

**UNITED FOOD AND COMMERCIAL  
WORKERS UNIONS  
AND EMPLOYERS MIDWEST PENSION  
PLAN**

**AS AMENDED AND RESTATED  
EFFECTIVE DECEMBER 1, 2014**

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## **ARTICLE I      PURPOSE**

Effective as of November 25, 1963, the United Food and Commercial Workers Unions and Employers Midwest Pension Plan (the “Plan”), known as the Retail Clerks Unions and Employers Midwest Pension Plan prior to May, 1982, originally known, prior to June, 1977, as the Chicago Area Retail Food Clerks Pension Plan, was adopted to provide retirement benefits for retail food employees in the Chicago area covered by Collective Bargaining Agreements with certain Local Unions affiliated with the United Food and Commercial Workers International Union, AFL-CIO & CLC (the “Union”).

The Plan was adopted in accordance with a trust agreement executed as of November 8, 1963 between the Union and business organizations employing retail food employees covered by Collective Bargaining Agreements with the Union which required contributions by Employers to finance the cost of benefits provided under the Plan. Said trust agreement established the United Food and Commercial Workers Unions and Employers Midwest Pension Fund (the “Fund”), formerly known as the Retail Clerks Unions and Employers Midwest Pension Fund, originally known as the Chicago Area Retail Food Clerks Pension Fund, provided for the appointment of individual trustees (the “Trustees”) to administer the Plan and the Fund, and authorized the individual Trustees to enter into an agreement or agreements with a bank or insurance company with respect to management of the Fund. The agreement of trust, including any amendments thereto, constitutes the “Trust Agreement” under which the Fund is maintained.

In accordance with a Merger Agreement between the Trustees and the trustees of a trust established as of January 1, 1969, known as the Retail Clerks Central Division Pension Trust (the “Central Division Trust”), the fund established thereunder was merged into the Fund, effective as of May 31, 1977 (the “Merger Date”). Effective June 1, 1977, the Trustees amended the Plan to provide benefits to employees covered by the Central Division Pension Trust immediately prior to the Merger Date (the “Central Division Participants”).

The Plan and Fund maintained under the Trust Agreement are intended to meet the requirements of Sections 401(a) and 501(a) of the Internal Revenue Code of 1986, as amended by subsequent legislation.

The Plan was previously amended and restated, effective December 1, 1997 (including Amendments through December 1, 2002) to conform to provisions of the Retirement Protection Act of 1994 (“RPA 94”) the Uruguay Round Agreements Act (“GATT”), Uniformed Services Employment and Reemployment Rights Act of 1994 (“USERRA”), Small Business Job Protection Act of 1996 (“SBJPA”), Taxpayer Relief Act of 1997 (“TRA '97”), Restructuring and Reform Act of 1998 (“RRA '98”), and the Economic Growth and Tax Relief Reconciliation Act of 2001 (“EGTRRA”), in addition to making other regulatory and administrative changes.

The Plan was further amended and restated effective December 1, 2010 to conform with EGTRRA further, to conform with the provisions of the Job Creation and Worker Assistance Act of 2002 ("JCWAA"), the Pension Funding Equity Act of 2004 ("PFEA"), the American Job Creation Act of 2004 ("AJCA"), the Pension Protection Act of 2006 ("PPA"), and the Heroes Earnings Assistance and Relief Act of 2008 ("HEART Act"), and to make other regulatory and administrative changes.

The Plan is now amended and restated effective December 1, 2014 to comply with the applicable requirements in the Cumulative List of Changes in Notice 2013-84 as provided under the laws below:

- (a) The Pension Protection Act of 2006 (PPA '06);
- (b) The Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act);
- (c) The Worker, Retiree, and Employer Recovery Act of 2008 (WRERA);
- (d) The Small Business Jobs Act of 2010 (SBJA); and
- (e) Other applicable rules and regulations pertaining to the Plan's qualified status.

The Plan has also been revised to comply with the requirement to apply provisions of the Plan to Participants who are married to a same gender individual in the manner required under guidance from the Internal Revenue Service.

The provisions of the Plan as set forth herein which increase the amount of benefits provided or which liberalize eligibility for benefits shall apply only to Employees terminating Industry Employment on or after December 1, 2014. The Plan as in effect prior to December 1, 2014 shall govern the amount of pension and the conditions under which it is payable to or in respect of Employees who terminated Industry Employment prior to December 1, 2014, except to the extent otherwise specifically provided in the Plan or under subsequent Plan amendments.

## ARTICLE II DEFINITIONS AND CONSTRUCTION

### Section 2.1 Definitions

Words and phrases appearing in this Plan shall have the respective meanings set forth in this Article, unless the context clearly indicates to the contrary.

#### (a) **Accrued Benefit**

The monthly amount of Pension payable at Normal Retirement Date, as determined in accordance with Section 6.1, based on the Participant's Credited Service at the date of determination, but subject to the provisions of Sections 3.2, 6.5 and 9.5.

#### (b) **Actuarial Present Value or Actuarial Equivalent**

(1) Actuarial Equivalent means two (2) benefits of equal Actuarial Present Value determined using the actuarial factors and assumptions specified in the provision in which that phrase is used or, if not otherwise specified, based on the factors and assumptions described in this Section.

(2) For lump sum payments and other payments subject to Code Section 417(e)(3):

(A) Made on or after December 1, 2008, notwithstanding any other Plan provision to the contrary, in determining the Actuarial Equivalent amount for purposes of satisfying the requirements of Code Section 417(e) as set forth in this Subsection, the following provisions shall apply:

##### (i) Applicable Interest Rate

The Applicable Interest Rate is the adjusted first, second and third segment rates applied under rules similar to the rules of Code Section 430(h)(2)(C) determined in the month of October preceding the Plan Year in which the distribution will occur. The adjusted first, second and third segment rates are the first, second and third segment rates determined pursuant to Code Section 417(e)(3)(D) with the applicable percentage under Code Section 430(h)(2)(G) determined in accordance with the following table:

| <b>Plan Years Beginning In:</b> | <b>Applicable Percentage:</b> |
|---------------------------------|-------------------------------|
| 2008                            | 20%                           |
| 2009                            | 40%                           |
| 2010                            | 60%                           |
| 2011                            | 80%                           |
| 2012 and later                  | 100%                          |

(ii) Applicable Mortality Table

Effective for Plan Years on and after December 1, 2008, the Applicable Mortality Table means the mortality table under Code Section 417(e)(3) modified as appropriate by the Secretary of Treasury based on the mortality table specified for the Plan Year by the Secretary and, except as otherwise stated in Treasury guidance, determined under subparagraph (A) of Code Section 430(h)(3) (without regard to subparagraph (C) or (D) of such Section). Effective for Limitation Years on and after January 1, 2009, the preceding mortality table is used as the Applicable Mortality Table for purposes of adjusting any benefit or limitation under Code Section 415(b)(2)(B), (C) or (D) as set forth in Section 6.5 of the Plan.

- (B) Made on or after December 1, 2002, and prior to December 1, 2008, notwithstanding any other provision to the contrary, any reference in the Plan to the Applicable Mortality Table or the mortality table prescribed in Rev. Rul. 95-6 shall be construed as a reference to the mortality table prescribed in Rev. Rul. 2001-62 for all purposes under the Plan.
- (C) Made on or after December 1, 2000, and prior to December 1, 2008, the Actuarial Present Value shall be determined using the interest rate for 30-Year Treasury Securities (the “Applicable Interest Rate”). The Applicable Interest Rate shall be effective the first day of each Plan Year and shall be determined in the month of October preceding each Plan Year. In determining the Actuarial Present Value, the mortality assumption shall be based on the 1983 Group Annuity Mortality Table weighted 50% male and 50% female (“Applicable Mortality Table”).



- (D) Made prior to December 1, 2000, unless otherwise specified in the Plan, the Actuarial Present Value of a benefit shall be determined using the full set of interest rates prescribed by the Pension Benefit Guaranty Corporation for valuing annuities under single-employer plans that terminate without a Notice of Sufficiency on the first day of the Plan Year in which the date as of which the benefit is valued occurs. The mortality assumption shall be based on the UP-1984 unisex mortality table.

Notwithstanding the foregoing, if the value so calculated under the preceding paragraph exceeds \$25,000 the Actuarial Present Value of a lump sum benefit shall be determined using 120% of the full set of interest rates prescribed by the Pension Benefit Guaranty Corporation for valuing annuities under single-employer plans that terminate without a Notice of Sufficiency on the first day of the Plan Year in which the date as of which the benefit is valued occurs.

- (3) For converting the normal form of benefit to all optional forms, except lump sum payments, other payments subject to Code Section 417(e)(3), and early retirement benefits, unless otherwise specified in the Plan, the Actuarial Present Value of a benefit shall be determined using an interest rate of 7 %.

Except as otherwise provided, for early retirement benefits, the Actuarial Present Value of a benefit shall be determined using an interest rate of 7.5%.

- (4) For converting the normal form of benefit to all optional forms, except lump sum payments, other payments subject to Code Section 417(e)(3), and early retirement benefits, unless otherwise specified in the Plan, the mortality assumption shall be a unisex mortality table based on experience underlying the 1971 Group Annuity Mortality Table (without margins), with an allowance for mortality improvements to 1976.

Except as otherwise provided, for early retirement benefits, the Plan shall use the 1994 Group Annuity Mortality Table, with a male/female weighting of 50/50 for mortality rates, to determine the actuarial equivalence.

**(c) Actuary**

The individual actuary or firm of actuaries (who is or shall include at least one (1) “Enrolled Actuary” under ERISA) selected by the Trustees to provide actuarial services in connection with the administration of the Plan.

**(d) Annuity Starting Date**

- (1) 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:
  - (A) The first day of the month following submission by the Participant of a completed application for benefits; or
  - (B) 30 days after the Plan advises the Participant of the available benefit payment options.
- (2) The Annuity Starting Date may occur and benefits may begin before the end of the 30-day period in (1)(B) above, provided:
  - (A) The benefit is being paid as a 50% Joint and Survivor Pension at or after the Participant’s Normal Retirement Age; or
  - (B) The Participant’s benefit was previously being paid because of an election after Normal Retirement Age; or
  - (C) The benefit is being paid out automatically as a lump sum under Section 8.5; or
  - (D) 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 (7) days after the written explanation was provided to the Participant and Spouse.
- (3) The Annuity Starting Date shall not be later than the Participant’s Required Beginning Date.
- (4) The Annuity Starting Date for a Beneficiary or alternate payee under a Qualified Domestic Relations Order (within the meaning of Section 206(d)(3) of ERISA and Code Section 414(p)) will be determined as stated in Subsections (1) and (2) above, except that references to the 50% Joint and Survivor Pension do not apply.
- (5) In the event that the Annuity Starting Date of a Disability Pension is prior to Normal Retirement Age, then the Disability Pensioner will have another Annuity Starting Date when the Participant reaches Normal Retirement Age.

(6) Notwithstanding anything in the Plan to the contrary, if a Participant (1) has a Retirement date after February 28, 2010 and on or before March 24, 2010, and (2) submits a completed application for benefits on or before March 31, 2010 then, unless the Participant requests pension payments to commence at a later date, his Annuity Starting Date shall be March 25, 2010 and the first benefit payment shall be for the period beginning March 25, 2010 and ending April 30, 2010, his second payment shall be made May 1, 2010, and all subsequent payments shall be made as of the first day of each following month.

**(e) Beneficiary**

A person (other than a Pensioner) who is receiving benefits under this Plan (or who would be receiving benefits under this Plan but for time for administrative processing) because of his or her designation for such benefits by a Participant or by the provisions of the Plan.

**(f) Calendar Year**

The twelve (12) month period commencing on January 1 and ending on December 31. For the purposes of ERISA regulations, a Calendar Year shall serve as the vesting computation period and the benefit accrual computation period.

**(g) Code**

The Internal Revenue Code of 1986, as amended from time to time.

**(h) Collective Bargaining Agreement**

A written agreement to which a Union and an Employer are parties, providing for current or future contributions by the Employer to the Fund on behalf of covered Employees.

**(i) Contiguous Noncovered Employment**

Employment by an Employee with an Employer which does not require the Employer to make contributions to the Fund and which, without quit, discharge or retirement having occurred, immediately precedes or follows the Employee's period of Covered Employment and which is after the Employer's Participation Date.

**(j) Covered Employment**

Any period during which an Employee was employed by an Employer subject to the following:

(1) With respect to the period after the date as of which contributions to the Pension Fund were first made on behalf of an Employee, Covered Employment shall include those

periods of work during which an Employer was obligated to make contributions as an Employer on behalf of the Employee;

- (2) With respect to the period prior to the date as of which contributions to the Pension Fund were first made on behalf of an Employee. Covered Employment shall include a period of work in a position involving industry operations only if such work was for an Employer, even if the Employee was not represented by a Union while performing such work;
- (3) Notwithstanding anything herein to the contrary, in the event that an Employee was employed by a business organization other than a Central Division Employer which went out of business prior to November 25, 1963 (or such later date as the Trustees shall have prescribed with respect to Unions which have or shall become parties to the Trust Agreement and the Plan subsequent to November 25, 1963) and which had a Collective Bargaining Agreement with a Union prior to going out of business, Covered Employment shall include any period of work for such business organization in a position involving retail food operations.

**(k) Credited Service**

The period of Covered Employment for which a Participant is granted credit under this Plan for purposes of determining the amount of his Accrued Benefit, which shall consist of his Past Credited Service, if any, plus his Future Credited Service, in accordance with Article IV.

**(l) Disability**

A physical or mental condition defined in Section 5.3(b).

**(m) Eligibility Service**

The period of a Participant's Covered Employment considered for purposes of determining his eligibility for benefits under this Plan, in accordance with Article IV.

**(n) Employee**

Any employee on whose behalf payments are required to be made to the Pension Fund by an Employer pursuant to a Collective Bargaining Agreement with a Union; and any employee employed by the Pension Fund, the United Food and Commercial Workers Unions and Employers Midwest Health Benefits Fund, the Union, the United Food and Commercial Workers Union State Council, or the Illinois Food Retailers Association, on whose behalf such Employer is obligated to make contributions to the Pension Fund pursuant to a Participation Agreement.

The term “Employee” includes a leased employee of an Employer, within the meaning of Code Section 414(n), who otherwise meets the conditions for participation, vesting and/or benefit accrual under the Fund.

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

The term “Employee” shall not include:

- (1) A sole proprietor or self-employed person;
- (2) A partner, regardless of the size of the partnership interest; or
- (3) Anyone else whose ownership would, in the opinion of the Trustees, jeopardize the tax-exempt status of the Fund or violate provisions of the Employee Retirement Income Security Act of 1974.

**(o) Employer**

Any employer who

- (1) On or after the Effective Date has a Collective Bargaining Agreement with a Union requiring periodic contributions to be made to the Pension Fund,
- (2) Signs a copy of the Trust Agreement or executes a Participation Agreement or in some other written manner indicates consent to be bound by the terms of the Trust Agreement, which is then filed at the administration office of the Pension Fund,
- (3) Is accepted for participation in the Pension Fund by the Trustees in accordance with the provisions of Article III hereof,
- (4) Makes contributions to the Pension Fund as required by the Collective Bargaining Agreement, and

- (5) Has not, by resolution of the Trustees, been terminated as an Employer because of failure, for a period of ninety (90) days after the due date, to make contributions to the Fund as provided for in its Collective Bargaining Agreement or Participation Agreement.

The term “Employer” shall also include the United Food and Commercial Workers Unions and Employers Midwest Pension Fund, the United Food and Commercial Workers Unions and Employers Midwest Health Benefits Fund, the Unions, the United Food and Commercial Workers Union State Council, and the Illinois Food Retailers Association, provided that each has signed a copy of the Trust Agreement as Employer becoming bound by its terms and agrees to make contributions to the Pension Fund, pursuant to a Participation Agreement unanimously acceptable to the Trustees, upon such terms and conditions necessary to preserve the actuarial soundness of the Fund and to preserve an equitable relationship between the contributions made by the other Employers participating in the Plan and the benefits payable to the Employees of such other Employers.

If an Employer has more than one place of business, the term “Employer” shall only apply to the place or places of business covered by the Collective Bargaining Agreement requiring contributions to the Pension Fund. A business organization shall not be deemed an Employer simply because it is part of a controlled group of corporations or of a trade or business under common control, some other part of which is an Employer.

An “Initial Employer” is a business organization, which became obligated to make contributions to the Pension Fund as of November 25, 1963. Section 3.3 of the Plan identifies each Employer who has executed a Participation Agreement, which provides for limitation on benefit accruals for periods of employment prior to the subject Employer’s Participation Date or other restriction and sets forth the specific features or circumstances governing such benefit restriction.

A “Central Division Employer” is an Employer who was participating in the Central Division Trust immediately prior to the Merger Date.

**(p) Effective Date**

December 1, 2014, the date on which the Plan was most recently amended and restated.

**(q) ERISA**

Public Law No. 93-406, the Employee Retirement Income Security Act of 1974, as amended from time to time.

**(r) Excused Absence**

An absence determined by the Trustees not to interrupt continuity of employment, in accordance with the provisions of Section 4.4.

**(s) Fiduciaries**

The Trustees, and any individual or organization designated by the Trustees, but only with respect to the specific responsibilities of each for Plan and Trust administration, as set forth in the Plan, Trust Agreement or any agreement entered into by the Trustees.

**(t) Fiscal Year**

The twelve (12) month period commencing on December 1 and ending on November 30.

**(u) Future Credited Service**

The Credited Service a Participant is entitled to receive under Section 4.3 for his period of Covered Employment on and after the Participation Date of his Employer.

**(v) Hour of Covered Employment**

Each Hour of Employment for which a Participant's Employer is obligated to make a contribution as an Employer to the Pension Fund on the Participant's behalf.

**(w) Hours of Employment**

Each Employee will be credited with an Hour of Employment for:

- (1) Each hour for which an Employee is directly or indirectly paid or entitled to payment by the Employer as an Employee for the performance of duties. These hours shall be credited to the Employee for the computation period or periods in which the duties are performed; and
- (2) Each hour (up to a maximum of 501 hours in any single continuous period) for which an Employee is directly or indirectly paid or entitled to payment by the Employer on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence other than for the performance of duties, except where such payment is made or due under a plan maintained solely for the purpose of complying with applicable worker's compensation, or unemployment compensation or disability insurance laws and except for payments which solely reimburse an Employee for medical or medically related expenses incurred

by the Employee. These hours shall be credited to the Employee for the computation period or periods in which the nonperformance of duties occurred. Two (2) periods of paid non-work time shall be deemed continuous if they are compensated for the same reason (e.g., disability) and are not separated by at least 90 days; and

- (3) Each hour for which back pay, irrespective of mitigation of damages, has been either awarded or agreed to by the Employer. These hours shall be credited to the Employee for the computation period or periods to which the award or agreement pertains rather than the computation period in which the award, agreement, or payment was made.

The same hours shall not be credited to an Employee under Paragraphs (1), (2) and (3) above.

The provisions of Department of Labor Regulation 2530.200b-2 are incorporated herein and made part hereof and shall supersede any conflicting definition or application contained herein with respect to Hours of Employment and the crediting thereof.

**(x) Industry Employment**

Any period during which an Employee was employed either:

- (1) In any capacity involving industry or related operations, as determined by the Trustees, within the geographical jurisdiction of the Union; or
- (2) While participating under a “Related Plan,” as defined in Section 10.2 hereof, which is considered by the provisions of such Related Plan to constitute a period of employment that precludes the Employee from receiving a retirement benefit under the Related Plan.

**(y) Normal Retirement Age**

Effective for accruals earned on and after January 1, 2011, Normal Retirement Age is 65, or if later, the Participant’s age at the time of his fifth anniversary after participation in the Plan commenced. For accruals earned prior to January 1, 2011, Normal Retirement Age is determined as follows:

- (1) If the Participant accrued 400 or more hours of Covered Employment in any Calendar Year after 1991 and does not receive any pension payments for a month prior to March 1, 1994, Normal Retirement Age is 60, or if later, the Participant’s age at the time of his fifth anniversary after participation commenced.



- (2) If the Participant accrued 400 or more hours of Covered Employment in any Calendar Year after 1987 and does not receive any pension payments for a month prior to June 1, 1990, Normal Retirement Age is 62, or if later, the Participant's age at the time he earns ten (10) or more years of Eligibility Service. The ten (10) or more years of Eligibility Service requirement is reduced to five (5) or more years of Eligibility Service for Participants not covered by a Collective Bargaining Agreement.
- (3) If the Participant does not meet the requirements of (1) or (2) above, his Normal Retirement Age is 65 or, if later, his age at the time he earns ten (10) or more years of Eligibility Service, including at least one (1) year of Eligibility Service after 1974.
- (4) If the Participant does not meet the requirements of (1) (2) or (3) above, Normal Retirement Age shall be the later of age 65 and the 5th anniversary of Participation in the Plan provided the Participant has not incurred a Break Year within such five (5) year period.

**(z) Normal Retirement Date**

The first day of the month following the Participant's Normal Retirement Age.

**(aa) Participant**

An Employee participating in the Plan in accordance with the provisions of Section 4.1, a retired Participant, or a Beneficiary.

**(bb) Participation Agreement**

A written agreement in form or content acceptable to the Trustees pursuant to which an Employer other than an Initial Employer consents to be bound by the Trust Agreement and adopts the Plan.

**(cc) Participation Date**

For each Employer the effective date of the earliest Collective Bargaining Agreement or Participation Agreement.

**(dd) Past Credited Service**

The Credited Service a Participant is entitled to receive under Section 4.2 for his period of Covered Employment prior to the Participation Date of his Employer.

**(ee) Pension**

A series of monthly amounts which are payable to a person who is entitled to receive benefits under the Plan.

**(ff) Pension Fund (or Fund)**

The United Food and Commercial Workers Unions and Employers Midwest Pension Fund, established to receive and invest contributions of the Employers and from which benefits are paid.

**(gg) Pensioner**

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.

**(hh) Plan**

United Food and Commercial Workers Unions and Employers Midwest Pension Plan, the Plan set forth herein, as amended from time to time.

**(ii) Plan Administrator**

The Board of Trustees.

**(jj) Plan Year**

The twelve (12) month period commencing on December 1 and ending on November 30.

**(kk) PBGC**

Pension Benefit Guaranty Corporation, a body corporate within the Department of Labor established under the provisions of Title IV of ERISA.

**(ll) Qualified Joint and Survivor Annuity**

An annuity for the life of the Participant with a survivor annuity for the life of the Spouse which is not less than 50% and not more than 100% of the amount of the annuity which is payable during the joint lives of the Participant and the Spouse and which is the Actuarial Equivalent of the normal form of benefit, or if greater, any optional form of benefit.

**(mm) Reciprocal Agreement**

A contract executed by the Trustees with the administrator of another plan, in accordance with the provisions of Article X, or a contract executed by the trustees of the Central Division Fund prior

to the Merger Date with respect to employees whose years of employment were divided between this Plan and such other plans.

**(nn) Rehabilitation Plan.**

Incorporated herein by reference, a plan to improve funding in accordance with the Pension Protection Act of 2006 and Code Section 432(e) that provides benefit design changes and/or contribution changes addressed in the Alternate Schedule or Default Schedule of the Rehabilitation Plan, adopted by the Trustees as of October 22, 2010 and as subsequently updated. If any of the terms of the Plan are inconsistent with the Rehabilitation Plan, the terms of the Rehabilitation Plan shall apply.

**(oo) Required Beginning Date**

A Participant's "Required Beginning Date" is April 1 of the Calendar Year following the Calendar Year in which the Participant reaches age 70-1/2; provided, however, that for a Participant who reaches age 70-1/2 before 1988, other than a 5% owner, the Required Beginning Date is April 1 of the Calendar Year in which his employment with an Employer terminates.

**(pp) Retirement**

Termination of Industry Employment after a Participant has fulfilled all requirements for a Pension. A Participant's Retirement date shall be deemed to be the day immediately following the later of his last day of Industry Employment or, if applicable, the Participant's last day of Excused Absence (including any period for which the Participant received sickness or accident benefit payments, exclusive of any payments voluntarily waived by the Participant, under a formal health and welfare benefit program to which his Employer contributed).

**(qq) Spouse (Surviving Spouse)**

A Participant's opposite-sex spouse or surviving spouse recognized under applicable law to whom the Participant was legally married as of the Annuity Starting Date (or his Normal Retirement Date, in the case of Disability Retirement) or, if earlier, as of his date of death, provided that a former spouse will be treated as the spouse or surviving spouse to the extent provided under a Qualified Domestic Relations Order as described in Section 206(d)(3) of ERISA and 414(p) of the Code. In addition, effective for retirements and deaths occurring from June 26, 2013 to September 15, 2013, the same-sex spouse of a Participant only if the Participant was legally married in a jurisdiction and domiciled in a state that recognizes same-sex marriages and, for retirements and death effective on or after September 16, 2013, the legally married same-

sex spouse of a Participant regardless of whether the Participant is domiciled in a state that recognizes same-sex marriages.

**(rr) Trust Agreement**

The Agreement and Declaration of Trust creating the United Food and Commercial Workers Unions and Employers Midwest Pension Fund, formerly known as the Retail Clerks Unions and Employers Midwest Pension Fund, originally known as the Chicago Area Retail Clerks Pension Fund, dated November 25, 1963, as amended from time to time.

**(ss) Trustees**

The persons selected under the Trust Agreement to administer the Plan and the Pension Fund, together with their successors, sometimes collectively referred to as the “Board of Trustees” or the “Board.”

**(tt) Union**

Any Local affiliated with United Food and Commercial Workers International Union, AFL-CIO & CLC, which has or shall become a party to the Trust Agreement and the Plan.

**Section 2.2 Construction**

The masculine gender, where appearing in the Plan, shall be deemed to include the feminine gender, and the singular may include the plural, unless the context clearly indicates to the contrary. The words “hereof,” “herein,” “hereunder” and other similar compounds of the word “here” shall mean and refer to the entire Plan, not to any particular provision or Section.

## ARTICLE III PARTICIPATING EMPLOYERS

### Section 3.1 Commencement of Participation

An Employer, other than an Initial Employer, shall be entitled to participate in this Plan only if its participation has been approved by the Trustees.

The Trustees shall approve a business organization's participation herein only if such participation will not adversely affect the actuarial soundness of the Pension Fund, as determined by the Trustees after consultation with the Actuary. To enable the Trustees to make such determination, each Union seeking approval of a new Employer shall be required to furnish the name, Social Security Number, sex, date of birth and employment history of each Employee then covered by the Collective Bargaining Agreement between the Union and the new Employer, as well as such other reasonable information as the Trustees shall request. Such determination may be made on an individual Employer basis or, for purposes of administrative convenience and expense savings, by pooling the experience of all new Employers whose contributions to the Fund commence within a period of one (1) Calendar Year or other appropriate unit, in accordance with practical rules or guidelines established by the Trustees.

