

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

Pension Plan Document

As Amended and Restated Effective through December 1, 1997
(Including Amendments through December 1, 2002)

Amended February 24, 2009, Amendment 7

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UNITED FOOD AND COMMERCIAL WORKERS UNIONS AND EMPLOYERS MIDWEST PENSION PLAN

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 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 retiring or otherwise terminating Industry Employment on or after December 1, 1997. The Plan as in effect prior to December 1, 1997 shall govern the amount of pension and the conditions under which it is payable to or in respect of Employees who retired or otherwise terminated Industry Employment prior to December 1, 1997, except to the extent otherwise specifically provided in the Plan or under subsequent Plan amendments.

Article II – Definitions and Construction

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) For lump sum payments

- (A) made on or after December 1, 2002, 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.
- (B) made on or after December 1, 2000, 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").
- (C) 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.

- (2) For converting the normal form of benefit to all optional forms, except lump sum payments, unless otherwise specified in the Plan, the “Actuarial Present Value” of a benefit shall be determined using an interest rate of 7½%.
- (3) For converting the form of benefit to all optional forms, 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 1986.
- (4) “Actuarial Equivalence” means two (2) benefits of equal Actuarial Present Value based on the actuarial factors and assumptions specified in the provision which that phrase is used or, if not otherwise specified, based on the assumptions described in this Section.

(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) thirty (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 Section 414(p) of the Internal Revenue Code) 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.

(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 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, the benefit accrual computation period, and, after the initial period of employment or of reemployment following a Break in Service, the computation period for eligibility to participate in the Plan.

(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 Non-Covered 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 Section 414(n) of the Internal Revenue Code, who otherwise meets the conditions for participation, vesting and/or benefit accrual under the Plan.

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 (1) 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 Fund 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, 1997, 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 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) *Hour 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 workers' 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 ninety (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—*

- (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 he earns five (5) or more years of Eligibility Service.
- (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 fifth anniversary of Participation in the Plan provided the Participant has not incurred a Break Year within such 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 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) *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 70½; provided, however, that for a Participant who reaches age 70½ 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.

(oo) *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).

(pp) *Spouse (Surviving Spouse)*—

The spouse or surviving spouse of the Participant to whom the Participant was 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 Section 414(p) of the Code.

(qq) *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.

(rr) *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.”

(ss) *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.

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

3.1 Commencement of Participation

An Employer, other than an Initial Employer, shall be entitled to participate in this Fund 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 which 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 Fund 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).

3.2 Termination of Participation

An Employer's participation in this Fund 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 Fund. 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.

3.3 Employers Subject to Benefit Restriction

High-Low Foods—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:

- (a) 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 (1) Calendar Year after 1975; or
- (b) Otherwise, the Participant must accrue at least 400 Hours of Covered Employment in each of the three (3) Calendar Years prior to 1980.

ARTICLE IV – Participation and Service

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, 1997 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 earliest January 1 or July 1 following the date he accrues 400 Hours of Covered Employment subsequent to his Employer's Participation Date.

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 Calendar Year.

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, 1997, 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 Non-Covered 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 Fund 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 Fund pursuant to Section 3.1 on or after January 1, 1976, such Participant's Eligibility Service and Past Credit 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 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 two-hundred-twenty-five (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 sixty-five (65) but less than two-hundred-twenty-five (225) days of Covered Employment. For any such Calendar Year in which the Participant had accrued less than sixty-five (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 Service Credits 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.

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 Non-Covered Employment within such Calendar Year, 1,000 Hours of Employment (as defined in Section 2.1(2)) 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).

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.

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 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.

4.6 Military Service

Notwithstanding any provisions of this Plan to the contrary, 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.

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, up to twelve (12) weeks, 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.

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 (1) year of Past Credited Service for each Calendar Year during which he worked at least an average of thirty-five (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 thirty-five (35) hours per week.

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 each 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 Calendar Year shall be determined from the following schedule:

<u>Date of Hire</u>	<u>Credited Service</u>
Full-Time Employee	
January 1 to February 20*	1 year
February 21* to October 2	1/3 year
October 3 to December 31	0 year
Part-Time Employee	
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

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").

