

Department of the Treasury
Internal Revenue Service

P.O. BOX 12192
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Jan. 29, 2010 LTR 3336C S0
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BOARD OF TRUSTEES OF THE TOLEDO
AREA SHEET METAL WORKERS PENSION
SCUMAKER LOOP KENDRICK LLP
SCOTT D NEWSOM
1000 JACKSON ST
TOLEDO OH 43604



16759

Employer Identification Number: 34-6682530
Plan Number: 001
Plan Name: TOLEDO AREA SHEET METAL
WORKERS PENSION PLAN
Application Form: 5300
Document Locator Number: 17007-012-07003-0
User Fee Paid: \$1000.00
For assistance, call: 1-877-829-5500

Dear Applicant,

Acknowledgement of Your Request

We received your application for a determination, notification, or advisory letter concerning the qualification of your plan and have assigned it the document locator number listed above. You should refer to this number in any communications with us concerning your application.

What Happens Next?

After data entry for your application is completed at the Processing Center in Covington, Kentucky, the application is sent to our Cincinnati office for review by one of our Employee Plans Specialists. Applications are processed in the order they are received.

Some applications are approved based on the information submitted. If this is the case, you will receive your favorable determination letter without further contact from us.

If additional information is required, or if other changes or plan amendments are needed, an Employee Plans Specialist will fax, telephone, or write you. The specialist may be from the Cincinnati office or from another office. You may typically expect to receive a determination letter after additional information and/or amendments are submitted. If we decide your plan is not qualified, we will discuss the findings with you. Furthermore, if an agreement cannot be reached, we will provide you with a complete explanation of your appeal rights.

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How Soon Will We Contact You?

You may normally expect to hear from us within 145 days. In any event, by law we may not issue a determination letter until at least 60 days after receipt of your application. This allows interested parties a period of time to submit comments to the Internal Revenue Service.

If you have any questions about your application, you may call our toll free number at 1-877-829-5500 Monday through Friday. Please have your document locator number at hand so we may identify your application more quickly. If you prefer to write, please include a copy of this letter with your correspondence.

You can also visit the "Retirement Plans Community" web page at www.irs.gov/ep. Questions and answers of general interest are featured at this web site location.

Sincerely yours,



Andrew E. Zuckerman
Director, EP Rulings & Agreement

**TOLEDO AREA SHEET METAL WORKERS
PENSION PLAN**

**as amended and restated
effective May 1, 2009***

*Except as otherwise noted.

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**TOLEDO AREA SHEET METAL WORKERS
PENSION PLAN**

The Toledo Area Sheet Metal Workers Pension Plan was established and is maintained as a result of collective bargaining between Local Union No. 33-Toledo District (formerly Local Union No. 6) of the Sheet Metal Workers' International Association and the Sheet Metal Contractors Association of Northwest Ohio (formerly known as the Toledo Area Sheet Metal and Roofing Contractors Association).

The Plan became effective May 6, 1963, and was amended on several subsequent occasions, including amendments by restatement effective May 1, 1976, May 1, 1984, May 1, 1989, and May 1, 2000.

The Trustees of the Plan desire to again amend the Plan by restatement to ensure its continuing qualification under section 401(a) of the Internal Revenue Code of 1986, as amended by the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"). Accordingly, the Plan is hereby amended by restatement effective May 1, 2009 (except as otherwise noted herein), to provide as follows.

The provisions of this amended and restated Plan shall apply to all individuals who are, or who become, participants on or after May 1, 2009, unless the provisions hereof specifically provide otherwise. Any rights and benefits of former participants shall be determined by the provisions of the Plan in effect on the date participation ceased.

ARTICLE 1
DEFINITIONS

Section 1.1 - Accrued Benefit

"Accrued Benefit" means the monthly pension benefit that a Participant or Former Participant has earned at any particular time (expressed in terms of a lifetime monthly retirement benefit for 60 months certain beginning at the Normal Retirement Date), based on the benefit formula in section 3.1. Notwithstanding the foregoing, however, effective June 1, 2009, "Accrued Benefit" means the monthly pension benefit that a Participant or Former Participant has earned at any particular time (expressed in terms of a Straight Life Annuity) beginning at the Normal Retirement Date, based on the benefit formula in section 3.1.

If a Participant or Former Participant incurs a Forfeiture of Service, the Accrued Benefit attributable to service prior to such event shall be zero. In addition, if a distribution is made pursuant to section 3.9, the Accrued Benefit attributable to service before such distribution shall be zero, subject to the repayment provisions of such section.

Except to the extent benefits are suspended in accordance with section 4.7, the amount of any form of benefit shall be the Actuarial Equivalent of the Participant's Accrued Benefit beginning at the Normal Retirement Date.

Section 1.2 - Actuarial Equivalent

"Actuarial Equivalent" means a benefit having the same value as the benefit that it replaces. The determination of Actuarial Equivalent shall be determined by section 3.10 and Exhibit A.

Section 1.3 - Annuity Starting Date

"Annuity Starting Date" means the first day of the first period for which an amount is paid as an annuity or any other form. However, in no event shall the Annuity Starting Date be later than the required beginning date, as defined in section 4.6(d)(4).

Section 1.4 - Association

"Association" means the Sheet Metal Contractors Association of Northwest Ohio (formerly known as the Toledo Area Sheet Metal and Roofing Contractors Association), and any other employer association that is bound to a collective bargaining agreement requiring contributions to the Plan.

Section 1.5 - Beneficiary

"Beneficiary" means the person or entity properly designated to receive benefits that may be payable after death pursuant to the provisions hereof. If no valid beneficiary designation form has been filed with the Board of Trustees at the date of death of the Participant or Former Participant (or if a deceased Participant or Former Participant is not survived by the Beneficiary he or she has designated), the Beneficiary shall be deemed to be the first in the following classes that is living at the date of death of the Participant or Former Participant:

- (a) The surviving spouse of the Participant or Former Participant.

- (b) The person entitled to receive death benefits from the health and welfare plan providing benefits to the Participant or Former Participant as a member of the collective bargaining unit represented by the Union.
- (c) The estate of the Participant or Former Participant.

Notwithstanding the foregoing, the Beneficiary of a Participant or Former Participant shall be the spouse to whom the Participant or Former Participant was married at death, subject to a Qualified Election. Furthermore, effective September 1, 2009, if a Participant or Former Participant designates his or her spouse as the Beneficiary, and the Participant or Former Participant and such spouse are legally divorced subsequent to the date of such designation, the designation of such spouse as a Beneficiary hereunder will be deemed null and void unless the Participant or Former Participant, subsequent to the legal divorce, reaffirms such designation by completing a new Beneficiary designation form.

Section 1.6 - Board of Trustees

"Board of Trustees" means the entity comprised of an equal number of union trustees and management trustees, as required by the Labor-Management Relations Act of 1947, as amended, which entity is responsible for administering the Plan. The Board of Trustees is the "administrator," as that term is used in ERISA.

Section 1.7 - Break in Service

"Break in Service" means

- prior to May 1, 1976, the loss of service for vesting and benefit accrual purposes based on the provisions of the Plan in effect at the particular time, and
- after April 30, 1976, the failure to complete at least 435 Hours of Work during the Accrual Computation Period, the Eligibility Computation Period or the Vesting Computation Period, as the case may be.

Effective on and after December 12, 1994, no Participant shall incur a Break in Service as a result of a period of Qualified Military Service if he or she returns to Covered Employment with an Employer after such military service ends and within such time as his or her reemployment rights are guaranteed by federal law.

Section 1.8 - Code

"Code" means the Internal Revenue Code of 1986, as amended.

Section 1.9 - Collective Bargaining Agreement

"Collective Bargaining Agreement" means the written agreement that governs the wages, hours and working conditions of Employees working in Covered Employment.

Section 1.10 - Contiguous Non-Covered Employment

"Contiguous Non-Covered Employment" means Non-Covered Employment that precedes or follows Covered Employment, provided no quit, discharge, or retirement occurs between such Covered Employment and Non-Covered Employment. However, Contiguous Non-Covered Employment shall not include any service with a person or entity while such person or entity was not an Employer, as defined in section 1.16.

Section 1.11 - Covered Employment

"Covered Employment" means the classification of employment, as defined in the Collective Bargaining Agreement or other written agreement, requiring contributions to the Plan by an Employer.

Section 1.12 - Early Retirement Date

"Early Retirement Date" means the first day of any month prior to the Normal Retirement Date as of which a Participant attains the age of at least 55 years and has completed at least 10 Years of Vesting Service.

Section 1.13 - Earnings

"Earnings" means wages, salaries, and fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with an Employer to the extent that the amounts are includible in gross income (including, but not limited to, commissions paid to salespersons, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements or other expense allowances under a nonaccountable plan [as described in section 1.62-2(c) of the regulations], and excluding the following:

- (1) employer contributions [other than elective contributions described in section 402(e)(3), 408(k)(6), 408(p)(2)(A)(i), or 457(b) of the Code] to a plan of deferred compensation [including a simplified employee pension described in section 408(k) of the Code or a simple retirement account described in section 408(p) of the Code, and whether or not qualified] to the extent such contributions are not includible in the Employee's gross income for the taxable year in which contributed, and any distributions (whether or not includible in gross income when distributed) from a plan of deferred compensation (whether or not qualified), other than amounts received during the year by an Employee pursuant to a nonqualified unfunded deferred compensation plan to the extent includible in gross income;
- (2) amounts realized from the exercise of a nonstatutory stock option [that is, an option other than a statutory stock option as defined in section 1.421-1(b) of the regulations], or when restricted stock (or property) held by the Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;
- (3) amounts realized from the sale, exchange or other disposition of stock acquired under a statutory stock option;
- (4) other amounts that receive special tax benefits, such as premiums for group-term life insurance (but only to the extent that the premiums are not includible in the gross income of the Employee and are not salary reduction amounts that are described in section 125 of the Code); and
- (5) other items of remuneration that are similar to any of the items listed in (1) through (4) above.

For any self-employed individual, Earnings shall mean earned income.

Except as provided herein, Earnings for a Limitation Year is the Earnings actually paid or made available (or, if earlier, includible in gross income) during such Limitation Year. Earnings for a Limitation Year shall include amounts earned but not paid during the Limitation Year solely because of the timing of pay periods and pay dates, provided the amounts are paid during the first few weeks of the next Limitation Year, the amounts are included on a uniform and consistent basis with respect to all similarly situated Employees, and no Earnings is included in more than one Limitation Year.

For Limitation Years beginning on or after July 1, 2007, Earnings for a Limitation Year shall also include Earnings paid by the later of 2 1/2 months after an Employee's Severance from Employment with an Employer or the end of the Limitation Year that includes the date of the Employee's Severance from Employment with an Employer, if the payment is regular Earnings for services during the Employee's regular working hours, or Earnings for services outside the Employee's regular working hours (such as overtime or 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 an Employer.

Any payments not described above shall not be considered Earnings if paid after Severance from Employment, even if they are paid by the later of 2 1/2 months after the date of Severance from Employment or the end of the Limitation Year that includes the date of Severance from Employment, except payments to an individual who does not currently perform services for an Employer by reason of qualified military service [within the meaning of section 414(u)(1) of the Code] to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for an Employer rather than entering qualified military service.

Back pay, within the meaning of section 1.415(c)-2(g)(8) of the regulations, shall be treated as Earnings 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 in this definition.

Earnings paid or made available during such Limitation Year shall include amounts that would otherwise be included in Earnings but for an election under section 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b) of the Code.

Earnings shall not include amounts paid as Earnings to a nonresident alien, as defined in section 7701(b)(1)(B) of the Code, who is not a Participant to the extent the Earnings is excludible from gross income and is not effectively connected with the conduct of a trade or business within the United States.

The Earnings of each participant taken into account in determining benefit accruals in any Plan Year beginning after December 31, 2001, shall not exceed \$200,000. For this purpose, Earnings means any Earnings during the Plan Year or such other consecutive 12-month period over which Earnings are otherwise determined under the Plan (the determination period). For purposes of determining benefit accruals in a plan year beginning after December 31, 2001, Earnings for any prior determination period shall be \$150,000 for any determination period beginning in 1996 or earlier; \$160,000 for any determination period beginning in 1997, 1998 or 1999; and \$170,000 for any determination period beginning in 2000 or 2001. The \$200,000 limit on annual Earnings in this paragraph shall be adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to annual Earnings for the determination period that begins with or within such calendar year. In determining benefit accruals in the Plan Years beginning after December 31, 2001, the annual Earnings limit set forth in this paragraph for determination periods beginning before January 1, 2002, shall be \$150,000 for any determination period beginning in 1996 or earlier, \$160,000 for any determination period beginning in 1997, 1998 or 1999, and \$170,000 for any determination period beginning in 2000 or 2001.

Section 1.14 - Eligibility Computation Period

"Eligibility Computation Period" means the 12 consecutive month period beginning with the day the Employee first performs an Hour of Work for the Employer (the "employment commencement date") and anniversaries thereof.

Breaks in Service for eligibility purposes will be measured on the same Eligibility Computation Period.

Section 1.15 - Employee

"Employee" means:

- (a) Any person who has a common-law employment relationship with an Employer and who is a member of the collective bargaining unit represented by the Union.
- (b) Any person who has a common-law employment relationship with any of the entities described in section 1.16.

Employee shall not include any self-employed individual, such as (but not limited to) partners and sole proprietors, regardless of how designated.

Section 1.16 - Employer

"Employer" means:

- (a) Any individual, firm, association, partnership or corporation that is a member of the Association (or that is represented in collective bargaining by the Association), that is subject to the Collective Bargaining Agreement and in accordance therewith is required to make contributions to the Plan.
- (b) Any individual, firm, association, partnership or corporation that is not a member of nor represented in collective bargaining by the Association, but that is subject to the Collective Bargaining Agreement and in accordance therewith is required to make contributions to the Plan.
- (c) The Union, any district council or umbrella labor organization, to the extent that it acts as an employer of its employees on whose behalf it makes contributions to the Plan in accordance with the Collective Bargaining Agreement or other written agreement.
- (d) The Board of Trustees to the extent that it acts as an employer of its employees on whose behalf contributions to the Plan are made in accordance with the Collective Bargaining Agreement or other written agreement.
- (e) Any board of trustees, committee or other agency established to administer fringe benefit, apprenticeship or related funds or other programs established through collective bargaining with the Union to the extent such entity acts as an employer of its employees on whose behalf contributions to the Plan are made in accordance with the Collective Bargaining Agreement or other written agreement.

Section 1.17 - ERISA

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

Section 1.18 - Forfeiture of Service

"Forfeiture of Service" means

- (a) prior to May 1, 1976, loss of benefits under the provisions of the Plan in effect at the particular time such loss occurs;
- (b) after April 30, 1976, but prior to May 1, 1985, the occurrence of consecutive Breaks in Service equal to the number of Years of Vesting Service earned before the initial Break in Service; and
- (c) after April 30, 1985, the occurrence of consecutive Breaks in Service equal to the greater of (i) five or (ii) the number of Years of Vesting Service earned.

Notwithstanding the foregoing, a Participant or Former Participant who has a vested interest in his or her Accrued Benefit shall not incur a Forfeiture of Service.

Section 1.19 - Former Participant

"Former Participant" means a person (other than a Beneficiary or an alternate payee under a Qualified Domestic Relations Order) whose participation in the Plan has ceased pursuant to section 2.2, but who is entitled to a benefit from the Plan, either currently or at a later date.

Section 1.20 - Hour of Work

"Hour of Work" means:

- (a) each hour for which an Employee is paid, or entitled to payment, for the performance of duties for the Employer. These hours shall be credited to the Employee for the computation period in which the duties are performed;
- (b) each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Employer. The same Hours of Work shall not be credited both under subparagraph (a) and under this subparagraph. These hours shall be credited to the Employee for the computation period or periods to which the award or agreement pertains, rather than the computation period in which the award, agreement or payment is made. No more than 435 Hours of Work will be credited for payments of back pay, to the extent back pay is agreed to or awarded for a period of time during which the Employee did not or would not have performed duties.

Hours of Work shall be credited for employment with other members of an affiliated service group [under section 414(m) of the Code], a controlled group of corporations [under section 414(b) of the Code], or a group of trades or businesses under common control [under section 414(c) of the Code] of which the Employer is a member, and any other entity required to be aggregated with the Employer pursuant to section 414(o) of the Code.

Hours of Work will also be credited for any individual considered an Employee for purposes of the Plan under section 414(n) of the Code or under section 414(o) of the Code.

Solely for purposes of determining whether a Break in Service has occurred for participation and vesting purposes in a computation period, an individual who is absent from work for maternity or paternity reasons shall receive credit for the Hours of Work that would otherwise have been credited to such individual but for such absence or, in any case in which such Hours of Work cannot be determined, eight Hours of Work per day of such absence. For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence (1) by reason of the pregnancy of the individual, (2) by reason of a birth of a child of the individual, (3) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or (4) for purposes of caring for such child for a period beginning immediately following such birth or placement. The Hours of Work credited under this paragraph shall be credited either in the computation period in which the absence begins (if the crediting is necessary to prevent a Break in Service in that period) or, in all other cases, the following computation period. However, the provisions of this paragraph shall not apply unless such individual was in the active service of an Employer immediately prior to such absence, nor to any Plan Year that begins before January 1, 1985.

If the Board of Trustees enters into a reciprocity agreement, any money and hours transferred to the Plan pursuant to such reciprocity agreement shall be credited to the Participant in the manner determined by the Board of Trustees for the purpose of determining his or her eligibility to participate, Accrued Benefit and the vested status thereof. Any money and hours transferred from the Plan pursuant to such reciprocity agreement shall be removed from the records of the Plan and shall not be considered when determining the value of the affected person's Accrued Benefit, the vested status thereof, or eligibility to participate.

Section 1.21 - Joint and Survivor Annuity

"Joint and Survivor Annuity" means an immediate annuity providing monthly payments for life to the Former Participant and monthly payments for life to the spouse to whom the Former Participant was married at the time payments to the Former Participant commenced, equal to 50 percent, 75 percent or 100 percent (as elected by the Participant or Former Participant at the time benefit payments commence) of the amount being paid to the Former Participant, provided such spouse survives the Former Participant. If no such election is made, the survivorship portion shall be 50 percent.

