

## **AMENDED AND RESTATED PLAN OF BENEFITS FOR THE PLUMBERS AND PIPEFITTERS LOCAL NO. 520 PENSION FUND**

THIS PLAN OF BENEFITS is made and, unless otherwise provided herein, this Amendment and Restatement is effective the 3<sup>rd</sup> day of December, 2014, by and between Plumbers and Pipefitters Local No. 520 (hereinafter called the "Union"), and Mechanical Contractors Association of Central Pennsylvania (hereinafter called the "Association").

### **W I T N E S S E T H:**

WHEREAS, pursuant to the provisions of the Amended and Restated Agreement and Declaration of Trust of the Plumbers and Pipefitters Local No. 520 Pension Fund, the Union and the Association have the power and authority to adopt a distinct document entitled the "Plan of Benefits for the Plumbers and Pipefitters Local No. 520 Pension Fund."

WHEREAS, the Union and the Association desire to amend and restate the Plan of Benefits they have previously established to satisfy Rev. Proc. 2007-44 and the 2013 Cumulative List Changes in Plan Qualification Requirements.

NOW, THEREFORE, the Union and Association hereby adopt the following Amended and Restated Plan of Benefits for the Plumbers and Pipefitters Local No. 520 Pension Fund.

### **SECTION 1: DEFINITIONS**

1.01 "Accrued Benefit" means the value of the benefits provided under the terms of the Plan to a Participant or Beneficiary.

1.02 "Actuarial Equivalence" means determined by application of such actuarial assumptions as are prescribed for such determination in Appendix A tables, or, where no such assumptions are so prescribed, the actuarial assumptions adopted by the Plan for such purpose. For distributions made on and after July 1, 2008, the applicable mortality table shall mean the applicable mortality table prescribed under Code Section 417(e)(3)(B), and the applicable interest rate shall mean the interest rate prescribed under Code Section 417(e)(3)(C).

1.03 "Annuity Starting Date" means the first day of the first period for which an amount is payable as an annuity, or, in the case of a benefit not payable in the form of an annuity, the first day on which all events have occurred which entitle the Participant to such benefit. The Annuity Starting Date for Disability Benefits is the first date on which Disability Benefits are received. If benefit payments are suspended pursuant to Section 4.05 for a Participant who continues in service without a separation and who does not receive a benefit payment, the commencement of benefit payments shall be treated as the new Annuity Starting Date.

1.04 "Beneficiary" means a person designated by a Participant or Pensioner by the terms of this Plan who is or may become entitled to a Benefit under the Plan.

1.05 "Casual Employment" means Industry Employment determined as follows: The Pensioner's Industry Employment is measured during the calendar year. If the Pensioner has worked three hundred sixty (360) hours or less during the calendar year, employment for the period is deemed casual. Even if the Pensioner has worked more than three hundred sixty (360) hours in a calendar year, his/her employment will be deemed casual for any month in which he/she has forty (40) hours or less of employment. The first 360 hours in a calendar year, and the first 40 hours in a month, shall not be used as a basis for suspending benefits.

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

1.07 "Compensation" means all Compensation paid during the year under consideration as W-2 income by the Employer to an Employee during the time he/she was a Participant, including overtime payments and bonuses, but excluding director's fees. It excludes all contributions by the Employer to the Plan and to any other retirement or deferred compensation plan maintained by the Employer.

Compensation shall include only that Compensation which is actually paid to the Participant during the Plan Year.

If the Compensation for any prior Plan Year is taken into account in determining an Employee's contribution or benefits for the current year, the Compensation for such prior year is subject to the applicable annual Compensation limit in effect for that prior year.

For years beginning after December 31, 1988 and before January 1, 1994, the annual Compensation of each Participant taken into account under the Plan for any Plan Year shall not exceed \$200,000. This limitation shall be adjusted by the Secretary at the same time and in the same manner as under Code Section 415(d), except that the dollar increase in effect on January 1 of any calendar year is effective for Plan Years beginning with or within such calendar year and the first adjustment to the \$200,000 limitation is effective on January 1, 1990.

In addition to other applicable limitations set forth in the Plan, and notwithstanding any other provision of the Plan to the contrary, for Plan Years beginning on or after January 1, 1994, the annual Compensation of each Employee taken into account under the Plan shall not exceed \$150,000, as adjusted by the Commissioner for increases in the cost of living in accordance with Code Section 401(a)(17)(B).

If the period for determining Compensation used in calculating an Employee's allocation for a determination period is a short Plan Year (i.e., shorter than 12 months), the annual Compensation limit is an amount equal to the otherwise applicable annual Compensation limit multiplied by the fraction, the numerator of which is the number of months in the short Plan Year, and the denominator of which is 12.

If the Plan determines Compensation on a period of time that contains fewer than 12 calendar months, then the annual Compensation limit is an amount equal to the annual Compensation limit for the calendar year in which the Compensation period begins multiplied by the ratio obtained by dividing the number of full months in the period by 12.

In determining the Compensation of a Participant for purposes of this limitation, for Plan Years beginning before January 1, 1997 the rules of Code Section 414(q)(6) shall apply, except in applying such rules, the term "family" shall include only the Eligible Spouse of the Participant and any lineal descendants of the Participant who have not attained age 19 before the close of the year. If, as a result of the application of such rules the adjusted \$200,000 or \$150,000 limitation (as applicable) is exceeded, then (except for purposes of determining the portion of Compensation up to the integration level if this Plan provides for permitted disparity), the limitation shall be prorated among the affected individuals in proportion to each such individual's Compensation as determined under this Section prior to the application of this limitation.

For Plan Years beginning on or after January 1, 2002, the annual compensation of each Participant taken into account in determining all benefits provided under the Plan for any determination period shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with Section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to any determination period beginning with or within such calendar year.

If compensation for any prior determination period is taken into account in determining a Participant's benefits for the current Plan Year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period. For this purpose, in determining benefits in Plan Years beginning on or after January 1, 1989 and before January 1, 1994, the annual compensation limit in effect for determination periods beginning before January 1, 1989 is \$200,000. In determining benefits in Plan Years beginning on or after January 1, 1994 and before January 1, 2002, the annual compensation limit in effect for determination periods beginning before January 1, 2002 is \$150,000. In determining benefits in plan years beginning on or after January 1, 2002, the annual compensation limit in effect for determination periods beginning before that date is \$200,000.

1.08 "Covered Employment" means employment of an Employee under the terms of a Collective Bargaining Agreement or Participation Agreement.

1.09 "Credited Service" means the sum of Past Service Credits and Future Service Credits, but not to exceed a maximum of 35 years of Credited Service. Effective May 1, 1999, for those Participants who retire on or after May 1, 1999, Credited Service accruing after May 1, 1998 will not be subject to the 35-year maximum.

1.10 "Credited Vesting Service Years" means the total number of Vesting Service Years completed by an Employee except for any Vesting Service Years which have been forfeited under Section 2.03 (F) (4).

1.11 "Divesting Service Year." means a Plan Year during which an Employee earns less than 500 Vesting Hours as defined in Section 1.38. However, if an Employee fails to earn 500 Vesting Hours due to Special Service, then such Plan Year shall not cause a Divesting Service Year.

1.12 "Effective Date" means May 1, 1963; however, for Participants who were employed in the bargaining unit represented by Local 559 prior to December 1, 1973, the Effective Date shall be September 1, 1969; and for Participants who were employed in the bargaining unit represented by Local 810, the Effective Date shall be October 1, 1969.

1.13 "Eligible Spouse"

(A) In order to be eligible, a Spouse must have been married, under applicable law, to the Participant for the one year period ending on the earlier of:

- (1) The day on which a Pension commences, or
- (2) The day the Participant dies.

(B) If a Spouse was married to the Participant during the one year period ending on the day the pension commences, the Spouse need not be married to the Participant at the time of his/her death in order to be eligible.

(C) If a Spouse is married to a Participant for less than one year on the day the Pension commences, but has been married for at least one year ending on the date the Participant dies, the Spouse is eligible.

(D) If a Qualified Domestic Relations Order provides that a former spouse is not entitled to a survivor benefit, the Spouse shall not be eligible.

(E) If a Qualified Domestic Relations Order provides that a former spouse is entitled to a survivor benefit the provisions of Section 1.11 will not be applicable unless they are consistent with such Order.

1.14 "Employee" shall, in addition to the meaning stated in the Amended and Restated Agreement and Declaration of Trust, mean any employee of the Employer or of any other employer required to be aggregated with such Employer under Code Sections 414(b), (c), (m) or (o). An "Employee" is an individual who would be an Employee but who is on a Leave of Absence. Directors acting solely in that capacity and independent contractors shall not be Employees.

The term Employee shall also include any leased employee deemed to be an employee of any employer described in the previous paragraph as provided in Code Sections 414(n) or (o).

The term “leased employee” means any person (other than an employee of the recipient) who, pursuant to an agreement between the recipient and any other person (“leasing organization”), has performed services for the recipient (or for the recipient and related persons determined in accordance with Code Section 414(n)(6)) on a substantially full-time basis for a period of at least one year, and such services are performed under primary direction or control by the recipient. Contributions or benefits provided a leased employee by the leasing organization which are attributable to services performed for the recipient employer shall be treated as provided by the recipient employer.

A leased employee shall not be considered an Employee of the recipient if: (i) such employee is covered by a money purchase pension plan maintained by the leasing organization providing: (1) a nonintegrated employer contribution rate of at least 10% of Compensation, as defined in Code Section 415(c)(3), but including amounts contributed pursuant to a salary reduction agreement which are excludable from the employee's gross income under Code Sections 125, 132(f)(4) (for Plan Years beginning on or after January 1, 2000), 402(e)(3), 402(h), or 403(b); (2) immediate participation; and (3) full and immediate vesting; and (ii) leased employees do not constitute more than 20% of the recipient's non-Highly Compensated workforce.

1.15 “Extension Period” means a period during which a Participant who is not eligible for a Normal or Disability Pension fails to work at least 500 Hours of Covered Employment in each of two consecutive Plan Years.

1.16 “Former Local 559 Participant” means an individual who worked under the Local 559 Collective Bargaining Agreement and was a participant in the Plumbers and Pipefitters National Pension Plan after September 1, 1969 and before December 1, 1973.

1.17 “Former Local 810 Participant” means an individual who was an Active Participant, Disabled Participant, Inactive Participant, Inactive Employee, Vested Former Participant, or Divesting Participant in the Plumbers and Steamfitters U.A. Local No. 810 Pension Plan on April 30, 1993.

1.18 “Future Service Credits” means credit for Covered Employment after the Effective Date computed as follows: (a) Each Participant will receive 1/10th year's credit for each full unit of 120 Hours of Covered Employment up to 1200 hours during a Plan Year; and (b) effective May 1, 1983, each Participant shall receive 1/10<sup>th</sup> year's Credited Service for each full unit of 120 Hours of Covered Employment in excess of 1700 hours during a Plan Year. For purposes of calculating Future Service Credit for the Rule of 90 for the Former Local 810 Participants who have earned at least 500 Vesting Hours in either the May 1, 1991 through April 30, 1992 Plan Year, or the May 1, 1992 through April 30, 1993 Plan Year, Former Local 810 Participants will be credited with 1/10<sup>th</sup> of a year of Future Service Credit for each 120 hours, up to 1200 hours in a Plan Year. Effective May 1, 1997, for those Active Participants who retire on or after that date and who earned 500 or more Hours of Credited Service after May 1, 1996, will receive 1/10<sup>th</sup> year's credit for each full unit of 120 Hours of Covered Employment after May 1, 1993. For purposes of calculating Normal Retirement Age under Section 1.23, Future Service Credits shall

not exceed one (1) per Plan Year. Effective May 1, 2006, for Hours of Covered Employment credited as a result of Reciprocal Agreements with other defined benefit pension plans, the Participant will receive a pro-rata credit for Hours of Covered Employment received from the reciprocating plan. The amount of the credit will be calculating the pro-rata relationship between the total amount of employer contributions payable under the reciprocating defined benefit pension plan's collective bargaining agreement and the amount of contributions payable under the terms of the collective bargaining agreement between the Union and the Association.

When Employees covered by this Fund are working in jurisdictions covered by other pension plans which have reciprocal agreements with this Fund, and pension contributions received by the other plans from Employers are reciprocated to this Fund, Future Service Credit will be granted to those Employees in accordance with this Fund based on the amount of hourly contributions reciprocated to this Fund. Future Service Credit will not be granted to Employees for hourly contributions that are reciprocated by this Fund to other pension plans under such reciprocal agreements. Future Service Credit under this Fund 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 Fund to other pension plans under a reciprocal agreement.

1.19 "Highly Compensated Employee" means a highly compensated active Employee and a highly compensated former Employee. 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.

(A) A Highly Compensated Active Employee is an Employee of the Employer who:

(1) was a 5-percent owner; as defined below, at any time during the Plan Year or preceding year; or

(2) 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.

(B) 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:

(1) was a 5-percent owner;

(2) 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;

(3) 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

(4) 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 (4), 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 (2), (3) or (4), 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.

(C) In lieu of determining which Employees are Highly Compensated Employees in accordance with the provisions of (B) 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.

(D) 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 55th 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.

(E) "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)(l).

(F) "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.

(G) For purposes of determining the group of Highly Compensated Employees under this section, "compensation" means "compensation" as defined in Section 9.13(1).

(H) For purposes of determining the group of Highly Compensated Employees but not for purposes of determining Covered Employment, the term "Employer" includes all corpora-

tions, 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).

1.20 "Hour of Covered Employment" means:

(A) Each hour for which an Employee is paid, or entitled to payment, for the performance of duties for the Employer. These hours will be credited to the Employee for the computation period in which the duties are performed;

(B) Each hour for which an Employee is paid, or entitled to payment, by the Employer on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or Leave of Absence with pay. Hours under this Paragraph (B) will be calculated and credited pursuant to section 2530.200b-2 of the Department of Labor Regulations which is incorporated herein by this reference; and

(C) Each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Employer. The same Hours of Service will not be credited both under Paragraph (A) or Paragraph (B), as the case may be, and under this Paragraph (C). These hours will be credited to the Employee for the computation periods to which the award or agreement pertains rather than the computation period in which the award, agreement or payment is made.

(D) Credit for each work day the Employee was absent from work but for which day the Employee received, or would have received but for the coordination of benefits, sick or accident benefits paid by the Health and Welfare Plan jointly administered by the Union and the Employer and for each working day within any waiting period immediately preceding his/her receipt of such benefits;

(E) Credit for each day the Employee was absent from work but for which the Employee received Workmen's Compensation Benefits arising from Covered Employment;

(F) Credit for 120 Hours of Covered Employment shall be given for each tenth of a year that a Participant has served in qualified military service, up to a maximum of five (5) years of Credited Service, provided that the following conditions are met: (1) the Employee must have been an Active Participant prior to entering active duty; (2) the Participant's release from qualified military service must have been under honorable conditions, unless the Participant dies or becomes Permanently Disabled while performing qualified military service; (3) service by the Participant did not exceed four (4) years or, if at the request and for the convenience of the qualified military, did not exceed five (5) years; (4) the Participant commences or re-applies for and is available for Cov-

ered Employment within ninety (90) days of his/her discharge or release from hospitalization of no more than one year continuing after his/her discharge; and (5) the Participant, Eligible Spouse or alternate payee applies to the Contract Administrator for Credited Service, and accompanies his/her application with such supporting documentation as the Contract Administrator may require;

(G) Credit for each working day described in Parts 1.18(D) and (E), the Employee shall receive credit for eight Hours of Covered Employment. Credit for absence under 1.18 (D) and (E) shall not exceed 1000 hours in each period of two consecutive Plan Years nor shall it exceed 2000 hours during a continuous disability or a series of periods of disability arising from the same cause.

Hours of Service will be credited for employment with other members of an affiliated service group (under Code Section 414(m)), a controlled group of corporations (under Code Section 414(b)), or a group of Trades or businesses under common control (under Code Section 414(c)) of which the adopting Employer is a member, and any other entity required to be aggregated with the Employer pursuant to Code Section 414(o).

Hours of Service will also be credited for any individual considered an Employee for purposes of this Plan under Code Sections 414(n) or 414(o).

Service will be determined on the basis of actual hours for which an Employee is paid or entitled to payment.

1.21 "Hour of Service" means each hour for which an Employee is paid or entitled to payment for the performance of duties for the Employer in Covered Employment.

1.22 "Hours of Industry Employment" means actual hours of work in Industry Employment for which Compensation is paid or payable.

1.23 "Industry Employment" means employment or self-employment of a Pensioner at any place in the Commonwealth of Pennsylvania and the remainder of any Standard Metropolitan Statistical Area which falls within the Commonwealth of Pennsylvania, whether or not for a contributing employer, in any Trade or Craft in which the Pensioner was employed at any time under the Plan.

1.24 "Non-Covered Vesting Employment" means employment with an Employer (after it initially commenced contributions to the fund) in a non-bargaining unit job if such Employee was employed with the same Employer in Covered Employment either immediately before or immediately after such Non-Covered Vesting Employment.

1.25 "Normal Retirement Age" or "Normal Retirement Date" is determined by first ascertaining the earlier of the date on which a Participant's age plus Years of Future Service Credit equals 90, or the date when the Participant attains age 62. Normal Retirement Age is the later of the date thus ascertained or the fifth (5<sup>th</sup>) anniversary of the time the Participant commenced par-

ticipation in the Plan. Normal Retirement Age means, for Former Local 810 Participants who did not have 500 Vesting Hours in either the May 1, 1991 through April 30, 1992 Plan Year, or the May 1, 1992 through April 30, 1993 Plan Year, the later of the time the Participant attains age 65 or the second anniversary of the time the Participant commenced participation in the Plan. Because this Plan formerly determined Normal Retirement Age with reference to the tenth (10th) anniversary of the commencement of participation, a transition rule shall be:

The qualifying anniversary date for Participants who commenced participation before May 1, 1988, shall be the earlier of

(a) the tenth anniversary of the date the Participant commenced participation  
or

(b) May 1, 1993 . The participation commencement date is the first day of the first Plan Year in which the Participant commenced participation in the Plan.

1.26 "Past Service Credits" means credit for Covered Employment prior to the Effective Date, at the rate of one year for each full year of Covered Employment. The total number of years for which Past Service Credits shall be allowed shall be measured by the continuous and uninterrupted period of such employment prior to the said date, as determined from Employer records, social security records and other similar evidence including the Union's records as the Board may by rule or regulation, uniformly applied, determine to be acceptable.

1.27 "Pensioner" means a Participant who is Retired and who is receiving Pension Benefits under this Plan.

1.28 "Permanently Disabled" means those disabilities which, based upon medical evidence, are reasonably expected to last for at least twelve (12) months or result in death.

1.29 "Plan" means the Plan of Benefits to be created herein.

1.30 "Plan Year" shall be May 1 through April 30.

1.31 "Qualified Joint and Survivor Annuity" means an immediate annuity for the life of the Participant, with a survivor annuity for the life of the Participant's Eligible Spouse which is 50% of the amount of the annuity which is payable during the joint lives of the Participant and the Participant's Eligible Spouse, and which is the actuarial equivalent of the normal form of benefit.

1.32 "Qualified Pre-Retirement Survivor Annuity" means a survivor annuity for the life of the surviving Eligible Spouse of the Participant under which the payments to the surviving Eligible Spouse under such Annuity are not less than the amounts which would be payable as a Survivor Annuity under the Qualified Joint and Survivor Annuity under the Plan (or the actuarial equivalent thereof) if:

(A) In the case of a Participant who dies after the date on which the Participant attained the Normal Retirement Age, such Participant had retired with an immediate Qualified Joint and Survivor Annuity on the day before the Participant's date of death;

(B) In the case of a Participant who dies on or before the date on which the Participant would have attained the Normal Retirement Age, such Participant had: (i) separated from service on the date of death; (ii) survived to the Normal Retirement Age; (iii) retired with an immediate Qualified Joint and Survivor Annuity at the Normal Retirement Age; and (iv) died on the day after the day on which such Participant would have attained the Normal Retirement Age; or

(C) In the case of a Participant who dies on or before the date on which the Participant would have attained the earliest retirement age, such Participant had: (i) separated from service on the date of death (or the date of separation from service, if earlier); (ii) survived to the earliest retirement age; (iii) retired with an immediate Qualified Joint and Survivor Annuity at the earliest retirement age; and (iv) died on the day after the day on which such Participant would have attained the earliest retirement age.

The "earliest retirement age" is the earliest date on which, under the Plan, the Participant could elect to receive retirement benefits. The earliest time at which payments may begin under a Qualified Pre-retirement Survivor Annuity is not later than the month in which the Participant would have attained the earliest retirement age under the Plan, and with the consent of the surviving Spouse.

1.33 "Retired," "Retirement" or "Retiring" shall mean the cessation of Covered Employment with the intention of becoming a Pensioner. To be considered retired, a person must refrain from employment or work in Industry Employment as provided in Section 4.05.

1.34 "Special Service" means

(A) absence from Covered Employment due to sickness, accident, military service that qualifies for service accrual under "Hours of Covered Employment," or

(B) absence from Covered Employment because of layoff, if the Employee is available for work in the industry. Whether or not the Employee was available for work during such period shall be determined by the Board, or

(C) absence from Covered Employment because of maternity or paternity reasons. For the purpose of this Section 1.34, an absence from work because of maternity or paternity reasons means an absence (1) by reason of a pregnancy of the individual, (2) by reason of a birth of a child of the individual, (3) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or (4) for purposes of caring for such child for a period beginning immediately following such birth or placement. Credit for Special Service under this Section 1.34(C) shall be limited to the Plan Year in which the absence commenced unless the Participant would

otherwise avoid a Divesting Service Year. In that event, such credit will be given in the following Plan Year.

1.35 "Trade or Craft" means all work of the type performed by members of the bargaining unit covered by this Plan, and employment as a supervisor of such work.

1.36 "Vested" means the status obtained by a Participant whose participation is pursuant to a Collective Bargaining Agreement who has attained Normal Retirement Age, or who has accrued five (5) Credited Vesting Service Years, providing the Participant has at least one (1) Hour of Covered Employment after May 1, 1998. A Former Local 810 Participant who had attained two (2) Vesting Service Years as of April 30, 1993 shall be fully vested in the Plan. If a Participant whose participation is pursuant to a Collective Bargaining Agreement does not have at least one (1) Hour of Covered Employment after May 1, 1998, it means the status obtained by the Participant who has accrued ten (10) Credited Vesting Service Years or attaining Normal Retirement Age. In the case of Participants whose participation is not pursuant to a Collective Bargaining Agreement, it means the status obtained by a Participant who has accrued five (5) Credited Vesting Service Years or attaining Normal Retirement Age.

1.37 "Vested Accrued Benefit" means the Accrued Benefit of each Participant to which each Participant has earned a nonforfeitable right to all of part of the Benefit as determined by Section 1.35.

1.38 "Vesting Hours" are computed for Covered Employment and Non-Covered Vesting Employment in the same manner as Hours of Covered Employment.

1.39 "Vesting Service Year" means a Plan Year commencing in 1976 or thereafter during which an Employee earns 500 or more Vesting Hours and, for service prior thereto each year (or part thereof) of Credited Service that had not been cancelled as that Credit was defined in the Plan as it existed on the last day of the Plan Year which commenced in 1975.

## **SECTION 2: PARTICIPATION**

2.01 Commencement of Participation. Every Employee shall become a Participant upon commencement of work in Covered Employment during a Plan Year.

2.02 Prior Participation and Benefit Accruals. Each person who was a Participant in the Plan as it existed on the last day of the Plan Year which commenced in 1975, shall continue to be covered under this Plan as a Participant in the same status as existed at that time, and the Participant's Accrued Benefit shall be the amount accrued as of the last day of the Plan Year which commenced in 1975.

2.03 Categories of Participants. Each person who is or becomes a Participant under Parts 2.01 or 2.02 shall be categorized in one of the following categories:

(A) Active Participant. Each new Participant shall be an Active Participant until his/her status changes. Each Employee who had uncancelled Credited Service as of the last day of the Plan Year commencing in 1975, other than a Pensioner, shall be considered an Active Participant until his/her status changes. Each Participant who returns to Covered Employment from another category of participation shall become an Active Participant. Each Active Participant shall accrue Future Service Credits and may also accrue Vesting Service Years or Divesting Service Years. An Active Participant's status shall cease or change upon the earliest of

- (1) His/her death; or
- (2) Permanent Disability and entitlement to a Disability Pension; at which time he/she shall become a Disabled Participant; or
- (3) His/her retirement, at which time he/she may, if otherwise qualified, become a Pensioner; or
- (4) The date he/she becomes an Inactive Participant, an Inactive Employee, or a Divesting Participant; or
- (5) The completion of his/her Extension Period, at which time he/she may become a Vested Former Participant; or
- (6) The date on which the Plan is terminated.

(B) Disabled Participant. Each Active Participant, or, before completion of his/her Extension Period, each Inactive Participant, each Inactive Employee or each Divesting Participant who becomes Permanently Disabled, as defined in Section 1.26, prior to his/her Normal Retirement Date may become a Disabled Participant and may be entitled to receive a Disability Pension if he/she meets all of the requirements therefor. A Participant who was receiving a Disability Pension under the Plan as of the last day of the Plan Year commencing in 1975, shall be covered thereafter under this Plan as a Disabled Participant and shall continue to receive a Disability Pension in the same amount as he/she was receiving on that date. Each Disabled Participant shall continue to accrue Vesting Service Years during the time he/she is disabled, but he/she shall not accrue Future Service Credits while receiving a Disability Pension. A Participant's status as a Disabled Participant shall cease immediately following the earliest of:

- (1) His/her death; or,
- (2) The date on which his/her Permanent Disability ceases, or the date of his/her refusal, prior to the age required for a Normal Retirement Date Pension, to undergo a physical examination by a physician designated by the Board, in which event he/she shall become an Active Participant, a Vested Participant, a Divesting Participant, or, if otherwise qualified, a Pensioner; or

(3) The date on which the Plan is terminated.

(C) Inactive Participant. Whenever an Active Participant who is not Vested commences work for the same Employer in Non-Covered Vesting Employment, he/she shall become an Inactive Participant. He/she shall accrue Vesting Service Years, but not Future Service Credits. His/her status as an Inactive Participant shall cease upon the happening of the earliest of:

(1) His/her death; or

(2) His/her becoming a Pensioner, if otherwise qualified; or

(3) His/her becoming a Vested Participant; or

(4) The first day of the month immediately following the date he/she returns to Covered Employment, at which time he/she shall become an Active Participant; or

(5) The first day of the month immediately following his/her leaving Non-Covered Vesting Employment at which time he/she shall become a Divesting Participant unless he/she becomes an Active Participant; or

(6) The date on which the Plan is terminated.

(D) Inactive Employee. An Active Participant who is not Vested and who enters into Special Service shall become an Inactive Employee. An Inactive Employee shall not accrue any Divesting Service Years. An Inactive Employee shall accrue Vesting Service Years and Future Service Credits if, and insofar as he/she qualifies for accrual under Hours of Covered Employment. A Participant's status as an Inactive Employee shall cease immediately following the earliest of

(1) His/her death; or

(2) His/her becoming a Vested Participant; or

(3) His/her becoming a Pensioner, if otherwise qualified; or

(4) His/her leaving Special Service and not returning to Covered Employment at which time he/she shall become a Divesting Participant; or

(5) His/her leaving Special Service and returning to Covered Employment at which time he/she shall become an Active Participant; or

(6) The date on which the Plan is terminated.