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 (1) Hour of Employment after November 30, 1989.

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.

5.3 Disability Retirement

(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 (7) 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 the incurring of such Disability, 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 administrative office. The requirement that a Social Security Administration Notice of Award must be filed with the Fund administrative 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 a 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 judgement of the Trustees totally and presumably permanently prevents the Employee from continuing in the employ of an 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 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 substantial and gainful 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 compatible 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 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.

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 (1) Hour of Employment 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 (1) Hour of Employment after November 30, 1989.

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.

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 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.

5.6 Application for Pension

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

ARTICLE VI – Amount of Retirement Benefits

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:

<u>Original Effective Date of Pension Rate</u>	<u>Final Hourly Contribution Rate</u>	<u>Formula Pension Rate</u>
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) shall be determined in accordance with the following schedule:

<u>Annual Hourly Contribution Rate</u>	<u>Formula Pension Rate For Credited Service Accrued</u>		
	<u>As of Special Accrual Date</u>	<u>After Special Accrual Date But Before 12/31/87</u>	<u>After Special Accrual Date and After 12/31/87</u>
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:

<u>Annual Hourly Contribution Rate</u>	<u>Formula Pension Rate For Credited Service Accrued</u>		
	<u>As of Special Accrual Date</u>	<u>After Special Accrual Date But Before 12/31/87</u>	<u>After Special Accrual Date and After 12/31/87</u>
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:

<u>Annual Hourly Contribution Rate</u>	<u>Formula Pension Rate For Credited Service Accrued</u>	
	<u>As of Special Accrual Date</u>	<u>After Special Accrual Date</u>
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:

<u>Annual Hourly Contribution Rate</u>	<u>Formula Pension Rate For Credited Service Accrued</u>	
	<u>As of Special Accrual Date</u>	<u>After Special Accrual Date</u>
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:

<u>Annual Hourly Contribution Rate</u>	<u>Formula Pension Rate For Credited Service Accrued</u>	
		<u>After Special Accrual Date</u>
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:

<u>Annual Hourly Contribution Rate</u>	<u>Formula Pension Rate For Credited Service Accrued</u>	
		<u>After Special Accrual Date</u>
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.

(d) The Normal Pension amount for a Participant who retires on or after January 1, 2005 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:

<u>Annual Hourly Contribution Rate</u>	<u>Formula Pension Rate For Credited Service Accrued</u>			
	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
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) on or after December 31, 2006 and prior to January 1, 2008:

<u>Annual Hourly Contribution Rate</u>	<u>Formula Pension Rate For Credited Service Accrued</u>			
	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
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
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:

<u>Annual Hourly Contribution Rate</u>	<u>Formula Pension Rate For Credited Service Accrued</u>			
	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
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) cannot exceed 57¢.

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 any 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.

6.2 Early Pension

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, or otherwise 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.

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.

6.4 Deferred Vested Pension

The single-life Pension of a Participant who meets the requirements for a Deferred Vested Pension shall be a monthly amount computed in the same manner as provided in Section 6.2 for an Early Pension, depending upon the Annuity Starting Date of the Deferred Vested Pension.

6.5 Restrictions on Pension Amounts

This Section is included in order to guarantee compliance with Section 415 of the Internal Revenue Code. It is not expected to have any practical effect on the benefits otherwise payable under the Plan.

Notwithstanding any other provision of this Plan, the annual retirement benefit to which an Employee shall be entitled hereunder when aggregated with the benefit under all other defined benefit plans maintained by the Employer (other than multiemployer plans) shall not exceed the lesser of:

- (a) \$90,000 or
- (b) 100% of the Employee's average annual compensation for the three (3) highest consecutive Calendar Years during which he participated in the Plan or any other plan maintained by the Employer.

