

**PLUMBERS & PIPEFITTERS  
NATIONAL PENSION FUND**

**FULL TEXT OF THE  
PLAN RULES**

**[Restated Effective January 1, 2014  
Revised through the 6th Amendment]**



# FULL TEXT OF THE PLAN

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# FULL TEXT OF THE PLAN

PLUMBERS & PIPEFITTERS  
NATIONAL PENSION PLAN  
(Restated Effective January 1, 2014)

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The following is a restatement of the Plan of Benefits maintained by the Plumbers and Pipefitters National Pension Fund. Unless otherwise stated, this restatement applies to an employee who earns at least one hour in Covered Employment in any Calendar Year 2014 or later. Under no circumstances, however, will this restatement apply to applications for benefits that were made before January 1, 2014.

## ARTICLE 1

### Definitions

Unless the context or subject matter otherwise requires, the following definitions shall govern in the Plan:

#### **Section 1.01. Trust Agreement.**

The term "Trust Agreement" shall mean the Agreement and Declaration of Trust establishing the Plumbers and Pipefitters National Pension Fund, dated as of July 23, 1968, including any modifications, amendments, extensions, renewals, or restatements thereof.

#### **Section 1.02. Pension Fund.**

The term "Pension Fund" or "Fund" shall mean the Plumbers and Pipefitters National Pension Fund, established by the Trust Agreement, and shall mean generally the monies and other items of value which comprise the corpus and additions thereto, received or held for or on behalf of the Trustees.

#### **Section 1.03. Pension Plan.**

The term "Pension Plan" or "Plan" shall mean this text of the Plumbers and Pipefitters National Pension Plan and any modification, amendment, extension or renewal thereof, or if applicable any prior versions of the Plan.

#### **Section 1.04. Trustee.**

The term "Trustee" shall mean any person designated as Trustee pursuant to the Trust Agreement, and the successors of such person from time to time in office. The terms "Board of Trustees," "Board" and "Trustees" mean the Board established by the Trust Agreement.

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### **Section 1.05. Union.**

The term "Union" shall mean the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada and its affiliated Local Unions and District Councils.

The term "Local Union" shall mean a Local Union of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada that is signatory to a Collective Bargaining Agreement under which it is the employee representative and pursuant to which contributions to the Fund are required on behalf of Employees it represents.

### **Section 1.06. Contributing Employer or Employer.**

The term "Contributing Employer" or "Employer" shall mean any person, company, business organization, pension fund, welfare fund, apprentice training fund, public or quasi-public employer which, pursuant to the provisions of Article 2, is accepted by the Trustees and becomes a party to the Trust Agreement and which has agreed in a Collective Bargaining Agreement with the Union to make contributions to the Pension Fund either by virtue of having signed or by virtue of agreeing to be bound to the Collective Bargaining Agreement or by virtue of the authority delegated to an employer association which has signed the Collective Bargaining Agreement on its behalf. An employer shall be deemed a Contributing Employer only with respect to employment performed in a jurisdiction where the Local Union Collective Bargaining Agreement provides for contributions to this Fund. The Union (or a participating Local Union or District Council, or a Local Union's pension, welfare, or apprentice training fund, or another Union-affiliated organization) may also be a Contributing Employer if it is accepted by the Trustees pursuant to the provisions of Article 2, and if it is contractually obligated by a signed participation agreement to make contributions on behalf of its employees in accordance with 1.08(a)(iv) or (v); provided, however, that any reference herein to the Union as an Employer shall not be deemed to convey upon the Union any of the rights or privileges granted under the Agreement and Declaration of Trust to Employers who are bound to a Collective Bargaining Agreement.

### **Section 1.07. Collective Bargaining Agreement.**

The term "Collective Bargaining Agreement" shall mean any written labor contract, Standard Form of Participation or written Agreement by and between a Contributing Employer and the Union which provides for contributions to this Pension Fund in a manner acceptable to the Board of Trustees with any and all extensions or renewals thereof and successor agreements thereto.

### **Section 1.08. Employee.**

(a) The term "Employee" means:

- (i) Any person who is performing work under a Collective Bargaining Agreement between a Contributing Employer and the Union and for whom the Employer is obligated to make contributions to the Fund under the terms of the Collective Bargaining Agreement;



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- (ii) Any person who was previously covered by the Fund as a member of a bargaining unit, who can otherwise be considered a Collectively Bargained Employee under Subsection (c), and for whom the Employer is obligated to make contributions to the Fund under the terms of the Collective Bargaining Agreement or other written agreement;
  - (iii) Any person employed by a public or quasi-public Employer and for whom the Employer signs a Collective Bargaining Agreement to make contributions to the Fund;
  - (iv) Any person who was previously covered by the Fund as a member of a bargaining unit, who is currently employed by a Local Union, and for whom contributions are required to the Fund under the terms of the Collective Bargaining Agreement or other written agreement;
  - (v) Any full-time employee of a participating Local Union or District Council, or Local Union's pension, welfare, or apprenticeship training fund, or of another Union-affiliated organization, provided the Employer signs a written agreement, on the terms established by the Trustees, providing for the coverage of such employees and requiring contributions to the Fund on their behalf. The Employer may determine who is a full-time employee on a reasonable and uniform basis; however, all employees who meet the participation requirements set forth in Article 3 must be treated as full-time employees. Such an Employer, on the terms established by the Trustees, may also elect in its written agreement to provide coverage to all of its employees; or to limit coverage to a reasonable classification of its employees who are not Highly Compensated employees; or, if the Employer is an employee representative within the meaning of Treasury Regulations Section 1.410(b)-6(d), to limit coverage to its employees who are Collectively Bargained Employees under Paragraphs 1.08(c)(iii) and (iv) below.
  - (vi) Any other full-time employee of a Contributing Employer who is not working under a Collective Bargaining Agreement, provided the Employer signs a written agreement, on the terms established by the Trustees, providing for the coverage of such employees and requiring contributions to the Fund on their behalf. The Contributing Employer may determine who is a full-time employee on a reasonable and uniform basis; however, all employees who meet the participation requirements set forth in Article 3 must be treated as full-time employees. The Employer may also elect in its written agreement to exclude from such coverage all Highly Compensated Employees who are not working under a Collective Bargaining Agreement.
  - (vii) Any person whose home local union is in Canada while working in the United States and for whom reciprocity payments are received by this Fund for hours employed in the United States on and after October 1, 2004 under a reciprocal agreement that treats this Fund as the person's home fund.
- (b) The term "Employee" shall not include any self-employed person, partner, or sole proprietor of an unincorporated business which is a Contributing Employer whether the interest is direct or indirect. A person with an ownership interest in a corporation which is a Contributing Employer will be considered an Employee if he otherwise meets the requirements of this Section 1.08; however, anyone with a 10% or greater ownership

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interest, or whose spouse has a 10% or greater ownership interest, can participate only if the Employer signs a participation agreement on the terms established by the Trustees.

- (c) (i) Employees who meet the requirements under any of Paragraphs (a)(i) - (iv) and (vii) above must also meet the requirements for a Collectively Bargained Employee under this Subsection (c) to be considered an Employee under this Plan. The only Non-Collectively Bargained Employees who are covered by this Plan are those under Paragraphs (a)(v) and (vi) above and those who meet the requirements of Paragraphs (c)(iii) and (iv) below.
- (ii) The term “Collectively Bargained Employee” means any Employee who is included in a unit of employees covered by a Collective Bargaining Agreement provided there is evidence that retirement benefits were the subject of good faith bargaining. The term “Non-Collectively Bargained Employee” for any Plan Year means any employee of an Employer who is not a Collectively Bargained Employee for that Plan Year, provided, however, that certain Non-Collectively Bargained Employees shall be treated as Collectively Bargained Employees in accordance with Paragraphs (c)(iii) and (iv) below.
- (iii) A Non-Collectively Bargained Employee shall be treated as a Collectively Bargained Employee as follows:
  - (A) If the Employee performs services for an Employer during a Plan Year both as a Collectively Bargained Employee and as a Non-Collectively Bargained Employee, he will be considered a Collectively Bargained Employee for that Plan Year provided at least half of the Employee’s Hours of Work during the Plan Year are performed as a Collectively Bargained Employee.
  - (B) An Employee who was a Collectively Bargained Employee for a Plan Year may be treated as a Collectively Bargained Employee for the duration of the Collective Bargaining Agreement applicable for that Plan Year, or if later, until the end of the following Plan Year.
  - (C) If the Employee was previously a Collectively Bargained Employee and is performing services for an Employer or for a participating Local Union during a Plan Year, he will be considered a Collectively Bargained Employee for that Plan Year provided no more than five percent (5%) of the Employees covered under this Plan for the Plan Year are Non-Collectively Bargained Employees determined without regard to this Subparagraph (C). For purposes of this five percent (5%) limitation, employees described in Subparagraphs (A) and (B) above are treated as Collectively Bargained Employees.
- (iv) A Non-Collectively Bargained Employee will not be considered a Collectively Bargained Employee under Paragraph (c)(iii) above unless:
  - (A) the Employee is providing services to the Employer as an employee for compensation; and

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- (B) the Employee is or was a member of a unit of employees covered by a Collective Bargaining Agreement and that agreement or a successor agreement, taking into account the provisions of the Plan, the Trust Agreement, and any participation agreement with the Employer, provides for the Employee to benefit under the Plan in the current Plan Year; and
  - (C) he is not working for an unincorporated Employer of which he or his spouse is an owner.

Those covered as Collectively Bargained Employees under Subparagraphs (c)(iii)(B) and (C) above can receive benefit accruals only in a manner that is generally no more favorable than similarly situated Employees who are currently in a unit of employees covered by a Collective Bargaining Agreement.

- (d)
  - (i) A “Highly Compensated Employee” is a Highly Compensated Active Employee or a Highly Compensated Former Employee 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 from that Employer and relationship to that Employer.
  - (ii) A Highly Compensated Active Employee is an Employee of the Employer who:
    - (A) was a 5-percent owner; as defined below, at any time during the Plan Year or preceding year; or
    - (B) for the preceding year, had compensation, as defined below, from the Employer in excess of \$80,000.

The \$80,000 amount shall be subject to adjustment in the same manner and at the same time as provided for by the Secretary under Internal Revenue Code Section 415(d), using the calendar quarter ending September 30, 1996 as the base period.
  - (iii) For Plan Years beginning before July 1, 1997, a Highly Compensated Active Employee is an Employee of the Employer who performs services for the Employer during the Plan Year and who during the Plan Year or the preceding year:
    - (A) was a 5-percent owner;
    - (B) received compensation from the Employer in excess of the amount under Internal Revenue Code Section 414(q)(1)(B) (as then in effect), as adjusted;
    - (C) received compensation from the Employer in excess of the amount under Internal Revenue Code Section 414(q)(1)(C) (as then in effect), as adjusted and who was a member of the top-paid group for that Plan Year within the meaning of Internal Revenue Code Section 414(q)(4) (as then in effect); or

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- (D) was an officer of the Employer and received compensation from the Employer in an amount greater than 50% of the dollar limitation in effect for that Plan Year under Internal Revenue Code Section 415(b)(1)(A). If no officer received compensation in the determination year or the preceding year at the level described in the preceding sentence, the officer who received the highest compensation from the Employer in that year shall be treated as a Highly Compensated Active Employee.

For purpose of determining officers under (D), above, the number of officers shall be limited to the lesser of (i) 50 Employees, or (ii) the greater of three Employees or 10 percent of all Employees. However, an Employee described in (B), (C) or (D), above, who was not so described in the preceding year, shall not be considered an active Highly Compensated Employee unless he or she was a member of the group of 100 Employees of the Employer who received the greatest compensation from the Employer during the determination year.

- (iv) In lieu of determining which Employees are Highly Compensated Employees in accordance with the provisions of (iii) above, the Trustees can elect, for any Plan Years beginning before January 1, 1997, to use the simplified “snapshot” method under IRS Revenue Procedure 95-34.
- (v) A Highly Compensated Former Employee for a Plan Year is any former Employee who, with respect to the Employer, had a separation year prior to the Plan Year and who was a Highly Compensated Active Employee for either the Employee’s separation year or any Plan Year ending on or after the Employee’s 55<sup>th</sup> birthday. An Employee who performs no service for an Employer during the Plan Year is treated as a former Employee for that Plan Year. Such Employee’s separation year is the year in which the Employee last performed service for the Employer.
- (vi) “5-percent owner” for any year means any Employee who is a 5-percent owner within the meaning of Internal Revenue Code Section 416(i)(I).
- (vii) “Top-Paid group” means the group consisting of the top 20 percent of the Employer’s Employees when ranked on the basis of compensation paid during such year.
- (viii) For purposes of determining the group of Highly Compensated Employees under this section, “compensation” means “compensation” as defined in Section 9.13(l).
- (ix) For purposes of determining the group of Highly Compensated Employees but not for purposes of determining Covered Employment, the term “Employer” includes all corporations, trades or businesses under common control with the Employer within the meaning of Internal Revenue Code Section 414(b) or (c); all members of an affiliated service group with the Employer within the meaning of Internal Revenue Code Section 414(m) and all other businesses aggregated with the Employer under Internal Revenue Code Section 414(o).

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- (e) Employees who are represented by a union other than the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada may be excluded from coverage under Paragraph (a)(v) above if such exclusion is the result of good faith collective bargaining.
  - (f) Solely for purposes of determining whether this Plan complies with the nondiscrimination testing requirements of Internal Revenue Code Sections 401(a)(4) and 410(b) and as otherwise required for testing purposes only by Internal Revenue Code Section 414(n)(3), all leased employees as defined in Internal Revenue Code Sections 414(n) or 414(o), who have performed services for an Employer on a substantially full-time basis, under such Employer's primary direction or control, for a period of at least one year shall be treated as an Employee except to the extent that such leased employees are excluded in accordance with Internal Revenue Code Section 414(n)(5).

### **Section 1.09. Covered Employment.**

The term "Covered Employment" means work as an Employee as defined by Section 1.08 above.

### **Section 1.10. Pension Credit.**

The term "Pension Credit" shall mean the units of credit which are accumulated and maintained for Employees in accordance with Article 5 of this Plan.

### **Section 1.11. Contribution Date.**

- (a) "Contribution Date" with respect to a Contributing Employer is the first date for which the Contributing Employer makes contributions to the Pension Fund under a Collective Bargaining Agreement. If a Contributing Employer operates in more than one Local Union's territorial jurisdiction, the Contribution Date applicable to such Employer shall be established separately based on the first date for which said Employer makes contributions to the Pension Fund, pursuant to a Collective Bargaining Agreement, for employment in each such territory.
- (b) The term "Contribution Date" with respect to an Employee shall be the Contribution Date of his first Contributing Employer in the jurisdiction of his home Local Union (or if not a member of the Union, in the jurisdiction of the Local Union where he is regularly employed), unless before such date contributions were made on behalf of the Employee in another jurisdiction for at least 870 hours in a twelve consecutive month period in which case the Employee's Contribution Date shall be the first day of employment for which a contribution was made on his behalf in that jurisdiction (however, this earlier contribution date would not be used if the result would be a Permanent Break in Service as described in Plan Section 5.06, or separation as described in Plan Section 4.20).

### **Section 1.12. Past Service Credit.**

The term "Past Service Credit" shall mean periods of employment prior to the Contribution Date for which Pension Credit is granted in accordance with Plan Section 5.02 or after the Contribution Date in accordance with Plan Section 5.03.

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**Section 1.13. Future Service Credit.**

The term "Future Service Credit" shall mean periods of Covered Employment subsequent to the Contribution Date for which units of Pension Credit are granted in accordance with Plan Section 5.04.

**Section 1.14. Participant.**

The term "Participant" shall mean a Pensioner, a Beneficiary, or an Employee who meets the requirement for participation in the Plan as set forth in Article 3, or a former Employee who has acquired a right to a pension under this Plan.

**Section 1.15. Pensioner.**

The term "Pensioner" shall mean an Employee who is Retired and who is receiving pension benefits under this Plan.

**Section 1.16. Beneficiary.**

The term "Beneficiary" shall mean a person designated by a Pensioner or Participant or a person who becomes a Beneficiary by operation of Plan Section 9.15 who is receiving benefit payments hereunder after the death of the Pensioner or Participant.

**Section 1.17. Employer Contributions.**

The term "Employer Contributions" shall mean payments made to the Fund by a Contributing Employer under the provisions of, and in accordance with, a Collective Bargaining Agreement and the Trust Agreement. The receipt of Employer Contributions by the Fund is not a condition of receiving Future Service Credit or Vesting Service hereunder.

**Section 1.18. Contribution Rate.**

The term "Contribution Rate" shall mean the amount set forth in the Collective Bargaining Agreement as the amount which a Contributing Employer is obligated to pay to the Fund on behalf of an Employee.

**Section 1.19. Normal Retirement Age.**

Normal Retirement Age shall mean the later of:

- (a) age 65; or
- (b) the age of the Participant on the 5<sup>th</sup> anniversary of his Participation.

In determining Normal Retirement Age, Hours of Work completed before a Permanent Break in Service shall be disregarded.

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## **Section 1.20. Calendar Year and Plan Year.**

The term "Calendar Year" shall mean the period from January 1 to the next December 31. For purposes of regulations promulgated under the Employee Retirement Income Security Act of 1974, as amended (hereafter "ERISA"), the Calendar Year shall serve as the vesting computation period, the benefit accrual computation period, and, after the initial period of employment or of re-employment following a Break in Service, the computation period for eligibility to participate in the Plan.

The "Plan Year," however, is the fiscal year of the Plan which is the period from July 1st to the next June 30th.

## **Section 1.21. Year of Participation.**

For purposes of compliance with Regulation 2530 of the Department of Labor, a "Year of Participation" means a Calendar Year after 1975 in which a Participant has completed 1,800 Hours of Work in Covered Employment.

## **Section 1.22. Hour of Work.**

The term "Hour of Work" shall mean (a) each hour for which an Employee is paid, or entitled to payment, for the performance of duties for a Contributing Employer; (b) any other hours in Covered Employment for which contributions are required under the terms of the Collective Bargaining Agreement; and (c) each hour for which back pay, regardless of mitigation of damages, is awarded or agreed to by an Employer, to the extent that such award or agreement is intended to compensate an Employee for periods during which the Employee would have been engaged in the performance of duties for the Employer, excluding any hour credited under (a) or (b). Hours of Work shall be computed and credited in accordance with Department of Labor Regulations Section 2530.200b-3(d).

## **Section 1.23. Continuous Employment.**

The term "Continuous Employment" shall mean a period of employment that is not interrupted by a quit, discharge, or other termination.

## **Section 1.24. Applicable Interest Rate.**

The Applicable Interest Rate, in accordance with the Pension Protection Act of 2006, is based on the segment rates as computed under Internal Revenue Code Section 430(h)(2), but determined without regard to a 24-month average. The segment rates issued for the month of August (as published in September) preceding the Calendar Year that contains the Participant's annuity starting date shall be applied.

## **Section 1.25. Applicable Mortality Table.**

In accordance with the Pension Protection Act of 2006, the Applicable Mortality Table is based on the mortality table for the Calendar Year specified under subparagraph (A) of Internal Revenue Code Section 430(h)(3).

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## Section 1.26. Actuarial Present Value

Unless otherwise specifically defined herein, "Actuarial Present Value" shall mean the actuarial present value determined based on the Applicable Mortality Table and the Applicable Interest Rate.

## Section 1.27. Other Terms.

Other terms are specially defined as follows:

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<b>Term</b>	<b>Section(s)</b>
50% Joint and Surviving Spouse Pension .....	6.02
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## ARTICLE 2

### Basis of Employer Participation in the Fund

#### Section 2.01. General.

The Pension Plan was established to provide retirement benefits for Employees who are represented for the purposes of collective bargaining by the Union. It is necessary that a Collective Bargaining Agreement be concluded with an Employer requiring contributions to the Pension Fund. The participation by the Employees of that Employer becomes effective upon the group being accepted for participation by the Trustees. In addition, a Local Union or District Council, a Local Union's pension, welfare, or apprentice training fund, or other Union-affiliated organization may participate in accordance with Section 2.04 below and for such purpose shall be considered a Contributing Employer.

#### Section 2.02. Acceptance of a New Contributing Employer.

An Employer shall be accepted by the Trustees as a "Contributing Employer" upon application, if consistent with the terms of this Section. The participation of the Employer must also be in conformity with Plan Section 1.08.

- (a) The Employer, along with the Union, shall include as part of the Collective Bargaining Agreement the terms of the Standard Form of Participation Agreement, as approved by the Trustees (the Standard Form of Participation Agreement sets forth the full details of the basis for contributions to the Fund and the basis for acceptance as a Contributing Employer).
- (b) The Employer or Union shall furnish the name, date of birth and employment history of each Employee then covered by the Collective Bargaining Agreement between the Union and the new Employer.
- (c) A new Employer meeting the requirements of (a) and (b) above may be accepted as a "Contributing Employer" by the Trustees if such acceptance will not adversely affect the actuarial status of the Fund as determined by the Trustees after consultation with the actuaries for the Fund. If the acceptance of an Employer will, in the judgment of the Trustees, adversely affect the actuarial status of the Fund, then the Trustees may, as a condition for acceptance, impose any terms and conditions they consider necessary to preserve the actuarial status of the Fund and to preserve an equitable relationship between the basis of contributions of all Contributing Employers and the benefits provided for all Employees. Such conditions may include, but shall not be limited to, the imposition of special waiting periods before the commencement of benefits to a Pensioner, and/or the granting of a lower scale of benefits.

#### Section 2.03. Notice of Acceptance.

A written Notice of Acceptance shall be sent by the Trustees to any new Employer who is accepted for participation in the Fund. Until such written Notice shall be sent by the Trustees, any new Employer shall not be deemed to have been accepted for participation in the Fund or be considered a Contributing Employer.

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#### **Section 2.04. Acceptance of a Participating Local Union or District Council, or of a Local Pension, Welfare or Apprenticeship Fund.**

A Local Union, a Local Union's pension, welfare, or apprentice training fund, or other Union-affiliated organization may be accepted as a Contributing Employer on behalf of its Employees under the following conditions:

- (a) Application for such participation is made to the Trustees in writing.
- (b) Necessary data for the employees is submitted to the Trustees.
- (c) The Local Union has a Collective Bargaining Agreement with at least one Contributing Employer; and in the case of a Local Union's pension, welfare, or apprentice training fund, such Collective Bargaining Agreement requires a Contributing Employer to make contributions to the fund seeking to become a Contributing Employer.
- (d) The Local Union, the Local Union's pension, welfare, or apprentice training fund, or the other Union-affiliated organization that is seeking acceptance as an Employer, must agree, in writing, to make contributions to the Fund on behalf of its Employees on the terms and conditions established by the Trustees.
- (e) The acceptance as a Contributing Employer of the Local Union, the Local Union's pension, welfare, or apprentice training fund, or the other Union-affiliated organization will not adversely affect the actuarial status of the Fund as determined by the Trustees after consultation with the actuary. The Trustees may also impose such other conditions on any acceptance as they deem appropriate in accordance with Plan Section 2.02(c).
- (f) Each Local Union must elect to cover only those of its Employees who meet the requirements of Plan Sections 1.08(a)(iv) and 1.08(c); or all of its full-time Employees pursuant to Plan Section 1.08(a)(v); or both.

#### **Section 2.05. Basis of Continuing Participation.**

- (a) If the continuing participation of any contributing Employer would, in the judgment of the Trustees, adversely affect the actuarial status of the Fund, then the Trustees may, as a condition of continued participation, modify any terms and conditions of participation that they consider necessary to preserve the actuarial status of the Fund.
- (b) The continuing participation of all Contributing Employers is conditioned upon compliance with coverage requirements set forth in Plan Section 1.08. Anyone working for the Employer who is not an Employee (as defined in Section 1.08) cannot be covered. All Contributing Employers must provide the Fund with any requested information to show such compliance. All Contributing Employers must also comply with the nondiscrimination and minimum coverage requirements of Internal Revenue Code Sections 401(a)(4) and 410(b). Any Employee who is a Non-Collectively Bargained Employee will not accrue a benefit under this Plan during any year unless the Employer meets the requirements of Internal Revenue Code Sections 401(a)(4) and 410(b) for that year and the Employer provides the Fund with information or certifications required to monitor compliance with these requirements. If the Employer fails to comply with the

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requirements of Internal Revenue Code Sections 401(a)(4) and 410(b) or if the Employer fails to provide requested information or certifications, the participation of that Employer's Employees who are not Collectively Bargained Employees will terminate as of the end of the Plan Year immediately preceding the Plan Year in which it failed to comply or for which it failed to supply requested information or certifications.

- (c) In determining and certifying compliance with the coverage and nondiscrimination requirements of the Plan and the Internal Revenue Code, an Employer may use "substantiation quality data" as defined in IRS Revenue Procedure 93-42. In addition, an Employer may determine and certify compliance on the basis of the Employer's workforce on a single day during the Plan Year (snapshot day) in accordance with Revenue Procedure 93-42.

### **Section 2.06. Merger.**

The term "Employee" as defined in Plan Section 1.08 shall also include, upon acceptance by the Trustees:

- (a) Any person where the trustees of a merged fund have granted eligibility to said person by virtue of his inclusion in a special class of Employees of Contributing Employers in the merged fund.
- (b) Any full-time Employee of a merged fund on whose behalf contributions have been made to the merged fund.

## **ARTICLE 3**

### **Basis of Employee Participation in Plan**

#### **Section 3.01. Purpose.**

This Article contains definitions to meet certain requirements of ERISA. Once an Employee has become a Participant, the provisions of the 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 3.02. Participation.**

An Employee who is engaged in Covered Employment becomes a Participant in the Plan on the earliest January 1 or July 1 following completion of a 12 consecutive month period during which he completed at least 870 Hours of Work in Covered Employment for which Employer Contributions are due to the Fund. The required 870 Hours of Work may also be completed with any other type of employment with the Employer if that other employment is Continuous Employment with the Employee's Covered Employment with that Employer.

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### **Section 3.03. Termination of Participation.**

A person who incurs a One Year Break in Service [defined in Plan Section 5.06(b)] shall cease to be a Participant as of the last day of the Calendar 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 3.04. Reinstatement of Participation.**

An Employee who has lost his status as a Participant in accordance with Section 3.03 above shall again become a Participant by meeting the requirements of Section 3.02 above on the basis of Hours of Work after the Calendar Year during which his participation terminated.

## **ARTICLE 4**

### **Pension Eligibility and Amounts**

#### **Section 4.01. General.**

This Article sets forth the eligibility conditions and benefit amounts for the pensions provided by the Plan. The monthly pension payable under this Article is limited to a maximum of 35 years of Pension Credit.

#### **Section 4.02. Normal Pension – Eligibility.**

A Participant shall be entitled to retire on a Normal Pension if he meets the following requirements:

- (a) he has attained age 65;
- (b) he has at least 5 years of Pension Credit; and
- (c) he has at least 1,500 Hours of Work in Covered Employment after his Contribution Date.

#### **Section 4.03. Normal Pension – Benefit Amounts for Periods Prior to 2005.**

##### **(a) *Schedule of Contribution Rates and Benefit Levels Prior to 2005 (Schedule A).***

The following schedule sets forth the monthly Normal Pension amount per year of Pension Credit earned prior to January 1, 2005:

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Hourly Contribution Rate	Monthly Normal Pension Amount Per Year of Pension Credit	Hourly Contribution Rate	Monthly Normal Pension Amount Per Year of Pension Credit
\$ 0.10	\$ 4.00	\$ 2.10	\$ 66.66
0.15	6.03	2.15	67.83
0.20	8.03	2.20	69.09
0.25	10.06	2.25	70.20
0.30	12.00	2.30	71.29
0.35	14.03	2.35	72.31
0.40	15.97	2.40	73.43
0.45	17.97	2.45	74.49
0.50	19.97	2.50	75.63
0.55	22.00	2.55	76.66
0.60	23.57	2.60	77.77
0.65	25.23	2.65	78.86
0.70	26.77	2.70	80.00
0.75	28.49	2.75	81.03
0.80	30.11	2.80	82.17
0.85	31.74	2.85	83.23
0.90	33.34	2.90	84.31
0.95	34.94	2.95	85.37
1.00	36.57	3.00	86.49
1.05	38.26	3.05	87.54
1.10	39.83	3.10	88.69
1.15	41.17	3.15	89.71
1.20	42.69	3.20	90.89
1.25	44.06	3.25	91.94
1.30	45.51	3.30	93.03
1.35	46.94	3.35	94.00
1.40	48.34	3.40	95.00
1.45	49.83	3.45	95.97
1.50	51.23	3.50	97.03
1.55	52.69	3.55	98.03
1.60	54.09	3.60	99.03
1.65	55.51	3.65	100.03
1.70	56.77	3.70	101.03
1.75	57.97	3.75	102.03
1.80	59.17	3.80	103.03
1.85	60.49	3.85	104.03
1.90	61.66	3.90	105.03
1.95	62.91	3.95	106.03
2.00	64.14	4.00	107.03
2.05	65.37		

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The monthly Normal Pension Payable at or over age 65 for years of Pension Credit earned prior to 2005 shall be the greater of the two following calculated amounts based upon the above schedule:

- (i) Contribution Rates from \$.10 per hour through \$4.00 per hour provide the corresponding monthly benefit amount per year of Pension Credit. Contribution Rates greater than \$4.00 per hour produce an additional monthly Normal Pension amount equal to 2.25% of the total payable contributions that exceed \$4.00 per hour for Hours of Work by the Participant prior to January 1, 2005; or
- (ii) Contribution Rates greater than \$1.10 per hour provide the monthly benefit amount payable for the \$1.10 Contribution Rate per year of Pension Credit, plus an additional monthly Normal Pension amount equal to 2.25% of the total payable contributions that exceed \$1.10 per hour for Hours of Work by the Participant prior to January 1, 2005.

