

**SHEET METAL, AIR, RAIL, AND TRANSPORTATION
ASSOCIATION LOCAL UNION
NO. 33 YOUNGSTOWN DISTRICT
PENSION FUND**

**PENSION PLAN RULES AND REGULATIONS AS AMENDED
AND RESTATED
EFFECTIVE MAY 9, 2022**

SHEET METAL, AIR, RAIL, AND TRANSPORTATION ASSOCIATION
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Effective as of November 1, 1964, the Sheet Metal Workers Local No. 5 Pension Plan was adopted in accordance with the terms of a Trust Agreement (“Trust”) dated November 1, 1964, establishing the Sheet Metal Workers Local No. 5 Pension Fund to provide retirement, disability, and death benefits to employees covered by the Plan. The Plan and Trust Agreement have been amended from time to time. The Plan was renamed to the Sheet Metal Workers Local No. 33 Youngstown District Pension Fund to reflect the merger of Sheet Metal Workers Local No. 5 into Local No. 33 Youngstown District Pension Fund. In 2013, the Plan was again renamed to SHEET METAL, AIR, RAIL, AND TRANSPORTATION ASSOCIATION LOCAL UNION NO. 33 YOUNGSTOWN DISTRICT PENSION FUND to reflect a name change to the international Union.

The Plan and Fund maintained under the Trust are intended to meet the requirements of §401(a) and §501(a) of the Internal Revenue Code, as amended.

The Trustees now desire to restate the Plan in its entirety, and the provisions of this Amended and Restated Pension Plan shall apply only to an employee who earns an Hour of Work on or after May 9, 2022. For any such employee, his Pension Credits and Years of Vesting Service attributable to periods of employment prior to May 9, 2022 shall be determined in accordance with the provisions of the Plan as of (the day before effective date of Plan).

A former employee's eligibility for benefits and the amount of benefits, if any, payable to or on behalf of a former employee shall be determined in accordance with the provisions of the Pension Plan in effect on the date his employment terminated, except to the extent otherwise specifically provided under subsequent Plan Amendments and this Amended and Restated Plan.

TABLE OF CONTENTS

ARTICLE I DEFINITIONS	1
ARTICLE II PARTICIPATION.....	7
SECTION 2.01. PURPOSE.....	7
SECTION 2.02. PARTICIPATION	7
SECTION 2.03. TERMINATION OF PARTICIPATION.....	7
SECTION 2.04. RETROACTIVE AMENDMENTS.....	7
SECTION 2.05. REINSTATEMENT OF PARTICIPATION	7
ARTICLE III PENSION ELIGIBILITY AND AMOUNTS.....	8
SECTION 3.01. GENERAL.....	8
SECTION 3.02. REGULAR PENSION— ELIGIBILITY	8
SECTION 3.03. REGULAR PENSION — AMOUNT	9
SECTION 3.04. EARLY RETIREMENT PENSION - ELIGIBILITY	11
SECTION 3.05. EARLY RETIREMENT PENSION - AMOUNT	11
SECTION 3.06. DEFERRED PENSION — ELIGIBILITY.....	12
SECTION 3.07. DEFERRED PENSION — AMOUNT.....	12
SECTION 3.08. DISABILITY PENSION—ELIGIBILITY AND COMMENCEMENT.....	13
SECTION 3.09. DISABILITY PENSION - AMOUNT	13
SECTION 3.10. PERMANENT DISABILITY	13
SECTION 3.11. EARNINGS BY A DISABILITY PENSIONER AND TIMELY REPORTS	13
SECTION 3.12. CESSATION OF TOTAL AND PERMANENT DISABILITY.....	13
SECTION 3.13. RETROACTIVE PAYMENT OF SUPPLEMENTAL DISABILITY BENEFIT	14
SECTION 3.14. PRERETIREMENT DEATH BENEFIT	14
SECTION 3.15. NON-DUPLICATION.....	14
SECTION 3.16. BENEFIT INCREASES	15
SECTION 3.17. FORM OF PENSION	15
SECTION 3.18 LEVEL INCOME OPTION.....	15
ARTICLE IV PENSION CREDITS AND YEARS OF VESTING SERVICE	16
SECTION 4.01. PENSION CREDITS	16
SECTION 4.02. YEARS OF VESTING SERVICE.....	17
SECTION 4.03. BREAK IN SERVICE	18
SECTION 4.04. MILITARY SERVICE	19

ARTICLE V PARTICIPANT AND SURVIVING SPOUSE PENSION AND PRERETIREMENT SURVIVING SPOUSE PENSION	20
SECTION 5.01. GENERAL	20
SECTION 5.02. PARTICIPANT AND SURVIVING SPOUSE PENSION AT RETIREMENT	21
SECTION 5.03. 75% OPTIONAL PARTICIPANT AND SURVIVING SPOUSE PENSION AT RETIREMENT	23
SECTION 5.04. 100% OPTIONAL PARTICIPANT AND SURVIVING SPOUSE PENSION AT RETIREMENT	23
SECTION 5.05. PRERETIREMENT SURVIVING SPOUSE PENSION	24
SECTION 5.06. INACTIVE VESTED PARTICIPANTS	25
SECTION 5.07. RELATION TO QUALIFIED DOMESTIC RELATIONS ORDER.....	26
SECTION 5.08. TRUSTEES RELIANCE	26
SECTION 5.09. BENEFIT ADJUSTMENTS IF PAYMENT OF PRERETIREMENT SURVIVING SPOUSE PENSION POSTPONED.....	26
SECTION 5.10. SURVIVOR BENEFIT LIMITATIONS	27
ARTICLE VI - APPLICATIONS, BENEFIT PAYMENTS AND RETIREMENT.....	28
SECTION 6.01. APPLICATIONS FOR BENEFITS.....	28
SECTION 6.02. ACTION OF TRUSTEES.....	28
SECTION 6.03. BENEFIT PAYMENTS GENERALLY	29
SECTION 6.04. RETIREMENT	30
SECTION 6.05. SUSPENSION OF BENEFITS.....	31
SECTION 6.06. BENEFIT PAYMENTS FOLLOWING SUSPENSION.....	34
SECTION 6.07. VESTED STATUS OR NONFORFEITABILITY	35
SECTION 6.08. NON-DUPLICATION OF DISABILITY BENEFITS.....	36
SECTION 6.09. INCOMPETENCE OR INCAPACITY OF A PENSIONER OR BENEFICIARY	36
SECTION 6.10. NON-ASSIGNMENT OF BENEFITS	36
SECTION 6.11. NO RIGHT TO ASSETS.....	37
SECTION 6.12. SMALL BENEFIT CASH OUTS.....	37
SECTION 6.13. OPTIONAL FORMS OF BENEFITS	37
SECTION 6.14. MAXIMUM LIMITATION	37
SECTION 6.15. RETIREE BENEFIT IMPROVEMENT	39
ARTICLE VII – MISCELLANEOUS.....	40
SECTION 7.01. NON-REVERSION	40
SECTION 7.02. LIMITATION OF LIABILITY	40

SECTION 7.03. NEW EMPLOYERS.....	40
SECTION 7.04. TERMINATED EMPLOYER.....	40
SECTION 7.05. TERMINATION.....	40
SECTION 7.06. CONSOLIDATION AND MERGER.....	41
SECTION 7.07. LAWS APPLICABLE.....	41
SECTION 7.08. MISSING BENEFICIARIES AND PARTICIPANTS.....	41
ARTICLE VIII - AMENDMENTS.....	41
SECTION 8.01. AMENDMENT.....	41
ARTICLE IX – NON-BARGAINED EMPLOYEES.....	42
SECTION 9.01. EMPLOYER.....	42
SECTION 9.02. NON-BARGAINED EMPLOYEE.....	42
SECTION 9.03. HIGHLY COMPENSATED EMPLOYEE.....	42
SECTION 9.04. VESTING FOR NON-BARGAINED EMPLOYEE.....	43
SECTION 9.05. NONDISCRIMINATION, COVERAGE, AND PARTICIPATION.....	44
ARTICLE X - ROLLOVERS.....	44
SECTION 10.01. ROLLOVERS.....	44
SECTION 10.02. DEFINITIONS.....	44
ARTICLE XI – TOP-HEAVY PROVISIONS.....	45
SECTION 11.01. DEFINITIONS.....	45
SECTION 11.02. TOP HEAVY PLAN REQUIREMENTS.....	46
SECTION 11.03. DETERMINATION OF TOP HEAVY STATUS.....	46
SECTION 11.04. TOP HEAVY VESTING.....	50
SECTION 11.05. TOP HEAVY BENEFIT REQUIREMENTS.....	51
ARTICLE XII - MINIMUM DISTRIBUTION REQUIREMENTS.....	52
SECTION 12.01. GENERAL RULES.....	52
SECTION 12.02. TIME AND MANNER OF DISTRIBUTION.....	53
SECTION 12.03. DETERMINATION OF AMOUNT TO BE DISTRIBUTED EACH YEAR.....	54
SECTION 12.04. REQUIREMENTS FOR ANNUITY DISTRIBUTION THAT COMMENCE DURING PARTICIPANT’S LIFETIME.....	55
SECTION 12.05. REQUIREMENTS FOR MINIMUM DISTRIBUTIONS WHERE PARTICIPANT DIES BEFORE DATE DISTRIBUTIONS BEGIN.....	56
SECTION 12.06. DEFINITIONS.....	56
ARTICLE 13 – CLAIMS AND APPEAL PROCEDURE.....	57
SECTION 13.1. SUBMISSION AND NOTIFICATION OF BENEFIT DETERMINATION.....	57

SECTION 13.2. MANNER AND CONTENT OF NOTIFICATION OF BENEFIT DETERMINATION	58
SECTION 13.3. APPEAL OF ADVERSE BENEFIT DETERMINATION	59
SECTION 13.4. TRUSTEES DECISION ON APPEAL	60
SECTION 13.5. DISCRETION OF TRUSTEES	62
SECTION 13.6. TIMELY SUBMISSION OF APPEALS.....	62
SECTION 13.7. LIMITATIONS OF ACTIONS	62
SECTION 13.8. FAILURE TO FOLLOW CLAIMS PROCEDURES.....	62
SECTION 13.9. AVOIDING CONFLICTS OF INTEREST.....	63
13.10. EXTENSION OF CERTAIN TIMEFRAMES.....	63

ARTICLE I DEFINITIONS

Actuarial Equivalent means an amount or series of amounts of equivalent value. Effective January 1, 2022, this determination is based on the following:

- (a) Interest rate: 6.5%
- (b) Participant Mortality:
 - (A) Blue Collar Adjusted Pri-2012 Retiree (Male) for non-Disability Pensions.
 - (B) Pre-2012 Disabled Retiree (Male) for Disability Pensions.
- (c) Spouse Mortality: Blue Collar Adjusted Pri-2012 Contingent Survivor (Female).
- (d) Weighting: Amount weighted.
- (e) Mortality projection: Projected to 2021 with Scale MP-2020.
- (f) With respect to any lump sum payment or form of payment subject to 417(e), the following rules apply effective for distributions on or after January 1, 2008:
 - i. The Applicable Interest Rate for a Plan Year shall be the adjusted first, second and third segment rates applied under the rules similar to the rules of Section 430(h)(C) of the Internal Revenue Code for the second full calendar month preceding the Plan Year which contains the date of distribution or such other time as the Secretary of Treasury may by regulations prescribe. For this purpose, the first, second, and third segment rates are the first, second and third segment rates that would be determined under Section 430(h)(2)(C) of the Internal Revenue Code if:
 - A. Section 430(h)(2)(D) of the Internal Revenue Code were applied by substituting the average yields for the second full calendar month preceding the Plan Year which contains the date of distribution or such other time as the Secretary of Treasury may by regulations prescribe for the average yields for the 24-month period described in such Section.
 - B. Effective as of January 1, 2022, the applicable interest rate for a Plan Year shall be the rates for the fifth full calendar month preceding the Plan Year. However, any distribution for which the annuity starting date occurs during the Plan Year commencing on January 1, 2022, must be determined using the interest rate provided under the Plan determined at either the date for determining the interest rate before January 1, 2022, or the date for determining the interest rate on and after January 1, 2021, whichever results in the larger distribution, as required under 26 C.F.R. Section 1.417(e)-1(d)(10)(ii).

- ii. The Applicable Mortality Table for all purposes under the Plan shall be the mortality table prescribed in regulations under Section 417(e) of the Internal Revenue Code for use in the Plan Year that contains the date of distribution.

Annuity Starting Date for purposes of §1.401(a)-20 of the Treasury Regulations, subject to Subsections (b) and (c), below, means the first day of the first calendar month starting after the Participant has fulfilled all of the conditions for entitlement to benefits and after the later of:

- (i) 30-days after submission by the Participant of a completed application for benefits, or
- (ii) 30-days after the Plan advises the Participant of the available benefit payment options, unless
 - (A) the benefit is being paid as a Participant and Surviving Spouse Pension at or after the Participant's Normal Retirement Age,
 - (B) the benefit is being paid out automatically as a lump sum under Section 6.15, or
 - (C) the Participant and Spouse, if any, consent in writing to the commencement of payments before the end of that 30-day period and distribution of the Pension begins more than seven days after the written explanation was provided to the Participant and Spouse.

The Annuity Starting Date shall not be later than the Participant's Required Beginning Date. The Annuity Starting Date for a Beneficiary or alternate payee pursuant to a Qualified Domestic Relations Order shall be determined as stated in Subsections (A) and (B) above, except that references to the Participant and Surviving Spouse Pension and spousal consent do not apply.

Beneficiary means a person who is receiving benefits under this Plan because of his or her designation for such benefits by a Participant. Immediately, upon the divorce or dissolution of the marriage of a Participant, any prior designation of the former spouse as a Beneficiary shall be immediately nullified.

Break in Service has the meaning set forth in Section 4.03.

Collective Bargaining Agreement or **Agreement** means a written agreement between the Union and an Employer which requires contributions to the Fund.

Compensation means the annual compensation to the extent taken into account for any employee under the Plan is limited to the annual compensation limit under 401(a)(17) and its corresponding regulations. The annual compensation limit is \$200,000, adjusted as provided by the Commissioner.

Continuous Employment means any periods of Service not separated by quit, discharge, or other termination of employment.

Contributing Employer or Employer means an Employer signatory to a Collective Bargaining Agreement with the Union requiring contributions to this Fund, and an Employer signatory to any other agreement requiring contributions to this Fund provided the Employer has been accepted as a Contributing Employer by the Trustees. "Employer" shall also mean the Union, the Pension Fund, the Sheet Metal Workers Local No. 33, Youngstown District Health and Welfare Fund and the Youngstown and Vicinity Sheet Metal Workers Joint Apprenticeship Committee. An employer shall not be deemed a Contributing Employer simply because it is part of a controlled group of corporations or of a trade or business under common control, some other part of which is a Contributing Employer.

Contribution Period means, with respect to a unit or classification of employment, the period during which the Employer is a Contributing Employer.

Covered Employment means employment of an Employee by an Employer, including employment prior to the Contribution Period which if performed during the Contribution Period would have resulted in contributions being paid to the Fund.

Deferred Pension has the meaning set forth in Sections 3.06 and 3.07.

Disability Pension has the meaning set forth in Sections 3.08 and 3.09.

Early Retirement Pension has the meaning set forth in Sections 3.04 and 3.05.

Employee means a person who is an employee of an Employer and who is covered by a Collective Bargaining Agreement or any written Agreement requiring Employer Contributions on his behalf.

The term "Employee" shall not include:

- (i) a sole proprietor who is a Contributing Employer;
- (ii) a partner who is a Contributing Employer, regardless of the size of the partnership interest; or
- (iii) anyone else whose ownership would, in the opinion of the Trustees, jeopardize the tax-exempt status of the Fund or violate provisions of the Employee Retirement Income Security Act of 1974.

ERISA shall mean the Employee Retirement Income Security Act of 1974.

Gender: except as the context may specifically require otherwise, use of the masculine gender shall be understood to include both masculine and feminine genders.

Hour of Service or Service means:

- (a) each hour for which an Employee is directly or indirectly paid, or entitled to payment, by the Employer for the performance of duties during the applicable computation period.

These hours shall be credited to the Employee for the computation period or periods in which the duties were performed.

- (b) each hour for which an Employee is paid, or entitled to payment, by the Employer on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), but excluding any time compensated under a Workers' Compensation or unemployment compensation law or a plan pursuant to a mandatory disability benefits law, layoff, jury duty, military duty or leave of absence. Notwithstanding the preceding sentence, no more than 501 Hours of Service are required to be credited under this Subsection 1.17(b) to an Employee on account of any single continuous period during which the Employee performs no duties (whether or not such period occurs in a single computation period). These hours shall be credited to the Employee for the computation period or periods in which the performance period occurred.
- (c) each hour for which back pay, irrespective of mitigation of damages, has been either awarded or agreed to by the Employer. 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 was made.

Industrial Fabricating and Manufacturing Work means all work performed by Employees under the Collective Bargaining Agreement between the Sheet Metal and Roofing Contractors of Eastern Ohio and Western Pennsylvania and Union Addendum on Industrial Fabricating and Manufacturing Work which generally includes fabrication work for air pollution control systems, noise abatement materials, process exhaust systems and all other industrial work excluding air conditioning, heating, ventilating, and architectural sheet metal work.