The \$90,000 limit set forth in Subparagraph (a) above shall be increased automatically to account for increases in the cost of living. Such cost of living adjustment shall be limited to scheduled increases in accordance with regulations issued by the Internal Revenue Service and shall be effective no sooner than January 1 of each year.

Effective January 1, 2002, the dollar limitation in Subparagraph (a) above shall be \$160,000 (as adjusted under Section 415(d) of the Internal Revenue Code in such manner as the Secretary shall prescribe) at age 62 reduced for payment prior to age 62 pursuant to Section 415(d) of the Internal Revenue Code and the compensation limit of 100% of compensation shall no longer apply.

For purposes of this Section, "Compensation" shall mean the Employee's earned income, wages, salaries, and fees for professional services, and other amounts received for personal services actually rendered in the course of employment with the Employer maintaining the plan (including, but not limited to, commissions earned by salesmen, compensation for services on the basis of percentage of profits, commissions on insurance premiums, tips, and bonuses), and excluding the following:

- (a) Employer contributions to a plan of defined compensation which are not included in the Employee's gross income for the taxable year in which contributed or Employer contributions under a simplified employee pension plan to the extent such contributions are deductible by the Employee, or any distributions from a plan of deferred compensation;
- (b) Amounts realized from the exercise of a non-qualified stock option, or when restricted stock (or property) held by the Employer either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;
- (c) Amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option plan;
- (d) Other amounts which received special tax benefits, or contributions made by the Employer (whether or not under a salary reduction agreement) towards the purchase of an annuity described in Section 403(b) of the Internal Revenue Code (whether or not the amounts are actually excludable from the gross income of the Employee);
- (e) Compensation in excess of \$200,000 (or such larger amount as set by the Secretary of the Treasury shall be disregarded).

For Plan Years beginning on or after January 1, 1994, the amount of a Participant's Compensation from any single employer that may be taken into account for any Plan purpose shall not exceed the OBRA '93 Annual Compensation limit in any calendar 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 Section 401(a)(17)(b) of the Internal Revenue Code. 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).

Notwithstanding the foregoing, for Plan Years beginning on or after January 1, 1998, Compensation shall include any elective deferrals, as described under Code Section 402(g)(3), and any amount which is deferred by the Employer, at the election of the Employee, and which by reason of Code Section 125, 1 Section 401(k) Section 403(b) or Section 457 and effective December 1, 2001, Section 132(f), is not included in the gross income of the Employee. Effective for Plan Years beginning after December 31, 2002, the annual compensation limit shall be \$200,000 as adjusted annually under Section 401(a)(17)(B) of the Internal Revenue Code, or such other amount as may be prescribed by the Secretary of the Treasury.

The maximum shall apply to the single-life Pension determined under regulations issued by the Secretary; provided, however that if the benefit is payable as a 50% Joint and Survivor Pension the maximum shall apply to the monthly benefit payable under that form. In the case of an Employee who has less than ten (10) years of Eligibility Service, the limitations set forth above shall be multiplied by a fraction, the numerator of which is the number of the Employee's years of Eligibility Service and the denominator of which is ten (10). In the case of an Employee whose benefits hereunder commence prior to attainment of Social Security Retirement Age, the limitations set forth above shall, in accordance with regulations issued by the Internal Revenue Service, be adjusted so that it is the equivalent to such benefit beginning at Social Security Retirement Age, provided that such an adjustment shall not reduce such limitation below:

- (a) if the benefit commences after the Employee attains age 55, \$75,000, or
- (b) if the benefit commences before the Employee attains age 55, the amount which is the equivalent to the \$75,000 limitation at age 55.

In the case of an Employee whose benefits hereunder commence after his attainment of age 65, the limitations set forth above shall, in accordance with regulations issued by the Internal Revenue Service, be adjusted so that it is the Actuarial Equivalent of the dollar limitation for a benefit commencing at age 65. For purposes of adjusting any benefit under this Subsection, the interest rate assumption shall be the greater of 5% or the rate specified by the Plan. For benefits payable after Social Security Retirement Age, the word "lesser" shall be substituted for the word "greater" in the preceding sentence.