(b) ***Special Rules for Contribution Rates and Benefit Levels for Pension Credit Earned before January 1, 2005.***

The following applies to the portion of the benefit attributable to Pension Credit earned prior to January 1, 2005:

- (i) Except as provided in Section 4.20 below and this Section 4.03, the Normal Pension to which a Participant will be entitled at Retirement for Pension Credit earned prior to January 1, 2005 will be based on the highest Contribution Rate under which he worked in the jurisdiction of his home Local Union, provided he has at least 1,500 Hours of Work in Covered Employment after his Contribution Date at that rate, including at least one Hour of Work at that rate before 2006. However, if there was more than one employment category covered under a labor agreement with separate Contribution Rates for the separate employment categories or if there were separate employment categories under separate labor agreements in a Local Union jurisdiction and a Participant had worked under more than one of such separate employment categories or agreements, then Pension Credits earned prior to January 1, 2005 for a Participant under the separate employment categories or labor agreements are treated as if such employment was in other Local Union jurisdictions as set forth in Paragraph (b)(iii) below. In determining the highest Contribution Rate under which the Participant has at least 1,500 Hours of Work in Covered Employment after his Contribution Date in the jurisdiction of his home Local Union, periods of Covered Employment after his Contribution Date for less than 1,500 Hours of Work under an agreement in the jurisdiction of any other participating Local Union or any other separate agreement in his home Local Union are taken into account.
- (ii) If, prior to January 1, 2005, the Participant's home Local Union entered into a Collective Bargaining Agreement requiring a lesser rate of contributions, all subsequent benefits for Future Service Credit earned under that agreement after the reduction in rate are based solely on the rates in effect when that Future Service Credit was earned. However, if the Participant's home Local Union was merged with or consolidated into another Local Union and if the Participant's new

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Local Union had a lower Contribution Rate than the prior home Local Union, the previous sentence does not apply, but the following Paragraph (b)(iii) does apply, for all those retiring after the merger or consolidation until the new Local Union's Contribution Rate equals or exceeds the Contribution Rate of the prior home Local Union. However, if the merged or consolidated Local Union's Contribution Rate did not yet equal or exceed the Contribution Rate of the prior home Local Union as of December 31, 2004, Paragraph (b)(iii) will continue to apply to accruals earned between when the Contribution Rate was reduced and January 1, 2005 even if the Contribution Rate is subsequently increased.

- (iii) If, prior to January 1, 2005, a Participant left the jurisdiction of his home Local Union and earned at least one (1) year of Future Service Credit under the agreement of one or more other participating Local Unions or in the jurisdictions covered by other pension plans which have reciprocal agreements with this Plan, then the Normal Pension amount per year of Pension Credit before January 1, 2005 is to be based on a Weighted Average Contribution Rate which is determined as follows:
- (A) The Participant's Pension Credits under each such agreement where he earned one or more years of Future Service Credit prior to January 1, 2005 are to be determined. Pension Credit earned, prior to January 1, 2005, in a Local Union jurisdiction other than his home local jurisdiction at a Contribution Rate which was equal to or greater than the Contribution Rate in effect in the Employee's home local jurisdiction for the same period shall be counted as earned in the home local jurisdiction unless such Contribution Rate is greater than the approved Contribution Rate in effect on the Participant's Effective Date of Benefits in his home local jurisdiction, or unless the result would be a lower Weighted Average Contribution Rate.
  - (B) The highest Contribution Rate in effect under that agreement before January 1, 2005, at which he has at least 1,500 Hours of Work in Covered Employment after his Contribution Date but before January 1, 2005 shall be determined. In the case of employment subject to a reciprocal agreement, the Contribution Rates to be applied shall be those rates received and retained by this Plan for periods prior to January 1, 2005. The Contribution Rate to be applied to his years of Future Service Credit earned in all Local Union jurisdictions prior to January 1, 2005 shall be the highest rate at which he has at least 1,500 Hours of Work in Covered Employment after his Contribution Date in any Local Union jurisdiction not to exceed the approved Contribution Rate in effect on December 31, 2004 in each such Local Union jurisdiction.
  - (C) Based upon the number of years in (A) above and the Contribution Rate in (B) above, his Weighted Average Contribution Rate shall be determined and then applied to his total years of Future Service Credit earned prior to January 1, 2005.
  - (D) The Contribution Rate to be applied to his years of Past Service Credit shall be the highest rate at which he has at least 1,500 Hours of Work in Covered

Employment after his Contribution Date not to exceed the approved Contribution Rate in effect on December 31, 2004, or at the time immediately preceding any initial reduction in rate governed by Plan Section 10.04, in the Local Union of which he was a member (or if not a union member, the Local Union in whose jurisdiction he was regularly employed) on his Contribution Date, subject to the provisions of this Section 4.03(b).

- (E) For the purpose of this Section 4.03(b)(iii), only the most recent 35 years of an Employee's Pension Credit earned prior to January 1, 2005 shall be taken into account, and Pension Credit of less than one year in any Local Union jurisdiction shall be disregarded for the purposes of computing the Weighted Average Contribution Rate.

**Section 4.04. Normal Pension – Benefit Amounts for Periods During and After 2005.**

- (a) ***Schedule of Contribution Rates and Benefit Levels for 2005 for All Participants, and for 2006 and Later Under Agreements Without the 25% Increase in Contributions (Schedule B).***

For all Participants, the following schedule sets forth the monthly Normal Pension amount for a year of Pension Credit earned during 2005. The following schedule will continue to apply per year of Pension Credit for Hours of Work earned in 2006 and later under Collective Bargaining Agreements (or other written agreements) without the 25% increase in the Contribution Rate referred to in Section 4.04(b) below:

Hourly Contribution Rate	Monthly Normal Pension Amount For a Year of Pension Credit Earned in 2005	Hourly Contribution Rate	Monthly Normal Pension Amount For a Year of Pension Credit Earned in 2005
\$ 0.10	\$ 1.00	\$ 2.10	\$ 16.67
0.15	1.51	2.15	16.96
0.20	2.01	2.20	17.27
0.25	2.52	2.25	17.55
0.30	3.00	2.30	17.82
0.35	3.51	2.35	18.08
0.40	3.99	2.40	18.36
0.45	4.49	2.45	18.62
0.50	4.99	2.50	18.91
0.55	5.50	2.55	19.17
0.60	5.89	2.60	19.44
0.65	6.31	2.65	19.72
0.70	6.69	2.70	20.00
0.75	7.12	2.75	20.26
0.80	7.53	2.80	20.54
0.85	7.94	2.85	20.81
0.90	8.34	2.90	21.08



Hourly Contribution Rate	Monthly Normal Pension Amount For a Year of Pension Credit Earned in 2005	Hourly Contribution Rate	Monthly Normal Pension Amount For a Year of Pension Credit Earned in 2005
\$ 0.95	\$ 8.74	\$ 2.95	\$ 21.34
1.00	9.14	3.00	21.62
1.05	9.57	3.05	21.89
1.10	9.96	3.10	22.17
1.15	10.29	3.15	22.43
1.20	10.67	3.20	22.72
1.25	11.02	3.25	22.99
1.30	11.38	3.30	23.26
1.35	11.74	3.35	23.50
1.40	12.09	3.40	23.75
1.45	12.46	3.45	23.99
1.50	12.81	3.50	24.26
1.55	13.17	3.55	24.51
1.60	13.52	3.60	24.76
1.65	13.88	3.65	25.01
1.70	14.19	3.70	25.26
1.75	14.49	3.75	25.51
1.80	14.79	3.80	25.76
1.85	15.12	3.85	26.01
1.90	15.42	3.90	26.26
1.95	15.73	3.95	26.51
2.00	16.04	4.00	26.76
2.05	16.34		

The monthly Normal Pension payable at or over age 65 for Pension Credit earned during 2005, and under this schedule of benefits after 2005, shall be the following calculated amount based upon the above schedule: Contribution Rates from \$.10 per hour through \$4.00 per hour provide the corresponding monthly benefit amount for a year of Pension Credit; and Contribution Rates greater than \$4.00 per hour produce an additional monthly Normal Pension amount equal to .375% of the total payable contributions that exceed \$4.00 per hour for Hours of Work by the Participant during 2005 (as well as Hours of Work after 2005 under this schedule of benefits).

(b) (i) ***Schedule of Contribution Rates and Benefit Levels for 2006 and Later Under Agreements with 25% Increase in Contributions (Schedule C).***

The following schedule sets forth the monthly Normal Pension amount per year of Pension Credit for Hours of Work in 2006 and later under a Collective Bargaining Agreement (or other written agreement) with a Contribution Rate that is 25% or greater than the Contribution Rate in effect on December 31, 2004. The amount representing this 25% increase is included in the applicable Contribution Rate under this schedule:

Hourly Contribution Rate	Monthly Normal Pension Amount Per Year of Pension Credit	Hourly Contribution Rate	Monthly Normal Pension Amount Per Year of Pension Credit
\$ 0.13	\$ 2.08	\$ 2.60	\$ 33.07
0.15	2.41	2.65	33.56
0.20	3.21	2.70	34.04
0.25	4.01	2.75	34.54
0.30	4.83	2.80	34.99
0.35	5.61	2.85	35.43
0.40	6.41	2.90	35.85
0.45	7.21	2.95	36.27
0.50	7.99	3.00	36.71
0.55	8.79	3.05	37.14
0.60	9.59	3.10	37.59
0.65	10.39	3.15	38.02
0.70	11.03	3.20	38.44
0.75	11.66	3.25	38.89
0.80	12.32	3.30	39.32
0.85	12.95	3.35	39.77
0.90	13.59	3.40	40.21
0.95	14.28	3.45	40.63
1.00	15.06	3.50	41.09
1.05	15.71	3.55	41.51
1.10	16.35	3.60	41.94
1.15	16.99	3.65	42.37
1.20	17.63	3.70	42.80
1.25	18.29	3.75	43.24
1.30	18.96	3.80	43.67
1.35	19.60	3.85	44.11
1.40	20.18	3.90	44.55
1.45	20.74	3.95	44.97
1.50	21.34	4.00	45.44
1.55	21.89	4.05	45.87
1.60	22.47	4.10	46.30
1.65	23.04	4.15	46.71
1.70	23.61	4.20	47.10
1.75	24.17	4.25	47.50
1.80	24.77	4.30	47.89
1.85	25.33	4.35	48.30
1.90	25.91	4.40	48.71
1.95	26.48	4.45	49.11
2.00	27.04	4.50	49.51
2.05	27.61	4.55	49.91
2.10	28.13	4.60	50.31
2.15	28.63	4.65	50.71
2.20	29.11	4.70	51.11

Hourly Contribution Rate	Monthly Normal Pension Amount Per Year of Pension Credit	Hourly Contribution Rate	Monthly Normal Pension Amount Per Year of Pension Credit
\$ 2.25	\$ 29.59	\$ 4.75	\$ 51.51
2.30	30.11	4.80	51.91
2.35	30.59	4.85	52.31
2.40	31.08	4.90	52.71
2.45	31.58	4.95	53.11
2.50	32.07	5.00	53.51
2.55	32.56		

The monthly Normal Pension payable at or over age 65 for Pension Credit earned on or after January 1, 2006 earned under this schedule of benefits shall be the following calculated amount: Contribution Rates from \$.13 per hour through \$5.00 per hour provide the corresponding monthly benefit amount per year of Pension Credit; and Contribution Rates greater than \$5.00 per hour produce an additional monthly Normal Pension amount equal to .75% of the total payable contributions that exceed \$5.00 per hour for Hours of Work by the Participant. In calculating this benefit amount, Hours of Work earned before the 25% increase in the Contribution Rate or before 2006 are not included.

(ii) ***Schedule of Contribution Rates and Benefit Levels for 2007 and Later Under Agreements with 25% Increase in Contributions (Schedule D).***

The following schedule sets forth the monthly Normal Pension amount per year of Pension Credit for Hours of Work in 2007 and later under a Collective Bargaining Agreement (or other written agreement) with a Contribution Rate that is 25% or greater than the Contribution Rate in effect on December 31, 2004 (provided such 25% Contribution Rate increase is effective on or before January 1, 2007). The amount representing this 25% increase is included in the applicable Contribution Rate under this schedule:

If the Contribution Rate increase is first effective during the period after January 1, 2007 through January 1, 2008, the above Schedule D will apply, but only to Pension Credit and Hours of Work earned on and after January 1, 2008. If the 25% Contribution Rate increase is adopted later, Schedule D will not apply, and Schedule C will apply to Pension Credit and Hours of Work earned after the increase is adopted. If the 25% Contribution Rate increase is never adopted, Schedule B will apply to all Pension Credit and Hours of Work earned after December 31, 2004.

Hourly Contribution Rate	Monthly Normal Pension Amount Per Year of Pension Credit	Hourly Contribution Rate	Monthly Normal Pension Amount Per Year of Pension Credit
\$ 0.13	\$ 3.12	\$ 2.60	\$ 49.61
0.15	3.62	2.65	50.34
0.20	4.82	2.70	51.06
0.25	6.02	2.75	51.81
0.30	7.25	2.80	52.49
0.35	8.42	2.85	53.15
0.40	9.62	2.90	53.78
0.45	10.82	2.95	54.41
0.50	11.99	3.00	55.07
0.55	13.19	3.05	55.71
0.60	14.39	3.10	56.39
0.65	15.59	3.15	57.03
0.70	16.55	3.20	57.66
0.75	17.49	3.25	58.34
0.80	18.48	3.30	58.98
0.85	19.43	3.35	59.66
0.90	20.39	3.40	60.32
0.95	21.42	3.45	60.95
1.00	22.59	3.50	61.64
1.05	23.57	3.55	62.27
1.10	24.53	3.60	62.91
1.15	25.49	3.65	63.56
1.20	26.45	3.70	64.20
1.25	27.44	3.75	64.86
1.30	28.44	3.80	65.51
1.35	29.40	3.85	66.17
1.40	30.27	3.90	66.83
1.45	31.11	3.95	67.46
1.50	32.01	4.00	68.16
1.55	32.84	4.05	68.81
1.60	33.71	4.10	69.45
1.65	34.56	4.15	70.07
1.70	35.42	4.20	70.65
1.75	36.26	4.25	71.25
1.80	37.16	4.30	71.84
1.85	38.00	4.35	72.45
1.90	38.87	4.40	73.07
1.95	39.72	4.45	73.67
2.00	40.56	4.50	74.27
2.05	41.42	4.55	74.87
2.10	42.20	4.60	75.47

Hourly Contribution Rate	Monthly Normal Pension Amount Per Year of Pension Credit	Hourly Contribution Rate	Monthly Normal Pension Amount Per Year of Pension Credit
\$ 2.15	\$ 42.95	\$ 4.65	\$ 76.07
2.20	43.67	4.70	76.67
2.25	44.39	4.75	77.27
2.30	45.17	4.80	77.87
2.35	45.89	4.85	78.47
2.40	46.62	4.90	79.07
2.45	47.37	4.95	79.67
2.50	48.11	5.00	80.27
2.55	48.84		

The monthly Normal Pension payable at or over age 65 for Pension Credit earned on or after January 1, 2007 under this schedule of benefits shall be the following calculated amount: Contribution Rates from \$.13 per hour through \$5.00 per hour provide the corresponding monthly benefit amount per year of Pension Credit; and Contribution Rates greater than \$5.00 per hour produce an additional monthly Normal Pension amount equal to 1.125% of the total payable contributions that exceed \$5.00 per hour for Hours of Work by the Participant. In calculating this benefit amount, Hours of Work earned before 2007 are not included.

(c) ***Special Rules for Contribution Rates and Benefit Levels for Pension Credit Earned On and After January 1, 2005***

The following applies to the portion of the benefit attributable to all Pension Credit earned on and after January 1, 2005:

- (i) Except as provided in Plan Sections 4.20 and 4.03, the Normal Pension to which a Participant will be entitled at Retirement for Pension Credit earned on and after January 1, 2005 will be based solely on each Contribution Rate in effect when the Pension Credit is earned. For each one-tenth of a Pension Credit, the Participant will be entitled to a prorated amount, under the applicable schedule of benefits above, for the specific Contribution Rate at which the credit was earned. In order for a specific Contribution Rate to apply, the Participant must have at least one-tenth of a Pension Credit at that rate. The schedule of benefits applicable to Pension Credit under a reciprocal agreement, where the work in the visited local union/group does not include direct participation in the National Pension Fund, shall be the schedule applicable to the Participant's then current home Local Union group.

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- (ii) Periods of Past Service Credit under Plan Section 5.02 for a Participant with an initial Contribution Date on and after January 1, 2005 will be valued at the Contribution Rate, on his Contribution Date, of his first Contributing Employer on or after that date in the jurisdiction of his then home Local Union group. Any other periods of Past Service Credit under Section 5.02 attributable to Employers or groups of employers that first begin participation in the Fund after 2004 will be valued at the first Contribution Rate of the applicable Employer or group of Employers in effect after the end of the applicable period of Past Service Credit. Periods of Past Service Credit in the Future Service period after 2004 under Plan Section 5.03 will be valued at the first Contribution Rate at which the Participant accrues Future Service Credit after the end of each applicable period of Past Service Credit in the Future Service period. Notwithstanding any other provisions herein, the level of benefit for the Contribution Rate applicable to any Past Service Credit described in this paragraph (ii) will be set at and remain at the level in effect when the applicable Employer or group first began participation hereunder.
  - (iii) All increases in Contribution Rates must be approved by the Trustees in order to be effective under this Plan. Increases in Contribution Rates that are effective January 1, 2005 and later may be accepted by the Trustees, but will not be applied to increase the level of benefits for the affected Participants, except as determined by the Trustees. Under no circumstances may benefits be increased under the schedule of benefits in Plan Section 4.04(a) through an increase in the Contribution Rate under the applicable Collective Bargaining Agreement (or other written agreement).
  - (iv) The parties to a Collective Bargaining Agreement (or other written agreement) must increase the Contribution Rate under that Agreement to a level that is at least 25% greater than the Contribution Rate in effect on December 31, 2004, in order for benefits for Employees under that Agreement to be increased to any schedule of benefits in Plan Subsection 4.04(b). If the 25% increase in Contribution Rate is effective on or before January 1, 2006, the schedule of benefits in Paragraph 4.04(b)(i) will apply to periods of Covered Employment under the Agreement on or after January 1, 2006. If the 25% increase in Contribution Rate is not effective until after January 1, 2006 the schedule of benefits in Paragraph 4.04(b)(i) will apply to periods of Covered Employment under the Agreement on or after the effective date of the 25% increase in the Contribution Rate. Regardless, if the 25% increase in the Contribution Rate is effective on or before January 1, 2007, the schedule of benefits in Paragraph 4.04(b)(ii) will apply to periods of Covered Employment under the Agreement on or after January 1, 2007.
  - (v) (A) The Employees of a new Contributing Employer, that effective on or after January 1, 2005 becomes bound to an existing Collective

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Bargaining Agreement that provided for contributions to the Fund prior to January 1, 2005, will be subject to the same schedule(s) of benefits, including the conditions for those schedules, as apply to the existing Employees working under that Collective Bargaining Agreement.

- (B) The Employees of a new Contributing Employer, that effective on or after January 1, 2005 becomes bound to a Collective Bargaining Agreement that did not provide contributions to the Fund prior to January 1, 2005, but is with a Local Union that has a separate primary (master) Agreement requiring contributions to the Fund, will be subject to the same schedule of benefits, including the conditions for those schedules, as apply to the existing Employees working under the primary (master) Agreement. If the Employees of such a new Contributing Employer commence participation under the schedule of benefits in Plan Subsection 4.04(a) in 2006 or later, the Contribution Rate in their applicable Collective Bargaining Agreement must be increased by 25% over its initial level for the schedule of benefits in Paragraph 4.04(b)(i) to apply (and such increase must be made effective on or before January 1, 2007 in order for the schedule of benefits in Paragraph 4.04(b)(ii) to apply). If the Employees of such a new Contributing Employer commence participation in 2006 and later under the schedule of benefits in Paragraph 4.04(b)(i), the 25% Contribution Rate increase in the applicable Collective Bargaining Agreement must have been made effective no later than January 1, 2007 in order for the schedule of benefits in Paragraph 4.04(b)(ii) to apply.
- (vi) The employees of all other new Contributing Employers that become signatory to a Collective Bargaining Agreement that did not provide for participation in the National Pension Fund before January 1, 2005, will be subject to the schedule of benefits in Plan Paragraph 4.04(b)(i) for periods of Covered Employment in 2006 and will be subject to the schedule of benefits in Paragraph 4.04(b)(ii) for periods of Covered Employment on and after January 1, 2007.
- (vii) If a Contribution Rate is reduced on and after January 1, 2005, the schedule of benefits for Hours of Work earned under the applicable Collective Bargaining Agreement (or other written agreement) shall not thereafter be increased, and such Hours of Work will not count in determining the eligibility for and the amount of any other Plan improvements adopted by the Trustees. If the Contribution Rate is reduced after any schedule of benefits under Plan Subsection 4.04(b) is in effect, the schedule of benefits under Subsection 4.04(a) will apply to all Hours of Work under the applicable Collective Bargaining Agreement (or other written agreement) earned after the reduction in the Contribution Rate is effective. Benefit

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levels for any reductions in Contribution Rates on or after January 1, 2005 will also be subject to further adjustment, and the Employers' status will be subject to termination, in accordance with the provisions of Sections 4.05 and 10.04 below.

(d) ***Special Rules Under Funding Improvement Plan***

(i) On April 5, 2010, the Trustees adopted a Funding Improvement Plan (FIP) as required by the Pension Protection Act. Under the FIP, to maintain the applicable benefit level as set forth in Subsections 4.04(a) and (b) of the Plan, the applicable Contribution Rate in the applicable Collective Bargaining Agreement or Participation Agreement must have been increased as follows:

(A) a 15% increase implemented by January 1, 2011, followed by a 5% increase that must be implemented by January 1, 2012; or

(B) a 20% increase implemented on or before January 1, 2011.

If one of these increases was not implemented under the applicable Collective Bargaining Agreement on or before January 1, 2012, one of the following levels must have been reached under the Collective Bargaining Agreement:

(C) a 23% increase must be implemented on or before January 2, 2012; or

(D) a 25% increase must be implemented on or before July 1, 2012.

However, the additional 3% or 5% over 20% as provided in (C) or (D) above will not count towards benefit accruals.

The base for this Contribution Rate increase is the rate in effect on July 1, 2009; however, if the applicable Contribution Rate was previously increased as provided in Paragraph 4.04(c)(iv), the base is set at the Contribution Rate in effect on January 1, 2008 and increases after that date are counted for purposes of this paragraph.

(ii) The dates set forth in (i) above are the dates as of which the applicable Contribution Rate increase must have been implemented under the applicable Collective Bargaining Agreement or Participation Agreement. However, in order to avoid the default schedule set forth in (iii) below, one of the above increases in Contribution Rates must have been adopted under the applicable Collective Bargaining Agreement or Participation Agreement within 180 days of receipt by the bargaining parties of the



availability of (A)-(D) above, or if later, 180 days after expiration of the applicable Collective Bargaining Agreement in effect on July 1, 2009. Under no circumstances, however, could this adoption date have been later than July 1, 2012.

- (iii) If a sufficient increase in the applicable Contribution Rate was not adopted and implemented under the applicable Collective Bargaining or Participation Agreement within the applicable time frames as set forth in (i) and (ii) above, the benefits accrued for Hours of Work under that Agreement after July 1, 2012 are reduced to the applicable default level (25% of the applicable level in effect as of June 30, 2012). In determining benefit levels, such Hours of Work are treated hereunder as having been earned at a separate Contribution Rate under a separate Collective Bargaining Agreement or Participation Agreement.

The following Schedule E sets forth the FIP default monthly Normal Pension amounts for the schedule set forth in Subsection 4.04(a) (Schedule B).

**SCHEDULE E**  
**SCHEDULE OF BENEFITS FOR CREDIT EARNED 7/1/2012 AND LATER UNDER**  
**AGREEMENTS THAT WERE PREVIOUSLY UNDER SCHEDULE B.**

Hourly Contribution Rate	Monthly Normal Pension Amount Per Year of Pension Credit	Hourly Contribution Rate	Monthly Normal Pension Amount Per Year of Pension Credit
\$ 0.10	\$ 0.25	\$ 2.10	\$ 4.17
0.15	0.38	2.15	4.24
0.20	0.50	2.20	4.32
0.25	0.63	2.25	4.39
0.30	0.75	2.30	4.46
0.35	0.88	2.35	4.52
0.40	1.00	2.40	4.59
0.45	1.12	2.45	4.66
0.50	1.25	2.50	4.73
0.55	1.38	2.55	4.79
0.60	1.47	2.60	4.86
0.65	1.58	2.65	4.93
0.70	1.67	2.70	5.00
0.75	1.78	2.75	5.07
0.80	1.88	2.80	5.14
0.85	1.99	2.85	5.20
0.90	2.09	2.90	5.27
0.95	2.19	2.95	5.34

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Hourly Contribution Rate	Monthly Normal Pension Amount Per Year of Pension Credit	Hourly Contribution Rate	Monthly Normal Pension Amount Per Year of Pension Credit
\$ 1.00	\$ 2.29	\$ 3.00	\$ 5.41
1.05	2.39	3.05	5.47
1.10	2.49	3.10	5.54
1.15	2.57	3.15	5.61
1.20	2.67	3.20	5.68
1.25	2.76	3.25	5.75
1.30	2.85	3.30	5.82
1.35	2.94	3.35	5.88
1.40	3.02	3.40	5.94
1.45	3.12	3.45	6.00
1.50	3.20	3.50	6.07
1.55	3.29	3.55	6.13
1.60	3.38	3.60	6.19
1.65	3.47	3.65	6.25
1.70	3.55	3.70	6.32
1.75	3.62	3.75	6.38
1.80	3.70	3.80	6.44
1.85	3.78	3.85	6.50
1.90	3.86	3.90	6.57
1.95	3.93	3.95	6.63
2.00	4.01	4.00	6.69
2.05	4.09		

The monthly Normal Pension payable at or over age 65 for Pension Credit earned on or after July 1, 2012 under this schedule of benefits shall be the following calculated amount: Contribution Rates from \$.10 per hour through \$4.00 per hour provide the corresponding monthly benefit amount per year of Pension Credit; and Contribution Rates greater than \$4.00 per hour produce an additional monthly Normal Pension amount equal to 0.09375% of the total payable contributions that exceed \$4.00 per hour for Hours of Work by the Participant. In calculating this benefit amount, Hours of Work earned before July 1, 2012 are not included.

The following Schedule F sets forth the FIP default monthly Normal Pension amounts for the schedule set forth in Paragraph 4.04(b)(i) (Schedule C).

