plan. Any such Trust Agreement may provide for a master trust containing assets of more than one plan if the portion or percentage attributable to each plan is clearly established and discernible. Each Trustee or Co-Trustee shall be appointed by the Board of Directors, and the Board of Directors shall have the sole authority to appoint and remove any Trustee, Co-Trustee or successor Trustee or Co-Trustee. All contributions shall be paid into a Trust Fund. Benefits provided by the Plan shall be payable from the Trust Fund. The Trustee or Co-Trustee shall execute such documents and take any other action necessary to carry out the instructions of any Investment Manager or the Advisory Committee.

8.04. ENFORCEABLE RIGHTS.

Cone does not guarantee payment of any benefits provided for under the Plan. All rights of Members and Beneficiaries shall be enforceable only against the Trust Fund except to the extent otherwise guaranteed by

applicable law or regulation. No person shall have any interest in or right to any part of the corpus or income of the Trust Fund except as provided in the Plan.

8.05. IMPOSSIBILITY OF DIVERSION.

Except as provide in Section 3.02, the assets of the Plan and the Trust Fund shall not inure to the benefit of the Employer and shall be held for the exclusive purposes of providing benefits to Members and Beneficiaries and defraying reasonable expenses of administering the Plan.

8.06. ADVISORY COMMITTEE AND OTHER COMMITTEES.

The Board of Directors shall appoint an Advisory Committee and may appoint other Committees from time to time, each Committee to consist of at least three (3) persons who may, but need not be, officers, directors or Employees of Cone. The members of each Committee shall hold office at the pleasure of the Board of Directors and shall serve without compensation. Each Committee member shall file his written acceptance with the Board of Directors and acknowledge that he is a Fiduciary under the Plan. Any Committee member may resign at any time by delivering his written resignation to the Board of Directors. Any vacancy which reduces Committee membership to less than three shall be filled by the Board of Directors as soon as practicable.

8.07. OFFICERS, QUORUMS, EXPENSES.

Each Committee may authorize one or more of its members to execute or deliver any instrument or act on its behalf. Each Committee shall hold meetings upon such notice and at such place and times as it may determine.

A majority of the members of each Committee in office at the time shall constitute a quorum for the transaction of business. All resolutions or other actions taken by a Committee shall be by the vote of a majority of those present at a meeting or without a meeting by an instrument in writing signed by a majority of the members. If a Committee member registers his dissent in writing with respect to any act or omission by the majority, delivered to the remaining Committee members within a reasonable time, such member shall not be responsible for such act or omission. The expenses of each Committee in performing its duties and the compensation of its agents shall be paid by Cone.

8.08. DUTIES OF INVESTMENT MANAGER.

Cone shall have authority to appoint in writing and

obtain the services of one or more Investment Mangers (as defined in ERISA Section 3(38) whose duties and responsibilities shall be to manage the investment and reinvestment of such portion of the Trust Fund as shall be determined from time to time by the Board of Directors. Each duly appointed Investment Manager shall, with respect to the portion of any Trust Fund for which it is responsible, have the sole authority, without prior consultation with the Trustee or Cone, to manage, acquire and dispose of assets of the Trust Fund but shall not, except to the extent permitted in the

Trust Agreement, have physical custody or indicia of ownership of any such assets. The appointment of an Investment Manger shall become effective as of the date it delivers to Cone a written statement acknowledging that it is Fiduciary as defined in ERISA Section 3(21)(A) and that it has the responsibility of acquisition and disposition of that portion of Trust Fund assets assigned to it. The Investment Manager shall exercise its power through written directions to the Trustee signed by an individual whose name and signature appears on a list furnished by such Investment Manager to Cone. The Investment Manager shall periodically deliver to Cone a report describing all Trust Fund asset transactions for each agreed upon reporting period. Any compensation or fee due to the Investment Manger for services rendered shall be paid out of the Trust Fund, unless paid by Cone in its discretion.

8.09. INFORMATION TO INVESTMENT MANAGER.

Cone shall advise each Investment Manager of the amount of that portion of any Trust Fund which it is to manage, the amount of Cone and CODA Contributions to be added to the Fund and the expected future benefits to be payable from the Fund in order that the Investment Manager may establish a funding policy consistent with current and long-term needs of the Plan and compatible with the investment policies and guidelines determined by the Board of Directors.

8.10. NOTICE TO TRUSTEE.

Cone shall notify the Trustee of each Trust Fund for which an Investment Manager has been appointed of the name of such Investment Manager and the portion of the Trust Fund for which such Manager is responsible. Until notified in writing by Cone that there has been a change in the appointment of an Investment Manager, the Trustee shall be fully protected in relying upon the

instructions received from such Investment Manager with respect to the portions of the Fund for which such Manager has investment responsibilities.

8.11. DUTIES OF THE ADVISORY COMMITTEE.

The Advisory Committee shall be responsible for and have discretionary authority with respect to interpretation of the provisions of the Plan, the determination of benefits and the right of any person to benefits, and such other functions including without limitation the promulgation of rules and regulations as may be necessary for proper administration of the Plan and not hereunder delegated to the Trustee, Investment Manager or other Fiduciary appointed by the Board of Directors. The Advisory Committee's rules, interpretations, computations and actions with be conclusive and binding on all persons. Individual members of the Advisory Committee may exercise jurisdiction and take actions with respect to administration of the Plan provided such actions are

consistent with the proposes of and authorized by the Plan.

8.12. NOTICE OF PAYMENTS DUE.

The Advisory Committee shall notify the Trustees in writing of the amounts payable under the Plan and the date of such payments.

8.13. RECORDS AND REPORTS.

The Advisory Committee shall maintain or shall direct the Trustees to maintain accounts showing the fiscal transactions of the Plan and shall keep or direct the Trustees to keep in convenient form such data as may be necessary for the valuation of the assets and liabilities, contingent or otherwise, of the Plan. The Committee shall exercise such authority as it deems appropriate in order to comply with the reporting requirements of any applicable law or regulation affecting the Plan and shall prepare annually a report showing in reasonable detail such assets and liabilities of the Plan and any other information which the Board of Directors may require and which the Committee can reasonably furnish or obtain from the Trustees. Such report shall be submitted to the Board of Directors.

8.14. EXONERATION OF ADVISORY COMMITTEE.

The members of the Advisory Committee, Employers and their officers, directors and Employees shall be entitled to rely upon the reports furnished by any

Trustee or by any accountant retained by the Committee or the Board of Directors, and upon all opinions given by any legal counsel selected or retained by the Committee or the Board of Directors. Except as contrary to law, the members of the Committee, Employers and their officers, directors and Employees shall be fully protected and exonerated from liability with respect to any action taken or suffered by them in good faith in reliance upon such reports, opinions or other advice received from any such Trustee, accountant or legal counsel.

The fact that any member of the Committee is a director, officer or shareholder of the Employer, or a Member of the Plan, shall not disqualify his from performing any duties which the Plan or the Trust Agreements authorize or require him to do as a member of the Committee or render him accountable for any benefits received by him under the Plan. All directors, officers and Employees who are deemed to be Fiduciaries of this Plan are entitled to indemnification to the full extent provided for by law and by the Articles of Incorporation and Bylaws of Cone in effect on January 1, 1987, or as, thereafter amended.

8.15. ERRORS AND OMISSIONS.

Individuals and entities charged with the administration of the Plan must see that it is administered in accordance with its terms as long as it

is not in conflict with the Code or ERISA. If an innocent error or omission is discovered in the Plan's operation or administration, and if the Advisory Committee determines that it would cost more to correct the error than is warranted, and if the Advisory Committee determines that the error did not result in discrimination prohibited by Plan Section 11.06 or cause a qualification or excise tax problem, then, to the extent that an adjustment will not in the Advisory Committee's judgment result in discrimination prohibited by Plan Section 11.06, the Advisory Committee may authorize any equitable adjustment it deems necessary or desirable to correct the error or omission, including but not limited to the authorization of additional Cone Contributions designed, in a manner consistent with the goodwill intended to be engendered by the Plan, to put Members in the same relative position they would have enjoyed if there had been no error or omission. Any contribution made pursuant to this section is an



additional discretionary contribution.

8.16. FEES AND EXPENSES.

Any fees or expenses incurred in connection with the operation of the Plan shall be paid out of the SRP or EEP Trust Fund, unless paid by Cone in its discretion.

8.17. VOTING AND TENDERING OF SHARES.

(a) Qualifying Employer Securities held in the Trust Fund established under the EEP shall be voted by

the Trustee according to the written instructions of the Member whose Accounts hold the shares. Without limiting the generality of the foregoing and notwithstanding any other provision of this Plan or the Trust Agreement established under the EEP, a Member shall be entitled to direct the Trustee as to the manner in which voting rights will be exercised with respect to any corporate matter which involves the voting of Qualifying Employer Securities allocated to his Accounts. Shares unallocated as of any voting record date or shares as to which the Trustee receives no written instructions shall be voted by the Trustee.

(b) Options and other rights (for example, tender rights) inuring to the benefit of Qualifying Employer Securities allocated to a Member's Account may be exercised by the Trustee only according to the written instruction of the Member whose Account holds the shares. Options and similar rights (for example, tender rights) inuring to the benefit of unallocated shares must be exercised by the Trustee according to the same principles set forth in this Section with regard to voting rights. Members directions pursuant to this Section may be itemized or a general (blanket) authorization.

(c) The Advisory Committee shall take such action as

may be necessary to ensure that Members of the EEP receive the same notices, financial statements, proxies, proxy solicitation materials and other information as Cone sends to its shareholders generally.

8.18 CERTIFICATION OF DIRECTIONS FROM MEMBERS.

Any Member's rights contained in this Plan or in the Trust Agreements to direct any action may be exercised only by directions communicated to the Advisory Committee. The Advisory Committee must communicate

those directions to the Trustee or other appropriate persons. Any Member's directions communicated by the Advisory Committee are deemed to be true and accurate, and each recipient of directions shall be entitled to rely conclusively upon the directions.

ARTICLE IX  
AMENDMENT, TERMINATION AND MERGER

9.01. AMENDMENT.

- (a) The Board of Directors retains the right at any time;
- (1) to amend this Plan (or any component hereof) and any Trust Agreement to qualify or retain qualification of this Plan and the Trust under the applicable provisions of the Code or under any other laws;
  - (2) to amend this Plan (or any component hereof) and any Trust Agreement in any other manner; and
  - (3) to amend this Plan (or any component hereof) and liquidate any Trust Fund by transferring all assets to a new trust qualified under the Code.
- (b) No amendment to the Plan or any Trust Agreement and no transfer of liabilities or assets of any Trust Fund shall permit any part of the Trust Fund to be used for or diverted to purposes other than for the exclusive benefit of Members and Beneficiaries and for defraying reasonable expenses of administering the Plan. An amendment may not cause any reduction in benefits accrued by any Member or cause or permit any portion of the Trust Fund to revert to or become the property of

an Employer. An amendment that affects the rights, duties or responsibilities of any Fiduciary may not be made without that Fiduciary's written consent. Except as permitted by Treasury regulation, no Plan amendment or transaction having the effect of a Plan amendment (such as a merger, plan transfer or similar transaction) shall be effective to the extent it eliminates or reduces any "Section 411(d)(6) protected benefit" or adds or modifies conditions relating to "Section 411(d)(6) protected benefits" the result of which is a further restriction on such benefit unless such 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. An amendment is effective on the date indicated in any written instrument that is identified as an amendment to the SRP or the EEP, that is approved or authorized by the Board of Directors of Cone Mills Corporation and that is signed by an officer of the Corporation.

- (c) As allowed by law, a transfer of liabilities or Trust Fund assets or any amendment to the Plan or a Trust Agreement may authorize or permit part of the Trust Fund to be used for or diverted to payment of taxes owed or to payment of reasonable administrative expenses. To the extent allowed by Code Section 401(a), Trust Fund assets may be used for or diverted to purposes that benefit Employees other than Members or their Beneficiaries or estates.

#### 9.02. TERMINATION.

- (a) The Board of Directors has the right at any time to terminate this Plan (or any Component hereof) and any Trust Agreement. Notice of a termination must be given to the Members, the Advisory Committee, the affected Trustees or Co-Trustees and all necessary authorities. If any authority's approval is necessary, termination is effective according to that approval; otherwise, the date of the notice or a later date contained in the notice is the termination date for purposes of this Plan.
- (b) If the Plan (or any component hereof) terminates, all Accounts are then nonforfeitable (100% vested). If the Plan (or any component hereof) partially terminates (determined in a manner consistent with legal authorities), all Accounts

of affected Members are fully nonforfeitable and may then be treated by the Advisory Committee as if the Plan had terminated.

- (c) On the Plan's (or any component hereof) termination, the Advisory Committee must direct the Trustee to allocate the assets of the affected Trust Fund among the Members and Beneficiaries according to the rules contained in Article IV.

Members have no recourse toward satisfaction of their SRP Accounts other than from the SRP Trust Fund and no recourse toward satisfaction of their EEP Accounts other than from the EEP Trust Fund.

- (d) After providing for payment of any expenses properly chargeable against the affected Trust Fund and compliance with all other requirements of law, the Advisory Committee may direct the Trustees and Co-Trustees to distribute assets remaining in the Trust Fund. Distributions according to this Section 9.02. are not subject to the regular distribution provisions of this Plan, but must be in the manner the Advisory Committee determines consistent with statutory requirements and purposes of the Plan. Except as specifically provided by law, the Advisory Committee's determination is conclusive.
- (e) Each Trustee and Co-Trustee must transfer or

deliver property to Members according to the Advisory Committee's directions. A Trustee or Co-Trustee will have no further right, title or interest in property distributed. After all distributions, each Trustee and Co-Trustee is discharged from all obligations under the Trust Agreements. Except by statute, no Member or Beneficiary has any further right or claim.

#### 9.03. DISCONTINUANCE OF CONTRIBUTIONS.

- (a) Each Employer has the right at any time to reduce or discontinue its contributions to this Plan (or any component hereof). If there is a complete discontinuance of contributions from all Employers, all Accounts become fully non-forfeitable.
- (b) A discontinuance of Employer contributions is not a termination of the Plan unless Cone gives the notice described in Plan Section 9.02(a).

#### 9.04. PLAN MERGER OR ASSET TRANSFER.

- (a) The merger or consolidation of this Plan with, or the transfer of assets or liabilities of this Plan (or any component hereof) to another employee benefit plan or the transfer of assets or liabilities of another plan to this Plan is allowed provided each Member's benefit entitlement immediately after the merger, consolidation, or transfer, is (when computed as if the surviving or

receiving plan had immediately terminated) equal to or greater than the benefit to which the Member would have been entitled if this Plan had terminated immediately before the merger, consolidation, or transfer.

- (b) Subject to subsection (a), on written direction from Cone, the Advisory Committee and any Trustee or Co-Trustee so directed must take all necessary steps to transfer assets held in any Trust Fund, in whole or in part, to another qualified plan.

9.05. CONTINUATION OF THE PLAN.

If an Employer is merged or consolidated with any other business or is succeeded by a corporation or any other legal entity that acquires substantially all of the Employer's assets, the surviving or purchasing corporation or legal entity, subject to approval of the Board of Directors, may elect to continue this Plan (or any component hereof) as to that Employer's Members but shall not be required to do so.

ARTICLE X

MULTIPLE COMPANIES INCLUDED

10.01. PLAN SPONSOR AND OTHER EMPLOYERS.

- (a) This Plan's sponsor is Cone Mills Corporation, or its successor.
- (b) This Plan is designed to allow the sponsor's Affiliates to participate. Employers are Cone Mills Corporation and any Affiliate that was participating in this Plan before the effective Date of this amendment and restatement and Affiliates that are permitted to adopt this Plan in accordance with Section 10.02.

10.02. METHOD OF PARTICIPATION.

With approval of the Board of Directors, any other business that is an Affiliate of Cone may take appropriate action through its board and become a party to the Plan (or any component hereof) as an Employer. To become an Employer, a business must adopt this Plan (or any component hereof) as a Qualified Plan for its employees. A Business that becomes an Employer must promptly deliver to the Trustee or Co-Trustees designated by Cone a copy of the resolutions or other documents evidencing its adoption of the Plan (or any component hereof) and also a written instrument showing Cone's Board's approval of the adopting entity's status as a party to the Plan and an Employer.

10.03. WITHDRAWAL BY EMPLOYER.

- (a) An employer may withdraw from the Plan (or any component hereof) at any time by giving the

Advisory Committee and the Board of Directors six months advance notice in writing of its intention to withdraw unless a shorter notice is agreed to by the Board of Directors.

- (b) Upon receipt of an Employer's notice of withdrawal, the Advisory Committee must certify to the appropriate Trustees or Co-Trustees the withdrawing Employer's equitable share in the Trust Fund. The Advisory Committee may rely conclusively on the determination made by counsel and advisors then employed on behalf of the Plan. The Trustees or Co-Trustees must then set aside from the Trust Fund such securities and other property as each deems, in its sole discretion, to be equal in value to that amount directed by the Advisory Committee. If the Plan (or any component hereof) is to be terminated with respect to the Employer, then the amount set aside must be dealt with according to the provisions of Plan Article IX. If the Plan (or any component hereof) is not to be terminated with respect to the Employer, the Trustee or Co-Trustees must either transfer the assets set aside to another trust governed by an

agreement between a Trustee or Co-Trustees and the withdrawing Employer or to a successor trustee, according to the Advisory Committee's directions.

- (c) The segregation of the Trust Fund Assets upon an Employer's withdrawal, or the execution of a new agreement and declaration of trust pursuant to any of the provisions of this section, must not operate to permit any part of the Trust Fund's principal or income to be used for or diverted to purposes other than for the benefit of Members and Beneficiaries or for the payment of reasonable expenses of administering the Plan.

10.04. TAX YEAR.

Although the Employers may have different tax years, the Plan Year which is the calendar year, is the tax year for this Plan and any Trust Fund.

ARTICLE XI

GENERAL

11.01. PLAN CREATES NO SEPARATE RIGHTS.

The establishment and existence of the Plan, Trust Agreements and Trust Fund does not give a person any legal or equitable right against:

- (a) an Employer;  
(b) any officer, director, Employee or other agent of

- an Employer;
- (c) any Trustee or any Co-Trustee;
- (d) the Advisory Committee or any member of the Advisory Committee.

The Plan and Trust Agreements create no employment rights and do not modify the terms of an Employee's or a Member's employment. The Plan and Trust Agreements are not contracts between an Employer and any Employee, and the Plan is not an inducement for anyone's employment.

11.02. DELEGATION OF AUTHORITY.

Cone's acts may be accomplished by any person with authorization from the Board of Directors. Any other Employer's acts may be accomplished by a person with authorization from that Employer's board.