Marriage will include a same-sex marriage that is legally recognized as a marriage under any state law.

Military Service: Notwithstanding, any provision to the contrary, an Employee's benefit shall include hours of service owed for periods of Qualified Military Service in the armed forces of the United States consistent with and to the extent required by the Uniformed Services Employment and Reemployment Right Act of 1994, as amended (USERRA), and Section 414(u) of the Internal Revenue Code, as amended. Military Service will be counted for purposes of crediting an Employee's Vesting Service and Pension Credits provided that they meet the requirements set forth in Section 4.04.

Normal Retirement Age:

- (a) For a Participant who completes one or more hours of Service after December 31, 1987, "Normal Retirement Age" means age 65 or, if later, the age of the Participant on the fifth anniversary of his participation.
- (b) In calculating the fifth anniversary of participation, participation before a Permanent Break in Service shall not be counted.

Participant means a Pensioner or an Employee who meets the requirements for participation in the Plan as set forth in Article II, or a former Employee who has acquired a right to a pension under this Plan.

Participant and Spouse Pension shall have the meaning set forth in Article V.

Pension Credits shall have the meaning set forth in Section 4.01.

Pension Fund or **Fund** means the Sheet Metal Workers Youngstown District Pension Fund, formerly known as the Sheet Metal Workers Local No. 5 Pension Fund established under the Trust Agreement.

Pension Plan or **Plan** means this document and any modification or amendment as enacted by the Trustees.

Pensioner means a person to whom a pension under this Plan is being paid or to whom a pension would be paid but for time for administrative processing. A Pensioner who has returned to Covered Employment and is accruing benefits on the same basis as other Employees as of the effective date of a benefit increase will not be considered a Pensioner for purposes of that benefit increase.

Plan Year means the period from January 1 to the next December 31. For purposes of ERISA regulations, the Plan Year shall serve as the vesting computation period, the benefit accrual computation period, and, after the initial period of employment, the computation period for eligibility to participate in the Plan.

Preretirement Surviving Spouse Pension shall have the meaning set forth in Section 5.05.

Regular Pension shall have the meaning set forth in Sections 3.02 and 3.03.

Required Beginning Date is:

- (1) For those who turn 70 ½ on or before December 31, 2019 (i.e. whose birthdate is on or before June 30, 1949): April 1 of the calendar year following the calendar year in which the Participant reaches age 70½ or, other than a 5% owner, April 1 of the calendar year in which the Participant ceases Work in Covered Employment, if that is later;
- (2) For those who turn 70 ½ after December 31, 2019 (i.e., whose birthdate is on or after July 1, 1949): April 1 of the calendar year following the calendar year in which the Participant reaches age 72 or, other than a 5% owner, April 1 of the calendar year in which the Participant ceases Work in Covered Employment, if that is later.

Residential Work means all work performed by Employees under the Collective Bargaining Agreement between the Sheet Metal and Roofing Contractors of Eastern Ohio and Western Pennsylvania and Union Addendum on Residential Work which generally includes work on any

single family dwelling or multiple family housing unit where each individual family unit contains a separate unit or system and is four stories or less.

Service in the Uniformed Services means the performance of duty on a voluntary or involuntary basis in a Uniformed Service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, and a period for which a Participant is absent from Covered Service for the purpose of an examination to determine the fitness of the Participant to perform any such duty.

Sheet Metal Work means all work performed by apprentices and journeymen under the Collective Bargaining Agreement between the Sheet Metal and Roofing Contractors of Eastern Ohio and Western Pennsylvania and Union, excluding the work performed under an Addendum to this Collective Bargaining Agreement covering Industrial Fabricating and Manufacturing or Residential Work.

Spouse or Qualified Spouse means the person married to the Participant, under applicable law, throughout the 1-year period ending on the earlier of the Participant's annuity starting date or the date of the participant's death. For purposes of the definition, if a Participant marries within 1 year before the annuity starting date, and the Participant and the Participant's spouse in such marriage have been married for at least a 1-year period ending on or before the date of the Participant's death, such participant and such spouse shall be treated as having been married throughout the 1-year period ending on the participant's annuity starting date. Notwithstanding the foregoing, if a Pensioner divorces after the annuity starting date (as defined in the Internal Revenue Code), in the absence of a qualified domestic relations order providing otherwise, the Surviving Spouse shall be the individual to whom he/she was married on the annuity starting date. Further, "Spouse" as used in this Plan means a Participant's former Spouse to the extent provided in a Qualified Domestic Relations Order (within the meaning of §206(d)(3) of ERISA and §414(p) of the Internal Revenue Code).

Trust Agreement means the Agreement and Declaration of Trust establishing the Sheet Metal Workers Youngstown District Pension Fund, and any modification, amendment, extension or renewal thereof.

Trustees means the Board of Trustees as designated in the Trust Agreement together with their successors designated and appointed in accordance with the terms of the Trust Agreement.

Uniformed Services means the Armed Forces, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the Commissioned Corps of the Public Health Service, and any other category of persons designated by the President of the United States in time of war or emergency.

Union means Local Union No. 33, Youngstown District, of the Sheet Metal Workers' International Association.

Vested Status shall have the meaning set forth in Section 6.10.

Work means a period in which an Employee performed services for which he was paid or entitled to payment.

Year of Participation means a Plan Year after January 1, 1976, in which a Participant has completed 1,800 Hours of Service in Covered Employment during a Contribution Period for purposes of compliance with Part 2530 of the Department of Labor.

Year of Vesting Service shall have the meaning set forth in Section 4.02.

ARTICLE II PARTICIPATION

SECTION 2.01. PURPOSE

This Article contains definitions to meet certain requirements of the Employee Retirement Income Security Act of 1974 (otherwise referred to as ERISA). It should be noted that once an Employee has become a Participant, the provisions of this Plan give him credit in accordance with the rules of the Plan for some or all of his service before he became a Participant.

SECTION 2.02. PARTICIPATION

An Employee who is engaged in Covered Employment during a Contribution Period shall become a Participant in the Plan on the earliest January 1st or July 1st following the completion of 775 Hours in a 12-consecutive month period from the Employee's Employment Commencement Date. For purposes of this determination, the "Employment Commencement Date" is the first day for which the Employee works in Covered Employment. Thereafter, Pension Credits and Years of Vesting Service shall be earned based on the Plan Year beginning with the Plan Year which contains the first anniversary of the Employee's Employment Commence Date.

SECTION 2.03. TERMINATION OF PARTICIPATION

A Participant who incurs a One-Year Break in Service (as defined in Section 4.03) shall cease to be a Participant as of the last day of the Plan Year which constituted the One-Year Break, unless such Participant is a Pensioner, or has acquired the right to a pension (other than for disability), whether immediate or deferred.

SECTION 2.04. RETROACTIVE AMENDMENTS

Any Plan amendment or Plan Restatement which takes effect after a person ceases to be a Participant shall not apply to such person, unless such amendment or restatement is specifically made retroactive to cover such persons.

SECTION 2.05. REINSTATEMENT OF PARTICIPATION

An Employee who has lost his status as a Participant in accordance with Section 2.03 above shall again become a Participant by meeting the requirements of Section 2.02 above within a Plan Year on the basis of work after the Plan Year during which his participation terminated. Reinstatement is retroactive to the date of re-hire after Hours of Service are completed.

ARTICLE III PENSION ELIGIBILITY AND AMOUNTS

SECTION 3.01. GENERAL

This Article sets forth the eligibility conditions and benefit amounts for the pensions provided by this Plan. The accumulation and retention of Pension Credits and Years of Vesting Service for eligibility are subject to the provisions of Article IV. The benefit amounts are subject to reduction on account of the Participant and Surviving Spouse Pension (Article V). Entitlement of an eligible Participant to receive pension benefits is subject to his retirement and application for benefits, as provided in Article VI.

Eligibility depends on Pension Credits, which are defined in Section 4.01, or Years of Vesting Service, which is defined in Section 4.02.

SECTION 3.02. REGULAR PENSION— ELIGIBILITY

- (a) An Active Participant retiring on and after June 1, 1992, but prior to June 1, 1997, other than a Participant who was employed in Industrial Fabrication and Manufacturing or Residential Work, may retire on a Regular Pension if he meets the following requirements:
 - i. He has attained age 60; and
 - ii. He has at least ten (10) Years of Vesting Service.

- (b) An Active Participant retiring on or after June 1, 1997, but prior to June 1, 1999, other than a Participant who was employed in Industrial Fabrication and Manufacturing or Residential Work, may retire on a Regular Pension if he meets the following requirements:
 - i. He has attained age 60; and
 - ii. He has at least Five (5) Years of Vesting Service.

- (c) An Active Participant retiring on or after June 1, 1999 but prior to January 1, 2001, other than a Participant who was employed in Industrial Fabrication and Manufacturing or Residential Work, may retire on a Regular Pension if he meets the following requirements:
 - i. He has attained age 58; and
 - ii. He has at least Five (5) Years of Vesting Service.

- (d) An Active Participant retiring on or after January 1, 2001, other than a Participant who was employed in Industrial Fabrication and Manufacturing or Residential Work, may retire on a Regular Pension if he meets the following requirements:
 - i. He has attained age 57; and

- ii. He has at least Five (5) Years of Vesting Service.
- (e) An Active Participant who was employed in Industrial Fabrication and Manufacturing or Residential Work, and any other Participant retiring before June 1, 1992, may retire on a Regular Pension if he meets the following requirements:
 - i. He has attained age 62; and
 - ii. He has at least Five (5) Years of Vesting Service.
- (f) An Active Participant who was employed in Industrial Fabrication and Manufacturing or Residential Work, and any other Participant retiring on or after January 1, 2005, may retire on a Regular Pension if he meets the following requirements:
 - i. He has attained age 57; and
 - ii. He has at least Five (5) Years of Vesting Service.

SECTION 3.03. REGULAR PENSION — AMOUNT

- (a) The monthly amount of the Regular Pension for Active Participants who retire on or after January 1, 2000:
 - i. \$4.00 per Pension Credit earned prior to the Contribution Period; PLUS
 - ii. \$12.00 per Pension Credit earned from November 1, 1964, through April 30, 1970; PLUS
 - iii. \$16.00 per Pension Credit earned from May 1, 1970 through October 31, 1974; PLUS
 - iv. \$20.00 per Pension Credit earned from November 1, 1974, through April 30, 1980; PLUS
 - v. \$55.00 per Pension Credit earned from May 1, 1980, through December 31, 1989; PLUS
 - vi. \$74.00 per Pension Credit earned from January 1, 1990, through May 31, 1994; PLUS
 - vii. \$80.00 per Pension Credit earned from January 1, 1994, through December 31, 2000, PLUS
 - viii. \$83.00 per Pension Credit earned on or after January 1, 2001, through May 31, 2013.
- (b) The monthly amount of the Regular Pension for Active Participants who were employed in Industrial Fabrication and Manufacturing or Residential Work under a Collective Bargaining Agreement who retire on or after January 1, 2000, shall be:
 - i. \$2.50 per Pension Credit earned prior to the Contribution Period; PLUS
 - ii. \$10.50 per Pension Credit earned from November 1, 1964, through April 30, 1970; PLUS
 - iii. \$14.50 per Pension Credit earned from May 1, 1970, through October 31, 1974; PLUS

- iv. \$18.50 per Pension Credit earned from November 1, 1974, through April 30, 1983; PLUS
 - v. \$27.50 per Pension Credit earned from May 1, 1983, through December 31, 1989; PLUS
 - vi. \$32.00 per Pension Credit earned from January 1, 1990, through May 31, 1994; PLUS
 - vii. \$36.00 per Pension Credit earned on or after June 1, 1994, through May 31, 2013.
- (c) Effective June 1, 2013 for Active Participants, including for Participants who are employed in Industrial Fabrication and Manufacturing or Residential Work and all newly active Participants who begin working as an apprentice or service tech trainee on or after January 1, 2013 the monthly amount of the Regular Pension shall be \$93.00 per Pension Credit earned on or after June 1, 2013 provided that the benefit amount per Pension Credit shall be prorated based on the Participant's actual contribution rate in proportion to the journeyman contribution rate provided in the Collective Bargaining Agreement. The benefit amount per pension credit earned as an apprentice or service tech trainee on or after January 1, 2013, shall be \$83.00 per Pension Credit, and shall not be pro-rated for Active Participants who began working as apprentices or service tech trainees prior to January 1, 2013.
- (d) Effective June 1, 2014 for Active Participants, including for Participants who are employed in Industrial Fabrication and Manufacturing or Residential Work and all newly active Participants who begin working as an apprentice or service tech trainee on or after January 1, 2013 the monthly amount of the Regular Pension shall be \$100.00 per Pension Credit earned on or after June 1, 2014 provided that the benefit amount per Pension Credit shall be prorated based on the Participant's actual contribution rate in proportion to the journeyman contribution rate provided in the Collective Bargaining Agreement. The benefit amount per pension credit earned as an apprentice or service tech trainee on or after January 1, 2013, shall be \$83.00 per Pension Credit, and shall not be pro-rated for Active Participants who began working as apprentices or service tech trainees prior to January 1, 2013.
- (e) The monthly amount of the Regular Pension determined under Subsections 3.03(a) and (b) above shall be increased as follows:
- i. For Active Participants retiring on or after June 1, 1992, other than a Participant who was employed in Industrial Fabrication and Manufacturing or Residential Work, the monthly amount of the Regular Pension shall be increased by four-tenths of one percent (.4%) for each full month by which the commencement of the pension follows the month in which the Participant attained age 60.
 - ii. For Participants who were employed in Industrial Fabrication and Manufacturing or Residential Work, and for Participants retiring before June 1, 1992, the monthly amount of the Regular Pension shall be increased by four-tenths of one percent (.4%) for each full month by which the commencement of the pension follows the month in which the Participant attained age 62.

- (f) Effective June 1, 2021, for Active Participants, including for Participants who are employed in Industrial Fabrication and Manufacturing or Residential Work and all active Participants who began working as an apprentice or service tech trainee on or after January 1, 2013, the monthly amount of the Regular Pension shall be \$110.00 per Pension Credit earned on or after June 1, 2021, provided that the benefit amount per Pension Credit shall be prorated based on the Participant's actual contribution rate in proportion to the journeyman contribution rate provided in the Collective Bargaining Agreement. This shall be in addition to amounts accrued under Sections, 3.03(b), 3.03(c), 3.03(d), and 3.03(e)(i). The benefit amount per Pension Credit earned as an apprentice or service tech trainee on or after January 1, 2013, shall be \$83.00 per Pension Credit, and shall not be pro-rated, for Active Participants who began working as apprentices or service tech trainees prior to January 1, 2013.

SECTION 3.04. EARLY RETIREMENT PENSION - ELIGIBILITY

- (a) A Participant shall be entitled to retire on an Early Retirement Pension if he meets the following requirements:
- i. he has attained age 55;
 - ii. he has at least Ten (10) Pension Credits.
- (b) An Active Participant shall be entitled to retire on an Early Retirement Pension on or after January 1, 1997, if he meets the following requirements:
- i. he has attained age 55;
 - ii. he has at least Five (5) Years of Vesting Service.

SECTION 3.05. EARLY RETIREMENT PENSION - AMOUNT

- (a) For Active Participants retiring on or after January 1, 2001, other than a Participant who was employed in Industrial Fabrication and Manufacturing or Residential Work, the monthly amount of the Early Retirement Pension is the amount of the Regular Pension reduced by four-tenths of one percent (.4%) for each month by which the commencement of the pension precedes age 57.
- (b) For Active Participants who were employed in Industrial Fabrication and Manufacturing or Residential Work and for Participants retiring before June 1, 1992, the monthly amount of the Early Retirement Pension is the amount of the Regular Pension reduced by four-tenths of one percent (.4%) for each month by which the commencement of the pension precedes age 62.
- (c) Effective on or after December 18, 2012, for Active Participants who were employed in Industrial Fabrication and Manufacturing or Residential Work and for Participants retiring on or after January 1, 2005, the monthly amount of the Early Retirement Pension is the amount of the Regular Pension reduced by four-tenths of one percent (.4%) for each month by which the commencement of the pension precedes age 57.

SECTION 3.06. DEFERRED PENSION — ELIGIBILITY

If a Participant completes at least 1 hour of Service in Covered Employment, on or after January 1, 1997, he shall be considered an Active Participant as of January 1, 1997 and is entitled to a full Deferred Vested Pension if he has at least 5 Years of Vesting Service, provided, the Participant has attained Normal Retirement Age, or after the Participant has completed all the requirements for commencement of an Early Retirement Pension, as set forth in Section 3.04.

SECTION 3.07. DEFERRED PENSION — AMOUNT

(a) **After Normal Retirement Age:** If the Deferred Pension begins after the Participant has attained his Normal Retirement Age, the monthly amount of the Deferred Pension shall be the amount of the Regular Pension.