Any business organization accepted as an Employer, other than an Initial Employer, may be required to sign, with the Union, a Participation Agreement approved by the Trustees that sets forth the full details of the basis for contributions to the Pension Fund and the basis for acceptance as an Employer.

When an Employer is accepted for participation, the Trustees may, in writing, impose on such acceptance any terms and conditions they consider necessary to preserve the actuarial soundness of the Pension Fund and to preserve an equitable relationship between the contributions made by the other Employers then participating in the Plan and the benefits payable to the Employees of such other Employers. Such conditions may include, but shall not be limited to, the imposition of special waiting periods before the commencement of benefits and/or the granting of a lower scale of benefits. Existent benefit restrictions are set forth in Section 3.3.

A written notice of acceptance shall be sent by the Trustees to any new Employer who is accepted for participation herein. Participation in the Pension Fund shall be deemed to commence on a date set forth in such written notice.

If an Employer is sold, merged or otherwise undergoes a change of corporate identity, the successor company shall participate as to the Employees theretofore covered in the Pension Plan just as if it were the original company, provided it remains an Employer as defined in Section 2.1(o).

## Section 3.2 Termination of Participation

An Employer's participation in this Plan shall be effectively terminated upon the permanent cessation of contributions by such Employer. If an Employer no longer remains obligated under a Collective Bargaining Agreement with the Union to make contributions to the Pension Fund, no Eligibility or Credited Service shall be given for the period with respect to which the Employer is not obligated to make contributions to the Pension Fund. If an Employer fails to make contributions due for ninety (90) days after their due date, the Trustees may, by resolution, terminate the Employer's participation in the Pension Fund.

In the event an Employer, other than an Initial Employer, shall permanently discontinue contributions to the Pension Fund within a period of five (5) years after the Participation Date, the Board shall reduce the unfunded Past Credited Service, which was granted to Participants as a consequence of the acceptance of such Employer for participation in the Plan. Such reduction may be applied to all Participants or only to designated categories thereof, and the reduction rates may vary according to designated categories, as shall be set forth in a resolution adopted by the Board.

## Section 3.3 Employers Subject to Benefit Restriction

### (a) **High-Low Food**

A Participant shall receive Eligibility Service and Past Credited Service, in accordance with the provisions of Sections 4.2 and 4.3, for periods of employment with High-Low Foods prior to August 1, 1975, only if one of the following conditions is satisfied:

- (1) If the Participant's Normal Retirement Date occurs in 1978 or earlier, he must accrue at least 400 Hours of Covered Employment in at least one Calendar Year after 1975; or
- (2) Otherwise, the Participant must accrue at least 400 Hours of Covered Employment in each of the three Calendar Years prior to 1980.

## ARTICLE IV PARTICIPATION AND SERVICE

### Section 4.1 Participation

An Employee shall be eligible to participate in this Plan as follows:

- (a) An Employee who was a Participant under the provisions of the Plan as in effect November 30, 2014, shall continue to participate in accordance with the provisions of this amended and restated Plan.
- (b) An Employee shall become a Participant as of the earlier of the December 1 or June 1 following the date he accrues 400 Hours of Covered Employment within the twelve consecutive-month period subsequent to his Employer's Participation Date and beginning with the Employee's employment commencement date. Such period shall be the Employee's initial computation period for determining eligibility to participate and subsequent computation periods for determining eligibility to participate shall be based on the Plan Year.

A former Employee entitled to receive a Pension under the Plan shall continue as a Participant until the date of his death. Any Employee who has not incurred a Break Year (defined in Section 4.7), shall continue as a Participant until the date of his death or, if applicable, his incurring of a Break Year. Any Employee who incurs a Break Year shall cease to be a Participant as of the last day of the Calendar Year, which constituted the Break Year. An Employee who has lost his status as a Participant in accordance with the preceding sentence shall again become a Participant by accruing 400 Hours of Covered Employment in a subsequent Plan Year.

### Section 4.2 Prior Service Credits

#### (a) **General Rule**

With respect to a Participant who was included under the provisions of the Plan as of November 30, 2014, his Eligibility Service and Credited Service prior to such date shall be equal to his Eligibility Service and Credited Service as of such date, respectively, as determined in accordance with the prior provisions of the Plan, but subject to the provisions of Sections 3.3 and 4.7 hereof. Such Eligibility Service or Credited Service determined in accordance with the prior provisions of the Plan shall be subject to the rules governing Breaks in Service effective during such prior periods of employment. Notwithstanding the foregoing:

- (1) A Participant shall be credited with one (1) year of Eligibility Service for each Calendar Year after his Employer's Participation Date and prior to the Effective Date in which he accrues at least 1,000 Hours of Employment (as defined in Section 2.1(w)) while in Contiguous Noncovered Employment, unless subsequently canceled under the effective rules governing Breaks in Service, and
- (2) An Employee who was or shall become a Participant on or after December 31, 1975 shall qualify for Past Credited Service if he had or shall have satisfied the provisions of Section 4.2(c)(1) hereunder, presuming that such provisions had been effective on his Employer's Participation Date.

(b) **Central Division Employer**

If a Participant's Employer is a Central Division Employer who commenced participation in the Plan as of the Merger Date, such Participant's Eligibility Service for the period of Covered Employment prior to Calendar Year 1977 shall be equal to his Eligibility Service as of December 31, 1976 determined in accordance with the provisions of the Central Division Plan immediately prior to the Merger Date and such Participant's Credited Service shall be determined hereunder based solely on the Covered Employment of the Participant after Calendar Year 1976.

(c) **Other Employers**

If a Participant's Employer other than a Central Division Employer commences participation in the Plan pursuant to Section 3.1 on or after January 1, 1976, such Participant's Eligibility Service and Past Credited Service for the period of Covered Employment prior to his Employer's Participation Date shall be determined in accordance with the following, except to the extent as may otherwise be provided under his Employer's Participation Agreement:

- (1) The Participant shall qualify for such prior service credits only if he was in the employ of his Employer (or on Excused Absence or Maternity/Paternity Absence) on the Participation Date, in a position involving industry operations, and either:
  - (A) Was then an Employee and accrues at least 400 Hours of Covered Employment in the Calendar Year of the Participation Date or the succeeding Calendar Year (or, if the Trustees determine that the Employee was unable to satisfy this requirement solely because of an Excused Absence or Maternity/Paternity Absence, in the Calendar Year in which such Absence expires or the succeeding Calendar Year),



- (B) Was then on Excused Absence or Maternity/Paternity Absence which commenced no earlier than 36 months prior to, and expires no later than 36 months after, the Participation Date and accrues at least 400 Hours of Covered Employment in the Calendar Year in which the such Absence expires or the succeeding Calendar Year,
  - (C) Was not then an Employee, but subsequently continues in uninterrupted employment with his Employer, becomes an Employee within the 36-month period after the Participation Date, and earns at least one (1) year of Future Credited Service prior to the end of the third Calendar Year following the year of the Participation Date, or
  - (D) Was not then an Employee, but subsequently becomes an Employee who earns Future Credited Service for each of five (5) or more Calendar Years; provided that, within the 60-month period preceding the Participation Date, the Participant had been transferred by his Employer from employment which would have constituted Covered Employment had it occurred after the Participation Date to other employment with that same Employer and continues in uninterrupted employment with that same Employer until the earliest date as of which he returns to Covered Employment with any Employer.
- (2) The Participant shall be credited with one (1) year of both Eligibility Service and Past Credited Service for each Calendar Year prior to the year of his Employer's Participation Date in which he had accrued at least 225 days of Covered Employment. The Participant shall be credited with one (1) year of Eligibility Service and one-third (1/3) year of Past Credited Service for each Calendar Year prior to the year of his Employer's Participation Date in which he had accrued at least 65 but less than 225 days of Covered Employment. For any such Calendar Year in which the Participant had accrued less than 65 days of Covered Employment, the Employee shall not qualify for any prior service credits. Where the Employer is unable to furnish exact information on the Participant's prior employment, the determination of Past Credited Service shall be made in accordance with the provisions of Section 4.8 hereof.
- (3) Notwithstanding the foregoing, if the Participant failed to earn Eligibility Service for each of two (2) consecutive Calendar Years prior to the first Calendar Year for which he earns any Future Credited Service (unless either or both of such years are exempted because of any Excused Absence, or Maternity/Paternity Absence as provided in Sections

4.4 and 4.5), the Participant shall not be credited with any Eligibility Service or Past Credited Service for any Calendar Year prior to such two (2) year Break in Service.

- (4) For the Calendar Year in which the Participation Date occurs, Eligibility Service and Credited Service shall be determined in accordance with the provisions of Section 4.2(c)(2) above, except that the provisions of Section 4.3 shall apply to such Calendar Year if the Participation Date occurs on a January 1st.
- (5) The Trustees shall determine an individual Participant's prior Eligibility Service and Past Credited Service on the basis of information submitted by the Employers, the Participant, the Social Security Administration, and such other sources as they shall deem appropriate.
- (6) The Past Credited Service of Participants who commence participation on or after June 1, 1977, and whose Employer commenced participation on or after June 1, 1977 shall be limited to ten (10) years.

### Section 4.3 Future Service Credits

With respect to Calendar Years beginning with 1976 or, if later, the first full Calendar Year in which a Participant had contributions made by an Employer to the Fund on his behalf, each Participant's Eligibility Service and Future Credited Service shall be determined in accordance with the following, subject to the provisions of Section 4.7:

- (a) The Participant shall be credited with one (1) year of Eligibility Service for each such Calendar Year in which he accrues at least 400 Hours of Covered Employment or, if the Participant has Contiguous Noncovered Employment within such Calendar Year, 1,000 Hours of Employment (as defined in Section 2.1(w)) with such Employer.
- (b) The Participant shall be credited with one (1) year of Future Credited Service for any such Calendar Year in which he accrues at least 1,600 Hours of Covered Employment.
- (c) The Participant shall be credited with no Future Credited Service for any such Calendar Year in which he accrues fewer than 400 Hours of Covered Employment.
- (d) The Participant shall be credited with a partial year of Future Credited Service for each such Calendar Year in which he accrues at least 400 but fewer than 1,600 Hours of Covered Employment, which shall be computed as the ratio (expressed as the nearest whole percentage of one (1) year of Future Credited Service) which the number of such Hours bears to 1,600 hours.

- (e) The foregoing notwithstanding, for any Calendar Year (or fraction thereof if a decrease in hourly contribution rate should occur), after December 31, 1987 but before January 1, 2006 that a Participant's Annual Hourly Contribution Rate (as defined in Section 6.1) is 52¢ or greater, and during which he accrues more than 1,600 Hours of Covered Employment, such Participant shall be credited with more than one (1) year of Future Credited Service which shall be computed by dividing the Participant's Hours of Covered Employment in such Calendar Year by 1,600 (result expressed in whole years and percentage of a year rounded to the nearest whole percent).

#### Section 4.4 Excused Absences

Solely for the purpose of determining whether a Participant has incurred a Break Year, as defined in Section 4.7 or as considered for purposes of Section 4.2(c)(3), the Employee shall accrue on the basis of hours or days which would otherwise have been normally scheduled, for that portion of any period of Excused Absence (provided hereunder) which shall include any period established as valid by the Trustees during which the Participant was absent from Covered Employment due to illness, injury, military service, as required by federal law, or employment as an employee or official of a Union or its International Association, or a combination of the foregoing causes.

#### Section 4.5 Maternity/Paternity Absence

Maternity/Paternity Absence shall mean an absence from work on or after January 1, 1986 by an Employee for any period:

- (a) By reason of pregnancy of the Employee,
- (b) By reason of the birth of a child of the Employee,
- (c) By reason of the placement of a child with the Employee in connection with the adoption of such child by such Employee, or
- (d) For purposes of caring for such child for a period immediately following such birth or placement.

An absence will not be considered a Maternity/Paternity Absence unless the Employee returns to Covered Employment at the end of such absence and provides the Plan Administrator with information within ten (10) working days demonstrating that the absence is for one of the four (4) permitted reasons outlined above. At the end of such absence, the Employee must provide the Plan Administrator with a record of the number of days of such absence.

Solely for the purpose of determining whether a Participant has incurred a Break Year, as defined in Section 4.7 or as considered for purposes of Section 4.2(c)(3), the Employee shall accrue Hours of

Employment while on Maternity/Paternity Absence, on the basis of hours or days which would otherwise have been normally scheduled. Such hours shall be treated as Hours of Employment for the Calendar Year in which the Maternity/Paternity Absence began, if necessary to prevent a Break in Service under Section 4.7. If there is no Break in Service in the Calendar Year the Maternity/Paternity Absence began, such Hours of Employment may be used to prevent a Break in Service in the following year.

#### Section 4.6 Military Service

Notwithstanding any provisions of this Plan to the contrary, effective December 12, 1994, Eligibility Service, Past Credited Service and Future Credited Service with respect to qualified military service will be provided in accordance with the Uniformed Services Employment and Reemployment Rights Act (“USERRA”), including Section 414(u) of the Code. Prior to that date, Eligibility Service, Past Credited Service and Future Credited Service with regard to military service shall be granted in accordance with the provisions of similar federal law.

To the extent consistent with the Heroes Earnings Assistance and Relief Act of 2008 (HEART Act), a Participant who would otherwise qualify for reemployment rights under USERRA but who is not timely reemployed (or does not make himself available for reemployment) within the time limits established by USERRA due to the Participant’s death or Disability on or after January 1, 2007 incurred while performing qualified military service (as defined under Code Section 414(u)) shall be treated as having been reemployed on the day preceding the date of death or Disability and then having terminated Covered Employment on the date of death or Disability for purposes of granting Future Credited Service and Eligibility Service for such period of qualified military service as permitted by Code Section 414(u).

To the extent required under the HEART Act, the survivors of a Participant who dies while performing qualified military service (as defined in Code Section 414(u)) on or after January 1, 2007 shall be entitled to any death benefits (including any accelerated vesting, if any) provided under the Plan in the same manner as if the Participant resumed and then terminated Covered Employment on account of death.

#### Section 4.7 Breaks in Service

Any Calendar Year after December 31, 1975 (or, if later, the December 31 preceding the Participation Date of a Participant’s Employer) for which the Participant failed to earn a year of Eligibility Service or accrue at least 500 Hours of Employment (as defined in Section 2.1(w)) attributable to periods of Excused and/or Maternity/Paternity Absences (as defined in Sections 4.4 and 4.5) shall constitute a “Break Year.”

For Break Years commencing on or after January 1, 1986, a Participant shall be deemed to have incurred a “Break in Service” if and when:

- (a) The number of his consecutive Break Years equals the greater of five (5) years or the number of his previously accrued years of Eligibility Service, and
- (b) Prior thereto the Participant had not satisfied the eligibility requirements to qualify for a Pension under the provisions of the Plan as in effect on January 1 of the first such Break Year.

Upon a Participant's incurring of a Break in Service, his entire Eligibility Service and Credited Service accrued prior thereto shall be permanently canceled. However, the provisions of the prior Plan with respect to loss of Credited Service and with respect to Breaks in Service shall apply to a non-vested Participant who earned no Eligibility Service and failed to accrue at least 500 Hours of Employment (as defined in Section 2.1(w)) attributable to a period of Excused Absence for each of the Calendar Years 1975 and 1976, so that such Participant's prior Eligibility Service and Credited Service shall thereupon be permanently canceled.

Notwithstanding the foregoing, a Central Division Participant shall be deemed to have incurred a "Break in Service" prior to January 1, 1977 only in accordance with the provisions of the Central Division Plan as in effect immediately prior to the Merger Date.

Solely for the purpose of determining whether a Participant has incurred a Break in Service, any leave of absence granted by an Employer under the Family and Medical Leave Act (FMLA) of 1993 shall not be counted as a Break in Service for purposes of determining eligibility and vesting.

The determination of Breaks in Service for Break Years commencing prior to January 1, 1986 shall be determined based on the plan provisions as then in effect.

#### **Section 4.8 Determination of Past Credited Service Where Rates are Available**

For any Calendar Year prior to the Employer's Participation Date where rates of pay and wages are available during the entire Calendar Year, the Employee shall be accorded:

- (a) One year of Past Credited Service for each Calendar Year during which he worked at least an average of 35 hours per week; or
- (b) One-third (1/3) year of Past Credited Service for each Calendar Year during which he worked less than an average of 35 hours per week.

## Section 4.9 Determination of Prior Service Credits Where Information is Incomplete

If for any Calendar Year prior to the Employer's Participation Date, such Employer is unable to furnish the exact number of days of Covered Employment of an Employee who may be entitled to prior service credits, said Employee shall be considered to have accrued days of Covered Employment at the rate of (a) five (5) days per each week in which he was a full-time Employee and (b) three (3) days per each week in which he was a part-time Employee. Accordingly, the following provisions shall apply:

### (a) Full Year of Employment

For any Calendar Year prior to the Employer's Participation Date, throughout which the Employee was:

- (1) In full-time employment, he shall be accorded one (1) year of Past Credited Service (corresponding to 5 multiplied by 52 equals 260 days of considered employment); or
- (2) In part-time employment, he shall be accorded one-third (1/3) of a year of Past Credited Service (corresponding to 3 multiplied by 52 equals 156 days of considered employment).

### (b) Partial Year of Employment

For any Calendar Year prior to the Employer's Participation Date, in which the Employee had one (1) or more periods during which he was not in employment, the number of days of his considered employment for such Calendar Year shall be computed as:

- (1) Five-sevenths (5/7) multiplied by the number of days in such Calendar Year during which he served as a full-time Employee; and
- (2) Three-sevenths (3/7) multiplied by the number of days in such Calendar Year during which he served as a part-time Employee.

On the basis of the foregoing, if an Employee had no break in employment (nor change in his full-time or part-time status) during the Calendar Year in which he was initially hired, his Past Credited Service for such year shall be determined from the following schedule:

**Date of Hire**

| <b>Full-Time Employee</b> | <b>Credited Service</b> |
|---------------------------|-------------------------|
| January 1 to February 20* | 1 year                  |
| February 21* to October 2 | 1/3 year                |
| October 3 to December 31  | 0 year                  |

  

| <b>Part-Time Employee</b> | <b>Credited Service</b> |
|---------------------------|-------------------------|
| January 1 to August 2     | 1/3 year                |
| August 3 to December 31   | 0 year                  |

*\* If Employee was hired in a leap year, change February 20 and 21 to February 21 and February 22, respectively.*

## ARTICLE V REQUIREMENTS FOR RETIREMENT BENEFITS

### Section 5.1 Normal Retirement

A Participant shall be eligible for a Normal Pension upon his Retirement on or after his Normal Retirement Age.

Payment of a Normal Pension shall commence as of the first day of the month immediately following the Participant's Retirement Age (his "Normal Retirement Date").

### Section 5.2 Early Retirement

A Participant shall be eligible for an Early Pension upon (a) his Retirement on or after his 55th birthday, or his accrual of 400 Hours of Covered Employment in the Calendar Year in which he attains age 54 and (b) completion of ten (10) or more years of Eligibility Service. The ten (10) or more years of Eligibility Service requirement is reduced to five (5) or more years of Eligibility Service for Participants not covered by a Collective Bargaining Agreement who earn at least one Hour of Service after November 30, 1989. Notwithstanding the preceding, the (5) or more years of Eligibility Service requirement is increased to ten (10) or more years of Eligibility Service for Participants who are not covered by a Collective Bargaining Agreement for benefit accruals earned on or after February 24, 2009.

Subject to the provisions of Subsection 2.1(d)(6) and Section 5.7, payment of an Early Pension shall commence as of the Participant's Normal Retirement Date or, upon his written request, in an amount determined under Section 6.2 as of the first day of any month between his Annuity Starting Date and his Normal Retirement Date.

### Section 5.3 Disability Retirement

Effective for initial applications for a Disability Pension on and after December 1, 2008 for persons who earned at least a partial year of Credited Service in 2008 or later and worked at least one Covered Hour in 2009 or later, the following provisions shall apply. Notwithstanding the foregoing, effective January 1, 2011, or if later, the earliest date the Default Schedule is imposed on an Employer, the Disability Pension is eliminated for Participants subject to the Default Schedule, and no such Participant may commence a Disability Pension after such date (but Disability Pensions commenced before such date shall not be affected).



(a) **Eligibility**

A Participant shall be eligible for a Disability Pension upon his Retirement by reason of Disability and completion of ten (10) or more years of Eligibility Service. A Participant shall be deemed to have retired by reason of Disability only if:

- (1) He experiences a termination of Covered Employment on account of Disability; and
- (2) He filed an application for a Disability Pension as soon as reasonably possible following the termination of Covered Employment but in no event more than seven calendar years after the calendar year in which he last earned Credited Service, and
- (3) He had received no Pension payments under the Plan prior to termination of Covered Employment under item (1) above, and
- (4) He has applied for a Disability Insurance Benefit under the Federal Social Security Act and filed a copy of the Social Security Administration Notice of Award (either favorable or unfavorable) with the Fund Benefits Office. The requirement that a Social Security Administration Notice of Award must be filed with the Fund benefits Office may be waived by the Trustees if the participant submits sufficient medical evidence for the Trustees to conclude that his medical condition is of such severe nature that this requirement would impose a significant hardship on the Participant and the Trustees determine there is sufficient medical evidence submitted to the Trustees to support a finding of Disability.

(b) **Disability Defined**

Disability under the Plan shall be:

- (1) A physical or mental condition which in the judgment of the Trustees totally and presumably permanently prevents the Employee from continuing in the employ of the Employer or engaging in any other regular occupation or employment substantially gainful in character, which he would otherwise have been expected to be capable of performing in light of his training, experience and abilities. The Trustees may require as proof a medical examination by a doctor or clinic appointed by the Trustees or any other evidence satisfactory to the Trustees, or

- (2) A physical or mental condition which the Social Security Administration determines qualifies the Participant for a Disability Insurance Benefit under the Federal Social Security Act.

(c) **Duration of Payments**

Payment of a Disability Pension shall commence as of the first day of the month following a period of Disability of six (6) full months. If the Participant fails to file his application for a Disability Pension prior to the date on which his first Disability Pension payment is otherwise scheduled to commence, only twenty-four (24) retroactive monthly Disability Pension payments shall be made. The last payment of a Disability Pension shall be made as provided in Article VIII or, in the event Disability ceases before the Participant's Normal Retirement Date, the first day of the month in which the Trustees determine that cessation of Disability occurred.

The Trustees may from time to time, but not more frequently than once in any twelve (12) month period, request that a Participant receiving a Disability Pension prior to his Normal Retirement Date shall undergo a medical examination or furnish satisfactory evidence that his Disability has not ceased. Disability shall be considered to have ceased, and the Disability Pension shall be terminated, if the Participant prior to his Normal Retirement Date:

- (1) Engages in any occupation or employment for remuneration or profit, except for such employment as is found by the Trustees to be for the primary purpose of rehabilitation or not incompatible with a finding of Disability, or
- (2) In the opinion of the Trustees based on a medical examination by a doctor or clinic appointed by the Trustees, has sufficiently recovered to be able to engage in full-time or substantial part-time employment with an Employer, or
- (3) Refuses to undergo such medical examination or furnish such reasonable information as may be requested by the Trustees.

(d) **Cessation of Disability**

If the Participant whose Disability ceases prior to his Normal Retirement Date:

- (1) Does not elect to resume employment with an Employer, he shall thereupon assume an Early or Vested Retirement status, as the case may be, or
- (2) Otherwise, his Pension upon subsequent Retirement shall be determined in accordance with the provisions of Section 9.5 hereof. Any erroneous Disability Pension payment

which had been paid to the Participant subsequent to the date as of which the Trustees determine that cessation of Disability had occurred shall be reimbursed to the Fund by the Participant, either in the form of a lump sum payment or as a deduction from the Pension ultimately payable to the Participant, as the Trustees shall decide. Such reimbursement shall include interest, unless the Trustees determine that the Participant's failure to timely notify the Trustees of his recovery from Disability was due to good cause. Where reimbursement is made in the form of a Pension deduction, it may be provided as a direct offset from the earliest Pension payments due (i.e., through deferment of the initial payment date) or by reducing the Pension on an Actuarially Equivalent basis.

Notwithstanding any other provision of this Section 5.3, no Participant shall qualify for a Disability Retirement Pension if the Trustees determine that his Disability resulted either from an injury suffered while engaged in a felonious or criminal act or enterprise, or from service in the Armed Forces of the United States, which entitled the Participant to a Veteran's Disability Pension.

#### Section 5.4 Vested Retirement

A Participant shall be eligible for a Deferred Vested Pension if his Retirement occurs after completion of ten (10) or more years five (5) or more years effective December 1, 1998 for Participants with at least one hour of service on or after December 1, 1998) of Eligibility Service, including at least one (1) year of Eligibility Service after 1974. The ten (10) or more years of Eligibility Service requirement is reduced to five (5) or more years of Eligibility Service for Participants not covered by a Collective Bargaining Agreement who earn at least one Hour of Service after November 30, 1989.

Subject to the provisions of Subsection 2.1(d)(6) and Section 5.7, payment of the Deferred Vested Pension shall commence as of the Participant's Normal Retirement Date or, upon his written request, in a reduced amount as of the first day of any month following his 55th birthday. Notwithstanding the foregoing, ten (10) years of vesting is required for the payment of an Early Pension.

#### Section 5.5 Other Eligibility Bases

Nothing in this amended and restated Plan shall preclude a Participant who was included under the Plan prior to the Effective Date (or such Participant's Spouse or child), and who does not satisfy the eligibility requirements under any of the foregoing provisions of this Article V (or Sections 7.1 or 7.3), from qualifying for a Pension benefit if he satisfies the eligibility provisions of the Plan as in effect prior to the Effective Date or as provided in Article X hereof. A Participant shall not be entitled to receive a Pension under more than one Section of this Article V or under both this Article V and Article X.

## Section 5.6 Application for Pension

In order to receive a Pension, a Participant shall file with the Trustees a written application therefore on a form prescribed by the Trustees.

## Section 5.7 Special Rule for March 2010

Notwithstanding anything in this Article to the contrary, the Special Rule set forth in Subsection 2.1(d)(6) shall apply to an affected Participant during March 2010.

## ARTICLE VI AMOUNT OF RETIREMENT BENEFITS

### Section 6.1 Normal Pension

Subject to the provisions of Article IX, the single life Pension of a Participant who meets the requirements for a Normal Pension shall be a monthly amount equal to his Accrued Benefit.

(a) **For Credited Service earned before January 1, 2001**

The Accrued Benefit of a Participant whose Annual Hourly Contribution Rate had never exceeded 51¢ is the product of his years of Credited Service multiplied by his applicable “Formula Pension Rate,” based on his Final Hourly Contribution rate.