(E) Vested Participant. When a Participant has accrued five (5) Credited Vesting Service Years, provided the Participant has at least one (1) Hour of Covered Employment after May 1, 1998, otherwise ten (10) Credited Vesting Service Years, he/she shall be Vested if his/her participation is pursuant to a Collective Bargaining Agreement; if not, he/she shall be Vested upon the accrual of five (5) Credited Vesting Service Years. A Former Local 810 Participant who had attained two (2) Vesting Service Years as of April 30, 1993 shall be fully vested in the Plan. In addition, he/she shall be entitled to the benefits of an Active Participant during his/her Extension Period. Each Inactive Participant shall become a Vested Participant at the completion of the Plan Year in which he/she first accrued five (5) Credited Vesting Service Years, provided the Participant has at least one (1) Hour of Covered Employment after May 1, 1998; otherwise ten (10) Credited Vesting Service Years if his/her participation is pursuant to a Collective Bargaining Agreement. Each Participant who was a Vested Participant under the Plan as it existed on the last day of the Plan Year that commenced in 1975, shall be covered under this Plan as a Vested Participant. Upon attainment of Normal Retirement Age, each Participant shall become a Vested Participant. A Participant's status as a Vested Participant shall cease immediately following the earliest of:

- (1) His/her death; or
- (2) His/her becoming a Pensioner, if otherwise qualified; or
- (3) The first day of the month immediately following the date that he/she again earns one (1) Hour of Covered Employment, at which time he/she will again become an Active Participant; or
- (4) The date the Plan is terminated.

A Vested Participant who completes his/her Extension Period shall become a Vested Former Participant.

(F) Divesting Participant. As of the last day of any Plan Year, each Active Participant, who is not Vested, who shall have earned fewer than 500 Vesting Hours during that year, shall become a Divesting Participant and shall accrue one Divesting Service Year. Each Inactive Employee shall become a Divesting Participant when his/her Special Service terminates unless he/she becomes an Active Participant. Each Inactive Participant shall become a Divesting Participant when he/she terminates his/her Non-Covered Vesting Employment unless he/she becomes an Active Participant. Each Divesting Participant shall accrue one Divesting Service Year for each Plan Year in which he/she accrues less than 500 Vesting Hours.

A Participant's status as a Divesting Participant shall cease immediately following the earliest of:

- (1) His/her death; or

(2) His/her becoming a Pensioner, if otherwise qualified; or

(3) The first day of the month following the date he/she returns to Covered Employment and his/her total Vesting Hours in the current Plan Year first equals 500, at which time he/she shall become an Active Participant; or

(4) The completion of the Plan Year in which the number of consecutive Divesting Service Years completed by the Divesting Participant, who has not attained Normal Retirement Age, first equals the greater of (a) five or (b) the number of his/her Credited Vesting Service Years, at which time he/she shall become a Former Participant and shall forfeit all Credited Vesting Service Years, all Credited Service, and all other rights to a benefit under this Plan; or

(5) The date on which the Plan is terminated.

(G) Pensioner. Each Participant shall become a Pensioner when he/she attains the age and Credited Service and otherwise meets all of the conditions required for retirement benefits under this Plan. The term Pensioner shall include a Participant's Eligible Spouse or other Beneficiary who shall become eligible for retirement benefits. Each person, who was a Pensioner under this Plan as it existed on the last day of the Plan Year commencing in 1975, shall continue to be covered as a Pensioner and shall receive the same benefits to which he/she was then entitled. The term Pensioner shall include those receiving a disability pension.

No Pensioner shall accrue either Vesting Service Years or Future Service Credits, unless he/she again qualifies for additional years and credits under Section 4.05.

A Pensioner's status as a Pensioner shall terminate at his/her death or requalification as an Active Participant, under Section 4.05.

(H) Vested Former Participant. When a Participant has accrued 5 Credited Vesting Service Years, provided the Participant has at least one (1) Hour of Covered Employment after May 1, 1998, otherwise 10 Credited Vesting Service Years, if his/her participation is pursuant to a Collective Bargaining Agreement, or 5 Credited Vesting Service Years, if his/her participation is not pursuant to a Collective Bargaining Agreement, and has completed an Extension Period, he/she shall be a Vested Former Participant. A Former Local 810 Participant who had attained two (2) Vesting Service Years as of April 30, 1993 shall be fully vested in the Plan. A Participant's status as a Vested Former Participant shall cease immediately following the earliest of:

(1) His/her death; or

(2) His/her becoming a Pensioner, if otherwise qualified; or

(3) The first day of the month following the date he/she works 500 Hours of Covered Employment in the Plan Year; or

(4) The date the Plan is terminated.

Benefits for Vested Former Participants shall be calculated as follows:

(1) Maintenance of Benefit Rate. A Vested Former Participant who is otherwise qualified shall receive upon retirement a pension at the rate in effect at the time he/she became a Vested Former Participant provided he/she is otherwise qualified for the rate, otherwise the rate he/she is qualified for, for all Credited Service earned up to that time.

(2) Return to Covered Employment. Should a Vested Former Participant subsequently return to Covered Employment prior to becoming a Pensioner, his/her pension will be paid in part at the rate set forth in paragraph (1) above, and in part at the rate in effect at the time his/her pension becomes effective for all Credited Service earned subsequent to his/her return to Covered Employment.

(3) Greater Benefits. The Vested rights at any time after the last day of the Plan Year that commenced in 1975, of an Active Participant, who was covered by this Plan on that day, shall be the greater of:

(a) His/her Vested rights as determined by the Plan subsequent to the first day of the Plan Year that commenced in 1976; or

(b) His/her Vested rights as determined under the vesting provisions of this Plan, if any, as they existed on the last day of the Plan Year that commenced in 1975.

2.04 Former Participant and Termination of Participation. A Participant shall terminate his/her participation in the Plan when all benefits payable on his/her behalf under the Plan have been paid or forfeited, at which time he/she shall become a Former Participant. A Former Participant shall have no rights to a benefit under the Plan and may reenter the Plan only as an Active Participant pursuant to Section 2.01.

### **SECTION 3: CONTRIBUTIONS**

3.01 Employer Contributions. Each Employer shall make contributions to the Fund monthly, in the amount set forth in the Collective Bargaining Agreement or Participation Agreement applicable to that Employer.

3.02 Participant Contributions. No Participant shall be required to make any contributions to the Fund. No Participant shall be permitted to make any contributions to the Fund.

## **SECTION 4: BENEFITS AND DISTRIBUTIONS**

### **4.01 Types of Benefits.**

#### **(A) Normal Retirement Date Pension**

(1) Any Active or Vested Participant may retire on optional or normal pension provided he/she has:

(a) Attained Normal Retirement Age; and

(b) Made written application for a normal retirement pension on the form and in the manner prescribed by the Board.

Notwithstanding the foregoing, the failure of a Participant and Eligible Spouse to consent to a distribution while a benefit is immediately distributable, within the meaning of Section 4.06 of the Plan, shall be deemed to be an election to defer commencement of payment of any benefit sufficient to satisfy this Section.

#### **(B) Early Retirement Pension**

(1) Any Active or Vested Participant may retire early on a reduced pension provided he/she has:

(a) Attained his/her 55<sup>th</sup> birthday; and.

(b) Completed ten (10) or more years of Credited Service, or, for Former Local 810 Participants, as of May 1, 1993, completed two (2) years of Credited Service; and

(c) Made written application for early pension on the form and in the manner prescribed by the Board.

(2) If a Participant leaves Covered Employment before satisfying the age requirement but having satisfied the service requirement, the Participant will be entitled to apply for an early retirement pension at any time after he/she attains the required age.

#### **(C) Disability Pension**

(1) Any Disabled Participant may retire on a disability pension provided:

(a) He/she has satisfied the eligibility requirements for one of the classes of Disabled Participants set forth in Section 4.01(C)(2) while an Active Participant or in his/her Extension Period. The satisfaction of

the eligibility requirements for any of the classes may be required to be certified by a physician appointed by the Board; and

(b) His/her disability has continued for six months; and

(c) He/she has completed three (3) or more years of Future Service Credit and such years of Credited Service shall not have been cancelled in accordance with Section 2.03(F); and

(d) He/she has made written application for disability pension on the form and in the manner prescribed by the Board while an Active Participant or in his/her Extension Period.

(e) The Board may require the Disability Pensioner, until he/she attains the age required for Normal Retirement Date Pension, to undergo physical examinations by a physician chosen by it in order to determine the continuance of disability, but no more frequently than once each year.

(f) The Fund shall treat a Participant who becomes 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 or she became Permanently Disabled.

(2) Disabled Participants shall be classified as follows:

(a) "Class One Disabled Participant" shall be a Disabled Participant who is not eligible for Early Retirement and who has become Permanently Disabled as a result of sickness or accident or mental illness which prevents him/her from carrying out the duties of his/her regular work while an Active Participant or in his or her Extension Period. Such Disability may be required to be certified by a physician appointed by the Board.

(b) "Class Two Disabled Participant" shall be a Disabled Participant who is eligible for Early Retirement and who has become Permanently Disabled as a result of sickness or accident or mental illness which prevents him/her from carrying out the duties of his/her regular work while an Active Participant or in his or her Extension Period. Such Disability may be required to be certified by a physician appointed by the Board.

(c) "Class Three Disabled Participant" shall be a Disabled Participant who is eligible for Early Retirement and who has become Permanently Disabled as result of sickness or accident or mental illness which prevents him/her from engaging in any gainful employment while an Active Participant or in his or her Extension Period. Such Disability may be required to be certified by a physician appointed by the Board.

(D) Death Benefits

(1) Vested Former Participant Who Has Not Reached Normal Retirement Age

(a) If a Vested Former Participant, having ten (10) Vesting Service Years or five (5) years of Future Service Credits, who has not made a qualified election of a form of pension other than a Husband-Wife 50% Without Marriage Reduction Pension, or a Husband-Wife 50% With Marriage Reduction Pension, dies prior to reaching Normal Retirement Age, his/her Eligible Spouse will receive a death benefit in the form of a monthly pension. The rate per month for each year of service shall be fifty (50%) percent of the amount which such Participant would have received had he/she retired on the day prior to his/her death on an Employee-Only Pension without reduction because such retirement preceded the Normal Retirement Date.

(b) Such benefit shall commence after approval of an application by the Board, effective on the first day of the month following such Participant's death.

(c) The death benefit will terminate on the first day of the month in which the Eligible Spouse dies.

(2) Active Participant Who Has Not Reached Normal Retirement Age

(a) If an Active Participant, having ten (10) Vesting Service Years or five (5) years of Future Service Credits, who has not made a qualified election of a form of pension other than a Husband-Wife 50% Without Marriage Reduction Pension, or a Husband-Wife 50% With Marriage Reduction Pension, dies prior to reaching Normal Retirement Age, his/her Eligible Spouse will receive a death benefit in the form of a monthly pension. The rate per month for each year of service shall be one hundred (100%) percent of the amount which such Participant would have received had he/she retired on the day prior to his/her death on an Employee-Only Pension without reduction because such retirement preceded the Normal Retirement Date.

(b) Such benefit shall commence after approval of an application by the Board, effective on the first day of the month following such Participant's death.

(c) The death benefit will terminate on the first day of the month in which the Eligible Spouse dies.

(3) Participant Who Has Reached Normal Retirement Age

(a) When a Participant who has reached Normal Retirement Age dies prior to the commencement of a pension without having made a qualified election of a form of pension different from a Husband-Wife 50% Without Marriage Reduction Pension, or Husband-Wife 50% With Marriage Reduction Pension, his/her Eligible Spouse will receive a death benefit. It will be in the form of a monthly pension and will be payable for the rest of her life. The rate of the pension will be fifty (50%) percent of the amount the Participant would have received had he/she retired on the day prior to his/her death on a Husband-Wife 50% Without Marriage Reduction Pension or Husband-Wife 50% With Marriage Reduction Pension.

(b) Such benefit shall commence after approval of an application by the Board, effective on the first day of the month following the Participant's death.

(c) The death benefit will terminate on the first day of the month in which the Eligible Spouse dies.

(4) Participant Who Became Disabled After Having Earned Five Years of Future Service Credits

(a) If a Participant, who becomes a Disabled Participant, having earned five (5) years of Future Service Credits, dies, his/her Eligible Spouse will receive a death benefit in the form of a monthly pension. The rate per month shall be one-half of that which the Disabled Participant was receiving at the time of his/her death.

(b) Such benefit will commence after approval of an application by the Board, effective on the first day of the month following such Participant's death.

(c) The death benefit will terminate on the first day of the month in which the Eligible Spouse dies, unless the Eligible Spouse is survived by an eligible minor child of the Participant.

(5) Minor Child's Benefit

(a) If a Participant on whose life a death benefit is payable under this Section 4.01(D)(1) through (4) either: (i) is not survived by an Eligible Spouse, but has surviving minor children, or (ii) is survived by an Eligible Spouse and minor children, but the Eligible Spouse dies while children of the deceased Participant are minors, then a death benefit in the form of a monthly pension shall be paid to the minor children. Payment shall be in accordance to the following rules:

(i) The benefit payable shall be divided equally among all minor children. As each child reaches his/her majority or if any child dies, the benefit that had been paid to that child shall be divided equally among the remaining minor children.

(ii) All benefit payments shall end when the last surviving child reaches his/her majority.

(iii) The amount of the children's monthly benefit shall be the amount paid to the Eligible Spouse or the amount that would have been payable to an Eligible Spouse had there been one.

(iv) A child eligible to receive a benefit under this Section shall be a minor (less than 18 years of age) natural or adopted child of the deceased Participant who has been recognized as a dependent for benefit purposes by the Social Security Administration.

(6) Lump-sum Death Benefit

(a) If a Participant dies while being a Pensioner, an Active Participant, or within the Extension Period, a lump-sum death benefit will be paid in the amount equal to \$100.00 multiplied by the Participant's years of Future Service Credits, up to 25 years, reduced by the total of any benefits previously paid, if any. The lump-sum death benefit is also payable to the Participant's Eligible Spouse's Beneficiary, if the Participant's Eligible Spouse dies while receiving benefits under the Plan, reduced by the total amount previously paid to the Eligible Spouse. The death benefit will be paid to the Participant's or Eligible Spouse's Beneficiary.

(b) If an Active Participant dies before reaching Normal Retirement Age, or if an Inactive Employees dies while in qualified military service, and is not survived by an Eligible Spouse or Minor Children, a lump-sum death benefit shall be payable to the Active Participant's or In-

active Employee's Beneficiary in the amount of \$1,000.00 for each year of Credited Service, up to a maximum of \$35,000.00.

(7) Former Local 810 Vested Former Participants

(a) If a Former Local 810 Vested Former Participant, having ten (10) Vesting Service Years or five (5) years of Future Service Credits, who has not made a qualified election of a form of pension other than a Husband-Wife 50% Without Marriage Reduction Pension, or Husband-Wife 50% With Marriage Reduction Pension, dies prior to reaching Normal Retirement Age (age 62, if the Former Local 810 Vested Former Participant worked at least 500 hours in either the May 1, 1991 to April 30, 1992 Plan Year or the May 1, 1992 to April 30, 1993 Plan Year; otherwise age 65), his/her Eligible Spouse will receive a death benefit in the form of a monthly pension. The rate per month for each year of service shall be fifty (50%) percent of the amount which such Participant would have received had he/she retired on the day prior to his/her death on an Employee-Only Pension without reduction because such retirement preceded the Normal Retirement Date.

(b) Such benefit shall commence after approval of an application by the Board, effective on the first day of the month following such Participant's death.

(c) The death benefit will terminate on the first day of the month in which the Eligible Spouse dies.

(d) The Eligible Spouse may elect to receive, in lieu of the monthly benefit, an additional lump-sum payment equal to sixty (60) times the monthly benefit the Participant would have received had the Participant retired the day before the Participant's date of death on an Employee-Only Pension, without reduction. If the Participant is not survived by an Eligible Spouse or Minor Children, the Participant's Beneficiary will receive a lump-sum payment equal to sixty (60) times the monthly benefit the Participant would have received had the Participant retired the day before the Participant's date of death on an Employee-Only Pension, without reduction.

(8) Former Local 810 Active Participants

(a) If a Former Local 810 Active Participant, having ten (10) Vesting Service Years or five (5) years of Future Service Credits, who has not made a qualified election of a form of pension other than a Husband-Wife 50% Without Marriage Reduction Pension, or Husband-Wife 50% With Marriage Reduction Pension, dies prior to reaching Normal Re-

tirement Age (age 62, if the Former Local 810 Vested Former Participant worked at least 500 hours in either the May 1, 1991 to April 30, 1992 Plan Year or the May 1, 1992 to April 30, 1993 Plan Year; otherwise age 65), his/her Eligible Spouse will receive a death benefit in the form of a monthly pension. The rate per month for each year of service shall be one hundred (100%) percent of the amount which such Participant would have received had he/she retired on the day prior to his/her death on an Employee-Only Pension without reduction because such retirement preceded the Normal Retirement Date.

(b) Such benefit shall commence after approval of an application by the Board, effective on the first day of the month following such Participant's death.

(c) The death benefit will terminate on the first day of the month in which the Eligible Spouse dies.

(d) The Eligible Spouse may elect to receive, in lieu of the monthly benefit, an additional lump-sum payment equal to sixty (60) times the monthly benefit the Participant would have received had the Participant retired the day before the Participant's date of death on an Employee-Only Pension, without reduction. If the Participant is not survived by an Eligible Spouse or Minor Children, the Participant's Beneficiary will receive the greater of a lump-sum payment equal to sixty (60) times the monthly benefit the Participant would have received had the Participant retired the day before the Participant's date of death on an Employee-Only Pension, without reduction, or \$1,000.00 for each year of Credited Service up to a maximum of \$35,000.00.

(9) Former Local 810 Participant Who Has Reached Normal Retirement Age

(a) When a Former Local 810 Participant who has reached Normal Retirement Age (age 62, if the Former Local 810 Vested Former Participant worked at least 500 hours in either the May 1, 1991 to April 30, 1992 Plan Year or the May 1, 1992 to April 30, 1993 Plan Year; otherwise age 65) dies prior to the commencement of a pension without having made a qualified election of a form of pension different from a Husband-Wife 50% Without Marriage Reduction Pension, or Husband-Wife 50% With Marriage Reduction Pension, his/her Eligible Spouse will receive a death benefit. It will be in the form of a monthly pension and will be payable for the rest of her life. The rate of the pension will be fifty (50%) percent of the amount the Participant would have received had he/she retired on the day prior to his/her death on a Husband-Wife 50%

Without Marriage Reduction Pension or Husband-Wife 50% With Marriage Reduction Pension.

(b) Such benefit shall commence after approval of an application by the Board, effective on the first day of the month following the Participant's death.

(c) The death benefit will terminate on the first day of the month in which the Eligible Spouse dies.

(d) The Eligible Spouse may elect to receive, in lieu of the monthly benefit, an additional lump-sum payment equal to sixty (60) times the monthly benefit the Participant would have received had the Participant retired the day before the Participant's date of death on an Employee-Only Pension, without reduction. If the Participant is not survived by an Eligible Spouse or Minor Children, the Participant's Beneficiary will receive a lump-sum payment equal to sixty (60) times the monthly benefit the Participant would have received had the Participant retired the day before the Participant's date of death on an Employee-Only Pension, without reduction.

(10) Former Local 810 Participant's Minor Child's Benefit

(a) If a Former Local 810 Participant on whose life a death benefit is payable under this Section 4.01(D)(7) through (9) either: (i) is not survived by an Eligible Spouse, but has surviving minor children, or (ii) is survived by an Eligible Spouse and minor children, but the Eligible Spouse dies while children of the deceased Participant are minors, then a death benefit in the form of a monthly pension shall be paid to the minor children. Payment shall be in accordance to the following rules:

(i) The benefit payable shall be divided equally among all minor children. As each child reaches his/her majority or if any child dies, the benefit that had been paid to that child shall be divided equally among the remaining minor children.

(ii) All benefit payments shall end when the last surviving child reaches his/her majority.

(iii) The amount of the children's monthly benefit shall be the amount paid to the Eligible Spouse or the amount that would have been payable to an Eligible Spouse had there been one.

(iv) A child eligible to receive a benefit under this Section shall be a minor (less than 18 years of age) natural or adopted

child of the deceased Participant who has been recognized as a dependent for benefit purposes by the Social Security Administration.

(11) Former Local 810 Participant's Lump-Sum Death Benefit

(a) If a Former Local 810 Pensioner dies, a death benefit is payable to the Pensioner's Beneficiary in the amount of \$1,000.00 if the Pensioner's pension commenced prior to April 1, 1976. If the Pensioner's pension commenced after 4/1/76, and before 4/30/93, the amount of the death benefit is \$2,000.00.

(E) Cash-out of Vested Accrued Benefit. If the Actuarial Equivalent value of the Participant's Vested Accrued Benefit does not exceed the applicable limit under Code Section 411(a)(11)(A), currently \$5,000, then distribution may only be made as a lump-sum payment. In determining the amount of a lump-sum payment payable under this paragraph, Actuarial Equivalent value shall mean a benefit, in the case of a lump-sum benefit payable prior to a Participant's Normal Retirement Date, of equivalent value to the Vested Accrued Benefit which would otherwise have been provided commencing at the Participant's Normal Retirement Date.

Effective March 28,2005, the Plan may make an immediate lump-sum distribution of the Actuarial Equivalent of the vested Accrued Benefit of a retired Participant in lieu of all benefits in the event:

(1) the retired Participant's Annuity Starting Date occurs on or after the later of age 62 or his Normal Retirement Date and the present value of his Vested Accrued Benefit determined as of his Annuity Starting Date is not in excess of the applicable limit under Code Section 411(a)(11)(A), currently \$5,000, or

(2) the retired Participant's Annuity Starting Date occurs prior to the later of age 62 or his Normal Retirement Date and the present value of his Vested Accrued Benefit is not in excess of \$1,000 at the time of distribution.

The Plan may make an immediate distribution of such benefit to a retired Participant without such Participant's consent.

Effective March 28,2005, in the event the Actuarial Equivalent of the Vested Accrued Benefit of a retired Participant exceeds \$1,000 but does not exceed the applicable limit under Code Section 411(a)(11)(A), currently \$5,000, at the time of distribution, the retired Participant may elect a lump-sum payment. Spousal consent to the Participant's election of the lump sum is not required.

Lump-sum distributions may be made only on account of termination of participation in the Plan. No distributions may be made under this section after the Annuity Starting Date, except in the case of a Participant who has attained age 70-1/2 and has commenced receiving his Vested Accrued Benefit in the form of a monthly annuity while still in Covered Employment. Such Participant may elect at retirement to receive immediate payment of the Actuarial Equivalent of his Vested Accrued Benefit, determined at the time of retirement, in a lump-sum distribution as described in this Section.

4.02 Amount of Benefit Payments. The amount of each pension is determined by such scale of benefits as the Association and the Union, upon recommendation of the Board, shall determine from time to time, on the basis of actuarial calculations, which can be supported by the rate of contributions being received. Until subsequently changed pursuant to provisions of the Plan, benefit amounts shall be as follows:

(A) Employee-Only Guaranteed 60 Payments Pension – For Participants who retire after May 1, 2005, and who have earned 500 or more hours of Credited Service after May 1, 2005, a monthly pension benefit for the life of the Participant at the rate per month for each year of Credited Service as is set forth in Appendix B of the Plan. In the event of the Participant's death before sixty (60) monthly payments have been made to the Participant, the remainder of the sixty (60) payments will be paid to his/her Beneficiary or, with the consent of the Board, may be commuted and paid to his/her Beneficiary in a lump sum.

(B) Employee-Only Pension - For Participants who retire after May 1, 2005, and who have not earned 500 or more hours of Credited Service after May 1, 2005, a monthly pension benefit for the life of the Participant at the rate per month for each year of Credited Service as is set forth in Appendix B of the Plan.

(C) Husband-Wife 50% Without Marriage Reduction Pension - For Participants who retire after May 1, 2005, and who have earned 500 or more hours of Credited Service after May 1, 2005, the amount of the Employee-Only Guaranteed 60 Payments Pension for the life of the Participant and upon his/her death fifty (50%) percent of the monthly pension benefit payable to his/her Eligible Spouse and thereafter until the death of the Eligible Spouse, provided that the Eligible Spouse married to the Participant at the time of his/her death must also have been married to the Participant at the time his/her pension commenced.

(D) Husband-Wife 50% With Marriage Reduction Pension - For Participants who retire after May 1, 2005, and who have not earned 500 or more hours of Credited Service after May 1, 2005, the Actuarial Equivalence of the Employee-Only Pension, for the life of the Participant and upon his/her death fifty (50%) percent of the monthly pension benefit payable to his/her Eligible Spouse and thereafter until the death of the Eligible Spouse, provided that the Eligible Spouse married to the Participant at the time of his/her death must also have been married to the Participant at the time his/her pension

commenced. If the spouse should die before the Participant, upon notice of that fact to the Board, the amount of the previous actuarial reduction shall be restored.

(E) Husband-Wife 75% With Marriage Reduction Pension - The Actuarial Equivalence of the Employee-Only Pension, for the life of the Participant and upon his/her death seventy-five (75%) percent of the monthly pension benefit payable to his/her Eligible Spouse and thereafter until the death of the Eligible Spouse, provided that the Eligible Spouse married to the Participant at the time of his/her death must also have been married to the Participant at the time his/her pension commenced. If the spouse should die before the Participant, upon notice of that fact to the Board, the amount of the previous actuarial reduction shall be restored.

(F) Husband-Wife 100% Pension - The Actuarial Equivalence of the Employee-Only Guaranteed 60 Payments or the Employee-Only Pension, for the life of the Participant and upon his/her death one hundred (100%) percent of the monthly pension benefit payable to his/her Eligible Spouse and thereafter until the death of the Eligible Spouse, provided that the Eligible Spouse married to the Participant at the time of his/her death must also have been married to the Participant at the time his/her pension commenced. If the spouse should die before the Participant, upon notice of that fact to the Board, the amount of the previous actuarial reduction shall be restored.

(G) Five-Year Guarantee Pension - The Actuarial Equivalence of the Employee-Only Pension, payable for the life of the Participant, and in the event of the Participant's death before sixty (60) monthly payments have been made to the Participant, the remainder of said sixty (60) payments will be paid to his/her Beneficiary or, with the consent of the Board, may be commuted and paid to his/her Beneficiary in a lump sum.

(H) Ten-Year Guarantee Pension - The Actuarial Equivalence of the Employee-Only Guaranteed 60 Payments or the Employee-Only Pension, payable for the life of the Participant, and in the event of the Participant's death before one hundred twenty (120) monthly payments have been made to the Participant, the remainder of said one hundred twenty (120) payments will be paid to his/her Beneficiary or, with the consent of the Board, may be commuted and paid to his/her Beneficiary in a lump sum.

#### 4.03 Optional Forms of Benefits and Duration of Benefits.

##### (A) Normal Retirement Pension

(1) The normal retirement benefit for an unmarried Participant, otherwise qualified, shall be the Employee-Only Pension, Section 4.02(A).

(2) The normal retirement benefit for a married Participant, otherwise qualified, who does not make a qualified election of a different form, shall be the Husband-Wife Pension, Section 4.02(B).

(B) Optional Retirement Pensions

(1) The optional retirement pension for an unmarried Participant shall be the Ten-Year-Guarantee Pension, Section 4.02(H).

(2) The optional retirement pensions for a married Participant shall be the Employee-Only or the Employee-Only Guaranteed 60 Payments Pension (Section 4.02(A) or (B)); the Husband and Wife 75% Pension (Section 4.02(E)); the Husband and Wife 100% Pension (Section 4.02(F)); or the Five- or Ten-Year Guarantee Pension (Section 4.02(G) or (H)).