**SCHEDULE F  
SCHEDULE OF BENEFITS FOR CREDIT EARNED 7/1/2012 AND LATER UNDER  
AGREEMENTS THAT WERE PREVIOUSLY UNDER SCHEDULE C**

Hourly Contribution Rate	Monthly Normal Pension Amount Per Year of Pension Credit	Hourly Contribution Rate	Monthly Normal Pension Amount Per Year of Pension Credit
\$ 0.13	\$ 0.52	\$ 2.60	\$ 8.27
0.15	0.60	2.65	8.32
0.20	0.80	2.70	8.51
0.25	1.00	2.75	8.64
0.30	1.21	2.80	8.75
0.35	1.40	2.85	8.86
0.40	1.60	2.90	8.96
0.45	1.80	2.95	9.07
0.50	2.00	3.00	9.18
0.55	2.20	3.05	9.29
0.60	2.40	3.10	9.40
0.65	2.60	3.15	9.51
0.70	2.76	3.20	9.61
0.75	2.92	3.25	9.72
0.80	3.08	3.30	9.83
0.85	3.24	3.35	9.94
0.90	3.40	3.40	10.05
0.95	3.57	3.45	10.16
1.00	3.77	3.50	10.27
1.05	3.93	3.55	10.38
1.10	4.09	3.60	10.49
1.15	4.25	3.65	10.59
1.20	4.41	3.70	10.70
1.25	4.57	3.75	10.81
1.30	4.74	3.80	10.92
1.35	4.90	3.85	11.03
1.40	5.05	3.90	11.14
1.45	5.19	3.95	11.24
1.50	5.34	4.00	11.36
1.55	5.47	4.05	11.47
1.60	5.62	4.10	11.58
1.65	5.76	4.15	11.68

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Hourly Contribution Rate	Monthly Normal Pension Amount Per Year of Pension Credit	Hourly Contribution Rate	Monthly Normal Pension Amount Per Year of Pension Credit
\$ 1.70	\$ 5.90	\$ 4.20	\$ 11.78
1.75	6.04	4.25	11.88
1.80	6.19	4.30	11.97
1.85	6.33	4.35	12.08
1.90	6.48	4.40	12.18
1.95	6.62	4.45	12.28
2.00	6.76	4.50	12.38
2.05	6.90	4.55	12.48
2.10	7.03	4.60	12.58
2.15	7.16	4.65	12.68
2.20	7.28	4.70	12.78
2.25	7.40	4.75	12.88
2.30	7.53	4.80	12.98
2.35	7.65	4.85	13.08
2.40	7.77	4.90	13.18
2.45	7.90	4.95	13.28
2.50	8.02	5.00	13.38
2.55	8.14		

The monthly Normal Pension payable at or over age 65 for Pension Credit earned on or after July 1, 2012 under this schedule of benefits shall be the following calculated amount: Contribution Rates from \$.13 per hour through \$5.00 per hour provide the corresponding monthly benefit amount per year of Pension Credit; and Contribution Rates greater than \$5.00 per hour produce an additional monthly Normal Pension amount equal to 0.1875% of the total payable contributions that exceed \$5.00 per hour for Hours of Work by the Participant. In calculating this benefit amount, Hours of Work earned before July 1, 2012 are not included.

The following Schedule G sets forth the FIP default monthly Normal Pension amounts for the schedule set forth in Paragraph 4.04(b)(ii) (Schedule D).

**SCHEDULE G  
SCHEDULE OF BENEFITS FOR CREDIT EARNED 7/1/2012 AND LATER UNDER  
AGREEMENTS THAT WERE PREVIOUSLY UNDER SCHEDULE D**

Hourly Contribution Rate	Monthly Normal Pension Amount Per Year of Pension Credit	Hourly Contribution Rate	Monthly Normal Pension Amount Per Year of Pension Credit
\$ 0.13	\$ 0.78	\$ 2.60	\$12.40
0.15	0.91	2.65	12.59
0.20	1.21	2.70	12.77
0.25	1.51	2.75	12.95
0.30	1.81	2.80	13.12
0.35	2.11	2.85	13.29
0.40	2.41	2.90	13.45
0.45	2.71	2.95	13.60
0.50	3.00	3.00	13.77
0.55	3.30	3.05	13.93
0.60	3.60	3.10	14.10
0.65	3.90	3.15	14.26
0.70	4.14	3.20	14.42
0.75	4.37	3.25	14.59
0.80	4.62	3.30	14.75
0.85	4.86	3.35	14.92
0.90	5.10	3.40	15.08
0.95	5.36	3.45	15.24
1.00	5.65	3.50	15.41
1.05	5.89	3.55	15.57
1.10	6.13	3.60	15.73
1.15	6.37	3.65	15.89
1.20	6.61	3.70	16.05
1.25	6.86	3.75	16.22
1.30	7.11	3.80	16.38
1.35	7.35	3.85	16.54
1.40	7.57	3.90	16.71
1.45	7.78	3.95	16.87
1.50	8.00	4.00	17.04
1.55	8.21	4.05	17.20
1.60	8.43	4.10	17.36
1.65	8.64	4.15	17.52

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Hourly Contribution Rate	Monthly Normal Pension Amount Per Year of Pension Credit	Hourly Contribution Rate	Monthly Normal Pension Amount Per Year of Pension Credit
\$ 1.70	\$ 8.86	\$ 4.20	\$ 17.66
1.75	9.07	4.25	17.81
1.80	9.29	4.30	17.96
1.85	9.50	4.35	18.11
1.90	9.72	4.40	18.27
1.95	9.93	4.45	18.42
2.00	10.14	4.50	18.57
2.05	10.36	4.55	18.72
2.10	10.55	4.60	18.87
2.15	10.74	4.65	19.02
2.20	10.92	4.70	19.17
2.25	11.10	4.75	19.32
2.30	11.29	4.80	19.47
2.35	11.47	4.85	19.62
2.40	11.66	4.90	19.77
2.45	11.84	4.95	19.92
2.50	12.03	5.00	20.07
2.55	12.21		

The monthly Normal Pension payable at or over age 65 for Pension Credit earned on or after July 1, 2012 under this schedule of benefits shall be the following calculated amount: Contribution Rates from \$.13 per hour through \$5.00 per hour provide the corresponding monthly benefit amount per year of Pension Credit; and Contribution Rates greater than \$5.00 per hour produce an additional monthly Normal Pension amount equal to 0.28125% of the total payable contributions that exceed \$5.00 per hour for Hours of Work by the Participant. In calculating this benefit amount, Hours of Work earned before July 1, 2012 are not included.

In addition, effective July 2, 2012, all accruals for all increases in Contribution Rates under Schedules E, F, and G will be set under those schedules.

- (iv) This Subsection 4.04(d) shall not apply to Hours of Work with a new Contributing Employer to which Paragraph 4.04(c)(vi) applies and who first becomes a Contributing Employer on or after July 1, 2009. However, this Subsection 4.04(d) does apply to Hours of Work with a new Contributing Employer to which Paragraph 4.04(c)(v) applies, and this Subsection 4.04(d) also applies to Hours of Work with Contributing Employers to which Paragraph 4.04(c)(iv) applies and who first became a Contributing Employer before July 1, 2009.

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- (v) Notwithstanding the provisions of Paragraph 4.04(c)(vii) above, the Trustees shall not accept a Collective Bargaining Agreement or Participation Agreement that reduces the level of contributions for any Participants during the Funding Improvement Plan Adoption Period or during the Funding Improvement Period as set forth in Internal Revenue Code Section 432(d) as adopted in the Pension Protection Act of 2006.
  - (vi) In determining a Participant's accrued benefit for the period starting July 1, 2012 until the end of the Funding Improvement Period under Internal Revenue Code Section 432(d), Hours of Work accrued under Schedules E, F, or G will be prorated with other Hours of Work in the same manner as is set forth in Paragraph 4.04(c)(i) above as if each type of Hour of Work were at a different Contribution Rate. The schedule of benefits applicable to Pension Credit under a reciprocal agreement, where the work in the visited local union/group does not include direct participation in the National Pension Fund, shall be the schedule applicable to the Participant's then current home Local Union group.

#### **Section 4.05. Additional Limitations on Pension Amounts.**

The total monthly amount of the Normal Pension is the sum of the amounts under Sections 4.03 and 4.04 above. In determining the total monthly amount of a pension, the applicable maximum number of years of Pension Credit as set forth in Section 4.01 above shall be used. If the Participant has more than the applicable maximum number of years of Pension Credit, the combination of years of Pension Credit that produces the highest pension amount will be used. The minimum Contribution Rate applicable to Subsections 4.03(a) and 4.04(a) above is \$.10 per hour and to Subsection 4.04(b) above is \$.13 per hour.

The Trustees will have the Fund's actuary review the age and service characteristics of every new group before it is accepted for participation in the Fund, and may impose special provisions or provide reduced benefits for that group of Employees. The Trustees may have the Fund's actuary review the age and service characteristics of any group when such group changes Contribution Rates and may impose special provisions or provide reduced benefits for that group of Employees.

The Trustees reserve the right to provide a lower level of pension benefits for the employees of new Contributing Employers or of Contributing Employers who change their Contribution Rate to the Pension Fund during or after the term of any Collective Bargaining Agreement (or other written agreement providing for contributions to the Pension Fund). This right will be exercised when it is necessary, in the opinion of the Trustees, to preserve an actuarially sound relationship between the projected benefits to be provided and the contributions anticipated from a new Contributing Employer or a new Contribution Rate for a previously accepted Contributing Employer. In the event the Trustees amend the Plan to effect their rights under this paragraph, such

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amendment shall be in accordance with Internal Revenue Code Section 411(d)(6) and Plan Section 11.01.

In addition, Plan Section 10.04 shall apply if a Union and an Employer enter into a Collective Bargaining Agreement requiring contributions to the Fund and then fail to renew such agreement, or enter into an agreement which does not require the continuation of contributions, or requires a lesser rate of contributions. Plan Section 10.04 shall also apply in such circumstances even if the agreement requiring contributions to the Fund is not a Collective Bargaining Agreement.

**Section 4.06. Early Retirement Pension – Eligibility.**

A Participant shall be entitled to retire on an Early Retirement Pension if he meets these requirements:

- (a) he has attained age 55 but not yet attained age 65;
- (b) he has at least 5 years of Pension Credit; and
- (c) he has at least 1,500 Hours of Work in Covered Employment after his Contribution Date.

**Section 4.07. Early Retirement Pension – Amount.**

The Early Retirement Pension shall be a monthly amount determined as follows:

- (a) The first step is to determine the amount of the Normal Pension to which the Participant would be entitled if he was 65 years of age at the time his Early Retirement Plan is to be effective.
- (b) The second step, to take into account the fact that the Participant retires earlier than 65, is to reduce the first amount by 1/8 of 1% for each month that the Participant is younger than 62 (to age 60) and by 1/2 of 1% for each month that the Participant is younger than 60 on the Effective Date of Benefits of his Early Retirement Pension.

**Section 4.08. Deferred Pension – Eligibility.**

A Participant shall be eligible to retire on a Deferred Pension if he meets both of the following requirements:

- (a) he has at least 15 years of Pension Credit; and
- (b) he has at least 5 years of Future Service Credit and has attained age 40.

The Deferred Pension shall be payable at age 55 or later.



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#### **Section 4.09. Deferred Pension – Amount.**

If payment of the Deferred Pension begins after the Participant has attained age 65, the monthly amount shall be the same as the Normal Pension to which the Participant would be entitled under Plan Sections 4.03 and 4.04. If payment of the Deferred Pension begins at age 55 or later, but before age 65, the monthly amount shall be the same as the Early Retirement Pension to which the Participant would be entitled under Section 4.07.

#### **Section 4.10. Vested Pension – Eligibility.**

A Participant shall be eligible to retire on a Vested Pension if he has attained Vested Status. The Vested Pension shall be payable at Normal Retirement Age.

#### **Section 4.11. Vested Pension – Amount.**

The monthly amount of the Vested Pension shall be the Normal Pension to which the Participant would be entitled under Plan Sections 4.03 and 4.04 based only on the Participant's Future Service Credit.

#### **Section 4.12. Disability Pension – Eligibility.**

A Participant shall be entitled to receive a Disability Pension if he becomes permanently and totally disabled and applies for the benefit at a time when:

- (a) he has not yet attained age 65;
- (b) he has at least 5 years of Pension Credit;
- (c) he has at least 1,500 Hours of Work in Covered Employment after his Contribution Date; and
- (d) he worked in Covered Employment or in other employment under a United Association collective bargaining agreement, or in other employment for the Union, a Local Union or other Union-affiliated organizations, for at least 500 hours in the 24-month period that immediately preceded the date that he became Permanently and Totally Disabled.

For purposes of determining whether a Participant satisfies the Disability Pension eligibility requirement of the prior paragraph (*i.e.*, 500 hours of Covered Employment or other employment under a United Association collective bargaining agreement, or in other employment for the Union, a Local Union or other Union-affiliated organizations in the 24-month period immediately preceding the date he became Permanently and Totally Disabled), the Plan shall treat a Participant who became Totally and Permanently Disabled while performing Qualified Military Service as if the Participant resumed employment with an Employer in accordance with the Participant's reemployment rights

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under Chapter 43 of Title 38 of the United States Code, on the day preceding the date he became Totally and Permanently Disabled.

If the Participant had any Hours of Work in Covered Employment, or any hours in other employment under a United Association collective bargaining agreement or in other employment for the Union, during the 48-month period before the date that he became Permanently and Totally Disabled or, if earlier, the date he submitted his application to the Social Security Administration for the Social Security Disability Award that deemed him Permanently and Totally Disabled, the Trustees have the authority to waive this subsection (d) if, during the 24-month period before his designation as Permanently and Totally Disabled, the Participant was unable to perform the normal duties of his craft as a result of disability, as determined by the Board of Trustees in its sole and absolute judgment, based upon the submission of medical evidence of such disability.

#### **Section 4.13. Disability Pension – Amount.**

The amount of the Disability Pension shall be the same as the amount of the Normal Pension. However, for purposes of determining the amount of a Participant's Disability Pension, the Plan shall treat a Participant who became Totally and Permanently Disabled while performing Qualified Military Service as if the Participant resumed employment with an Employer in accordance with the Participant's reemployment rights under Chapter 43 of Title 38 of the United States Code, on the day preceding the date he became Totally and Permanently Disabled.

#### **Section 4.14. Permanent and Total Disability Defined.**

A Participant shall be deemed "Permanently and Totally Disabled" upon determination by the Social Security Administration that he is entitled to a Social Security Disability Benefit in connection with his Old Age Survivors and Disability Insurance coverage. The Trustees may, at any time or from time to time, require evidence of continued entitlement to such Social Security Disability Benefit.

#### **Section 4.15. Disability Pension Payments.**

Payment of the Disability Pension shall commence as provided in Plan Section 9.05, but no sooner than the first day of the month after the month in which the disability begins as determined by the Social Security Administration, and shall continue thereafter for so long as the recipient of the Disability Pension remains Permanently and Totally Disabled as herein defined. Upon attainment of age 65 the recipient of a Disability Pension shall have benefits continued regardless of whether or not he remains Permanently or Totally Disabled, provided, however, that he remains Retired as defined in Plan Section 9.06.

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**Section 4.16. Contingent Early Retirement Pension Pending Disability Determination.**

- (a) A Participant who is applying for a Disability Pension may, if eligible, elect on his application to begin receiving a Contingent Early Retirement Pension. To be eligible for a Contingent Early Retirement Pension, the applicant must have applied for and be awaiting a determination by the Social Security Administration on his eligibility for a Social Security Disability Award, or must have a pending appeal of an unfavorable determination by the Social Security Administration on his eligibility for a Social Security Disability Award. In addition, the applicant must be eligible for an Early Retirement Pension. The amount of the Contingent Early Retirement Pension shall be calculated as an Early Retirement Pension in accordance with Plan Section 4.07, but any adjustments for the form of benefit shall be made as if the benefit is a Disability Pension.
- (b) (i) Upon determination of eligibility for a Disability Pension, the Participant shall thereafter receive the amount of the Disability Pension and be considered a Disability Pensioner. If the date of disability as determined in accordance with Plan Paragraph 9.05(b)(iii) is later than the Effective Date of Benefits of the initial Early Retirement Pension, the amount of the benefit shall be adjusted to the Disability Pension amount from the date of disability and the payments prior to that date shall remain the same. If the date of disability as determined in accordance with Paragraph 9.05(b)(iii) is earlier than the Effective Date of Benefits of the initial Early Retirement Pension, an additional payment will be made in accordance with Paragraph 9.05(b)(iii) using the Effective Date of Benefits of the initial Early Retirement Pension, and the payments after that date will be adjusted to the amount of the Disability Pension.
- (ii) Upon determination of ineligibility for a Disability Pension, the Participant shall thereafter receive the amount of the Early Retirement Pension and be considered an Early Retirement Pensioner. The amount of the Early Retirement Pension shall be adjusted back to the Effective Date of Benefits of the Contingent Early Retirement Pension as if the benefit had always been an Early Retirement Pension.
- (iii) Such adjustments in benefits shall be made automatically and the Participant shall not otherwise be entitled to change the form of benefit. Notwithstanding any adjustments in benefits, the Effective Date of Benefits shall remain the Effective Date of Benefits [as established under Plan Paragraph 9.05(b)(i)] of the Contingent Early Retirement Pension.
- (c) Notwithstanding the above, the pension of a Participant who is receiving an Early Retirement Pension may be adjusted to a Disability Pension as follows:

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- (i) If the Participant failed to elect the Contingent Early Retirement Pension on his application as required by Plan Subsection 4.16(a), but otherwise met the requirements of this Section 4.16 at the time of his application, his pension will be adjusted as set forth above in Paragraph 4.16(b)(i).
  - (ii) If the Participant had not applied for a Social Security Disability Award at the time of his initial application, but subsequently submits a favorable determination by the Social Security Administration on his eligibility for a Disability Award and otherwise meets the requirements of Plan Section 4.12, his pension may be adjusted if the date of disability as determined in accordance with Paragraph 9.05(b)(iii) is on or before the Effective Date of Benefits of the initial Early Retirement Pension.

Notwithstanding any adjustment under this subsection, the Participant's Effective Date of Benefits and form of benefit payment will remain the same.

- (d) If the Pensioner dies prior to the date a notice of eligibility for a Social Security Disability Benefit is received by the Fund, he shall be treated as an Early Retirement Pensioner regardless of whether he has received a Disability Award from the Social Security Administration.

#### **Section 4.17. Effect of Recovery by a Disability Pension Recipient.**

- (a) If a Disability Pension recipient loses entitlement to his Social Security Benefit prior to attaining age 65, such fact shall be reported to the Board of Trustees within twenty-one (21) days of the date he received notice from the Social Security Administration of such loss.
- (b) Payment of Disability Pensions shall be discontinued to any recipient who receives notice from the Social Security Administration that he has lost entitlement to his Social Security Benefit, except when the recipient has formally appealed the determination by the Social Security Administration that he is no longer disabled and provides medical proof satisfactory to the Trustees that such an appeal is being made in good faith. Disability Pensions shall not continue for any such recipient who has returned to work.

Disability Pensions that continue to be paid under this Subsection will cease upon the passage of an 18-month period, the recipient's return to work in gainful employment, the recipient's withdrawal of his appeal of the determination by the Social Security Administration, or a decision of his appeal upholding the decision to discontinue eligibility for Social Security benefits by an Administrative Law Judge of the Social Security Administration. The recipient must notify the Trustees in writing within 21 days of his return to work, the withdrawal of his appeal, or of notice of an unfavorable decision by an Administrative Law Judge.

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- (c) If the written notices of loss of eligibility referred to in Subsections (a) and (b) are not provided to the Trustees within 21 days, the recipient will, upon his subsequent Retirement, not be eligible for benefits for a period of six months following the date of his Retirement in addition to the months which may have elapsed since he received the notice and during which he received a Disability Pension under this Plan. The six-month loss of eligibility under this Subsection shall not result in the withholding of benefits for any month after the recipient has attained Normal Retirement Age.

#### **Section 4.18. Re-Employment of a Disability Pension Recipient.**

A Disability Pension recipient who is no longer entitled to a Social Security Benefit may again return to Covered Employment and resume the accrual of Pension Credit and be entitled to a Normal, Early Retirement, Deferred or Vested Pension which will be determined in accordance with Section 4.20 below, but otherwise will not be reduced by the prior receipt of a Disability Pension.

#### **Section 4.19. Non-Duplication of Pensions.**

A person shall be entitled to only one type of pension benefit under the rules of the Plan, except that (a) a Disability Pension recipient who recovers may be entitled to a different type of pension; (b) a Contingent Early Retirement Pension or an Early Retirement Pension may be adjusted in accordance with Section 4.16 above.

#### **Section 4.20. Amount of Benefits after Separation from Covered Employment.**

Notwithstanding the provisions of Section 4.03 above, the accrued benefit to which a Participant is entitled shall be fixed under the terms of the Plan as in effect at the time the Participant separates from Covered Employment and the Contribution Rate at which he worked prior to such separation. A Participant shall be deemed to have separated from Covered Employment on the last day of work which is followed by five consecutive Calendar Years in which the employee fails to earn at least one-tenth (1/10th) of a year of Future Service Credit. If a Participant returns to Covered Employment after five consecutive One-Year Breaks in Service, he may accrue additional benefits under the terms of the Plan then in effect and the Contribution Rates at which he subsequently works. Such additional accrued benefits shall be added to his previously accrued benefits to determine his total accrued benefits.

The five year period needed to incur a separation under this Section 4.20 will be extended up to two additional years for a period with absolutely no gainful employment immediately following an on-the-job injury while in Covered Employment, provided the Participant was unable to work because of the on-the-job injury and provided the Participant subsequently returned to Covered Employment and earned at least one year of Future Service Credit.

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## Section 4.21. Pro Rata/Partial Pension.

- (a) Partial pension benefits are provided under this Plan to certain Employees who would otherwise lack sufficient service credit to be eligible for pension benefits because their years of employment have been divided between pension plans. If another pension plan has been recognized by the Trustees of this Plan as a Related Plan, an Employee will receive a Pro Rata/Partial Pension under this Plan and/or the Related Plan based on his service under both Plans, if he meets the requirements of this Section and/or the corresponding requirements for a Pro Rata/Partial Pension of the Related Plan.
- (b) "Related Plan" means a pension plan in the United States or Canada, duly recognized by the Trustees as such, with which the Trustees have entered into an agreement for Pro Rata/Partial Pensions. This Section 4.21 shall apply only to pensions that are first effective on or after the effective date of said Agreement with the Related Plan. This Section shall not apply to anyone already receiving a pension from this Plan or from the Related Plan on or before the effective date of said Agreement with the Related Plan. This Section shall also not apply to any service under a Related Plan after the termination of said Agreement with the Related Plan.
- (c) For purposes of this Section 4.21, an Employee's Hours of Future (Contributory) Service under the Related Plan, excluding any Hours of Service as may be recognized by the Related Plan under one or more other similar but separate agreements, shall be recognized under this Plan but only for the purposes of vesting and determining eligibility for the Pro Rata/Partial Pension provided for in this Section. Such Hours of Future Service shall be only those hours remaining after the completion by both Plans of money-follows-the-man reciprocity. Hours of Past (Noncontributory) Service under the Related Plan shall not count for any purpose under this Section 4.21. Hours of Service under the Related Plan that are duplicative of Hours of Service earned under this Plan and Hours of Service under the Related Plan after the termination of said Agreement with that Plan shall also not count for any purpose under this Section 4.21.
- (d) Such Hours of Future Service under the Related Plan shall not count for the purpose of accruals in determining the amount of benefits under this Plan, nor shall such Hours count for avoiding the provisions of Plan Section 4.20 with regard to the effect of separations from Covered Employment, but such Hours shall be counted as Covered Employment for avoiding the provisions of Plan Section 5.06 with regard to the effect of a Break in Service.
- (e) An Employee shall be eligible for a Pro Rata/Partial Pension under this Plan if he satisfies all of the following requirements:
  - (i) he is not otherwise eligible for a pension under this Plan,

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- (ii) he had earned, after the completion of money-follows-the-man reciprocity, at least 1,500 Hours of Work in Covered Employment after his Contribution Date under this Plan without counting any Service under a Related Plan and without regard to any Breaks in Service,
  - (iii) he would be eligible for any type of pension under this Plan if the Hours of Future Service recognized under this Section 4.21 are treated as Hours of Work under this Plan; provided, however, that no more than one year of Pension Credit shall be granted for any Calendar Year prior to 1999, no more than 1.1 years of Pension Credit shall be granted for Calendar Year 1999, and no more than 1.2 years of Pension Credit shall be granted in any Calendar Year commencing with 2000; but no additional Pension Credit shall be granted for the same hours recognized by both Plans,
  - (iv) he had earned, after the completion of money-follows-the-man reciprocity, at least a partial year of Future Service Credit in at least one of the Funds signatory to the National Pension Fund's standard money-follows-the-man reciprocal agreement during at least one of the five Calendar Years prior to his Effective Date of Benefits. However, if the Employee did not have the requisite Future Service Credit during this five-year period because he was unable to perform the normal duties of his craft as a result of a disability as established to the satisfaction of the Trustees in their sole and absolute judgment (based on the submission of medical evidence of such disability), then he will satisfy this paragraph (iv) if the required Future Service Credit is earned during at least one of the five Calendar Years prior to such disability.
  - (f) For periods on and after October 1, 2004, if any of the Related Plans under which the Employee has earned Hours of Future Service is in Canada and provided the Employee's home local union was in Canada while he was working under the Related Plan(s), the 1,500 Hours of Work requirement in Plan Subsection 4.21(e) shall be 150 Hours of Work.
  - (g) The amount of the Pro Rata/Partial Pension under this Plan shall be determined solely on the basis of the Employee's Future Service Credit under this Plan without regard to any Hours of Service under a Related Plan and without regard to any Past Service Credit under this Plan. Payment of a Pro Rata/Partial Pension shall be subject to all conditions applicable to other types of pensions under this Plan, including, but not limited to, Retirement as defined herein and timely application.

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## ARTICLE 5

### Pension Credits and Years of Vesting Service

#### Section 5.01. Outline.

The purpose of this Article is to define the basis on which Participants accumulate Pension Credit toward eligibility for a regular pension as well as the basis on which Participants accumulate Years of Vesting Service toward eligibility for a Vested Pension. This Article also defines the basis on which Pension Credit and Years of Vesting Service, once accumulated, may be canceled.

#### Section 5.02. Pension Credit for Service Prior to the Contribution Date (Past Service Credit).

- (a) (i) In order to qualify for Past Service Credit for years of employment prior to the Participant's Contribution Date, a Participant must have worked at least 2,250 hours during the period consisting of the five Calendar Years immediately prior to the year of his Contribution Date in the jurisdiction of any local union affiliated with the United Association in work covered by agreements of such local unions.

One exception to this rule shall be granted to a Participant who proves on the basis of medical evidence satisfactory to the Trustees that his failure to meet the work requirements of the preceding paragraph was due to one or more periods of total disability, provided, however, that such Participant worked at least 1,000 hours during the five-year period in the jurisdiction of any local union affiliated with the United Association in work covered by agreements of such local unions with Employers. A second exception to this rule shall be granted to a Participant who left employment to enter military service and was prevented from meeting the requirements of this rule solely as the result of his actually serving in the military during the years specified.

A third exception to this rule shall be granted to a Participant who shall qualify for five years of Future Service Credit at any time after his Contribution Date.

- (ii) Paragraph 5.02(a)(i) above notwithstanding, Participants with a Contribution Date on or after January 1, 2000 shall qualify for Past Service Credit only if they attain five years of Future Service Credit or five years of Vesting Service after their Contribution Date.
- (b) Any Participant who qualifies for Past Service Credit by having met the requirements of Subsection (a) above shall, subject to the limitations set forth in Subsection (f) of this Section, and in Plan Sections 10.03 and 10.04, be entitled to



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Past Service Credit for each Calendar Year he was regularly employed prior to his Contribution Date by one or more Contributing Employers, provided that (1) such employment was in a job classification and at a place of business covered by a Collective Bargaining Agreement then in effect between the Union and an Employer who subsequently became a Contributing Employer or (2) if such employment was prior to the time the first Collective Bargaining Agreement was signed by the Contributing Employer and the Union, the Participant's job classification during such period was included in the said first Collective Bargaining Agreement. The Trustees shall have the sole discretion to determine whether the said prior employment comes within a classification included in the first Collective Bargaining Agreement. One year of Past Service Credit is based on 750 hours or more in a Calendar Year and one-half year Past Service Credit is based on 375 but less than 750 hours of employment. (Credit is not granted for fewer than 375 hours.) When evidence of hours worked is not available, the Trustees may accept evidence of dollar earnings, adjusted for basic hourly wage rates then in effect in the type of work described above.

- (c)
  - (i) If a Participant worked for an Employer who went out of business, or who does not regularly employ men in the area, credit for periods of employment with the Employer that went out of business or who no longer employs men in the area may be granted if the Trustees, in their sole discretion, are satisfied on the basis of evidence submitted to them, that such employment was covered by a Collective Bargaining Agreement of a Local Union that has negotiated contributions to the Fund.
  - (ii) If a nonparticipating employer went out of business before signing a Collective Bargaining Agreement with the Local Union, credit for periods of service with that employer may be granted if the Trustees, in their sole discretion, are satisfied on the basis of evidence submitted to them, that the employer went out of business while a participating Local Union was actively pursuing a Collective Bargaining Agreement with the employer that would have included contributions to the Fund.
  - (iii) If a Contributing Employer replaces a nonparticipating employer for work on a federal government contract, and if that work is being performed by the same workforce, credit for periods of service with the previous nonparticipating employer may be granted if the Trustees, in their sole discretion, are satisfied on the basis of evidence submitted to them, that such employment was in a covered job classification under the replacement Contributing Employer's Collective Bargaining Agreement.
- (d) Service Credit shall be granted for employment as a full-time salaried officer or employee of a Local Union, District Council, or Pension, Welfare or Apprenticeship Training Fund provided that such Local Union, District Council, or Pension, Welfare, or Apprenticeship Training Fund subsequently becomes a Contributing Employer.

