

**INTERNATIONAL ASSOCIATION OF  
HEAT & FROST INSULATORS AND  
ALLIED WORKERS LOCAL NO. 13  
PENSION PLAN**

**RULES AND REGULATIONS**

*As Amended and Restated Effective January 1, 2014*

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**ARTICLE I****INTRODUCTION; DEFINITIONS; PARTICIPATION****1.1 INTRODUCTION**

The purpose of this Pension Plan is to set forth the rules concerning eligibility for benefits and the amount of benefits which will be payable to eligible Employees and their beneficiaries from the Trust. The Pension Plan will be known as the INTERNATIONAL ASSOCIATION OF HEAT & FROST INSULATORS AND ALLIED WORKERS LOCAL NO. 13 PENSION PLAN. This Plan is a continuation of the Plan adopted effective January 1, 1962 and subsequently amended. The Plan is hereby amended and restated effective January 1, 2014 except to the extent an earlier or later effective date is expressly provided for with respect to a particular provision hereof. Unless otherwise stated with respect to a particular provision hereof, the provisions of this Plan, as so amended and restated, will apply only to an Employee in Covered Service on or after the applicable effective date. Any retired Employee receiving benefits prior to January 1, 2014 or any former Employee who terminated Covered Service prior to January 1, 2014 will have his rights to benefits determined under the Plan as in effect when his Covered Service terminated and will not be entitled to any additional benefits under the amended and restated Plan as set forth herein unless the Trustees specifically provide otherwise.

**1.2 DEFINITIONS**

(A) The following words and phrases will have the meanings stated below unless a different meaning is plainly required by the context:

(1) The term "Act" or "ERISA" as used herein means the Employee Retirement Income Security Act of 1974, any amendments as may from time to time be made, and any regulations promulgated pursuant to the provisions of said Act.

(2) The term "Actuarial Equivalent" or "Actuarially Equivalent" as used herein means equality in value of the aggregate amounts expected to be received under different forms of payment. Actuarially Equivalent amounts will be determined by discounting benefit payments for mortality and interest based on the following:

(a) Interest: 7.00% per annum compounded annually.

(b) Mortality: The RP-2000 Mortality Table for annuitants with male rates used for the Employee and female rates used for a beneficiary or joint annuitant.

(c) For the purposes of determining the amount of present values and whether, under this Paragraph 1.2(A)(2), the present value of:

(i) a Participant's vested accrued benefit,

(ii) a Qualified Joint and Survivor Annuity, within the meaning of Code section 417(b), or

(iii) a Qualified Pre-Retirement Survivor Annuity within the meaning of Code section 417(c)(1)

exceeds \$1,000, the present value of any such benefit or annuity will be calculated by using an interest rate equal to the Applicable Interest Rate and by using a mortality table equal to the Applicable Mortality Table.

- (d) In no event will the present value of any such benefit or annuity determined under Subparagraph 1.2(A)(2)(c) be less than the present value of such benefit or annuity determined under Subparagraphs 1.2(A)(2)(a) and 1.2(A)(2)(b).
- (e) For purposes of this Paragraph 1.2(A)(2), "Applicable Interest Rate" means the adjusted first, second, and third segment rates described in Code section 417(e)(3)(C) as specified by the Commissioner, selected for the "lookback month" for the "stability period." The "lookback month" is the second calendar month preceding the "stability period." The "stability period" is the Plan Year which contains the date as of which the present value is being determined.
- (f) For purposes of this Paragraph 1.2(A)(2), "Applicable Mortality Table" means the mortality table prescribed from time to time by the Secretary of the Treasury as applicable for purposes of Code section 417(e)(3).

- (3) The term "Annuity Starting Date" as used herein means, with respect to any Participant, the first day of the first period for which an amount is paid as an annuity or, in the case of a benefit not payable in the form of an annuity, the first day on which all events have occurred which entitles the Participant to such benefit.
- (4) The term "Code" or "IRC" as used herein means the Internal Revenue Code of 1986, including any amendments or any reenactment or restatement thereto.
- (5) The term "Collective Bargaining Agreement" as used herein means any collective bargaining agreement between an Employer and the Union and any extension, amendment, modification, renewal or successor thereof, which requires Employers to make payments to the Trust.
- (6) The term "Compensation" as used herein means, with respect to an Employee for a particular calendar year, all salary or wages paid to the Employee by all Employers which are subject to withholding for purposes of federal income taxes. In addition, Compensation will include elective amounts that are not includable in the gross income of the Employee by reason of Code sections 125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 403(b), 414(h)(2), and 457(b).

Back pay (within the meaning of regulation section 1.415(c)-2(g)(8)) will be treated as Compensation for the Limitation Year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

With respect to Limitation Years beginning on or after July 1, 2007, Compensation for a Limitation Year will also include Compensation paid by the later of 2½ months after an Employee's severance from employment with the Employer or the end of the Limitation Year that includes the date of the Employee's severance from employment with the Employer if:

- (a) the payment is regular compensation for services during the Employee's regular working hours or compensation for services outside the Employee's regular working hours (such as overtime or a shift differential), commissions, bonuses, or other similar payments and, absent a severance from employment, the payments would have been paid to the Employee while the Employee continued in employment with the Employer; or
- (b) the payment is for unused accrued bona fide sick, vacation, or other leave that the Employee would have been able to use if employment had continued; or
- (c) the payment is received by the Employee pursuant to a nonqualified unfunded deferred compensation plan and would have been paid at the same time if employment had continued, but only to the extent includable in gross income.

Any payments not described above will not be considered Compensation if paid after severance from employment, even if they are paid by the later of 2½ months after the date of severance from employment or the end of the Limitation Year that includes the date of severance of employment.

In addition to other applicable limitations set forth in the Plan and notwithstanding any other provisions of the Plan to the contrary, for Plan Years beginning on or after January 1, 2002, the annual Compensation of each Employee taken into account under the Plan will not exceed \$200,000 as adjusted by the Commissioner for increases in the cost of living in accordance with Code section 401(a)(17)(B) (the “compensation limit”). The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which Compensation is determined (the “determination period”) beginning in such calendar year. If a determination period consists of fewer than 12 months, the compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period and the denominator of which is 12. For Plan Years beginning on or after January 1, 2002, any reference in this Plan to the limitation under Code section 401(a)(17) will mean the compensation limit set forth in this Paragraph 1.2(A)(6).

If Compensation for any prior determination period is taken into account in determining an Employee’s benefits accruing in the current Plan Year, the compensation for that prior determination period is subject to the compensation limit in effect for that prior determination period. For this purpose, for determination periods beginning before the first day of the first Plan Year beginning on or after January 1, 2002, the compensation limit is \$150,000, as adjusted by the Commissioner for increases in the cost of living in accordance with Code section 401(a)(17)(B) for determination periods beginning during the period January 1, 1994 through December 31, 2001.

- (7) The term “Contributions” as used herein means the payment required to be made by an Employer on behalf of an Employee to the Trustees and to the Trust Fund in amounts and in a manner set forth in the Collective Bargaining Agreement or Other Written Agreement in effect from time to time.
- (8) The term “Controlled Group” as used herein means any corporation which is a member of a controlled group of corporations with an Employer (within the meaning of Code section 1563(a), as amended, determined without regard to Code sections 1563(a)(4) and 1563(e)(3)(C)) or a trade or business (whether or not incorporated) which is under common control with an Employer within the meaning of Code section 414(c).
- (9) The term “Covered Service” as used herein means any employment during which the Employee has been employed by an Employer who makes or is required to make Contributions with respect to such employment to the Fund under the terms of a Collective Bargaining Agreement or Other Written Agreement. After 1996, the term “Covered Service” includes work performed pursuant to a Collective Bargaining Agreement between the Union and an Employer for which no contributions are made or required to be made under the terms of said Collective Bargaining Agreement.
- (10) The term “Eligible Spouse” as used herein will mean a person of either gender who is the husband or wife to whom the Employee was married on the earlier of the Employee’s Annuity Starting Date or the Employee’s date of death; provided, however, the term “Eligible Spouse” will exclude a spouse by civil union and any other spouse where, in any case, the marriage cannot be evidenced by a duly-constituted marriage certificate issued by the appropriate state or other jurisdiction where the union occurred.
- (11) The term “Employee” or “Employees” as used herein means:
  - (a) Any employee represented by the Union and working for an Employer as defined herein and with respect to whose employment an Employer is required to make Contributions into the Trust Fund pursuant to a Collective Bargaining Agreement or Other Written Agreement between an Employer and the Union;

- (b) After 1996, any employee performing work pursuant to a Collective Bargaining Agreement between the Union and an Employer for which no contributions are made or required to be made under the terms of said Collective Bargaining Agreement; and
- (c) An employee of the Union or of an Employer who has been proposed for benefits under the Trust Fund by the Union or the Employer and who has been accepted by the Trustees and for whom the Union or Employer agrees in writing to contribute to the Trust Fund pursuant to the terms of an Other Written Agreement.

(12) The term "Employer" as used herein means:

- (a) An Employer who has duly executed or may execute or is bound by a Collective Bargaining Agreement with the Union providing for the making of payments to the Trust Fund with respect to Employees represented by the Union;
- (b) The Union which, for the purpose of making the required Contributions into the Trust Fund, will be considered as the employer of the employees of the Union for whom the Union contributes to the Trust Fund;
- (c) An Employer who, while not recognizing the Union as the representative of its employees, is bound by an Other Written Agreement to make Contributions on behalf of certain of its employees; and
- (d) The Trustees of this Trust Fund who, at their election, will make like payments or contributions to the Trust Fund on behalf of the employees of the Trust Fund.

Owners or partners of sole proprietorships or partnerships, respectively, may not remit Contributions in their behalf. Employers described in this Paragraph will, by making payments to the Trust Fund pursuant to such Collective Bargaining Agreements or Other Written Agreements, be deemed to have accepted and be bound by the Trust Agreement.

(13) The term "Hour Worked" as used herein means:

- (a) Each hour for which an Employee is paid or entitled to payment for the performance of duties for an Employer. These hours will be credited to the Employee for the Plan Year in which the duties are performed;
- (b) Each hour for which an Employee is paid or entitled to payment by an Employer on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, incapacity (including disability), layoff, jury duty, military duty, or leave of absence. Hours under this Subparagraph 1.2(A)(13)(b) will be calculated and credited pursuant to section 2530.200b-2 of the Department of Labor regulations which is incorporated herein by this reference; and
- (c) Each hour for which back pay, irrespective of mitigation of damages, is awarded or agreed to by an Employer, if credit for such hour had not been accrued previously in Subparagraphs 1.2(A)(13)(a) or 1.2(A)(13)(b) above. These hours will be credited to the Employee for the Plan Year or Plan Years to which the award or agreement pertains rather than the Plan Year in which the award, agreement, or payment is made.

Notwithstanding Subparagraph 1.2(A)(13)(b) above, no more than 501 Hours Worked will be credited under Subparagraph 1.2(A)(13)(b) to an Employee on account of any single continuous period during which the Employee performs no duties (whether or not such period occurs within a single Plan Year).

An hour for which an Employee is directly or indirectly paid or entitled to payment on account of a period during which no duties are performed will not be credited to the Employee if such payment is made or due under a plan maintained solely for the purpose of complying with applicable workmen's compensation, unemployment compensation, or disability insurance laws. Hours Worked will not be credited for payment which solely reimburses an Employee for medical or medically-related expenses incurred by the Employee. No Employee will accrue an Hour Worked for employment with any partnership or proprietorship while he is a partner or proprietor.

The crediting of "Hours Worked" to Plan Years will be determined under Department of Labor regulations section 2530.200b-2(c).

- (14) The term "Limitation Year" as used herein means the calendar year.
- (15) The term "Normal Form of Payment" as used herein means a monthly Retirement Income payable until the death of the Pensioner receiving such monthly Retirement Income, except, in the event the Pensioner dies before he has received such benefit for a period of 60 months, the same monthly Retirement Income will be paid to the beneficiary until a total of 60 monthly payments have been made.
- (16) The term "One-Year Break-in-Service" as used herein means a Plan Year during which an Employee fails to earn at least 435 Hours Worked.

An Employee will be deemed to have incurred a One-Year Break-in-Service as of the last day of any Plan Year during which he meets the requirements of this Paragraph 1.2(A)(16).

Solely for purposes of determining whether a One-Year Break-in-Service has occurred, an Employee who is absent from work for maternity or paternity reasons will receive credit for the Hours Worked which would otherwise have been credited to such individual but for such absence or, in any case in which such hours cannot be determined, eight Hours Worked per day for such absence. Such hours will be credited only if such absence begins in a Plan Year beginning on or after January 1, 1985. For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence by reason of the pregnancy of the individual, by reason of the birth of a child of the individual, by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or for purposes of caring for such child for a period beginning immediately following such birth or placement.

The Hours Worked credited under this Paragraph for maternity or paternity reasons will be credited in the Plan Year in which the absence begins, if the crediting is necessary to prevent a One-Year Break-in-Service in that Plan Year, or in the following Plan Year, in all other cases.

Also solely for purposes of determining whether a One-Year Break-in-Service has occurred, an Employee who is absent from work for any of the following reasons will receive credit for the Hours Worked which would otherwise have been credited to such individual but for such absence or, in any case in which such hours cannot be determined, eight Hours Worked per day for such absence:

- (a) employment immediately following Covered Service with an Employer in a category of work for which Contributions to this Plan are not required to be made;
- (b) after 1992, disability such that the Employee has been unable to work in Covered Service for 60 consecutive days during the Plan Year;
- (c) a qualified leave of absence granted by an Employer pursuant to the Family and Medical Leave Act of 1993; and

(d) Qualified Military Service or Qualified Uniformed Service, to the extent that Vested Service is not granted for such Qualified Military Service or Qualified Uniformed Service.

(17) The term "Other Written Agreement" as used herein means any agreement, law, legal ordinance, or legal resolution, other than a Collective Bargaining Agreement, which requires an Employer to make payments to the Trust on behalf of Employees.

(18) The term "Participant" as used herein means any individual who participates in the Plan as provided in Section 1.3.

(19) The term "Pension Plan" or "Plan" as used herein means the plan, program, method, rules, and procedures for the payment of benefits from the Trust Fund established by the Agreement and Declaration of Trust and amendments thereto. The Employer Identification Number is 59-1086811. The Plan Number is 001.

(20) The term "Pensioner" as used herein means a person who is actively receiving pension benefits under this Pension Plan either as a former Employee or as the beneficiary of a former Employee, except that the term Pensioner will not include persons who are receiving pension benefits under an annuity contract purchased pursuant to Article VIII.

(21) The term "Plan Year" as used herein means any 12-month period from January 1<sup>st</sup> through December 31<sup>st</sup>. The first Plan Year will be the period January 1, 1962 through December 31, 1962.

(22) The term "Qualified Joint and Survivor Annuity" as used herein means an annuity for the life of the Participant with a survivor annuity for the life of the Participant's Eligible Spouse that is 50 percent of the amount that is payable during the joint lives of the Participant and Eligible Spouse and, in the case of benefits payable other than pursuant to Article VIII, that is the Actuarial Equivalent of the Normal Form of Payment. The optional form of payment described in Option 3 of Subsection 5.3(A) herein will serve as the "Optional Qualified Survivor Annuity" required to be offered pursuant to the requirements of the Pension Protection Act of 2006. Any reference in this Plan to the Qualified Joint and Survivor Annuity will be treated as if such reference includes the Qualified Optional Survivor Annuity described in this Paragraph 1.2(A)(22).

(23) The term "Qualified Military Service" as used herein means any military service required to be recognized under the Plan pursuant to any applicable federal law or regulations that were in effect prior to the enactment of the Uniformed Services Employment and Reemployment Rights Act of 1994 and which required the recognition of certain military service with respect to individuals who returned to active employment with an Employer prior to December 12, 1994.

(24) The term "Qualified Uniformed Service" as used herein means any uniformed service required to be recognized under the Plan pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994 and any regulations promulgated thereunder with respect to individuals who return to active employment with an Employer on or after December 12, 1994.

(25) The term "Retirement Income" as used herein means the benefit the Pensioner receives under this Plan, except that Retirement Income will not include any benefit payable pursuant to Article VIII.

(26) The term "Trust", "Trust Fund", "Pension Fund", or "Fund" as used herein means the entire trust estate of the International Association of Heat & Frost Insulators and Allied Workers Local No. 13 Pension Fund as it may, from time to time, be constituted, including, but not limited to, all funds received in the form of Contributions, together with all contracts entered into by the Trustees (including dividends, interest, refunds, and other sums payable to the Trustees on account of such contracts), all investments made and held by the Trustees, all income, increments, earnings, and profits therefrom, and any and all other

property or funds received and held by the Trustees by reason of their acceptance of the Agreement and Declaration of Trust.

- (27) The term "Trust Agreement" or "Agreement and Declaration of Trust" as used herein means the RESTATED AGREEMENT AND DECLARATION OF TRUST, including all amendments and modifications as may from time to time be made.
- (28) The term "Trustees" or "Board of Trustees" as used herein means the Trustees nominated and appointed in the Agreement and Declaration of Trust, which these rules form a part thereof, and any successor Trustee designated in the manner provided therein. The Trustees collectively will be the "Administrator" of this Fund as that term is used in the Act.
- (29) The term "Union" or "Local Union" as used herein means Local No. 13 of the International Association of Heat & Frost Insulators and Allied Workers, its successors and assigns, and such other union or unions which have a Collective Bargaining Agreement with an Employer where the union and Employer may from time to time be accepted to participate and become a party to the Trust Agreement under such terms and conditions as may be required by the Trustees.