In the case of a Participant employed by a tax-exempt Employer:

- (a) If the Participant's benefit payments begin before age 65, but on or after age 62, the dollar

limit is not reduced.

- (b) If the Participant's benefit payments begin before age 62, but on or after age 55, the dollar limit is reduced to the Actuarial Equivalent of the benefit payable at age 62, but not below \$75,000.
- (c) If the Participant's benefit payments begin before age 55, the dollar limit is reduced to the Actuarial Equivalent of a \$75,000 benefit at age 55.
- (d) If the Participant's benefit payments begin before age 65, the dollar limit is increased to the Actuarial Equivalent of the benefit payable at age 65.

Notwithstanding the limitations of this Section, if an Employee was covered by the Plan before the first day of the Limitation Year beginning in 1983, he may receive an annual retirement benefit which is not less than the amount of his current Accrued Benefit as of the close of the last Limitation Year beginning before 1983, as determined under the terms of the Plan as then in effect disregarding any amendments or cost of living adjustments after July 1, 1982. For purposes of this Section, "Limitation Year" means the Calendar Year.

Prior to December 1, 2000, if an Employee covered by this Plan participates in both defined benefit and defined contribution plans maintained by the Employer, the sum of (a) and (b) below may not exceed 1.0:

- (a) The sum of the projected annual benefit of the Employee under all defined benefit plans of the Employer determined as of the close of the Limitation Year, divided by the lesser of:
 - (1) the product of 1.25 multiplied by the dollar limitation in effect under Section 415(b)(1)(A) of the Internal Revenue Code for such Year, or
 - (2) the product of 1.4 multiplied by the amount which may be taken into account under Section 415(b)(1)(B) of the Internal Revenue Code with respect to such Employee for such Year; and
- (b) The sum of the annual additions to the Employee's account under all defined contribution plans of the Employer as of the close of the Limitation Year and for all prior Calendar Years divided by the sum or the lesser of (1) or (2) above for such Year and for each prior year of Eligibility Service with the Employer (regardless of whether any such defined contribution plan was in existence during those years), where (1) is the product of 1.25 multiplied by the dollar limitation in effect under Section 415(c)(1)(A) of the Internal Revenue Code for such Year (without regard to Section 415(c)(6) of the Internal Revenue Code), and (2) is the product of

1.4 multiplied by the same amount which may be taken into account under Section 415(c)(1)(B) of the Internal Revenue Code (or Section 415(c)(7) or (8) of the Internal Revenue Code, if applicable) with respect to such individual under such plan for such year; provided, however, that the Trustees may elect that the amount taken into account for such Employee for all years ending before January 1, 1983 under (1) and (2) above shall be determined pursuant to the special transition rule in Section 415(e)(6) of the Internal Revenue Code.

If this Plan is aggregated with another plan that was in existence on July 1, 1982, and the above limitations are not met, each Participant for whom the limits are violated will not receive any annual additions or accruals in this Plan. In the event that at the earlier to occur of each December 31, or the date of an Employee's Retirement or termination, the sum of (a) and (b) above exceeds 1.0 and the benefit of such Employee under another plan or plans is not reduced to bring such sum to 1.0 then such Employee's benefits under this Plan shall be reduced by an amount sufficient to cause the sum of (a) and (b) above for each Employee to equal 1.0.

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 non-reduced 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.

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.

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

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.

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 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 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 the first of the month following the date the Participant would have reached Normal Retirement Age.

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.

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.

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 therefor 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 (2) 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 (2) 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.

ARTICLE VIII – Manner of Payment

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.

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.

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.

8.2 100% 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, as described hereunder.

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.

The aggregate of the Pension payments expected to be paid to a Participant and his Spouse under the 100% 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% 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 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 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 anything herein to the contrary, the 100% Joint and Survivor Option mode of benefit payment shall not be permitted if it reduces the Actuarial Present Value of the expected Pension payments to the Participant by more than 49%, in accordance with the limits of Internal Revenue Code Section 401(a)(9) and the incidental death benefits rule and the regulations prescribed thereunder including section 1.401(a)(9)-1 and 1.401(a)(9)-2 of the Treasury Regulations.