Section 1.22 - Leased Employee

"Leased Employee" means any person (other than an employee of the recipient) who pursuant to an agreement between the recipient and any other person ("leasing organization") has performed services for the recipient [or for the recipient and related persons determined in accordance with section 414(n)(6) of the Code] on a substantially full-time basis for a period of at least one year, and such services are performed under primary direction or control by the recipient (or, prior to May 1, 1997, such services are of a type historically performed by employees in the business field of the recipient). Contributions or benefits provided a Leased Employee by the leasing organization that are attributable to services performed for the recipient employer shall be treated as provided by the recipient employer.

A Leased Employee shall not be considered an employee of the recipient if: (i) such employee is covered by a money purchase pension plan providing: (1) a nonintegrated employer contribution rate of at least 10 percent of compensation, as defined in section 415(c)(3) of the Code, but including amounts contributed pursuant to a salary reduction agreement that are excludable from the employee's gross income under section 125, section 402(e)(3), section 402(h) or section 403(b) of the Code, (2) immediate participation, and (3) full and immediate vesting; and (ii) Leased Employees do not constitute more than 20 percent of the recipient's nonhighly compensated workforce.

Section 1.23 - Limitation Year

"Limitation Year" means the Plan Year.

Section 1.24 - Non-Covered Employment

"Non-Covered Employment" means employment for which contributions by an Employer to the Plan are not required by either the Collective Bargaining Agreement or by any other written agreement permitting participation in the Plan.

Section 1.25 - Normal Retirement Age

"Normal Retirement Age" means the later of age 65 or the fifth anniversary of the participation commencement date. (For purposes of the foregoing, the participation commencement date shall be the first day of the first Plan Year in which the Employee became a Participant.) In all cases, however, participation before a Forfeiture of Service shall be disregarded.

Section 1.26 - Normal Retirement Date

"Normal Retirement Date" means the first day of the month following the Normal Retirement Age.

Section 1.27 - Participant

"Participant" means an Employee who, at the particular time, has satisfied the eligibility requirements of article 2 for participation, and who has not ceased participation pursuant thereto.

Section 1.28 - Plan

"Plan" means the Toledo Area Sheet Metal Workers Pension Plan, including any amendments.

Section 1.29 - Plan Year

"Plan Year" means the 12-month period beginning May 1 and ending the following April 30.

Section 1.30 – Qualified Domestic Relations Order.

"Qualified Domestic Relations Order" means a judgment, decree or order (including approval of a property settlement agreement) that satisfies the requirements of section 414(p) of the Code.

Section 1.31 - Qualified Election

"Qualified Election" means a waiver of the Joint and Survivor Annuity or the death benefit payment to the spouse in the event of death. Any waiver of a Joint and Survivor Annuity or a death benefit payment shall not be effective unless (a) the spouse consents in writing to the election; (b) the election designates a specific alternate beneficiary, including any class of beneficiaries or any contingent beneficiaries, that may not be changed without spousal consent (or the spouse expressly permits designations by the Participant without any further spousal consent); (c) the spouse's consent acknowledges the effect of the election; and (d) the spouse's consent is witnessed by a Plan representative or notary public. Additionally, a waiver of the Joint and Survivor Annuity will not be effective unless the election designates a form of benefit payment that may not be changed without spousal consent (or the spouse expressly permits designations without any further spousal consent). If it is established to the satisfaction of a Plan representative that such written consent may not be obtained because there is no spouse or the spouse cannot be located, a waiver will be deemed a Qualified Election. If the spouse is legally incompetent, a Qualified Election may be given by the spouse's legal guardian (even if the Participant is the legal guardian). Finally, if the Participant is legally separated or has been abandoned (within the meaning of local law) and has a court order to that effect, spousal consent is not required for a Qualified Election, unless a Qualified Domestic Relations Order provides otherwise.

Any consent by a spouse obtained under this provision (or establishment that the consent of a spouse may not be obtained) shall be effective only with respect to such spouse. A consent that permits designations by the Participant without any requirement of further consent by such spouse must acknowledge that the spouse has the right to limit consent to a specific beneficiary, and a specific form of benefit where applicable, and that the spouse voluntarily elects to relinquish either or both of such rights. A revocation of a prior waiver may be made by a Participant without the consent of the spouse at any time prior to the commencement of benefits. The number of revocations prior to the commencement of benefits shall not be limited.

For purposes hereof, a former spouse will be treated as a spouse or surviving spouse and a current spouse will not be treated as a spouse or surviving spouse to the extent provided in a Qualified Domestic Relations Order.

Section 1.32 – Qualified Military Service

"Qualified Military Service" means any service in the United States uniformed services (as defined in Chapter 43 of Title 38, United States Code) by any Employee if such Employee is entitled to reemployment rights under such chapter of the United States Code with respect to such service.

Section 1.33 - Social Security Retirement Age

"Social Security Retirement Age" means the age used as the retirement age for the Participant under section 216(1) of the Social Security Act except that such section shall be applied without regard to the age increase factor, and as if the early retirement age under section 216(1)(2) of such Act were 62.

Section 1.34 - Straight Life Annuity

"Straight Life Annuity" means an annuity payable in equal installments for the life of the payee, with no monthly survivorship benefits.

Section 1.35 - Union

"Union" means Local Union No. 33-Toledo District (formerly Local Union No. 6) of the Sheet Metal Workers' International Association, and any successor.

Section 1.36 - Vesting Computation Period

"Vesting Computation Period" means the Plan Year.

Section 1.37 - Years of Credited Service

"Years of Credited Service" means the sum of the following:

- The number of consecutive years from May 1, 1948, through April 30, 1963, during which the Employee worked as a member of the collective bargaining unit represented by the Union (computed to the nearest one-tenth).
- Service in the armed forces of the United States to the extent required by applicable law, provided the Employee returns to service with an Employer within such time as reemployment rights are guaranteed by law.

Notwithstanding the foregoing, however,

- Years of Credited Service shall be limited to a maximum of 15,
- service prior to May 1, 1948, shall be disregarded when determining Years of Credited Service,
- Years of Credited Service prior to a Forfeiture of Service shall likewise be disregarded, and
- no periods of self-employment shall be taken into account when determining Years of Credited Service.

Section 1.38 - Year of Vesting Service

"Year of Vesting Service" means the sum of the following:

- The number of consecutive years from May 1, 1948, through April 30, 1963, during which the Employee worked as a member of the collective bargaining unit represented by the Union (computed to the nearest one-tenth).
- For service after April 30, 1963, the number of Vesting Computation Periods during which an Employee completes at least 500 Hours of Work with an Employer.
- Service in the armed forces of the United States to the extent required by applicable law, provided the Participant or Former Participant returns to service with an Employer within such time as reemployment rights are guaranteed by law.

Notwithstanding the foregoing, however,

- no periods of self-employment shall be taken into account when determining Years of Vesting Service, and
- Years of Vesting Service prior to a Forfeiture of Service shall be disregarded.

ARTICLE 2

PARTICIPATION

Section 2.1 - Time of Participation

Each person who was a Participant on April 30, 2009, shall participate on May 1, 2009, unless his or her participation ceased on April 30, 2009, pursuant to the provisions of the Plan in effect on such date.

Any other person on whose behalf a contribution is required by the Collective Bargaining Agreement or other written agreement shall become a Participant on the May 1 or November 1 following completion of 12 months of employment with an Employer, provided such person has completed at least 500 Hours of Work during such period, and provided such person is working in Covered Employment at the time participation would otherwise commence. Notwithstanding the preceding provisions of this paragraph, however, no person shall become a Participant if, prior to the date he or she would otherwise become a Participant, contributions on his or her behalf are to be reciprocated to another tax-qualified plan.

Section 2.2 - Cessation of Participation

A person who has satisfied the participation requirements of section 2.1 shall cease participation in the Plan upon the occurrence of any of the following:

- (a) Death.
- (b) Retirement (including disability retirement).
- (c) Transferring to Non-Covered Employment.
- (d) The absence of the requirement that Employer contributions be made to the Plan for the Employee for at least 100 hours during three consecutive Plan Years.
- (e) The absence of the requirement that Employer contributions be made to the Plan for the Employee during two consecutive Plan Years.
- (f) The occurrence of an obligation by the Board of Trustees to reciprocate contributions to another tax-qualified plan on behalf of such person.

However, such person may thereupon become a Former Participant.

Section 2.3 - Reemployed Participant

If an Employee satisfies the participation requirements of section 2.1, terminates employment with an Employer, and is later reemployed by an Employer, the Employee will become a Participant as of the day contributions to the Plan are first required for him or her pursuant to the Collective Bargaining Agreement or other written agreement unless, upon such reemployment, the Employee has incurred a Forfeiture of Service, in which case he or she shall be treated as a new hire and the eligibility provisions of section 2.1 shall apply anew.

Section 2.4 - Transfer from Contiguous Non-Covered Employment

If an Employee transfers from Contiguous Non-Covered Employment to Covered Employment, Hours of Work in such Contiguous Non-Covered Employment will be taken into account to determine if the Employee has satisfied the participation requirements of section 2.1.

Section 2.5 - Self-Employed Individuals

Notwithstanding any provision in this article, no person who is self-employed shall be a Participant.

Section 2.6 - Provisions Relating to Leased Employees

- (a) Safe-Harbor. Notwithstanding any other provisions of the Plan, for purposes of the pension requirements of section 414(n)(3) of the Code, employees of the Employer shall include individuals defined as employees in section 1.22.

- (b) Participation and Accrual. A Leased Employee shall not become a Participant in, nor accrue benefits under, the Plan based on service as a Leased Employee unless the Collective Bargaining Agreement or other written agreement provides otherwise.

Section 2.7 - Participation by Nonbargaining Unit Employees

An Employer may elect to make contributions to the Plan on behalf of an Employee who was a member of the collective bargaining unit represented by the Union and who then moves to a position involving the supervision of work performed under the Collective Bargaining Agreement. An Employer who elects to make contributions pursuant to this section shall make contributions for all such supervising employees at the rate required by the Collective Bargaining Agreement. Such election may be revoked at any time by the Employer but only prospectively, and such revocation shall render the Employer ineligible to make contributions in the future on behalf of all such supervising employees without the specific approval of the Board of Trustees.

ARTICLE 3

BENEFIT ELIGIBILITY AND AMOUNTS

Section 3.1 - Normal Retirement Benefit

Subject to section 3.5 and section 3.9, a Participant who retires on his or her Normal Retirement Date after April 30, 2000, but prior to June 1, 2009, is entitled to a lifetime monthly retirement benefit for 60 months certain and a Participant who retires on his or her Normal Retirement Date after May 31, 2009, is entitled to a Straight Life Annuity equal (in either case) to the sum of the following:

- \$5 multiplied by such person's Years of Credited Service.
- \$1.60 for each 100 hours of Employer contributions for such person since his or her most recent Forfeiture of Service prior to May 1, 1984.
- \$2.45 for each 100 hours of Employer contributions for such person since his or her most recent Forfeiture of Service after April 30, 1984, but prior to May 1, 1994.
- In the case of an individual who is a Participant after April 30, 2000, \$6.40 for each 100 hours of Employer contributions for such person after April 30, 1994, but prior to May 1, 2003, and \$ 3.20 for each 100 hours of Employer contributions for such person after April 30, 2003.

The Accrued Benefit shall be totally nonforfeitable at a Participant's Normal Retirement Age and at all times thereafter.

If a Participant does not retire at his or her Normal Retirement Date and if the Annuity Starting Date is after the Normal Retirement Date, the monthly benefit payable to such Participant upon retirement shall be the greater of:

- (a) an amount that is the Actuarial Equivalent of the Accrued Benefit that would have been payable to the Participant at his or her Normal Retirement Date; or
- (b) the Accrued Benefit at his or her actual retirement date.

If the Participant first becomes entitled to additional benefits after the Normal Retirement Date, the actuarial increase in such benefits will start from the date such benefits would first have been paid, not from the Normal Retirement Date. Such payment date shall be the June 1 of the Plan Year that follows the Plan Year in which the additional accruals were earned or, in the case of a benefit increase, the date specified in the amendment adopting the increase.

Notwithstanding the foregoing, if the Participant or Former Participant has been notified of the Plan's suspension of benefit rules, and if payment of benefits has been suspended pursuant to section 4.7(b), the Actuarial Equivalent of the Accrued Benefit at his or her Normal Retirement Age shall be actuarially increased only for that number of months (if any) between the Participant's Normal Retirement Date and his or her Annuity Starting Date during which benefits were not properly suspended pursuant to section 4.7.

If for administrative reasons, such as the need to obtain reliable information to calculate benefits or to await formal approval for benefits, actual payments begin after the scheduled Annuity Starting Date, such delay shall not affect the Annuity Starting Date nor the benefit determination, provided, however, that when such payments actually begin, the Former Participant shall receive a payment to cover benefits due for all months after the Annuity Starting Date.

If a Participant does not continue to work beyond his or her Normal Retirement Date and if the Annuity Starting Date is after the Normal Retirement Date, the monthly benefit will be the Accrued Benefit at the Normal Retirement Date, actuarially increased for each month for which benefits were not paid between the Normal Retirement Date and the Annuity Starting Date, and then converted as of the Annuity Starting Date to the form of benefit elected in the pension application or, if none, to the Joint and Survivor Annuity. Actuarial increases for delayed retirement shall be based on the assumptions in Exhibit A.

Section 3.2 - Early Retirement Benefit

Subject to section 3.5 and section 3.9, a Participant who retires on the Early Retirement Date after April 30, 2000, but prior to June 1, 2009, is entitled to a lifetime monthly retirement benefit for 60 months certain and a Participant who retires on his or her Early Retirement Date after May 31, 2009, is entitled to a Straight Life Annuity equal (in either case) to the sum of the following:

- \$5 multiplied by such person's Years of Credited Service.
- \$1.60 for each 100 hours of Employer contributions for such person since his or her most recent Forfeiture of Service prior to May 1, 1984.
- \$2.45 for each 100 hours of Employer contributions for such person since his or her most recent Forfeiture of Service after April 30, 1984, but prior to May 1, 1994.
- In the case of an individual who is a Participant after April 30, 2000, \$6.40 for each 100 hours of Employer contributions for such person after April 30, 1994, but prior to May 1, 2003, and \$3.20 for each 100 hours of Employer contributions for such person after April 1, 2003.

The sum of the foregoing shall then be reduced by 5/9 percent for each month by which the commencement of the Early Retirement Benefit precedes the date the Participant or Former Participant would have attained age 62 unless, at the time of retirement, the Participant or Former Participant had earned at least 25 Years of Vesting Service, but only if such person did not begin to receive the Early Retirement Benefit prior to the age of 60 years. (If, at the time of retirement, such person had 25 Years of Vesting Service, but had begun to receive the Early Retirement Benefit prior to age 60, such reduction shall apply only from age 60.) Furthermore, the foregoing reduction shall not apply if, at the time of retirement, an individual earned at least 30 Years of Vesting Service, but only if such person did not begin to receive such benefit prior to age 57. (If, at the time of retirement, such person had 30 Years of Vesting Service, but had begun to receive the Early Retirement Benefit prior to age 57, such reduction shall apply only from age 57.) Finally, effective May 1, 2000, the foregoing reduction shall not apply if, at the time of retirement, an individual earned at least 30 Years of Vesting Service, but only if such person did not begin to receive such benefit prior to age 55. The Early Retirement Benefit shall commence as of the first day of the month following the date on which a properly completed application for such benefit is filed with and approved by the Board of Trustees, unless the Former Participant requests a delayed effective date.

No reduction in the Accrued Benefit for early retirement shall occur if retirement occurs after age 62.

Section 3.3 - Deferred Vested Benefit

Subject to section 3.5 and section 3.9, a Participant who terminates employment with a partially or totally nonforfeitable interest in his or her Accrued Benefit for any reason other than death, total and permanent disability, or early or normal retirement, (i) and whose Annuity Starting Date is prior to June 1, 2009, is entitled to a lifetime monthly retirement benefit for 60 months certain (ii) and whose Annuity Starting Date is after May 31, 2009, is entitled to a Straight Life Annuity equal (in either case) to the sum of the following, multiplied by that percentage of the Participant's or Former Participant's Accrued Benefit that is vested:

- \$5 multiplied by such person's Years of Credited Service.
- \$1.60 for each 100 hours of Employer contributions for such person since his or her most recent Forfeiture of Service prior to May 1, 1984.
- \$2.45 for each 100 hours of Employer contributions for such person since his or her most recent Forfeiture of Service after April 30, 1984, but prior to May 1, 1994.
- In the case of an individual who is a Participant after April 30, 2000, \$6.40 for each 100 hours of Employer contributions for such person after April 30, 1994, but prior to May 1, 2003, and \$3.20 for each 100 hours of Employer contributions for such person after April 30, 2003.

For purposes of this section, the vested percentage of an individual's Accrued Benefit shall be determined as follows:

For Individuals Who Are Participants
After April 30, 1984, But Not After April 30, 1992

<u>Years of Vesting Service</u>	<u>Nonforfeitable Percentage</u>
Less than 5	0%
5	50%
6	60%
7	70%
8	80%
9	90%
10 or more	100%

For Individuals Who Are Participants After April 30, 1992

<u>Years of Vesting Service</u>	<u>Nonforfeitable Percentage</u>
Less than 5	0%
5 or more	100%

Payment of the Deferred Vested Benefit shall begin as of the Normal Retirement Date. However, if the Former Participant has at least 10 Years of Vesting Service, he or she shall, upon written request, receive such benefit commencing as of the Early Retirement Date or as of the first day of any subsequent month prior to the Normal Retirement Date, in which case the Deferred Vested Benefit shall be reduced as provided in section 3.2.

Notwithstanding the foregoing, if a Former Participant (1) was a Participant on May 1, 1976, (2) was a Participant in the Plan in effect prior to May 1, 1976, and (3) had at least two Plan Years of contributions (as defined in the Plan in effect on April 30, 1976), and if the lump sum Actuarial Value of the Deferred Vested Benefit to which he or she would have been entitled under the vesting schedule and form of payment in effect under the Plan

on April 30, 1976, is greater than the lump sum Actuarial Equivalent of the Deferred Vested Benefit in this section, such person shall be entitled to receive the Deferred Vested Benefit with the greater Actuarial Equivalent.

Section 3.4 - Disability Retirement Benefit

A Participant who is not eligible for a Normal Retirement Benefit or an actuarially unreduced Early Retirement Benefit, who incurs a total and permanent disability and who has at least 10 Years of Vesting Service, is entitled to a monthly Disability Retirement Benefit equal to his or her Accrued Benefit.