(b) **Before Normal Retirement Age:**

If the Participant has attained age 55 and has earned at Five (5) Years of Vesting Service, the monthly amount of the Deferred Pension shall be as follows:

- i. For Participants retiring on or after January 1, 1997 other than a Participant who was employed in Industrial Fabrication and Manufacturing or Residential Work:
 - A. If payment of the Deferred Pension begins when the Participant is between the ages of 60 and 65, the amount of the Deferred Pension shall be the same as the amount of the Regular Pension, including an increase of four-tenths of one percent (.4%) for each full month by which the commencement of the pension follows the month in which the Participant attained age 60.
 - B. If payment of the Deferred Pension begins when the Participant is between the ages of 55 and 60, the amount of the Deferred Pension shall be the amount of the Regular Pension reduced by four-tenths of one percent (.4%) for each month by which the commencement of his pension precedes age 60.
- ii. For Participants who were employed in Industrial Fabrication and Manufacturing or Residential Work, and for Participants retiring after January 1, 1997:
 - A. If payment of the Deferred Pension begins when the Participant is between the ages of 60 and 62, the amount of the Deferred Pension shall be the same as the amount of the Regular Pension, including an increase of four-tenths of one percent (.4%) for each full month by which the commencement of the pension follows the month in which the Participant attained age 62.
 - B. If payment of the Deferred Pension begins when the Participant is between the ages of 55 and 62, the amount of the Deferred Pension shall be the amount of the Regular Pension reduced by four-tenths of one percent (.4%) for each month by which the commencement of his pension precedes age 62.

SECTION 3.08. DISABILITY PENSION—ELIGIBILITY AND COMMENCEMENT

- (a) An Active Participant on or after January 1, 1997, may retire on a Disability Pension if:
 - (1) he retires as the result of total and permanent disability as defined in Section 3.10, and
 - (2) prior to becoming totally and permanently disabled as defined as defined in Section 3.10 he has accumulated at least Five (5) Years of Vesting Service and at least 155 hours of Work in Covered Employment within the 24-month period.
- (b) The Disability Pension will be payable commencing with the sixth month after the commencement of disability or the first day of the month following the month a proper application is completed in accordance with Sections 6.01 and 6.02 whichever is later.

SECTION 3.09. DISABILITY PENSION - AMOUNT

The monthly amount of the Disability Pension is the same as the Regular Pension, as set forth in Section 3.03, but no less than \$40 per month.

SECTION 3.10. PERMANENT DISABILITY

A Participant shall be considered totally and permanently disabled upon proof of a determination by the Social Security Administration that the Participant is entitled to a Social Security Disability Benefit.

SECTION 3.11. EARNINGS BY A DISABILITY PENSIONER AND TIMELY REPORTS

A Disability Pensioner shall report any and all earnings from any employment or gainful pursuit to the Trustees, in writing, within fifteen (15) days after the end of any month in which he has such earnings. A Disability Pensioner shall be disqualified from benefits in any month in which he earns more than \$1,000 in any employment or gainful pursuit. If a Disability Pensioner fails to make timely reports as required in this Section 3.11, he shall be disqualified for pension benefits for the month or months in which he had earnings from employment or other gainful pursuit. He shall also be disqualified for pension benefits for up to six (6) additional months for failure to make timely reports. This penalty shall apply to each such violation unless the Trustees determine that there were extenuating circumstances which prevented the Employee from making such timely filings.

SECTION 3.12. CESSATION OF TOTAL AND PERMANENT DISABILITY

Any Participant retiring under the Disability Pension provisions of the Plan who subsequently ceases to be totally and permanently disabled may:

- (a) apply for a Regular or Early Retirement Pension, provided he has fulfilled the requirements for such benefit. The Early Retirement benefit shall become payable for the

month immediately following the month in which the Disability Pension terminates, and the amount shall be based on the then attained age of the Pensioner as of the date he first entered retirement on an Early Retirement Pension; or

- (b) return to Covered Employment and resume the accrual of Pension Credits.

SECTION 3.13. RETROACTIVE PAYMENT OF SUPPLEMENTAL DISABILITY BENEFIT

- (a) Effective as of January 1, 1989, if the Annuity Starting date for a Participant who is totally disabled after the date payments would have begun if an application had been filed earlier, the Participant will be entitled to a Supplemental Disability Benefit (which is an auxiliary disability benefit under §1.401(a)-20 Q&A #10 of the Treasury regulations).
- (b) The "Supplemental Disability Benefit" means an amount, payable as a lump sum, equal to the monthly benefit payment payable as the Participant's Disability Pension (in the payment form elected for that pension) multiplied by the number of complete months between the Annuity Starting Date and the date the Disability Pension payments would have begun if the Participant had applied on the date of disability.

SECTION 3.14. PRERETIREMENT DEATH BENEFIT

If an active Participant dies prior to retirement, a death benefit shall be payable to his designated Beneficiary. The amount of the death benefit shall be equal to 100% of the employer Contributions made to the Fund on the deceased Participant's behalf plus simple interest credited at 3% per annum. At the designated beneficiary's option, the death benefit shall be payable in the form of a single lump-sum payment or in 36 equal monthly installments. This death benefit will not be payable if the deceased Participant was vested in any part of his accrued benefit and was married at the time of death or subject to a Qualified Domestic Relations Order (QDRO). In the event that a death benefit is payable under this Section 3.15 and the deceased Participant had failed to designate a Beneficiary, or if no Beneficiary designated by the Participant is then living, the Trustees will direct that payment be made to the executor or administrator appointed by any Probate Court to administer the estate of the deceased Participant, or in accordance with the order of any Court issued on application to distribute the deceased Participant's estate without administration.

The survivor or survivors of a participant who dies while performing qualified military service (as defined in section 414(u) of the Act) are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the plan had the participant resumed and then terminated employment on account of death. This is effective with respect to all deaths occurring on or after January 1, 2007.

SECTION 3.15. NON-DUPLICATION

A person shall be entitled to only one pension under this Plan, except that a Disability Pensioner who recovers may be entitled to a different kind of pension and a Pensioner may also receive a pension as the Spouse of a deceased Pensioner.

SECTION 3.16. BENEFIT INCREASES

The pension to which a Participant is entitled shall be determined under the terms of the Plan as in effect at the time the Participant separates from Covered Employment.

A Participant shall be deemed to have separated from Covered Employment on the last day of work which is followed by a Plan Year in which he fails to complete 155 hours of Work in Covered Employment.

SECTION 3.17. FORM OF PENSION

(a) When a Participant:

- i. retires on a Regular, Early, Deferred Vested or Disability Pension, and
- ii. properly rejects the Participant and Surviving Spouse Pension in a written statement and his Spouse consents to the rejection in a written notarized statement, or
- iii. the Participant and Surviving Spouse Pension is not applicable,

the form of payment shall be a life annuity, and if the Pensioner dies before he has received sixty (60) monthly payments, his monthly pension shall be continued to his designated Beneficiary until a total of 60 monthly payments have been made to the Pensioner and his designated Beneficiary (Five Year Certain and Single Life Annuity). If he had failed to designate a Beneficiary, or if no Beneficiary designated by the Pensioner is then living, the Trustees will direct that payment be made to the executor or administrator appointed by any Probate Court to administer the estate of the deceased Pensioner or in accordance with the order of any Court issued on application to distribute the deceased member's estate without administration, until a total of sixty (60) such payments have been made to the Pensioner, his designated Beneficiary or estate.

(b) If the pre-retirement death benefit is being paid to someone other than the Participant's surviving spouse, payments must either:

- i. be completed by December 31 of the fifth calendar year following the year of the Participant's death, or
- ii. begin by December 1 of the year following the year of the Participant's death and be paid out over a period no longer than the beneficiary's life or life expectancy, as determined under Table V of Treas. Reg. §1.72-9 as of the date payments commence, except that they can continue until the end of the fifth calendar year following the year of the Participant's death if longer.

SECTION 3.18 LEVEL INCOME OPTION

A Participant retiring prior to his eligibility for social security, may elect to have his pension increased until he is eligible for social security, according to the age at which he expects to receive his Social Security benefit, and reduced thereafter, in order to approximate his or her pension before he receives social security as nearly equal as possible to his combined retirement

income after that age.

Election of the Level Income Option must be made in writing on a form prescribed by the Trustees and filed with the Trustees in advance of the first month for which benefits are payable.

The Participant must provide the Fund Office with a Benefit Estimate Statement from the Social Security Administration regarding his expected Social Security retirement benefit. The adjustment amount will be made on the basis of actuarial equivalence, based on the factors in Appendix A, and the amount of the Social Security Benefit Estimate. However, in no event shall the factors provided in Appendix A be less than the Actuarial Equivalent factors determined using the Applicable Mortality Table and the Applicable Interest Rate. There will be no additional adjustment in the benefit paid by the Plan regardless of the amount actually paid by Social Security.

A Participant may not elect the Level Income Option if it would result in a monthly benefit of less than Twenty-Five Dollars (\$25.00).

Once elected, the Level Income Option cannot be revoked, except that if a Participant who is receiving benefits under this option returns to work in Disqualifying Employment, his future pension benefit will not be paid in the form of a Level Income Option. Future benefit payments will be reduced by the amount previously overpaid under the Level Income Option on the basis of actuarial principles and approval by the Trustees.

The Level Income Option may be elected in combination with the Fifty Percent (50%) Participant and Surviving Spouse Pension, the Optional Seventy Five Percent (75%) Participant and Surviving Spouse Pension or the Optional One Hundred Percent (100%) Participant and Surviving Spouse Pension.

If the Participant dies before he has received sixty (60) monthly payments, his monthly pension shall be continued to his designated Beneficiary until a total of 60 monthly payments have been made to the Pensioner and his designated Beneficiary. If he had failed to designate a Beneficiary, or if no Beneficiary designated by the Pensioner is then living, the Trustees will direct that payment be made to the executor or administrator appointed by any Probate Court to administer the estate of the deceased Pensioner or in accordance with the order of any Court issued on application to distribute the deceased member's estate without administration, until a total of sixty (60) such payments have been made to the Pensioner, his designated Beneficiary or estate.

ARTICLE IV PENSION CREDITS AND YEARS OF VESTING SERVICE

SECTION 4.01. PENSION CREDITS

(a) For Employment after December 31, 1975:

For periods after December 31, 1975, a Pension Credit is the number of hours of Work in Covered Employment for which contributions to the Pension Fund were made in an Accrual Period divided by 1,550. An Accrual Period begins the first day a benefit rate under section 3.03 is effective and ends on the last day such benefit rate is in effect.

Thus, a new Accrual Period begins each time the benefit amount earned per Pension Credit changes.

- (b) For purposes of paragraph (a) of this Section 4.01, in the event that a Participant who is a Trustee of the Pension Fund is caused to miss or forego Work in Covered Employment (Lost Work) to attend a meeting of the Trustees or to attend an educational session, seminar or conference for the benefit of the Pension Fund (provided the same is approved by the Board of Trustees), Work in Covered Employment shall include actual time in attendance at any such meeting, session, seminar or conference, as well as any day or time for which reimbursement is available pursuant to any policy adopted by the Pension fund regarding the payment and reimbursement of Trustees' expenses for attendance at any such meeting, session, seminar or conference. For purposes of Section 3.03 of the Plan, the "actual contribution rate" for any Participant described in this paragraph (b) shall be the contribution rate set forth in the Collective Bargaining Agreement for the classification in which such Participant was working at the time of the Lost Work.

SECTION 4.02. YEARS OF VESTING SERVICE

- (a) General Rule

A Participant shall be credited with one Year of Vesting Service for each Plan Year during the Contribution Period (including periods before he became a Participant) in which he completed at least 775 hours of Work in Covered Employment, and 1/5 of a Year of Vesting Service for each 155 hours of Service in Covered Employment, but no more than one full Year of Vesting Service in any one Plan Year.

- (b) Additions

If a Participant works for a Contributing Employer in a job not covered by this Plan and such employment is continuous and contiguous with his Employment with that Employer in covered Employment, his hours of Work in such non-covered job during the Contribution Period after December 31, 1975, shall be counted toward a Year of Vesting Service.

- (c) Exceptions

A Participant shall not be entitled to credit toward a Year of Vesting Service for the following periods:

- i. Years preceding a Permanent Break in Service as defined in Paragraph 4.03(c)(ii) for periods prior to January 1, 1976.
- ii. Years preceding a Permanent Break in Service as defined in Paragraph 4.03(c)(i).
- iii. Years before January 1, 1971, unless the Participant earned at least three Years of Vesting Service after December 31, 1970.

SECTION 4.03. BREAK IN SERVICE

(a) General

If a person has a Permanent Break in Service before he has earned at least five (5) Pension Credits based on Covered Employment during the Contribution Period, it has the effect of canceling his standing under the Plan, that is, his Participation, his previously credited Years of Vesting Service, and his previous Pension Credits. However, a Break may be temporary, subject to repair by a sufficient amount of subsequent Service. A longer Break may be permanent. A person who has suffered any Break-in-Service which is not repaired is not considered an Active Participant under this Plan.

(b) One-Year Break in Service

- i. A person has a One-Year Break in Service in any Plan Year in which he fails to complete 155 hours of Work in Covered Employment.
- ii. Time of employment with a Contributing Employer in non-covered employment after December 31, 1975, if creditable under Subsection 4.02(b), shall be counted as if it were Covered Employment in determining whether a One-Year Break-in-Service has been incurred.
- iii. A One-Year Break-in-Service is repairable, in the sense that its effects are eliminated if, before incurring a Permanent Break-in-Service, the Employee subsequently earns a Year of Vesting Service. Previously earned Years of Vesting Service and Pension Credits shall be restored. However, nothing in this Paragraph 4.03(b)(iii) shall change the effect of a Permanent Break-in-Service.
- iv. Solely for the purpose of determining whether a One-Year Break-in-Service has occurred, the absence of an Employee from Service by reason of:
 - (A) her pregnancy,
 - (B) birth of a child of the Employee,
 - (C) placement of a child with the Employee in connection with his or her adoption of the child, or
 - (D) care for such child for a period beginning immediately after such birth or placement,

shall be credited as Hours of Service to the extent that Hours of Service would have been credited but for such absence (or, where that cannot be determined, eight Hours of Service per day of absence) to a maximum of 155 Hours for each such pregnancy, childbirth, or placement. The hours so credited shall be applied to the Plan Year in which such absence begins, if doing so will prevent the Employee from incurring a One-Year Break-in-Service in that Plan Year; otherwise, they shall be applied to the next Plan Year. The Trustees may require, as a condition for granting such credit, that the Employee establish in timely fashion and to the satisfaction of the Trustees that the Employee is entitled to such credit. This subparagraph shall apply only to the absences that begin after December 31, 1985.

(c) Permanent Break-in-Service. This provision shall only apply to Participants who are not vested in any portion of their accrued benefit.

i. **Permanent Break-in-Service After 1975.** A person has a Permanent Break-in-Service if he has consecutive One-Year Breaks in Service, including at least one after 1975, that equal or exceed the number of full Years of Vesting Service with which he had been credited.

In any event, however, a Participant shall not incur a Permanent Break-in-Service after December 31, 1985, until his consecutive One-Year Breaks equal at least five.

ii. **Effect of Permanent Break-in-Service.** If an Employee has a Permanent Break-in-Service before he retires with a pension or before he meets the requirements of Section 3.06, his previous Pension Credits, Years of Vesting Service and his participation are cancelled, with new participation being subject to the provisions of Section 2.04.

(d) Family Medical Leave

Solely for the purpose of determining whether a Participant has incurred a Break-in-Service, any leave of absence granted by an Employer, up to 12 weeks within a 12 month period, that qualifies under the Family and Medical Leave Act (FMLA) shall not be counted as a Break-in-Service for purposes of determining eligibility and vesting.

SECTION 4.04. MILITARY SERVICE

(a) Service in the Armed Forces of the United States shall be credited to the extent required by law. To protect his full rights, an Employee who left Covered Employment to enter such Military Service should apply for re-employment with his Employer within the time prescribed by law. Furthermore, he must call his claim for credit for Military Service to the attention of the Trustees and be prepared to supply the evidence that the Trustees will need in order to determine his rights.

(b) If an Employee leaves Covered Employment to enter active service in the Armed Forces of the United States, the period of such Military Service, for up to five years, shall not be counted toward a Break-in-Service. Moreover, if he returns to Work in Covered Employment (or makes himself available for Covered Employment) within the time periods set forth in subsection (c) below, after his separation from Military Service, the period of such Military Service shall, for up to five years, be credited toward Years of Vesting Service. Additionally, effective for any Military Service on or after December 12, 1994, the Participant will receive Pension Credits for any Qualified period of Military Service if the Participant meets the reemployment requirements set forth in subsection (c) below.

(c) If a Participant returns to Work in Covered Employment (or makes himself available for Covered Employment) after his honorable discharge from Military Service, the period of

such Military Service shall be credited. The time period for a reemployment deadline varies depending upon the time period of the Participant's Military Service. If the Service was less than 31 days, then the Participant must be reemployed within 1 day after discharge. If the Military Service was less than 180 days, then the Participant must be reemployed within 14 days after discharge. If the military service was more than 180 days, then the Participant must be reemployed within 90 days after discharge.

However, the Employer is responsible for notifying the Fund Office of the reemployment within 30 days of the date that the Participant is reemployed.