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 therefor 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.

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.

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 \$3,500 (\$5,000 effective December 1, 1997).

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 Actuarial Equivalent lump sum value of the Accrued Benefit for the purposes of this Section 8.5 shall be determined on the basis of Pension Benefit Guaranty Corporation interest rates provided in Section 2.1(b).

If a terminated Participant returns to Covered Employment with the Employer and reparticipates 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 accordance with Section 6.1) will be reduced by the actuarial value of the amounts that he previously received.

8.6 Election Period

Effective on and after December 1, 2007, a Participant's election period shall begin not more than one-hundred-eighty (180) calendar days (ninety (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 one-hundred-eighty (180) days (ninety (90) days for Plan Years beginning before December 1, 2007) before the Annuity Starting Date and no later than thirty (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 thirty (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.

8.7 Notification to Participants

Prior to the Annuity Starting Date and within the time required by regulations under ERISA, the Trustees shall supply the Participant with a written explanation of the nature, form and amount of the benefit to which he is entitled, as well as a written explanation of the normal form and optional forms of payment under the Plan.

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.

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.

(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.

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 sixty (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(oo); 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.

8.11 Mandatory Commencement of Benefits

Notwithstanding any provision of the Plan to the contrary, effective April 1, 1988, a Participant must make application and commence receiving benefit payments by his Required Beginning Date.

A Participant who earns additional Credited Service and who is being paid a Pension because he has attained the Required Beginning Date will have his Pension recalculated each January 1 for the additional Credited Service earned during the Calendar Year without any offset of the payments received against the additional Credited Service earned.

Provisions herein to the contrary notwithstanding, as to distributions occurring on or after January 1, 2003, the Plan shall apply the minimum distribution requirements of Code Section 401(a)(9) consistent with Treasury Regulations promulgated pursuant to Code Section 401(a)(9) as

interpreted by Revenue Procedure 2002-29.

8.12 Rollovers

This Section 8.12 applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Article, a distributee may elect, at the time and in the manner prescribed by the 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 Section 401(a)(9) of the Internal Revenue Code; and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).
- (b) An "eligible retirement plan" is an (i) individual retirement account described in Section 408(a) of the Internal Revenue Code, (ii) an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code, (iii) an annuity plan described in Section 403(a) of the Internal Revenue Code, or (iv) a qualified trust described in Section 401(a) of the Internal Revenue Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the Surviving Spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

For distributions made on or after December 1, 2002, an "eligible retirement plan" shall also mean an annuity contract described in Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code 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 Section 414(p) of the Internal Revenue Code. Effective for distributions made on or after December 1, 2007, definitions (i) and (ii) shall also apply to a designated Beneficiary who is not the Participant's Surviving Spouse.

- (c) A “distributee” includes an Employee or former Employee. 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 Section 414(p) of the Internal Revenue Code, are distributees with regard to the interest of the Spouse or former Spouse. Effective for distributions made on or after December 1, 2007, a “distributee” includes the Employee’s or former Employee’s designated Beneficiary who is not the Participant’s Surviving Spouse, i.e., a non-Spouse designated Beneficiary. For distributions for a distributee who is a non-Spouse designated Beneficiary, the distribution must be a direct rollover only to an individual retirement account or annuity described in Code Section 408(a) or Section 408(b) (an “IRA”) that is established on behalf of the non-Spouse designated Beneficiary and that will be treated as an inherited IRA pursuant to the provisions of Code Section 402(c)(11). For such distributions, the determination of any required minimum distribution under Code Section 401(a)(9) that is ineligible for rollover shall be made in accordance with Notice 2007-7, Q&A 17 and 18.
- (d) A “direct rollover” is a payment by the Plan to the eligible retirement plan specified by the distributee.

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 Section 2.1(b)) 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 for 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 Pension 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 ninety (90) 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

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.

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 one (1) or more hours of service in Covered Employment.