The Disability Retirement Benefit shall commence as of the first day of the month following the later of the receipt of a proper application by the Board of Trustees or the first day of the month following the occurrence of the total and permanent disability.

For purposes of this section, a Participant shall be deemed to have a total and permanent disability if the Board of Trustees determines (based on competent medical evidence satisfactory to it) that the Participant has a physical or mental condition that will totally and permanently prevent the Participant from engaging in any regular occupation or employment for remuneration or profit (which occupation or employment would be inconsistent with a finding of a total and permanent disability) as a sheet metal worker or in the construction industry for which said person is trained, experienced or qualified and which condition is expected to be permanent and continuous during the remainder of the Participant's life.

Notwithstanding the foregoing, no Disability Retirement Benefit shall be payable due to a disability that:

- (a) results from use of narcotics;
- (b) was contracted, suffered or incurred while the Participant was engaged in or resulted from having engaged in the commission of a felonious enterprise; or
- (c) results from an intentionally self-inflicted injury.

The Disability Retirement Benefit shall terminate with the month in which

- (1) the Former Participant attains his or her Normal Retirement Date, at which time he or she shall be eligible for a Normal Retirement Benefit,
- (2) the Former Participant attains the age at which he or she is eligible for an unreduced Early Retirement Benefit, at which time he or she shall be eligible for such benefit,
- (3) the Board of Trustees determines that the Former Participant is no longer totally and permanently disabled,
- (4) the Former Participant dies, or
- (5) the Former Participant, having become employed in an effort at rehabilitation as permitted by the final paragraph of this section, fails to provide satisfactory evidence of income when requested by the Board of Trustees.

The Board of Trustees may require the Former Participant to be examined by a physician chosen by the Board of Trustees (but not more frequently than once in any six-month period) or to submit evidence of a Social Security disability award, as the Board of Trustees deems appropriate.

If a Former Participant receiving a Disability Retirement Benefit becomes gainfully employed in an effort at rehabilitation as determined by the Board of Trustees in an occupation not within the trade jurisdiction of the Union, as defined in the collective bargaining agreement (and not requiring physical ability and dexterity equal to or greater than that required to perform work within the trade jurisdiction of the Union) his or her Disability Retirement

Benefit shall not be terminated unless, during any calendar year (commencing with the calendar year in which the Disability Retirement Benefit becomes effective), his or her earnings from such employment exceed an amount equal to the product of 1500 hours multiplied by the average base wage rate then in effect for journeyman sheet metal workers represented by the Union. Any Former Participant who, having received the Disability Retirement Benefit while gainfully employed pursuant to this paragraph, shall be found to have earned in excess of the amount allowed hereunder in a calendar year shall be deemed to have been ineligible for any Disability Retirement Benefits received for that year and shall be obligated to repay to the Plan a sum equal to the Disability Retirement Benefits received for such calendar year. Except in cases of fraud or intentional concealment of a material fact by the Former Participant, the Plan shall recover monies due it as a result of such an occurrence only from benefits that subsequently become payable from the Plan to the Former Participant or his or her Beneficiary.

Section 3.5 - Form of Payment

- (a) Joint and Survivor Annuity. Unless an optional form of benefit described in subparagraph (b) has been elected pursuant to a Qualified Election during the 180 day period (or 90 day period for notices given in Plan Years beginning prior to January 1, 2007) preceding the Annuity Starting Date or unless the Former Participant is eligible for the Disability Retirement Benefit, a Participant or Former Participant who has been married throughout the one-year period ending on his or her Annuity Starting Date shall receive benefits in the form of a Joint and Survivor Annuity.

The Joint and Survivor Annuity and the optional forms of benefits described in subparagraph (b) shall be the Actuarial Equivalent of a Straight Life Annuity. A Joint and Survivor Annuity shall not be available to an alternate payee under a Qualified Domestic Relations Order.

- (b) Other Forms of Payment. If a Participant or Former Participant is not married on his or her Annuity Starting Date (or, if married, has not been married throughout the one-year period ending on his or her Annuity Starting Date) or pursuant to a Qualified Election, a Participant or Former Participant (other than a Participant or Former Participant who is eligible for the Disability Retirement Benefit) may elect during the 180 day period (or 90 day period for notices given in Plan Years beginning prior to January 1, 2007) preceding the Annuity Starting Date to receive retirement benefits in one of the following forms:
- (1) A benefit payable each month for life to the Former Participant with the provision that if the Former Participant dies before receiving 120 monthly payments, monthly payments in the amount being paid to the Former Participant shall be paid to the Beneficiary of the Former Participant until a total of 120 monthly payments has been made to the Former Participant and Beneficiary in the aggregate.
 - (2) A benefit payable each month for life to the Former Participant with the provision that if the Former Participant dies before receiving 60 monthly payments, monthly payments in the amount being paid to the Former Participant shall be paid to the Beneficiary of the Former Participant until a total of 60 monthly payments has been made to the Former Participant and Beneficiary in the aggregate.
 - (3) A Straight Life Annuity.
- (c) Disability Retirement Benefit. Any provision in this section to the contrary notwithstanding, the Disability Retirement Benefit shall be paid monthly (subject, however, to section 3.9), with a pre-retirement death benefit payable pursuant to section 3.6.

For purposes of this section, no change in the form of payment shall be permitted after the Annuity Starting Date except to the extent required by a Qualified Domestic Relations Order. However, the Beneficiary of benefits

that may be payable under subparagraph (b)(1) or subparagraph (b)(2) may be changed by the Former Participant at any time prior to his or her death (subject to a Qualified Election) by notifying the Board of Trustees in writing.

Section 3.6 - Pre-Retirement Death Benefit

- (a) A death benefit shall be payable to the surviving spouse of a Participant or Former Participant who dies (i) with a partially or totally vested interest in his or her Accrued Benefit (determined pursuant to section 3.3), (ii) at or after the date on which the Participant or Former Participant could have received the Early Retirement Benefit, but (iii) prior to the Annuity Starting Date (other than that relating to the Disability Retirement Benefit), provided the Participant or Former Participant and spouse had been married throughout the one-year period immediately preceding the death of the Participant or Former Participant. The death benefit payable to such surviving spouse shall be a monthly payment equal to 50 percent of the amount that would have been payable to the deceased Participant or Former Participant if he or she had begun to receive benefits in the form of the Joint and Survivor Annuity (with a 50 percent survivorship feature) on the day before death. The payment of such benefit to the surviving spouse shall commence as of the first day of the month following the month in which the Participant or Former Participant dies and shall continue monthly thereafter, ceasing following the payment due for the month in which the death of such spouse occurs. If a Participant or Former Participant described above dies but has not satisfied (i) solely because of the failure to meet the service requirement for the Early Retirement Benefit, the surviving spouse shall receive the benefit described in this subparagraph commencing as of the date the deceased Participant or Former Participant would have attained the Normal Retirement Date.
- (b) If the Participant or Former Participant had not reached the earliest date on which he or she could have received the Early Retirement Benefit, but dies with a partially or totally vested interest in his or her Accrued Benefit (determined pursuant to section 3.3), a death benefit shall also be payable to the surviving spouse, provided the Participant or Former Participant and spouse had been married throughout the one-year period immediately preceding the death of the Participant or Former Participant. Such death benefit shall be a monthly payment to the surviving spouse equal to 50 percent of the amount that would have been payable to the deceased Participant or Former Participant if he or she had separated from service on the date of death, survived to the earliest date on which he or she could have received the Early Retirement Benefit, had retired with an immediate Joint and Survivor Annuity (with a 50 percent survivorship feature) and then had immediately died. The payment of such benefit to such surviving spouse shall commence as of the earliest date on which the deceased Participant or Former Participant could have elected to receive the Early Retirement Benefit but for death and shall continue monthly thereafter, ceasing following the payment due for the month in which the death of such spouse occurs. If a Participant or Former Participant described above dies but has not satisfied the service requirement for the Early Retirement Benefit, the surviving spouse shall receive the benefit described in this subparagraph commencing as of the date the deceased Participant or Former Participant would have attained the Normal Retirement Date. If the surviving spouse dies before the date benefits are to commence under this subparagraph, no further benefit payments shall be made to any person or entity.
- (c) If a Former Participant dies while receiving the Disability Retirement Benefit, he or she shall be deemed to have been working in Covered Employment at the date of death for purposes of determining eligibility for any pre-retirement death benefit payable pursuant to this section 3.6.
- (d) Notwithstanding the foregoing provisions of this section, if any Participant or Former Participant dies while performing Qualified Military Service, the Beneficiary of such Participant or Former Participant shall be entitled to any additional benefits (other than

benefit accruals), including any applicable pre-retirement death benefit under this section 3.6, provided by the Plan as if the Participant or Former Participant had resumed Covered Employment and then terminated employment on account of death.

Section 3.7 - Post-Retirement Death Benefit

If a Former Participant dies after the Annuity Starting Date (other than that relating to the Disability Retirement Benefit), any death benefit shall be governed by the survivorship provisions applicable to the form of retirement benefit which the Former Participant elected, or is deemed to have elected.

- (a) If the Former Participant was receiving the Joint and Survivor Annuity, the spouse to whom the deceased Former Participant was married when monthly benefit payments to the Former Participant commenced shall receive monthly benefits for life, in an amount equal to 50 percent, 75 percent or 100 percent (as the Former Participant elected, or is deemed to have elected) of the amount being paid to the Former Participant. Such benefits shall commence as of the first day of the month following the Former Participant's death and shall cease following the payment due for the month in which the death of such spouse occurs. If such spouse has predeceased the Former Participant, no further benefits shall be payable following the death of the Former Participant.
- (b) If the Former Participant was receiving lifetime monthly benefits for 120 months certain pursuant to section 3.5(b)(1) and dies before receiving 120 monthly payments, monthly payments in the amount being received by the Former Participant shall be paid to the Beneficiary of the Former Participant until a total of 120 monthly payments has been made to the Former Participant and Beneficiary in the aggregate. If the Former Participant and Beneficiary die prior to receiving a total of 120 monthly payments in the aggregate, the Actuarial Equivalent of the remaining monthly payments shall be paid in a lump sum to the estate of the Beneficiary. If the Former Participant dies after receiving 120 monthly payments, no further benefits shall be payable.
- (c) If the Former Participant was receiving lifetime monthly benefits for 60 months certain pursuant to section 3.5(b)(2) and dies before receiving 60 monthly payments, monthly payments in the amount being received by the Former Participant shall be paid to the Beneficiary of the Former Participant until a total of 60 monthly payments has been made to the Former Participant and Beneficiary in the aggregate. If the Former Participant and Beneficiary die prior to receiving a total of 60 monthly payments in the aggregate, the Actuarial Equivalent of the remaining monthly payments shall be paid in a lump sum to the estate of the Beneficiary. If the Former Participant dies after receiving 60 monthly payments, no further benefits shall be payable.
- (d) If the Former Participant was receiving a Straight Life Annuity, no further payments shall be made.

Section 3.8 - Non-Duplication

Benefits available to a Participant or Former Participant shall be reduced to the extent necessary to prevent a duplication of benefits, other than a Disability Retirement Benefit.

Section 3.9 - Payment of Small Benefit and Payment of Benefit Pursuant to a Qualified Domestic Relations Order

If a Participant or Former Participant applies for a Normal Retirement Benefit, an Early Retirement Benefit, a Deferred Vested Benefit or a Disability Retirement Benefit, if he or she is eligible for such benefit and if the Actuarial Equivalent of such benefit does not exceed \$5,000, the Participant or Former Participant will receive a lump sum payment of the Actuarial Equivalent of the entire vested portion of such Accrued Benefit, and the nonvested portion will be treated as a forfeiture. However, in lieu of such distribution, the Former Participant may elect to have such amount transferred directly to an eligible retirement plan in the manner described in section 4.9.

For purposes of the foregoing, if the Actuarial Equivalent of a Former Participant's vested Accrued Benefit is zero, he or she shall be deemed to have received a distribution thereof. In the event of a mandatory distribution greater than \$1,000 in accordance with the preceding provisions of this paragraph, if the Participant or Former Participant does not elect to have such distribution paid directly to an eligible retirement plan specified by the Participant or Former Participant in a direct rollover or to receive the distribution directly in accordance with this section 3.9, the Board of Trustees will cause the distribution to be paid in a direct rollover to an individual retirement plan designated by the Board of Trustees.

If a Former Participant receives a distribution pursuant to the prior paragraph and again becomes a Participant, he or she shall have the right to restore his or her Accrued Benefit (including all optional forms of benefits and subsidies relating to such benefits) to the extent forfeited upon repayment to the Plan of the full amount of the distribution plus interest, compounded annually from the date of distribution at the rate determined for purposes of section 411(c)(2)(C) of the Code. Such repayment must be made before the earlier of five years after the first date on which such person subsequently becomes a Participant or the date such person incurs five consecutive Breaks in Service following the date of distribution. Notwithstanding the foregoing provisions of this paragraph, however, the Accrued Benefit of such a Participant who received a lump sum payment of his or her Disability Retirement Benefit shall be so restored without such repayment.

If the Actuarial Equivalent of the pre-retirement surviving spouse's benefit described in section 3.6 does not exceed \$5,000, the Actuarial Value thereof shall be paid as soon as administratively feasible to the surviving spouse to whom the decedent was married at the date of death in full satisfaction of the Plan's obligation to such survivor or, if such surviving spouse so elects, shall instead be transferred directly to an eligible retirement plan in the manner described in section 4.9.

If the Actuarial Equivalent of the vested benefit assigned to an alternate payee under a Qualified Domestic Relations Order does not exceed \$5,000 and if the Qualified Domestic Relations Order so provides, the Actuarial Equivalent thereof shall be

- distributed to the alternate payee in lump sum at such time as is provided in the order in lieu of any other benefit assigned by the Qualified Domestic Relations Order or provided to the alternate payee by the Plan, or
- if otherwise permissible, transferred directly to an eligible retirement plan in the manner described in section 4.9.

Section 3.10 - Restrictions on Maximum Amount of Benefit

The limitations of this section shall apply in Limitation Years beginning on or after July 1, 2007, except as otherwise provided herein.

- (a) Definitions. For the purpose of determining the benefit limitation set forth in this section, the following terms are defined:

Annual Benefit means a benefit that is payable annually in the form of a Straight Life Annuity. Except as provided below, where a benefit is payable in a form other than a Straight Life Annuity, the benefit shall be adjusted to an actuarially equivalent Straight Life Annuity that begins at the same time as such other form of benefit and is payable on the first day of each month, before applying the limitations of this section. For a Participant who has or will have distributions commencing at more than one Annuity Starting Date, the Annual Benefit shall be determined as of each such Annuity Starting Date (and shall satisfy the limitations of this section as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other Annuity Starting Dates. For this purpose, the determination of whether a new starting date has occurred shall be made without regard to section 1.401(a)-20, Q&A 10(d), and with regard to section 1.415(b)-1(b)(1)(iii)(B) and (C) of the regulations.

No actuarial adjustment to the benefit shall be made for (i) survivor benefits payable to a surviving spouse under a qualified joint and survivor annuity to the extent such benefits would not be payable if the Participant's benefit were paid in another form; (ii) benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and post-retirement medical benefits); or (iii) the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to section 417(e)(3) of the Code and would otherwise satisfy the limitations of this section, and the Plan provides that the amount payable under the form of benefit in any Limitation Year shall not exceed the limits of this section applicable at the Annuity Starting Date, as increased in subsequent years pursuant to section 415(d) of the Code. For this purpose, an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic periodic increases to the benefits paid in that form.

The determination of the Annual Benefit shall take into account Social Security supplements described in section 411(a)(9) of the Code and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant to section 1.411(d)-4, Q&A-3(c), of the regulations, but shall disregard benefits attributable to employee contributions or rollover contributions.

Effective for distributions in Plan Years beginning after December 31, 2003, the determination of actuarial equivalence of forms of benefit other than a Straight Life Annuity shall be made in accordance with (1) or (2) below:

- (1) Benefit Forms Not Subject to Code Section 417(e)(3). The Straight Life Annuity that is actuarially equivalent to the Participant's form of benefit shall be determined under this subparagraph (1) if the form of the Participant's benefit is either (i) a nondecreasing annuity (other than a Straight Life Annuity) payable for a period of not less than the life of the Participant (or, in the case of a qualified preretirement survivor annuity, the life of the surviving spouse), or (ii) an annuity that decreases during the life of the Participant merely because of (a) the death of the survivor annuitant (but only if the reduction is not below 50 percent of the benefit payable before the death of the survivor annuitant), or (b) the cessation or reduction of Social Security supplements or qualified disability payments [as defined in section 401(a)(11) of the Code].
 - (i) Limitation Years beginning before July 1, 2007. For Limitation Years beginning before July 1, 2007, the actuarially equivalent Straight Life Annuity is equal to the annual amount of the Straight Life Annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit computed using whichever of the following produces the greater annual amount:
 - A. the interest rate and the mortality table (or other tabular factor) specified in Exhibit A of the Plan for adjusting benefits in the same form; and
 - B. a 5 percent interest rate assumption and the mortality table described in the model amendment to the Plan reflecting Rev. Rul. 2001-62 for that Annuity Starting Date.
 - (ii) Limitation Years beginning on and after July 1, 2007. For Limitation Years beginning on and after July 1, 2007, the actuarially equivalent Straight Life Annuity is equal to the greater of:
 - A. the annual amount of the Straight Life Annuity (if any) payable to the Participant under the Plan commencing at the same Annuity Starting Date as the Participant's form of benefit; and

- B. the annual amount of the Straight Life Annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit, computed using a 5 percent interest rate assumption and the mortality table described in the model amendment to the Plan reflecting Rev. Rul. 2001-62 for that Annuity Starting Date.
- (2) Benefit Forms Subject to Code Section 417(e)(3). The Straight Life Annuity that is actuarially equivalent to the Participant's form of benefit shall be determined under this subparagraph (2) if the form of the Participant's benefit is other than a benefit form described in subparagraph (1) above. In this case, the actuarially equivalent Straight Life Annuity shall be determined as follows:
- (i) Annuity Starting Date in Plan Years Beginning After 2005. If the Annuity Starting Date of the Participant's form of benefit is in a Plan Year beginning after 2005, the actuarially equivalent Straight Life Annuity is equal to the greatest of
 - A. the annual amount of the Straight Life Annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit, computed using the interest rate and the mortality table (or other tabular factor) specified in Exhibit A of the Plan for adjusting benefits in the same form;
 - B. the annual amount of the Straight Life Annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit, computed using a 5.5 percent interest rate assumption and the mortality table mortality table described in the model amendment to the Plan reflecting Rev. Rul. 2001-62; and
 - C. the annual amount of the Straight Life Annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit, using the Applicable Interest Rate described herein and the applicable mortality table described in the model amendment to the Plan reflecting Rev. Rul. 2001-62, divided by 1.05.
 - (ii) Annuity Starting Date in Plan Years Beginning in 2004 and 2005. If the Annuity Starting Date of the Participant's form of benefit is in a Plan Year beginning in 2004 or 2005, the actuarially equivalent Straight Life Annuity is equal to the annual amount of the Straight Life Annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit, computed using whichever of the following produces the greater annual amount:
 - A. the interest rate and the mortality table (or other tabular factor) specified in Exhibit A of the Plan for adjusting benefits in the same form; and
 - B. 5.5 percent interest rate assumption and the mortality table described in the model amendment to the Plan reflecting Rev. Rul. 2001-62.