- (d) A Participant who reenters Covered Employment on or after December 12, 1994, will be credited with Hours of Service up to 32 hours per week for each week that the Participant was engaged in Service in the Uniformed Services. This weekly or annual credit calculation will only be applicable if the Participant fails to earn one (1) full Pension credit based on actual work in a Plan Year. No more than 1550 Hours of work will be credited on this basis in any one Plan Year.
- (e) A Participant who claims entitlement to Hours for Service in the Uniformed Services shall submit such documentation as the Trustees may require to demonstrate the Participant's return to Covered Employment in a timely fashion, that the Participant did not exceed the limitations on the time allowed in Service in the Uniformed Services, and that the Participant's entitlement to benefits has not otherwise terminated in accordance with Federal Law. No hours shall be credited to a Participant for Service in the Uniformed Services if the Participant's separation from the Uniformed Services was by a dishonorable or bad conduct discharge, or under other than honorable conditions.
- (f) The funds required to pay for the hours credited to a Participant under this Section shall be allocated from general assets of the Fund, and no Individual Employer will be liable to make contributions for such hours.

Effective January 18, 2006, if a Participant received a distribution of all or part of his benefits in connection with his or her qualified Uniformed Service, then the Participant may repay the distributed amounts upon reemployment. The repayment amount shall include any interest that would have accrued had the distribution not been made. The repayment may be made during the period beginning on the date of reemployment and continuing for up to three times the Participant's length of Uniformed Service, but not to exceed the earlier of five years or termination of Covered Employment.

ARTICLE V PARTICIPANT AND SURVIVING SPOUSE PENSION AND PRERETIREMENT SURVIVING SPOUSE PENSION

SECTION 5.01. GENERAL

The following provisions are subject to all of the conditions and limitations in this Article.

- (a) If a married Participant makes a benefit election after December 31, 1984, the benefit shall automatically be paid as a 50% Participant and Surviving Spouse Pension unless:

- i. the Participant and Spouse elect otherwise in accordance with Subsection 5.02(e);
or
 - ii. the benefit is payable only in a single sum pursuant to Section 6.15.
- (b) If a married Participant with a vested right to a pension under the Plan dies after August 22, 1984 but before the Annuity Starting Date, a Preretirement Surviving Spouse Pension shall be payable as described in Section 5.03.
- (c) With regards to the 50% Participant and Spouse Pension payable under Section 5.02, the Trustees shall provide the Participant, no less than 30 days and no more than 180 days prior to the Annuity Starting Date (and consistent with Treasury regulations), a written explanation of:
- i. The terms and conditions of the 50% Participant and Spouse Pension, and
 - ii. The Participant's right to make and election to waive the 50% Participant and Spouse Pension, and
 - iii. The right of the Participant's spouse to consent to any election to waive the 50% Participant and Spouse Pension, and
 - iv. The right of the Participant to revoke such election and the effect of such revocation.

Such explanation shall include a general description of the material features, and an explanation of the relative values of the optional forms of benefit available under Sections 5.03 and 5.04 of the Plan in a manner that would satisfy the notice requirements of IRC 417(a)(3) and Treas. Reg. 1.417(a)(3)-1.

SECTION 5.02. PARTICIPANT AND SURVIVING SPOUSE PENSION AT RETIREMENT

- (a) The pension of a Participant who is married to a Qualified Spouse on the Annuity Starting Date shall be paid in the form of a 50% Participant and Surviving Spouse Pension, payable immediately, unless a valid waiver of that form of payment has been filed with the Trustees. This includes a Disability Pension that is payable.
- (b) A 50% Participant and Surviving Spouse Pension means that the Participant will receive an adjusted monthly amount for life and, if the Participant dies before his Qualified Spouse, the latter will receive a monthly benefit for her lifetime equal to 50% of the Participant's adjusted monthly amount. The 50% Participant and Surviving Spouse Pension shall be the Actuarial Equivalent of the Five Year Certain and Single Life Annuity (as adjusted, if applicable, for Early Retirement).
- (c) A 50% Participant and Surviving Spouse Pension, once payments have begun, may not be revoked nor the Pensioner's benefits increased by reason of subsequent divorce or death of the Spouse before that of the Participant, except as provided below.

Effective for Spouses whose death occurs after June 1, 2006, if a Spouse predeceases a Participant who has elected the 50% Participant and Surviving Spouse, the Participant's pension will be adjusted upward (pop-up) to the original pension benefit prior to the adjustment for the 50% Participant and Surviving Spouse Pension option, i.e. the Single Life Annuity. This benefit pop-up will only apply upon the death of the Spouse who was married to the Participant at the time the Participant's retirement began. This benefit will not apply when a Qualified Domestic Relations Order (QDRO) is in effect. This pop-up benefit will only take effect prospectively upon notification from the participant.

- (d) A retiring Participant shall be advised by the Trustees of the effect of payment on the basis of the 50% Participant and Surviving Spouse Pension, including a comparison of the full single life pension amount and of the adjusted amount.
- (e) The 50% Participant and Surviving Spouse Pension may be waived in favor of another form of distribution only as follows:
 - i. The Participant files the waiver in writing in such form as the Trustees may prescribe, and the Participant's Spouse acknowledges the effect of the waiver and consents to it in writing, witnessed by a notary public, or the Fund Administrator or his designee, or as provided for by applicable law.
 - ii. The Participant establishes to the satisfaction of the Trustees that:
 - (A) he is not married; or
 - (B) the Spouse whose consent would be required cannot be located; or
 - (C) the Participant and spouse are legally separated, or
 - (D) the Participant has been abandoned by the spouse as confirmed by a court order, or
 - (E) consent of the Spouse cannot be obtained because of extenuating circumstances, as provided in IRS regulations.
 - iii. A waiver is valid only if a written explanation of the effect of the 50% Participant and Surviving Spouse Pension has been provided to the Participant no more than one hundred eighty days before the Annuity Starting Date and no less than thirty days before the Annuity Starting Date. The Participant may file a new waiver or revoke a previous waiver at any time and any number of times during the 180-day period prior to the Annuity Starting Date. Notwithstanding the foregoing, a Participant may commence receiving benefits before thirty days have elapsed from receipt of such notice provided the Participant and Spouse waive such thirty-day advance waiting period, in writing. In no event shall the benefit commence prior to the eighth day after the Participant and Spouse execute a separate thirty-day waiting period waiver. Once payments have begun, the form of benefit elected cannot be changed.
 - iv. A Spouse's consent to a waiver of the Participant and Surviving Spouse Pension shall be effective only with respect to that Spouse and shall be irrevocable unless the Participant revokes the waiver to which it relates if allowed by law.

- v. The Spouse's consent to a waiver of the Participant and Surviving Spouse Pension shall include a consent to the specific non-spouse beneficiary designated and the optional form of benefit payment elected, neither of which may be further modified without subsequent spousal consent, unless expressly permitted by the Spouse.
- (f) If the 50% Participant and Surviving Spouse Pension would be payable except for the fact that the Spouse is not a Qualified Spouse on the Annuity Starting Date, because the Participant and Spouse have not been married for at least a year at that time, pension payments to the Participant shall be made in the amount adjusted for the 50% Participant and Surviving Spouse Pension and if the Participant and Spouse have not been married to each other for at least a year before the death of the Participant, the difference between the amounts that had been paid and the amounts that would have been paid if the monthly amount had not been adjusted shall be paid to the Spouse, if then alive, and otherwise to the Participant's Beneficiary.

SECTION 5.03. 75% OPTIONAL PARTICIPANT AND SURVIVING SPOUSE PENSION AT RETIREMENT

A participant who is eligible for the automatic 50% Participant and Surviving Spouse Pension under Section 5.02 may waive his 50% Participant and Surviving Spouse Pension with spousal consent and elect to receive a 75% Participant and Surviving Spouse Pension.

A 75% Participant and Surviving Spouse Pension means that the Participant will receive an adjusted monthly amount for life and, if the Participant dies before his Qualified Spouse, the latter will receive a monthly benefit for her lifetime equal to 75% of the Participant's adjusted monthly amount. The 75% Participant and Surviving Spouse Pension shall be the Actuarial Equivalent of the Five Year Certain and Single Life Annuity (as adjusted, if applicable, for Early Retirement).

Effective for Spouses whose death occurs after December 18, 2012, if a Spouse predeceases a Participant who has elected the 75% Participant and Surviving Spouse Pension, the Participant's pension will be adjusted upward (pop-up) to the original pension benefit prior to the adjustment for the 75% Participant and Surviving Spouse Pension option, i.e. the Single Life Annuity. This benefit pop-up will only apply upon the death of the Spouse who was married to the Participant at the time the Participant's retirement began. This benefit will not apply when a Qualified Domestic Relations Order (QDRO) is in effect. This pop-up benefit will only take effect prospectively upon notification from the participant.

SECTION 5.04. 100% OPTIONAL PARTICIPANT AND SURVIVING SPOUSE PENSION AT RETIREMENT

A participant who is eligible for the automatic 50% Participant and Surviving Spouse Pension under Section 5.02 may waive his 50% Participant and Surviving Spouse Pension with spousal consent and elect to receive a 100% Participant and Surviving Spouse Pension.

A 100% Participant and Surviving Spouse Pension means that the Participant will receive an adjusted monthly amount for life and, if the Participant dies before his Qualified Spouse, the latter will receive a monthly benefit for her lifetime equal to 100% of the Participant's adjusted monthly amount. The 100% Participant and Surviving Spouse Pension shall be the Actuarial Equivalent of the Five Year Certain and Single Life Annuity (as adjusted, if applicable, for Early Retirement).

Effective for Spouses whose death occurs after December 18, 2012, if a Spouse predeceases a Participant who has elected the 100% Participant and Surviving Spouse Pension, the Participant's pension will be adjusted upward (pop-up) to the original pension benefit prior to the adjustment for the 100% Participant and Surviving Spouse Pension option, i.e. the Five Year Certain and Single Life Annuity. This benefit pop-up will only apply upon the death of the Spouse who was married to the Participant at the time the Participant's retirement began. This benefit will not apply when a Qualified Domestic Relations Order (QDRO) is in effect. This pop-up benefit will only take effect prospectively upon notification from the participant.

SECTION 5.05. PRERETIREMENT SURVIVING SPOUSE PENSION

- (a) If a Participant who has a Qualified Spouse dies before the Annuity Starting Date but at a time when he had earned a vested right to a pension, a Preretirement Surviving Spouse Pension shall be paid to his surviving Qualified Spouse.
- (a) A Spouse is a Qualified Spouse for the purpose of this Section 5.05 if the Participant and Spouse have been married to each other throughout the year immediately before his death, or if they were divorced after being married for at least one year and the former Spouse is required to be treated as a Spouse or surviving Spouse under a Qualified Domestic Relations Order.
- (b) If the Participant described in Subsection 5.05(a) died at a time when he would have been eligible to begin receiving payment of a pension (other than a Disability Pension) had he retired, his surviving Qualified Spouse shall be entitled to a Preretirement Surviving Spouse Pension determined in accordance with the provisions of Section 5.02 as if the Participant had retired the day before he died.
- (c) If the Participant described in Subsection 5.05 (a) above died before he would have been eligible to begin receiving pension payments had he retired (other than a Disability Pension if he died before the Annuity Starting Date), the surviving Qualified Spouse shall be entitled to a Preretirement Surviving Spouse Pension determined as if the Participant had separated from Service under the Plan on the earlier of the date he last worked in Covered Employment or the date of his death, had survived to the earliest retirement age at which a pension (other than a Disability Pension) would be payable to him under the Plan, retired at that age with an immediate 100% Participant and Surviving Spouse Pension, and died the next day. In other words, the Preretirement Surviving Spouse Pension begins when the Participant would have attained the earliest retirement age for which he would have qualified for a pension, and the amount is 100% of what the Participant's pension amount would have been, after adjustment, if any, for the early retirement and for the 100% Participant and Surviving Spouse Pension form. The amount

shall be determined under the terms of the Plan in effect when the Participant last worked in Covered Employment, unless otherwise expressly specified.

- (d) Notwithstanding any other provision in this Article V, a Preretirement Surviving Spouse Pension shall not be paid in the form, manner or amount described above if one of the alternatives set forth in this Subsection 5.05 (e) applies.
- i. If the Actuarial Present Value of the benefit is \$5,000 or less, the Trustees shall make a single-sum payment to the Spouse in any amount equal to the Actuarial Present Value, in full discharge of the Preretirement Surviving Spouse Pension.
 - ii. The Spouse may elect in writing, filed with the Trustees, and on whatever form the Trustees may prescribe, to defer commencement of the Preretirement Surviving Spouse Pension until a specified date that is no later than the first of the month on or immediately before the date:
 - A. on which the Participant would have reached age 70-1/2 for participants who turn (or would have turned) 70 ½ on or before December 31, 2019 (i.e. whose birthdate is on or before June 30, 1949); or
 - B. on which the Participant would have reached age 72 for participants who turn 70 ½ after December 31, 2019 (i.e. whose birthdate is on or after July 1, 1949).

The amount payable at that time shall be determined as described in Subsection 5.05(c) and (d), except that the benefit shall be paid in accordance with the terms of the Plan in effect when the Participant last worked in Covered Employment (unless otherwise specified) as if the Participant had retired with a 50% Participant and Surviving Spouse Pension on the day before the surviving Spouse's payments are scheduled to start, and died the next day.

- iii. If the Preretirement Surviving Spouse Pension is payable under Subsection 5.05 and it would not otherwise start until at least one year after the Trustees learn of the Participant's death, the surviving Spouse may elect to have payments start earlier, but no earlier than 60 days after she applies for the benefits, on whatever form the Trustees may prescribe. In that case, the monthly benefits will be adjusted so that the Actuarial Present Value of the pension payable to the surviving Spouse is equivalent to that of the pension that would have been payable under Subsection 5.05 (d). No election may be made under this paragraph if the pension that would become payable to the surviving Spouse would be less than \$25 per month.

SECTION 5.06. INACTIVE VESTED PARTICIPANTS

- (a) A Participant who:
- i. had at least one Hour of Service under the Plan after September 1, 1974,
 - ii. is vested,

- iii. had not retired under the Plan before August 23, 1984, and
 - iv. is not otherwise entitled to, or eligible to elect, protection for a surviving Spouse through a "Qualified Joint and Survivor Annuity" within the meaning of §205 of ERISA, either before or after enactment of the Retirement Equity Act of 1984, shall be entitled to elect to receive his benefits as a Participant and Surviving Spouse Pension in accordance with the provisions of this Plan by written request filed with the Trustees before the Annuity Starting Date.
- (b) A Participant who:
- i. had at least one Hour of Service for an Employer on or after January 1, 1976,
 - ii. had a vested right to a pension and credit for at least ten Years of Vesting Service, and
 - iii. was not receiving pension payments under the plan as of August 23, 1984, shall be entitled to protection for a surviving Spouse through a "Qualified Joint and Survivor Annuity" under this Article V as amended on account of the Retirement Equity Act of 1984.
- (c) The benefit schedule applied under this Section 5.06 shall be that in effect as of the beginning of the Plan Year immediately after 1975 or, if later, the beginning of the Plan Year immediately after the Participant last completed a Year of Service, unless otherwise expressly specified.

SECTION 5.07. RELATION TO QUALIFIED DOMESTIC RELATIONS ORDER

Any rights of a former Spouse or other alternate payee under a Qualified Domestic Relations Order, within the meaning of §206(d)(3) of ERISA and §414(p) of the Internal Revenue Code with respect to a Participant's pension, shall take precedence over those of any later Spouse of the Participant.

SECTION 5.08. TRUSTEES RELIANCE

The Trustees shall be entitled to rely on written representations, consents, and revocations submitted by Participants, Spouses or other parties in making determinations under this Article and, unless such reliance is arbitrary or capricious, the Trustees' determinations shall be final and binding, and shall discharge the Fund and the Trustees from liability to the extent of the payments made. This means that, unless the Plan is administered in a manner determined to be inconsistent with the fiduciary standards of Part 4 of Title I of ERISA, the Fund shall not be liable under this Article for duplicate benefits with respect to the same Participant, or for surviving Spouse benefits in excess of the Actuarial Present Value of the benefits described in this Article, determined as of the Annuity Starting Date of the Participant's pension or, if earlier, the date of the Participant's death.

SECTION 5.09. BENEFIT ADJUSTMENTS IF PAYMENT OF PRERETIREMENT SURVIVING SPOUSE PENSION POSTPONED

- (a) Notwithstanding any other provisions of the Plan, if the Annuity Starting Date for the Preretirement Surviving Spouse Pension is after the Participant's earliest retirement date,

the benefit shall be determined as if the Participant had died on the surviving Spouse's Annuity Starting Date after retiring with a Participant and Surviving Spouse Pension the day before, taking into account any actuarial adjustments to the Participant's accrued benefit that would have applied as of that date.

- (b) If a surviving Spouse dies before the Annuity Starting Date for the Preretirement Surviving Spouse Pension, that benefit will be forfeited and unless an alternate Beneficiary has been designated by the Participant with the acknowledgement and consent of the Participant's Spouse under Section 5.05, there will be no payments to any other party.