(3) A Participant may during the election period make a qualified election in writing on a form approved by the Board to receive his/her monthly pension in an optional form of pension in lieu of the monthly pension benefit described as his/her normal retirement pension. Such election may be revoked in writing during the election period and another qualified election may be made.

(4) The Contract Administrator shall inform Participants in writing no less than thirty days and no more than one hundred eighty (180) days prior to the commencement of the pension, (i) the terms of the normal retirement pension, (ii) the terms of all optional forms of pension, (iii) the Participant's right to waive the normal form of pension, (iv) the rights of the Participant's Eligible spouse, (v) the right to revoke previously made waivers and (vi) the relative values of the various forms of benefits under this Plan.

(5) In addition, each optional form of benefit provided under this Plan must be made available to all Participants on a nondiscriminatory basis (i.e., they must not discriminate in favor of the Highly Compensated group). This is the case regardless of whether a particular form of benefit is the actuarial equivalent of any other optional form of benefit under this Plan.

(C) Duration of the Employee-Only Pension - The Employee-Only Pension shall commence after approval of the application, but effective the first day of the month following the later of retirement or completion of the age and service requirements, Sections 4.01(A) or (B). The final pension payment shall be made on the first day of the month in which the Participant dies.

(D) Duration of the Husband-Wife 50% Without Marriage Reduction Pension; Husband-Wife 50% With Marriage Reduction Pension; Husband-Wife 75% With Marriage Reduction Pension; and Husband-Wife 100% Pension - The Husband-Wife Pension shall commence after approval of the application, but effective the first day of the month following the later of retirement or the completion of the age and service requirements, Sections 4.01(A) or (B). The final payment shall be made on the first day of the month in which the survivor of the Participant or his/her Eligible Spouse dies.

(E) Duration of the Five-Year-Guarantee Pension - The Five-Year-Guarantee Pension shall commence after approval of the application, but effective the first day of the month following the later of retirement or completion of the age and service requirements, Sections 4.01(A) or (B). The final pension payment shall be on the first day of the month in which the Participant dies or the sixtieth month of pension, whichever is later, or if a commuted sum is payable to a Beneficiary, payment of such commuted sum shall be the final payment.

(F) Duration of the Ten-Year-Guarantee Pension - The Ten-Year-Guarantee Pension shall commence after approval of the application, but effective the first day of the month following the later of retirement or completion of the age and service requirements, Sections 4.01(A) or (B). The final pension payment shall be on the first day of the month in which the Participant dies or the one hundred twentieth month of pension, whichever is later, or if a commuted sum is payable to a Beneficiary, payment of such commuted sum shall be the final payment.

(G) Early Retirement Pension - The Forms, Amounts, Options and Duration of the Early Retirement Pension shall be as set forth in Section 4.02 and 4.03, with the following modifications:

(1) The Participant's Employee-Only Pension shall be reduced by  $1/180^{\text{th}}$  for each of the first twenty-four (24) months prior to the Participant's 62<sup>nd</sup> birthday, and by  $1/360^{\text{th}}$  for each month of the next sixty (60) months. The other forms of pension shall be actuarial reductions of the amount thus calculated. For Former Local 810 Participants, the Participant's Employee-Only Pension shall be reduced by one-half of one percent (.5%) for each month which his/her Early Retirement Date precedes his/her 65<sup>th</sup> birthday for benefits accrued prior to May 1, 1993. For Former Local 810 Participants who accrued benefits after April 30, 1993, the Participant's Employee-Only Pension shall be reduced by  $1/180^{\text{th}}$  for each of the first twenty-four (24) months prior to the Participant's 62<sup>nd</sup> birthday, and by  $1/360^{\text{th}}$  for each month of the next sixty (60) months which precedes his/her Normal Retirement Date.

(2) The Early Retirement Pension shall commence on the later of retirement, completion of age and service requirements, Section 4.01(B), or approval of the Participant's application.

(3) The election or revocation of election or re-election of an optional form of Early Retirement Pension may be made during the election period preceding the commencement of an Early Retirement Pension.

(H) Late Retirement Pension – Subject to the provisions of Section 4.07, an Employee need not retire upon his/her Normal Retirement Date and may continue in employment. Upon eventual retirement, he/she will receive credit for service rendered after his/her Normal Retirement Date.

(I) Disability Pension –

(1) A monthly benefit shall be payable to Class One and Class Three Disabled Participants in the form and amount of the Employee-Only Pension (Section 4.02(A)). A monthly benefit shall be payable to Class Two Disabled Participants in the form and amount of the Employee-Only Pension reduced by 1/180<sup>th</sup> for each month that the Disability Retirement Date precedes the Normal Retirement Date, but shall be reduced by 1/360<sup>th</sup> for each month which the Disability Retirement Date precedes the Participant's 60<sup>th</sup> birthday—however, for purposes of determining the amount of a Participant's Disability Pension, the Fund shall treat a Participant who became 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 the United States Code on the day preceding the date he or she became Permanently Disabled. This form of Pension shall commence on the first day of the month following the later of:

(a) The date occurring six months after the inception of disability; and

(b) Receipt of the application by the Board.

(2) The final pension payment shall be made on the first day of the month in which:

(a) The end of permanent disability occurs; or

(b) The Disabled Participant dies (however, his/her Eligible Spouse or minor children may be eligible for a death benefit under Section 7); or

(c) The Disabled Participant refuses to undergo a required physical examination by a physician selected by the Board; or

(d) Upon the attainment of Normal Retirement Age.

(3) In the event Disability Pension payments cease because of the end of permanent disability or the refusal to undergo a required physical examination, the Participant may either:

(a) Return to Covered Employment in which case the Credited Service which he/she accumulated prior to the commencement of the Disability Pension shall be reinstated; or

(b) Enter the status of a Vested Participant or a Pensioner, if qualified, or of a Divesting Participant.

4.04 Commencement of Benefits. Unless the Participant elects otherwise, distribution of benefits will begin no later than the 60th day after the close of the Plan Year in which:

- (A) The Participant attains age 65 (or Normal Retirement Age, if earlier);
- (B) occurs the 10th anniversary of the year in which the Participant commenced participation in the Plan; or
- (C) the Participant terminates service with the Employer.

Notwithstanding any provision in the Plan to the contrary, any Benefits to which a Participant is entitled shall commence no later than the Participant's Required Beginning Date. The failure of a Participant and Eligible Spouse to consent to a distribution while a benefit is immediately distributable, shall be deemed to be an election to defer commencement of payment of any benefit sufficient to satisfy this section. An Accrued Benefit is immediately distributable if any part of the Accrued Benefit could be distributed to the Participant (or surviving Eligible Spouse) before the Participant attains (or would have attained if not deceased) the later of Normal Retirement Age or age 62.

#### 4.05 Suspension and Resumption of Benefits

(A) Suspension of Benefits on Resumption of Non-Casual Industry Employment

(1) If any Pensioner (other than a Disability Pensioner) resumes Industry Employment (except as Casual Employment), his/her benefit for any month in which he/she works 40 or more hours shall be suspended.

(2) A Pensioner whose benefits are to be suspended under this Section shall be given notice as follows:

(a) Notice shall be given during the first calendar month in which benefits are being withheld.

(b) Notice shall be given in writing by personal delivery or by First Class Mail addressed to the Pensioner's last known address.

(c) The notice shall contain the following or shall refer the Pensioner to the relevant pages of the Plan's Summary Plan Description where such information can be found: (1) a description of the specific reason or reasons why benefit payments are being suspended; (2) a general description of the Plan provisions relating to the suspension of payments

and a copy of the Plan provisions; (3) a statement that Department of Labor regulations concerning suspension may be found at Title 29 Code of Federal Regulations Section 2530.203-3; (4) a description of the Plan's claim review procedure; (5) an explanation of how to apply for resumption of benefits and a copy of the required form for benefit resumption; and (6) the amount of benefits previously paid that the Plan intends to recoup, and the manner in which recoupment will take place.

(3) Each Pensioner who resumes Industry Employment shall notify the Plan within 15 days after resuming employment.

(4) The Plan may require information concerning employment from any Pensioner. The Plan may at any time, and as frequently as may be reasonable, require any Pensioner to (i) provide it with information sufficient to establish that any employment does not constitute Industry Employment or (ii) to certify to the Plan that the Pensioner is unemployed.

(5) Whenever the Plan becomes aware that a Pensioner has begun Industry Employment and has failed to comply with the Plan's notice and reporting requirements concerning re-employment, the Plan shall assume that the Pensioner was engaged in such employment for the same employer in work at that construction site for so long before the work in question as that same employer performed that work at that construction site. Whenever such presumptions are applied by the Plan, the Plan shall give notice to the Pensioner as required by Federal regulation. Any Pensioner who wishes to challenge the application of these presumptions as applied to him/her may present contrary evidence to the Contract Administrator and shall have a right to appeal the Contract Administrator's determination in accordance with the Plan's claim denial procedures.

(B) **Reinstatement of Benefits After Ceasing Non-Casual Industry Employment: Plan's Recoupment Rights**

(1) If a Pensioner's benefits have been suspended under this Section, they shall not be reinstated until the Pensioner notifies the Plan that his/her ineligibility has ceased by making a written, application for resumption of his/her benefits on the form and in the manner prescribed by the Plan. Payment of benefits shall be resumed at the rate earlier in effect and no later than the first day of the third calendar month after he/she has notified the Plan as required above that his/her ineligibility has ceased.

(2) If the Plan has no claim for recoupment of benefits against a Pensioner who has applied for resumption of benefits, then the full amount of benefits due since he/she stopped his/her disqualifying work shall be paid in the initial payment.

(3) If the Plan has a claim for recoupment of benefits against a Pensioner who has applied for resumption of benefits, the Contract Administrator shall withhold the amount owed to the Plan, but no more than three months of benefits, before reinstating benefits. If the Plan's claim for recoupment is in excess of three months of benefits, the remaining amount shall be recouped by withholding up to 25 percent of the Pensioner's monthly benefit until the full amount has been recouped.

(C) Pensioner's Right to Determination of Whether Employment Will Be Deemed Industry Employment

A Pensioner may request a determination from the Plan as to whether specific contemplated employment will be deemed Industry Employment. Such a request initially shall be made to the Contract Administrator, and the determination shall be rendered within thirty (30) days of receipt of the request. A Pensioner dissatisfied by the Contract Administrator's determination shall have a right to appeal that determination in accordance with the claim appeal procedures of the Plan.

(D) Amount of Pension Benefit Upon Reinstatement After Suspension

(1) A reinstated pension shall not be subject to any increase or decrease caused by a change in contribution rates negotiated by collective bargaining, unless such increase or decrease is specifically provided for in this Plan by means of an amendment hereto. A Pensioner, whose annuity starting date occurred either before or after his/her Normal Retirement Date, receiving a benefit other than a Disability Pension who resumes Covered Employment shall receive an increase in his/her benefit by virtue of any Credited Service earned subsequent to such return. In that event, upon his/her subsequent re-retirement, he/she shall receive pension benefits on the original Credited Service at the rate in effect at the time his/her pension first commenced, and pension benefits on the subsequent Credited Service at the rate in effect when the Credited Service was earned, and the Pensioner's original annuity starting date shall apply to the additional accounts. If any additional Credited Service is earned, the payment for the additional Credited Service must commence no later than beginning with the first month in the calendar year immediately following the calendar year after the Pensioner ceases Covered Employment.

(E) Automatic Suspension of Benefits of Participant Who Continues Workings After Normal Retirement Date

(1) A Participant who reaches Normal Retirement Age but who has failed to apply for retirement benefits shall be presumed to have continued Industry Employment. His/her benefits shall be suspended until application for benefits is made and approved.

(2) A Participant whose benefits are suspended under (e)(1) shall be given or sent (by First Class Mail) a notice each year containing the following: (i) a statement that his/her benefits have been suspended and the specific reason for suspension, and (ii) a general description of the Plan provisions relating to the suspension of payments and a copy of the Plan provisions.

(F) Amount of Reinstated Pension Benefit of Participant Who Has Previously Drawn Disability Pension

A Pensioner receiving a Disability Pension who resumes Covered Employment shall, upon subsequent re-retirement or recurrence of disability, apply to the Board for resumption of his/her pension on the form and in the manner prescribed by the Board. His/her resumed pension shall be at his/her pension rate in effect immediately prior to the resumption of Covered Employment for all Credited Service earned up to that time, and at the rate in effect at the time of his/her re-retirement for all Credited Service earned subsequent to his/her resumption of Covered Employment.

4.06 Restrictions on Immediate Distributions.

(A) If there are remaining payments to be made with respect to a particular distribution option that previously commenced, and the accrued benefit is immediately distributable, the Participant and the Participant's Eligible Spouse (or, where either the Participant or Eligible Spouse has died, the survivor) must consent to any distribution of such accrued benefit. The consent of the Participant and the Participant's Eligible Spouse shall be obtained in writing within the 180-day period ending on the annuity starting date. The annuity starting date is the first day of the first period for which an amount is paid as an annuity or any other form. The Contract Administrator shall notify the Participant and the Participant's Eligible Spouse of the right to defer any distribution until the Participant's accrued benefit is no longer immediately distributable. Such notification shall include a general description of the material features and an explanation of the relative values of the optional forms of benefit available under the Plan in a manner that would satisfy the notice requirements of Code Section 417(a)(3), and shall be provided no less than 30 days and no more than 180 days prior to the annuity starting date. However, distribution may commence less than 30 days after the notice described in the preceding sentence is given, provided the distribution is one to which Code Sections 401(a)(11) and 417 do not apply, the Contract Administrator clearly informs the Participant that the Participant has a right to a period of at least 30 days after receiving the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular distribution option), and the Participant, after receiving the notice, affirmatively elects a distribution.

Notwithstanding the foregoing, only the Participant need consent to the commencement of a distribution in the form of a Qualified Joint and Survivor Annuity while the accrued benefit is immediately distributable. Neither the consent of the Participant

nor the Participant's Eligible Spouse shall be required to the extent that a distribution is required to satisfy Code Sections 401(a)(9) or 415.

Present value shall be determined in accordance with Section 1.02 of the Plan.

An accrued benefit is immediately distributable if any part of the accrued benefit could be distributed to the Participant (or surviving Eligible Spouse) before the Participant attains (or would have attained if not deceased) the later of Normal Retirement Age or age 62.

(B) For purposes of determining the applicability of the foregoing consent requirements to distributions made before the first day of the first Plan Year beginning after December 31, 1988, the Participant's Vested accrued benefit shall not include amounts attributable to accumulated deductible Employee contributions within the meaning of Code Section 72(o)(5)(B).

#### 4.07 Timing and Modes of Distribution.

##### (A) General Rules.

(1) Precedence and Effective Date. Subject to Section 4.08, Qualified Joint and Survivor Annuity requirements, the requirements of this Section shall apply to any distribution of a Participant's interest and will take precedence over any inconsistent provisions of this Plan. Unless otherwise specified, the provisions of this Section apply to calendar years beginning after December 31, 2002.

(2) Requirements of Treasury Regulations Incorporated. All distributions required under this Section shall be determined and made in accordance with Code Section 401(a)(9), including the incidental death benefit requirement in Section 401(a)(9)(G), and the Treasury Regulations thereunder.

(3) Limits on Distribution Periods. As of the first distribution calendar year, distributions to a Participant, if not made in a single sum, may only be made over one of the following periods:

- (a) the life of the Participant,
- (b) the joint lives of the Participant and a designated Beneficiary,
- (c) a period certain not extending beyond the life expectancy of the Participant, or
- (d) a period certain not extending beyond the joint life and last survivor expectancy of the Participant and a designated Beneficiary.

(B) Time and Manner of Distribution.

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

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

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

(b) If the Participant's surviving Eligible Spouse is not the Participant's sole designated Beneficiary, then distributions to the designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

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

(d) If the Participant's surviving Eligible Spouse is the Participant's sole designated Beneficiary and the surviving Eligible Spouse dies after the Participant but before distributions to the surviving Eligible Spouse are required to begin, this Paragraph (B)(2), other than Paragraph (B)(2)(a), will apply as if the surviving Eligible Spouse were the Participant.

For purposes of this Paragraph (B)(2) and Paragraph (E) below, unless Paragraph (B)(2)(d) applies, distributions are considered to begin on the Participant's required beginning date. If Paragraph (B)(2)(d) applies, distributions are considered to begin on the date distributions are required to begin to the surviving Eligible Spouse under Paragraph (B)(2)(a). If distributions under an annuity meeting the requirements of this Section commence to the Participant before the Participant's required beginning date (or to the Participant's surviving Eligible Spouse before the date distributions are required to begin to the surviving Eligible Spouse under Paragraph (B)(2)(a)), the date distributions are considered to begin is the date distributions actually commence.

(3) Forms of Distribution. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with Paragraphs (C), (D) and (E) of this Section. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code Section 401(a)(9) and Section 1.401(a)(9) of the Treasury Regulations. Any part of the Participant's interest which is in the form of an individual account described in Code Section 414(k) will be distributed in a manner satisfying the requirements of Code Section 401(a)(9) and Section 1.401(a)(9) of the Treasury Regulations that apply to individual accounts.

(C) Determination of Amount to be Distributed Each Year.

(1) General Annuity Requirements. If the Participant's interest is to be paid in the form of annuity distributions under the Plan, payments under the annuity shall satisfy the following requirements:

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

(b) the distribution period will be over a life (or lives) or over a period certain not longer than the period described in Paragraph (D) or (E);

(c) once payments have begun over a period, the period will be changed only in accordance with Paragraph (F) of this Section;

(d) payments will either be non-increasing or increase only as follows:

(i) by an annual percentage increase that does not exceed the percentage increase in an eligible cost-of-living index for a 12-month period ending in the year during which the increase occurs or a prior year;

(ii) by a percentage increase that occurs at specified times and does not exceed the cumulative total of annual percentage increases in an eligible cost-of-living index since the annuity starting date, or if later, the date of the most recent percentage increase;

(iii) by a constant percentage of less than five (5%) percent per year, applied not less frequently than annually;

(iv) as a result of dividend or other payments that result from actuarial gains, provided:

(I) actuarial gain is measured not less frequently than annually,

(II) the resulting dividend or other payments are either paid no later than the year following the year for which the actuarial experience is measured or paid in the same form as the payment of the annuity over the remaining period of the annuity (beginning no later than the year following the year for which the actuarial experience is measured),

(III) the actuarial gain taken into account is limited to actuarial gain from investment experience,

(IV) the assumed interest rate used to calculate such actuarial gains is not less than three (3%) percent, and

(V) the annuity payments are not increased by a constant percentage as described in Paragraph (iii) of this Paragraph (C)(1)(d);

(v) to the extent of the reduction in the amount of the Participant's payments to provide for a survivor benefit, but only if there is no longer a survivor benefit because the Beneficiary whose life was being used to determine the distribution period described in Paragraph (D) dies or is no longer the Participant's Beneficiary pursuant to a qualified domestic relations order within the meaning of Code Section 414(p);

(vi) to provide a final payment upon the Participant's death not greater than the excess of the actuarial present value of the Participant's accrued benefit (within the meaning of Code Section 411(a)(7)) calculated as of the annuity starting date using the applicable interest rate defined in Section 1.02 of the Plan and the applicable mortality table defined in Section 1.02 of the Plan (or, if greater, the total amount of employee contributions) over the total of payments before the Participant's death;

(vii) to allow a Beneficiary to convert the survivor portion of a Joint and Survivor Annuity into a single sum distribution upon the Participant's death; or

(viii) to pay increased benefits that result from a Plan amendment.

(2) Amount Required to be Distributed by Required Beginning Date and Later Payment Intervals. The amount that must be distributed on or before the Participant's required beginning date (or, if the Participant dies before distributions begin, the date distributions are required to begin under Paragraph (B)(2)(a) or (b)) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. All of the Participant's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Participant's required beginning date.

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

(D) Requirements For Annuity Distributions That Commence During Participant's Lifetime.

(1) Joint Life Annuities Where the Beneficiary Is Not the Participant's Eligible Spouse. If the Participant's interest is being distributed in the form of a Joint and Survivor Annuity for the joint lives of the Participant and a non-spouse Beneficiary, annuity payments to be made on or after the Participant's required beginning date to the designated Beneficiary after the Participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the Participant, using the table set forth in Section 1.401(a)(9)-6, Q&A 2(c)(2), in the manner described in Q&A 2(c)(1), of the Treasury Regulations, to determine the applicable percentage. If the form of distribution combines a Joint and Survivor Annuity for the joint lives of the Participant and a non-spouse Beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated Beneficiary after the expiration of the period certain.

(2) Period Certain Annuities. Unless the Participant's Eligible Spouse is the sole designated Beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the Participant's lifetime may not exceed the applicable distribution period for the Participant under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9, Q&A-2, of the Treasury Regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the Participant reaches age 70, the applicable distribution period for the

Participant is the distribution period for age 70 under the Uniform Lifetime Table set forth in §1.401(a)(9)-9, Q&A-2, of the Treasury Regulations plus the excess of 70 over the age of the Participant as of the Participant's birthday in the year that contains the annuity starting date. If the Participant's Eligible Spouse is the Participant's sole designated Beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the Participant's applicable distribution period, as determined under this Paragraph (D)(2), or the joint life and last survivor expectancy of the Participant and the Participant's Eligible Spouse as determined under the Joint and Last Survivor Table set forth in §1.401(a)(9)-9, Q&A-3, of the Treasury Regulations, using the Participant's and Eligible Spouse's attained ages as of the Participant's and Eligible Spouse's birthdays in the calendar year that contains the annuity starting date.

(E) Requirements For Minimum Distributions After the Participant's Death.

(1) Death After Distributions Begin. If the Participant dies after distribution of his or her interest begins in the form of an annuity meeting the requirements of this article, the remaining portion of the Participant's interest will continue to be distributed over the remaining period over which distributions commenced.

(2) Death Before Distributions Begin.

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

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

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

(b) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no designated Beneficiary as of

September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(c) Death of Surviving Eligible Spouse Before Distributions to Surviving Eligible Spouse Begin. If the Participant dies before the date distribution of his or her interest begins, the Participant's surviving Eligible Spouse is the Participant's sole designated Beneficiary, and the surviving Eligible Spouse dies before distributions to the surviving Eligible Spouse begin, this Paragraph (E) will apply as if the surviving Eligible Spouse were the Participant, except that the time by which distributions must begin will be determined without regard to Paragraph (B)(2)(a).

(F) Changes to Annuity Payment Period.

(1) Permitted Changes. An annuity payment period may be changed only in association with an annuity payment increase described in Paragraph (C)(1)(d) of this Section or in accordance with Paragraph (F)(2).

(2) Reannuitization. An annuity payment period may be changed and the annuity payments modified in accordance with that change if the conditions in Paragraph (F)(3) are satisfied and:

(a) the modification occurs when the Participant retires or in connection with a Plan termination;

(b) the payment period prior to modification is a period certain without life contingencies; or

(c) the annuity payments after modification are paid under a Qualified Joint and Survivor Annuity over the joint lives of the Participant and a designated Beneficiary, the Participant's Eligible Spouse is the sole designated Beneficiary, and the modification occurs in connection with the Participant's becoming married to such Eligible Spouse.

(3) Conditions. The conditions in this Paragraph (F)(3) are satisfied if:

(a) the future payments after the modification satisfy the requirements of Code Section 401(a)(9), Section 1.401(a)(9) of the Treasury Regulations, and this Section (determined by treating the date of the change as a new annuity starting date and the actuarial present value of the remaining payments prior to modification as the entire interest of the Participant);

(b) for purposes of Code Sections 415 and 417, the modification is treated as a new annuity starting date;

(c) after taking into account the modification, the annuity (including all past and future payments) satisfies the requirements of Code Section 415 (determined at the original annuity starting date, using the interest rates and mortality tables applicable to such date); and

(d) the end point of the period certain, if any, for any modified payment period is not later than the end point available to the Employee at the original annuity starting date under Code Section 401(a)(9) and this Section.

(G) Payments to a Surviving Child.

(1) Special rule. For purposes of this Section, payments made to a Participant's surviving child until the child reaches the age of majority (or dies, if earlier) shall be treated as if such payments were made to the surviving Eligible Spouse to the extent the payments become payable to the surviving Eligible Spouse upon cessation of the payments to the child.

(2) Age of majority. For purposes of this Section, a child shall be treated as having not reached the age of majority if the child has not completed a specified course of education and is under the age of 26. In addition, a child who is disabled within the meaning of Code Section 72(m)(7) when the child reaches the age of majority shall be treated as having not reached the age of majority so long as the child continues to be disabled.

(H) Definitions.

(1) Actuarial gain. The difference between an amount determined using the actuarial assumptions (i.e., investment return, mortality, expense, and other similar assumptions) used to calculate the initial payments before adjustment for any increases and the amount determined under the actual experience with respect to those factors. Actuarial gain also includes differences between the amount determined using actuarial assumptions when an annuity was purchased or commenced and such amount determined using actuarial assumptions used in calculating payments at the time the actuarial gain is determined.

(2) Designated Beneficiary. The individual who is designated by the Participant (or the Participant's surviving Eligible Spouse) as the Beneficiary of the Participant's interest under the Plan and who is the designated Beneficiary under Code Section 401(a)(9) and Section 1.401(a)(9)-4 of the Treasury Regulations.

(3) 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 pursuant to Paragraph (B)(2).

(4) Eligible cost-of-living index. An index described in paragraphs (b)(2), (b)(3) or (b)(4) of Section 1.401(a)(9)-6, Q&A-14, of the Treasury Regulations.

(5) Life expectancy. Life expectancy as computed by use of the Single Life Table in Section 1.401 (a)(9)-9, Q&A-1, of the Treasury Regulations.

(6) Required beginning date.

(a) The required beginning date of a Participant is April 1 of the calendar year following the calendar year in which the Participant attains age 70½, except that benefit distributions to a Participant (other than a 5-percent owner) with respect to benefits accrued after the effective date of the amendment to the Plan that implements the changes to the required beginning date of this paragraph must commence by the later of the April 1 of the calendar year following the calendar year in which the Participant attains age 70½ or retires.

(b) Any Participant (other than a 5-percent owner) attaining age 70½ in years after 1995 may elect by April 1 of the calendar year following the calendar year in which the Participant attains age 70½ (or by December 31, 1997 in the case of a Participant attaining age 70½ in 1996), to defer distributions until April 1 of the calendar year following the calendar year in which the Participant retires. If no such election is made the Participant will begin receiving distributions by April 1 of the calendar year following the year in which the Participant attained age 70½.

(c) Any Participant (other than a 5-percent owner) attaining age 70½ in years prior to 1997 may elect to stop distributions and recommence by April 1 of the calendar year following the year in which the Participant retires.

To satisfy the Qualified Joint and Survivor Annuity requirements described in Section 4.08, the requirements in Notice 97-75, Q&A-8, must be satisfied for any Participant who elects to stop distributions, including the requirement that such distributions stop before the end of the Plan's remedial amendment period under Code Section 401(b) for changes in Plan

qualification requirements made by the Small Business Job Protection Act of 1996. There is either:

- (i) a new annuity starting date upon recommencement,  
or
- (ii) no new annuity starting date upon recommencement.