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

9.2 Procedure for Suspending Pensions

A retired 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.

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.

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.

9.5 Recalculations of Pension Amounts

- (a) If the Participant had never received any Pension payments and had at least two (2) 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

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.

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.”

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.

10.4 Combined Service

The total of an Employee’s 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.

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.

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.

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.

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.

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 VIII 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.

10.10 Lump Sum Death Benefit

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

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.

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.

11.3 Merger or Consolidation of Plans

Any merger or consolidation of the Plan with any other plan of deferred compensation maintained or to be established for the benefit of all or some of the Participants of this Plan, or any transfer in whole or in part of the assets and liabilities of the Trust Fund to another trust fund, or vice versa, shall be effected only if:

- (a) each Participant would (if either this Plan or the other plan then terminated) receive a benefit immediately after the merger, consolidation or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation or transfer (if this Plan had then terminated);
- (b) resolutions of the Board of 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 former (or latter) resolution shall include an assumption of liabilities with respect to participants transferred from (or to) the other plan; and

(c) such other plan and trust are qualified under Sections 401(a) and 501(a) of the Internal Revenue Code.

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

ARTICLE XII – Administration

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.

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 ninety (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 one-hundred-eighty (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:

- (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 claim to 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; and
- (5) 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 sixty (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) 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 thirty (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 five (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 forty-five (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 seventy-five (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 seventy-five (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 one-hundred-fifty (150) 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 thirty (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 thirty (30) days of the Claimant's response to the request for additional 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:

- (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 procedure 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 one-hundred-eighty (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) 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 thirty (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 five (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 sixty (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 sixty (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 one-hundred-twenty (120) days after receipt of such request). The decision of the Board of Trustees shall be final.

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.

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.

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.

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.

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.

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.

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.

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.

ARTICLE XIII—Guarantees and Liabilities

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.

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 therefor in any manner.

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 Section 414(p) of the Internal Revenue Code, 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 therefor 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 Internal Revenue Code Section 401(a)(13) be considered.

13.4 Nonforfeatability 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 Section 411(a)(3)(C) of the Internal Revenue Code 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.

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.

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.

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.

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. Except for liabilities which may result from provisions of the Employee Retirement Income Security Act of 1974, the Multiemployer Pension Plan Amendments Act of 1980 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.

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 twenty-five (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 10-year period, or
- (c) the Pension of a Participant becomes payable after such 10-year period and the full current costs for the 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 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 a 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 twenty-five (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 Article XIV a Plan amendment that has the effect of (a) eliminating or reducing an early retirement benefit or 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 Accrued Benefits. In the case of a retirement-type subsidy, the preceding sentence shall apply only with respect to a Participant who satisfies (either before or after the amendment) the pre-amendment conditions for the subsidy. Notwithstanding the preceding sentences, a Participant's Accrued Benefit, early retirement benefit, retirement-type subsidy, or optional form of benefit may be reduced to the extent permitted under Code Section 412(c)(8) (for Plan Years beginning on or before December 31, 2007) or Code Section 412(d)(2) (for Plan Years beginning after December 31, 2007), or to the extent permitted under Sections 1.411(d)-3 and 1.411(d)-4 of the Treasury Regulations.

The foregoing notwithstanding, the Trustees may amend the Plan:

- (a) as necessary to establish or maintain the qualification of the Plan or the Trust Fund under the Internal Revenue Code and to maintain compliance of the Plan with the requirements of ERISA, or
- (b) modified as required by the paragraphs above, if the amendment meets the requirements of Section 302(c)(8) of ERISA and Section 412(c)(8) of the Internal Revenue Code, and the Secretary of Labor has been notified of such amendment and has either approved of it or, within one-hundred (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 Employee's Employer-provided Accrued Benefit will not be less than the percentage computed under the Plan without regard to such amendment or change. Furthermore, each Participant with at least three (3) years of Eligibility Service may elect within a reasonable period after the adoption of the amendment or change to have his nonforfeitable percentage computed under the Plan without regard to such amendment or change. For a Participant who does not have at least one (1) Hour of Employment in any Plan Year beginning after December 31, 1988, the preceding sentence shall be applied by substituting five (5) years of Eligibility Service for three (3) 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 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

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.