SECTION 5.10. SURVIVOR BENEFIT LIMITATIONS

When a Participant's entire interest in the Plan is distributed in a form other than a lump sum, the distribution shall be made in one or more of the following ways:

- i. Over the life of the Participant; or
- ii. Over the life of the Participant and a designated beneficiary; or
- iii. Over a period certain not extending beyond the joint life and last survivor expectancy of the Participant and a designated beneficiary.

In the event a Participant should die prior to the commencement of benefit payments, such Participant's remaining interest, if any, shall be distributed subject to the following:

- a. Any remaining portion of the Participant's interest that is not payable to a beneficiary designated by the Participant shall be distributed within five (5) years after the Participant's death; or
- b. Any remaining portion of the Participant's interest that is payable to a beneficiary designated by the Participant shall be distributed either:
 - (i) within five (5) years after the Participant's death, or
 - (ii) over the life expectancy of the beneficiary.

Such distributions shall commence no later than the end of the calendar year following the calendar year in which the Participant dies; or: if the designated beneficiary is the Participant's surviving Spouse:

- i. For participants who turn (or would have turned) 70 ½ on or before December 31, 2019 (i.e., whose birthdate is on or before June 30, 1949), commencing no later than the end of the calendar year in which the participant would have attained age 70 ½,
- ii. For participants who turn 70 ½ after December 31, 2019 (i.e. whose birthdate is on or after July 1, 1949), commencing no later than the end of the calendar year in which the participant would have attained age 72.

In the event a participant should die subsequent to the commencement of benefit payments hereunder, such Participant's interest, if any, shall be distributed at least as rapidly as under the method of distribution being used as of the Participant's death.

Notwithstanding any other provision of the Plan, all survivor benefits shall comply with the limits of §401(a)(9) of the Internal Revenue Code and the incidental death benefit rule and the regulations prescribed thereunder including §1.401(a)(9)-1 and §1.401(a)(9)-2 of the Proposed Treasury Regulations, as amended from time to time, the provisions of which are incorporated herein by reference.

ARTICLE VI - APPLICATIONS, BENEFIT PAYMENTS AND RETIREMENT

SECTION 6.01. APPLICATIONS FOR BENEFITS

Pension Benefits must be applied for in writing filed with the Trustees in advance of the Annuity Starting Date.

Every claimant for benefits shall furnish, at the request of the Trustees, any information or proof reasonably required to determine his benefit rights. If the claimant makes a willfully false statement material to his application or furnishes fraudulent information or proof material to his claim, benefits not vested under this Plan (as defined in Section 6.10) may be denied, suspended or discontinued as determined by the Trustees. The Trustees shall have the right to recover, through legal proceedings, any benefits paid in reliance on any willfully false or fraudulent statement, information or proof submitted by a claimant (including withholding of material fact) plus interest and costs, without limitation by recovery through offset of benefit payments as permitted in this Article.

SECTION 6.02. ACTION OF TRUSTEES

- (a) The Trustees shall, subject to the requirements of the law, be the sole judges of the standard of proof required in any case and the application and interpretation of this Plan, and the decisions of the Trustees shall be final and binding on all parties.
- (b) Wherever in the Plan the Trustees are given discretionary powers, they shall exercise such powers in a uniform and non-discriminatory manner. The Trustees shall process a claim for benefits as speedily as is feasible, consistent with the need for adequate information and proof necessary to establish the claimant's benefit rights and to commence the payment of benefits.
- (c) All questions or controversies of whatsoever character arising in any manner or between any parties or persons in connection with this Plan or its operation, whether as to any claim for benefits, as to the construction of the language of this Plan or any rules and regulations adopted by the Trustees, or as to any writing, decision, instrument or account in connection with the operation of the Plan or otherwise, shall be submitted to the Board of Trustees for decision. In the event a claim for benefits has been denied, no lawsuit or other action against the Fund or its Trustees may be filed until the matter has been

submitted for review under the ERISA-mandated review procedure set forth in Section 6.04. The decision on review shall be binding upon all persons dealing with the Plan or claiming any benefit hereunder, except to the extent that such decision may be determined to be arbitrary or capricious by a court or arbitrator having jurisdiction over such matter.

SECTION 6.03. BENEFIT PAYMENTS GENERALLY

- (a) A Participant who is eligible to receive benefits under this Plan and who makes application in accordance with the rules of the Pension Plan shall be entitled, upon the Annuity Starting Date, to receive the monthly benefits provided for the remainder of his life, subject to the other provisions of this Article and of any other applicable provisions of this Plan.
- (b) Pension benefits shall be payable commencing with the Annuity Starting Date. Unless the Participant elects otherwise, benefits may begin sooner, but shall not be delayed to a date later than 60 days after the last of the following dates:
 - i. the end of the Plan Year in which the Participant attained Normal Retirement Age;
 - ii. the end of the Plan Year in which the Participant retired as that term is defined in Section 6.07; or
 - iii. the date the Participant filed a claim for benefits.
- (c) A Participant may, however, elect in writing filed with the Trustees to postpone commencement of benefits to a date no later than his Required Beginning Date.
 - i. A Participant who earns additional Pension Credit who is being paid a pension because he has attained the Required Beginning Date will have his pension recalculated each January 1, for the additional Pension Credit earned during the Plan Year without any offset of the payments received against the additional Pension Credit earned.
 - ii. A Participant who has been definitely located, who has attained his Required Beginning Date, and fails to complete an application for benefits on a timely basis will have his benefits paid as follows:
 - A. If the Actuarial Present Value of the Participant's benefit is no more than \$1,000 or \$5,000 prior to March 28, 2005, in a single-sum payment
 - B. In any other case, in the form of a Participant and Surviving Spouse Pension calculated on the assumptions that the Participant is and has been married for at least one year by the date payments start and that the Participant is three years older than the Surviving Spouse.
 - C. The benefit payment form specified here will be irrevocable once it begins, with the sole exception that it may be changed to a single life annuity if the

Participant proves that he did not have a Qualified Spouse (including an alternate payee under a Qualified Domestic Relations Order) on the Required Beginning Date; also, the amounts of future benefits will be adjusted based on the actual age difference between the Participant and Spouse if proven to be different from the foregoing assumptions.

- (d) Effective January 1, 1989, if the Annuity Starting Date is after the Participant's Normal Retirement Age, the monthly benefit will be the accrued benefit at Normal Retirement Age, actuarially increased for each complete calendar month between Normal Retirement Age and the Annuity Starting Date for which benefits were not suspended pursuant to the provisions of this Plan, and then converted as of the Annuity Starting Date to the benefit payment form elected in the pension application or to the automatic form, of Participant and Surviving Spouse Pension, if no other form is elected.
 - i. If a Participant first becomes entitled to additional benefits after Normal Retirement Age, whether through additional service or because of a benefit increase, the actuarial increase in those benefits will start from the date they would first have been paid rather than Normal Retirement Age.
 - ii. The actuarial increase will be 1% per month for the first sixty (60) months after Normal Retirement Age and 1.5% per month for each month thereafter.

For purposes of determining the number of months in which to apply the actuarial increase referenced in this subsection (d), any month after the date the participant attains age 70 ½ will not be excluded even if the participant is working in suspendible employment as defined in Section 6.08

- (e) A Pensioner who returns to Covered Employment and earns additional accrual shall be entitled to a new election as to form of benefit payment for such additional accrual; provided, however, that the first election on or after Normal Retirement Age shall apply for any subsequent accrual earned.
- (f) Effective January 1, 1986, if a Participant's Beneficiary is not his surviving Spouse, the payment of any benefits under this Plan that become payable on account of the Participant's death shall begin no later than one year from the date of death or, if later, as soon as practicable after the Trustees learn of the death.
- (g) Notwithstanding any other provision of this Plan, if the Actuarial Present Value of a benefit payable under this Plan is \$1,000 or less (\$5,000 or less prior to March 28, 2005) as of the date payment would start, the Trustees shall pay it in accordance with Section 6.15.

SECTION 6.04. RETIREMENT

To be considered retired, a Participant must have separated from Service and completely terminated employment with any and all employers in the Sheet Metal Industry.

Notwithstanding the Suspension of Benefits provisions in Section 6.08, no retiree shall be subject to the suspension of his or her benefits if, for a period of five (5) years or longer prior to the time of his or her retirement and continuing thereafter, he or she owns a Sheet Metal business performing services as described in the Sheet Metal Workers Local No. 33 Collective Bargaining Agreement; provided, however, the owner shall not perform any collective bargaining unit work and the business remains signatory to a Sheet Metal Workers' union collective bargaining agreement. For purposes of this section, an "owner" is a Participant who individually owns at least a 25% controlling interest in the business, or whose spouse owns at least a 25% controlling interest in the business and the Participant is actively involved in the management of the business, as determined in the sole discretion of the Trustees. An owner is retired upon cessation of covered employment.

SECTION 6.05. SUSPENSION OF BENEFITS

(a) Before Normal Retirement Age

- i. The monthly benefit shall be suspended for any month in which the Participant is employed in any Disqualifying Employment after he/she has retired but prior to Normal Retirement Age, or continues or engages in Disqualifying Employment prior to Normal Retirement Age.
- ii. "Disqualifying Employment" prior to Normal Retirement Age is the following employment within the jurisdiction of the International Association of Sheet Metal, Air, Rail and Transportation Workers:
 - A. Employment for any employer, in work of any type covered by the terms of the Collective Bargaining Agreement in effect between the Union and the Association, including supervision of the same;
 - B. Any employment or self-employment within the Sheet Metal industry including, but not limited to, employment by manufacturers and suppliers or distributors, whether wholesale or retail, of any materials, supplies, equipment, systems or machines for the Sheet Metal Industry.
- iii. "Disqualifying Employment," for the period before Normal Retirement Age does NOT include:
 - A. Employment by a Contributing Employer in the following positions, provided the Participant did not engage in such work within three months following his/her Annuity Starting Date:
 1. Estimating
 2. Sales
 3. Driver/Delivery
 4. Office or Clerical, including Accounting and Purchasing
 5. Janitorial and Maintenance

- B. Employment as a trainer, instructor or coordinator for training or apprenticeship programs operated by, on behalf of, or in conjunction with the Union.

The above exceptions apply to the Participant's entire pension benefit, regardless of when accrued.

- iv. Monthly benefits shall also be suspended for the six consecutive months after any consecutive period of one or more months during which the Participant was engaged in Disqualifying Employment. If the Participant has failed to notify the Plan of Employment that may be the basis for suspension of benefits under Paragraph 6.08(a), in accordance with the notification requirements of Subsection 6.08(d), or has willfully misrepresented to the Plan with respect to Disqualifying Employment, the monthly benefit shall be suspended for an additional six months.
- (b) After Normal Retirement Age and Prior to Age 70 ½.
- i. The monthly benefit shall be suspended for any month in which the Participant is employed in Disqualifying Employment for 40 hours or more after he/she has retired and after Normal Retirement Age or continues or engages in Disqualifying Employment after Normal Retirement Age.
 - ii. "Disqualifying Employment" after Normal Retirement Age is employment in:
 - A. An industry in which employees covered by the Plan were employed and accrued benefits under the Plan (as a result of such employment at the time that the payment of benefits commenced or would have commenced if the employees had not returned to employment), and
 - B. A Trade or Craft in which the employee was employed at any time under the Plan, and
 - C. The Geographic Area covered by the Plan (at the time that the payment of benefits commenced or would have commenced if the employee has not returned to employment).

The terms Industry, Trade or Craft and Geographic Area for purposes of this subsection shall be consistent with Section 2530.203-3 of ERISA in its current form or as it may be amended.

- iii. "Disqualifying Employment," for the period after Normal Retirement Age does NOT include Employment as a trainer, instructor or coordinator for training or apprenticeship programs operated by, on behalf of, or in conjunction with the Union. These exceptions apply to the Participant's entire pension benefit, regardless of when accrued.

- iv. Paid non-work time shall be counted toward the measure of 40 hours if paid for vacation, holiday, illness or other incapacity, layoff, jury duty, or other leave of absence. However, time compensated under a Workers' Compensation or temporary disability benefits law shall not be so counted."

(c) Definition of Suspension of Benefits.

"Suspension of benefits" for a month means non-entitlement to benefits for the month. If benefits were paid for a month for which benefits were later determined to be suspended, the overpayment shall be recoverable through deductions from future pension payments, pursuant to Subsection 6.08(f), and in accordance with Section 6.02.

(d) Notices

- i. Upon commencement of pension payments, the Trustees shall notify the Pensioner of the Plan rules governing suspension of benefits, including identity of the industries and area covered by the Plan. If benefits have been suspended and payment resumed, new notification shall, upon resumption of benefits, be given to the Participant if there has been any material changes in the suspension rules or the identity of the industries or area covered by the Plan.
- ii. A Pensioner shall notify the Plan in writing within 21 days after starting work of a type that is or may be disqualifying under the provisions of the Plan and without regard to the number of hours of such work (that is, whether or not less than 40 hours in a month).
- iii. If a Pensioner has worked in disqualifying employment in any month and has failed to give timely notice to the Plan of such employment, the Trustees shall presume that he worked for at least 40 hours in such month and any subsequent month before the Participant gives notice that he has ceased disqualifying employment. The Participant shall have the right to overcome such presumption by establishing to the satisfaction of the Trustees that his work was not in fact an appropriate basis, under the Plan, for suspension of benefits.

If a Pensioner has worked in disqualifying employment for any number of hours for a contractor at a building or construction site and he has failed to give timely notice to the Plan of such employment, the Trustees shall presume that he has engaged in work for as long as the contractor has been and remains actively engaged at that site. The Participant shall have the right to overcome such presumption by establishing to the satisfaction of the Trustees that his work was not in fact an appropriate basis, under the Plan, for suspension of his benefits. The Trustees shall inform all retirees at least once every 12 months of the reemployment notification requirements and the presumptions set forth in this Subsection 6.08(d).

- iv. A Pensioner whose pension has been suspended shall notify the Plan when disqualifying employment has ended. The Trustees shall have the right to withhold benefit payments until such notice is filed with the Plan.
- v. A Participant may ask the Plan whether a particular type of employment will be disqualifying. The Plan shall provide the Participant with its determination.
- vi. The Plan shall inform a Participant of any suspension of his benefits by notice given by personal delivery or first-class mail during the first calendar month in which his benefits are withheld.

(e) Review

A Participant shall be entitled to a review of a determination suspending his benefits by written request filed with the Trustees within 60 days of the notice of suspension.

The same right of review shall apply, under the same terms, to a determination by or on behalf of the Trustees that contemplated employment will be disqualifying.

(f) Resumption of Benefit Payments.

- i. Benefits shall be resumed for the months after the last month for which benefits were suspended, with payments beginning no later than the third month after the last calendar month for which the Participant's benefits were suspended, provided the Participant has complied with the notification requirement of Paragraph 6.08(d)(iii).
- ii. Overpayments attributable to payments made for any month or months for which the Participant had disqualifying employment shall be deducted from pension payments otherwise paid or payable subsequent to the period of suspension. A deduction from a monthly benefit for a month after the Participant attained Normal Retirement Age shall not exceed 25% of the pension amount (before deduction), except that the Plan may withhold up to 100% of the first pension payment made upon resumption of benefits after a suspension. If a Pensioner dies before a recoupment of overpayments has been completed, deductions shall be made from the benefits payable to his Beneficiary or Spouse receiving a pension subject to the 25% limitation on the rate of reduction.

SECTION 6.06. BENEFIT PAYMENTS FOLLOWING SUSPENSION

- (a) A Pensioner who returns to Covered Employment and earns additional accrual shall be entitled to a re-computation of his pension on the same basis as a Participant who has not retired and shall be subject to the provisions of Section 3.17, Benefit Increases.

If a Pensioner retired on a pension payable before Normal Retirement Age, his benefits were suspended because of disqualifying employment and he was not credited with

additional accrual his pension amount will be adjusted for his age when his payments are resumed.

- (b) If a Pensioner who retired on a pension payable before his Normal Retirement Age (except a Disability Pension) returns to work in disqualifying employment, he shall, upon resumption of his pension, have his pension amount, as determined in accordance with Subsection (a), reduced by the Actuarial Equivalent of his previous pension payments.
 - i. For the purpose of this subsection, the Actuarial Equivalent is determined by dividing the total amount of pension payments a Pensioner has received prior to Normal Retirement Age by the factor appropriate to his age upon his subsequent retirement, as shown in Appendix A.
 - ii. If the monthly benefit resulting from the deduction of the actuarial equivalent of payments received prior to Normal Retirement Age is less than the previous pension amount payable before Normal Retirement Age, the amount payable upon resumption of his pension will be equal to the previous pension amount payable before Normal Retirement Age.
- (c) In no event, however, shall any adjustment of a benefit amount under this Section result in forfeiture of a Participant's Normal Retirement benefit or of its actuarial equivalent in violation of Section 203(a)(3)(B) of ERISA.
- (d) A Participant and Surviving Spouse Pension in effect immediately prior to suspension of benefits shall remain effective if the Pensioner's death occurs while his benefits are in suspension.
- (e) A Pensioner who returns to Covered Employment and earns additional accrual shall be entitled to a new election as to form of benefit payment for such additional accrual; provided, however, that the first election on or after Normal Retirement Age shall apply for any subsequent accrual earned.