11.03. LIMITATION OF LIABILITY.

- (a) A Fiduciary is not subject to suit or liability in connection with this Plan or the Trust Agreement or their operation, except according to this Section 11.03.

- (b) Each member of the Advisory Committee, each Trustee and Co-Trustee and any person employed by an Employer is liable only for that person's own acts or omissions.

- (c) Each member of the Advisory Committee, each Trustee and Co-Trustee, or any person employed by an Employer is not liable for the acts or omissions of another without knowing participation in the acts or omissions, except by action to conceal an action or omission of another while knowing the act or omission is a breach, or by a failure to properly perform duties that enables the breach to occur, or with knowledge of the breach, failure to make reasonable efforts to remedy the breach.

- (d) One Trustee or Co-Trustee must use reasonable care to prevent another from committing a breach; but all Trustees and Co-Trustees need not jointly manage or control the assets, because specific duties have been allocated among them in this Plan or the Trust Agreements. A Trustee or Co-Trustee is not liable for actions or omissions when following the specific directions of the Advisory Committee or a duly authorized and appointed Investment Manager unless such directions are improper on their face. If an Investment Manager has been properly appointed, subject to subsection

(c), a Trustee or Co-Trustee is not liable for the acts of the Investment Manager and does not have any investment responsibility for assets under the management of the Investment Manager.

(e) A Fiduciary is not liable for the actions of another to whom responsibility has been allocated or delegated according to this Plan and the Trust Agreements, unless as the allocating or delegating Fiduciary it was imprudent in making the allocation or delegation or in continuing the allocation or delegation.

(f) Each Employee releases all members of the Investment Committee and the Advisory Committee, each Trustee and Co-Trustee, each Employer, all officers and agents of each Employer, and all agents of Fiduciaries from any and all liability or obligation, to the extent release is consistent with the provisions of this Section.

11.04. LEGAL ACTION.

Except as explicitly permitted by statute, in any action or proceeding involving the Plan, a Trust Agreement, a Trust Fund, any property held as part of a Trust Fund, or the administration of the Plan or Trust Fund, the Advisory Committee, the appropriate Trustee or Co-Trustees and Cone are the only necessary parties. No Employees or former Employees or their Beneficiaries

or any person having or claiming to have an interest in any Trust Fund, or under the Plan is entitled to notice of process. Any final judgment that is not appealed or appealable that may be entered in an action or proceeding is binding and conclusive on the parties to this Plan and all persons having or claiming to have any interest in any Trust Fund or under the Plan.

11.05. BENEFITS SUPPORTED ONLY BY TRUST.

Except as otherwise provided by statute, a person having any claim under the Plan must look solely to the assets of the Trust Fund for satisfaction.

11.06. DISCRIMINATION.

The Advisory Committee must administer the Plan in a uniform and consistent manner for all Members and may not permit discrimination in favor of Highly Compensated Employees.

11.07. MODEL AMENDMENT IV.

The following sections of Model Amendment IV (IRS Notice 87-2) are hereby incorporated in the Supplemental Retirement Plan of Cone Mills Corporation for the Plan Years beginning January 1, 1987 and



January 1, 1988: I, II, III, IV, V, VI, VIII, IX, X, XI  
AND XII.

11.08. ENTIRE PLAN.

This document incorporates in their entirety  
the Plan, the SRP and the EEP and supersedes  
and replaces all prior plan documents. It

may not be amended, modified or supplemented  
except by a written instrument that is  
identified as an amendment to the Plan, the  
SRP or the EEP, that is approved or  
authorized by the Board of Directors of Cone  
Mills Corporation and that is signed by an  
officer of the Corporation.

SIGNATURE PAGE

As evidence of the adoption of the Plan, as amended and restated,  
for itself and by all Affiliated Companies, Cone Mills  
Corporation has caused this document to be signed by its duly  
authorized officer effective January 1, 1994.

Cone Mills Corporation

By:

Title: Vice President

EXHIBIT 4.9

SUPPLEMENTAL RETIREMENT PROGRAM

OF

CONE MILLS CORPORATION

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## INTRODUCTION

Cone Mills Corporation ("Cone") initially adopted the Supplemental Retirement Plan of Cone Mills Corporation (the "Supplemental Plan") effective January 1, 1947. Its purposes were to supplement pension benefits for salaried employees of Cone and its affiliates and to promote strong employee interest in successful business operations.

The Supplemental Plan was amended a number of times since inception; several of the more significant changes are described below. Amendments effective January 1, 1983, provided for salary-reduction contributions pursuant to a qualified cash or deferred arrangement under Section 401 (k) of the Internal Revenue Code, of 2% to 6% of members' salaries. Limited in-service withdrawal rights and investment choices and a shortened vesting period of five years instead of 15 years were also instituted. Amendments effective January 1, 1984, to permit after-tax voluntary contributions of 2% to 6% of salary and to grant authority to the Advisory Committee to reduce or suspend salary-reduction elections were adopted.

On November 11, 1986, the Board of Directors of Cone authorized amendments which increased member cash or deferred elections to 2% to 10% of salary and discontinued after-tax contributions effective January 1, 1987. Other changes became effective as a result of the Retirement Equity Act of 1984 and the Tax Reform Act of 1986. On December 8, 1987, the Board of Directors of

Cone again approved amendments to the Plan which established

matching Cone contributions equal to 25% of member salary-reduction contributions not in excess of 6% of salaries, permitted additional matching Cone contributions at the discretion of the Board of Directors and added semi-annual member investment and contributions elections.

Effective May 1, 1989, the Supplemental Retirement Plan of Cone Mills Corporation was amended, restated, and renamed, and will operate as and be known as the Supplemental Retirement Program of Cone Mills Corporation. As amended and restated, the Program consists of two separate plans: the Cone Mills Corporation Supplemental Retirement Plan (SRP), which is a continuation of the prior plan, and the Cone Mills Corporation Employee Equity Plan (EEP), which is a new stock bonus plan that invests primarily in Common Stock of Cone Mills Corporation. Members were afforded the opportunity of transferring from the SRP to the EEP all or any portion of their SRP account balances as of June 30, 1989. Effective July 1, 1989 members may make salary-reduction contributions of 2% to 10% of salary and direct that the contribution be made to the SRP or EEP or divided between the two plans. Cone's matching contributions remained at 25% of salary reduction contributions not in excess of 6% of salary to the SRP and were set at 50% of such members' contributions to the EEP. If a member contributes more than 6% to both Plans, the 6% limitation will be divided between the SRP and EEP in the same proportion as the member elects to divide his salary reduction

contribution. In this document, the Supplemental Retirement Program may be referred to as the Plan.

Effective January 1, 1993 hourly employees were added to the class of employees eligible to participate in the Plan. In addition, amendments to the Plan require quarterly valuation and reporting of member account balances, give members the right to change their contribution percentages and SRP investment fund selection quarterly, added a third investment choice in the SRP and subject to certain restrictions, provide limited rights to transfer funds from the EEP to the SRP.

This Plan document has been amended and restated to incorporate all amendments that became effective on or before September 1, 1993. Cone intends to continue the SRP as a profit-sharing plan (assigned plan number 003) by incorporating all amendments described above and any other changes required by applicable law or regulation effective or to become effective at the time of adoption of this amended and restated SRP. Cone intends to maintain the EEP as a stock bonus plan (assigned plan number 016) by incorporating all provisions required by applicable law effective or to become effective at the time of adoption of this amended and restated EEP. Accordingly, the



effective date of this amended and restated Plan document is September 1, 1993 except with respect to those provisions that were required to be effective earlier pursuant to the Tax Reform Act of 1986 and except as otherwise provided herein.

The Supplemental Plan is funded through the Trust Agreement for the Supplemental Retirement Plan of Cone Mills Corporation. The EEP is funded through the Cone Mills Corporation Employee Equity Plan Trust.

Any word in this Plan with an initial capital not expected by ordinary capitalization rules is a defined term. Definitions not found in the Plan are in the Internal Revenue Code or the Employee Retirement Income Security Act, both laws as amended to the present time. The masculine gender where appearing in the Plan includes the feminine gender unless the context clearly indicates otherwise. Article and Section headings are included for convenience of reference and do not affect the Plan terms in any way.

ARTICLE I  
DEFINITIONS

- 1.01. Account means a Member's interest under the Plan according to Plan provisions. A Member may have several named accounts in this Plan. When Account is used without modification, it means the sum of all the Member's Accounts in this Plan.  
See also: CODA Account, Cone Contributions Account and Voluntary Account.
- 1.02. Actual Deferral Percentage or ADP is defined in Plan Section 3.04(b).
- 1.03. Advisory Committee means the committee appointed by Cone Mills Corporation which is responsible for general administration of the Plan.
- 1.04. Affiliate means a member of the same controlled group of corporations as defined in Code Section 1563(a) as Cone Mills Corporation.
- 1.05. Alternate Payee means a Member's Spouse, former Spouse, child or other dependent who is recognized by a Qualified Domestic Relations Order as having a right to receive all or a portion of the benefits payable under the Plan with respect to a Member.
- 1.06. Annual Additions is defined in Plan Section 4.06.
- 1.07. Approved Leave means an individual's nonworking period granted by an Employer for reasons relating to:  
(a) accident, sickness or disability;
- 1.07. Approved Leave continued:  
(b) job-connected education or training;

- (c) government service, including jury duty, whether elective or by appointment; or
- (d) terminal leave, with or without pay.

Approved Leaves shall be granted pursuant to policies that are uniformly applied to all individuals, with no discrimination in favor of Highly Compensated Employees as defined in Code Section 414(q). Approved Leave also means an individual's nonworking period during which he is absent from work due to compulsory service in the Armed Forces of the United States and such period thereafter as his job rights are protected by law.

- 1.08. Beneficiary or Beneficiaries means one or more individuals or other entities so designated by a Member according to Plan Section 6.07, or if there is no effective designation, then as specified in that Section. Despite the preceding, to the extent provided in a Qualified Domestic Relations Order as defined in Code Section 414(p), or to the extent provided in any domestic relations order entered before January 1, 1985, under which payments have begun, Beneficiary means the Spouse, former Spouse, child or other dependent of a Member who is recognized by that order as having a right to receive all or a portion of any benefits payable under the Plan on behalf of such Member.
- 1.09. Board of Directors means the Board of Directors of Cone Mills Corporation.
- 1.10. Break in Service is defined for Full-Time Employees in subsection (a) and is defined for Part-Time Employees in subsection (b).
  - (a) A Full-Time Employee has a one-year Break in Service for each twelve-consecutive-month Period of Severance.
  - (b) A Part-Time Employee has a one-year Break in Service during each Plan Year in which he receives credit for fewer than 501 Hours of Service after crediting Hours of Service according to Internal Revenue Code Sections 410(a)(3)(E) and 411(a)(6)(E) regarding maternity and paternity absences.
- 1.11. CODA Account means the sum of a Member's EEP CODA Account and his SRP CODA Account.
- 1.12. CODA Contributions means the Employers' contributions described in Plan Section 3.01 caused by Salary-Reduction Elections and includes both EEP CODA Contributions and SRP CODA Contributions.
- 1.13. Code means the Internal Revenue Code as amended by the Tax Reform Act of 1986, as amended from time to time.
- 1.14. Compensation means base Salary, wages, overtime

earnings, vacation pay, holiday pay, service awards, severance pay, incentive pay, bonuses, commissions, supervisors' supplement and other similar compensation, but does not

1.14. Compensation continued:

include pension or profit sharing benefits or other benefits and contributions paid by any Employer (other than contributions caused by the Member's salary-reduction elections that are not includable in his gross income by reason of Code Sections 125 or 402(e)(3)), stock option payments, moving or regular expense allowances, moving expense reimbursements, retainers, fees under contract, mortgage interest differential payments, imputed income resulting from personal use of company cars or from group term life insurance coverage, or any other similar compensation not related to actual earnings as an employee. Notwithstanding the foregoing, the annual Compensation of each member taken into account under the Plan for any Plan Year shall not exceed \$200,000 (\$150,000, effective for Plan Years beginning January 1, 1994) as adjusted for increases in cost-of-living in accordance with Code Sections 401(a)(17) and 415(d). In determining the compensation of a Member for purposes of this limitation, the rules of Code Section 414(q)(6) shall apply, except in applying such rules, the term "family" shall mean only the Spouse of the Member and any lineal descendants of the member who have not attained age 19 before the close of the Plan Year. If as a result of the application of such rules the adjusted \$200,000 (\$150,000, effective for Plan Years beginning

1.14. Compensation continued:

January 1, 1994) limitation is exceeded, the limitation shall be prorated among the affected individuals in proportion to each such individual's Compensation determined under this Section 1.14 prior to application of the limitation. The Compensation of an Employee described in the last sentence of Section 1.28 of the Plan shall be determined in accordance with the special rules set forth in Code Section 406(b)(2).

1.15. Computation Period means a consecutive twelve-month period beginning with an Employee's Employment Commencement Date and succeeding anniversaries of such date and in addition, for Part-Time Employees, a Plan Year.

1.16. Cone means Cone Mills Corporation, a North Carolina corporation, the Plan sponsor.

- 1.17. Cone Contributions means the Employer Contributions described in Plan Section 3.02 and includes both EEP Cone Contributions and SRP Cone Contributions.
- 1.18. Cone Contributions Account means the sum of a Member's EEP Cone Contributions Account and his SRP Cone Contributions Account.
- 1.19. Continuous Service means an Employee's period of employment with an Employer or an Affiliate beginning with his Employment Commencement Date and continuing until his Severance from Service Date. If an Employee is
- 1.19. Continuous Service continued:  
reemployed or returns to work after a Severance from Service and his Continuous Service completed before his Severance from Service is not required to be recognized under this Plan, his period of employment with an Employer or an Affiliate is Continuous Service beginning on the date on which he again is credited with an Hour of Service for the performance of duties and continuing until his later Severance from Service Date. Continuous Service includes all employment even though as a non-Member. For purposes of eligibility to participate in the Plan and vesting, the Continuous Service of an Employee who quits, retires or is discharged includes his Period of Severance (up to a maximum of 12 months) if he again performs an Hour of Service with an Employer or an Affiliate before the first anniversary of the date he quit, retired or was discharged, and the Continuous Service of an Employee who is absent for any reason other than quit, retirement or discharge and who has a Severance from Service before the first anniversary of such absence includes the period of time between the Severance from Service Date and the first anniversary of the absence if he again performs an Hour of Service with an Employer or an Affiliate before the first anniversary of the absence.
- 1.20. EEP means the Cone Mills Corporation Employee Equity Plan, the stock bonus plan incorporated in this Plan document.
- 1.21. EEP CODA Contributions means CODA Contributions made to the EEP pursuant to Salary-Reduction Elections.
- 1.22. EEP CODA Contributions Account means a Member's Account to which his EEP CODA Contributions are allocated.
- 1.23. EEP Cone Contributions means Cone Contributions made to the EEP pursuant to Plan Section 3.02.
- 1.24. EEP Cone Contributions Account means a Member's Account to which EEP Cone Contributions are allocated.
- 1.25. EEP Voluntary Contributions Account means a Member's

Account to which amounts transferred from his SRP Voluntary Contributions Account pursuant to Member elections in accordance with Plan provisions in effect on May 1, 1989 are allocated.

- 1.26. Effective Date means with respect to this amended and restated Plan, September 1, 1993, except with respect to those provisions that have an earlier effective date pursuant to the Tax Reform Act of 1986, or as otherwise provided. The Trust for each Plan has an effective date contained in the first Trust Agreement executed for that plan.
- 1.27. Eligible Employee is defined in Plan Section 2.02.
- 1.28. Employee is an individual who renders personal services for an Employer or an Affiliate, in an employer-employee relationship, as defined for Federal Insurance Contribution Act purposes and Federal Employment Tax purposes, including Code Section 3401(c). A Full-Time Employee is an individual who, according to a policy uniformly applied in similar situations, is scheduled to work the standard number of hours for his job classification. A Part-Time Employee is one who, according to a policy uniformly applied in similar situations, is scheduled to work less than the standard number of hours for full-time job classifications. Employee shall included Leased Employees within the meaning of Code Sections 404(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 nonhighly compensated work force. For purposes of the Plan, a citizen or resident of the United States who is an employee of a foreign entity in which Cone directly or through other entities has not less than a ten percent (10%) interest in the voting stock thereof (or, in the case of an entity other than a corporation, in the profits thereof) shall be treated as an Employee of Cone if Cone has entered into an agreement under Code Section 3121(l) with respect to such foreign entity and if no
- 1.28. Employee continued:  
contributions under a funded plan of deferred compensation are provided by any person other than Cone  
  
with respect to the remuneration paid to such individual by the foreign entity.
- 1.29. Employer means an entity described in Plan Section 10.01.
- 1.30. Employment Commencement Date means the first day for which an Employee is credited with an Hour of Service.

The Employment Commencement Date for any Employee who has Rule of Parity Years is the first day after those Rule of Parity Years for which that Employee is credited with an Hour of Service for the performance of duties.

1.31. ERISA means the Employee Retirement Income Security Act of 1974, as amended from time to time.

1.32. Forfeiture refers to any part of a Member's Account under this Plan to which he is not entitled to receive by reason of the vesting rules of Plan Article V.

1.33. Hour of Service

(a) An Hour of Service is each hour for which an Employee is paid or is entitled to payment for the performance of duties for an Employer or an Affiliate during the applicable Computation Period.

(b) An Hour of Service is each hour for which an Employee is paid or is entitled to payment by an Employer or an Affiliate in a period during which no duties are performed (regardless of whether the

1.33. Hour of Service continued:

relationship has terminated) because of vacation, holiday, illness, incapacity, layoff or Approved Leave, but:

(1) no more than 501 Hours of Service are credited under this subsection (b) to an individual for any single continuous period during which he performs no duties (whether or not the period occurs in a single Computation Period);

(2) an hour for which an individual is directly or indirectly paid, or is entitled to payment, because of a period during which no duties are performed, is not credited to him if that payment is made or is due under a plan maintained solely for the purpose of complying with applicable worker's compensation, unemployment compensation or disability insurance laws; and

(3) Hours of Service are not credited for a payment that solely reimburses an individual for his medical or medically related expenses incurred.

For purposes of this subsection (b), a payment is deemed to be made by or be due from an Employer or an Affiliate regardless of whether it is made by or

1.33. Hour of Service continued:

due from that entity directly or indirectly through a trust fund or insurer to which that entity contributes or pays premiums, and regardless of whether contributions made or due to the trust fund or insurer or other funding vehicle are for the benefit of particular individuals or are on behalf of a group of individuals.