(d) Except with respect to a 5-percent owner, a Participant's accrued benefit will be actuarially increased to take into account the period after age 70½ in which the Participant does not receive any benefits under the Plan. The actuarial increase will begin on April 1 following the calendar year in which the Employee attains age 70½ (January 1, 1997 in the case of an Employee who attains age 70½ prior to 1996), and will end on the date on which benefits commence after retirement in an amount sufficient to satisfy Code Section 401(a)(9). The amount of actuarial increase payable as of the end of the period for actuarial increases will be no less than the actuarial equivalent of the Participant's retirement benefits that would have been payable as of the date the actuarial increase must commence plus the actuarial equivalent of additional benefits accrued after that date, reduced by the actuarial equivalent of any distributions made after that date. The actuarial increase under this Section is not in addition to the actuarial increase required for that same period under Code Section 411 to reflect the delay in payments after normal retirement, except that the actuarial increase required under this Section will be provided even during the period during which an Employee is in Code Section 203(a)(3)(B) service. For purposes of Code Section 411(b)(1)(H), the actuarial increase will be treated as an adjustment attributable to the delay in distribution of benefits after the attainment of normal retirement age. Accordingly, to the extent permitted under Code Section 411(b)(1)(H), the actuarial increase required under this Section will reduce the benefit accrual otherwise required under Code Section 411(b)(1)(H)(i), except that the rules on the suspension of benefits are not applicable.

(7) 5-percent owner. A Participant is treated as a 5-percent owner for purposes of this Section if the Participant is a 5-percent owner as defined in Code Section 416 at any time during the Plan Year ending with or within the calendar year in which such owner attains age 70½. Once distributions have begun to a 5-percent owner under this Section, they must continue to be distributed, even if the Participant ceases to be a 5-percent owner in a subsequent year.

(I) TEFRA Section 242(b)(2) Elections.

(1) Notwithstanding the other requirements of this Section and subject to the requirements of Section 4.08, Qualified Joint and Survivor Annuity requirements, distribution on behalf of any Employee, including a 5-percent owner, who has made a designation under Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (a "Section 242(b)(2) election") may be made in accordance with all of the following requirements (regardless of when such distribution commences):

(a) The distribution by the Plan is one which would not have disqualified such Plan under Code Section 401 (a)(9) as in effect prior to amendment by the Deficit Reduction Act of 1984.

(b) The distribution is in accordance with a method of distribution designated by the Employee whose interest in the Plan is being distributed or, if the Employee is deceased, by a Beneficiary of such Employee.

(c) Such designation was in writing, was signed by the Employee or the Beneficiary, and was made before January 1, 1984.

(d) The Employee had accrued a benefit under the Plan as of December 31, 1983.

(e) The method of distribution designated by the Employee or the Beneficiary specifies the time at which distribution will commence, the period over which distributions will be made, and in the case of any distribution upon the Employee's death, the beneficiaries of the Employee listed in order of priority.

(2) A distribution upon death will not be covered by this transitional rule unless the information in the designation contains the required information described above with respect to the distributions to be made upon the death of the Employee.

(3) For any distribution which commences before January 1, 1984, but continues after December 31, 1983, the Employee, or the Beneficiary, to whom such distribution is being made, will be presumed to have designated the method of distribution under which the distribution is being made if the method of distribution was specified in writing and the distribution satisfies the requirements in Paragraphs (I)(1)(a) and (e).

(4) If a designation is revoked any subsequent distribution must satisfy the requirements of Code Section 401(a)(9) and the Treasury Regulations there-

under. If a designation is revoked subsequent to the date distributions are required to begin, the Plan must distribute by the end of the calendar year following the calendar year in which the revocation occurs the total amount not yet distributed which would have been required to have been distributed to satisfy Code Section 401(a)(9) and the Treasury Regulations thereunder, but for the Section 242(b)(2) election. For calendar years beginning after December 31, 1988, such distributions must meet the minimum distribution incidental benefit requirements. Any changes in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another Beneficiary (one not named in the designation) under the designation will not be considered to be a revocation of the designation, so long as such substitution or addition does not alter the period over which distributions are to be made under the designation, directly or indirectly (for example, by altering the relevant measuring life).

(5) In the case in which an amount is transferred or rolled over from one Plan to another Plan, the rules in Code Section 1.401(a)(9)-8, Q&A-14 and Q&A-15 of the Treasury Regulations shall apply.

(J) Transition Rules.

(1) Election to Apply the Final Regulations Under Code Section 401(a)(9) for the 2002 Distribution Calendar Year. Except as provided in Paragraph (J)(2), if applicable, the provisions of this Section apply for purposes of determining minimum required distributions for the 2002 distribution calendar year that are made on or after the date specified by the Employer in the adoption agreement. If any minimum required distributions were made in 2002, the transition rule described in Section 1.2 of Model Amendment 2 in Rev. Proc. 2002-29, 2002-1 C.B. 1176, also applies.

(2) Alternative Compliance with Certain Annuity Requirements in 2003, 2004 and 2005. F-3 and F-3A of Section 1.401(a)(9)-1 of the 1987 proposed Treasury Regulations, A-1 of Section 1.401(a)(9)-6 of the 2001 proposed Treasury Regulations, Section 1.401(a)(9)-6T of the temporary Treasury Regulations, or a reasonable and good faith interpretation of the requirements of Code Section 401(a)(9) (as elected by the Employer) apply in lieu of the requirements of Paragraphs (C), (D) and (E) of this Section for purposes of determining minimum required distributions for calendar years 2003, 2004, 2005, or (if the Employer has made the election in Paragraph (J)(1)) 2002.

(K) Notwithstanding the other provisions of this Section 4.07, a Participant who would have been required to receive required minimum distributions for 2009 but for the enactment of Code Section 401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2009 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectan-

cy) of the Participant, the joint lives (or joint life expectancy) of the Participant, or for a period of at least 10 years ("Extended 2009 RMDs"), will not receive those distributions for 2009 unless the Participant chooses to receive such distributions. Participants described in the preceding sentence will be given the opportunity to elect to receive the distributions described in the preceding sentence. In addition, notwithstanding Section 4.10 of the Plan, and solely for purposes of applying the direct rollover provisions of the Plan, a direct rollover will be offered for 2009 RMDs, Extended 2009 RMDs and distributions that would be eligible rollover distributions without regard to Code Section 401 (a)(9)(H), and will be treated as eligible rollover distributions.

#### 4.08 Qualified Joint and Survivor Annuity and Qualified Pre-retirement Survivor Annuity.

(A) The provisions of this Section 4.08 shall apply to any Participant who is credited with at least one Hour of Service with the Employer on or after August 23, 1984, and such other Participants as provided in Paragraph (F).

(B) Qualified Joint and Survivor Annuity.

(1) Unless an optional form of benefit is selected pursuant to a qualified election within the 180 day period ending on the annuity starting date, a married Participant's Vested accrued benefit will be paid in the form of a Qualified Joint and Survivor Annuity and an unmarried Participant's Vested accrued benefit will be paid in the normal form of an immediate life annuity. The Participant may elect to have such annuity distributed upon attainment of the earliest retirement age under the Plan.

(C) Qualified Optional Survivor Annuity.

(1) If a married Participant elects, within the election period pursuant to a qualified election, to waive the Qualified Joint and Survivor Annuity, the Participant may elect a Qualified Optional Survivor Annuity.

(D) Qualified Pre-Retirement Survivor Annuity.

(1) Unless an optional form of benefit has been selected within the election period pursuant to a qualified election, if a Participant dies after the earliest retirement age, the Participant's surviving Eligible Spouse, if any, will receive the same benefit that would be payable if the Participant had retired with an immediate Qualified Joint and Survivor Annuity on the day before the Participant's date of death.

The surviving Eligible Spouse may elect to commence payment under such annuity within a reasonable period after the Participant's death. The actuarial value of benefits which commence later than the date on which payments would

have been made to the surviving Eligible Spouse under a Qualified Joint and Survivor Annuity in accordance with this provision shall be adjusted to reflect the delayed payment.

(2) Unless an optional form of benefit is selected within the election period pursuant to a qualified election, if a Participant dies on or before the earliest retirement age, the Participant's surviving Eligible Spouse (if any) will receive the same benefit that would be payable if the Participant had:

- (a) separated from service on the date of death (or date of separation from service, if earlier),
- (b) survived to the earliest retirement age,
- (c) retired with an immediate Qualified Joint and Survivor Annuity at the earliest retirement age, and
- (d) died on the day after the earliest retirement age.

(3) For purposes of Paragraph (C)(2), and subject to the provisions of Section 4.07 of the Plan, a surviving Eligible Spouse will begin, with the Eligible Spouse's consent, to receive payments at the earliest retirement age. Benefits commencing after the earliest retirement age will be the actuarial equivalent of the benefit to which the surviving Eligible Spouse would have been entitled if benefits had commenced at the earliest retirement age under an immediate Qualified Joint and Survivor Annuity in accordance with Paragraph (C)(2).

(4) For the purposes of this Paragraph (C), the benefit payable to the surviving Eligible Spouse shall be attributable to Employee contribution in the same proportion as the total accrued benefit derived from Employee contributions is to the accrued benefit of the Participant.

(E) Definitions.

(1) "Election period." The period which begins on the first day of the Plan Year in which the Participant attains age 35 and ends on the date of the Participant's death. If a Participant separates from service prior to the first day of the Plan Year in which age 35 is attained, with respect to the benefits accrued prior to separation, the election period shall begin on the date of separation.

Pre-age 35 waiver. A Participant who will not yet attain age 35 as of the end of any current Plan Year may make a special qualified election to waive the Qualified Pre-Retirement Survivor Annuity for the period beginning on the date of such election and ending on the first day of the Plan Year in which the Participant will attain age 35. Such election shall not be valid unless the Participant re-

ceives a written explanation of the Qualified Pre-Retirement Survivor Annuity in such terms as are comparable to the explanation required under Paragraph (E)(1). Qualified Pre-Retirement Survivor Annuity coverage will be automatically reinstated as of the first day of the Plan Year in which the Participant attains age 35. Any new waiver on or after such date shall be subject to the full requirements of Section 4.08.

(2) “Earliest retirement age.” The earliest date on which, under the Plan, the Participant could elect to receive retirement benefits.

(3) “Qualified election.” A waiver of a Qualified Joint and Survivor Annuity or a Qualified Pre-Retirement Survivor Annuity. Any waiver of a Qualified Joint and Survivor Annuity or a Qualified Pre-Retirement Survivor Annuity shall not be effective unless: (a) the Participant's Eligible Spouse consents in writing to the election; (b) the election designates a specific Beneficiary including any class of Beneficiaries or any contingent Beneficiaries, which may not be changed without spousal consent (or the Eligible Spouse expressly permits designations by the Participant without any further spousal consent); (c) the Eligible Spouse's consent acknowledges the effect of the election; and (d) the Eligible Spouse's consent is witnessed by a Plan representative or notary public. Additionally, a Participant's waiver of the Qualified Joint and Survivor Annuity shall not be effective unless the election designates a form of benefit payment which may not be changed without spousal consent (or the Eligible Spouse expressly permits designations by the Participant without any further spousal consent). If it is established to the satisfaction of a Plan representative that there is no Eligible Spouse or that the spouse cannot be located, a waiver will be deemed a qualified election.

Any consent by an Eligible Spouse obtained under this provision (or establishment that the consent of a spouse may not be obtained) shall be effective only with respect to such spouse. A consent that permits designations by the Participant without any requirement of further consent by such spouse must acknowledge that the spouse has the right to limit consent to a specific Beneficiary, and a specific form of benefit where applicable, and that the spouse voluntarily elects to relinquish either or both of such rights. A revocation of a prior waiver may be made by a Participant without the consent of the spouse at any time before the commencement of benefits. The number of revocations shall not be limited. No consent obtained under this provision shall be valid unless the Participant has received notice as provided in Paragraph (E) below.

(4) “Qualified Joint and Survivor Annuity.” An immediate annuity for the life of the Participant with a survivor annuity for the life of the spouse which is not less than 50% and not more than 100% of the amount of the annuity which is payable during the joint lives of the Participant and the Eligible Spouse and

which is the actuarial equivalent of the normal form of benefit, or if greater, any optional form of benefit, and is further defined in Section 4.03.

(5) “Qualified Optional Survivor Annuity.” An immediate annuity for the life of the Participant with a survivor annuity for the life of the Eligible Spouse which is not less than 75% and not more than 100% of the amount of the annuity which is payable during the joint lives of the Participant and the Eligible Spouse and which is the actuarial equivalent of the normal form of benefit, or if greater, any optional form of benefit, and is further defined in Section 4.03.

(6) “Eligible Spouse.” The spouse or surviving spouse of the Participant as defined in Section 1.11, provided that a former spouse will be treated as the spouse or surviving spouse and a current spouse will not be treated as the spouse or surviving spouse to the extent provided under a qualified domestic relations order as described in Code Section 414(p).

(7) “Annuity starting date.” The first day of the first period for which an amount is paid as an annuity or any other form.

The annuity starting date for disability benefits shall be the date such benefits commence if the disability benefit is not an auxiliary benefit. An auxiliary benefit is a disability benefit which does not reduce the benefit payable at Normal Retirement Age.

(8) “Vested accrued benefit.” The value of the Participant's Vested accrued benefit derived from Employer and Employee contributions (including roll-overs). The provisions of this Section 4.08 shall apply to a Participant who is Vested in amounts attributable to Employer contributions, Employee contributions (or both) at the time of death or distribution.

(F) Notice Requirements.

(1) In the case of a Qualified Joint and Survivor Annuity, the Contract Administrator shall no less than 30 days and no more than 180 days prior to the annuity starting date provide each Participant a written explanation of: (a) the terms and conditions of a Qualified Joint and Survivor Annuity and Qualified Optional Survivor Annuity; (b) the Participant's right to make and the effect of an election to waive the Qualified Joint and Survivor Annuity form of benefit; (c) the rights of a Participant's Eligible Spouse; (d) the right to make, and the effect of, a revocation of a previous election to waive the Qualified Joint and Survivor Annuity; and (e) the relative values of the various optional forms of benefit under the Plan. The written explanation shall comply with the requirements of Treasury Regulation Section 1.417(a)(3)-1.

The annuity starting date for a distribution in a form other than a Qualified Joint and Survivor Annuity may be less than 30 days after receipt of the written explanation described in the preceding paragraph provided: (a) the Participant has been provided with information that clearly indicates that the Participant has at least 30 days to consider whether to waive the Qualified Joint and Survivor Annuity and elect (with spousal consent) to a form of distribution other than a Qualified Joint and Survivor Annuity; (b) the Participant is permitted to revoke any affirmative distribution election at least until the annuity starting date or, if later, at any time prior to the expiration of the 7-day period that begins the day after the explanation of the Qualified Joint and Survivor Annuity is provided to the Participant; and (c) the annuity starting date is a date after the date that the written explanation was provided to the Participant. The written explanation shall comply with the requirements of Treasury Regulation Section 1.417(a)(3)-1.

(2) In the case of a Qualified Pre-Retirement Survivor Annuity as described in Paragraph 4.08(C), the Contract Administrator shall provide each Participant within the applicable period for such Participant a written explanation of the Qualified Pre-Retirement Survivor Annuity in such terms and in such manner as would be comparable to the explanation provided for meeting the requirements of Paragraph (E)(1) applicable to a Qualified Joint and Survivor Annuity.

The applicable period for a Participant is whichever of the following periods ends last: (a) the period beginning with the first day of the Plan Year in which the Participant attains age 32 and ending with the close of the Plan Year preceding the Plan Year in which the Participant attains age 35; (b) a reasonable period ending after the individual becomes a Participant; (c) a reasonable period ending after Paragraph (E)(3) ceases to apply to the Participant; (d) a reasonable period ending after this Section 4.08 first applies to the Participant. Notwithstanding the foregoing, notice must be provided within a reasonable period ending after separation from service in the case of a Participant who separates from service before attaining age 35.

For purposes of applying the preceding paragraph, a reasonable period ending after the enumerated events described in (b), (c) and (d) is the end of the two-year period beginning one year prior to the date the applicable event occurs, and ending one year after that date. In the case of a Participant who separates from service before the Plan Year in which age 35 is attained, notice shall be provided within the two-year period beginning one year prior to separation and ending one year after separation. If such a Participant thereafter returns to employment with the Employer, the applicable period for such Participant shall be re-determined.

(3) Notwithstanding the other requirements of this Paragraph (E), the respective notices prescribed by this Paragraph (E) need not be given to a Participant

pant if: (a) the Plan “fully subsidizes” the costs of a Qualified Joint and Survivor Annuity or Qualified Pre-Retirement Survivor Annuity, and (b) the Plan does not allow the Participant to waive the Qualified Joint and Survivor Annuity or Qualified Pre-Retirement Survivor Annuity and does not allow a married Participant to designate a non-Spouse Beneficiary. For purposes of this Paragraph (E)(3), a plan fully subsidizes the costs of a benefit if no increase in cost, or decrease in benefits to the Participant may result from the Participant's failure to elect another benefit. Prior to the time the Plan allows the Participant to waive the Qualified Pre-Retirement Survivor Annuity, the Plan may not charge the Participant for the cost of such benefit by reducing the Participant's benefits under the Plan or by any other method.

(4) The Participant must establish to the satisfaction of the Trustees that a consent to a rejection is not required because:

- (a) the Participant is not married;
- (b) the Eligible Spouse whose consent would be required cannot be located; or
- (c) consent of the Eligible Spouse cannot be obtained because of extenuating circumstances, as provided in IRS regulations.

(G) Retroactive Annuity Starting Date

(1) A retroactive annuity starting date shall mean an annuity starting date affirmatively elected by a Participant that occurs on or before the date the written explanation required in Paragraph (D)(1) of this Section is provided to the Participant. A Participant cannot elect a retroactive annuity starting date that precedes the date upon which the Participant could have otherwise started receiving benefits under the terms of the Plan in effect as of the retroactive annuity starting date. Future periodic payments with respect to a Participant who elects a retroactive annuity starting date must be the same as the future periodic payments, if any, that would have been paid with respect to the Participant had payments actually commenced on the retroactive annuity starting date.

The Participant must receive a make-up payment to reflect any missed payment or payments for the period from the retroactive annuity starting date to the date of the actual make-up payment, adjusted for interest from the date the missed payment(s) would have been made to the date of the actual make-up payment. Annuity payments that otherwise satisfy the requirements of a Qualified Joint and Survivor Annuity under Paragraph (B)(4) of this Section will not fail to be treated as a Qualified Joint and Survivor Annuity for purposes of Paragraph (B) because a retroactive annuity starting date is elected and a make-up payment is made.

(2) The Participant's Eligible Spouse (including an alternate payee who is treated as a Eligible Spouse under a Qualified Domestic Relation Order as described in Code Section 414(p)), determined as if the date distributions commence were the Participant's annuity starting date, shall consent to the distribution in a manner that would satisfy the requirements of Paragraph (D) of this Section. The Eligible Spousal consent requirement of this Paragraph (E)(2) does not apply if the amount of such Eligible Spouse's survivor annuity payments under the retroactive annuity starting date election is no less than the amount that the survivor payments to such Eligible Spouse would have been under an optional form of benefit that would satisfy the requirements to be a Qualified Joint and Survivor Annuity under Paragraph (D)(4) of this Section and that has an annuity starting date after the date the explanation required by Paragraph (E) of this Section was provided.

If the Participant's Eligible Spouse as of the retroactive annuity starting date would not be the Participant's Eligible Spouse determined as if the date distributions commence was the Participant's annuity starting date, consent of that former Eligible Spouse is not needed to waive the Qualified Joint and Survivor Annuity with respect to the retroactive annuity starting date, unless otherwise provided under a qualified domestic relations order as described in Code Section 414(p).

(3) The written explanation required by Paragraph (E) shall be provided no less than 30 days and no more than 180 days (90 days for notices given in Plan years beginning before January 1, 2007) before the date of the first payment of benefits pursuant to the retroactive annuity starting date, and the election to receive the distribution shall be made after the written explanation is provided and on or before the date of the first payment.

(4) When the date the distribution commences is substituted for the annuity starting date for all purposes (including for purposes of determining the applicable interest of the Plan and the applicable mortality table under Section 1.02 of the Plan), the distribution (including interest adjustments) must satisfy the requirements of Section 5.01. However, if the date the distribution commences is 12 months or less from the retroactive annuity starting date and the form of the benefit would have been excepted from Code Section 417(e)(3) if the distribution had actually commenced on the retroactive annuity starting date, the requirement to apply Section 5.01 as of the date the distribution commences does not apply. The benefit determined as of the retroactive annuity starting date must satisfy the requirements of Section 5.01 with the applicable interest rate and the applicable mortality table determined as of that date.

In the case of a form of benefit that would have been subject to Code Section 417(e)(3) if distributions had commenced as of the retroactive annuity starting date, the distribution shall be not less than the benefit produced by applying

the applicable interest rate under Section 1.02 and the applicable mortality table under Section 1.02 determined as of the date the distribution actually commences to the annuity form that corresponds to the annuity form that was used to determine the benefit amount as of the retroactive annuity starting date. The benefit determined as of the retroactive annuity starting date must satisfy the requirements of Code Section 417(e)(3) with the applicable interest rate and the applicable mortality table determined as of that date.

(H)      Transitional Rules.

(1)      Any living Participant not receiving benefits on August 23, 1984, who would otherwise not receive the benefits prescribed by the previous Paragraphs of this Section 4.08 must be given the opportunity to elect to have the prior provisions of this Section 4.08 apply if such Participant is credited with at least one Hour of Service under this Plan or a predecessor plan in a Plan Year beginning on or after January 1, 1976, and such Participant had at least 10 Years of Service for Vesting when he/she separated from service.

(2)      Any living Participant not receiving benefits on August 23, 1984, who was credited with at least one Hour of Service under this Plan or a predecessor plan on or after September 2, 1974, and who is not otherwise credited with any service in a Plan Year beginning on or after January 1, 1976, must be given the opportunity to have his/her or her benefits paid in accordance with Paragraph (G)(4).

(3)      The respective opportunities to elect (as described in Paragraphs (G)(1) and (2) above) must be afforded to the appropriate Participants during the period commencing on August 23, 1984, and ending on the date benefits would otherwise commence to said Participants.

(4)      Any Participant who has elected pursuant to Paragraph (G)(2) and any Participant who does not elect under Paragraph (G)(1) or who meets the requirements of Paragraph (G)(1) except that such Participant does not have at least 10 Years of Service for Vesting when he/she separates from service, shall have his/her or her benefits distributed in accordance with all of the following requirements if benefits would have been payable in the form of a life annuity.

(a)      Automatic joint and survivor annuity. If benefits in the form of a life annuity become payable to a married Participant who:

(i)      begins to receive payments under the Plan on or after Normal Retirement Age; or

(ii)      dies on or after Normal Retirement Age while still working for the Employer; or

(iii) begins to receive payments on or after the qualified early retirement age; or

(iv) separates from service on or after attaining Normal Retirement Age (or the qualified early retirement age) and after satisfying the eligibility requirements for the payment of benefits under the Plan and thereafter dies before beginning to receive such benefits; then such benefits will be received under this Plan in the form of a Qualified Joint and Survivor Annuity, unless the Participant has elected otherwise during the election period. The election period must begin at least 6 months before the Participant attains qualified early retirement age and end not more than 90 days before the commencement of benefits. Any election hereunder will be in writing and may be changed by the Participant at any time.

(b) Election of early survivor annuity. A Participant, who is employed after attaining the qualified early retirement age will be given the opportunity to elect, during the election period, to have a survivor annuity payable on death. If the Participant elects the survivor annuity, payments under such annuity must not be less than the payments which would have been made to the Eligible Spouse under the Qualified Joint and Survivor Annuity if the Participant had retired on the day before his/her or her death. Any election under this provision will be in writing and may be changed by the Participant at any time. The election period begins on the later of: (i) the 90th day before the Participant attains the qualified early retirement age, or (ii) the date on which participation begins, and ends on the date the Participant terminates employment.

(c) For purposes of this Paragraph (f)(iv), qualified early retirement age is the latest of:

(i) the earliest date, under the Plan, on which the Participant may elect to receive retirement benefits,

(ii) the first day of the 120th month beginning before the Participant reaches Normal Retirement Age, or

(iii) the date the Participant begins participation.

#### 4.09 Qualified Domestic Relations Orders.

(A) Notwithstanding any other provisions of Section 4, any Accrued Benefit of a Participant may be apportioned between the Participant and the alternate payee (as defined in Code Section 414(p)(8)) by providing the alternate payee a percentage or specific amount of the Participant's Accrued Benefit. The Contract Administrator may direct

distributions to an alternate payee pursuant to a qualified domestic relations order as defined in Code Section 414(p)(1)(A) on or after the date on which the Participant attains the earliest retirement age, provided that the Contract Administrator has properly notified the affected Participant and each alternate payee of the order and has determined that the order is a qualified domestic relations order as defined in Code Section 414(p)(1)(A). The alternate payee shall be paid the present value (using the actuarial assumptions contained in the Plan) of his/her specific amount or his/her percentage of the Participant's Accrued Benefit in a lump-sum payment notwithstanding the value of such lump-sum payment unless the domestic relations order specifies a different manner of payment permitted by the Plan; the alternate payee shall not be required to consent to such lump-sum payment. The Board of Trustees shall adopt reasonable procedures to determine the qualified status of domestic relations orders and to administer the distributions thereunder.

(B) Any rights of a former Eligible 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 Eligible Spouse of the Participant.

(C) The Fund shall be entitled to rely on written representations, consents, and revocations submitted by Participants, Eligible Spouses or other parties in making determinations and, unless such reliance is arbitrary or capricious, the Fund's determinations shall be final and binding and shall discharge the Fund 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 for duplicate benefits with respect to the same Participant, or for surviving Eligible Spouse benefits in excess of the actuarial present value of the benefits, determined as of the Effective Date of Benefits of the Participant's pension or, if earlier, the date of the Participant's death.

4.10 Direct Rollovers. Notwithstanding any other provision of the Plan, for distributions made after December 31, 2001 the Contract Administrator shall advise any distributee entitled to receive an eligible rollover distribution, at the same time as the notice required to be given pursuant to Section 4 (or such other time as is permitted by law) of his/her right to elect a direct rollover to an eligible retirement plan, pursuant to the provisions of this Section. To elect a direct rollover the distributee must request in writing to the Contract Administrator that all or a specified portion of the eligible rollover distribution be transferred directly to an eligible retirement plan.

The distributee shall not be entitled to elect a direct rollover pursuant to this Section unless he/she has obtained a waiver of any applicable Qualified Joint and Survivor Annuity, as required pursuant to Section 4.08.

For purposes of this Section, the following definitions shall apply:

(A) A "direct rollover" is a payment by the Plan to the eligible retirement plan specified by the distributee.

(B) A "distributee" includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving Eligible Spouse and the Employee's (or former Employee's) Eligible Spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p), are distributees with regard to the interest of the Eligible Spouse or former spouse. A distributee also includes the Participant's non-spouse designated Beneficiary. In the case of a non-spouse Beneficiary, the direct rollover may be made only to an individual retirement account or annuity described in Code Section 408(a) or 408(b) that is established on behalf of the designated Beneficiary and that will be treated as an inherited individual retirement account pursuant to the provisions of Code Section 402(c)(11). Also, in this case, the determination of any required minimum distribution under Code Section 401(a)(9) that is ineligible for rollover shall be made in accordance with Notice 2007-7, Q&A 17 and 18, 2007-5 I.R.B. 395.

(C) An "eligible retirement plan" is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b) (other than an endowment contract), a qualified trust (an employees' trust) described in Code Section 401(a) which is exempt from tax under Code Section 501(a) and which agrees to separately account for amounts transferred into such plan from this Plan, an annuity plan described in Code Section 403(a), an eligible deferred compensation plan described in Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality thereof which agrees to separately account for amounts transferred into such plan from this Plan, and an annuity contract described in Code Section 403(b) that accepts the distributee's eligible rollover distribution. However, in the case of an "eligible rollover distribution" to the surviving Eligible Spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving Eligible Spouse, or to an Eligible Spouse or former Eligible Spouse who is the alternate payee under a qualified domestic relations order as defined in Code Section 414(p). The Contract Administrator may establish reasonable procedures for ascertaining that the eligible retirement plan meets the preceding requirements.

