

**RHODE ISLAND LABORERS' PENSION PLAN**  
**AMENDED AND RESTATED**  
**JANUARY 1, 2015**  
**Complete Text of the Rules and Regulations**

## **RHODE ISLAND LABORERS' PENSION PLAN**

In accordance with the provisions of Article X of the Rhode Island Laborers' Pension Plan, the undersigned, Trustees of the said Plan, hereby agree that the Rhode Island Laborers' Pension Plan, effective September 1, 1961 and as previously amended and restated effective January 1, 2001 and January 1, 2010, shall be further amended in the form of a completely restated Plan to be effective January 1, 2015 unless a different effective date is expressly specified herein, in which case such effective date specified herein shall control. The Trustees hereby amend and restate the Plan in its entirety to incorporate voluntary amendments made since the Plan was last restated and to comply with the Pension Protection Act of 2006 (PPA '06), Pub. L. 109-280; the U.S. Troop Readiness, Veterans' Care, Katrina Recovery and Iraq Accountability Appropriations Act 2007, Pub. L. 110-28; the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act), Pub. L. 110-245; the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA), Pub. L. 110-458; the Small Business Jobs Act of 2010 (SBJA), Pub. L. 111-240; the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (PRA 2010), Pub. L. No.111-192; the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141; and the American Taxpayer Relief Act of 2012 (ATRA), P.L. 112-240, in addition, to additional revisions necessary to comply with any subsequent legislation and guidance listed in IRS Notice 2013-84, in Section IV of the 2013 Cumulative List of Changes in Plan Qualification Requirements.

Former Employees' eligibility for benefits and the amount of benefits, if any, payable to or on behalf of former Employees shall be determined in accordance with the provisions of the Plan in effect as of the date their Covered Employment terminated, except to the extent otherwise specifically provided under subsequent Plan amendments or in this Amended and Restated Plan. Likewise, certain benefits under this Plan are subject to minimum requirements such as a minimum number of Hours of Service after a specified date. Participants not meeting such requirements shall have their benefits payable under a prior Plan provision for which they are qualified, notwithstanding the fact that such minimum requirements are not restated herein.

**RHODE ISLAND LABORERS’  
PENSION PLAN**

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# ARTICLE I Definitions

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

## Section 1.01 Actuarial Present Value

Unless otherwise specified in the Plan, the Actuarial Present Value of a benefit shall be determined using:

- (a) For distributions with Annuity Starting Dates on or after January 1, 2008, the Applicable Mortality Table and Applicable Interest Rate as referenced below.
  - (1) The “Applicable Mortality Table” shall be the table for the Calendar Year that contains the Annuity Starting Date, modified as appropriate by the Secretary of the Treasury, pursuant to Code Section 417(e)(3)(B) (which table is subject to change annually in accordance with Rev. Rul. 2007-67 without the necessity of further amending the Plan).
  - (2) The “Applicable Interest Rate” shall be the rates determined in accordance with Code Section 417(e)(3), as amended by the Pension Protection Act, including the transition rules from 2008-2011, for the month of November (the “Lookback Month”) immediately preceding the Calendar Year (the “stability period”) that contains the Annuity Starting Date. The stability period, within the meaning of Treasury Regulation Section 1.417(e)-1(d)(4)(ii), shall be the Calendar Year.
- (b) For determinations as of any Annuity Starting Date that is on or after January 1, 2000 but before January 1, 2008, of a minimum pension benefit under Sections 6.06, 6.20 or 7.01(c)(A), the Applicable Mortality Table and the Applicable Interest Rate or, if greater, using a 7% interest assumption and the 1971 Group Annuity Mortality Table. For this purpose:
  - (1) The Applicable Mortality Table for a Calendar Year is the table prescribed for use in that year in Regulations under Code Section 417(e), and which until modified or superseded, is the table set forth in Revenue Ruling 95-6, and

- (2) The Applicable Interest Rate is, for a Calendar Year, the annual rate of interest on 30-year Treasury securities as specified by the commissioner of Internal Revenue for the month of November (as published in December) immediately preceding the Calendar Year that contains the Annuity Starting Date.
- (c) Notwithstanding subsection (a) above, for a determination as of an Annuity Starting Date that is on or after January 1, 2000 but no later than 12 months following the adoption of this provision, the Actuarial Present Value of a minimum pension benefit under Sections 6.06, 6.20 or 7.01(c)(A) shall be determined in accordance with subsection (d) above if that yields a greater Actuarial Present Value.
- (d) For all other determinations, including any determinations as of any Annuity Starting Date that is prior to January 1, 2000, the lower of:
  - (1) a 7% interest rate or
  - (2) the interest rate prescribed by the Pension Benefit Guaranty Corporation for valuing immediate annuities under single-employer plans that terminate without a Notice of Sufficiency during the first month of the Plan Year that includes the Annuity Starting Date.

The mortality assumption shall be based on the 1971 Group Annuity Mortality Table, weighted as follows:

- (A) For a Participant's benefit, 100% male and 0% female;
- (B) For the benefit of a Participant's spouse or former spouse, 0% male and 100% female; and
- (C) In any other case, 50% male and 50% female.

“Actuarial Equivalence” means two benefits of equal actuarial present value based on the actuarial factors and assumptions specified in the provision in which that phrase is used or, if not otherwise specified, based on the assumptions described in this section.



## Section 1.02      Annuity Starting Date

- (a) The “Annuity Starting Date” is the date as of which benefits are calculated and paid under the Plan and shall be the first day of the first month after or coincident with the later of:
  - (1) the month following the month in which the claimant has fulfilled all of the conditions for entitlement to benefits, including the filing of an application for benefits, or
  - (2) 30 days after the Plan advises the Participant of the available benefit payment options.
- (b) Notwithstanding subsection (a) above, the Annuity Starting Date may occur and benefits may begin before the end of the 30-day period, provided:
  - (1) the Participant and Spouse, if any, consent in writing to the commencement of payments before the end of the 30-day period and distribution of the Pension begins more than seven days after the written explanation was provided to the Participant and Spouse,
  - (2) the Participant’s benefit was previously being paid because of an election after the Normal Retirement Age, or
  - (3) the benefit is being paid out automatically as a lump sum under the provisions of the Plan.
- (c) The Annuity Starting Date will not be later than the Participant’s Required Beginning Date as defined in Section 7.01.
- (d) The Annuity Starting Date for a Beneficiary or Alternate Payee (within the meaning of Section 206(d)(3) of ERISA and Section 414(p) of the Internal Revenue Code) will be determined under subsections (a) and (b), except that references to spousal consent do not apply.
- (e) A Participant who retires before his or her Normal Retirement Age and then earns additional benefit accruals under the Plan through reemployment will have a separate Annuity Starting Date determined with respect to those additional accruals, except that an

Annuity Starting Date that is on or after Normal Retirement Age shall apply for any additional benefits accrued through reemployment after that date unless Section 6.11(b) applies.

### **Section 1.03      Beneficiary**

“Beneficiary” means a person (other than a pensioner) who is receiving benefits under this Plan because of his or her designation for such benefits by a Participant or in accordance with ERISA requirements in Article V regarding the Joint and Survivor Pension.

### **Section 1.04      Calendar Year**

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

### **Section 1.05      Collective Bargaining Agreement**

“Collective Bargaining Agreement” or “Agreement” means an agreement between the Union and an Employer which requires contributions to the Fund.

### **Section 1.06      Contributing Employer**

“Contributing Employer” or “Employer” means an employer signatory to a Collective Bargaining Agreement with the Union requiring contributions to this Fund, provided the employer has been accepted as a Contributing Employer by the Trustees. “Employer” shall also include the Union, provided each shall be required to make the contribution for each of its employees equal at all times to the highest contribution made by any Employer on the due date. For purposes of identifying highly compensated employees and applying the rules on participation, vesting and statutory limits on benefits under the Fund, the term “employer” includes all corporations, trades or businesses under common control with the Employer within the meaning of Internal Revenue Code §414(b) and (c), all members of an affiliated service group with the Employer within the meaning of Code §414(m) and all other businesses aggregated with the Employer under Code §414(o).

### **Section 1.07 Contribution Period**

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

### **Section 1.08 Covered Employment**

“Covered Employment” means employment of an Employee by an Employer in a category covered by a Collective Bargaining Agreement including such employment prior to the Contribution Period.

### **Section 1.09 Employee**

“Employee” means a person who is an employee of an Employer and who is covered by a Collective Bargaining Agreement or any written agreement requiring Employer contributions on his behalf. If the Union is a Contributing Employer, the employees with respect to whom such Employer participates in this Plan are to be deemed Employees. For Plan Years beginning after December 31, 1996, solely for purposes of participation, nondiscrimination, vesting and benefit limits, the term “Employee” includes all leased employees of an Employer, within the meaning of §414(n) or §414(o) of the Internal Revenue Code, who otherwise meet the conditions for participation, vesting and/or benefit accrual under the Fund and who have performed services for a Contributing Employer on a substantially full-time basis for a period of at least one year, except to the extent such leased employees are excluded under the safe harbor exemption of §414(n)(5) of the Internal Revenue Code.

The term “Employee” shall not include any self-employed person or sole proprietor of a business organization which is a Contributing Employer.

### **Section 1.10 ERISA**

“ERISA” means the Employee Retirement Income Security Act of 1974 made effective September 2, 1974 and as it may be amended thereafter.

### **Section 1.11 Gender**

Except as the context may specifically require otherwise, use of the masculine (feminine) gender shall be understood to include both masculine and feminine genders.

## **Section 1.12 Highly Compensated Employee**

- (a) The term “Highly Compensated Employee” includes Highly Compensated Active Employees and Highly Compensated Former Employees of an Employer. Whether an individual is a Highly Compensated Employee is determined separately with respect to each Employer, based solely on that individual’s compensation from or status with respect to that Employer.
- (b) Effective for Plan Years beginning after December 31, 1996, a Highly Compensated Employee is any employee who:
  - (1) was a 5-percent owner of the Employer at any time during the year or the preceding year, or
  - (2) for the preceding year
    - (A) had compensation from the Employer in excess of \$80,000 (as adjusted annually for increases in the cost-of-living in accordance with regulations prescribed by the Secretary of the Treasury), and
    - (B) was in the top-paid group of employees for such preceding year. An employee is in the top-paid group of employees for any year if such employee is in the group consisting of the top twenty percent of the total employees when ranked by compensation paid during such year.

## **Section 1.13 Non-Bargained Employee**

A Non-Bargained Employee is a Participant whose participation is not covered by a Collective Bargaining Agreement between an Employer and an employee representative.

## **Section 1.14 Normal Retirement Age**

“Normal Retirement Age” means, effective January 1, 1988, the later of:

- (a) age 65 or
- (b) the earlier of:

- (1) the fifth anniversary of the Participant’s Plan participation, disregarding participation before the effective date of this Section, or
- (2) the tenth anniversary of the Participant’s Plan participation.

Participation before a Permanent Break in Service, and participation before a One-Year Break in Service in the case of a former Participant who has not returned to Covered Employment and reestablished participation in accordance with Section 2.04 are disregarded in applying this paragraph (b).

### **Section 1.15 Other Terms**

Other terms are specifically defined as follows:

<b>Terms</b>	<b>Section</b>
Regular Pension	3.02
Early Retirement Pension	3.04
Service Pension	3.06
Deferred Vested Pension	3.08
Disability Pension	3.10
Pension Credits	4.01
Year of Vesting Service	4.02
Permanent Break-in-Service	4.03
Qualified Military Service	4.04(c)
Joint and Survivor Pension	5.01

### **Section 1.16 Participant**

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

### **Section 1.17 Pensioner**

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

## **Section 1.18 Pension Fund**

“Pension Fund” or “Fund” means the Rhode Island Laborers’ Pension Fund established under the Trust Agreement.

## **Section 1.19 Pension Plan or Plan**

“Pension Plan” or “Plan” means this document as adopted by the Trustees and as thereafter amended by the Trustees.

## **Section 1.20 Service or “Hour of Service”**

- (a) In general, “Service” or Hour of “Service” is each hour for which:
  - (1) an Employee is paid, or entitled to payment, by the Employer(s) for the performance of duties for the Employer during the applicable computation period;
  - (2) an Employee is paid, or entitled to payment, by the Employer(s) 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), lay-off, jury duty, military duty or leave of absence; and
  - (3) back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Employer.
- (b) Hours under subparagraph (a)(2) above shall be computed in accordance with Department of Labor Regulations section 2530.200b-2.
- (c) The same hours shall not be credited both under subparagraph (a)(1) or (a)(2), as the case may be, and under subparagraph (a)(3).
- (d) Hours credited under subparagraph (a)(2) shall specifically include, without limitation, payments for disability from the Rhode Island Laborers’ Health Fund.

### **Section 1.21 Trust Agreement**

“Trust Agreement” means the Agreement and Declaration of Trust establishing the Rhode Island Laborers’ Pension Fund entered into as of June 2, 1961 and as thereafter amended.

### **Section 1.22 Trustees**

“Trustees” means the Board of Trustees as established and constituted from time to time in accordance with the provisions of the Trust Agreement.

### **Section 1.23 Union**

“Union” means any Local Union or District Council in the State of Rhode Island affiliated with the Laborers’ International Union of North America, AFL-CIO, which is or becomes a party to the Trust Agreement.

## **ARTICLE II      Participation**

### **Section 2.01      Purpose**

This article contains definitions to meet certain requirements of ERISA. It should be noted that once an Employee has become a Participant, the provisions of this Plan give him credit in accordance with the rules of the Plan for some or all of his service before he became a Participant.

### **Section 2.02      Participation**

An Employee shall become a Participant in the Plan on the first day of the month following the month in which he completed 250 Hours of Service in Covered Employment within either the first twelve (12) months after he is hired or within a Plan Year beginning after he is hired. The required hours may also be completed with any hours of service and other employment with an Employer if that other employment is continuous with the Employee's Covered Employment with that Employer. Employees employed by an employer, other than an Employer defined in Section 1.06, which is (i) one of a commonly controlled group of employers as defined in Code Section 414(b) or (c), (ii) an affiliated service group as defined in Code Section 414(m), of which an Employer is a member, or (iii) a business aggregated with the employer under Code Section 414(o) shall receive credit for employment for Participation and Vesting (not for benefit accrual) for such employment as defined herein.

### **Section 2.03      Termination of Participation**

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

### **Section 2.04      Reinstatement of Participation**

An Employee who has lost his status as a Participant in accordance with Section 2.03 shall again become a Participant by meeting the requirements of Section 2.02 within a Calendar Year on the basis of Service after the Calendar Year during which his participation terminated.



## ARTICLE III Pension Eligibility and Amounts

### Section 3.01 General

This article sets forth the eligibility conditions and benefit amounts for the pensions provided by this Plan. The accumulation and retention of service credits for eligibility are subject to the provisions of Article IV. The benefit amounts are subject to reduction on account of the Joint and Survivor Pension (Article V). The benefit rate used in calculating the benefit amount shall be determined as provided in Section 6.05. Entitlement of an eligible Participant to receive pension benefits is subject to his retirement; payment of benefits is subject to application for benefits, as provided in Article VI.

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

### Section 3.02 Regular Pension - Eligibility

- (a) A Participant may retire on a Regular Pension if he meets the following requirements:
- (1) he has attained age 65;
  - (2) he has at least 10 Pension Credits or effective January 1, 1999, in the case of a Participant with at least one Hour of Service on or after January 1, 1999, he has at least 5 Pension Credits or 5 Years of Vesting Service; and
  - (3) he has earned at least one half (1/2) Pension Credit during the Contribution Period by actual work in Covered Employment, or he has worked in Covered Employment for at least 500 hours in the 12 month period beginning with the month in which contributions were first payable for his group of Employees.

Notwithstanding the above, a Participant shall be eligible for a Regular Pension upon his attainment of Normal Retirement Age.

- (b) In addition, a Participant shall be eligible for the equivalent of a Regular Pension, in the form of an unreduced Early Retirement Pension, if he meets the following requirements:
- (1) he has attained age 62 and has earned at least one half (1/2) Pension Credit during 1989 or any year thereafter, and

- (2) he has at least 10 Pension Credits or effective January 1, 1999, in the case of a Participant with at least one Hour of Service on or after January 1, 1999, he has at least 5 Pension Credits or 5 Years of Vesting Service.

### **Section 3.03 Regular Pension - Amount**

#### **FOR PARTICIPANTS OTHER THAN NON-BARGAINED EMPLOYEES**

For Participants with 15 or more Pension Credits, the monthly amount of the Regular Pension for pensions effective on or after January 1, 2008 is \$100 times the number of a Participant's Pension Credits, but not exceeding \$3,500 in total, provided the Participant earned at least one-half (1/2) Pension Credit during 2007 or any year thereafter.

For Participants with 15 or more Pension Credits, the monthly amount of the Regular Pension for pensions effective on or after January 1, 2006 is \$90 times the number of a Participant's Pension Credits, but not exceeding \$2,700 in total, provided the Participant earned at least one-half (1/2) Pension Credit during 2005 or any year thereafter.