- (c) An Hour of Service is each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by an Employer or an Affiliate. The same Hours of Service must not be credited both under subsection (a) or (b) and also under this subsection (c). Thus, for example, if an individual receives a back-pay award following a determination that he was paid at an unlawful rate for Hours of Service previously credited, he is not entitled to additional credit for the same Hours of Service. Crediting of Hours of Service for back pay awarded or agreed to with respect to periods described in subsection (b) is subject to the limitations set forth in the subsection. For example, not more than 501 Hours of Service are required to be credited for payments of back pay, to the extent that the back pay is agreed to or awarded for a period of time during which an

1.33. Hour of Service continued:

individual did not or would not have performed duties.

- (d) For determining Hours of Service for reasons other than the performance of duties, the special rule in 29 C.F.R. section 2530.200b-2(b) is incorporated by reference. That rule provides that Hours of Service are credited on the basis of the number of hours in the individual's regular work schedule or, in the case of a payment not calculated by the units of time, by dividing the payment in question by the individual's most recent hourly rate of pay.
- (e) When crediting Hours of Service to Computation Periods, the special rule in 29 C.F.R. section 2530.200b-2(c) is incorporated by reference. That rule provides that Hours of Service are credited to individuals in the Computation Periods covered by the individual's regular work schedule during the period of nonperformance of duties.
- (f) The determination of Hours of Service must be made from records of hours worked and hours for which payment is made or due.

(g) For purposes of determining Hours of Service credited according to the maternity and paternity absence provisions of Code Section 410(a)(5)(E) and Code Section 411(a)(6)(E), those provisions are

- 1.33. Hour of Service continued:  
first effective for Plan Years beginning after 1984.
- 1.34. Investment Committee means the Committee appointed by Cone that, prior to August 20, 1992, had authority to manage, acquire or dispose of the assets of the Plan in accordance with and subject to Plan Section 8.08 (as in effect prior to August 20, 1992) or to appoint one or more Investment Managers for such purpose. The Investment Committee was discontinued effective August 20, 1992.
- 1.35. Investment Earnings means the net gain or loss of an Investment Fund from interest and dividends received or accrued, realized and unrealized gains and losses on securities and any other investment transactions, less expenses paid or chargeable to the Investment Fund for a Plan Year or such interim period within a Plan Year for which the assets of the Investment Fund are being valued. Investment Earnings shall be determined on the basis of generally accepted accounting principles and assets of an Investment Fund as of any Valuation Date shall be valued on the basis of their current fair market value.
- 1.36. Investment Fund means a fund established for the investment of Trust Fund assets pursuant to Article VII.
- 1.37. Investment Manager means an individual, firm or other entity appointed by the Board of Directors and assigned duties as described in Plan Section 8.08.
- 1.38. Member is defined in Plan Section 2.01.
- 1.39. Period of Severance means the period of time beginning on an Employee's Severance from Service Date and ending on the date on which he is next credited with an Hour of Service for the performance of duties.
- 1.40. Plan means the Supplemental Retirement Program of Cone Mills Corporation as described in this document. The Program consists of the EEP, a stock bonus plan (plan number 016), and the SRP, a profit sharing plan (plan number 003).
- 1.41. Plan Year means a twelve (12) month period beginning on January 1 and ending on December 31 and shall be the "limitation year" for purposes of Code Section 415.
- 1.42. Prior Plan means the Supplemental Retirement Program of Cone Mills Corporation as in effect on January 1, 1991.



- 1.43. Rule of Parity Years means Years of Service which are disregarded for eligibility, vesting or other service credit under the Plan. Rule of Parity Years only apply to an Employee: (1) who has not joined either the EEP or the SRP, (2) who has at least five consecutive one-year Breaks in Service, and (3) whose total consecutive one-year Breaks in Service exceed prior Years of Service.
- 1.44. Salary means compensation which is fixed in amount and stipulated to be regularly paid by one or more Employers for a definite period, which shall be a week or more in duration as differentiated from wages, commissions, bonuses or the guaranty of earnings for wage earners over any stated period.
- 1.45. Salary-Reduction Election means the election described in Plan Section 3.01, regardless of whether the election is made with respect to base Salary, wages, or other Compensation.
- 1.46. Severance from Service Date means the earliest of:
- (a) the date an Employee quits, retires, is discharged or dies; or
  - (b) the first anniversary of the date from which an Employee remains absent from work (with or without pay) for any other reason such as layoff, disability, or Approved Leave; except that, for an Employee who is absent from work by reason of a maternity or paternity absence described in Code Section 410(a)(5)(i)(E) or Code Section 411(a)(6)(i)(E) and who continues to be absent from work beyond the first anniversary of the first day of such maternity or paternity absence, his Severance from Service Date is the second anniversary of the first day of such absence and the period between the first day and second
- 1.46. Severance from Service Date continued:  
anniversaries is neither a period of Continuous Service nor a Period of Severance; and except that, for an Employee who is absent from work by reason of compulsory military service, his Severance from Service Date is the 91st day following his discharge from active duty.  
An Employee's Severance from Service Date may be postponed by the Advisory Committee under established policy uniformly applied in similar situations. For purposes of this Plan, an Employee has a Severance from Service on his Severance from Service Date.
- 1.47. Spouse means the individual legally married to a Member. Surviving Spouse means the individual legally married to a Member on the date of such Member's death.

An individual is not a Spouse or a Surviving Spouse after the marriage to the Member is legally ended for reasons other than death of the Member.

- 1.48. SRP means the Cone Mills Corporation Supplemental Retirement Plan, the profit sharing plan incorporated in this Plan document.
- 1.49. SRP CODA Contributions means CODA Contributions made to the SRP pursuant to Salary-Reduction Elections.
- 1.50. SRP CODA Contributions Account means a Member's Account to which his SRP CODA Contributions (including all CODA Contributions made prior to May 1, 1989) are allocated.
- 1.51. SRP Cone Contributions means Cone Contributions made to the SRP pursuant to Plan Section 3.02.
- 1.52. SRP Cone Contributions Account means a Member's Account to which his SRP Cone Contributions (including all Cone Contributions made prior to May 1, 1989) are allocated.
- 1.53. SRP Voluntary Contributions Account means a Member's Account to which his Voluntary Contributions are allocated.
- 1.54. Trust and Trust Fund refers to a Trust Fund established for this Plan and the Trust Agreement(s) executed under this Plan.
- 1.55. Trust Agreement means any agreement including amendments executed by a Trustee or Co-Trustee with Cone to be used in connection with this Plan.
- 1.56. Trustee means one or more individuals or entities or their successors so designated in the Trust Agreement. A Co-Trustee is one of several Trustees so designated under a Trust Agreement. Unless the context clearly indicates otherwise, the term Trustee also means Co-Trustees.
- 1.57. Valuation Date for this Plan means March 31, June 30, September 30 and December 31 of each Plan Year and any other date on which a valuation is made in connection with the payment of benefits.
- 1.58. Voluntary Contribution means any nondeductible Member contribution that is not made pursuant to a Salary Reduction Election.
- 1.59. Year of Service is defined in (a) for a Part-Time Employee and in (b) for a Full-Time Employee, but a Year of Service does not include: (1) service with an Employer before any termination of employment that occurred before January 1, 1976; and (2) Rule of Parity Years.
- (a) for a Part-Time Employee, a Plan Year following a Part-Time Employee's Employment Commencement Date during which he is credited with at least 1,000 Hours of Service. A Part-Time Employee will be

credited with one Year of Service for his first full Plan Year if he is credited with at least 1,000 Hours of Service during his initial Computation Period, regardless of whether he is credited with at least 1,000 Hours of Service during such first full Plan Year, provided however, a Year of Service shall not be given for both the initial Computation Period and the first full Plan Year of employment.

- (b) for a Full-Time Employee, twelve months of Continuous Service (whether or not consecutive). Months of Continuous Service are aggregated yield Years of Service.

1.59. Year of Service continued:

If a Part-Time Employee becomes a Full-Time Employee during his initial Computation Period and is credited with at least 1,000 Hours of Service in such Computation Period as of the date his change of status occurred, he is granted a Year of Service and his Continuous Service shall begin on the first day of the Computation Period after which the change to Full-Time status occurred. If he is not credited with at least 1,000 Hours of Service as of the date the change in status occurred, then he is credited with service as if he had been a Full-Time Employee during the entire Computation period.

After completing his initial Computation Period, a Part-Time Employee who becomes a Full-Time Employee and who had been credited with at least 1,000 Hours of Service for the Plan Year during which the change occurs, retains his Years of Service for pre-change Plan Years, is credited with a Year of Service for the Plan Year in which the change occurs, and is credited with Continuous Service beginning on the first day of the Plan Year following the date on which the change occurs. If a Part-Time Employee becomes a Full-Time Employee, after completing one Computation Period, and had not been credited with at least 1000 Hours of Service for the Plan Year during which the change occurs, his Continuous

1.59. Year of Service continued:

Service is credited from the beginning of the Plan Year in which the change occurs.

If a Full-Time Employee becomes a Part-Time Employee, he shall receive credit for the number of full years of Continuous Service completed as of the date the change occurred and will be deemed to become a Part-Time

Employee on the first day of the Plan Year in which the date of change occurs. For the Plan Year in which the change occurs, he shall receive credit, on the basis of 190 Hours of Service per month or fraction thereof, for the period from the end of his last full year of Continuous Service to the date of his change in status.

A Full-Time Employee who quits, retires, is discharged or is otherwise absent from work and who returns as a Part-Time Employee within 12 months is treated as if he had changed from a Full-Time Employee to a Part-Time Employee on the date of his reemployment.

A Full-Time Employee who quits, retires, is discharged or is otherwise absent from work and who returns after the first anniversary of the date on which he quit, retired, was discharged or otherwise absent from work as a Part-Time Employee shall have an initial Computation Period

1.59. Year of Service continued:  
begin on the date of return.

A Part-Time Employee who quits, retires, is discharged or is otherwise absent from work and who returns as a Full-Time Employee before the end of the Plan Year in which such event occurred is treated as if he had been a Part-Time Employee for the entire Plan Year and is credited with 190 Hours of Service for each month in which he is a Full-Time Employee; his Continuous Service as a Full-Time Employee begins on the first day of the next Plan Year.

## ARTICLE II PARTICIPATION

2.01. MEMBER

A Member is an Employee or former Employee who has begun participation in this Plan according to this Article II. An individual whose Account Balance is greater than zero continues to be a Member for purposes of provisions relating to allocation of earnings and losses to his Account and to distributions from his Account, but is a Member for purposes of allocations of Cone Contributions only if he was an Eligible Employee at any time during the Plan Year and CODA Contributions pursuant to Salary-Reduction Elections in effect during such Plan Year were made on his behalf and not withdrawn.

2.02. CONDITIONS OF PARTICIPATION

(a) An Employee shall become an Eligible Employee on the January 1 or July 1 coinciding with or next

following his attainment of age twenty-one (21) and completion of one (1) Year of Service.

- (b) An Eligible Employee shall become a Member of the SRP by electing an SRP CODA Contribution and shall become a Member of the EEP by electing an EEP CODA Contribution.
- (c) Employees who are Leased Employees within the meaning of Code Sections 414(n)(2) and 414(o)(2) cannot be Eligible Employees.

2.02. CONDITIONS OF PARTICIPATION continued:

- (d) Employees who contribute to the Defined Contribution Pension Plan of the Machine Printers' and Engravers' Association of the United States cannot be Eligible Employees.

2.03. EMPLOYMENT AND ELIGIBILITY STATUS CHANGES

- (a) If a Member does not have a Severance from Service Date but becomes an Employee of an Affiliate that does not participate in the Plan, or ceases to make CODA Contributions, he shall become a suspended Member at the end of the pay period the change in status occurs.
- (b) If an Employee has attained age twenty-one (21) and has at least one (1) Year of Service and becomes an Eligible Employee due to transfer from an Affiliate not participating in the Plan to an Employer, he may participate in the Plan on the January 1 or July 1 coinciding with or next following such transfer. If he is not an Eligible Employee at the time of such transfer, he shall become an Eligible Employee according to Plan Section 2.02.

2.04. PARTICIPATION UPON REEMPLOYMENT

- (a) If a Member or Eligible Employee has a Severance from Service Date and is reemployed, such Member shall become an Eligible Employee when he first performs an Hour of Service, unless all of his

2.04. PARTICIPATION UPON REEMPLOYMENT continued:

Prior Years of Service are disregarded as Rule of Parity Years.

- (b) A Member or Eligible Employee who has a Severance from Service Date and whose prior Years of Service are all disregarded as Rule of Parity Years is treated as a new Employee for all purposes under the Plan and participates according to Plan Section 2.02.
- (c) An Employee who is not an Eligible Employee or Member when he has a Severance from Service Date shall be treated as a new Employee upon

reemployment and shall participate according to Plan Section 2.02.

ARTICLE III  
CONTRIBUTIONS

3.01. CODA CONTRIBUTIONS

- (a) The Employer's CODA Contribution for a Plan Year is the total of all reductions in Members' Compensation for the Plan Year by way of Salary-Reduction Elections. Each Eligible Employee may elect to have his Employer make CODA Contributions on his behalf for a Plan Year in an amount, expressed as a whole percentage, of not less than 2% or more than 10% of his Compensation, provided, however, that no Member shall be permitted to have "Excess Elective Deferrals", which shall mean CODA Contributions made under this Plan, or any other qualified plan maintained by an Employer, during any taxable year, in excess of the dollar limitation contained in Section 402(g) of the Code in effect at the beginning of such taxable year. All CODA Contributions shall be credited to the Member's EEP CODA Contributions Account or to his SRP CODA Contributions Account, as directed by the Member. A Member may divide his CODA Contributions between the SRP and the EEP provided that at least 2% of his Compensation is contributed to each plan.
- (b) CODA Contributions elections shall be made on a form provided by the Advisory Committee. Such

3.01. CODA CONTRIBUTIONS continued:

- forms shall authorize the Employer to remit the aggregate amount of CODA Contributions designated to be made from Compensation payable to the Employee by the Employer to the EEP or to the SRP or to divide such CODA Contributions between the EEP and SRP. The Employer shall remit CODA Contributions as soon as practicable, but in no event later than ninety (90) days following the end of the pay period for which such contributions were made.
- (c) Members and Eligible Employees will be allowed to make or change CODA Contributions as of January 1, April 1, July 1 and October 1 of each Plan Year. Employees who are or become Eligible Employees during the Plan Year may become Members of the Plan by executing the appropriate Salary-Reduction Election forms authorizing CODA Contributions to become effective on the January 1 or July 1 next following the date the election forms are

delivered to the Advisory Committee.

- (d) Any Member may elect to cease CODA Contributions to the Plan by delivering written notice to the Advisory Committee, such election to be effective as soon as possible after receipt. Should such Member desire to rejoin the Plan, he may do so by

3.01. CODA CONTRIBUTIONS continued:

submitting a new Salary-Reduction Election to the Advisory Committee provided, however, that such reinstatement will not become effective until the July 1 or January 1 next following the effective date on which his earlier CODA Contributions terminated.

- (e) As provided in Section 3.04, the Advisory Committee may suspend or revoke any Salary-Reduction Election of any member or cause refunds of CODA Contributions previously made in the Plan Year by a Member if it is determined that such suspension, revocation or refund is necessary to comply with the limitations and discrimination tests contained in Section 401(k) of the Internal Revenue Code.
- (f) A Member may assign to this Plan any Excess Elective Deferrals made during a taxable year of the Member by notifying the Advisory Committee on or before March 15 of the following year of the amount of the excess CODA Contributions to be assigned to the Plan. A Member is deemed to notify the Advisory Committee of any Excess Elective Deferrals that result solely from CODA Contributions made to this Plan and any other plans of an Employer. Notwithstanding any other provisions of the Plan, excess CODA Contributions,

3.01. CODA CONTRIBUTIONS continued:

plus any income and minus any loss allocable thereto, shall be distributed no later than April 15 to any Member to whose Account excess CODA Contributions were assigned for the preceding year and who claims excess CODA Contributions for such taxable year.

3.02. CONE CONTRIBUTIONS

- (a) The Employer shall contribute to the EEP for each Plan Year an amount equal to 50% of the EEP CODA Contributions made on behalf of Members for such Plan Year. The Employer shall contribute to the SRP for each Plan Year an amount equal to 25% of the SRP CODA Contributions made on behalf of Members for such Plan Year; however, CODA

Contributions made on behalf of any Member in excess of 6% of his Compensation shall not be taken into account in determining the Cone Contribution. If the total CODA Contributions made on behalf of any Member exceed 6% of his Compensation, then the 6% of Compensation limitation will be divided between the EEP and SRP in the same proportion as the Member elects to divide the CODA Contributions made on his behalf.

- (b) Additional Cone Contributions may be made to the EEP, the SRP or both, with respect to a Plan Year

3.02. CONE CONTRIBUTIONS continued:

or with respect to any three-month period ending March 31, June 30, September 30 or December 31, in such amount as the Board of Directors in its sole discretion may determine.

- (c) Current or accumulated earnings and profits of the Employer are not required in order for Cone Contributions to be made. In no event, however, shall Cone Contributions for any Plan Year exceed the amount allowed as a deduction for its fiscal year ended with or nearest the Plan Year end for which such Cone Contributions are made under applicable provisions of the Code.
- (d) All Cone Contributions shall be paid not later than the time prescribed in the Code for filing the federal income tax return of the Employer including extensions which have been granted for the filing of such return. The Trustee is not required to collect Cone Contributions or payments required by an Employer and is responsible only for assets received as Trustee.
- (e) All contributions to the Trust Fund are conditioned on their being deductible under applicable provisions of the Code. If any deduction for any contribution is not allowed in whole or in part, then that disallowed portion must be returned to

3.02. CONE CONTRIBUTIONS continued:

the contributor, but repayment must be made no later than one year after the disallowance. To the extent such disallowance represents CODA Contributions made pursuant to Salary-Reduction Elections of Members, such contribution shall be returned to the appropriate Members. For purposes of this Section 3.02, the disallowance may be made by the opinion of any court whose decision has become final or by any disallowance asserted by the Internal Revenue Service to which Cone agrees.



(f) If any excess contribution is made by an Employer because of a mistake-of-fact, then the portion of the contribution due to the mistake-of-fact must be returned to the contributor. To the extent such mistake-of-fact contribution represents CODA Contributions made pursuant to Salary-Reduction Elections of Members, such contributions shall be returned to the appropriate Members. Earnings of the Trust Fund attributable to the excess contribution may not be returned but any losses attributable thereto must reduce the amount returned.

3.03. CASH AND NONCASH CONTRIBUTIONS

(a) Cone Contributions and CODA Contributions to the SRP Trust Fund shall be in cash.

3.03. CASH AND NONCASH CONTRIBUTIONS continued:

(b) CODA Contributions to the EEP Trust Fund shall be in cash.

(c) Cone Contributions to the EEP Trust Fund may be in the form of either cash or Qualifying Employer Securities as defined in Section 407(d)(5) of ERISA. All noncash property contributed to the Trustee must be valued at its fair market value on the actual date of acceptance of the property by the Trustee.