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- (e) It is recognized that, for the period prior to the Contribution Date, it may be difficult to establish with certainty the Past Service of a Participant in the type of employment referred to above. In making the necessary determinations of Past Service Credit, the Board of Trustees, in its sole and absolute discretion, may consider and rely upon any relevant and material evidence, including but not limited to, any or all of the following:
- (i) Records and/or statements of employers.
  - (ii) Records of the federal Social Security Administration.
  - (iii) Records of the Unions having or having had jurisdiction over what is now Covered Employment, including records of periods of union membership in good standing.
- (f) Past Service Credit granted in accordance with this Section and Section 5.03 below shall be subject to the following maximum limitations:
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<b>Contribution Date</b>	<b>Maximum Years of Past Service Credit</b>
Prior to January 1, 1980	24
January 1, 1980, through December 31, 1982	20
January 1, 1983, through December 31, 1985	15
January 1, 1986, through December 31, 1999	10
On or after January 1, 2000	5

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**Section 5.03. Past Service in the Future Service Period.**

- (a) (i) Past Service Credit shall also be granted for periods of employment after the Participant's Contribution Date in accordance with all of the terms set forth in this Section, provided that such employment was covered by a Collective Bargaining Agreement of a Local Union that has negotiated contributions to the Fund before the Participant's Effective Date of Benefits.
- (ii) Past Service Credit shall be granted for periods of employment within the jurisdiction of the Participant's home Local Union after his Contribution Date if such employment was with an employer that had never previously been a Contributing Employer in that Local Union's jurisdiction for the job

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classification. Such Past Service Credit under the preceding paragraph shall be granted even if the Employer had previously been a Contributing Employer in that Local Union's jurisdiction for the job classification.

- (b) (i) If the Participant's Contribution Date preceded the date that contributions were first required to be made by the Contributing Employer for the classification for which the Past Service Credit in the Future Service Period is being granted, the Participant's maximum years of Past Service Credit for the new Contributing Employer shall be subject to the maximum limitations set forth in Subsection 5.02(f) above based on the Contribution Date of that Employer for that classification; however, the Participant's total Past Service Credit shall continue to be limited to the amount set forth in Subsection 5.02(f) for his original Contribution Date.
- (ii) If the Contributing Employer is a re-participating Contributing Employer, the Participant's Past Service Credit for that Employer for the period after the Employer's original Contribution Date shall be limited to a maximum of five years; however, the Participant's total Past Service Credit shall continue to be limited to the amount set forth in Subsection 5.02(f) above for his original Contribution Date.
- (c) Such Past Service Credit in the Future Service Period may serve to repair Breaks in Service during the period following the Participant's Contribution Date.
- (d) A Participant may earn Past and Future Service Credit in the same year. However, no more than one year of Pension Credit may be earned in any Calendar Year prior to 1999, no more than 1.1 years of Pension Credit may be earned in Calendar Year 1999, and no more than 1.2 years of Pension Credit may be earned in any Calendar Year commencing with 2000.

**Section 5.04. Pension Credit for Periods On and After the Contribution Date (Future Service Credit).**

For the period commencing on his Contribution Date, a Participant shall receive one full year of Future Service Credit during each Calendar Year in which he completes 1,500 or more Hours of Work in Covered Employment. Proportionately less than one full year of credit shall be granted in accordance with the schedule below. In addition, a Participant who completes 1,800 or more Hours of Work in any Calendar Year 1999 or later will receive an extra one-tenth of a year of Pension Credit for that year as noted below; and a Participant who completes 2,100 or more Hours of Work in any Calendar Year 2000 or later will receive another extra one-tenth of a year of Pension Credit for that year as noted below.

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<b>Hours of Work in Covered Employment During Calendar Year</b>	<b>Years of Future Service Credit</b>
2,100 Hours or more	1 2/10
1,800 – 2,099	1 1/10
1,500 – 1,799	1
1,350 – 1,499	9/10
1,200 – 1,349	8/10
1,050 – 1,199	7/10
900 – 1,049	6/10
750 – 899	5/10
600 – 749	4/10
450 – 599	3/10
300 – 449	2/10
150 – 299	1/10
Less than 150	0

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If in a Calendar Year a Participant completes a Year of Vesting Service but less than 150 Hours of Work in Covered Employment, he shall be credited with a prorated portion of a full year of Pension Credit in the ratio that his Hours of Work in Covered Employment has to 1,800.

**Section 5.05. Years of Vesting Service.**

(a) **General Rule.**

A Participant shall be credited with one Year of Vesting Service for each Calendar Year beginning with his Contribution Date in which he worked in Covered Employment for 870 hours or more. This rule is subject to the provision of the following Subsections.

(b) **Additions.**

If a Participant works for a Contributing Employer in a job classification not covered by this Plan and such work is Continuous Employment with his Covered Employment with that Employer, his Hours of Work in such non-covered job during the Contribution Period and after January 1, 1976, 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: Years preceding a Permanent Break in Service as defined in Subsections 5.06 (c), (d), (e), and (f).

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## **Section 5.06. Breaks in Service.**

### **(a) General.**

If a person has a Break in Service before he has attained Vested Status, it has the effect of canceling his standing under this 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, as described below.

### **(b) One-Year Break in Service.**

- (i) A person has a One-Year Break in Service in any Calendar Year after 1975 or after his Contribution Date, if later, in which he fails to complete 150 Hours of Work.
- (ii) Hours of Work in non-covered employment with a Contributing Employer creditable under Subsection 5.05(b) above is to be counted as an Hour of Work for the purpose of this Subsection (b).
- (iii) Total disability, as established to the satisfaction of the Trustees, shall not be counted as a Break in Service. The Trustees, in their sole and absolute judgment, shall determine whether a period of disability should be counted as Hours of Work for the sole and exclusive purpose of determining whether there has been a One-Year Break in Service. Such periods of disability shall not be added to an Employee's Pension Credit or Vesting Service.
- (iv) Periods of military service in any of the Armed Forces of the United States shall be counted as Hours of Work for the purpose of determining whether there has been a One-Year Break in Service, provided the Employee was actively engaged in Covered Employment at the time he entered military service and made himself available for Covered Employment within ninety (90) days after release from active duty. Such periods of military service shall be added to an Employee's Pension Credit and Vesting Service if required under Internal Revenue Code Section 414(u).
- (v) Past Service Credit earned during the Future Service period in accordance with Section 5.03 above shall have the effect of repairing any One-Year Break in Service which occurred during such period.
- (vi) Solely for the purpose of determining whether a One-Year Break in Service has occurred, the absence of an Employee from Covered Employment 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

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immediately after such birth or placement shall be credited as Hours of Work to the extent that Hours of Work would have been credited but for such absence (or, where that cannot be determined, eight Hours of Work per day of absence) to a maximum of 501 hours for each such pregnancy, childbirth, or placement. The hours so credited shall be applied to the Calendar Year in which such absence begins, if doing so will prevent the employee from incurring a One-Year Break in Service in that Calendar Year; otherwise, they shall be applied to the next Calendar 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 paragraph (vi) shall apply only to absences that begin after December 31, 1984.

- (vii) 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 (870 hours). More specifically,
- (A) Participation is restored in accordance with the provisions of Plan Section 3.04; and
  - (B) Previously earned Years of Vesting Service and Pension Credits are restored.

Nothing in this paragraph (vii) shall change the effect of a Permanent Break in Service.

(c) ***Permanent Break in Service After June 1998.***

A person who is not Vested, who has not incurred a Permanent Break in Service prior to January 1, 1998, and who has at least one Hour of Service on or after July 1, 1998, shall have a Permanent Break in Service only if he has five consecutive One-Year Breaks in Service. A person who is not Vested, who has not incurred a Permanent Break in Service prior to January 1, 1998, and who does not have at least one Hour of Service on or after July 1, 1998, shall incur a Permanent Break in Service if he has at least five consecutive One-Year Breaks in Service and if the number of consecutive One-Year Breaks in Service equals or exceeds the number of Years of Vesting Service with which he has been credited.

(d) ***Permanent Break in Service After 1984 and Before July 1998.***

A person who has not incurred a Permanent Break in Service prior to January 1, 1985, and who has earned five or fewer Years of Vesting Service shall have a Permanent Break in Service if he has five consecutive One-Year Breaks in Service. A person who has earned six but less than ten Years of Vesting Service

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shall incur a Permanent Break in Service when his number of consecutive One-Year Breaks in Service equals or exceeds the number of Years of Vesting Service with which he has been credited.

(e) ***Permanent Break in Service After 1975 and Before 1985.***

A person who has less than four Years of Vesting Service shall incur a Permanent Break in Service prior to January 1, 1985, if he has at least three consecutive One-Year Breaks in Service after his Contribution Date, including at least one after 1975. A person who has four or more Years of Vesting Service shall incur a Permanent Break in Service when his number of consecutive One-Year Breaks in Service equals or exceeds the number of Years of Vesting Service with which he has been credited.

(f) ***Permanent Break in Service Before 1976 but After the Contribution Date.***

(i) ***General Rule.***

It shall be considered a Permanent Break in Service and all of a Participant's previously accumulated Pension Credit and Years of Vesting Service shall be canceled, if, after the January 1 coincident with or next following his Contribution Date, he fails to earn three-tenths (3/10ths) of a year of Future Service Credit in a period of three consecutive Calendar Years.

(ii) ***Exception on Account of Military Service or Disability.***

(A) An Employee can be allowed a grace period if his failure to earn Pension Credit or Vesting Service is due solely to his total disability as established to the satisfaction of the Trustees, or to military service in any of the Armed Forces of the United States, provided the Employee was actively engaged in Covered Employment at the time he entered military service and made himself available for Covered Employment within ninety (90) days after release from active duty.

(B) This grace period is not intended to add to the Pension Credit or Vesting Service of the Employee. Rather, it is a period which is to be disregarded in determining whether there has been a period of three consecutive Calendar Years during which the Employee has failed to earn at least three-tenths (3/10ths) of a year of Future Service Credit. However, this grace period will count toward Pension Credit or Vesting Service for periods of military service if required under the Military Selective Service Act, as amended.

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- (C) The Board of Trustees, in its sole and absolute judgment, shall determine whether periods of military service and disability claimed as grace periods hereunder should be granted.

(g) ***Effect of a Permanent Break in Service.***

If a person who has not attained Vested Status has a Permanent Break in Service:

- (i) his previous Pension Credits and Years of Vesting Service are canceled, and
- (ii) his participation is canceled, new participation being subject to the provisions of Plan Section 3.04.

(h) ***Exception to Break in Service Rules.***

- (i) A Participant who has met the requirements for a Normal or Early Retirement Pension shall not thereafter incur a Permanent Break in Service unless he engages in employment of the type described in Plan Section 9.07 in which case the Break in Service rules of the Plan shall be applicable.
- (ii) Employment in the jurisdiction of a local union in which the local pension fund subsequently enters into and remains signatory to a reciprocal agreement causing contributions to be made into the National Pension Fund may be used to waive a Break in Service. Such waiver shall be granted provided the individual, subsequent to the Break in Service, re-establishes his participation in the National Pension Plan as a result of contributions for work in jurisdictions covered by the National Pension Plan or reciprocal contributions received for work in jurisdictions covered by reciprocating pension plans. Such employment shall be counted as Hours of Work for the sole purpose of determining whether there has been a Permanent Break in Service, but shall not be used to add to the Vesting Service or Pension Credit of the Employee.
- (iii) Employment by a non-participating public or quasi-public employer in a job that is covered by a collective bargaining agreement between such employer and a local union participating in this Fund may be used to waive a One-Year Break in Service, provided that such governmental employment is for an employer that contributes only to a government pension plan. Such employment shall be counted as Hours of Work for the sole purpose of determining whether there has been a Permanent Break in Service, but shall not be used to add to the Vesting Service or Pension Credit of the Employee.



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- (iv) Employment by the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada may be used to waive a One-Year Break in Service. Such employment shall be counted as Hours of Work for the sole purpose of determining whether there has been a Permanent Break in Service, but shall not be used to add to the Vesting Service or Pension Credit of the Employee. Additionally, such employment shall count to avoid any separations under Plan Section 4.20; and such employment shall also be counted as Hours of Work at the respective Contribution Rates in the jurisdiction of the Participant's home Local Union for purpose of determining the highest Contribution Rate prior to 2005 under Subsection 4.03(b).
  - (v) The effects of any unrepaired One-Year Break in Service will be waived for any applicant who, at the time of his application for benefits, has Pension Credit which has not been canceled by a Permanent Break in Service.
  - (vi) Periods of leave provided under the Family and Medical Leave Act will not be counted towards a Break in Service.
  - (vii) A person's most recent Permanent Break in Service will be waived if he returns to Covered Employment and thereafter accumulates, prior to incurring another Permanent Break in Service, five years of Vesting Service or five years of Future Service Credit.

#### **Section 5.07. Pension Credit for Reciprocal Contributions.**

When Employees covered by this Plan are working in jurisdictions covered by other pension plans which have reciprocal agreements with this Plan, and pension contributions received by the other plans from Employers are reciprocated to this Plan, Future Service Credit will be granted to those Employees in accordance with the rules and regulations of this Plan based on the amount of hourly contributions reciprocated to this Plan. Future Service Credit will not be granted to Employees for hourly contributions that are reciprocated by this Plan to other pension plans under such reciprocal agreements. Future Service Credit under this Plan will not be granted for hours worked by an Employee whenever the Employer Contributions for those hours are reciprocated on the Employee's behalf by this Plan to other pension plans under a reciprocal agreement.

#### **Section 5.08. Qualified Military Service.**

Notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with Internal Revenue Code Section 414(u).

No Employer shall be required to make any contributions to the Fund for hours that are credited under this Plan for periods of qualified military service in accordance with this

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Section. Any liability of the Plan described in this Section 5.08 shall be allocated to the Plan.

## ARTICLE 6

### Normal Forms of Pension

#### Section 6.01. General.

- (a) For a married Participant the benefit is to be paid as a 50% Joint and Surviving Spouse Pension unless:
  - (i) the Participant and Spouse elect otherwise in accordance with Subsection 6.02(e) below; or
  - (ii) the Spouse is not a Qualified Spouse as defined below; or
  - (iii) the benefit is payable only in a single sum, under Plan Subsection 9.05(e).
- (b) A Preretirement Surviving Spouse Pension shall be payable as described in this Article when a married Participant dies before his pension payments have started and he was Vested or otherwise could have established entitlement to a pension.
- (c) For purposes of this Plan, effective June 26, 2013, "Spouse" means the person to whom a Participant is Married (as defined herein), and, if and to the extent provided in a Qualified Domestic Relations Order (as defined in ERISA § 206(d)(3) and Code § 414(p)), a Participant's former Spouse. "Marriage" and "Married" refer to a legal marital relationship between two individuals, whether of the same or opposite sex. Consistent with IRS Rev. Rul. 2013-17 and IRS Notice 2014-19, whether individuals are Married will be determined pursuant to the law of the state in which the marriage occurred (without regard to the law of the state in which the individuals are currently domiciled). Marriage does not include civil unions, domestic partnerships, or any other formal relationship recognized under state law that is not denominated as a marriage under the laws of the state in which the relationship was formally entered regardless of whether the individuals who have entered into such relationships are of the same or opposite sex. For purposes of this subsection, the term "state" shall mean any domestic or foreign jurisdiction having the legal authority to sanction marriages.
- (d) To be eligible to receive the survivor's pension in accordance with a 50% Joint and Surviving Spouse Pension or a Preretirement Surviving Spouse Pension, the Spouse must be a Qualified Spouse. A Spouse is a "Qualified Spouse" if the Participant and Spouse were married throughout the twelve months ending with the date the Participant's pension payments start or, if earlier, the date of death. A

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Spouse is also a "Qualified Spouse" if the Participant and Spouse became married within the twelve months immediately preceding the date the Participant's pension payments start and they were married for at least a twelve-month period on or before the Participant's date of death. A former Spouse is a "Qualified Spouse" if the couple were divorced after being married for at least twelve months and the former Spouse is required to be treated as a Spouse or Surviving Spouse under a Qualified Domestic Relations Order.

#### **Section 6.02. 50% Joint and Surviving Spouse Pension at Retirement.**

- (a) Pensions and Disability Pensions shall be paid in the form of a 50% Joint and Surviving Spouse Pension, unless the Participant and Spouse have filed with the Trustees in writing a timely rejection of that form of pension, subject to the conditions of this Section.
- (b) A 50% Joint 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 of 50% of the Participant's adjusted monthly amount. The Participant's monthly amount shall be a percentage of the full monthly amount otherwise payable as a single life pension (after adjustment, if any, for early retirement) as follows:
  - (i) If the Participant's pension is not a Disability Pension, the percentage shall be 90% plus 0.4% for each full year that the Spouse is older than the Participant (to a maximum of 99%) and minus 0.4% for each full year that the Spouse is younger than the Participant.
  - (ii) If the Participant's pension is a Disability Pension, the percentage shall be 82% plus 0.4% for each full year that the Spouse is older than the Participant (to a maximum of 93%) and minus 0.4% for each full year that the Spouse is younger than the Participant.
- (c) In the event that the Qualified Spouse on the Effective Date of Benefits predeceases the Pensioner, the monthly amount payable to the Pensioner shall be increased to the full monthly amount that would have been payable if the 50% Joint and Surviving Spouse Pension had not been in effect. The increased monthly amount shall be paid as of the first of the month following the month in which the Spouse died. The increased monthly amount shall be paid for the remainder of the Pensioner's life, without further survivor benefits payable on his behalf. In no event will the Pensioner's benefit be increased because of a divorce after the Effective Date of Benefits.
- (d) A retiring Participant shall be advised by the Trustees of the effect of payment on the basis of the 50% Joint and Surviving Spouse Pension, including a comparison of the full single life pension amount and of the adjusted amount.

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- (e) The 50% Joint and Surviving Spouse Pension may be rejected in favor of another form of distribution (or a previous rejection may be revoked) only as follows:
- (i) (A) The Participant must file the rejection in writing in such form as the Trustees may prescribe. The Participant's Spouse must acknowledge the effect of the rejection and must consent to it in writing. The Spouse must also consent to a specified Beneficiary or Beneficiaries and to a specified optional benefit form. The Spouse's consent must be witnessed by a Notary Public. The Participant may not subsequently change the designated Beneficiary or Beneficiaries or the optional benefit form without the consent of the Spouse, or
  - (B) The Participant must establish to the satisfaction of the Trustees that a consent to a rejection is not required because:
    - (I) the Participant is not married;
    - (II) the Spouse whose consent would be required cannot be located; or
    - (III) consent of the Spouse cannot be obtained because of extenuating circumstances, as provided in IRS regulations.
  - (ii) Except as provided in Plan Subsection 9.05(b), a rejection of the 50% Joint and Surviving Spouse Pension and any required consent must be filed within the 180-day period ending on the Effective Date of Benefits of the Participant's benefit. To be valid, such a rejection must be made after the Participant and Spouse have been provided with information which includes a general explanation of the 50% Joint and Surviving Spouse Pension, the circumstances in which it will be provided unless the Participant and Spouse elect otherwise, the availability of such an election, the estimated effect of the 50% Joint and Surviving Spouse Pension and the eligibility conditions and other material features of the optional forms of benefits provided under the Plan including the relative values of the optional forms. The Participant and Spouse may revoke a previous rejection or file a new rejection after the receipt of the information referred to in this subsection but only during the applicable 180-day period.
  - (iii) A Spouse's consent to a rejection shall be effective only with respect to that Spouse.
  - (iv) A recipient of a Disability Pension who recovers and returns to work may reject the 50% Joint and Surviving Spouse Pension, in the manner set forth above, upon his subsequent Retirement.

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- (f) If the 50% Joint and Surviving Spouse Pension would be payable except for the fact that the Spouse is not a Qualified Spouse on the date the Participant's pension payments start 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% Joint 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 surviving spouse will receive for her lifetime the Beneficiary portion of the 50% Joint and Survivor Pension set forth in Plan Section 8.04.

### **Section 6.03. Preretirement Surviving Spouse Pension.**

- (a) If a Participant who has a Qualified Spouse dies before his Effective Date of Benefits, and if at the time of his death the Participant was Vested or otherwise could have established entitlement to a pension, a Preretirement Surviving Spouse Pension shall be paid to his surviving Spouse. A Participant who dies while performing qualified military service (as defined in Section 414(u)(5) of the Internal Revenue Code) will have the period of qualified military service prior to his death credited as Vesting Service for the purpose of determining his Qualified Spouse's eligibility to receive a Preretirement Surviving Spouse Pension. However, such qualified military service shall not be credited for purposes of benefit accrual when determining the amount of the Qualified Spouse's Preretirement Surviving Spouse Pension.
- (b) If the Participant described in (a) above died on or after age 55, the surviving Qualified Spouse shall be entitled to a lifetime Preretirement Surviving Spouse Pension determined in accordance with the provisions of Plan Section 8.01 under the 100% Joint and Surviving Spouse Pension as if the Participant had Retired the day before he died.
- (c) If the Participant described in (a) above died before age 55, 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 age 55, Retired at that age with an immediate 100% Joint and Surviving Spouse Pension and died the next day. The Preretirement Surviving Spouse Pension begins when the Participant would have attained age 55, and the amount is 100% of what the Participant's pension amount would have been, after adjustment, if any, for the Early Retirement Pension and for the 100% Joint 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) (i) (A) The surviving Spouse of a Participant who is entitled to a Preretirement Surviving Spouse Pension under Subsection 6.03(c) above may waive the Preretirement Surviving Spouse Pension and

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elect, in lieu thereof, to receive the Lump Sum Death Benefit provided in Plan Section 7.01. In that case, the actuarial present value of the Preretirement Surviving Spouse Pension under Subsection 6.03(c) shall be reduced (but not below zero) by the amount of the Death Benefit payable under Section 7.01, and any remaining value of the Preretirement Surviving Spouse Pension under Subsection 6.03(c) shall be paid as a monthly benefit commencing on the date the Participant would have reached age 55, in accordance with this subsection.

- (B) If the actuarial present value of the remainder of the survivor's benefit is \$5,000 or less, the Trustees will make a single-sum payment to the Spouse, on the date the Participant would have reached age 55, in an amount equal to the actuarial present value of the survivor's benefit as defined in (D) below, in full discharge of the Preretirement Surviving Spouse Pension.
  - (C) The Spouse may elect to receive the remainder of the survivor's benefit in a single sum payment, on the date the Participant would have reached age 55, in an amount equal to the actuarial present value as defined in (D) below, in full discharge of the Preretirement Surviving Spouse Pension. In accordance with Plan Subparagraph 9.05(e)(iii)(C), the lump sum election shall not apply to the portion of the accrued benefit earned on and after January 1, 2005.
  - (D) The actuarial present value of the survivor's benefit under this subsection shall be determined based upon (i) the 1971 Group Annuity Mortality Table for Females at 7% interest rate or (ii) the Applicable Interest Rate and the Applicable Mortality Table, whichever set of assumptions would produce the greater benefit.
- (ii) If a Participant dies within the 180-day period before his payments commence or within the 180-day period before his Effective Date of Benefits, and if at the time of his death the Participant had formally applied for a pension and established an Effective Date of Benefits under Plan Subsection 9.05(b), his surviving Spouse may waive the Preretirement Surviving Spouse Pension (and the Lump Sum Death Benefit) and elect to receive, in lieu thereof, the survivor portion, if any, under the form of benefit previously elected by the Participant under Section 6.02 above (but only if the actuarial present value of the survivor portion of the other form of benefit is greater than that of the Preretirement Surviving Spouse Pension). This paragraph will apply even if the Participant, at the time of his death, had not yet established an Effective Date of Benefits or elected a form of benefit, provided the Fund had received his formal application for a pension prior to his death and he would have been eligible to receive a benefit based on that application. The surviving Spouse of such a Participant will have the

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option of electing the survivor portion of the 100% Joint and Surviving Spouse Pension (but only if the actuarial present value of the survivor portion is greater than that of the Preretirement Surviving Spouse Pension).

- (iii) A Spouse's waiver under this subsection (d) shall be in writing, shall acknowledge the effect of the waiver, and shall be witnessed by a Notary Public.

#### **Section 6.04. Relation to Qualified Domestic Relations Order.**

Any rights of a former Spouse, or other alternate payee under a Qualified Domestic Relations Order, with respect to a Participant's pension, shall take precedence over those of any later Spouse of the Participant under this Article.

#### **Section 6.05. 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 Effective Date of Benefits of the Participant's pension or, if earlier, the date of the Participant's death.

#### **Section 6.06. Single Life Pension with 5-Years Certain Payments.**

- (a) The normal form of benefit payment for single Pensioners is a monthly amount payable for the remainder of the Pensioner's life (with 5-Years Certain Payments as set forth in Plan Section 7.02). A single Participant who becomes entitled to receive a pension benefit shall receive it in this normal form unless the Participant has filed a timely rejection of that form of payment.
- (b) Except as provided in Plan Subsection 9.05(b), a rejection of the normal form for a single Participant must be filed within the 180-day period ending on the Effective Date of Benefits of the Participant's benefit. To be valid, such a rejection must be made after the Participant has been provided with information which includes a general explanation of the applicable normal form, the circumstances in which it will be provided unless the Participant elects otherwise, the availability of such an election, the estimated effect of the applicable normal form, the eligibility conditions and other material features of the optional forms of benefits provided under the Plan including the relative values of the optional forms. The Participant may revoke a previous waiver or file a new waiver after receipt of the information referred to in this subsection but only during the applicable 180-day period.

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- (c) A single Participant who has rejected the normal form in accordance with Subsection (b) above shall be entitled to elect to receive his pension benefit in accordance with the optional forms of benefits provided in Article 8 subject to the limitations of that Article.
  - (d) For purposes of this Plan, a single Participant shall be one who does not have a Qualified Spouse under Subsection 6.01(d) above.

## **ARTICLE 7**

### **Death and Severance Benefits**

#### **Section 7.01. Death Benefit Before Retirement (Lump Sum).**

Effective July 1, 1982, in the event a Participant dies before his Effective Date of Benefits but after he has accrued five (5) years of Future Service Credit, a Lump Sum Death Benefit equal to the contributions made by his Employers on his behalf shall be paid to his designated Beneficiary. In addition, for deaths on or after January 1, 2000, this Lump Sum Death Benefit will be payable on behalf of any other person who dies before his Effective Date of Benefits with an Hour of Work during the Calendar Year of his death or during any of the five previous Calendar Years. However, if a Preretirement Surviving Spouse Pension is payable under Plan Section 6.03, no Death Benefit will be paid under this Section, unless the Participant's surviving Spouse elects to receive it in accordance with Subsection 6.03(d). In any event, no benefits shall otherwise be payable under this Section if a Preretirement Surviving Spouse Pension is payable to the Spouse of the Participant under Section 6.03.

A Participant who dies while performing qualified military service (as defined in Section 414(u)(5) of the Internal Revenue Code) will be considered to have an Hour of Work during the Calendar Year of his death for the purpose of determining whether his designated Beneficiary (or surviving Spouse, if applicable) is eligible to receive a Lump Sum Death Benefit under this Section 7.01. However, such qualified military service shall not be credited for purposes of determining the amount of such Lump Sum Death Benefit.

#### **Section 7.02. Death Benefit After Retirement (5-Years Certain Payments).**

Upon the death of a Pensioner before he has received Pension payments for 60 months, payments will be continued to his designated Beneficiary until a total of 60 payments in all have been paid to the Pensioner and his Beneficiary. However, no benefits shall be payable under this Section if the Pensioner retires under the terms of the 50% Joint and Surviving Spouse Pension in accordance with Plan Section 6.02, the 75% Joint and Surviving Spouse or the 100% Joint and Surviving Spouse Pension in accordance with



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Plan Section 8.01 the Single Life Pension with 10-Years Certain Payments in accordance with Plan Section 8.02, or the 50% Joint and Survivor Pension in accordance with Plan Section 8.04, or if payment was made in a single sum in accordance with Plan Subsection 9.05(g)(i)(A).

### **Section 7.03. Re-Employment.**

A former Participant who returns to Covered Employment before incurring a Permanent Break in Service and who did not receive a Severance Benefit under the prior Plan with respect to his previous period of Covered Employment shall resume earning Pension Credit as a Participant which will be aggregated with his previously earned Pension Credit for the purpose of determining any subsequent benefits to which he may be entitled.

In the event a former Participant who received a Severance Benefit under the prior Plan returns to Covered Employment before incurring a Permanent Break in Service, any benefits to which he may subsequently be entitled shall be reduced by the portion thereof which is derived from the Severance Benefit received unless he elects to repay to the Plan the amount of the Severance Benefit received with compounded interest at the rate of 5% per annum from the date of the receipt of the Severance Benefit to the date of repayment to the Plan.