If the Annuity Starting Date of the Participant's benefit is on or after the first day of the first Plan Year beginning in 2004 and before December 31, 2004, the application of this subparagraph (2)(ii) shall not cause the amount payable under

the Participant's form of benefit to be less than the benefit calculated under the Plan taking into account the limitations of this section, except that the actuarially equivalent Straight Life Annuity is equal to the annual amount of the Straight Life Annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit, computed using whichever of the following produces the greatest annual amount:

- C. the interest rate and the mortality table (or other tabular factor) specified in Exhibit A of the Plan for adjusting benefits in the same form;
- D. the applicable interest rate in Exhibit A of the Plan and the mortality table described in the model amendment to the Plan reflecting Rev. Rul. 2001-62; and
- E. the applicable interest rate in Exhibit A of the Plan (as in effect on the last day of the last Plan Year beginning before January 1, 2004, under the provisions of the Plan then adopted and in effect) and the mortality table described in the model amendment to the Plan reflecting Rev. Rul. 2001-62.

Applicable Interest Rate means, for Plan Years beginning on or after July 1, 2000 but prior to July 1, 2008, the rate of interest on 30-year Treasury securities as specified by the Commissioner for the look-back month for the stability period. The look-back month applicable to the stability period is the calendar month preceding the first day of the stability period. The stability period is the successive period of one Plan Year that contains the Annuity Starting Date for the distribution and for which the Applicable Interest Rate remains constant. For Plan Years beginning after June 30, 2008, Applicable Interest Rate shall instead mean the rate described in section 417(e)(3)(C) of the Code (and as amplified by any guidance issued by the Commissioner) for the foregoing look-back month and stability period.

A Plan amendment that changes the date for determining the Applicable Interest Rate (including an indirect change such as the results of a change in Plan Year when the stability period is the Plan Year), shall not be given effect with respect to any distribution during the period commencing one year after the later of the amendment's effective date or adoption date, if, during such period and as a result of such amendment, the Participant's distribution would be reduced.

Applicable Mortality Table means, on any date, the table according to the method set forth in section 417(e) of the Code, as amplified by Rev. Rul. 2007-67 and any future guidance issued by the Commissioner.

Defined Benefit Compensation Limitation means 100 percent of a Participant's High Three-Year Average Compensation, payable in the form of a Straight Life Annuity.

In the case of a Participant who is rehired after a Severance from Employment, the Defined Benefit Compensation Limitation is the greater of 100 percent of the Participant's High Three-Year Average Compensation, as determined prior to the Severance from Employment, or 100 percent of the Participant's High Three-Year Average Compensation, as determined after the Severance from Employment under the definition of High Three-Year Average Compensation.

Defined Benefit Dollar Limitation means, effective for Limitation Years ending after December 31, 2001, \$160,000, automatically adjusted under section 415(d) of the Code, effective January 1 of each year, as published in the Internal Revenue Bulletin, and payable in the form of a Straight Life Annuity. The new limitation shall apply to Limitation Years ending with or within the calendar year of the date of the adjustment, but a Participant's benefits shall not reflect the adjusted limit prior to January 1 of that calendar year. The automatic annual adjustment of the

Defined Benefit Dollar Limitation under section 415(d) of the Code shall not apply to Participants who have had a Severance from Employment.

Employer means, for purposes of this section, the Employer that adopts or contributes to this Plan, and all members of a controlled group of corporations [as defined in section 414(b) of the Code, as modified by section 415(h) of the Code], all commonly controlled trades or businesses [as defined in section 414(c) of the Code], as modified, except in the case of a brother-sister group of trades or businesses under common control, by section 415(h) of the Code], or affiliated service groups [as defined in section 414(m) of the Code] of which the adopting or contributing Employer is a part, and any other entity required to be aggregated with the Employer pursuant to section 414(o) of the Code.

Formerly Affiliated Plan means a plan that, immediately prior to the cessation of affiliation, was actually maintained by an Employer and immediately after the cessation of affiliation, is not actually maintained by an Employer. For this purpose, cessation of affiliation means the event that causes an entity to no longer be considered an Employer, such as the sale of a member of a controlled group of corporations, as defined in section 414(b) of the Code, as modified by section 415(h) of the Code, to an unrelated corporation, or that causes a plan to not actually be maintained by the Employer, such as a transfer of plan sponsorship outside a controlled group.

High Three-Year Average Compensation means the average Earnings for the three consecutive years of service (or if the Participant has less than three consecutive years of service, the Participant's longest consecutive period of service, including fractions of years, but not less than one year) with the Employer that produces the highest average. A year of service with an Employer is the 12-consecutive month period ending on the last day of each Limitation Year. In the case of a Participant who is rehired by an Employer after a Severance from Employment, the Participant's High Three-Year Average Compensation shall be calculated by excluding all years for which the Participant performs no services for and receives no Earnings from an Employer (the break period) and by treating the years immediately preceding and following the break period as consecutive. A Participant's Earnings for a year of service shall not include Earnings in excess of the limitation under section 401(a)(17) of the Code that is in effect for the calendar year in which such year of service begins.

Maximum Permissible Benefit means, except as otherwise provided in this section, the lesser of the Defined Benefit Dollar Limitation or the Defined Benefit Compensation Limitation (both adjusted where required, as provided below).

- (1) Adjustment for Less Than Ten Years of Participation or Years of Service. If the Participant has less than ten Years of Participation in the Plan, the Defined Benefit Dollar Limitation shall be multiplied by a fraction, (i) the numerator of which is the number of Years of Participation (or part thereof, but not less than one year) in the Plan, and (ii) the denominator of which is ten. In the case of a Participant who has less than ten Years of Service with the Employers the Defined Benefit Compensation Limitation shall be multiplied by a fraction, (i) the numerator of which is the number of Years of Service (or part thereof, but not less than one year), and (ii) the denominator of which is ten.
- (2) Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement Before Age 62 or After Age 65. Effective for benefits commencing in Limitation Years ending after December 31, 2001, the Defined Benefit Dollar Limitation shall be adjusted if the Annuity Starting Date of the Participant's benefit is before age 62 or after age 65. If the Annuity Starting Date is before age 62, the Defined Benefit Dollar Limitation shall be adjusted under subparagraph (2)(i) below, as modified by subparagraph (2)(iii) below. If the Annuity Starting Date is after age 65, the Defined Benefit Dollar Limitation shall be adjusted under subparagraph (2)(ii) below, as modified by subparagraph (2)(iii) below.

(i) Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement Before Age 62.

A. Limitation Years Beginning Before July 1, 2007. If the Annuity Starting Date for the Participant's benefit is prior to age 62 and occurs in a Limitation Year beginning before July 1, 2007, the Defined Benefit Dollar Limitation for the Participant's Annuity Starting Date is the annual amount of a benefit payable in the form of a Straight Life Annuity commencing at the Participant's Annuity Starting Date that is the actuarial equivalent of the Defined Benefit Dollar Limitation [adjusted under subparagraph (1) above for Years of Participation less than ten, if required], with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (i) the interest rate and the mortality table (or other tabular factor) specified in the Plan for purposes of determining actuarial equivalence for early retirement benefits; or (ii) a 5 percent interest rate assumption and the Applicable Mortality Table. To the extent the Plan does not specify an interest rate and mortality table (or other tabular factor) or for ages for which no tabular factor is specified, a 5 percent interest rate and the Applicable Mortality Table shall be used to determine actuarial equivalence.

B. Limitation Years Beginning On or After July 1, 2007.

I. Plan Does Not Have Immediately Commencing Straight Life Annuity Payable at Both Age 62 and the Age of Benefit Commencement. If the Annuity Starting Date for the Participant's benefit is prior to age 62 and occurs in a Limitation Year beginning on or after July 1, 2007, and the Plan does not have an immediately commencing Straight Life Annuity payable at both age 62 and the age of benefit commencement, the Defined Benefit Dollar Limitation for the Participant's Annuity Starting Date is the annual amount of a benefit payable in the form of a Straight Life Annuity commencing at the Participant's Annuity Starting Date that is the actuarial equivalent of the Defined Benefit Dollar Limitation [adjusted under subparagraph (1) above for Years of Participation less than ten, if required], with actuarial equivalence computed using a 5 percent interest rate assumption and the Applicable Mortality Table for the Annuity Starting Date (and expressing the Participant's age based on completed calendar months as of the Annuity Starting Date).

II. Plan Has Immediately Commencing Straight Life Annuity Payable at Both Age 62 and the Age of Benefit Commencement. If the Annuity Starting Date for the Participant's benefit is prior to age 62 and occurs in a Limitation Year beginning on or after July 1, 2007, and the Plan has an immediately commencing Straight Life Annuity payable at both age 62 and the age of benefit commencement, the Defined Benefit Dollar Limitation for the Participant's Annuity Starting Date is the lesser of the limitation determined under subparagraph (2)(i)B.I. above and the Defined Benefit Dollar Limitation [adjusted under subparagraph (1) above for Years of Participation less than ten, if required], multiplied by

the ratio of the annual amount of the immediately commencing Straight Life Annuity under the Plan at the Participant's Annuity Starting Date to the annual amount of the immediately commencing Straight Life Annuity under the Plan at age 62, both determined without applying the limitations of this section.

- C. The provisions of this subparagraph (2) shall be modified as provided in section 415(b)(9) of the Code for Participants who are commercial airline pilots.
- D. Notwithstanding any other provision of this subparagraph (2), the age adjusted Defined Benefit Dollar Limitation applicable to a Participant does not decrease on account of an increase in age or the performance of additional service.

(ii) Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement After Age 65:

- A. Limitation Years Beginning Before July 1, 2007. If the Annuity Starting Date for the Participant's benefit is after age 65 and occurs in a Limitation Year beginning before July 1, 2007, the Defined Benefit Dollar Limitation for the Participant's Annuity Starting Date is the annual amount of a benefit payable in the form of a Straight Life Annuity commencing at the Participant's Annuity Starting Date that is the actuarial equivalent of the Defined Benefit Dollar Limitation [adjusted under subparagraph (1) above for Years of Participation less than ten, if required], with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (i) the interest rate and the mortality table (or other tabular factor) specified in the Plan for purposes of determining actuarial equivalence for late retirement benefits; or (ii) a 5 percent interest rate assumption and the Applicable Mortality Table.
- B. Limitation Years Beginning On or After July 1, 2007.
 - I. Plan Does Not Have Immediately Commencing Straight Life Annuity Payable at Both Age 65 and the Age of Benefit Commencement. If the Annuity Starting Date for the Participant's benefit is after age 65 and occurs in a Limitation Year beginning on or after July 1, 2007, and the Plan does not have an immediately commencing Straight Life Annuity payable at both age 65 and the age of benefit commencement, the Defined Benefit Dollar Limitation at the Participant's Annuity Starting Date is the annual amount of a benefit payable in the form of a Straight Life Annuity commencing at the Participant's Annuity Starting Date that is the actuarial equivalent of the Defined Benefit Dollar Limitation [adjusted under subparagraph (1) above for Years of Participation less than ten, if required], with actuarial equivalence computed using a 5 percent interest rate assumption and the Applicable Mortality Table for that Annuity Starting Date (and expressing the Participant's age based on completed calendar months as of the Annuity Starting Date).

II. Plan Has Immediately Commencing Straight Life Annuity Payable at Both Age 65 and the Age of Benefit Commencement. If the Annuity Starting Date for the Participant's benefit is after age 65 and occurs in a Limitation Year beginning on or after July 1, 2007, and the Plan has an immediately commencing Straight Life Annuity payable at both age 65 and the age of benefit commencement, the Defined Benefit Dollar Limitation at the Participant's Annuity Starting Date is the lesser of the limitation determined under subparagraph (2)(ii)B.I. above and the Defined Benefit Dollar Limitation [adjusted under subparagraph (1) above for Years of Participation less than ten, if required], multiplied by the ratio of the annual amount of the adjusted immediately commencing Straight Life Annuity under the Plan at the Participant's Annuity Starting Date to the annual amount of the adjusted immediately commencing Straight Life Annuity under the Plan at age 65, both determined without applying the limitations of this section. For this purpose, the adjusted immediately commencing Straight Life Annuity under the Plan at the Participant's Annuity Starting Date is the annual amount of such annuity payable to the Participant, computed disregarding the Participant's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing Straight Life Annuity under the Plan at age 65 is the annual amount of such annuity that would be payable under the Plan to a hypothetical Participant who is age 65 and has the same accrued benefit as the Participant.

(iii) Notwithstanding the other requirements of this subparagraph (2), no adjustment shall be made to the Defined Benefit Dollar Limitation to reflect the probability of a Participant's death between the Annuity Starting Date and age 62, or between age 65 and the Annuity Starting Date, as applicable, if benefits are not forfeited upon the death of the Participant prior to the Annuity Starting Date. To the extent benefits are forfeited upon death before the Annuity Starting Date, such an adjustment shall be made. For this purpose, no forfeiture shall be treated as occurring upon the Participant's death if the Plan does not charge Participants for providing a qualified joint and survivor annuity, as defined in section 417(c) of the Code, upon the Participant's death.

(3) Minimum Benefits Permitted. Notwithstanding anything else in this definition to the contrary, the benefit otherwise accrued or payable to a Participant under this Plan shall be deemed not to exceed the Maximum Permissible Benefit if:

(i) the retirement benefits payable for a Limitation Year under any form of benefit with respect to such Participant under this Plan and under all other defined benefit plans (without regard to whether a plan has been terminated) ever maintained by the Employer do not exceed \$10,000 multiplied by a fraction, (1) the numerator of which is the Participant's number of Years of Service (or part thereof, but not less than one year) with the Employer (not to exceed ten), and (2) the denominator of which is 10; and

(ii) the Employer or a Predecessor Employer) has not at any time maintained a defined contribution plan in which the Participant participated. [For this purpose, mandatory employee contributions under a defined benefit plan, individual medical benefit accounts under section 401(h) of the Code, and

accounts for post-retirement medical benefits established under section 419A(d)(1) of the Code are not considered a separate defined contribution plan].

Predecessor Employer means, with respect to a Participant, a former employer if the Employer maintains a plan that provides a benefit which the Participant accrued while performing services for the former employer. Predecessor Employer also means, with respect to a Participant, a former entity that antedates the Employer if, under the facts and circumstances, the Employer constitutes a continuation of all or a portion of the trade or business of the former entity.

Severance from Employment means an Employee has ceased to be an Employee of an Employer. An Employee does not have a Severance from Employment if, in connection with a change of employment, the Employee's new employer contributes to the plan with respect to the employee.

Year of Participation means, for purposes of the definition of Maximum Permissible Benefit, one year (computed to fractional parts of a year) for each Plan Year for which the following conditions are met:

- (1) the Participant is credited with a year of service for benefit accrual purposes, and
- (2) the Participant is included as a Participant under the eligibility provisions of the Plan for at least one day of the Plan Year,

If these two conditions are met, the portion of a Year of Participation credited to the Participant shall equal the amount of accrual service credited to the Participant for such Plan Year. A Participant who is totally and permanently disabled within the meaning of section 415(c)(3)(C)(i) of the Code for a Plan Year shall receive a Year of Participation with respect to that period. In addition, for a Participant to receive a Year of Participation (or part thereof) for a Plan Year, the Plan must be established no later than the last day of such Plan Year. In no event will more than one Year of Participation be credited for any 12-month period.

Year of Service means, for purposes of the definition of Maximum Permissible Benefit, one year (computed to fractional parts of a year) for each Plan Year for which the Participant is credited with at least the number of Hours of Service for benefit accrual purposes, taking into account only service with the Employer or a Predecessor Employer.

- (b) The Annual Benefit otherwise payable to a Participant at any time will not exceed the Maximum Permissible Benefit. If the benefit the Participant would otherwise accrue in a Limitation Year would produce an Annual Benefit in excess of the Maximum Permissible Benefit, the benefit shall be limited (or the rate of accrual reduced) to a benefit that does not exceed the Maximum Permissible Benefit.
- (c) If the Participant is, or has ever been, a participant in another qualified defined benefit plan (without regard to whether the plan has been terminated) maintained by the Employer or a Predecessor Employer, the sum of the Participant's Annual Benefits from all such plans may not exceed the Maximum Permissible Benefit. Where the Participant's employer-provided benefits under all such defined benefit plans (determined as of the same age) would exceed the Maximum Permissible Benefit applicable at that age, the benefit shall be limited (or the rate of accrual reduced) in the plan most recently established to the extent necessary so that the sum of the Participant's Annual Benefits from all such plan(s) does not exceed the Maximum Permissible Benefit.
- (d) The application of the provisions of this section shall not cause the Maximum Permissible Benefit for any Participant to be less than the Participant's accrued benefit under all the defined benefit plans of the Employer or a Predecessor Employer as of the end of the last Limitation Year

beginning before July 1, 2007 under the provisions of the plans that were both adopted and in effect before April 5, 2007. The preceding sentence applies only if the provisions of such defined benefit plans that were both adopted and in effect before April 5, 2007 satisfied the applicable requirements of statutory provisions, regulations, and other published guidance relating to section 415 of the Code in effect as of the end of the last Limitation Year beginning before July 1, 2007, as described in section 1.415(a)-1 (g)(4) of the regulations.