The “Formula Pension Rate” for a Participant described in 6.1(a) shall be determined in accordance with the following schedule:

| <b>Original Effective<br/>Date of Pension Rate</b> | <b>Final Hourly<br/>Contribution Rate</b> | <b>Formula<br/>Pension Rate</b> |
|--|---|---------------------------------|
| January 1, 1973                                    | 8¢ or less                                | \$ 5.80                         |
| January 1, 1973                                    | 10¢ or 11¢                                | \$ 6.30                         |
| January 1, 1973                                    | 12¢                                       | \$ 6.50                         |
| January 1, 1974                                    | 13¢                                       | \$ 7.00                         |
| January 1, 1974                                    | 14¢                                       | \$ 7.50                         |
| January 1, 1974                                    | 15¢                                       | \$ 8.00                         |
| January 1, 1976                                    | 16¢                                       | \$ 9.00                         |
| January 1, 1976                                    | 17¢                                       | \$10.00                         |
| June 1, 1977                                       | 22¢                                       | \$12.00                         |
| December 1, 1978                                   | 27¢                                       | \$14.00                         |
| January 1, 1980                                    | 32¢                                       | \$16.00                         |
| January 1, 1980                                    | 37¢                                       | \$18.00                         |
| December 1, 1981                                   | 42¢                                       | \$20.00                         |
| December 1, 1981                                   | 47¢                                       | \$22.00                         |

(b) **For Credited Service earned before January 1, 2001**

Effective January 1, 1988, for each Participant whose Annual Hourly Contribution Rate had ever been 52¢ (or greater, a date shall be determined which is the later to occur of December 31, 1985 and December 31st of the Calendar Year prior to the First Calendar Year that the Participant’s

Annual Hourly Contribution Rate was 52¢ or greater, which shall be known as his “Special Accrual Date.”

The Accrued Benefit of such Participant is:

- (1) The product of his years of Credited Service accrued as of his Special Accrual Date multiplied by his applicable “Formula Pension Rate” based on the Annual Hourly Contribution Rate of 52¢ or greater for the first Calendar Year following his Special Accrual Date, and
- (2) The sum of the products, for each Calendar Year thereafter that his Annual Hourly Contribution Rate continued to be 52¢ or greater, of the Credited Service accrued in that Calendar Year multiplied by his applicable “Formula Pension Rate” based on the Annual Hourly Contribution Rate of 52¢ or greater for that Calendar Year.

The “Formula Pension Rate” for a Participant described in 6.1(b)(2) shall be determined in accordance with the following schedule:

**Formula Pension Rate for Credited Service Accrued**

| Annual Hourly<br>Contribution Rate | As of Special<br>Accrual Date | After Special Accrual<br>Date But Before<br>December 31, 1987 | After Special Accrual<br>Date and After<br>December 31, 1987 |
|------------------------------------|-------------------------------|---|--|
| 52¢                                | \$22.00                       | \$27.00   | \$28.00  |
| 57¢                                | \$22.00                       | \$32.00   | \$34.00  |

Effective January 1, 1993, the “Formula Pension Rate” for a Participant described in 6.1(b), who had not left Covered Employment prior to that date and who had accrued 400 or more Hours of Covered Employment in a Calendar Year after 1991, shall be determined in accordance with the following schedule:

**Formula Pension Rate for Credited Service Accrued**

| Annual Hourly<br>Contribution Rate | As of Special<br>Accrual Date | After Special Accrual<br>Date But Before<br>December 31, 1987 | After Special Accrual<br>Date and After<br>December 31, 1987 |
|------------------------------------|-------------------------------|---|--|
| 52¢                                | \$27.00                       | \$32.00   | \$33.00  |
| 57¢                                | \$27.00                       | \$37.00   | \$39.00  |

Effective December 1, 1995, the “Formula Pension Rate” for a Participant described in 6.1(b), who had not left Covered Employment prior to that date and who had accrued 400 or more Hours of Covered Employment in a Calendar Year after 1994, shall be determined in accordance with the following schedule:

**Formula Pension Rate for Credited Service Accrued**

| <b>Annual Hourly Contribution Rate</b> | <b>As of Special Accrual Date</b> | <b>After Special Accrual Date</b> |
|--|-----------------------------------|-----------------------------------|
| 52¢                                    | \$32.00                           | \$38.00                           |
| 57¢                                    | \$32.00                           | \$44.00                           |

Effective December 1, 1996 the “Formula Pension Rate” for a Participant described in 6.1(b), who had not left Covered Employment prior to that date and who had accrued 400 or more Hours of Covered Employment in a Calendar Year after 1995, shall be determined in accordance with the following schedule:

**Formula Pension Rate for Credited Service Accrued**

| <b>Annual Hourly Contribution Rate</b> | <b>As of Special Accrual Date</b> | <b>After Special Accrual Date</b> |
|--|-----------------------------------|-----------------------------------|
| 52¢                                    | \$42.00                           | \$42.00                           |
| 57¢                                    | \$42.00                           | \$48.00                           |

Effective December 1, 1997 the “Formula Pension Rate” for a Participant described in 6.1(b), who had not left Covered Employment prior to that date and who had accrued 400 or more Hours of Covered Employment in a Calendar Year after 1996, shall be determined in accordance with the following schedule:

**Formula Pension Rate for Credited Service Accrued**

| <b>Annual Hourly Contribution Rate</b> | <b>After Special Accrual Date</b> |
|--|-----------------------------------|
| 52¢                                    | \$45.00                           |
| 57¢                                    | \$50.00                           |

Effective December 1, 2000, the “Formula Pension Rate” for a Participant described in 6.1(b), who had not left Covered Employment prior to that date and who had accrued 400 or more Hours of Covered Employment in a Calendar Year after 1999, shall be determined in accordance with the following schedule:

**Formula Pension Rate for Credited Service Accrued**

| <b>Annual Hourly Contribution Rate</b> | <b>After Special Accrual Date</b> |
|--|-----------------------------------|
| 52¢                                    | \$48.00                           |
| 57¢                                    | \$53.00                           |

(c) **For Credited Service earned on or after January 1, 2001 and Before January 1, 2005**

The Normal Pension amount for a Participant shall be equal to the sum of the products of the Participant’s Credited Service accrued in each Calendar Year on or after January 1, 2001 and prior to January 1, 2005, multiplied by the Formula Pension Rate in effect for that Calendar Year, as defined in items (a) and (b) above. In the case where the Participant also has earned Credited Service prior to January 1, 2001, the Normal Pension amount for that Credited Service shall be determined in accordance with items (a) and (b) above, as applicable, and added to the Normal Pension amount for Credited Service earned on or after January 1, 2001 and before January 1, 2005.

The “Annual Hourly Contribution Rate” for any Calendar Year is the rate, which was in effect on the Participant’s last day of Covered Employment in that Calendar Year with the latest Employer continuously contributing to the Fund on the Participant’s behalf for at least 400 Hours of Covered Employment.

If an Annual Hourly Contribution Rate cannot be so determined for any Calendar Year, the Annual Hourly Contribution Rate for that Calendar Year shall be the last Annual Hourly Contribution Rate, which could be so determined.

The “Final Hourly Contribution Rate” is the rate, which was in effect on the Participant’s last day of Covered Employment with the latest Employer who had made contributions to the Fund on the Participant’s behalf for at least 400 Hours of Covered Employment.

If either the Annual Hourly Contribution Rate or Final Hourly Contribution Rate, as applicable, does not coincide with any of the rates set forth above, such rate shall be deemed to be the equivalent of the next lower rate.



The foregoing notwithstanding, if a Participant's hourly contribution rate has decreased during his period of Covered Employment, the monthly amount of his Accrued Benefit shall not be less than the sum of the amounts which would be produced if an Accrued Benefit was determined separately for each period of his Covered Employment marked by a decrease in his applicable hourly contribution rate; such period is herein referred to as a "computation period" and determined as follows:

The first computation period shall begin with the Participant's first day of Covered Employment and end with the day preceding the day as of which the hourly contribution rate applicable to him is less than any preceding hourly contribution rates, which were applicable to him. The next computation period shall begin with the day immediately following the Participant's first computation period and end with the day preceding the day as of which the hourly contribution rate applicable to him is less than preceding hourly contribution rates applicable to him during this new computation period. Subsequent computation periods shall be determined in a like manner, with the Participant's last computation period ending with his last day of Covered Employment. For the purpose of this paragraph, the amount of Accrued Benefit attributable to a Participant's computation period shall be determined as above but based on the Participant's Credited Service accrued during the computation period and the hourly contribution rate applicable to him during the computation period.

With respect to Central Division Participants, the Accrued Benefit is the sum of the Pension benefit accrued after December 31, 1976 under the preceding paragraphs of this Section 6.1 plus the Pension benefit accrued prior to January 1, 1977 under the terms of the Central Division Plan as in effect immediately prior to the Merger Date and, notwithstanding the foregoing, the Accrued Benefit of a Central Division Participant employed by a Central Division Employer contributing less than 12¢ per hour on the determination date is the Pension benefit accrued (for all years both before 1977 and after 1976) under the terms of the Central Division Plan as in effect immediately prior to the Merger Date.

(d) **For Credited Service Earned on or After January 1, 2005 and Before January 1, 2011**

The Normal Pension amount for a Participant who retires on or after January 1, 2005 and before January 1, 2011 shall be equal to the sum of the products of the Participant's Credited Service accrued in each Calendar Year on or after January 1, 2005, multiplied by the Formula Pension Rate in effect for that Calendar Year, as provided below. In the case where the Participant also has earned Credited Service prior to January 1, 2005, the Normal Pension amount for that Credited Service shall be determined in accordance with items (a), (b), and (c) above, as

applicable, and added to the Normal Pension amount for Credited Service earned on or after January 1, 2005.

- (1) For a Participant covered under a Collective Bargaining Agreement with a contract expiration date (disregarding any extension or rollovers) on or after September 30, 2005 and prior to January 1, 2007:

| <b>Hourly<br/>Contribution<br/>Rate</b> | <b>Formula Pension Rate for Credited Service Accrued</b> |             |             |                    |
|---|--|-------------|-------------|--------------------|
|   | <b>2005</b>  | <b>2006</b> | <b>2007</b> | <b>2008 - 2010</b> |
| 17¢                                     | \$10.00  | \$8.00      | \$6.00      | \$4.00             |
| 22¢                                     | 12.00  | 10.00       | 8.00        | 6.00               |
| 27¢                                     | 14.00  | 12.00       | 10.00       | 8.00               |
| 32¢                                     | 16.00  | 16.50       | 16.50       | 16.50              |
| 37¢                                     | 18.00  | 17.00       | 16.75       | 16.50              |
| 42¢                                     | 20.00  | 18.00       | 17.00       | 16.75              |
| 47¢                                     | 22.00  | 20.00       | 18.00       | 18.00              |
| 52¢                                     | 48.00  | 22.00       | 20.00       | 20.00              |
| 57¢                                     | 53.00  | 48.00       | 22.00       | 22.00              |
| 62¢                                     | 53.00  | 53.00       | 48.00       | 24.00              |
| 67¢                                     | -----  | 53.00       | 53.00       | 48.00              |
| 72¢                                     | -----  | -----       | 53.00       | 53.00              |

- (2) For a Participant covered under a Collective Bargaining Agreement with a contract expiration date (disregarding any extension or rollovers) after December 31, 2006 and prior to January 1, 2008:

| <b>Hourly<br/>Contribution<br/>Rate</b> | <b>Formula Pension Rate for Credited Service Accrued</b> |             |             |                    |
|---|--|-------------|-------------|--------------------|
|   | <b>2005</b>  | <b>2006</b> | <b>2007</b> | <b>2008 - 2010</b> |
| 17¢                                     | \$10.00  | \$10.00     | \$6.00      | \$4.00             |
| 22¢                                     | 12.00  | 12.00       | 8.00        | 6.00               |
| 27¢                                     | 14.00  | 14.00       | 10.00       | 8.00               |
| 32¢                                     | 16.00  | 16.00       | 16.50       | 16.50              |
| 37¢                                     | 18.00  | 18.00       | 16.75       | 16.50              |
| 42¢                                     | 20.00  | 20.00       | 17.00       | 16.75              |
| 47¢                                     | 22.00  | 22.00       | 18.00       | 18.00              |
| 52¢                                     | 48.00  | 48.00       | 20.00       | 20.00              |
| 57¢                                     | 53.00  | 53.00       | 22.00       | 22.00              |

| Hourly<br>Contribution<br>Rate | Formula Pension Rate for Credited Service Accrued |       |       |             |
|--------------------------------|---|-------|-------|-------------|
|                                | 2005  | 2006  | 2007  | 2008 - 2010 |
| 62¢                            | 53.00   | 53.00 | 48.00 | 24.00       |
| 67¢                            | -----   | 53.00 | 53.00 | 48.00       |
| 72¢                            | -----   | ----- | 53.00 | 53.00       |

- (3) For a Participant covered under a Collective Bargaining Agreement with a contract expiration date (disregarding any extension or rollovers) after December 31, 2007 and prior to January 1, 2009:

| Hourly<br>Contribution<br>Rate | Formula Pension Rate for Credited Service Accrued |         |         |             |
|--------------------------------|---|---------|---------|-------------|
|                                | 2005  | 2006    | 2007    | 2008 – 2010 |
| 17¢                            | \$10.00   | \$10.00 | \$10.00 | \$ 4.00     |
| 22¢                            | 12.00   | 12.00   | 12.00   | 6.00        |
| 27¢                            | 14.00   | 14.00   | 14.00   | 8.00        |
| 32¢                            | 16.00   | 16.00   | 16.00   | 16.50       |
| 37¢                            | 18.00   | 18.00   | 18.00   | 16.50       |
| 42¢                            | 20.00   | 20.00   | 20.00   | 16.75       |
| 47¢                            | 22.00   | 22.00   | 22.00   | 18.00       |
| 52¢                            | 48.00   | 48.00   | 48.00   | 20.00       |
| 57¢                            | 53.00   | 53.00   | 53.00   | 22.00       |
| 62¢                            | 53.00   | 53.00   | 53.00   | 24.00       |
| 67¢                            | -----   | 53.00   | 53.00   | 48.00       |
| 72¢                            | -----   | -----   | 53.00   | 53.00       |

- (4) The hourly contribution rate for any Participant who is a new hire employed under the Collective Bargaining Agreements described in this paragraph 6.1(d)(1), (2) and (3) must be either 32¢, 47¢ or 57¢.

(e) **For Credited Service Earned on or After January 1, 2011**

The Normal Pension amount for a Participant who retires on or after January 1, 2011 shall be equal to the sum of the products of the Participant's Credited Service accrued in each Calendar Year on or after January 1, 2011, multiplied by the Formula Pension Rate in effect for that Calendar Year, as provided below. In the case where the Participant also has earned Credited Service prior to January 1, 2011, the Normal Pension amount for that Credited Service shall be

determined in accordance with items (a), (b), (c) and (d) above, as applicable, and added to the Normal Pension amount for Credited Service earned on or after January 1, 2011.

(1) **Base Contribution Rates Effective for Groups Not Covered By a Rehabilitation Plan Schedule**

Effective for groups that are not covered by a Rehabilitation Plan schedule, the base contribution shall provide the benefit based on the Maximum Formula Pension Rate as of January 1, 2011, provided, however, if the Supplemental Contributions provided for under the Dominick's Agreement as adopted for the Plan on September 21, 2010, are not paid as of the date of the new collective bargaining agreement or January 1, 2010, if later, then the Reduced Formula Pension Rate is applicable to benefit accruals on or after January 1, 2011 as follows:

| <b>Base Contribution Rates in Effect<br/>Prior to January 1, 2010</b> | <b>Maximum Formula<br/>Pension Rate</b> | <b>Reduced Formula<br/>Pension Rate</b> |
|---|---|---|
| 17¢   | \$2.00                                  | \$0.70                                  |
| 22¢   | 3.00                                    | 0.90                                    |
| 27¢   | 4.00                                    | 1.10                                    |
| 32¢   | 5.00                                    | 1.30                                    |
| 37¢   | 7.00                                    | 1.55                                    |
| 42¢   | 9.00                                    | 1.75                                    |
| 47¢   | 11.00                                   | 1.95                                    |
| 52¢   | 13.00                                   | 2.10                                    |
| 57¢   | 15.00                                   | 2.35                                    |
| 62¢   | 16.00                                   | 2.60                                    |
| 67¢   | 32.00                                   | 2.80                                    |
| 72¢   | 35.00                                   | \$3.00                                  |

Notwithstanding the above, once a Rehabilitation Plan Schedule is implemented by the Employer, then the contributions (including Supplemental Contributions) and benefit accrual shall be determined by that Schedule which supersedes the above benefit accrual rates.

(2) **Base Contribution Rates Under Alternate Schedule of Rehabilitation Plan**

Effective January 1, 2011 for Participants subject to the Alternate Schedule of the Rehabilitation Plan, the following \$35 maximum benefit accrual schedule is effective as outlined below:

| <b>Base Contribution Rates in Effect<br/>January 1, 2011</b> | <b>Maximum Benefit</b> |
|--|------------------------|
| 17¢  | \$2.00                 |
| 22¢  | 3.00                   |

| <b>Base Contribution Rates in Effect<br/>January 1, 2011</b> | <b>Maximum Benefit</b> |
|--|------------------------|
| 27¢  | 4.00                   |
| 32¢  | 5.00                   |
| 37¢  | 7.00                   |
| 42¢  | 9.00                   |
| 47¢  | 11.00                  |
| 52¢  | 13.00                  |
| 57¢  | 15.00                  |
| 62¢  | 16.00                  |
| 67¢  | 32.00                  |
| 72¢  | 35.00                  |

**Base Contribution Rates Under Default Schedule of Rehabilitation Plan**

Effective January 1, 2011 for Participants subject to the Default Schedule of the Rehabilitation Plan, the following 1% of contribution benefit accrual schedule is effective as outlined below:

| <b>Base Contribution Rates In<br/>Effect January 1, 2011</b> | <b>1% of Contribution<br/>Benefit Accrual Schedule</b> |
|--|--|
| 17¢  | \$2.72   |
| 22¢  | 3.52   |
| 27¢  | 4.32   |
| 32¢  | 5.12   |
| 37¢  | 5.92   |
| 42¢  | 6.72   |
| 47¢  | 7.52   |
| 52¢  | 8.32   |
| 57¢  | 9.12   |
| 62¢  | 9.92   |
| 67¢  | 10.72  |
| 72¢  | 11.52  |

**Section 6.2 Early Pension**

Subject to the provisions of Subsection 2.1(d)(6) and Section 5.7, the single-life Pension of a Participant who meets the requirements for an Early Pension shall be a monthly amount equal to his Accrued Benefit, if commencing at his Normal Retirement Date. If commencing prior to the Participant's Normal Retirement Date, the monthly amount of a such Early Pension shall be equal to his Accrued Benefit, which:

- (a) With respect to accruals earned prior to January 1, 2011 is reduced by one-third of one percent (1/3%) for each full month (i.e., 4% for each full year) by which the Annuity Starting Date of the

Early Pension precedes the Participant's Normal Retirement Date; applicable to such accruals except that if a Participant terminated Covered Employment before March 28, 2010 and is not in pay status at that date, then his Early Pension is reduced to the Actuarial Equivalent (as determined by Section 2.1(b)) for any period by which the Annuity Starting Date of the Early Pension precedes his Normal Retirement Age; and

- (b) With respect to accruals earned on and after January 1, 2011, remains unadjusted for the period between the age 65 and age 62 if the Participant retires from Covered Employment with 10 or more years of Eligibility Service, and is reduced to the Actuarial Equivalent (as determined by Section 2.1(b)) of the unadjusted Early Pension amount at age 62 for any period by which the Annuity Starting Date of the Early Pension precedes age 62. However, with respect to such post-2010 accruals, the Early Pension is reduced to the Actuarial Equivalent (as determined by Section 2.1(b)) for any period that commencement precedes age 65 if the Participant retires with less than 10 years of Eligibility Service or does not retire from Covered Employment for any period that precedes age 65; and
- (c) Notwithstanding the foregoing, if a Participant is subject to the Default Schedule of the Rehabilitation Plan, then the monthly amount of such Early Pension shall be equal to his Accrued Benefit, which:
  - (1) With respect to accruals earned prior to January 1, 2011 is reduced to the Actuarial Equivalent (as determined by Section 2.1(b)) of his Accrued Benefit for any period by which the Annuity Starting Date of the Early Pension precedes the Participant's Normal Retirement Age; and
  - (2) With respect to accruals earned on and after January 1, 2011, is reduced to the Actuarial Equivalent (as determined by Section 2.1(b)) of his Accrued Benefit for any period by which the Annuity Starting Date of the Early Pension precedes age 65.

### Section 6.3 Disability Pension

The single-life Pension of a Participant who meets the requirements for a Disability Pension shall be a monthly amount equal to his Accrued Benefit.

A Participant who has satisfied the Early Retirement requirements of Section 5.2 and filed an application for a Disability Pension under the Plan shall be given the option of electing to receive temporary Early Pension payments during the waiting period pending the Trustees' determination of his Disability status, with the understanding that if the Participant is subsequently determined to be (a) ineligible for the Disability Pension, he shall continue to receive his Early Pension in the same monthly amount as was

payable during the waiting period, or (b) eligible for the Disability Pension, he shall thereupon commence to receive his Disability Pension, but the monthly amount thereof shall be actuarially adjusted to reflect the prior Early Pension payments which he had received.

Notwithstanding the foregoing, effective January 1, 2011, or if later, the earliest date benefits can be reduced after the Default Schedule is imposed on an Employer, the Disability Pension is eliminated for Participants subject to the Default Schedule of the Rehabilitation Plan and no Disability Pensions can commence after that date (but Disability Pensions in pay status at that time are unaffected).

#### Section 6.4 Deferred Vested Pension

Subject to the provisions of Subsection 2.1(d)(6) and Section 5.7, the single-life Pension of a Participant who meets the requirements for a Deferred Vested Pension shall be a monthly amount equal to his Accrued Benefit, if commencing at his Normal Retirement Date. If commencing prior to the Participant's Normal Retirement Date, the monthly amount of a such Deferred Vested Pension shall be equal to his Accrued Benefit, which:

- (a) With respect to service earned prior January 1, 2011, is reduced by one-third of one percent (1/3%) for each full month (i.e., 4% for each full year) by which the Annuity Starting Date of the Deferred Vested Pension precedes the Participant's Normal Retirement Date applicable to such accruals, except that if a Participant terminated Covered Employment before March 28, 2010 and is not in pay status at that date, then his Pension is reduced to the Actuarial Equivalent (as determined by Section 2.1(b)) for any period by which the Annuity Starting Date of the Deferred Vested Pension precedes his Normal Retirement Age ; and
- (b) With respect to accruals earned on and after January 1, 2011, is reduced to the Actuarial Equivalent (as determined by Section 2.1(b)) of his Accrued Benefit for any period by which the Annuity Starting Date of the Deferred Vested Pension precedes age 65.
- (c) Notwithstanding the foregoing, if a Participant is subject to the Default Schedule of the Rehabilitation Plan, the monthly amount of such Deferred Vested Pension shall be equal to the Accrued Benefit, which:
  - (1) With respect to accruals earned prior to January 1, 2011 is reduced to the Actuarial Equivalent (as determined by Section 2.1(b)) for any period by which the Annuity Starting Date of the Deferred Vested Pension precedes the Participant's Normal Retirement Age; and

- (2) With respect to accruals earned on and after January 1, 2011, is reduced to the Actuarial Equivalent (as determined by Section 2.1(b)) of his Accrued Benefit for any period by which the Annuity Starting Date of the Deferred Vested Pension precedes age 65.

## Section 6.5 Restrictions on Pension Amounts

### (a) **Limit on Accrued Benefits**

The Plan is subject to the limitations on benefits imposed by Code Section 415, which are incorporated herein by this reference. The following provisions are intended to meet the requirements of Code Section 415 and its final Treasury Regulations. If there is a conflict between the provisions of this Section and Code Section 415, then Code Section 415 will supersede these provisions. If no language is set forth in this Section 6.5, then the default rule under the final Treasury Regulations for Code Section 415 applies.

### (b) **Limits on Benefits Distributed or Paid**

For Limitation Years beginning on or after July 1, 2007, the annual benefit payable to a Participant under the Plan at any time shall not exceed the maximum permissible benefit determined pursuant to Code Section 415. If the annual benefit the Participant would otherwise accrue in a Limitation Year would produce an annual benefit in excess of such limitation under Code Section 415, the benefit shall be limited (or the rate of accrual reduced) to a benefit that does not exceed the maximum permissible benefit.

### (c) **Adjustment for Defined Benefit Dollar Limitation Before Age 62**

#### (1) **Adjustment for Defined Benefit Dollar Limitation for Benefit Commencement before Age 62 for Limitation Years beginning before July 1, 2007**

If the benefit of a Participant begins prior to age 62, the Defined Benefit Dollar Limitation applicable to the Participant at such earlier age is an annual benefit payable in the form of a straight life annuity beginning at the earlier age that is the Actuarial Equivalent of the Defined Benefit Dollar Limitation applicable to the Participant at age 62. The Defined Benefit Dollar Limitation (adjusted for less than 10 years of participation if required) applicable at an age prior to age 62 is determined as the lesser of:

- (1) The Actuarial Equivalent (at such age) of the Defined Benefit Dollar Limitation computed using the interest rate and mortality table or other tabular factor



specified in the Plan for early retirement purposes as specified in Section 2.1(b) of the Plan; or

- (2) The Actuarial Equivalent (at such age) of the Defined Benefit Dollar Limitation computed using a 5% Applicable Interest Rate and the Applicable Mortality Table as defined in Section 2.1(b) of the Plan.

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

- (2) Pre-age 62 adjustments for Limitation Years beginning on or after July 1, 2007 are provided as follows:

- (A) **Plan does not have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement.** If the Annuity Starting Date for the Participant's benefit is prior to age 62 and occurs in a Limitation Year beginning on or after July 1, 2007, and the Plan does not have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the Defined Benefit Dollar Limitation for the Participant's Annuity Starting Date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Participant's Annuity Starting Date that is the Actuarial Equivalent of the Defined Benefit Dollar Limitation (adjusted for less than 10 years of participation if required) with actuarial equivalence computed using a five percent interest rate assumption and the applicable mortality table for the Annuity Starting Date as defined in Section 2.1(b) of the Plan (and expressing the Participant's age based on completed calendar months as of the Annuity Starting Date).

- (B) **Plan has an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement.** If the Annuity Starting Date for the Participant's benefit is prior to age 62 and occurs in a Limitation Year beginning on or after July 1, 2007, and the Plan has an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the Defined Benefit Dollar Limitation for the Participant's Annuity Starting Date is the lesser of the limitation determined under (A) above and the Defined Benefit Dollar Limitation (adjusted for less than 10 years of

participation if required) multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under the Plan at the Participant's Annuity Starting Date to the annual amount of the immediately commencing straight life annuity under the Plan at age 62, both determined without applying the limitations of this Section 6.5.