(B) Pronouns of one gender used in the Plan also refer to similar pronouns of the other gender unless otherwise qualified by the context. Words in the singular or plural form used in the Plan will be construed as though they were also used in the other form unless otherwise qualified by the context. The terms "herein" and "hereunder" and similar terms refer to this document, unless otherwise qualified by the context.

(C) The following terms and expressions are defined in the Sections indicated:

- (1) "Credited Service": Section 2.1
- (2) "Past Credited Service": Section 2.1
- (3) "Future Credited Service": Section 2.1
- (4) "Vested Service": Section 2.2
- (5) "Past Vested Service": Section 2.2
- (6) "Future Vested Service": Section 2.2
- (7) "Vested Retirement Income": Section 2.5
- (8) "Vested Percentage": Section 2.5
- (9) "Normal Retirement Age": Section 3.1
- (10) "Normal Retirement Date": Section 3.1
- (11) "Normal Retirement Income": Section 3.1
- (12) "Early Retirement Date": Section 3.2
- (13) "Early Retirement Income": Section 3.2
- (14) "Late Retirement Date": Section 3.3

- (15) "Late Retirement Income": Section 3.3
- (16) "Disability Retirement Income" or "Temporary Disability Income": Section 3.4
- (17) "Totally and Permanently Disabled": Section 3.4
- (18) "Qualified Pre-Retirement Survivor Annuity": Section 4.2
- (19) "Jurisdiction of the Plan": Section 5.5
- (20) "Required Beginning Date": Section 5.5

### **1.3 PARTICIPANT**

- (A) The term "Participant" as used herein means, with respect to any particular Plan Year:
  - (1) any Pensioner;
  - (2) any person entitled to receive benefits in the future as the beneficiary of a deceased Participant;
  - (3) any person who has completed the requirements for a Vested Retirement Income;
  - (4) any person who has a vested interest in an Individual Account as described in Article VIII;
  - (5) any person who has earned at least 435 Hours Worked within such Plan Year; and
  - (6) any person who has earned at least 435 Hours Worked within a preceding Plan Year and who, as of the last day of the immediately preceding Plan Year, has not incurred a One-Year Break-in-Service.
- (B) An Employee will first become a Participant as of the beginning of the Plan Year during which he first satisfies the requirements set forth in Subsection 1.3(A).
- (C) For an Employee who has not completed the requirements for a Vested Retirement Income and who does not have a vested interest in an Individual Account as described in Article VIII, participation will cease as of the last day of the Plan Year in which he incurs a One-Year Break-in-Service. An Employee whose participation ceases pursuant to this Subsection 1.3(C) will be deemed to have received the present value of his accrued Retirement Income as of the date he incurs a One-Year Break-in-Service. He will immediately again become a Participant of the Plan as of the date he is reemployed in Covered Service provided that he completes 435 Hours Worked within a Plan Year.
- (D) No Credited Service or Vested Service under this Plan will be granted for any service prior to the Plan Year in which an Employee becomes a Participant except as set forth in Subsections 2.1(A), 2.1(C), 2.2(A), and 2.2(C) and Section 2.3.
- (E) Every Employee and Participant will be deemed conclusively for all purposes to have assented to the terms of the Plan and will thereby be bound with the same force and effect as if he had executed it as a party thereto.

**ARTICLE II****CREDITING OF SERVICE; AMOUNT OF RETIREMENT INCOME**

There are four types of service which will be credited to an Employee under this plan: (1) Past Credited Service; (2) Future Credited Service; (3) Past Vested Service; and (4) Future Vested Service. Past Credited Service and Past Vested Service apply to time prior to January 1, 1962. Future Credited Service and Future Vested Service apply to Hours Worked since December 31, 1961.

**2.1 CREDITED SERVICE**

The amount of monthly Retirement Income to which an Employee may become entitled under the Plan is based on his total Credited Service, which is equal to the sum of: (A) Past Credited Service and (B) Future Credited Service. Credited Service is also subject to the loss of service rules set forth in Section 2.4 herein.

**(A) Past Credited Service**

- (1) Completed half-years of Past Credited Service will be granted to each Employee for each year of continuous employment in jobs covered by the terms and conditions of a collective bargaining agreement with the Union immediately prior to January 1, 1962.
- (2) In order to qualify for Past Credited Service, the Employee must have been a Participant of this Plan as of January 1, 1962.
- (3) It is the responsibility of the Employee claiming Past Credited Service to prove the existence of any of the qualifying factors relating to Past Credited Service and he must furnish in writing such information and proof as the Trustees may determine.

**(B) Future Credited Service**

- (1) Future Credited Service is equal to the number of years of Credited Service earned on and after January 1, 1962, based on the number of Hours Worked in each Plan Year.

One full year of Future Credited Service will be granted for each Plan Year in which the Employee earns at least 2,000 Hours Worked.

For Plan Years prior to 1976, Future Credited Service will be granted for less than 2,000 Hours Worked in accordance with the following table:

Hours Worked During Plan Year	Future Credited Service for Plan Year
Less than 1,100	0.0 year
At least 1,100, but less than 1,200	0.5 year
At least 1,200, but less than 1,300	0.6 year
At least 1,300, but less than 1,400	0.7 year
At least 1,400, but less than 1,500	0.8 year
At least 1,500, but less than 1,600	0.9 year
At least 1,600	1.0 year

For the 1976 Plan Year, Future Credited Service will be granted for less than 2,000 Hours Worked in accordance with the following table:

Hours Worked During Plan Year	Future Credited Service for Plan Year
Less than 1,000	0.0 year
At least 1,000, but less than 1,100	0.4 year
At least 1,100, but less than 1,200	0.5 year
At least 1,200, but less than 1,300	0.6 year
At least 1,300, but less than 1,400	0.7 year
At least 1,400, but less than 1,500	0.8 year
At least 1,500, but less than 1,600	0.9 year
At least 1,600	1.0 year

For Plan Years after 1976, Future Credited Service will be granted for less than 2,000 Hours Worked in accordance with the following table:

Hours Worked During Plan Year	Future Credited Service for Plan Year
Less than 700	0.0 year
At least 700, but less than 800	0.1 year
At least 800, but less than 900	0.2 year
At least 900, but less than 1,000	0.3 year
At least 1,000, but less than 1,100	0.4 year
At least 1,100, but less than 1,200	0.5 year
At least 1,200, but less than 1,300	0.6 year
At least 1,300, but less than 1,400	0.7 year
At least 1,400, but less than 1,500	0.8 year
At least 1,500, but less than 1,600	0.9 year
At least 1,600	1.0 year

(2) For each Plan Year commencing on or after January 1, 1962, an Employee who is credited with one year of Future Vested Service, but fails to be credited with any Future Credited Service under Paragraph 2.1(B)(1) above, will nevertheless receive Future Credited Service for that Plan Year equal to 0.1 of a year of Future Credited Service multiplied by the ratio of the Employee's number of Hours Worked during the Plan Year to 700, where the maximum value of the ratio is one.

(C) An Employee will also receive Credited Service for Qualified Military Service and Qualified Uniformed Service to the extent that such credit is required pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994 or its predecessor statutes.

## 2.2 VESTED SERVICE

Eligibility for benefits is based on an Employee's total Vested Service, which is equal to the sum of: (A) Past Vested Service and (B) Future Vested Service. Vested Service is also subject to the loss of service rules set forth in Section 2.4 herein.

### (A) Past Vested Service

Past Vested Service is equal to Past Credited Service as determined under Subsection 2.1(A).

(B) Future Vested Service

For Plan Years prior to 1989, Future Vested Service will be granted based on the number of Hours Worked in accordance with the following table:

Hours Worked During Plan Year	Future Vested Service for Plan Year
Less than 870	0.000 year
At least 870	1.000 year

For Plan Years after 1988, Future Vested Service will be granted based on the number of Hours Worked in accordance with the following table:

Hours Worked During Plan Year	Future Vested Service for Plan Year
Less than 700	0.000 year
At least 700	1.000 year

(C) An Employee will also receive Vested Service for Qualified Military Service and Qualified Uniformed Service to the extent that such credit is required pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994 or its predecessor statutes.

### **2.3 VESTED SERVICE AND PARTICIPATION CREDIT FOR NON-COVERED SERVICE**

An Employee who has Covered Service with an Employer after December 31, 1975 will receive Vested Service and credit for becoming a Participant (but not Credited Service) for service with an Employer both as an employee and as a leased employee as that term is defined in Code section 414(n) (including credit for service as an employee or as a leased employee with other related employers (while related) which are members of a Controlled Group) in a category of work for which Contributions to the Plan are neither made nor required to be made, provided:

- (A) such service precedes or follows the Covered Service and no quit, discharge, or retirement occurs between the Covered Service and the non-covered service; and
- (B) no Vested Service or Credited Service will be given under this Section 2.3 for periods of service prior to the date an employer becomes an Employer as defined in Paragraph 1.2(A)(12) hereof. Credit for such service will be governed exclusively by Subsections 2.1(A) and 2.2(A) hereof.

### **2.4 LOSS OF CREDITED SERVICE AND VESTED SERVICE**

- (A) An Employee's Vested Service and Credited Service as of December 31, 1975 will be established based upon the Plan provisions in effect on that date, including those Plan provisions relating to the loss of Vested Service and Credited Service.
- (B) After December 31, 1975, an Employee who incurs a One-Year Break-in-Service during a Plan Year will lose his total Vested Service and Credited Service to date unless the Employee meets the requirements set forth in at least one of Paragraphs 2.4(B)(1), 2.4(B)(2), or 2.4(B)(3) below, whichever are applicable to such Plan Year.
  - (1) The Employee has earned at least five years of Vested Service;

- (2) The number of consecutive One-Year Breaks-in-Service incurred by the Employee between the last day of the Plan Year preceding the Plan Year in which he first incurred a One-Year Break-in-Service and the last day of the current Plan Year is less than his number of years of Vested Service; or
- (3) For Plan Years beginning after December 31, 1984, the number of consecutive One-Year Breaks-in-Service incurred by the Employee between the last day of the Plan Year preceding the Plan Year in which he first incurred a One-Year Break-in-Service and the last day of the current Plan Year is less than five.

## **2.5 VESTED RETIREMENT INCOME**

- (A) An Employee will become entitled to a Vested Retirement Income upon the termination of his employment with all Employers provided that his Vested Percentage is greater than 0%. The Vested Retirement Income, payable at Normal Retirement Date, to which any Employee may become entitled will be computed in accordance with Subsection 2.5(C) below. Except as specifically provided in this Section 2.5, a Participant's Vested Retirement Income will be payable in accordance with the provisions of Section 3.1.

In lieu of receiving a Vested Retirement Income payable at Normal Retirement Age, a Participant may elect to convert his Vested Retirement Income to an Early Retirement Income or a Late Retirement Income which is payable either before or after his Normal Retirement Date, respectively, in accordance with the provisions of Sections 3.2 or 3.3, whichever is applicable.

- (B) It will be impossible for any Participant who is either voluntarily or involuntarily terminated to forfeit his Vested Retirement Income after meeting the requirements for a Vested Retirement Income.
- (C) Vested Retirement Income will be determined as the product of (1) multiplied by (2), where (1) and (2) are defined as follows:
  - (1) the Normal Retirement Income earned by an Employee determined in accordance with the provisions of Section 3.1 herein; and
  - (2) the applicable Vested Percentage as defined in Subsection 2.5(D) below.
- (D) Vested Percentage means:
  - (1) for an Employee who has earned at least five years of Vested Service, 100%;
  - (2) for an Employee who has attained his Normal Retirement Age and who does not incur a One-Year Break-in-Service with respect to the Plan Year during which he attains his Normal Retirement Age and with respect to the immediately preceding Plan Year, 100%; and
  - (3) for any other Employee, 0%.

## **2.6 AMOUNT OF RETIREMENT INCOME**

- (A) The monthly Retirement Income of an Employee will be that amount determined as the sum of (1) and (2), where (1) and (2) are defined as follows:
  - (1) the Employee's Credited Service earned prior to January 1, 1981 multiplied by the applicable Benefit Level from the following table:

Effective Date	Benefit Level
Prior to January 1, 1969	\$ 3.25
January 1, 1969 through December 31, 1970	4.25
January 1, 1971 through June 30, 1974	5.00
July 1, 1974 through February 27, 1977	10.00
February 28, 1977 through December 31, 1980	12.75
January 1, 1981 through December 31, 1989	15.69
January 1, 1990 through January 1, 1992	16.31
January 2, 1992 through December 31, 1993	17.21
January 1, 1994 and thereafter	17.73

(2) the Contributions made or required to be made on behalf of the Employee after December 31, 1980 multiplied by the applicable Benefit Percentage from the following table:

Effective Date	Benefit Percentage
Prior to January 1, 1988	1.78%
January 1, 1988 through December 31, 1989	2.00%
January 1, 1990 through January 1, 1992	2.08%
January 2, 1992 through December 31, 1993	2.19%
January 1, 1994 through December 31, 1998	2.26%
January 1, 1999 and thereafter	2.30%

The applicable Benefit Percentage is zero with respect to Contributions made or required to be made during any Plan Year after 1984 in which the Employee earns less than 435 Hours Worked unless such Employee is credited with one year of Future Vested Service for that Plan Year.

With respect to any Plan Year beginning after 1996, the minimum monthly benefit earned during such Plan Year by an Employee who performs work pursuant to a Collective Bargaining Agreement between the Union and an Employer for which no contributions are made or required to be made under the terms of said Collective Bargaining Agreement for a portion of such year will be \$1.00.

Notwithstanding any other provisions of the Plan to the contrary, the Benefit Percentage that will be applied to the Contributions made or required to be made on behalf of an Employee for the period after August 31, 2009 will be equal to 2.00% and, furthermore, the Contributions that are considered for purposes of determining benefits after August 31, 2009 pursuant to this Paragraph 2.6(A)(2) will not exceed \$3.00 per hour.

Subject to Subsection 2.6(B) below, the effective date for the applicable Benefit Level and Benefit Percentage pursuant to Paragraphs 2.6(A)(1) and 2.6(A)(2) is the earliest of the Employee's Retirement Date, the Employee's date of death, or the date as of which the Employee becomes Totally and Permanently Disabled.

(B) If an Employee fails to be credited with at least 435 Hours Worked during any Plan Year, but does not lose his total Credited Service and Vested Service to date because of the operation of Section 2.4, then the Benefit Level and Benefit Percentage applicable to the series of years of Credited Service and Vested Service accrued by that Employee prior to such Plan Year, but after any previous such Plan Year, will be the greatest of the Benefit Level and Benefit Percentage set forth in (1), (2), or (3) as follows:

- (1) the Benefit Level or Benefit Percentage, as applicable, in effect on the last day of the most recent Plan Year in which the Employee last accrued some Credited Service;
- (2) the Benefit Level or Benefit Percentage, as applicable, in effect on the date that the Employee's Disability Retirement Income or Temporary Disability Income payments become effective, provided that such Employee has earned at least one year of Vested Service during the five consecutive Plan Year period that immediately precedes the Plan Year during which the Employee's Disability Retirement Income or Temporary Disability Income payments become effective; or
- (3) in the case of an Employee who is credited with at least 435 Hours Worked during either one of two consecutive Plan Years, the Benefit Level or Benefit Percentage, as applicable, in effect on the last day of the latest such two consecutive Plan Year period.

This Paragraph 2.6(B) will not apply to the Employee's Credited Service and Contributions earned in consecutive Plan Years immediately prior to the most recent period of consecutive Plan Years during which he failed to be credited with at least 435 Hours Worked in each Plan Year if, subsequent to the most recent Plan Year in which the Employee fails to be credited with at least 435 Hours Worked, the Employee is credited with at least five consecutive years of Future Vested Service.

If the Employee earns more than the maximum allowable total Credited Service as set forth in Section 2.1, for the purposes of calculating any benefit under the Plan, the years used will be selected such that the Employee will receive the maximum benefit. This Paragraph 2.6(B) will also be applied in a similar manner in order to determine the applicable lump-sum death benefit as described in Section 4.1 herein if such lump-sum death benefit is based on the Credited Service or Vested Service of the Employee.

(C) Pensioner Increases

[Reserved]

**ARTICLE III****RETIREMENT BENEFIT PROVISIONS AND  
GOVERNMENTAL LIMITATIONS****3.1 NORMAL RETIREMENT****(A) Normal Retirement Age and Date**

- (1) The Normal Retirement Age of each Participant will be age 62.
- (2) The Normal Retirement Date of each Participant will be the first day of the month coincident with or next following the Participant's Normal Retirement Age.

**(B) Amount of Normal Retirement Income**

The monthly Normal Retirement Income of a Participant becoming eligible on his Normal Retirement Date will be an amount as set forth in Section 2.6; provided, however, that the amount otherwise determined under this Subsection 3.1(B) will be increased for retirement after age 60 as described in Subsection 3.3(B) herein.

**3.2 EARLY RETIREMENT****(A) Early Retirement Date**

An Employee or a Participant entitled to a Vested Retirement Income may retire prior to his Normal Retirement Date at any time after the first day of the month coincident with or next following the earliest of the dates set forth in (1), (2), and (3) below:

- (1) the date on which he attains age 60;
- (2) the date on which he has both attained age 55 and accumulated at least five years of Vested Service; and
- (3) the date on which he has accumulated at least 30 years of Vested Service.