3.04. DEFERRAL PERCENTAGE TEST - CODA CONTRIBUTIONS

(a) CODA Contributions under this Plan are intended to qualify as cash or deferred arrangements according to Section 401(k) of the Code. For purposes of measuring compliance with Section 401(k), EEP CODA Contributions and SRP CODA Contributions shall be aggregated, the deferral percentage tests as described in this Section 3.04 shall be made for each Plan Year and compliance with such tests will be secured as provided in this Section 3.04 and in accordance with applicable provisions of the Code.

(b) Definitions for purposes of deferral percentage tests are:

(1) Actual Deferral Percentage (ADP) means the percentage determined by dividing the sum of CODA Contributions made on behalf of a Member

3.04. DEFERRAL PERCENTAGE TEST - CODA CONTRIBUTIONS

continued:

which are allocated to his Account for the Plan Year or portion thereof by his Compensation for the Plan Year or portion thereof. The ADP of an Eligible Employee who does not elect to have CODA Contributions made on his behalf is zero.

- (2) Average ADP means the arithmetic average of the ADP of all Members and Eligible Employees as a group.
- (3) For any Plan Year, compensation may be given any meaning which satisfies Code Section 414(s).
- (4) Highly Compensated Employee includes highly compensated active Employees and highly compensated former Employees.

A highly compensated active Employee includes any Employee who performs services for the Employer during the determination year and who, during the look-back year: (i) received compensation from the Employer in excess of \$75,000 (as adjusted pursuant to Section 415(d) of the Code); (ii) received compensation from the Employer in excess of \$50,000 (as adjusted pursuant in Section 415(d) of the Code) and was a member of the

3.04. DEFERRAL PERCENTAGE TEST - CODA CONTRIBUTIONS  
continued:

top-paid group for such year; or (iii) was an officer of the Employer and received Compensation during such year that is greater than 150 percent of the dollar limitation in effect under Section 415(b)(1)(A) of the Code. The term highly compensated active Employee also includes: (i) any Employee who is both described in the preceding sentence if the term "determination year" is substituted for the term "look-back year" and is one of the 100 Employees who received the most Compensation from the Employer during the determination year; and (ii) Employees who are 5 percent owners at any time during the look-back year or determination year. If no officer has satisfied the Compensation requirement of (iii) above during either a determination year or look-back year, the highest paid officer for such year shall be treated as a Highly Compensated Employee.

For this purpose, the determination year shall be the Plan Year. The look-back year shall be the twelve-month period immediately preceding the determination year.

3.04. DEFERRAL PERCENTAGE TEST - CODA CONTRIBUTIONS  
continued:

A highly compensated former Employee includes

any Employee who has a Severance from Service (or was deemed to have a Severance from Service) prior to the determination year, performs no services for the Employer during the determination year, and was a highly compensated active Employee for either his severance year or any determination year ending on or after the Employee's 55th birthday.

If an Employee is, during a determination year or look-back year, a family member of either a 5 percent owner who is an active or former Employee or of a Highly Compensated Employee who is one of the 10 most Highly Compensated Employees ranked on the basis of compensation paid by the Employer during such year, then the combined ADP for the family group of which such Employee is a member (which is treated as one Highly Compensated Employee) must be determined by combining the compensation and CODA Contributions of all the eligible family members, and the combined ACP for the family group must be determined by combining the

3.04. DEFERRAL PERCENTAGE TEST - CODA CONTRIBUTIONS  
continued:

compensation and Cone Contributions of all the eligible family members. For purposes of the Section, family member includes the Spouse, lineal ascendants and descendants of the Employee or former Employee and the Spouses of such lineal ascendants and descendants.

The determination of who is a Highly Compensated Employee, including the determinations of the number and identity of Employees in the top-paid group, the top 100 Employees, the number of Employees treated as officers and the compensation that is considered, will be made in accordance with Code Section 414(q) and the regulations thereunder.

- (5) Non-Highly Compensated Employee means an Employee who is neither a Highly Compensated Employee nor a family member of a Highly Compensated Employee as defined in Plan Section 3.04(b)(4).

(c) The average ADP for any Plan Year cannot exceed the allowance set forth in the following table:

3.04. DEFERRAL PERCENTAGE TEST - CODA CONTRIBUTIONS

continued:

(A)	(B)
If Average Actual Deferral Percentage for Eligible Non-Highly Compensated Employees is:	The Average Actual Deferral Percentage for Eligible Highly Compensated Employees can be:
2% or less.....	2 times Column A
2% to 8%.....	Column A plus 2 percentage points
Over 8%.....	1.25 times Column A

- (d) Notwithstanding the foregoing table, to avoid duplicate use of the limit for any Highly Compensated Employee in violation of Code Section 401(m)(9), the actual contribution ratio for Highly Compensated Employees shall be reduced pursuant to Treasury Regulation 1.401(m)-2 and Plan Section 3.05(f).
- (e) In the case of a Highly Compensated Employee who is a Member or Eligible Employee and who is eligible to have CODA Contributions made on his behalf to individual accounts under two or more Employer plans described in Section 401(a) or 401(k) of the Code, all such contributions shall be treated as if made to a single plan for purposes of determining the ADP for any Plan Year.
- (f) CODA Contributions made on behalf of any Member who is a Highly Compensated Employee, that in the aggregate for any Plan Year, exceed the maximum amount that can be allocated based on the application of the deferral percentage test for

3.04. DEFERRAL PERCENTAGE TEST - CODA CONTRIBUTIONS

continued:

such Plan Year, shall be distributed, to the extent practicable within two and one half months, but in no event later than the last day of the Plan Year next following the year in which such excess CODA Contributions were made. Such distributions shall include any income or be reduced by any loss applicable to the excess CODA Contributions and shall be made in cash to the Members on whose behalf excess CODA Contributions were made. If it appears during a Plan Year that excess CODA Contributions will be made on behalf of Highly Compensated Employees, the Advisory

Committee, upon appropriate notice, may reduce, or suspend entirely current Salary Reduction Elections in effect for Highly Compensated Employees or refund a portion of CODA Contributions previously made in the Plan Year to the extent necessary to comply with the deferral percentage tests. The amount of excess CODA Contributions for a Member who is a Highly Compensated Employee shall be determined in accordance with Treasury Regulation 1.401(k)-1(f)(2). No "gap period" income or loss will be distributed.

3.05. CONTRIBUTIONS PERCENTAGE TEST - EMPLOYEE AFTER-TAX CONTRIBUTIONS AND CONE CONTRIBUTIONS

- (a) Contributions by Members on an after-tax basis are not permitted by this Plan. If such Member contributions are allowed in the future, they shall be taken into account for purposes of applying the tests described in this Section 3.05.

For purposes of measuring compliance with Section 401(m) of the Code, EEP Cone Contributions and SRP Cone Contributions shall be aggregated, the contribution percentages tests as described in this Section 3.05 shall be made for each Plan Year and compliance with such tests will be secured as provided in this Section 3.05 and in accordance with applicable provisions of the Code.

- (b) Definitions for purposes of contributions percentage tests are:
- (1) Actual Contributions Percentage (ACP) means the percentage determined by dividing the sum of Cone Contributions and Member contributions, if any, allocated to his Account for the Plan Year or portion thereof by his Compensation for the Plan Year or portion thereof. The ACP of an Eligible Employee who does not receive Cone Contributions or make Member contributions is zero.

3.05. CONTRIBUTIONS PERCENTAGE TEST - EMPLOYEE AFTER-TAX CONTRIBUTIONS AND CONE CONTRIBUTIONS continued:

- (2) Average ACP means the arithmetic average of the ACP for all Members and Eligible Employees as a group.
- (3) Compensation has the meaning given such term by Plan Section 3.04(b)(3).
- (4) Highly Compensated Employee means an Employee described in Plan Section 3.04(b)(4).

(5) Non-Highly Compensated Employee means an Employee who is neither a Highly Compensated Employee nor a family member of a Highly Compensated Employee as defined in Plan Section 3.05(b) (5).

(c) The average ACP for any Plan Year cannot exceed the allowance set forth in the following table:

(A) (B)

If Average Actual Contributions Percentage for Eligible Non-Highly Compensated Employees is: The Average Actual Contributions Percentage for Eligible Highly Compensated Employees can be:

2% or less.....	2 times Column A
2% to 8%.....	Column A plus 2 percentage points
Over 8%.....	1.25 times Column A

(d) Notwithstanding the foregoing table, to avoid duplicate use of the limit for any Highly Compensated Employee in violation of Code Section 401(m) (9), the actual contribution ratio for Highly Compensated Employees shall be reduced pursuant to Treasury Regulation 1.401(m)-2 and Plan Section 3.05(f).

3.05. CONTRIBUTIONS PERCENTAGE TEST - EMPLOYEE AFTER-TAX CONTRIBUTIONS AND CONE CONTRIBUTIONS continued:

(e) In the case of a Highly Compensated Employee who is a Member or Eligible Employee and who is eligible to receive matching Employer Contributions and to make Member contributions to individual accounts under two or more Employer plans described in Section 401(a) or 401(m) of the Code, all such contributions shall be treated as if made to a single plan for purposes of determining the ACP for any Plan Year.

(f) Cone Contributions made on behalf of any Member who is a Highly Compensated Employee and Member contributions that in the aggregate for any Plan Year exceed the maximum amount that can be allocated based on the application of the contributions percentage test for such Plan Year, shall be distributed, to the extent practicable within two and one-half months, but in no event later than the last day of the Plan Year next following the year in which such excess Cone Contributions and Member contributions were made. Such distributions shall include any income or be reduced by any loss applicable to the excess Cone Contributions and Member Contributions and shall be made in cash to the Members on whose behalf

excess Cone Contributions and Member contributions were

- 3.05. CONTRIBUTIONS PERCENTAGE TEST - EMPLOYEE AFTER-TAX CONTRIBUTIONS AND CONE CONTRIBUTIONS continued:  
made. If it appears during a Plan Year that excess Cone Contributions and member contributions will be made on behalf of Highly Compensated Employees, the Advisory Committee, upon appropriate notice, may reduce or suspend entirely current Member contribution elections in effect for Highly Compensated Employees or refund a portion of such contributions previously made in the Plan Year to the extent necessary to comply with the contributions percentage tests. The amount of excess CODA Contributions for a Member who is a Highly Compensated Employee shall be determined in accordance with Treasury Regulation 1.401(m)-1(e)(2) and 1.401(m)-2. No "gap period" income or loss will be distributed.
- 3.06. DISTRIBUTION RESTRICTIONS  
Except as permitted by Plan Section 3.04(f) or 3.05(f), no distribution from the Plan shall be made to a Member or his or her Beneficiary or Beneficiaries, in accordance with such Member's or Beneficiary or Beneficiaries election, earlier than upon Severance from Service, death, disability or the hardship of the Member as described in Plan Section 6.10.

#### ARTICLE IV

##### ACCOUNTS AND ALLOCATIONS

- 4.01. INDIVIDUAL ACCOUNTS.  
The Advisory Committee shall maintain individual accounts for each Member in which all amounts allocated to such Member shall be credited and all distributions and other withdrawals shall be charged in accordance with applicable provisions of this Plan. Individual accounts shall contain the following components or subaccounts as applicable: CODA Contributions Account consisting of the Member's EEP CODA Contributions Account and his SRP CODA Contributions Account; Cone Contributions Account consisting of the Member's EEP Cone Contributions Account and his SRP Cone Contributions Account; and Voluntary Contributions Account consisting of the Member's EEP Voluntary Contribution Account and his SRP Voluntary Contribution Account. Each Member's individual account shall reflect the Investment Funds in which his account balances are invested pursuant to Plan Article VII.
- 4.02. CODA CONTRIBUTIONS ACCOUNT.  
As of each Valuation Date, the Advisory Committee shall

credit the total value of the contributions made during the period ending on such Valuation Date by each Member pursuant to his Salary-Reduction Election to his CODA Contributions Account.

4.03. CONE CONTRIBUTIONS ACCOUNT.

- (a) As of each Valuation Date, the Advisory Committee shall compute each Member's share of Cone Contributions determined for the period ending on such Valuation Date under Plan Section 3.02 and allocate such amount to his Cone Contributions Account as provided herein. Cone Contributions shall be allocated and credited to the Cone Contributions Accounts of Members employed on each Valuation Date and Members who retired, terminated employment, suspended CODA Contributions or died during the period ending on such Valuation Date and who had made CODA Contributions pursuant to Salary-Reduction Elections in effect during such period.
- (b) Each Member described in paragraph (a) above shall receive an allocation of Cone Contributions made pursuant to Plan Section 3.02(a) as follows:
  - (1) With respect to Cone Contributions made to the SRP pursuant to Section 3.02(a), each Member shall be credited with 25% of the aggregate SRP CODA Contributions made on his behalf for the applicable Plan Year and not withdrawn, provided, however, that CODA Contributions in excess of 6% of his Compensation shall not be taken into account.

4.03. CONE CONTRIBUTIONS ACCOUNT continued:

- (2) With respect to Cone Contributions made to the EEP pursuant to Section 3.02(a), each Member shall be credited with 50% of the aggregate EEP CODA Contributions made on his behalf for the applicable Plan Year and not withdrawn, provided, however, that CODA Contributions in excess of 6% of his Compensation shall not be taken into account.
- If the total CODA Contributions made on behalf of any Member exceed 6% of his Compensation then the 6% of Compensation limitation will be divided between the SRP and the EEP in the same proportion as the Member elects to have divided the CODA Contributions made on his behalf.
- (c) Each Member described in paragraph (a) above shall receive an allocation of Cone Contributions made pursuant to Plan Section 3.02(b) as follows:
    - (1) With respect to Cone Contributions made to



the SRP pursuant to Section 3.02(b), each Member shall be credited with the same proportion of the additional Cone Contributions as the SRP CODA Contributions made on his behalf for the applicable Plan Year or other period and not withdrawn bears to the total CODA Contributions made on behalf of all Members

4.03. CONE CONTRIBUTIONS ACCOUNT continued:

for such Plan Year or period and not withdrawn; provided, however, that in its resolutions authorizing any additional Cone Contributions to the SRP pursuant to Section 3.02(b), the Board of Directors may direct that SRP CODA Contributions in excess of a specified percentage of Compensation shall be disregarded, in which case each Member shall be credited with the same proportion of the additional Cone Contributions as the SRP CODA Contributions made on his behalf not in excess of the specified percentage of Compensation bears to the total CODA Contributions made on behalf of all members, not in excess of the specified percentage of each individual's Compensation.

- (2) With respect to Cone Contributions made to the EEP pursuant to Section 3.02(b), each Member shall be credited with the same proportion of the additional Cone Contributions as the EEP CODA Contributions made on his behalf for the applicable Plan Year or other period and not withdrawn bears to the total CODA Contributions made on behalf of all Members for such Plan Year or period and not

4.03. CONE CONTRIBUTIONS ACCOUNT continued:

withdrawn; provided, however, that in its resolutions authorizing any additional Cone Contributions to the EEP pursuant to Section 3.02(b), the Board of Directors may direct that EEP CODA Contributions in excess of a specified percentage of Compensation shall be disregarded, in which case each Member shall be credited with the same proportion of the additional Cone Contributions as the EEP CODA Contributions made on his behalf not in excess of the specified percentage of Compensation bears to the total CODA Contributions made on behalf of all members,

not in excess of the specified percentage of each individual's Compensation.

If the total CODA Contributions made on behalf of any Member for any applicable Plan Year or other period exceed the percentage limitation specified by the Board of Directors in its resolution authorizing additional Cone Contributions pursuant to Section 3.02(a), then the percentage of Compensation Limitation will be divided between the SRP and the EEP in the same proportion as the Member elects to have divided the CODA Contributions made on his behalf.

4.04. VOLUNTARY CONTRIBUTIONS ACCOUNT.

Members who made Voluntary Contributions as previously permitted under the Plan shall have a Voluntary Contributions Account, which shall have as its opening balance, the amount carried forward from the previous Plan. Voluntary Member Contributions are not permitted by this Plan; such Accounts will only share in Investment Earnings as hereafter provided.

4.05. ALLOCATION OF INVESTMENT EARNINGS.

Investment Earnings as of each Valuation Date shall be allocated to the individual Accounts of Members as provided below:

- (a) The Trustee shall determine the net Investment Earnings as of each Valuation Date separately for each Investment Fund in accordance with generally accepted accounting principles. The determination by the Trustee may be accepted as conclusive by the Advisory Committee.
- (b) Investment Earnings for each Investment Fund shall be allocated as of each Valuation Date to the individual Accounts of Members in the same proportion that the dollar value investment of each Member's individual Account in such Investment Fund bears to the total dollar value investment of all Member's individual Accounts in such Investment Fund. The dollar value investment eligible to

4.05. ALLOCATION OF INVESTMENT EARNINGS continued:

share in the allocation of net Investment Earnings shall be determined by deducting from the value of each individual Account as of the preceding Valuation Date the total amount of all single sum payments or withdrawals and one-half (1/2) the amount of all installment payments out of such individual Account; provided however, that the total amount of all installment payments shall be

deducted if the total amount in an individual Account as of the preceding Valuation Date is to be paid out prior to the next succeeding Valuation Date. The amount eligible to share in the allocation of net Investment Earnings shall be increased by adding to the value of each Member's individual accounts as of the preceding Valuation Date, one-half of the amount of CODA Contributions made to such accounts with respect to each Member, but not withdrawn during the period after the preceding Valuation Date.

- (c) Notwithstanding the foregoing provisions of this Section 4.05, unrealized gains and losses with respect to Qualifying Employer Securities held in the Company Stock Fund shall not be allocated, but the value of Qualifying Employer Securities allocated to a Member's EEP Accounts shall be

4.05. ALLOCATION OF INVESTMENT EARNINGS continued:  
determined as of each Valuation Date and reported to the Member. Qualifying Employer Securities traded on the New York Stock Exchange will be valued at their closing price on the Exchange on the Valuation Date or, if that date is not a business day, on the immediately preceding business day.