(d) **Defined Benefit Dollar Limitations after Age 65**

- (1) Defined Benefit Dollar Limitation After Age 65 for Limitation Years beginning prior to July 1, 2007

If the benefit of a Participant begins after the Participant attains age 65, the Defined Benefit Dollar Limitation applicable to the Participant at the later age is the annual benefit payable in the form of a straight life annuity beginning at the later age that is actuarially equivalent to the Defined Benefit Dollar Limitation applicable to the Participant at age 65. The Actuarial Equivalent of the Defined Benefit Dollar Limitation (adjusted for less than 10 years of participation if required) applicable at an age after 65 is determined as the lesser of:

- (1) The Actuarial Equivalent (at such age) of the Defined Benefit Dollar Limitation computed using the interest rate and mortality table or other tabular factor for delayed retirement purposes as specified in Section 2.1(b) of the Plan, or
- (2) The Actuarial Equivalent (at such age) of the Defined Benefit Dollar Limitation computed using a 5% Applicable Interest Rate assumption and the Applicable Mortality Table specified in Section 2.1(b) of the Plan.

For these purposes, mortality between age 65 and the age at which benefits commence shall be ignored.

- (2) Post age 65 adjustment for Limitation Years beginning on or after July 1, 2007 are provided as follows:

- (A) **Plan does not have an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement.** If the Annuity Starting Date for the Participant's benefit is after age 65 and occurs in a Limitation Year beginning on or after July 1, 2007, and the Plan does not have an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the Defined Benefit Dollar Limitation at the Participant's

Annuity Starting Date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Participant's Annuity Starting Date that is the Actuarial Equivalent of the Defined Benefit Dollar Limitation (adjusted for less than 10 years of participation if required) with actuarial equivalence computed using a five percent interest rate assumption and the applicable mortality table for that Annuity Starting Date as defined in Section 2.1(b) of the Plan (and expressing the Participant's age based on completed calendar months as of the Annuity Starting Date).

- (B) **Plan has an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement.** If the Annuity Starting Date for the Participant's benefit is after age 65 and occurs in a Limitation Year beginning on or after July 1, 2007, and the Plan has an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the Defined Benefit Dollar Limitation at the Participant's Annuity Starting Date is the lesser of the limitation determined under (A) above and the Defined Benefit Dollar Limitation (adjusted for less than 10 years of participation if required) multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the Plan at the Participant's Annuity Starting Date to the annual amount of the adjusted immediately commencing straight life annuity under the Plan at age 65, both determined without applying the limitation of this Section 6.5. For this purpose, the adjusted immediately commencing straight life annuity under the Plan at the Participant's Annuity Starting Date is the annual amount of such annuity payable to the Participant, computed disregarding the Participant's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing straight life annuity under the Plan at age 65 is the annual amount of such annuity that would be payable under the Plan to a hypothetical Participant who is age 65 and has the same accrued benefit as the Participant.

(e) **Benefit Forms not Subject to Section 417(e)(3) of the Internal Revenue Code**

The straight life annuity that is actuarially equivalent to the Participant's form of benefit shall be determined under this Subsection (e) if the form of the Participant's benefit is a non-decreasing annuity (other than a straight life annuity) payable for a period of not less than the life of the

Participant (or, in the case of a qualified pre-retirement survivor annuity, the life of the surviving Spouse).

(1) Limitation Years beginning before July 1, 2007

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

- (A) The Applicable Interest Rate specified in Section 2.1(b) of the Plan and the Applicable Mortality Table specified in Section 2.1(b) of the Plan for adjusting benefits in the same form; and
- (B) A 5% Applicable Interest Rate assumption and the Applicable Mortality Table specified in Section 2.1(b) of the Plan for that effective date of Pension.

(2) Limitation Years beginning on or after July 1, 2007

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

- (A) The annual amount of the straight life annuity (if any) payable to the Participant under the Plan commencing at the same effective date of Pension as the Participant's form of benefit; and
- (B) The annual amount of the straight life annuity commencing at the same effective date of Pension that has the same Actual Present Value as the Participant's form of benefit, computed using a 5% Applicable Interest Rate assumption and the Applicable Mortality Table defined in Section 2.1(b) of the Plan for that effective date of Pension.

(f) **Interest Rates for Annuity Starting in Years Beginning on and After January 1, 2006 for Benefit Forms Subject to Section 417(e) of the Internal Revenue Code**

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

- (1) The interest rate specified in the Plan,
- (2) 5.5 percent, and
- (3) 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 Code Section 417(e)(3)).

(g) **Interest Rates for Annuity Starting Dates in Plan Years Between January 1, 2004 and December 31, 2005 for Benefit Forms Subject to Section 417(e) of the Internal Revenue Code**

Effective for Annuity Starting Dates in Plan Years beginning on and after January 1, 2004, and ending December 31, 2005, for purposes of adjusting any benefit under Code Section 415(b)(2)(B) for any form of benefit subject to Code Section 417(e)(3), the interest rate assumption shall be not less than the greater of:

- (1) The interest rate specified in the Plan, and
- (2) 5.5 percent.

(h) **Interest Rates for Annuity Starting Dates in Plan Years Between January 1, 2000 and December 31, 2003 for Benefit Forms Subject to Section 417(e) of the Internal Revenue Code**

Effective for Annuity Starting Dates in Plan Years beginning on or after January 1, 2000 and before January 1, 2004, 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:

- (1) The interest rate specified in the Plan, and
- (2) The “applicable interest rate” (as defined in Code Section 417(e)(3)).

The following timing rules for compensation are effective for the first Limitation Year beginning on or after July 1, 2007.

(i) **Compensation and Timing**

Effective for Limitation Years beginning after December 31, 2001, the Compensation limit of Code Section 415(b)(1)(B) does not apply to a multiemployer defined benefit plan.

Effective for Limitation Years beginning on or after July 1, 2007, Compensation shall include regular compensation for services during the Employee's regular working hours or compensation for services outside the Employee's regular working hours (including, but not limited to overtime or shift differential), commission bonuses or other similar payments that is paid after the Employee's severance from Covered Employment if such payment would have been paid to the Employee prior to a severance from Covered Employment if the Employee had continued in employment with the Employer.

Effective for Limitation Years beginning on or after July 1, 2007, Compensation paid within the later of 2-1/2 months after severance from Covered Employment or the end of the limitation year that includes the date of severance from Covered Employment shall be included in Compensation if the payments include regular compensation for services during the Employee's regular working hours or compensation for services outside the Employee's regular working hours (including, but not limited to overtime or shift differential), commissions, bonuses or other similar payment that is paid after the Employee's severance from Covered Employment if such payment would have been paid to the Employee prior to a severance from Covered Employment if the Employee had continued in employment with the Employer. Compensation shall exclude all other payments if paid after severance from Covered Employment, even if paid within the time period referenced in the preceding sentence.

Effective January 1, 2009, Compensation includes any differential wage payments (as defined under Code Section 3401(h)(2)) to an individual who does not currently perform services for the Employer by reason of qualified military service (within the meaning of Code Section 414(u)(5)) while on active duty for a period of more than 30 days to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service.

(j) **Interaction with Section 401(a)(17)**

The 415 Compensation for a Participant for any Limitation Year or Plan 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.

(k) **Aggregation of Plans**

The limitations of Section 6.5 shall be determined and applied taking into account the aggregation rules in Section 1.415(f)-1 of the Treasury Regulations.

- (1) The benefits under this Plan are not aggregated with any other multiemployer plans as defined in Code Section 414(f).
- (2) Effective for Limitation Years on and after July 1, 2007, benefits earned under the Plan by a Participant attributable to the Participant from all Employers participating in the Plan must be taken into account in applying the limitations of Code Section 415.
- (3) For the purpose of this Section 6.5, in aggregating the benefits under this Plan with any plan that is not a multiemployer plan maintained by any Employer, only the benefits under this Plan that are provided by such Employer shall be treated as benefits provided under a plan maintained by the Employer, to the maximum extent permitted by law.
- (4) In the event that the benefits accrued in any Limitation Year by a Participant exceed the limits under Code Section 415 as a result of the mandatory aggregation of this Plan with the benefits under another plan(s) maintained by an Employer, the benefits under this Plan shall be reduced to the extent necessary to comply with Code Section 415 in applying the dollar limitations of Code Section 415(b)(1)(A).

(1) **Grandfather Provision**

The application of the provisions of this Section 6.5 shall not cause the maximum permissible benefit under Code Section 415 for any Participant to be less than the Participant's accrued benefit under all the defined benefit plans of his Employer (or a predecessor employer) as of the end of the last Limitation Year beginning before July 1, 2007 under provisions of the plans that were both adopted and in effect before April 5, 2007.

## Section 6.6 Retirement or Termination Before December 1, 1989

The benefits payable under the Plan to any Participant who retired or terminated his Industry Employment prior to December 1, 1989 or to the Beneficiary of such a Participant shall be determined in accordance with the provisions of the Plan covering the Participant in effect on the date of his Retirement or termination of Industry Employment, except that:

- (a) Any living Participant not receiving benefits on August 23, 1984, who would otherwise not receive the benefits prescribed by Sections 7.1 and 7.2, will be deemed to be covered by such provisions.

- (b) The benefit payable to a Participant who retires on or after January 1, 1977 shall, commencing with the month of June, 1977, be determined in accordance with the provisions of the Plan as amended effective June 1, 1977.
- (c) The benefit payable to either any Pensioner or Beneficiary whose payments commenced prior to January 1, 1970 or to any Participant whose Retirement occurred prior to January 1, 1970 shall be governed by the provisions of the Plan as in effect on his Pension commencement date or Retirement date, subject to the provisions of Section 9.5 hereof, except that:
  - (1) Any Employee receiving a reduced Disability Pension prior to April 1, 1969 shall commence to receive, effective as of April 1, 1969, a nonreduced Pension computed in the same manner as a Normal Pension, considering his Credited Service prior to Retirement and the provisions of the Plan as then in effect;
  - (2) The monthly amount of any Pension which commenced prior to January 1, 1970 (including the monthly amount of any prospective survivorship annuity which shall become payable to the contingent pensioner of an Employee who was receiving an optional Pension prior to January 1, 1970), or which shall commence after January 1, 1970 for Retirements occurring prior to January 1, 1970, shall be increased by 5%, effective for payments due on or after January 1, 1970 except that the monthly amount of Pension payable to an Employee receiving adjusted payments prior to January 1, 1970 pursuant to a Level Income Option, as provided under the Plan as then in effect, shall be increased, effective for payments due on or after January 1, 1970, by an amount equal to 5% of the monthly amount of the Early Pension which would have otherwise been payable had such Level Income Option not become effective.
- (d) The monthly amount of any Pension which commenced prior to January 1, 1973 (including the monthly amount of any prospective survivorship annuity which shall become payable to the contingent pensioner of an Employee receiving an optional Pension prior to January 1, 1973), or which shall commence after January 1, 1973, for Retirements occurring prior to January 1, 1973, shall be increased by 5% effective for payments due on and after January 1, 1973; except that the monthly amount of Pension payable to an Employee receiving adjusted payments prior to January 1, 1973 pursuant to a Level Income Option under the terms of the Plan as then in effect shall be increased, effective for payments due on or after January 1, 1973, by an amount equal to 5% of the monthly amount of the Early Pension which would have otherwise been payable had such Level Income Option not become effective.



## Section 6.7 Non-Duplication of Past Credited Service

If a retired Participant qualifies for a retirement benefit under another defined benefit retirement plan to which an Employer has contributed, and if the amount of such benefit is based upon a period of employment which is considered as Past Credited Service under this Plan, the Participant's Accrued Benefit shall be reduced by the Actuarial Equivalent of that portion of the retirement benefit payable to the Participant under such other plan which is attributable to both the Employer's contributions and a period of employment which is considered as Past Credited Service under this Plan.

## Section 6.8 Additional Benefits for Retirees

### **Plan Improvements**

As a result of favorable investment performance of fund assets, the Plan provides ancillary benefit payments from time to time in the form of an extra pension payment or an increase in pension payments for a specific period of time. These lump sum ancillary benefit payments are in addition to the accrued benefits under the Plan. The following describe these lump sum ancillary benefits:

- (a) All retirees who were receiving pension benefits on December 1, 1997 received a 13th check equal to their monthly pension benefit.
- (b) All retirees who were receiving pension benefits on December 1, 1998 received a 13th check equal to 2% of their annual pension plus an additional 1% of their annual pension for each year they had been receiving a pension.

## ARTICLE VII SURVIVOR BENEFITS

### Section 7.1 Eligibility for Surviving Spouse's Pension

The surviving Spouse of a Participant who dies prior to the Annuity Starting Date, including a disabled Participant who dies while entitled to a Disability Pension, shall be eligible for a Surviving Spouse's Pension, provided that:

- (a) The decedent's death occurs after he is eligible for a Deferred Vested Pension, and (i) prior to both the date his Pension commences and the third Calendar Year following the last Calendar Year for which the Participant received (or, but for an Excused Absence, would have received) Credited Service, or (ii) prior to his Annuity Starting Date, or (iii) in the case of a retired Participant receiving a Disability Pension, prior to his Normal Retirement Date; and
- (b) The Spouse files with the Board all information required by the Trustees, including satisfactory proof of age, marriage, the Participant's death, and a written application on a form prescribed by the Trustees.

### Section 7.2 Surviving Spouse's Pension

If a Spouse qualifies for a Surviving Spouse's Pension only under the provision of clause (ii) of Section 7.1(a) hereinabove, payment of a Surviving Spouse's Pension shall commence as of the first day of the month next following the later of (i) Employee's or retired Employee's date of death, and (ii) the date that such Employee would have attained age 55. Otherwise, payment of a Surviving Spouse's Pension shall commence as of the first day of the month next following the Employee's or retired Employee's date of death. The last payment thereof shall be made as of the first day of the month in which the death of the surviving Spouse occurs. However, if the Surviving Spouse fails to file an application for a Pension and submit information required under Section 7.1(b) hereinabove before the seventh (7th) calendar month following the Participant's date of death, up to six (6) retroactive monthly payments of the Surviving Spouse's Pension shall be made. If the Surviving Spouse files an application for a Pension and submits information required under Section 7.1(b) hereinabove after the seventh (7th) calendar month following the Participant's date of death, the amount of the Surviving Spouse's Pension shall be Actuarially Equivalent to the Surviving Spouse's Pension assuming it had been paid beginning on the first day of the month next following the Employee's or retired Employee's date of death.

If a Spouse qualifies for a Surviving Spouse's Pension only under the provision of clause (ii) of Section 7.1(a) hereinabove, the monthly amount thereof shall be that which would have been payable to a Spouse had the Participant retired and commenced receiving a reduced 50% Joint and Survivor Pension

on the first day of the month following the later of (i) the date of his death, and (ii) the date he would have attained age 55, as determined in accordance with Section 8.1. Otherwise, the monthly amount of the Surviving Spouse's Pension shall be equal to 50% of the decedent's Accrued Benefit; except that, if the Spouse is more than five (5) years younger than the Participant, such Pension shall be reduced to the Actuarial Equivalent of the Pension which would have been payable to a Spouse exactly five (5) years younger.

The surviving Spouse may elect in writing, filed with the Trustees, and on whatever form the Trustees may prescribe, to defer commencement of the Surviving Spouse's Pension until a specified date that is no later than first of the month following the date the Participant would have reached Normal Retirement Age.

Notwithstanding the preceding, for a Participant who is subject to the Default Schedule of the Rehabilitation Plan on or after January 1, 2011, or if later, the earliest date benefits can be reduced after the Default Schedule is imposed on the Employer, the amount of the Surviving Spouse's Pension is reduced to no more than the legally required amount the Spouse would have received from a Qualified Preretirement Survivor Annuity.

### Section 7.3 Eligibility for Surviving Child's Pension

If no Surviving Spouse's Pension becomes payable on behalf of a Participant who meets the requirements of clause (i) or (iii) of the foregoing Section 7.1(a), or if a Spouse of such Participant dies while entitled to a Surviving Spouse's Pension, each surviving eligible child, if any, shall be entitled to an equal share in a Surviving Child's Pension. An eligible child shall be any offspring or legally adopted child of the Employee or retired Employee who is under age 18 and unmarried. Any questions relating to the eligibility status of an adopted child, step-child, or a child who was living as a member of the Employee's or retired Employee's household shall be resolved on the basis of such child's entitlement to a child's benefit under the Federal Social Security Act.

Notwithstanding the preceding, this Section shall not apply for a Participant who is subject to the Default Schedule of the Rehabilitation Plan on or after January 1, 2011, or if later, the earliest date benefits can be reduced after the Default Schedule is imposed on an Employer.

### Section 7.4 Surviving Child's Pension

The legal guardian of an eligible child shall file a written application for a Surviving Child's Pension on a form prescribed by the Trustees and shall submit proof satisfactory to the Trustees which confirms the decedent's death, the guardian's status, and the child's relationship to his deceased parents. Payment of a

Surviving Child's Pension shall be made to the legal guardian of the eligible child, commencing as of the first day of the month next following the death of the Participant or Surviving Spouse.

The last payment shall be made on the first day of the month in which (i) the youngest eligible child attains age 18, or (ii) the last eligible child dies or marries, whichever is earlier. The monthly amount of the Surviving Child's Pension shall be equal to the monthly amount of the Surviving Spouse's Pension which would have been payable had the Participant been survived by a Spouse of the same age. Such Surviving Child's Pension shall be divided equally among the Participant's eligible children.

Notwithstanding the preceding, this Section shall not apply for a Participant who is subject to the Default Schedule of the Rehabilitation Plan on or after January 1, 2011, or if later, the earliest date benefits can be reduced after the Default Schedule is imposed on an Employer.

### Section 7.5 Lump Sum Death Benefit

Upon the death of a retired Participant after the date his Pension commences, his designated death Beneficiary shall be entitled to receive a lump sum payment of \$1,500 (\$1,000, if death occurs before December 1, 1995) except as otherwise provided in Article X, upon filing both an application therefore on a form prescribed by the Trustees and a death certificate or other proof satisfactory to the Trustees of the retired Participant's death. Effective December 1, 1995, if two or more persons become entitled to benefits as designated death Beneficiaries, they shall share equally.

If no death Beneficiary had been designated by the decedent or if the designated death Beneficiary does not survive the decedent, the lump sum death benefit shall be paid to the surviving person or persons in the first of the following classes of successive preference Beneficiaries of which a member survives the decedent: the decedent's (a) Spouse; (b) children, including legally adopted children; (c) parents; (d) brothers and sisters; (e) executor or administrator; and (f) benefactor who has paid the expenses for the decedent's funeral.

In determining such person or persons, the Trustees may rely upon an affidavit by a member of any of the classes of preference Beneficiaries. Payment based upon such affidavit shall be full acquittance hereunder unless, before such payment is made, the Trustees have received written notice of a valid claim by some other person. If two or more persons become entitled to benefits as preference Beneficiaries, they shall share equally.

Any benefits for loss of life payable to a minor may be paid to the legally appointed guardian of the minor, or if there be no such guardian, to such adult or adults as have in the Trustees' opinion assumed the custody and principal support of such minor.

The Participant may designate a Beneficiary, as well as a contingent Beneficiary or multiple Beneficiaries, or may change a previously designated Beneficiary by filing with the Trustees a properly completed written request on a form satisfactory to the Trustees.

Notwithstanding the preceding, a lump sum death benefit under this Section 7.5 is not available while the Plan is in critical status as certified by the Plan actuary starting with a benefit commencement date on and after March 26, 2010. In addition, the lump sum death benefit under this Section shall be eliminated for a Participant who is subject to the Default Schedule of the Rehabilitation Plan on or after January 1, 2011, or if later, the earliest date benefits can be reduced after the Default Schedule is imposed on the Employer.

## ARTICLE VIII MANNER OF PAYMENT

### Section 8.1 Payment of Pensions

If a Participant has a Spouse on his Annuity Starting Date, a Normal, Early or Deferred Vested Pension shall be paid in the form of a 50% Joint and Survivor Pension, unless the Participant elects otherwise in writing. If a Participant receiving a Disability Pension has a Spouse on his Normal Retirement Date, Disability Pension payments from and after his Normal Retirement Date shall be made in the form of a 50% Joint and Survivor Pension, unless the Participant elects otherwise in writing.

Under a 50% Joint and Survivor Pension, a reduced amount shall be paid to the Participant for his lifetime and the Spouse, if surviving at the Participant's death, shall be entitled to receive thereafter a lifetime survivorship Pension in a monthly amount equal to 50% of the reduced monthly amount which had been payable to the Participant. The reduced amount payable to the Participant shall be determined so that the aggregate of the Pension payments expected to be made to the Participant and his Spouse shall be the Actuarial Equivalent of the single-life Pension (a) determined under Article VI, or (b) in the case of a Disability Pension, payable from and after the Participant's Normal Retirement Date. The last payment of the 50% Joint and Survivor Pension shall be made as of the first day of the month in which the death of the survivor occurs.

Disability Pension payments prior to Normal Retirement Date shall be equal to the single-life Pension computed under Section 6.3; and in the event of the death prior to his Normal Retirement Date of a Participant receiving a Disability Pension, the provisions of Sections 7.1 and 7.2 shall be applicable. A Participant who commences his Disability Pension prior to Normal Retirement Age, may change his or her benefit form at his Normal Retirement Date to any benefit form available under the Plan eligible for a Normal Pension. In lieu of a 50% Joint and Survivor Pension, a Participant may elect in writing, prior to his Annuity Starting Date (or his Normal Retirement Date, in the case of a Participant receiving a Disability Pension), to receive the single-life Pension computed under Article VI or, subject to the provisions of Section 8.2, a Pension payable in the form of a 100% Joint and Survivor Option, or effective December 1, 2009, a 75% Joint and Survivor option. Notwithstanding the preceding, the option to elect a 100% Joint and Survivor Option shall not apply for a Participant who is subject to the Default Schedule of the Rehabilitation Plan on or after January 1, 2011, or if later, the earliest date benefits can be reduced after the Default Schedule is imposed on the Employer.

If a Participant does not have a Spouse on the date his Pension payments commence, a Normal, Early or Deferred Vested Pension shall be paid in the form of a single-life Pension. The last payment of any

single-life Pension shall be made as of the first day of the month in which the death of the Participant occurs.

## Section 8.2 100% or 75% Joint and Survivor Option

Subject to the conditions and provisions set forth hereunder, a Participant who is eligible for a Pension other than a Deferred Vested Pension may, by filing a written application with the Trustees on a form prescribed by the Trustees, if he then has a Spouse, elect the 100% Joint and Survivor Option, or effective December 1, 2009, a 75% Joint and Survivor option, as described hereunder. The 75% Joint and Survivor option shall be considered the Qualified Optional Survivor Annuity (“QOSA”) under Code Section 417.

Under the 100% Joint and Survivor Option, the Participant shall receive a reduced Pension payable for life, and payments in the same reduced amount shall, after the Participant’s death, be continued to his Spouse during the latter’s lifetime. Under the 75% Joint and Survivor Option, the Participant shall receive a reduced Pension payable for life, and payments equal to 75% of the reduced amount shall, after the Participant’s death, be continued to his Spouse during the latter’s lifetime.

The aggregate of the Pension payments expected to be paid to a Participant and his Spouse under the 100% or 75% Joint and Survivor Option shall be the Actuarial Equivalent of, as applicable, (a) the single-life Early or Normal Pension which the Participant is otherwise entitled to receive upon Retirement, or (b) the single-life Disability Pension payable on and after the option effective date, as defined below.

An eligible Participant may elect, change or revoke the 100% or 75% Joint and Survivor Option at any time prior to his Annuity Starting Date. This Option may not be elected, changed or revoked on or after the Annuity Starting Date, except that an eligible Participant who is entitled to a Disability Pension may elect this Option on his Normal Retirement Date or, if later, on the date his Disability Pension commences. The Disability Pension shall be actuarially reduced as of such option effective date, provided that both the Participant and his Eligible Spouse are then surviving; otherwise, the option shall be automatically canceled upon the death of either party prior to the option effective date.

For Participants who retire and whose benefits commence before December 1, 1995: If an eligible Participant elects this Option and retires pursuant to Section 5.2 hereof, such option shall become effective on the second anniversary of his Annuity Starting Date. If an eligible Participant elects this Option and retires on or after his Normal Retirement Date, this Option shall become effective on his Annuity Starting Date or, if later, the second anniversary of the date on which he filed his optional election form. The Early or Normal Pension shall be actuarially reduced as of the Annuity Starting Date, but the following provisions shall apply if the death of the Participant or his Spouse occurs between such date and the option effective date.

- (a) Upon the death of a Participant, his Spouse shall be entitled to the survivorship Pension which would have been payable had the Participant elected the 50% Joint and Survivor Pension in accordance with Section 8.1 hereof in lieu of the 100% Joint and Survivor Option.
- (b) Upon the death of a Spouse, the Pension thereafter payable to the Participant shall be the amount which would have been payable had the Participant elected the 50% Joint and Survivor Pension in accordance with Section 8.1 hereof in lieu of the 100% Joint and Survivor Option.

For Participants who retire on or after December 1, 1995: The Participant shall be entitled to commence receiving his Pension under the 100% Joint and Survivor Option or, effective January 1, 2009, the 75% Joint and Survivor Option immediately as of his Annuity Starting Date.

If a Participant retires pursuant to Section 5.2 hereof and elects to defer his Early Pension, the option election under this Section 8.2 shall be automatically canceled upon the death of the Participant or his Spouse prior to the Annuity Starting Date.

Notwithstanding the preceding, effective January 1, 2011, or if later, the earliest date benefits can be reduced after the Default Schedule is imposed on an Employer, the option to elect a 100% Joint and Survivor Option shall not apply for a Participant who is subject to the Default Schedule of the Rehabilitation Plan.

### Section 8.3 Level Income Option

If payment of an Early Pension, commences prior to the earliest age as of which the Participant may become eligible for an Old-Age Insurance Benefit under the Social Security Act, the Participant may elect, upon written application therefore filed with the Trustees, to have the amount of his Pension increased until he attains such age, and reduced thereafter, so that he will receive, from this Plan and under the Social Security Act, an aggregate income in an approximately level amount for life. Such adjusted Pension payments shall be the Actuarial Equivalent of the Pension otherwise payable to the Participant.

The Trustees shall rely on reports from the Social Security Administration in calculating the pension amounts to be paid from the Plan. Once the Level Income Option begins, there will be no changes to the amounts of the monthly benefits paid by the Plan, regardless of the amount paid by Social Security.