SECTION 6.07. VESTED STATUS OR NONFORFEITABILITY

- (a) The Employee Retirement Income Security Act of 1974 (ERISA) requires that certain benefits under this Plan be vested or non-forfeitable.
- (b) Vested status is earned as follows:
 - i. A Participant's right to his Regular Pension is non-forfeitable upon his attainment of Normal Retirement Age, except to the extent that benefits are cancelled, pursuant to Section 7.04, because the Employer has ceased to contribute to the Plan with respect to the employment unit in which the Participant was employed.
 - ii. A Participant acquires Vested Status after completion of five Years of Vesting Service (except, of course, for Years of Vesting Service that are not taken into

account because of a Permanent Break in Service). A Participant who performs work in Non-Bargained Employment acquires Vested Status in accordance with Section 9.04.

- (c) ERISA also provides certain limitations on any Plan amendment that may change the Plan's vesting schedule. In accordance with those legal limitations, no amendment of this Plan may take away a Participant's Vested Status if he has already earned it at the time of the amendment. Also, an amendment may not change the schedule on the basis of which a Participant acquires vested status, unless each Participant who has credit for at least three Years of Vesting Service at the time the amendment is adopted or effective (whichever is later) is given the option of achieving Vested Status on the basis of the pre-amendment schedule. That option may be exercised within 60 days after the latest of the following dates:
- i. When the amendment was adopted,
 - ii. When the amendment became effective, or
 - iii. When the Participant was given written notice of the amendment

SECTION 6.08. NON-DUPLICATION OF DISABILITY BENEFITS

No pension benefits shall be payable for any month for which the Participant or Pensioner receives wage indemnification for disability from the Sheet Metal Workers Local No. 33 Youngstown District Welfare Fund or an Employer or an Employee-financed disability insurance plan. This provision shall, however, be subject to the provisions of Section 6.08(b).

SECTION 6.09. INCOMPETENCE OR INCAPACITY OF A PENSIONER OR BENEFICIARY

In the event it is determined to the satisfaction of the Trustees that a Pensioner or Beneficiary is unable to care for his affairs because of mental or physical incapacity, any payment due may be applied, in the discretion of the Trustees, to the maintenance and support of such Pensioner or Beneficiary or to such person as the Trustees in their sole discretion find to be an object of the natural bounty of the Pensioner or Beneficiary in the manner decided by the Trustees; unless, prior to such payment, claim shall have been made for such payment by a legally-appointed guardian, committee, or other legal representative appropriate to receive such payments on behalf of the Pensioner or Beneficiary.

SECTION 6.10. NON-ASSIGNMENT OF BENEFITS

- (a) No Participant, Pensioner or Beneficiary entitled to any benefits under this Plan shall have the right to assign, alienate, transfer, encumber, pledge, mortgage, hypothecate, anticipate, or impair in any manner his legal or beneficial interest, or any interest in assets of the Pension Fund, or benefits of this Pension Plan. Neither the Pension Fund nor any of the assets thereof, shall be liable for the debts of any Participant, Pensioner or Beneficiary entitled to any benefits under this Plan, nor be subject to attachment or execution or process in any court action or proceeding.

- (b) Notwithstanding Subsection 6.13(a) or any other provision of the Plan, benefits shall be paid in accordance with a Qualified Domestic Relations Order as defined in §206(d)(3) of ERISA, and with written procedures adopted by the Trustees for compliance with such Orders, which shall be binding on all Participants, Beneficiaries and other parties. In no event shall the existence or enforcement of a Qualified Domestic Relations Order cause the Fund to pay benefits with respect to a Participant in excess of the Actuarial Present Value of the Participant's benefits without regard to the Order, and benefits otherwise payable under the Plan shall be reduced by the Actuarial Present Value of any payment required pursuant to a Qualified Domestic Relations Order. Section 1.01 shall apply to determine the Actuarial Present Value of a benefit in accordance with a Qualified Domestic Relations Order, if necessary. Payments may also be made to an alternate beneficiary as provided under this Plan.

SECTION 6.11. NO RIGHT TO ASSETS

No person other than the Trustees of the Fund shall have any right, title or interest in any of the income, or property of any funds received or held by or for the account of the Pension Fund; and no person shall have any right to benefits provided by the Plan except as expressly provided herein.

SECTION 6.12. SMALL BENEFIT CASH OUTS

Notwithstanding any other provision of this Plan, if the Actuarial Present Value of a benefit payable under the Plan is \$1,000 or less (\$5,000 or less prior to March 28, 2005) as of the Annuity Starting Date, the Trustees shall pay the benefit in a single sum equal to that value. If the value of the benefit is more than \$1,000 (but not exceeding \$5,000), distribution shall be made upon the Participant's (without spouse consent) written request. This section shall not apply after payment of the Participant's pension payments have commenced unless the Participant or beneficiary, as the case may be, consents in writing to the lump-sum distribution.

SECTION 6.13. OPTIONAL FORMS OF BENEFITS

Unless otherwise specified, any optional form of benefit under this Plan is intended to be at least the Actuarial Equivalent of the Participant's non-forfeitable accrued benefit payable at Normal Retirement Age or, if later, the Participant's Annuity Starting Date.

SECTION 6.14. MAXIMUM LIMITATION

- (a) Limitations on Benefits Under Section 415.

In addition to any other limitations set forth in the Plan and notwithstanding any other provisions of the Plan, effective for Limitation Years beginning on and after May 1, 2007, benefits under the Plan shall be limited in accordance with Section 415 of the Code and the Treasury Regulations thereunder, in accordance with this Section. This Section 6.17 is intended to incorporate the requirements of Section 415 of the Code by reference including the final Regulations effective January 1, 2008, the Pension Funding Equity

Act of 2004 effective January 1, 2004 and the Pension Protection Act of 2006 effective January 1, 2006, except as otherwise specified herein.

(b) Definitions.

- i. "Limitation Year" means the Calendar Year. "Plan Benefit" means as of any date, the amount of a Participant's Benefit as determined under the applicable provisions of the Plan before application of the limits in this Section.
- ii. Compensation for purposes of this Section is as defined in Section 1.06 of the Plan.
- iii. "Severance From Employment" has occurred when a Participant is no longer an employee of an Employer maintaining the Plan.

(c) Limit on Accrued Benefits.

For Limitation Years beginning on or after May 1, 2007, in no event shall a Participant's benefit accrued under the Plan for a Limitation Year exceed the annual dollar limit determined in accordance with Section 415 of the Code and the Treasury Regulations thereunder (the "annual dollar limit") for that Limitation Year. If a Participant's Plan Benefit for a Limitation Year beginning on or after July 1, 2007 would exceed the annual dollar limit for that Limitation Year, the accrued benefit, but not the Plan Benefit, shall be frozen or reduced so that the accrued benefit does not exceed the annual dollar limit for that Limitation Year.

(d) Limits on Benefits Distributed or Paid.

For Limitation Years beginning on or after July 1, 2007, in no event shall the annual amount of benefit distributed or otherwise payable to or with respect to a Participant under the Plan in a Limitation Year exceed the annual dollar limit for the Limitation Year. If the benefit distributable or otherwise payable in a Limitation Year would exceed the annual dollar limit for that Limitation Year, the benefit shall be reduced so that the benefit distributed or otherwise payable does not exceed the annual dollar limit for that Limitation Year.

(e) Multiple Plans.

In the event that the aggregate benefit accrued in any Plan Year by a Participant exceeds the limits under Section 415 of the Code and the Treasury Regulations thereunder as a result of the mandatory aggregation of the benefits under this Plan with the benefits under another plan maintained by the Employer, the benefits under this Plan shall be reduced only after all reductions have been made under such other plan.

(f) Interest Rates

- i. Interest Rates for Annuity Starting Dates in Plan Years Beginning on or after January 1, 2006.

Effective for Annuity Starting Dates in Plan Years beginning on or after January 1, 2006, for purposes of adjusting any benefit under Section 415(b)(2)(B) of the Code for any form of benefit subject to Section 417(e)(3) of the Code, the interest rate assumption shall be not less than the greater of:

- A. the interest rate and mortality table specified un the Plan for determining the actuarial equivalence for benefits under Section 417(e) of the Code, or
 - B. 5.5 percent and the Applicable Mortality Table, or
 - C. the interest rate and mortality table specified in the Plan for determining the actuarial equivalence of benefits under Section 417(e) of the Code that produces a benefit of not more than 105% of the benefit that would be provided using the "Applicable Interest Rate".
- ii. Interest Rates for Annuity Starting Dates in Plan Years Between January 1, 2004 and December 31, 2005. Effective for Annuity Starting Dates in Plan Years beginning on or after January 1, 2004, and ending December 31, 2005, for purposes of adjusting any benefit under Section 415(b)(2)(B) of the Code for any form of benefit subject to Section 417(e)(3) of the Code, the interest rate assumption shall be not less than the greater of:
- A. the interest rate and mortality table specified in the Plan for determining the actuarial equivalence of benefits under Section 417(e) of the Code, or
 - B. 5.5 percent and the Applicable Mortality Table.

(g) General

- i. To the extent that a participant's benefit is subject to provisions of Section 415 of the Code and the Treasury Regulations thereunder that have not been set forth in the Plan, such provisions are hereby incorporated by reference into this plan and for all purposes shall be deemed a part of the Plan.
- ii. This Section is intended to satisfy the requirements imposed by Section 415 of the Code and the Treasury Regulations thereunder and shall be construed in a manner that will effectuate this intent. This Section shall not be construed in a manner that would impose limitations that are more stringent than those required by Section 415 of the Code and the Treasury Regulations thereunder.
- iii. If and to the extent that the rules set forth in this Section are no longer required for qualification of the Plan under Section 401(a) and related provisions of the Code and the Treasury Regulations thereunder, they shall cease to apply without the necessity of an amendment to the Plan.

SECTION 6.15. RETIREE BENEFIT IMPROVEMENT

Effective for all Participants and Beneficiaries receiving a benefit from the Fund on June 1,

1999, their monthly benefit amount will be increased by Five percent (5%).

ARTICLE VII – MISCELLANEOUS

SECTION 7.01. NON-REVERSION

In no event shall any of the corpus or assets of the Fund revert to the Employers or be subject to any claims of any kind or nature by the Employers, except for the return of an erroneous contribution within the time limits prescribed by law.

SECTION 7.02. LIMITATION OF LIABILITY

This Plan has been established on the basis of an actuarial calculation which 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 for liabilities which may result from provisions of ERISA and PPA, nothing in this Plan shall be construed to impose any obligation to contribute beyond the obligation of the Employer to make contributions as stipulated in its collective bargaining with the Union.

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

SECTION 7.03. NEW EMPLOYERS

If an Employer is sold, merged or otherwise undergoes a change of company identity, the successor company shall participate as to the Employees theretofore covered in the Pension Plan just as if it were the original company, provided it remains a Contributing Employer as defined in Section 1.08.

SECTION 7.04. TERMINATED EMPLOYER

If an Employer's participation in the Fund with respect to a bargaining unit terminates, the Trustees shall cancel any obligation of the Trust Fund that is maintained under the Trust Agreement with respect to that part of any pension for which a person was made eligible on the basis of employment in such bargaining unit prior to the Contribution Period with respect to that unit, provided that an actuarial study shows the termination significantly affects actuarial costs. No such reduction shall apply to pensions in effect prior to the termination of Employer participation. Neither shall the Trustees, the Employers who remain as Contributing Employers, nor the Union be obliged to make such payments.

SECTION 7.05. TERMINATION

The Trustees shall have the right to discontinue or terminate this Plan in whole or in part. In the event of a full or partial termination of this Plan, the rights of all affected Participants to benefits then accrued, to the extent then funded, shall thereupon become 100% vested and non-forfeitable. Upon termination of the Plan, the Trustees shall take such steps as they deem

necessary or desirable to comply with Sections 4041A and 4281 of ERISA.

SECTION 7.06. CONSOLIDATION AND MERGER

In the case of any merger or consolidation of this Plan, or of the Pension Fund with, or transfer of the assets or liabilities of the Plan and/or Pension Fund to, any other plan, the terms of such merger, consolidation, or transfer shall be such that each Participant would receive (in the event of termination of the Plan, or its successor immediately thereafter) a benefit which is no less than he would have received in the event of termination of this Plan immediately before such merger, consolidation or transfer.

SECTION 7.07. LAWS APPLICABLE

This Plan is intended to comply with the Employee Retirement Income Security Act of 1974 and with the requirements for tax qualification under the Code and all regulations thereunder, and is to be interpreted and applied consistent with that intent.

SECTION 7.08. MISSING BENEFICIARIES AND PARTICIPANTS

Each Participant and each Beneficiary must from time to time file with the Administrator, in writing, his or her post office address and each change of post office address. For purposes of this Plan, any communication, statement or notice addressed to a Participant or Beneficiary at his or her last post office address filed with the Administrator, or if no address is filed with the Administrator, then at the last post office address as shown on the Employer's records, shall be binding on the Participant and his or her Beneficiary. Notwithstanding any other provision of this Plan, if a Participant or Beneficiary to whom the Plan owes benefits cannot, after reasonable and diligent effort by the Administrator, be located or reached by certified letter or registered letter delivered to the appropriate address (as indicated above), then the benefits due such person shall be forfeited after three (3) years from the date on which the letter was sent. The Administrator shall make a reasonable and diligent effort to locate any such person, including, but not limited to, sending notification by certified or registered mail to the last known address of such person, filing Internal Revenue Service Schedule SSA reporting information as required by Code Section 6056(a), and mailing an individual statement pursuant to Code Section 6057(e). If such person later contacts the Administrator and files a claim for benefits, such person's benefits shall be reinstated.

ARTICLE VIII - AMENDMENTS

SECTION 8.01. AMENDMENT

This Plan may be amended at any time by the Trustees, consistent with the provisions of the Trust Agreement and any applicable Collective Bargaining Agreement. However, no amendment may decrease the accrued benefit of any Participant, except:

- (a) As necessary to establish or maintain the qualification of the Plan or the Trust Fund under the Internal Revenue Code and to maintain compliance of the Plan with the requirements of ERISA, or

- (b) If the amendment meets the requirements of §302(c)(8) of ERISA and §412(c)(8) of the Internal Revenue Code, and the Secretary of Labor has been notified of such amendment and has either approved of it or, within 90 days after the date on which such notice was filed, has failed to disapprove.

ARTICLE IX – NON-BARGAINED EMPLOYEES

SECTION 9.01. EMPLOYER

For purposes of identifying Highly Compensated Employees and applying the rules on participation, vesting and statutory limits on benefits under the Fund for such employees, but not for determining covered service, the term "Employer" includes all members of an affiliated service group with the Employer within the meaning of §414(m) of the Internal Revenue Code and all other businesses aggregated with the Employer under §414(o) of the Internal Revenue Code.

For this purpose, an "Employer" also includes all corporations, trades or businesses under common control With the Employer within the meaning of §414(b) and (c) of the Internal Revenue Code.

For all other purposes, the term "Employer" shall have the meaning stated in Article 1.

SECTION 9.02. NON-BARGAINED EMPLOYEE

A "Non-Bargained Employee" means a person who is employed by an Employer and who is not covered by a Collective Bargaining Agreement but is covered by another written agreement requiring Employer contributions to be made on his behalf.

SECTION 9.03. HIGHLY COMPENSATED EMPLOYEE

- (a) The term "Highly Compensated Employee" includes highly compensated active employees and highly compensated former employees of an Employer. Whether an individual is a highly compensated employee is determined separately with respect to each Employer, based solely on that individual's compensation form or status with respect to that Employer.
- (b) A highly compensated active employee is an employee of the Employer who performs service for the Employer during the determination year and who during the look-back year:
- i. received compensation from the Employer in excess of \$80,000 (as adjusted under §414(q) of the Internal Revenue Code); or
 - ii. is a 5% owner at any time during the look-back year or the determination year.
- (c) A highly compensated former employee is an employee who separated from service, or

was deemed to have separated, before the determination year, performs no service for the Employer during the determination year, and was a Highly Compensated Employee either for the separation year or for any determination year ending on or after the individual reaches age 55.

- (d) The "determination year" is the plan year for which the test is being applied, and the look-back year is the 12-month period immediately preceding that plan year. An Employer may elect to make the look-back year calculation for a determination year on the basis of the calendar year ending with or within the applicable determination year, in accordance with Treasury Regulation 1.414(q)-1T.

SECTION 9.04. VESTING FOR NON-BARGAINED EMPLOYEE

- (a) **Non-Bargained Employees.**
A Non-Bargained Employee who has at least one Hour of Service after December 31, 1988, will attain Vested Status after accumulating 5 Years of Vesting Service in Non-Bargained Work, as defined below.
- (b) **Transfer Between Bargained and Non-Bargained Status.**
If a Participant has worked at different times in employment covered by a Collective Bargaining Agreement ("Bargained Work") and leaves such Bargained Work and continues to work for an Employer in Continuous Employment ("Non-Bargained Work") the following rules shall apply:
 - i. The maximum credit a Participant may receive for any Plan Year is one Year of Vesting Service. If a Participant works part of a Plan Year in Non-bargained Work and part of a Plan Year in Bargained Work, the Participant will receive credit for the Plan Year as a Bargained Year if the majority of the hours of Service were in Bargained Work; and conversely, the Participant will receive credit for that Plan Year as a Non-bargained Year if the majority of hours of Service were in Non-bargained Work; provided, however, if an Employee works 1,000 Hours of Service in Non- bargained Work in a Plan Year the Employee shall receive credit for that year as a Year of Vesting Service in Non-bargained Work.
 - ii. A Participant to whom this Subsection 9.04(b) applies will acquire Vested Status when the Participant's combined years of Vesting Service attributable to Bargained Work and Non-bargained Work equal ten, or if sooner, when the Participant's Years of Vesting Service attributable to Non-bargained Work equal five.
- (c) **Break in Service.**
Years of Vesting Service that are not taken into account because of a Permanent Break in Service do not count in determining a Participant's Vested Status.