For Participants with less than 15 Pension Credits, the monthly amount of the Regular Pension for pensions effective on and after January 1, 2006 is \$81.00 times the number of a Participant's Pension Credits, but not exceeding \$1,194.75 in total, provided the Participant earned at least one-half (1/2) Pension Credit during 2005 or any year thereafter.

For Participants with 15 or more Pension Credits, the monthly amount of the Regular Pension for pensions effective on or after January 1, 2005 is \$86 times the number of a Participant's Pension Credits, but not exceeding \$2,580 in total, provided the Participant earned at least one-half (1/2) Pension Credit during 2004 or any year thereafter.

For Participants with less than 15 Pension Credits, the monthly amount of the Regular Pension for pensions effective on and after January 1, 2005 is \$77.40 times the number of a Participant's Pension Credits, but not exceeding \$1,141.65 in total, provided the Participant earned at least one-half (1/2) Pension Credit during 2004 or any year thereafter.

For Participants with 15 or more Pension Credits, the monthly amount of the Regular Pension for pensions effective on or after January 1, 2004 is \$86 times the number of a Participant's Pension Credits, but not exceeding \$2,150 in total, provided the Participant earned at least one-half (1/2) Pension Credit during 2003 or any year thereafter.

For Participants with less than 15 Pension Credits, the monthly amount of the Regular Pension for pensions effective on and after January 1, 2004 is \$64.50 times the number of a Participant's Pension Credits, but not exceeding \$951.38 in total, provided the Participant earned at least one-half (1/2) Pension Credit during 2003 or any year thereafter.

For Participants with 15 or more Pension Credits, the monthly amount of the Regular Pension for pensions effective on or after January 1, 2002 is \$74 times the number of a Participant's Pension Credits, but not exceeding \$1,850 in total, provided the Participant earned at least one-half (1/2) Pension Credit during 2001 or any year thereafter.

For Participants with less than 15 Pension Credits, the monthly amount of the Regular Pension for pensions effective on and after January 1, 2002 is \$55.50 times the number of a Participant's Pension Credits, but not exceeding \$818.63 in total, provided the Participant earned at least one-half (1/2) Pension Credit during 2001 or any year thereafter.

For Participants with 15 or more Pension Credits, the monthly amount of the Regular Pension for pensions effective on or after January 1, 2000 is \$68 times the number of a Participant's Pension Credits, but not exceeding \$1,700 in total, provided the Participant earned at least one-half (1/2) Pension Credit during 1999 or any year thereafter.

For Participants with less than 15 Pension Credits, the monthly amount of the Regular Pension for pensions effective on and after January 1, 2000 is \$51 times the number of a Participant's Pension Credits, but not exceeding \$752.25 in total, provided the Participant earned at least one-half (1/2) Pension Credit during 1999 or any year thereafter.

For Participants with 15 or more Pension Credits, the monthly amount of the Regular Pension for pensions effective on or after January 1, 1995 is \$56 times the number of a Participant's Pension Credits, but not exceeding \$1,400 in total, provided the Participant earned at least one-half (1/2) Pension Credit during 1994 or any year thereafter.

For Participants with less than 15 Pension Credits, the monthly amount of the Regular Pension for pensions effective on and after January 1, 1995 is \$42 times the number of a Participant's Pension Credits, but not exceeding \$619.50 in total, provided the Participant earned at least one-half (1/2) Pension Credit during 1994 or any year thereafter.

For Participants with 15 or more Pension Credits, the monthly amount of the Regular Pension for pensions effective on and after January 1, 1992 is \$52 times the number of a Participant's Pension

Credits, but not exceeding \$1,300 in total, provided the Participant earned at least one-half (1/2) Pension Credit during 1991 or any year thereafter.

For Participants with less than 15 Pension Credits, the monthly amount of the Regular Pension for pensions effective on and after January 1, 1992 is \$39 times the number of a Participant's Pension Credits, but not exceeding \$575.25 in total, provided the Participant earned at least one-half (1/2) Pension Credit during 1991 or any year thereafter.

#### FOR PARTICIPANTS WHO ARE NON-BARGAINED EMPLOYEES

For Participants who are Non Bargained Employees, the monthly amount of the Regular Pension for pensions effective on or after January 1, 2008 is \$100 times the number of a Participant's Pension Credits earned after 2006 and \$90 times the number of a Participant's Pension Credits earned prior to 2007, but not exceeding \$3,500 in total (35 Pension Credits), provided the Participant earned at least one-half (1/2) Pension Credit during 2007 or any year thereafter.

For Participants who are Non-Bargained Employees, the monthly amount of the Regular Pension for pensions effective on or after January 1, 2006 is \$90 times the number of a Participant's Pension Credits, but not exceeding \$2,700 in total, provided the Participant earned at least one-half (1/2) Pension Credit during 2005 or any year thereafter.

For Participants who are Non-Bargained Employees, the monthly amount of the Regular Pension for pensions effective on or after January 1, 2005 is \$86 times the number of a Participant's Pension Credits, but not exceeding \$2,580 in total, provided the Participant earned at least one-half (1/2) Pension Credit during 2004 or any year thereafter.

For Participants who are Non-Bargained Employees, the monthly amount of the Regular Pension for pensions effective on or after January 1, 2004 is \$86 times the number of a Participant's Pension Credits, but not exceeding \$2,150 in total, provided the Participant earned at least one-half (1/2) Pension Credit during 2003 or any year thereafter.

For Participants who are Non-Bargained Employees, the monthly amount of the Regular Pension for pensions effective on or after January 1, 2002 is \$74 times the number of a Participant's Pension Credits, but not exceeding \$1,850 in total, provided he earned at least one-half (1/2) Pension Credit during 2001 or any year thereafter.

For Participants who are Non-Bargained Employees, the monthly amount of the Regular Pension for pensions effective on or after January 1, 2000 is \$68 times the number of a Participant's Pension Credits, but not exceeding \$1,700 in total, provided he earned at least one-half (1/2) Pension Credit during 1999 or any year thereafter.

For Participants who are Non-Bargained Employees, the monthly amount of the Regular Pension for pensions effective on or after January 1, 1995 is \$56 times the number of a Participant's Pension Credits, but not exceeding \$1,400 in total, provided he earned at least one-half (1/2) Pension Credit during 1994 or any year thereafter.

For Participants who are Non-Bargained Employees, the monthly amount of the Regular Pension for pensions effective on or after January 1, 1992 is \$52 times the number of a Participant's Pension Credits, but not exceeding \$1,300 in total, provided he earned at least one-half (1/2) Pension Credit during 1991 or any year thereafter.

### **Section 3.04      Early Retirement Pension - Eligibility**

A Participant shall be entitled to retire on an Early Retirement Pension if he meets all of the following requirements:

- (a) he has attained age 55;
- (b) he has at least 10 Pension Credits or effective January 1, 1999, in the case of a Participant with at least one Hour of Service on or after January 1, 1999, he has at least 5 Pension Credits or 5 Years of Vesting Service; and
- (c) he has earned at least one-half (1/2) Pension Credit during the Contribution Period by actual work in Covered Employment, or he has worked in Covered Employment for at least 500 hours in the 12-month period beginning with the month in which contributions were first payable for his group of Employees.

### **Section 3.05      Early Retirement Pension - Amount**

The monthly amount of the Early Retirement Pension shall be reduced from the amount of the Regular Pension to which the Participant would have been entitled if he had attained age 62. Effective for pensions first payable on or after January 1, 1991, the amount of the reduction shall be one quarter of one percent (.0025) for each month by which the Employee is younger than age 62 when the pension

commences, provided the Participant earned at least one-half (1/2) Pension Credit during 1990 or any year thereafter.

### **Section 3.06            Service Pension - Eligibility**

A Participant may retire on a Service Pension if he meets the following requirements:

- (a)     he has at least 35 Pension Credits; and he has earned at least one-half (1/2) Pension Credit during the 1979 Calendar Year or any subsequent Calendar Year, and retires on or after January 1, 1980; or
  
- (b)     he has at least 30 Pension Credits, earned at least one-half (1/2) Pension Credit during the 1987 Calendar Year or any subsequent Calendar Year, and retires on or after March 1, 1988.

### **Section 3.07            Service Pension - Amount**

The monthly amount of the Service Pension is \$1,300 for pensions effective on and after January 1, 1992. The monthly amount of the Service Pension is \$1,400 for pensions effective on or after January 1, 1995. The monthly amount of the Service Pension shall not exceed \$1,700 for pensions effective on or after January 1, 2000 provided the Participant earned at least one-half (1/2) Pension Credit during 1999 or any year thereafter. The monthly amount of the Service Pension shall not exceed \$1,850 for pensions effective on or after January 1, 2002 provided the Participant earned at least one-half (1/2) Pension Credit during 2001 or any year thereafter. The monthly amount of the Service Pension shall not exceed \$2,150 for pensions effective on or after January 1, 2004 provided the Participant earned at least one-half (1/2) Pension Credit during 2003 or any year thereafter. The monthly amount of the Service Pension shall not exceed \$2,580 for pensions effective on or after January 1, 2005 provided the Participant earned at least one-half (1/2) Pension Credit during 2004 or any year thereafter. The monthly amount of the Service Pension shall not exceed \$2,700 for pensions effective on or after January 1, 2006 provided the Participant earned at least one-half (1/2) Pension Credit during 2005 or any year thereafter. the monthly amount of a Service Pension for pensions effective on or after January 1, 2008 is \$100 times the number of a Participant's Pension Credits earned on and after 2007 and \$90 times the number of a Participant's Pension Credits earned prior to January 1, 2007, but not exceeding 35 Pension Credits in total, provided the Participant earned at least one-half (1/2) Pension Credit during 2007 or any year thereafter.

### **Section 3.08           Deferred Vested Pension - Eligibility**

A Participant who separates from Covered Employment with at least ten years of Vesting Service, or effective January 1, 1999, in the case of a Participant with at least one Hour of Service on or after January 1, 1999, with at least five years of Vesting Service, or in the case of a Non-Bargained Employee who has at least one Hour of Service after December 31, 1988, at least five years of Vesting Service, and who does not become eligible for a pension under Sections 3.02, 3.04, 3.06 or 3.10, shall nonetheless be eligible to receive a Deferred Vested Pension, commencing at age 62 if he earned at least one-half (1/2) Pension Credit during 1991 or any year thereafter, or at age 65 otherwise. Notwithstanding any provision of the Plan to the contrary, a Participant who has earned sufficient Pension Credits under Section 3.04(b) and 3.04(c) but who separates from service prior to having attained age 55, shall be entitled to have his benefits commence as of the first day of any month after he attains age 55, if he so elects.

### **Section 3.09           Deferred Vested Pension - Amount**

The monthly amount of a Deferred Vested Pension shall be determined in the same manner as a Regular Pension to which the Participant would have been entitled if he had attained age 62 or age 65 if applicable.

### **Section 3.10           Disability Pension - Eligibility**

A Participant may retire on a Disability Pension if:

- (a) he has become totally and permanently disabled as hereinafter defined;
- (b) he is younger than age 62;
- (c) he has at least 15 Pension Credits or, effective January 1, 1999, at least 10 Pension Credits, provided he worked at least 500 hours in Covered Employment in a Plan Year beginning on or after January 1, 1997 and his date of disability is in 1998 or later;
- (d) he has at least one-half (1/2) Pension Credit by actual work in Covered Employment during the Contribution Period; and
- (e) he has earned at least one-quarter (1/4) Pension Credit during the thirty-six (36) month period immediately preceding his proven date of disability, either by actual work in Covered Employment or in accordance with the provisions of Section 4.01(c)(1) and (2).

Disability Pensions payable pursuant to this Section will not be paid retroactively for periods prior to January 1, 1979 for an individual who becomes eligible for disability as a result of the amendment of this Section.

A Participant who has retired on an Early Retirement Pension and who subsequently becomes disabled will not be eligible to receive a Disability Pension. All other requirements set forth in this Section 3.10 are applicable to disability applicants.

### **Section 3.11            Disability Pension - Amount**

The monthly amount of the Disability Pension is the same as the monthly amount of the Regular Pension. If a Participant who is receiving a Disability Pension shall subsequently cease to be totally and permanently disabled, his Disability Pension shall be terminated and he shall then be entitled to apply for an Early Retirement Pension, as defined in Section 3.04. In that event, the Early Retirement Pension shall be in an amount based on his age when he first retired on a monthly Disability Pension or age 55, whichever is the higher.

### **Section 3.12            Total and Permanent Disability Defined**

A Participant shall be deemed totally and permanently disabled if, on the basis of medical evidence satisfactory to a physician retained by the Trustees, he is found to be totally and permanently unable to engage in any further employment as a laborer as a result of bodily injury or disease. The Trustees shall accept as proof of total and permanent disability the determination by the Social Security Administration that the Participant is entitled to a Social Security disability benefit in connection with his Old Age and Survivors Insurance coverage. Before the Trustees act on an application for a Disability Pension under this Plan, a Participant applying for a Disability Pension may be required to submit to an examination by a physician or physicians selected by the Trustees and may also be required to submit to re-examination periodically as the Trustees may direct. A Participant who fails to submit to such periodic re-examination when required shall have his Disability Pension terminated. Subject to the claims procedure of Section 6.04, the Trustees are the sole and final judges of total and permanent disability and entitlement to a Disability Pension.



### **Section 3.13           Waiting Period for a Disability Pension**

The first monthly payment of a Disability Pension shall begin no sooner than the first of the month following the fifth month of the disability and shall continue thereafter for life, so long as the Pensioner remains totally and permanently disabled.

### **Section 3.14           Non-duplication of Pension**

A Participant shall be entitled to only one pension under this Plan, except that a Disability Pensioner who recovers may be entitled to a different type of pension, and a Pensioner may also receive a pension as the spouse or Beneficiary of a deceased Pensioner.

### **Section 3.15           Auxiliary Disability Benefit**

Effective as of June 1, 1993, if a Participant who is Totally and Permanently Disabled applies for a Disability Pension but, due to administrative causes including, but not limited to, a delay in receipt of proof of his total and permanent disability, his Annuity Starting Date is delayed, the Participant will be entitled to an Auxiliary Disability Benefit. The Auxiliary Disability Benefit is an amount, payable as a lump sum, equal to the monthly benefit payable as the Participant's Disability Pension (in the payment form elected for that pension) multiplied by the number of complete months, to a maximum of 12 months, between the Annuity Starting Date and the date the Disability Pension payments would have begun had there been no delay. In accordance with Section 3.13, no payments will be made for months prior to the month following the fifth month of disability.

### **Section 3.16           Special Pension Payments**

The Trustees may authorize such additional pension benefit payments to Pensioners, Beneficiaries and/or alternate payees as shall be determined in the sole and absolute discretion of the Trustees, provided however, that such additional pension benefit payments shall apply to Pensioners, Beneficiaries and/or alternate payees on a uniform and nondiscriminatory basis. By way of example and not by way of limitation, the Trustees, in the exercise of their fiduciary discretion, may authorize the payment of an additional monthly pension check to Pensioners, Beneficiaries and/or alternate payees.

Effective December 31, 2005, Pensioners, Surviving Spouses, eligible Alternate Payees and or beneficiaries receiving payments on December 1, 2005 will receive a one-time supplemental post-retirement benefit in the form of a 13th check in an amount equal to their December 2005 monthly payment.

Effective December 31, 2006, Pensioners, Surviving Spouses, eligible Alternate Payees and or beneficiaries receiving payments on December 1, 2006 will receive a one-time supplemental post-retirement benefit in the form of a 13th check in an amount equal to their December 2006 monthly payment.

Effective December 31, 2007, Pensioners, Surviving Spouses, eligible Alternate Payees and or beneficiaries receiving payments on December 1, 2007 will receive a one-time supplemental post-retirement benefit in the form of a 13th check in an amount equal to their December 2007 monthly payment.

# ARTICLE IV Pension Credits and Years of Vesting Service

## Section 4.01 Pension Credits

(a) For Employment during the Contribution Period: During the Contribution Period, a Participant shall be credited with Pension Credits on the basis of his hours of work in Covered Employment, including those worked before he became a Participant, on the following basis:

(1) For periods of Covered Employment after December 31, 1975, hours of work in accordance with the schedule shown below, regardless of whether contributions are actually paid with respect to such hours. Not more than one Pension Credit shall be granted in any one calendar year.

Notwithstanding the foregoing, a Participant will receive Pension Credit for a full year of Qualified Military Service as defined in Section 4.04(c) in accordance with the schedule above, based on the average number of his hours of work in Covered Employment during the 12-month period immediately preceding the period of Qualified Military Service; if the Participant serves less than a full year in Qualified Military Service, then Pension Credit will be pro-rated for each calendar week of Qualified Military Service on the basis of such average number of hours.

(2) For periods of Covered Employment prior to January 1, 1976, hours of work on which contributions are actually paid in accordance with the schedule shown below. Not more than one Pension Credit shall be granted in any one calendar year.