(e) The limitations of this section shall be determined and applied taking into account the rules in (f) below.

(f) Other Rules.

(1) Benefits under Terminated Plans. If a defined benefit plan maintained by the Employer has terminated with sufficient assets for the payment of benefit liabilities of all plan participants and a participant in the plan has not yet commenced benefits under the plan, the benefits provided pursuant to the annuities purchased to provide the participant's benefits under the terminated plan at each possible annuity starting date shall be taken into account in applying the limitations of this section. If there are not sufficient assets for the payment of all participants' benefit liabilities, the benefits taken into account shall be the benefits that are actually provided to the participant under the terminated plan.

(2) Benefits Transferred From the Plan. If a participant's benefits under a defined benefit plan maintained by the Employer are transferred to another defined benefit plan maintained by the Employer and the transfer is not a transfer of distributable benefits pursuant to section 1.411(d)-4, Q&A-3(c) of the regulations, the transferred benefits are not treated as being provided under the transferor plan (but are taken into account as benefits provided under the transferee plan). If a participant's benefits under a defined benefit plan maintained by the Employer are transferred to another defined benefit plan that is not maintained by the Employer and the transfer is not a transfer of distributable benefits pursuant to section 1.411(d)- 4, Q&A-3(c), of the regulations, the transferred benefits are treated by the Employer's plan as if such benefits were provided under annuities purchased to provide benefits under a plan maintained by the Employer that terminated immediately prior to the transfer with sufficient assets to pay all participants' benefit liabilities under the plan. If a participant's benefits under a defined benefit plan maintained by the Employer are transferred to another defined benefit plan in a transfer of distributable benefits pursuant to section 1.411(d)- 4, Q&A-(c), of the regulations, the amount transferred is treated as a benefit paid from the transferor plan.

(3) Formerly Affiliated Plans of the Employer. A Formerly Affiliated Plan of the Employer shall be treated as a plan maintained by the Employer, but the Formerly Affiliated Plan shall be treated as if it had terminated immediately prior to the cessation of affiliation with sufficient assets to pay participants' benefit liabilities under the plan and had purchased annuities to provide benefits.

(4) Plans of a Predecessor Employer. If the Employer maintains a defined benefit plan that provides benefits accrued by a participant while performing services for a Predecessor Employer, the participant's benefits under a plan maintained by a Predecessor Employer shall be treated as provided under a plan maintained by the Employer. However, for this purpose, the plan of the Predecessor Employer shall be treated as if it had terminated immediately prior to the event giving rise to the Predecessor Employer relationship with sufficient assets to pay participants' benefit liabilities under the plan, and had purchased annuities to provide benefits; the Employer and the Predecessor Employer shall be treated as if they were a single employer immediately prior to such event and as unrelated employers immediately after the event; and if the event giving rise to the predecessor relationship is a benefit transfer, the transferred benefits shall be excluding in determining the benefits provided under the plan of the Predecessor Employer.

- (5) Special Rules. The limitations of this section shall be determined and applied taking into account the rules in section 1.415(f)-1(d), (e), and (h) of the regulations.
- (6) Multiemployer Plans.
 - (i) Only the benefits under this multiemployer plan shall be treated as benefits provided under a plan maintained by the Employer for purposes of this section.
 - (ii) Effective for Limitation Years ending after December 31, 2001, any other multiemployer plan shall be disregarded for purposes of applying the compensation limitation of the Defined Benefit Compensation Limitation definition and subparagraph (1) of the Maximum Permissible Benefit definition in subparagraph (a) above to a plan that is not a multiemployer plan.

Section 3.11 - Limitation of Benefits Under All Plans

For Plan Years ending prior to May 1, 2000, if an Employee is a Participant in the Plan and a defined contribution plan maintained by the Employer, the sum of the defined contribution plan fraction and the defined benefit plan fraction for any Limitation Year may not exceed 1.0, as computed under the terms and conditions as set forth under section 415(e) of the Code.

For purposes of computing the defined contribution plan fraction for any Limitation Year, the numerator shall be the sum of the Annual Additions to the Participant's accounts during such Limitation Year and for all prior Limitation Years, and the denominator shall be the lesser of:

- (a) the product of 1.25 multiplied by the maximum permissible dollar amount under section 415(c)(1)(A) of the Code for such year and for all prior years, or
- (b) the product of 1.4 multiplied by the maximum permissible percentage of compensation contributed under section 415(c)(1)(B) of the Code for such year and for all prior years.

For purposes of computing the defined benefit plan fraction for any Limitation Year, the numerator shall be the Participant's projected annual benefit under the defined benefit plan as of the end of the Limitation Year and the denominator shall be the lesser of:

- (1) the product of 1.25 multiplied by the maximum permissible dollar amount of benefit in effect under section 415(b)(1)(A) of the Code for such year, or;
- (2) the product of 1.4 multiplied by the maximum permissible percentage of compensation limitation of the amount of benefit in effect under section 415(b)(1)(B) of the Code for such year.

If the preceding limitations are exceeded for any person, the Board of Trustees shall notify the administrator of each defined contribution plan in which such person is a participant of such condition and shall adjust accruals hereunder to comply with the limitations of this section to the extent necessary to ensure that contributions to the defined contribution plan are not affected.

For any Plan Year in which the Plan is "top-heavy" within the meaning of section 416(g) of the Code and the requirements of section 416(h)(2) of the Code are not met, the preceding two paragraphs shall be applied by substituting "1.0" for "1.25" in subparagraphs (a) and (1) above.

In the case of an individual who was a Participant in the Plan as of the beginning of the first Limitation Year beginning after December 31, 1986, whose current Accrued Benefit, as of the close of such Limitation Year, exceeded the dollar limitation of Code section 415(b), as amended by the Tax Reform Act of 1986, the Participant's current Accrued Benefit shall be the applicable dollar limitation for purposes of applying the limitations of Code

sections 415(b) and 415(e); provided that the Plan satisfied the requirements of section 415 of the Code for all Limitation Years ending prior to January 1, 1987.

Section 3.12 - Benefit Adjustments

Effective May 1, 2000, the monthly benefits of all Former Participants and Beneficiaries that are in pay status for the month of April, 2000, shall be increased by \$20.

ARTICLE 4

APPLICATIONS, BENEFIT PAYMENTS, RETIREMENT AND BENEFIT SUSPENSIONS

Section 4.1 - Applications

Application for a benefit must be filed in writing with the Board of Trustees on a form approved by the Board of Trustees.

A pension shall not be payable for any month before the month an application has been filed, except as otherwise provided herein.

Section 4.2 - Information and Proof

Each applicant shall furnish all information or proof reasonably required by the Board of Trustees to determine benefit rights. If the applicant knowingly makes a false statement that is material to the application or furnishes fraudulent information that is material to the claim, benefits may be denied, suspended or discontinued. The Board of Trustees shall have the right to recover any benefits paid in reliance on any false statement, information or proof submitted by an applicant (including withholding of material facts) plus interest and costs, without limitation of recovery through offset of benefit payments as permitted by this article.

Section 4.3 - Action of Board of Trustees

The Board of Trustees has discretionary authority to determine eligibility for benefits and to use its discretionary authority to interpret the Plan. Benefits under the Plan will be paid only if the Board of Trustees decides, in its discretion, that the applicant for the benefits is entitled to them. If any decision of the Board of Trustees (or of those acting on behalf of the Board of Trustees) is appealed or questioned in any judicial proceeding, it is the intention of the Board of Trustees that such decision is to be upheld unless it is judicially determined to be arbitrary and capricious.

The Board of Trustees shall process a claim for benefits as quickly as is administratively feasible, subject to the receipt of adequate information and proof necessary to establish the applicant's benefit rights.

Section 4.4 - Right of Appeal

An applicant whose application for benefits has been denied in whole or in part shall be provided with adequate notice in writing setting forth the specific reasons for such denial and shall have the right to appeal the decision in accordance with the claims and review procedure in the summary plan description.

Section 4.5 - Benefit Payments Generally

- (a) A Participant who is eligible to receive benefits and who makes application in accordance with the rules of the Plan shall be entitled to receive monthly benefits for life, except as otherwise provided herein.
- (b) As a general rule, benefits shall be payable with the month following the month in which the applicant has fulfilled all of the conditions for entitlement to benefits, including the

requirement for the filing of an application with the Board of Trustees, provided, however, normal, early and disability retirement benefits shall be payable with the month in which the Participant has fulfilled all of the conditions for entitlement to benefits, including the requirement for the filing of an application with the Board of Trustees. (The recommencement of benefits that have been suspended shall be paid in accordance with the general rule.) The first day of such first month shall be the Annuity Starting Date and the effective date of the benefit. A Participant may, however, elect in writing filed with the Board of Trustees to receive benefits first payable for a later month, provided that no such election may postpone the commencement of benefits beyond the required beginning date, as defined in section 4.6(o).

- (c) Subject to the foregoing, payment of benefits to a Participant shall begin no later than 60 days after the close of the Plan Year in which occurs the latest of:
 - (i) the date such person attains the Normal Retirement Age,
 - (ii) the fifth anniversary of the first day of the Plan Year in which such person began participation in the Plan (with participation prior to a Forfeiture of Service disregarded for purposes of determining the participation commencement date), or
 - (iii) the date such person terminates service with all Employers.

Notwithstanding the foregoing, the failure of a Participant (and, if applicable, the spouse) to consent to a distribution while a benefit is immediately distributable, within the meaning of section 5.6, shall be deemed to be an election to defer commencement of benefit payments sufficient to satisfy the foregoing, although any such deemed election shall be subject to section 4.6.

- (d) If the amount of the payment required to commence on the date determined under this section cannot be determined by such date, or if it is not possible to make such payment on such date because the Board of Trustees has been unable to locate the Participant after making reasonable efforts to do so, a payment retroactive to such date may be made no later than 60 days after the earliest date on which the amount of such payment can be ascertained or on the date on which such person is located, as the case may be.
- (e) Payment of benefits shall include retroactive payment for any months for which the benefit is due and payable in accordance with paragraph (d) of this section, or in other cases where the Board of Trustees determines that retroactive payment is justified by extenuating circumstances (such as a delay in reviewing or approving the Participant's application for benefits). However, any such retroactive payment shall satisfy the following requirements:
 - (i) The Participant shall receive a lump-sum make-up payment reflecting all months for which the Board of Trustees determine benefit payments were due but not made (with, for make-up payments to be made after December 31, 2001, an appropriate adjustment for interest from the date the missed payment would have been made, taking into account reasonable time for processing the payment, to the date the retroactive lump-sum payment is made).
 - (ii) The Board of Trustees has provided the Participant with the written explanation of the Joint and Survivor Annuity described in section 5.6 no more than 180 days (90 days for explanations given in Plan Years beginning prior to January 1, 2007) prior to the date the retroactive payment is made to the Participant.

- (iii) The retroactive payment is made either (a) at least 30 days after this written explanation is provided, or (b) at least seven days after the notice is provided if the Participant has affirmatively consented in writing to an immediate distribution.

The Participant's spouse (if any) on the date the retroactive payment is made has consented to the distribution to the extent required by section 5.6.

Section 4.6 - Distribution Requirements

Subject to the provisions of the Plan relating to the payment of the Joint and Survivor Annuity, the requirements of this section shall apply to any distribution of a Participant's or Former Participant's interest and will take precedence over any inconsistent provisions of the Plan.

Time and Manner of Distribution

(a) Required Beginning Date. The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's required beginning date.

(b) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

(1) If the Participant's surviving spouse is the Participant's sole designated beneficiary, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later.

(2) If the Participant's surviving spouse is not the Participant's sole designated beneficiary, distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

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

(4) If the Participant's surviving spouse is the Participant's sole designated beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this section 4.6(b), other than section 4.6(b)(1), will apply as if the surviving spouse were the Participant. For purposes of this section 4.6(b) and section 4.6(i)(j) and (k), distributions are considered to begin on the Participant's required beginning date [(or, if section 4.6(b)(4) applies, the date distributions are required to begin to the surviving spouse under section 4.6(b)(1)]. If annuity payments irrevocably commence to the Participant before the Participant's required beginning date [(or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under section 4.6(b)(1)], the date distributions are considered to begin is the date distributions actually commence.

(c) Form of Distribution. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with sections 4.6(d) through (k) of this article. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of section 401(a)(9) of the Code and the Treasury regulations. Any part of the Participant's interest that is in the form of an individual account described in section 414(k) of the Code will be distributed in a manner satisfying the requirements of section 401(a)(9) of the Code and the Treasury regulations that apply to individual accounts.

Determination of Amount to be Distributed Each Year

(d) General Annuity Requirements. If the Participant's interest is paid in the form of annuity distributions under the plan, payments under the annuity will satisfy the following requirements:

(1) the annuity distributions will be paid in periodic payments made at intervals not longer than one year;

(2) the distribution period will be over a life (or lives) or over a period certain not longer than the period described in sections 4.6(g) through (k);

(3) once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted;

(4) payments will either be nonincreasing or increase only as follows:

(i) by an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the Bureau of Labor Statistics;

(ii) to the extent of the reduction in the amount of the Participant's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period described in section 4.6(g), (h) dies or is no longer the Participant's beneficiary pursuant to a qualified domestic relations order within the meaning of section 414(p);

(iii) to provide cash refunds of employee contributions upon the Participant's death;
or

(iv) to pay increased benefits that result from a plan amendment.

(e) Amount Required to be Distributed by Required Beginning Date. The amount that must be distributed on or before the Participant's required beginning date [(or, if the Participant dies before distributions begin, the date distributions are required to begin under section 4.6(b)(1) or (2)] is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, *e.g.*, bi-monthly, monthly, semi-annually, or annually. All of the Participant's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Participant's required beginning date.

(f) Additional Accruals After First Distribution Calendar Year. Any additional benefits accruing to the Participant in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

Requirements For Annuity Distributions That Commence During Participant's Lifetime

(g) Joint Life Annuities Where the Beneficiary Is Not the Participant's Spouse. If the Participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the Participant and a nonspouse beneficiary, annuity payments to be made on or after the Participant's required beginning date to the designated beneficiary after the Participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the Participant using the table set forth in Q&A-2 of section 1.401(a)(9)-6T of the Treasury regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the Participant and a nonspouse beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.

(h) Period Certain Annuities. Unless the Participant's spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the Participant's lifetime may not exceed the applicable distribution period for the Participant under the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the Participant reaches age 70, the applicable distribution period for the Participant is the distribution period for age 70 under the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury regulations plus the excess of 70 over the age of the Participant as of the Participant's birthday in the year that contains the annuity starting date. If the Participant's spouse is the Participant's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the Participant's applicable distribution period, as determined under this section 4.6(h), or the joint life and last survivor expectancy of the Participant and the Participant's spouse as determined under the Joint and Last Survivor Table set forth in section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the calendar year that contains the annuity starting date.

Requirements For Minimum Distributions Where Participant Dies Before Date Distributions Begin

(i) Participant Survived by Designated Beneficiary. If the Participant dies before the date distribution of his or her interest begins and there is a designated beneficiary, the Participant's entire interest will be distributed, beginning no later than the time described in section 4.6(b)(1) or (2), over the life of the designated beneficiary or over a period certain not exceeding:

(1) unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the Participant's death; or

(2) if the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.

(j) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(k) Death of Surviving Spouse Before Distributions to Surviving Spouse Begin. If the Participant dies before the date distribution of his or her interest begins, the Participant's surviving spouse is the Participant's sole designated beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, sections 4.6(i), (j) and (k) will apply as if the surviving spouse were the Participant, except that the time by which distributions must begin will be determined without regard to section 4.6(b)(1).

Definitions

(l) Designated Beneficiary. The individual who is designated as the beneficiary under section 1.5 of the plan and is the designated beneficiary under section 401(a)(9) of the Internal Revenue Code and section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.

(m) Distribution Calendar Year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year that contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to section 4.6(b).

(n) Life Expectancy. Life expectancy as computed by use of the Single Life Table in section 1.401(a)(9)-9 of the Treasury regulations.

(o) Required Beginning Date.

(1) General Rule. Except as specified otherwise in subparagraphs (2), (3) or (4) below, the required beginning date of a Participant or Former Participant is the first day of April of the calendar year following the later of the calendar year in which the Participant or Former Participant attains age 70½ or the calendar year in which the Former Participant retires.

(2) Prior to January 1, 2000. The required beginning date of any Participant or Former Participant who attained age 70½ before January 1, 2000, shall be the first day of April of the calendar year following the calendar year in which the attainment of age 70½ occurred.

(3) Transitional Rule. Any Participant or Former Participant who attains age 70-1/2 between January 1, 2000 and December 31, 2000 may elect to have his or her required beginning date determined under either the General Rule in subparagraph (1) or the old rule in subparagraph (2).

(4) Treatment of 5 Percent Owner. The required beginning date of a Participant or Former Participant who is a 5 percent owner during any year beginning after December 31, 1979, is the first day of April following the later of:

(A) the calendar year in which the Participant or Former Participant attains age 70½, or

(B) the earlier of the calendar year with or within which ends the Plan Year in which the Participant or Former Participant becomes a 5 percent owner, or the calendar year in which the Participant or Former Participant retires.

(5) 5 Percent Owner. A Participant or Former Participant is treated as a 5 percent owner for purposes of this section if such Participant or Former Participant is a 5 percent owner as defined in section 416(i) of the Code (determined in accordance with section 416 but without regard to whether the Plan is top-heavy) at any time during the Plan Year ending with or within the calendar year in which such owner attains age 66½ or any subsequent Plan Year.

(6) Continuation of Payments. Once distributions have begun to a 5 percent owner under this section, they must continue to be distributed, even if the Participant ceases to be a 5 percent owner in a subsequent year.

Section 4.7 - Suspension of Benefits

(a) Definition of Suspension. "Suspension of Benefits" means nonentitlement to benefits for the month, regardless of whether payment of such benefits has commenced. If benefits were paid for a month for which they should have been suspended, the overpayment shall be recovered through deductions from future pension payments, pursuant to subparagraph (f).