SECTION 9.05. NONDISCRIMINATION, COVERAGE, AND PARTICIPATION

- (a) Effective January 1, 1989, participation in the Plan by Non-Bargained Employees shall be in compliance with §401(a)(4) (nondiscrimination rules), §410(b) (coverage rules), and §401(a)(26) (minimum participation rules) of the Internal Revenue Code.
- (b) A Non-Bargained, Highly Compensated Employee shall not receive any Pension Credit (although vesting credit may be earned) for any Plan Year in which the Employer fails to meet the requirements of §410(b) and §401(a)(26) of the Internal Revenue Code with respect to coverage and participation of Non-Bargained Employees. In that regard, §401(a)(26) applies during any Plan Year in which there are less than 50 Participants, including Participants covered by a Collective Bargaining Agreement.

ARTICLE X - ROLLOVERS

SECTION 10.01. ROLLOVERS

This Article 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 Article, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

SECTION 10.02. DEFINITIONS

- (a) **Eligible rollover distribution.** An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated Beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under §401(a)(9) of the Internal Revenue Code; and 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).
- (b) **Eligible retirement plan.** An eligible retirement plan is a traditional individual retirement account described in §408(a) of the Internal Revenue Code, an individual retirement annuity described in §408(b) of the Internal Revenue Code, an annuity plan described in §403(a) of the Internal Revenue Code, or a qualified trust described in §401(a) of the Internal Revenue Code, and effective January 1, 2008 a Roth individual retirement account described in Section 408A 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.

An "eligible retirement plan" also shall include an annuity contract described in IRC

§403(b) and an eligible plan under IRC §457(b), which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state which agrees to separately account for amounts transferred into such plan from this Plan. The definition of eligible retirement plan also shall apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order as defined in IRC §414(p).

- (c) **Distributee.** A distributee includes an Employee or former Employee and effective January 1, 2010 a non-spouse beneficiary. In addition, the Employee's or former employee's surviving Spouse and the Employee's former Spouse who is the alternate payee under a Qualified Domestic Relations Order, as defined in §414(p) of the Internal Revenue Code, are distributes with regard to the interest of the Spouse or former Spouse.
- (d) **Direct rollover.** A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.
- (e) **Non-Spousal Rollover.** Effective January 1, 2010, a non-spousal Beneficiary may elect a direct rollover into an inherited IRA.

ARTICLE XI – TOP-HEAVY PROVISIONS

SECTION 11.01. DEFINITIONS

For purposes of this Article, the following words and phrases shall have the meaning stated below unless a different meaning is clearly required by the context:

- (a) **Key Employee:** "Key Employee" means an 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 IRC §416(i)(1)(A) 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 IRC §415(c)(3). The determination of who is a key employee will be made in accordance with IRC §416(i)(1) and the applicable regulations and other guidance of general applicability issued thereunder.
- (b) **Non-Key Employee:** "Non-Key Employee" means any Employee who is not a Key Employee.
- (c) **Determination Date:** "Determination Date" means, with respect to any Plan Year, the last day of the preceding Plan Year, or in the case of the first Plan Year of any Plan, the last day of such Plan Year.

SECTION 11.02. TOP HEAVY PLAN REQUIREMENTS

Effective January 1, 1984, for any Top Heavy Plan Year, the Plan shall provide the following:

- (a) Special vesting requirements of §416(b) of the Internal Revenue Code pursuant to Section 11.04.
- (b) Special minimum benefit requirements of §416(c) of the Internal Revenue Code pursuant to Section 11.05.
- (c) The Top Heavy vesting and minimum benefit requirements set forth in (a) and (b) above do not apply to any Employee who is part of a unit covered by a valid collective bargaining agreement in which retirement benefits were the subject of good faith bargaining.

SECTION 11.03. DETERMINATION OF TOP HEAVY STATUS

- (a) This Plan shall be a Top Heavy Plan for any Plan Year commencing after December 31, 1983, in which, as of the Determination Date
 - i. The present value of accrued benefits of Key Employees as determined under a uniform accrual method which applies to all defined benefit plans maintained by the employer, or where there is no such method, as if such benefit accrued not more rapidly than the slowest rate of accrual permitted under the fractional rule of IRC Section 411(b)(1)(C).
 - ii. The sum of the aggregate accounts of Key Employees under this Plan and all plans of an Aggregation Group exceeds sixty percent (60%) of the present value of accrued benefits and the aggregate accounts of all Key Employees and Non-Key Employees under this Plan and all plans of an Aggregation Group.

If any Participant is a Non-Key Employee for a Plan Year, but such Participant was a Key Employee for any prior Plan Year, such Participant's present value of accrued benefits and/or aggregate account balance shall not be taken into account for purposes of determining whether this Plan is a Top Heavy or Super Top Heavy Plan (or whether any Aggregation Group which includes this Plan is a Top Heavy Group). In addition, for Plan Years beginning after December 31, 1984, if a Participant or former Participant has not performed an Hour of Service for the Employer maintaining the Plan at any time during the five-year period ending on the Determination Date, the aggregate account and/or present value of accrued benefit for such Participant or former Participant shall not be taken into account for the purposes of determining whether this Plan is a Top Heavy Plan. or Super Top Heavy Plan.

- (b) This Plan shall be a "Super Top Heavy Plan" for any Plan Year commencing after December 31, 1983, in which, as of the Determination Date:

- i. the present value of accrued benefits of Key Employees and
- ii. the sum of the aggregate accounts of Key Employees under this Plan and all plans of an Aggregation Group exceeds ninety percent (90%) of the present value of accrued benefits and the aggregate accounts of all Key Employees and Non-Key Employees under this Plan and all plans of an Aggregation Group.

Provided, however, effective for all Plan Years beginning after December 31, 1999, these provisions are no longer applicable.

- (c) A Participant's aggregate account as of the Determination Date shall be determined under applicable provisions of the defined contribution plan used in determining Top Heavy Plan status.
- (d) "Aggregation Group" means either a Required Aggregation Group or a Permissive Aggregation Group as hereinafter determined.

- i. In determining a Required Aggregation Group hereunder, each plan of an Employer in which a Key Employee is a Participant, and each other plan of an Employer which enables any plan in which a Key Employee participates to meet the requirements of §401(a)(4) or §410 of the Internal Revenue Code, will be required to be aggregated. For purposes of this subparagraph, any plan of an Employer which terminated within the five-year period ending on the Determination Date shall be included. Such group shall be known as a "Required Aggregation Group."

In the case of a Required Aggregation Group, each plan in the group will be considered a Top Heavy Plan if the Required Aggregation Group is a Top Heavy Group. No plan in the Required Aggregation Group is a Top Heavy Group if the Required Aggregation Group is not a Top Heavy Group.

- ii. An Employer may also include any other plan not required to be included in the Required Aggregation Group, provided the resulting group, taken as a whole, would continue to satisfy the provisions of §401(a)(4) and §410 of the Internal Revenue Code. Such group shall be known as a "Permissive Aggregation Group."

In the case of a Permissive Aggregation Group, only a plan that is part of the Required Aggregation Group will be considered a Top Heavy Plan if the Permissive Aggregation Group is a Top Heavy Group. No plan in the Permissive Aggregation Group will be considered a Top Heavy Plan if the Permissive Aggregation Group is not a Top Heavy Group.

- iii. Only those plans of an Employer in which the Determination Dates fall within the same calendar year shall be aggregated in order to determine whether such plans

are Top Heavy Plans.

- (e) In the case of a defined benefit plan, a Participant's present value of accrued benefits shall be determined:
- i. as of the most recent actuarial valuation date which is the most recent valuation date within a twelve-month period ending on the Determination Date,
 - ii. for the first Plan Year, as if:
 - (A) the Participant terminated service as of the Determination Date; or
 - (B) the Participant terminated service as of the actuarial valuation date, but taking into account the estimated present value of accrued benefits as of the Determination Date.
 - iii. for any other Plan Year, as if the Participant terminated service as of the actuarial valuation date,
 - iv. the actuarial valuation date must be the same date used for computing the defined benefit plan minimum funding costs, regardless of whether a valuation is performed in the Plan Year.
- (f) The calculation of a Participant's present value of accrued benefit as of a Determination Date shall be the sum of the following:
- i. the present value of accrued benefit using actuarial assumptions stated in the most recent actuarial valuations; except in the event that the aggregation group includes two or more defined benefit plans, the same actuarial assumption must be used with respect to all such plans and must be specified in such plans.
 - ii. any Plan distributions made within the Plan Year that includes the Determination Date or within four preceding Plan Years. However, in the case of distributions made after the valuation date and prior to the Determination Date, such distributions are not included as distributions for Top Heavy purposes to the extent that such distributions are already included in the Participant's present value of accrued benefit as of the valuation date.

Notwithstanding anything herein to the contrary, all distributions, including distributions made prior to January 1, 1984, and distributions under a terminated plan which if it had not been terminated would have been required to be included in an Aggregation Group, will be counted;
 - iii. any Employee contributions, whether voluntary or mandatory. However, amounts

attributable to tax deductible Qualified Voluntary Employee Contributions shall not be considered to be a part of the Participant's present value of accrued benefits;

- iv. with respect to unrelated rollovers and plan-to-plan transfers (ones which are both initiated by the Employee and made from a plan maintained by one Employer to a plan maintained by another Employer), if this Plan provides for rollovers or plan-to-plan transfers, it shall always consider such rollover or plan-to-plan transfers as a distribution for purposes of this section. If this Plan is the plan accepting such rollovers or plan-to-plan transfers, it shall not consider such rollovers or plan-to-plan transfers accepted after December 31, 1983, as part of the Participant's present value of accrued benefits. However, rollovers or plan-to-plan transfers accepted prior to January 1, 1984, shall be considered as part of the Participant's present value of accrued benefits; and
 - v. With respect to related rollovers and plan-to-plan transfers (ones either not initiated by the Employee or made to a plan maintained by the same Employer), if this Plan provides the rollover or plan-to-plan transfer, it shall not be counted as a distribution for purposes of this section. If this Plan is the plan accepting such rollover or plan-to-plan transfer, it shall consider such rollover or plan-to-plan transfer as part of the Participant's present value of accrued benefits, irrespective of the date on which such rollover or plan-to-plan transfer is accepted.
- (g) "Top Heavy Group" means an Aggregation Group in which, as of the Determination Date, the sum of:
- i. the present value of accrued benefits of Key Employees under all defined benefit plans included in the group, and
 - ii. the aggregate accounts of Key Employees under all defined contribution plans included in the group exceeds sixty percent (60%) of a similar sum determined for all Participants.
- (h) Notwithstanding anything herein to the contrary, the effective date otherwise provided for herein for the application of §416 of the Internal Revenue Code to this Plan (Plan Years beginning after December 31, 1983) shall be extended in accordance with any federal law or regulatory authority.
- (i) Effective after December 31, 2001

Distribution 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 IRC §416(g)(2)

during the one-year period ending on the determination date. The preceding sentence also shall apply to distributions under a terminated plan which had it not been terminated, would have been aggregated with the Plan under IRC §416(g)(2)(A)(I). In the case of a distribution made for a reason other than severance from employment, death, or disability, this provision shall be applied by substituting "five-year period" for "one-year period."

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 one-year period ending on the determination date shall not be taken into account.

SECTION 11.04. TOP HEAVY VESTING

- (a) Notwithstanding the determination of Vested Status in accordance with Section 6.09 of the Plan for any Top Heavy Plan Year, the vested portion of any Participant's accrued benefit shall be determined on the basis of the Participant's number of Years of Vesting Service according to the following schedule:

Years of Vesting	Percentage
Less than 3	0%
3 or more	100%

- (b) If, in any subsequent Plan Year, the Plan ceases to be a Top Heavy Plan, the Trustees may elect to:
- i. continue to apply this vesting schedule in determining the vested portion of any Participant's accrued benefit, or
 - ii. revert to the vesting schedule in effect before this Plan became a Top Heavy Plan pursuant to §411(a)(10) of the Internal Revenue Code. The nonforfeitable percentage of the accrued benefit before the Plan ceased being Top Heavy, therefore must not be reduced and any Participant with three or more years of vesting service must be given the option of remaining under the Top Heavy vesting schedule. Any such reversion shall be treated as a Plan amendment.
- (c) The Top Heavy vesting schedule does not apply to the accrued benefit of any Employee who does not have one Hour of Service after the Plan has initially become a Top Heavy Plan and such Employee's accrued benefit attributable to Employer contributions will be determined without regard to this Article.

SECTION 11.05. TOP HEAVY BENEFIT REQUIREMENTS

- (a) The minimum accrued benefit derived from Employer contributions to be provided under the section for each Non-Key Employee who is a Participant shall equal the product of:
 - i. one-twelfth (1/12th) of Annual Compensation averaged over the five consecutive "limitation years" (or actual number of "limitation years" if less) which produces the highest average, and
 - ii. the lesser of:
 - (A) two percent (2%) multiplied by Years of Vesting Service, or
 - (B) twenty percent (20%).
- (b) For purposes of providing the minimum benefit under §416 of the Internal Revenue Code, a Non-Key Employee who is a Participant and who has completed at least 1000 Hours of Service during the Plan Year shall accrue a minimum benefit under §416 regardless of whether such Employee is employed on a specified date. A Non-Key Employee who is not a Participant solely because:
 - i. his Annual Compensation is below a stated amount, or
 - ii. he declined to make mandatory contributions to the Plan will be considered to be a Participant.
- (c) For purposes of this section, Years of Vesting Service for any Plan Year ending prior to January 1, 1984, or for any Plan Year during which the Plan was not a Top Heavy Plan shall be disregarded.
- (d) For purposes of this section, Annual Compensation for any "limitation year" ending prior to January 1, 1984, or subsequent to the last "limitation year" during which the Plan is a Top Heavy Plan shall be disregarded. The term "limitation year" means the Plan Year.
- (e) For purposes of this section, Annual Compensation shall have the meaning set forth in §1.415-2(d) of the Treasury Regulations, but in no event more than \$200,000 (as adjusted annually under §401(a)(17) of the Internal Revenue Code) per Plan Year. For Plan Years beginning on and after January 1, 1994, Annual Compensation shall have the meaning set forth in Paragraph 11.01(c)(ii).
- (f) If the Plan provides for the normal retirement benefit to be paid in a form other than a single life annuity, the accrued benefit under this section shall be the Actuarial Equivalent of the minimum accrued benefit under Subsection 11.05(a) pursuant to Section 1.01 of the Plan.
- (g) If payment of the minimum accrued benefit commences at a date other than Normal Retirement Age, the minimum accrued benefit shall be adjusted in accordance with

Section 6.05 of the Plan.

- (h) If a Non-Key Employee participates in this Plan and a defined contribution plan included in a Required Aggregation Group which is top heavy, the minimum benefits shall be provided under this Plan.
- (i) To the extent required to be non-forfeitable under Section 6.09 of the Plan the minimum accrued benefit under this section may not be forfeited under §411(a)(3)(B) or §411(a)(3)(D) of the Internal Revenue Code.
- (j) Minimum Benefits. For purposes of satisfying the minimum benefit requirements of IRC §416(c)(1) and in determining years of service with the Employer, any service with the Employer shall be disregarded to the extent that such service occurs during a Plan Year when the Plan benefits (within the meaning of IRC §410(b)) no key employee or former key employee.

ARTICLE XII - MINIMUM DISTRIBUTION REQUIREMENTS

SECTION 12.01. GENERAL RULES

- (a) The provisions of this article will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.
- (b) Precedence.
 - i. The requirements of this Article will take precedence over any inconsistent provisions of the Plan.
 - ii. Except to the extent inconsistent with this Article, all distribution options provided under the Plan are preserved.
 - iii. This article does not authorize any distribution options not otherwise provided under the Plan.
- (c) All distributions required under this Article will be determined and made in accordance with the Treasury regulations under Section 401(a)(9) of the Internal Revenue Code.
- (d) Notwithstanding the other provisions of this Article, other than Subsection 12.01(c), distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(6)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the Plan that relate to Section 242(b)(2) of TEFRA.