15.2 Priorities of Allocation

In the event of termination, the assets then remaining in the Fund, 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 3-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 5-year period ending on such date) under which such Pension would be the least. The lowest Pension in pay status during the 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 3-year period if the Participant had retired prior to the beginning of the 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 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.

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 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 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.

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.

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

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 (60) 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 (2) 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.

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.

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, 1% 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 Section 16.3(c)(4)(B)(i-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.

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) (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.

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.

16.6 Limitations in Determining Withdrawal Liability

- (a) To determine an Employer's 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% (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:

If the Liquidation or Dissolution Value of the Employer after the Sale or Exchange is:	The Portion is:
Not more than \$2,000,000	30% of the amount
More than \$2,000,000 but not more than \$4,000,000	\$600,000 plus 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 plus 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 plus 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 plus 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 plus 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 plus 70% of the amount in excess of \$9,000,000
More than \$10,000,000	\$4,350,000 plus 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 Seller's 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:
 - 1. 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
 - 2. 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. 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:
 - (i) 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
 - (ii) 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 forth within 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 five (5) 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% 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

- (A) it is undergoing a Liquidation or Dissolution; and,
- (B) 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:
 - (i) as of the commencement of the Liquidation or Dissolution; and,
 - (ii) 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.

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 thirty (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 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) any 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 thirty (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 ninety (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 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.

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) Sixty (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 twenty (20) years, the Employer's liability shall be limited to the first twenty (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 this 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 sixty (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) Whenever interest is required to be paid under this Section, interest shall be charged at 2% 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 attorneys' 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.

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 arbitrators' fees and the Fund shall pay the remaining half; each side shall pay its own attorneys' 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 arbitrators' fees and the Fund's attorneys' fees and costs.

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

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.

ARTICLE XVII — Top Heavy Provisions

(Applicable for Noncollectively Bargained Employees)

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 an Employee or former Employee (and the Beneficiaries of such Employee) meeting the definition of “key employee” contained in Section 416(i)(1) of the Internal Revenue Code and Section 1.416-1 of the Treasury Regulations.

(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 Section 415(c)(3) of the Internal Revenue Code and Section 1.415-2(d) of the Treasury Regulations, but in no event more than \$200,000 per Calendar Year (as adjusted annually under Section 401(a)(17) of the Internal Revenue Code). 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 Sections 125, 401(a)(8), 402(h), 403(b) or, effective December 1, 2001, 132(f) of the Internal Revenue Code.

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 Section 401(a)(17) of the Internal Revenue Code. 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 twelve (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.

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 Section 416(b) of the Internal Revenue Code pursuant to Section 17.4.
- (b) Special minimum benefit requirements of Section 416(c) of the Internal Revenue Code pursuant to Section 17.5.

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 Super Top Heavy Plan (or whether any Aggregation Group which includes this Plan is a Top Heavy Group). In addition, for Plan Years beginning after December 31, 1984, if a Participant or former Participant has not received any Annual Compensation from any Employer maintaining the Plan (other than benefits under the Plan) at any time during the 5-year period ending on the Determination Date, the aggregate account and/or Actuarial Present Value of Accrued Benefits for such Participant or former Participant shall not be taken into account for the purposes of determining whether this Plan is a Top Heavy Plan or Super Top Heavy Plan.

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

- (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 90% 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.

A Participant's aggregate account as of the Determination Date shall be determined under applicable provisions of the defined contribution plan used in determining Top Heavy Plan status.

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

- (a) In determining a Required Aggregation Group hereunder, each plan of an Employer in which a Key Employee is a Participant, and each other plan of an Employer which enables any plan in which a Key Employee participates to meet the requirements of Sections 401(a)(4) and 410 of the Internal Revenue Code, will be required to be aggregated. Such group shall be known as a "Required Aggregation Group."