(D) "Eligible rollover distribution" is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated Beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); and the portion of any distribution that is not includable in gross income (determined without regard

to the exclusion for net unrealized appreciation with respect to employer securities); and any other distribution(s) that is reasonably expected to total less than \$200 during a year.

A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includable in gross income. However, such portion may be transferred only to: (1) an individual retirement account or annuity described in Code Section 408(a) or (b); (2) for taxable years beginning after December 31, 2001 and before January 1, 2007; to a qualified trust which is part of a defined contribution plan that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includable in gross income and the portion of such distribution which is not so includable; or (3) for taxable years beginning after December 31, 2006, to a qualified trust or to an annuity contract described in Code Section 403(b), if such trust or contract provides for separate accounting for amounts so transferred (including interest thereon), including separately accounting for the portion of such distribution which is includable in gross income and the portion of such distribution which is not so includable.

A Participant or Beneficiary (including a non-Spousal Beneficiary, to the extent permitted under the Plan) may roll over an eligible rollover distribution (as defined in Code Section 402(c)(4)) to a Roth IRA, provided the Participant (or Beneficiary) satisfies the requirements for making a Roth contribution under Code Section 408A(c)(3)(B). Any amounts rolled over to a Roth IRA will be included in gross income to the extent such amounts would have been included in gross income if not rolled over (as required under Code Section 408A(d)(3)(A)).

**4.11 Direct Rollovers on Behalf of Designated Non-Spousal Beneficiaries.** A deceased Participant's designated non-spousal Beneficiary, designated within the meaning of Code Section 401(a)(9)(E), shall be permitted to direct a trustee-to-trustee transfer of any portion of a distribution from this Plan to an individual retirement plan described in Code Section 408(a) or (b) that is established for purposes of receiving the distribution on behalf of the designated non-spousal Beneficiary. The direct trustee-to-trustee rollover must be made to an individual retirement account established on behalf of the designated non-spousal Beneficiary that will be treated as an inherited individual retirement account pursuant to the provisions of Code Section 402(c)(11). In order to be able to roll over the distribution, the distribution must otherwise satisfy the definition of an eligible rollover distribution (as defined in Code Section 402(c)(4)). In applying this Section, a non-Spouse rollover will be subject to the direct rollover requirements under Code Section 401(a)(31), the rollover notice requirements under Code Section 402(f), and the mandatory withholding requirements under Code Section 3405(c).

**4.12 Incompetence or Incapacity of a Pensioner.** In the event it is determined that any Participant or Beneficiary is unable to care for his or her affairs because of mental or physical incapacity, the Trustees may pay the benefits due to such Participant or Beneficiary to his or her 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 discre-

tion, 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 or her interest, the Trustees may pay the benefits due to the Participant or Beneficiary to the residential health care facility in which he or she 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 the Participant or Beneficiary's 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 Fund to any part of the Participant or Beneficiary's Pension benefit or any other assets of the 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 or her care and maintenance.

## **SECTION 5: LIMITATION ON CONTRIBUTIONS AND BENEFITS**

### 5.01 Limitation on Benefits

(A) The limitations of this Section shall apply in limitation years beginning on or after July 1, 2007, except as otherwise provided herein.

(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) If the Participant is, or has ever been, a Participant in another qualified defined benefit plan (without regard to whether the plan has been terminated) maintained by the Employer or a predecessor Employer, the sum of the Participant's annual benefits from all such plans may not exceed the maximum permissible benefit.

(D) The application of the provisions of this Section shall not cause the maximum permissible benefit for any Participant to be less than the Participant's accrued benefit under all the defined benefit plans of the Employer or a predecessor Employer as of the end of the last limitation year beginning before July 1, 2007 under provisions of the plans that were both adopted and in effect before April 5, 2007. The preceding sentence applies only if the provisions of such defined benefit plans that were both adopted and in effect before April 5, 2007 satisfied the applicable requirements of statutory provisions, regulations, and other published guidance relating to Code Section 415 in effect as of the end of the last limitation year beginning before July 1, 2007, as described in Section 1.415(a)-1(g)(4) of the Treasury Regulations.

(E) The limitations of this Section shall be determined and applied taking into account the rules in Paragraph (G).

(F) Definitions.

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

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

The determination of the annual benefit shall take into account social security supplements described in Code Section 411(a)(9) and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant Section 1.411(d)-4, Q&A-3(c), of the Treasury Regulations, but shall disregard benefits attributable to Employee contributions or rollover contributions.

Effective for distributions in Plan Years beginning after December 31, 2003, the determination of Actuarial Equivalence of forms of benefit other than a straight life annuity shall be made in accordance with Paragraphs (F)(1)(a) or (F)(1)(b).

(a) Benefit Forms Not Subject to Code Section 417(e)(3): The straight life annuity that is actuarially equivalent to the Participant's form of benefit shall be determined under this Paragraph (F)(1)(a) if the form of the Participant's benefit is either (1) a nondecreasing annuity (other than a straight life annuity) payable for a period of not less than the life of the Participant (or, in the case of a Qualified Pre-Retirement Survivor Annuity, the life of the surviving spouse), or (2) an annuity that decreases during the life of the Participant merely because of (a) the death of the survivor annuitant (but only if the reduction is not below 50% of the benefit payable before the death of the survivor annuitant), or (b) the cessation or reduction of Social Security supplements or qualified disability payments (as defined in Code Section 401(a)(11)).

(i) Limitation Years Beginning Before July 1, 2007. For limitation years beginning before July 1, 2007, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit computed using whichever of the following produces the greater annual amount: (I) the interest rate specified in Section 1.02 of the Plan and the mortality table (or other tabular factor) specified in Section 1.02 of the Plan for adjusting benefits in the same form; and (II) a 5 percent interest rate assumption and the applicable mortality table defined in Section 1.02 of the Plan for that annuity starting date.

(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 (1) the annual amount of the straight life annuity (if any) payable to the Participant under the Plan commencing at the same annuity starting date as the Participant's form of benefit; and (2) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using a 5 percent interest rate assumption and the applicable mortality table defined in Section 1.02 of the Plan for that annuity starting date.

(b) Benefit Forms Subject to Code Section 417(e)(3): The straight life annuity that is actuarially equivalent to the Participant's form of benefit shall be determined under this Section if the form of the Participant's benefit is other than a benefit form described in Paragraph (F)(1)(a). In this case, the actuarially equivalent straight life annuity shall be determined as follows:

(i) Annuity Starting Date in Plan Years Beginning After 2005. If the annuity starting date of the Participant's form of benefit is in a Plan Year beginning after 2005, the actuarially equivalent straight life annuity is equal to the greatest of (I) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using the interest rate specified in Section 1.02 of the Plan and the mortality table (or other tabular factor) specified in Section 1.02 of the Plan for adjusting benefits in the same form; (II) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using a 5.5 percent interest rate assumption and the applicable mortality table defined in Section 1.02 of the Plan; and (III) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using the applicable interest rate defined in Section 1.02 of the Plan and the applicable mortality table defined in Section 1.02 of the Plan, divided by 1.05.

(ii) Annuity Starting Date in Plan Years Beginning in 2004 or 2005. If the annuity starting date of the Participant's form of benefit is in a Plan Year beginning in 2004 or 2005, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Participant's form of benefit, computed using whichever of the following produces the greater annual amount: (I) the interest rate specified in Section 1.02 of the Plan and the mortality table (or other tabular factor) specified in Section 1.02 of the Plan for adjusting benefits in the same form; and (II) a 5.5 percent interest rate assumption and the applicable mortality table defined in Section 1.02 of the Plan.

If the annuity starting date of the Participant's benefit is on or after the first day of the first Plan Year beginning in 2004 and before December 31, 2004, the application of this Paragraph (F)(1)(b)(ii) shall not cause the amount payable under the Participant's form of benefit to be less than the benefit calculated under the Plan, taking into account the limitations of this Section, except that the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as

the Participant's form of benefit, computed using whichever of the following produces the greatest annual amount:

(I) the interest rate specified in Section 1.02 of the Plan and the mortality table (or other tabular factor) specified in Section 1.02 of the Plan for adjusting benefits in the same form;

(II) the applicable interest rate defined in Section 1.02 of the Plan and the applicable mortality table defined in Section 1.02 of the Plan; and

(III) the applicable interest rate defined in Section 1.02 of the Plan (as in effect on the last day of the last Plan Year beginning before January 1, 2004, under provisions of the Plan then adopted and in effect) and the applicable mortality table defined in Section 1.02 of the Plan.

(2) Compensation: Compensation shall mean one of the following:

(a) Information Required To Be Reported Under Code Sections 6041, 6051, And 6052 (wages, tips, and other compensation as reported on Form W-2). Compensation is defined as wages, within the meaning of Code Section 3401(a), and all other payments of compensation to an Employee by the Employer (in the course of the Employer's trade or business) for which the Employer is required to furnish the Employee a written statement under Code Sections 6041(d), 6051(a)(3), and 6052. Compensation shall be determined without regard to any rules under Code Section 3401(a) 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 Code Section 3401(a)(2)).

(b) Code Section 3401(a) Wages. Compensation is defined as wages within the meaning of Code Section 3401(a) for the purposes of income tax withholding at the source but determined without regard to 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 Code Section 3401 (a)(2)).

(c) 415 Safe-Harbor Compensation. Compensation is defined as wages, salaries, and fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer maintaining the Plan to the extent that the amounts are in-

cludible in gross income (including, but not limited to, commissions paid salespersons, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements, or other expense allowances under a nonaccountable plan (as described in Section 1.62-2(c) of the Treasury Regulations), and excluding the following:

- (i) Employer contributions (other than elective contributions described in 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 Code Section 408(k) or a simple retirement account described in Code Section 408(p), and whether or not qualified) to the extent such contributions are not includible in the Employee's gross income for the taxable year in which contributed, and any distributions (whether or not includible in gross income when distributed) from a plan of deferred compensation (whether or not qualified)
- (ii) Amounts realized from the exercise of a nonstatutory stock option (that is, an option other than a statutory stock option as defined in Section 1.421-1(b) of the Treasury Regulations), or when restricted stock (or property) held by the Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;
- (iii) Amounts realized from the sale, exchange or other disposition of stock acquired under a statutory stock option;
- (iv) 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 Code Section 125);
- (v) Other items of remuneration that are similar to any of the items listed in (i) through (iv).

(d) For any self-employed individual, Compensation shall mean earned income.

(e) Except as provided herein, for limitation years beginning after December 31, 1991, compensation for a limitation year is the compensation actually paid or made available during such limitation year. Compensation for a limitation year shall include amounts earned but not paid during the limitation year solely because of the timing of pay periods

and pay dates, provided the amounts are paid during the first few weeks of the next limitation year, the amounts are included on a uniform and consistent basis with respect to all similarly situated Employees, and no compensation is included in more than one limitation year.

(f) For limitation years beginning on or after July 1, 2007, compensation for a limitation year shall also include compensation paid by the later of 2½ months after an Employee's severance from employment with the Employer maintaining the Plan or the end of the limitation year that includes the date of the Employee's severance from employment with the Employer maintaining the Plan, if:

(i) 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, absent a severance from employment, the payments would have been paid to the Employee while the Employee continued in employment with the Employer,

(ii) the payment is for unused accrued bona fide sick, vacation or other leave that the Employee would have been able to use if employment had continued; or

(iii) the payment is received by the Employee pursuant to a nonqualified unfunded deferred compensation plan and would have been paid at the same time if employment had continued, but only to the extent includable in gross income.

(g) Any payments not described above shall not be considered compensation if paid after severance from employment, even if they are paid by the later of 2½ months after the date of severance from employment or the end of the limitation year that includes the date of severance from employment, except, (a) payments to an individual who does not currently perform services for the Employer by reason of qualified military service (within the meaning of Code Section 414(u)(1)) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service; or (b) compensation paid to a Participant who is permanently and totally disabled, as defined in Code Section 22(e)(3), provided salary continuation applies to all Participants who are permanently and totally disabled for a fixed or determinable period, or the Participant was not a highly compensated Employee, as defined in Code Section 414(q), immediately before becoming disabled.

(h) Back pay, within the meaning of Section 1.415(c)-2(g)(8) of the Treasury Regulations, shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

(i) For limitation years beginning after December 31, 1997, compensation paid or made available during such limitation year shall include amounts that would otherwise be included in Compensation but for an election under Code Sections 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b).

(j) For limitation years beginning after December 31, 2000, Compensation shall also include any elective amounts that are not includable in the gross income of the Employee by reason of Code Section 132(f)(4).

(k) For limitation years beginning after December 31, 2001, Compensation shall also include deemed Code Section 125 compensation. Deemed Code Section 125 compensation is an amount that is excludable under Code Section 106 that is not available to a Participant in cash in lieu of group health coverage under a Code Section 125 arrangement solely because the Participant is unable to certify that he or she has other health coverage. Amounts are deemed Code Section 125 compensation only if the Employer does not request or otherwise collect information regarding the Participant's other health coverage as part of the enrollment process for the health plan.

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

(3) Defined Benefit Compensation Limitation: 100 percent of a Participant's high three-year average compensation, payable in the form of a straight life annuity.

(a) In the case of a Participant who has had a severance from employment with the Employer, the defined benefit compensation limitation applicable to the Participant in any limitation year beginning after the date of severance shall be automatically adjusted by multiplying the limitation applicable to the Participant in the prior limitation year by the annual adjustment factor under Code Section 415(d) that is published in the Internal Revenue Bulletin. The adjusted compensation limit shall

apply to limitation years ending with or within the calendar year of the date of the adjustment, but a Participant's benefits shall not reflect the adjusted limit prior to January 1 of that calendar year.

(b) In the case of a Participant who is rehired after a severance from employment, the defined benefit compensation limitation is the greater of 100 percent of the Participant's high three-year average compensation, as determined prior to the severance from employment, as adjusted pursuant to the preceding paragraph, if applicable; or 100 percent of the Participant's high three-year average compensation, as determined after the severance from employment under Paragraph (F)(7).

(4) Defined Benefit Dollar Limitation: effective for limitation years ending after December 31, 2001, the defined benefit dollar limitation is \$160,000, automatically adjusted under Code Section 415(d), effective January 1 of each year, as published in the Internal Revenue Bulletin, and payable in the form of a straight life annuity. The new limitation shall apply to limitation years ending with or within the calendar year of the date of the adjustment, but a Participant's benefits shall not reflect the adjusted limit prior to January 1 of that calendar year. The automatic annual adjustment of the defined benefit dollar limitation under Code Section 415(d) shall apply to Participants who have had a separation from employment.

(5) Employer: For purposes of this Section, Employer shall mean the Employer that participates in this Plan, and all members of a controlled group of corporations, as defined in Code Section 414(b), as modified by Code Section 415(h), all commonly controlled trades or businesses (as defined in Code Section 414(c), as modified, except in the case of a brother-sister group of trades or businesses under common control, by Code Section 415(h)), or affiliated service groups (as defined in Code Section 414(m)) of which the adopting Employer is a part, and any other entity required to be aggregated with the Employer pursuant to Code Section 414(o).

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

(7) High Three-Year Average Compensation: The average compensation for the three consecutive years of service (or, if the Participant has less than three

consecutive years of service, the Participant's longest consecutive period of service, including fractions of years, but not less than one year) with the Employer that produces the highest average. A year of service with the Employer is the 12-consecutive month period. In the case of a Participant who is rehired by the Employer after a severance from employment, the Participant's high three-year average compensation shall be calculated by excluding all years for which the Participant performs no services for and receives no compensation from the Employer (the break period) and by treating the years immediately preceding and following the break period as consecutive. A Participant's compensation for a year of service shall not include compensation in excess of the limitation under Code Section 401(a)(17) that is in effect for the calendar year in which such year of service begins.

(8) Limitation Year: A calendar year. All qualified plans maintained by the Employer must use the same limitation year. If the limitation year is amended to a different 12-consecutive month period, the new limitation year must begin on a date within the limitation year in which the amendment is made.

(9) Maximum Permissible Benefit: The lesser of the defined benefit dollar limitation or the defined benefit compensation limitation (both adjusted where required, as provided below).

(a) Adjustment for Less than 10 Years of Participation or Service: If the Participant has less than 10 years of participation in the Plan, the defined benefit dollar limitation shall be multiplied by a fraction, (i) the numerator of which is the number of years (or part thereof, but not less than one year) of participation in the Plan, and (ii) the denominator of which is 10. In the case of a Participant who has less than ten years of service with the Employer, the defined benefit compensation limitation shall be multiplied by a fraction, (i) the numerator of which is the number of years (or part thereof, but not less than one year) of service with the Employer, and (ii) the denominator of which is 10.

(b) Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement Before Age 62 or after Age 65: Effective for benefits commencing in limitation years ending after December 31, 2001, the defined benefit dollar limitation shall be adjusted if the annuity starting date of the Participant's benefit is before age 62 or after age 65. If the annuity starting date is before age 62, the defined benefit dollar limitation shall be adjusted under Paragraph (F)(9)(b)(i), as modified by Paragraph (F)(9)(b)(iii). If the annuity starting date is after age 65, the defined benefit dollar limitation shall be adjusted under Paragraph (F)(9)(b)(ii), as modified by Paragraph (F)(9)(b)(iii).

(i) Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement Before age 62:

(I) Limitation Years Beginning Before July 1, 2007. If the annuity starting date for the Participant's benefit is prior to age 62 and occurs in a limitation year beginning before July 1, 2007, the defined benefit dollar limitation for the Participant's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Participant's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation (adjusted under Paragraph (F)(9)(a) for years of participation less than 10, if required) with Actuarial Equivalence computed using whichever of the following produces the smaller annual amount: (1) the interest rate specified in Section 1.02 of the Plan and the mortality table (or other tabular factor) specified in Section 1.02 of the Plan; or (2) a 5-percent interest rate assumption and the applicable mortality table as defined in Section 1.02 of the Plan.

(II) Limitation Years Beginning on or After July 1, 2007.

aa. Plan Does Not Have Immediately Commencing Straight Life Annuity Payable at Both Age 62 and the Age of Benefit Commencement. If the annuity starting date for the Participant's benefit is prior to age 62 and occurs in a limitation year beginning on or after July 1, 2007, and the Plan does not have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the defined benefit dollar limitation for the Participant's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Participant's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation (adjusted under Paragraph (F)(9)(a) for years of participation less than 10, if required) with Actuarial Equivalence computed using a 5 percent interest rate assumption and the applicable mortality table for the annuity starting date as defined in Section 1.02 of the Plan (and ex-

pressing the Participant's age based on completed calendar months as of the annuity starting date).

bb. Plan Has Immediately Commencing Straight Life Annuity Payable at Both Age 62 and the Age of Benefit Commencement: If the annuity starting date for the Participant's benefit is prior to age 62 and occurs in a limitation year beginning on or after July 1, 2007, and the Plan has an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the defined benefit dollar limitation for the Participant's annuity starting date is the lesser of the limitation determined under Paragraph (F)(9)(b)(i)II[AA] and the defined benefit dollar limitation (adjusted under Paragraph (F)(9)(a) for years of participation less than 10, if required) multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under the Plan at the Participant's annuity starting date to the annual amount of the immediately commencing straight life annuity under the Plan at age 62, both determined without applying the limitations of this Section.

(ii) Adjustment of defined benefit dollar limitation for Benefit Commencement After Age 65:

(I) Limitation Years Beginning Before July 1, 2007. If the annuity starting date for the Participant's benefit is after age 65 and occurs in a limitation year beginning before July 1, 2007, the defined benefit dollar limitation for the Participant's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Participant's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation (adjusted under Paragraph (F)(9)(a) for years of participation less than 10, if required) with Actuarial Equivalence computed using whichever of the following produces the smaller annual amount: (1) the interest rate specified in Section 1.02 of the Plan and the mortality table (or other tabular factor) specified in Section 1.02 of the Plan; or (2) a 5-percent interest rate assumption and the applicable mortality table as defined in Section 1.02 of the Plan.

(II) Limitation Years Beginning Before July 1, 2007.

a. Plan Does Not Have Immediately Commencing Straight Life Annuity Payable at Both Age 65 and the Age of Benefit Commencement. If the annuity starting date for the Participant's benefit is after age 65 and occurs in a limitation year beginning on or after July 1, 2007, and the Plan does not have an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the defined benefit dollar limitation at the Participant's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Participant's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation (adjusted under Paragraph (F)(9)(a) for years of participation less than 10, if required), with Actuarial Equivalence computed using a 5 percent interest rate assumption and the applicable mortality table for that annuity starting date as defined in Section 1.02 of the Plan (and expressing the Participant's age based on completed calendar months as of the annuity starting date).

b. Plan Has Immediately Commencing Straight Life Annuity Payable at Both Age 65 and the Age of Benefit Commencement. If the annuity starting date for the Participant's benefit is after age 65 and occurs in a limitation year beginning on or after July 1, 2007, and the Plan has an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the defined benefit dollar limitation at the Participant's annuity starting date is the lesser of the limitation determined under Paragraph (F)(9)(b)(ii)(II)[A] and the defined benefit dollar limitation (adjusted under Paragraph (F)(9)(a) for years of participation less than 10, if required) multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the Plan at the Participant's annuity starting date to the annual amount of the adjusted immediately commencing straight life annuity under the

Plan at age 65, both determined without applying the limitations of this Section. For this purpose, the adjusted immediately commencing straight life annuity under the Plan at the Participant's annuity starting date is the annual amount of such annuity payable to the Participant, computed disregarding the Participant's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing straight life annuity under the Plan at age 65 is the annual amount of such annuity that would be payable under the Plan to a hypothetical Participant who is age 65 and has the same accrued benefit as the Participant.

(iii) Notwithstanding the other requirements of this Paragraph (F)(9)(b), no adjustment shall be made to the defined benefit dollar limitation to reflect the probability of a Participant's death between the annuity starting date and age 62, or between age 65 and the annuity starting date, as applicable, if benefits are not forfeited upon the death of the Participant prior to the annuity starting date. To the extent benefits are forfeited upon death before the annuity starting date, such an adjustment shall be made. For this purpose, no forfeiture shall be treated as occurring upon the Participant's death if the Plan does not charge Participants for providing a qualified preretirement survivor annuity, as defined in Code Section 417(c), upon the Participant's death.

(c) Minimum Benefit Permitted: Notwithstanding anything else in this Section to the contrary, the benefit otherwise accrued or payable to a Participant under this Plan shall be deemed not to exceed the maximum permissible benefit if:

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

(ii) the Employer (or a predecessor Employer) has not at any time maintained a defined contribution plan in which the

Participant participated (for this purpose, mandatory Employee contributions under a defined benefit plan, individual medical accounts under Code Section 401(h), and accounts for postretirement medical benefits established under Code Section 419A(d)(1) are not considered a separate defined contribution plan).

(10) Predecessor Employer: If the Employer maintains a plan that provides a benefit which the Participant accrued while performing services for a former Employer, the former Employer is a predecessor Employer with respect to the Participant in the Plan. A former entity that antedates the Employer is also a predecessor Employer with respect to a Participant if, under the facts and circumstances, the Employer constitutes a continuation of all or a portion of the trade or business of the former entity.

(11) Severance from Employment: An Employee has a severance from employment when the Employee ceases to be an Employee of the Employer maintaining the Plan. An Employee does not have a severance from employment if, in connection with a change of employment, the Employee's new Employer maintains the Plan with respect to the Employee.

(12) Year of Participation: The Participant shall be credited with a year of participation (computed to fractional parts of a year) for each accrual computation period for which the following conditions are met: (1) the Participant is credited with at least the number of hours of service (or period of service if the elapsed time method is used) for benefit accrual purposes, required under the terms of the Plan in order to accrue a benefit for the accrual computation period, and (2) the Participant is included as a Participant under the eligibility provisions of the Plan for at least one day of the accrual computation period. If these two conditions are met, the portion of a year of participation credited to the Participant shall equal the amount of benefit accrual service credited to the Participant for such accrual computation period. A Participant who is permanently and totally disabled within the meaning of Code 415(c)(3)(C)(i) for an accrual computation period shall receive a year of participation with respect to that period. In addition, for a Participant to receive a year of participation (or part thereof) for an accrual computation period, the Plan must be established no later than the last day of such accrual computation period. In no event shall more than one year of participation be credited for any 12-month period.

(13) Year of Service: For purposes of Paragraph (F)(7), the Participant shall be credited with a year of service (computed to fractional parts of a year) for each accrual computation period for which the Participant is credited with at least the number of hours of service (or period of service if the elapsed time method is used) for benefit accrual purposes, required under the terms of the Plan in or-

der to accrue a benefit for the accrual computation period, taking into account only service with the Employer or a predecessor Employer.

(G) Other Rules.

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

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

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

(4) Plans of a Predecessor Employer. If the Employer maintains a defined benefit plan that provides benefits accrued by a Participant while performing services for a predecessor Employer, the Participant's benefits under a plan maintained by the predecessor Employer shall be treated as provided under a plan maintained by the Employer. However, for this purpose, the plan of the predeces-

sor Employer shall be treated as if it had terminated immediately prior to the event giving rise to the predecessor Employer relationship with sufficient assets to pay Participants' benefit liabilities under the plan, and had purchased annuities to provide benefits; the Employer and the predecessor Employer shall be treated as if they were a single Employer immediately prior to such event and as unrelated Employers immediately after the event; and if the event giving rise to the predecessor relationship is a benefit transfer, the transferred benefits shall be excluded in determining the benefits provided under the plan of the predecessor Employer.

(5) Special Rules. The limitations of this Section shall be determined and applied taking into account the rules in Section 1.415(f)-1(d), (e) and (h) of the Treasury Regulations.

(6) Aggregation with Multiemployer Plans.

(a) If the Employer maintains a multiemployer plan, as defined in Code Section 414(f), and the multiemployer plan so provides, only the benefits under the multiemployer plan that are provided by the Employer shall be treated as benefits provided under a plan maintained by the Employer for purposes of this Section.

(b) Effective for limitation years ending after December 31, 2001, a multiemployer plan shall be disregarded for purposes of applying the compensation limitation of Paragraphs (F) and (F)(9)(a) to a plan which is not a multiemployer plan.

## 5.02 Early Plan Termination

(A) Benefits distributed to any of the 25 most Highly Compensated active and former Highly Compensated Employees are restricted such that the annual payments are no greater than an amount equal to the payment that would be made on behalf of the Employee under a single life annuity that is the actuarial equivalent of the sum of the Employee's Accrued Benefit and the Employee's other benefits under the Plan.

(B) The preceding paragraph shall not apply if (i) after payment of the benefit to an Employee described in the preceding paragraph, the value of Plan assets equals or exceeds 110% of the value of current liabilities, as defined in Code Section 412(l)(7) or (ii) the value of the benefits for an Employee described above is less than 1% of the value of current liabilities.

(C) For purposes of this Section, benefits include loans in excess of the amount set forth in Code Section 72(p)(2)(A), any periodic income, any withdrawal values payable to a living Employee, and any death benefits not provided for by insurance on the Employee's life.

5.03 Pre-Termination Restrictions. In the event of Plan termination, the benefit of any Highly Compensated Employee (whether active or former) is limited to a benefit that is non-discriminatory under Code Section 401(a)(4). As of the date this Plan is terminated, if the value of Plan assets is not less than the present value of all Accrued Benefits (whether nor not non-forfeitable), distribution of assets to each Participant equal to the present value of that Participant's Accrued Benefit will not be discriminatory if the formula for computing benefits as of the date of Plan termination is not discriminatory. All present values and the value of Plan assets will be computed using assumptions satisfying Section 4044 of the Employee Retirement Income Security Act.