SECTION 12.02. TIME AND MANNER OF DISTRIBUTION

- (a) 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) 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:
 - i. If the Participant's surviving spouse is the Participant's sole designated Beneficiary, distributions to the surviving Spouse will begin by (1) December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70 1/2, if later, for participants who would have turned 70 1/2 on or before December 31, 2019 (i.e. whose birthdate is on or before June 30, 1949); or (2) 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 72, if later, for participants who would have turned 70 1/2 after December 31, 2019 (i.e. whose birthdate is on or after July 1, 1949).
 - ii. 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.
 - iii. 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.
 - iv. If the Participant's surviving Spouse is the Participant's sole designated Beneficiary and the surviving Spouse dies after the Participant but before distributions to the surviving Spouse begin, this Subsection 12.02(b), other than Section 12.02(b)(i), will apply as if the surviving spouse were the Participant.
- (c) For purposes of this Subsection 12.02(b) and Section 12.05, distributions are considered to begin on the Participant's Required Beginning Date (or, if subsection 12.02(b)(iv) applies, the date distributions are required to begin to the surviving Spouse under Subsection 12.02(b)(i)). 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 Subsection 12.02(b)(1)), the date distributions are considered to begin is the date distributions actually commence.

Unless the Participant's interest is distributed in a single sum on or before the Required Beginning Date, as of the first distribution calendar year distribution calendar year distributions will be made in accordance with Sections 12.03,12.04 and 12.05.

SECTION 12.03. DETERMINATION OE AMOUNT TO BE DISTRIBUTED EACH YEAR

- (a) 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:
- i. The annuity distributions will be paid in periodic payments made in intervals not longer than one year.
 - ii. The distribution period will be over a life (or lives) or over a period certain not longest than the period described in Section 12.04 or 12.05;
 - iii. 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;
 - iv. Payments will either be non-increasing or increase only as follows:
 - A. 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;
 - B. 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 12.04 dies or is no longer the Participant's Beneficiary pursuant to a Qualified Domestic Relations Order within the meaning of Internal Revenue Code Section 414(p);
 - C. To provide cash refunds of employee contributions upon the Participant's death; or
 - D. To pay increased benefits that result from a Plan amendment amount accrues.
- (b) 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 Subsection 12.02(b)(i) or (ii)) 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.

- (c) 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.

SECTION 12.04. REQUIREMENTS FOR ANNUITY DISTRIBUTION THAT COMMENCE DURING PARTICIPANT'S LIFETIME

- (a) If the Participant's interest is being distributed in tire form of a joint and survivor annuity for the joint lives of the Participant and a non-spouse 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(c) of that regulation. If the form of distribution combines a joint and survivor annuity for the joint lives of the Participant and a non-spouse 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.
- (b) 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 Subsection 12.04(b), 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.

SECTION 12.05 REQUIREMENTS FOR MINIMUM DISTRIBUTIONS WHERE PARTICIPANT DIES BEFORE DATE DISTRIBUTIONS BEGIN

- (a) 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 Subsection 12.02(b)(i) or (ii), over the life of the designated Beneficiary or over a period certain not exceeding:
 - i. 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
 - ii. 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.
- (b) If the Participant dies before the date distributions begin and there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (c) 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, this Section 12.05 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 12.02(b)(1).

SECTION 12.06. DEFINITIONS

- (a) Designated Beneficiary is the individual who is designated as the Beneficiary under Section 1.03 of the Plan and is the designated Beneficiary under Section 401(a)(9) of the Internal Revenue Code and Section 1.401(a)(9)-4, of the Treasury regulations.
- (b) Distribution calendar year is a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to Subsection 12.02(b).
- (c) Life expectancy is the life expectancy as computed by use for the Single Life Table in Section 1.401(a)(9)-9 of the Treasury regulations.
- (d) Required Beginning Date is the date specified in Section 1.20 of the Plan.

- (e) “Spouse”. For purposes of the Plan, the term “spouse” will mean any individuals who are lawfully married under any state law, including individuals married to a person of the same sex who were legally married in a state that recognizes such marriages, but who are domiciled in a state that does not recognize such marriages.
- (f) “Marriage”. For purposes of the Plan, the term "marriage" will be read to include a same-sex marriage that is legally recognized as a marriage under any state law.
- (g) “Husband and Wife”. If used in the Plan, now or in the future, the term “Husband and Wife” shall be read as “Participant and Spouse.”

ARTICLE 13 – CLAIMS AND APPEAL PROCEDURE

SECTION 13.1. SUBMISSION AND NOTIFICATION OF BENEFIT DETERMINATION

This Section applies to all claims filed on or after January 1, 2002.

(a) **Retirement Benefits**

The Employee shall notify the Plan of his desire to apply for benefits and upon such notification, the Plan shall furnish the Employee with an application form and instructions on how to complete the form and submit other documentary evidence required to supplement said application.

The Board of Trustees subsequent to receipt of the applications and recommendations will consider the same and approve or deny the benefits applied for. The Trustees may delegate the obligation to review and decide claims to any individual, committee or entity. Unless special circumstances exist, a claimant shall be informed of the Trustees' decision on his claim within 90 days of the date the claim is filed, regardless of whether all the information and evidence necessary to process the claim is received. Within such 90-day period, the claimant shall receive a notice of the Trustees' decision or a notice that:

- i. Explains the special circumstances requiring a delay in the decision; and
- ii. Sets a date, no later than 180 days after his claim has been received, by which he can expect to receive a decision.

The claimant may assume that his claim has been denied and may proceed to appeal the denial if the claimant does not receive any notice from the Trustees within the 90-day period, or a notice of a delayed decision within such 90-day period.

(b) **Disability Benefits**

A claim for disability benefits includes an initial claim for disability benefits or any rescission of coverage of a disability benefit.

In the case of a claim for disability benefits, the Plan shall notify the claimant, in accordance with this Section of the Plan's adverse benefit determination within a reasonable period of time, but not later than 45 days after receipt of the claim by Plan.

This period may be extended by the Plan for up to 30 days, provided that the Plan both determines that such an extension is necessary due to matters beyond the control of the Plan and notifies the claimant, prior to the expiration of the initial 45-day period of the circumstances requiring the extension of time and the date by which the plan expects to render a decision. If, prior to the end of the first 30-day extension period, the Plan determines that, due to matters beyond the control of the Fund, a decision cannot be rendered within that extension period, the period for making the determination may be extended for up to an additional 30 days, provided that the Plan notifies the claimant, prior to the expiration of the first 30-day extension period, of the circumstances requiring the extension and the date as of which the plan expects to render a decision. In the case of any extension under this provision, the notice of extension shall specifically explain the standards on which entitlement to a benefit is based, the unresolved issues that prevent a decision on the claim, and the additional information needed to resolve those issues, and the claimant shall be afforded at least 45 days within which to provide the specified information.

SECTION 13.2. MANNER AND CONTENT OF NOTIFICATION OF BENEFIT DETERMINATION

The Plan shall provide a claimant with written or electronic notification of any adverse benefit determination (i.e. denial of claim).

Before the Fund can issue an adverse benefit determination based on new or additional evidence, the Fund must provide the Claimant, free of charge, with any new or additional evidence considered, relied upon, or generated by the Fund (or at the direction of the Fund) in connection with the claim; such evidence must be provided as soon as possible and sufficiently in advance of the date on which the adverse benefit determination is required to be provided to give the Claimant a reasonable opportunity to respond prior to that date.

The notification shall set forth, in a manner calculated to be understood by the claimant –

- (a) The specific reason or reasons for the adverse determination;
- (b) Reference to the specific plan provisions on which the determination is based;
- (c) A description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary;

- (d) A description of the Plan's review procedures and the time limits applicable to such procedures, including a statement of the claimant's right to bring a civil action under section 502(a) of ERISA following an adverse benefit determination on review; and
- (e) If an internal rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination, either the specific rule, guideline, protocol, or other similar criterion or a statement that such a rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination and that a copy of such rule, guideline, protocol, or other criterion will be provided free of charge to the claimant upon request or, if applicable, a statement that such rule, guideline, protocol or other criterion does not exist.

With respect to an adverse benefit determination regarding disability benefits, the determination must also include the following:

- (a) An explanation of the basis for disagreeing with any of the following:
 - (i) The health care professionals that treated the Claimant;
 - (ii) The advice of the health professional obtained by the Plan; or
 - (iii) A disability determination from the Social Security Administration. The benefit denial must be in a culturally and linguistically appropriate manner as required by law.
- (b) A statement that the Claimant is entitled to receive, free of charge and upon request, reasonable access to copies of all documents, records, and other information relevant to the Claimant's claim for benefits.
- (c) If the denial was based on medical necessity or experimental treatment, the denial must include either an explanation of the scientific or clinical judgment for the determination, applying the terms of the Plan to the claim or statement or a statement that such explanation will be provided free of charge upon request.
- (d) The denial must be in a culturally and linguistically appropriate manner as required by law.

SECTION 13.3. APPEAL OF ADVERSE BENEFIT DETERMINATION

- (a) Appeals must be forwarded to and received by the Board of Trustees, the same to be done by written petition addressed to the Board of Trustees setting forth the precise grounds for the appeal, that is, a clear statement as to which of the reasons for the denial of the application he disagrees with and why he disagrees with the same, within 60 days following receipt of a notification of an adverse benefit determination (i.e. denial of claim). As part of any such appeal, a claimant may submit written comments, documents, records, and other information relating to the claim for benefits.
- (b) A claimant may authorize a representative to act on the claimant's behalf for any purpose under this Section. An authorization to use a representative must be provided to the Trustees on a written form provided by the Plan on in a manner satisfactory to the

Trustees.

- (c) A claimant, free of charge and upon request, shall be provided reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits.
- (d) Upon appeal, the Trustees will review all comments, documents, records, and other information submitted by the claimant relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination.
- (e) The Claimant has the right, upon appeal to the Board of Trustees, to request in his appeal petition to appear before said Board for a hearing on the merits of his appeal petition. In the event such a request is made, the hearing shall be held at the next regular meeting of the full Board of Trustees or at such other time as may be agreed upon by the Employee and said Board of Trustees. In the absence of such a request, the Board of Trustees shall at its next regular meeting review the entire application and supporting evidence and approve or deny the application.
- (f) Upon completion of the hearing and any adjournments thereof and after full and complete opportunity to be heard has been afforded the Employee, the Board of Trustees shall, within 30 days thereafter, notify the Employee, in writing, of its decision allowing or denying the application and appeal and, in the event of a denial, the notice shall set forth the reason for said denial.
- (g) The decision of the Board of Trustees shall be final and binding on all parties interested in the same and shall not be the subject to further review by the Fund.

SECTION 13.4. TRUSTEES DECISION ON APPEAL

(a) Timing of Decision

The Trustees shall make a benefit determination on appeal no later than the date of the board meeting that immediately follows the Plan's receipt of an appeal, unless the appeal is filed within 30 days preceding the date of such meeting. In such case, the benefit determination may be made no later than the date of the second board meeting following the Plan's receipt of the request for review.

If special circumstances require a further extension of time for processing, a benefit determination shall be rendered not later than the third board meeting following the Fund Office's receipt of the request for review. If such an extension of time for review is required because of special circumstances, the Plan shall provide the claimant with written notice of the extension, describing the special circumstances and the date as of which the benefit determination will be made, prior to the commencement of the extension. The Plan shall notify the claimant of its decision on appeal but not later than 5 days after the benefit determination is made.

(b) Manner and Content of Notification of Trustees Notice of Decision on Appeal

The Plan shall provide a claimant with written or electronic notification of any adverse benefit determination on review. The notification shall set forth, in a manner calculated to be understood by the claimant –

- (1) The specific reason or reasons for the adverse determination;
- (2) Reference to the specific plan provisions on which the determination is based;
- (3) A statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits;
- (4) A statement of the claimant's right to bring a civil action under section 502(a) of ERISA;
- (5) A statement describing any contractual limitation period that applies to the Claimant's right to bring an action under ERISA §502(a) and the calendar date on which such contractual limitation expires; and
- (6) If an internal rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination, either the specific rule, guideline, protocol, or other similar criterion; or a statement that such a rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination and that a copy of such rule, guideline, protocol, or other criterion will be provided free of charge to the claimant upon request, or if applicable, a statement that such rules or guidelines do not exist.

Before the Plan can issue a notice of decision on appeal with respect to disability benefits based on new or additional evidence, the Plan must provide the Claimant, free of charge, with any new or additional evidence considered, relied upon, or generated by the Plan (or at the direction of the Plan) in connection with the claim; such evidence must be provided as soon as possible and sufficiently in advance of the date on which the notice of decision on appeal is required to be provided to give the Claimant a reasonable opportunity to respond prior to that date.

Before the Plan can issue a notice of decision on appeal with respect to disability benefits based on a new or additional rationale, the Claimant must be provided, free of charge, with the rationale. The rationale must be provided as soon as possible and sufficiently in advance of the date on which the notice of decision on appeal is required to be provided to give the claimant a reasonable opportunity to respond prior to that date.

In addition to the above, a notice of decision on appeal pertaining to a claim for disability benefits will include the following:

- (1) An explanation of the basis for disagreeing with any of the following:

- (i) The health care professionals that treated the Claimant;
 - (ii) The advice of the health professional obtained by the Plan; or
 - (iii) A disability determination from the Social Security Administration.
- (2) If the denial was based on medical necessity or experimental treatment, the denial must include either an explanation of the scientific or clinical judgment for the determination, applying the terms of the Plan to the claim or statement or a statement that such explanation will be provided free of charge upon request.
- (3) The benefit denial must be in a culturally and linguistically appropriate manner as required by law.

SECTION 13.5. DISCRETION OF TRUSTEES

The Trustees have full discretionary authority to determine eligibility for benefits, interpret plan documents, and determine the amount of benefits due. Their decision, if not in conflict with any applicable law or government regulation, shall be final and conclusive.

SECTION 13.6. TIMELY SUBMISSION OF APPEALS

All appeals must be timely submitted. A participant or dependent who does not timely submit an appeal waives his/her right to have the benefit denial further reviewed by the Fund or in a court of law.

SECTION 13.7. LIMITATIONS OF ACTIONS

No action may be brought to recover benefits allegedly due under the terms of the Plan more than 180 days following the Notice of Decision on Appeal.

SECTION 13.8. FAILURE TO FOLLOW CLAIMS PROCEDURES

If the Plan fails to follow claims procedures with respect to any claim for benefits, the Claimant is deemed to have exhausted administrative remedies and is entitled to pursue all remedies under ERISA §502(a) on the basis that the plan has failed to provide a reasonable claims procedure that would yield a decision on the merits.

In addition to the above, if the plan fails to strictly adhere to all procedures with respect to a claim for disability benefits and the claimant chooses to pursue remedies under section ERISA §502(a), the claim is deemed denied on review without the exercise of discretion by the Trustees.

Notwithstanding the above, the internal claims and appeals process will not be deemed exhausted based on de minimis violations that do not cause, and are not likely to cause, prejudice or harm

to the Claimant so long as the Plan demonstrates that the violation was for good cause or due to matters beyond the control of the Plan and that the violation occurred in the context of an ongoing, good faith exchange of information between the Plan and the Claimant.

The Claimant may request a written explanation of the violation from the Plan, and the Plan must provide such explanation within 10 days, including a specific description of its bases, if any, for asserting that the violation should not cause the internal claims and appeals process to be deemed exhausted.

If an external reviewer or a court rejects the Claimant's request for immediate review on the basis that the Plan met the standards for the exception to the deemed exhaustion rule, the Claimant has the right to resubmit and pursue the internal appeal of the claim. In such a case, within a reasonable time after the external reviewer or court rejects the claim for immediate review (not to exceed ten days), the Plan shall provide the Claimant with the notice of the opportunity to resubmit and pursue the internal appeal of the claim. Time periods for re-filing the claim shall begin to run upon Claimant's receipt of such notice.

SECTION 13.9. AVOIDING CONFLICTS OF INTEREST

The Plan must ensure that all claims and appeals are adjudicated in a manner designed to ensure the independence and impartiality of the persons involved in making the decision. Accordingly, decisions regarding hiring, compensation, termination, promotion, or other similar matters with respect to any individual (such as a claims adjudicator or medical expert) must not be made based upon the likelihood that the individual will support the denial of benefits.

13.10. EXTENSION OF CERTAIN TIMEFRAMES

The Plan will disregard the period from March 1, 2020, until the earlier of (1) 1 year from the date a Participant or Beneficiary becomes eligible for an extended deadline or (2) 60 days after the announced end of the National Emergency or such other date announced by the applicable federal agency (the "Outbreak Period") for all participants and dependents in determining the following periods and dates:

Relating to claims submission and the claims and appeal procedures under Article 13, Sections 13.1 and 13.3:

- a. The date within which individuals may file a benefit claim, and
- b. The date within which claimants may file an appeal of an adverse benefit determination.

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SIGNATURE PAGE

IN WITNESS WHEREOF, this Agreement has been adopted May 9, 2022.

UNION TRUSTEES

Steve C. Bowers

Terri Bauer

Jan W. Gier

EMPLOYER TRUSTEES

Wm. J. Kelly

Eric B. Gier

Chris Stettin

Kevin Kutzman

SIGNATURE PAGE

IN WITNESS WHEREOF, this Agreement has been adopted May 9, 2022.

UNION TRUSTEES

Steve A. Bennett

Tom Bauer

John W. [unclear]

EMPLOYER TRUSTEES

[unclear]

Jim [unclear]

Chris [unclear]

[unclear]