<b>Hours of Employment In a Calendar Year</b>	<b>Pension Credit In a Calendar Year</b>
Less than 250	None
250 but less than 500	One-quarter
500 but less than 750	One-half
750 but less than 1,000	Three-quarters

<b>Hours of Employment In a Calendar Year</b>	<b>Pension Credit In a Calendar Year</b>
1,000 or more	One Pension Credit

- (b) For Employment before the Contribution Period: A Participant shall be credited with Pension Credits prior to the Contribution Period (from January 1, 1955 to December 31, 1961) on the basis of his hours of work in Covered Employment as defined in (1), below, and in accordance with the same schedule shown in Section 4.01(a), above.
- (1) Participants shall be granted Pension Credit for employment with any employer in a job in the Building, Heavy and Highway Construction, Pipeline, and Plant industries in the State of Rhode Island covered by a collective bargaining agreement with the Union prior to the Contribution Period or in a category of employment with an employer that was subsequently covered by the first collective bargaining agreement between the Union and the Employer. For the periods prior to January 1, 1955, a Participant shall receive one-quarter Pension Credit for each calendar quarter in which he worked for one or more days in Covered Employment as defined above. The Trustees recognize that it may be difficult to verify creditable employment prior to the Contribution Period; consequently, for purposes of this rule, the Trustees will consider membership in a local union in the State of Rhode Island in a calendar quarter, as shown on the records of the Laborers' International Union of North America, AFL-CIO, as presumptive evidence of work in Covered Employment in that calendar quarter, provided, however, that no Pension Credit will be granted for periods of self-employment or for periods in which the person was not an Employee as defined in Section 1.09.
- (2) A Participant who is entitled to Pension Credit, as determined under Paragraph (b)(1) of this Section 4.01, shall also receive Pension Credit before the Contribution Period for similar employment outside the State of Rhode Island while working as a laborer in the jurisdiction of any local union in New England affiliated with the Laborers' International Union of North America, AFL-CIO, provided that he has accrued at least ten (10) Pension Credits for Covered Employment during the Contribution Period. Such similar employment outside of the geographic area covered by this Pension Fund while working as a laborer

within the jurisdiction of any local union in New England shall not be credited under this Plan, however, if the effect of doing so would be to duplicate the crediting of service or benefits under this and any other pension plan or fund.

(3) A Participant who is not eligible for Pension Credit under (2) may be entitled to Pension Credit for similar employment outside the State of Rhode Island, provided he meets the following requirements:

(A) At least 50 percent of the Participant’s Pension Credits which may be credited under this Section 4.01(b) is for Covered Employment in Rhode Island.

(B) He has earned at least the following number of Pension Credits during the Contribution Period, according to the year in which he first satisfied all of the requirements for a pension under this Plan:

<b>Application for Pension Based Upon Service Through the Following Years</b>	<b>Pension Credits During Contribution Period</b>
1970-71	Five
1972-73	Six
1974 and after	Seven

(C) Such employment shall not be credited if the effect of doing so would be to duplicate the crediting of service or benefits in this and any other laborers’ pension fund.

For the purpose of this subparagraph (3), the term “Local Union” shall be deemed to embrace any Local Union affiliated with the Laborers’ International Union of North America, AFL-CIO, whether or not in the State of Rhode Island.

(c) For Non-Working Periods: For the purpose of computing Pension Credits both before and during the Contribution Period, periods of absence from Covered Employment for the following reasons shall be credited as if they were periods of work in Covered Employment, provided, however, that the Participant had satisfied the requirement for initial participation as defined in Article II and accumulated at least one Pension Credit prior to the period of absence.

- (1) Total disability for Covered Employment for a period for which weekly accident and sickness benefits were paid under a welfare trust or similar plan to which the Employer contributes, provided that Pension Credit shall not be given for more than 13 weeks of any such period.
- (2) Total disability or incapacity arising from Covered Employment for which the Participant is compensated under a Workmen's Compensation law, limited to one (1) Pension Credit for any such period.
- (3) For the duration of employment as a full-time officer or official of the Rhode Island Laborers' District Council or the Laborers' International Union of North America, AFL-CIO. Notwithstanding the foregoing, concurrent service in each of the above capacities shall not result in dual credit under this Plan and any other plan of the Laborers' International Union of North America and its subordinate bodies which are not Participating Employers in this Plan.
- (4) Effective for Participants retiring after January 1, 1997, a lifetime maximum of three-quarters Pension Credit from the Laborers International Union of North America National (Industrial) Pension Plan will be granted provided that no pension is paid by the International Plan for such credit.
- (5) There shall be no more than one (1) Pension Credit for a Calendar Year credited to any Participant under all provisions of this Section 4.01.

## **Section 4.02      Years of Vesting Service**

- (a) General Rule: A Participant shall be credited with one Year of Vesting Service for each Calendar Year during the Contribution Period in which he worked in Covered Employment for 1,000 Hours of Service or more. For a Participant who works less than 1,000 Hours of Service in a Calendar Year, he shall receive fractional credit towards Vesting Service in accordance with the schedule set out in Section 4.01(a). This rule is subject to the provisions of the following subsections.

On or after January 1, 1999. A Participant who earns at least one Hour of Service on or after January 1, 1999 shall be 100% vested in his accrued benefit, provided he has at least five (5) years of Vesting Service. Notwithstanding the foregoing, a Participant shall be 100% vested upon the attainment of Normal Retirement Age, as defined in Article I and

the Break in Service rules shall not operate to deprive him of his accumulated Pension Credit.

(b) Additions

(1) If a Participant works for a Contributing Employer in a job not covered by this Plan and such employment is continuous with his employment with that Employer in Covered Employment, his hours of employment in such non-covered job during the Contribution Period and while he continued as an employee of that Employer shall be counted toward years of Vesting Service.

(2) A Participant shall also be credited with years of Vesting Service in accordance with the provisions of Section 4.01(c).

(3) Notwithstanding the foregoing, a Participant will be credited with up to a year of Vesting Service for a full year of Qualified Military Service as defined in Section 4.04(c), in accordance with the provisions of Section 4.01(c) based on the average number of his hours of work in Covered Employment during the 12-month period immediately preceding the period of Qualified Military Service; if the Participant serves less than a full year in Qualified Military Service, then credit for Vesting Service will be pro-rated for each calendar week of Qualified Military Service on the basis of such average number of hours.

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

(1) Years preceding a Break-in-Service as defined in Sections 4.03(c), 4.03(d) and 4.03(e) of this Article.

(2) Years before January 1, 1971 unless the Participant earned at least three Years of Vesting Service after December 31, 1970.

### **Section 4.03 Breaks-in-Service**

(a) General: If a person has a Break-in-Service before he has earned at least ten Pension Credits or ten Years of Vesting Service, or effective January 1, 1999, in the case of a bargained Participant with at least one Hour of Service on or after January 1, 1999, at

least five Pension Credits or five years of Vesting Service, or in the case of a Non-Bargained Employee with at least one Hour of Service after December 31, 1988, at least five Pension Credits or five years of Vesting Service, it has the effect of canceling his standing under the Plan; that is, his participation, his previously credited years of Vesting Service, and his previous Pension Credits. However, a Break may be temporary, subject to repair by a sufficient amount of subsequent service. A longer Break may be permanent.

(b) One-Year Break-in-Service

- (1) A Participant has a One-Year Break-in-Service in any Calendar Year in which he fails to complete 250 hours of service in Covered Employment.
- (2) Time of employment with a Contributing Employer in non-covered employment, if creditable under Section 4.02(b), shall be counted as if it were Covered Employment in determining whether a Break-in-Service has been incurred.
- (3) A One-Year Break-in-Service is repairable, in the sense that its effects are eliminated, if, before incurring a Permanent Break-in-Service, the Employee subsequently earns a quarter-year of Vesting Service. Previously earned years of Vesting Service and Pension Credits shall be restored. However, nothing in this paragraph (3) shall change the effect of a Permanent Break-in-Service.
- (4) Solely for the purpose of determining whether a One-Year Break-in Service has occurred after December 31, 1986, if a Participant is absent from Covered Employment by reason of (a) her pregnancy, (b) the birth of a child of such Participant, (c) the placement of a child with such Participant in connection with his or her adoption of such child, or (d) providing care for such child for a period beginning immediately following such birth or placement, the hours of service that otherwise would normally have been credited to such Participant but for such absence, or, where that cannot be determined, eight (8) hours of service per day of absence, shall be treated as hours of service hereunder up to a maximum of 251 hours for each such pregnancy or placement. The hours of service so credited shall be applied to the year in which such absence begins if doing so will prevent the Participant from incurring a One-Year Break-in-Service in that year; otherwise, they shall be applied to the immediately following year. The Fund



may require, as a condition of granting such credit, that the Participant establish to the satisfaction of the Trustees that the absence is for one of the reasons specified and the period during which such absence occurred.

- (5) For leaves that begin after February 4, 1994 which are covered by the terms of the Family and Medical Leave Act, hours will be credited as described in subsection (4) above for the term of the leave to a maximum of 12 weeks.
  - (6) Solely for the purpose of determining whether a One-Year Break-in Service has occurred, a Participant's military service and/or Qualified Military Service shall be credited in accordance with the provisions of Section 4.04.
- (c) Permanent Break-in-Service After 1975 and Before January 1, 1987: A Participant has a Permanent Break-in-Service if he has consecutive One-Year Breaks-in-Service, including at least one after 1975, that equal or exceed the number of Years of Vesting Service with which he had been credited.
  - (d) Permanent Break-in-Service After December 31, 1986: A Permanent Break-in-Service shall occur if a Participant incurs consecutive One-Year Breaks-in-Service for the greater of (i) five (5) years or (ii) his years of Vesting Service.
  - (e) Permanent Break-in-Service Before 1976: A Participant shall have incurred a Permanent Break-in-Service if, before January 1, 1976, he fails to earn the following number of Pension Credits during the indicated periods:
    - (1) Until a Participant has accumulated at least five (5) Pension Credits, he must earn at least one-quarter (1/4) Pension Credit in each Calendar Year.
    - (2) After a Participant has accumulated more than five (5) Pension Credits and until he has accumulated 15 Pension Credits, he must earn at least one-quarter (1/4) Pension Credit in any one of two consecutive Calendar Years.
    - (3) After a Participant has accumulated 15 Pension Credits, he must earn at least one-quarter (1/4) Pension Credit in any one of three consecutive Calendar Years.

- (4) After a Participant has attained the age of 55 and has accumulated at least 15 Pension Credits, the break rule shall not apply to cancel his accumulated Pension Credit.
- (5) After a Participant has accumulated 15 Pension Credits, of which at least five (5) Pension Credits were earned during the Contribution Period, the break rule shall not apply to cancel his accumulated Pension Credit.
- (f) Exception: A Participant shall not incur a Permanent Break in Service if his absence from Covered Employment is due to total disability from work as a laborer during which time he is collecting workers' compensation insurance.
- (g) Effect of Permanent Break-in-Service: If a person who has not met the requirements for a pension has a Permanent Break-in-Service:
  - (1) His previous Pension Credits and years of Vesting Service are permanently canceled, and
  - (2) His participation is canceled, new participation being subject to the provisions of Section 2.04.

#### **Section 4.04 Military Service**

- (a) Service in the armed forces of the United States shall be credited to the extent required by law.

A Participant who left Covered Employment to enter such military service shall apply for reemployment with his Employer within the time prescribed by law to be entitled to reemployment. Furthermore, he must call his claim for credit for military service to the attention of the Trustees and be prepared to supply the evidence that the Trustees will need in order to determine his rights.
- (b) Whether or not he is so entitled under law, if a Participant leaves Covered Employment during a time of a declared war or a national emergency to enter active service in the Armed Forces of the United States, the period of such military service shall not be counted toward a Break-in-Service.

Moreover, if he returns to Covered Employment (or makes himself available for Covered Employment) within the time required by law after his separation from military service to protect his reemployment rights, the period of such military service shall be credited toward years of Vesting Service and Pension Credit to the extent required by law.

- (c) Notwithstanding any provision to the contrary, contributions, vesting, benefits and service credit with respect to Qualified Military Service will be provided in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended, (USERRA) and Section 414(u) of the Internal Revenue Code for Participants who return to Covered Employment from Qualified Military Service on or after December 12, 1994. “Qualified Military Service” means a Participant’s qualified military service or other uniformed service period under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 USC Chapter 43. Qualified Military Service will be counted for purposes of earning Pension Credit, years of Vesting Service, avoiding a Break in Service and avoiding a Benefit Break provided the following conditions are satisfied.
- (1) A Participant must have reemployment rights under USERRA in order for the period of Qualified Military Service to be recognized.
  - (2) A Participant must not have incurred a One-Year Break in Service at the time he entered Qualified Military Service.
  - (3) A Participant must have earned at least 250 Hours of Service in the 12 months prior to the first day of Qualified Military Service.
  - (4) The Participant shall be deemed to have returned to Covered Employment if he provides the Trustees with reasonable documentation establishing that his return to Covered Employment was timely under USERRA, if his Qualified Military Service, including both the period immediately preceding his return and all previous periods, does not exceed the maximum period applicable under federal law, if his discharge was other than dishonorable and if he works at least 250 hours in Covered Employment within the 12-month period beginning on the date of his return to Covered Employment.

- (d) The contributions required to pay for the hours credited for periods of military service and Qualified Military Service will be allocated from general assets of the Fund, and no individual Employer will be liable to make contributions for such hours.
- (e) **Benefits Following Death or Disability During Qualified Military Service.** If a Participant dies on or after January 1, 2007 while performing qualified military service (as defined in Code §414(u)(5)), the deceased Participant's beneficiaries shall be entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) that would have been provided under the Plan if such Participant had resumed Covered Employment and then terminated Covered Employment on account of death. In addition, the period of such Participant's qualified military service shall be treated as vesting service under the Plan.

In addition, the foregoing provisions of this Section 4.04 shall also apply in calculating the Vesting Service for Qualified Military Service of a Participant who becomes disabled on or after January 1, 2007 while performing Qualified Military Service, assuming that the Participant had resumed Covered Employment on the day preceding the day on which the Participant incurred the disability, and then terminated Covered Employment on the day the disability was incurred. For these purposes, the Participant shall be deemed to have met the work requirement after his return to Covered Employment as provided under the foregoing provisions of this Section 4.04.

Furthermore, the foregoing provisions of this Section 4.04 shall also apply to calculating the Pension Credit(s) for Military Service of a Participant who dies or becomes disabled on or after January 1, 2007 while performing Military Service, assuming that the Participant had resumed Covered Employment on the day preceding death or on the day preceding the day on which the Participant incurred the disability, respectively, and then terminated Covered Employment on the date of death or the day the disability was incurred, respectively. For these purposes, the Participant shall be deemed to have met the work requirement after his return to Covered Employment as provided under the foregoing provisions of this Section 4.04.

# ARTICLE V Standard and Optional Forms of Retirement Benefits

## Section 5.01 General

The Joint and Survivor Pension provides a lifetime pension for a married Participant plus a lifetime pension for his or her surviving Spouse or Spousal Equivalent, starting after the death of the Participant. In this Article, “Spouse” means for Annuity Starting Dates or a death before an Annuity Starting Date, either of which occurs on or after June 26, 2013, a person of the same or opposite gender to whom a Participant is considered married under the laws of the jurisdiction where the marriage was celebrated; and, if and to the extent provided in a Qualified Domestic Relations Order (within the meaning of §206(d)(3)(F) of ERISA and Code §414(p)(5)) entered by a court of competent jurisdiction on or after June 26, 2013, a Participant’s former Spouse. “Spousal Equivalent” means for an Annuity Starting Dates or death before an Annuity Starting Date, either of which occurs on or before June 26, 2013, married, as legally sanctioned in the state in which the Participant is domiciled at the Annuity Starting Date.

The monthly amount paid to the surviving Spouse is one-half (50%) the monthly amount paid to the Participant, or for Participants retiring on or after January 1, 2000 who worked at least 500 hours in Covered Employment during a Plan Year beginning on or after January 1, 1999, 75% of the monthly amount paid to the Participant. When a Joint and Survivor Pension is in effect, the monthly amount of the Participant’s pension is reduced in accordance with the provisions of Section 5.10 from the full amount otherwise payable.

If a Participant dies on or after January 1, 2007 while performing qualified military service (as defined in Code Section 414(u)(5)), the deceased Participant’s beneficiaries shall be entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) that would have been provided under the Plan if such Participant had resumed Covered Employment on the day prior to his death and then terminated employment on account of death.

## Section 5.02 Standard Form of Benefit Upon Retirement

- (a) Subject to other provisions of this Article V, upon retirement at the Annuity Starting Date, a pension shall be paid in the form of a Joint and Survivor Pension, unless the Participant and his Spouse have filed with the Trustees in writing a timely rejection of that form of pension.

No waiver of the Joint and Survivor Pension shall be effective unless the Spouse of the Participant has consented in writing to such rejection, and acknowledged the effect thereof, and such rejection is witnessed by a Notary Public. The consent of a Spouse in favor of a beneficiary is limited to the beneficiary for which the consent is given.