## **SECTION 6: TOP HEAVY PROVISIONS**

6.01 Application of Section. The provisions in this Section shall take precedence over any other provisions in the Plan with which they conflict.

6.02 Definitions.

(A) "Key Employee." Any Employee or former Employee (including any deceased Employee) who, at any time during the Plan Year that includes the determination date, is an officer of an Employer having an annual compensation greater than \$130,000 (as adjusted under Code Section 416(i)(1) for Plan Years beginning after December 31, 2002), a 5-percent owner of the Employer, or a 1-percent owner of the Employer having an annual compensation of more than \$150,000. For purposes of this paragraph, annual compensation means compensation within the meaning of Section 1.05 of the Plan. The determination of who is a Key Employee will be made in accordance with Code Section 416(i)(1) and the Treasury Regulations thereunder.

(B) "Top-heavy plan." For any Plan Year beginning after December 31, 1983, this Plan is top-heavy if any of the following conditions exists:

- (1) If the top-heavy ratio for this Plan exceeds 60% and this Plan is not part of any required aggregation group or permissive aggregation group of plans.
- (2) If this Plan is a part of a required aggregation group of plans but not part of a permissive aggregation group and the top-heavy ratio for the group of plans exceeds 60%.
- (3) If this Plan is a part of a required aggregation group and part of a permissive aggregation group of plans and the top-heavy ratio for the permissive aggregation group exceeds 60%.

(C) "Top-heavy ratio."

(1) If the Employer maintains one or more defined benefit plans and the Employer has not maintained any defined contribution plan (including any Simplified Employee Pension Plan) which during the one-year period ending on the determination date(s) has or has had account balances, the top-heavy ratio for this Plan alone or for the required or permissive aggregation group as appropriate is a fraction, the numerator of which is the sum of the present value of accrued benefits of all key Employees as of the determination date(s) (including any part of any accrued benefit distributed in the one-year period ending on the determination date(s) in the case of a distribution made for a reason other than severance from employment, death or disability), and the denominator of which is the sum of the present value of accrued benefits (including any part of any accrued benefits distributed in the one-year period ending on the determination date(s) in the case of a distribution made for a reason other than severance from employment, death or disability), both computed in accordance with Code Section 416 and the Treasury Regulations thereunder.

(2) If the Employer maintains one or more defined benefit plans and the Employer maintains or has maintained one or more defined contribution plans (including any Simplified Employee Pension Plan) which during the five-year period ending on the determination date(s) has or has had any account balances, the top-heavy ratio for any required or permissive aggregation group as appropriate is a fraction, the numerator of which is the sum of the present value of accrued benefits under aggregated defined benefit plan or plans for all key Employees, determined in accordance with Paragraph (1) above, and the sum of the account balances under the aggregated defined contribution plan or plans for all key Employees as of the determination date(s), and the denominator of which is the sum of the present value of accrued benefits under the aggregated defined benefit plan or plans for all Participants, determined in accordance with Paragraph (1) above, and the account balances under the aggregated defined contribution plan or plans for all Participants as of the determination date(s), all determined in accordance with Code Section 416 and the regulations thereunder. The account balances under a defined contribution plan in both the numerator and denominator of the top-heavy ratio are increased for any distribution of an account balance made in the five-year period ending on the determination date (five-year period ending on the determination date in the case of a distribution made for a reason other than severance from employment, death or disability).

(3) For purposes of Paragraphs (1) and (2) above, the value of account balances and the present value of accrued benefits will be determined as of the most recent valuation date that falls within or ends with the 12-month period ending on the determination date, except as provided in Code Section 416 and the regulations thereunder for the first and second Plan Years of a defined benefit

plan. The account balances and accrued benefits of a Participant (a) who is not a key Employee but who was a key Employee in a prior year, or (b) who has not been credited with at least one Hour of Service with any employer maintaining the Plan at any time during the five-year period ending on the determination date will be disregarded. The calculation of the top-heavy ratio, and the extent to which distributions, rollovers, and transfers are taken into account will be made in accordance with Code Section 416 and the regulations thereunder. Deductible Employee contributions will not be taken into account for purposes of computing the top-heavy ratio. When aggregating plans the value of account balances and accrued benefits will be calculated with reference to the determination dates that fall within the same calendar year.

The accrued benefit of a Participant other than a key Employee shall be determined under (a) the method, if any, that uniformly applies for accrual purposes under all defined benefit plans maintained by the Employer, or (b) if there is no such method, as if such benefit accrued not more rapidly than the slowest accrual rate permitted under the fractional rule of Code Section 411(b)(1)(C).

(D) “Permissive aggregation group.” The required aggregation group of plans plus any other plan or plans of the Employer which, when considered as a group with the required aggregation group, would continue to satisfy the requirements of Code Sections 401(a)(4) and 410.

(E) “Required aggregation group.” (1) Each qualified plan of the Employer in which at least one key Employee participated at any time during the Plan Year containing the determination date or any of the four preceding Plan Years (regardless of whether the plan has terminated), and (2) any other qualified plan of the Employer which enables a plan described in (1) to meet the requirements of Code Sections 401(a)(4) or 410.

(F) “Determination date.” For any Plan Year subsequent to the first Plan Year, the last day of the preceding Plan Year. For the first year of the Plan, the last day of that year.

(G) “Non-key Employee.” Any Employee who is not a key Employee.

(H) “Valuation date.” For each defined benefit plan sponsored by the Employer, the valuation date is the most recent date within the 12-month period ending on the determination date used for computing plan costs for minimum funding for such plan. For each defined contribution plan sponsored by the Employer, the valuation date is the most recent date within the 12-month period ending on the determination date used for annual valuation of account balances for such plan.

(I) “Present value.” For purposes of establishing present value to compute the top-heavy ratio, any benefit shall be discounted using the interest and mortality rates described in Section 1.02.

6.03 Accelerated Vesting Unless the Plan provides for full and immediate vesting of the Participant's Accrued Benefit upon participation, then for any Plan Year in which this Plan is deemed to be a top-heavy plan, the vesting schedule contained in Section 1.31 shall be modified as follows:

(A) Total Service for Vesting (excluding Years of Service prior to Effective Date of this Plan)

(B)	Vested	Percentage
	less than 3 years	0%
	3 years or more	100%

Should this Plan not be deemed to be a top-heavy plan after previously being so categorized, the vesting schedule contained in Section 1.31 shall again be effective except that the Vested percentage attained by Participants shall not be reduced thereby and Participants with 3 or more Years of Service for Vesting shall have the right to select the vesting schedule under which their Vested Accrued Benefit will be determined.

6.04 Notwithstanding any other provision in this Plan except Paragraphs (C), (D), (E) and (F) below, for any Plan Year in which this Plan is top-heavy, each Participant who is not a key Employee and has completed 1,000 hours of service will accrue a benefit (to be provided solely by Employer contributions and expressed as a life annuity commencing at normal retirement age) of not less than two percent of his or her highest average Compensation for the five consecutive years for which the Participant had the highest Compensation. The aggregate Compensation for the years during such five-year period in which the Participant was credited with a year of service will be divided by the number of such years in order to determine average annual Compensation. The minimum accrual is determined without regard to any Social Security contribution. The minimum accrual applies even though under other Plan provisions the Participant would not otherwise be entitled to receive an accrual, or would have received a lesser accrual for the year because (i) the non-key Employee fails to make mandatory contributions to the Plan, (ii) the non-key Employee's Compensation is less than a stated amount, (iii) the non-key Employee is not employed on the last day of the accrual computation period, or (iv) the Plan is integrated with Social Security.

(A) For purposes of computing the minimum accrued benefit, Compensation shall mean Compensation as defined in Section 5.01(D)(2) of the Plan, as limited by Section 401 (a)(17) of the Code.

(B) No accrual shall be provided pursuant to Paragraph (A) above for a year in which the Plan does not benefit any key Employee or former key Employee.

(C) No additional benefit accruals shall be provided pursuant to Paragraph (A) above to the extent that the total accruals on behalf of the Participant attributable to Employer contributions will provide a benefit expressed as a life annuity commencing at normal retirement age that equals or exceeds 20 percent of the Participant's highest aver-

age Compensation for the five consecutive years for which the Participant had the highest Compensation.

(D) The provision in Paragraph (A) above shall not apply to any Participant to the extent the Participant is covered under any other Plan or plans of the Employer and the minimum allocation or benefit requirement applicable to top-heavy plans will be met in the other Plan or plans.

(E) All accruals of Employer-derived benefits, whether or not attributable to years for which the Plan is top-heavy, may be used in computing whether the minimum accrual requirements of paragraph (3) above are satisfied.

6.05 Limitation on Compensation Taken into Account Under Plan. For any Plan Year prior to Plan Years beginning before January 1, 1989, in which this Plan is deemed to be a top-heavy plan the definition of annual Compensation contained in Paragraph 6.02(A) shall exclude amounts in excess of \$200,000. For any Plan Year beginning on or after January 1, 1989 annual Compensation shall exclude amounts in excess the limitation under Code Section 401(a)(17) (i.e., \$150,000 adjusted for the cost of living).

6.06 Modification of Defined Benefit and Defined Contribution Plan Fraction. For any Plan Years beginning after December 31, 1999, this Section shall not apply. For any Plan Year in which the Plan is deemed to be a top-heavy plan, the denominators of the defined benefit fraction and the defined contribution fraction contained in Paragraph 5.01(D) shall be deemed to be modified by substituting 100% for 125%. Notwithstanding the above, if this Plan would not be deemed to be a top-heavy plan if 90% were substituted for 60% in Paragraph 6.02(B) and if the Employer provides benefits and/or makes contributions to the accounts of non-key Employees who participate in defined benefit and/or defined contribution plans maintained by the Employer, in amounts at least equal to that which would be required by Section 6.04 after substituting 3% for 2% in the minimum non-integrated benefit, and by substituting 7.5% for 5% as the minimum non-elective contribution percentage made by the Employer for eligible non-key Employees for the Plan Year to a defined contribution plan sponsored by the Employer, then the reduction in the defined benefit fraction and the defined contribution fraction as set forth in the preceding sentence, shall not be made.

For Plan Years beginning after December 31, 1999, minimum benefits shall be determined under Section 6.04.

## **SECTION 7: APPLICATION FOR BENEFITS AND ADJUDICATION OF CLAIMS FOR BENEFITS**

7.01 Advance Written Application Required. An application for a Pension shall be made in writing on a form and in the manner prescribed by the Fund in advance of its effective date of benefits.

## 7.02 Information Required and Recovery of Overpayments.

(A) Every claimant for benefits shall furnish to the Fund all information and proof relevant to his or her eligibility for benefits under the Fund. Each Participant, Pensioner, and Beneficiary shall furnish the Fund with all information and proof requested by it for the administration of the Fund. If a Participant, Pensioner, Beneficiary, or other claimant for benefits makes a willfully false statement relevant to his or her claim for benefits, or furnishes fraudulent information or proof relative to his or her claim for benefits, then benefits not vested under the Fund may be suspended or discontinued.

(B) The Fund 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 the Fund, 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, and recoupment shall not apply, to benefits paid to the Pensioner's surviving Eligible Spouse.

7.03 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.

7.04 Notice of Claim Determinations. A Participant or Beneficiary who applies for benefits under the Plan shall have his/her eligibility for benefits determined by the Contract Administrator. The Participant or Beneficiary may designate an Authorized Representative to act on behalf of the Participant or Beneficiary in pursuing a benefit claim or an appeal of a determination. In order for a designation of an Authorized Representative to be effective, the Participant or Beneficiary must submit to the Contract Administrator a Designation of Authorized Representative form.

The Contract Administrator will make an initial determination within 90 days (45 days in the case of Disability claims) of receipt of the benefits claim form. The Contract Administrator

may extend the period for the initial determination for a period not to exceed 90 days (or 30 days, in the case of Disability claims), provided: (1) the Participant or Beneficiary is notified of the extension within the initial 90- or 45-day period; (2) the extension is required for reasons beyond the Contract Administrator's control; and (3) the Participant or Beneficiary is advised of the unresolved issues that prevent any decision and the additional information needed to resolve those issues. The Contract Administrator may further extend the period for the initial determination of Disability claims for an additional 30 days, provided: (1) the Participant or Beneficiary is notified of the extension within the first 30-day extension period; (2) the extension is required for reasons beyond the Contract Administrator's control; and (3) the Participant or Beneficiary is advised of the unresolved issues that prevent any decision and the additional information needed to resolve those issues. If any extension is necessary because the Participant or Beneficiary submits an incomplete claim to the Contract Administrator, the period for making an initial determination will be suspended from the date that the request for additional information is sent to the Participant or Beneficiary until the earlier of: (a) the date that the Participant or Beneficiary responds to the Contract Administrator, or (b) 90 days (45 days for Disability claims) from the date of the request. The Participant or Beneficiary must submit the additional information requested by the Contract Administrator within 90 days (45 days for Disability claims). If a claim is denied, in whole or in part, the Participant or Beneficiary shall be sent written notice of the denial containing the following information: (1) the specific reason or reasons for the denial of the claim; (2) a specific reference to pertinent plan provisions on which the denial is based; (3) a description of any additional material or information necessary for the Participant or Beneficiary to perfect the claim and an explanation of why the additional material or information is necessary; and (4) an explanation of the Plan's claim review procedure.

7.05 Appeal to the Board of Trustees. If the Participant or Beneficiary disagrees with the Contract Administrator's determination, the Participant or Beneficiary must file a written appeal with the Board of Trustees. To file an appeal to the Board of Trustees, the Participant or Beneficiary must send to the Contract Administrator a written statement stating that the Participant wishes to appeal the Contract Administrator's determination. The statement must be filed (postmarked or hand-delivered) within 180 days (60 days for Disability claims) after receipt of the determination. The Participant may submit with the appeal any written comments, documents, records, or other information related to the benefit claim which is the subject of the appeal. An appeal of a determination by the Contract Administrator shall be decided by the Board of Trustees at their next regularly scheduled quarterly meeting that immediately follows the Board's receipt of the Participant or Beneficiary's appeal, unless the appeal is filed within 30 days preceding the date of such regular quarterly meeting. If an appeal is filed within 30 days of a regularly scheduled meeting, the Board's determination shall be made no later than the date of the second regularly scheduled quarterly meeting following the Board's receipt of the appeal. If special circumstances require a further extension of time for processing the appeal, a determination by the Board shall be rendered no later than the third meeting of the Board following the Board's receipt of the appeal. If such an extension of time for review is required because of special circumstances, the Contract Administrator shall notify the Participant or Beneficiary in writing of the required extension prior to the commencement of the extension, describing the special circumstances and the date as of which the appeal determination will be made by the Board. The

Contract Administrator shall notify the Participant or Beneficiary of the Board's appeal determination as soon as possible, but no later than five days after the appeal determination is made by the Board.

**7.06 Extension of Time.** The Participant or Beneficiary, Authorized Representative, Contract Administrator, or Board of Trustees may agree, in writing, to extend the times set forth in this Section. Any written agreement to extend the times must be reduced to writing prior to the expiration of the times set forth herein, and must specifically provide for the amount of the agreed-to extension.

**7.07 Rights on Appeal to the Board of Trustees.** The Participant or Beneficiary may request a hearing in person before the Board of Trustees. This request must be set forth in the written appeal filed with the Contract Administrator. At the hearing the Participant or Beneficiary may present any evidence, through documents or witnesses, to support the claim for benefits, and may be represented by a lawyer. The Participant or Beneficiary has the right to submit to the Board of Trustees along with the appeal documents, records and other information relating to the claim for benefits. The Participant or Beneficiary has the right, upon request and without charge, to reasonable access to and copies of all documents, records and other information relevant to the claim for benefits. The Participant or Beneficiary will be provided with the names of any medical or vocational experts whose advice was obtained on behalf of the Plan by the Contract Administrator in connection with the initial claim determination, without regard to whether the advice was relied upon in making the initial claim determination. The decision of the Board of Trustees will be based on its own review of the claim, taking into account all comments, documents, records, and other information submitted by the Participant or Beneficiary, without regard to whether such information was submitted or considered in the initial benefit determination and, where appropriate, in consultation with a health care professional who has appropriate training and experience in the field of medicine involved in the claim, and who was not consulted in connection with the initial benefit determination, and without any deference to the initial claim determination made by the Contract Administrator.

**7.08 Consequences of Failure to File an Appeal.** If the Participant or Beneficiary fails to seek a review through the Contract Administrator's appeal procedure of any claim denial, in whole or in part, by the Contract Administrator, the decision of the Contract Administrator shall be final and binding. No legal action may be commenced or maintained against the Plan if the Participant or Beneficiary fails to appeal the denial of the claim. If the Participant or Beneficiary fails to seek a review by the Board of a claim denial, in whole or in part, by the Contract Administrator, the decision of the Contract Administrator shall be final and binding. No legal action may be commenced or maintained against the Plan if the Participant or Beneficiary fails to appeal the denial of the claim to the Board of Trustees. If the Participant or Beneficiary does not exercise their rights under ERISA to seek review of a decision by the Board denying the claim, in whole or in part, the decision of the Board shall be final and binding. No legal action may be commenced or maintained against the Plan more than 6 months after the decision of the Board of Trustees.

## **SECTION 8: DESIGNATION OF BENEFICIARY**

8.01 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 the Plan, or any benefits due but not yet received by the Pensioner at the time of his or her death, by forwarding such designation to the Contract Administrator 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 Section 4.08(B) (spousal consent requirement at retirement) and 4.08(D) (preretirement surviving spouse pension) for limitations on beneficiary designations. A Participant or Pensioner shall have the right to change his or her designation of Beneficiary without the consent of the Beneficiary, but no change shall be effective or binding on the Fund unless it is received by the Contract Administrator prior to the time any payments are made to the Beneficiary whose designation is on file with the Contract Administrator. Any benefits due but not yet received by the Pensioner at the time of his or her death, shall be paid to the most recently designated Beneficiary filed with the Contract Administrator. 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 8.02.

8.02 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 due but not yet received by the Pensioner at the time of his or her 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 the Participant's surviving children, divided equally among them;
- (C) if no surviving Spouse or surviving children, to the Participant's surviving parents, divided equally between them;
- (D) if no surviving Spouse or surviving children or surviving parents, to the Participant's surviving siblings, divided equally among them.

If there are no survivors under (A) through (D) above, such benefits will not be paid to anyone, including an estate, and such amounts will be forfeited to the Fund.

This Plan Section 8.02 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 if there were benefits due but not yet received by the Beneficiary or surviving Spouse at the time of his or her death.

## **SECTION 9: MERGER PROVISIONS**

9.01 Definitions: Terms defined in the Plan shall have the same meaning in this Section, except where inconsistent with the following definitions. The meanings of the following terms are effective for the purposes of this Section only:

- (A) "Merging Fund" means Plumbers and Steamfitters U.A. Local 810 Pension Fund.
- (B) "Participant of the Merging Fund" means a Participant as defined in the Merging Fund Agreement who, on May 1, 1993, had Pension benefit accruals under the Merging Fund which were not lost on account of a break in service prior to May 1, 1993. A Participant of the Merging Fund shall include a surviving Eligible Spouse or other designated Beneficiary who is entitled to receive benefits accrued by a Participant of the Merging Fund under the terms of the Merging Fund.
- (C) "Active Participant of the Merging Fund" means a Participant of the Merging Fund who has at least 500 hours of Vesting Service under the Merging Fund in either of the two consecutive Merging Fund Plan Years immediately preceding the Effective Date.
- (D) "Effective Date" means May 1, 1993.

9.02 All Participants of the Merging Fund shall become Participants under the Plan as of the Effective Date. A Participant of the Merging Fund for whom Future Benefit Service is earned for service after the Effective Date shall be entitled to benefits for that Future Benefit Service under the pertinent provisions of the Plan and shall be entitled to benefits earned before the Effective Date under the terms of the Merging Fund, subject to the provisions of Section 10.7.

9.03 A Participant of the Merging Fund shall have his/her Credited Service, anniversaries of participation, Vesting Service Years, and service establishing eligibility for early, "Golden 90" (as described in Section 9.07(A)(1), below), and normal retirement benefits, earned or recognized under the Merging Fund prior to the Effective Date combined with the pension credit, anniversaries of participation, Vesting Service, and service establishing eligibility for early, Golden 90 or normal retirement benefits he/she earns under the Plan after the Effective Date for purposes of determining whether the Participant is eligible for a benefit under the Merging Fund and Plan.

9.04 No Participant of the Merging Fund shall have lower accrued benefit immediately after the Effective Date than his/her accrued benefit immediately before the Effective Date under the terms of the Merging Fund. A Participant or former Participant of the Merging Fund who had part or all of his/her credits cancelled under the Merging Fund's break-in-service rules prior to the Effective Date shall not have any such credit reinstated as a result of the merger of the Merging Fund with the Plan.

9.05 A Participant of the Merging Fund who is 100% vested in his/her accrued benefits under the Merging Fund as of the Merger Date (as defined in the Merger Agreement) shall be 100% vested in all benefits subsequently accrued under the Plan. A Participant of the Merging Fund who is not 100% vested as of the Effective Date will have his/her vested interest in accrued benefits for all purposes under the Plan calculated in accordance with the vesting schedule of the Plan.

9.06 Notwithstanding anything herein to the contrary, no Participant or former Participant of the Merging Fund shall, as a result of the merger with the Plan, receive duplicate benefits from the Merging Fund and the Plan or from any fund which has been or hereafter shall be merged into or with the Merging Fund or the Plan.

9.07 Notwithstanding anything herein to the contrary, a Participant of the Merging Fund to whom the Plan's provisions apply shall have his/her benefit calculated as follows:

(A) A Participant's Merging Fund Pension Benefit accruals prior to the Effective Date and eligibility to receive those accruals shall be determined pursuant to the pertinent provisions of the Merging Fund as of the Effective Date. For Active Participants of the Merging Fund, such benefit accruals and eligibility to receive those accruals shall be determined as if the Merging Fund defined "Normal Retirement Age" as meaning: (1) the date on which a Participant's age plus his/her Future Service Pension credit (not to exceed one year during a Plan Year in which the Participant works at least 1200 hours) earned after October 1969 equals 90; (2) the later of the time the Participant attains age 62 or the fifth anniversary of the time the Participant commenced participation in the Merging Fund; or (3) the later of the time the Participant attains age 65 or the second anniversary of the time the Participant commenced participation in the Merging Fund unless all credited Vesting Service Years are sooner forfeited.

(B) Active Participants of the Merging Fund as of the Effective Date will be eligible to receive a supplemental monthly benefit of \$20.00 for each year of Vesting Service Years after the Effective Date, up to a maximum of \$160.00. For example, an Active Participant of the Merging Fund who earns eight years of Vesting Service under the Plan after the Effective Date will receive a \$160 monthly benefit increase, while an Active Participant of the Merging Fund who earns only six years of Vesting Service under the Plan after the Effective Date will receive a \$120 monthly benefit increase.

(C) Participants' Pension benefit accruals earned after the Effective Date shall be determined pursuant to the provisions of the Plan; provided that effective August 1, 1993, additional benefit accruals earned by each Participant of the Merging Fund shall be reduced by the excess of the benefit accrued by the Participant for the period May 1, 1993 through July 31, 1993 under the terms of the Merging Fund, less the benefit which the Participant would have accrued for the same service during the same period under the terms of the Plan.

## **SECTION 10: MISCELLANEOUS PROVISIONS**

10.01 Military Service Credit. 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 Code Section 414(u).

10.02 Non-Assignment of Benefits.

(A) Each Participant under the Plan is hereby restrained from selling, transferring, anticipating, assigning, hypothecating or otherwise disposing of his or her 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:

(1) 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

(2) 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

(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.

(3) 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 Eligible 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 Eligible 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 or her 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 or her 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 Fund to any part of the Participant's or Beneficiary's Pension benefit or to any other assets of the 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 health and welfare fund must reimburse the Fund all of its costs for the deduction and transfer. Both the 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 his or her legal representative, may authorize in writing the payment of his or her entire monthly pension benefit to a residential health care facility in which he or she 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 Fund to any part of the Participant or Beneficiary's Pension benefit or any other assets of the Fund. The payment will be made only when the Pension benefit would otherwise be payable to the Participant or Beneficiary.

10.03 Merger, Consolidation or Transfer of Plan. In the case of any merger or consolidation with, or transfer of any assets or liabilities to, any other plan, each Participant in this Plan must be entitled to receive a benefit immediately after the merger, consolidation or transfer, which is equal to or greater than the benefit the Participant would have been entitled to receive immediately before the merger, consolidation or transfer.

10.04 Plan Amendments. No amendment to the Plan (including a change in the actuarial basis for determining optional or early retirement benefits) shall be effective to the extent that it has the effect of decreasing a Participant's accrued benefit. Notwithstanding the preceding sentence, a Participant's accrued benefit may be reduced to the extent permitted under Code Section 412(c)(8). For purposes of this Section 10.04, a Plan amendment that has the effect of: (1) eliminating or reducing an early retirement benefit or a retirement-type subsidy, or (2) eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment, shall be treated as reducing accrued benefits. In the case of a retirement-type subsidy, the preceding sentence shall apply only with respect to a Participant who satisfies (either before or after the amendment) the pre-amendment conditions for the subsidy. Notwithstanding the preceding sentences, a Participant's accrued benefit, early retirement benefit, retirement-type subsidy or optional form of benefit may be reduced to the extent permitted under Code Section 412(c)(8) (for Plan Years beginning on or before December 31, 2007) or Code Section 412(d)(2) (for Plan Years beginning after December 31, 2007), or to the extent permitted under Sections 1.411(d)-3 and 1.411(d)-4 of the Treasury Regulations. In general, a retirement-type subsidy is a subsidy that continues after retirement, but does not include a qualified disability benefit, a medical benefit, a social security supplement, or a death benefit (including life insurance). Furthermore, if the vesting schedule of the Plan is amended, in the case of an Employee who is a Participant as of the later of the date such amendment is adopted or the date it becomes effective, the non-forfeitable percentage (determined as of such date) of such Employee's employer-provided accrued benefit will not be less than the percentage computed under the Plan without regard to such amendment.

10.05 Use of Plan Assets. The Plan assets and income therefrom may not be diverted to or used for other than the exclusive benefit of the Participants or their Beneficiaries.

10.06 Purchase of Annuity Contracts. The terms of any annuity contract purchased and distributed by the Plan to a Participant or Eligible Spouse shall comply with the requirements of this Plan. Any annuity contract distributed herefrom must be nontransferable.

10.07 Vesting on Plan Termination. In the event of the termination or partial termination of this Plan, the rights of all affected Employees to benefits accrued to the date of such termination or partial termination (to the extent funded as of such date) shall be non-forfeitable.

10.08 If the Plan's vesting schedule is amended or the Plan is amended in any way that directly or indirectly affects the computation of a Participant's nonforfeitable percentage, or if the Plan is deemed amended by an automatic change to or from a top-heavy vesting schedule, in the case of an Employee who is a Participant as of the later of the date such amendment or change is adopted or the date it becomes effective, the nonforfeitable percentage (determined as

of such date) of such Employee's Employer-provided accrued benefit will not be less than the percentage computed under the Plan without regard to such amendment or change. Furthermore, each Participant with at least 3 years of service with the Employer may elect within a reasonable period after the adoption of the amendment or change, to have his nonforfeitable percentage computed under the Plan without regard to such amendment or change. For Participants who do not have at least one hour of service in any Plan Year beginning after December 31, 1988, the preceding sentence shall be applied by substituting "5 years of service" for "3 years of service" where such language appears. The period during which the election may be made shall commence with the date the amendment is adopted or deemed to be made and shall end on the latest of:

- (A) 60 days after the amendment is adopted;
- (B) 60 days after the amendment becomes effective; or
- (C) 60 days after the Participant is issued written notice of the amendment by the Employer or Contract Administrator.