Such retirement date will be known as the Participant's Early Retirement Date.

**(B) Amount of Early Retirement Income**

- (1) The monthly Early Retirement Income of a Participant electing Early Retirement will be the amount of the Normal Retirement Income, as set forth in Subsection 3.1(B), to which the Participant would be entitled if he had attained his Normal Retirement Age when his Early Retirement Income first becomes payable multiplied by an Early Retirement Reduction Factor (as defined in Paragraph 3.2(B)(2) below) to take into account the Participant's younger age and the earlier commencement of Retirement Income payments.
- (2) The Early Retirement Reduction Factor is one, reduced with respect to those Employees who have failed to earn at least 30 years of Vested Service by  $\frac{5}{12}\%$  for each month by which the Employee's Early Retirement Date precedes the first day of the month coincident with or next following the date on which the Employee attains age 60; provided, however, that the  $\frac{5}{12}\%$  reduction described in this Paragraph 3.2(B)(2) will apply to all benefits that are earned after August 31, 2009 regardless of whether the Employee has earned at least 30 years of Vested Service.

### 3.3 LATE RETIREMENT

#### (A) Late Retirement Date

A Participant may postpone the commencement of his Retirement Income payments until a date that is after his Normal Retirement Date; provided, however, that a Participant may not postpone the commencement of his Retirement Income to a date later than his Required Beginning Date as set forth in Subsection 5.5(D). Such postponed retirement date will be known as the Participant's Late Retirement Date.

#### (B) Amount of Late Retirement Income

- (1) The monthly amount of Late Retirement Income payable to a Participant will be equal to the sum of (a), (b), and (c), where (a), (b), and (c) are defined as follows:
  - (a) is the Participant's Normal Retirement Income;
  - (b) is an Actuarial Adjustment for the Plan Year which includes the Participant's Normal Retirement Date and each Plan Year thereafter, as determined under Paragraph 3.3(B)(2) below; and
  - (c) is the excess, if any, of the additional benefit accruals earned after the Participant's Normal Retirement Date during the Plan Year which includes his Normal Retirement Date and during each Plan Year thereafter over the Actuarial Adjustment for each such Plan Year, respectively.
- (2) The Actuarial Adjustment will be determined as of the close of each Plan Year and will be equal to the increase in the Participant's monthly Retirement Income as of the close of the preceding Plan Year (or as of the Participant's Normal Retirement Date, if later) which is required in order to provide a monthly benefit as of the determination date that is the Actuarial Equivalent of the monthly benefit as of the close of the preceding Plan Year (or as of the Participant's Normal Retirement Date, if later).

### 3.4 TEMPORARY DISABILITY INCOME

#### (A) Eligibility For a Temporary Disability Income

- (1) A Participant will be eligible for a Temporary Disability Income if he:
  - (a) becomes Totally and Permanently Disabled;
  - (b) has accumulated at least five years of Vested Service; and
  - (c) with respect to disabilities that occur after 2000:
    - (i) becomes disabled as a result of accident, injury, or disease sustained while employed by an Employer; or
    - (ii) is unable due to his disability to perform the duties of an insulator or asbestos worker continuously from the date he last earned an Hour Worked until the date he becomes Totally and Permanently Disabled; or
    - (iii) has earned at least 435 Hours Worked during at least one of the last two Plan Years immediately preceding the date on which he becomes Totally and Permanently Disabled.
- (2) A Participant will be considered "Totally and Permanently Disabled" only if the Trustees, in their sole and absolute judgment, find on the basis of medical evidence that:

- (a) such Participant has been totally disabled by a physical or mental condition so as to be prevented from performing any further employment as an insulator or asbestos worker and does not engage in further employment as an owner, supervisor, or construction worker in the building or construction trades industry;
- (b) such disability will be permanent and continuous during the remainder of his life; and
- (c) such disability has existed for at least five months.

Evidence of Total and Permanent Disability to be submitted by the Participant to the Trustees will consist of either:

- (d) written verification from the Social Security Administration that he is entitled to receive Social Security disability insurance benefits; or
- (e) written certification on the basis of medical examination by two doctors, one selected by the Participant and the other selected by the Trustees, that he has incurred a Total and Permanent Disability that prevents him from satisfactorily performing the duties of an insulator or asbestos worker; provided, however, that a Participant is only eligible to submit evidence of disability pursuant to this Subparagraph 3.4(A)(2)(e) once in his lifetime for disabilities incurred after 2000.

No Participant, however, will be deemed to be Totally and Permanently Disabled for the purpose of the Plan if his incapacity resulted from military service or consists of chronic alcoholism or addiction to narcotics or if such incapacity was contracted, suffered, or incurred while he was engaged in a felonious enterprise or resulted from his engaging in a felonious enterprise or resulted from an intentionally self-inflicted injury.

The Trustees may at any time or from time to time require evidence of continued entitlement to Social Security disability benefits or continued disability as a prerequisite to the continuation of a Temporary Disability Income under this Section 3.4.

**(B) Amount of Temporary Disability Income**

A Participant who is eligible for a Temporary Disability Income will receive a monthly income equal to the Participant's Normal Retirement Income as set forth in Subsection 3.1(B).

**(C) Payment of Temporary Disability Income**

- (1) The Temporary Disability Income will be payable on the first day of each month.
- (2) Temporary Disability Income payments will be effective and the first payment will be payable on the first day of the month coincident with or next following:
  - (a) the date that is the latest date of disability as determined under the Participant's Social Security Award Certificate for disability benefits, if the Participant's disability is based on evidence as described in Subparagraph 3.4(A)(2)(d), or
  - (b) the date that is the latest date of disability as determined under the certification of doctors, otherwise;

provided, however, that Temporary Disability Income payments will not be effective earlier than the first day of the month following the date that is 12 months prior to the receipt of the Participant's application

for a Temporary Disability Income and the satisfaction by the Participant of the eligibility requirements set forth in Subsection 3.4(A).

- (3) The last payment will be the payment due on or before the earlier of the date on which the Participant recovers from his disability or the Participant's date of death, provided, however, that, if the Participant's disability is based solely on evidence as described in Subparagraph 3.4(A)(2)(e), no more than 24 monthly Temporary Disability Income payments will be made.
- (4) Notwithstanding the above, a Participant who is receiving a Temporary Disability Income and who has attained his Normal Retirement Date will no longer be eligible for a Temporary Disability Income, but will retire under the provisions of Section 3.1, with the right to make an election of an optional form of payment pursuant to Sections 5.2 and 5.3. Alternatively, a Participant who is receiving a Temporary Disability Income and who meets the requirements for Early Retirement Income as defined in Subsection 3.2(A) may, in lieu of receipt of additional Temporary Disability Income payments on or after his Early Retirement Date, elect to retire with an Early Retirement Income pursuant to Section 3.2, with the right to make an election of an optional form of payment pursuant to Sections 5.2 and 5.3.

Notwithstanding the provisions of Sections 3.1 and 3.2, for a Participant who was receiving a Temporary Disability Income immediately prior to the commencement of a Normal or Early Retirement Income, the amount of the Participant's Normal or Early Retirement Income, whichever is applicable, payable in the Normal Form of Payment upon such retirement will be the greater of (a) or (b), as follows:

- (a) The Participant's Normal or Early Retirement Income as calculated pursuant to Section 3.1 or 3.2, whichever is applicable; or
- (b) The amount of the Participant's Temporary Disability Income as of the day immediately preceding the Participant's Normal or Early Retirement Date, whichever is applicable, adjusted for Early Retirement (if applicable) as set forth in Subsection 3.2(B).

### **3.5 MAXIMUM AMOUNT OF RETIREMENT INCOME**

- (A) Any other provision herein to the contrary notwithstanding, the Retirement Income payable to each Participant in any Limitation Year will not exceed the maximum amount allowable under Code section 415 and the final regulations issued by the Secretary of the Treasury thereunder and such Code section and regulations are incorporated into this Plan by reference. Effective for Limitation Years beginning after 2001, the "defined benefit dollar limitation" is \$160,000 as adjusted effective January 1 of each year under Code section 415(d) in such manner as the Secretary shall prescribe and payable in the form of a straight life annuity. A limitation as adjusted under Code section 415(d) will apply to Limitation Years ending with or within the calendar year for which the adjustment applies.
- (B) For purposes of Sections 3.5 and 8.4, the Section 414(k) Plan described in Article VIII herein will be considered to be a defined contribution plan.
- (C) In no event will the amount of Retirement Income considered under this Plan exceed the amount of a benefit that is non-discriminatory under Code section 401(a)(4).
- (D) In no event will distributions to the 25 most highly-compensated active and former Employees (as that term is defined in Code section 414(q)) exceed the amount that would be paid to such individual under a straight-life annuity that is the Actuarial Equivalent of the Employee's accrued benefit and the Employee's other benefits under the Plan, except that the preceding restriction on the amount of distribution to the 25 most highly-compensated Employees (the "Restricted Employees") will not apply if any of the following requirements have been met for each Restricted Employee:

- (1) After payment of the benefit described in this Subsection 3.5(D) to such Restricted Employee, the value of plan assets equals or exceeds 110 percent of the value of current liabilities as defined in Code section 412(1)(7);
- (2) The value of the benefit described in this Subsection 3.5(D) for such Restricted Employee is less than one percent of the value of current liabilities, as defined in Code section 412(1)(7), before distribution of such benefit; or
- (3) The value of such Restricted Employee's benefits does not exceed \$5,000.

### **3.6 NON-DUPLICATION**

- (A) A Participant will be entitled to only one benefit (retirement or death) under this Plan, except that a Participant receiving a Disability Retirement Income or Temporary Disability Income who survives to his Early or Normal Retirement Date may be entitled to a Retirement Income.
- (B) Subsection 3.6(A) above notwithstanding, a Participant who receives an Early Retirement Income and who subsequently becomes eligible for a Disability Retirement Income or Temporary Disability Income (but for the fact that he is receiving an Early Retirement Income) may nevertheless receive a Disability Retirement Income or Temporary Disability Income, as applicable, in lieu of his Early Retirement Income, subject to any applicable spousal consent as set forth in Section 5.2, provided that such Participant had made application for a Disability Retirement Income or Temporary Disability Income as of his Early Retirement Date and that the date set forth in Paragraph 3.4(C)(2) either coincides with or precedes his Early Retirement Date.
- (C) This Section 3.6 will not prohibit a Pensioner from receiving a benefit as the beneficiary of a deceased Participant.
- (D) If a Participant is eligible or becomes eligible for more than one form of benefit, the Participant's selection of any benefit will be final and binding upon the Participant and his beneficiaries.
- (E) This Section 3.6 will not prohibit an individual from receiving a benefit under the terms of Article VIII and such benefits payable under the terms of Article VIII will have no effect under this Section 3.6 on the benefits otherwise payable from the Plan.

ARTICLE IV**DEATH BENEFIT PROVISIONS****4.1 LUMP-SUM DEATH BENEFIT**

- (A) If an Employee dies prior to the date that Retirement Income payments are effective pursuant to Section 5.1 and has earned at least five years of Vested Service, then the Employee's designated beneficiary (or beneficiaries) will be entitled to receive a lump-sum payment (divided into equal shares, if applicable) equal to the Employee's number of years of Future Vested Service multiplied by \$225.00.
- (B) If the Participant has not designated a beneficiary or if the designated beneficiary predeceases the Participant, then any lump-sum death benefits payable under this Section 4.1 will be paid as set forth under Section 6.3.
- (C) In no event will the lump-sum payment determined in Subsection 4.1(A), when added to the Actuarial Equivalent of the Qualified Pre-Retirement Survivor Annuity determined under Section 4.2, exceed the greater of:
  - (a) The single sum value which is the Actuarial Equivalent of the Participant's Normal Retirement Income calculated as of his date of death; provided, however, if the Participant was eligible to receive an Early Retirement Income under the terms of Subsection 3.2(A), then the single sum value computed under this paragraph will not be less than the single sum value which is the Actuarial Equivalent of the Early Retirement Income to which the Participant would have been entitled if he had retired on his date of death; or
  - (b) The single sum value equal to 100 times the anticipated monthly Normal Retirement Income. The anticipated monthly Normal Retirement Income is equal to the monthly Retirement Income, calculated pursuant to Subsection 3.1(B), but based upon the Participant's anticipated Credited Service at his date of death, calculated as if the Participant had reached his Normal Retirement Date and had 2,000 Hours Worked for the Plan Year that includes his date of death and for all future Plan Years up to his Normal Retirement Date.
- (D) If not otherwise provided for in Subsection 4.1(A) above, the benefits described in this Section 4.1 will be payable to the designated beneficiary (or beneficiaries) of an Employee who dies while engaged in Qualified Uniformed Service and will be determined as if the Employee had returned to Covered Service immediately prior to his death in accordance with the Heroes Earnings Assistance and Relief Tax (HEART) Act and any regulations promulgated thereunder.
- (E) Any benefit payable under this Section 4.1 is in addition to the benefit that may be provided under Section 4.2.

**4.2 QUALIFIED PRE-RETIREMENT SURVIVOR ANNUITY**

- (A) (1) If a Participant who is eligible for a Vested Retirement Income in accordance with Section 2.5, Early Retirement Income in accordance with Subsection 3.2(A), Normal Retirement Income in accordance with Subsection 3.1(A), or Late Retirement Income in accordance with Subsection 3.3(A) has an Eligible Spouse and dies prior to the date that Retirement Income payments are effective pursuant to Section 5.1, his Eligible Spouse will receive a Qualified Pre-Retirement Survivor Annuity commencing on the first day of the month coincident with or next following his date of death.
- (2) If the Participant dies on or before his Normal Retirement Date, the Qualified Pre-Retirement Survivor Annuity will be a monthly Retirement Income payable to the Eligible Spouse for the Eligible Spouse's lifetime in an amount equal to one-half of the amount set forth in Subsection 3.1(B) herein determined as if the Participant had been eligible to retire with a Normal Retirement Income on his date of death.

- (3) If the Participant dies after his Normal Retirement Date, the Qualified Pre-Retirement Survivor Annuity will be a monthly Retirement Income payable to the Eligible Spouse for the Eligible Spouse's lifetime in an amount equal to one-half of the amount set forth in Subsection 3.3(B) herein.
- (4) If, at any time after the Participant's death, there is no Eligible Spouse to receive the benefit described in this Section 4.2, then such benefit will be payable in equal shares until the attainment of age 18 to the Participant's dependent children; provided, however, that any benefits payable pursuant to the provisions of this Paragraph 4.2(A)(4) will not exceed the Actuarial Equivalent of the excess of the amount set forth in Subsection 4.1(C) over the benefit payable pursuant to such Section 4.1.

(B) Any benefit payable under this Section 4.2 is in lieu of all other benefits under the Plan other than the lump-sum death benefit that may be provided under Section 4.1.

#### **4.3 POST-RETIREMENT DEATH BENEFIT**

[Reserved]

ARTICLE V**PROVISIONS REGARDING PAYMENT OF BENEFITS****5.1 PAYMENT OF RETIREMENT INCOME**

- (A) The monthly Retirement Income payable in the event of Normal, Early, Late, or Disability Retirement will be payable on the first day of each month.
- (B) (1) In the event of Normal Retirement, Retirement Income payments will be effective and the first payment will be payable on the Participant's Normal Retirement Date.
- (2) In the event of Early Retirement, Retirement Income payments will be effective and the first payment will be payable on the Participant's Early Retirement Date, subject to Paragraph 5.1(B)(4) below; provided, however, an Employee will not be considered to have retired and, thus, will not be eligible to commence receipt of his Early Retirement Income if he is or continues to be employed by a contributing Employer or a related employer that is a member of a Controlled Group immediately after his Early Retirement and further provided that the foregoing restriction will not be applicable after the date on which the Employee attains age 62.

For this purpose, "retirement" under this Plan will mean that an Employee has a severance of employment such that he ceases to have an employment relationship with any contributing Employer or any related employer that is a member of a Controlled Group. Such a severance of employment as described in this Paragraph 5.1(B)(2) must continue for at least three full calendar months commencing with the Employee's Early Retirement Date in order to be considered a "retirement". In the event that the Employee engages in any employment with a contributing Employer or a related employer that is a member of a Controlled Group within such three-month period, the Employee will be deemed not to have retired and any Early Retirement Income payments made to such Employee will be immediately repayable to the Plan. The Trustees may establish rules and procedures to ensure that Retirement Income payments are not made in violation of the provisions of this Paragraph 5.1(B)(2).

- (3) In the event of Late Retirement, Retirement Income payments will be effective and the first payment will be payable on the Participant's Late Retirement Date.
- (4) Normal, Early, or Late Retirement Income payments will not be effective earlier than the first day of the month following the date on which the Participant's completed application for a Normal, Early, or Late Retirement Income is filed at the office of the Plan Administrator.
- (C) Any other provisions of this Section 5.1 notwithstanding, Retirement Income payments pursuant to Section 3.3 will begin no later than the Participant's Required Beginning Date as described in Subsection 5.5(D); provided, however, unless a Participant otherwise elects as described in Paragraph 5.1(C)(4) below, Retirement Income payments will begin no later than the 60<sup>th</sup> day after the close of the Plan Year during which the latest of the following events occurs if such date is prior to the Participant's Required Beginning Date:
  - (1) the date on which the Participant attains his Normal Retirement Age;
  - (2) the 10<sup>th</sup> anniversary of the date on which the Participant commenced participation in the Plan;
  - (3) the date on which the Participant ceases to be employed by a contributing Employer; or
  - (4) the benefit commencement date specified in an election made by the Participant, where such election must be made by the end of the first month for which a monthly Retirement Income payment would otherwise be payable pursuant to this Subsection 5.1(C).