If, after the commencement of Early Retirement Pension payments pursuant to Section 6.3, the Participant is subsequently determined to be ineligible for a Disability Pension, the Participant shall be given the opportunity to elect the Level Income Option payable in an actuarially adjusted manner pursuant to Section 8.3.



Notwithstanding the preceding, a Participant may not elect the Level Income Option while the Plan is in critical status as certified by the Plan actuary starting with Annuity Starting Dates on and after March 26, 2010. Further, effective January 1, 2011, or if later, the earliest date benefits can be reduced after the Default Schedule is imposed on an Employer, the option to elect the Level Income Option is eliminated for a Participant who is subject to the Default Schedule under the Rehabilitation Plan.

#### Section 8.4 Level Income Benefit Pending Disability Award

Pursuant to the provisions of Section 6.3 of this Plan, a Participant who has satisfied the Early Retirement requirements of the Plan and who has filed an application for a Disability Pension is given the opportunity to elect to receive a temporary Early Pension payment payable during the waiting period pending the Board of Trustees determination of the Participant's Disability status. Notwithstanding anything in the Plan to the contrary, the provisions of Section 6.3 are hereby deemed to exclude the election of a Level Income Option payable during such waiting period pending determination of Disability status. Notwithstanding the preceding, a Participant may not elect the Level Income Option while the Plan is in critical status as certified by the Plan actuary starting with Annuity Starting Dates on and after March 26, 2010. Further, effective January 1, 2011, or if later, the earliest date benefits can be reduced after the Default Schedule is imposed on an Employer, the option to elect the Level Income Option is eliminated for a Participant who is subject to the Default Schedule under the Rehabilitation Plan.

#### Section 8.5 Small Pensions

In accordance with rules of uniform application, the Board of Trustees shall direct that, in lieu of the payment of a Pension of relatively small amount or value, the Actuarial Equivalent thereof shall be paid in a single lump sum; provided that such lump sum settlement may not be directed if the single sum value thereof exceeds \$5,000 (\$3,500 prior to December 1, 1997) and solely if the Participant consents in writing to the distribution.

If a lump sum settlement is made pursuant to the provisions of this Section 8.5, the Plan Administrator shall provide each recipient receiving such a settlement a notice, which specifies certain information regarding the federal income tax treatment of certain plan benefits.

If a lump sum is paid to a person, then such person shall thereafter lose all rights to any Eligibility Service, Credited Service or Accrued Benefit under the Plan. The Actual Equivalent lump sum value of the Accrued Benefit for the purposes of this Section 8.5 shall be determined in accordance with Section 2.1(b)(2).

If a terminated Participant returns to Covered Employment with the Employer and re-participates in the Plan after having received a lump sum distribution hereunder, the value of his Accrued Benefit shall be

fully restored if, he returns to the Pension Fund all of the lump sum distribution that he received plus interest at the rate of five percent (5%) per annum compounded annually, or such other rate as shall be required from time to time under ERISA. Alternatively, if he does not return such amount to the Pension Fund, his Accrued Benefit and his Normal Retirement Pension (as determined in Section 6.1) will be reduced by the actuarial value of the amounts that he previously received.

## Section 8.6 Election Period

A Participant's election period shall begin not more than 180 calendar days (90 calendar days for Plan Years beginning before December 1, 2007) preceding the Annuity Starting Date or, in the case of a Participant receiving a Disability Pension, his Normal Retirement Date.

Except as provided in Plan Section 8.13, a waiver is valid only if a written explanation of the effect of the 50% Joint and Survivor Pension has been provided to the Participant no earlier than 180 days (90 days for Plan Years beginning before December 1, 2007) before the Annuity Starting Date and no later than 30 days before the Annuity Starting Date. The Participant may file a new waiver or revoke a previous waiver at any time during the 180-day period (90-day period for Plan Years beginning before December 1, 2007) prior to the Annuity Starting Date. Notwithstanding the foregoing, a Participant may commence receiving benefits before 30 days have elapsed from receipt of such notice provided the Participant and Spouse waive such 30-day advance waiting period, in writing. The Pension shall not begin until a period of seven (7) days after the information on forms of payment was provided to the Participant and Spouse.

A Spouse's consent to a waiver of the 50% Joint and Survivor Pension shall be irrevocable unless the Participant revokes the Waiver to which it relates.

For elections made after November 30, 1985, a Qualified Election, as described in Section 8.8, is required for payments not in the form of a 50% Joint and Survivor Pension.

## Section 8.7 Notification to Participants

Within a period of no more than 180 days and no fewer than 30 days before the date the Participant's Pension begins (and consistent with Treasury regulations), the Trustees shall provide the Participant and his Spouse, if any, with a written explanation of:

- (a) The terms and conditions of the 50% Joint and Survivor Pension and the 75% Joint and Survivor Pension (effective December 1, 2009);
- (b) The Participant's right to make and the effect of an election to waive the Spouse's Pension;

- (c) The right of the Participant's Spouse to consent to any election to waive the Spouse's Pension;
- (d) The right of the Participant to revoke such election during the election period that ends on the date the Participant's Pension begins;
- (e) The relative values of optional forms of benefit under the Plan pursuant to Treasury Regulation Section 1.417(a)-3;
- (f) 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; and
- (g) The notice required under Section 402(f) of the Code when applicable under Section 8.12.

## Section 8.8 Qualified Election

Qualified Election means a waiver of a Qualified Joint and Survivor Annuity. The waiver must be in writing and must be consented to by the Participant's Spouse. The Spouse's consent to a waiver must be witnessed by a Plan representative or notary public. Notwithstanding this consent requirement, if the Participant establishes to the satisfaction of a Plan representative that such written consent may not be obtained because there is no Spouse or the Spouse cannot be located, a waiver will be deemed a Qualified Election. Any consent necessary under this provision will be valid only with respect to the Spouse who signs the consent, or in the event of a deemed Qualified Election, the designated Spouse. Additionally, a revocation of a prior waiver may be made by a Participant without the consent of the Spouse at any time before the Annuity Starting Date. The number of revocations shall not be limited. Any new election must comply with the requirements of this Section 8.8. A former Spouse's waiver shall not be binding on a new Spouse.

## Section 8.9 Qualified Domestic Relations Order (QDRO)

### (a) Definition

Means any judgment, decree or order (including approval of a property settlement agreement) which is made pursuant to a State Domestic Relations Law (including a community property law) and which:

- (1) Relates to provision of child support, alimony payments, or marital property rights of a Spouse, former Spouse, child or other dependent of a Participant, and which

- (2) Recognizes or creates an alternate payee's right to, or assigns to an alternate payee the right to receive all or a portion of the benefits payable with respect to a Participant under this Plan, and which
- (3) clearly specifies:
  - (A) Name and last known address of the Participant and of each alternate payee,
  - (B) The amount, percentage or manner in which such could be determined, of the Participant's benefits to be paid to such alternate payee by the Plan,
  - (C) The number of payments or time period the QDRO covers and
  - (D) Each plan to which the QDRO applies.

A Qualified Domestic Relations Order cannot require any plan to provide a type or form of benefit, or any option not otherwise provided by the Plan, nor can it require the Plan to provide increased benefits. A QDRO cannot require payment to an alternate payee of benefits required to be paid to another alternate payee by virtue of a previous QDRO.

Effective April 6, 2007, in accordance with Department of Labor guidance, a Qualified Domestic Relations Order includes:

- (1) An order that is issued after and with respect to another domestic relations order or Qualified Domestic Relations Order, including an order that revises or amends a prior order; or
- (2) An order issued after the Participant's Annuity Starting Date, divorce or death, provided that the other requirements for a Qualified Domestic Relations Order as set forth in the Plan's Qualified Domestic Relations Order and/or as defined in Code Section 414(p) are satisfied.

(b) **Payment of Benefits**

- (1) The amount of such benefit shall be as provided in the QDRO.
- (2) A benefit payable under a QDRO shall commence on the date specified in the QDRO; provided, however, no benefit will commence earlier than the date on which the Participant attains (or would have attained) the earliest retirement age under the Plan. If a benefit was paid at such time to an alternate payee, the amount of the Participant's benefit

to which the QDRO is applied shall be as if the Participant had retired on the date payments are to begin, considering the present value of benefits accrued to that date only. The interest rate used to determine the present value shall be the same as defined in Section 2.1(b). An alternate payee is permitted to begin receiving a benefit under the QDRO prior to the Participant's Retirement.

(c) **Administration**

The Trustees will establish a written procedure for determining the qualified status of domestic relations orders and to administer distributions thereunder as consistent with applicable law.

## Section 8.10 Benefit Payments Generally

A Participant who is eligible to receive benefits under this Plan and who makes application in accordance with the rules of the Pension Plan shall be entitled upon the Annuity Starting Date to receive benefits, subject to the provisions of this Plan.

Pension benefits shall be payable commencing with the Annuity Starting Date.

A monthly Pension shall last be payable for the month in which the death of the retired Participant occurs except as provided in accordance with a 50% or 100% Joint and Survivor Option or any other provision of this Plan providing for payments after the death of the retired Participant.

Payment of benefits may begin sooner, but, shall not be delayed to a date later than 60 days after the last of the following dates, unless requested by the Participant:

- (a) The end of the Plan Year in which the Participant attained Normal Retirement Age;
- (b) The end of the Plan Year after the Participant's Retirement as that term is defined in Section 2.1(pp); or
- (c) The date the Participant filed a claim for benefits; or
- (d) The date the Trustees were first able to ascertain entitlement to, or the amount of, the Pension.

## Section 8.11 Mandatory Commencement of Benefits

(a) **General Rules**

- (1) The provisions of this Subsection will apply for purposes of determining required minimum distributions for calendar years beginning with the 2005 calendar year. For

purposes of determining minimum required distributions for calendar years 2003, 2004, and 2005, a good faith interpretation of the requirements of Code Section 401(a)(9) shall apply.

- (2) The requirements of this Subsection will take precedence over any inconsistent provisions of the Plan.
- (3) All distributions required under this Subsection will be determined and made in accordance with the Treasury Regulations under Code Section 401(a)(9).
- (4) Notwithstanding the other provisions of this Subsection, other than Section 8.11(a), 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.
- (5) Notwithstanding anything herein to the contrary, all distributions under this Section 8.11 shall be made in accordance with Code Section 401(a)(9) and its regulations, including the incidental death benefit requirement of Code Section 401(a)(9)(G).

**(b) Time and Manner of Distribution**

- (1) 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) 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 dies, or by December 31 of the calendar year in which the Participant would have attained age seventy and one-half (70-1/2), 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 Subsection 8.11(b)(2), other than Section 8.11(b)(2)(A), will apply as if the surviving Spouse were the Participant.

For purposes of this Subsection 8.11(b)(2) and Subsection 8.11(e), distributions are considered to begin on the Participant's Required Beginning Date (or, if Section 8.11(b)(2)(D) applies, the date distributions are required to begin to the surviving Spouse under Section 8.11(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 8.11(b)(2)(A), the date distributions are considered to begin is the date distributions actually commence.

- (3) 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 8.11(c), 8.11(d), and 8.11(e). If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code Section 401(a)(9) and the Treasury Regulations.

(c) **Determination of Amount to be Distributed Each Year**

- (1) 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 (1) year;
  - (B) The distribution period will be over a life (or lives) or over a period certain not longer than the period described in Subsection 8.11(d) or 8.11(e);
  - (C) Once payments have begun over a period certain, the period certain may only be changed in accordance with A-13 of the Treasury Regulations Section 1.401(a)(9)-6;

- (D) Life (or joint and survivor) annuity payments will satisfy the minimum distribution incidental benefit requirements of A-2 of Treasury Regulation Section 1.401(a)(9)-6; and
- (E) 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 an eligible cost-of-living index (as defined under A-14 of Treasury Regulation Section 1.401(a)(9)-6) for a 12-month period ending in the year during which the increase occurs or a prior year;
  - (ii) By a percentage increase that occurs at specified times and does not exceed the cumulative total of annual percentage increases in an eligible cost-of-living index (as defined under A-14 of Treasury Regulation Section 1.401(a)(9)-6) since the Annuity Starting Date or, if later, the date of the most recent percentage increase, provided (in the case of a cumulative increase), an actuarial increase may not be provided to reflect that increases were not provided in the interim years;
  - (iii) 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 Subsection 8.11(d) dies or is no longer the Participant's Beneficiary pursuant to a Qualified Domestic Relations Order within the meaning of Code Section 414(p);
  - (iv) To allow a Beneficiary to convert the survivor portion of a joint and survivor annuity into a single sum distribution upon the Participant's death;
  - (v) To pay increased benefits that result from a Plan amendment; or
  - (vi) To the extent increases are otherwise permitted under A-14 of Treasury Regulation Section 1.401(a)(9)-6.
- (2) The amount that must be distributed on or before the Participant's Required Beginning Date (or, if the Participant dies before distributions begin, the date distributions are required to begin under Subsection 8.11(b)(2)(A) or (B) is the payment that is required



for one (1) 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) 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) If the Participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the Participant and a non-Spouse Beneficiary, annuity payments to be made on or after the Participant's Required Beginning Date to the Designated Beneficiary after the Participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the Participant using the table set forth in 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) Unless the Participant's Spouse is the sole Designated Beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the Participant's lifetime may not exceed the applicable distribution period for the Participant under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations for the calendar year that contains the Annuity Starting Date. If the Annuity Starting Date precedes the year in which the Participant reaches age seventy (70), the applicable distribution period for the Participant is the distribution period for age seventy (70) under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations plus the excess of seventy (70) over the age of the Participant as of the Participant's birthday in the year that contains the Annuity Starting Date. If the Participant's Spouse is the Participant's sole Designated

Beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the Participant's applicable distribution period, as determined under this Subsection 8.11(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 Annuity Starting Date.

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

- (1) If the Participant dies before the date distribution of his or her interest begins and there is a Designated Beneficiary, the Participant's entire interest will be distributed, beginning no later than the time described in Subsection 8.11(b)(1) or (2), over the life of the Designated Beneficiary or over a period certain not exceeding:
  - (A) Unless the Annuity Starting Date is before the first Distribution Calendar Year, the Life Expectancy of the Designated Beneficiary determined using the Beneficiary's age as of the Beneficiary's birthday in the calendar year immediately following the calendar year of the Participant's death; or
  - (B) If the Annuity Starting Date is before the first Distribution Calendar Year, the Life Expectancy of the Designated Beneficiary determined using the Beneficiary's age as of the Beneficiary's birthday in the calendar year that contains the Annuity Starting Date.
- (2) 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) If the Participant dies before the date distribution of his or her interest begins, the Participant's surviving Spouse is the Participant's sole Designated Beneficiary, and the surviving Spouse dies before distributions to the surviving Spouse begin, this Subsection 8.11(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 Subsection 8.11(b)(2)(A).

(f) **Definitions**

- (1) Designated Beneficiary is the individual who is designated as the Beneficiary under the Plan and is the designated Beneficiary under Code Section 401(a)(9) and Section 1.401(a)(9) of the Treasury Regulations.
- (2) Distribution calendar year is a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year, which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin pursuant to Subsection 8.11(b)(2).
- (3) Life Expectancy is the 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 is the date defined in Section 2.1(nn).

## Section 8.12 Rollovers

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

- (a) An "eligible rollover distribution" is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and any distribution reasonably expected to total less than \$200 in a Plan Year.
- (b) An "eligible retirement plan" is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), or a qualified trust described in Code Section 401(a), 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.

For distributions made on or after December 1, 2002, an "eligible retirement plan" shall also mean an annuity contract described in Code Section 403(b) and an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving Spouse, or to a Spouse or former Spouse who is the alternate payee under a Qualified Domestic Relations Order, as defined in Code Section 414(p). Effective January 1, 2008, an eligible retirement plan shall include a Roth individual retirement account (Roth IRA) described in Section 408A of the Code, subject to the adjusted gross income limits of Code Section 408A(c)(3)(B) as applicable and the distribution rules of Code Section 408A(d)(3).

- (c) A "distributee" includes an Employee or former Employee, or effective December 1, 2007, a non-Spouse beneficiary. In addition, the Employee's or former Employee's surviving Spouse and the Employee's Spouse or former Spouse who is the alternate payee under a Qualified Domestic Relations Order, as defined in Code Section 414(p), are distributees with regard to the interest of the Spouse or former Spouse.
- (d) A "direct rollover" is a payment by the Plan to the eligible retirement plan specified by the distributee.
- (e) Non-Spouse Rollover. Effective December 1, 2007, a non-Spouse Beneficiary may elect a direct rollover in the form of a direct trustee-to-trustee transfer, provided that the distributed amount is an eligible rollover distribution without regard to the requirement that the recipient of the distribution be a Participant. The direct rollover must be made to an individual retirement plan described in Code Section 408(a) or (b) (an "IRA) that is established for the purpose of receiving the distribution on behalf of the Beneficiary and will be treated an inherited IRA pursuant to the provisions of Code Section 408(d)(3)(C). If the amount distributed from the Plan is received by the Beneficiary, the distribution is not eligible for rollover. Effective December 1, 2010, distributions made pursuant to this Subsection shall be subject to the direct rollover requirements of Code Section 401(a)(31), the notice requirements of Code Section 402(f) and the mandatory withholding requirements of Code Section 3405(c) if not rolled over. The Plan shall administer rollovers for non-Spouse Beneficiaries in accordance with all applicable law and guidance.

## Section 8.13 Retroactive Annuity Starting Date

### (a) Actuarial Adjustment or Retroactive Annuity Starting Date After Normal Retirement Age

A Participant whose benefits commence after the Participant's Normal Retirement Age shall be eligible to receive benefits in accordance with either (1) or (2) of this Section:

- (1) The Participant's monthly benefit will be an amount equal to the Participant's Accrued Benefit at his Normal Retirement Age, actuarially increased (utilizing the factors set forth in Plan Sections 2.1(b)(3) and (4)) for each complete calendar month in which the Participant's benefit is not suspended under Article IX between the Participant's Normal Retirement Date and the Annuity Starting Date.
- (2) In lieu of an actuarial adjustment described in (1) above, a Participant may elect, with spousal consent if applicable, to receive a single cash payment for the retroactive period based on his accrued benefit determined as of his Normal Retirement Age payable retroactive to the Participant's Normal Retirement Date (or the first day of the month following the date the Participant terminates Employment or which the Participant's benefit is suspended under Article IX, if later), with interest on the retroactive amount at an annual rate equal to the short-term interest rate established by the Plan's custodian bank, determined as of the first day of the Plan Year in which the distribution commences, not to exceed the Plan's actuarial interest assumption. Distributions under this option will be made in accordance with Section 1.417(e)-1 of the Treasury Regulations. The provisions of this Subsection (2) shall not apply to a form of benefit payable as a single cash payment.

For purposes of Plan Subsection 8.13(a)(2), the relevant Spouse shall be the Spouse determined as if the date the distribution commences were the Annuity Starting Date (unless otherwise provided under a Qualified Domestic Relations Order).

### (b) Actuarial Adjustment or Retroactive Annuity Starting Date for Disability Pensions Payable After Normal Retirement Age

The provisions of Plan Section 8.13(a) shall apply to the portion of a retroactive Disability Pension provided under Plan Section 5.3(c) payable after the Participant attains Normal Retirement Age, which is the earliest date on which the Participant receiving a Disability Pension can experience his Annuity Starting Date.

(c) **Administrative Delay**

This Section 8.13 shall not apply where, due solely to administrative delay, a distribution commences more than 180 days after the written explanation of the 50% Joint and Survivor Pension is provided to the Participant.

## **ARTICLE IX REEMPLOYMENT OF PARTICIPANTS: SUSPENSION OF PENSION PAYMENTS AND RECALCULATION OF PENSION AMOUNTS**

### **Section 9.1 Suspension of Pension Payments**

A Pension otherwise payable to a former Employee on or after his Normal Retirement Date will be permanently withheld for each calendar month during which a retired Participant is reemployed and completes more than one hundred (100) hours of service in Industry Employment or Covered Employment. Notwithstanding any provision in this Section 9.1 to the contrary, the term “former Employee” or “retired Participant” shall also include an Employee who continues working past his or her Normal Retirement Date.

A Pension otherwise payable to a former Employee prior to his Normal Retirement Date will be permanently withheld for each calendar month, during which a retired Participant is reemployed and completes more than forty (40) hours of service in Industry Employment or Covered Employment.

A detailed description of Industry Employment is provided in the Plan’s Industry Employment Policy and Covered Employment is defined in Section 2.1(j) of the Plan.

Effective on and after January 1, 1991, a Pension otherwise payable to a former Employee on or after his age 62 will be permanently withheld for each calendar month during which a retired Participant is reemployed and completes one hundred (100) or more hours of service in Industry Employment or Covered Employment.

Effective on and after January 1, 1991, a Pension otherwise payable to a former Employee prior to his age 62 will be permanently withheld for each calendar month during which a retired Participant is reemployed and completes forty (40) or more hours of service in Industry Employment or one (1) or more hours of service in Covered Employment.

Effective on and after March 1, 1994, a Pension otherwise payable to a former Employee on or after his age 60 will be permanently withheld for each calendar month during which a retired Participant is reemployed and completes one hundred (100) or more hours of service in Industry Employment or Covered Employment.

Effective on and after March 1, 1994, a Pension otherwise payable to a former Employee prior to his age 60 will be permanently withheld for each calendar month during which a retired Participant is reemployed and completes forty (40) or more hours of service in Industry Employment or one (1) or more hours of service in Covered Employment.

Notwithstanding any other provision of this Article IX, as of the Participant's Required Beginning Date, no Employment will be considered suspendable with respect to such Participant.

## Section 9.2 Procedure for Suspending Pensions

A Participant whose Pension is being suspended will be notified of the suspension during the first month in which the Pension payment is withheld. Such notice will contain the following:

- (a) A description of the specific reasons why Pension payments are being suspended;
- (b) A general description of the Plan provisions relating to suspension of benefits, and a copy of such provisions;
- (c) A copy of the review procedures for requesting reconsideration of the decision to suspend Pension payments; and
- (d) Information describing the procedures necessary in order to again resume the payment of Pension benefits.

Additionally, if offsets are involved pursuant to Section 9.4 hereunder, a description of the offset procedures and amounts shall be included in the notice. Such notice will be forwarded to the retired Participant by certified mail.

## Section 9.3 Resumption of Suspended Pensions

The former Employee is entitled to all Pension benefit payments from the first day of the first calendar month he was no longer subject to the suspension provisions of Section 9.1.

In order to be eligible for the resumption of Pension payments, proof of the employment status of the retired Participant must be provided.

## Section 9.4 Offset Rules

If Pension payments were erroneously made during calendar months prior to the actual suspension of Pension benefits, such Pension payments may be recaptured by offsetting payments made after the



resumption of Pension payments. Such offsets will not be in excess of 25% of the retired Participant's Pension.

## Section 9.5 Recalculation of Pension Amounts

- (a) If the Participant has never received any Pension payments and has at least two consecutive Calendar Years during which he accrues no Credited Service, the monthly amount of his recomputed Pension shall be based upon the amounts determined separately for each such period of employment for which Credited Service is accrued, based upon the provisions of the Plan as in effect on the Retirement or termination date applicable to each such period.
- (b) If a Participant under Disability Retirement prior to his Normal Retirement Date resumed employment with an Employer within twelve (12) months after his Disability ceased and accrued one (1) year of Eligibility Service for the Calendar Year in which the Disability ceased or the succeeding Calendar Year, the monthly amount of the recomputed Pension shall be based upon the provisions of the Plan as in effect on the Participant's subsequent Retirement date and shall consider his aggregate Credited Service.
- (c) A 50% Joint and Survivor Pension or 100% Joint and Survivor Pension in effect immediately prior to suspension of benefits, shall remain effective if the Pensioner's death occurs while his benefits are in suspension.
- (d) If a retired Participant's return to Industry Employment resulted in a suspension of Pension payments pursuant to Section 9.1, he will upon his subsequent Retirement receive a recomputed Pension equal to the sum of (i) the monthly amount of his original Pension (including any increase provided under a Plan amendment which would have applied to the Participant had he not resumed Industry Employment), plus (ii) if any, the monthly amount attributable to the Credited Service which he accumulated during his period of reemployment, the latter to be based upon the provisions of the Plan as in effect on his subsequent Retirement date. If the original Pension had been payable pursuant to a Level Income option election, as provided under Section 8.3 hereof, the amount in the foregoing clause (i) shall be that which would have been payable had such election not been exercised, but actuarially reduced to reflect the extent to which the value of the payments received by the Participant exceeds the value of the payments which he would otherwise have received without the election.

## **ARTICLE X PORTABLE PENSIONS UNDER RECIPROCAL AGREEMENTS**

### **Section 10.1 Purpose**

A “Portable Pension” is provided under this Plan for any Employee who, but for the application of the provisions of this Article X, would lack sufficient Eligibility Service to be eligible for any Pension under this Plan because his years of employment were divided among this Pension Fund and any Related Plan, as defined in Section 10.2 hereof.

### **Section 10.2 Related Plans**

By resolution duly adopted, the Trustees may recognize one or more other pension plans, which have executed a Reciprocal Agreement to which this Plan is a party, as a “Related Plan.”

### **Section 10.3 Related Service Credits**

Service accumulated and maintained by an Employee under a Related Plan for determining eligibility for benefits under the Related Plan shall be recognized under this Plan as “Related Service.” The Trustees shall compute Related Service on the basis on which that credit has been earned and credited under the Related Plan and certified by the Related Plan to this Plan.

### **Section 10.4 Combined Service**

The total of an Employees’ Eligibility Service under this Plan and Related Service together comprise the Employee’s “Combined Service.” Not more than one (1) year of Combined Service shall be counted in any Calendar Year.

### **Section 10.5 Eligibility**

An Employee shall be eligible for a Portable Pension under this Plan if, by considering his Combined Service as equivalent to Eligibility Service under this Plan, he would qualify for Retirement and thereby be eligible for any type of Pension under Article V of this Plan. Related Service shall also be considered for purposes of determining eligibility for survivorship benefits under Article VII of this Plan.

### **Section 10.6 Breaks in Service**

In applying the rules of this Plan with respect to loss of Eligibility Service and Credited Service, pursuant to Section 4.7 of this Plan, no Calendar Year for which an Employee has earned Related Service shall be considered as a Break Year, and any absence period which has been exempted under a Related Plan’s

rules for determining breaks in service shall be considered as equivalent to Excused Absence under this Plan.

### Section 10.7 Election of Pensions

If an Employee is eligible for more than one type of Pension under this Plan, he shall be entitled to elect the type of Pension he is to receive, in accordance with the provisions of Article VIII hereof.

### Section 10.8 Portable Pension Amount

The monthly amount of a single-life Portable Pension provided under the Plan shall be the Participant's Accrued Benefit as of his last day of Covered Employment under this Plan.