- (b) A Participant and his Spouse may reject the Joint and Survivor Pension or revoke a previous rejection before the Annuity Starting Date, except that any election made by September 30, 1976 shall be deemed timely. A Participant shall receive an explanation in writing in a reasonable period of time, but in no event more than 90 or less than 30 days before his Annuity Starting Date, of the financial effect of the Joint and Survivor Pension. He shall have a period of at least 90 days prior to his Annuity Starting Date to reject or revoke a previous rejection of a Joint and Survivor Pension.
  
- (c) Notice to Participants. Within a period of no more than 90 days and no fewer than 30 days before the Annuity Starting Date (and consistent with Treasury regulations), the Trustees shall provide the Participant and his Spouse, if any, with a written explanation of:
  - (1) the terms and conditions of the Joint and Survivor Pension, the Qualified Optional Survivor Annuity and Straight Life Annuity Option;
  - (2) the Participant's right to make and the effect of an election to waive the Joint and Survivor Pension;
  - (3) the right of the Participant's Spouse to consent to any election to waive the Joint and Survivor Pension;
  - (4) the right of the Participant to revoke such election during the election period that ends on the Annuity Starting Date, and the effect of such revocation;
  - (5) the relative values of the various optional forms of benefit under the Plan; and
  - (6) the right to defer any distribution and the consequences of failing to defer distribution of benefits including a description of how much larger benefits will be if the commencement of distributions is deferred.

### **Section 5.03            Spousal Consent Not Necessary**

- (a) Notwithstanding any other provision of the Plan, spousal consent in accordance with Section 5.02 is not required if the Participant establishes to the satisfaction of the Trustees:
  - (1) that there is no Spouse.
  - (2) that the Spouse cannot be located.
  - (3) that the Participant and Spouse are legally separated as confirmed by court order,  
or
  - (4) that the Participant has been abandoned by the Spouse as confirmed by court order.
- (b) If the Spouse is legally incompetent, consent under Section 5.02 may be given by his or her legal guardian, including the Participant if authorized to act as the Spouse's legal guardian.

### **Section 5.04            Optional Forms of Payment.**

- (a) Qualified Optional Survivor Annuity.
  - (1) 50% Qualified Optional Survivor Annuity  

Effective for Annuity Starting Dates on or after January 1, 2008, a Participant married to a Spouse, who is eligible for the 75% Joint and Survivor Pension may elect a 50% Qualified Optional Survivor Annuity. A 50% Qualified Optional Survivor Annuity provides a reduced lifetime pension for the Participant plus a lifetime pension for his surviving Spouse, commencing after the death of the Participant. The monthly amount to be paid to the surviving Spouse is 50% of the monthly amount paid to the Participant. When a 50% Qualified Optional Survivor Annuity is elected, the monthly amount of the Participant's pension is reduced in accordance with the provisions in Section 5.10.

(2) 75% Qualified Optional Survivor Annuity

Effective for Annuity Starting Dates on or after January 1, 2008, a Participant married to a Spouse, who is eligible for the 50% Joint and Survivor Pension may elect a 75% Qualified Optional Survivor Annuity. A 75% Qualified Optional Survivor Annuity provides a reduced lifetime pension for the Participant plus a lifetime pension for his surviving Spouse, commencing after the death of the Participant. The monthly amount to be paid to the surviving Spouse is 75% of the monthly amount paid to the Participant. When a 75% Qualified Optional Survivor Annuity is elected, the monthly amount of the Participant's pension is reduced in accordance with the provisions in Section 5.10.

(b) Optional Joint and Survivor Annuity for Spousal Equivalent

For Annuity Starting Dates prior to June 26, 2013, a Participant married to a Spousal Equivalent may elect a 50% Joint and Survivor Pension or a 75% Joint and Survivor Pension, with a reduced lifetime pension for the Participant, plus a lifetime pension for his Spousal Equivalent, commencing after the death of the Participant. When a 50% Joint and Survivor Pension or 75% Joint and Survivor Pension is elected, the monthly amount of the Participant's pension is reduced in accordance with the provisions in Section 5.10.

## **Section 5.05      Straight Life Annuity**

In the case of a Participant who has no Spouse, or who has filed a valid waiver of the Joint and Survivor Pension, or who is not eligible for the Joint and Survivor Pension, the Participant shall receive retirement benefits in the form of a life annuity payable in equal monthly installments. Subject to Section 6.01 (Applications) payments of retirement benefits shall be made commencing with the Participant's Annuity Starting Date and continuing to the last monthly payment preceding his death, subject to Section 5.08(b).

## **Section 5.06      Standard Form of Benefit for Death Before Retirement**

- (a) If a Participant dies after August 22, 1984 and (i) he had accumulated at least 10 Years of Vesting Service, or effective January 1, 1999, in the case of a Participant with at least one Hour of Service on or after January 1, 1999, at least 5 Pension Credits or 5 Years of Vesting Service, or in the case of a Non-Bargained Employee, at least five Pension Credits or five years of Vesting Service, (ii) he had earned one or more hours of service



in Covered Employment after December 31, 1975, and (iii) he was married for at least one year at his death, his Spouse or Spousal Equivalent (prior to June 26, 2013), if otherwise eligible for a Joint and Survivor Pension or Optional Joint and Survivor Annuity for Spousal Equivalent, respectively, as defined in Section 5.13, shall be entitled to a survivor's annuity (hereafter, the "Pre-retirement Surviving Spouse Annuity" or Pre-Retirement Surviving Spousal Equivalent Annuity") as if such Participant had retired on a Joint and Survivor Pension or Optional Joint and Survivor Annuity for Spousal Equivalent (Regular Retirement or Early Retirement) on the day before his death. If the Participant was younger than age 55 on the date of death, the amount payable to the Spouse or Spousal Equivalent shall be calculated as though the Participant was age 55 on the date of death. However, for purposes of applying the provisions of Section 5.10(a) (Regular Retirement reduction factors), the actual age of the Participant on the date of death shall be used. For Participants who die on or after January 1, 2000 who worked at least 500 hours in Covered Employment during a Plan Year beginning on or after January 1, 1999, the spousal benefit shall be 75% of the monthly amount paid to the Participant.

- (b) Subject to Section 7.02(c), the surviving Spouse of a Participant who dies before the Participant's Annuity Starting Date may apply for and receive the Pre-Retirement Surviving Spouse benefit to which he or she is entitled at any time after the death of the Participant. Payments will begin as of the surviving Spouse's Annuity Starting Date, determined under Section 1.02.

### **Section 5.07            Benefit Adjustments If Payment Postponed**

Notwithstanding any other provisions of the Plan, if the Annuity Starting Date for the Pre-retirement Surviving Spouse Annuity is after the Participant's earliest retirement date, the benefit shall be determined as if the Participant had died on the surviving Spouse's Annuity Starting Date after retiring with a Joint and Survivor Pension the day before, taking into account any actuarial adjustments to the Participant's accrued benefit that would have applied as of that date.

### **Section 5.08            Other Death Benefits**

- (a) A Participant who is not entitled to the Pre-retirement Surviving Spouse Annuity under Section 5.06 may be entitled to the following death benefit, subject to these provisions:

If a Participant dies before retirement and after he has attained age 55 and had accumulated at least 10 Pension Credits or effective January 1, 1999, in the case of a Participant with at least one Hour of Service on or after January 1, 1999, at least 5 Pension Credits or 5 Years of Vesting Service (and would otherwise be eligible for a pension in accordance with Section 3.04), the monthly pension amount to which the Participant would have been entitled on the date of his death, had he applied for a pension, shall be paid to his surviving Spouse or Spousal Equivalent for a period of 60 months.

- (b) If a Pensioner and his Spouse have rejected the Joint and Survivor Pension form of pension or if a Pensioner is not eligible for the Joint and Survivor Pension, and he dies after retirement but before receiving 60 monthly pension payments, the monthly pension amount to which he was entitled shall be paid to his designated Beneficiary for the balance of the 60-month period and shall thereupon cease.
- (c) Effective January 1, 2000, a lump sum death benefit of \$1,000 per Pension Credit shall be paid to the designated Beneficiary of a vested Participant who has no Spouse or Spousal Equivalent, who dies before retirement, provided he earned at least ½ Pension Credit in 1999 or later.
- (d) **Post-Retirement Death Benefit**
  - (1) Effective January 1, 1986 a lump sum death benefit of \$2,000 shall be paid to the designated Beneficiary of the Pensioner upon the Pensioner's death after retirement and shall be in addition to any other benefits payable under the Plan.
  - (2) Effective January 1, 2007, a lump sum death benefit of (i) \$2,000 plus (ii) for those Pensioners who had at least 10 Pension Credits prior to the date of death, \$50 per Pension Credit up to a maximum of 30 Pension Credits shall be paid to the designated Beneficiary of a Pensioner upon the Pensioner's death in addition to any other benefits payable under the Plan.
  - (3) Effective January 1, 2008, a lump sum death benefit of (i) \$2,000 plus (ii) for those Pensioners who had at least 5 Pension Credits prior to the date of death, \$100 per Pension Credit up to a maximum of 30 Pension Credits shall be paid to

the designated Beneficiary of a Pensioner upon the Pensioner's death in addition to any other benefits payable under the Plan.

### **Section 5.09 Standard Form of Disability Benefit Upon Retirement Before Age 55**

If the Annuity Starting Date of a Participant's Disability Pension occurs before he has attained age 55, payment shall be made in the form of a Joint and Survivor Pension, unless the Participant and his Spouse have rejected such form of payment in writing filed with the Trustees, as provided in Section 5.02(b), before his Annuity Starting Date.

### **Section 5.10 Adjustment of Pension Amount**

- (a) 50% or a 75% Joint and Survivor Pension:

When a 50% or 75% Joint and Survivor Pension, whichever is applicable, becomes effective, the amount of the Participant's monthly pension shall be reduced in accordance with the following reduction factors:

Regular Retirement: 90.0% plus .4% for each year that Spouse's age is greater than Participant's age or minus .4% for each year that Spouse's age is less than Participant's age with a maximum factor of 99%.

Disability Retirement: 82.0% plus .4% for each year that Spouse's age is greater than employee's age or minus .4% for each year that Spouse's age is less than employee's age with a maximum factor of 99%.

- (b) 50% Qualified Optional Survivor Annuity

When a 50 percent Qualified Optional Survivor Annuity becomes effective, the amount of the Participant's monthly pension shall be reduced in accordance with the following reduction factors:

Regular Retirement: 94.0% plus .3% for each year that beneficiary's age is greater than employee's age or minus .3% for each year that beneficiary's age is less than employee's age with a maximum factor of 99%.

Disability Retirement: 88.0% plus .3% for each year that beneficiary's age is greater than employee's age or minus .3% for each year that beneficiary's age is less than employee's age with a maximum factor of 99%.

(c) 75% Qualified Optional Survivor Annuity

When a 75 percent Qualified Optional Survivor Annuity becomes effective, the amount of the Participant's monthly pension shall be reduced in accordance with the following reduction factors:

Regular Retirement: 85.0% plus .5% for each year that beneficiary's age is greater than employee's age or minus .5% for each year that beneficiary's age is less than employee's age with a maximum factor of 99%.

Disability Retirement: 74.0% plus .4% for each year that beneficiary's age is greater than employee's age or minus .4% for each year that beneficiary's age is less than employee's age with a maximum factor of 99%.

### **Section 5.11 Continuation of Joint and Survivor Pension**

The monthly amount of the Joint and Survivor Pension, once it has become payable, shall not be increased if the Spouse is subsequently divorced from the Pensioner or if the Spouse predeceases the Pensioner.

### **Section 5.12 Effective Date**

The provisions of this Article do not apply (i) to a pension, the effective date of which was before January 1, 1976, or (ii) if the Participant or former Participant incurred a Break-in-Service before 1976, unless it was subsequently cured by a return to Covered Employment.

### **Section 5.13 Additional Conditions**

- (a) A Joint and Survivor Pension or Qualified Optional Survivor Annuity shall not be effective unless the Participant and his or her Spouse had been married throughout the year ending with his or her Annuity Starting Date or, if earlier, the date of death.
- (b) If the Participant and his or her Spouse were not married throughout the year ending with the Participant's Annuity Starting Date, but were married on that Annuity Starting Date,

the Participant's monthly pension shall be payable as a Joint and Survivor Pension or, if elected, as a Qualified Optional Survivor Annuity. If the Participant and his or her Spouse do not remain married for at least one year, the Participant's pension shall be restored as a single life pension (after adjustment, if any, for early retirement), and the Spouse shall lose any right to survivor benefits.

- (c) A Joint and Survivor Pension or Qualified Optional Survivor Annuity shall not be effective if: (i) the Spouse died before the Participant's Annuity Starting Date or before his death, if he died before he retired on a pension, or (ii) the Participant and the Spouse were divorced from each other before the Participant's Annuity Starting Date, except as otherwise provided in a qualified domestic relations order or required by regulations.
- (d) The Trustees shall be entitled to rely on a representation in writing by a Participant filed with them within ninety (90) days prior to his Annuity Starting Date as to whether he is married to his Spouse or, if married that his Spouse cannot be located, unless the Trustees have information which may indicate that such representation is inaccurate. If the Trustees believe they have such information and a resolution of the status of the Participant and his Spouse, if any, satisfactory to the Trustees is not determined prior to the Annuity Starting Date of the Participant, a Joint and Survivor Pension only shall be paid until the Trustees receive satisfactory evidence or it is determined under Section 5.03 that the Participant is unmarried or his spouse cannot be located; in that event, the Participant shall receive a straight life annuity payment with adjustment for previous payments made in the form of a Joint and Survivor Pension. This reliance shall include the right to deny benefits to a person claiming to be the spouse of a Participant in contradiction of the aforementioned representation of the Participant, and the discretionary right to adjust the dollar amount of the pension payments made to the alleged surviving spouse so as to recoup any excess benefits which may have been erroneously paid.
- (e) An election or revocation of a Joint and Survivor Pension or Qualified Optional Survivor Annuity must be:
  - (1) made (or revoked) prior to the Participant's Annuity Starting Date;
  - (2) made on forms furnished by the Fund Office;

- (3) filed with the Fund Office.
  
- (f) The rights of a prior spouse or other family member to any share of Participant's pension, as set forth under a qualified domestic relations order, shall take precedence over any claims of the Participant's Spouse at the time of retirement or death.

# ARTICLE VI Applications, Benefit Payments and Retirement

## Section 6.01 Applications

A Pension must be applied for in writing filed with the Trustees in advance of the Participant's Annuity Starting Date.

## Section 6.02 Information and Proof

Every Participant or Pensioner shall furnish, at the request of the Trustees, any information or proof reasonably required to determine his benefit rights. If the claimant makes a false statement material to his application or furnishes fraudulent information or proof material to his claim, benefits not vested under this Plan may be denied, suspended, or discontinued. The Trustees shall have the right to recover any benefit payments made in reliance on any false or fraudulent statement, information, or proof submitted by a Participant or Pensioner.

## Section 6.03 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. Wherever in the Plan the Trustees are given discretionary powers, the Trustees shall exercise such powers in a uniform and non-discriminatory manner.

## Section 6.04 Right of Appeal

- (a) For Claims Filed on or after January 1, 2002
  - (1) Denial of Claims (Other than Disability Benefit)

In the event that any Participant, Beneficiary or other person claims to be entitled to a benefit under the Plan, and the Fund Administrator determines that such claim should be denied in whole or in part, the Fund Administrator shall, in writing, notify such claimant within 90 days of receipt of such claim that his claim has been denied. An extension of time not exceeding 90 days shall be available if special circumstances require an extension of time for processing the

claim. If so, notice of such extension, indicating what special circumstances exist and the date by which a final decision is expected to be rendered, shall be furnished to the claimant before the initial 90-day period expires.

(2) Denial of Disability Benefit

If a Participant claims to be entitled to a benefit under the Plan by reasons of disability as defined in Section 3.12, and the Trustees make a determination that the Participant is not disabled, the Trustee shall, in writing, notify such claimant within 45 days of receipt of such claim that his claim has been denied.

(A) An extension of time not exceeding 30 days shall be available if special circumstances require an extension of time for processing the claim. If so, notice of such extension, indicating what special circumstances exist and the date by which a final decision is expected to be rendered, shall be furnished to the claimant before the initial 45-day period expires. The Fund may take a second 30-day extension period should it determine before the expiration of the first 30-day extension period that such an extension is necessary because a decision cannot be rendered within the first extension period due to reasons beyond its control. If a second extension is necessary, the notice of the second extension shall be sent to the claimant before the first 30-day extension period expires.

(B) For any extension where unresolved issues prevent a decision on the claim and additional information is needed to resolve the issue, the claimant shall be given 45 days from the receipt of the extension notice to provide the specified information.

(1) Notice of Denial (All Claims)

(A) The notice of denial shall set forth in a manner reasonably expected to be understood by the claimant: (i) the specific reason or reasons for the denial; (ii) specific reference to pertinent Plan provisions on which the denial is based; (iii) a description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; (iv)



appropriate information as to the steps to be taken if the claimant wishes to submit his claim for review; and (v) a statement explaining the claimant's right to bring a civil action under Section 502(a) of ERISA following an adverse benefit determination after the review (as discussed below).