4.06. MAXIMUM ANNUAL ADDITIONS.

- (a) Notwithstanding any other provision of this Plan, the maximum "Annual Additions" credited to a Member's Account for any "limitation year" shall equal the lesser of: (1) \$30,000 (or, if greater, one-fourth of the dollar limitation in effect under Code Section 415(b)(1)(A)) or (2) twenty-five percent (25%) of the Member's "415 Compensation" for such "limitation year."
- (b) For purposes of applying the limitations of Code Section 415, "Annual Additions" means the sum credited to a Member's individual Accounts in the SRP and the EEP, taken together, for any "limitation year" of: (1) Cone Contributions, (2) CODA Contributions, (3) Voluntary Contributions, (4) Forfeitures, (5) amounts allocated, after March 31, 1984, to an individual medical account, as defined in Code Section 415 (1)(2) which is part of

4.06. MAXIMUM ANNUAL ADDITIONS continued:  
a pension or annuity plan maintained by the Employer and (6) 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)(2) 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(1)(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 CODA Contributions or Voluntary Contributions for the purposes of Plan Sections 4.06(b)(2) and (3): (1) rollover contributions (as defined in Code Sections 402(a)(5), 403(a)(4), 403(b)(8) and 408(d)(3)); (2)

4.06. MAXIMUM ANNUAL ADDITIONS continued:

repayments of loans made to a Member 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, "415 Compensation" shall include the Member's wages, salaries, fees for professional service and other amounts for personal services actually rendered in the course of employment with an Employer maintaining the Plan (including, but not limited to, commissions paid salesmen, compensation for service on the basis of a percentage of profits, commissions on insurance premiums, tips and bonuses and in the case of a Member who is an Employee within the meaning of Code Section 401(c)(1) and the regulations thereunder, the Member's earned income (as described in Code Section 401(c)(2) and the regulations thereunder)) paid during the "limitation year".
- "415 Compensation" shall exclude: (1) (A)

4.06. MAXIMUM ANNUAL ADDITIONS continued:

contributions made by the Employer to a plan of deferred compensation to the extent that, before the application of the Code Section 415 limitations to the Plan, the contributions are not includable in the gross income of the Employee for the taxable year in which contributed (including contributions not includable in gross income under Code Section 402(e)(3)), (B) contributions made by the Employer to a plan of deferred compensation to the extent that all or a portion of such contributions are recharacterized as a voluntary Employee contribution, (C) Employer contributions made on behalf of an Employee to a simplified employee pension plan described in Code Section 408(k) to the extent such contributions are excludable from the Employee's gross income, (D) any distributions from a plan of deferred compensation regardless of whether such amounts are includable in the gross income of the Employee when distributed except any amounts received by an Employee pursuant to an unfunded non-qualified plan to the extent such amounts are includable in the gross income of the Employee; (2) amounts realized from the exercise of a non-qualified stock option or when restricted stock (or property) held by an Employee either

4.06. MAXIMUM ANNUAL ADDITIONS continued:

becomes freely transferable or is no longer subject to a substantial risk of forfeiture; (3) amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option; and (4) other amounts which receive special tax benefits, such as premiums for group term life insurance (but only to the extent that the premiums are not includable in the gross income of the Employee), contributions not includable in gross income under Code Section 125, and contributions made by the Employer (whether or not under a salary reduction agreement) towards the purchase of any annuity contract described in Code Section 403(b) (whether or not the contributions are excludable from the gross income of the Employee). "415 Compensation" shall be limited to \$200,000 (\$150,000, effective for Plan Year beginning January 1, 1994) (unless adjusted in the same manner as permitted under Code Section 415(d).

(e) For purposes of applying the limitations of Code

Section 415, the "limitation year" shall be the Plan Year.

4.06. MAXIMUM ANNUAL ADDITIONS continued:

- (f) The dollar limitation under Code Section 415(b)(1)(A) stated in paragraph (a)(1) above shall be adjusted annually as provided in Code Section 415(d) pursuant to the Regulations. The adjusted limitation is effective as of January 1st of each calendar year and is applicable to "limitation years" ending with or within that calendar year.
- (g) For the purpose of this Section, all qualified defined benefit plans (whether terminated or not) ever maintained by the Employer shall be treated as one defined benefit plan, and all qualified defined contribution plans (whether terminated or not) ever maintained by the Employer shall be treated as one defined contribution plan.
- (h) 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) or is a member of an affiliated service group (as defined by Code Section 414(m)), all Employees of such Employers shall be considered to be employed by as single Employer.

4.06. MAXIMUM ANNUAL ADDITIONS continued:

- (i) For the purpose of this Section, if this Plan is a Code Section 413(c) plan, all Employers of a Member who maintain this Plan will be considered to be a single Employer.
- (j) (1) If a Member 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 Member's accounts during the "limitation year."  
(2) If a Member 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 Member's accounts under the defined contribution plan subject to Code Section 412 prior to crediting "Annual Additions" to the

Member's accounts under the defined contribution plan not subject to Code Section 412.

4.06. MAXIMUM ANNUAL ADDITIONS continued:

- (3) If a Member 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 Member'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.
- (k) Subject to the exception in Section 4.06(p) below, if an Employee is (or has been) a Member in one or more defined benefit plans and one or more defined contribution plans maintained by the Employer, the sum of the defined benefit plan fraction and the defined contribution plan fraction for any "limitation year" may not exceed 1.0.
- (1) (1) The defined benefit plan fraction for any "limitation year" is a fraction (A) the numerator of which is the "projected annual

4.06. MAXIMUM ANNUAL ADDITIONS continued:

benefit" of the Member under the Plan (determined as of the close of the "limitation year"), and (B) the denominator of which is the greater of the product of 1.25 multiplied by the "protected current accrued benefit" or the lesser of: (i) the product of 1.25 multiplied by the maximum dollar limitation provided under Code Section 415(b)(1)(A) for such "limitation year," or (ii) the product of 1.4 multiplied by the amount which may be taken into account under Code Section 415(b)(1)(B) for such "limitation year."

- (2) For purposes of applying the limitation of Code Section 415, the "projected annual benefit" for any Member is the benefit, payable annually, under the terms of the Plan determined pursuant to Regulation 1.415-7(b)(3).
- (3) For purposes of applying the limitations of

Code Section 415, "protected current accrued benefit" for any Member in a defined benefit plan in existence on July 1, 1982, shall be the accrued benefit, payable annually, provided for under question T-3 of Internal Revenue Service Notice 83-10.

4.06. MAXIMUM ANNUAL ADDITIONS continued:

- (m) (1) The defined contribution plan fraction for any "limitation year" is a fraction (A) the numerator of which is the sum of the "Annual Additions" to the Member's accounts as of the close of the "limitation year" and (B) the denominator of which is the sum of the lesser of the following amounts determined for such year and each prior year of service with the Employer: (i) the product of 1.25 multiplied by the dollar limitation in effect under Code Section 415(c)(1)(A) for such "limitation year" (determined without regard to Code Section 415(c)(6)), or (ii) the product of 1.4 multiplied by the amount which may be taken into account under Code Section 415(c)(1)(B) for such "limitation year."
- (2) Notwithstanding the foregoing, the numerator of the defined contribution plan fraction shall be adjusted pursuant to Regulation 1.415-7(d)(1) and questions T-6 and T-7 of Internal Revenue Service Notice 83-10.
- (3) For defined contribution plans in effect on or before July 1, 1982, the Administrator may elect, for any "limitation year" ending after December 31, 1982, that the amount taken into

4.06. MAXIMUM ANNUAL ADDITIONS continued:

account in the denominator for every Member for all "limitation years" ending before January 1, 1983 shall be an amount equal to the product of (A) the denominator for the "limitation year" ending in 1982 determined under the law in effect for the "limitation year" ending in 1982 multiplied by (B) the "transition fraction."

- (4) For purposes of the preceding paragraph, the term "transition fraction" shall mean a fraction (A) the numerator of which is the lesser of (i) \$51,875 or (ii) 1.4 multiplied by twenty-five percent (25%) of the Member's "415 Compensation" for the "limitation year" ending in 1981, and (B) the denominator of which is the lesser of (i) \$41,500 or (ii)



twenty-five percent (25%) of the Member's "415 Compensation" for the "limitation year" ending in 1981.

- (5) Notwithstanding the foregoing, for any "limitation year" in which the Plan is a Top Heavy Plan, \$41,500 shall be substituted for \$51,875 in determining the "transition fraction."

4.06. MAXIMUM ANNUAL ADDITIONS continued:

- (n) Notwithstanding the foregoing, for any "limitation year" in which the Plan is a Top Heavy Plan, 1.0 shall be substituted for 1.25 in paragraph 1(1) and m(1).
- (o) If the sum of the defined benefit plan fraction and the defined contribution plan fraction shall exceed 1.0 in any "limitation year" for any Member in this Plan for reasons other than described in Section 4.06(p), the Advisory Committee shall then adjust the numerator of the defined benefit plant fraction so that the sum of both fractions shall not exceed 1.0 in any "limitation year" for such Member.
- (p) If (1) the substitution of 1.00 for 1.25 and \$41,500 for \$51,875 above or (2) the excess benefit accruals or "Annual Additions" provided for in Internal Revenue Service Notice 82-19 cause the 1.0 limitation to be exceeded for any Member in any "limitation year," such Member shall be subject to the following restrictions for each future "limitation year" until the 1.0 limitation is satisfied: (A) the Member's accrued benefit under the defined benefit plant shall not increase, (B) no "Annual Additions" may be credited to a Member's account and (C) no Employee contributions (voluntary or mandatory) shall be made under any

4.06. MAXIMUM ANNUAL ADDITIONS continued:

defined benefit plan or any defined contribution plan of the Employer.

- (q) 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, the terms of which are specifically incorporated herein by reference.

4.07. ADJUSTMENTS FOR EXCESSIVE ANNUAL ADDITIONS.

- (a) If, as a result of a reasonable error in estimating a Member's Compensation 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 Member, the Advisory Committee shall (1) return any CODA Contributions credited for the "limitation year" to the extent that the return would reduce the "excess amount", in the Member's accounts, (2) hold any "excess amount" remaining after the return of any CODA contributions in a "Section 415 suspense account", (3) use the "Section 415 suspense account" in the next "limitation year" (and succeeding "limitation years" if necessary) to

- 4.07. ADJUSTMENTS FOR EXCESSIVE ANNUAL ADDITIONS continued:  
reduce CODA Contributions for that Member if that Member is covered by the Plan as of the end of the "limitation year," or if the Member is not so covered, allocate and reallocate the "Section 415 suspense account" in the next "limitation year" (and succeeding "limitation years" if necessary) to all Members in the Plan before any Cone or CODA Contributions which would constitute "Annual Additions" are made to the Plan for such "limitation year", (4) reduce Cone Contributions to the Plan for such "limitation year" by the amount of the "Section 415 suspense account" allocated and reallocated during such "limitation year."
- (b) For purposes of this Section, "excess amount" for any Member for a "limitation year" shall mean the excess, if any, of: (1) the "Annual Additions" which would be credited to his 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 4.06.
- (c) For purposes of this Section, "Section 415 suspense account" shall mean an unallocated account equal to the sum of "excess amounts" for all Members in the Plan during the "limitation year." The "Section 415 suspense account" shall not share in any
- 4.07. ADJUSTMENTS FOR EXCESSIVE ANNUAL ADDITIONS continued:  
earnings or losses of the Trust Fund.
- (d) The Plan may not distribute "excess amounts," other than CODA Contributions as provided by the Code and regulations thereunder, to Members or former Members.

4.08 DETERMINATION OF TOP HEAVY STATUS.

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, exceed 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.

This Plan shall be a Super 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, exceed ninety percent (90%) 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.

4.08 DETERMINATION OF TOP HEAVY STATUS continued:

If any Member is a Non-Key Employee for any Plan Year, but such Member was a Key Employee for any prior Plan Year, such Member's Present Value of Accrued Benefits and/or Aggregate Account balance shall not be taken into account for purposes of determining whether this Plan is a Top Heavy or Super Top Heavy Plan (or whether any Aggregation Group which includes this Plan is a Top Heavy Group). In addition, if a Member or Former Member 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 Member or former Member shall not be taken into account for the purposes of determining whether this Plan is a Top Heavy or Super Top Heavy Plan.

The following definitions apply in determining whether the Plan is a Top Heavy Plan or a Super Top Heavy Plan:

- (a) Aggregate Account: A Member's Aggregate Account as of the Determination Date is the sum of:
  - (1) the Member's Account balance as of the most recent Valuation Date occurring within a twelve (12) month period ending on the Determination Date;

4.08 DETERMINATION OF TOP HEAVY STATUS continued:

- (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 most recent 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 most recent 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 Member'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

4.08 DETERMINATION OF TOP HEAVY STATUS continued:

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 Member'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 Member'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.
- (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

4.08 DETERMINATION OF TOP HEAVY STATUS continued:

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 Member'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.

(b) 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 member 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

4.08 DETERMINATION OF TOP HEAVY STATUS continued:

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

4.08 DETERMINATION OF TOP HEAVY STATUS continued:

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.

(c) 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.

(d) 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 his Beneficiaries) is considered a Key Employee if he, 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:

4.08 DETERMINATION OF TOP HEAVY STATUS continued:

(i) 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 150 percent (150%) of the amount in effect under Code Section 415(b)(1)(A) for any such Plan Year.

(ii) 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 (0.5%) interest and the largest interests in the Employer.

(iii) 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

4.08 DETERMINATION OF TOP HEAVY STATUS continued:

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.

(iv) a "one percent owner" of the Employer having 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

4.08 DETERMINATION OF TOP HEAVY STATUS continued:

Sections 414(b), (c), (m) and (o) shall be taken into account. For purposes of this Section, "415 Compensation" means Compensation as defined in Plan Section 4.06(d), except that the determination of "415 Compensation" shall be made without regard to Code Sections 125, 402(e)(3), 402(h)(1)(B) and, in the case of Employer contributions made pursuant to a salary reduction agreement without regard to Code

Section 403(b).

- (e) Non-Key Employee means any Employee or former Employee (and his Beneficiaries) who is not a Key Employee.
- (f) Present Value of Accrued Benefit In the case of a defined benefit plan, the Present Value of Accrued Benefit for a Member 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).
- (g) Top Heavy Group means an Aggregation Group in which as of the Determination Date, the sum of:

4.08 DETERMINATION OF TOP HEAVY STATUS continued:

- (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 Members.

4.09. TOP HEAVY REQUIREMENTS.

- (a) Minimum Allocations Required for Top Heavy Plan Years. For any Top Heavy Plan Year, the sum of the Employer's contributions and Forfeitures allocated to the 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 (i) the sum of the Employer's contributions and Forfeitures allocated to the 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 (ii) this Plan is not required to be included in an Aggregation Group to enable a defined benefit plan

4.09. TOP HEAVY REQUIREMENTS continued:

to meet the requirements of Code Section 401(a)(4) or 410, the sum of the Employer's contributions and Forfeitures allocated to the Account of each Non-Key Employee shall be equal to the largest percentage allocated to the Account of any Key Employee. For the purposes of this Section, "415



Compensation" shall be limited to \$200,000 (\$150,000 effective for Plan Years beginning January 1, 1994) unless adjusted in such manner as permitted under Code Section 415(d).)

For purposes of the minimum allocations set forth above, the percentage allocated to the Account of any Key Employee shall be equal to the ratio of the sum of the Employer's contributions and Forfeitures allocated on behalf of such Key Employee divided by the "415 Compensation" for such Key Employee. For any Top Heavy Plan Year, the minimum allocations set forth above shall be allocated to the Accounts of all Non-Key Employees who are Members and who are employed by the Employer on the last day of the Plan Year. In lieu of the above, in any Plan Year in which a Non-Key Employee is a Member in both this Plan and a defined benefit pension plan included in a Required Aggregation Group which is

4.09. TOP HEAVY REQUIREMENTS continued:

top heavy, the Employer shall not be required to provide such Non-Key Employee with both the full separate defined benefit plan minimum benefit and the full separate defined contribution plan minimum allocation.

For purposes of determining minimum allocations, the CODA Contributions and Cone Contributions for Highly Compensated Employees shall be taken into account but the CODA Contributions for Non-Highly Compensated Employees shall not be taken into account.

(b) Minimum Vesting: In accordance with Plan Section 5.01, a Member is 100% vested in his Account at all times.

(c) Impact on Maximum Benefits: For any Plan Year in which the Plan is a Top-Heavy Plan, Plan Section 4.06 shall be applied by substituting the number "1.00" for the number "1.25" wherever it appears therein except such substitution shall not have the effect of reducing any benefit accrued under a defined benefit plan prior to the first day of the Plan Year in which this provision becomes applicable.

4.09. TOP HEAVY REQUIREMENTS continued:

(d) Notwithstanding anything contained herein to the contrary, the requirements prescribed in this Section shall at all times comply with the

provisions of Code Section 416 and the Regulations thereunder, the terms of which are specifically incorporated herein by reference.

ARTICLE V  
VESTING

5.01. VESTED ACCOUNTS.

- (a) Each Member's CODA Contributions Account and Voluntary Contributions Account, if applicable, are nonforfeitable (100% vested).
- (b) (1) If, before January 1, 1989, a Member had a voluntary Severance from Service Date (other than by retirement or death) and had incurred a one-year Break in Service, his Cone Contributions Accounts are vested (nonforfeitable) according to the following schedule:

Years of Service After age 18	Vested Percentage Cone Contributions Account
Less than 4,	0%
4 but less than 5	50%
5 or more	100%

Before January 1, 1989, a Member's Cone Contributions Accounts were 100% vested on the earlier of his 65th birthday (normal retirement date) or his death, or at his involuntary Severance from Service Date.

- (2) Each Member of the Plan who is employed by an Employer on or after January 1, 1989, and each Member of the Plan on January 1, 1989, who was not then employed by an Employer but who had

5.01 VESTED ACCOUNTS continued:

not yet incurred a one-year Break in Service is 100% vested in his Cone Contributions Accounts.

5.02. FORFEITURES.

For Plan Years beginning on and after January 1, 1989, each Member's Accounts in the SRP and EEP are nonforfeitable (100% vested); therefore, no Forfeitures shall occur or shall be subject to allocation in such Plan Years.

ARTICLE VI  
DISTRIBUTION OF BENEFITS

6.01. CLAIM PROCEDURE.

The Advisory Committee may require any person entitled

to benefits to complete an application for payment and to select the method under which benefits are to be paid. If a claim is wholly or partially denied, the Advisory Committee will furnish the claimant a written explanation within ninety days unless special circumstances require an extension of time. If an extension is needed, the Advisory Committee will notify the claimant before the ninety-day period expires informing him that the written explanation will be sent within the second ninety-day period. The written notice will state: (1) the specific reason or reasons for denial; (2) specific reference to pertinent Plan provisions on which the denial is based; (3) a description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and (4) appropriate information as to the steps to be taken if the member or Beneficiary wishes to submit the claim for review.

6.02. REVIEW OF CLAIMS.

The claimant or a duly authorized representative may, within sixty days after receipt by the claimant of a written notification or denial of a claim: (1) request

6.02. REVIEW OF CLAIMS continued:

a review by the Advisory Committee upon written application to the Committee; (2) review pertinent documents; and (3) submit issues and comments in writing. A decision by the Advisory Committee shall be made promptly but in any event not later than sixty days after receipt of a request for review unless special circumstances require an extension of time, in which event a decision shall be rendered not later than one hundred twenty days after receipt of such request. Written notice of any such extension shall be furnished to the claimant prior to the commencement of the extension. The decision on review shall be in writing, shall include specific reasons for the decision and shall be furnished to the claimant within the appropriate time described in this Section 6.02.