Retirement Income payments which commence in accordance with this Subsection 5.1(C) will be paid in the form of a Qualified Joint and Survivor Annuity, if the Participant has an Eligible Spouse, or in the Normal Form of Payment, otherwise, unless a timely election is made by the Participant not to receive such Qualified Joint and Survivor Annuity or such Normal Form of Payment pursuant to the provisions of Sections 5.2 and 5.3.

(D) In the event of Early, Normal, or Late Retirement, the last payment will be the payment due next preceding the Pensioner's death or the 36<sup>th</sup> monthly payment, if later, or such other date as is applicable under the form of payment being received by the Pensioner as of his death. In the case of Disability Retirement, the last payment will be the payment due next preceding the earliest of the Pensioner's death or the 36<sup>th</sup> monthly payment (if later), recovery from disability prior to his Normal Retirement Age, or such other date as is applicable under the form of payment being received by the Pensioner as of his death.

**5.2 REQUIREMENT WITH RESPECT TO QUALIFIED JOINT AND SURVIVOR ANNUITY FORM OF PAYMENT**

(A) Notification

(1) The Plan Administrator will provide written information regarding the Qualified Joint and Survivor Annuity to each Participant no less than 30 days and no more than 180 days prior to his Annuity Starting Date or as soon as administratively practicable thereafter. Except as otherwise provided in this Section 5.2, in no event will such information be provided less than 30 days nor more than 180 days prior to the date on which distributions actually commence. In the event the written information required by this Section 5.2 is not provided prior to the Annuity Starting Date, then the date that distributions actually begin will be the Annuity Starting Date, provided that the Participant will be permitted to elect between such Annuity Starting Date and a "Retroactive Annuity Starting Date" (which is defined as the date on which his Retirement Income payments were scheduled to commence as specified under Section 5.1; which occurs on or before the date on which the written information required by this Section 5.2 is provided to the Participant; and which is affirmatively elected by the Participant).

The information required under this Section 5.2 will include:

- (a) the terms and conditions of the Qualified Joint and Survivor Annuity;
- (b) the Participant's right to make and the effect of an election to waive the Qualified Joint and Survivor Annuity;
- (c) the right of the Participant's Eligible Spouse to consent to elections made by the Participant;
- (d) the right to make and the effect of a revocation of an election to waive the Qualified Joint and Survivor Annuity;
- (e) the relative values of the various optional forms of benefits under the Plan to the extent required under the Code, including the difference in the amount of Retirement Income payable under the Qualified Joint and Survivor Annuity as compared to the amount otherwise payable under Section 5.1;
- (f) the effect of the election of a Retroactive Annuity Starting Date, if applicable; and
- (g) the participant's right to defer distribution and the consequences of failing to defer receipt of the distribution.

The 180-day timing requirements of this Paragraph 5.2(A)(1) will not be breached merely because, due solely to an administrative delay, a distribution commences more than 180 days after the written explanation of the Qualified Joint and Survivor Annuity is provided to the Participant.

- (2) Notwithstanding the provisions of Subsection 5.2(A)(1), the Annuity Starting Date (or the date distributions actually commence, if a Participant elects a Retroactive Annuity Starting Date) for a distribution in a form other than a Qualified Joint and Survivor Annuity may be less than 30 days after the written information regarding the Qualified Joint and Survivor Annuity is provided to the Participant, provided:
  - (a) the Participant has been provided information that clearly indicates that the Participant has at least 30 days to consider whether to waive the Qualified Joint and Survivor Annuity and elects (with spousal consent, if applicable) a form of distribution other than a Qualified Joint and Survivor Annuity;
  - (b) the Participant is permitted to revoke any affirmative distribution election at least until the Annuity Starting Date (or the date distributions actually commence, if a Participant elects a Retroactive Annuity Starting Date) or, if later, at any time prior to the expiration of the seven-day period that begins the day after the information regarding the Qualified Joint and Survivor Annuity is provided to the Participant;
  - (c) the Annuity Starting Date (or the date distributions actually commence, if a Participant elects a Retroactive Annuity Starting Date) is a date after the date that the written information was provided to the Participant; and
  - (d) distribution in accordance with the affirmative election does not commence before the expiration of the seven-day period that begins the day after the explanation of the Qualified Joint and Survivor Annuity is provided to the Participant.
- (3) In the event a Participant elects a Retroactive Annuity Starting Date, such Participant's future periodic payments will be the same as the future periodic payments, if any, that would have been paid with respect to the Participant had payments actually commenced on the Retroactive Annuity Starting Date. Such Participant must receive a make-up payment to reflect any missed payments for the period from the Retroactive Annuity Starting Date to the date of the actual make-up payment, with an appropriate adjustment for interest from the date each missed payment would have been made to the date of the actual make-up payment. The Trustees in their sole discretion will determine the circumstances under which interest is appropriate and the corresponding rate of interest to be applied in such case, provided that the Trustees will uniformly apply such rules to similarly situated Participants.

A Participant cannot elect a Retroactive Annuity Starting Date that precedes the date on which the Participant could have otherwise started receiving benefit payments. If a Participant elects a Retroactive Annuity Starting Date, the actuarial assumptions which are applicable as of the Retroactive Annuity Starting Date will be used to determine such Participant's benefits. However, if the exceptions for benefits subject to Code sections 415 and 417(e) are not complied with in accordance with the final regulations, the actuarial assumptions as of the date distributions actually begin will be applicable.

- (4) If the Participant has elected to receive an Early Retirement Income, the Plan Administrator will provide the Participant with information concerning the effect of his election to receive an Early Retirement Income, including information concerning the increased amount of Retirement Income that may be payable if the Participant were to delay payment of his Early Retirement Income to a later date or were to delay payment of his Retirement Income until his Normal Retirement Date.

(B) Election Procedures

(1) Any provisions of Subsection 5.1(B) herein to the contrary notwithstanding, if a Participant has an Eligible Spouse as of the date payment of his benefit under this Plan is to commence, his benefit will be paid in the form of a Qualified Joint and Survivor Annuity unless the Participant submits a written election to the Trustees for a different form of payment prior to (but in no event earlier than 180 days prior to) the date distribution of his benefit commences.

Any election of any form of payment under this Plan may be revoked at any time prior to the date benefits actually commence by submission of a written revocation to the Trustees.

(2) An election by the Participant not to receive a Qualified Joint and Survivor Annuity will be effective only if all of the following requirements are met:

- (a) the Participant's Eligible Spouse consents to the election in writing and the Eligible Spouse's consent is witnessed by a notary public or a representative of the Plan;
- (b) the election and the Eligible Spouse's consent state the specific non-spouse beneficiary (including any class of beneficiaries or contingent beneficiaries) and the particular form of benefit payment being elected and consented to and further provide that neither the non-spouse beneficiary nor the form of benefit payment may be changed at a later date without subsequent spousal consent (as described in this Paragraph 5.2(B)(2)), except that the form of benefit payment may be changed back to a Qualified Joint and Survivor Annuity, unless the Eligible Spouse has expressly permitted otherwise in the consent; and
- (c) the Eligible Spouse's consent acknowledges the effect of the election.

Spousal consent will not be required, however, if the Participant:

- (d) establishes to the satisfaction of the Trustees that the consent required of the Eligible Spouse cannot be obtained because there is no Eligible Spouse, because the Eligible Spouse cannot be located, or because of other circumstances that the Secretary of the Treasury prescribes by regulation;
- (e) is legally separated from the otherwise Eligible Spouse; or
- (f) has been abandoned by his otherwise Eligible Spouse (within the meaning of local law) and the Participant has a court order to that effect.

Any consent by an Eligible Spouse (or establishment that such consent may not be obtained) is effective only with respect to that Eligible Spouse.

(3) If the Trustees act in accordance with the fiduciary standards of the Act in securing an Eligible Spouse's consent to elect against a Qualified Joint and Survivor Annuity or to waive the 30-day period as described in Paragraph 5.2(A)(2), then the Plan will not be liable for payments to the surviving Eligible Spouse under such form of payment. This discharge from liability will also apply in the case where the Trustees accept the representations of the Participant that the Eligible Spouse's consent cannot be obtained or is otherwise not required.

(C) If a Pensioner's Retirement Income has commenced in either the Normal Form of Payment, a Qualified Joint and Survivor Annuity, or under an optional form elected under the provisions of Subsection 5.2(B) or Section 5.3, he may not change the form of benefit payment at any subsequent date.

(D) Retirement Income payments made under the Normal Form of Payment, the Qualified Joint and Survivor Annuity, or an optional form pursuant to Section 5.3 will be subject to the following limitations:

- (1) If a Participant dies prior to the date that his Retirement Income payments are effective pursuant to Section 5.1, no benefits will be payable under the Plan except as provided under Article IV.
- (2) If the designated beneficiary (or beneficiaries) or joint pensioner of a Participant dies before the date that the Participant's Retirement Income payments are effective pursuant to Section 5.1, the Qualified Joint and Survivor Annuity or other optional form elected will be cancelled automatically and a Retirement Income of the Normal Form of Payment and amount will be payable to the Participant as if the election had not been made unless the Participant either marries another Eligible Spouse prior to the date his Retirement Income payments become effective pursuant to Section 5.1, in which case the provisions of this Section 5.2 will apply anew to such subsequent Eligible Spouse, or makes a new election pursuant to Sections 5.2 and 5.3 of the Plan.
- (3) If both the Participant and the beneficiary (or beneficiaries) designated by him die after the date that the Participant's Retirement Income payments become effective pursuant to Section 5.1 but before the full payment has been effected under any option providing for payments for a period certain and life thereafter, such payments will be paid in accordance with Section 6.4 hereof and, if the commuted value of the remaining payments is less than \$1,000, such payments will be paid in a lump-sum.

(E) The selection or rejection of any optional form of Retirement Income will be final and binding upon the Participant and his beneficiary (or beneficiaries) on the date that the Participant's Retirement Income commences.

### **5.3 OPTIONAL FORM OF RETIREMENT INCOME**

(A) In lieu of the amount and Normal Form of Payment of Retirement Income payable pursuant to Sections 3.1, 3.2, or 3.3 hereof, a Participant, subject to the provisions of Subsection 5.2(B) and Section 5.5, upon furnishing written notice to the Plan Administrator, may elect to receive an Actuarially Equivalent Retirement Income in one of the forms of payment which are described below:

***Option 1:*** A Retirement Income of a lesser monthly amount, payable to the Employee for his lifetime, except that, in the event of the Employee's death before he has received at least: (a) 120, or (b) 180 monthly payments, his named beneficiary will receive monthly payments in the same amount until a total of: (a) 120, or (b) 180 monthly payments, respectively, have been made.

***Option 2:*** Modified payments during the Participant's lifetime, with: (a) 50%, (b) 66½%, or (c) 100% of the modified payments continuing to a joint pensioner named by him for the remainder of the joint pensioner's lifetime. If the joint pensioner predeceases the Participant, then the Participant will receive an amount for the remainder of his lifetime that he would have received under the Normal Form of Payment as if payments under this Option 2 had not been elected; provided, however, that such increased amount will not be considered in determining the Actuarial Equivalent adjustment described in this Subsection 5.3(A).

***Option 3:*** Modified payments during the Participant's lifetime, with 75% of the monthly payments continuing to the Participant's Eligible Spouse for the remainder of the Eligible Spouse's lifetime.

(B) Notwithstanding any provisions of this Section 5.3 to the contrary, an option will not be available hereunder unless the distributions to the Participant and his beneficiary satisfy the minimum distribution requirements of Code section 401(a)(9) as described in Section 5.6 herein.

(C) The Participant, upon electing any option of this Section 5.3, will designate the joint pensioner or beneficiary (or beneficiaries) to receive the benefits, if any, payable under the Plan in the event of his death and will have the power to change such designation prior to the commencement of Retirement Income payments, but any such change will be deemed a new election and will be subject to the provisions of Subsection 5.2(B). Such designation will name a joint pensioner, one or more primary beneficiaries, and one or more contingent beneficiaries, where applicable. Each such designation will be made in writing on a form prepared by the Trustees.

Once Retirement Income payments have commenced to the Participant, he may not change a joint pensioner who is designated to receive a survivor annuity under a joint and contingent form of payment, joint and survivor form of payment, or any other form of payment that was based in part on the age of the joint pensioner as of the Annuity Starting Date or Retroactive Annuity Starting Date, as applicable. However, a Pensioner may change the primary or contingent beneficiary or beneficiaries who are designated to receive any other benefits that may be payable upon the Pensioner's death.

In the event that no designated beneficiary survives the Participant, such benefits as are payable in the event of the death of the Participant subsequent to his retirement will be paid as provided in Section 6.3 hereof.

#### **5.4 LUMP-SUM PAYMENT OF SMALL RETIREMENT INCOME**

In addition to any other provision of the Plan, for the purpose of reducing the administrative cost of the Plan, if the single sum value of the Retirement Income (including that of a Qualified Joint and Survivor Annuity or Qualified Pre-Retirement Survivor Annuity) to be paid plus the Participant's Individual Account (as defined in Article VIII herein) is less than \$1,000 as of the date that Retirement Income payments are first effective or as of the date of death of the Participant (in the case of a Qualified Pre-Retirement Survivor Annuity), then the single sum value of such Retirement Income will be paid in a lump-sum without the consent of the Participant and, if applicable, without the consent of the Participant's Eligible Spouse. Such single sum value will be based on the mortality and interest assumptions used for the calculation of a single sum value lump-sum payment as described in the definition of Actuarial Equivalent.

#### **5.5 SUSPENSION OF BENEFITS; NOTIFICATION OF EMPLOYMENT AFTER RETIREMENT; REQUIRED BEGINNING DATE; RECALCULATION OF RETIREMENT INCOME**

(A) Except as otherwise set forth in Subsection 5.1(C), a Participant must file an application for Retirement Income with the Plan Administrator on a form prescribed by the Trustees in order to commence distribution of his Retirement Income in any form at any age.

(B) Definitions

The following definitions apply to the following terms as those terms are used in this Section 5.5:

- (1) "Age 70½ Payment Date" means the first day of the month coincident with or next following the date as of which a Participant attains age 70½.
- (2) "Section 203(a)(3)(B) Service" has the meaning set forth in 29 C.F.R. section 2530.203-3.
- (3) "Jurisdiction of the Plan" means the same industry, trade, or craft and geographic area covered by the Plan as defined in 29 C.F.R. section 2530.203-3, provided that the geographic area covered by the Plan will be limited to the territorial jurisdiction of the Union.
- (4) "Suspendible Employment" means 40 or more hours of Section 203(a)(3)(B) Service within the Jurisdiction of the Plan during a calendar month, provided that the first 400 such hours within each Plan Year will not be considered in determining whether the Participant has engaged in Suspendible Employment.

(C) Suspension of Benefits; Notification of Employment After Retirement

- (1) A Participant who is receiving a Retirement Income will have his Retirement or Disability Income payments suspended with respect to any month prior to his Age 70½ Payment Date during which such a Participant engages in Suspensible Employment.
- (2) To the extent Retirement Income payments are subject to suspension as set forth in Paragraph 5.5(C)(1) above, for any month prior to his Age 70½ Payment Date, a Participant who is receiving such Retirement Income payments and who is employed in any work that may be considered as Suspensible Employment is required to notify the Plan Administrator in writing within 10 days of commencing such employment and is further required to notify the Plan Administrator in writing within 10 days of ceasing such employment.

In addition, a Participant who is receiving an Early Retirement Income and who is employed within the first three months after his Early Retirement Date with any Employer or related employer that is a member of a Controlled Group is required to notify the Plan Administrator in writing within 10 days of commencing such employment.

In either case, a Participant will, upon request, furnish reasonable information for the purpose of verifying employment and continuous retirement. Such a Participant must, upon request, certify that, for the three-month period commencing with his Early Retirement Date or for any applicable period after retirement, he remained unemployed or provide factual information sufficient to establish that he had no employment relationship with any Employer or related employer that is a member of a Controlled Group or that such employment is not within the Jurisdiction of the Plan, as applicable.

If a Participant who is receiving Retirement Income payments fails to notify the Plan Administrator of potential Suspensible Employment and the Trustees discover that the Participant is engaged in Suspensible Employment at a work site, the Trustees may, unless unreasonable to do so, act on the basis of a rebuttable presumption that the Participant has been engaged in Suspensible Employment during each month for the length of time that his employer has performed work at that site. Alternatively, if a Participant fails to provide verification of retirement or notification of employment within three months of his Early Retirement Date as described above, such Participant will be deemed not to have retired early and any Early Retirement Income payments made to such Employee will be immediately repayable to the Plan.

If employment is contemplated after retirement, the Participant may request of the Plan Administrator a determination as to whether the employment will result in a suspension or permanent withholding of Retirement Income payments from the Plan or whether the employment will violate the provisions of Subsection 5.1(B)(2) and will result in a revocation of the Participant's Early Retirement Income. The Plan Administrator will reply in writing to the Participant within a reasonable period of time, but no later than within 60 days from the date of the request, unless special circumstances (such as a hearing) require additional time, not to exceed 120 days from receipt of the request.