(B) Disability Claims Only – If the Fund relied on an internal rule, guideline, protocol or similar criterion in making its decision to deny the disability claim, the notice shall also include the specific internal rule, guideline, protocol or similar criterion, or a statement of such, as well as a notice of the claimant's right for a free copy of the internal rule, guideline, protocol or similar criterion upon request.

(2) Right to Authorized Representative (All Claims)

A claimant may appoint an authorized representative to act on his behalf for the purposes of filing a claim and seeking a review of a denied claim. The claimant, however, must notify the Fund in advance in writing of the name, address, and phone number of the authorized representative.

(3) Right to Appeal (Other than Disability Claims)

Within 60 days after receipt of such notice of denial, such claimant or his authorized representative may request, by mailing or delivery of written notice to the Trustees, a review by the Trustees of the decision denying the claim. Such petition for review shall state in clear and concise terms the reason or reasons for disputing the denial and shall be accompanied by any pertinent documentary material not already furnished. The review will take into account all comments, documents, records, and other information submitted by the claimant relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination.

(4) Right to Appeal for Disability Claims

(A) Within 180 days after receipt of notice of denial of disability claims, such claimant or his authorized representative may request, by mailing or delivery of written notice to the Trustees, a review by the Trustees of the

decision denying the claim. Such petition for review shall state in clear and concise terms the reason or reasons for disputing the denial and shall be accompanied by any pertinent documentary material not already furnished. The review will take into account all comments, documents, records, and other information submitted by the claimant relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination.

- (B) The review of the appeal for denial of disability claims shall be made by individuals who did not make the adverse benefit determination that is the subject of the appeal, and are not a subordinate of the individuals who made the adverse benefit determination.
- (C) The review of the appeal will not afford deference to the initial adverse determination.
- (D) If the denial of disability claims was based in whole or in part on a medical judgment, the Trustees shall consult with a health care professional who has appropriate training and experience in the field of medicine involved in the medical judgment. Should it be necessary for the Trustees to consult with a health care professional, the health care professional shall be an individual who was not consulted in connection with the adverse benefit determination that is the subject of the appeal, nor a subordinate of such individual.

(5) Review of Documents (All Claims)

- (A) Upon request and free of charge, the claimant or his duly authorized representative shall be permitted to review relevant documents and submit issues and comments in writing. A document, record or other information is “relevant” if it: (i) was relied upon in making the benefit determination; (ii) was submitted considered, or generated in the course of making the benefit determination, without regard to whether it was relied upon in making the benefit determination; or (iii) demonstrates compliance with the administrative processes and safeguards required under federal law.

(B) The Trustees shall also provide the identification of medical or vocational experts whose advice was obtained on behalf of the Fund in connection with the claimant's disability claim denial, whether or not the advice was relied upon in making the adverse decision.

(6) Presumption (All Claims)

If the claimant fails to request such a review within such 60- or 180-day period, it shall be conclusively determined for all purposes of this Plan that the denial of such claim by the Fund Administrator is correct.

(7) Notification of Decision (Other than Disability Claims)

A decision by the Trustees shall be made at their next scheduled meeting which is at least 30 days after their receipt of a request for review, unless special circumstances require an extension of time for processing, in which case notice of such extension shall be furnished to the claimant prior to the commencement of the extension. A decision shall be rendered as soon as possible, but not later than the third meeting following the Trustees' receipt of the request for review.

(8) Notification of Decision (Disability Claims)

A decision by the Trustees shall be made at their next scheduled meeting which is at least 30 days after their receipt of a request for review, unless special circumstances require an extension of time for processing, in which case notice of such extension shall be furnished to the claimant prior to the commencement of the extension. A decision shall be rendered as soon as possible, but not later than the third meeting following the Trustees' receipt of the request for review.

(9) Content of Notice (All Claims)

The claimant shall be advised of the Trustees' decision in writing as soon as possible, but no later than 5 days after the decision has been made. The notice of denial shall set forth in a manner reasonably expected to be understood by the claimant:

- (A) specific reasons for the decision and specific references to the pertinent Plan provisions on which the decision is based;
- (B) a statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to and copies of all documents, records and other information “relevant” to the claimant’s claims for benefits, as determined under (g)(1), above;
- (C) description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary;
- (D) a statement describing any voluntary appeal procedures and the claimant’s right to obtain information about such procedures, if any;
- (E) a statement of the claimant’s right to bring a civil action under Section 502(a) of ERISA following an adverse benefit determination on review; Disability Claim only – if any internal rule, guideline, protocol or other similar criterion was relied upon in making the adverse determination on a disability claim, the specific rule, guideline, protocol or other similar criterion, or a statement that such rule, guideline, protocol or other similar criterion will be provided free of charge upon request; and
- (F) Disability Claim only – if adverse benefit determination of a disability claim is based on a medical necessity, an explanation of the scientific or clinical judgment for the determination, applying the terms of the Plan to the claimant’s medical circumstances, or a statement that such explanation will be provided free of charge.

(10) Determination (All Claims)

If the Trustees’ determination is favorable to the claimant, it shall be binding and conclusive. If such determination is adverse to such claimant, it shall be binding and conclusive unless the claimant notifies the Trustees within 90 days after the mailing or delivery to him by the Trustees of its determination, that he intends to institute legal proceedings challenging the determination of the Trustees, and

actually institutes such legal proceeding within 180 days after such mailing or delivery.

(11) Fully Binding (All Claims)

The denial of an application or claim as to which the right of review has been waived or the decision of the Trustees with respect to a petition for review, shall be final and binding upon all parties, including the applicant, claimant or petitioner and any person claiming under the applicant, claimant or petitioner, subject only to judicial review.

## **Section 6.05      Benefit Levels Generally**

- (a) If a Participant has acquired a right to a pension under Article III (subject to the provision of subparagraph (c) hereof), his benefit rate at retirement shall be based on the applicable Regular Pension in effect as of December 31 of the last calendar year in which he earned at least one-half (1/2) Pension Credit. Notwithstanding the foregoing, if he returns to Covered Employment and earns at least one quarter additional Pension Credit, his benefit at retirement shall be determined in accordance with subsection (b) below.
  
- (b) Any Participant who had not previously retired who incurs a One-Year Break-in-Service and fails to earn at least one and one-half (1-1/2) Pension Credits or complete at least 1,500 hours of work in Covered Employment during a period of three (3) consecutive calendar years immediately following such Break-in-Service (such period to be known as a “Benefit Break”) and subsequently returns to Covered Employment before he incurs a Permanent Break-in-Service and then earns any additional Pension Credit, shall have the amount of his pension determined as the sum of (1) and (2) below except that if his failure to earn such Pension Credit or to complete such hours of work in Covered Employment during a period of up to 5 Calendar Years is due to total disability from work as a laborer and during that time he is compensated under a Workers’ Compensation law or is due to a period of Qualified Military Service as defined in Section 4.04, such period of total disability or Qualified Military Service shall not be counted in determining whether this subsection (b) applies.

- (1) For Pension Credit earned prior to a One-Year Break-in-Service (subject to the provisions of subparagraph I hereof), the benefit rate shall be based on the amount of the applicable Regular Pension in effect as of December 31 of the last calendar year prior to such termination in which he earned at least ½ Pension Credit; plus
  - (2) For Pension Credit earned after his return to Covered Employment (subject to the provisions of subparagraph I hereof), the benefit rate shall be based on the amount of the applicable Regular Pension in effect as of December 31 of the last calendar year prior to his retirement, or to his subsequent termination from Covered Employment, in which he earned at least ½ Pension Credit.
- (c) Notwithstanding the provisions of subparagraph (a) or (b)(2) hereof, in the case of a Participant (i) who last earned ½ Pension Credit or more in the Plan Year immediately prior to a Plan Year in which benefit levels have been increased under Article III, and (ii) whose Annuity Starting Date is on or after the effective date of such increase, the benefit rate for purposes of subparagraph (a) and (b)(2) hereof shall be the benefit rate in effect as a result of such increase.

## **Section 6.06      Benefit Payments Generally**

- (a) A Participant who is eligible to receive benefits under this Plan and makes application in accordance with the rules of this Pension Plan shall be entitled, upon retirement, to receive the monthly payments provided for the remainder of his life, subject to the provisions of this Plan. Benefit payments shall be payable commencing with the Participant's Annuity Starting Date.
- (b) However, in no event, unless the participant elects otherwise, shall benefits be payable later than the 60<sup>th</sup> day after the later of:
  - (1) the close of the calendar year in which the Participant attains Normal Retirement Age, or
  - (2) the close of the calendar year in which the Participant terminates his Covered Employment and retires.

- (c) Pension payments shall end with the payment for the month in which the death of the Pensioner occurs except as provided in accordance with a Joint and Survivor Pension (and any other provision of this Plan for payments after the death of the Pensioner).
- (d) Should the actuarial equivalent of any benefit payable under this Plan be \$3,500 or less or effective January 1, 1998, \$5,000 or less as of the Annuity Starting Date, the Trustees shall pay any such benefits in a lump sum. If a Pensioner has started to receive payments in the Joint and Survivor form of pension the surviving spouse shall receive monthly benefits after the Pensioner's death unless he or she consents to a lump sum cashout. For Annuity Starting Dates prior to January 1, 2000, the amount of the lump sum payment shall be determined by using the lower of: (i) a 7% interest rate or (ii) the interest rate which would be used (as of the first day of the Plan Year which includes the Annuity Starting Date) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination.
- (e) For Annuity Starting Dates prior to January 1, 2000, the lump sum factors will likewise be based on unisex mortality, but with a blend of male and female life expectancy that approximates the mix of men and women in the active employee population.
- (f) For Annuity Starting Dates on or after January 1, 2000, the amount of the lump sum payment shall be determined in accordance with the provisions of Section 1.01(a) or, if applicable, 1.01(c).

## **Section 6.07 Actuarial Adjustment for Delayed Retirement**

- (a) Effective as of January 1, 1989, if the Annuity Starting Date is after the Participant's Normal Retirement Age, the monthly benefit will be the greater of:
  - (1) the benefit payable on the Annuity Starting Date in accordance with Article III based on all Pension Credit earned; or
  - (2) the accrued benefit at Normal Retirement Age, actuarially increased for each complete calendar month between Normal Retirement Age and the Annuity Starting Date for which benefits were not suspended,

converted as of the Annuity Starting Date to the benefit payment form elected in the pension application or to the automatic form of Joint and Survivor Pension if no other form is elected.

- (b) If a Participant first becomes entitled to additional benefits after Normal Retirement Age, whether through additional service or because of a benefit increase, the actuarial increase in those benefits will start from the date they would first have been paid rather than Normal Retirement Age.
- (c) The actuarial increase will be 1% per month for the first 60 months after Normal Retirement Age and 1.5% per month for each month thereafter. In no event, however, will an actuarial increase be payable for any month for which a retroactive payment is made.

#### **Section 6.08            Benefits Accrued After Normal Retirement Age**

- (a) Effective as of January 1, 1990 any additional benefits earned by a Participant in Covered Employment after Normal Retirement Age will be determined at the end of each Plan Year and will be payable as of February 1, following the end of the Plan Year in which it accrued, provided payment of benefits at that time is not suspended pursuant to Section 6.09 or postponed due to the Participant's continued employment.
- (b) Additional benefits described in subsection (a) that are not suspended or postponed will be paid in the payment form in effect for the Participant as of the Annuity Starting Date most recently preceding the date the additional benefits became payable.

#### **Section 6.09            Suspension of Benefits Prior to Normal Retirement Age**

- (a) A Pensioner may not be employed as follows before he has attained his Normal Retirement Age:
  - (1) Employment with any Contributing Employer;
  - (2) Employment with any employer in the same or related business as any Contributing Employer;
  - (3) Self-Employment in the same or related business as any Contributing Employer;



- (4) Employment or Self-Employment in any business which is or may be under the jurisdiction of a Local Union or of the Laborers' International Union of North America, AFL-CIO.
- (b) Effective January 1, 1989, if a Pensioner takes employment as described in paragraph (a) above, his pension benefits shall be suspended for any calendar month in which he is so employed and for an six additional months after ceasing such employment. After that period, his benefits shall again become payable. Effective on and after January 1, 2006, the six month suspension rules shall no longer apply to a pensioner who returns to work and subsequently earns at least three pension credits after returning to work. However, a Pensioner's benefits shall continue to be suspended for each calendar month in which he is so employed in the type of employment described in paragraph (a) above.
- (c) Effective January 1, 1989, if a Pensioner takes employment of the type described in (a) above, he must notify the Board of Trustees, in writing, within twenty-one days of such employment. If he fails to give such written notice within such twenty-one day period, his benefits shall be suspended for an additional period of six months over and above the suspension period in (b) above.
- (d) Suspension before Normal Retirement Age in accordance with this Section 6.09, because of employment of a type for which benefits could not be suspended after Normal Retirement Age, shall not have the effect of reducing the value of the Participant's pension payable at his Normal Retirement Age, and to the extent necessary to avoid such reduction, the monthly amount of the pension shall be adjusted so as not to deprive the Pensioner of the value of his benefit as payable from his Normal Retirement Age.
- (e) Any Pensioner or prospective Pensioner may request a ruling from the Trustees on whether a particular contemplated employment is of a type described in (a) above. Such request shall be made in accordance with the procedures outlined in Section 6.10(h).
- (f) Waiver of Suspension – The Trustees may, from time to time, adopt by motion objective standards under which benefits will not be suspended for engaging in specified types or categories of disqualifying employment, for the period specified in the motion granting the exemption.

## **Section 6.10                      Suspension of Benefits After Normal Retirement Age**

- (a)     **General Rule:** Benefits in pay status after Normal Retirement Age will be permanently suspended for any calendar month during which a Participant works for 40 or more hours in Disqualifying Employment. The amount to be so withheld shall be the actual amount of monthly benefit payment for each such calendar month, or if less, the monthly single life annuity payment to which the Participant would be entitled.
  
- (b)     **Resumption of Benefit Payments:** Payments suspended in accordance with the preceding paragraph will resume not later than the first day of the third calendar month following the calendar month in respect of which the Participant does not work in Disqualifying Employment and submits a benefit resumption notice to such effect to the Trustees. The initial payment will include the benefit for the month in which benefits actually resume plus any other payments retroactive to the month in respect of which the benefit resumption notice is submitted, less any offsets permitted by the succeeding paragraph.
  
- (c)     **Offsets Against Resumed Payments:** Benefits which were paid by the Plan in error for periods in which a suspension of benefits was in effect on account of Disqualifying Employment shall be offset against future payments beginning with the first payment made as a result of receipt of a benefit resumption notice. Such offset shall be in an amount equal to the lesser of 25% of the benefit payment or remaining unrecouped offsettable amount; provided that no limit is placed on the offset which may be made against the first such payment. The total amount thus recoverable by the Plan shall be equal to the sum of benefits so paid in error, without actuarial adjustment. If the full amount so paid in error is not thereby recovered during the Participant's lifetime, the offset may continue to be applied in the same manner against any survivor benefits payable from the Plan to the Participant's beneficiary.
  
- (d)     **Notification of Suspension:** Payments may not be suspended on account of Disqualifying Employment until the first month of such Disqualifying Employment during which the Trustees provide the Participant with a notice, by personal delivery or certified mail, that benefits are to be so withheld. The notice must contain:
  - (1)     Notification that his benefits are suspended;
  
  - (2)     The specific reason why benefit payments are being suspended;

- (3) A general description of the plan provisions relating to suspension of benefit payments and a copy of such provisions;
- (4) A statement that applicable Department of Labor regulations may be found in Section 2530.203-3 of the Code of Federal Regulations;
- (5) Information about the plan's procedure for affording a review of the suspension of benefits;
- (6) A description of the procedures (if any) for the Pensioner's filing of a benefit resumption notice when his employment again ceases, including copies of any necessary forms;
- (7) If any benefits which were paid to the Pensioner in error for months in which his benefits were to have been suspended on account of Disqualifying Employment are to be offset against future pension payments, then the following information will be provided to the Pensioner:
  - (A) the period of employment involved;
  - (B) the total amount subject to offset;
  - (C) the manner in which the offset will be applied; and
  - (D) the procedure to follow if a Pensioner disputes the accuracy of any of the information in (A) and (B).

Notwithstanding the provisions of this subparagraph (d), if any or all of the information in (7) is not reasonably available at the time the first notice is sent, this information may be provided as part of a later notification sent in the same manner at least thirty days prior to the date the first offset is to be applied.

- (e) Disqualifying Employment Defined: "Disqualifying Employment" means reemployment of a Participant in (i) an Industry in which Employees covered by the Plan were employed and accrued benefits under the Plan as a result of such employment, at the time that the payment of benefits commenced or would have commenced if the Employee had not remained in or returned to employment; and (ii) a Trade or Craft in which the Employee was employed at any time under the Plan; and (iii) the Geographic area

covered by the Plan at the time that the payment of benefits commenced or would have commenced if the Employee had not remained in or returned to employment.

(f) Related Definitions:

(1) “Industry” means the business activities of the types engaged in by any Employers maintaining the Plan.