(b) Suspension of Benefits After Normal Retirement Age. A Participant's or Former Participant's monthly benefit shall be suspended for any month (other than a month that occurs after the required beginning date, as defined in section 4.6) in which he or she completes at least 40 Hours of Work in Disqualifying Employment after his or her Normal Retirement Age. For purposes of this subparagraph, "Disqualifying Employment" means employment or self-employment in an industry in which Participants covered by the Plan were employed and accrued benefits under the Plan as a result of such employment at the time the payment of benefits commenced (or would have commenced but for employment or reemployment), in the geographic area covered by the Plan at the time the payment of benefits commenced (or would have commenced

but for employment or reemployment), and in the trade or craft in which the Participant or Former Participant worked under the Plan at any time. For purposes of the foregoing,

- (i) The term "industry" means the business activities of the types engaged in by any Employer, including, but not necessarily limited to, the building and construction industry.
 - (ii) The geographic area covered by the Plan means the State of Ohio, the State of Michigan and the remainder of any Standard Metropolitan Statistical Area that falls in part within either state, determined as of the time the payment of benefits commenced (or would have commenced but for employment or reemployment).
 - (iii) Trade or craft means the type of work described in the applicable collective bargaining agreement with the Union, as well as supervisory activities relating, either directly or indirectly, to such work. For purposes hereof, an individual shall be deemed to be supervising work if he or she engages in any supervisory or managerial activity that is reasonably related to the underlying skills associated with the trade or craft for which the former retiree was trained or in which the former retiree acquired work experience.
- (c) Suspension of Benefits Before Normal Retirement Age. A Participant's or Former Participant's monthly benefit shall be suspended for any month in which he or she completes at least one Hour of Work in Disqualifying Employment prior to his or her Normal Retirement Age. For purposes of this subparagraph, "Disqualifying Employment" means employment or self-employment in the appropriate geographic area and in the appropriate trade or craft. For purposes of the foregoing,
- (i) The appropriate geographic area means anywhere in the United States.
 - (ii) Appropriate trade or craft means the type of work described in the applicable collective bargaining agreement with the Union, as well as supervisory activities relating, either directly or indirectly, to such work. For purposes hereof, an individual shall be deemed to be supervising work if he or she engages in any supervisory or managerial activity that is reasonably related to the underlying skills associated with the trade or craft for which the former retiree was trained or in which the former retiree acquired work experience. In addition, an individual who has an ownership interest in a corporation or partnership that is engaged in the type of work described in the Collective Bargaining Agreement, or whose spouse, parent or lineal descendant has such an interest, shall be conclusively deemed to be supervising work of the type described in the Collective Bargaining Agreement.

The foregoing provisions of this subparagraph (c) shall not result in the suspension of benefits for any month after the Participant or Former Participant has attained his or her Normal Retirement Age.

- (d) Notices.
- (i) A Participant or Former Participant must notify the Board of Trustees in writing within 15 days after commencing any work of a type that is or may be Disqualifying Employment under the provisions of the Plan, regardless of the number of hours of such work. If a Participant or Former Participant has worked in Disqualifying Employment [as defined in subparagraph (b) or subparagraph (c), as the case may be] in any month and has failed to give timely notice to the Board of Trustees of such employment or self-employment, the Board of Trustees shall presume that he or she completed the number of Hours

of Work necessary to effect a suspension of benefits during such month and any subsequent month before the Participant or Former Participant gives notice that he or she has ceased such Disqualifying Employment. The Participant or Former Participant shall have the right to rebut such presumption by establishing that the work was not in fact an appropriate basis for suspension of benefits.

- (ii) If a Participant or Former Participant has worked in Disqualifying Employment [as defined in subparagraph (b) or subparagraph (c), as the case may be] for any number of hours at a building or construction site and has failed to give timely notice to the Board of Trustees of such employment or self-employment, the Board of Trustees shall presume that the Participant or Former Participant has engaged in such work for as long as the contractor has been and remains actively engaged at that site. The Participant or Former Participant shall have the right to rebut such presumption by establishing that the work was not in fact an appropriate basis for suspension of benefits.
 - (iii) A Participant or Former Participant whose monthly benefit has been suspended must notify the Board of Trustees in writing when Disqualifying Employment [as defined in subparagraph (b) or subparagraph (c), as the case may be] has ended and, as a condition for receiving benefits, must file the appropriate application or resumption form. The Board of Trustees shall have the right to withhold benefit payments until such form has been filed.
 - (iv) A Participant or Former Participant may ask the Board of Trustees whether a particular type of employment is Disqualifying Employment. The Board of Trustees shall provide the Participant or Former Participant with its determination.
 - (v) The Board of Trustees shall inform a Participant or Former Participant of any suspension of benefits by notice given by personal delivery or first class mail during the first calendar month in which benefits are withheld. Such notice shall include a description of the specific reasons for the suspension, a general description of the Plan's suspension provisions, a copy of such provisions, reference to the applicable regulations of the Department of Labor and a statement of the procedure for securing a review of the suspension. In addition, the notice shall describe the procedure for the Participant or Former Participant to notify the Plan when Disqualifying Employment ends, a description of the procedure for filing a request for the commencement (or recommencement) of benefits and a copy of the appropriate form. Finally, the suspension notice shall explain the offset procedure and identify the amount expected to be recovered as well as the periods of employment to which they relate. Notwithstanding the foregoing provisions of this subparagraph, however, if the Plan's summary plan description contains information that is substantially the same as information described in this subparagraph, the suspension notification may refer to the relevant pages of the summary plan description as to a particular item, as long as the Participant or Former Participant is informed how to obtain a copy of the summary plan description (or relevant pages thereof) and provided requests for referenced information are honored within a reasonable period of time, not to exceed 30 days.
- (e) Review. A Participant or Former Participant shall be entitled to a review of a determination suspending benefits in accordance with the claims and review procedure in the summary plan description. The same right shall apply to a determination that contemplated employment will be Disqualifying Employment.

- (f) Resumption of Benefit Payments.
- (i) Benefits suspended pursuant to subparagraph (b) shall resume for months after the last month for which benefits were suspended, with payments beginning no later than the first day of the third month after the last calendar month for which the benefit was suspended, provided the Former Participant has complied with the applicable notification and filing requirements of subparagraph (d). The amount of the resumed payment shall be determined in accordance with the provisions of section 4.8.
 - (ii) Benefits suspended pursuant to subparagraph (c) shall resume with the payment due for the seventh month following the month in which the Participant or Former Participant last worked in Disqualifying Employment [as defined in such subparagraph (c)] or with the payment due for the month following the Normal Retirement Age [unless benefits are suspended pursuant to subparagraph (b)], whichever is sooner.
 - (iii) Overpayments attributable to payments made for any month or months for which the Participant or Former Participant engaged in Disqualifying Employment [as defined in subparagraph (b)] after the Normal Retirement Age shall be deducted from benefit payments otherwise paid or payable subsequent to the period of suspension. Such deduction shall not exceed 25 percent of the benefit amount (before deduction), except for the first benefit payment made upon resumption after a suspension. If a Former Participant dies before recoupment of overpayments has been completed, deductions shall be made from the benefits payable to the Beneficiary, subject to the 25 percent limitation on the rate of deduction.
 - (iv) Overpayments attributable to payments made for any month or months for which the Participant or Former Participant engaged in Disqualifying Employment [as defined in subparagraph (c)] before the Normal Retirement Age shall be deducted from benefit payments otherwise paid or payable subsequent to the period of suspension, provided, however, any such deduction after the Normal Retirement Age shall not exceed 25 percent of the benefit amount (before deduction), except for the first benefit payment made upon resumption after suspension. If a Former Participant dies before recoupment of overpayments has been completed, deductions shall be made from the benefits payable to the Beneficiary, subject to the 25 percent limitation on the rate of deduction.

Section 4.8 - Benefit Payments Following Suspension

- (a) Determination of Amount of Benefit Payment. The monthly amount of benefits following a suspension shall be determined under subparagraph (b) of this section and shall be adjusted for any optional form of benefit as well as for any additional accruals earned during the period of suspension and any benefit increases adopted during such period. Nothing in this section shall be deemed to extend any benefit increase or adjustment effective after the initial retirement to any benefit upon resumption of payment, except to the extent that it may be expressly provided by other provisions of the Plan.
- (b) Amount of Resumed Benefit. When a Participant or Former Participant whose monthly benefit has been suspended pursuant to section 4.7 has filed the appropriate application or resumption form pursuant to section 4.7(d)(iii), and if the Board of Trustees determines that such person's benefits are no longer suspendible, the amount of the monthly benefit upon its resumption shall be equal to the sum of the following:

- (i) The Participant's Accrued Benefit at the time his or her benefit was suspended.
 - (ii) Any additional benefit accruals earned while benefits were suspended.
 - (iii) Such person shall be entitled to a new election as to the form of benefit, but only with respect to such benefit accruals earned during the period of suspension.
- (c) Adjustments. The amount determined under subparagraph (b) shall be adjusted (using the factors in Exhibit A) for the Joint and Survivor Annuity or for any other form of benefit that is payable.
 - (d) Effect Upon Form of Benefit. A Joint and Survivor Annuity in effect immediately prior to a suspension of benefits or any other form of benefit that provides payment to a survivor following the death of the Former Participant in effect immediately prior to a suspension of benefits shall remain effective if death occurs while benefits are suspended.

Section 4.9 - Direct Rollovers

- (a) This section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect, at the time and in the manner prescribed by the Board of Trustees, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.
- (b) Definitions.
 - (i) Eligible rollover distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of 10 years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and any hardship withdrawal of elective deferrals [within the meaning of section 401(k)(2)(B)(i)(IV) of the Code].
 - (ii) Eligible retirement plan: An eligible retirement plan is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code, an annuity contract described in section 403(b) of the Code, an eligible plan under section 457(b) of the Code which is maintained by a state or political subdivision of a state and which agrees to separately account for amounts transferred in such plan from this Plan, or a qualified trust described in section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.
 - (iii) Distributee: 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, are distributees with regard to the interest of the spouse or former spouse.

- (iv) Direct rollover: A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.
- (c) If a distribution is one to which section 401(a)(11) and section 417 of the Code do not apply, such distribution may commence less than 30 days after the notice required under section 1.411(a)-11(c) of the regulations is given, provided that:
 - (i) the Board of Trustees informs the distributee that he or she has a right to a period of at least 30 days after receiving the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular distribution option), and
 - (ii) the distributee, after receiving the notice, affirmatively elects a distribution.
- (d) Direct Rollover for Non Spouse Beneficiary. Effective May 1, 2010, if a Participant or Former Participant dies, and the Beneficiary (determined pursuant to section 1.5) is not the surviving spouse of the Participant or Former Participant and is entitled to receive an eligible rollover distribution, the Beneficiary may elect to receive the distribution of the full amount of the Participant or Former Participant's Accrued Benefit to which the Beneficiary is entitled in the form of a direct rollover pursuant to a direct trustee to trustee transfer to either (i) an individual retirement account as defined in section 408(a) of the Code, or (ii) an individual retirement annuity, as defined in section 408(b) of the Code, established for the purpose of receiving the distribution on behalf of the Beneficiary.

A direct rollover of a distribution by a non-spouse Beneficiary is a rollover of an eligible rollover distribution for purposes of section 402(c) of the Code only. Accordingly, the distribution is not subject to the direct rollover requirements of section 401(a)(31) of the Code, the notice requirements of section 402(f) of the Code, or the mandatory withholding requirements of section 3405(c) of the Code. If an amount is distributed from a Plan and is received by a non-spouse Beneficiary, the distribution is not eligible for rollover treatment.

If, with respect to any portion of a distribution from the Plan of a deceased Participant's vested Accrued Benefit, a direct trustee-to-trustee transfer is made to an individual retirement plan as described in section 401(c)(8)(B)(i) or (ii) of the Code, established for the purpose of receiving the distribution on behalf of an individual who is a Beneficiary of the deceased Participant and who is not his or her surviving Spouse or a Spouse or former Spouse who is an Alternate Payee under a Qualified Domestic Relations Order (1) the transfer shall be treated as an Eligible Rollover Distribution; (2) the individual retirement plan shall be treated as an inherited individual retirement account or individual retirement annuity [within the meaning of section 408(d)(3)(C)] of the Code; and (3) section 401(a)(9)(B) of the Code [other than section 401(a)(9)(B)(iv) of the Code] shall apply to such individual retirement plan. For purposes of this paragraph, to the extent provided in rules prescribed by the Secretary, a trust maintained for the benefit of one or more designed beneficiaries shall be treated in the same manner as a Beneficiary.

- (e) For distributions made after December 31, 2007, a Participant entitled to receive an eligible rollover distribution may also elect to have such eligible rollover distribution paid directly, as a direct rollover, to the custodian or trustee of a Roth Individual Retirement Account described in Section 408A of the Code; however, for taxable years beginning prior to January 1, 2010, the income restrictions that apply to a rollover from a traditional IRA with a Roth IRA shall continue to apply such payments.

ARTICLE 5
MISCELLANEOUS

Section 5.1 - Non-Reversion

In no event shall any of the corpus or assets of the Plan revert to any Employer or the Association or be subject to any claims of any kind or nature by the Association or any Employer, provided that any contribution made by an Employer because of a mistake of fact or law may be returned to the Employer within the period of six months after a determination is made that the contribution was made by reason of such a mistake, if such return is authorized by the Board of Trustees.

Section 5.2 - Limitation of Liability

The Plan has been established on the basis of an actuarial calculation that has established, to the extent possible, that the contributions will, if continued, be sufficient to maintain the Plan on a permanent basis, fulfilling the funding requirements of ERISA. Except as otherwise provided by law, nothing in the Plan shall be construed to impose any obligation to contribute beyond the obligation of the Employer to make contributions as stipulated in the Collective Bargaining Agreement or other written agreement.

There shall be no liability upon the Trustees individually or collectively to provide the benefits established by the Plan, if the Plan does not have sufficient assets to make such payments.

Section 5.3 - No Specific Interest

Nothing in this document shall be construed to give any Participant, Former Participant or Beneficiary any interest in the Plan, other than the right to receive payment in accordance with the provisions hereof.

Section 5.4 - Participants' Rights

Each Participant, Former Participant and Beneficiary shall have only the rights, privileges and benefits that are provided hereunder. The Plan does not create any contract of employment with any person nor grant any person the right to continue employment.

Section 5.5 - Forfeitures

If a Participant or Former Participant incurs a Forfeiture of Service, or dies under such circumstances that no death benefits are payable, his or her Accrued Benefit shall be forfeited. Such forfeiture shall not be applied to increase the benefits any other person would otherwise receive under the provisions of the Plan.

Section 5.6 - Duties of Board of Trustees with Respect to Certain Payments

If the Actuarial Equivalent of a Participant's vested Accrued Benefit exceeds \$5,000, and the Accrued Benefit is immediately distributable, the Participant and the Participant's spouse (or where either the Participant or the spouse has died, the survivor) must consent to any distribution of such Accrued Benefit. The consent of the Participant and the Participant's spouse shall be obtained in writing within the period of at least 30 days and no more than 180 days (or 90 days for Plan Years beginning prior to January 1, 2007) ending on the Annuity Starting Date. The Board of Trustees shall notify the Participant and the Participant's spouse of the right to defer any distribution until the Participant's Accrued Benefit is no longer immediately distributable. Such notification shall include a general description of the material features, and an explanation of the relative values of, the optional forms of benefit available under the Plan in a manner that would satisfy the notice requirements of section 417(a)(3) of the Code, and shall be provided no less than 30 days and no more than 180 days (or 90 days for notices given in Plan Years beginning prior to January 1, 2007) prior to the Annuity Starting Date. Further, for notices given in Plan Years beginning after December 31, 2006, the written explanation provided to Participant shall include a description of how much larger benefits will be if the commencement of distributions is deferred.

Notwithstanding the foregoing, only the Participant need consent to the commencement of a distribution in the form of a Joint and Survivor Annuity while the Accrued Benefit is immediately distributable. Neither the consent of the Participant nor the Participant's spouse shall be required to the extent that a distribution is required to satisfy section 401(a)(9) or section 415 of the Code.

Such distribution may commence less than 30 days after the notice required under section 1.411(a)-11(c) of the regulations is given to the Participant, provided that:

- (i) the Board of Trustees informs the Participant that he or she has a right to a period of at least 30 days after receiving the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular distribution option),
- (ii) the Participant, after receiving the notice, affirmatively elects a distribution, and
- (iii) the distribution commences at least seven days after the Participant receives the notice.

For purposes hereof, an Accrued Benefit is immediately distributable if any part of the Accrued Benefit could be distributed to the Participant (or surviving spouse) before the Participant attains (or would have attained if not deceased) the later of the Normal Retirement Date or age 62.

The foregoing shall not apply if the Actuarial Equivalent of such person's vested Accrued Benefit does not exceed \$5,000.

Section 5.7 - Valuation of Plan Assets

The Board of Trustees shall cause the assets of the Plan to be revalued at least annually (as of the last day of the Plan Year) at their fair market values.

Section 5.8 - Merger, Consolidation or Transfer of Assets

In the event of a merger or consolidation with, or transfer of assets or liabilities to, any other plan, each Participant in the Plan shall (if the Plan then terminated) receive a benefit immediately after the merger, consolidation or transfer that is equal to or greater than the benefit he or she would have been entitled to receive immediately before the merger, consolidation or transfer (if the Plan had then terminated).

Section 5.9 - Inalienability of Benefits

No benefit or interest available from the Plan will be subject to assignment or alienation, either voluntary or involuntary. However, this provision does not apply to the creation, assignment or recognition of a right to any benefit payable with respect to a Participant or Former Participant pursuant to a Qualified Domestic Relations Order.

Section 5.10 – Top-Heavy Provisions

If the Plan is or becomes top-heavy in any Plan Year beginning after December 31, 1983, the provisions of this section will supersede any conflicting provisions in the Plan.

(a) Definitions

- (1) Key Employee. Key employee means any employee or former employee (including any deceased employee) who at any time during the plan year that includes the determination date was an officer of the employer having annual compensation greater than \$130,000 (as adjusted under section 416(i)(1) of the Code for plan years beginning after December 31, 2002), a 5-percent owner of the employer, or a 1-percent owner of the employer having annual compensation of more than \$150,000. For this purpose, annual compensation means compensation within the meaning of section 415(c)(3) of the Code. The

determination of who is a key employee will be made in accordance with section 416(i)(1) of the Code and the applicable regulations and other guidance of general applicability issued thereunder.