- (3) If a Participant engages in Suspensible Employment, no Retirement Income payment will be suspended or permanently withheld unless the Trustees have notified the Participant in writing, by personal delivery or first class mail, during the first calendar month in which the Plan withholds payment that his Retirement Income payments are suspended. The notification will contain a description of the specific reasons why Retirement Income payments are being suspended, a general description of the Plan provisions pertaining to the suspension of benefits, and a copy of such Plan provisions. The suspension notification will inform the Employee of the Plan's procedure for affording a review of the suspension of benefits. The notification will also inform the Participant that, before Retirement Income payments resume, the Participant must file a written notice of cessation of Suspensible Employment with the Plan Administrator

on a form prescribed by the Trustees. A copy of such form will be included with the suspension notification.

In addition, if Retirement Income payments were paid to the Participant for any month during which such payments should have been suspended because the Participant engaged in Suspensible Employment, the suspension notice will inform the Participant of the periods of Suspensible Employment for which such payments should have been suspended, the amount of Retirement Income subject to such suspension, and that, upon the resumption of Retirement Income payments, excluding the initial 100% offset, the Plan will offset from the Retirement Income payable each month, until the total which should have been suspended is recouped, an amount not to exceed in any one month 25% of that month's total Retirement Income payment.

- (4) If Retirement Income payments have been suspended, payments will resume no later than the first day of the third calendar month after payments are no longer being suspended pursuant to Paragraph 5.5(C)(1), provided that the Participant has filed with the Trustees the required notice of cessation of Suspensible Employment. The Trustees may require reasonable verification of the fact that such Suspensible Employment has ceased.

The initial Retirement Income payment upon resumption may be offset up to 100% by any previous overpayment to the Participant while he was employed in Suspensible Employment. Subsequent Retirement Income payments may be offset up to 25% by any previous overpayment to the Participant while he was employed in Suspensible Employment until such overpayment is entirely recouped by the Plan.

**(D) Required Beginning Date**

Retirement Income payments will become effective no later than the April 1 of the calendar year following the later of:

- (1) the calendar year in which the Employee or former Employee attains age 70½; or
- (2) the calendar year in which the Employee or former Employee retires.

Such date will be known as the Employee's or former Employee's Required Beginning Date.

For purposes of this Subsection 5.5(D) and Paragraph 5.5(E)(2)(a), an Employee or former Employee will be deemed to have retired as of the last day of any month during which he has been employed by all contributing Employers for less than 40 hours within such month.

With respect to an Employee or former Employee who is also a 5% owner (as that term is defined in Code section 416(i)(1)(B)(i)) of an Employer, this Subsection 5.5(D) will be applied without regard to whether such individual has retired.

**(E) Recalculation of Retirement Income**

- (1) An Employee who is receiving Retirement Income payments or who has had his Retirement Income payments suspended pursuant to Subsection 5.5(C) (if applicable) and who, after the effective date of such Retirement Income payments and after December 31, 1987, earns additional Benefit Units and Vested Service will earn additional Retirement Income for such employment determined in accordance with Paragraph 5.5(E)(3) below.
- (2) The additional Retirement Income so determined in Paragraph 5.5(E)(3) will be payable to the Employee upon the earlier of:

- (a) his subsequent date of retirement as defined in Subsection 5.5(D) (solely with respect to Employees who have not attained age 62 as of such date) or each July 1<sup>st</sup> (with respect to all other Employees); or
  - (b) each January 1<sup>st</sup>, if such January 1<sup>st</sup> follows his Required Beginning Date.
- (3) An Employee who qualifies for additional Retirement Income pursuant to Paragraph 5.5(E)(1) will have his Retirement Income recalculated as of a recalculation date which is the day immediately preceding the date defined in Paragraph 5.5(E)(2) above. The additional Retirement Income which is payable to the Employee will be equal to the excess, if any, of the recalculated Retirement Income as set forth in Subparagraphs 5.5(E)(3)(a) and 5.5(E)(3)(b) below over the Retirement Income as in effect prior to the application of this Subsection 5.5(E).
  - (a) If the recalculation date precedes the Employee's Age 70½ Payment Date, then the amount of Retirement Income determined under this Paragraph 5.5(E)(3) will be equal to (i) plus (ii), where (i) and (ii) are defined as follows:
    - (i) The amount of Retirement Income earned before the recalculation date will not be recomputed but will be frozen at the same benefit amount and form of payment previously in effect.
    - (ii) The amount of additional Retirement Income will be computed based on the benefit levels as set forth in Section 2.6 which are in effect on the recalculation date, on the additional Benefit Units and Vested Service earned pursuant to Sections 2.1 and 2.2, on any applicable Early or Late Retirement adjustment as set forth in Sections 3.2 or 3.3, respectively, except as set forth in Subsection 5.5(E)(5) below, and on any applicable Vested Percentage as set forth in Section 2.5.
  - (b) If the recalculation date is on or after the Employee's Age 70½ Payment Date, then the amount of Retirement Income determined under this Paragraph 5.5(E)(3) will be equal to (i) or (ii), whichever is applicable, plus (iii), where (i), (ii), and (iii) are defined as follows:
    - (i) The amount of Retirement Income earned as of the Employee's Age 70½ Payment Date will be determined pursuant to the calculation rules of Subparagraph 5.5(E)(3)(a) above.
    - (ii) The portion of the amount so determined pursuant to Subparagraph 5.5(E)(3)(b)(i) with respect to which Retirement Income payments have not commenced as of the Employee's Age 70½ Payment Date will be increased to a Retirement Income which is its Actuarial Equivalent if the date set forth in Paragraph 5.5(E)(2) is during a calendar year which follows the calendar year in which the Employee attained age 70½.
    - (iii) The amount of additional Retirement Income earned after the Employee's Age 70½ Payment Date will be computed based on the benefit levels as set forth in Section 2.6 which are in effect on the recalculation date, on the additional Benefit Units and Vested Service earned pursuant to Sections 2.1 and 2.2, on any applicable Early or Late Retirement adjustment as set forth in Sections 3.2 or 3.3, respectively, except as set forth in Subsection 5.5(E)(5) below, and on any applicable Vested Percentage as set forth in Section 2.5, but will be reduced (but not below zero) by the Actuarially Equivalent value of any Retirement Income payments received by the Employee during the period beginning with the Employee's Age 70½ Payment Date.
- (4) If the later of the effective date of the Employee's Retirement Income payments or his most recent previous recalculation date preceded the Employee's Normal Retirement Date, then the options, forms,

and elections available pursuant to Sections 5.2 and 5.3 will apply separately to any additional amount of Retirement Income determined under this Subsection 5.5(E).

(5) If Paragraph 5.5(E)(4) does not apply to the Employee as of his recalculation date, then the latest form of payment elected pursuant to Sections 5.2 and 5.3 will apply to the additional amount determined under this Subsection 5.5(E) and such additional amount will be adjusted actuarially to take into account any remaining certain period and any joint pensioner designated under the most recently elected form of payment.

## **5.6 GOVERNMENTAL RESTRICTIONS REGARDING DISTRIBUTION OF BENEFITS**

Distributions from this Plan will be made in accordance with Internal Revenue Service regulations under Code section 401(a)(9), including sections 1.401(a)(9)-2 through 1.401(a)(9)-9 of the regulations, and in accordance with Code section 401(a)(9)(G). Notwithstanding any other provisions of the Plan to the contrary, the provisions of Code section 401(a)(9) will override any distribution options in the Plan which are inconsistent with Code section 401(a)(9). Furthermore, any distributions required under the incidental death benefit requirements of Code section 401(a) will be treated as a distribution required under Code section 401(a)(9).

### **(A) Additional Before-Death Distribution Rules**

The Retirement Income to a Pensioner will be distributed, beginning not later than the date set forth in Subsection 5.1(C), over the life of such Pensioner or over the lives of such Pensioner and a designated beneficiary or over a period not extending beyond the life expectancy of such Pensioner or the life expectancy of such Pensioner and a designated beneficiary.

### **(B) After-Death Distribution Rules**

(1) If unpaid amounts remain at the death of a Pensioner receiving benefits in accordance with Subsection 5.6(A) hereof, such remaining amounts will be distributed at least as rapidly as under the method of distribution being used under Subsection 5.6(A) as of the date of his death.

(2) In the case in which distributions have not commenced to an Employee or former Employee prior to the Employee's death, the entire interest of the Employee will be distributed within five years after the death of such Employee. However, such five-year rule will not apply if any portion of the Employee's interest is payable to a designated beneficiary where such portion will be distributed over the life of such designated beneficiary or over a period not extending beyond the life expectancy of such beneficiary beginning not later than one year after the date of the Employee's death or such later date as the Secretary of the Treasury may by regulations prescribe. If the designated beneficiary is the surviving Eligible Spouse of the Employee, the date on which the distributions would be required to begin will not be earlier than the Employee's Required Beginning Date. If the surviving Eligible Spouse dies before payments are required to commence, the five-year rule will be applied as if the surviving Eligible Spouse were the Employee.

(C) The limitations of Subsections 5.6(A) and 5.6(B) are incorporated into the Plan in order to conform to the distribution limitation rules imposed under the Deficit Reduction Act of 1984. To the extent that such limitations become modified or eliminated by further legal or governmental actions, such modifications or eliminations will be deemed to be incorporated into this Plan to the extent that Subsections 5.6(A) and 5.6(B) would otherwise restrict methods of benefit payment allowable under the Plan.

## **5.7 DIRECT ROLLOVER OF ELIGIBLE DISTRIBUTION**

(A) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Section 5.7, a Distributee may elect, at the time and in the manner prescribed by the Plan

Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover; provided, however, if less than the entire amount of the Eligible Rollover Distribution is being paid directly to an Eligible Retirement Plan, then the Plan Administrator may require that the amount paid directly to such plan be at least \$500.

(B) Definitions

For purposes of this Section 5.7, the following definitions will apply:

- (1) Eligible Rollover Distribution: An Eligible Rollover Distribution is any distribution described in Code section 402(c)(4) and generally includes 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 10 years or more; any distribution to the extent such distribution is required under Code section 401(a)(9); 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); any hardship distribution described in Code section 401(k)(2)(B)(i)(IV); and any other distribution reasonably expected to total less than \$200 during a calendar year.

Notwithstanding the above, a portion of a distribution will not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax voluntary Employee contributions which are not includable in gross income. However, such portion may be transferred only to: (a) an individual retirement account or annuity described in Code section 408(a) or 408(b); or (b) to a qualified trust or to an annuity contract described in Code section 403(b), if such trust or contract provides for separate accounting for amounts so transferred (including interest thereon), including separately accounting for the portion of such distribution which is includable in gross income and the portion of such distribution which is not so includable.

- (2) Eligible Retirement Plan: An Eligible Retirement Plan is an individual retirement account described in Code section 408(a), an individual retirement annuity described in Code section 408(b) (other than an endowment contract), a qualified defined contribution plan described in Code section 401(a) that accepts the Distributee's Eligible Rollover Distribution, an annuity plan described in Code section 403(a), an eligible plan under Code section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision and which agrees to separately account for amounts transferred into such plan from this Plan, or an annuity contract described in Code section 403(b) that accepts the Distributee's Eligible Rollover Distribution. However, in the case of an Eligible Rollover Distribution to a surviving spouse, an Eligible Retirement Plan is an individual retirement account or individual retirement annuity. The definition of Eligible Retirement Plan will also apply in the case of a distribution to a surviving spouse or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order as defined in Code section 414(p). If any portion of an Eligible Rollover Distribution is attributable to payments or distributions from a designated Roth account, an Eligible Retirement Plan with respect to such portion will include only another designated Roth account of the individual from whose account the payments or distributions were made or a Roth account of such individual.

A Participant may elect to transfer Employee (after-tax) contributions by means of a direct rollover to a qualified plan or to a Code section 403(b) plan that agrees to account separately for amounts so transferred, including accounting separately for the portion of such distribution which is includable in gross income and the portion of such distribution which is not includable in gross income.

A non-spouse beneficiary who is a "designated beneficiary" under Code section 401(a)(9)(E) and the regulations promulgated thereunder, by a direct trustee-to-trustee transfer ("direct rollover") may roll over

all or any portion of his or her distribution to an individual retirement account that the beneficiary establishes for purposes of receiving the distribution. In order to be able to roll over the distribution, the distribution otherwise must be an Eligible Rollover Distribution.

- (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 Code section 414(p), are Distributees 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.

(C) A Participant entitled to an Eligible Rollover Distribution must receive a written explanation of the right to a Direct Rollover, the tax consequences of not making a Direct Rollover, and, if applicable, any available special income tax election. The notice must be provided within the same 30- to 180-day timeframe applicable to the Participant consent notice described in Section 5.2 herein. The Direct Rollover notice must be provided unless the total amount the Participant will receive as a distribution during the calendar year is expected to be less than \$200.

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## ARTICLE VI

### **ADMINISTRATION AND MISCELLANEOUS INFORMATION REGARDING PARTICIPANTS**

#### **6.1 ADMINISTRATION BY TRUSTEES**

The Plan will be administered by the Trustees in accordance with the provisions of the Trust Agreement. The Trustees will be the named fiduciary for the Plan. The Trustees, or any person or persons to whom the Trustees delegate such authority, will from time to time establish rules for the interpretation, application, and administration of the Plan. The Trustees or, where Trustee responsibility has been delegated to others, such other persons will, subject to the requirements of law, be the sole judges of the standard of proof required in any case and the application and interpretation of the Plan and decisions of the Trustees or their delegates will be final and binding.

All questions or controversies of whatsoever character arising in any manner or between any parties or persons in connection with this Plan or its operation, whether as to any claim for benefits, as to the construction of the language of this Plan, or any rules and regulations adopted by the Trustees, or as to any writing, decision, instrument, or account in connection with the operation of the Plan or otherwise will be submitted to the Trustees or their delegates for decision. In the event a claim for benefits has been denied, no lawsuit or other action against the Fund or its Trustees may be filed until the matter has been submitted for review under the ERISA-mandated review procedure set forth in Section 6.15. The decision on review will be binding upon all persons dealing with the Plan or claiming any benefit hereunder, except to the extent that such decision may be determined to be arbitrary or capricious by a court or arbitrator having jurisdiction over such matter.

The assets of the Plan will be conserved, invested, and disbursed by the Trustees pursuant to the terms of the Trust Agreement. The Trustees collectively will be the "Administrator" of this Plan as that term is defined in Act section 3(16).

#### **6.2 PARTICIPANTS TO FURNISH REQUIRED INFORMATION**

Each Participant will furnish to the Trustees such information as the Trustees consider necessary or desirable for the purpose of administering the Plan and the provisions of the Plan. Any payments hereunder are conditioned upon the Participant's furnishing promptly such true, full, and complete information as is necessary to establish the facts upon which the benefits are based.

An application for Retirement Income or for a distribution of an Individual Account pursuant to Section 8.3 will be in writing on a form and in the manner prescribed by the Trustees and will be filed with the Plan Administrator.

Each Participant will submit proof of his age and proof of the age of each beneficiary and joint pensioner designated or selected by him to the Trustees at such time as required by the Trustees. The Trustees will, if such proof of age is not submitted as required, use as conclusive evidence thereof such information as is deemed by the Trustees to be reliable, regardless of the source of such information. Any adjustment required by reason of lack of proof or the misstatement of the age of persons entitled to benefits hereunder, by the Participant or otherwise, will be in such manner as the Trustees deem equitable.

Any notice of information which, according to the terms of the Plan or the rules of the Trustees, must be filed with the Trustees will be deemed so filed at the time that it is actually received by the Plan Administrator.

The Trustees and any person or persons involved in the administration of the Plan will be entitled to rely upon any certification, statement, or representation made or evidence furnished by a Participant with respect to his age or other facts required to be determined under any of the provisions of the Plan and will not be liable on account of the payment of any moneys or the doing of any act or failure to act in reliance thereon. Any such certification, statement, representation, or evidence, upon being duly made or furnished, will be conclusively binding upon the person

furnishing the same, but it will not be binding upon the Trustees or any other person or persons involved in the administration of the Plan. Nothing herein contained will be construed to prevent any of such parties from contesting any such certification, statement, representation, or evidence or to relieve the Participant from the duty of submitting satisfactory proof of any such fact.

### **6.3 BENEFICIARIES**

Each Employee or former Employee may, on a form provided for that purpose, signed and filed with the Plan Administrator, designate a beneficiary (or beneficiaries) to receive the benefit, if any, which may be payable under Section 8.3 or under a form of payment other than a Qualified Pre-Retirement Survivor Annuity or a Qualified Joint and Survivor Annuity in the event of his death and each such designation may be revoked by such Employee by signing and filing with the Trustees a new designation of beneficiary form; but no such change will be binding on the Trustees unless it is received prior to the time any payments are made to the beneficiary whose designation is on file with the Plan Administrator.

If a deceased Employee had failed to name a beneficiary in the manner prescribed above or if the beneficiary (or beneficiaries) named by a deceased Employee predeceases the Employee, the death benefit, if any, which may be payable under Section 8.3 or under a form of payment other than a Qualified Pre-Retirement Survivor Annuity or a Qualified Joint and Survivor Annuity with respect to such deceased Employee, will be paid in the following order:

- (A) to the Employee's Eligible Spouse or, if none,
- (B) to the Employee's descendants or, if none,
- (C) to the Employee's parents or, if none,
- (D) to the Employee's sisters and brothers, per stirpes, or, if none,
- (E) to the Employee's estate.