(2) “Trade or Craft” means (i) a skill or skills, learned during a significant period of training or practice which are applicable in occupations in some industry, or (ii) supervisory activities relating to a skill or skills described in (i) above.

(3) “Geographic area covered by the Plan” consists of any State in which contributions were made or were required to be made by or on behalf of an Employer and the remainder of any Standard Metropolitan Statistical Area (SMSA) which falls in part within such State, determined as of the time that the payment of benefits commenced or would have commenced if the Employee had not returned to employment.

(4) “Hours” - Hours of work for purposes of this Article shall be any hours of service as defined in Department of Labor Regulations 2530.200b-2(a)(1) or (2).

(g) Reciprocal Arrangements: Employment in the jurisdiction of a plan with which this Plan has a reciprocal agreement for the crediting of service shall not be considered Disqualifying Employment solely for such reason.

(e) Requests for Determination of Disqualifying Employment: A Pensioner or prospective Pensioner by first class mail or personal delivery to the Trustees, at their principal office, may request that a determination be made by the Trustees as to whether a particular contemplated employment is Disqualifying Employment. The request shall be in writing signed by the Pensioner and shall describe the nature of the prospective employment, including expected employment commencement date, job classification, estimated hours per month, expected duration of employment, name and address of employer and the request shall be accompanied by a verification signed by the prospective employer as to the foregoing terms of employment. Such determination shall be made by the later of (i) fourteen (14) days after receipt of the request or (ii) fourteen (14) days prior to the stated expected employment commencement date.

- (f) Notification by Retired Employees of Any New Employment: Any Employee who has retired under the Plan and is receiving benefits, must notify the Trustees of any employment. The Trustees may request from any such retired Employee access to reasonable information for the purposes of verifying such employment.
- (g) Annual Request for Verification of Employment Status: The Trustees may annually request from all Pensioners, as a condition for receiving future benefit payments, to either certify that they are unemployed or provide factual information sufficient to establish that any employment does not constitute Disqualifying Employment. Any such notification shall be sent with a regular benefit payment check and shall inform the Employee that if he does not want to have his benefit payments interrupted, he must furnish the certification or information within a reasonable time prior to the date of the next benefit payment. Once the Employee has furnished the required certification of information, the Trustees shall cause to be forwarded, at the next regularly scheduled time for payment of benefits, all payments which had been withheld under the provisions of this paragraph, except such benefits as may be validly offset pursuant to other provisions of this Section 6.10.
- (h) Presumption of Disqualifying Employment: If the Trustees become aware that a Pensioner is employed in Disqualifying Employment and that the Pensioner has not provided the Trustees with notice of such employment, the Trustees, unless it is unreasonable under the circumstances to do so, shall act on the basis of a rebuttable presumption that the Pensioner had worked in Disqualifying Employment for that month. In addition, if the Trustees become aware that a Pensioner is employed in Disqualifying Employment at a work site and the Pensioner has not provided the Trustees with notice of such employment, the Trustees, unless it is unreasonable under the circumstances to do so, shall act on the basis of a rebuttable presumption that the Pensioner engaged in such employment for the same Employer and work at that site for as long before the work in question as that same Employer performed that work at that work site. Notwithstanding the foregoing, the Trustees may not act upon any presumption described in this paragraph unless the employment verification requirements and the nature and effect of the foregoing presumptions have been set forth in the Plan's Summary Plan Description and in any communication to Plan Participants which relates to such verification requirements, and Pensioners have been furnished such disclosure, whether through

receipt of the above communications or by special distribution, prior to the Trustees' action upon any such presumption and thereafter at least once every twelve months.

- (i) Waiver of Suspension – The Trustees may, from time to time, adopt by motion objective standards under which benefits will not be suspended for engaging in specified types or categories of disqualifying employment, for the period specified in the motion granting the exemption.

## **Section 6.11            Benefit Payments Following Suspension**

The monthly amount of pension when resumed after suspension shall be determined under paragraph (a) and adjusted for any optional form of payment in accordance with paragraph (b), and any additional pension credit earned in accordance with paragraph (c).

- (a) Resumption: The amount shall be determined as if it were then being determined for the first time, but on the basis of an adjusted age. The adjusted age shall be the age of the Participant at the beginning of the first month for which payment is resumed, reduced by (i) the months for which he previously received benefits to which he was entitled and (ii) the months for which his benefits were suspended for work if that work would have been disqualifying if he had already attained Normal Retirement Age.

In no event shall the pension paid upon resumption be less than the initial pension.

- (b) The amount determined under the above paragraphs shall be adjusted for the Joint and Survivor Pension or any other optional form of benefit in accordance with which the benefits of the Participant and any contingent annuitant or beneficiary are payable.

A Joint and Survivor Pension in effect immediately prior to suspension of benefits and any other benefit following the death of the Pensioner shall remain effective if the Pensioner's death occurs while his benefits are in suspension. If a Pensioner has returned to Covered Employment, he shall not be entitled to a new election as to the Joint and Survivor Pension or any other optional form of benefit except if after such return, he has sufficient Covered Employment to earn at least two additional consecutive years of Vesting Service or if Section 1.02(d) applies. The new election shall apply only to the benefits based on Pension Credits earned during such return to Covered Employment.

- (c) **General Rule:** A Pensioner who returns to Covered Employment shall, upon his subsequent retirement, be entitled to a recomputation of his pension amount, based on any additional Pension Credits. Such additional Pension Credits earned after return to Covered Employment shall be recomputed based on the Benefit Rate in effect for each such additional Pension Credit earned after return to Covered Employment, if applicable. No such increase shall be applied to Pension Credits earned prior to a Pensioner's Annuity Starting Date.
  
- (d) Effective January 1, 2006, if a Pensioner who had previously retired on a Service Pension, returns to Covered Employment, he shall, upon his subsequent retirement, be entitled to a recomputation of his pension amount, based on additional Pension Credits earned after return to Covered Employment, in accordance with the provisions of Section 6.11(c) above. In no even shall a Service Pension accrue in excess of 30 total Pension Credits. Any additional Pension Credits earned above the 30 Pension Credit maximum shall be recalculated in accordance with Section 6.11(c), if applicable.

## **Section 6.12 No Suspension After Required Beginning Date**

No benefits will be suspended under this Article for months starting on and after a Participant's Required Beginning Date, as defined in Section 7.01.

## **Section 6.13 Vested Status or Nonforfeitability**

The accrued vested benefits to which a Participant is entitled under this Plan upon his attainment of Normal Retirement Age are nonforfeitable, subject only to the conditions as to suspension of benefits (Sections 6.09) and willful misrepresentation (Section 6.02) and the limited right to retroactive amendment pursuant to Section 411(a)(3)(C) of the Internal Revenue Code and Section 302(c)(8) of ERISA. The survivor benefits to which a surviving spouse is entitled shall likewise be nonforfeitable. Participants and beneficiaries shall be entitled to any of the other benefits of this Plan subject to all of the applicable terms and conditions.

ERISA also provides certain limitations on any plan amendment that may change the plan's vesting schedule. In accordance with those legal limitations, no amendment of this Plan may take away a Participant's Vested Status if he has already earned it at the time of the amendment. Also, an amendment may not change the schedule on the basis of which a Participant acquires Vested Status, unless each Participant who has credit for at least five Years of Vesting Service or, for Participants with at least one

Hour of Service after December 31, 1988, three Years of Vesting Service at the time the amendment is adopted or effective (whichever is later) is given the option of achieving Vested Status on the basis of the pre-amendment schedule. That option may be exercised within 60 days after the latest of the following dates:

- (a) when the amendment was adopted;
- (b) when the amendment became effective; or
- (c) when the Participant was given written notice of the amendment.

For purposes of applying the provisions of this Section and of determining when a Participant has acquired nonforfeitable rights, as defined under the law, the vesting schedule of this Plan consists of 100 percent nonforfeitability for a Participant who has completed at least 10 Years of Vesting Service, or effective January 1, 1999, in the case of a Participant with at least one Hour of Service on or after January 1, 1999, at least 5 Years of Vesting Service, or in the case of a Non-Bargained Employee with at least one Hour of Service after December 31, 1988, at least five Years of Vesting Service.

#### **Section 6.14 Transfers Between Bargained and Non-Bargained Status:**

If a Participant who is in a non-bargained job when he completes the fifth year of service, or if the Participant accumulates 5 years of service in non-bargained positions even if they are not consecutive (as long as they are not separated by a Permanent Break-in-Service), the person will be fully vested in all benefits accrued under the Plan, including those accrued through bargaining-unit work.

In every other case the Participant's status at the time of termination of service will control the classification for this purpose.

A Participant who has both bargained-for and non-bargained service during a Plan Year is treated as a Non-Bargained Employee for that year if (a) he has enough service in non-bargained covered employment to earn a Year of Vesting Service or (b) the majority of his Covered Employment for the Plan Year is as a Non-Bargained Employee.

#### **Section 6.15 Nonduplication with Disability Benefits**

No pension benefits shall be payable for any month for which the Participant or Pensioner receives wage indemnification for disability from the Rhode Island Laborers' Health Fund.



## **Section 6.16            Incompetence or Incapacity of a Pensioner or Beneficiary**

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

## **Section 6.17            Nonassignment of Benefits**

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

For purposes of this Section, there shall not be taken into account any voluntary and revocable assignment of not to exceed ten percent of any benefit payment made by any Participant who is receiving benefits under the Plan unless the assignment or alienation is made for purposes of defraying plan administration costs. There shall also be disregarded for purposes of this Section any other form of voluntary and revocable assignment made in accordance with the provisions of regulations promulgated by the Secretary of the Treasury.

Notwithstanding the foregoing, benefits shall be paid in accordance with the applicable requirements of any “qualified domestic relations order” as defined by Section 2.06(d)(3) of ERISA.

## **Section 6.18            No Right to Assets**

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

## **Section 6.19. Maximum Benefit**

- (a) Limitations on Benefits Under Section 415. In addition to any other limitations set forth in the Plan and notwithstanding any other provisions of the Plan, effective for Limitation Years beginning on and after January 1, 2008, benefits under the Plan shall be limited in accordance with Section 415 of the Code and the Treasury Regulations thereunder, in accordance with this Section. This Section is intended to incorporate the requirements of Section 415 of the Code by reference except as otherwise specified herein.
  
- (b) Definitions. For purposes of this Section, the following terms shall have the following meanings.
  - (1) Plan Benefit. “Plan Benefit” means, as of any date, the amount of a Participant’s benefit as determined under the applicable provisions of the Plan before the application of the limits in this Section.
  - (2) “Severance from Employment” has occurred when a Participant is no longer an Employee of any Employer maintaining the Plan.
  - (3) “Limitation Year” means calendar year.
  - (4) “Compensation.” For Limitation Years beginning on or after January 1, 2008, “415 Compensation,” for purposes of this Section (to the extent applicable) and for purposes of nondiscrimination under Code Sections 401(a)(4), 410(b) and 401(a)(26) and the determination of Highly Compensated Employees, means remuneration received from the Employer during the Limitation Year, as defined in Treasury Regulation § 1.415(c)-2(d)(4). 415 Compensation shall also be subject to the following rules:
    - (A) 415 Compensation must be paid within the Limitation Year, and paid or treated as paid before Severance from Employment in accordance with the general timing rule of § 1.415(c)-2(e)(1).
    - (B) 415 Compensation must include amounts paid by the later of 2½ months after Severance from Employment or the end of the Limitation Year that includes the Severance from Employment date in accordance with

§1.415(c)-2(e)(3)(i). Such post-severance compensation includes regular pay as defined in §1.415(c)-2(e)(3)(ii).

- (C) The 415 Compensation for a Participant for any Limitation Year shall in no event exceed the dollar limit specified in section 401(a)(17) of the Code, as adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Code; but not other post-severance payments as defined in §1.415(c)-2(e)(3)(iv).
  - (D) Treatment of Military Differential Wage Payments . Effective for years beginning after December 31, 2008, Compensation shall include military differential wage payments (as defined in section 3401(h) of the Code).
- (c) Limit on Accrued Benefits. For Limitation Years beginning on or after January 1, 2008, in no event shall a Participant's benefit accrued under the Plan for a Limitation Year exceed the annual dollar limit determined in accordance with Section 415 of the Code and the Treasury Regulations thereunder (the "annual dollar limit") for that Limitation Year. If a Participant's Plan Benefit for a Limitation Year beginning on or after January 1, 2008 would exceed the annual dollar limit for that Limitation Year, the accrued benefit, but not the Plan Benefit, shall be frozen or reduced so that the accrued benefit does not exceed the annual dollar limit for that Limitation Year.
- (d) Limit on Benefits Distributed or Paid. For Limitation Years beginning on or after January 1, 2008, in no event shall the annual amount of benefit distributed or otherwise payable to or with respect to a Participant under the Plan in a Limitation Year exceed the annual dollar limit for that Limitation Year. If the benefit distributable or otherwise payable in a Limitation Year would exceed the annual dollar limit for that Limitation Year, the benefit shall be reduced so that the benefit distributed or otherwise payable does not exceed the annual dollar limit for that Limitation Year.
- (e) Protection of Prior Benefits. To the extent permitted by law, the application of the provisions of this Section shall not cause the benefit that is accrued, distributed or otherwise payable for any Participant to be less than the Participant's accrued benefit as of December 31, 2007 under the provisions of the Plan that were both adopted and in effect before April 5, 2007 and that satisfied the limitations under section 415 of the Code and the Treasury Regulations thereunder as in effect as of December 31, 2007.

- (f) **Aggregation of Plans.** In the event that a Participant's aggregated benefits exceeds the limits under Section 415 of the Code and the Treasury Regulations thereunder as a result of the mandatory aggregation of the benefits under this Plan with the benefits under another non-multiemployer plan maintained by an Employer, the benefits of this Plan shall be reduced to the extent necessary to comply with Section 415 of the Code and the Treasury Regulations thereunder.
- (g) **General.**
- (1) To the extent that a Participant's benefit is subject to the provisions of Section 415 of the Code and the Treasury Regulations thereunder that have not been set forth in this Plan, such provisions are hereby incorporated by reference into this Plan and for all purposes shall be deemed a part of the Plan.
  - (2) This Section is intended to satisfy the requirements imposed by Section 415 of the Code and the Treasury Regulations thereunder and shall be construed in a manner that will effectuate this intent. This Section shall not be construed in a manner that would impose limitations that are more stringent than those required by Section 415 of the Code and the Treasury Regulations thereunder.
  - (3) If and to the extent that the rules set forth in this Section are no longer required for qualification of the Plan under Section 401(a) and related provisions of the Code and the Treasury Regulations thereunder, they shall cease to apply without the necessity of an amendment to the Plan.
- (h) **Adjustment for Benefits Subject to Section 417(e).**
- (1) **Interest Rates for Pension Starting Dates in Years Beginning on and After January 1, 2006**  
  
Effective for Pension Starting Dates in years beginning on and after January 1, 2006, for purposes of adjusting any benefit under section 415(b)(2)(B) of the Code for any form of benefit subject to section 417(e)(3) of the Code, the interest rate assumption shall be not less than the greater of:
    - (A) the interest rate specified in the Plan,
    - (B) 5.5 percent, and

(C) the interest rate that produces a benefit of not more than 105% of the benefit that would be provided using the “applicable interest rate” (as defined in section 417(e)(3) of the Code).

(2) Interest Rates for Pension Starting Dates in Plan Years Between January 1, 2004 and December 31, 2005.

Effective for Pension Starting Dates in Plan Years beginning in 2004 and 2005, for purposes of adjusting any benefit under Section 415(b)(2)(B) of the Code for any form of benefit subject to Section 417(e)(3) of the Code, the interest rate assumption shall be not less than the greater of:

(A) the interest rate specified in Plan, and

(B) 5.5 percent.

(i) Section 415 Cost of Living Adjustments. To the extent permitted by law, benefits accrued, distributed or otherwise payable with respect to any Participant while in Covered Employment and after such Participant’s Severance From Employment, or after the Participant’s Pension Starting Date if earlier, that are limited by this Section 6.19 shall be increased annually pursuant to cost of living increases in the annual dollar limit under Section 415(d)(1)(A) of the Code and the Treasury Regulations thereunder; provided, however, that in no event shall any increase under this Section 6.19 cause the amount of a Participant’s accrued, distributed or otherwise payable benefit to exceed the amount of the Participant’s Plan Benefit.

(j) Interpretation or Definition of Other Terms. The terms used in this Article that are not otherwise expressly defined in the Plan, shall be defined, interpreted and applied for purposes of this Section as prescribed in Section 415 of the Code and the Treasury Regulations thereunder.

## **Section 6.20            Limitation of Benefits on Termination**

(a) In the event of plan termination, the benefit of any Highly Compensated Employee shall be limited to a benefit that is nondiscriminatory under Code § 401(a)(4).