### Section 10.9 Payment of Portable Pensions

The payment of a Portable Pension shall be subject to all the conditions contained in this Plan applicable to other types of Pensions, including, but not limited to reduction for the early payment of an Early or Deferred Vested Pension or the application of any Actuarial Equivalent provisions of Article VII hereof. Any Employee must notify the Trustees of his Related Service, if any, within one (1) year of entering Covered Employment under this Plan for such Related Service to be counted toward eligibility for a Portable Pension, unless the Trustees determine failure to timely notify was for good cause.

### Section 10.10 Lump Sum Death Benefit

Subject to the Rehabilitation Plan, upon the death of a retired Participant who was receiving a Portable Pension, the lump sum amount payable pursuant to Section 7.5 hereof, notwithstanding any provisions therein to the contrary, shall not exceed the product of \$150 multiplied by such Participant's years of Eligibility Service under this Plan, exclusive of any credits earned under a Related Plan.

## ARTICLE XI PLAN FINANCING AND ASSETS

### Section 11.1 Method of Funding

No contributions shall be required or permitted under the Plan from any Participant. The Employers shall make contributions in such amounts and at such times as provided under the applicable Collective Bargaining Agreements and Participation Agreements.

The Trustees from time to time shall determine the immediate and long term financial requirements of the Plan and, on the basis of such determination, establish a policy and method of funding.

### Section 11.2 Assets of Fund

All contributions and other payments made by the Employers under this Plan shall be directed to the Board of Trustees and deposited in the Fund. All assets of the Fund, including investment income, shall be retained for the exclusive benefit of Participants and their Beneficiaries and shall be used to pay benefits to such persons or to pay administrative expenses. It is expressly understood that in no event shall any of the corpus or assets of the Fund revert to or inure to the benefit of the Employers or be subject to any claims of any kind or nature by the Employers, except for the return of an erroneous contribution (or other erroneous payments) within the time limits prescribed by law.

### Section 11.3 Merger, Consolidation or Transfer of Assets and Liabilities to Other Plans

In the event of any merger or consolidation of the Plan with, or transfer in whole or in part of the assets and liabilities of the Trust to another trust fund under, any other plan of deferred compensation maintained or to be established for the benefit of all or some of the Participants of this Plan, the assets of the Trust applicable to such Participants shall be merged or consolidated with or transferred to the other trust fund only if:

- (a) No Participant's or designated Beneficiary's accrued benefit (determined in accordance with Code Section 411) is lower immediately after the effective date of the merger, consolidation or transfer than the benefit immediately before that date; and
- (b) Resolutions of the Trustees under this Plan and of the board of trustees or other corresponding agency of responsibility under the other plan shall authorize such transfer of assets; and the latter resolution shall include an assumption of liabilities with respect to Participants transferred to the other plan; and

(c) Such other plan and trust are qualified under Code Sections 401(a) and 501(a).

This Section 11.3 shall apply only to the extent determined by the Pension Benefit Guaranty Corporation.

#### Section 11.4 Funding Status, Benefit Limitations and Notifications

The Plan will comply with the funding rules, benefit limitations and notifications pursuant to Code Sections 431 and 432 and related Treasury Regulations and guidance issued by the Internal Revenue Service, to the extent applicable.

## ARTICLE XII ADMINISTRATION

### Section 12.1 Allocation of Responsibility Among Fiduciaries for Plan and Fund Administration

The Fiduciaries shall have only those specific powers, duties, responsibilities and obligations as are specifically given them under this Plan, the Trust Agreement, or other applicable agreement. The Employers shall have the sole responsibility for making the contributions necessary to provide benefits under the Plan as specified in Article XI. The Trustees shall have the responsibility for the administration of this Plan and the Fund and to amend or terminate the Plan, in whole or in part. The Trustees may appoint an individual or organization to assist in the administration of the Plan, a corporate trustee to assist in the administration of the Fund, and an investment manager to assist in the selection of investments and management of the Fund assets, all as specifically provided in any contracts executed by the Trustees.

Each Fiduciary warrants that any directions given, information furnished, or action taken shall be in accordance with the provisions of the Plan, the Trust Agreement, or other applicable agreement, as the case may be, authorizing or providing for such direction, information or action. No Fiduciary guarantees the Fund in any manner against investment loss or depreciation in asset value.

### Section 12.2 Claim and Appeal Procedures

The Trustees have adopted procedures to afford a fair and expeditious method for the processing of applications for benefits provided under this Pension Plan, which procedures are described below. A claim is a request for a Plan benefit that is initiated by the filing of a signed application form by a Participant or legal survivor (the "Claimant") with the Trustees. A Claimant may appoint a legal representative to act on the Claimant's behalf on forms provided by the Fund administrative office. Compliance with these claim and appeal procedures is a condition precedent to any legal action by a Claimant with respect to a partial or complete denial of an application for benefits.

Application forms may be obtained from the Fund administrative office. A claim for benefits should be filed as promptly as possible. If additional information is required, the Claimant will be notified and requested to furnish the necessary data.

(a) **For standard Pension applications filed on or after January 1, 2002**

**Approval or Denial**

Approval or denial of the application will generally be made within 90 days after the application has been received by the Fund administrative office. Within such 90-day period, the Claimant shall receive a notice of the Fund administrative office's decision unless additional time is required to render a decision. If additional time is needed to make a decision, the Fund administrative office will provide a notice of extension to the Claimant prior to the end of the initial 90-day period which:

- (1) Explains the special circumstances requiring a delay in the decision, and
- (2) Sets a date, no later than 180 days after his application has been received, by which he can expect to receive a decision.

Any request to the Claimant for additional information will be made within the initial 90-day period. The Fund administrative office will approve or deny the claim at the end of the 90-day period (180-day period if the deadline was extended) regardless whether the Claimant provides the requested information.

Whenever a Claimant has been notified by the Fund administrative office that his application for benefits has been denied, in whole or in part, he will be sent a notice that sets forth in plain and concise language:

- (A) The specific reason or reasons for the denial;
- (B) All pertinent provisions of this Pension Plan, the Trust Agreement or other applicable agreement;
- (C) A description of such materials or information deemed necessary for the Claimant to perfect his claim to benefits, together with an explanation as to the necessity thereof;
- (D) A detailed explanation of the procedures of appeal described in this Section 12.2, available to the Claimant for a full and fair review of the denial of his application for pension benefits; and

- (E) A statement of the Claimant's right to bring a civil action under ERISA Section 502(a).

### **Request for Review**

Any Claimant whose claim has been denied in whole or in part may request a review by the Board of Trustees by filing a written request for review within 60 days after receipt by the Claimant of written notification of denial of the application. The Fund administrative office will provide the Claimant with a form, which may be used in filing the appeal. The Claimant or his duly authorized representative have the right to:

- (1) Submit additional materials, including any comments, statements or documents; and
- (2) Review all relevant information (free of charge) upon reasonable request to the Board of Trustees. A document, record or other information is relevant if:
  - (A) It was relied upon by the Plan in making the decision;
  - (B) It was submitted, considered or generated (regardless of whether it was relied upon); or
  - (C) It demonstrates compliance with the application processing requirements.

### **Appeal**

The review will be decided by the Board of Trustees or a Committee appointed by the Board. The Board of Trustees or Committee shall act on the appeal at its next quarterly meeting, unless the appeal is received within 30 days prior to the next quarterly meeting. In this case, the decision on the appeal shall be rendered no later than the second quarterly meeting following the receipt of the appeal. Special circumstances may require an extension of time for the Board of Trustees or Committee to render a decision. If an extension is necessary, the Board of Trustees or Committee shall render its decision no later than the third quarterly meeting following receipt of the appeal. The Claimant will be provided with written notice stating the special circumstances that exist and the date the Board of Trustees or Committee anticipates rendering a decision on the appeal.

The decision of the Board of Trustees or Committee shall be issued within 5 days of the Board of Trustees' or Committee's decision. The decision shall be in writing and shall include:

- (1) The specific reason or reasons for the denial;



- (2) All pertinent provisions of this Pension Plan, the Trust Agreement or other applicable agreement; and
- (3) A statement of the Claimant's right to bring a civil action under ERISA Section 502(a).

A Claimant must follow the procedures described above before taking any legal action with respect to an application for benefits from the Pension Plan.

(b) **For Disability applications filed on or after January 1, 2002**

**Approval or Denial**

Approval or denial of the application will generally be made within 45 days after the application (complete with a Social Security Award letter) has been received by the Fund administrative office. Within such 45-day period, the Claimant shall receive notice of the decision unless additional time is required to render a decision. If additional time is needed to make a decision, the Fund administrative office will provide a notice of extension prior to the end of the initial 45-day period which:

- (1) Explains the special circumstances requiring a delay in the decision; and
- (2) Sets a date, no later than 75 days after his claim has been received, by which he can expect to receive a decision, unless the Claimant has been requested to provide additional information (addressed below).

In such a case, approval or denial of the application will be made within 75 days after the application has been received by the Fund administrative office, unless additional time is again required to render a decision. If additional time is again needed to make a decision, the Fund administrative office will provide notice of the extension prior to the end of the initial 75-day period which:

- (1) Explains the special circumstances requiring a delay in the decision; and
- (2) Sets a date, no later than 105 days after his claim has been received by which he can expect to receive a decision, unless the Claimant has been requested to provide additional information (addressed below). If a request to the Claimant for additional information is made within the initial 45-day period, the Claimant will receive a notice of the Fund administrative office's decision or notice of a subsequent extension within 30 days of the Claimant's response to the request for additional information. If a request to the Claimant for additional information is made within the first 30-day extension, the Claimant will

receive notice of the Fund administrative office's decision within 30 days of the Claimant's response to the request for additional information.

Whenever a Claimant has been notified by the Benefits Fund Office that his application for benefits has been denied, in whole or in part, he will be sent a notice that sets forth in plain and concise language:

- (1) The specific reason or reasons for the denial.
- (2) All pertinent provisions of this Pension Plan, the Trust Agreement or other applicable agreement.
- (3) A description of such materials or information deemed necessary for the Claimant to perfect his application for benefits, together with an explanation as to the necessity thereof.
- (4) A detailed explanation of the procedures of appeal described in this Section 12.2, available to the Claimant for a full and fair review of the denial of his application for pension benefits.
- (5) A statement of the Claimant's right to bring a civil action under ERISA Section 502(a) upon denial on appeal.

### **Request for Review**

Any Claimant whose application has been denied in whole or in part may request a review by the Board of Trustees by filing a written request for review within 180 days after receipt by the Claimant of written notification of denial of the application. The Fund administrative office will provide the Claimant with a form, which may be used in filing the appeal. The Claimant or his duly authorized representative have the right to:

- (1) Submit additional materials, including any comments, statements or documents;
- (2) Review all relevant information (free of charge) upon reasonable request to the Trustees. A document, record or other information is relevant if:
  - (A) It was relied upon by the Plan in making the decision;

- (B) It was submitted, considered or generated (regardless of whether it was relied upon); or
  - (C) It demonstrates compliance with the claims processing requirements.
- (3) Have the right to be advised of the identity of any medical experts.

### **Appeal**

The Board of Trustees or a Committee appointed by the Board shall render a decision on the appeal at its next quarterly meeting following receipt of the appeal, unless the appeal is received within 30 days of the next quarterly meeting. In this case, the Board of Trustees or Committee shall render a decision on the appeal at the second quarterly meeting following the receipt of the appeal. If the determination is based on medical finding, or appropriateness, the Board of Trustees or Committee must consult a medical professional who is not the same individual who consulted on the initial review of the claim, or a subordinate of that individual. Special circumstances may require an extension of time for processing and determination. The Board of Trustees or Committee shall render a delayed decision on the appeal no later than the third quarterly meeting after receipt of the appeal. The Claimant will be provided written notice stating the special circumstances that exist and the date the Board of Trustees or Committee anticipates rendering a decision on the appeal.

The decision of the Board of Trustees or Committee shall be issued within 5 days of the Board of Trustees' or Committee's decision. The decision shall be in writing and shall include:

- (1) The specific reason or reasons for the denial;
- (2) All pertinent provisions of this Pension Plan, the Trust Agreement or other applicable agreement; and
- (3) A statement of the Claimant's right to bring a civil action under ERISA Section 502(a).

A Claimant must follow the procedures described above before taking any legal action with respect to a claim for benefits from the Pension Plan.

(c) **For all claims filed prior to January 1, 2002**

The Trustees shall make all determinations as to the right of any person to a benefit. Any denial by the Trustees of the claim for benefits under the Plan by a Participant or other benefit applicant shall be stated in writing by the Trustees and delivered or mailed to the applicant and such notice

shall set forth the specific reason for the denial, written to the best of the Trustees' ability in a manner calculated to be understood without legal or actuarial counsel.

Any applicant whose claim for benefits has been denied or the duly authorized representative of such applicant shall have the right to submit additional proof of benefit entitlement, to examine any Plan document which is germane to his claim for benefits, and to appeal the Board's decision denying the claim. The appeal must be submitted in writing to the Board of Trustees and filed within 60 days after the date of notification of benefit denial. The appeal statement must set forth the reasons for the applicant's disagreement with the denial and may include any supporting documents or additional comments related to the appeal. The applicant or his authorized representative may request an appearance before the Board, or the Trustees may require the applicant's personal attendance at a hearing regarding his review. The applicant will be notified if his request is granted or if his attendance is required.

The Board shall make a full and complete review of any valid appeal and shall issue its decision in writing within 60 days after receipt of the written appeal request, unless special circumstances require an extension of time for processing (in which event the decision shall be rendered as soon as possible, but not later than 120 days after receipt of such request). The decision of the Board of Trustees shall be final.

### Section 12.3 Records and Reports

The Trustees shall exercise such authority and responsibility as they deem appropriate in order to comply with ERISA and governmental regulations issued thereunder relating to records of Participants' Eligibility Service, Credited Service, and Accrued Benefits, notifications to Participants, annual registration with the Internal Revenue Service, annual reports to the Department of Labor, and reports to the PBGC.

### Section 12.4 Other Powers and Duties

The Trustees shall have such duties and powers as may be necessary to discharge their duties hereunder, including, but not by way of limitation, the following:

- (a) To construe and interpret the Plan, decide all questions of eligibility and determine the amount, manner and time of payment of any benefits hereunder;
- (b) To prescribe procedures to be followed by Participants or Beneficiaries filing applications for benefits;

- (c) To prepare and distribute, in such manner as is determined to be appropriate, information explaining the Plan;
- (d) To receive from the Employers and from Participants such information as shall be necessary for the proper administration of the Plan;
- (e) To furnish to Employers, upon request, such annual reports with respect to the administration of the Plan as are reasonable and appropriate;
- (f) To receive and review the periodic valuation of the Plan made by the Actuary;
- (g) To receive, review and keep on file (as is deemed convenient and proper) reports of benefit payments and reports of disbursements for expenses; and
- (h) To appoint or employ individuals to assist in the administration of the Plan and any other agents it deemed advisable, including the employment of legal counsel, investment managers, medical consultants, field auditors, ERISA-qualified public accountants, actuaries, and administrative, accounting and other assistants or employees.

Except by formal amendment in accordance with the provisions of Article XIV, the Trustees shall have no power to add to, subtract from or modify any of the terms of the Plan, or to change or add to any benefits provided by the Plan, or to waive or fail to apply any requirements of eligibility for a Pension under the Plan.

### Section 12.5 Rules and Decisions

The Trustees may adopt such rules and actuarial tables as they deem necessary desirable or appropriate. All rules and decisions of the Trustees shall be uniformly and consistently applied to all Participants in similar circumstances. When making a determination or calculation, the Trustees shall be entitled to rely upon information furnished by a Participant or Beneficiary, the Employers, the legal counsel of the Trustees, or the Actuary.

### Section 12.6 Information and Proof

Every Participant or Beneficiary shall furnish, at the request of the Trustees, any information or proof reasonably required to determine his benefit rights. If a person makes a willfully false statement material to an application or furnishes fraudulent information or proof material to his claim, 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 Beneficiary.

## Section 12.7 Application and Forms for Pension

The Trustees may require a Participant or a Beneficiary to complete and file with the Trustees an application for Pension and all other forms approved by the Trustees, and to furnish all pertinent information requested by the Trustees. The Trustees may rely upon all such information so furnished, including the Participant's current mailing address.

## Section 12.8 Facility of Payment

Whenever, in the Trustees' opinion, a person entitled to receive any payment of a benefit or installment thereof hereunder is under a legal disability or is incapacitated in any way so as to be unable to manage his financial affairs, the Trustees may make payments to such person or to his legal representative or to a relative or friend of such person for his benefit, or the Trustees may apply the payment for the benefit of such person in such manner as the Trustees consider advisable. Any payment of a benefit or installment thereof in accordance with the provisions of this Section shall be a complete discharge of any liability for the making of such payment under the provisions of the Plan.

## Section 12.9 Disposition of Benefits to Participants Who Cannot Be Located

If a Participant or Beneficiary, who has been determined to be entitled to benefits under this Plan cannot be located by the Trustees after a reasonable effort, such benefits shall be retained in the Trust. The ultimate disposition of such benefits shall be in accordance with the then existing Federal Law, Rules and Regulations.

## Section 12.10 Indemnification

Through the purchase of insurance, but not from Fund assets, the Trustees or other Fiduciaries may be indemnified against any and all liabilities arising by reason of any act or failure to act made in good faith pursuant to the provisions of the Plan, the Trust Agreement, or other applicable agreement, including expenses reasonably incurred in the defense of any claim relating thereto.

## Section 12.11 Overpayments

The Plan shall have the right to recover amounts paid to or on behalf of any individual who was not entitled to such payments through appropriate legal or equitable action, including but not limited to the initiation of a collection action under ERISA or applicable Federal or state law, the imposition of a constructive trust or the filing of a claim for equitable lien. The Plan shall have the right to reduce future payments due to such individual, including the individual's Spouse or other Beneficiary. The Plan is

entitled to recover the principal amount of the overpayment plus interest at a rate determined by the Trustees and all costs of collection.

## ARTICLE XIII GUARANTEES AND LIABILITIES

### Section 13.1 Non-Guarantee of Employment

Nothing contained in this Plan shall be construed as a contract of employment between an Employer and any Employee, or as a right of any Employee to be continued in the employment of an Employer, or as a limitation on the right of any Employer to discharge any of its Employees, with or without cause.

### Section 13.2 Rights to Fund Assets

No Employee shall have any right to, or interest in, any of the assets of the Fund upon termination of his employment or otherwise, except as provided from time to time under this Plan, and then only to the extent of the benefits payable to such Employee out of the Fund. Except as may be provided otherwise under Title IV of ERISA, all payments of benefits as provided for in this Plan shall be made solely out of the assets of the Fund and the Employers shall not be liable therefore in any manner.

### Section 13.3 Non-Alienation of Benefits

Benefits payable under this Plan shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution, or levy of any kind, either voluntary or involuntary, including any such liability which is for alimony or other payments for the support of a Spouse or former Spouse, or for the support of any other relative of an Employee, prior to actually being received by the person entitled to the benefit under the terms of the Plan, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge or otherwise dispose of any right to benefits payable hereunder, shall be void. The Fund shall not in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to benefits hereunder.

The preceding paragraph shall also apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a Participant pursuant to a domestic relations order, unless such order is determined to be a Qualified Domestic Relations Order, as defined in Code Section 414(p), or any domestic relations order entered before January 1, 1985.

Notwithstanding the foregoing, deductions may be made from monthly Pension payments upon the retired Participant's filing of a written request and authorization therefore with the Trustees on a form prescribed by the Trustees, provided that such authorized deductions constitute amounts withheld for federal tax purposes or, with the concurrence of the Trustees of the United Food and Commercial Workers Unions and Employers Midwest Health Benefits Fund, health benefit contributions to said fund.



Such health benefit contributions shall not be considered an assignment of benefits nor shall the restrictions of the Code Section 401(a)(13) be considered.

### Section 13.4 Nonforfeitability of Benefits

The benefits to which a Participant is entitled under this Plan upon his attainment of Normal Retirement Age are vested and nonforfeitable, subject however to retroactive amendment made within the limitations of Code Section 411(a)(3)(C) and Section 302(c)(8) of ERISA. The benefits to which a Spouse is entitled shall likewise be nonforfeitable. “Vested” means fulfillment by a Participant of the service requirements for receipt after attainment of his Normal Retirement Age and Retirement of a nonforfeitable pension.

### Section 13.5 Action of Trustees

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

The Trustees shall, 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.

All questions or controversies of whatsoever character arising in any manner or between any parties or persons in connection with this Plan or its operation, whether as to any claim for benefits, as to the construction of the language of this Plan or any rules and regulations adopted by the Trustees, or as to any writing, decision, instrument or account in connection with the operation of the Plan or otherwise, shall be submitted to the Board of Trustees for decision. In the event a claim for benefits has been denied, no lawsuit or other action against the Fund or its Trustees may be filed until the matter has been submitted for review under the ERISA-mandated review procedure set forth in Section 12.2. The decision on review shall be binding upon all persons dealing with the Plan or claiming any benefit hereunder, except to the extent that such decision may be determined to be arbitrary or capricious by a court or arbitrator having jurisdiction over such matter.

### Section 13.6 Governing Law

The Plan shall be construed, administered, and governed in accordance with the laws of the State of Illinois, except in matters where Federal law is controlling.

### Section 13.7 Reference to Code

Any reference herein to any Section of the Internal Revenue Code or to any other statute or law shall be deemed to include any successor statute or law of similar impact.

## Section 13.8 Limitation of Liability

This Pension Plan has been based on 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 and the Pension Protection Act of 2006 (“PPA”). Except for liabilities which may result from provisions of ERISA, the Multiemployer Pension Plan Amendments Act of 1980, PPA and any regulations thereunder, nothing in this Plan shall be construed to impose any obligation to contribute beyond the obligation of the Employer to make contributions and other payments 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 13.9 Restrictions on Benefits Payable to Highly Compensated Participants

This Section sets forth limitations required by the Internal Revenue Service on the pension benefits payable to certain Participants. It shall apply to a Participant only if his anticipated annual Pension exceeds \$1,500 and the Participant was among the 25 highest-paid Employees of an Employer on the Effective Date, or on the date of the most recent amendment, which substantially increased pension benefits (a “Substantive Amendment Date”). The limitations set forth in this Section shall become applicable if:

- (a) The Plan is terminated within ten (10) years after the Effective Date (or a Substantive Amendment Date, if applicable),
- (b) The Pension of a Participant becomes payable within such ten (10) year period, or
- (c) The Pension of a Participant becomes payable after such ten (10) year period and the full current costs for the ten (10) year period have not been funded.

If subparagraph (b) above is applicable, the restrictions shall remain in effect until the later of the expiration of the ten (10) year period or the date on which the full current costs have been funded.

If subparagraph (c) above is applicable, the limitations shall continue to apply until the full current costs have been funded.

If a Participant is subject to the provisions of this Section, the Pension payable to him shall not exceed the Pension, which can be provided from the greatest of the following:

- (a) Employer contributions (or funds attributable thereto) which would have been applied to provide benefits for the Participant if the Plan had not been amended on the Substantive Amendment Date and had continued without change;
- (b) \$20,000;
- (c) The sum of (1) Employer contributions (or funds attributable thereto) which would have been applied to provide benefits for the Participant if the Plan had been terminated on the day before the Substantive Amendment Date (if applicable) and (2) an amount computed by multiplying the number of years for which the current costs of the Plan have been met after the Effective Date (or the Substantive Amendment Date, if applicable) by 20% of the first \$50,000 of the Participant's average annual compensation during his last five (5) years of employment.

The limitations described above may be exceeded for the purpose of making current benefit payments to retired Participants who would otherwise be subject to such restrictions, provided:

- (a) The contributions which may be used for any such retired Participant in accordance with the restrictions heretofore indicated are applied to provide either Pension in the normal form of benefit provided for under the Plan for such Participant, or a Pension in an optional form of benefit not greater in amount than the amount of Pension under the normal form of benefit, and
- (b) The Pension thus provided is supplemented by monthly payments to the extent necessary to provide the full Pension in the normal form called for by the Plan, and
- (c) Such supplemental payments are made if the full current costs of the Plan have been met or if the aggregate of such supplemental payments for all such retired Participants does not exceed the aggregate Employer contributions already made under the Plan in the year then current.

The limitations in this Section 13.9 shall automatically become inoperative and of no effect upon a ruling by the Internal Revenue Service that they are not required.

On or after December 1, 1995, the following rules will apply instead of the foregoing:

In the event of a distribution to a Restricted Member, or upon the termination of the Plan, annual payments to a "Restricted Member" (as defined below) shall be limited to an amount equal to the payment that would be made under a single-life benefit that is the Actuarial Equivalent of the sum of the Restricted Member's Accrued Benefit and other benefits under the Plan. The preceding sentence shall not apply if the value of the Restricted Member's benefits (including death benefits) is either: (a) less than or equal to \$3,500 (\$5,000 effective December 1, 1997), or (b) less than 1% of the value of all current

liabilities (as defined in Section 412 of the Code) if, after the payment of the Restricted Member's benefits, the value of Plan assets equals or exceeds 110% of the value of current liabilities. For the purposes of this Article, the term "Restricted Members" shall mean, for each Plan Year, the 25 highest paid highly compensated employees or former highly compensated employees (as defined in Section 414(q) of the Code).

## ARTICLE XIV AMENDMENTS

The Trustees reserve the right to make, from time to time, any amendment or amendments to this Plan which do not cause any part of the Fund to be used for, or diverted to, any purpose other than the exclusive benefit of Participants and Plan Beneficiaries; provided, however, that they may make any amendment they determine necessary or desirable, with or without retroactive effect, to comply with ERISA.

No amendment to the Plan (including a change in the actuarial basis for determining optional or early retirement benefits) shall be effective to the extent that it has the effect of decreasing a Participant's Accrued Benefit. For purposes of this paragraph, a Plan amendment which has the effect of: (a) eliminating or reducing an early retirement benefit or a retirement-type subsidy, or (b) eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment shall be treated as reducing his Accrued Benefit. In the case of a retirement-type subsidy, the preceding sentence shall apply only with respect to a Participant who satisfies (either before or after the amendment) the pre-amendment conditions for the subsidy. Notwithstanding the preceding sentences, a Participant's Accrued Benefit, early retirement benefit, retirement-type subsidy, or optional form of benefit may be reduced to the extent permitted under Code Section 412(c)(8) (for Plan Years beginning on or before December 31, 2007), or Code Section 412(d)(2) (for Plan Years beginning after December 31, 2007), or to the extent permitted under Sections 1.411(d)-3 and 1.411(d)-4 of the Treasury Regulations. The foregoing notwithstanding, the Trustees may amend the Plan:

- (a) Modified as required by the paragraphs above, 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 Code Section 412(c)(8), and the Secretary of Labor has been notified of such amendment and has either approved of it or, within 100 days after the date on which such notice was filed, he failed to disapprove.