Any payment made to any person pursuant to the power and discretion conferred upon the Trustees by the provisions of this Section 6.3 will operate as a complete discharge of all obligations under the Plan with respect to such deceased Employee and will not be subject to review by anyone but will be final, binding, and conclusive.

### **6.4 CONTINGENT BENEFICIARIES**

In the event of the death of a beneficiary who is receiving benefits pursuant to the provisions of the Plan within any certain period specified under the Plan with respect to which benefits are payable under the Plan after the Employee's death, the same amount of monthly retirement income which the beneficiary was receiving will be payable for the remainder of such specified certain period to a person designated by the Employee (in the manner provided in Section 6.3) to receive the remaining benefits, if any, payable in the event of such contingency or, if no person was so named, then to a person designated by the beneficiary (in the manner provided in Section 6.3) of the deceased Employee to receive the remaining benefits, if any, payable in the event of such contingency; provided, however, that, if no person so designated is living upon the occurrence of such contingency, then the remaining death benefits, if any, will be payable for the remainder of such specified certain period as follows:

- (A) to the beneficiary's spouse or, if none,
- (B) to the Employee's Eligible Spouse or, if none,
- (C) to the beneficiary's descendants or, if none,
- (D) to the Employee's descendants or, if none,

- (E) to the beneficiary's parents or, if none,
- (F) to the Employee's parents or, if none,
- (G) to the beneficiary's sisters and brothers, per stirpes, or, if none,
- (H) to the Employee's sisters and brothers, per stirpes, or, if none,
- (I) to the beneficiary's estate.

Any payments made to any person pursuant to the power and discretion conferred upon the Trustees by the provisions of this Section 6.4 will operate as a complete discharge of all obligations under the Plan with respect to such deceased beneficiary and will not be subject to review by anyone but will be final, binding, and conclusive.

## 6.5 **PARTICIPANTS' RIGHTS IN TRUST FUND**

No Participant or other person will have any interest in or any right in, to, or under the Trust Fund or any part of the assets thereof except as and to the extent expressly provided in the Plan.

## 6.6 **ANTI-ALIENATION PROVISIONS**

### (A) Spendthrift Provision

Except as set forth in Subsections 6.6(B) and 6.6(C) below, no benefits, rights, or accounts will exist under the Plan which are subject in any manner to voluntary anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge and any attempt to so anticipate, alienate, sell, transfer, assign, pledge, encumber, or charge the same will be null and void; nor will any such benefit, right, or account under the Plan be in any manner liable for or subject to the debts, contracts, liabilities, engagements, torts, or other obligations of the person entitled to such benefit, right, or account; nor will any such benefit, right, or account under the Plan constitute an asset in case of the bankruptcy, receivership, or divorce of any person entitled under the Plan; and any such benefit, right, or account under the Plan will be payable only directly to the Employee or former Employee or his beneficiary, as the case may be.

### (B) Domestic Relations Order Exception

The creation, assignment, or recognition of a right to any benefit payable with respect to a Participant pursuant to a "Qualified Domestic Relations Order" (QDRO), as defined in the Retirement Equity Act of 1984, will not be treated as an assignment or alienation prohibited by Subsection 6.6(A) herein. The benefit payable to an individual pursuant to a QDRO may be payable in any of the optional forms of payment which are available under Section 5.3 herein, provided that:

- (1) the QDRO also makes such form of payment available to such individual;
- (2) the Actuarially Equivalent value of such form of payment is not in excess of the Actuarially Equivalent value of the payments which would otherwise be required under a QDRO in the absence of such form of payment;
- (3) for purposes of Sections 5.3, 6.3, and 6.4, such individual will be treated as a Participant or Employee, as applicable, with the exception of any requirements related to the Qualified Joint and Survivor Annuity;
- (4) the Participant's Retirement Income as determined under Section 2.6 will be reduced by the Actuarial Equivalent of any payments to be made to the individual pursuant to the QDRO; and

- (5) the provisions of Subsection 5.2(E) and Sections 5.3, 5.4, 6.3, and 6.4 will apply to any benefits payable to such individual.

A domestic relations order that otherwise satisfies the requirements for a QDRO will not fail to be a QDRO solely because the order is issued after, or revises, another domestic relations order or QDRO or solely because of the time at which the order is issued, including issuance after the Participant's death. A domestic relations order described in this paragraph is subject to the same requirements and protections that apply to QDROs.

(C) Special Rule for Certain Judgments and Settlements

Subsection 6.6(A) above will not apply to any offset of a Participant's benefits provided under the Plan against an amount that such Participant is ordered or required to pay to the Plan if the order or requirement to pay arises:

- (1) under a judgment of conviction for a crime involving the Plan;
- (2) under a civil judgment (including a consent order or decree) entered by a court in an action brought in connection with a violation (or alleged violation) of part 4 of subtitle B of title I of ERISA; or
- (3) pursuant to a settlement agreement between the Secretary of Labor and the Participant or a settlement agreement between the Pension Benefit Guaranty Corporation and the Participant in connection with a violation (or alleged violation) of part 4 of subtitle B of title I of ERISA by a fiduciary or any other person; and

the judgment, order, decree, or settlement agreement expressly provides for the offset of all or part of the amount ordered or required to be paid to the Plan against the Participant's benefits provided under the Plan; and, in the case in which the survivor annuity requirements of Code section 401(a)(11) apply with respect to distributions from the Plan to such Participant, if the Participant has an Eligible Spouse at the time at which the offset is to be made:

- (4) either such Eligible Spouse has consented in writing to such offset and such consent is witnessed by a notary public or representative of the Plan (or it is established to the satisfaction of the Plan Administrator that such consent may not be obtained by reason of circumstances described in Code section 417(a)(2)(B)), or an election to waive the right of the Eligible Spouse to either a Qualified Joint and Survivor Annuity or a Qualified Pre-Retirement Survivor Annuity is in effect in accordance with the requirements of Code section 417(a);
- (5) such Eligible Spouse is ordered or required in such judgment, order, decree, or settlement to pay an amount to the Plan in connection with a violation of part 4 of subtitle B of title I of ERISA; or
- (6) in such judgment, order, decree, or settlement, such Eligible Spouse retains the right to receive the Survivor Annuity described in Subsection 6.6(D) below.

(D) Survivor Annuity

The Survivor Annuity payable to an Eligible Spouse pursuant to Subsection 6.6(C) will be an amount determined as the portion of the Qualified Pre-Retirement Survivor Annuity or the Qualified Joint and Survivor Annuity, as applicable, which, but for the application of Subsection 6.6(C), would be payable to a Participant's Eligible Spouse pursuant to Section 4.2 or Section 5.2, respectively; provided, however, that such Survivor Annuity will be determined as if:

- (1) the Participant ceased to be employed in Covered Service on the date of the offset described in Subsection 6.6(C);

- (2) there is no offset pursuant to Subsection 6.6(C);
- (3) the Plan permits commencement of benefits only on or after the Participant's Normal Retirement Age;
- (4) the Plan provides only the Minimum Qualified Joint and Survivor Annuity; and
- (5) the Qualified Pre-Retirement Survivor Annuity under the Plan is equal to the amount of the Minimum Qualified Joint and Survivor Annuity.

For purposes of this Subsection 6.6(D), the Minimum Qualified Joint and Survivor Annuity will mean the Qualified Joint and Survivor Annuity described in Paragraph 1.2(A)(22), except that such Paragraph 1.2(A)(22) will be applied as if the survivor portion of the Qualified Joint and Survivor Annuity is no greater than 50%.

**(E) Self-Payment Authorization for Health and Welfare Fund**

Notwithstanding the provisions set forth in Subsection 6.6(A) above, a Participant may authorize the Trustees to withhold a self-payment for retiree health insurance to the Plumbers and Pipefitters Local 803 Health and Welfare Fund from his Retirement Income payments and to submit such amount to the health and welfare fund. Such authorization must be in writing on the form prescribed by the Trustees for this purpose and the Participant may revoke such authorization in writing at any time.

**6.7 BENEFITS PAYABLE TO MINORS AND INCOMPETENTS**

Section 6.6 herein notwithstanding, whenever any person entitled to payments under this Plan is a minor or under other legal disability or in the sole judgment of the Trustees is otherwise unable to apply such payments to his own best interest and advantage (as in the case of illness, whether mental or physical, or where the person not under legal disability is unable to preserve his estate for his own best interest), the Trustees may direct all or any portion of such payments to an existing and duly-appointed guardian, tutor, conservator, committee, or other duly-appointed legal representative, in which event payment will be made to such representative as follows:

- (A) Directly to such person unless such person is an infant or has been legally adjudicated incompetent at the time of payment;
- (B) To the spouse, child, parent, or other blood relative to be expended on behalf of the person entitled or on behalf of those dependents as to whom the person entitled has the duty of support;
- (C) To a recognized charity or governmental institution to be expended for the benefit of the person entitled or for the benefit of those dependents as to whom the person entitled has the duty of support; or
- (D) By the Trustees themselves received and expending or directing the expenditures of the same for the benefit of the person entitled or for the benefit of those dependents as to whom the person entitled has the duty of support.

The decision of the Trustees will, in each case, be final and binding upon all persons and, except in the case of Subsection 6.7(D) above, the Trustees will not be obliged to see to the proper application or expenditure of any payments so made. Any payment made pursuant to the power herein conferred upon the Trustees will operate as a complete discharge of the obligations of the Trustees.

**6.8 NOTIFICATION OF MAILING ADDRESS**

Each Participant entitled to benefits hereunder will file with the Plan Administrator from time to time in writing his post office address and each change of post office address and any check representing payment hereunder and any communication addressed to a Participant hereunder at his last address filed with the Plan Administrator (or, if no such

address has been filed, then at his last address as indicated in the records of the Plan Administrator) will be binding on such person for all purposes of the Plan and the Trustees will not be obliged to search for or ascertain the location of any such person.

If a Pensioner fails to inform the Plan Administrator, in writing sent by certified mail, of his address and the Trustees are unable to communicate with the Pensioner at the address last recorded by the Plan Administrator and a letter is sent by regular mail to such Pensioner, any payments due on the Pensioner's account will be held without interest until he makes claim therefor.

#### **6.9 PROOF OF CONTINUED EXISTENCE**

If the Trustees, for any reason, are in doubt as to whether Retirement Income payments are being received by the person entitled thereto, the Trustees may, by registered or certified mail addressed to the person concerned at his address last known to the Trustees, notify such person, after 60 days following the mailing of the request, that all unmailed and future Retirement Income payments will be henceforth withheld until he provides to the Trustees a sworn statement of his continued life and his proper mailing address or his beneficiary provides the Trustees with evidence of his death.

#### **6.10 WRITTEN COMMUNICATIONS REQUIRED**

Any notice, request, instruction, or other communication to be given or made hereunder will be in writing and either personally delivered to the addressee or deposited in the United States mail fully postpaid and properly addressed to such addressee at the last address for notice shown in the records of the Plan Administrator.

#### **6.11 BENEFITS PAYABLE AT OFFICE OF PLAN ADMINISTRATOR**

All benefits hereunder and installments thereof will be payable at the office of the Plan Administrator.

#### **6.12 RELIANCE ON CERTIFICATES AND REPORTS**

The Trustees may rely upon all certificates and reports made by an accountant designated by the Trustees, upon all opinions given by legal counsel approved by the Trustees, upon all tables, valuations, certificates, and reports furnished by an actuary engaged by the Trustees, upon medical opinion submitted by a doctor approved by the Trustees, and will be fully protected with respect to any action taken or suffered by them in good faith in reliance upon any accountant, counsel, actuary, or doctor and such action will be conclusive upon Participants, Employers, and others having any relations with the Trustees, the Plan, or the Fund.

#### **6.13 ACTUARY AND ACTUARIAL VALUATIONS**

The benefits as set forth in this Plan (other than the benefits described in Article VIII) have been adopted by the Trustees on the basis of an actuarial estimate furnished them by an actuary that the Contributions to the Fund and the estimated earnings thereof will be sufficient to provide such benefits on a continuing basis. However, it is recognized that:

- (A) in the future, the income and/or liabilities of the Fund may differ from those estimated at the time of the establishment of this Plan; and
- (B) the benefits set forth in this Plan can be provided only to the extent that the assets of the Fund are sufficient to provide them.

In recognition of the foregoing, the Trustees will have prepared periodically (but no less frequently than required by Code section 412 or 431 as applicable) by an actuary an actuarial valuation of the Fund. Such actuarial valuation will

be performed by a firm, at least one of whose members or employees is enrolled by the Joint Board for the Enrollment of Actuaries.

#### **6.14 RECOVERY OF BENEFIT PAYMENTS**

The Trustees, in the event of any overpayment, will have the right, without limitation of any other rights, to recover such overpayment from future benefits payable hereunder. The amount of recovery from each such benefit payment will be at the discretion of the Trustees; provided, however, that no recovery of any single payment will exceed any amount allowable under federal law.

Any person, whether an Employee, beneficiary, or other person, who receives an incorrect payment from the Trust Fund (whether an erroneous benefit amount, a payment made after a Participant's death, or a payment made for any other reason) will be responsible to notify the Trustees of such receipt of incorrect payment and to promptly return such payment to the Trustees.

#### **6.15 CLAIMS PROCEDURE**

Claims for all benefits will be governed by the provisions of Subsection 6.15(A), except that claims for a Disability Retirement Income or Temporary Disability Income payable pursuant to Section 3.4 herein will be governed by the provisions of Subsection 6.15(B) if such Disability Retirement Income or Temporary Disability Income has been granted based on evidence other than a federal Social Security disability award.

(A) If a Participant, beneficiary, alternate payee, or their authorized representative (hereinafter referred to as the "Claimant") asserts a right to a benefit under the Plan which has not been received, the Claimant must file a claim for such benefit with the Trustees on forms provided by the Trustees. The Trustees will render their decision on the claim within 90 days after their receipt of the claim. If special circumstances apply, the 90-day period may be extended by an additional 90 days, provided that written notice of the extension is provided to the Claimant during the initial 90-day period and such notice indicates the special circumstances requiring an extension of time and the date by which the Trustees expect to render their decision on the claim.

If the Trustees wholly or partially deny the claim, the Trustees will provide written notice to the Claimant within the time limitations of the immediately preceding paragraph. Such notice will set forth:

- (1) the specific reasons for the denial of the claim;
- (2) specific reference to pertinent provisions of the Plan on which the denial is based;
- (3) a description of any additional material or information necessary to perfect the claim and an explanation of why such material or information is necessary;
- (4) a description of the Plan's claims review procedures and the time limitations applicable to such provisions; and
- (5) a statement of the Claimant's right to bring a civil action under section 502(a) of ERISA if the claim denial is appealed to the Trustees and the Trustees fully or partially deny the claim.

A Claimant whose application for benefits is denied may request a full and fair review of the decision denying the claim by filing, in accordance with such procedures as the Trustees may establish, a written appeal which sets forth the documents, records, and other information relating to the claim within 60 days after receipt of the notice of the denial from the Trustees. In connection with such appeal and upon request by the Claimant, a Claimant may review (or receive free copies of) all documents, records, or other information relevant to the Claimant's claim for benefit, all in accordance with such procedures as the Trustees may establish. If a Claimant fails to file an appeal within such 60-day period, he will have no further right to appeal.

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A decision on the appeal by the Trustees will include a review by the Trustees that takes into account all comments, documents, records, and other information submitted by the Claimant relating to the claim, without regard to whether such information was submitted or considered in the initial claim determination. The Trustees will render their decision on the appeal not later than 60 days after the receipt by the Trustees of the appeal. If special circumstances apply, the 60-day period may be extended by an additional 60 days, provided that written notice of the extension is provided to the Claimant during the initial 60-day period and such notice indicates the special circumstances requiring an extension of time and the date by which the Trustees expect to render their decision on the claim on appeal.

The Trustees will provide written notice to the Claimant of their determination on review within the time limitations of the immediately preceding paragraph. If the Trustees wholly or partially deny the claim on appeal, such notice will set forth:

- (6) the specific reasons for the denial of the claim;
- (7) specific reference to pertinent provisions of the Plan on which the denial is based;
- (8) a statement of the Claimant's right to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the Claimant's claim for benefits; and
- (9) a statement of the Claimant's right to bring a civil action under ERISA section 502(a).

The foregoing claims procedures described in this Subsection 6.15(A) will be administered in accordance with ERISA section 503 and guidance issued thereunder. Any written notice required to be given to the Claimant may, at the option of the Trustees and in accordance with guidance issued under ERISA section 503, be provided electronically.

(B) If a Participant or his authorized representative (hereinafter referred to as the "Claimant") asserts a right to a benefit under Section 3.4 of the Plan which has not been received and the Participant has not received a federal Social Security disability award, the Claimant must file a claim for such benefit with the Trustees on forms provided by the Trustees. The Trustees will render their decision on the claim within 45 days after their receipt of the claim. If special circumstances apply, the 45-day period may be extended by an additional 30 days, provided that written notice of the extension is provided to the Claimant during the initial 45-day period and such notice indicates the special circumstances requiring an extension of time and the date by which the Trustees expect to render their decision on the claim. If, prior to the end of the first 30-day extension, the Trustees determine that, due to matters beyond the control of the Trustees, a decision cannot be rendered within the extension period, the period for making the decision may be extended for an additional 30-day period, provided that written notice of the extension is provided to the Claimant prior to expiration of the first 30-day extension period and such notice indicates the special circumstances requiring a second extension of time and the date by which the Trustees expect to render their decision on the claim.