- (b) Benefits distributed to any of the 25 most Highly Compensated Employees with the greatest compensation in the current or prior year are restricted such that the monthly payments are no greater than an amount equal to the monthly payment that would be made on behalf of such person under a straight life annuity that is the Actuarial Equivalent of the sum of the person's accrued benefit and the person's other benefits under the Plan. However, the limitation of this Section 6.20 shall not apply if:
- (1) after payment of the benefit to a person described above, the value of Plan assets equals or exceeds 110 percent of the value of current liabilities, as defined in Code §412(1)(7);
  - (2) the value of the benefits for a person described above is less than 1 percent of the value of current liabilities before distribution; or
  - (3) the value of the benefits payable under the Plan to a person described above does not exceed \$3,500 or, for an Annuity Starting Date on or after January 1, 1998, \$5,000.
- (c) For purposes of this Section, benefit includes any periodic income, any withdrawal values payable to a living Participant, and any death benefits not provided for by insurance on the person's life.
- (d) Notwithstanding the foregoing, with respect to Plan Years beginning prior to January 1, 1994, compliance with the Plan and Regulations then in effect shall be deemed compliance with this Section 6.20.

## **Section 6.21 Mergers**

In the case of any merger or consolidation with or transfer of assets or liabilities to any other plan, each Participant shall receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (if this Plan had then terminated). This section shall apply only to the extent determined by the Pension Benefit Guaranty Corporation.

## Section 6.22 Eligible Rollover Distributions.

- (a) This Section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.
- (b) Definitions:
- (1) "Direct Rollover" means a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.
  - (2) "Distributee" includes a Participant or former Participant. In addition, the Participant's or former Participant's Surviving Spouse and the Participant's or former Participant's Spouse or former Spouse who is the Alternate Payee under a Qualified Domestic Relations Order, as defined in Section 414(p) of the Internal Revenue Code, are Distributees with regard to the interest of the Spouse or former Spouse. A Distributee also includes, for distributions on and after January 1, 2010, a non-spouse designated beneficiary. "Eligible Retirement Plan" is an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code, or a qualified trust described in Section 401(a) of the Internal Revenue Code, that accepts the Distributee's Eligible Rollover distribution. However, in the case of an Eligible Rollover Distribution to the Surviving Spouse, an Eligible Retirement Plan is an individual retirement account or individual retirement annuity. An Eligible Retirement Plan also shall include an annuity contract described in Code §403(b) and an eligible plan under Code §457(b), which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of eligible retirement plan also shall apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order as defined in Code

§414(p). Effective for distributions made after January 1, 2008, an eligible retirement plan shall also include a Roth individual retirement account or Roth individual retirement annuity described in Section 408A of the Code.

In the case of a non-spouse beneficiary, an eligible retirement plan is an individual retirement account or annuity described in Section 408(a) of the Code, or Section 408(b) of the Code (“IRA”) or, for distributions made after December 31, 2009, a Roth individual retirement account or annuity described in Section 408A of the Code, that is established on behalf of the designated beneficiary and that will be treated as an inherited IRA pursuant to the provisions of section 402(c)(11) of the Code.

- (3) “Eligible Rollover Distribution” means 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 (10) years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; any hardship distribution as referred in Section 401(k)(2)(B)(i)(IV) of the Code; and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

## **Section 6.23      Applicable Laws**

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



## ARTICLE VII Distribution Rules

### Section 7.01 Mandatory Commencement of Benefits Before Death

- (a) Notwithstanding any provision of the Plan to the contrary, effective January 1, 1984, the Fund will begin benefit payments to all Participants by their Required Beginning Dates, whether or not they apply for benefits.
- (b) Effective January 1, 1990, a Participant's Required Beginning Date is April 1 of the calendar year following the year the Participant reaches 70 1/2 provided that, for a Participant who reaches 70 1/2 before 1988 other than a 5% owner, the Required Beginning Date is April 1 of the year following the Calendar Year in which the Participant ceases work in Covered Employment if that is later.
- (c) If a Participant who is definitely located fails to file a completed application for benefits on a timely basis, the Fund will establish the Participant's Required Beginning Date as the Annuity Starting Date and begin benefit payments as follows:
  - (1) If the Actuarial Value of the Participant's benefit (determined in accordance with Section 6.06) is no more than \$3,500 or effective January 1, 1998, no more than \$5,000, in a single sum payment.
  - (2) In any other case, in the form of a Joint and Survivor Pension calculated on the assumptions that the Participant is and has been married for at least one year by the date payments start and that the Participant is 3 years older than the Spouse, unless the Fund has information to the contrary.
  - (3) The benefit payment form specified here will be irrevocable once it begins, with the sole exceptions that it may be changed to a single-life annuity if the Participant proves that he did not have a qualified spouse (including an alternate payee under a QDRO) on the Required Beginning Date, and the amounts of future benefits will be adjusted based on the actual age difference between the Participant and spouse if proven to be different from the foregoing assumptions.
    - (A) Federal, state and local income tax, and any other applicable taxes, will be withheld from the benefit payments as required by law or determined

by the Trustees to be appropriate for the protection of the Fund and the Participant.

## **Section 7.02      After Death**

- (a) Notwithstanding any provision of this Plan to the contrary, for plan years beginning after December 31, 1984, in the event distribution has commenced but not been completed prior to the death of a Participant, the remainder of the Participant's interest (not including ancillary benefits) is to be distributed (i) at least as rapidly under the method in effect prior to death, or (ii) under a faster method selected by his/her beneficiary if permitted by the Plan or uniform rules adopted by the Trustees.
  
- (b) Effective January 1, 1990, in the event distribution has not commenced prior to the Participant's death, payment of any portion of the Participant's interest to or for the benefit of a designated beneficiary who is not the Participant's eligible Spouse must either:
  - (1) be completed by December 31, of the fifth calendar year following the year of the Participant's death, or
  - (2) begin by December 1 of the year following the year of the Participant's death and be paid out over a period no longer than the beneficiary's life or life expectancy, as determined under Table V of Treas. Reg. §1.72 9 as of the date payments commence, except that they can continue until the end of the fifth calendar year following the year of the Participant's death if longer.
  
- (c) Effective January 1, 1990, in the event distribution has not commenced prior to the death of the Participant and the designated eligible Spouse beneficiary, including for the purpose of this subparagraph, a Spouse annuitant under a Joint and Survivor Pension, is the beneficiary of the Participant, the portion of the interest of the Participant designated for the Spouse beneficiary must be distributed or commence to be distributed not later than December 1 of the calendar year in which the Participant would have reached 70 1/2 or, if later, December 1 of the calendar year following the year of the Participant's death. If the Trustees confirm the identity and whereabouts of a surviving Spouse who has not applied for benefits by that time, payments to that surviving Spouse in the form of a single life annuity (subject to the provisions of Section 7.01 on small benefit cashouts)

will begin automatically as of that date. In the event the surviving Spouse dies before distribution commenced or is required to commence to him or her, then the provisions of subparagraph (b) shall apply to that interest of the Participant as though the Spouse was the Participant.

### **Section 7.03 Survivor Benefit Limitations**

Notwithstanding any other provision of the Plan, all survivor benefits shall comply with the limits of Internal Revenue Code Section 401(a)(9) and the incidental benefit rule and the regulations prescribed under them, including proposed Treasury Regulation Sections 1.401(a)(9)-1 and 1.401(a)(9)-2.

### **Section 7.04 Required Minimum Distributions**

#### **(a) General Rules**

- (1) **Effective Date.** The provisions of this Section 7.04 will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 Calendar Year.
- (2) **Precedence.** The requirements of this Section are intended to comply with Section 401(a)(9) of the Code and the regulations promulgated thereunder . However, this Section does not provide any benefit or right not otherwise provided under the Plan.
- (3) **Requirements of Treasury Regulations Incorporated.** All distributions required under this Section 7.04 will be determined and made in accordance with the Treasury regulations under Section 401(a)(9) of the Code.
- (4) **TEFRA Section 242(b)(2) Elections.** Notwithstanding the other provisions of this Section 7.04 other than paragraph (a)(3) above, distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (“TEFRA”) and the provisions of the Plan that relate to Section 242(b)(2) of TEFRA.

(b) Time and Manner of Distribution

- (1) Required Beginning Date. The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date.
- (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 Spouse is the Participant's sole Designated Beneficiary, then distributions to the surviving Spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later.
  - (B) If the Participant's surviving 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 Spouse is the Participant's sole Designated Beneficiary and the surviving Spouse dies after the Participant, but before distributions to the surviving Spouse begin, this Section 7.04(b)(2), other than Section 7.04(b)(2)(A), will apply as if the surviving Spouse were the Participant.

For purposes of this Subsection 7.04(b)(2) and Subsection 7.04(e), distributions are considered to begin on the Participant's Required Beginning Date (or if Section 7.04(b)(2)(D) applies, the date distributions are required to begin to the Surviving Spouse under Section 7.04(b)(2)(A)). If annuity payments irrevocably

commence to the Participant before the Participant's Required Beginning Date (or to the Participant's surviving Spouse before the date distributions are required to begin to the surviving Spouse under Section 7.04(b)(2)(A)), the date distributions are considered to begin is the date distributions actually commence.

- (3) Form of Distribution. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company, or in a single sum on or before the Required Beginning Date as of the first Distribution Calendar Year, distributions will be made in accordance with Subsections (c), (d) and (e) of this Section 7.04. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Code and the Treasury regulations. Any part of the Participant's interest which is in the form of an individual account described in Section 414(k) of the Code will be distributed in a manner satisfying the requirements of Section 401(a)(9) of the Code and the Treasury regulations that apply to individual accounts.

(c) Determination of Amount to be Distributed Each Year

- (1) General Annuity Requirements. If the Participant's interest is paid in the form of annuity distributions under the plan, payments under the annuity will satisfy the following requirements:
  - (A) The annuity distributions will be paid in periodic payments made at 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 Section 7.04(d) or (e);
  - (C) Once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted; and
  - (D) Payments will either be non-increasing or increase only as follows:

- (i) By an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the Bureau of Labor Statistics;
  - (ii) To the extent of the reduction in the amount of the Participant's payments to provide for a survivor benefit upon death, but only if the Beneficiary whose life was being used to determine the distribution period described in Section 7.04(d) dies, or is no longer the Participant's Beneficiary pursuant to a Qualified Domestic Relations Order within the meaning of section 414(p);
  - (iii) To provide cash refunds of Employee contributions upon the Participant's death; or
  - (iv) To pay increased benefits that result from a Plan amendment.
- (2) Amount Required to be Distributed by Required Beginning Date. The amount that must be distributed on or before the Participant's Required Beginning Date (or if the Participant dies before distributions begin, the date distributions are required to begin under Section 7.04(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. Payment intervals are the periods for which payments are received e.g., bi-monthly, monthly, semi-annually, or annually. All of the Participant's benefit accruals as of the last day of the first Distribution Calendar Year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Participant's Required Beginning Date.
- (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 amount accrues.

(d) Requirements for Annuity Distributions That Commence During Participant's Lifetime

- (1) Joint Life Annuities Where the Beneficiary is not the Participant's Spouse. If the Participant's interest is being distributed in the form of a Joint and Survivor Annuity for the joint lives of the Participant and a 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 rules and table set forth in Q&A-2 of Section 1.401(a)(9)-6 of the Treasury regulations. 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 Spouse is the sole Designated Beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the Participant's lifetime may not exceed the applicable distribution period for the Participant under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations for the calendar year that contains the Benefit Commencement Date. If the Benefit Commencement Date precedes the year in which the Participant reaches age 70, the applicable distribution period for the Participant is the distribution period for age 70 under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations plus the excess of 70 over the age of the Participant as of the Participant's birthday in the year that contains the Benefit Commencement Date. If the Participant's Spouse is the Participant's sole Designated Beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the Participant's applicable distribution period, as determined under this Subsection (d)(2), or the joint life and last survivor expectancy of the Participant and the Participant's Spouse as determined under the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's

and Spouse's attained ages as of the Participant's and Spouse's birthdays in the calendar year that contains the Benefit Commencement Date.

(e) Requirements for Minimum Distributions Where Participant Dies Before Date Distributions Begin

(1) Participant Survived by Designated Beneficiary. If the Participant dies before the date distribution of his or her interest begins and there is a Designated Beneficiary, the Participant's entire interest will be distributed beginning no later than the time described in Section 7.04(b)(2)(A) or (B) over the life of the Beneficiary or over a period certain not exceeding:

(A) Unless the Benefit Commencement 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

(B) If the Benefit Commencement 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 Benefit Commencement Date.

(2) 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.

(3) Death of Surviving Spouse Before Distributions to Surviving Spouse Begin. If the Participant dies before the date distribution of his or her interest begins, the Participant's Surviving Spouse is the Participant's sole Designated Beneficiary, and if the Surviving Spouse dies before distributions to the Surviving Spouse begin, this Subsection (e) will apply as if the Surviving Spouse were the Participant, except that the time by which distributions must begin will be determined without regard to Section 7.04(b)(2)(A).



(f) Definitions

- (1) Designated Beneficiary. The individual who is designated by the Participant (or the Participant's Surviving Spouse, if applicable) as the beneficiary of the Participant's interest under Section 1.03 or 5.07 and who is the designated Beneficiary under Section 401(a)(9) of the Code and Section 1.401(a)(9)-4, Q&A-1, of the Treasury regulations.
- (2) 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 Subsection (b)(2).
- (3) Life Expectancy. Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury regulations.
- (4) Required Beginning Date. The date specified in Section 7.01(b) of the Plan.
- (5) Benefit Commencement Date. The "Annuity Starting Date" as described in Section 1.02 of the Plan.

## **ARTICLE VIII    Miscellaneous**

### **Section 8.01            Non-Reversion**

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

### **Section 8.02            Limitations of Liability**

This Pension Plan has been established on the basis of an actuarial calculation which has established to the extent possible that the contributions will, if continued, be sufficient to maintain the Plan on a permanent basis, fulfilling the funding requirements of ERISA. Except for liabilities which may result from provisions of ERISA, nothing in this Plan shall be construed to impose any obligation to contribute beyond the obligation of the Employer to make contributions as stipulated in its collective bargaining agreement with the Union.

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

### **Section 8.03            New Employer or Employee Groups**

New Employer or Employee groups may be admitted to participation in the Pension Fund and this Pension Plan upon approval by the Trustees. The participation of any such new Employer shall be subject to such terms and conditions as the Trustees may lawfully prescribe including, but not limited to, the imposition of waiting periods in connection with the commencement of benefits, a requirement for retroactive contributions, or the application of modified benefit conditions and amounts. In adopting applicable terms or conditions, the Trustees shall take into account such requirements as they, in their sole discretion, may deem necessary to preserve the actuarial soundness of the Pension Fund and to preserve an equitable relationship with the contributions required from other participating Employers and the benefits provided to their Employees.

## **Section 8.04            Termination**

The Trustees shall have the right to discontinue or terminate this Plan in whole or in part. The rights of all affected Participants to benefits accrued to the date of the termination, partial termination, or discontinuance to the extent funded as of such date, shall be nonforfeitable. In the event of termination, the Plan will conform to the requirements of all applicable sections of Title IV of ERISA.

## **ARTICLE IX      Partial Pensions**

### **Section 9.01      Purpose**

Partial Pensions are provided under this Plan for Participants who would otherwise lack sufficient service credit to be eligible for any pension because their years of employment were divided between different pension plans or, if eligible, whose pension would be less than the full amount because of such division of employment.

### **Section 9.02      Related Plan**

The Trustees may enter into a Reciprocal Agreement with the Trustees of one or more other pension plans whereby such other plan becomes a Signatory Plan for the purpose of this Article. All plans which have signed the Laborers' International Union of North America National Reciprocal Agreement are Signatory Plans.

### **Section 9.03      Partial Pension**

- (a) On or after October 1, 1978, a Participant who files an application for benefits shall be eligible to retire on a Partial Pension provided he satisfies all of the following requirements:
- (1) Such Participant has earned at least one Pension Credit for which contributions were collected by the Rhode Island Laborers' Pension Fund; and
  - (2) Such Participant has earned at least one Pension Credit under a Signatory Plan in order for the Pension Credit and fractional parts thereof from such Plan to be recognized in the determination of his benefit; and
  - (3) Such Participant would be eligible for a pension other than a Partial Pension under each of the Signatory Plans, in which at least one Pension Credit was earned, if his combined total Pension Credits were treated as Pension Credit under each Plan; and

- (4) Such Participant, prior to October 1, 1978, has not incurred a One-Year Break-in-Service that was not followed by an accrual of at least one-quarter Pension Credit; and
  - (5) If such Participant is applying for a pension based on a disability, the specific disability provisions under each Signatory Plan, in which at least one Pension Credit was earned, must be satisfied; and
  - (6) If such Participant is applying for a pension based on a minimum age requirement, the minimum age requirement under each Signatory Plan, in which at least one Pension Credit was earned, must be satisfied; and
  - (7) On or after January 1, 1988, if such Participant is applying for a Service Pension as defined in Section 3.06, only Pension Credit earned under New England Signatory Plans will be recognized in determining eligibility for such pension and the specific provisions with respect to a Service Pension under each such Signatory Plan, in which at least one Pension Credit was earned, must be satisfied.
- (b) A Participant's Pension Credit accrued under this Plan shall be based upon the Benefit Rate and rules and regulations in effect during the Calendar Year of such employment or, if later, of employment under the jurisdiction of a signatory to the New England Laborers' Pension Funds Partial Pension Administrative Agreement, which is incorporated herein by reference. In no event will more than one Pension Credit be granted for any 12 consecutive calendar months. If during a Calendar Year a Participant worked in the jurisdiction of two or more Plans and accumulated a fractional part of a Pension Credit under each Plan and the total exceeds one, then the Plan which provides the greatest benefit accrual rate will be recognized first, and the other Plans will be recognized in the descending order of their benefit accrual rates.