6.03. DISTRIBUTION DEFINITIONS.

(a) Spousal Consent means with respect to a Member's election to designate a Beneficiary other than his Spouse, the Spouse's written consent to the Beneficiary or Beneficiaries designated, which Beneficiary or Beneficiaries may not be changed without a further Spousal Consent (unless the

Spousal Consent expressly permits changes without a further Spousal Consent).

6.03. DISTRIBUTION DEFINITIONS continued:

(b) Spouse or Surviving Spouse is defined in Plan Section 1.47.

6.04. METHODS OF PAYMENT.

(a) After a Member has a Severance from Service Date and submits the appropriate claim forms, election forms and income tax withholding forms, and subject to the rights of any Alternate Payee under a Qualified Domestic Relations Order, the Advisory Committee shall direct the Trustee to distribute the vested portion of the Member's Accounts by one of the following methods as elected by such Member:

(1) In a single, lump sum distribution.

(2) In monthly installments of a specified amount over a fixed period not to exceed the life expectancy of the Member or the joint life expectancies of the Member and his designated Beneficiary.

(3) By a combination of the methods set forth in (1) and (2) above.

The Advisory Committee may adjust installment elections so as not to be administratively burdensome.

6.04. METHODS OF PAYMENT continued:

(b) If a Member has a Severance from Service and the vested portion of his Cone Contributions Account is \$3,500 or less, distribution will only be made in a single lump sum amount or direct trustee-to-trustee transfer; in such event, the Member shall not be entitled to elect any other method of payment pursuant to paragraph (a) above. If the vested portion of such Member's Account is over \$3,500, distribution before the Member's sixty-fifth birthday shall be made only with the consent of the Member.

(c) If a Member's Beneficiary is not the Member's Spouse, a monthly installment distribution method may not be elected if it provides for payments during the Member's life expectancy that are less than 50% of the present value of the total payments to be made to the Member and his Beneficiary. Life expectancy shall be determined by use of tables, prepared on a unisex basis, and contained in U. S. Treasury Department Regulations.

(d) Distributions from the Plan must be in cash,

except that the receiving Member may elect to receive his distribution from the EEP in the form of Qualifying Employer Securities unless such a distribution is restricted according to the Employer's bylaws or

6.04. METHODS OF PAYMENT continued:

articles of incorporation. If a Member entitled to a stock distribution has assets other than Qualifying Employer Securities forming part of the vested portion of his EEP Accounts, and if he exercises his right to elect to receive such Qualifying Employer Securities, those other assets must be converted at fair market value (in accordance with Plan Section 6.11) into any Qualifying Employer Securities to which he may be entitled by Code Section 401(a)(23) or 409(h), as selected by the Advisory Committee, and then distributed. Balances representing fractional shares may be paid in cash. The Advisory Committee may direct the Trustee of the EEP to obtain Qualifying Employer Securities necessary for distribution from whatever source might be available to the Trustee. If the Trustee cannot find other Qualifying Employer Securities available for conversion, the Advisory Committee may direct the Trustee to purchase Qualifying Employer Securities from the EEP Accounts of other Members. The issuer of a security to be distributed may impose any transfer restrictions allowable under state or federal securities laws on any stock distributed pursuant to this subsection.

6.04. METHODS OF PAYMENT continued:

(e) In the case of a distribution of Qualifying Employer Securities which are not readily tradable on an established securities market, the EEP shall provide the Member with a put option that complies with the requirements of Section 409(h) of the Code. Such put option shall provide that if a Member exercises the put option, the Employer, or the EEP if the EEP elects to assume the Employer's obligation, shall repurchase the Qualifying Employer Securities as follows:

(1) If the distribution constitutes a total distribution of the vested portion of a Member's EEP Accounts, payment of the fair market value of the Member's account balance shall be made in a lump sum or in annual installments over a period not exceeding five

years. If paid in installments, the first installment shall be paid not later than 30 days after the Member exercises the put option. The purchaser will pay a reasonable rate of interest and provide adequate security on amounts not paid after 30 days.

- (2) If the distribution does not constitute a total distribution of the vested portion of a Member's EEP Account, the purchaser shall pay

6.04. METHODS OF PAYMENT continued:

the Member an amount equal to the fair market value of the Qualifying Employer Securities repurchased no later than 30 days after the Member exercises the put option.

- (f) Shares of Qualifying Employer Securities distributed by the Plan shall be subject to the "right of first refusal" described in this Section 6.04(f) so long as they are not readily tradable on an established securities market. Prior to any transfer of such shares, the shares must first be offered in writing to the Trustee of the EEP and then if refused by the Trustee, to Cone at a price equal to the purchase price offered by a third party buyer (other than the Trustee of the EEP or Cone) making a good faith (as determined by the Advisory Committee) offer to purchase such shares; provided, however, that the Trustee shall in no event purchase shares at a price in excess of their fair market value. The Trustee of the EEP or Cone, as the case may be, may accept the offer as to part or all of the Qualifying Employer Securities at any time during the period not exceeding 14 days after receipt of such offer by the Trustee, on terms and conditions no less favorable to the shareholder than those offered by the third-party buyer. Any

6.04. METHODS OF PAYMENT continued:

installment purchase shall be made pursuant to a note secured by the shares purchased and shall bear a reasonable rate of interest. If the offer is not accepted by the Trustee of the EEP, Cone, or both, then the proposed transfer may be completed within a 30-day period following the end of the aforementioned 14-day period, but only upon terms and conditions no less favorable than the terms and conditions of the third-party buyer's original offer. If the proposed transfer is not completed within the aforementioned 30-day period, then the shares will again be subject to the right

of first refusal described in this Section  
6.04(f).

6.05. COMMENCEMENT OF BENEFITS.

- (a) Subject to Plan Section 6.11, the valuation of a Member's Accounts for purposes of determining the amount of benefit payment(s) is made as of the Valuation Date immediately following the date on which he becomes eligible for such payment(s) pursuant to this Section 6.05.
- (b) Unless a Member elects otherwise, benefit payments must begin no later than 60 days after the close of the Plan Year in which occurs the latest of:
  - (1) his 65th birthday;

6.05. COMMENCEMENT OF BENEFITS continued:

- (2) the 10th anniversary of the date he became a Member of the Plan; or
- (3) his Severance from Service.
- (c) A Member who has an involuntary Severance from Service and who receives Approved Leave with or without pay shall be eligible to receive a distribution of the balance in his Accounts in accordance with Plan Section 6.04 within 75 days of the Valuation Date immediately following his last day of active employment, provided that the Member terminates his election to have CODA Contributions made on his behalf to the Plan so that no further CODA Contributions will be made after such Valuation Date.
- (d) If for any reason the benefit amount cannot be accurately determined before payment is required, or if it is not possible to pay when required because the Advisory Committee has been unable to locate the Member, after making reasonable efforts to do so, a payment retroactive to the required date may be made not later than 60 days after the earliest date on which the amount of that payment can be determined, or the date on which the Member is located (whichever is applicable).

6.05. COMMENCEMENT OF BENEFITS continued:

- (e) Distributions pursuant to this Section 6.05(e) may be requested by a Member who has a Severance from Service date prior to January 1, 1993, and by the Beneficiary of a Member who dies before January 1, 1993. A distribution pursuant to this Section 6.05(e) shall begin or be made, subject to Section 6.05(d), within 90 days of the Valuation Date immediately following such Severance from Service Date or Death. At the election of the Member or Beneficiary, up to 90% of the value of the

Member's Accounts as of the Valuation Date immediately preceding the Severance from Service Date or death will be distributed within 15 days after the Valuation Date immediately following such Severance from Service Date or death, with the balance distributed by April 1 or October 1 following the applicable Valuation Date.

- (f) Distributions pursuant to this Section 6.05(f) may be requested by a Member who has a Severance from Service Date after December 31, 1992, and by the Beneficiary of a Member who dies after December 31, 1992. A distribution pursuant to this Section 6.05(f) shall begin or be made, subject to Section 6.05(d), within 75 days of the Valuation Date immediately following such Severance from

6.05. COMMENCEMENT OF BENEFITS continued:  
Service Date or death.

6.06. SPECIAL DISTRIBUTION PROVISIONS.

- (a) Distribution of the entire interest of a Member must be or begin no later than April 1 of the calendar year following the calendar year in which he attains age 70-1/2 whether or not he has a Severance from Service. If distribution has not started by the required beginning date described in the preceding sentence, it must begin not later than that required beginning date and be payable over a period not exceeding the life of the Member, or the life expectancy of the Member, or the lives of the Member and a designated Beneficiary, or the life expectancies of the Member and a designated Beneficiary. Life expectancy shall be determined in accordance with U. S. Treasury Department regulations and may be redetermined annually.
- (b) If the distribution of a Member's account has begun in accordance with paragraph (a) and the Member dies before his entire Account balance has been distributed, the remaining portion of his Account balance must be distributed at least as rapidly as under the method of distribution being used as of the date of the Member's death. If a Member dies before the distribution of his Account balance has

6.06. SPECIAL DISTRIBUTION PROVISIONS continued:  
begun, his entire Account balance must be distributed within five years after his death.

6.07. DEATH BENEFITS.

- (a) Subject to the rights of any Alternate Payee under



a Qualified Domestic Relations Order, if a Member having a vested interest in the Plan dies before receiving a distribution of his Account balance with a Surviving Spouse, his vested Account balance, valued in accordance with Plan Section 6.11, shall be distributed to the Surviving Spouse in accordance with subsection (b), unless the Member had made an effective election pursuant to subsection (c).

- (b) Unless the Surviving Spouse elects a later date, distribution of the Member's vested Account balance shall be made or begin no later than 60 days after the end of the Plan Year in which death occurs, except as permitted under Plan Section 6.05(d). Payment shall be made under one of the methods provided in Plan Section 6.04. Notwithstanding the foregoing, if the aggregate amount of the Member's vested Account balance is \$3,500 or less, such amount shall be distributed to the Surviving Spouse in a single lump-sum payment. No distribution shall be made pursuant to this subsection (b) until

6.07. DEATH BENEFITS continued:

the Advisory Committee has received proof of the Member's death and appropriate claim, election and tax withholding forms.

- (c) A Member may designate a Beneficiary or Beneficiaries (other than his Spouse) in accordance with subsection (d) to receive death benefits under this Plan; provided, however, that no Beneficiary designation in accordance with subsection (d) shall be effective unless accompanied by a Spousal Consent. A Member may revoke any Beneficiary designation and, subject to any required Spousal Consent, may designate another Beneficiary or Beneficiaries.
- (d) On forms provided by the Advisory Committee, each Member without a Spouse and, subject to Spousal Consent, each Member with a Spouse may designate or change a Beneficiary or Beneficiaries to receive death benefits under the Plan. A Beneficiary designation is effective when received by the Advisory Committee. Any designation of a Beneficiary by a Member without a Spouse shall become void and of no further force and effect if the Member later marries. If a Beneficiary or Beneficiaries are designated in accordance with this subsection (d), and if distribution of

6.07. DEATH BENEFITS continued:

benefits under this Plan has not begun before a Member's death, then, after the Advisory Committee receives proof of the Member's death, it shall request his Beneficiary or Beneficiaries to submit claim, election and tax withholding forms. Subject to the rights of any Alternate Payee under a Qualified Domestic Relations Order, the Advisory Committee, upon receiving these forms, shall direct the Trustee to distribute the Member's Account, valued no later than the end of the Plan Year during which death occurs, to his Beneficiary or Beneficiaries. Distribution will be made or begin no later than 60 days after the end of the Plan Year in which death occurs, except as permitted under Plan Section 6.05(d), and, subject to Plan Section 6.06(b), shall be made by one of the methods described in Plan Section 6.04, as elected by the Beneficiary or Beneficiaries. Notwithstanding the foregoing, if the amount distributable under this subsection (d) is \$3,500 or less, such amount shall be distributed in a single lump sum payment. If a Member had elected installment payments pursuant to Plan Section 6.04 and had designated a Beneficiary or Beneficiaries in accordance with this subsection (d), then any

6.07. DEATH BENEFITS continued:

installment payments becoming due after his death shall be made to the Beneficiary or Beneficiaries so designated, unless they elect to accelerate payment thereof. If there is no effective beneficiary designation in effect at the time of a Member's death, then subject to any required Spousal Consent and to the rights of any Alternate Payee, the Member's estate shall be entitled to receive his vested Account balance.

6.08. QUALIFIED DOMESTIC RELATIONS ORDER.

Except as provided in this Section 6.08, Plan benefits may not be assigned, alienated or in any other way made subject to debts or other obligations of Members or Beneficiaries. Notwithstanding the above, the Advisory Committee must comply with the terms of a Qualified Domestic Relations Order which is a judgment, decree or order (including approval of a property settlement agreement) made pursuant to a state domestic relations law (including community property law), that relates to the provision of child support, alimony payments or marital property rights of a Spouse, former Spouse, child or other dependent ("Alternate Payee") of a Member. A Qualified Domestic Relations Order creates

or recognizes the existence of an Alternate Payee's right to, or assigns to an Alternate Payee the right to, receive all

6.08. QUALIFIED DOMESTIC RELATIONS ORDER continued:

or a portion of the benefits payable to a Member under his Plan and specifies the following:

- (1) the name and last know mailing address of the Member and each Alternate Payee;
- (2) the amount or percentage of the Member's Plan benefits to be paid to any Alternate Payee, or the manner in which such amount or percentage is to be determined; and
- (3) the number of payments or the period to which the Order applies and the name of the plan(s) to which the Order relates.

Plan benefits will be paid pursuant to a Qualified Domestic Relations Order to such Alternative Payee(s) at such times and in such amounts as are stated therein, provided however, that such Qualified Domestic Relations Order may not require the Plan to provide any type or form of benefit, or any option not otherwise provided. It also may not require the Plan to provide increased benefits and may not require the payment of benefits to an Alternate Payee prior to the Member's "earliest retirement age" as defined in Code Section 414(p). The Advisory Committee shall establish reasonable procedures to determine the qualified status of domestic relations orders and to administer distributions under such Orders.

6.09. WITHHOLDING OF BENEFITS.

If a Member has a Severance from Service and returns to regular employment of the Employer, the Advisory Committee may suspend payment of any benefit which such Member would have received from the Plan during any such period of reemployment.

6.10. HARDSHIP WITHDRAWAL.

(a) Upon written application on forms provided by the Advisory Committee and subject to the provisions of this Section 6.10, a Member shall be permitted to withdraw a specified whole dollar amount from the vested balance in his individual Accounts to the extent such withdrawal is necessary to meet the following documented immediate and heavy financial need of the Member:

- (1) medical expenses described in Code Section 213(d) of the Member, his Spouse or dependents;
- (2) purchase (excluding mortgage payments) of a

- principal residence of the Member;
- (3) tuition and related education fees (but not room and board) for the next twelve (12) months of post-secondary education for the Member, his Spouse, or dependents;

6.10. HARDSHIP WITHDRAWAL continued:

- (4) the need to prevent eviction of the Member from his principal residence or foreclosure on the mortgage of his principal residence; plus, any amounts necessary to pay any federal, state or local income taxes or penalties reasonably anticipated to result from the distribution.

No such withdrawal shall be permitted to the extent that the immediate and heavy financial need proposed to be met thereby may be met from other resources that are reasonably available to the Member and, for this purpose, the Member's resources shall be deemed to include those assets of his Spouse and minor children that are reasonably available to the Member. Accordingly, no withdrawal from a Member's Accounts shall be permitted unless the Member has represented to the Advisory Committee in writing that his immediate and heavy financial need cannot be relieved: (1) through reimbursement or compensation by insurance or otherwise; (2) by reasonable liquidation of the Employee's assets, to the extent such liquidation would not itself cause an immediate and heavy financial need; (3) by cessation of elective contributions or Employee contributions under the

6.10. HARDSHIP WITHDRAWAL continued:

Plan; (4) by other distributions or nontaxable loans from plans maintained by Cone or by any other Employer of the Member; or (5) by borrowing from commercial sources on reasonable commercial terms. Amounts withdrawn shall be in the following order: (1) a portion or all of the SRP Voluntary Contributions Account; (2) a portion or all of the SRP Cone Contributions Accounts; (3) a portion or all of the SRP CODA Contributions Account; (4) a portion or all SRP Investment Earnings attributable to Plan Years ending before January 1, 1989; (5) a portion or all of the EEP Voluntary Contributions Account; (6) a portion or all of the EEP Cone Contributions Account; (7) a portion or all of the EEP CODA Contributions Account. Subject to paragraph (b), the maximum

amount subject to withdrawal is the vested balance in the Member's Accounts as of the end of the Plan Year immediately preceding the date of application, but in no event shall a withdrawal be in excess of the amount necessary to meet the immediate and heavy financial need of the Member, and a withdrawal of less than \$300 shall not be permitted.

6.10. HARDSHIP WITHDRAWAL continued:

- (b) Beginning January 1, 1989, the amount of any hardship withdrawal cannot exceed the sum of the Member's Accounts, including Investment Earnings thereon attributable to Plan Years ending before January 1, 1989, (but excluding Investment Earnings thereon attributable to Plan Years ending after December 31, 1988, and all Investment Earnings attributable to the EEP Company Stock Fund). The order of withdrawal rules in paragraph (a) will apply.
- (c) The determination required to be made under this Section 6.10 by the Advisory Committee shall be made in a uniform and non-discriminatory manner on the basis of all relevant facts and circumstances. Hardship withdrawals are not subject to the Advisory Committee's discretion, except to the extent reasonably necessary to determine whether the conditions set forth in paragraph (a) have been met, and the Claim Procedure set forth in Section 6.01 shall apply. The Advisory Committee shall be entitled to rely on information and documentation supplied by a Member in connection with his written application for a hardship withdrawal, pursuant to this Plan Section 6.10.

6.11. VALUATION OF ACCOUNT BALANCES.

For purposes of determining the amount of any distribution, a Member's Accounts will be determined as of the Valuation Date immediately preceding the date of the distribution, except that cash distributions from the EEP after December 31, 1992, that are attributable to common stock of Cone will be based on the closing price of the common stock on the sixtieth day following such Valuation Date or, if the sixtieth day is not a business day, the immediately preceding business day.

6.12. WITHHOLDING OF TAXES.

Notwithstanding any other term or provision of this Article VI, the Advisory Committee will direct the Trustee to deduct from any distribution made to a Member such amount as is required to be withheld under Code Section 3405 and the corresponding provision of

any applicable state law.

6.13. ELIGIBLE ROLLOVER DISTRIBUTIONS.

(a) This Section 6.13 applies to distributions made on or after January 1, 1993. 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 Advisory Committee, to have any portion of an eligible rollover distribution paid directly to an eligible

6.13. ELIGIBLE ROLLOVER DISTRIBUTIONS continued:

retirement plan specified by the distributee in a direct rollover.