The notice of the extension will set forth:

- (1) the standards on which entitlement to a benefit is based;
- (2) the unresolved issues that prevent a decision on the claim; and
- (3) the additional information needed to resolve the issues.

The Claimant will be afforded at least 45 days to provide the specified information.

If the Trustees wholly or partially deny the claim, the Trustees will provide written notice to the Claimant within the time limitations of the immediately preceding paragraph. Such notice will set forth:

- (4) the specific reasons for the denial of the claim;
- (5) specific reference to pertinent provisions of the Plan on which the denial is based;
- (6) a description of any additional material or information necessary to perfect the claim and an explanation of why such material or information is necessary;
- (7) a description of the Plan's claims review procedures and the time limitations applicable to such provisions;
- (8) if an internal rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination, the notice will also set forth either the specific rule, guideline, protocol, or other similar criterion or a statement that such a rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination and the notice will inform the Claimant that a copy of such rule, guideline, protocol, or other criterion will be provided to the Claimant free of charge upon request; and
- (9) a statement of the Claimant's right to bring a civil action under ERISA section 502(a) if the claim denial is appealed to the Trustees and the Trustees fully or partially deny the claim.

A Claimant whose application for benefits is denied may request a full and fair review of the decision denying the claim by filing, in accordance with such procedures as the Trustees may establish, a written appeal which sets forth the documents, records, and other information relating to the claim within 180 days after receipt of the notice of the denial from the Trustees. In connection with such appeal and upon request by the Claimant, a Claimant may review (or receive free copies of) all documents, records, or other information relevant to the Claimant's claim for benefit, all in accordance with such procedures as the Trustees may establish. If a Claimant fails to file an appeal within such 180-day period, he will have no further right to appeal.

The review on the appeal will not afford deference to the initial adverse benefit determination and will be conducted by an appropriate named fiduciary of the Plan who is neither the individual who made the initial adverse benefit determination nor the subordinate of such individual. In deciding an appeal of any adverse benefit determination that is based in whole or in part on a medical judgment, the appropriate named fiduciary will consult with a health care professional who has appropriate training and experience in the field of medicine involved in the medical judgment, other than an individual who was consulted in connection with the initial adverse benefit determination or the subordinate of any such individual. A decision on the appeal by the appropriate named fiduciary will include a review by the appropriate named fiduciary that takes into account all comments, documents, records, and other information submitted by the Claimant relating to the claim, without regard to whether such information was submitted or considered in the initial claim determination. The appropriate named fiduciary will render his decision on the appeal not later than 45 days after the receipt by the appropriate named fiduciary of the appeal. If special circumstances apply, the 45-day period may be extended by an additional 45 days, provided that written notice of the extension is provided to the Claimant during the initial 45-day period and such notice indicates the special circumstances requiring an extension of time and the date by which the appropriate named fiduciary expects to render his decision on the claim on appeal.

The appropriate named fiduciary will provide written notice to the Claimant of his determination on review within the time limitations of the immediately preceding paragraph. If the appropriate named fiduciary wholly or partially denies the claim on appeal, such notice will set forth:

- (10) the specific reasons for the denial of the claim;
- (11) specific reference to pertinent provisions of the Plan on which the denial is based;

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- (12) a statement of the Claimant's right to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the Claimant's claim for benefits;
- (13) the identification of the medical or vocational experts whose advice was obtained on behalf of the Plan;
- (14) if an internal rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination, the notice will also set forth either the specific rule, guideline, protocol, or other similar criterion or a statement that such a rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination and the notice will inform the claimant that a copy of such rule, guideline, protocol, or other criterion will be provided to the Claimant free of charge upon request; and
- (15) a statement of the Claimant's right to bring a civil action under ERISA section 502(a).

The foregoing claims procedures described in this Subsection 6.15(B) will be administered in accordance with ERISA section 503 and guidance issued thereunder. Any written notice required to be given to the Claimant may, at the option of the Trustees and in accordance with guidance issued under ERISA section 503, be provided electronically.

- (C) For purposes of this Section 6.15, the period of time within which an initial benefit determination is required to be made will begin at the time a claim is filed in accordance with Subsections 6.15(A) or 6.15(B) without regard to whether all of the information necessary to make a benefit determination accompanies the filing. In the event that a period of time is extended as permitted due to the Claimant's failure to submit information necessary to decide a claim, the period for making the benefit determination will be tolled from the date on which the notification of the extension is sent to the Claimant until the date on which the Claimant responds to the request for additional information.
- (D) If the Trustees hold regularly scheduled meetings at least quarterly, the Trustees may instead make a benefit determination no later than the date of the meeting of the Board of Trustees that immediately follows the Plan's receipt of a request for review, unless the request for review is filed within 30 days preceding the date of such meeting. In such case, a benefit determination may be made by no later than the date of the second meeting following the Plan's receipt of the request for review. If special circumstances require a further extension of time for processing, a benefit determination will be rendered not later than the third meeting of the Board of Trustees following the Plan's receipt of request for review. If such an extension of time for review is required because of special circumstances, the Trustees will provide the Claimant with written notice of the extension, describing the special circumstances and the date as of which the benefit determination will be made, prior to the commencement of the extension. The Trustees will notify the Claimant of a benefit determination or the decision on review of an adverse benefit determination, as soon as possible, but not later than five days after the benefit determination is made.
- (E) A decision on any claim submitted for review will be furnished to the Claimant within 60 days following receipt of the request for review; provided, however, that, if a decision cannot be made within such 60-day period, the Trustees may extend the period within which a decision or review may be furnished to the Claimant for an additional 60 days by written notice to the Claimant within the original 60-day period. Any decision or review will be in writing and will set forth the reasons for the decision and will refer to the Plan provisions upon which the decision is based.

(F) Limitation of Actions

No legal action may be commenced or maintained against the Plan (or its Trustees) by any Claimant prior to the Claimant's exhausting the administrative procedures set forth herein. No legal action may be commenced or maintained unless that action is filed in the appropriate court no more than 180 days following the exhaustion of the administrative procedures set forth herein or such earlier time as is applicable under State law.

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**ARTICLE VII****OTHER PROVISIONS****7.1 AMENDMENT OF PLAN**

(A) The Trustees may alter, amend, or modify the Plan at any time and from time to time. Notwithstanding the foregoing, no amendment to this Plan (including a change in the actuarial basis for determining an optional form of Retirement Income or an Early Retirement Income) will be effective to the extent that it decreases a Participant's accrued benefit; provided, however, a Participant's accrued benefit may be reduced to the extent permitted under Code sections 412(c)(8) or 432. For purposes of this Subsection 7.1(A), a Plan amendment which has the effect of: (1) eliminating or reducing an Early Retirement Income or a retirement-type subsidy; or (2) eliminating an optional form of Retirement Income, with respect to benefits attributable to service before the amendment, will be treated as reducing accrued benefits. In the case of a retirement-type subsidy, the preceding sentence will apply only with respect to a Participant who satisfies (either before or after the amendment) the pre-amendment conditions for the subsidy. In general, a retirement-type subsidy is a subsidy that continues after retirement, but does not include a Disability Retirement Income, Temporary Disability Income, or death benefit which is not in pay status. Furthermore, no amendment to the Plan will have the effect of decreasing a Participant's vested interest determined without regard to such amendment as of the later of the date such amendment is adopted or becomes effective. The Trustees specifically reserve the right, however, to make such retroactive amendments as may be required by the Commissioner of Internal Revenue to preserve this Plan as a qualified pension plan under Code section 401(a) and to maintain the tax-exempt status of its related Trust under Code section 501(a).

(B) In the event that any amendment changes any vesting schedule under the Plan, each Participant of the Plan with at least three years of Vested Service may elect to have his Vested Percentage computed under the Plan without regard to such amendment. The period during which such election may be made will commence with the date the amendment is adopted and will end on the latest of:

- (1) 60 days after the amendment is adopted;
- (2) 60 days after the amendment becomes effective; or
- (3) 60 days after the Participant is issued written notice of the amendment by the Trustees.

**7.2 TERMINATION OF PLAN AND DISTRIBUTION OF TRUST FUND**

Upon termination of the Plan, the Trust Fund will be apportioned and distributed in accordance with the following procedure:

(A) The Trustees will determine the date of distribution and the asset value to be distributed, after taking into account the expenses of such distribution.

(B) The Trustees will determine the method of distribution of the asset value (that is, whether distribution will be by payment in cash, by transfer to Individual Retirement Accounts established under Code section 408, by the maintenance of another or substituted trust fund, by the purchase of insured annuities, or in-kind based on the then market value) for each class of Participants under the Plan, as specified in Subsection 7.2(C) below. In the case of a distribution which is an immediate annuity, such distribution will conform to the requirements of Sections 5.2 and 5.3. In the case of a distribution which is a deferred annuity, all of the Plan provisions and requirements as set forth in this document relating to a Qualified Pre-Retirement Survivor Annuity and a Qualified Joint and Survivor Annuity will be preserved by and incorporated into any contract which operates outside this Plan to provide such deferred annuity.

(C) The Trustees, after having first determined the asset value properly apportionable, will apportion the asset value as of the date of termination of the Plan in the manner set forth below, on the basis that the amount required to provide any given Retirement Income will mean the actuarially computed single-sum value of such Retirement Income; except that, if the method of distribution determined under Subsection 7.2(B) above involves the purchase of an insured annuity, the amount required to provide the given Retirement Income will mean the single-premium payable for such annuity.

- (1) Apportionment will first be made with respect to the Individual Accounts described in Article VIII.
- (2) If there is any asset value remaining after the apportionment under Paragraph 7.2(C)(1) above, apportionment will next be made with respect to:
  - (a) each Pensioner whose Retirement Income payments commenced at least three years prior to the date of termination of the Plan in the amount required to provide (after the date of termination of the Plan) the smallest amount of income which such Pensioner received during such three-year period immediately preceding the date of termination of the Plan; and
  - (b) each other Employee or former Employee who, at least three years prior to the date of termination of the Plan, had become eligible for either Normal or Early Retirement, but had not yet begun receiving Retirement Income payments, in the amount required to provide (after the date of termination of the Plan) the monthly Retirement Income which would have been payable on behalf of such Employee if he had retired three years prior to the date of termination of the Plan, where such Retirement Income will be computed under the provisions of the Plan as in effect during the five-year period immediately preceding the date of termination of the Plan and will be equal to the smallest amount of income provided under the provisions of the Plan during such five-year period;

provided, however, that, if the asset value is less than the aggregate of such amounts, such amounts will be proportionately reduced so that the aggregate of such reduced amounts will be equal to the asset value.

- (3) If there is any asset value remaining after the apportionment under Paragraphs 7.2(C)(1) and 7.2(C)(2) above, apportionment will next be made with respect to each other Employee or former Employee who is not entitled to an apportionment under Paragraph 7.2(C)(2) above in the amount required to provide the single-sum value of his Vested Retirement Income commencing at Normal Retirement Date which he had accrued as of the date of termination of the Plan or, if applicable, which he was receiving as of the date of termination of the Plan which is not in excess of the Actuarially Equivalent single-sum value of the benefit guaranteed on his behalf under ERISA section 4022; provided, however, that, if such remaining asset value is less than the aggregate of the amounts thus apportioned hereunder, such latter amounts will be proportionately reduced so that the aggregate of such reduced amounts will be equal to the remaining asset value.
- (4) If there is any asset value remaining after the apportionments under Paragraphs 7.2(C)(1), 7.2(C)(2), and 7.2(C)(3) above, apportionment will next be made with respect to each Pensioner receiving a Retirement Income hereunder on such date and each Employee or former Employee who has, by such date, become eligible for Normal Retirement, but has not yet begun receiving Retirement Income payments, in an amount equal to the excess, if any, of:
  - (a) the amount required to provide the Retirement Income which such Employee or Pensioner is receiving or is entitled to receive;
  - (b) the amount of apportionment made on behalf of such Employee or Pensioner under Paragraphs 7.2(C)(2) or 7.2(C)(3) above;

over

provided, however, that, if such remaining asset value is less than the aggregate of the amounts thus apportioned hereunder, such latter amounts will be proportionately reduced so that the aggregate of such reduced amounts will be equal to the remaining asset value.

(5) If there is any asset value remaining after the apportionments under Paragraphs 7.2(C)(1), 7.2(C)(2), 7.2(C)(3), and 7.2(C)(4) above, apportionment will next be made with respect to:

(a) each Employee on such date who is not entitled to an apportionment under Paragraph 7.2(C)(4) above in an amount equal to the excess, if any, of:

(i) the amount required to provide the Actuarially Equivalent single-sum value of the Vested Retirement Income which he would have been entitled to receive if his service had been terminated on the date of termination of the Plan;

over

(ii) the amount of the apportionment made on behalf of such Employee under Paragraphs 7.2(C)(2) or 7.2(C)(3) above; and

(b) each former Employee entitled to a Vested Retirement Income whose monthly benefit payments have not commenced by such date in an amount equal to the excess, if any, of:

(i) the amount required to provide the Actuarially Equivalent single-sum value of his Vested Retirement Income;

over

(ii) the amount of the apportionment made on behalf of such Employee under Paragraphs 7.2(C)(2) or 7.2(C)(3) above;

provided, however, that, if such remaining asset value is less than the aggregate of the amounts thus apportioned hereunder, such latter amounts will be proportionately reduced so that the aggregate of such reduced amounts will be equal to the remaining asset value.

(6) If there is any asset value remaining after the apportionments under Paragraphs 7.2(C)(1), 7.2(C)(2), 7.2(C)(3), 7.2(C)(4), and 7.2(C)(5) above, apportionment will lastly be made with respect to each active Employee on such date who is not entitled to an apportionment under Paragraph 7.2(C)(4) above in an amount equal to the excess, if any, of:

(a) the amount required to provide the Actuarially Equivalent single-sum value of the deferred monthly Retirement Income commencing at Normal Retirement Date which has accrued as of the date of termination of the Plan;

over

(b) the amount of the apportionment made on behalf of such Employee under Paragraphs 7.2(C)(1), 7.2(C)(2), 7.2(C)(3), 7.2(C)(4), and 7.2(C)(5) above;

provided, however, that, if such remaining asset value is less than the aggregate of the amounts thus apportioned hereunder, such latter amounts will be proportionately reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.

(7) In the event that there is any asset value remaining after the full apportionments specified in Paragraphs 7.2(C)(1), 7.2(C)(2), 7.2(C)(3), 7.2(C)(4), 7.2(C)(5), and 7.2(C)(6) above, such excess will be prorated to each Participant on the basis of the single-sum value of his benefits to the single-sum value of all Participants' benefits.

The amount allocated under any Paragraph of Subsection 7.2(C) with respect to any benefit will be properly adjusted for any allocation of assets with respect to that benefit under a prior Paragraph of Subsection 7.2(C).

(D) The order of priorities for, and the amount of, distribution set forth in Subsection 7.2(C) above will be subject:

- (1) to the recapture of certain payments as provided in ERISA section 4045; and
- (2) to such distributions' not being determined to be otherwise discriminatory by the Internal Revenue Service.

In the event the recapture of payments under ERISA section 4045 becomes effective or the Internal Revenue Service rules that the distributions are otherwise discriminatory, adjustment may be made in the said priorities and amounts of distribution as may be required to satisfy the requirements of ERISA section 4045 or of the Internal Revenue Service, as the case may be.

(E) As soon as practicable after receipt by the Trustees of notification from the Internal Revenue Service and the Pension Benefit Guaranty Corporation evidencing their approval of the method of distribution under this Section 7.2, the Trustees will distribute, in accordance with the manner of distribution determined under Subsection 7.2(B) above, the amount apportioned under Subsections 7.2(C) or 7.2(D), as the case may be.

### **7.3 BENEFITS 100% VESTED IF PLAN IS TERMINATED**

In the event that the Plan is terminated or partially terminated, the benefits of each Employee in the Plan in the event of complete termination or only the terminated Employees in the event of partial termination on such date of termination or partial termination are nonforfeitable and will be 100% vested to the extent then funded, where such vested benefits will be determined and distributed as provided in Section 7.2 hereof.

### **7.4 MERGER**

In the case of any merger or consolidation with, or transfer of assets or liabilities to, any other pension plan, each Employee in the plan will (if the plan then terminates) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (if the Plan had then terminated).

### **7.5 FORFEITURES**

Forfeitures and dividends will not be used to increase the benefits that any Employee would otherwise receive under the Plan at any time prior to the termination of the Plan, but will be anticipated in determining the costs under the Plan; provided, however, that this Section 7.5 will not be interpreted so as to prevent the Trustees from adopting Plan amendments which provide for increased benefits or Pensioner increases or other changes as seem appropriate from time to time.

### **7.6 REVERSION TO EMPLOYERS**

(A) Except as provided below, in no event will any Employer, directly or indirectly, receive any refund of Contributions made to the Trust nor will an Employer directly or indirectly participate in the disposition of the Trust Fund or receive any benefits from the Trust Fund unless or except as a qualified Participant.

(B) In the event an Employer makes a bona fide erroneous payment or overpayment of Contributions under a mistake of fact or law pursuant to ERISA section 403(c)(2)(A)(ii), the Employer may request repayment of such erroneous payment or overpayment of Contributions and the Trustees may return such amount to the Employer within six months after the Trustees determine that the erroneous payment or overpayment was made by such a mistake. Earnings of the Plan attributable to the erroneous payment or overpayment of Contributions may not be returned to the Employer but any losses attributable thereto must reduce the amount so returned.