### **Section 7.04. Disability Severance Benefit.**

A Participant may apply for and receive a Disability Severance Benefit if: he becomes "Permanently and Totally Disabled" as defined in Plan Section 4.14; he is not eligible for a Disability Pension but meets the requirements of Subsections 4.12(a), (c), and (d); and he is not otherwise eligible to begin receiving currently any other pension benefits hereunder. The amount of the Disability Severance Benefit will be equal to the amount of the contributions made by the Participant's Employers on his behalf; or, if the Participant has attained Vested Status, the amount will be in lieu of currently accrued pension benefits in the future and will be the greater of the amount of the contributions made by the Participant's Employers on his behalf or the actuarial present value of his accrued benefit (as determined in accordance with Paragraph 9.05(e)(iv)). If the recipient of the Disability Severance Benefit recovers and returns to Covered Employment, he will be subject to the reemployment and repayment provisions of Section 7.03. In addition, the payment of the Disability Severance Benefit will be subject to the consent and election provisions of Plan Articles 6 and 9.

## **ARTICLE 8**

### **Optional Forms of Pension**

#### **Section 8.01. 75% Joint and Surviving Spouse Pension or 100% Joint and Surviving Spouse Pension Options.**

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Instead of the pension otherwise payable to him, a Participant may elect to receive payment in the form of a 75% Joint and Surviving Spouse Pension or a 100% Joint and Surviving Spouse Pension, in accordance with which he will receive a lower monthly amount than he would otherwise receive under the 50% Joint and Surviving Spouse Pension, but with 75% or 100% (whichever is applicable) of that lower amount continuing after his death for the lifetime of his Spouse. Election of the 75% Joint and Surviving Spouse Pension or the 100% Joint and Surviving Spouse Pension shall be subject to the following conditions:

- (a) The election of either of these options must be made in writing in a form prescribed by the Trustees and filed with the Trustees.
- (b) In order to be eligible for either of these options, the Spouse must be a Qualified Spouse under Plan Subsection 6.01(d). If these options would apply except for the fact that the Spouse is not a Qualified Spouse on the date the Participant's pension payments start because the Participant and Spouse have not been married for at least a year at that time, pension payment shall be made in accordance with these options in the same fashion as made under Plan Subsection 6.02(f).
- (c) Once a Participant elects either a 75% Joint and Surviving Spouse Pension or a 100% Joint and Surviving Spouse Pension option, such option cannot be revoked after payments commence.

Further, in the event that the Spouse predeceases the Pensioner after the Effective Date of Benefits, the monthly amount payable to the Pensioner shall be increased to the full monthly amount that would have been payable if the 75% Joint and Surviving Spouse Pension or 100% Joint and Surviving Spouse Pension had not been in effect, subject to the provisions of Plan Subsection 6.02(c).

- (d) When either option becomes effective, the 5-Years Certain Payments provision of Plan Section 7.02 shall automatically be waived.
- (e) The 100% Joint and Surviving Spouse Pension shall not be payable if it would result in a monthly benefit of less than \$20 to the Pensioner or his Spouse.
- (f) The reduction formula for the 75% Joint and Surviving Spouse Pension shall be based upon the following factors if the pension is not a Disability Pension:
  - (i) The Participant shall receive a base of 85% where he and his Spouse are of equal ages.
  - (ii) For each full year that the Spouse is older than the Participant the amount received by the Participant shall be increased by 0.55% to a maximum of 97%.

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- (iii) For each full year that the Spouse is younger than the Participant the amount received by the Participant shall be decreased by 0.55%.
  - (g) The reduction formula for the 75% Joint and Surviving Spouse Pension shall be based upon the following factors if the pension is a Disability Pension:
    - (i) The Participant shall receive a base of 73% where he and his Spouse are of equal ages.
    - (ii) For each full year that the Spouse is older than the Participant, the amount received by the Participant shall be increased by 0.45% to a maximum of 85%.
    - (iii) For each full year that the Spouse is younger than the Participant, the amount received by the Participant shall be decreased by 0.45%.
  - (h) The reduction formula for the 100% Joint and Surviving Spouse Pension shall be based upon the following factors if the pension is not a Disability Pension:
    - (i) The Participant shall receive a base of 81% where he and his Spouse are of equal ages.
    - (ii) For each full year that the Spouse is older than the Participant the amount received by the Participant shall be increased by 0.7% to a maximum of 96%.
    - (iii) For each full year that the Spouse is younger than the Participant the amount received by the Participant shall be decreased by 0.7%.
  - (i) The reduction formula for the 100% Joint and Surviving Spouse Pension shall be based upon the following factors if the pension is a Disability Pension:
    - (i) The Participant shall receive a base of 67% where he and his Spouse are of equal ages.
    - (ii) For each full year that the Spouse is older than the Participant, the amount received by the Participant shall be increased by 0.5% to a maximum of 81%.
    - (iii) For each full year that the Spouse is younger than the Participant, the amount received by the Participant shall be decreased by 0.5%.
  - (j) Notwithstanding any other provision of the Plan to the contrary, a participant of a merged fund as described in Plan Section 2.06 who is entitled to a benefit under the terms of the merged plan may elect to receive his pension benefit under a merged fund as a 75% joint and surviving spouse annuity. For purposes of this

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subsection (j), the 75% joint and surviving spouse annuity means an annuity for the life of the participant with a survivor annuity for the life of the spouse which is 75% of the annuity which is payable during the joint lives of the participant and the spouse, and which is the actuarial equivalent of a single life annuity for the participant under the terms of the merged plan.

### **Section 8.02. Single Life Pension with 10-Years Certain Payments.**

Instead of the pension otherwise payable to him, a Participant may elect to receive payment for life in a lower monthly amount, with the provision that if he dies before receiving 120 monthly payments, payments will be continued to his Beneficiary at the same rate until a total of 120 monthly payments in all have been paid. Election of the Single Life Pension with 10-Years Certain Payments shall be subject to the following conditions:

- (a) It must be made in writing on a form prescribed by the Trustees and filed with the Trustees.
- (b) Once this option has been elected, it cannot be revoked after payments commence. However, it is automatically revoked if, as applicable, the rejection of the 50% Joint and Surviving Spouse Pension is revoked in accordance with Plan Subsection 6.02(e) or the rejection of the Single Life Pension is revoked in accordance with Plan Section 6.06.
- (c) Upon election of this option, the 5-Years Certain Payments provision of Plan Section 7.02 shall automatically be waived.
- (d) This option may not be elected if the Pensioner is entitled to the 50% Joint and Surviving Spouse Pension provision of Plan Subsection 6.02(b) unless rejected by the Pensioner in accordance with 6.02(e).
- (e) If the pension is not a Disability Pension, the Participant shall receive a base of ninety-four percent (94%) where he is sixty-five (65) years of age.
  - (i) For each full year that the Participant is older than age sixty-five (65), the amount received shall be decreased by one percent (1%).
  - (ii) For each full year that the Participant is younger than age sixty-five (65), the amount received shall be increased by four-tenths of one percent (0.4%) to a maximum of ninety-nine percent (99%).
- (f) If the pension is a Disability Pension, for each full year the Participant is younger than age sixty-five (65), the amount received shall be increased from eighty-five and four-tenths percent (85.4%) by three-tenths of one percent (0.3%) to a maximum of eighty-nine percent (89%).

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- (g) The Single Life Pension with 10-Years Certain Payments shall not be payable if it would result in a monthly benefit of less than \$20 to the Pensioner.

### **Section 8.03. Partial Lump-Sum Payment Option.**

A Participant may elect to have the amount of his monthly benefit reduced by not more than 10% in return for the payment to him of a lump sum of money at the time his monthly pension is first payable. This option shall only be available to Pensioners who retire with at least 5 years (50-tenths) of Future Service Credit who elect the Partial Lump-Sum Payment Option in conjunction with the 100% Joint and Surviving Spouse Pension described in Section 8.01 above or the Single Life Pension with Ten Year Certain Benefits described in Section 8.02 above.

This Partial Lump-Sum Payment Option is subject to the following conditions:

- (a)
- (i) The lump-sum payable as a result of the election must not be less than \$500 or more than \$2,500.
  - (ii) The Participant must elect to have his monthly benefit reduced by an even dollar amount which does not exceed 10% of the monthly benefit.
  - (iii) This option can be elected by the Participant only at the time he files his pension application in the form provided for this purpose by the Trustees.
  - (iv) This option may not be elected if the Pensioner's normal form of benefit is the 50% Joint and Surviving Spouse Pension in accordance with Plan Subsection 6.02(b) unless that pension has been rejected by the Pensioner in accordance with Plan Subsection 6.02(e) or if the Pensioner elects the 75% Joint and Surviving Spouse Pension as described in Section 8.01.
- (b) Once this option has been elected, it cannot be revoked after payments commence. However, it is automatically revoked if, as applicable, the rejection of the 50% Joint and Surviving Spouse Pension is revoked in accordance with Plan Subsection 6.02(e) or the rejection of the Single Life Pension is revoked in accordance with Plan Section 6.06.
- (c) If the pension is not a Disability Pension, the lump-sum payable shall be based upon the Participant's age on his Effective Date of Benefits and shall be determined as follows:
- (i) The Participant who is fifty-five (55) years of age shall receive, for each \$1.00 reduction to his monthly pension amount, a lump-sum amount equal to \$130.00.
  - (ii) For each full month that the Participant is older than fifty-five (55), the \$130.00 shall be reduced by \$0.20.

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- (d) If the pension is a Disability Pension, the lump-sum payable shall be based upon the Participant's age on his Effective Date of Benefits and shall be determined as follows:
- (i) For each full month that the Participant is younger than sixty-five (65) years of age but older than fifty-one (51) years of age, he shall receive a lump-sum amount of \$87.00 for each \$1.00 reduction in his monthly pension amount, increased by \$0.10 for each month he is younger than age 65.
  - (ii) For each full month that the Participant is younger than fifty-one (51) years of age, he shall receive a lump-sum amount of \$104.00 for each \$1.00 reduction to his monthly pension amount, increased by \$0.04 for each month he is younger than age 51.
- (e) If this option is elected, survivor benefits shall be in the form of the 5-Years Certain Payments Death Benefit in accordance with Plan Section 7.02, unless it is elected in conjunction with either the 100% Joint and Surviving Spouse Pension in accordance with Section 8.01 above or the Single Life Pension with 10-Years Certain Payments in accordance with Section 8.02 above.
- (f) In calculating the value of a Partial Lump-Sum Benefit hereunder, the amount of such partial lump-sum shall not be less than the actuarially equivalent amount that would be produced using the Applicable Interest Rate and the Applicable Mortality Table.

#### **Section 8.04. 50% Joint and Survivor Pension.**

Instead of the pension otherwise payable to him, a Participant may elect to receive payment on a 50% Joint and Survivor Pension, in accordance with which he will receive a lower monthly amount, but with 50% of that lower amount continuing after his death for the lifetime of his designated Beneficiary. Election of the 50% Joint and Survivor Pension shall be subject to the following conditions:

- (a) The election of this option must be made in writing in a form prescribed by the Trustees and filed with the Trustees.
- (b) This option may not be elected if the Pensioner is entitled to the 50% Joint and Surviving Spouse Pension provision of Plan Subsection 6.02(b) unless that pension has been rejected in accordance with Subsection 6.02(e).
- (c) Once this option has been elected, it cannot be revoked after payments commence. However, it is automatically revoked if, as applicable, the rejection of the 50% Joint and Surviving Spouse Pension is revoked in accordance with Plan Subsection 6.02(e) or the rejection of the Single Life Pension is revoked in accordance with Plan Section 6.06.

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- (d) Upon election of this option, the 5-Years Certain Payments provision of Plan Section 7.02 shall be automatically waived.
  - (e) Once payments begin under this option, the designated Beneficiary may not be changed. If the designated Beneficiary predeceases the Pensioner, there will be no adjustment in the monthly amount to the Pensioner. If the designated Beneficiary is not living at the death of the Pensioner, no additional benefits shall be payable on behalf of the Pensioner.
  - (f) The reduction formula for the 50% Joint and Survivor Pension shall be the same as set forth in Plan Subsection 6.02(b) for the 50% Joint and Surviving Spouse Pension using the ages of the Participant and the designated Beneficiary.

## **ARTICLE 9**

### **Applications, Benefit Payments and Retirement**

#### **Section 9.01. Advance Written Application Required.**

An application for a pension shall be made in writing on a form and in the manner prescribed by the Board of Trustees in advance of its Effective Date of Benefits.

#### **Section 9.02. Information Required and Recovery of Overpayments.**

- (a) Every claimant for benefits shall furnish the Board of Trustees all information and proof relevant to his eligibility for benefits under this Plan. Each Participant, Pensioner, and Beneficiary shall furnish the Board of Trustees with all information and proof requested by it for the administration of this Plan. If a Participant, Pensioner, Beneficiary, or other claimant for benefits makes a willfully false statement relevant to his claim for benefits, or furnishes fraudulent information or proof relative to his claim for benefits, then benefits not Vested under this Plan (as defined in Section 9.08) may be suspended or discontinued.
- (b) The Trustees shall have the right to recover by all legal and equitable means any amounts paid to anyone in error, plus interest on same, and the right to recover by all legal and equitable means any amounts paid to which the recipient was not rightfully entitled under the terms of this Plan, plus interest on same. This right to recovery shall include, but shall not be limited to, the right to adjust future payments actuarially, or otherwise, to recoup such amounts from any future benefits to be paid to or on behalf of the Participant, Pensioner, or Beneficiary and the right to recoup such amounts from any benefits to be paid to or on behalf of any survivors of the Participant, Pensioner, or Beneficiary. Where benefit payments received by a Pensioner in the form of a joint and survivor annuity are actuarially adjusted to recoup an overpayment, such adjustment shall not extend,

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and recoupment shall not apply, to benefits paid to the Pensioner's surviving spouse.

### **Section 9.03. Action of Trustees.**

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 decisions of the Trustees shall be final and binding on all parties. The Trustees shall have the exclusive right and discretionary authority to construe the terms of the Plan, to resolve any ambiguities, and to determine any questions which may arise with the Plan's application or administration, including but not limited to determination of eligibility for benefits. Wherever in the Plan the Trustees are given discretionary powers, the Trustees 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.

### **Section 9.04. Right of Appeal.**

- (a) A Participant whose application for benefits under this Plan has been denied, in whole or in part, is to be provided with adequate notice in writing setting forth the specific reasons for such denial, and shall have the right to appeal the decision by written request filed with the Trustees within 180 days after receipt of such notice. The appeal shall be considered by the Trustees or a person or committee designated by the Trustees. The decision shall be final and shall be communicated to the claimant.
- (b) All questions or controversies, of whatsoever character, arising in any manner or between any parties or persons in connection with this Pension Fund or the administration thereof, whether as to any claim for any benefits proffered by an Employee, Beneficiary or any other person, or whether as to the construction of the language or meaning of the Pension Plan or the Trust Agreement, or whether as to any other writing, decision, instrument or accounts in connection with the operation of the Pension Fund or otherwise, shall be submitted to the Trustees, and the decision of the Trustees shall be binding upon all persons dealing with the Pension Fund or claiming benefits under the Pension Plan.

### **Section 9.05. Benefit Payments Generally.**

- (a) A Participant who makes application in accordance with the rules of the Pension Plan and whom the Board of Trustees determines to be eligible, shall be entitled upon Retirement to receive the monthly benefits provided for the remainder of his life, subject to the provisions of this Plan.
- (b) (i) The Effective Date of Benefits (Annuity Starting Date) shall be the date specified by the Participant or, if later, the first of the month after the



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Participant has fulfilled all of the conditions for entitlement to benefits including receipt by the Trustees of a written application for benefits in accordance with Section 9.01 above. The Effective Date of Benefits shall be no later than the Required Beginning Date. The actual payment of benefits shall commence no sooner than 30 days after the applicable information under Plan Sections 6.02(e), 6.06, and 9.05(e) is supplied to the Participant and Qualified Spouse, if applicable; and notwithstanding any other provision of this Plan to the contrary, such information may be supplied after the Effective Date of Benefits in which case the applicable election must be made within 180 days after such information is supplied. The actual payment of benefits may commence before the end of the 30-day period after the information is supplied if all of the following requirements are met:

- (A) The Participant and Qualified Spouse, if applicable, are provided with information about the right to at least 30 days to consider the available payment options and whether to consent to payment.
  - (B) The Participant and Qualified Spouse, if applicable, are permitted to revoke any election until the Effective Date of Benefits, or if later, at any time prior to the expiration of the seven day period that begins the day after the explanation of available payment options is provided to the Participant, and Qualified Spouse, if applicable.
  - (C) The actual payment of benefits does not commence before the expiration of the seven day period that begins the day after the explanation of the available benefit payment options is provided to the Participant and Qualified Spouse, if applicable.
  - (D) The Participant and Qualified Spouse, if applicable, consent in writing to the commencement of payment before the end of that 30-day period.
- (ii) Notwithstanding the foregoing, pursuant to Treas. Regulations §§ 1.417(e)-1(b)(3)(iv)-(v), if the above Effective Date of Benefits is before the applicable information under Plan Sections 6.02(e), 6.06, and 9.05(e) is supplied, the Participant will not be allowed that Effective Date unless he elects that date as a retroactive annuity starting date. Otherwise, the Effective Date of Benefits will be the first of the month following receipt by the Trustees of the completed applicable election. The following additional requirements must be met to use a retroactive annuity starting date:
- (A) The applicable information must be provided to the Participant and Qualified Spouse, if applicable, no more than 180 days and no less than 30 days before the date payments actually commence. However, the date payments actually commence may be before the end of the 30 day period if all of the conditions above are met by

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- treating the date the payments actually commence as if it were the Effective Date there under. Regardless, the payments must actually commence no more than 180 days after the applicable information is provided, unless the payments commence later due to administrative delay;
- (B) The retroactive annuity starting date may not be before the date the Participant retires or could have otherwise started receiving benefits under this Plan;
  - (C) The electing Participant must be paid the amounts for all missed months from the retroactive annuity starting date to the date the missed payments are made with interest from the date the missed payments would have been made to the date of the actual make up payment;
  - (D) If elected, the retroactive annuity starting date must be treated as the Effective Date of Benefits for all purposes under this Plan;
  - (E) The Participant's Qualified Spouse, if applicable, must consent to the Participant's election of the retroactive annuity starting date. The Participant's Qualified Spouse for consent to this election will be the Qualified Spouse on the day payments actually commence. If the Participant's Qualified Spouse as of the retroactive annuity starting date is not the Participant's Qualified Spouse as of the date the payments actually commence, the consent of the former Spouse will not be required unless otherwise provided in a Qualified Domestic Relations Order.
- (iii) The Effective Date of Benefits of a Disability Pension shall be established as set forth in Paragraph (b)(i) above. When the date of disability is prior to the Effective Date of Benefits of the Disability Pension, the benefit payment for the first month shall be equal to the monthly benefit amount under Plan Section 4.13 plus an additional auxiliary amount equal to the monthly benefit amount times the number of months between the Effective Date of Benefits and the date of disability. For this purpose, the date of disability shall be the first day of the month after the month during which the disability begins as determined by the Social Security Administration.
  - (iv) The Effective Date of Benefits of the Preretirement Surviving Spouse Pension shall be the first day of the first month after receipt of an application as is set forth in Paragraph (b)(i) above subject to any further limitations under Plan Section 6.03. The surviving Qualified Spouse shall have the right to delay the Effective Date of Benefits to a date not later than the date set forth in Subsection (f) below. In addition, payments to the surviving Qualified Spouse will be subject to the provisions of Subsection 9.05(e)

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below. If the Effective Date of Benefits is within twenty-four months of the Participant's death and is later than any applicable date under Plan Subsection 6.03(b) or (c), the benefit payment for the first month shall include an additional auxiliary amount equal to the monthly benefit amount times the number of months between the Effective Date of Benefits and the applicable date under Subsection 6.03(b) or (c) (to a maximum of twenty-four months). Regardless, if the Effective Date of Benefits is later than any applicable date under Subsection 6.03(b) or (c), the amount of the Preretirement Surviving Spouse Pension shall be based on what the age of the Participant would have been on the Effective Date of Benefits.

- (v) The applicable consent and election provisions of this Plan and the applicable Effective Date of Benefits provisions of this Plan are those in effect on the actual Effective Date of Benefits.
- (c) (i) Benefit payments shall be made as soon as practicable after the Participant's Effective Date of Benefits but, in no event, unless the Participant elects otherwise, shall the payment of benefits begin later than the 60th day after the later of the end of the Calendar Year in which:
  - (A) the Participant attains Normal Retirement Age;
  - (B) the Participant terminates his Covered Employment and Retires as that term is defined in Section 9.06 below;
  - (C) occurs the 5th anniversary of the year in which the Participant commenced participation in the Plan; or
  - (D) the Participant makes a proper application as set forth in Section 9.01 above.
- (ii) A Participant may postpone the payment of benefits to a date no later than his Required Beginning Date. The Required Beginning Date is the April 1st following the Calendar Year in which the Participant reaches age 70½, without regard to whether the Participant remains in Covered Employment, subject to the rules of Internal Revenue Code Section 401(a)(9) and related regulations.
- (d) In any event, the Trustees need not make payment before they are first able to ascertain entitlement to, or the amount of, the pension.
- (e) Notwithstanding any other provisions of this Plan (other than the application requirement of section 9.01):
  - (i) If the actuarial present value of a benefit payable under this Plan is \$5,000 or less as of the initial Effective Date of Benefits, the Trustees will pay it in a single sum equal to that value.

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- (ii) If the actuarial present value of the benefit payable under the Plan exceeds \$5,000, benefits may not be paid prior to the date the Participant has attained Normal Retirement Age without the consent of the Participant. The consent of the Participant and the Participant's Qualified Spouse, if applicable, shall be obtained in writing within the 180-day period ending on the Effective Date of Benefits. The Participant's consent shall not be valid unless the Participant has received a general description of the material features and an explanation of the relative values of the optional forms of benefit available under the Plan prior to giving consent.
- (iii) (A) If the actuarial present value of the benefit payable under this Plan as of the initial Effective Date of Benefits exceeds \$5,000 but is not more than \$10,000, the Participant may elect, in accordance with the applicable requirements of Plan Sections 6.02(e), 6.06, and 9.05(e), that the distribution of such benefit be made to him in a single sum equal to that value.
- (B) The recipient of any monthly survivor benefit may elect, at the time payments are due to commence to the survivor, that the distribution of such benefit be made to him in a single sum equal to its actuarial present value. Information about the availability of this option may be supplied after payments are due to commence in which case the applicable election must be made within 180 days after such information is supplied.
- (C) Notwithstanding the foregoing, except when a distribution is being made to a decedent's estate, the lump sum election permitted under Subparagraph (e)(iii)(B) above shall not apply to the portion of the accrued benefit earned on and after January 1, 2005. However, if the sum of the portion of such accrued benefit earned on or after January 1, 2005 and the portion earned before that date has an actuarial present value of \$10,000 or less at the time payment of that benefit is due to commence to the survivor, the lump sum election permitted under Subparagraph (e)(iii)(B) above may be made with regard to that total benefit amount.
- (iv) For the purposes of this Subsection, actuarial present value shall be based upon the 1971 Group Annuity Mortality Table for Males at 7% interest rate or the Applicable Interest Rate and the Applicable Mortality Table, whichever assumption would produce the greater benefit.
- (f) All distributions under the Plan will be made in accordance with Internal Revenue Code Section 401(a)(9) and Treas. Regs. §§ 1.401(a)(9)-1 through 1.401(a)(9)-9. The requirements of this Section 9.05(f) will take precedence over any inconsistent provisions of the Plan. Except to the extent inconsistent with this Section 9.05(f), all distribution options under the Plan are preserved. This Section 9.05(f) does not authorize any distribution options not otherwise provided under this Plan.
- (i) For purposes of this Section 9.05, the following definitions will apply:
- (A) Designated Beneficiary: The individual who is designated as the Beneficiary under Section 9.14 or 9.15 of the Plan and is the

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Designated Beneficiary under Internal Revenue Code Section 401(a)(9) and Treas. Reg. § 1.401(a)(9)-4, Q&A-1. If the Beneficiary named under Section 9.14 of the Plan is a trust and the requirements of Treas. Reg. § 1.401(a)(9)-4, Q&A-5 are not satisfied, the Participant will be treated as having no Designated Beneficiary for purposes of this Section 9.05. If the Beneficiary named under Section 9.14 of the Plan is an estate, the Participant will be treated as having no Designated Beneficiary for purposes of this Section 9.05.

- (B) Distribution Calendar Year: A Calendar Year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first Distribution Calendar Year is the Calendar Year immediately preceding the Calendar Year 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 under Section 9.05(f)(ii).
- (C) Required Beginning Date: The Participant's Required Beginning Date is the date specified in Section 9.05(c)(ii) of the Plan. Required Beginning Dates for a surviving Spouse or a non-Spouse Beneficiary are set forth in Section 9.05(f)(ii)(B).

(ii) Time and Manner of Distributions

- (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, then by the Surviving Spouse's Required Beginning Date, which shall be the later of December 31 of the Calendar Year immediately following the Calendar Year in which the Participant died or December 31 of the Calendar Year in which the Participant would have attained age 70½.
  - (II) If the Participant has a non-Spouse Designated Beneficiary, then by the Required Beginning Date for non-Spouse Beneficiaries, which is December 31 of the Calendar Year following the Calendar Year in which the Participant died.
  - (III) If there is no Designated Beneficiary as of September 30 of the Calendar Year following the Calendar 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 in the manner prescribed by Section 9.15.

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- (IV) If the Participant's Spouse is the Participant's sole Designated Beneficiary and the Spouse dies after the Participant dies but before distributions to the Spouse begin, then the provisions of this Section 9.05(f)(ii)(B) shall apply as if the Spouse were the Participant, and the date of the Spouse's death shall be treated as the date of the Participant's death for determining the required distribution time periods. However, this rule shall not apply to any subsequent spouse of the Participant's Spouse.
- (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.
- (D) Benefit payments, which are required to commence in accordance with this Section 9.05(f), shall be made automatically to Participants and Beneficiaries to whom benefits are payable by the Fund but who fail or refuse to apply for benefits. Benefits shall commence on the applicable Required Beginning Date to those who fail or refuse to apply as follows:
- (I) In a single sum, if the actuarial present value of the benefit (as determined in accordance with Paragraph 9.05(e)(iv)) is no more than \$5,000.
- (II) Except as set forth in clause (I), if the Participant is alive:
1. In the form of a 50% Joint 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 8 years older than the Spouse.
  2. Once benefit payments commence, the benefit in the form of the 50% Joint and Surviving Spouse Pension is irrevocable except that it will be changed prospectively to the normal form for a single Participant if the Participant proves that he was not married on the Required Beginning Date, and the amount of future benefit payments will be adjusted prospectively for a married Participant upon a showing that the actual ages of the Participant and Spouse are different from the assumption set forth above.
- (III) Except as set forth in clause (I), if the Participant has died, a Surviving Qualified Spouse will be paid the Preretirement Surviving Spouse Pension (if eligible) as set forth in Plan Section 6.03, but only on a prospective basis. Otherwise, Plan Section 7.01 will apply.
- (IV) Participants or Beneficiaries who cannot be located through reasonable efforts shall be presumed dead. If the Participant

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is presumed dead and there is no Beneficiary that can be located, the benefits shall be forfeited, subject to reinstatement if the Participant or Beneficiary later makes application for benefits.

(iii) Requirements for Annuity Distributions that Commence During a Participant's Lifetime

(A) Once distributions have commenced during the Participant's lifetime, upon the Participant's death, the remainder of the Participant's benefits will be distributed at least as rapidly as such benefits were being distributed to the Participant at the time of his death.

(B) If the Participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the Participant and a 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 based on the table set forth in Treas. Reg. § 1.401(a)(9)-6, Q&A-2.

(g) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this subsection, a distributee may elect, at the time and in the manner prescribed by the Trustees, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

A Participant's non-spouse Beneficiary may elect, at the time and manner prescribed by the Trustees, to have any portion of an otherwise eligible rollover distribution paid directly to an inherited individual retirement plan as prescribed in subparagraph (v) below.

(i) "Eligible Rollover Distribution":

(A) In general, an eligible rollover distribution is any distribution of all or any portion of the benefit of the distributee, except that an eligible rollover distribution does not include any distribution that is one in a series of substantially equal periodic payments (not less frequently than annually) of the distributee or the joint lives 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 Internal Revenue Code Section 401(a)(9); and the portion of any distribution that is not includible in gross income.