If the Plan's vesting schedule is amended, the Plan is amended in any way that directly or indirectly affects the computation of a Participant's nonforfeitable percentage, or the Plan is deemed amended by an automatic change to or from a Top-Heavy vesting schedule, as set forth in Section 17.4 of the Plan, in the case of an Employee who is a Participant as of the later of the adoption date of such amendment or change or the effective date of such amendment or change, the nonforfeitable percentage (determined as of that date) of such Employees' Employer-provided Accrued Benefit will not be less than the percentage

computed under the Plan without regard to such amendment or change. Furthermore, each Participant with at least three years of Eligibility Service may elect within a reasonable period after the adoption of the amendment to change to have his nonforfeitable percentage computed under the Plan without regard to such amendment or change. For a participant who does not have at least one Hour of Employment in any Plan Year beginning after December 31, 1988, the preceding sentence shall be applied by substituting five years of Eligibility Service for three years of Eligibility Service wherein such language appears. The period during which the election may be made will begin with the date the amendment is adopted or deemed to have been made and shall end on the latest of:

- (a) Sixty (60) days after the amendment is adopted;
- (b) Sixty (60) days after the amendment becomes effective; or
- (c) Sixty (60) days after the Participant is sent written notice of the amendment.

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

## ARTICLE XV PLAN TERMINATION

### Section 15.1 Right to Terminate

The Trustees shall have the right to discontinue or terminate this Plan in whole or in part. The rights of all affected Participants to their Accrued Benefits as of the date of termination, partial termination or discontinuance shall be nonforfeitable.

### Section 15.2 Priorities of Allocation

In the event of termination, the assets then remaining in the Plan, after providing for any administration expenses, shall be allocated among the retired Participants, Beneficiaries, and other Participants in the following order:

- (a) In the case of benefits payable as a Pension:
  - (1) Of a Participant or Beneficiary which was in pay status as of the beginning of the three-year period ending on the termination date of the Plan, to each such Pension, based on the provisions of the Plan (as in effect during the five (5) year period ending on such date) under which such Pension would be the least. The lowest Pension in pay status during the three (3) year period shall be considered the Pension in pay status for such period.
  - (2) Of a Participant or Beneficiary which would have been in pay status as of the beginning of such three (3) year period if the Participant had retired prior to the beginning of the three (3) year period and if his Pension had commenced (in the standard form) as of the beginning of such period, to each such Pension based on the provisions of the Plan (as in effect during the three (3) year period ending on such date) under which the Pension would be the least.
- (b) To all other benefits (if any) of the individuals under the Plan guaranteed under Title IV of ERISA.
- (c) To all other vested benefits under this Plan.
- (d) To all other benefits under this Plan.

### Section 15.3 Allocation Procedure

For purposes of Section 15.2 hereof:

- (a) The amount allocated under any paragraph of Section 15.2 with respect to any benefit shall be properly adjusted for any allocation of assets with respect to that benefit under a prior paragraph of that Section.
- (b) If the assets available for allocation under any paragraph of Section 15.2 (other than paragraphs (c) and (d)) are insufficient to satisfy in full the benefits of all individuals which are described in that paragraph, the assets shall be allocated pro-rata among such individuals on the basis of the present value (as of the termination date) of their respective benefits described in that paragraph.
- (c) This Section 15.3 applies if the assets available for allocation under Section 15.2(c) are not sufficient to satisfy in full the benefits of individuals described in that paragraph.
  - (1) If this Subparagraph applies, except as provided in Subparagraph (2), below, the assets shall be allocated to the benefits of individuals described in Section 15.2(c) on the basis of the benefits of individuals which would have been described in such Section 15.2(c) under the Plan as in effect at the beginning of the five (5) year period ending on the date of Plan termination.
  - (2) If the assets available for allocation under Subparagraph (1), above are sufficient to satisfy in full the benefits described in such paragraph (without regard to this Subparagraph), then for purposes of Subparagraph (1), benefits of individuals described in such Subparagraph shall be determined on the basis of the Plan as amended by the most recent Plan amendment effective during such five (5) year period under which the assets available for allocation are sufficient to satisfy in full the benefits of individuals described in Subparagraph (1) on the basis of the Plan as amended by the next succeeding Plan amendment effective during such period.

### Section 15.4 Manner of Distribution

Subject to the foregoing provisions of this Article XV, to the extent that no discrimination in value results, any distribution after termination of the Plan may be made, in whole or in part, in cash, in securities or other assets in kind, or in non-transferable annuity contracts, as the Trustees (in their discretion) may determine. All non-cash distributions shall be valued at fair market value as of the date of distribution.



## Section 15.5 Residual Amounts

In no event shall the Employers receive any amounts from the Fund upon termination of the Plan, and such amounts, if any, as may remain after the satisfaction of all liabilities of the Plan and arising out of any variations between actual requirements and expected actuarial requirements shall be apportioned among Participants and Plan Beneficiaries in an equitable manner as determined by the Trustees.

## ARTICLE XVI WITHDRAWAL LIABILITY

### Section 16.1 Definitions

(a) **Base Units**

Shall mean Hour(s) of Covered Employment as defined in Article II Section 2.1(w).

(b) **Default**

Shall mean:

- (1) The failure of an Employer to make, when due, any Withdrawal Liability payment if the failure is not cured within sixty days after the Employer receives written notification from the Board of such failure; or
- (2) A Withdrawal or Partial Withdrawal after:
  - (A) The filing of a petition in bankruptcy by the Employer; or
  - (B) The inception of any insolvency proceedings under state or federal law with regard to the Employer; or
  - (C) Notice of a bulk sale under the Uniform Commercial Code with regard to the assets of the Employer; or
- (3) Where, after a request by the Trustees, the Employer is unable to provide adequate assurance, under all the facts and circumstances, that it is likely to pay its Withdrawal Liability.

(c) **Employer**

As defined in Section 2.1(o) of the Plan shall include, for the purposes of this Article XVI a Withdrawn or a Partially Withdrawn Employer. It shall include, except if the context requires otherwise, as determined by the Board of Trustees, all trades or businesses under common control with the Employer contributing to the Fund, within the meaning of Section 4001(c) of the Employee Retirement Income Security Act of 1974, as amended.

(d) **Employer's Unfunded Benefits**

Shall mean that portion of the Plan's Unfunded Benefits deemed to be attributable to an Employer, determined in accordance with Section 16.3 or 16.4.

(e) **Facility**

Shall mean each location (e.g., store, nursing home, warehouse, etc.) at which an Employer operates or does business.

(f) **Labor Dispute**

Shall mean an economic or unfair labor practice strike sanctioned by the Union.

(g) **Partial Withdrawal**

Shall mean any of the following conditions, and the date of a Partial Withdrawal shall be deemed to be on the last day of the Plan Year in which any of the following conditions occurs:

- (1) When an Employer's Base Units for the Plan Year and each of the two preceding Plan Years ("Testing Period") do not exceed 65% of the number of the Employer's Base Units determined by calculating the average Base Units during any two (2) Plan Years (which need not be consecutive) in which the Base Units were highest within the five (5) Plan Years before the Testing Period ("High Base Year"); or
- (2) When an Employer Permanently ceases to have any obligation to contribute under one or more, but fewer than all, Collective Bargaining Agreements under which the Employer was obligated to contribute to the Fund, but continues to perform the following type of work within the jurisdiction of such Collective Bargaining Agreement, or transfers such work to another location: the handling or selling of merchandise or rendering personal services in furtherance of the Employer's business. A cessation of obligations described in this paragraph shall not include a situation where one Collective Bargaining Agreement has been replaced with another; or
- (3) When an Employer Permanently ceases to have an obligation to contribute to the Fund with respect to work performed at one or more, but fewer than all, Facilities, but continues to perform work at the Facility of the following type of work for which the obligation to contribute ceased: the handling or selling of merchandise or rendering personal services in furtherance of the Employer's business.

(h) **Permanent or Permanently**

Shall mean a condition expected to last indefinitely, and shall be determined at the discretion of the Board of Trustees.

(i) **Plan's Unfunded Benefits**

Shall mean the amount calculated by subtracting the Fund's assets, as determined by the Board of Trustees, from the present value of the Fund's Vested Benefits, as determined by the Board of Trustees.

(j) **Vested Benefits**

Shall mean a benefit for which a Participant has satisfied the conditions for entitlement under the Plan or the requirements of ERISA (other than submission of a formal application, Retirement, completion of a required waiting period, or death in the case of benefit which returns all or a portion of a Participant's accumulated mandatory employee contributions upon the Participant's death), whether or not the benefit may subsequently be reduced or suspended by Plan amendment or an occurrence of any condition, or operation of ERISA or of the Internal Revenue Code of 1986.

(k) **Withdrawal**

Shall mean the earlier of the Permanent cessation by an Employer of either the obligation to contribute to the Fund or the Permanent cessation of all work covered under Collective Bargaining Agreements obligating the Employer to contribute to the Fund. Withdrawal does not occur if the cessation of the obligation to contribute or cessation of covered work is due solely to the pendency of a Labor Dispute.

(l) **Withdrawal Liability**

Shall mean the lump sum amount of liability owed as a result of a Withdrawal or Partial Withdrawal, determined under Section 16.3 or 16.4 after application of all reductions or limitations described in Sections 16.5 and 16.6.

(m) **Withdrawn Employer**

Shall mean an Employer with respect to which Withdrawal from the Fund within the meaning of Section 16.1(k) has occurred.

(n) **Partially Withdrawn Employer**

Shall mean an Employer with respect to which Partial Withdrawal from the Fund within the meaning of Section 16.1(g) has occurred.

**Section 16.2 Determination and Collection of Withdrawal Liability**

(a) The Board of Trustees shall determine:

- (1) Whether Withdrawal or Partial Withdrawal from the Fund has occurred with respect to an Employer;
- (2) The date of such Withdrawal or Partial Withdrawal;
- (3) An Employer's Withdrawal Liability;
- (4) The schedule of payments of an Employer's Withdrawal Liability; and
- (5) Any other decisions necessary to the establishment and calculation of liability under this Article XVI.

(b) An Employer shall be required to show to the Board of Trustees that the reductions or limitations described in Section 16.6(c)-(f) apply. Upon such showing, the Board of Trustees shall determine to what extent, if any, such reductions or limitations apply. An Employer showing of reductions or limitations shall be submitted to the Board of Trustees no later than ninety (90) days after the Employer receives the notice described in Section 16.7(e) from the Trustees. If an Employer fails to make such showing within the time allowed, the reductions or limitations shall be deemed to have been waived and shall not apply.

(c) In making the determinations described herein, the Board of Trustees may consult with the Fund's Actuary, attorney, auditor or administrative personnel.

(d) Effective January 1, 2011, a new Simplified Method as described in Section 16.11 shall be used for determining an Employer's Withdrawal Liability.

**Section 16.3 Determination of Employer's Unfunded Benefits Upon Withdrawal**

(a) The amount of an Employer's Unfunded Benefits upon a Withdrawal shall be the sum of:

- (1) The Pre-1980 Portion;

- (2) The Post-1980 Portion; and
- (3) The Reallocated Portion;

provided, however, if such sum is less than zero, the Employer's Withdrawal Liability shall be zero.

(b) For the purposes of this Section 16.3, the following definitions shall apply:

- (1) "Pre-1980 Portion" shall mean the Employer's proportional share of the unamortized amount of the Plan's Unfunded Benefits at the end of the Plan Year that ended on November 30, 1979, calculated pursuant to Sections 4211(b)(2)(D) and 4211(b)(3) of ERISA;
- (2) "Post-1980 Portion" shall mean the Employer's proportional share of the unamortized amount of any change in the Plan's Unfunded Benefits for Plan Years ending on and after November 30, 1980, calculated pursuant to Section 4211(b)(2)(A)-(C) and (E) of ERISA: and
- (3) "Reallocated Portion" shall mean the Employer's proportional share of the unamortized amounts of the reallocated Plan's Unfunded Benefits, if any, calculated pursuant to Section 4211(b)(4) of ERISA. In determining such Portion, the amounts described in Section 4211(b)(4)(B)(i)-(iii) of ERISA shall be the amounts determined by the Board of Trustees to be appropriate for use in such calculation, based on all the facts and circumstances it deems to be relevant in making such determinations. The fact that such amounts are not used by the Trustees for other purposes shall be irrelevant.

(c) Notwithstanding Section 16.3(b):

- (1) The fraction utilized in determining a proportional share of the amounts described in Section 16.3(a)(1)-(3) shall be based on five (5) Plan Years;
- (2) "The sum of all contributions made" and "total amount contributed" by an Employer or Employers for a Plan Year or Plan Years means: the amount of contributions accrued during the Plan Year and received during the Plan Year and the two months subsequent to the close of such Plan Year;
- (3) The total contributions counted for any Plan Year shall be reduced by the amount of contributions included in any previous annual total for any other Plan Year; and

- (4) (A) For Plan Years ending on or before November 30, 1979 the sum of all contributions made by Employers shall include the contributions of Withdrawn Employers who are not a “Significant Withdrawn Employer”;
- (B) For the purposes of this Section, a Significant Withdrawn Employer means:
  - (i) An Employer to whom the Plan has sent a notice of Withdrawal Liability under Section 4219 of ERISA; or
  - (ii) A Withdrawn Employer that in any Plan Year used to determine the denominator of a fraction, contributed at least \$250,000 or, if less, one percent of all contributions made by Employers for that year.
- (C) A group of Employers shall be treated as a single Employer for determining whether they are a Significant Withdrawn Employer under Sections 16.3(c)(4)(B)(i) and (ii) if they withdrew in a concerted withdrawal; a concerted withdrawal meaning a discontinuance of contributions to the Plan during a single Plan Year:
  - (i) By an employer association;
  - (ii) By all or substantially all Employers covered by a single Collective Bargaining Agreement; or
  - (iii) By all, or substantially all, Employers covered by Collective Bargaining Agreements with a single Union.

#### Section 16.4 Determination of Employer’s Unfunded Benefits Upon Partial Withdrawal

- (a) The amount of an Employer’s Unfunded Benefits upon a Partial Withdrawal shall be the amount determined under Section 16.3 which shall be determined as if the Employer had become a Withdrawn Employer on the date of the Partial Withdrawal, or in the case of a Partial Withdrawal under Section 16.1(g)(1), on the last day of the first Plan Year in the Testing Period; reduced in accordance with Section 16.6(b)(2) (if it is applicable); and multiplied by a fraction that is one (1) minus the fraction:
  - (1) Whose numerator is the Employer’s Base Units for the Plan Year following the Plan Year in which the Partial Withdrawal occurs; and

- (2) Whose denominator is the Employer's average Base Units during the five (5) Plan Years preceding the Plan Year of the Partial Withdrawal except in the case of a Partial Withdrawal under Section 16.1(g)(1), the five (5) Plan Years preceding the Testing Period shall be used.
- (b) An Employer's Withdrawal Liability for a Partial Withdrawal shall be offset against any Withdrawal Liability that may arise upon a subsequent Withdrawal or Partial Withdrawal by such Employer in a manner determined by the Board of Trustees.

### Section 16.5 Reduction in Liability After Imposition of Partial Withdrawal Liability

- (a) Withdrawal Liability payable as a result of a Partial Withdrawal shall be eliminated or reduced in accordance with this Section.
- (b) In any case in which the number of Base Units for the entire Fund, in the two Plan Years following the Plan Year of a Partial Withdrawal of an Employer, is higher than such number immediately after the Partial Withdrawal, the Employer's Withdrawal Liability for the Partial Withdrawal is to be reduced to the extent and in accordance with Section 16.5(c).
- (c) The Board of Trustees is to determine the number of Facilities operated by the Employer during the High Base Year under Section 16.1(g)(1). If the number of Facilities utilized by the Employer during the Plan Year in which Partial Withdrawal Liability is due exceeds the number of Facilities utilized by the Employer during such High Base Year, the Partial Withdrawal Liability payment for the Plan Year subsequent to the Plan Year of such determination shall be reduced in an amount determined in accordance with Section 16.5(d).
- (d) The amount of Partial Withdrawal Liability otherwise payable for a Plan Year shall be multiplied by a fraction, the numerator of which is the number of Facilities utilized during the High Base Year pursuant to Section 16.5(c) and the denominator of which is the number of Facilities utilized during the Plan Year in which the determination described in Section 16.5(c) is made.

### Section 16.6 Limitations in Determining Withdrawal Liability

- (a) To determine an Employers Withdrawal Liability, the Employer's Unfunded Benefits shall be reduced or adjusted in accordance with this Section 16.6, as applicable.



(b) **Deductible**

In the case of a Withdrawal, an Employer's Unfunded Benefits, if any, shall be reduced by the "Reduction Amount," which shall mean the lesser of:

- (1) .75 percent (three quarters of one percent) of the Plan's Unfunded Benefits as of the end of the Plan Year ending before the date of the Withdrawal or Partial Withdrawal; or
- (2) \$50,000;

Provided, however, that if the Employer's Unfunded Benefits (determined without regard to this Section 16.6(b)) exceed \$100,000 the Reduction Amount shall be reduced by the amount of such excess until the reduction is zero.

- (3) This Section 16.6(b) shall not apply to an Employer who has Withdrawn in concert with, or during the same period as, substantially all of the Employers, as determined by the Board of Trustees, as described in Section 4209(c) of ERISA.
- (4) In the case of a Partial Withdrawal, this Section 16.6(b) shall be applied in determining the Employer's Unfunded Benefits pursuant to Section 16.4, but shall not be applied to reduce the Unfunded Benefits so determined.

(c) **Sale**

- (1) Upon a showing by an Employer, to the satisfaction of the Board of Trustees, that its Withdrawal or Partial Withdrawal has occurred because of a bona fide sale of all (or substantially all, as determined by the Board of Trustees) of its assets in an arm's length transaction to an unrelated party (as defined in Section 4204(d) of ERISA), the Employer's Unfunded Benefits shall not exceed the greater of:

- (A) The applicable portion of the Liquidation or Dissolution Value of the Employer (determined without regard to the Withdrawal Liability, determined after the sale of the Employer's assets) applying the following table:

| <b>If the Liquidation or Dissolution Value of the Employer after the Sale of Exchange is:</b> | <b>The Portion is:</b>                                    |
|---|---|
| Not more than \$2,000,000   | 30% of the amount   |
| More than \$2,000,000 but not more than 4,000,000   | \$600,000 + 35% of the amount in excess of \$2,000,000    |
| More than \$4,000,000 but not more than \$6,000,000   | \$1,300,000 + 40% of the amount in excess of \$4,000,000  |
| More than \$6,000,000 but not more than \$7,000,000   | \$2,100,000 + 45% of the amount in excess of \$6,000,000  |
| More than \$7,000,000 but not more than \$8,000,000   | \$2,550,000 + 50% of the amount in excess of \$7,000,000  |
| More than \$8,000,000 but not more than \$9,000,000   | \$3,050,000 + 60% of the amount in excess of \$8,000,000  |
| More than \$9,000,000 but not more than \$10,000,000  | \$3,650,000 + 70% of the amount in excess of \$9,000,000  |
| More than \$10,000,000  | \$4,350,000 + 80% of the amount in excess of \$10,000,000 |

or

- (B) The Employer's determination, evidenced by an Actuary's report acceptable to the Board of Trustees, of the Unfunded Benefits actually attributable to Employees of the Employer who were or are Participants as of the date of the Employer's Withdrawal or Partial Withdrawal. The final determination of such Unfunded Benefits shall be made by the Board of Trustees.
- (2) For the purposes of this Section 16.6(c), Liquidation or Dissolution Value shall mean the actual value of the Employer's assets sold pursuant to a sale described in Section 16.6(c)(1)(A) minus bona fide liabilities of the Employer actually paid in an arm's length transaction to an unrelated party (as defined in Section 4204(d) of ERISA), and shall be based upon all the facts and circumstances including a submission by the Employer, acceptable to the Board of Trustees, evidencing such Value. The final determination of such Value shall be made by the Board of Trustees.
- (3) This Section 16.6(c) shall be applied to the Unfunded Benefits calculated after application of Section 16.6(b).

- (4) This Section 16.6(c) shall not apply to an Employer undergoing a reorganization under Title II, “Bankruptcy Act” of the United States Code, (hereinafter, “Title II, U.S.C.”), or a similar provision of state law, as determined by the Board of Trustees.
- (d) Except to the extent specified in this Section 16.6(d), an Employer shall not be liable upon a Withdrawal or Partial Withdrawal of the Employer (hereinafter in this Section 16.6(d) referred to as the “Seller”) if such Withdrawal or Partial Withdrawal occurs solely because, as a result of a bona fide, arm’s length sale of assets to an unrelated party as defined in Section 4204(d) of ERISA (hereinafter in this Section referred to as the “Purchaser”), the Seller ceases covered operations or ceases to have an obligation to contribute to the Fund for such operations, and if:
- (1) The Purchaser has an obligation to contribute to the Fund with respect to the operations for substantially the same number of Base Units for which the Seller had an obligation to contribute to the Fund, as determined by the Board of Trustees: and,
  - (2) The Purchaser provides to the Fund for a period of five (5) Plan Years commencing with the first Plan Year beginning after the sale of assets, a bond issued by a corporate surety that is an acceptable surety for purposes of Section 412 of ERISA, or an amount held in escrow by a bank or similar financial institution satisfactory to the Board of Trustees, in an amount equal to the greater of:
    - (A) The average annual contribution required to be made by the Seller with respect to the operations under the Fund for the three (3) Plan Years preceding the Plan Year in which the sale of the Sellers’ assets occurs; or
    - (B) The annual contribution that the Seller was required to make with respect to the operations under the Fund for the last Plan Year before the Plan Year in which the sale of the Seller’s assets occurs; which bond or escrow shall be paid to the Fund if the Purchaser becomes a Withdrawn or Partially Withdrawn Employer from the Fund, or fails to make a contribution to the Fund when due, at any time during the first five (5) Plan Years beginning after such sale; and,
  - (3) The contract of sale provides that, if the Purchaser becomes a Withdrawn or Partially Withdrawn Employer from the Fund, during such first five (5) Plan Years, the Seller is secondarily liable for any Withdrawal Liability Seller would have had to the Fund (but for this Section 16.6(d)) if the liability of the Purchaser with respect to the Fund is not paid. The contract of sale between Seller and Purchaser shall provide substantially as follows:

- (A) Notwithstanding any provision to the contrary, the Purchaser in the interest of continued labor peace at the Facilities subject to this Agreement, agrees to, and hereby does, become a party to the Collective Bargaining Agreement between (name of Seller) and (name of Union), effective (effective dates), a copy of which is attached hereto, and (name of Purchaser) shall succeed to all rights, responsibilities and liabilities of (name of Seller), with respect to such Facilities.
- (B) The Purchaser hereby agrees within ten (10) days of the sale to execute a Participation Agreement with the Fund, and succeed to the rights, responsibilities and liabilities of (name of Seller) thereto, with respect to the contribution Base Units of (name of Seller) which relate to work at the Facilities subject to this Agreement.
- (C)
  - (i) The Purchaser agrees to contribute to the Fund for at least three (3) years with respect to the operations for at least the average number of contribution Base Units for which the Seller had an obligation to contribute to the Fund during the last three (3) Plan Years preceding the Plan Year in which this sale occurs. The Purchaser agrees that it shall assume the contribution history of the Seller with respect to the Fund as if such contributions had been made by the Purchaser.
  - (ii) The Purchaser shall provide to the Fund for a period of five (5) Plan Years commencing with the first Plan Year beginning after the sale of assets, a bond issued by a corporate surety company that is an acceptable surety for purposes of Section 412 of ERISA, or an amount held in escrow by a bank or similar financial institution satisfactory to the Fund's Board of Trustees, in an amount equal to the greater of:
    - (aa) The average annual contribution required to be made by the Seller with respect to the operations under the Fund for the three (3) Plan Years preceding the Plan Year in which the sale of the Seller's assets occurs; or
    - (bb) The annual contribution that the Seller was required to make with respect to the operations under the Fund for the last Plan Year before the Plan Year in which the sale of the Seller's assets occurs;

which bond or escrow shall be paid to the Fund if the Purchaser becomes a Withdrawn or Partially Withdrawn Employer from the Fund, or fails to make a contribution to the Fund when due, at any time during the first five Plan Years beginning after such sale. The amount of the bond or escrow shall be doubled if during the Plan Year in which such sale takes place, the Fund is in reorganization under Section 4241 of ERISA.

(D) If the Purchaser becomes a Withdrawn or Partially Withdrawn Employer from the Fund during the first five (5) Plan Years following the sale of assets, the Seller shall be secondarily liable for any Withdrawal Liability it would have had to the Fund if the liability of the Purchaser with respect to the Fund is not paid.

(E) If the Purchaser:

(ii) Becomes a Withdrawn or Partially Withdrawn Employer from the Fund before the last day of the fifth Plan Year beginning after the sale of assets; and,

(iii) Fails to make any Withdrawal Liability payment when due, then the Seller shall pay to the Fund an amount equal to the payment that would have been due from the Seller but for Section 16.6(d) of the Plan.

(F) If all, or substantially all, of the Seller's assets are distributed, or if the Seller is liquidated before the end of the five (5) Plan Year period described in paragraph (C)(ii), then the Seller shall provide a bond or amount in escrow equal to the present value of the Withdrawal Liability the Seller would have had but for Section 16.6(d) of the Plan.

(G) If only a portion of the Seller's assets are distributed during such period, then a bond or escrow shall be provided, in accordance with regulations prescribed by the Pension Benefit Guaranty Corporation (PBGC).

(H) All defined terms used herein shall be construed in accordance with the definitions of such terms as set with in the Plan.

(4) If the Purchaser:

(A) Becomes a Withdrawn or Partially Withdrawn Employer from the Fund before the last day of the fifth Plan Year beginning after the sale of assets; and,

- (B) Fails to make any Withdrawal Liability payment when due, then the Seller shall pay to the Fund the payments that would have been due from the Seller but for this Section 16.6(d).
- (5) If all, or substantially all, of the Seller's assets are distributed, or if the Seller is liquidated before the end of the fifth Plan Year period described in Section 16.6(d)(2), then the Seller shall provide a bond or amount in escrow equal to the present value of the Withdrawal Liability the Seller would have had but for this Section 16.6(d).
- (6) If only a portion of the Seller's assets are distributed during such period, then a bond or escrow shall be required, in accordance with regulations prescribed by the PBGC.
- (7) The liability of the party furnishing a bond or escrow under this Section 16.6(d), shall be reduced, upon payment of the bond or escrow to the Fund, by the amount thereof.
- (8) For the purposes of this Section, the liability of the Purchaser shall be determined as if the Purchaser were the Seller and had been required to contribute to the Fund that amount which the Seller was required to contribute.
- (9) If the Fund is in reorganization within the meaning of Section 4241 of ERISA in the Plan Year in which the sale of assets occurs, the Purchaser shall furnish a bond or escrow in an amount equal to 200 percent of the amount described in Section 16.6(d)(2).