With respect to benefits accrued as of the later of the adoption or effective date of the amendment, the vested percentage of each Participant will be the greater of the vested percentage under the old vesting schedule or the vested percentage under the new vesting schedule.

10.09 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 11: EMPLOYER WITHDRAWAL LIABILITY**

11.01 A Covered Employer that withdraws from the Fund after May 1, 2000, in either a complete or partial withdrawal, shall owe and pay withdrawal liability to the Fund, as determined under this Article and the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980, and the applicable regulations of Pension Benefit Guarantee Corporation.

11.02 For purposes of this Article, Trade or Craft means all of the type of work performed by members of the bargaining unit covered by the Collective Bargaining Agreements that require Covered Employers to contribute to the Fund. The term Covered Employer for purposes of this Article shall also have the meaning set forth in the applicable provisions of ERISA. For purposes of this Article, Collective Bargaining Agreement shall also mean Participation Agreement.

11.03 A complete withdrawal occurs if a:

(A) Covered Employer ceases to have an obligation to contribute to the Fund, and

(B) The Covered Employer:

(1) continues to perform work in the Trade or Craft in the jurisdiction of the Collective Bargaining Agreements of the type in the Trade or Craft of which contributions were previously required, or

(2) resumes such work in the Trade or Craft within five (5) years after the date on which the obligation to contribute under the Fund ceased, and does not renew the obligation to contribute to the Fund at the time of the resumption.

11.04 A Covered Employer's obligation to contribute ceases when the Covered Employer is no longer required by a Collective Bargaining Agreement or by the National Labor Relations Act or other law to contribute to the Fund. If a Covered Employer was delinquent in making contributions for a period when it did have a contractual or statutory obligation to contribute, this will not prevent a withdrawal from occurring, even though the Covered Employer remains liable for the delinquent contributions.

11.05 A Covered Employer's obligation to contribute is not considered to have ceased solely because the:

(A) Covered Employer continues to have a Collective Bargaining Agreement requiring contributions for covered work in the Trade or Craft, but the Contributing Employer has no employees performing covered work in the Trade or Craft for a period of time, or

(B) Covered Employer goes out of business, or

(C) Covered Employer's Collective Bargaining Agreement requiring contributions is not renewed, but the Covered Employer does not continue to perform work in the Trade or Craft for which contributions had been required in the same jurisdiction, or

(D) Covered Employer temporarily suspends contributions during a labor dispute involving its employees covered by a Collective Bargaining Agreement.

11.06 The date of a complete withdrawal is the date the Covered Employer's obligation to contribute ceased.

11.07 A partial withdrawal by a Covered Employer occurs if the Covered Employer's obligation to contribute to the Fund is continued for no more than an insubstantial portion of its work in the Trade or Craft in the jurisdiction of the Collective Bargaining Agreement or there is a partial cessation of the Covered Employer's contribution obligation under a Collective Bargaining Agreement. An insubstantial portion means thirty (30%) percent on the last day of the Plan Year.

11.08 There is a partial cessation of a Covered Employer's obligation to contribute for a Plan Year if, during such Plan Year, the Covered Employer permanently ceased to have an obligation to contribute under one or more but fewer than all Collective Bargaining Agreements under which the Covered Employer has been obligated to contribute to the Fund, but continues to perform work in the jurisdiction of the Collective Bargaining Agreement in the Trade or Craft for which contributions were previously required or transfers such work to an entity or entities owned or controlled by the Covered Employer.

11.09 To determine whether a partial withdrawal has occurred the Fund will compare, for each Plan Year:

(A) The amount of work in the Trade or Craft for which the Contributing Employer was obligated to contribute to the Fund for the Plan Year, with

(B) The total amount of the Covered Employer's work in the same Trade or Craft in the jurisdiction of the Collective Bargaining Agreement for the Plan Year.

11.10 The date of a partial withdrawal is the last day of the Plan Year during which the conditions of a partial withdrawal were met.

11.11 A Covered Employer that would otherwise incur a complete withdrawal or partial withdrawal will not be assessed withdrawal liability if the following conditions are met:

- (A) The Covered Employer first had an obligation to contribute to the Fund on or after December 1, 2007, and
- (B) The Covered Employer had an obligation to contribute to the Fund for no more than five (5) years, and
- (C) The Covered Employer was obligated to make contributions to the Fund for each Plan Year in an amount equal to less than two (2%) percent of the sum of all Covered Employer contributions made to the Fund for each of such years, and
- (D) The Covered Employer has never before avoided withdrawal liability from the Fund under this provision.

11.12 This Article shall not apply to a Covered Employer which purchases assets from a terminating Covered Employer and enters into an agreement contemplated by Section 4204 of ERISA.

11.13 In the event that a Covered Employer incurs a complete withdrawal or partial withdrawal and the Fund has unfunded vested benefits liability, the Fund's actuary will calculate the Covered Employer's withdrawal liability, if any, using the presumptive method set forth in Section 4211(b) of ERISA.

11.14 Withdrawal liability shall be determined by the Fund's Actuary utilizing actuarial assumptions and methods which, in the aggregate, and in the discretion of the Actuary, are reasonable, taking into account the experience of the Fund and reasonable expectations, and which, in combination, offer the Fund's Actuary's best estimate of anticipated experience under the Fund.

11.15 The share of the unfunded vested benefits liability allocated to the Covered Employer will be reduced by the de minimis deductible provided by Section 3209 of ERISA. The de minimis deductible is the lesser of: (1) \$50,000, and (2) 0.75% of the unfunded vested benefits liability. If the share of the unfunded vested benefits liability allocated to the Covered Employer is less than the de minimis deductible, no withdrawal liability is assessed. The de minimis deductible is applied on a diminishing basis to the extent that the share of the unfunded vested benefits liability allocated to the Covered Employer is more than \$100,000. For every dollar that the Covered Employer's share of the unfunded vested benefits liability exceeds \$100,000, the deductible is reduced by a dollar. If the Covered Employer's share of the unfunded vested benefits liability is less than \$100,000, the full amount of the applicable deductible is applied to reduce the amount assessed as withdrawal liability. If the Covered Employer's share of the unfunded vested benefits liability exceeds \$150,000, the deductible is zero, and does not reduce the amount assessed as withdrawal liability.

11.16 The share of the unfunded vested benefits liability allocated to the Covered Employer will be further reduced by application of the limitations on withdrawal liability set forth in Section 4225 of ERISA if, and to the extent that, the Covered Employer demonstrates to the Fund's satisfaction that it qualifies for any of the limitations.

11.17 In the event that a Covered Employer incurs a partial withdrawal, its withdrawal liability will be a pro-rata share of the complete withdrawal liability calculated under Sections 1.13 through 1.16, above.

11.18 Withdrawal liability is payable by a Covered Employer on an installment payment schedule, the amount of which is to be determined by the Fund's Actuary in accordance with Section 4219(c) of ERISA. The installment payments shall include interest. The first installment will be payable within sixty (60) days following the notice of the assessment, and the subsequent installments shall be payable at three- (3) month intervals. Notwithstanding the installment payment schedule, a Covered Employer may prepay all or any part of its withdrawal liability without penalty.

11.19 As soon as practicable after a Covered Employer's complete withdrawal or partial withdrawal and the Fund's determination that the Covered Employer owes withdrawal liability, the Fund shall send a written notice of the assessment of withdrawal liability and demand for payment in accordance with the payment schedule. The notice will set forth the amount of withdrawal liability, the schedule for payment, and a description of the withdrawal liability calculation.

11.20 The Fund may require the Covered Employer to post a bond or other acceptable security for the payment of its withdrawal liability, initially or at any time before the withdrawal liability is fully paid, if the Covered Employer's payment schedule extends more than eighteen (18) months, if the Covered Employer is the subject of a bankruptcy petition or similar proceedings, or if substantially all of the Covered Employer's assets are sold, distributed or transferred out of the jurisdiction of the U.S. Courts or the Fund receives notice of a pending sale, distribution or transfer.

11.21 The Fund may require immediate payment of the full amount of withdrawal liability under certain circumstances described in Sections 1.32 through 1.35, below.

11.22 No later than ninety (90) days following its receipt of a notice of withdrawal liability assessment, the Covered Employer may submit to the Fund's Board of Trustees a written request for review of any specific matter relating to the withdrawal liability assessment and payment schedule, including any alleged inaccuracy in the withdrawal liability determination. The Covered Employer shall also submit with its request for review any documents or other information that it considers supportive of its request for review.

11.23 The Fund's Board of Trustees shall review any such request for review. The Covered Employer will be notified in writing of the decision and the basis for the decision, in-

cluding an explanation of any changes in the withdrawal liability assessment or payment schedule.

11.24 In the event that the Covered Employer is not satisfied by the Board of Trustees' decision, the Covered Employer may initiate arbitration in accordance with the rules of Section 4221 of ERISA.

11.25 The Covered Employer must initiate arbitration within sixty (60) days after the earlier of:

(A) The date of which the Covered Employer receives notice of the Board of Trustees' decision on its request for review; or

(B) One hundred twenty (120) days after the date of the Covered Employer's request for review to the Board of Trustees.

11.26 Arbitration shall be initiated by written notice to the Philadelphia, Pennsylvania Regional Office of the American Arbitration Association (AAA), with copies to the Fund (or, if initiated by the Fund, to the Covered Employer). Such arbitration will be conducted in accordance with the "Multiemployer Pension Plan Arbitration Rules (the "AAA Rules") administered by the Philadelphia, Pennsylvania Regional Office of the AAA. The initial filing fee is to be paid by the party initiating the arbitration proceeding. Arbitration is timely initiated if received by the AAA along with the initial fee within the time period set forth in Section 1.25, above. All arbitrations, including all arbitration hearings under this Section, shall be conducted in Harrisburg, Pennsylvania, at the offices of the Fund. All arbitrators shall be selected pursuant to procedures of the AAA, from the withdrawal liability arbitration list maintained by the AAA, or by agreement between the Fund and the Covered Employer.

11.27 A Covered Employer cannot initiate arbitration unless it has submitted to the Board of Trustees, under Section 12.22, above, a written request for review.

11.28 Within thirty (30) days after the issuance of the final award by an arbitrator in accordance with these procedures, any party to such arbitration proceeding may bring an action in the United States District Court for the Middle District of Pennsylvania to enforce, modify or vacate the arbitration award, in accord with Sections 4221 and 4301 of ERISA.

11.29 If the Covered Employer does not initiate arbitration in accordance with Section 1.25 above, the Covered Employer will be deemed to have waived any right to contest the withdrawal liability assessment.

11.30 Notwithstanding the Covered Employer's request for review or initiation of arbitration, the Covered Employer shall pay its withdrawal liability assessment in accordance with the payment schedule set by the Fund's Actuary. If the withdrawal liability assessment is reduced or rescinded as a result of the Board of Trustees' review, arbitration, or other proceedings, an appropriate adjustment in future payments or refund will be made. If the Covered Employer

has paid more withdrawal liability than it is determined to owe, the excess will be refunded with interest.

11.31 If the Fund determines that a Covered Employer has incurred a complete or partial withdrawal, or a Covered Employer is liable for withdrawal liability with respect to the complete or partial withdrawal from the Fund, and such determination is based in whole or in part on a finding by the Fund that a principal purpose of any transaction that occurred after December 31, 1998, and at least five (5) years (or two (2) years in the case of a small employer) before the date of complete or partial withdrawal was to evade or avoid withdrawal liability, and the Covered Employer contests the Fund's determination with respect to withdrawal liability payments through the review and arbitration proceedings set forth above, the Covered Employer is not obligated to make the withdrawal liability payments until a final decision in the arbitration proceeding, or in court, upholds the Fund's determination. This special rule applies only if the Covered Employer provides notice to the Fund of its election to apply the special rule within ninety (90) days after the Fund notifies the Covered Employer of its liability, and if a final decision on the arbitration proceeding, or in court, of the withdrawal liability dispute has not been rendered within twelve (12) months from the date of such notice, the Covered Employer provides to the Fund, effective as of the first day following the 12-month period, a bond issued by a corporate surety, or an amount held in escrow by a bank or similar financial institution satisfactory to the Fund, in an amount equal to the sum of the withdrawal liability payments that would otherwise be due for the 12-month period beginning with the first anniversary of such notice. The bond or escrow must remain in effect until there is a final decision in the arbitration proceeding, or in court, of the withdrawal liability dispute. At such time, the bond or escrow must be paid to the Fund if the final decision upholds the Fund's determination. If the withdrawal liability dispute is not concluded by 12 months after the Covered Employer posts the bond or escrow, the Covered Employer must, at the start of each succeeding 12-month period, provide an additional bond or amount held in escrow equal to the sum of the withdrawal liability payments that would otherwise be payable to the Fund during that period.

11.32 A Covered Employer will be in default on its withdrawal liability if:

- (A) Any installment payment is not received by the Fund when due;
- (B) The Fund has notified the Covered Employer of its failure to pay the installment when due; and
- (C) The Covered Employer has failed to make the installment payment within sixty (60) days after receipt of the notice of non-payment from the Fund; the default date will be the sixtieth (60th) day after the Covered Employer's receipt of the notice of non-payment, unless payment is received by the Fund by then; or
- (D) There is a filing or commencement by the Covered Employer, or the filing or commencement against the Covered Employer or any of its property, of any proceeding, suit or action, at law or equity, under or relating to any bankruptcy, reorganization, arrangement-of-debt, receivership, liquidation or dissolution law or statute.

11.33 In the event of default, the Covered Employer shall be liable to the Fund for:

(A) The amount of the overdue installment payment or the full amount of the withdrawal liability as permitted by Section 1.34;

(B) 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 plus one (1%) percent charged by M&T Bank 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 plus one (1%) percent in effect on the anniversary date of the date as of which the initial interest rate was determined.

11.34 In the event of default, the Fund may require the Covered Employer to make immediate payment of the full amount of the withdrawal liability plus accrued interest on that full amount from the due date of the defaulted payment.

11.35 In the event that the Fund determines that there is a substantial likelihood that a Covered Employer will be unable to pay its withdrawal liability when due, the Fund may declare the Covered Employer in default and require the Covered Employer to immediately pay the full amount of the withdrawal liability plus accrued interest.

11.36 In any suit by the Fund to collect withdrawal liability, including a suit to enforce an arbitrator's award and a claim asserted by the Fund in an action brought by a Covered Employer or other party, if judgment is awarded in favor of the Fund, the Covered Employer shall pay to the Fund, in addition to the unpaid liability and interest thereon as determined in Section 1.33, liquidated damages equal to the greater of:

(A) The amount of the interest charged on the unpaid balance; or

(B) Twenty (20%) percent of the unpaid amount awarded.

The Covered Employer shall also pay attorneys' fees and all costs incurred in the action. Nothing in this Section shall be construed as a waiver or limitation of the Fund's right to any other legal or equitable relief.

11.37 A Covered Employer is required, within thirty (30) days of written request from the Fund, to furnish to the Fund such information as the Fund reasonably need, in its judgment, to determine whether the Covered Employer has incurred a complete withdrawal or partial withdrawal, to determine the amount of any withdrawal liability, to collect any assessed withdrawal liability, or to otherwise administer these rules and ERISA's employer withdrawal liability provisions.

11.38 If a Covered Employer fails to comply with such a request for information, the Fund shall be entitled to draw reasonable inferences and make reasonable assumptions that are adverse to the Covered Employer.

11.39 This obligation, like all of the other Covered Employer's obligations under this Article, shall survive the Covered Employer's withdrawal from the Fund.

## **SECTION 12: PENSION PROTECTION ACT OF 2006**

12.01 Compliance. Notwithstanding anything in the Plan to the contrary, effective for Plan Years beginning on or after January 1, 2008, if the Actuary certifies that the Plan is in Endangered Status or Critical Status, the Board of Trustees will adopt and implement a Funding Improvement Plan or Rehabilitation Plan, as applicable, and comply with the requirements under Code Section 432 and the Treasury regulations thereunder. Such Funding Improvement Plan or Rehabilitation Plan, shall include, but is not limited to, the actions to improve the Plan's funded percentage to enable the Plan to emerge from Endangered Status or Critical Status, as applicable, including schedules with the revised benefit structures, revised contribution structures, or both, as prescribed under Code Section 432. Such Funding Improvement Plan or Rehabilitation Plan shall be set forth in Appendix C of this Plan. No later than the 90th day of each Plan Year, the Actuary will certify whether the Plan is in Endangered Status or Critical Status for such Plan Year. In accordance with Code Section 432, the Board of Trustees shall annually update the applicable Funding Improvement Plan or Rehabilitation Plan, including related schedules, to reflect the experience of the Plan. The Board of Trustees has the sole discretion to amend and interpret the Funding Improvement Plan or Rehabilitation Plan, including any related schedules.

12.02 Benefit Reductions and Restrictions. The Board of Trustees shall comply with the implementation and rules for operation regarding amendments that increase the Plan's liabilities and place restrictions on benefits and benefit increases, as described in Code Section 432, during the period beginning on the date the Actuary certifies that the Plan is in Endangered Status or Critical Status, as applicable, and continuing through the end of the Funding Improvement Period or Rehabilitation Period.

12.03 Automatic Employer Surcharge. In accordance with Code Section 432(e), while a Plan is certified by the Actuary to be in Critical Status, each Covered Employer obligated to make Plan contributions will be required to pay a surcharge, equal to a percentage of the contributions otherwise required, starting in the initial critical year no later than 30 days after receiving notification of Critical Status, and for each succeeding Plan Year. The surcharge will cease to apply to any Employer once its Collective Bargaining Agreement is amended to comply with the Funding Improvement Plan or Rehabilitation Plan.

12.04 Notification. In accordance with the annual certification by the Actuary, pursuant to Code Section 432(b)(3), proper notification of the Endangered Status or Critical Status for a Plan Year will be provided to the Participants and Beneficiaries, the Board of Trustees, labor organizations representing Participants, the Pension Benefit Guaranty Corporation and the Secre-

tary of Labor no later than 30 days after such actuarial certification. The Board of Trustees will also provide notification to the Participants, Beneficiaries, Covered Employers, and the labor organizations representing Participants no later than 30 days prior to the effective date of the reduction of any adjustable benefits, as defined in Code Section 432(e)(8) and referenced in Section 9.1 of the Plan.

12.05 Definitions. For purposes of this Article XIV, the terms Endangered Status, Critical Status, Rehabilitation Plan, Funding Improvement Plan, Rehabilitation Period, and Funding Improvement Period, shall have the meanings ascribed to them in Code Section 432.

IN WITNESS WHEREOF, the undersigned do hereby set their hands and seals the day and year first above written:

PLUMBERS AND PIPEFITTERS LOCAL No. 520:

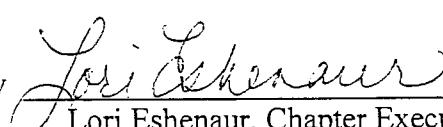
By



Keith Rutherford, Business Manager

MECHANICAL CONTRACTORS ASSOCIATION OF  
CENTRAL PENNSYLVANIA:

By



Lori Eshenaur, Chapter Executive

## APPENDIX A

### PLUMBERS AND PIPEFITTERS LOCAL NO. 520 PENSION FUND ACTUARIAL EQUIVALENCE FACTORS FOR MONTHLY PENSION OPTIONS

TABLE 1

(Normal Form: Employee-Only) (Life Only)

<u>Participant Retirement Age (NBD)</u>	<u>5 Yr. Guar.</u>	<u>10 Yr. Guar.</u>	<u>Husband &amp; 50% Wife</u>	<u>Husband &amp; 75% Wife</u>	<u>Husband &amp; 100% Wife</u>
70+	.9500	.8750	.9000	.85000	.8000
69	.9550	.8850	.9025	.85625	.8050
68	.9600	.8950	.9050	.86250	.8100
67	.9650	.9050	.9075	.86875	.8150
66	.9700	.9150	.9100	.87500	.8200
65	.9750	.9250	.9125	.88125	.8250
64	.9775	.9300	.9150	.88750	.8300
63	.9800	.9350	.9175	.89375	.8350
62	.9825	.9400	.9200	.90000	.8400
61	.9850	.9450	.9225	.90625	.8450
60	.9875	.9500	.9250	.91250	.8500
59	.9900	.9550	.9275	.91875	.8550
58	.9900	.9600	.9300	.92500	.8600
57	.9900	.9650	.9325	.93125	.8650
56	.9900	.9700	.9350	.93750	.8700
55 or younger	.9900	.9750	.9375	.94375	.8750

Adjustments to J&S for Age Difference of Participant & Survivor: (Add for each whole year survivor is older) (Subtract for each year survivor is younger)	.0050	.00625	.0075
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Maximum Factor	.9900	.9750	.9750	.9625	.9500
Minimum Factor	.9500	.8750	.8000	.7500	.7000

## APPENDIX A

### PLUMBERS AND PIPEFITTERS LOCAL NO. 520 PENSION FUND ACTUARIAL EQUIVALENCE FACTORS FOR MONTHLY PENSION OPTIONS FOR MARRIED PARTICIPANTS

TABLE 2

(Normal Form: Husband and 50% Wife)

Participant Retirement Age (NBD)	Employee Only Pension	5 Yr. <u>Guar.</u>	10 Yr. <u>Guar.</u>	Husband & 75% <u>Wife</u>	Husband & 100% <u>Wife</u>
70+	1.0000	1.0000	.9500	.95000	.9000
69	1.0000	1.0000	.9550	.95125	.9025
68	1.0000	1.0000	.9600	.95250	.9050
67	1.0000	1.0000	.9650	.95375	.9075
66	1.0000	1.0000	.9700	.95500	.9100
65	1.0000	1.0000	.9750	.95625	.9125
64	1.0000	1.0000	.9775	.95875	.9150
63	1.0000	1.0000	.9800	.96000	.9175
62	1.0000	1.0000	.9825	.96125	.9200
61	1.0000	1.0000	.9850	.96250	.9225
60	1.0000	1.0000	.9875	.96375	.9250
59	1.0000	1.0000	.9900	.96500	.9275
58	1.0000	1.0000	.9900	.96625	.9300
57	1.0000	1.0000	.9900	.96750	.9325
56	1.0000	1.0000	.9900	.96875	.9350
55 or younger	1.0000	1.0000	.9900	.97000	.9375

Adjustments to J&S for Age Difference of Participant & Survivor: (Add for each whole year survivor is older) (Subtract for each year survivor is younger)	.0025	.0050
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Maximum Factor	1.0000	1.0000	.9900	.9875	.9750
Minimum Factor	1.0000	1.0000	.9500	.9000	.8000

## APPENDIX A

### PLUMBERS AND PIPEFITTERS LOCAL NO. 520 PENSION FUND ACTUARIAL EQUIVALENCE FACTORS FOR MONTHLY PENSION OPTIONS FOR SINGLE PARTICIPANTS

TABLE 3

(Normal Form: 5 Year Guarantee Pension)

<u>Participant Retirement Age (NBD)</u>	<u>Employee Only Pension</u>	<u>10 Yr. Guar.</u>
70+	1.0000	.9500
69	1.0000	.9550
68	1.0000	.9600
67	1.0000	.9650
66	1.0000	.9700
65	1.0000	.9750
64	1.0000	.9775
63	1.0000	.9800
62	1.0000	.9825
61	1.0000	.9850
60	1.0000	.9875
59	1.0000	.9900
58	1.0000	.9900
57	1.0000	.9900
56	1.0000	.9900
55 or younger	1.0000	.9900

Maximum Factor	1.0000	.9900
Minimum Factor	1.0000	.9500

### ACTUARIAL EQUIVALENCE ASSUMPTIONS FOR LUMP-SUM PAYMENTS

The lump-sum value of a participant's monthly pension shall be actuarially computed on the basis of the applicable interest rate, as that term is defined in IRC Section 417(e)(3)(A)(ii)(II), and the applicable Mortality Table, as that term is defined in IRC Section 417(e)(3)(A)(ii)(I). The stability period is the Plan Year, and the Lookback Month is the second full calendar month preceding the Plan Year.

## APPENDIX B

### PLUMBERS AND PIPEFITTERS LOCAL NO. 520 PENSION FUND

In order to be eligible for one of the following rates of benefits, a Participant's benefits must commence after one of the following effective dates and before the next effective date. The benefit paid the Participant will be based on that rate in effect between the two effective dates unless there is a specific provision for a subsequent increase in the benefit rate. In the case of survivor benefits, the rate is governed by that rate which was effective at the time the Covered Employee's benefits commenced rather than the date on which the surviving Eligible Spouse's or Beneficiary's benefits commenced.

To qualify for any of the levels of benefits set out below, a Participant must have actually worked in Covered Employment and accumulated the required Hours of Covered Employment between the time a new level of benefits was put into effect and the time a higher level of benefits was later put into effect; *i.e.*, if a level of benefits requires a minimum number of Hours of Covered Employment for qualification, the Participant must have actually worked and earned those hours between the two dates.

1. Effective for those who retired prior to May 1, 1963, \$1.75 per month per year of Credited Service, not to exceed 25 years.

2. Effective for those who retired on or after May 1, 1963, \$2.50 per month per year of Credited Service, not to exceed 25 years.

3. Effective for those commencing Normal or Disability Pension on or after May 1, 1967, \$5.25 per month per year of Credited Service, not to exceed 25 years.

4. Effective May 1, 1967, the amount payable as a Death Benefit shall be \$100 for each year of Future Service Credits up to 25 years less any amount received in pension payments prior to death.

5. Effective for those commencing a Normal or Disability Pension on and after May 1, 1971, \$7.00 per month per year of Credited Service, not to exceed 25 years.

6. Effective May 1, 1971, those who retired prior thereto shall receive the pensions then in effect augmented by \$1.00 per month per year of Credited Service, not to exceed 25 years.

7. Effective for Participants who die after May 1, 1971, with 5 years of Future Service Credits, his eligible widow receives a monthly benefit of \$7.00 per month per year of Credited Service, not to exceed 25 years. Terminable as set forth in the Plan. This shall be in addition to the Death Benefit.

8. Effective for those who retire after May 1, 1972, having accumulated 500 hours of Future Service Credits after May 1, 1972:

a. Normal and Disability Pension and widow's benefit \$9.00 per month per year of Credited Service, not to exceed 25 years.

9. Those retiring prior to May 1, 1972, or thereafter without accumulating the required 500 hours of Future Service Credits, shall have the pensions augmented by \$1.00 per month per year of Credited Service, not to exceed 25 years.

10. Participants who worked under the jurisdiction of Local 559 who retired after December 1, 1973, become eligible for benefits under this Plan as of December 1, 1975. Service Credits for the Pensioners, i.e., service before December 1, 1973, shall be based upon a rate of benefit of \$6.40 per month per year of Credited Service. Benefits for service on or after December 1, 1973, shall be at a rate of \$9.00 per month per year of Credited Service, not to exceed a total of 25 years of service before and after December 1, 1973. If there are excess years, those years of Credited Service on and after December 1, 1973, shall first be counted.

11. Participants who worked under the jurisdiction of Local 559, who retire after December 1, 1973, shall receive benefit credit for service prior to December 1, 1973, whether Past Service Credits or Future Service Credits, at the rate of \$6.40 per month per year of Credited Service. Pension Benefit Credit for Future Service Credits earned after November 30, 1973, shall be at the rate of \$9.00 per month per year of Future Service Credits, not to exceed 25 years. If there are years of Credited Service in excess of 25 years, those after November 30, 1973, shall first be counted.