(b) Definitions.

(1) Eligible rollover distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee 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 Section 401(a)(9) of the Code; and the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

6.13. ELIGIBLE ROLLOVER DISTRIBUTIONS continued:

(2) Eligible retirement plan: An eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, or a qualified trust described in Section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the Surviving Spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

- (3) Distributee: 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 section 414(p) of the Code, are distributees with regard to the interest of the Spouse or former Spouse.

6.13. ELIGIBLE ROLLOVER DISTRIBUTIONS continued:

- (4) Direct rollover: A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

ARTICLE VII  
INVESTMENT OF ACCOUNTS

7.01. INVESTMENT FUNDS.

- (a) The Trustee of the SRP shall establish and maintain three Investment Funds. The first fund, known as the Fixed Income Fund, shall be invested in interest bearing accounts, certificates of deposit, money market securities and other interest bearing investments which involve a minimum or no risk to principal. The second fund, known as the Balanced Fund, shall be invested primarily in common and preferred stocks, corporate and government bonds, debentures and other evidences of indebtedness. The third fund, known as the Diversified Common Stock Fund, shall be invested primarily in common stocks. The Trustee of the SRP shall establish and maintain other Investment Funds if directed to do so by the Board of Directors. The Investment Funds maintained by the Trustee of the SRP shall be utilized in investing the individual SRP Accounts of Members and Beneficiaries.
- (b) Plan assets held in the SRP Trust Fund and attributable to Members' SRP CODA Contributions and SRP Voluntary Contributions, that is, any funds allocated or allocable to SRP CODA Contributions

7.01 INVESTMENT FUNDS continued:

Accounts or SRP Voluntary Contributions Accounts shall not be invested in any securities or other properties whatsoever of Cone or Affiliates.

- (c) The Trustee of the EEP shall establish and maintain two Investment Funds. The first fund, known as the Company Stock Fund, shall be invested solely in Qualifying Employer Securities (as

defined in Section 407(d)(5) of ERISA). The second fund, known as the Other Investments Fund shall be invested in interest bearing accounts, certificates of deposit, money market securities and other interest bearing investments which involve a minimum or no risk to principal. The Investment Funds maintained by the Trustee of the EEP shall be utilized in investing the individual EEP Accounts of Members and Beneficiaries.

7.02. DIRECTING INVESTMENT OF INDIVIDUAL ACCOUNTS.

- (a) At least 30 days prior to each January 1, April 1, July 1 and October 1 each Member shall have the right to direct the Advisory Committee as to the investment of all funds in his individual SRP Accounts during the next three months. Such election shall be in writing on a form provided by the Advisory Committee and shall indicate which amounts, in 25% increments, are to be invested in

7.02 DIRECTING INVESTMENT OF INDIVIDUAL ACCOUNTS continued:  
each of the SRP Investment Funds. In the event no election is made on a timely basis, the Member's individual Accounts shall remain invested in the same manner as during the prior period in accordance with his last election.

- (b) Members shall not have the right to direct the investment of EEP Accounts. EEP Accounts shall be invested by the Trustee of the EEP primarily in the Company Stock Fund, and the Other Investments Fund will be used primarily as a temporary fund whose assets will be used to purchase Qualifying Employer Securities or to make distributions in accordance with Article VI.
- (c) Notwithstanding any other provisions of this Section 7.02, effective January 1, 1991, a Member who has attained age 60 and who has an EEP Account balance may elect on forms provided by the Advisory Committee, to transfer such balance to the SRP Investment Funds. Transfers as permitted by this Section 7.02(c) shall be effective on January 1 of each Plan Year, with respect to Members who are age 60 or older on or before the December 31 Valuation Date immediately preceding such January 1. The initial transfer by any Member shall be 50% of the value of his EEP Account balance as of the

7.02 DIRECTING INVESTMENT OF INDIVIDUAL ACCOUNTS continued:  
December 31 Valuation Date immediately preceding the January 1 effective date. A Member shall be allowed a second transfer effective no sooner than



one year after such initial transfer; the second transfer shall be the Member's remaining EEP Account balance. A Member shall not be allowed more than two transfers pursuant to this Section 7.02(c). The Advisory Committee shall restrict rights to transfer by Highly Compensated Employees which may otherwise be permitted by this Section 7.02(c) to the extent necessary to cause compliance with Treasury Regulation 1.401(a)(4)-4.

If restricting transfer rights by Highly Compensated Employees becomes necessary, then to the extent required to comply with Treasury Regulation 1.401(a)(4)-4, the Advisory Committee shall not allow transfer rights to be elected by Highly Compensated Employees as of any applicable December 31 Valuation Date in the following order:  
First - by those Highly Compensated Employees who have attained age 60.

7.02 DIRECTING INVESTMENT OF INDIVIDUAL ACCOUNTS continued:

Second - by those Highly Compensated Employees who have attained age 61.

Third - by those Highly Compensated Employees - who have attained age 62.

Fourth - by those Highly Compensated Employees who have attained age 63.

Fifth - by those Highly Compensated Employees who have attained age 64 or any older age.

(d) Effective January 1, 1993, in accordance with uniform and nondiscriminatory procedures adopted from time to time by the Advisory Committee, a Member who has an EEP Account balance may elect to transfer such balance to the SRP Investment Funds over a period of four Plan Years as follows:

(1) For the first Plan Year in which a transfer is elected, 25% of the Member's total EEP Account balance as of the Valuation Date immediately preceding the date on which the transfer is made;

(2) For the second Plan Year in which a transfer is elected, 33-1/3% of the Member's total EEP Account balance as of the Valuation Date immediately preceding the date on which the transfer is made;

7.02 DIRECTING INVESTMENT OF INDIVIDUAL ACCOUNTS continued:

(3) For the third Plan Year in which a transfer is elected, 50% of the Member's total EEP Account balance as of the Valuation Date

immediately preceding the date on which the transfer is made; and

- (4) For the fourth Plan Year in which a transfer is elected, 100% of the Member's total EEP Account balance as of the Valuation Date immediately preceding the date on which the transfer is made.

Notwithstanding the foregoing, if the total value of a Member's EEP Account balance does not exceed \$5,000 as of any Valuation Date, he may elect to have such balance transferred to the SRP Investment Funds, provided that only one transfer shall be permitted of an EEP Account balance that does not exceed \$5,000. The Advisory Committee shall restrict rights to transfer by Highly Compensated Employees which may otherwise be permitted by this Section 7.02(d) to the extent necessary to cause compliance with Treasury Regulation 1.401(a)(4)-4. If restricting transfer rights by Highly Compensated Employees becomes necessary, then to the extent required to comply with the Treasury Regulation 1.401(a)(4)-4, the Advisory Committee

7.02 DIRECTING INVESTMENT OF INDIVIDUAL ACCOUNTS continued:  
shall not allow transfer rights to be elected by Highly Compensated Employees as of any applicable Valuation Date in the following order:

- (i) By those Highly Compensated Employees described in Code Section 414(q)(1)(A) or (B).
- (ii) By those Highly Compensated Employees described in Code Section 414(q)(1)(C) and not included in category (i) above.
- (iii) By those Highly Compensated Employees described in Code Section 414(q)(1)(D) and not included in category (i) or (ii) above.

7.03. SEGREGATED ACCOUNT.

If a terminated Member's or Beneficiary's distribution is payable in installments which extend more than 6 months after the normal payment date for a lump sum distribution, then, as of the January 1 coinciding with or next following the date on which the election to receive installment payments is made, the individual SRP Accounts shall be invested in the Fixed Income Fund and, subject to Plan Section 6.04(d), the individual EEP Accounts shall be invested in the Other Investments Fund.

ARTICLE VIII

TRUST FUND AND ADMINISTRATION OF THE PLAN

8.01. NAMED FIDUCIARIES AND ALLOCATION OF RESPONSIBILITY.

- (a) Plan Fiduciaries are Cone (acting through the Board of Directors), each Trustee or Co-Trustee, the Advisory Committee and any other Committee appointed pursuant to Plan Section 8.06. Each Fiduciary shall have only those powers, duties, responsibilities and obligations that are specifically assigned under the Plan or Trust Agreement. A Fiduciary may serve in more than one capacity with respect to the Plan. The Board of Directors shall appoint the Advisory Committee and any Trustee or successor Trustees or Co-Trustees and any other Fiduciaries.
- (b) Each Trustee has custody and sole responsibility for administration of the Trust Fund of which it is the Trustee, but a Trustee's authority to manage, acquire or dispose of assets of the Plan is subject to such investment policies and guidelines as may be adopted from time to time by the Board of Directors and communicated to such Trustee. If an Investment Manger is appointed according to a Trust Agreement, the Trustee or each Co-Trustee under that Trust Agreement is released from any obligation or liability for the investment of the

8.01. NAMED FIDUCIARIES AND ALLOCATION OF RESPONSIBILITY continued:

assets for which the appointment is made.

- (c) The Advisory Committee has only the responsibilities described in this Plan and those delegated by Cone. The Advisory Committee has no responsibility for the control or management of the Trust Fund.
- (d) Other Committees appointed pursuant to Plan Section 8.06 shall have such authority and responsibilities as may be delegated by the Board of Directors.
- (e) All responsibilities not specifically delegated to a Fiduciary remain with Cone, including designating other Fiduciaries not named in this Plan or the Trust Agreement. A Fiduciary serves at the pleasure of Cone and may employ one or more persons to render advice with regard to any responsibility such Fiduciary has under the Plan. Each Fiduciary may rely upon any direction, information or action of another Fiduciary, as being proper under the Plan or Trust Agreement and shall not be required to inquire into the

propriety of any such direction, information or action. It is intended that each Fiduciary be responsible for the proper exercise of its own power, duties, responsibilities and obligations and shall not be responsible for

8.01. NAMED FIDUCIARIES AND ALLOCATION OF RESPONSIBILITY  
continued:

any act or omission of another Fiduciary except to the extent that he has knowledge of a breach of Fiduciary responsibility by another Fiduciary and fails to make reasonable effort to remedy the breach.

8.02. DUTIES AND RESPONSIBILITIES.

Each Fiduciary shall discharge his duties with respect to the Plan solely in the interest of Members and Beneficiaries for the exclusive purpose of providing benefits to Members and Beneficiaries and for defraying reasonable expenses in administering the Plan, with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, and in accordance with the documents and instruments governing the Plan insofar as such documents and instruments are consistent with the provisions of applicable law or regulation.

Notwithstanding the foregoing, the diversification requirement of ERISA Section 404(a)(1)(C) and the prudence requirement of ERISA Section 404(a)(1)(B) (to the extent it requires diversification) shall not apply to the acquisition and holding of Qualifying Employer Securities as defined in ERISA Section 407(d) by the EEP.

8.03. TRUST FUND.

All of the assets of the Plan shall be held in a Trust Fund or Funds under a Trust Agreement or Agreements which shall be a part of the Plan. Any such Trust Agreement may provide for a master trust containing assets of more than one plan if the portion or percentage attributable to each plan is clearly established and discernible. Each Trustee or Co-Trustee shall be appointed by the Board of Directors, and the Board of Directors shall have the sole authority to appoint and remove any Trustee, Co-Trustee or successor Trustee or Co-Trustee. All contributions shall be paid into a Trust Fund. Benefits provided by the Plan shall be payable from the Trust Fund. The Trustee or Co-Trustee shall execute such documents and take any other action necessary to carry out the

instructions of any Investment Manager or the Advisory Committee.

8.04. ENFORCEABLE RIGHTS.

Cone does not guarantee payment of any benefits provided for under the Plan. All rights of Members and Beneficiaries shall be enforceable only against the Trust Fund except to the extent otherwise guaranteed by applicable law or regulation. No person shall have any interest in or right to any part of the corpus or income of the Trust Fund except as provided in the Plan.

8.05. IMPOSSIBILITY OF DIVERSION.

Except as provide in Section 3.02, the assets of the Plan and the Trust Fund shall not inure to the benefit of the Employer and shall be held for the exclusive purposes of providing benefits to Members and Beneficiaries and defraying reasonable expenses of administering the Plan.

8.06. ADVISORY COMMITTEE AND OTHER COMMITTEES.

The Board of Directors shall appoint an Advisory Committee and may appoint other Committees from time to time, each Committee to consist of at least three (3) persons who may, but need not be, officers, directors or Employees of Cone. The members of each Committee shall hold office at the pleasure of the Board of Directors and shall serve without compensation. Each Committee member shall file his written acceptance with the Board of Directors and acknowledge that he is a Fiduciary under the Plan. Any Committee member may resign at any time by delivering his written resignation to the Board of Directors. Any vacancy which reduces Committee membership to less than three shall be filled by the Board of Directors as soon as practicable.

8.07. OFFICERS, QUORUMS, EXPENSES.

Each Committee may authorize one or more of its members to execute or deliver any instrument or act on its behalf. Each Committee shall hold meetings upon such notice and at such place and times as it may determine.

8.07. OFFICERS, QUORUMS, EXPENSES continued:

A majority of the members of each Committee in office at the time shall constitute a quorum for the transaction of business. All resolutions or other actions taken by a Committee shall be by the vote of a majority of those present at a meeting or without a meeting by an instrument in writing signed by a majority of the members. If a Committee member

registers his dissent in writing with respect to any act or omission by the majority, delivered to the remaining Committee members within a reasonable time, such member shall not be responsible for such act or omission. The expenses of each Committee in performing its duties and the compensation of its agents shall be paid by Cone.

8.08. DUTIES OF INVESTMENT MANAGER.

Cone shall have authority to appoint in writing and obtain the services of one or more Investment Managers (as defined in ERISA Section 3(38) whose duties and responsibilities shall be to manage the investment and reinvestment of such portion of the Trust Fund as shall be determined from time to time by the Board of Directors. Each duly appointed Investment Manager shall, with respect to the portion of any Trust Fund for which it is responsible, have the sole authority, without prior consultation with the Trustee or Cone, to manage, acquire and dispose of assets of the Trust Fund but shall not,

8.08. DUTIES OF INVESTMENT MANAGER continued:

except to the extent permitted in the Trust Agreement, have physical custody or indicia of ownership of any such assets. The appointment of an Investment Manager shall become effective as of the date it delivers to Cone a written statement acknowledging that it is Fiduciary as defined in ERISA Section 3(21)(A) and that it has the responsibility of acquisition and disposition of that portion of Trust Fund assets assigned to it. The Investment Manager shall exercise its power through written directions to the Trustee signed by an individual whose name and signature appears on a list furnished by such Investment Manager to Cone. The Investment Manager shall periodically deliver to Cone a report describing all Trust Fund asset transactions for each agreed upon reporting period. Any compensation or fee due to the Investment Manager for services rendered shall be paid out of the Trust Fund, unless paid by Cone in its discretion.

8.09. INFORMATION TO INVESTMENT MANAGER.

Cone shall advise each Investment Manager of the amount of that portion of any Trust Fund which it is to manage, the amount of Cone and CODA Contributions to be added to the Fund and the expected future benefits to be payable from the Fund in order that the Investment Manager may establish a funding policy consistent with current and long-term needs of the Plan and compatible with the

- 8.09. INFORMATION TO INVESTMENT MANAGER continued:  
investment policies and guidelines determined by the Board of Directors.
- 8.10. NOTICE TO TRUSTEE.  
Cone shall notify the Trustee of each Trust Fund for which an Investment Manager has been appointed of the name of such Investment Manager and the portion of the Trust Fund for which such Manager is responsible. Until notified in writing by Cone that there has been a change in the appointment of an Investment Manager, the Trustee shall be fully protected in relying upon the instructions received from such Investment Manager with respect to the portions of the Fund for which such Manager has investment responsibilities.
- 8.11. DUTIES OF THE ADVISORY COMMITTEE.  
The Advisory Committee shall be responsible for and have discretionary authority with respect to interpretation of the provisions of the Plan, the determination of benefits and the right of any person to benefits, and such other functions including without limitation the promulgation of rules and regulations as may be necessary for proper administration of the Plan and not hereunder delegated to the Trustee, Investment Manager or other Fiduciary appointed by the Board of Directors. The Advisory Committee's rules, interpretations, computations and actions with be conclusive and binding on all persons.
- 8.11. DUTIES OF THE ADVISORY COMMITTEE continued:  
Individual members of the Advisory Committee may exercise jurisdiction and take actions with respect to administration of the Plan provided such actions are consistent with the proposes of and authorized by the Plan.
- 8.12. NOTICE OF PAYMENTS DUE.  
The Advisory Committee shall notify the Trustees in writing of the amounts payable under the Plan and the date of such payments.
- 8.13. RECORDS AND REPORTS.  
The Advisory Committee shall maintain or shall direct the Trustees to maintain accounts showing the fiscal transactions of the Plan and shall keep or direct the Trustees to keep in convenient form such data as may be necessary for the valuation of the assets and liabilities, contingent or otherwise, of the Plan. The Committee shall exercise such authority as it deems appropriate in order to comply with the reporting requirements of any applicable law or regulation affecting the Plan and shall prepare annually a report showing in reasonable detail such assets and liabilities of the Plan and any other information which

the Board of Directors may require and which the Committee can reasonably furnish or obtain from the Trustees. Such report shall be submitted to the Board of Directors.

8.14. EXONERATION OF ADVISORY COMMITTEE.

The members of the Advisory Committee, Employers and their officers, directors and Employees shall be entitled to rely upon the reports furnished by any Trustee or by any accountant retained by the Committee or the Board of Directors, and upon all opinions given by any legal counsel selected or retained by the Committee or the Board of Directors. Except as contrary to law, the members of the Committee, Employers and their officers, directors and Employees shall be fully protected and exonerated from liability with respect to any action taken or suffered by them in good faith in reliance upon such reports, opinions or other advice received from any such Trustee, accountant or legal counsel.

The fact that any member of the Committee is a director, officer or shareholder of the Employer, or a Member of the Plan, shall not disqualify him from performing any duties which the Plan or the Trust Agreements authorize or require him to do as a member of the Committee or render him accountable for any benefits received by him under the Plan. All directors, officers and Employees who are deemed to be Fiduciaries of this Plan are entitled to indemnification to the full extent provided for by law and by the Articles of Incorporation and Bylaws of Cone in effect on January 1, 1987, or as, thereafter amended.