(2) Top-Heavy Plan. The Plan is top-heavy for any Plan Year after December 31, 1983, if any of the following conditions exists:

- (i) If the top-heavy ratio for the Plan exceeds 60 percent and the Plan is not part of any required aggregation group or permissive aggregation group of plans.
- (ii) If the Plan is a part of a required aggregation group of plans but not part of a permissive aggregation group and the top-heavy ratio for the group of plans exceeds 60 percent.
- (iii) If the Plan is a part of a required aggregation group and part of a permissive aggregation group of plans and the top-heavy ratio for the permissive aggregation group exceeds 60 percent.

(3) Top-Heavy Ratio.

- (i) If the Employer maintains one or more defined benefit plans and the Employer has not maintained any defined contribution plan [including any simplified employee pension, as defined in section 408(k) of the Code] that during the five-year period ending on the determination date(s) has or has had account balances, the top-heavy ratio for the Plan alone or for the required or permissive aggregation group (as appropriate) is a fraction, the numerator of which is the sum of the present values of accrued benefits of all Key Employees as of the determination date(s) [including any part of any accrued benefit distributed in the five-year period ending on the determination date(s)], and the denominator of which is the sum of the present value of all accrued benefits [including any part of any accrued benefit distributed in the five-year period ending on the determination date(s)], determined in accordance with section 416 of the Code and the regulations thereunder.
- (ii) If the Employer maintains one or more defined benefit plans and the Employer maintains or has maintained one or more defined contribution plans (including any simplified employee pension) that during the five-year period ending on the determination date(s) has or has had any account balances, the top-heavy ratio for any required or permissive aggregation group (as appropriate) is a fraction, the numerator of which is the sum of the present value of the accrued benefits under the aggregated defined benefit plan or plans for all Key Employees, determined in accordance with (1) above, and the sum of the account balances under the aggregated defined contribution plan or plans for all Key Employees as of the determination date(s), and the denominator of which is the sum of the present value of the accrued benefits under the aggregated defined benefit plan or plans for all participants, determined in accordance with (1) above, and the sum of the account balances under the aggregated defined contribution plan or plans for all participants as of the determination date(s), all determined in accordance with section 416 of the Code and the regulations thereunder. The account balances under a defined contribution plan in both the numerator and denominator of the top-heavy ratio are

increased for any distribution of an account balance made in the five-year period ending on the determination date.

- (iii) For purposes of subparagraph (i) and subparagraph (ii), the value of account balances and the present value of accrued benefits will be determined as of the most recent valuation date that falls within or ends with the 12-month period ending on the determination date, except as provided in section 416 of the Code and the regulations thereunder for the first and second plan years of a defined benefit plan. The account balances and accrued benefits of a Participant (i) who is not a Key Employee but who was a Key Employee in a prior year, or (ii) who has not been credited with at least one Hour of Work with any Employer maintaining the Plan at any time during the five-year period ending on the determination date will be disregarded. The calculation of the top-heavy ratio, and the extent to which distributions, rollovers, and transfers are taken into account will be made in accordance with section 416 of the Code and the regulations thereunder. Deductible employee contributions will not be taken into account for purposes of computing the top-heavy ratio. When aggregating plans the value of account balances and accrued benefits will be calculated with reference to the determination dates that fall within the same calendar year.

The accrued benefit of a Participant other than a Key Employee shall 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 section 411(b)(1)(C) of the Code.

- (iv) For purposes of determining the present values of accrued benefits and the amounts of account balances of employees as of the determination date:

- (A) Distributions During Year Ending on the Determination Date. The present values of accrued benefits and the amounts of account balances of an employee as of the determination date shall be increased by the distributions made with respect to the employee under the plan and any plan aggregated with the plan under section 416(g)(2) of the Code during the 1-year period ending on the determination date. The preceding sentence shall also apply to distributions under a terminated plan which, had it not been terminated, would have been aggregated with the plan under section 416(g)(2)(A)(i) of the Code. In the case of a distribution made for a reason other than separation from service, death, or disability, this provision shall be applied by substituting "5-year period" for "1-year period."

- (B) Employees Not Performing Services During Year Ending on the Determination Date. The accrued benefits and accounts of any individual who has not performed services for the employer during the 1-year period ending on the determination date shall not be taken into account.

- (4) Permissive Aggregation Group. The required aggregation group of plans plus any other plan or plans of the Employer that, when considered as a group with the required aggregation group, would continue to satisfy the requirements of section 401(a)(4) and section 410 of the Code.

- (5) Required Aggregation Group. (a) The qualified plan of the Employer in which at least one Key Employee participates or participated at any time during the determination period (regardless of whether the plan has terminated), and (b) any other qualified plan of the Employer that enables a plan described in (a) to meet the requirements of sections 401(a)(4) or 410 of the Code.
 - (6) Determination Date. For any Plan Year subsequent to the first Plan Year, the last day of the preceding Plan Year. For the first Plan Year of the Plan, the last day of that year.
 - (7) Valuation Date. The last day of the Plan Year, the date as of which account balances or accrued benefits are valued for purposes of calculating the top-heavy ratio.
 - (8) Present Value. Present value shall be based on the interest and mortality rates in Exhibit A.
- (b) Minimum Accrued Benefit.
- (1) Notwithstanding any other provision in this Plan except subparagraphs (b)(3)-(b)(5) of this section, for any Plan Year in which the Plan is top-heavy, each Participant who is not a Key Employee and who has completed at least 870 Hours of Work with the Employer will accrue a benefit (to be provided solely by Employer contributions and expressed as a Straight Life Annuity commencing at the Normal Retirement Date) of not less than 2 percent of his or her highest average compensation for the five consecutive years for which the Participant had the highest compensation. The aggregate compensation for the years during such five-year period in which the Participant was credited with a year of service will be divided by the number of such years in order to determine average annual compensation. The minimum accrual is determined without regard to any Social Security contribution. The minimum accrual applies even though under other provisions of the Plan the Participant would not otherwise be entitled to receive an accrual, or would have received a lesser accrual for the year because the non-Key Employee fails to make mandatory contributions to the plan, the non-Key Employee's compensation is less than a stated amount, the non-Key Employee is not employed on the last day of the accrual computation period, or the Plan is integrated with Social Security.
 - (2) For purposes of computing the minimum accrued benefit, compensation shall mean compensation as defined in section 415(c)(3) of the Code, as limited by section 401(a)(17) of the Code.
 - (3) No additional benefit accruals shall be provided pursuant to subparagraph (b)(1) to the extent that the total accruals on behalf of the Participant attributable to Employer contributions will provide a benefit expressed as a Straight Life Annuity commencing at the Normal Retirement Date that equals or exceeds 20 percent of the Participant's highest average compensation for the five consecutive years for which the Participant had the highest compensation.
 - (4) Notwithstanding subparagraph(b)(1), if a Participant is covered under any defined contribution plan of the Employer that is also top-heavy,

the minimum accrual requirements of section 416 of the Code shall be satisfied during the Plan Year the plans are top-heavy if the Participant is provided with the minimum accrual described in section 5.10(b)(1), offset by benefits provided under the defined contribution plan.

- (5) All accruals of Employer-derived benefits, whether or not attributable to years for which the plan is top-heavy, may be used in computing whether the minimum accrual requirements of subparagraph (b)(3) have been satisfied.

If the form of benefit is other than a Straight Life Annuity, the Participant must receive an amount that is the actuarial equivalent of the minimum Straight Life Annuity benefit. If the benefit commences at a date other than at Normal Retirement Date, the Participant must receive at least an amount that is the actuarial equivalent of the minimum Straight Life Annuity benefit commencing at the Normal Retirement Date.

- (c) Vesting Provisions. The minimum accrued benefit required [to the extent required to be nonforfeitable under section 416(b) of the Code] may not be forfeited under section 411(a)(3)(B) or 411(a)(3)(D) of the Code.

For any Plan Year in which the Plan is top-heavy, the following vesting schedule will apply:

Years of Vesting Service	Vested Percentage
Less than 3	0
3 or more	100 percent

The minimum vesting schedule applies to all benefits within the meaning of section 411(a)(7) of the Code except those attributable to Employee contributions, including benefits accrued before the effective date of section 416 of the Code and benefits accrued before the Plan became top-heavy. Further, no decrease in a Participant's nonforfeitable percentage may occur in the event the Plan's status as top-heavy changes for any Plan Year. However, this subparagraph does not apply to the Accrued Benefit of any Employee who does not have an Hour of Work after the Plan has initially become top-heavy and such person's account balance attributable to Employer contributions and forfeitures will be determined without regard to this subparagraph.

5.11 - Governing Law

This document shall be administered, construed and enforced in accordance with ERISA and, to the extent that ERISA has not preempted the laws of the State of Ohio, in accordance with the laws of the State of Ohio.

5.12 - Provisions Relating to Returning Veterans

Notwithstanding any provision of the Plan to the contrary, effective on and after December 12, 1994, contributions, benefits and service credit with respect to Qualified Military Service will be provided in accordance with section 414(u) of the Code.

Notwithstanding the foregoing provisions of this section, if an individual dies while performing Qualified Military Service [as defined in section 414(u) of the Code], the Beneficiary of such individual is entitled to any additional benefits (other than benefit accruals) relating to the period of Qualified Military Service provided by the Plan as if the individual had resumed Covered Employment and then terminated employment on account of death.

ARTICLE 6

ENDANGERED OR CRITICAL STATUS OF PLAN

Section 6.1 - Effective Date and Purpose

The provisions of this Article shall apply to Plan Years beginning on or after May 1, 2008. This Article shall incorporate and implement the requirements of section 432 of the Code and the regulations promulgated thereunder.

Section 6.2 - Definitions

(a) Definitions. For purposes of this Article the following definitions shall apply:

(1) Accumulated Funding Deficiency. The term Accumulated Funding Deficiency has the same meaning as the term accumulated funding deficiency under section 431(a) of the Code.

(2) Active Participant. The term Active Participant means a participant who is in covered service under the plan.

(3) Bargaining Party. The term Bargaining Party means an Employer who has an obligation to contribute under the Plan and an employee organization which, for purposes of collective bargaining, represents Plan participants employed by an Employer which has an obligation to contribute under the Plan.

(4) Benefit Commencement Date. The term Benefit Commencement Date means the annuity starting date (or in the case of a retroactive annuity starting date, the date on which benefit payments begin).

(5) Critical Status. A multiemployer plan is in Critical Status if the plan meets one of the tests set forth in section 6.5.

(6) Endangered Status. A plan is in Endangered Status if the plan meets one of the tests set forth in section 6.3.

(7) Funded Percentage. The term Funded Percentage means a fraction (expressed as a percentage) the numerator of which is the actuarial value of the Plan's assets as determined under section 431(c)(2) of the Code and the denominator of which is the accrued liability of the plan, determined using the actuarial assumptions described in section 431(c)(3) of the Code and the unit credit funding method.

(8) Funding Improvement Period for endangered or seriously endangered plans. The term Funding Improvement Period means the period that begins on the first day of the first Plan Year beginning after the earlier of the second anniversary of the date of the adoption of the funding improvement plan, or the expiration of the collective bargaining agreements that are in effect on the due date for the actuarial certification of Endangered Status for the initial endangered year and which cover, as of such due date, at least 75 percent of the active participants in the plan. The funding improvement period ends on the last day of the 10th year (15 years for seriously endangered plans, except as provided in section 432(c)(5) of the Code) after it begins or, if earlier, the date of the change in status described in section 432(c)(4)(C) of the Code.

(9) Funding Plan Adoption Period. The term Funding Plan Adoption Period means the period that begins on the date of the actuarial certification for the initial endangered year and ends on the day before the first day of the funding improvement period.

(10) Inactive Participant. The term Inactive Participant means -

- (A) A Participant who is not an Active Participant as defined in section 6.2(a)(2),
- (B) A Beneficiary under the Plan, or
- (C) An alternate payee under the Plan.

(11) Initial Critical Year. The term Initial Critical Year means the first year for which the enrolled actuary for the Plan has certified that the Plan is or will be in Critical Status. If a plan is in Critical Status in one year, emerges from Critical Status in a subsequent year and then returns to Critical Status, the year of reentry into Critical Status is treated as the Initial Critical Year with respect to subsequent years.

(12) Initial Endangered Year. The term Initial Endangered Year means the first year for which the enrolled actuary for the Plan has certified that the Plan is in Endangered Status. If a plan is in Endangered Status in one year, changes from Endangered Status in a subsequent year and then returns to Endangered Status, the year of reentry into Endangered Status is treated as the Initial Endangered Year with respect to subsequent years.

(13) Nonbargained Participant. The term Nonbargained Participant means a Participant in the Plan whose participation is other than pursuant to a collective bargaining agreement within the meaning of section 7701(a)(46) of the Code. A Participant will not be treated as a Nonbargained Participant merely because the Participant is no longer covered by the collective bargaining agreement solely as a result of retirement or severance from employment.

(14) Obligation to Contribute. The term Obligation to Contribute means an obligation to contribute arising under one or more collective bargaining (or related) agreements or as a result of a duty under applicable labor-management relations law.

(15) Plan Sponsor. The term Plan Sponsor means the Board of Trustees of the Toledo Area Sheet Metal Workers Pension Plan.

(16) Rehabilitation Period. The term Rehabilitation Period means the period that begins on the first day of the first Plan Year beginning after the earlier of the second anniversary of the date of the adoption of the rehabilitation plan, or the expiration of the collective bargaining agreements that are in effect on the due date for the actuarial certification of Critical Status for the initial critical year and which cover, as of such due date, at least 75 percent of the active participants in the plan. The rehabilitation period ends on the last day of the 10th year after it begins or, if earlier, the plan year preceding the plan year in which the plan has emerged from Critical Status as described in section 432(e)(4)(B) of the Code.

(17) Rehabilitation Plan Adoption Period. The term Rehabilitation Plan Adoption Period means the period that begins on the date of the actuarial certification for the Initial Critical Year and ends on the day before the first day of the rehabilitation period.

(18) Seriously Endangered Status. A plan is in Seriously Endangered Status if the plan is in Endangered Status and is described in both section 6.3(a)(1) and section 6.3(a)(2).

Section 6.3 - Determination of Endangered Status

(a) Determination of Endangered Status. The Plan shall be in Endangered Status for a Plan Year if, as determined by the enrolled actuary for the Plan, the Plan is not in Critical Status for the Plan Year and if, as of the beginning of the Plan Year, the Plan is described either in section 6.3(a)(1) or section 6.3(a)(2). The enrolled actuary's determination of whether a plan is in Endangered Status shall be made under the rules of section 6.7(e).

(1) Endangered status based on funding percentage. The Plan is described in this section 6.3(a)(1) for a Plan Year if the Plan's funded percentage for such Plan Year is less than 80 percent.

(2) Endangered status based on projection of funding deficiency. The Plan is described in this section 6.3(a)(2) for a Plan Year if the Plan has an Accumulated Funding Deficiency for such Plan Year (or is projected to have such an Accumulated Funding Deficiency for any of the six succeeding Plan Years), taking into account any extension of amortization periods under section 431(d) of the Code.

Section 6.4 - Plans in Endangered Status

(a) Plan Sponsor must adopt funding improvement plan. If the Plan is in Endangered Status, the Plan Sponsor shall adopt and implement a funding improvement plan that satisfies the requirements of section 432(c) of the Code.

(b) Restrictions applicable to plans in Endangered Status. If the Plan is in Endangered Status, the Plan and Plan Sponsor must satisfy the requirements of section 432(d)(1) of the Code during the Funding Plan Adoption Period specified in section 432(c)(8) of the Code, including:

(1) the Plan Sponsor may not accept a collective bargaining agreement or participation agreement with respect to the Plan that provides for—

(A) a reduction in the level of contributions for any participants,

(B) a suspension of contributions with respect to any period of service, or

(C) any new direct or indirect exclusion of younger or newly hired employees from plan participation.

(2) no amendment of the plan which increases the liabilities of the Plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan may be adopted unless the amendment is required as a condition of qualification or to comply with other applicable law, and

(3) in the case of a plan in seriously Endangered Status, the Plan Sponsor shall take all reasonable actions which are consistent with the terms of the plan and applicable law and which are expected, based on reasonable assumptions, to achieve—

(A) an increase in the plan's funded percentage, and

(B) postponement of an accumulated funding deficiency for at least one additional Plan Year.

Actions under this section 6.4(b)(3) include applications for extensions of amortization periods under section 431(d) of the Code, use of the shortfall funding method in making funding standard account computations, amendments to the Plan's benefit structure, reductions in future benefit accruals, and other reasonable actions consistent with the terms of the plan and applicable law.

(c) Restrictions applicable after the adoption of funding improvement plan. If the Plan is in Endangered Status after adoption of the funding improvement plan, the Plan and the Plan Sponsor shall satisfy the requirements of section 432(d)(2) of the Code until the end of the funding improvement period.

Section 6.5 - Critical Status

(a) The Plan shall be in Critical Status for a Plan Year if, as determined by the enrolled actuary for the Plan, the Plan is described in one or more of sections 6.5(b) through (f) as of the beginning of the Plan Year. The enrolled actuary's determination of Critical Status must be made in accordance with the rules of section 6.7(e). Notwithstanding section 6.7(e)(3), for purposes of applying the Critical Status tests described in sections 6.5(b) and 6.5(e), the actuary must assume that the terms of all collective bargaining agreements pursuant to which the Plan is maintained for the current Plan Year continue in effect for succeeding Plan Years.

(b) Critical status based on six-year projection of benefit payments. A plan is described in this section 6.5(b) if the funded percentage of the plan is less than 65 percent, and the present value of all nonforfeitable benefits projected to be payable under the plan during the current Plan Year and each of the six succeeding Plan Years (plus administrative expenses for such Plan Years) is greater than the sum of-

(1) The fair market value of plan assets, plus

(2) The present value of the reasonably anticipated employer contributions for the current Plan Year and the six succeeding Plan Years.

(c) Critical status based on short term funding deficiency. A plan is described in this section 6.5(c) if-

(1) The plan has an accumulated funding deficiency for the current Plan Year, not taking into account any extension of amortization periods under section 431(d) of the Code, or

(2) The plan is projected to have an accumulated funding deficiency for any of the three succeeding Plan Years (four succeeding Plan Years if the funded percentage of the plan is 65 percent or less), not taking into account any extension of amortization periods under section 431(d) of the Code.