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- (B) Notwithstanding any other provision of this subsection (h), a distribution described in paragraph (v) shall also be treated as an eligible rollover distribution.
- (ii) “Eligible Retirement Plan”: An eligible retirement plan is an individual retirement account described in Internal Revenue Code Section 408(a), an individual retirement annuity described in Internal Revenue Code Section 408(b), an annuity plan described in Internal Revenue Code Section 403(a), or a qualified trust described in Internal Revenue Code Section 401(a), that accepts the distributee’s eligible rollover distribution. An eligible retirement plan shall also mean an annuity contract described in Internal Revenue Code Section 403(b) and an eligible plan under Internal Revenue Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. This definition of “eligible retirement plan” shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a Qualified Domestic Relations Order, as defined in Internal Revenue Code Section 414(p).
- (iii) “Distributee”: A distributee includes a Participant or former Participant. In addition, the Participant’s or former Participant’s surviving spouse and the Participant’s or former Participant’s spouse or former spouse who is the alternate payee under a Qualified Domestic Relations Order, as defined in Internal Revenue Code Section 414(p), are distributees with regard to the interest of the spouse or former spouse.
- (iv) “Direct Rollover”: A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee (or, in the case of a direct rollover to an inherited individual retirement account or annuity, a Participant’s non-spouse Beneficiary).
- (v) Distribution to an inherited individual retirement plan of a deceased Participant’s non-spouse Beneficiary: If, with respect to any portion of a deceased Participant’s distribution from this Plan, a direct trustee-to-trustee transfer is made to an individual retirement plan described in Internal Revenue Code Section 408(a) or 408(b) (other than an endowment contract) established for the purposes of receiving the distribution on behalf of an individual who is a designated Beneficiary (as defined by Internal Revenue Code Section 401(a)(9)(E)) of the Participant and who is not the surviving Spouse of the Participant—
- (A) the transfer shall be treated as an eligible rollover distribution;



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- (B) the individual retirement plan shall be treated as an inherited individual retirement account or individual retirement annuity (within the meaning of Internal Revenue Code Section 408(d)(3)(C)); and
  - (C) Internal Revenue Code Section 401(a)(9)(B) (other than clause (iv) thereof) shall apply to such inherited individual retirement plan.

For purposes of this subparagraph (v), to the extent provided in rules prescribed by the Secretary of the Treasury, a trust maintained for the benefit of one or more designated Beneficiaries shall be treated in the same manner as a trust of a designated Beneficiary.

#### **Section 9.06. Retirement.**

- (a) Retirement under this Plan shall be voluntary.
- (b) Prior to a Participant's Required Beginning Date, pension benefits provided by this Plan shall commence only if the Participant is "Retired." To be considered "Retired," a Participant must have separated from service with any and all Contributing Employers and from any and all employment that would be considered to be Disqualifying Employment as set forth in Section 9.07 below. A Participant who has so separated from service shall be considered Retired notwithstanding subsequent employment or re-employment with a Covered Employer for less than 40 hours in any month after attaining Normal Retirement Age.

#### **Section 9.07. 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 Disqualifying Employment before he has attained Normal Retirement Age. "Disqualifying Employment," for the period before Normal Retirement Age, is:
    - (A) Employment with any Contributing Employer.
    - (B) Employment with any employer in the same or related business as any Contributing Employer.
    - (C) Self-employment in the same or related business as a Contributing Employer.
    - (D) Employment or self-employment in any business which is under the jurisdiction of the Union.

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- (E) Employment with the Union or any Fund or program to which the Union is a party by virtue of a written document.
- (ii) In addition, the monthly benefit shall 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. The monthly benefit shall be suspended for an additional six months if the Participant has failed to give notice to the Plan, as set forth in Subsection (d) below, of employment that may be the basis for suspension of benefits, or if the Participant has willfully misrepresented to the Plan with respect to Disqualifying Employment. The Trustees may, for good cause, waive either or both of these additional periods of suspension. The provisions of this Paragraph (ii) shall not, however, result in the suspension of the benefit for any month after the Participant has attained Normal Retirement Age.
- (iii) Paid non-work time shall be counted as Disqualifying Employment if paid for vacation, holiday, illness or other incapacity, layoff, jury duty, or other leave of absence.
- (b) ***After Normal Retirement Age.***
- (i) If the Participant has attained Normal Retirement Age, his monthly benefit shall be suspended for any month in which he worked or was paid for at least 40 hours in Disqualifying Employment. After attainment of Normal Retirement Age, "Disqualifying Employment" means employment or self-employment that is in an industry covered by the Plan when the Participant's pension payments began, in the geographic area covered by the Plan when the Participant's pension began, and in any occupation in which the Participant worked under the Plan at any time or any occupation covered by the Plan at the time the Participant's pension payments began.
- (ii) The term "industry covered by the Plan," means the plumbing and pipefitting industry and any other industry in which Employees covered by the Plan were employed when the Participant's pension began or, but for suspension under this Article, would have begun.
- (iii) The geographic area covered by the Plan consists of any state of the United States in which contributions were required to be made by or on behalf of any Employer and the remainder of any Standard Metropolitan Statistical Area which falls in part of such state, at the time when the Participant's pension began or, but for suspension under this Article, would have begun.
- (iv) If a Retired Participant reenters Covered Employment to an extent sufficient to cause a suspension of benefits, and his pension payments are subsequently resumed, the industry and area covered by the Plan "when

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the Participant's pension began" shall be the industry and area covered by the Plan when his pension was resumed.

- (v) 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.
- (vi) Notwithstanding any provision of this Plan to the contrary, a Participant's benefits will be suspended after Normal Retirement Age if he does not retire and continues to work in Covered Employment or Disqualifying Employment. However, when such a Participant does retire his benefit will be calculated without the limitations set forth in Subsection 9.07(h) below. Under no circumstances will benefits be suspended after a Participant's Required Beginning Date, as defined in paragraph 9.05(c)(ii) above.

(c) ***Definition of Suspension.***

"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 (g) below, and in accordance with Section 9.03 above.

(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, be given to the Participant, if there has been any material change 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 30 days after starting any work of a type that is or may be Disqualifying Employment 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). 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 that his work was not in fact an appropriate basis, under the Plan, for suspension of his 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

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give timely notice to the Plan of such employment, the Trustees shall presume that he has engaged in such 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 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 re-employment notification requirements and the presumptions set forth in this subsection.

- (iii) A Pensioner whose pension has been suspended shall notify the Plan when Disqualifying Employment has ended. The Trustees shall have the right to hold back benefit payments until such notice is filed with the Plan.
- (iv) A Participant may ask the Plan whether a particular employment will be disqualifying. The Plan shall provide the Participant with its determination.
- (v) 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. Such notice shall include a description of the specific reasons for the suspension, a general description of the plan provisions relating to suspension of benefits and a copy of such provisions, reference to the applicable regulation of the U.S. Department of Labor, and a statement of the procedure for securing a review of the suspension. In addition, the notice shall describe the procedure for the Participant to notify the Plan when his Disqualifying Employment ends. If the Plan intends to recover prior overpayments by offset under Paragraph (g)(ii) below, the suspension notice shall explain the offset procedure and identify the amount expected to be recovered, and the periods of employment to which they relate.

(e) ***Review.***

By written request filed with the Trustees within 180 days of the notice of suspension, a Participant shall be entitled to a review of a determination suspending his benefits. 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. Such review under this Section shall be in accordance with and pursuant to Section 9.04 above on appeals.

(f) ***Waiver of Suspension.***

The Trustees may, from time to time, adopt by written resolution objective standards under which benefits shall not be suspended for engaging in specific types or categories of Disqualifying Employment for the period specified in the resolution granting the waiver.

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(g) ***Resumption of Benefit Payments.***

- (i) Benefits shall be resumed for 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 benefit was suspended, provided the Participant has complied with the notification requirements of Paragraph (d)(iii) above.
- (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. Such a deduction after the Participant has attained Normal Retirement Age shall not exceed 100% of the initial payment (for a period not to exceed three months) and 25% of the monthly pension payments thereafter. If a Pensioner dies before recoupment of overpayments has been completed, deductions shall be made from the benefits payable to his Beneficiary or contingent annuitant, subject to the 25% limitation on the rate of deduction. Nothing in this Section shall prohibit the Trustees from taking legal action for overpayments in addition to any offset which is applied.

(h) ***Benefit Payments Following Suspension.***

- (i) The monthly amount of pension when resumed after suspension shall be determined on the basis of an adjusted age, which shall be the age of the Participant at the beginning of the first month for which payment is resumed, reduced by the months for which he previously received benefits to which he was entitled and for the months for which his benefits were suspended for work if that work was disqualifying and would have been disqualifying if he had already attained Normal Retirement Age. Once the Participant's adjusted age is equal to age 65 or age 62, whichever was used to establish his original age reduction factor when he first Retired, the resumed benefits will not be determined on the basis of an adjusted age.
- (ii) If, during the period of work in Disqualifying Employment, the Pensioner earns additional Future Service Credit, he will be entitled to an additional pension amount. The additional pension amount shall be computed solely on the basis of his Future Service Credit earned after his return to Covered Employment and such additional Future Service Credit shall not be used to increase the portion of his pension attributable to his Pension Credit prior to the suspension of his benefits. Such additional Future Service Credit shall not, in combination with the Pension Credit previously accumulated, exceed the Plan's maximum number of years of Pension Credit. Upon resumption, there shall be no further adjustments in the amount of the pension except as provided in this Paragraph or in Paragraph (i) above.

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- (iii) Any additional pension amount earned by a Pensioner in Covered Employment after his Required Beginning Date, as defined in Subsection 9.05(c)(ii) above, will be determined in accordance with Paragraph (ii) above at the end of each Calendar Year and will be payable as of the beginning of the year following the year in which it was accrued.
  - (iv) If a Participant whose original Effective Date of Benefits was on or after Normal Retirement Age returns to Covered Employment, any subsequent benefit accrued under Paragraph (ii) above will be payable in the benefit form originally selected at Retirement.
  - (v) If a Participant whose original Effective Date of Benefits was before Normal Retirement Age returns to Covered Employment, any subsequent benefits accrued under Paragraph (ii) above will be payable in the benefit form selected following the resumption of the Participant's benefit payments. The requirements of Section 9.05 above and Plan Article 6 shall apply to such additional benefits.

#### **Section 9.08. Vested Status or Nonforfeitability.**

The benefits to which a Participant is entitled under this Plan upon his attainment of Normal Retirement Age (as defined in Plan Section 1.19) are Vested (nonforfeitable), subject, however, to the conditions as to suspension of benefits (Section 9.07 above), application (Section 9.01 above), limitation on retroactivity (Section 9.05 above), limitation of liability (Plan Sections 10.02, 10.03, 10.04), and the effects of retroactive amendment made within the limitations of Internal Revenue Code Section 411(a)(3)(C) and ERISA Section 302(c)(8). The benefits to which a surviving Spouse is entitled shall be nonforfeitable subject to the above limitations. Participants and Beneficiaries shall be entitled to any of the other benefits of this Plan subject to all of the applicable terms and conditions.

"Vested" or "Vested Status" is earned as follows:

- (a) Upon attainment by the Participant of at least five Years of Vesting Service, none of which has been canceled by a Permanent Break in Service; or
- (b) Upon attainment by the Participant of Normal Retirement Age with any Future Service Credit which has not been canceled by a Permanent Break in Service; or
- (c) Upon fulfillment by the Participant of the eligibility requirements for receipt of a Deferred Pension at Retirement; or

#### **Section 9.09. Incompetence or Incapacity of a Pensioner.**

In the event it is determined that any Participant or Beneficiary is unable to care for his affairs because of mental or physical incapacity, the Trustees may pay the benefits due to

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such Participant or Beneficiary to his legal guardian, conservator, committee, or other legal representative, or in the absence of any of them, to any relative by blood or marriage who is deemed by the Trustees, in their sole discretion, to be acting in the interest of the Participant or Beneficiary. If such a Participant or Beneficiary resides in a residential health care facility, is not mentally competent, and lacks both a legal representative and a relative acting in his interest, the Trustees may pay the benefits due to the Participant or Beneficiary to the residential health care facility in which he resides and which is deemed by the Trustees, in their sole discretion, to be acting in the interest of the Participant or Beneficiary. Payment by the Trustees hereunder to a legal representative, relative, or residential health care facility shall operate to discharge the Trustees from any liability to such Participant or Beneficiary or to anyone representing him or his interest. Payments to a legal representative, relative or a residential health care facility hereunder will not be deemed an assignment of benefits; and the relative or residential health care facility must acknowledge in writing that they will apply the amounts paid solely in the interest of the Participant or Beneficiary and that they have no right enforceable against the Pension Fund to any part of the Participant or Beneficiary's pension benefit or any other assets of the Pension Fund. No payment will be made hereunder to a governmental or private agency, institution, or facility if the Participant or Beneficiary is not legally required to pay for his care and maintenance.

#### **Section 9.10. Non-Assignment of Benefits.**

- (a) Each Participant under the Pension Plan is hereby restrained from selling, transferring, anticipating, assigning, hypothecating or otherwise disposing of his pension, prospective pension or any other rights or interest under the Plan, and the Board of Trustees shall not recognize, or be required to recognize such sale, transfer, anticipation, assignment, hypothecation or other disposition. Any such pension, prospective pension, right or interest shall not be subject in any manner to voluntary transfer or transfer by operation of law or otherwise, and shall be exempt from the claims of creditors or other proceedings to the fullest extent permitted by law.
- (b) Notwithstanding the foregoing, Subsection (a) above, shall not preclude:
  - (i) Benefits from being paid in accordance with the applicable requirements of any "Qualified Domestic Relations Order" as defined by ERISA Section 206(d)(3); and
  - (ii) Any offset of a Participant's benefits as provided under Internal Revenue Code Section 401(a)(13)(C) with respect to:
    - (A) a judgment of conviction for a crime involving the Plan;
    - (B) a civil judgment, consent order or decree in an action for breach or alleged breach of fiduciary duty under ERISA involving the Plan; or

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- (C) a settlement agreement between the Participant and either the Secretary of Labor or the Pension Benefit Guaranty Corporation in connection with a breach of fiduciary duty under ERISA by a fiduciary or any other person, which court order, judgment, decree or agreement is issued or entered into on or after August 5, 1997 and specifically requires the Plan to offset against a Participant's benefits.
- (iii) However, an offset under Internal Revenue Code Section 401(a)(13)(C) against a married Participant's benefits shall be valid only if one of the following conditions is satisfied:
    - (A) written spousal consent is obtained;
    - (B) the Spouse is required by a judgment, order, decree or agreement to pay the Plan an amount; or
    - (C) a judgment, order, decree or agreement provides that the Spouse shall receive a survivor annuity, as required by Internal Revenue Code Section 401(a)(11), determined as if the Participant terminated employment on the offset date (with no offset to his benefits), to begin on or after Normal Retirement Age, and providing a 50% qualified joint and survivor annuity and a qualified pre-retirement survivor annuity.
- (c) A Participant or Beneficiary may authorize in writing the payment of his or her entire monthly pension benefit to a trust fund. Such authorization must be strictly voluntary and may be revoked by the Participant or Beneficiary at any time. Such authorization shall not be an assignment of benefits to the trust fund so designated, and the trust fund designated shall have no right enforceable against the Plan to any part of the Participant or Beneficiary's pension benefit. The trust fund must acknowledge in writing that the payment of benefits creates no enforceable right in or to any benefit payment, or portion thereof, from the Plan. The payment will only be made when or after the benefit would otherwise be payable to the Pensioner or Beneficiary.
  - (d) A Participant or Beneficiary may authorize in writing a deduction from his monthly pension benefit for remittance to a health and welfare trust fund to pay for health and welfare coverage. Such authorization must be strictly voluntary and subject to revocation by the Participant or Beneficiary at any time. Such authorization shall not be an assignment of benefits to the health and welfare fund, and the health and welfare fund must acknowledge in writing that it shall have no right enforceable against the Pension Fund to any part of the Participant's or Beneficiary's pension benefit or to any other assets of the Pension Fund. The payment will be made to the health and welfare fund only when the pension benefit would otherwise be payable to the Participant or Beneficiary. In addition, the



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health and welfare fund must reimburse the Pension Fund all of its costs for the deduction and transfer. Both the Pension Fund and the health and welfare fund must have the authority to revoke such an arrangement upon reasonable notice to the other.

- (e) A Participant or Beneficiary, or their legal representative, may authorize in writing the payment of his entire monthly pension benefit to a residential health care facility in which he resides. Such authorization must be strictly voluntary and may be revoked by the Participant or Beneficiary, or legal representative, at any time. Such authorization shall not be an assignment of benefits to the nursing home or other residential health care facility so designated, and the nursing home or other residential health care facility must acknowledge in writing that it shall have no right enforceable against the Pension Fund to any part of the Participant or Beneficiary's pension benefit or any other assets of the Pension Fund. The payment will be made only when the pension benefit would otherwise be payable to the Participant or Beneficiary.

#### **Section 9.11. Trust Assets.**

Neither the Contributing Employers, the Union or any Participant or Pensioner under the Pension Plan, nor any other person shall have any right, title or interest in or to the Fund other than as specifically provided in the Trust Agreement or in the Pension Plan. Neither the Trust nor any contributions to the Trust shall be in any manner liable for or subject to the debts, contracts or liabilities of any of the Contributing Employers, the Union, any Participant or Pensioner.

#### **Section 9.12. Rounding up Benefits.**

All benefit payments under this Pension Plan which include a fraction of a dollar shall be rounded up to the next highest whole \$1.00. However, such payments thereafter shared in accordance with a Qualified Domestic Relations Order or divided as a result of an Eligible Rollover Distribution shall not be further rounded up.

#### **Section 9.13. Maximum Limitations.**

- (a) (i) The limitations of this Section shall apply in Limitation Years beginning on or after July 1, 2007, except as provided herein.
- (ii) The application of the provisions of this Section shall not cause the Maximum Permissible Benefit of any Participant to be less than the Participant's accrued benefit under the Plan as of the end of the last Limitation Year beginning before July 1, 2007 under provisions of the Plan that were both adopted and in effect before April 5, 2007. The preceding sentence applies only if the provisions of this Plan that were both adopted and in effect before April 5, 2007 satisfied the applicable requirements of statutory provisions, regulations, and other published guidance relating to

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Internal Revenue Code Section 415 in effect as of the end of the last Limitation Year beginning before July 1, 2007, as described in Treas. Reg. §1.415(a)-1(g)(4). For purposes of this Section, “Maximum Permissible Benefit” shall be the Defined Benefit Dollar Limitation as defined in subsection (c) below.

- (b) The Annual Benefit otherwise payable to a Participant under the Plan at any time shall not exceed the Maximum Permissible Benefit. If the benefit the Participant would otherwise accrue in a Limitation Year would produce an Annual Benefit in excess of the Maximum Permissible Benefit, the benefit shall be limited (or the rate of accrual reduced) to a benefit that does not exceed the Maximum Permissible Benefit.
- (c) ***Annual Benefit.***
- (i) The “Annual Benefit” payable to a Participant under this Plan in any Limitation Year may not exceed the Defined Benefit Dollar Limitation. The Defined Benefit Dollar Limitation is \$205,000 (effective January 1, 2013) and , automatically adjusted under Internal Revenue Code Section 415(d), effective January 1 of each year, as published by the Internal Revenue Bulletin, and payable in the form of a straight life annuity. The new limitation shall apply to Limitation Years ending with the calendar year of the date of the adjustment, but a Participant’s benefits shall not reflect the adjusted limit prior to January 1 of that calendar year. The automatic annual adjustment of the Defined Benefit Dollar Limitation shall also apply to Participants who have had a separation from employment.
- (ii) Benefit increases resulting from the increase in the limitation of Internal Revenue Code Section 415(b) made by the Economic Growth and Tax Relief Reconciliation Act of 2001 (“EGTRRA”) will be provided to all current and former Participants (with benefits limited by Internal Revenue Code Section 415(b)) who have an Accrued Benefit immediately prior to January 1, 2002 (other than an Accrued Benefit resulting solely from a benefit increase as a result of the increase in limitations under Internal Revenue Code Section 415(b)).
- (d) The Annual Benefit (without regard to the age at which benefits commence) payable with respect to a Participant under any defined benefit plan is not considered to exceed the limitations on benefits described in subsection (c) above if the benefits payable with respect to the Participant do not exceed \$10,000 and the Participant was never a Participant in a defined contribution plan of the Employer. In the case of an Employee who has fewer than 10 years of service with the Employer, the \$10,000 amount under the special rule discussed in this subsection (d) shall be reduced by multiplying \$10,000 by a fraction, the numerator of which is the number of years (or part thereof, but not less than one year) of service with the Employer, and the denominator of which is 10. For

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purposes of this subsection (d), the benefits payable with respect to the Participant for a Limitation Year reflect all amounts payable under the Plan for the Limitation Year, and are not adjusted for form of benefit or commencement date.

- (e) **Adjustment for fewer than 10 Years of Participation:** If the Participant has fewer than 10 years of participation in the Plan, the Defined Benefit Dollar Limitation as defined in paragraph (c)(i) above shall be multiplied by a fraction—(1) the numerator of which is the number of years (or part thereof, but not less than one year) of participation in the Plan, and (2) the denominator of which is 10.
- (f) ***Adjustment for Defined Benefit Dollar Limitation for Benefit Commencement before Age 62.***

If the benefit of a Participant begins prior to age 62, the Defined Benefit Dollar Limitation applicable to the Participant at such earlier age is an Annual Benefit payable in the form of a straight life annuity beginning at the earlier age that is the actuarial equivalent of the Defined Benefit Dollar Limitation applicable to the Participant at age 62 (adjusted under subsection (e) above, if required). The Defined Benefit Dollar Limitation applicable at an age prior to age 62 is determined as the lesser of:

- (i) the actuarial equivalent (at such age) of the Defined Benefit Dollar Limitation computed using the Applicable Interest Rate and Applicable Mortality Table specified in Plan Sections 1.24 and 1.25, respectively; or
- (ii) the actuarial equivalent (at such age) of the Defined Benefit Dollar Limitation computed using a 5% Applicable Interest Rate and the Applicable Mortality Table as defined in Plan Section 1.25.

Any decrease in the Defined Benefit Dollar Limitation determined in accordance with the paragraph shall not reflect a mortality decrement if benefits are not forfeited upon the death of the Participant. If any benefits are forfeited upon death, the full mortality decrement is taken into account.

- (g) ***Defined Benefit Dollar Limitations after Age 65.***

If the benefit of a Participant begins after the Participant attains age 65, the Defined Benefit Dollar Limitation applicable to the Participant at the later age is the Annual Benefit payable in the form of a straight life annuity beginning at the later age that is actuarially equivalent to the Defined Benefit Dollar Limitation applicable to the Participant at age 65 (adjusted under subsection (e) above, if required). The actuarial equivalent of the Defined Benefit Dollar Limitation applicable at an age after age 65 is determined as the lesser of:

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- (i) The actuarial equivalent (at such age) of the Defined Benefit Dollar Limitation computed using the Applicable Interest Rate and Applicable Mortality Table specified in Plan Sections 1.24 and 1.25, respectively, or
  - (ii) The actuarial equivalent (at such age) of the Defined Benefit Dollar Limitation computed using a 5% Applicable Interest Rate assumption and the Applicable Mortality Table specified in Plan Section 1.25.

(h) ***Benefit Forms not Subject to Internal Revenue Code Section 417(e)(3).***

The straight life annuity that is actuarially equivalent to the Participant's form of benefit shall be determined under this subsection (h) if the form of the Participant's benefit is a non-decreasing annuity (other than a straight life annuity) payable for a period of not less than the life of the Participant (or, in the case of a qualified pre-retirement survivor annuity, the life of the surviving spouse).

(i) **Limitation Years beginning before July 1, 2007.**

For Limitation Years beginning before July 1, 2007, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same Effective Date of Pension that has the same actuarial present value as the Participant's form of benefit computed using whichever the following produces the greater annual amount:

- (A) The Applicable Interest Rate specified in Plan Section 1.24 and the Applicable Mortality Table specified in Plan Section 1.25 for adjusting benefits in the same form; and
- (B) A 5% Applicable Interest Rate assumption and the Applicable Mortality Table specified in Plan Section 1.25 of the Plan for that Effective Date of Pension.

(ii) **Limitation Years beginning on or after July 1, 2007.**

For Limitation Years beginning on or after July 1, 2007, the actuarially equivalent straight life annuity is equal to the greater of:

- (A) The annual amount of the straight life annuity (if any) payable to the Participant under the Plan commencing at the same Effective Date of Pension as the Participant's form of benefit; and
- (B) The annual amount of the straight life annuity commencing at the same Effective Date of Pension that has the same actuarial present value as the Participant's form of benefit, computed using a 5%

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Applicable Interest Rate assumption and the Applicable Mortality Table defined in Plan Section 1.25 for that Effective Date of Pension.

(i) ***Benefit Forms Subject to Internal Revenue Code Section 417(e)(3).***

The straight life annuity that is actuarially equivalent to the Participant's form of benefit shall be determined under this subsection if the form of the Participant's benefit is other than a benefit form described in subsection (h) above. In this case, the actuarially equivalent straight life annuity shall be determined as follows:

The actuarially equivalent straight life annuity is equal to the greatest of:

- (A) The annual amount of the straight life annuity commencing at the same Effective Date of Pension that has the same actuarial present value as the Participant's form of benefit, computed using the adjustment factors specified in the Plan for adjusting benefits in the same form;
- (B) The annual amount of the straight life annuity commencing at the same Effective Date of Pension that has the same actuarial present value as the Participant's form of benefit, computed using a 5.5% Applicable Interest Rate assumption and the Applicable Mortality Table defined in Plan Section 1.25; or
- (C) The annual amount of the straight life annuity commencing at the same Effective Date of Pension that has the same actuarial value as the Participant's form of benefit, computed using the Applicable Interest Rate defined in Plan Section 1.24 and the Applicable Mortality Table defined in Plan Section 1.25, divided by 1.05.

(j) ***Aggregation with other Plans.***

- (i) Pursuant to Internal Revenue Code Section 415(f)(3)(B), this Plan shall not be aggregated with any other multiemployer plan for purposes of applying the limits in this Section.
- (ii) Where an Employer maintains this Plan and other plans that are not multiemployer plans, only the benefits under this Plan that are provided by the Employer will be aggregated with benefits under the Employer's plans other than multiemployer plans. The Fund may impose a reasonable charge, at the Trustees' discretion, to cover the cost of the actuarial services required to provide the information needed for an Employer to perform the limited aggregation permitted by this paragraph.

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- (iii) This Plan shall not be aggregated with any other plan for purposes of applying the Defined Benefit Compensation Limit of Internal Revenue Code Section 415(b)(1)(B) and Treas. Reg. §1.415(b)-1(a)(1)(ii).
- (k) For purposes of this Section, “Limitation Year” means the Calendar Year.
- (l) For purposes of this Section, “Compensation” means:
- (i) An employee's wages, salaries, fees for professional services, and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with an Employer, to the extent that the amounts are includible in gross income (or to the extent amounts would have been received and includible in gross income but for an election under Internal Revenue Code Sections 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b)). These amounts include, but are not limited to, commissions paid to salespersons, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements or other expense allowances under a non-accountable plan as described in Treas. Reg. §1.62-2(c).
- (ii) For purposes of paragraph (i) above, “wages” includes wages within the meaning of Internal Revenue Code Section 3401(a) (for purposes of income tax withholding at the source), plus amounts that would be included in wages but for an election under Internal Revenue Code Sections 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b). However, any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Internal Revenue Code Section 3401(a)(2)) are disregarded for this purpose.
- (iii) Items not included in “Compensation.” Compensation does not include:
- (A) Employer contributions (other than elective contributions described in Internal Revenue Code Sections 402(e)(3), 408(k)(6), 408(p)(2)(A)(i) or 457(b)) to a plan of deferred compensation (including a simplified employee pension described in Internal Revenue Code Section 408(k) or a simple retirement account described in Internal Revenue Code Section 408(p), and whether or not qualified) to the extent that the contributions are not includible in the gross income of the employee for the taxable year in which contributed. In addition, any distribution from a plan of deferred compensation (whether or not qualified) is not considered as compensation for purposes of this Section, regardless of whether such amounts are includible in the gross income of the employee when distributed.

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- (B) Amounts realized from the exercise of a nonstatutory option (which is an option other than a statutory option as defined in Treas. Reg. §1.421-1(b)), or when restricted stock or other property held by an employee either become freely transferable or is no longer subject to a substantial risk of forfeiture;
  - (C) Amounts realized from the sale, exchange or other disposition of stock acquired under a statutory stock option;
  - (D) Other amounts that receive special tax benefits, such as premiums for group-term life insurance (but only to the extent that the premiums are not includible in the gross income of the employee and are not salary reduction amounts that are described in Internal Revenue Code Section 125);
  - (E) Other items of remuneration that are similar to any of the items listed in subparagraphs (A) through (D) above.
- (iv) For any self-employed individual, Compensation shall mean earned income.
  - (v)
    - (A) Except as otherwise provided in this paragraph (v), in order to be taken into account for a Limitation Year, Compensation for purposes of this Section must be actually paid or made available to an employee (or, if paid or made available earlier, includible in the gross income of the employee) within the Limitation Year. For this purpose, Compensation is treated as paid on a date if it is actually paid on that date or it would have been paid on that date but for an election under Internal Revenue Code Sections 125, 132(f)(4), 401(k), 403(b), 408(k), 408(p)(2)(A)(i), or 457(b).
    - (B) Except as otherwise provided in this paragraph (v), in order to be taken into account for a Limitation Year, Compensation within the meaning of this Section must be paid or treated as paid to the employee (in accordance with the rules of subparagraph (v)(A) above) prior to the employee's severance from employment with the Employer.
    - (C) Notwithstanding the provisions of subparagraph (v)(D), Compensation for a Limitation Year includes amounts earned during the Limitation Year but not paid during the Limitation Year solely because of the timing of pay periods and pay dates if: (1) these amounts are paid during the first few weeks of the next Limitation Year; (2) the amounts are included on a uniform and consistent basis with respect to all similarly situated employees;

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and (3) no Compensation is included in more than one Limitation year.