8.15. ERRORS AND OMISSIONS.

Individuals and entities charged with the administration of the Plan must see that it is administered in accordance with its terms as long as it is not in conflict with the Code or ERISA. If an innocent error or omission is discovered in the Plan's operation or administration, and if the Advisory Committee determines that it would cost more to correct the error than is warranted, and if the Advisory Committee determines that the error did not result in discrimination prohibited by Plan Section 11.06 or cause a qualification or excise tax problem, then, to the extent that an adjustment will not in the Advisory Committee's judgment result in discrimination prohibited by Plan Section 11.06, the Advisory Committee may authorize any equitable adjustment it deems necessary or desirable to correct the error or



omission, including but not limited to the authorization of additional Cone Contributions designed, in a manner consistent with the goodwill intended to be engendered by the Plan, to put Members in the same relative position they would have enjoyed if there had been no error or omission. Any contribution made pursuant to this section is an additional discretionary contribution.

8.16. FEES AND EXPENSES.

Any fees or expenses incurred in connection with the operation of the Plan shall be paid out of the SRP or EEP Trust Fund, unless paid by Cone in its discretion.

8.17. VOTING AND TENDERING OF SHARES.

(a) Qualifying Employer Securities held in the Trust Fund established under the EEP shall be voted by the Trustee according to the written instructions of the Member whose Accounts hold the shares. Without limiting the generality of the foregoing and notwithstanding any other provision of this Plan or the Trust Agreement established under the EEP, a Member shall be entitled to direct the Trustee as to the manner in which voting rights will be exercised with respect to any corporate matter which involves the voting of Qualifying Employer Securities allocated to his Accounts. Shares unallocated as of any voting record date or shares as to which the Trustee receives no written instructions shall be voted by the Trustee.

(b) Options and other rights (for example, tender rights) inuring to the benefit of Qualifying Employer Securities allocated to a Member's Account may be exercised by the Trustee only according to the written instruction of the Member whose Account holds the shares. Options and similar rights (for

8.17. VOTING AND TENDERING OF SHARES continued:

example, tender rights) inuring to the benefit of unallocated shares must be exercised by the Trustee according to the same principles set forth in this Section with regard to voting rights. Members directions pursuant to this Section may be itemized or a general (blanket) authorization.

(c) The Advisory Committee shall take such action as may be necessary to ensure that Members of the EEP receive the same notices, financial statements, proxies, proxy solicitation materials and other information as Cone sends to its shareholders generally.

8.18 CERTIFICATION OF DIRECTIONS FROM MEMBERS.

Any Member's rights contained in this Plan or in the Trust Agreements to direct any action may be exercised only by directions communicated to the Advisory Committee. The Advisory Committee must communicate those directions to the Trustee or other appropriate persons. Any Member's directions communicated by the Advisory Committee are deemed to be true and accurate, and each recipient of directions shall be entitled to rely conclusively upon the directions.

ARTICLE IX  
AMENDMENT, TERMINATION AND MERGER

9.01. AMENDMENT.

- (a) The Board of Directors retains the right at any time;
  - (1) to amend this Plan (or either component hereof) and any Trust Agreement to qualify or retain qualification of this Plan and the Trust under the applicable provisions of the Code or under any other laws;
  - (2) to amend this Plan (or either component hereof) and any Trust Agreement in any other manner; and
  - (3) to amend this Plan (or either component hereof) and liquidate any Trust Fund by transferring all assets to a new trust qualified under the Code.
- (b) No amendment to the Plan or any Trust Agreement and no transfer of liabilities or assets of any Trust Fund shall permit any part of the Trust Fund to be used for or diverted to purposes other than for the exclusive benefit of Members and Beneficiaries and for defraying reasonable expenses of administering the Plan. An amendment may not cause any reduction in benefits accrued by any Member or cause or permit any portion of the Trust Fund to revert to

9.01. AMENDMENT continued:

or become the property of an Employer. An amendment that affects the rights, duties or responsibilities of any Fiduciary may not be made without that Fiduciary's written consent. Except as permitted by Treasury regulation, no Plan amendment or transaction having the effect of a Plan amendment (such as a merger, plan transfer or similar transaction) shall be effective to the extent it eliminates or reduces any "Section 411(d)(6) protected benefit" or adds or modifies conditions relating to "Section 411(d)(6) protected benefits" the result of which is a

further restriction on such benefit unless such 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. An amendment is effective on the date indicated in any written instrument that is identified as an amendment to the SRP or the EPP, that is approved or authorized by the Board of Directors of Cone Mills Corporation and that is signed by an officer of the Corporation.

9.01. AMENDMENT continued:

(c) As allowed by law, a transfer of liabilities or Trust Fund assets or any amendment to the Plan or a Trust Agreement may authorize or permit part of the Trust Fund to be used for or diverted to payment of taxes owed or to payment of reasonable administrative expenses. To the extent allowed by Code Section 401(a), Trust Fund assets may be used for or diverted to purposes that benefit Employees other than Members or their Beneficiaries or estates.

9.02. TERMINATION.

(a) The Board of Directors has the right at any time to terminate this Plan (or either Component hereof) and any Trust Agreement. Notice of a termination must be given to the Members, the Advisory Committee, the affected Trustees or Co-Trustees and all necessary authorities. If any authority's approval is necessary, termination is effective according to that approval; otherwise, the date of the notice or a later date contained in the notice is the termination date for purposes of this Plan.

(b) If the Plan (or either component hereof) terminates, all Accounts are then nonforfeitable (100% vested).

9.02. TERMINATION continued:

If the Plan (or either component hereof) partially terminates (determined in a manner consistent with legal authorities), all Accounts of affected Members are fully nonforfeitable and may then be treated by the Advisory Committee as if the Plan had terminated.

(c) On the Plan's (or either component hereof) termination, the Advisory Committee must direct

the Trustee to allocate the assets of the affected Trust Fund among the Members and Beneficiaries according to the rules contained in Article IV. Members have no recourse toward satisfaction of their SRP Accounts other than from the SRP Trust Fund and no recourse toward satisfaction of their EEP Accounts other than from the EEP Trust Fund.

- (d) After providing for payment of any expenses properly chargeable against the affected Trust Fund and compliance with all other requirements of law, the Advisory Committee may direct the Trustees and Co-Trustees to distribute assets remaining in the Trust Fund. Distributions according to this Section 9.02. are not subject to the regular distribution provisions of this Plan, but must be in the manner the Advisory Committee determines consistent with statutory requirements and purposes

9.02. TERMINATION continued:

of the Plan. Except as specifically provided by law, the Advisory Committee's determination is conclusive.

- (e) Each Trustee and Co-Trustee must transfer or deliver property to Members according to the Advisory Committee's directions. A Trustee or Co-Trustee will have not further right, title or interest in property distributed. After all distributions, each Trustee and Co-Trustee is discharged from all obligations under the Trust Agreements. Except by statute, no Member or Beneficiary has any further right or claim.

9.03. DISCONTINUANCE OF CONTRIBUTIONS.

- (a) Each Employer has the right at any time to reduce or discontinue its contributions to this Plan (or either component hereof). If there is a complete discontinuance of contributions from all Employers, all Accounts become fully non-forfeitable.
- (b) A discontinuance of Employer contributions is not a termination of the Plan unless Cone gives the notice described in Plan Section 9.02(a).

9.04. PLAN MERGER OR ASSET TRANSFER.

- (a) The merger or consolidation of this Plan with, or the transfer of assets or liabilities of this Plan (or either component hereof) to another employee

9.04. PLAN MERGER OR ASSET TRANSFER continued:

benefit plan or the transfer of assets or liabilities of another plan to this Plan is allowed provided each Member's benefit entitlement

immediately after the merger, consolidation, or transfer, is (when computed as if the surviving or receiving plan had immediately terminated) equal to or greater than the benefit to which the Member would have been entitled if this Plan had terminated immediately before the merger, consolidation, or transfer.

- (b) Subject to subsection (a), on written direction from Cone, the Advisory Committee and any Trustee or Co-Trustee so directed must take all necessary steps to transfer assets held in any Trust Fund, in whole or in part, to another qualified plan.

9.05. CONTINUATION OF THE PLAN.

If an Employer is merged or consolidated with any other business or is succeeded by a corporation or any other legal entity that acquires substantially all of the Employer's assets, the surviving or purchasing corporation or legal entity, subject to approval of the Board of Directors, may elect to continue this Plan (or either component hereof) as to that Employer's Members but shall not be required to do so.

ARTICLE X

MULTIPLE COMPANIES INCLUDED

10.01. PLAN SPONSOR AND OTHER EMPLOYERS.

- (a) This Plan's sponsor is Cone Mills Corporation, or its successor.
- (b) This Plan is designed to allow the sponsor's Affiliates to participate. Employers are Cone Mills Corporation and any Affiliate that was participating in this Plan before the effective Date of this amendment and restatement and Affiliates that are permitted to adopt this Plan in accordance with Section 10.02.

10.02. METHOD OF PARTICIPATION.

With approval of the Board of Directors, any other business that is an Affiliate of Cone may take appropriate action through its board and become a party to the Plan (or either component hereof) as an Employer. To become an Employer, a business must adopt this Plan (or either component hereof) as a Qualified Plan for its employees. A Business that becomes an Employer must promptly deliver to the Trustee or Co-Trustees designated by Cone a copy of the resolutions or other documents evidencing its adoption of the Plan (or either component hereof) and also a written instrument showing Cone's Board's approval of the adopting entity's status as a party to the Plan and an Employer.

10.03 WITHDRAWAL BY EMPLOYER.

- (a) An employer may withdraw from the Plan (or either component hereof) at any time by giving the Advisory Committee and the Board of Directors six months advance notice in writing of its intention to withdraw unless a shorter notice is agreed to by the Board of Directors.
- (b) Upon receipt of an Employer's notice of withdrawal, the Advisory Committee must certify to the appropriate Trustees or Co-Trustees the withdrawing Employer's equitable share in the Trust Fund. The Advisory Committee may rely conclusively on the determination made by counsel and advisors then employed on behalf of the Plan. The Trustees or Co-Trustees must then set aside from the Trust Fund such securities and other property as each deems, in its sole discretion, to be equal in value to that amount directed by the Advisory Committee. If the Plan (or either component hereof) is to be terminated with respect to the Employer, then the amount set aside must be dealt with according to the provisions of Plan Article IX. If the Plan (or either component hereof) is not to be terminated with respect to the Employer, the Trustee or Co-Trustees must either transfer the assets set aside to another trust governed by an agreement between a

10.03. WITHDRAWAL BY EMPLOYER continued:

Trustee or Co-Trustees and the withdrawing Employer or to a successor trustee, according to the Advisory Committee's directions.

- (c) The segregation of the Trust Fund Assets upon an Employer's withdrawal, or the execution of a new agreement and declaration of trust pursuant to any of the provisions of this section, must not operate to permit any part of the Trust Fund's principal or income to be used for or diverted to purposes other than for the benefit of Members and Beneficiaries or for the payment of reasonable expenses of administering the Plan.

10.04. TAX YEAR.

Although the Employers may have different tax years, the Plan Year which is the calendar year, is the tax year for this Plan and any Trust Fund.

ARTICLE XI  
GENERAL

11.01. PLAN CREATES NO SEPARATE RIGHTS.

The establishment and existence of the Plan, Trust

Agreements and Trust Fund does not give a person any legal or equitable right against:

- (a) an Employer;
- (b) any officer, director, Employee or other agent of an Employer;
- (c) any Trustee or any Co-Trustee;
- (d) the Advisory Committee or any member of the Advisory Committee.

The Plan and Trust Agreements create no employment rights and do not modify the terms of an Employee's or a Member's employment. The Plan and Trust Agreements are not contracts between an Employer and any Employee, and the Plan is not an inducement for anyone's employment.

11.02. DELEGATION OF AUTHORITY.

Cone's acts may be accomplished by any person with authorization from the Board of Directors. Any other Employer's acts may be accomplished by an person with authorization from that Employer's board.

11.03. LIMITATION OF LIABILITY.

- (a) A Fiduciary is not subject to suit or liability in connection with this Plan or the Trust Agreement or their operation, except according to this

11.03. LIMITATION OF LIABILITY continued:

Section 11.03.

- (b) Each member of the Advisory Committee, each Trustee and Co-Trustee and any person employed by an Employer is liable only for that person's own acts or omissions.
- (c) Each member of the Advisory Committee, each Trustee and Co-Trustee, or any person employed by an Employer is not liable for the acts or omissions of another without knowing participation in the acts or omissions, except by action to conceal an action or omission of another while knowing the act or omission is a breach, or by a failure to properly perform duties that enables the breach to occur, or with knowledge of the breach, failure to make reasonable efforts to remedy the breach.
- (d) One Trustee or Co-Trustee must use reasonable care to prevent another from committing a breach; but all Trustees and Co-Trustees need not jointly manage or control the assets, because specific duties have been allocated among them in this Plan or the Trust Agreements. A Trustee or Co-Trustee is not liable for actions or omissions when following the specific directions of the Advisory Committee or a duly authorized and appointed Investment Manager unless such directions are

11.03. LIMITATION OF LIABILITY continued:

improper on their face. If an Investment Manager has been properly appointed, subject to subsection (c), a Trustee or Co-Trustee is not liable for the acts of the Investment Manager and does not have any investment responsibility for assets under the management of the Investment Manager.

(e) A Fiduciary is not liable for the actions of another to whom responsibility has been allocated or delegated according to this Plan and the Trust Agreements, unless as the allocating or delegating Fiduciary it was imprudent in making the allocation or delegation or in continuing the allocation or delegation.

(f) Each Employee releases all members of the Investment Committee and the Advisory Committee, each Trustee and Co-Trustee, each Employer, all officers and agents of each Employer, and all agents of Fiduciaries from any and all liability or obligation, to the extent release is consistent with the provisions of this Section.

11.04. LEGAL ACTION.

Except as explicitly permitted by statute, in any action or proceeding involving the Plan, a Trust Agreement, a Trust Fund, any property held as part of a Trust Fund, or the administration of the Plan or Trust Fund, the

11.04. LEGAL ACTION continued:

Advisory Committee, the appropriate Trustee or Co-Trustees and Cone are the only necessary parties. No Employees or former Employees or their Beneficiaries or any person having or claiming to have an interest in any Trust Fund, or under the Plan is entitled to notice of process. Any final judgment that is not appealed or appealable that may be entered in an action or proceeding is binding and conclusive on the parties to this Plan and all persons having or claiming to have any interest in any Trust Fund or under the Plan.

11.05. BENEFITS SUPPORTED ONLY BY TRUST.

Except as otherwise provided by statute, a person having any claim under the Plan must look solely to the assets of the Trust Fund for satisfaction.

11.06. DISCRIMINATION.

The Advisory Committee must administer the Plan in a uniform and consistent manner for all Members and may not permit discrimination in favor of Highly Compensated Employees.

11.07. MODEL AMENDMENT IV.

The following sections of Model Amendment IV (IRS Notice 87-2) are hereby incorporated in the



Supplemental Retirement Plan of Cone Mills Corporation  
for the Plan Years beginning January 1, 1987 and  
January 1, 1988: I, II, III, IV, V, VI, VIII, IX, X, XI  
AND XII.

11.08. ENTIRE PLAN.

This document incorporates in their entirety  
the Plan, the SRP and the EEP and supersedes  
and replaces all prior plan documents. It  
may not be amended, modified or supplemented  
except by a written instrument that is  
identified as an amendment to the Plan, the  
SRP or the EEP, that is approved or  
authorized by the Board of Directors of Cone  
Mills Corporation and that is signed by an  
officer of the Corporation.

SIGNATURE PAGE

As evidence of the adoption of the Plan, as amended and restated,  
for itself and by all Affiliated Companies, Cone Mills  
Corporation has caused this document to be signed by its duly  
authorized officer on December 15, 1993.

Cone Mills Corporation

By:

Lacy G. Baynes

Title: Vice President

EXHIBIT 5

January 18, 1994

Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, D. C. 20549

Re: Cone Mills Corporation  
Registration Statement on Form S-8

Gentlemen:

I am General Counsel of Cone Mills Corporation, a North Carolina corporation (the "Company"), and have represented the Company in connection with the registration under the Securities Act of 1933, as amended (the "1933 Act"), of (i) 250,000 shares of Common Stock, par value \$.10 per share, of the Company issuable pursuant to the Company's Employee Equity Plan - Hourly (the "Plan") and (ii) an indeterminate amount of interests to be offered or sold pursuant to the Plan.

I have examined the Company's Restated Charter and all amendments thereto, its Bylaws as amended and such of its corporate records as I deemed necessary for purposes of rendering this opinion, the Plan and related documents, the Registration Statement on Form S-8 relating to the foregoing registration ("Registration Statement") and filed with the Securities and Exchange Commission and the form of certificate of Common Stock. Based on such review, I am of the following opinions:

1. The establishment of the Plan and the interests in the Plan have been duly authorized by all necessary corporate action on the part of the Company, and the interests in the Plan will be valid and subsisting under the Plan and fully paid and nonassessable.
2. All necessary corporate actin has been taken to authorize the sale and issuance of the shares of Common Stock to be sold by the Company and such shares, when

and if issued and paid for as contemplated by the Plan,  
will be validly issued, fully paid and nonassessable.

Securities and Exchange Commission  
January 18, 1994  
Page 2

I hereby consent to the use of this opinion as Exhibit 5 of the Registration Statement and to the reference to my name under the caption "Interest of Named Experts and Counsel" therein. I do not, however, thereby admit that I am within the category of persons whose consent is required under Section 7 of the 1933 Act or the rules and regulations of the Securities and Exchange Commission promulgated thereunder.

Very truly yours,

CONE MILLS CORPORATION

Neil W. Koonce  
General Counsel

NWK/eg

EXHIBIT 23.2

CONSENT OF  
ROBINSON, BRADSHAW & HINSON, P.A.

We hereby consent to the incorporation by reference into this Registration Statement on Form S-8 of the references to our firm and opinion with respect to the litigation between Elmore et al. and Cone Mills Corporation (the "Company") et al. in the following:

- (1) the Annual Report on Form 10-K of Cone Mills Corporation for the fiscal year ending January 3, 1993 (dated March 25, 1993), as amended by Form 8, Amendment No. 1 (dated April 30, 1993);
- (2) the Quarterly Report on Form 10-Q of Cone Mills Corporation for the quarter ended April 4, 1993 (dated May 11, 1993); and
- (3) the Quarterly Report on Form 10-Q of Cone Mills Corporation for the quarter ended July 4, 1993 (dated August 16, 1993).

This consent is limited to the foregoing reports in each case as of the date thereof, and shall not be deemed in any way to constitute an update or restatement of our legal opinion referred to therein.

ROBINSON, BRADSHAW & HINSON, P.A.

Charlotte, North Carolina  
January 12, 1994

EXHIBIT 23.3

CONSENT OF INDEPENDENT AUDITOR

We hereby consent to the incorporation by reference into this Registration Statement on Form S-8 our report, date February 19, 1993, which appears on page 27 of the Annual Report on Form 10-K of Cone Mills Corporation for the fiscal year ended January 3, 1993.

McGLADREY & PULLEN

Greensboro, North Carolina  
January 18, 1994