(d) Critical status based on contributions less than normal cost plus interest. A plan is described in this section 6.5(d) if-

(1) The present value of the reasonably anticipated employer and employee contributions for the current Plan Year is less than the sum of-

(A) The plan's normal cost (determined under the unit credit funding method), and

(B) Interest (determined at the rate used for determining costs under the plan) on the excess if any of-

(i) The accrued liability of the plan (determined using the actuarial assumptions described in section 431(c)(3) of the Code and the unit credit funding method) over

(ii) The actuarial value of assets determined under section 431(c)(2) of the Code,

(2) The present value, as of the beginning of the current Plan Year, of nonforfeitable benefits of inactive participants is greater than the present value of nonforfeitable benefits of active participants, and

(3) The plan has an accumulated funding deficiency for the current Plan Year (or is projected to have such a deficiency for any of the four succeeding Plan Years), not taking into account any extension of amortization periods under section 431(d) of the Code.

(e) Critical status based on four-year projection of benefit payments. A plan is described in this section 6.5(e) if the present value of all benefits projected to be payable under the plan during the current Plan Year or any of the four succeeding Plan Years (plus administrative expenses for such Plan Years) is greater than the sum of-

(1) The fair market value of plan assets, plus

(2) The present value of the reasonably anticipated employer contributions for the current Plan Year and each of the four succeeding Plan Years.

- if-
- (f) Critical status based on failure to meet emergence criteria. A plan is described in this section 6.5(f)
 - (1) The plan was in Critical Status for the immediately preceding Plan Year, and
 - (2) The enrolled actuary for the plan has certified that the plan is projected to have an accumulated funding deficiency for the Plan Year or any of the nine succeeding Plan Years, without regard to the use of the shortfall funding method but taking into account any extensions of the amortization periods under section 431(d) of the Code.

Section 6.6 - Adoption of Rehabilitation Plan

(a) Plans in Critical Status.-

(1) Plan sponsor must adopt rehabilitation plan. If the Plan is in Critical Status, the plan sponsor shall adopt and implement a rehabilitation plan that satisfies the requirements of section 432(e) of the Code, which consists of actions, including options or a range of options to be proposed to the bargaining parties, formulated, based on reasonably anticipated experience and reasonable actuarial assumptions, to enable the Plan to cease to be in Critical Status by the end of the rehabilitation period and may include reductions in plan expenditures (including plan mergers and consolidations), reductions in future benefit accruals or increases in contributions, if agreed by the bargaining parties, or any combination of such actions.

(2) Restrictions applicable to plans in Critical Status. If the Plan is in Critical Status, the Plan and the plan sponsor shall satisfy the requirements of section 432(f)(4) of the Code during the rehabilitation plan adoption period as defined in section 432(e)(5) of the Code. The plan shall also apply the restrictions on single sum and other accelerated benefits set forth in section 6.6(a)(3).

(3) Restrictions on single sums and other accelerated benefits-

(A) In general. A plan in Critical Status is required to provide that, effective on the date the notice of certification of the plan's Critical Status for the initial critical year under section 6.8 is sent, no payment in excess of the monthly amount payable under a single life annuity (plus any social security supplements described in the last sentence of section 411(a)(9) of the Code), and no payment for the purchase of an irrevocable commitment from an insurer to pay benefits, may be made except as provided in section 432(f)(2) of the Code. A plan amendment that provides for these restrictions shall not violate section 411(d)(6) of the Code.

(B) Exceptions. Pursuant to section 432(f)(2)(B) of the Code, the restrictions under this section 6.6(a)(3) do not apply to a benefit which under section 411(a)(11) of the Code may be immediately distributed without the consent of the participant or to any makeup payment in the case of a retroactive annuity starting date or any similar payment of benefits owed with respect to a prior period.

(C) Correction of erroneous restrictions. If the notice described in IRS regulations section 1.432(b)-1(e) has been sent and the restrictions provided under this section 6.6(a)(3) have been applied, and it is later determined that the restrictions should not have been applied, then the Plan shall correct any benefit payments that were restricted in error.

(4) Restrictions applicable after the adoption of rehabilitation plan. In the event that the Plan is in Critical Status after the adoption of the rehabilitation plan, the Plan and the Plan Sponsor shall satisfy the requirements of section 432(f)(1) of the Code until the end of the rehabilitation period.

Section 6.7 - Annual Certification by Enrolled Actuary

(a) Annual certification by the Plan's enrolled actuary. Not later than the 90th day of each Plan Year, the enrolled actuary for the Plan shall certify to the Secretary of the Treasury and to the plan sponsor-

(1) Whether or not the Plan is in Endangered Status for such Plan Year;

(2) Whether or not the Plan is or will be in Critical Status for such Plan Year, and

(3) In the case of a plan which is in a funding improvement or rehabilitation period, whether or not the plan is making the scheduled progress in meeting the requirements of its funding improvement or rehabilitation plan.

(b) Transmittal of certification-

(1) Transmittal to the plan sponsor. The certification of plan status described in section 6.7(a) shall be submitted to the plan sponsor at the address stated by the plan sponsor on their Annual Report (Form 5500) or such other address as the plan sponsor may designate in writing for receipt of this certification.

(2) Transmittal to the Secretary of the Treasury. Unless otherwise provided in guidance of general applicability published in the Internal Revenue Bulletin, the annual certification of plan status described in section 6.7(a) shall be transmitted to the Secretary of the Treasury in accordance with Treasury Regulation 1.432(b)-1(d)(2)(ii).

(c) Content of annual certification - In general. The annual certification shall contain the information described in Treasury Regulation section 1.431(b)-1(d)(3)(i) through (iv) and in guidance of general applicability published in an Internal Revenue Bulletin.

(d) Penalty for failure to secure timely actuarial certification. A failure of the Plan's actuary to certify the Plan's status under this section 6.7 by the date specified in section 6.7(a) shall be treated as a failure or refusal by the plan administrator to file the annual report required to be filed with the Secretary of Labor under section 101(b)(4) of the Employee Retirement Income Security Act of 1974.

(e) Actuarial projections of assets and liabilities-

(1) In general. In making the determinations and projections under section 432(b) of the Code and this section, the enrolled actuary for the Plan shall make projections required for the current and succeeding Plan Years of the current value of the assets of the Plan and the present value of all liabilities to participants and beneficiaries under the Plan for the current Plan Year as of the beginning of such year. These projections shall be based on reasonable actuarial estimates, assumptions, and methods in accordance with section 431(c)(3) of the Code and that offer the actuary's best estimate of anticipated experience under the Plan. Notwithstanding the previous sentence, the actuary shall be permitted to rely on the Plan Sponsor's projection of activity in the industry provided under section 6.7(e)(3). The projected present value of liabilities as of the beginning of such year must be determined based on the most recent information reported on the most recent of either-

(A) The actuarial statement required under section 103(d) of the Employee Retirement Income Security Act of 1974 that has been filed with respect to the most recent year, or

(B) The actuarial valuation for the preceding Plan Year.

(2) Determinations of future contributions. Any actuarial projection of plan assets shall assume either-

(A) Reasonably anticipated employer contributions for the current and succeeding Plan Years, assuming that the terms of the one or more collective bargaining agreements pursuant

to which the plan is maintained for the current Plan Year continue in effect for succeeding Plan Years, or

(B) That employer contributions for the most recent Plan Year will continue indefinitely, but only if the enrolled actuary for the plan determines there have been no significant demographic changes that would make such assumption unreasonable.

(3) Projected industry activity. The Plan Sponsor shall provide any necessary projection of activity in the industry, including future covered employment, to the plan actuary. For this purpose, the plan sponsor must act reasonably and in good faith.

(f) Treatment of amortization extensions under section 412(e) of the Code. For purposes of section 432 of the Code, if the Plan received an extension of any amortization period under section 412(e) of the Code, the extension is treated the same as an extension under section 431(d) of the Code. Thus, such an extension shall not be taken into account in determining whether a plan has or will have an accumulated funding deficiency under sections 6.5(c) and 6.5(d), but it is taken into account in determining whether a plan has or will have an accumulated funding deficiency under section 6.3(a)(2).

Section 6.8 - Notice of Endangered or Critical Status

(a) Notice of Endangered or Critical Status. In the event the enrolled actuary for the Plan certifies that the Plan is or will be in endangered or Critical Status for a Plan Year, the Board of Trustees shall, not later than 30 days after the date of the certification, provide notification of the endangered or Critical Status to the participants and beneficiaries, the bargaining parties, the Pension Benefit Guaranty Corporation, and the Secretary of Labor.

(b) Plans in Critical Status. If it is certified that the Plan is or will be in Critical Status for a Plan Year, the Board of Trustees shall include in the notice an explanation of the possibility that adjustable benefits (as defined in section 432(e)(8) of the Code) may be reduced, and such reductions may apply to participants and beneficiaries whose benefit commencement date is on or after the date such notice is provided for the first Plan Year in which the Plan is in Critical Status. If the Plan provides benefits that are restricted under section 432(f)(2) of the Code, the notice shall also include an explanation that the Plan cannot pay single sums and similar benefits described in section 432(f)(2) of the Code that are greater than the monthly amount due under a single life annuity. Sending the model notice pursuant to section 432(b)(3)(D)(iii) of the Code shall satisfy this requirement.

(c) Transition rules-

(1) Early notice permitted. If, after August 17, 2006, the enrolled actuary for the Plan certifies that the Plan is reasonably expected to be in Critical Status with respect to the first Plan Year beginning after 2007, then the notice described in this section 6.8 may be provided before the date the actuary certifies the Plan is in Critical Status for that Plan Year. The ability to provide early notice shall extend the otherwise applicable deadline for providing the notice under section 6.8(a).

(2) Reformation of prior notice. If notice has been provided prior to the date required under section 6.8(a), but the notice did not include all of the information described in section 6.8(b) of this section, then that notice will not satisfy the requirements for notice under section 432(b)(3)(D) of the Code. Accordingly, the restrictions under section 432(f)(2) will not apply as a result of the issuance of such a notice. However, if prior to the date notice is required to be provided under section 6.8(a) additional notice is provided that includes all of the information required under section 6.8(b), then the notice requirements of section 432(b)(3)(D) are satisfied as of the date of that additional notice and the restrictions of section 432(f)(2) will apply beginning on that date. In such a case, the date of the earlier notice will still apply for purposes of section 432(e)(8)(A)(ii) of the Code provided that the earlier notice included all of the information required under section 432(b)(3)(D)(ii) of the Code.

Section 6.9 - Miscellaneous

(a) Plans covering both bargained and Nonbargained Participants. In the case of an employer that contributes to a plan with respect to both employees who are covered by one or more collective bargaining agreements and employees who are Nonbargained Participants, if the plan is in Endangered Status or Critical Status, benefits of and contributions for the Nonbargained Participants (including surcharges on those contributions) are determined as if those Nonbargained Participants were covered under the employer's collective bargaining agreement in effect when the plan entered Endangered or Critical Status that is the first to expire.

(b) Plans covering Nonbargained Participants only. In the case of an employer that contributes to a multiemployer plan only with respect to employees who are not covered by a collective bargaining agreement, section 432 of the Code and the regulations thereunder shall be applied as if the employer were the bargaining party, and its participation agreement with the plan were a collective bargaining agreement with a term ending on the first day of the Plan Year beginning after the employer is provided the schedules described in sections 432(c) and (e) of the Code.

ARTICLE 7

AMENDMENT AND TERMINATION

Section 7.1 - Amendment

No part of the corpus or income of the Plan shall be used for purposes other than for the exclusive benefit of Participants, Former Participants and Beneficiaries, and for defraying reasonable expenses of administering the Plan. Otherwise, the Plan may be amended at any time by the Board of Trustees. Any amendment may be given retroactive effect. However, no amendment (including a change in the actuarial basis for determining optional or early retirement benefits) shall be effective to the extent it has the effect of decreasing an Accrued Benefit. However, the preceding provision shall not apply to the extent the reduction in the Accrued Benefit is permitted by section 412(c)(8) of the Code. For purposes of this section, an amendment that has the effect of eliminating or reducing a retirement-type subsidy or eliminating an optional form of benefit (with respect to benefits attributable to service before the amendment) shall be treated as reducing an Accrued Benefit except as otherwise permitted by law or regulation. In the case of a retirement-type subsidy, the preceding sentence shall apply only with respect to a Participant or Former 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 qualified disability benefit, a medical benefit, a Social Security supplement or a death benefit (including life insurance). In addition, no amendment shall have the effect of decreasing a Participant's or Former Participant's vested interest determined without regard to such amendment as of the later of the date of such amendment is adopted or becomes effective. Notwithstanding this section 7.1, a Participant's Accrued Benefit, early retirement benefit, retirement-type subsidy, or optional form of benefit may be reduced by an amendment to the Plan adopted by the Board of Trustee to the extent permitted under section 412(c)(8) of the Code (for Plan Years beginning prior to January 1, 2008), or Section 412(d)(2) (for Plan Years beginning after December 31, 2007), or to the extent permitted under sections 1.411(d)-3 and 1.411(d)-4 of the Treasury Regulations.

If the Plan's vesting schedule is amended, or if the Plan is amended in any way that directly or indirectly affects the computation of the nonforfeitable percentage, each affected person with at least three Years of Vesting Service may elect, within a reasonable period after the adoption of the amendment or change, to have the nonforfeitable percentage computed under the Plan without regard to such amendment or change if his or her nonforfeitable percentage under the Plan, as amended, is at any time less than the percentage determined without regard to such amendment.

The period during which the election may be made shall commence with the date the amendment is adopted or deemed to be made, and shall end on the latest of the following:

- (1) 60 days after the amendment is adopted;
- (2) 60 days after the amendment becomes effective; or

(3) 60 days after written notice of the amendment is issued by the Board of Trustees.

An amendment to the Plan shall be evidenced by an instrument in writing signed by a majority of the number of the Board of Trustees, or by the Chairman and Secretary of the Board of Trustees.

Section 7.2 - Termination

The Plan may be terminated at any time upon the written agreement of the Union and the Association. The Board of Trustees shall continue to act until the fund has been distributed according to the provisions of this document.

When a termination or partial termination of the Plan occurs, each Participant's Accrued Benefit shall be, to the extent funded as of the date of termination or partial termination, totally nonforfeitable.

In the event of termination (including partial termination) of the Plan, the Board of Trustees shall allocate the assets of the Plan (available to provide benefits) among Participants, Former Participants and Beneficiaries in the manner provided by ERISA.

Section 7.3 - Restrictions in Event of Plan Termination

In the event of the termination of the Plan, the benefit of any highly compensated active or highly compensated former Employee shall be limited to a benefit that is nondiscriminatory under section 401(a)(4) of the Code.

Benefits distributed to any of the 25 most highly compensated active and highly compensated former Employees with the greatest compensation in the current or any prior year shall be restricted such that the annual payments are no greater than an amount equal to the payment that would be made on behalf of the Employee under a Straight Life Annuity that has the same Actuarial Equivalent of the sum of the Employee's Accrued Benefit, the Employee's other benefits under the Plan [other than a Social Security supplement, within the meaning of section 1.411(a)-7(c)(4)(ii) of the regulations], and any amount the Employee is entitled to receive under a Social Security supplement.

The preceding paragraph shall not apply if:

- after payment of the benefit to an Employee described in the preceding paragraph, the value of Plan assets equals or exceeds 110 percent of the value of current liabilities, as defined in section 412(l)(7) of the Code,
- the value of the benefits for an Employee described above is less than 1 percent of the value of current liabilities before distribution, or
- the value of the benefits payable under the Plan to an Employee described above does not exceed (and has never exceeded) \$5,000.

This section is solely for the purpose of complying with the requirements of the Internal Revenue Service and shall not be applied except to the extent necessary to comply with such requirements.

IN WITNESS WHEREOF, the Board of Trustees of the Toledo Area Sheet Metal Workers Pension Plan has caused this document to be executed by duly authorized officers on this 23rd day of November, 2009, but effective as of May 1, 2009, except as otherwise noted.

**TOLEDO AREA SHEET METAL WORKERS
PENSION PLAN**

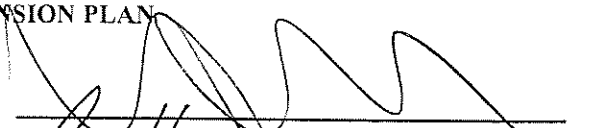
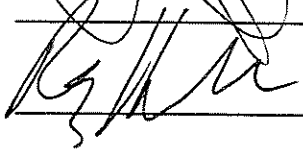
By  _____ Chairman
By  _____ Secretary

EXHIBIT A

Actuarial Equivalent

The determination of an Actuarial Equivalent annuity shall be based upon an interest rate of 6.5 percent and a mortality table of UP84 with a five-year setback for spouses.

The determination of the value of a lump sum payment on or after May 1, 1995 and prior to May 1, 2002 shall be based upon the prevailing Commissioners' standard mortality table described in section 807(d)(5)(A) of the Code used to determine reserves for group annuity contracts [without regard to any other subparagraph of section 807(d)(5) of the Code]. The interest rate used shall be the lesser of 6.5 percent or the applicable interest defined in section 417(e)(3) of the Code and section 205(g)(3) of ERISA for the month preceding the first day of the Plan Year containing the date of distribution.

Effective for lump sum payments on or after May 1, 2002, but prior to May 1, 2008, the applicable mortality table for determining the present value of Plan benefits under 417(e)(3) of the Code and the corresponding provisions of ERISA shall be the GAR-94 mortality table projected to 2002 and blended 50 percent male rates and 50 percent female rates, as contained in Rev. Rul. 2001-62. The interest rate shall continue to be the lesser of 6.5 percent or the applicable interest rate as defined in section 417(e)(3) of the Code and section 205(g)(3) of ERISA for the month preceding the first day of the Plan Year containing the date of distribution.

Effective for lump sum payments on or after May 1, 2008, the applicable mortality table shall be based on the table described in Rev. Rul. 2007-67, or such other mortality table prescribed by the Commissioner of the Internal Revenue Service for purposes of section 415(b)(2) and section 417(e)(3) of the Code. The interest rate shall be the lesser of 6.5 percent or the rate described in section 415(b)(2) and section 417(e)(3) of the Code (as applicable), and as amplified by any guidance issued by the Commissioner.

The same mortality as noted above for lump sum payments shall also be applicable for adjusting benefits or limitations under section 415(b)(2) of the Code.