If an Employee accrues more than 25 Pension Credits under this Plan, only the 25 Pension Credits which were completed last will be considered for purposes of computing his Accrued Benefit under this Plan. However, for pensions effective on or after January 1, 2000, the monthly amount of the Partial Pension based solely on Pension Credits accrued under this Plan shall be computed considering all those Pension Credits, but shall in no event exceed \$1,700 (before reductions for early retirement and/or form of

payment). For pensions effective on or after January 1, 2002, the monthly amount of the Partial Pension based solely on Pension Credits accrued under this Plan shall be computed considering all those Pension Credits, but shall in no event exceed \$1,850 (before reductions for early retirement and/or form of payment).

- (c) The Partial Pension benefit amount shall be a monthly amount equal to the Benefit Rate determined in accordance with (b) above multiplied by the number of accrued Pension Credits in force, if benefits are payable in the form of a Life Pension, or an actuarial equivalent amount based on the factors in Section 5.10 if benefits are payable in the form of a Joint and Survivor Pension.
  - (1) If the Participant retires prior to his Normal Retirement Age, the determination of a Partial Pension shall be subject to the early retirement conditions and actuarial reduction as stated in Section 3.05.
  - (2) If the Participant's Partial Pension is based upon a disability the eligibility and determination of such benefit shall be subject to all the conditions of Sections 3.10 and 5.10.
- (d) The eligibility of a Participant for a Partial Pension based on his combined Total Pension Credit shall not be considered evidence for the establishment of eligibility for the Death Benefits provided for in Section 5.06 or Section 5.08.

# ARTICLE X      Amendments

## Section 10.01      Amendment

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

- (a) As necessary to establish or maintain the qualification of the Plan or the Trust Fund under the Internal Revenue Code and to maintain compliance of the Plan with the Requirements of ERISA, or
- (b) If the amendment meets the requirements of Section 302(c)(8) of ERISA and Section 412(c)(8) of the Internal Revenue Code, and the Secretary of Labor has been notified of such amendment and has either approved of it, or, within 90 days after the date on which such notice was filed, he failed to disapprove.

# ARTICLE XI Top Heavy Provisions

## Section 11.01 Effective Date

For purposes of any Plan Year beginning after December 31, 1983 in which the plan is Top Heavy, the provisions of this Article XI shall supersede any conflicting provision in the Plan.

## Section 11.02 Definitions

- (a) "Accrued benefit" is the present value of a Participant's accrued benefit, which shall mean:
- (1) In the case of a defined contribution plan, the sum of the balance of the Participant's accounts under that plan as of the Valuation Date on or immediately preceding the Determination Date, plus (1) any contribution to that plan which is due but unpaid as of that Determination Date, (2) the amount of any distribution from that plan made to or on behalf of the Participant during the Determination Period, and (3) the amount of any distribution made to or on behalf of the Participant during the Determination Period from any terminated plan which, if it had not been terminated, would have been part of the Required Aggregation Group. Distributions made after the Valuation Date but before the Determination Date shall not be counted in determining the accrued benefit if the value of the distribution is reflected in the Participant's account as of the Valuation Date;
  - (2) In the case of a Defined Benefit Plan Determination of Present Values and Amounts shall be determined:
    - (A) in the case of a Participant other than a Key Employee, using the single accrual method used for all plans of the Employer and Affiliated Employers, or if no such single method exists, using a method which results in benefits accruing not more rapidly than the slowest accrual rate permitted under Code §411(b)(1)(C).
    - (B) as of the most recent "actuarial valuation date," which is the most recent valuation date within a twelve (12) month period ending on the Determination Date.



- (C) for the first Plan Year, as if (a) the Participant terminated service as of the Determination Date; or (b) the Participant terminated service as of the actuarial valuation date, but taking into account the estimated Accrued Benefits as of the Determination Date.
- (D) for the second Plan Year, the Accrued Benefit taken into account for a current Participant must not be less than the Accrued Benefit taken into account for the first Plan Year unless the difference is attributable to using an estimate of the Accrued Benefit as of the Determination Date for the first Plan Year and using the actual Accrued Benefit for the second Plan Year.
- (E) for any other Plan Year, as if the Participant terminated service as of the actuarial valuation date.
- (F) the actuarial valuation date must be the same date used for computing the defined benefit plan minimum funding costs, regardless of whether a valuation is performed that Plan Year.
- (G) by not taking into account proportional subsidies.
- (H) by taking into account nonproportional subsidies.
- (I) Determination of Present Values and Amounts. This subsection (2) shall apply for Plan Years beginning after December 31, 2001, for purposes of determining the present values of Accrued Benefits and the amounts of account balances of Employees as of the Determination Date.
  - (i) Distributions During Year Ending on the Determination Date. The present values of accrued benefits and the amounts of account balances of an Employee as of the determination date shall be increased by the distributions made with respect to the Employee under the Plan and any plan aggregated with the Plan under Code §416(g)(2) during the one-year period ending on the determination date. The preceding sentence shall also apply to distributions under a terminated plan which, had it not been terminated, would have been aggregated with the Plan under

Code §416(g)(2)(A)(i). In the case of a distribution made for a reason other than severance from employment, death, or disability, this provision shall be applied by substituting "five-year period" for "one-year period."

- (ii) Employees Not Performing Services During Year Ending on the Determination Date. The Accrued Benefits and Accounts of any individual who has not performed services for the Employer during the one-year period ending on the determination date shall not be taken into account.
- (3) The calculation of a Participant's Present Value of Accrued Benefit as of a Determination Date shall be the sum of:
- (A) the Present Value of Accrued Benefit using the actuarial assumptions of Section 1.01, which assumptions shall be identical for all defined benefit plans being tested for Top Heavy Plan status.
  - (B) any Plan distributions required to be included by paragraph (2)(I) of this Section. However, in the case of distributions made after the valuation date and prior to the Determination Date, such distributions are not included as distributions for Top Heavy purposes to the extent that such distributions are already included in the Participant's Present Value of Accrued Benefit as of the valuation date. Notwithstanding anything herein to the contrary, all distributions, including distributions made prior to January 1, 1984, and distributions under a terminated plan which if it had not been terminated would have been required to be included in an Aggregation Group, will be counted. Further, benefits paid on account of death, to the extent such benefits do not exceed the Present Value of Accrued Benefits existing immediately prior to death, shall be treated as distributions for the purposes of this paragraph.
  - (C) any Employee contributions, whether voluntary or mandatory. However, amounts attributable to tax-deductible qualified voluntary employee contributions shall not be considered to be a part of the Participant's Present Value of Accrued Benefit.

- (D) with respect to unrelated rollovers and plan-to-plan transfers (ones which are both initiated by the Employee and made from a plan maintained by one employer to a plan maintained by another employer), if this Plan provides the rollovers or plan-to-plan transfers, it shall always consider such rollovers or plan-to-plan transfers as a distribution for the purposes of this Section. If this Plan is the plan accepting such rollovers or plan-to-plan transfers, it shall not consider such rollovers or plan-to-plan transfers accepted after December 31, 1983, as part of the Participant's Present Value of Accrued Benefit. However, rollovers or plan-to-plan transfers accepted prior to January 1, 1984 shall be considered as part of the Participant's Present Value of Accrued Benefit.
  - (E) with respect to related rollovers and plan-to-plan transfers (ones either not initiated by the Employee or made to a plan maintained by the same employer), if this Plan provides the rollovers or plan-to-plan transfers, it shall not be counted as a distribution for purposes of this Section. If this Plan is the plan accepting such rollovers or plan-to-plan transfers, it shall consider such rollovers or plan-to-plan transfers as part of the Participant's Present Value of Accrued Benefit, irrespective of the date on which such rollovers or plan-to-plan transfers are accepted.
  - (F) for the purposes of determining whether two employers are to be treated as the same employer in paragraphs (D) and (E) above, all employers aggregated under Code §414(b), (c), (m) or (o) are treated as the same employer.
- (b) “Determination Date” means, with respect to each Plan Year for which the Top Heavy determination is made, the last day of the immediately preceding Plan Year or, in the case of the first Plan Year, the last day of such Plan Year.
  - (c) “Determination Period” shall mean the Plan Year that includes the Determination Date..
  - (d) “Former Key Employee” shall mean any Employee who is not a Key Employee for the Plan Year but who was a Key Employee for a prior Plan Year. The beneficiary of a Former Key Employee shall be considered a Former Key Employee.

- (e) A Key Employee means any Employee or former Employee (including any deceased Employee) who at any time during the Plan Year that includes the determination date was an officer of the Employer having annual compensation greater than \$130,000 (as adjusted under Code §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 annual compensation of more than \$150,000. For this purpose, annual compensation means compensation within the meaning of Code §415(c)(3). The determination of who is a key employee will be made in accordance with Code §416(i)(1) and the applicable regulations and other guidance of general applicability issued thereunder.
- (f) “Non-Key Employee” shall mean all Employees other than Key Employees.
- (g) “Permissive Aggregation Group” means (i) the plans comprising the Required Aggregation Group, and (ii) any other plans which, when considered with the Required Aggregation Group, do not cause the Plans in the Required Aggregation Group or any other such plan to fail to satisfy the requirements of Section 401(a)(4) and 410 of the Code.
- (h) “Required Aggregation Group” means (i) each plan sponsored by the Local Union in which a Key Employee is a Participant, and (ii) each other plan of the Union or Funds which must be combined with any of the foregoing plans in order for such other plan to satisfy the requirements of Section 401(a)(4) or 410 of the Code.
- (i) “Earnings” shall mean total compensation for federal income tax purposes on any and all W-2 Forms completed by the Employer in respect to the year specified.

### **Section 11.03      Top Heavy Defined**

The Plan shall be Top Heavy in any Plan Year beginning after December 31, 1983 for which, as of the Determination Date for that Plan Year: (a) the aggregate of the accrued benefits of the Key Employees under those plans comprising the Required Aggregation Group exceeds 60% of the aggregate of the accrued benefits of all Employees, other than Former Key Employees, under those plans comprising the Required Aggregation Group, unless (b) the aggregate accrued benefits of the Key Employees under those plans comprising the Permissive Aggregation Group do not exceed 60% of the aggregate of the accrued benefits of all Employees, other than Former Key Employees, under those plans comprising the Permissive Aggregation Group. For Plan Years beginning after December 31, 1983, the determination of

whether the Plan is Top Heavy shall be made without taking into account the accrued benefits of any person who has not received any Earnings during the five (5) year period ending on the Determination Date.

#### **Section 11.04 Super Top Heavy**

The Plan shall be Super Top Heavy and Top Heavy for any Plan Year in which, as of the Determination Date for that Plan Year, it would be Top Heavy pursuant to Section 11.03 hereof if the number “90%” were substituted for the number “60%” in all places in Section 11.03 hereof where such number appears.

#### **Section 11.05 Limitations**

Subject to Section 416(h) of the Code, if, in addition to the Plan, the Union and/or Funds maintains a defined contribution plan or plans:

- (a) for any limitation year prior to January 1, 2000 in which the Plan is Top Heavy but not Super Top Heavy, the denominator in each of the Defined Benefit Plan Fraction and the Defined Contribution Plan Fraction (each as defined in Section 6.19 hereof) for purposes of Section 6.19(k) hereof shall be 100% instead of the 125% as provided under Section 415(e) of the Code; provided, however, that this paragraph 11.05(a) shall not apply if the Union and/or Funds makes the election provided for in Section 11.08(b) with respect to the minimum benefit accrual.
- (b) for any limitation year prior to January 1, 2000 in which the Plan is Super Top Heavy, the denominator in each of the Defined Benefit Plan Fraction and the Defined Contribution Plan Fraction (each as defined in Section 6.19 hereof) for purposes of Section 6.19(k) hereof shall be 100% instead of the 125% as provided under Section 415(e) of the Code.

#### **Section 11.06 Maximum Earnings**

For any Plan Year in which the Plan is Top-Heavy, the maximum annual Earnings for each Participant, for purposes of the Plan, shall not exceed \$200,000 or such other amount as may be prescribed by Treasury Regulations under Section 416(d)(2) of the Code.

## **Section 11.07 Top Heavy Vesting Schedule**

During any Plan Year in which the Plan is Top Heavy, the benefits payable under the Plan to each Participant shall vest in accordance with the following schedule:

<b>Completed Year of Vesting Service</b>	<b>Percentage of Vested Interest In Accrued Benefit</b>
Less than 2 Years	0%
At least 2 but less than 3 years	20%
At least 3 but less than 4 years	40%
At least 4 but less than 5 years	60%
5 years or more	100%

Employee who does not earn an Hour of Service after the Plan becomes Top Heavy and Notwithstanding the foregoing, this Section 11.07 shall not apply to the benefits of any the percentage of such Participant's vested interest in his benefits under the Plan shall be determined without regard to this Section 11.07.

If after the Plan has become Top Heavy it ceases to be Top Heavy for a subsequent Plan Year, any part of the Participant's benefits under the Plan which was vested prior to the end of the Plan Year in which the Plan ceases to be Top-Heavy shall continue to be vested. Furthermore, each Participant who has at least five (5) Years of Vesting Service or, for a Participant with at least one Hour of Service after December 31, 1988, three Years of Vesting Service ending on the last Plan Year in which the Plan was Top-Heavy may elect to have the vesting schedule set forth in Section 11.07 hereof apply to him, provided that such election is made within 60 days after the first day of the Plan Year in which the Plan ceases to be Top-Heavy or the date the Participant is issued a notice of the right to make the election by the Trustees, whichever is later.

## **Section 11.08 Minimum Benefit Accrual**

- (a) If the Plan is Top Heavy in any Plan Year commencing on or after January 1, 1984, each Non-Key Employee who is a Participant shall accrue a minimum benefit for such Plan Year and for each Plan Year thereafter an additional benefit, if necessary, so that such Participant's pension amount expressed as an annual amount, is equal to the applicable percentage (as set forth in subsection (b) (below) of the Participant's Top Heavy Average Compensation (as defined below).

- (b)
  - (1) “Applicable percentage” shall mean the lesser of (A) 2 percent multiplied by the Participant’s years of service with the Employer or (B) 20 percent.
  - (2) “Top Heavy Average Compensation” shall mean the Participant’s Earnings averaged over the five consecutive years during which such Earnings were highest.
- (c) Notwithstanding anything to the contrary, subsection (a) of this Section 11.08 shall not apply with respect to any Participant who is covered under any defined contribution plan or plans maintained by the Union and/or Funds if the minimum allocation or minimum benefit requirement applicable to Top Heavy Plans is satisfied in such manner as the Union or Funds may deem appropriate under Section 416 of the Code and the regulations thereunder, including any of the following ways:
  - (1) The required minimum benefit is provided under the Plan pursuant to Section 416(c)(1) of the Internal Revenue Code.
  - (2) The required minimum benefit is provided under the Plan pursuant to Section 416(c)(1) of the Internal Revenue Code but is offset by the benefits provided under the defined contribution plan or plans maintained by the Union or Funds.
  - (3) A comparability analysis is performed each year, demonstrating that any defined contribution plans maintained by the Local Union or Funds are providing aggregate benefits at least equal to those provided under the Plan, and such benefits are provided.
  - (4) Each Participant receives a minimum allocation under the defined contribution plan or plans maintained by the Union or Funds equal to at least five percent (5%) of Salary.
- (d) Notwithstanding anything to the contrary, if after the Plan has become Top Heavy it ceases to be Top-Heavy for a subsequent Plan Year, a Participant shall accrue further benefits under the Plan only to the extent his accrued benefit is less than it would have been if the Plan had never been Top Heavy.

- (e) The minimum benefit required pursuant to this Section 11.08 (to the extent required to be nonforfeitable under Section 416(b) of the Code) may not be forfeited under Section 411(a)(3)(B) or Section 411(a)(3)(D) of the Code.

### **Section 11.09      Top Heavy Assumptions**


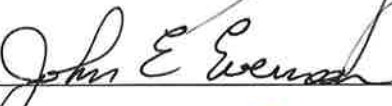
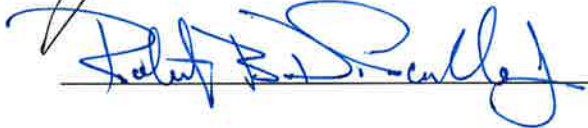
For the purpose of determining the present value of accrued benefits a seven percent (7%) interest assumption and the 1971 Group Annuity Mortality Table rated 100% for males shall be utilized.







IN WITNESS WHEREOF, the undersigned Trustees have executed this amended and restated Plan on this 9th day of December, 20 14.

EMPLOYER TRUSTEES:

UNION TRUSTEES:

  
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