(e) **Insolvency**

- (1) Upon a showing by an Employer, to the satisfaction of the Board of Trustees, that it is undergoing a Liquidation or Dissolution; and, its liabilities (including Withdrawal Liability, determined without regard to this Section 16.6(e)) exceed its assets (determined as of the commencement of the Liquidation or Dissolution); then the Employer's Unfunded Benefits shall not exceed the sum described in Section 16.6(e)(2).
- (2) The Withdrawal Liability of any Employer described in Section 16.6(e)(1) shall not exceed the sum of:
  - (A) 50% of the Employer's Unfunded Benefits (determined without regard to this Section); plus,
  - (B) That portion of 50% of the Employer's Unfunded Benefits (determined under Section 16.6(e)(1)) that does not exceed the Employer's Liquidation or

Dissolution Value (determined without regard to Withdrawal Liability) calculated:

- (ii) As of the commencement of the Liquidation or Dissolution; and
  - (iii) After reducing the Liquidation or Dissolution Value by the amount determined under Section 16.6 (e) (2) (A)
- (3) For purposes of this Section 16.6(e), Liquidation or Dissolution Value shall mean the actual value of the Employer's assets sold pursuant to a sale, minus bona fide liabilities of the Employer actually paid in an arm's length transaction to an unrelated party (as defined in Section 4204(d) of ERISA), and shall be based upon all facts and circumstances, including a submission by the Employer, acceptable to the Board of Trustees, evidencing such value. The final determination of such value shall be made by the Board of Trustees.
- (4) The Board of Trustees shall determine:
- (A) Whether an Employer is undergoing a Liquidation or Dissolution within the meaning of this Section 16.6(e); and,
  - (B) The amount of liabilities and assets of the Employer, as described in Section 16.6(e)(1)(B) based upon all the facts and circumstances, including a submission acceptable to the Board of Trustees, evidencing the Employer's information regarding such liabilities and assets.

(f) **Individual Liability**

Upon a showing by an Employer, to the satisfaction of the Board of Trustees, that as an Employer it operated as a sole proprietorship, or partnership, property described as exempt in Title II U.S.C. Section 522 (or similar provisions of law, as determined by the Board of Trustees) shall not be available to pay Withdrawal Liability.

**Section 16.7 Identification of Withdrawal/Partial Withdrawal**

- (a) Each Employer shall periodically file with the Fund such information as the Trustees reasonably request to enable the Trustees to determine the status of each Employer participating in the Fund.
- (b) Notwithstanding each Employer's obligations to file such periodic reports as required by the Trustees, an Employer shall furnish within 30 days after written request from the Trustees such

additional information as the Trustees determine to be necessary to enable the Trustees to determine an Employer's status with respect to the Fund.

- (c) In addition to all other reporting requirements of the Employer to the Fund, each Employer shall give notice to the Fund of:
  - (1) Any proposed bulk sale transaction within the meaning of Article 6 of the Uniform Commercial Code; and/or,
  - (2) Any closing of a Facility where Employees of the Employer who plan's participate in the Fund are employed; and/or,
  - (3) Any sale of all or substantially all of the Employer's assets out of the ordinary course of business; and/or,
  - (4) The sale of any Facility where Employees of the Employer who participate in the Fund are employed.
- (d) The Trustees shall adopt reasonable procedures to review the status of each Employer with respect to the Fund. Upon identification of a Withdrawal or Partial Withdrawal by an Employer, the Trustees shall determine the Withdrawal Liability and schedule for payments of such Employer. In the event the Trustees lack sufficient data, they shall request such additional information as the Trustees deem necessary to determine the Employer's status as provided by Section 16.7(b), and the Employer shall within 30 days after such request furnish such information to the Trustees.
- (e) As soon as practical after the Trustees have identified an Employer's Withdrawal or Partial Withdrawal from the Fund, the Trustees shall notify the Employer of the amount of its Withdrawal Liability as calculated under Section 16.3 or Section 16.4 and the schedule for liability payments as prescribed by Section 16.8 and shall demand payment in accordance with the payment schedule.
- (f) No later than 90 days after the Employer receives the notice described in Section 16.7(e), the Employer:
  - (1) May ask the Trustees to review, any specific matter relating to the determination of the Employer's Withdrawal Liability and the schedule of payments,
  - (2) May identify any inaccuracy in the determination of the amount of the Plan's unfunded vested benefits allocable to the Employer, and



- (3) May furnish any additional relevant information to the Trustees.
- (g) After a reasonable review of any matter raised pursuant to Section 16.7(f) or 16.2(b), the Trustees shall notify the Employer of:
  - (1) The decision of the Board of Trustees,
  - (2) The basis for such decision, and
  - (3) The reason for any change in the determination of the Employer's Withdrawal Liability or schedule of Withdrawal Liability payments.

### Section 16.8 Payment of Withdrawal Liability

- (a) The amount of Withdrawal Liability upon Withdrawal or Partial Withdrawal from the Fund, determined under Section 16.3 or Section 16.4 after adjustment under Section 16.6, shall be payable in monthly installments over the period of years necessary to amortize the amount of Withdrawal Liability in level annual payments calculated as if the first payment were made on the first day of the Plan Year following the Plan Year in which the Withdrawal or Partial Withdrawal occurs and as if each subsequent payment were made on the first day of each subsequent Plan Year as prescribed herein.

#### (b) **Calculation of Annual Payment**

- (1) The amount of each annual payment shall be the product of:
  - (A) The average number of Base Units for the period of three (3) consecutive Plan Years, during the period of ten (10) consecutive Plan Years ending before the Plan Year in which the Withdrawal or Partial Withdrawal occurs, in which the number of Base Units for which the Employer had an obligation to contribute to the Fund was the highest multiplied by,
  - (B) The highest contribution rate at which the Employer had an obligation to contribute to the Fund during the ten (10) years ending with the Plan Year in which the Withdrawal or Partial Withdrawal occurred.
- (2) In the case of a Partial Withdrawal described in Section 16.1(g)(1), the amount of each annual payment shall be the product of:
  - (A) The amount determined under Section 16.8(b)(1), multiplied by.

(B) The fraction determined under Section 16.4(a)(1-2).

(3) A Partial Withdrawal described in Section 16.1(g)(1) shall be deemed to occur on the last day of the first year of the Testing Period described in Section 16.1(g)(1).

(c) **Assumptions for Calculation of Amortization Period**

The determination of the amortization period shall be based on the assumptions used for the most recent actuarial valuation for the Fund.

(d) **Time for Payment**

Each annual payment shall be due and payable in twelve (12) equal installments, due monthly. The first payment shall be due no later than the earlier of:

- (1) 60 days after the date of the demand for payment of the Withdrawal Liability; or,
- (2) The next due date for payment of contributions to the Fund, notwithstanding any request for review or appeal of the determination of the amount of such Withdrawal Liability or of the schedule of payment.

(e) **Limitation of Collection Period**

In any case in which the amortization period required for payments pursuant to Section 16.8(b) exceeds 20 years, the Employer's liability shall be limited to the first 20 annual payments determined under Section 16.8(b).

(f) **Employer Delinquencies**

(1) In the event an Employer is delinquent in making any installment payment of Withdrawal Liability, the Fund shall send notice of such delinquency by mailgram (or similar method) to the Employer who shall have five (5) working days after the date such notice was sent to cure its delinquency.

(2) In the event the Employer fails to cure its delinquency after notice as provided by Section 16.8(f)(1), then the Employer shall pay, in addition to the amount owed, the greater of:

(A) Interest on the unpaid installments; or,

(B) Liquidated damages in an amount of 20% of the delinquent sum.

- (3) The entire outstanding amount of an Employer's Withdrawal Liability, plus accrued interest on the total outstanding liability from the first date of the Employer's delinquency, and additional interest and liquidated damages provided under Section 16.8(f)(2) shall become immediately due and payable upon an act of Default by an Employer obligated to pay Withdrawal Liability; forbearance by the Trustees in demanding acceleration of payments shall not be deemed a waiver of the Fund's right to accelerate payments. The term "Default" as used in the Section includes:
- (A) The failure of an Employer to make, when due, payment of Withdrawal Liability or payment of any installment payment of Withdrawal Liability, if the failure is not cured within 60 days after written notification pursuant to Section 16.8(f)(1) is sent to the Employer from the Fund of such failure; or,
  - (B) The filing of a petition in bankruptcy by the Employer; or,
  - (C) The inception of any insolvency proceedings under state or federal law with regard to the Employer; or
  - (D) The commencement of a bulk sale proceeding within the meaning of the Uniform Commercial Code; or,
  - (E) Where after request by the Trustees the Employer is unable to provide adequate assurance, under all the facts and circumstances, that it is likely to pay its Withdrawal Liability.
- (4) Wherever interest is required to be paid under this Section, interest shall be charged at two percent above the prime rate then charged by First National Bank of Chicago.
- (5) In the event that the Trustees initiate legal proceedings to enforce payment of Withdrawal Liability, the Fund shall be entitled to reasonable attorney's fees, costs of such legal proceedings, and such other legal or equitable relief as a court of competent jurisdiction shall deem appropriate.
- (g) The Employer may prepay the outstanding amount of any unpaid Withdrawal Liability payments determined under Section 16.8(b), plus accrued interest, if any, in whole or in part, without penalty.

(h) In the event the Fund terminates by the Withdrawal of every Employer from the Fund, or substantially all the Employers withdraw from the Fund pursuant to an agreement or arrangement to withdraw from the Fund:

- (1) The liability of each Employer shall be determined or redetermined and paid without regard to Sections 16.6(b) and 16.8(e); and
- (2) Notwithstanding any other provisions of this Article XVI, the Plan's Unfunded Benefits shall be fully allocated among all such Employers.

Withdrawal by an Employer from the Fund during a period of three (3) consecutive Plan Years within which substantially all the Employers that have an obligation to contribute to the Fund incur Withdrawal, shall be presumed to be a Withdrawal pursuant to an agreement or arrangement, unless the Employer proves otherwise to the Trustees by a preponderance of the evidence.

### Section 16.9 Resolution of Disputes

(a) Any disputes between an Employer and the Fund concerning a determination made by the Board of Trustees under this Article XVI shall be resolved through arbitration. The Employer may initiate the arbitration proceeding by serving upon the Trustees a notice of initiation of arbitration setting forth a statement of the amount involved, the nature of the dispute and the remedy sought, attaching a copy of the demand for Withdrawal Liability and any request for review or reconsideration and the response thereto. Such notice of initiation of arbitration must be received by the Board of Trustees no later than the earlier of:

- (1) A date within a 60-day period following the date the Employer receives notification from the Trustees described in Section 16.7(g), or
- (2) A date within a 180-day period following the date of the Employer's request for review filed with the Trustees pursuant to Section 16.7(f), or a showing submitted to the Trustees pursuant to Section 16.2(b).

No arbitration may be initiated, and an Employer notice of arbitration will be rejected by the Trustees, if prior thereto, no request for review has been filed with the Trustees pursuant to Section 16.7(f), or showing has been submitted to the Trustees pursuant to Section 16.2(b).

(b) The Fund shall not initiate arbitration in any event.

- (c) The arbitration shall be conducted in accordance with procedures established by the PBGC, and if none, then according to the procedures of the American Arbitration Association.
- (d) The Fund may purchase insurance to cover the potential liability of the arbitrator.
- (e) The Employer shall pay the expenses of any arbitration as follows:
  - (1) In the event the Employer prevails, the Employer shall pay half of the costs of the arbitration, including arbitrator's fees and the Fund shall pay the remaining half; each side shall pay its own attorney's fees and costs, if any; or
  - (2) In the event the Employer does not prevail, the Employer shall pay all of the costs of the arbitration, including arbitrator's fees and the Fund's attorneys' fees and costs.

The arbitrator shall award the amount of costs and the amount of attorney's fees as set forth in this Section 16.9(e).

### Section 16.10 Information Requests

- (a) An Employer may request in writing that the Fund make available to the Employer general information necessary for the Employer to compute its Withdrawal Liability with respect to the Fund (other than information, which is unique to that Employer). The Fund shall furnish the information for examination at the Fund's office to the Employer without charge. In the event copies of any documents are furnished to the Employer, such copies will be subject to a charge of \$.25 per page.
- (b) If any Employer requests in writing that the Board of Trustees provide information unique to that Employer, the Board of Trustees may require the Employer to pay the reasonable cost of providing such information.

Notwithstanding the foregoing Sections or Subsections, any payment to the Plan in any form that is accepted as a voluntary payment by the Trustees shall not be used in any way to determine the withdrawal liability payment schedule for the Employer under ERISA Section 4219 or Article XVI of the Plan, or otherwise to increase the Employer's share of withdrawal liability or withdrawal liability payments to the Plan in any way. Notwithstanding the foregoing, the voluntary payment shall be included in both the numerator and the denominator for purposes of determining the withdrawal liability allocation under ERISA Section 4211 and Plan Section 16.3(b); provided that the voluntary payment shall be so included in both the numerator and denominator only so long as Plan's Counsel determines that ERISA Section 4211 requires that the voluntary payment must be included in at least the denominator of the allocation

fraction. Should any voluntary payment be included for purposes of ERISA Section 4211, it shall first be reflect in Form 5500 and in the allocation fraction as of the last day of the Plan Year during which the payment is made, regardless of whether its inclusion in Form 5500 is permissible in an earlier year in accordance with IRC 11.412(c)-12. A voluntary payment shall not include amounts for which there is an obligation of the Employer to contribute in some form to the Plan including an obligation under law.

### Section 16.11 Adoption of Simplified Method for Determining Withdrawal Liability

In determining an Employer's Withdrawal Liability for a Withdrawal or Partial Withdrawal, the Plan has adopted the PBGC Technical Update 10-3: "Simplified Methods for Applying the Requirement to Disregard Benefit Reductions in Determining Withdrawal Liability."

For purposes of this Section 16.11, if adjustable benefits (as defined in Section 432(e)(8) of the Code) have been reduced under a rehabilitation plan (pursuant to Section 432(e)(1) of the Code), then the amount of the Plan's Unfunded Benefits allocable to an Employer that withdraws after the last day of the Plan Year in which the reduction occurred is equal to the sum of (a) and (b) where:

- (a) Is the amount determined in accordance with Section 4211 of ERISA under the method in use by the Plan, and
- (b) Is the Employer's proportional share determined as of the end of the Plan Year prior to withdrawal of the unamortized balance of the value of the reduced nonforfeitable benefits ("Affected Benefits").

Under this Simplified Method:

- (1) The value of the Affected Benefits benefit reductions which are to be disregarded under Section 432(e)(9)(A) of the Code in determining the Plan's Unfunded Benefits for purposes of determining an Employer's Withdrawal Liability is determined using the same assumptions that the Plan uses to determine an Employer's Unfunded Benefits for purposes of Section 4211 of ERISA.
- (2) The unamortized balance of the Affected Benefits as of a Plan Year is the value of that amount as of the end of the Plan Year in which the reductions took effect (base year), reduced as if that amount were being fully amortized in level annual installments over 15 years, at the Plan's valuation interest rate, beginning with the first Plan Year after the base year. An Employer's proportional share of the unamortized balance of the Affected Benefits is the product of:

- (i) The unamortized balance as of the end of the Plan Year preceding the withdrawal, and
- (ii) A fraction:

The numerator of which is the sum of all contributions required to be made by the Employer under the Plan for the last 5 Plan Years ending before withdrawal, and

The denominator of which is the total amount contributed under the Plan by all Employers for the last 5 Plan Years ending before the withdrawal, increased by any Employer contributions owed with respect to earlier periods which were collected in those Plan Years, and decreased by any amount contributed to the Plan during those Plan Years by Employers who ceased to be obligated to contribute or ceased covered operations.

To the extent there are benefit reductions under a rehabilitation plan in more than one Plan Year, the Affected Benefits unamortized balances shall be aggregated for this purpose.

Employer surcharges under Section 432(e)(7) of the Code shall be excluded from contributions under the allocation fraction described above.

## ARTICLE XVII TOP HEAVY PROVISIONS

(Applicable for Noncollectively Bargained Employees)

### Section 17.1 Definitions

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

(a) **Key Employee**

“Key Employee” means any Employee or former Employee (and 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 Section 416(i)(1) for Plan Years beginning after December 31, 2002), a Five-Percent Owner of the Employer, or a One-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 Section 415(c)(3). The determination of who is a Key Employee will be made in accordance with Code Section 416(i)(1) and the applicable regulations and other guidance of general applicability issued thereunder.

(b) **Non-Key Employee**

“Non-Key Employee” means any Employee who is not a Key Employee.

(c) **Annual Compensation**

“Annual Compensation” means compensation as defined in Code Section 415(c)(3) and Section 1.415-(c)2 of the Treasury Regulations, but in no event more than \$200,000 per Calendar Year (as adjusted annually under Code Section 401(a)(17)). Annual Compensation also includes amounts contributed by the Employer pursuant to a salary reduction agreement which are excludable from an Employee’s gross income under Code Sections 125, 401(a)(8), 402(h), 403(b) or, effective December 1, 2001, 132(f)(4).

For Plan Years beginning on or after January 1, 1994, the amount of a Participant’s Compensation from any one Employer that may be taken into account for any Plan purpose shall not exceed the OBRA ’93 Annual Compensation limit in any Plan Year. The OBRA ’93 Annual Compensation limit is \$150,000, as that amount may be adjusted from time to time by the Secretary of Treasury under Code Section 401(a)(17). The cost-of-living adjustment in effect for



a calendar year applies to any period, not exceeding twelve (12) months, over which compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the OBRA '93 Annual Compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is twelve (12).

(d) **Determination Date**

“Determination Date” means, with respect to any Plan Year, the last day of the preceding Plan Year, or in the case of the first Plan Year of any Plan, the last day of such Plan Year.

## Section 17.2 Top Heavy Plan Requirements

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

- (a) Special vesting requirements of Code Section 416(b) pursuant to Section 17.4.
- (b) Special minimum benefit requirements of Code Section 416(c) pursuant to Section 17.5.

## Section 17.3 Determination of Top Heavy Status

This Plan shall be a Top Heavy Plan for any Plan Year commencing after December 31, 1983, in which, as of the Determination Date,

- (a) The Actuarial Present Value of Accrued Benefits of Key Employees and
- (b) The sum of the aggregate accounts of Key Employees under this Plan and all plans of an Aggregation Group exceeds 60% of the Actuarial Present Value of Accrued Benefits and the aggregate accounts of all Key Employees and Non-Key Employees under this Plan and all plans of an Aggregation Group.

If any Participant is a Non-Key Employee for a Plan Year, but such Participant was a Key Employee for any prior Plan Year, such Participant’s Actuarial Present Value of Accrued Benefits and/or aggregate account balance shall not be taken into account for purposes of determining whether this Plan is a Top Heavy (or whether any Aggregation Group which includes this Plan is a Top Heavy Group). In addition, for Plan Years beginning after December 31, 1984, if a Participant or former Participant has not received any Annual Compensation from any Employer maintaining the Plan (other than benefits under the Plan) at any time during the one (1) year period ending on the Determination Date, the aggregate account and/or Actuarial Present

Value of Accrued Benefit for such Participant or former Participant shall not be taken into account for the purposes of determining whether this Plan is a Top Heavy Plan.

“Aggregation Group” means either a Required Aggregation Group or a Permissive Aggregation Group as hereinafter determined.

- (a) A Required Aggregation Group consists of (a) each qualified plan of the employer in which at least one key employee participates or participated in any time during the Plan Year containing the determination date or any of the four preceding Plan Years regardless of when the plan has terminated and (b) any other qualified plan of the employer which enables a plan described in (a) above to meet the requirements of Section 401(a)(4) or 410 of the Internal Revenue Code.

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

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

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

- (c) Only those plans of an Employer in which the Determination Dates fall within the same Calendar Year shall be aggregated in order to determine whether such plans are Top Heavy Plans.

In the case of a defined benefit plan, a Participant’s Actuarial Present Value of Accrued Benefits shall be determined:

- (a) 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,
- (b) For the first Plan Year, as if:
  - (1) The Participant terminated service as of the Determination Date; or

- (2) The Participant terminated service as of the actuarial valuation date, but taking into account the estimated Actuarial Present Value of Accrued Benefits as of the Determination Date.
- (c) For any other Plan Year, as if the Participant terminated service as of the actuarial valuation date,
- (d) The actuarial valuation date must be the same date used for computing the defined benefit plan minimum funding costs, regardless of whether a valuation is performed in the Plan Year.

The calculation of a Participant's Actuarial Present Value of Accrued Benefit as of a Determination Date shall be the sum of the following:

- (a) The Actuarial Present Value of Accrued Benefit using actuarial assumptions stated in the most recent actuarial valuation;
- (b) 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 Section 416(g)(2) during the 1-year period ending on the determination date. The preceding sentence shall also apply to distributions under a terminated plan which, had it not been terminated, would have been aggregated with the Plan under Code Section 416(g)(2)(A)(i). In the case of a distribution made for a reason other than severance from employment, death, or disability, this provision shall be applied by substituting "5-year period" for "1-year period."

The accrued benefits and accounts of any individual who has not performed services for the Employer during the 1-year period ending on the determination date shall not be taken into account.

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;

- (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 Actuarial Present Value of Accrued Benefits:
- (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 for rollovers or plan-to-plan transfers, it shall always consider

such rollover or plan-to-plan transfers as a distribution for purposes of this Section. If this Plan is the plan accepting such rollovers or plan-to-plan transfers, it shall not consider such rollovers or plan-to-plan transfers accepted after December 31, 1983, as part of the Participant’s Actuarial Present Value of Accrued Benefits. However, rollovers or plan-to-plan transfers accepted prior to January 1, 1984, shall be considered as part of the Participant’s Actuarial Present Value of Accrued Benefits; and

- (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 rollover or plan-to-plan transfer, it shall not be counted as a distribution for purposes of this Section. If this Plan is the plan accepting such rollover or plan-to-plan transfer, it shall consider such rollover or plan-to-plan transfer as part of the Participant’s Actuarial Present Value of Accrued Benefits, irrespective of the date on which such rollover or plan-to-plan transfer is accepted.

“Top Heavy Group” means an Aggregation Group in which, as of the Determination Date, the sum of:

- (a) The present value of accrued benefits of Key Employees under all defined benefit plans included in the group, and
- (b) The aggregate accounts of Key Employees under all defined contribution plans included in the group exceeds 60% of a similar sum determined for all Participants.

Notwithstanding anything herein to the contrary, the effective date otherwise provided for herein for the application of Code Section 416 to this Plan (Plan Years beginning after December 31, 1983) shall be extended in accordance with any federal law or regulatory authority.

**Section 17.4 Top Heavy Vesting**

Notwithstanding the determination of a Participant’s vested status for any Top Heavy Plan Year, the vested portion of any Participant’s Accrued Benefit shall be determined on the basis of the Participant’s number of Years of Eligibility Service according to the following schedule:

| <b>Years of Eligibility Service</b> | <b>Percentage</b> |
|-------------------------------------|-------------------|
| less than 3                         | 0%                |
| 3 or more                           | 100%              |

If, in any subsequent Plan Year, the Plan ceases to be a Top Heavy Plan, the Trustees may elect to:

- (a) Continue to apply this vesting schedule in determining the vested portion of any Participant’s accrued benefit, or

- (b) Revert to the vesting schedule in effect before this Plan became a Top Heavy Plan pursuant to Code Section 411(a)(10). The nonforfeitable percentage of the Accrued Benefit before the Plan ceased being Top Heavy, therefore must not be reduced and any Participant with three or more years of vesting service must be given the option of remaining under the Top Heavy vesting schedule. Any such reversion shall be treated as a Plan amendment.

The Top Heavy vesting schedule does not apply to the Accrued Benefit of any Employee who does not have one Hour of Employment after the Plan has initially become a Top Heavy Plan and such Employee's Accrued Benefit attributable to Employer contributions will be determined without regard to this Article.

### Section 17.5 Top-Heavy Benefit Requirements

The minimum accrued benefit derived from Employer contributions to be provided under the Section for each Non-Key Employee who is a Participant shall equal the product of:

- (a) One-twelfth (1/12th) of Annual Compensation averaged over the five (5) consecutive "limitation years" (or actual number of "limitation years" if less) which produces the highest average, and
- (b) The lesser of
  - (1) 2% multiplied by Years of Eligibility Service, or
  - (2) 20%.

For purposes of providing the minimum benefit under Code Section 416, a Non-Key Employee who is not a Participant solely because:

- (a) His Annual Compensation is below a stated amount, or
- (b) He declined to make mandatory contributions to the Plan will be considered to be a Participant.

For purposes of this Section, Years of Eligibility Service for any Plan Year ending prior to January 1, 1984, or for any Plan Year during which the Plan was not a Top Heavy Plan shall be disregarded.

For purposes of this Section, Annual Compensation for any "limitation year" ending prior to January 1, 1984, or subsequent to the last "limitation year" during which the Plan is a Top Heavy Plan shall be disregarded. The term "limitation year" means the Plan Year.

If the Plan provides for the normal retirement benefit to be paid in a form other than a single life annuity, the Accrued Benefit under this Section shall be the Actuarial Equivalent of the minimum Accrued Benefit under Subsection (a) and (b) above.

If payment of the minimum Accrued Benefit commences at a date other than Normal Retirement Age, the minimum Accrued Benefit shall be adjusted in accordance with Sections 6.2 and 8.11 of the Plan.

If a Non-Key Employee participates in this Plan and a defined contribution plan included in a Required Aggregation Group, which is top heavy, the minimum benefits shall be provided under this Plan.

To the extent required to be nonforfeitable under Section 5.4 of the Plan the minimum accrued benefit under this Section may not be forfeited under Code Sections 411(a)(3)(B) or 411(a)(3)(D).

For purposes of satisfying the minimum benefit requirements of Section 416(c)(1) of the Code and the Plan, in determining years of service with the employer, any service with the employer shall be disregarded to the extent that such service occurs during a plan year when the plan benefits (within the meaning of Section 419(b) of the Code) no key employee or former key employee.

Employer matching contributions shall be taken into account for purposes of satisfying the minimum contribution requirements of Code Section 416(c)(2) and the Plan. The preceding sentence shall apply with respect to matching contributions under the Plan or, if the Plan provides that the minimum contribution requirement shall be met in another plan, such other plan. Employer matching contributions that are used to satisfy the minimum contribution requirements shall be treated as matching contributions for purposes of the actual contribution percentage test and other requirements of Code Section 401(m).

The Employer may provide in the adoption agreement that the minimum benefit requirement shall be met in another plan (including another plan that consists solely of a cash or deferred arrangement which meets the requirements of Code Section 401(k)(12) and matching contributions with respect to which the requirements of Code Section 401(m)(11) are met).

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