## 7.7 MISCELLANEOUS

(A) The headings of articles are included solely for convenience or reference and, if there is any conflict between any such heading and the text, the text will control.

(B) Any discretionary action permitted by the Plan to be taken by the Trustees will be an action which is uniform in its application to all persons concerned or affected by such discretionary action.

(C) Any documents published and distributed to any Participant which summarize and explain the material provisions of the Plan will not be construed or in any way interpreted as constituting the Plan and, in the event of any conflicts between the terms of such documents and the terms of the Plan, the terms of the Plan will control.

## 7.8 RECIPROCITY

(A) The Trustees will be authorized, in their discretion, to enter into, operate under, and withdraw from any reciprocal agreement between this Plan and any other pension plans. Credit for Hours Worked, Contributions, Credited Service, and Vested Service will only be granted under this Section 7.8 for reciprocal contributions that are actually received by the Fund. In addition, no Hours Worked, Contributions, Credited Service, or Vested Service will be granted under this Section 7.8 for reciprocal hours for which the applicable contribution is received by the Fund more than 12 months after the date on which the work was performed that gave rise to the contribution and, in such a case, the reciprocal contributions will be returned to the reciprocating pension fund. All reciprocal agreements are incorporated herein by reference, provided that, in the event that there is a conflict between any provision of this Plan and a provision of a reciprocal agreement, the provision of this Plan will control and the conflicting provision of the reciprocal agreement will be null and void. Neither the Trustees nor the Trust Fund assume any of the liabilities or obligations of any of the other signatory funds to any reciprocal agreements.

(B) Any Hours Worked or Contributions which are credited by the Plan on account of a reciprocal agreement will be equal to the Hours Worked or Contributions, respectively, which would otherwise be credited under the Plan had such hours been worked within the Jurisdiction of the Plan except as set forth in the reciprocal agreement or in Subsection 7.8(C) below.

(C) [Reserved]

(D) Definitions

The following terms as used in this Section 7.8 will have the meanings as set forth below:

- (1) "Jurisdiction of the Plan" will have the same meaning as set forth under Paragraph 5.5(B)(3) herein.
- (2) "Local Contribution Rate" will mean the hourly pension contribution rate for work within the Jurisdiction of the Plan which is similar to that work which gave rise to reciprocal hours which are credited pursuant to a reciprocal agreement.
- (3) "Reciprocal Contribution Rate" will mean the hourly pension contribution rate for reciprocal hours credited pursuant to a reciprocal agreement, regardless of whether such hours are reciprocated from a

defined benefit or defined contribution plan. In the event that a reciprocal contribution is received from more than one plan for the same hour worked, the contribution received from multiple plans will be combined for purposes of this Section 7.8 and will be treated as a single contribution from a single pension plan.

## 7.9 CONSTRUCTION

The Trust Agreement and the Plan are created and accepted in the State of Florida. All questions pertaining to the validity or construction of the Trust Agreement and the Plan and the accounts and transactions of the parties will be determined in accordance with the laws of the State of Alabama, except to the extent that such determination is subject to the provisions of ERISA or any other federal legislation which may preempt jurisdiction of the subject matter. Should any provision contained in the Trust Agreement or in the Plan or in any trust agreement pursuant to which the Agreement is created be held unlawful, such provision will be of no force and effect and the Trust Agreement, the Plan, or any such trust agreement will be treated as if such portion had not been contained therein.

## 7.10 SEPARABILITY

Any provision or Section of the Plan adjudicated to be unlawful by a court of competent jurisdiction will become null and void, but all other provisions of this Plan will remain in full force and effect.

## 7.11 TOP-HEAVY PROVISIONS

The provisions of Subsections 7.11(C) and 7.11(D) will become effective for Employees (as defined in Subparagraph 1.2(A)(11)(b)) of an Employer with respect to any Plan Year during which the Plan is determined to be a Top-Heavy Plan with respect to such Employer.

### (A) Definitions

- (1) “Affiliated Employer” means any corporation which is a member of a Controlled Group which includes the Employer, any organization (whether or not incorporated) which is a member of an affiliated service group (as defined in Code section 414(m)) which includes the Employer, and any other entity required to be aggregated with the Employer pursuant to regulations promulgated under Code section 414(o).
- (2) “Determination Date” means, with respect to any Plan Year, the last day of the immediately preceding Plan Year.
- (3) “Key Employee” means an Employee as defined in Code section 416(i) and the regulations promulgated thereunder. Generally, any Employee or former Employee (including any deceased Employee, as well as each of the Employee’s or former Employee’s beneficiaries) is considered a Key Employee if the Employee or former Employee, at any time during the Plan Year that contains the Determination Date, has been included in one of the following categories:
  - (a) an officer of the Employer (as that term is defined within the meaning of the regulations under Code section 416) having annual Compensation greater than \$130,000 (as adjusted under Code section 416(i)(1) for Plan Years beginning after December 31, 2002); or
  - (b) a person who owns (or is considered as owning within the meaning of Code section 318) more than five percent of the value of the outstanding stock of the Employer or stock possessing more than five percent of the total combined voting power of all stock of the Employer or, in the case of an unincorporated business, a person who owns more than five percent of the capital or profits interest in the Employer; or

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- (c) a person having annual Compensation from the Employer of more than \$150,000 and who owns (or is considered as owning within the meaning of Code section 318) more than one percent of the value of the outstanding stock of the Employer or stock possessing more than one percent of the total combined voting power of all stock of the Employer or, in the case of an unincorporated business, who owns more than one percent 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), 414(c), 414(m), and 414(o) will be treated as separate employers. In determining whether an individual has Compensation of more than \$150,000, Compensation from each employer required to be aggregated under Code sections 414(b), 414(c), 414(m), and 414(o) will be taken into account.

Notwithstanding the provisions above, an Employee will be a Key Employee only if he is a member of the "Top-Paid Group" as defined herein. The Top-Paid Group will be determined pursuant to Code section 414(q) and the regulations promulgated thereunder and generally means the top 20% of Employees who performed any services for the Employer during the applicable year, ranked according to the amount of Compensation received from the Employer during such year. All Affiliated Employers will be taken into account as a single employer and leased employees will be treated as Employees if required pursuant to Code sections 414(n) or 414(o). Employees who are non-resident aliens who received no earned income (within the meaning of Code section 911(d)(2)) from the Employer constituting United States source income within the meaning of Code section 861(a)(3) will not be treated as Employees. Furthermore, for the purposes of determining the number of active Employees in any year, the following additional Employees may also be excluded, provided, however, that such Employees will still be considered for the purpose of identifying the particular Employees in the Top-Paid Group:

- (d) Employees with less than six months of service;
- (e) Employees who normally work less than 17½ hours per week;
- (f) Employees who normally work less than six months during a year; and
- (g) Employees who have not yet attained age 21.

The foregoing exclusions set forth in this Paragraph 7.11(A)(3) will be applied on a uniform and consistent basis for all purposes for which the Code section 414(q) definition is applicable. Furthermore, in applying such exclusions, the Employer may substitute any lesser service, hours, or age in Subparagraphs 7.11(A)(3)(d), 7.11(A)(3)(e), or 7.11(A)(3)(g), respectively.

- (4) "Non-Key Employee" means any Employee or former Employee of the Employer (and such Employee's or former Employee's beneficiaries) who is not a Key Employee.
- (5) "Permissive Aggregation Group" means the Required Aggregation Group of plans plus any other plan or plans of the Employer or any Affiliated Employer which, when considered as a group with the Required Aggregation Group, would continue to satisfy the requirements of Code sections 401(a)(4) and 410.
- (6) "Present Value" means the present value based on the interest and mortality rates used to determine the minimum required contribution for the preceding Plan Year under Code sections 412 or 431, as applicable.
- (7) "Required Aggregation Group" means:
  - (a) each qualified plan of the Employer or any Affiliated Employer in which at least one Key Employee participates or participated at any time during the Plan Year containing the determination date or any of the four preceding Plan Years (regardless of whether the plan has terminated); and

- (b) any other qualified plan of the Employer which enables a plan described in Subparagraph 7.11(A)(7)(a) to meet the requirements of Code sections 401(a)(4) or 410.
- (8) "Valuation Date" means, with respect to any Plan Year, the first day of the immediately preceding Plan Year.

(B) Top-Heavy Determination

The Plan will be considered a Top-Heavy Plan with respect to an Employer for the Plan Year if, as of the Determination Date:

- (1) the Present Value of the accrued Retirement Income of Participants who are Key Employees with respect to the Employer exceeds 60% of the Present Value of the accrued Retirement Income of all Participants with respect to the Employer (the "60% Test"); or
- (2) the Plan is part of a Required Aggregation Group with respect to the Employer and the Required Aggregation Group is Top-Heavy.

However, notwithstanding the results of the 60% Test, the Plan will not be considered a Top-Heavy Plan with respect to the Employer for any Plan Year in which the Plan is part of a Required or Permissive Aggregation Group which is not Top-Heavy with respect to the Employer.

For purposes of making the 60% Test for any Plan Year, the accrued Retirement Income and respective Present Values under the Plan will be those amounts calculated as of the Valuation Date. Distributions made with respect to such Employees within the one-year period ending on the Determination Date will be included in such Present Values for purposes of making the 60% Test. Furthermore, with respect to distributions made other than on account of a severance of employment, death, or disability, distributions made with respect to such Employees within the five-year period ending on the Determination Date will be included in such Present Values for purposes of making the 60% Test. For purposes of including in the 60% Test another plan within a Required or Permissive Aggregation Group of which this Plan is a part, the present value of the accrued benefits or the account balances under such other plan will be determined as of the determination date which falls within the same calendar year as does the Determination Date for the Plan.

If an individual has not performed any service for the Employer at any time during the one-year period ending on the Determination Date or was a Key Employee with respect to the prior Plan Year but is not a Key Employee with respect to the current Plan Year, then any accrued Retirement Income of the Participant is disregarded for the purposes of determining whether the Plan is Top-Heavy with respect to the Employer for the current Plan Year. The accrued Retirement Income of a Non-Key Employee will be determined under the method, if any, that uniformly applies for accrual purposes under all defined benefit plans maintained by the Employer or, if there is no such method, as if such benefit accrued not more rapidly than the slowest accrual rate permitted under the fractional rule of Code section 411(b)(1)(C).

The calculation of the 60% Test and the extent to which distributions, rollovers, and transfers are taken into account will be made in accordance with Code section 416 and the regulations promulgated thereunder.

(C) Minimum Benefit

- (1) The minimum annual Retirement Income for a Non-Key Employee terminating employment on or after his Normal Retirement Date and the minimum annual Retirement Income payable as of his Normal Retirement Date for a Non-Key Employee who terminates employment prior thereto with entitlement to a Retirement Income will be equal to the product of:

- (a) 2% for each Plan Year in which he has a year of Vested Service and the Plan is a Top-Heavy Plan with respect to an Employer or, if less, 20%; and
- (b) The average of the total Compensation paid over the five (or the actual number, if fewer) consecutive calendar years preceding termination of employment during which such aggregate compensation is the largest. Any calendar year for which the Participant is not credited with at least 1,000 Hours Worked will be disregarded for purposes of this average.

(2) In the case of a Non-Key Employee who also participates in a defined contribution plan maintained by the Employer, the minimum Retirement Income provided in Paragraph 7.11(C)(1) above will be accrued regardless of the contributions accrued under such defined contribution plan.

(D) Minimum Vesting

Notwithstanding other provisions of this Plan regarding vesting, a Participant who is either a Key Employee or a Non-Key Employee of an Employer will be eligible for a Vested Retirement Income if, while the Plan is a Top-Heavy Plan with respect to the Employer, his employment is terminated before death or retirement after he has earned at least three years of Vested Service. The amount of his Vested Retirement Income payable in the Normal Form of Payment commencing as of his Normal Retirement Date will be equal to the vested percentage of his accrued Retirement Income determined in accordance with the following table:

<u>Years of Vested Service</u>	<u>Vested Percentage</u>
Less than three	0%
Three or more	100%

(E) Change in Top-Heavy Status

If the Plan becomes a Top-Heavy Plan with respect to an Employer and subsequently ceases to be such, the vesting schedule set forth in Subsection 7.11(D) will continue to apply in determining the Vested Retirement Income of any Participant previously eligible therefor who had at least three years of Vested Service as of the last day of the last Plan Year of top-heaviness.

**7.12 DETERMINATION OF WITHDRAWAL LIABILITY**

[Reserved]

**ARTICLE VIII**

**IRC §414(K) PLAN**

**8.1 ESTABLISHMENT OF INDIVIDUAL ACCOUNTS; DEFINITION OF TERMS**

[Reserved]

**8.2 VALUATION OF INDIVIDUAL ACCOUNTS**

[Reserved]

**8.3 PAYMENT OF INDIVIDUAL ACCOUNTS**

[Reserved]

**8.4 MAXIMUM EMPLOYER CONTRIBUTIONS**

[Reserved]

SIGNATURE PAGE

In witness whereof, the members of the BOARD OF TRUSTEES of the INTERNATIONAL ASSOCIATION OF HEAT & FROST INSULATORS AND ALLIED WORKERS LOCAL NO. 13 PENSION FUND have caused this instrument to be signed by the Employer Trustees and the Union Trustees, respectively, of the appointed members of the Board of Trustees, this 14<sup>th</sup> day of October, 2014, but effective as of the respective dates referenced in the "Introduction" hereto.

EMPLOYER TRUSTEES

UNION TRUSTEES

Walter J. Jahn

Mitchell J. Hodges

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Renee Parenti  
Witness

Renee Parenti  
Witness

**AMENDMENT ONE****INTERNATIONAL ASSOCIATION OF HEAT & FROST INSULATORS  
AND ALLIED WORKERS LOCAL NO. 13 PENSION PLAN**

The International Association of Heat & Frost Insulators and Allied Workers Local No. 13 Pension Plan, as amended and restated effective January 1, 2014, is hereby amended by making the substitutions and additions described below.

(1) Plan Subsection 7.1(A) is amended by changing the reference to Internal Revenue Code section 412(c)(8) to section 412(d)(2).

Except as amended as described above, the plan will remain in full force and effect.

IN WITNESS WHEREOF, the Trustees of the INTERNATIONAL ASSOCIATION OF HEAT & FROST INSULATORS AND ALLIED WORKERS LOCAL NO. 13 PENSION FUND have authorized this instrument to be signed by the Employer Trustees and the Union Trustees, respectively, this 23<sup>rd</sup> day of April, 2015, to be effective as of the date(s) cited above.

EMPLOYER TRUSTEES

UNION TRUSTEES

Walter J. John

Mitchell J. Hodge

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Jeff Sandt  
Witness

Scott Dutcher  
Witness

## **AMENDMENT TWO**

### **INTERNATIONAL ASSOCIATION OF HEAT & FROST INSULATORS AND ALLIED WORKERS LOCAL NO. 13 PENSION PLAN**

The International Association of Heat & Frost Insulators and Allied Workers Local No. 13 Pension Plan, as amended and restated effective January 1, 2014, is hereby amended by making the substitutions and additions described below.

- (1) Effective January 1, 2016, plan Paragraph 2.6(A)(2) is amended as follows:
  - (2) *the Contributions made or required to be made on behalf of the Employee after December 31, 1980 multiplied by the applicable Benefit Percentage from the following table:*

<i>Effective Date</i>	<i>Benefit Percentage</i>
<i>Prior to January 1, 1988</i>	<i>1.78%</i>
<i>January 1, 1988 through December 31, 1989</i>	<i>2.00%</i>
<i>January 1, 1990 through January 1, 1992</i>	<i>2.08%</i>
<i>January 2, 1992 through December 31, 1993</i>	<i>2.19%</i>
<i>January 1, 1994 through December 31, 1998</i>	<i>2.26%</i>
<i>January 1, 1999 and thereafter</i>	<i>2.30%</i>

*The applicable Benefit Percentage is zero with respect to Contributions made or required to be made during any Plan Year after 1984 in which the Employee earns less than 435 Hours Worked unless such Employee is credited with one year of Future Vested Service for that Plan Year.*

*With respect to any Plan Year beginning after 1996, the minimum monthly benefit earned during such Plan Year by an Employee who performs work pursuant to a Collective Bargaining Agreement between the Union and an Employer for which no contributions are made or required to be made under the terms of said Collective Bargaining Agreement for a portion of such year will be \$1.00.*

*Notwithstanding any other provisions of the Plan to the contrary, the Benefit Percentage that will be applied to the Contributions made or required to be made on behalf of an Employee for ~~during the period after August 31~~<sup>September 1</sup>, 2009 through December 31, 2015 will be equal to 2.00% and, furthermore, the Contributions that are considered for purposes of determining benefits during the*

period after August 31September 1, 2009 through December 31, 2015 pursuant to this Paragraph 2.6(A)(2) will not exceed \$3.00 per hour.

Except as amended as described above, the plan will remain in full force and effect.

IN WITNESS WHEREOF, the Trustees of the INTERNATIONAL ASSOCIATION OF HEAT & FROST INSULATORS AND ALLIED WORKERS LOCAL NO. 13 PENSION FUND have authorized this instrument to be signed by the Employer Trustees and the Union Trustees, respectively, this 16<sup>th</sup> day of August, 2016, to be effective as of the date(s) cited above.

EMPLOYER TRUSTEES

Walter J. John

UNION TRUSTEES

Mitchell J. Hodges

Witness

Witness