12. Effective for those who retire after November 1, 1975, having accumulated 500 hours of Future Service Credits after November 1, 1975:

a. Normal and Disability Pension, \$11.50 per month per year of Credited Service, not to exceed 25 years. However, Participants who worked under the jurisdiction of Local 559 shall receive benefits at the rate of \$6.40 per month per year of Credited Service earned prior to December 1, 1973.

b. Pre-retirement death benefit, \$9.00 per month per year of Credited Service, not to exceed 25 years. However, Participants who worked under the jurisdiction of Local 559 shall receive benefits at the rate of \$6.40 per month per year of Credited Service earned prior to December 1, 1973.

13. If Local 559 Participants have years of Credited Service in excess of 25 years, those after November 30, 1973, shall first be counted.

14. Those retiring prior to November 1, 1975, or thereafter without accumulating the required 500 hours of Credited Service shall have their pension augmented by \$1.00 per month

per year of Credited Service, not to exceed 25 years. This increase shall not be available to Pensioners or their beneficiaries whose participation was under the jurisdiction of Local 559.

15. Effective for those who retire after November 1, 1977, having accumulated 500 or more hours of Future Service Credits after November 1, 1977:

a. Normal and Disability Pension, \$14.00 per month per year of Credited service, not to exceed 30 years. However, Participants who worked under the jurisdiction of Local 559 shall receive benefits at the rate of \$6.40 per month per year of Credited Service earned prior to December 1, 1973.

16. If Local 559 Participants have years of Credited Service in excess of 30, those after November 30, 1973, shall first be counted.

17. Persons who retired before November 1, 1977, or who retired thereafter without accumulating 500 hours of Future Service Credits after November 1, 1977, shall have their pensions augmented by \$1.00 per month per year of Credited Service not to exceed 25 years. Local 559 Participants who were transferred to this Plan from the National Pension Plan shall have their pensions augmented by \$1.00 per month per year for each year of Credited Service after November 30, 1973.

18. Disability pension - spouse's benefit - \$9.00 per month per year of Credited Service; not to exceed 30 years. However, in the case of the spouse of a Local 559 Participant the benefit will be at the rate of \$6.40 per month per year of Credited Service earned prior to December 1, 1973. If such Participant had years of Credited Service in excess of 30 years, those after November 30, 1973, shall first be counted.

19. Effective for those who retire after October 1, 1979, having accumulated 500 or more hours of Credited Service after May 1, 1979:

a. Employee-Only Pension benefit: \$20.00 per month per year of Credited Service, not to exceed 35 years.

However, Participants who worked under the jurisdiction of Local 559 shall receive benefits at the rate of \$10.00 per month per year of Credited Service earned prior to December 1, 1973. If such Participant had years of Credited Service in excess of 35 years, those after November 30, 1973, shall first be counted.

20. Pensioners who retired before October 1, 1979, and those retiring thereafter without having accumulated 500 hours of credited services after May 1, 1979, shall have that portion of their monthly pension benefit based upon service earned under the jurisdiction of Local 520 increased by 10%.

21. Those Participants who worked under the jurisdiction of Local 559, who retire after May 1, 1982, having accumulated 500 or more hours of Credited Service after May 1, 1981, shall be entitled to an Employee-Only Pension benefit of \$10 per month per year of Credited Service earned prior to December 1, 1973, and \$20 per month per year thereafter subject to a maximum of 35 years. If more than 35 years of Credited Service are accumulated, only the most recent 35 years shall be counted.

22. Effective November 1, 1982, the pensions of pensioners who acquired credited service under the jurisdiction of Local 559 shall be increased as follows:

a. For such pensioners who retired before November 1, 1975, the monthly employee-only benefit shall be

- (i) \$6.40 at date of retirement,
- (ii) \$7.40 effective November 1, 1975, and
- (iii) \$8.40 effective November 1, 1977.

b. For such pensioners who retired before November 1, 1977, having earned 500 hours of credited service after November 1, 1975

- (i) \$8.90 at date of retirement, and
- (ii) \$9.90 effective November 1, 1977.

c. For such pensioners who retire before October 1, 1979, having earned 500 hours of credited service after November 1, 1977

- (i) \$11.40 at date of retirement.

d. For such pensioners who retired after October 1, 1979, having earned 500 hours of credited service after May 1, 1979

- (i) \$17.40 at date of retirement, and
- (ii) all other such pensioners shall receive a 10% increase effective May 1, 1980.

e. For such pensioners who retired after November 1, 1982, having earned 500 hours of credited service after May 1, 1981

- (i) \$20.00 at date of retirement.

23. Effective May 1, 1984, for such Pensioners who retire thereafter having worked and earned at least 500 hours of Credited Service after May 1, 1983, the monthly Employee-Only benefit shall be \$20.00 per month per year of Credited Service prior to May 1, 1973, and \$28.75 per month per year of Credited Service on and after May 1, 1973.

24. Pensioners who did not work and earn 500 hours of Credited Service after May 1, 1983, but who were retired as of June 1, 1985 and who were Active Participants on May 1, 1984, shall receive an increase of \$25.00 per month.

25. Effective October 1, 1986, for those Active Participants who retire after that date, the amount of the monthly Employee-Only Pension Benefit shall be the total of:

- a. \$20.00 for each year of Credited Service prior to May 1, 1973, and
- b. \$28.75 for each year of Credited Service after April 30, 1973, and
- c. The sum of \$125.00 (actuarially reduced for early retirement or joint or other optional forms of pension).

If more than 35 years of Credited Service are earned, only the most recent 35 years shall be counted.

26. Effective October 1, 1987, for those Active Participants who retire after that date, having worked and earned 500 hours of Credited Service after May 1, 1986, the amount of the monthly Employee-Only Pension Benefit shall be the total of

- a. \$20.00 for each year of Credited Service prior to May 1, 1973, and
- b. \$31.50 for each year of Credited Service after April 30, 1973, and
- c. The sum of \$125.00 (actuarially reduced for early retirement or joint or other optional forms of pension).

If more than 35 years of Credited Service are earned, only the most recent 35 years shall be counted.

27. Effective September 1, 1989, for those Active Participants who retire on or after that date, the amount of the monthly Employee-Only Pension Benefit shall be the total of

- a. \$20.00 for each year of Credited Service prior to May 1, 1973 ,and
- b. \$31.50 for each year of Credited Service after April 30, 1973, and

c. The sum of \$160.00 (actuarially reduced for early retirement or joint or other optional forms of pension).

If more than 35 years of Credited Service are earned, only the most recent 35 years shall be counted.

28. In the event the collective bargaining agreement between the Union and any Employer specifies a rate of contribution, less than that required by the agreement with the Association, the Participants in such Employer bargaining unit shall be entitled to benefits at a rate reduced proportionally to the reduction in contributions. This provision shall not apply to reduce the pensions of Participants who have been or are apprentices indentured to the Local 520 Joint Apprenticeship Committee.

29. Effective May 1, 1993, for those active participants who retire on or after that date, the amount of monthly Employee-Only Pension Benefit shall be the total of:

- a. \$20.00 for each year of Credited Service prior to May 1, 1973, and
- b. \$31.50 for each year of Credited Service after April 30, 1973, and
- c. \$43.00 for each year of Credited Service after April 30, 1993, and
- d. the sum of \$160.00 (actuarially reduced for early retirement or joint or other optional forms of pension).

If more than 35 years of Credited Service are earned, only the most recent 35 years shall be counted.

30. Effective May 1, 1997, for those Active Participants who retire on or after that date, the amount of monthly Employee-Only Pension Benefit shall be the total of:

- a. \$20.00 for each year of Credited Service prior to May 1, 1973, and
- b. \$31.50 for each year of Credited Service after April 30, 1973, and
- c. \$43.00 for each year of Credited Service after April 30, 1993, and
- d. \$60.00 for each year of Credited Service after May 1, 1997, and
- e. a Supplement Benefit of either \$160.00 or, for an active Participant of the Merging Fund, \$20.00 for each Plan Year after May 1, 1993, with 500 hours of Vesting Service, but not to exceed \$160.00, actuarially reduced for early retirement or joint or other optional forms of pension.

If more than 35 years of Credited Service are earned, only the most recent 35 years shall be counted.

31. Effective May 1, 1997, increase the monthly pension benefits of Pensioners who were receiving benefits as of April 30, 1997 by five (5%) percent, but not less than \$20.00.

32. Effective May 1, 1997, for those Active Participants who retire on or after that date and who earned 500 or more hours of Credited Service after May 1, 1996, the amount of monthly Employee-Only Pension Benefit shall be the total of:

- a. \$20.00 for each year of Credited Service prior to May 1, 1973, and
- b. \$31.50 for each year of Credited Service after April 30, 1973, and
- c. \$6.00 for every 1/10<sup>th</sup> of a year of Credited Service after May 1, 1993; and
- d. a Supplement Benefit of either \$160.00 or, for an active Participant of the Merging Fund, \$20.00 for each Plan Year after May 1, 1993, with 500 hours of Vesting Service, but not to exceed \$160.00, actuarially reduced for early retirement or joint or other optional forms of pension.

If more than 35 years of Credited Service are earned, only the most recent 35 years shall be counted.

33. Effective May 1, 1998, the Supplement Benefit shall be increased by \$40.00 for those Active Participants who retired on or after May 1, 1993, and who earned 500 or more Hours of Credited Service after May 1, 1993.

34. Effective May 1, 1999, for those Participants who retire on or after May 1, 1999, benefit service credits accruing after May 1, 1998, will not be subject to the 35-year maximum for years of benefit service.

35. Effective May 1, 1999, for those Participants who retire on or after May 1, 1999, and who have earned 500 or more Hours of Credited Service between May 1, 1998 and April 30, 1999, increase the Participant's accrued benefit as of May 1, 1998, by seven (7%) percent.

36. Effective May 1, 1999, for Participants who were Retired Participants as of April 30, 1999, increase the Retired Participant's monthly benefit by seven (7%) percent.

37. Effective May 1, 1999, for those Active Participants who retire on or after May 1, 1999, and who earned 500 or more hours of Credited Service after May 1, 1999, the amount of monthly Employee-Only Pension Benefit shall be the total of:

- a. \$20.00 for each year of Credited Service prior to May 1, 1973, and

- b. \$31.50 for each year of Credited Service after April 30, 1973, and
- c. \$6.00 for every 1/10<sup>th</sup> year of Credited Service after May 1, 1993;
- d. \$7.00 for every 1/10<sup>th</sup> year of Credited Service after May 1, 1999.

38. Effective May 1, 2000, for Participants who were Retired Participants as of April 30, 2000, increase the Retired Participant's monthly benefit by one (1%) percent.

39. Effective May 1, 2000, for those Active Participants who retire on or after May 1, 2000, and who earned 500 or more hours of Credited Service after May 1, 2000, the amount of monthly Employee-Only Pension Benefit shall be the total of:

- a. \$20.00 for each year of Credited Service prior to May 1, 1973, and
- b. \$31.50 for each year of Credited Service after April 30, 1973, and
- c. \$60.00 for every year of Credited Service after May 1, 1993, and
- d. \$70.00 for each year of Credited Service after May 1, 1999, and
- e. \$75.00 for each year of Credited Service after May 1, 2000.

40. Effective May 1, 2001, for those Active Participants who retire on or after May 1, 2001, and who earned 500 or more hours of Credited Service after May 1, 2001, the amount of monthly Employee-Only Pension Benefit shall be the total of:

- a. \$20.00 for each year of Credited Service prior to May 1, 1973, and
- b. \$31.50 for each year of Credited Service after April 30, 1973, and
- c. \$60.00 for every year of Credited Service after May 1, 1993, and
- d. \$70.00 for each year of Credited Service after May 1, 1999, and
- e. \$75.00 for each year of Credited Service after May 1, 2000, and
- f. \$85.00 for each year of Credited Service after May 1, 2001.

## **APPENDIX C**

### **PLUMBERS AND PIPEFITTERS LOCAL NO. 520 PENSION FUND FUNDING IMPROVEMENT PLAN(S) AND/OR REHABILITATION PLAN**

#### **NO-ACTION FUNDING IMPROVEMENT PLAN OF THE PLUMBERS AND PIPEFITTERS LOCAL NO. 520 PENSION FUND**

To: Plumbers and Pipefitters Local No. 520 and Mechanical Contractors Association of Central Pennsylvania

On August 20, 2008, the Board of Trustees of the Plumbers and Pipefitters Local No. 520 Pension Fund sent to you the Fund's Notice of Endangered Status.

In the Notice you were informed that, as a result of action taken by you in the form of providing for an increased rate of contributions to the Fund under the collective bargaining agreement between Plumbers and Pipefitters Local No. 520 and the Mechanical Contractors Association of Central Pennsylvania effective May 1, 2008, the Fund's actuary has determined that the Fund has effectively adopted a No-Action Funding Improvement Plan that satisfies the requirements of the Pension Protection Act of 2006. As a result of the increase in the amount of contributions to the Fund, the funding level of the Fund during the Funding Improvement Period is estimated to increase from its current funding percentage of 68% to 85%.

As required by the Pension Protection Act, the Board of Trustees and the Fund's actuary must continue to review the Fund's funding status. The Fund's funding status must be reviewed and certified by the actuary annually, and notices must be provided to you each year while the Fund is in Endangered Status.

It is important to keep in mind that there are several variables beyond the control of the Board of Trustees that the Fund's advisors are monitoring—including investment market volatility, and changes in employment levels and/or the number of contributing employers—which could affect the Fund's future funding status and the Board of Trustees' recommended corrective actions in the future. Depending on what occurs with respect to these variables, the Board of Trustees may be required to take some additional action in order to maintain the Funding Improvement Plan.

## **Funding Improvement Plan Projected Progress**

<b>Funding Improvement Plan Progress</b>		
<b>Year</b>	<b>Credit Balance</b>	<b>Funding %</b>
2008	\$4,623,000	72.45%
2009	8,774,000	74.53
2010	11,525,000	76.78
2011	14,311,000	78.14
2012	16,749,000	79.25
2013	18,397,000	81.19
2014	19,749,000	83.13
2015	19,061,000	85.10
2016	19,128,000	87.10
2017	19,781,000	89.17

## **FIRST ANNUAL (2010 PLAN YEAR) UPDATE TO THE NO-ACTION FUNDING IMPROVEMENT PLAN OF THE PLUMBERS AND PIPEFITTERS LOCAL NO. 520 PENSION FUND**

### **Introduction**

On July 29, 2008, the Plumbers and Pipefitters Local No. 520 Pension Fund’s (“Fund”) actuary certified to the U.S. Department of Treasury that the Fund was considered to be in endangered status for the 2008 Plan Year beginning May 1, 2008. The Fund’s actuary determined that the funded percentage of the Fund was less than 80%. Because of the Fund’s endangered status, the Pension Protection Act of 2006 (“PPA”) required the Fund to adopt a Funding Improvement Plan.

Rather than waiting for a formal certification from the Fund’s actuary, early in 2008, the Board of Trustees asked the actuary to provide an estimated projection of the Fund’s funding deficiencies beginning May 1, 2008. The Board of Trustees also asked the actuary to provide information on the amount of any contribution increase necessary to fund a Funding Improvement Plan if the actuary concluded that the Fund’s funding deficiencies beginning May 1, 2008 would be in endangered status. It was the Board of Trustees’ intent that, if they did receive notice from the Fund’s actuary that the Fund was in endangered status, they would provide the Union and Employers with the actuary’s contribution recommendation and would recommend that the Union and Employers implement the recommended contribution increases. The Fund’s actuary did inform the Board of Trustees that if the contribution rates were increased in specified amounts an effective Funding Improvement Plan could be established without any adjustments to the Fund’s benefits.

As a result of the action by the Union and Employers, the Board of Trustees adopted a No-Action Funding Plan—“No Action,” since there was no need to provide the Union and Em-

ployers with one or more schedule of revised contributions and benefit structures, commonly referred to as a default schedule and preferred schedules.

The Fund's funding improvement period is the ten- (10) year period that begins May 1, 2009 and ends April 30, 2019.

On March 11, 2009, the Board of Trustees elected to freeze the Fund's funding status as permitted by Section 204(a) of the Worker, Retiree and Employer Recovery Act of 2008 for the Plan Year beginning May 1, 2009. As a result of the action of the Board of Trustees, there was no need to issue an annual update to the Fund's No-Action Funding Improvement Plan.

### **2010 Update of Funding Improvement Plan**

A comparison of the original Funding Improvement Plan projections to updated projections based on the May 1, 2010 valuation as set forth below demonstrates that the Fund is not making scheduled progress and will not emerge from endangered status prior to the end of the Funding Improvement Period.

<b>Original</b> <b>Funding Improvement Plan Progress</b>			<b>Scheduled Progress</b> <b>At 5/1/2010</b>	
<b>Credit Balance</b>	<b>Funding %</b>	<b>Year</b>	<b>Credit Balance</b>	<b>Funding %</b>
\$4,623,000	72.45%	2008		
8,774,000	74.53	2009	\$6,152,000	68.01%
11,525,000	76.78	2010	10,365,000	73.73
14,311,000	78.14	2011	14,387,000	72.93
16,749,000	79.25	2012	17,757,000	73.30
18,397,000	81.19	2013	20,010,000	74.12
19,749,000	83.13	2014	21,623,000	75.01
19,061,000	85.10	2015	20,533,000	74.70
19,128,000	87.10	2016	19,655,000	75.01
19,781,000	89.17	2017	18,834,000	75.40

### **Annual Standards and Updating of Funding Improvement Plan**

Pursuant to the Pension Protection Act of 2006, the Fund has adopted the following procedures:

The Fund's actuary shall conduct an annual review of the Funding Improvement Plan and the schedules thereto.

The Fund's actuary shall report to the Trustees the results of its annual review.

In consultation with the Fund's actuary, the Trustees shall update annually the Funding Improvement Plan and the contribution rates contained in its Schedules to reflect the experience of the Fund.

## **SECOND ANNUAL (2011 PLAN YEAR) UPDATE TO THE NO-ACTION FUNDING IMPROVEMENT PLAN OF THE PLUMBERS AND PIPEFITTERS LOCAL NO. 520 PENSION FUND**

### **Introduction**

On July 29, 2008, the Plumbers and Pipefitters Local No. 520 Pension Fund's ("Fund") actuary certified to the U.S. Department of Treasury that the Fund was considered to be in endangered status for the 2008 Plan Year beginning May 1, 2008. The Fund's actuary determined that the funded percentage of the Fund was less than 80%. Because of the Fund's endangered status, the Pension Protection Act of 2006 ("PPA") required the Fund to adopt a Funding Improvement Plan.

Rather than waiting for a formal certification from the Fund's actuary, early in 2008, the Board of Trustees asked the actuary to provide an estimated projection of the Fund's funding deficiencies beginning May 1, 2008. The Board of Trustees also asked the actuary to provide information on the amount of any contribution increase necessary to fund a Funding Improvement Plan if the actuary concluded that the Fund's funding deficiencies beginning May 1, 2008 would be in endangered status. It was the Board of Trustees' intent that, if they did receive notice from the Fund's actuary that the Fund was in endangered status, they would provide the Union and Employers with the actuary's contribution recommendation and would recommend that the Union and Employers implement the recommended contribution increases. The Fund's actuary did inform the Board of Trustees that if the contribution rates were increased in specified amounts an effective Funding Improvement Plan could be established without any adjustments to the Fund's benefits.

As a result of the action by the Union and Employers, the Board of Trustees adopted a No-Action Funding Plan—"No Action," since there was no need to provide the Union and Employers with one or more schedule of revised contributions and benefit structures, commonly referred to as a default schedule and preferred schedules.

The Fund's funding improvement period is the ten- (10) year period that begins May 1, 2009 and ends April 30, 2019.

### **2011 Update of Funding Improvement Plan**

A comparison of the original Funding Improvement Plan projections to updated projections based on the May 1, 2011 valuation as set forth below demonstrates that the Fund is making scheduled progress and will emerge from endangered status prior to the end of the Funding Improvement Period.

<b>Original Funding Improvement Plan Progress</b>			<b>Scheduled Progress At 5/1/2011</b>	
<b>Credit Balance</b>	<b>Funding %</b>	<b>Year</b>	<b>Credit Balance</b>	<b>Funding %</b>
\$4,623,000	72.45%	2008		
8,774,000	74.53	2009		
11,525,000	76.78	2010	\$9,850,000	73.41%
14,311,000	78.14	2011	15,929,000	74.95
16,749,000	79.25	2012	21,789,000	77.38
18,397,000	81.19	2013	27,074,000	80.74
19,749,000	83.13	2014	32,290,000	84.13
19,061,000	85.10	2015	35,396,000	86.30
19,128,000	87.10	2016	39,027,000	87.89
19,781,000	89.17	2017	43,055,000	89.64

### **Annual Standards and Updating of Funding Improvement Plan**

Pursuant to the Pension Protection Act of 2006, the Fund has adopted the following procedures:

The Fund's actuary shall conduct an annual review of the Funding Improvement Plan and the schedules thereto.

The Fund's actuary shall report to the Trustees the results of its annual review.

In consultation with the Fund's actuary, the Trustees shall update annually the Funding Improvement Plan and the contribution rates contained in its Schedules to reflect the experience of the Fund.

## **THIRD ANNUAL (2012 PLAN YEAR) UPDATE TO THE NO-ACTION FUNDING IMPROVEMENT PLAN OF THE PLUMBERS AND PIPEFITTERS LOCAL NO. 520 PENSION FUND**

### **Introduction**

On July 29, 2008, the Plumbers and Pipefitters Local No. 520 Pension Fund's ("Fund") actuary certified to the U.S. Department of Treasury that the Fund was considered to be in endangered status for the 2008 Plan Year beginning May 1, 2008. The Fund's actuary determined that the funded percentage of the Fund was less than 80%. Because of the Fund's endangered status, the Pension Protection Act of 2006 ("PPA") required the Fund to adopt a Funding Improvement Plan.

Rather than waiting for a formal certification from the Fund's actuary, early in 2008, the Board of Trustees asked the actuary to provide an estimated projection of the Fund's funding deficiencies beginning May 1, 2008. The Board of Trustees also asked the actuary to provide in-

formation on the amount of any contribution increase necessary to fund a Funding Improvement Plan if the actuary concluded that the Fund's funding deficiencies beginning May 1, 2008 would be in endangered status. It was the Board of Trustees' intent that, if they did receive notice from the Fund's actuary that the Fund was in endangered status, they would provide the Union and Employers with the actuary's contribution recommendation and would recommend that the Union and Employers implement the recommended contribution increases. The Fund's actuary did inform the Board of Trustees that if the contribution rates were increased in specified amounts an effective Funding Improvement Plan could be established without any adjustments to the Fund's benefits.

As a result of the action by the Union and Employers, the Board of Trustees adopted a No-Action Funding Plan—"No Action," since there was no need to provide the Union and Employers with one or more schedule of revised contributions and benefit structures, commonly referred to as a default schedule and preferred schedules.

The Fund's funding improvement period is the ten- (10) year period that begins May 1, 2009 and ends April 30, 2019.

## **2012 Update of Funding Improvement Plan**

A comparison of the original Funding Improvement Plan projections to updated projections based on the May 1, 2012 valuation as set forth below demonstrates that the Fund is making scheduled progress and will emerge from endangered status prior to the end of the Funding Improvement Period.

<b>Original Funding Improvement Plan Progress</b>			<b>Scheduled Progress At 5/1/2012</b>	
<b>Credit Balance</b>	<b>Funding %</b>	<b>Year</b>	<b>Credit Balance</b>	<b>Funding %</b>
\$4,623,000	72.45%	2008		
8,774,000	74.53	2009		
11,525,000	76.78	2010		
14,311,000	78.14	2011		
16,749,000	79.25	2012	\$18,808,000	74.42%
18,397,000	81.19	2013	22,462,000	75.88
19,749,000	83.13	2014	25,594,000	77.30
19,061,000	85.10	2015	26,176,000	77.55
19,128,000	87.10	2016	26,810,000	77.23
19,781,000	89.17	2017	27,605,000	78.04
		2018	29,100,000	78.97
		2019	31,017,000	81.54

## **Annual Standards and Updating of Funding Improvement Plan**

Pursuant to the Pension Protection Act of 2006, the Fund has adopted the following procedures:

The Fund's actuary shall conduct an annual review of the Funding Improvement Plan and the schedules thereto.

The Fund's actuary shall report to the Trustees the results of its annual review.

In consultation with the Fund's actuary, the Trustees shall update annually the Funding Improvement Plan and the contribution rates contained in its Schedules to reflect the experience of the Fund.

## **FOURTH ANNUAL (2013 PLAN YEAR) UPDATE TO THE NO-ACTION FUNDING IMPROVEMENT PLAN OF THE PLUMBERS AND PIPEFITTERS LOCAL NO. 520 PENSION FUND**

### **Introduction**

On July 29, 2008, the Plumbers and Pipefitters Local No. 520 Pension Fund's ("Fund") actuary certified to the U.S. Department of Treasury that the Fund was considered to be in endangered status for the 2008 Plan Year beginning May 1, 2008. The Fund's actuary determined that the funded percentage of the Fund was less than 80%. Because of the Fund's endangered status, the Pension Protection Act of 2006 ("PPA") required the Fund to adopt a Funding Improvement Plan.

Rather than waiting for a formal certification from the Fund's actuary, early in 2008, the Board of Trustees asked the actuary to provide an estimated projection of the Fund's funding deficiencies beginning May 1, 2008. The Board of Trustees also asked the actuary to provide information on the amount of any contribution increase necessary to fund a Funding Improvement Plan if the actuary concluded that the Fund's funding deficiencies beginning May 1, 2008 would be in endangered status. It was the Board of Trustees' intent that, if they did receive notice from the Fund's actuary that the Fund was in endangered status, they would provide the Union and Employers with the actuary's contribution recommendation and would recommend that the Union and Employers implement the recommended contribution increases. The Fund's actuary did inform the Board of Trustees that if the contribution rates were increased in specified amounts an effective Funding Improvement Plan could be established without any adjustments to the Fund's benefits.

As a result of the action by the Union and Employers, the Board of Trustees adopted a No-Action Funding Plan—"No Action," since there was no need to provide the Union and Em-

ployers with one or more schedule of revised contributions and benefit structures, commonly referred to as a default schedule and preferred schedules.

The Fund's funding improvement period is the ten- (10) year period that begins May 1, 2009 and ends April 30, 2019.

### **2013 Update of Funding Improvement Plan**

A comparison of the original Funding Improvement Plan projections to updated projections based on the May 1, 2013 valuation as set forth below demonstrates that the Fund is making scheduled progress and will emerge from endangered status prior to the end of the Funding Improvement Period.

<b>Original</b> <b>Funding Improvement Plan Progress</b>			<b>Scheduled Progress</b> <b>At 5/1/2013</b>	
<b>Credit Balance</b>	<b>Funding %</b>	<b>Year</b>	<b>Credit Balance</b>	<b>Funding %</b>
\$4,623,000	72.45%	2008		
8,774,000	74.53	2009		
11,525,000	76.78	2010		
14,311,000	78.14	2011		
16,749,000	79.25	2012		
18,397,000	81.19	2013	\$20,107,000	75.55%
19,749,000	83.13	2014	23,048,000	76.93
19,061,000	85.10	2015	23,428,000	77.30
19,128,000	87.10	2016	23,886,000	77.08
19,781,000	89.17	2017	24,502,000	77.97
		2018	25,773,000	78.82
		2019	27,419,000	81.34

### **Annual Standards and Updating of Funding Improvement Plan**

Pursuant to the Pension Protection Act of 2006, the Fund has adopted the following procedures:

The Fund's actuary shall conduct an annual review of the Funding Improvement Plan and the schedules thereto.

The Fund's actuary shall report to the Trustees the results of its annual review.

In consultation with the Fund's actuary, the Trustees shall update annually the Funding Improvement Plan and the contribution rates contained in its Schedules to reflect the experience of the Fund.