**(D) Compensation Paid After Severance.**

- (I) Any Compensation described in this subparagraph (v)(D) does not fail to be Compensation within the meaning of this Section pursuant to the rule of subparagraph (v)(B) merely because it is paid after the employee's severance from employment with the Employer, provided the Compensation is paid by the later of 2 ½ months after severance from employment with the Employer or the end of the Limitation Year that includes the date of severance from employment with the Employer.
  - (II) Regular Pay after Severance. An amount is described in this clause (D)(II) if:
    - 1. The payment is regular Compensation for services during the employee's regular working hours, or Compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and
    - 2. The payment would have been paid to the employee prior to severance from employment if the employee had continued in employment with the Employer.
  - (III) Any payment that is not described in clause (D)(II) is not considered Compensation under clause (D)(I) if paid after severance from employment with the Employer, even if it is paid within the time period described in clause (D)(I).
  - (IV) Notwithstanding anything to the contrary in this subparagraph (D), a payment after severance from employment from an Employer for whom services were provided is considered to be Compensation as long as the individual receiving the payment is employed by any Employer maintaining the Plan. Thus, a Participant is treated as having a severance from employment under this subparagraph (D) only when the Participant is no longer providing services to any Employer maintaining the Plan.
- (vi) Back pay, within the meaning of Treas. Reg. §1.415(c)-2(g)(8), shall be treated as Compensation for the Limitation Year to which the back pay



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relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

- (vii) Only compensation considered for purposes of Internal Revenue Code Section 401(a)(17) shall be taken into account for purposes of this Section as follows:

The annual compensation of each Participant taken into account for determining all benefits provided under the Plan shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with Internal Revenue Code Section 401(a)(17)(B).

- (m) The Trustees are entitled to rely on a representation by an Employer that the pension payable to a Participant under this Plan to the extent attributable to employment with the Employer, does not, together with any other pension payable to him/her under any other plan maintained by the Employer, whether or not terminated, and to the extent attributable to employment with the Employer, exceed the limitations of Internal Revenue Code Section 415.
- (n) The benefits paid under this Plan will not exceed the limitations set forth in this Section. If a Participant on his Effective Date of Pension is not eligible for full monthly benefits under this Plan because of the operation of this Section, his/her monthly benefits will be recalculated annually thereafter until he/she is receiving a full monthly benefit under the Plan's terms without operation of this Section. Each recalculation will be based on this Section with any applicable adjustment to reflect cost of living increases as set forth in paragraph (c)(i).
- (o) In calculating the benefit of a Participant's surviving Spouse or Beneficiary, the benefit of such Spouse or Beneficiary first shall be calculated based on the amount to which the Participant would have been entitled without regard to the limits imposed by this Section. The limits of this Section then will be applied to the resulting benefit amount.

#### **Section 9.14. Designation of Beneficiary.**

A Participant or Pensioner may designate a person or persons as a Beneficiary or Beneficiaries to receive the Death Benefits, if any, provided in accordance with Plan Sections 7.01, 7.02 or 8.02, or any benefits due but not yet received by the Pensioner at the time of his death, by forwarding such designation to the Fund Office in a form acceptable to the Board of Trustees. Designated Beneficiaries other than individual(s) are not acceptable; however, a trust or an estate may be a designated Beneficiary. See also Plan sections 6.02(e)(i)(A) (spousal consent requirement at retirement) and 6.03 (preretirement surviving spouse pension) for limitations on beneficiary designations. A Participant or Pensioner shall have the right to change his designation of Beneficiary without the consent of the Beneficiary, but no change shall be effective or binding on the Trustees unless it is received by the Fund Office prior to the time any payments are made

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to the Beneficiary whose designation is on file with the Fund Office. Any benefits provided in accordance with Plan Sections 7.01, 7.02 or 8.02, or any benefits due but not yet received by the Pensioner at the time of his death, shall be paid to the most recently designated Beneficiary filed with the Trustees. If such designated Beneficiary, who has survived the Pensioner or Participant, dies, and further payments are due for periods after the death, and if no successor Beneficiary named by the Participant is still then living, such payments shall be made to the designated Beneficiary's survivor(s), as applicable, according to the order listed in Plan Section 9.15.

#### **Section 9.15. No Designated Beneficiary.**

If a Participant has not designated a Beneficiary or if there is no designated Beneficiary alive at the death of a Participant, any benefits provided under Plan Sections 7.01, 7.02 or 8.02, or any benefits due but not yet received by the Pensioner at the time of his death, shall be payable to the person listed below in the order listed:

- (a) to the Participant's Spouse;
- (b) if no surviving Spouse, to his surviving children, divided equally between them;
- (c) if no surviving Spouse or surviving children, to his surviving parents, divided equally between them;
- (d) if no surviving Spouse or surviving children or surviving parents, to his surviving siblings, divided equally between them.

If there are no survivors under (a)-(d) above, such benefits will not be paid to anyone, including an estate, and such amounts will be forfeited to the Trust Fund.

This Plan Section 9.15 shall also apply to the survivors of a Beneficiary, if no successor Beneficiary named by the Participant is still living, or to the survivors of a surviving Spouse, and there were benefits due but not yet received by the Beneficiary or surviving Spouse at the time of his or her death.

#### **Section 9.16. Minor Beneficiary.**

If benefits from this Fund are payable to a minor, the Trustees may pay the benefits due to the minor to the person having present custody or care of the minor with whom the minor resides. Such recipient on behalf of the minor must agree in writing to apply the payments solely for the minor's support. The Trustees also have the discretion to make any payments of benefits to a minor by depositing the payments in a federally insured savings account in the sole name of the minor and by giving written notice of such deposit to the minor. Payments made in the manner set forth in this Section shall operate to discharge the Trustees from any liability to the minor or anyone representing his interest. No payment shall be made under this Section to a government agency.

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### **Section 9.17. Merger.**

Benefits to persons from other plans which have merged into this Plan shall be subject to the applicable terms of any merger agreements between the plans. In applying an applicable provision of a merged plan under terms of such a merger agreement, the definition of Spouse in Section 6.01(c) shall apply. In the case of any merger or consolidation with or transfer of assets or liabilities to any other plan, each Participant shall be entitled to receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer.

### **Section 9.18. Adjustment for Delayed Initiation of Benefit Payments.**

- (a) In the case of a Participant for whom benefits were not suspended pursuant to Paragraph 9.07(b)(vi) above, if the Effective Date of Benefits is after the Participant's Normal Retirement Age, the benefit accrued at Normal Retirement Age will be actuarially increased for each complete calendar month between Normal Retirement Age and the Effective Date of Benefits.
- (b) If a Participant first becomes entitled to additional benefits after Normal Retirement Age, whether through additional Pension Credit or because of a benefit increase, the actuarial increase in those benefits will start from the date they would have been paid rather than from Normal Retirement Age.
- (c) The actuarial increase will be calculated using the factors set forth in Subsection 9.05(e) above.

### **Section 9.19. Disclaimer of Benefits.**

If a Beneficiary signs and delivers to the Fund Office a written disclaimer of Plan benefits which satisfies the requirements of Internal Revenue Code Section 2518 and the Regulations thereunder, and the benefits, but for the disclaimer, would otherwise pass to such individual as a result of the death of a Participant or a Beneficiary, the individual executing such disclaimer of benefits shall be deemed to have failed to survive the deceased Participant or Beneficiary. For such a disclaimer to be effective for purposes of the Plan, the following conditions must be satisfied:

- (a) The disclaimer must be an irrevocable and unqualified written refusal by the individual who would otherwise receive Plan benefits as a Beneficiary not to accept such benefits;
- (b) The written disclaimer must be received in the Fund Office no later than the date that is nine (9) months after the date of death of the Participant or Beneficiary by reason of which the disclaiming individual would be entitled to Plan benefits;

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- (c) The disclaiming individual has not accepted any portion of the Plan benefits being disclaimed;
  - (d) As a result of the disclaimer, the Plan benefits are paid in accordance with the Plan document and without any direction on the part of the individual making the disclaimer to a person other than the individual making the disclaimer, and
  - (e) The disclaimer must satisfy the requirements of applicable state law as demonstrated by a legal opinion, acceptable to the Trustees or their designee, from an attorney hired and paid by the Beneficiary.

Disclaimers are only permitted for a Death Benefit to a non-spouse Beneficiary under Sections 7.01 or 7.02.

## **ARTICLE 10**

### **General Provisions**

#### **Section 10.01. Non-Reversion.**

It is expressly understood that in no event shall any of the corpus or assets of the Pension Fund revert to the Contributing Employers or be subject to any claims of any kind or nature by the Contributing Employers, except for the return of an erroneous contribution within the time limits prescribed by law.

#### **Section 10.02. Limitation of Liability.**

This Plan has been adopted by the Trustees on the basis of an actuarial estimate, which has established to the fullest extent possible that the contributions will, if continued, be sufficient to maintain the Plan on a permanent basis, fulfilling the funding requirements of ERISA.

However, it is recognized as possible that, in the future, the income and/or the liabilities of the Fund may be substantially different from those previously anticipated.

It is understood that this Pension Plan can be fulfilled only to the extent that the Fund has assets available from which to make the pension payments. Consequently, the Trustees shall have prepared, annually, an actuarial evaluation of the Fund.

No Employer has any liability, directly or indirectly, to provide the benefits established by this Plan beyond the obligation of the Employer to make contributions as stipulated in his Collective Bargaining Agreement or otherwise as provided by the Trust Agreement, this Plan or by law. In the event that at any time the Pension Fund does not have sufficient assets to permit continued payments on a sound actuarial basis under this Pension Plan, nothing contained in the Pension Plan and the Trust Agreement shall be

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construed as obligating the Employer to make benefit payments or contributions (other than the contributions for which the Employer may be obligated by his Collective Bargaining Agreement) in order to provide for the benefits established by the Pension Plan.

Likewise, there shall be no liability upon the Board of Trustees, individually or collectively, or upon the Employers, District Council, or Union to provide the benefits established by this Plan if the Pension Fund does not have assets to make such benefit payments.

### **Section 10.03. Delinquent Employers.**

If a Contributing Employer fails to make contributions to the Fund in a timely fashion, the Trustees may assess liquidated damages and interest, and may take whatever actions they deem appropriate to collect all amounts due and enforce the obligation to contribute, in accordance with the terms of the Trust Agreement and ERISA Sections 502(g)(2) and 515. Nothing in this Section shall be construed as a waiver or limitation of the Plan's or the Trustees' right to enforce an Employer's obligation to contribute in any type of proceeding.

### **Section 10.04. Termination or Modification of Obligation to Contribute.**

The financing of benefits provided by the Plan is based on the continued contribution of Employers, as required by the Collective Bargaining Agreement with the Union.

If a Union and an Employer should enter into a Collective Bargaining Agreement requiring contributions to the Fund and then fail to renew such agreement, or enter into an agreement which does not require the continuation of contributions to the Fund, or requires a lesser rate of contributions, to the extent permitted under Internal Revenue Code Section 411(d)(6) and 411(a)(3)(E), and as otherwise authorized under Plan Section 11.01 and the Trust Agreement, the Trustees have the authority to take such action as they deem appropriate in their discretion with respect to all of the Employees of all the Employers in that Local Union jurisdiction including but not limited to the following in order to maintain that group of Employees, or the Fund as a whole, on a sound actuarial basis:

- (a) The Trustees shall have the right to terminate the Employers' status as Contributing Employers and to terminate or reduce any pension benefits to former Employees of the Employers if the total amount contributed by said Contributing Employers is less than the actuarially determined value of the pension benefits approved for former Covered Employees of such Contributing Employers.
- (b) The Trustees shall have the right to adjust or cancel the credit of any Employees or former Employees, or modify the conditions for entitlement to any benefits, in order to maintain an actuarially sound

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relationship between the contributions made on account of such Employees or former Employees and any benefits accrued by them.

However, any cancellation of Pension Credit shall not apply to any periods of employment (or any benefits attributable thereto) for which the Employers were obligated to contribute to the Fund under the terms of a Collective Bargaining Agreement or other written agreement.

**Section 10.05. Unauthorized Representations.**

The Fund shall not be bound by the representations of any person, other than the Trustees, regarding participation in and eligibility for benefits under this Plan, status of Employees or Employers or any other matter relating to the Pension Plan or Fund.

**Section 10.06. Authority.**

The Trustees shall have the sole responsibility and the sole control of the operation and administration of the Plan and shall have the full power, discretion, and authority to take all action and to make all decisions and interpretations which may be necessary or appropriate in order to administer and operate the Plan, including, without limiting the generality of the foregoing, the power, duty, discretion and responsibility to:

- (a) Resolve and determine all disputes or questions arising under the Plan, including the power and discretion to determine the rights of Pensioners, Participants and Beneficiaries, and their respective benefits, and to remedy any ambiguities, inconsistencies or omissions;
- (b) Adopt such rules of procedure and regulations as in their opinion may be necessary for the proper and efficient administration of the Plan and as are consistent with the Plan;
- (c) Implement the Plan in accordance with its terms and the rules and regulations adopted as above and with the Trust Agreement;
- (d) Determine the eligibility of any Employee as a Participant and the crediting and distribution of the Trust pursuant to the terms of the Plan and the Trust; and
- (e) Establish and carry out a funding policy and method consistent with the objectives of the Trust, the Plan, and ERISA pursuant to which the Trustees shall determine the Plan's liquidity and financial needs.

**Section 10.07. Severability.**

In the event that any provision(s) of this Plan shall be held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining provisions of this Plan; and the provision(s) held illegal or invalid shall be fully severable and the Plan shall be construed as if said illegal or invalid provision had never been inserted herein.

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## **Section 10.08. Grammatical Construction.**

Pronouns or other words indicating masculine, feminine or neuter gender shall be deemed to include other genders unless the context clearly indicates otherwise, and singular words shall include the plural in all cases where such meaning would be appropriate.

## **Section 10.09. Top Heavy Plan Requirements.**

For any Top Heavy Plan Year, the Plan shall provide vesting provisions meeting the requirements of Internal Revenue Code Section 416(b) and a minimum benefit meeting the requirements of Internal Revenue Code Section 416(c).

For purposes of this Section, the benefits provided under the Plan for the employees of each Contributing Employer shall be treated as a separate plan maintained by such Contributing Employer, the provisions of this section shall be applicable separately to each such separate plan, and the term “Plan” shall mean such a separate plan.

### **(a) *Determination of Top Heavy Status.***

- (i) The Plan shall be a Top Heavy Plan for any Plan Year in which, as of the Determination Date, the Plan is a Top Heavy Plan as defined in Paragraph 10.09(b)(ix) below.
- (ii) A Participant’s Present Value of Accrued Benefit as of the Determination Date must be determined as of the most recent valuation date which is within the 12-month period ending on the Determination Date. The Accrued Benefit for a current employee shall be determined as if the employee terminated service as of such valuation date.

### **(b) *Special Top Heavy Definitions.***

- (i) “Aggregation Group” means either a Required Aggregation Group or a Permissive Aggregation Group as hereinafter determined.
  - (A) Required Aggregation Group: In determining a Required Aggregation Group hereunder, each plan of the Employer in which a Key Employee is a participant, and each other plan of the Employer which enables any plan in which a Key Employee participates to meet the requirements of Internal Revenue Code Sections 401(a)(4) and 410, will be required to be aggregated. Such group shall be known as a Required Aggregation Group, and 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

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Group will be considered a Top Heavy Plan if the Required Aggregation Group is not a Top Heavy Group.

- (B) Permissive Aggregation Group: The Employer may also include any other plan not required to be included in the Required Aggregation Group, provided the resulting group, taken as a whole, would continue to satisfy the provisions of Internal Revenue Code Sections 401(a)(4) and 410. Such group shall be known as a Permissive Aggregation Group, and in such case, 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.
- (C) Only those plans of the Employer in which the Determination Dates fall within the same calendar year shall be aggregated in order to determine whether such plans are Top Heavy Plans.
- (ii) “Compensation” means “compensation” as defined in Plan Subsection 9.13(l).
- (iii) “Determination Date” means the last day of the preceding Plan Year.
- (iv) “Key Employee” means any employee or former employee who, at any time during the Plan Year or any of the four (4) preceding Plan Years, is (1) an officer of the Employer whose annual compensation is greater than 50% of the amount in effect under Internal Revenue Code Section 415(b)(1)(A) for any Plan Year in the determination period; (2) one of ten employees owning (by attribution or otherwise) the largest interests in the Employer if such individual’s compensation exceeded the dollar limit on annual additions to defined contribution plans under Internal Revenue Code Section 415(c)(1)(A); (3) a 5-percent owner of the Employer; or (4) a 1-percent owner of the Employer having annual Compensation in excess of \$150,000. For purposes of determining whether a person is an officer under (1), above, no more than fifty (50) Employees (or, if less, the greater of three (3) or ten percent (10%) of Employees) will be treated as officers. In addition, persons who are merely nominal officers will not be treated as Key Employees solely by reason of their titles as officers. For purposes of (2), above, if two (2) employees have the same interest in the Employer, the employee with the greater annual Compensation from the Employer will be treated as having the larger interest.

Notwithstanding the foregoing, effective July 1, 2002, “Key Employee” means any employee or former employee (including any deceased employee) who at any time during the Plan Year that includes the Determination Date was an officer of the Employer having annual



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compensation greater than \$130,000 (as adjusted under Internal Revenue Code Section 416(i)(1)); a five-percent (5%) owner of the Employer; or a one-percent (1%) owner of the Employer having annual compensation of more than \$150,000. For purposes of this subsection, annual compensation means compensation within the meaning of Internal Revenue Code Section 415(c)(3). The determination of who is a Key Employee will be made in accordance with Internal Revenue Code Section 416(i)(1) and the applicable regulations and other guidance of general applicability thereunder.

- (v) “Non-Key Employee” means any employee who is not a Key Employee.
- (vi) “Present Value of Accrued Benefit” means in the case of a defined benefit plan, a Participant’s present value of accrued benefit as determined under the provisions of the defined benefit plan.
- (vii) For Limitation Years beginning before January 1, 2000, “Super Top Heavy Plan” means a Plan for which, as of the Determination Date, the Present Value of Accrued Benefits of Key Employees or the sum of the Accrued Benefits of Key Employees under this Plan and any plan of an Aggregation Group, exceeds ninety percent (90%) of the Present Value of Accrued Benefits or the Accrued Benefits of all Participants under this Plan and any plan of an Aggregation Group. Effective for Limitation Years beginning after December 31, 1999, any provisions for Super Top Heavy Plans will not apply.
- (viii) “Top Heavy Group” means an Aggregation Group in which, as of the Determination Date, the sum of the Present Value of Accrued Benefits of Key Employees under all defined benefit plans included in the group, and 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. The value of an employee’s Accrued Benefit distributed during the 5-year period ending on the Determination Date will be included in determining whether an Aggregation Group is a Top Heavy Group. The preceding sentence shall also apply to distributions under a terminated plan which if it had not been terminated would have been required to be included in an Aggregation Group. However, if a former employee has not performed any services for the Employer maintaining the Plan at any time during the 5-year period ending on the Determination Date or if an employee is not a Key Employee on the Determination Date but was a Key Employee for any Calendar Year prior to the Determination Date, the value of his or her Accrued Benefit will not be included in determining whether an Aggregation Group is a Top Heavy Group.

Notwithstanding the foregoing, effective July 1, 2002 the present values of accrued benefits and the amounts of account balances of an employee as

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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 Internal Revenue Code Section 416(g)(2) during the one-year period ending on the Determination Date. The preceding sentence shall also apply to distributions under a terminated plan which, had it not been terminated, would have been aggregated with the Plan under Internal Revenue Code Section 416(g)(2)(A)(i), and 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.” In addition, effective January 1, 2002, the accrued benefits and accounts of any individual who has not performed service for the Employer during the one-year period ending on the Determination Date shall not be taken into account in determining whether the Plan is a Top Heavy Plan.

- (ix) “Top Heavy Plan” means a Plan as to which, as of the Determination Date, the Present Value of Accrued Benefits of Key Employees, or the sum of the Accrued Benefits of Key Employees under this Plan and any plan of an Aggregation Group, exceeds sixty percent (60%) of the Present Value of Accrued Benefits or the Accrued Benefits of all Participants under this Plan and any plan of an Aggregation Group. The value of an employee’s Accrued Benefit distributed during the 5-year period ending on the Determination Date will be included in determining whether a plan is a Top Heavy Plan. The preceding sentence shall also apply to distributions under a terminated plan which if it had not been terminated would have been required to be included in an Aggregation Group. However, if a former employee has not performed any services for the Employer maintaining the Plan at any time during the 5-year period ending on the Determination Date or if an employee is not a Key Employee on the Determination Date but was a Key Employee for any Calendar Year prior to the Determination Date, the value of his or her Accrued Benefit will not be included in determining whether a plan is a Top Heavy Plan.

Notwithstanding the foregoing, effective July 1, 2002, “Top Heavy Plan” means a Plan under which the aggregate present value of accrued benefits for Key Employees exceeds sixty percent (60%) of the present value of accrued benefits for all Employees under such plan and which is not part of a Required or Permissive Aggregation Group that is not a Top Heavy Group. Top Heavy Plan also means a Plan which is part of a Required Aggregation Group that is a Top Heavy Group.

Effective July 1, 2002, 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 Internal Revenue Code Section 416(g)(2) during the one-year period ending on the

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Determination Date. The preceding sentence shall also apply to distributions under a terminated plan which, had it not been terminated, would have been aggregated with the Plan under Internal Revenue Code Section 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.” In addition, effective January 1, 2002, the accrued benefits and accounts of any individual who has not performed service for the Employer during the one-year period ending on the Determination Date shall not be taken into account in determining whether the Plan is a Top Heavy Plan.

(x) “Top Heavy Plan Year” means that, for a particular Plan Year, the Plan is a Top Heavy Plan.

(c) ***Minimum Benefit.***

If this Plan is a Top Heavy Plan, each Participant who is not a Key Employee, and who is not included in a unit of employees covered by a collective bargaining agreement, will accrue a benefit for his Years of Top Heavy Benefit Service (to be provided solely by Employer contributions and expressed as a life annuity commencing at Normal Retirement Age) which shall be the lesser of: (i) 2% of the Participant’s Top Heavy Average Compensation multiplied by his Top Heavy Years of Benefit Service; or (ii) 20% of the Participant’s Top Heavy Average Compensation. Top Heavy Years of Benefit Service shall mean all years of Pension Credit earned on or after July 1, 1984, but excluding all Pension Credit earned during Plan Years during which the Plan was not a Top Heavy Plan. Top Heavy Compensation shall mean the Participant’s average Compensation from the Employer over the period of consecutive calendar years not exceeding five during which the Participant has the greatest aggregate Compensation from the Employer. Plan Years before July 1, 1984, years beginning after the close of the last Plan Year in which this Plan was deemed a Top Heavy Plan, and years in which the Participant failed to be credited with any Pension Credit will not be taken into account. For purposes of this minimum benefit, Compensation in excess of One Hundred Fifty Thousand Dollars (\$150,000) (or such other amount as the Secretary of the Treasury may designate) shall be disregarded. For any Top Heavy Plan Year, this minimum benefit shall be accrued by all Non-Key Employees who are Participants and who are employed by the Employer on the last day of the Plan Year, including Non-Key Employees who have failed to complete a Year of Vesting Service.

(d) ***Minimum Vesting.***

For any Top Heavy Plan Year, the vested portion of the Accrued Benefit of any Participant who is not included in a unit of employees covered by a collective bargaining agreement shall be a percentage of the total Accrued Benefit of such

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Participant, determined on the basis of the Participant's number of years of Vesting Service according to the following schedule:

<u>Vesting Schedule</u>	
Years of Service	Percentage
1	0%
2	0%
3	100%

If in any subsequent Plan Year, the Plan ceases to be a Top Heavy Plan, this vesting schedule shall apply only to the Accrued Benefit as of the last day of the last Plan Year in which the Plan was a Top Heavy Plan.

(e) ***Adjustment of Limitation on Annual Benefit.***

This subsection (e) shall not apply to Limitation Years beginning after December 31, 1999.

- (i) If the Plan becomes a Top Heavy Plan, Internal Revenue Code Section 415(e) shall be modified by substituting the number "1.0" for "1.25" in such Section. However, such modification shall not be made if the Top Heavy Minimum Benefits provided under Paragraph 10.09(c)(i) above is changed to three (3) percent, and the percentage under Paragraph 10.09(c)(ii) above is increased by one (1) percent (not to exceed 30%) for each Plan year taken into account under Internal Revenue Code Section 416(h).
  - (ii) If the Plan becomes "Super Top Heavy," the exception provided for in Paragraph 10.09(e)(i) above shall not apply.
- (f) Effective for Plan Years beginning on or after January 1, 2002, for purposes of satisfying the minimum top heavy benefit requirements set forth in Internal Revenue Code Section 416(c)(1) and this Plan, in determining years of service with the Employer, any service with the Employer shall be disregarded to the extent that such service occurs during the Plan Year when the Plan benefits (within the meaning of Internal Revenue Code Section 410(b)) no Key Employee or former Key Employee.

## **ARTICLE 11**

### **Amendment and Termination**

#### **Section 11.01. Amendment.**

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This Plan may be amended at any time by the Trustees, consistent with the provisions of the Trust 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 ERISA Section 302(c)(8) and Internal Revenue Code Section 412(c)(8), and the Secretary of Labor has been notified of such amendment and has either approved it or, within 90 days after the date on which such notice was filed, failed to disapprove it.

### **Section 11.02. Termination.**

The Trustees shall have the right to discontinue or terminate this Plan in whole or in part. In the event of a termination of this Plan, the rights of all affected Participants to benefits then accrued, to the extent then funded, shall thereupon become nonforfeitable. Upon a termination of the Plan, the Trustees shall take such steps as they deem necessary or desirable to comply with ERISA Sections 4041A and 4281.

## **ARTICLE 12**

### **Employer Withdrawal Liability**

#### **Section 12.01. General.**

- (a) An Employer that withdraws from the Plan in either a complete or partial withdrawal shall owe and pay withdrawal liability to the Plan, as determined under this Article and ERISA, as amended by the Multi-employer Pension Plan Amendments Act of 1980.
- (b) For purposes of this Article, all corporations, trades or businesses that are under common control, as defined in regulations of the Pension Benefit Guaranty Corporation (PBGC) are considered a single Employer, and the entity resulting from a change in business form described in ERISA Section 4218(1) is considered to be the original Employer.

#### **Section 12.02. Complete Withdrawal Defined.**

- (a) A complete withdrawal occurs if:
  - (i) the Employer ceases to have an obligation to contribute under the Plan, and

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- (ii) the Employer
    - (A) continues to perform work in the jurisdiction of the collective bargaining agreement(s) of the type for which contributions were previously required, or
    - (B) resumes such work within 5 years after the date on which the obligation to contribute under the Plan ceased, and does not renew the obligation at the time of the resumption.
  - (b) For this purpose, an Employer's obligation to contribute is not considered to have ceased solely because:
    - (i) the Employer is not, at the particular time, engaged in activity for which it has a contractual obligation to contribute, or
    - (ii) the Employer temporarily suspends contributions during a labor dispute involving its employees.
  - (c) The date of a complete withdrawal is the date the Employer's obligation to contribute ceased.

### **Section 12.03. Amount of Liability for Complete Withdrawal.**

(a) ***General.***

The amount of an Employer's liability for a complete withdrawal shall be its initial liability amount, reduced in accordance with Subsection (g) below. The amount shall be determined as of the end of the Plan Year preceding the date of the employer's withdrawal.

(b) ***Initial Liability Amounts.***

The initial liability amount is the sum of its proportional share in the Plan's unfunded vested liability and of the reallocated amounts for each Plan Year that ended after June 30, 1980, and before the date of the Employer's withdrawal.

(c) ***Unfunded Vested Liability Defined.***

- (i) For the purposes of this Article, the term "vested benefit" means a benefit for which a Participant has satisfied the conditions for entitlement under this Plan (other than submission of a formal application, Retirement, or completion of a required waiting period) whether or not the benefit may subsequently be reduced or suspended by a plan amendment, an occurrence of any condition, or operation of law and whether or not the

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benefit is considered "vested" or "nonforfeitable" for any other purpose under the Plan.

- (ii) The Plan's liability for vested benefits as of a particular date is the actuarial value of the vested benefits under this Plan as of that date. Actuarial value shall be determined on the basis of actuarial methods and assumptions, which in the aggregate, are reasonable (taking into account the experience of the Plan and reasonable expectations) and which, in combination, offer the Plan's enrolled actuary's best estimate of anticipated experience under the Plan.
- (iii) The unfunded vested liability shall be the amount, not less than zero, determined by subtracting the value of the Plan's assets from the Plan's liability for vested benefits. The Plan's assets are to be valued on the basis of actuarial methods and assumptions, which in the aggregate, are reasonable (taking into account the experience of the Plan and reasonable expectations) and which, in combination, offer the Plan's enrolled actuary's best estimate of anticipated experience under the Plan.

(d) ***Annual Change in Unfunded Vested Liability.***

- (i) The change in the Plan's unfunded vested liability for a Plan Year is the amount (which may be less than zero) determined by subtracting the unfunded vested liability as of the end of the Plan Year from the sum of the unamortized balances (as of the end of the Plan Year) of the changes in the unfunded vested liability for each Plan Year that ended after June 30, 1980, and before the Plan Year for which the change is determined.
- (ii) The balance of the change in the Plan's unfunded vested liability for a Plan Year is the change in the Plan's unfunded vested liability for that year reduced by 5% of such amount for each succeeding complete Plan Year.

(e) ***Reallocated Liability Amount.***

For each Plan Year that ended after June 30, 1980, the reallocated liability amount is:

- (i) any amount of unfunded vested liability that the Trustees determined in the Plan Year to be uncollectible for reasons arising out of cases of proceedings under Title 11, United States Code, or similar proceedings;
- (ii) any amount of unfunded vested liability that the Trustees determined in the Plan Year will not be assessed as a result of the limitations on liability described in ERISA Sections 4209, 4219(c)(B) or 4225 against an employer to whom a notice of liability under ERISA Section 4219 has been sent; and

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- (iii) any amount that the Trustees determine to be uncollectible or unassessable in the Plan Year for other reasons under standards not inconsistent with such regulations as may be prescribed by the Pension Benefit Guaranty Corporation.

The balance of the reallocated liability amount for a Plan Year is the reallocated liability amount for that year reduced by 5% of such amount for each succeeding Plan Year.

(f) ***Apportionment of Unfunded Liability to Employer that has Withdrawn.***

- (i) An Employer's proportional share of the change in the unfunded vested liabilities and of the reallocated liability amount for a Plan Year ending after June 30, 1980, shall be determined by multiplying each of those amounts, if any, as determined for a Plan Year by a fraction:
  - (A) the numerator of which is the total contributions that the Employer was obligated to make to the Plan for the Plan Year in which the change or reallocation arose and the four preceding Plan Years ("Apportionment Base Period"); and
  - (B) the denominator of which is the total adjusted Employer Contributions to the Plan with respect to the Apportionment Base Period, determined as follows:
    - (I) The total contributions shall be the Employer Contributions accrued in each of the Plan Years in the Apportionment Base Period as recorded in the annual audited financial statements of the Plan, plus any contributions accrued earlier but not included, for purposes of this denominator, as contributions with respect to any earlier Plan Year.
    - (II) Notwithstanding Clause (I) above, with respect to any Plan Year that ended after June 30, 1980, the total Employer Contributions shall be reduced by the amount of any Employer Contributions included, consistent with these provisions, in any previous annual total.
    - (III) The total adjusted Employer Contributions shall be the total Employer Contributions with respect to the Apportionment Base Period, determined under Clauses (I) and (II) above, reduced by any contributions otherwise included in the total that were made by a significant withdrawn Employer, and by any other Employer to which a notice of withdrawal liability was sent by the Plan within the Apportionment Base Period.



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(ii) For purposes of the denominators of the fractions described in Paragraph (i), "significant Employer" means:

(A) an Employer that contributed, in any one Plan Year of the relevant period, at least one percent of total Employer Contributions to the Plan in the period, as determined for purposes of the relevant denominator, or, if lower, \$250,000; and

(B) any other Employer that was a member of an employer association, a group of Employers covered by a single collective bargaining agreement or a group of Employers covered by agreements with a single labor organization, if the contribution obligations of substantially all members of the group ceased in a single Plan Year and the group's aggregate contributions to the Plan in any one Plan Year of the relevant period totaled at least one percent of the total Employer Contributions to the Plan in the period, as determined for purposes of the relevant denominator or, if lower, \$250,000.

(g) ***Limitations on the Amount of Withdrawal Liability.***

(i) Deductible. For the initial liability amount, there shall be deducted the lesser of:

(A) \$50,000, or

(B) three-fourths of one percent (0.75%) of the Plan's unfunded vested liability as of the end of the Plan Year preceding the Employer's withdrawal,

less the excess of the initial amount over \$100,000.

(ii) The amount of initial liability remaining after application of Paragraph (i) shall be reduced, to the extent applicable, in accordance with ERISA Section 4219(c)(1)(B).

(iii) The amount of initial liability remaining after application of Paragraph (ii) shall be reduced in accordance with ERISA Section 4225 if and to the extent that the Employer demonstrates that additional limitations under that Section apply.

(h) ***Adjustments Prescribed Under Internal Revenue Code Section 432(e) Disregarded in Withdrawal Liability Determinations.***

(i) Any benefit reductions adopted by the Trustees in accordance with Internal Revenue Code Section 432(e) shall be disregarded in determining

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the Plan's unfunded vested benefits for purposes of determining an employer's withdrawal liability under ERISA Section 4201.

- (ii) Any surcharges under Internal Revenue Code Section 432(e)(7) shall be disregarded in determining the allocation of unfunded vested benefits to an employer under ERISA Section 4211 except for purposes of determining the unfunded vested benefits attributable to an employer under ERISA Section 4211(c)(4) or a comparable method approved under ERISA Section 4211(c)(5).

#### **Section 12.04. Satisfaction of Withdrawal Liability.**

- (a) Withdrawal liability shall be payable in installments, in accordance with Subsection 12.05(c). The total amount due in each 12-month period beginning on the date of the first installment shall be the product of:
  - (i) the highest rate at which the Employer was obligated to contribute to the Plan in the Plan Year in which the withdrawal occurred and in the preceding 9 Plan Years, multiplied by
  - (ii) the Employer's average annual contribution base for the three consecutive Plan Years, within the 10 consecutive Plan Years ending before the Year in which the withdrawal occurred, during which the Employer's contribution base was the highest, except that the number of installment payments due in the final year shall be reduced to assure that the total payments will not exceed the Employer's total amortized withdrawal liability.
- (b) If, in connection with the Employer's withdrawal, the Plan transfers benefit liabilities to another plan to which the Employer will contribute, the Employer's withdrawal liability shall be reduced in an amount equal to the value of the unfunded vested benefits that are transferred, determined as of the end of the Plan Year preceding the withdrawal on the same basis as the determination of the Plan's unfunded vested liability under Section 12.03 above.

#### **Section 12.05. Notice of Collection of Withdrawal Liability.**

(a) ***General.***

Notice of withdrawal liability, reconsideration, determination of the amortization period, and the maximum years of payment shall be as provided in ERISA Section 4219 and in this Section.

(b) ***Arbitration.***

A dispute between an Employer and the Plan concerning a determination of withdrawal liability shall be submitted to arbitration as provided in ERISA Section

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4221 to be conducted in accordance with rules adopted by the Trustees not inconsistent with regulations of the Pension Benefit Guaranty Corporation. No issue concerning the computation of withdrawal liability may be submitted for arbitration unless the matter has been reviewed by the Plan in accordance with ERISA Section 4219(b)(2) and any Plan rules adopted thereunder.

(c) ***Schedule of Payment.***

- (i) Withdrawal liability shall be paid in equal monthly installments. Notwithstanding the pendency of all review, arbitration, or other proceedings, payment shall begin on the first day of the month that begins at least 10 days after the notice of, and demand for, payment is sent to the Employer. Interest shall accrue on any late payment from the date the payment was due until the date paid, at the rate described in Paragraph (d)(ii), below.
- (ii) If, following review, arbitration or other proceedings, the amount of the Employer's withdrawal liability is determined to be different from the amount set forth in the notice and demand, adjustment shall be made by reducing or increasing the total number of installment payments due. If the Employer has paid more than the amount finally determined to be its withdrawal liability, the Plan shall refund the excess with interest at the rate used to determine the amortization period under Subsection (a).

(d) ***Default.***

- (i) An Employer is in default on its withdrawal liability if any installment is not paid when due, the Plan has notified the Employer of its failure to pay the liability on the date it was due, and the Employer has failed to pay the past-due installment within 60 days after receipt of the late payment notice.
- (ii) Interest shall be charged on any amount in default from the date the payment was due to the date it is paid at an annual rate equal to the prime rate charged by the JPMorgan Chase & Co (or its successor) on the first day of the calendar quarter preceding the due date of the payment. For each succeeding 12-month period that any amount in default remains unpaid, interest shall be charged on the unpaid balance (including accrued interest) at the prime rate in effect on the anniversary date of the date as of which the initial interest rate was determined.
- (iii) In the case of a default on withdrawal liability, the Plan may require immediate payment of some or all installments that would otherwise be due in the future.
- (iv) In addition to the event described in Paragraph (i), the Trustees or their designee may declare an Employer in default when notice is received of

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any circumstances indicating a substantial likelihood that further payments will not be made in a timely fashion.

(e) ***Collection Actions.***

In any suit by the Trustees to collect withdrawal liability, including a suit to enforce an arbitrator's award and a claim asserted by the Trustees in an action brought by an Employer or other party, if judgment is awarded in favor of the Plan, the Employer shall pay to the Plan, in addition to the unpaid liability and interest thereon as determined under Paragraph (d)(ii) above, liquidated damages equal to the greater of:

- (i) the amount of interest charged on the unpaid balance, or
- (ii) 20 percent of the unpaid amount awarded.

The Employer shall also pay attorneys' fees and all costs incurred in the action, as awarded by the court. Nothing in this Subsection shall be construed as a waiver or limitation of the Plan's right to any other legal or equitable relief.

(f) ***Prepayment.***

An Employer may prepay all or part of its withdrawal liability, without penalty.

(g) ***Other Terms and Conditions.***

The Trustees may require that an Employer post a bond, or provide the Plan other security for payment of its withdrawal liability, if:

- (i) the Employer's payment schedule would extend for longer than 18 months;
- (ii) the Employer is the subject of a petition under the Bankruptcy Code, or similar proceedings under state or other federal laws; or
- (iii) a substantial portion of the Employer's assets are sold, distributed or transferred or the Plan receives notice of a pending sale, distribution or transfer.

**Section 12.06. Partial Withdrawal Defined.**

A partial withdrawal occurs on the last day of the Plan Year in which the Employer's work mix within the craft and area jurisdiction of a Collective Bargaining Agreement under which it is obligated to contribute to the Plan shifts, with the result that no more than an insubstantial portion of such work remains covered under the Plan.

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### **Section 12.07. Partial Withdrawal – Amount and Payment.**

The amount of liability for a partial withdrawal and the total amount due in a 12-month period with respect to a partial withdrawal shall be pro-rata shares of the amounts determined as if the Employer had withdrawn completely on the date of the partial withdrawal, in a manner consistent with the applicable provisions of ERISA Sections 4206 and 4219.

### **Section 12.08. Inapplicability of Withdrawal Liability, Liability Adjustments and Abatements.**

(a) ***Free Look***

- (i) Notwithstanding the other provisions of this Article, an Employer whose obligation to contribute to the Plan first commences on or after January 1, 2007 and who withdraws from the Plan in a complete or partial withdrawal on or after that date will not be liable to the Plan for withdrawal liability if the following conditions are met:
  - (A) The Employer ceases to have an obligation to contribute prior to the fifth anniversary of the first day of the first month for which the Employer was obligated to contribute to the Plan
  - (B) The Employer was required to make contributions to the Plan for each such plan year in an amount equal to less than two percent (2%) of the sum of all Employer Contributions made to the Plan for each such year,
  - (C) The Employer never previously avoided withdrawal liability with respect to the Plan because of the application of this subsection, and
  - (D) For the Plan year preceding the first plan year for which the Employer was required to contribute to the Plan, the ratio of the assets of the Plan to the benefit payments made by the Plan during that plan year was at least 8 to 1.
- (ii) Notwithstanding anything in the Plan to the contrary, in the event that the Employer ceases to have an obligation to contribute to the Plan but avoids withdrawal liability because of the application of this subsection, Past Service Credit that would otherwise be available under this Plan to Employees of the Employer for benefits accrued as a result of service with the Employer before the Employer had an obligation to contribute to the Plan shall be cancelled retroactively for all Pensioners and other Participants, whether vested or not, and their beneficiaries, pursuant to ERISA Section 4210(b)(3) and Internal Revenue Code Section 411(a)(3)(E).

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(b) ***Successive Withdrawals.***

If, after a partial withdrawal, an employer again incurs liability for a complete or partial withdrawal, the liability incurred as a result of the later withdrawal(s) shall be adjusted to the extent necessary to avoid duplication of liability.

(c) ***Abatement After Renewed or Increased Participation.***

If an Employer that has withdrawn from the Plan later renews the obligation to contribute, or if an Employer that has partially withdrawn later increases the share of its work in the craft and area jurisdiction of the Collective Bargaining Agreement under which the employer is obligated to contribute to the Plan so that the portion of such work that is covered under the Plan is determined by the Trustees to be more than insubstantial, the unpaid balance of the Employer's liability incurred on account of the earlier withdrawal or partial withdrawal shall be reduced in accordance with rules adopted by the Trustees pursuant to regulations of the Pension Benefit Guaranty Corporation.

**Section 12.09. Mass Withdrawal.**

Notwithstanding any other provisions of this Article, if all or substantially all Contributing Employers withdraw from the Plan pursuant to an agreement or arrangements, as determined under ERISA Sections 4209 and 4219(c)(1)(D), the withdrawal liability of each such employer shall be adjusted in accordance with those ERISA sections.

**Section 12.10. Notice to Employers.**

Any notice that must be given to an Employer under this Article or under Subtitle E of Title IV of ERISA shall be effective if given to the specific member of a commonly controlled group that has or has had the obligation to contribute under the Plan.

**Section 12.11. Non-Construction Contributors.**

- (a) Sections 12.02, 12.06, and 12.07 of this Article do not apply to an Employer that is not a construction contributor. For this purpose, an Employer is a construction contributor if substantially all the employees with respect to whom the Employer has an obligation to contribute under the Plan perform work in the building and construction industry.
- (b) In the case of an Employer that is not a construction contributor, whether a withdrawal or partial withdrawal has occurred, and the liability and payments for a partial withdrawal, will be determined in accordance with the applicable provisions of ERISA Sections 4203, 4205, 4208 and 4219.

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### **Section 12.12. Reciprocal Transfers.**

Notwithstanding any other provisions, Employer Contributions transferred to another pension plan, pursuant to a reciprocal agreement between this Plan and such other plan, shall not be considered contributions to this Plan for the purpose of determining whether an Employer has withdrawn or for the purpose of determining the total or annual amount of withdrawal liability. Amounts retained by the Plan as the administrative expense for handling such transferred contributions shall likewise be disregarded. However, if the Plan's records do not reveal which contributions by a withdrawn Employer are to be so disregarded, they shall be disregarded only if the Employer provides the necessary data for the Trustees to make that determination. Contributions transferred to the Plan pursuant to such a reciprocal agreement shall also be disregarded in any determination of withdrawal liability.

## **APPENDIX A**

### **PROGRAM FOR ENHANCED EARLY RETIREMENT BENEFITS**

#### **Section A.01. General.**

The parties to a Collective Bargaining Agreement may negotiate to participate in the following program for enhanced early retirement benefits by increasing and setting aside permanently a portion of the contributions to this Pension Fund to fund an unreduced early retirement benefit. Notwithstanding Plan Section 4.08, the amount of a Participant's Early Retirement Pension will be increased in accordance with the following program if he works under the particular Collective Bargaining Agreement that provides for these benefits and he otherwise meets the requirements of this Appendix A.

#### **Section A.02. Application by Parties to the Collective Bargaining Agreement.**

This program for enhanced early retirement benefits will apply only if the parties to the Collective Bargaining Agreement make a formal application to the Board of Trustees. As part of the application, the parties to the Collective Bargaining Agreement must agree to all of the conditions of this program for enhanced early retirement benefits. The Trustees may, in their sole discretion, accept or reject any application for participation in the program for enhanced early retirement benefits or set special conditions for the group. An application for this program for enhanced early retirement benefits will not be accepted unless the Collective Bargaining Agreement has had a base contribution rate to this Pension Fund of at least \$1.10 per hour for the twelve months prior to the effective date of the program for the group (or such higher minimum base contribution rate amount as the Trustees may set) and unless any other defined benefit pension plan provided for in the Collective Bargaining Agreement has a program for early unreduced pensions.

#### **Section A.03. Permanent Contribution Rate Set-Aside Requirements.**

The parties to the Collective Bargaining Agreement must also agree to increase the base contribution rate to this Pension Fund by the applicable percentage set by the Trustees for the type of early unreduced pension selected by the bargaining parties for the group. The required percentages are: 25% for the 35 and Out Unreduced Pension; 37% for the Rule of 85 Unreduced Pension. These percentages will be fixed for each group upon its acceptance by the Trustees, and the Trustees may fix a higher percentage for any group making an application.

This extra contribution rate amount will be used only to fund the availability of the early unreduced pension, will be permanently set aside, and will never be used for any other purpose in determining the amount of pensions under Article 4. In addition, the same percentage will always be permanently set aside in the same way from any future increases in the contribution rate. If the Collective Bargaining Agreement has separate



contribution rates for more than one employment category, the same percentage increases must be made to all of the contribution rates, and the same permanent set-asides will be applied to each contribution rate and to any future increases in each contribution rate. If the parties to the Collective Bargaining Agreement at any time reduce the contribution rate to this Pension Fund, the permanent set-aside will continue to apply at the same actual cents per hour amount (and not as a percentage) as was in effect at the highest contribution rate; however, the percentage will once again apply if the contribution rate is ever increased above the highest contribution rate in effect before the reduction. Notwithstanding the foregoing, the particular set-aside of contributions will not apply to anyone working under the Collective Bargaining Agreement who has a different home Local Union at the time the work is performed.

#### **Section A.04. Enhanced Early Retirement Options.**

An application for this program for enhanced early retirement benefits must select only one of the following options for Participants covered by the program because of work under the particular Collective Bargaining Agreement.

(a) ***35 and Out Unreduced Pension.***

Under this option, the Participant covered by this program shall be entitled to retire on an unreduced Early Retirement Pension at any age if he has at least 35 years of Pension Credit. The amount of the 35 and Out Pension shall be the amount of the Normal Pension to which the Participant covered by this program would be entitled if he were age 65 when he retires.

(b) ***Rule of 85 Unreduced Pension.***

Under this option, the Participant covered by this program shall be entitled to retire on an unreduced Early Retirement Pension beginning at age 55, if the sum of his age and his years of Pension Credit totals at least 85. The amount of the Rule of 85 Unreduced Pension shall be the amount of the Normal Pension to which the Participant covered by this program would be entitled if he were age 65 when he retires.

#### **Section A.05. Additional Requirements.**

In order to be eligible for an unreduced pension under this program for enhanced early retirement benefits, the Participant's home Local Union must participate in the program, and he must have at least 3,000 Hours of Work in Covered Employment for which set-aside contributions are due. If the Participant works under other Collective Bargaining Agreements, or if the Participant travels and contributions are received from other plans under reciprocal agreements, the same set-aside will be applied to all of the contributions, and the hours attributable to those contributions will count in determining whether the Participant has the requisite 3,000 Hours of Work in Covered Employment. The set aside of contributions will not be made for any periods prior to the effective date

for the home Local Union of this program for enhanced early retirement benefits, but all of the Participant's Pension Credit earned prior to the effective date, including Pension Credit earned under other Collective Bargaining Agreements, will count for the program provided the Participant's home Local Union on the effective date is the Local Union that is signatory to the applicable Collective Bargaining Agreement. The Participants from a home Local Union with the program for enhanced early retirement benefits will only be eligible for the type of unreduced pension that was selected by the bargaining parties in their application for the program.

**Section A.06. Participants with More than One Home Local Union.**

Except as provided in Section A.05 above, if a Participant changes his home Local Union from a Local Union that participates in this program for enhanced early retirement benefits to a Local Union that does not participate in the program, or from a Local Union that does not participate in the program to a Local Union that does participate in the program, the enhanced early retirement benefits will only be applied to the portion of his pension earned while his home Local Union was the Local Union participating in the program (with all Pension Credit counting toward eligibility for enhanced early retirement benefits, but with the enhancement only applying to the portion of the Pension Credit earned while the home Local Union was the Local Union participating in the program). If a Participant changes his Local Union from a Local Union that participates in the program with one of the enhanced early retirement options to a Local Union with the other enhanced early retirement option, each particular option will be applied only to the portion of the pension earned with the particular home Local Union (with all Pension Credit counting toward eligibility for enhanced early retirement benefits, but with the particular enhancement only applying to the portion of the Pension Credit earned with that particular home Local Union).

## APPENDIX B

### Listing of Local Unions, Special Agreements and Union Affiliated Organizations Participating in the National Pension Fund on a Non-Standard Basis

Participants from some local unions accrue and receive benefits from the Plan at lower levels than the standard level of benefits set forth in the Plan or have a non-standard limit on Past Service Credit. The following lists local union areas with non-standard benefit levels or non-standard Past Service Credit limits. In each case, the Effective Date for non-standard participation is also listed.

<u>Local Union</u>	<u>Effective Date</u>	<u>Percentage Benefit Level</u>	<u>Past Service Credit Limit</u>	<u>Description</u>
1	07/01/89			Currently a \$.65/hr. permanent set-aside.
7	07/01/04		1 year	Building Trades Work. Does not include former Local 105 members who already participate.
8	06/01/90	94%		Building Trades Work.
12	09/01/08		No Past Service Credit	Currently a \$.20/hr. temporary set-aside until unfunded liability is paid in full.
14	05/01/01		1 year	Building Trades Work.
21 (Former Local 201)	02/01/99		9 years	Covers only the former Local 201 Building Trades agreement.
21 (Former Local 543 -Bldg. Tr.)	05/01/99		9 years	Covers former Local 543 Building Trades agreement.
21 (Former Local 543 -Service)	01/01/00		9 years	Covers former Local 543 Service agreement.
25 FBO	05/01/88		7 years	Benefit Fund Office only.
25/161	06/01/84		8 years	Past Service Credit limitation is only for ex-Local 161 members merged into Local 25.

Appendix B  
Local Unions, Special Agreements and Union Affiliated Organizations  
Participating in the National Pension Fund on a Non-Standard Basis

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<u>Local Union</u>	<u>Effective Date</u>	<u>Percentage Benefit Level</u>	<u>Past Service Credit Limit</u>	<u>Description</u>
26 (Former Local 631)	07/01/98	78%		Former Local 631 Pacific Ship Repair and Fabrication Agreement. Former Local 631 merged into Local 26 effective 08/01/02.
M041	10/01/95	76%		Montana State Hospital Agreement.
50	07/01/93		9 years	Building Trades Work.
50 FBO	07/01/93	59%		Benefit Fund Office only.
52	01/01/03		3 years	Building Trades Work.
55	05/01/92	81%		Non-standard benefit level was increased from 65% (non-standard level as of 05/01/92) to 81% at the June 9, 1998 Trustees meeting. This increase covers the Building Trades Plumbers working under HB55 classification doing residential work and Apprentice Building Plumbers (A055) working under Local 55 Building Trades Agreement. Also includes SH55 - shop servicemen.
3R55	05/01/92	81%		Repair, Remodeling and Residential Agreement. From 05/01/92 – 12/31/97 non-standard benefit level was 67%.
C055	01/01/96	87%		Cuyahoga County Engineers Agreement.
68	10/01/92		9 years	Building Trades Work.
J110	07/01/87		2 years	Joint Apprenticeship Committee only.
E123	05/01/98		7 years	Covers former Local 111 members.

Appendix B  
Local Unions, Special Agreements and Union Affiliated Organizations  
Participating in the National Pension Fund on a Non-Standard Basis

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<u>Local Union</u>	<u>Effective Date</u>	<u>Percentage Benefit Level</u>	<u>Past Service Credit Limit</u>	<u>Description</u>
Former Local 138 (Now Local 12 or 537)	09/01/08			Currently \$5.50/hr. set-aside (as of 01/11) until unfunded liability is paid in full.
C250 (DC #16)	09/01/97	95%		Refrigeration and Air Conditioning Agreement.
286	06/01/08		No Past Service Credit	Building Trades Work. A temporary set-aside was in effect from June 2008 through March 2012.
295	11/01/97	91%		Labor Agreement – Halifax Area Master Plumbers Association.
333 (Former Locals 335 and 388)	06/01/02		4 years	Only covers former Local 335 and former Local 388 members.
R350	05/01/84		10 years	Refrigeration Agreement only.
421 York Employees	05/01/86		No Past Service Credit	York employees covered by North and South Carolina Supplement to the National Mechanical Equipment Service and Maintenance Agreement.
421 (Former Locals 96 and 785)	07/01/92	88%		Building Trades work <b>only</b> .  <b>Note:</b> Fabrication Shop Agreement for Connex employees participates on a standard basis as does Carrier and York work.
460	12/01/99	77%		Building Trades work.
486	12/14/04		No Past Service Credit	Facility Maintenance. Work – Naval Academy.
486	07/01/05		2 years	Maintenance Service Agreement.
537	09/01/08		No Past Service Credit	Currently a \$.20/hr. temporary set- aside until unfunded liability is paid in full.

Appendix B  
 Local Unions, Special Agreements and Union Affiliated Organizations  
 Participating in the National Pension Fund on a Non-Standard Basis

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<u>Local Union</u>	<u>Effective Date</u>	<u>Percentage Benefit Level</u>	<u>Past Service Credit Limit</u>	<u>Description</u>
G577	08/01/88		2 years	Ohio State Gas Distribution Agreement only.
693	05/01/04	83%		Building Trades Work.
760	09/01/98	39%		Health and Welfare Fund Office.
766	10/01/95	62%		Building Trades Work.
773	05/01/04		3 years	Building Trades Work.
DC #16	07/01/97	77%		Building Trades Work.

## APPENDIX C

### Plumbers and Pipefitters National Pension Plan MERGED LOCAL PLANS

When another pension plan is merged into this plan, there is a negotiated merger agreement detailing how service and accruals earned under each plan are treated. The terms of those merger agreements are incorporated into this Plan by reference. As of January 1, 2014, the following plans have been merged into this Plan:

<u>Pension Plan</u>	<u>Location</u>	<u>Effective Date</u>
1A	Brooklyn, NY	7/1/1989
1B	Brooklyn, NY	5/1/1999
2	New York, NY	5/1/1999
5	Washington, D.C.	10/1/1980
10	Richmond, VA	4/1/1970
18	Sioux City, IA	3/1/1974
73	Indianapolis, IN	5/1/1973
88	Lincoln, NE	5/1/1969
94	Canton, OH	6/1/1974
97	Springfield, OH	9/1/1988
100	Dallas, TX	7/1/1998
105	Schenectady, NY	7/1/1980
109	Ithaca, NY	2/1/1983
136	Evansville, IN	8/1/1969
138	Salem, MA	1/1/2009
141	Shreveport, LA	1/1/1977
157	Terre Haute, IN	8/1/1969
164	Fairbault, MN	4/1/1978
165	Topeka, KS	1/1/1971
184	Paducah, KY	9/1/1974
185	Corpus Christi, TX	7/1/1994
195	Beaumont, TX	8/1/1990
211	Houston, TX	5/12/1990
217	Portland, ME	1/1/1972
229	Panama City, FL	1/1/1998
240	Layfayette, IN	11/1/1976
260	Altoona, PA	6/15/1978

<u>Pension Plan</u>	<u>Location</u>	<u>Effective Date</u>
278	Elkhart, IN	8/1/1969
286	Austin, TX	6/1/2008
307	Hammond, IN	7/1/1982
330	Kokomo, IN	8/1/1969
351	Muskogee, OK	9/29/1969
366	Pensacola, FL	1/1/1998
371	Staten Island, NY	5/1/1999
377	Decatur, AL	9/15/1978
385	Eau Claire, WI	6/15/1978
399	Logansport, IN	8/1/1969
440	Indianapolis, IN	2/1/1971
490	Steubenville, OH	10/1/2000
515	Bloomington, IN	2/1/1971
565	Parkersburg, WV	4/1/1978
568	Gulfport, MS	4/17/1978
587	Sioux Falls, SD	5/1/2002
605	New Albany, IN	8/1/1969
625	Charleston, WV	5/1/1979
651	Charleston, WV	5/15/1979
661	Muncie, IN	8/1/1969
688	Brainerd, MN	3/31/1977
697	Richmond, IN	8/1/1969
766	Rome, GA	10/1/1995
789	Princeton, WV	8/1/1967
830	Loraine, OH	6/10/1973
Colorado Pipe Industry	Denver, CO	10/1/1996
DC #12	White Plains, NY	4/15/1993
Favret Company	Columbus, OH	9/1/1987
New Mexico Pipe Trades	Albuquerque, NM	10/1/1997