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

- (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 Section 401(a)(4) and 410 of the Internal Revenue Code. Such group shall be known as a "Permissive Aggregation Group."

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

- (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 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 Benefits as of a Determination Date shall be the sum of the following:

- (a) the Actuarial Present Value of Accrued Benefits using actuarial assumptions stated in the most recent actuarial valuation;
- (b) any Plan distributions made within the Plan Year that includes the Determination Date or within four (4) preceding Plan Years. However, in the case of distributions made after the valuation date and prior to the Determination Date, such distributions are not included as distributions for Top Heavy purposes to the extent that such distributions are already included in the Participant's Actuarial Present Value of Accrued Benefits as of the valuation date.

Notwithstanding anything herein to the contrary, all distributions, including distributions made prior to January 1, 1984, and distributions under a terminated plan which if it had not been terminated would have been required to be included in an Aggregation Group, will be counted;

- (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 rollovers 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 Section 416 of the Internal Revenue Code to this Plan (Plan Years beginning after December 31, 1983) shall be extended in accordance with any federal law or regulatory authority.

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:

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

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 Section 411(a)(10) of the Internal Revenue Code. The nonforfeitable percentage of the Accrued Benefit before the Plan ceased being Top Heavy, therefore must not be reduced and any Participant with three (3) 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 (1) 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.

17.5 Top Heavy Benefit Requirements

The minimum Accrued Benefit derived from Employer contributions to be provided under this 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 Section 416 of the Internal Revenue Code, 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 Sections 411(a)(3)(b) or 411(a)(3)(D) of the Internal Revenue Code.

17.6 New Rules Under the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA)

The following reflect the new rules for the Top Heavy provisions as set forth in IRS model amendment and this Section shall apply for purposes of determining whether the Plan is a Top Heavy Plan under Section 416(g) of the Internal Revenue Code for Plan Years beginning after December 31, 2001, and whether the Plan satisfies the minimum benefits requirements of Section 416(c) of the Internal Revenue Code for such years. This Section amends Article XVII as applicable.

(a) *Determination of Top Heavy Status—*

- (1) *Key Employee—*Key Employee means any Employee or former Employee (including any deceased Employee) who at any time during the Plan Year that includes the Determination Date was an officer of the Employer having annual compensation greater than \$130,000 (as adjusted under Section 416(i)(I) of the Internal Revenue Code for Plan Years beginning after December 31, 2002), a 5% Owner of the Employer, or a 1% Owner of the Employer having annual compensation of more than \$150,000. For this purpose, annual compensation means compensation within the meaning of Section 415(c)(3) of the Internal Revenue Code. The determination of who is a Key Employee will be made in accordance with Section 416(i)(I) of the Internal Revenue Code and the applicable regulations and other guidance of general applicability issued thereunder.

- (2) *Determination of Present Values and Amounts*—This Section 17.6(a) shall apply for purposes of determining the present values of accrued benefits and the amounts of account balances of Employees as of the Determination Date.
- (3) *Distributions during Year Ending on the Determination Date*—The present values of accrued benefits and the amounts of account balances of an Employee as of the Determination Date shall be increased by the distributions made with respect to the Employee under the Plan and any plan aggregated with the Plan under Section 416(g)(2) of the Internal Revenue Code 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 Section 416(g)(2)(A)(i) of the Internal Revenue Code. In the case of a distribution made for a reason other than separation from service, death, or disability, this provision shall be applied by substituting “5-year period” for “1-year period.”
- (4) *Employees not Performing Services during Year Ending on the Determination Date*—The accrued benefits and accounts of any individual who has not performed services for the Employer during the 1-year period ending on the Determination Date shall not be taken into account.

(b) Minimum Benefits—

- (1) *Matching Contributions*—Employer matching contributions shall be taken into account for purposes of satisfying the minimum contribution requirements of Section 416(c)(2) of the Internal Revenue Code 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 Section 401(m) of the Internal Revenue Code.
- (2) *Contributions under Other Plans*—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 Section 401(k)(12) of the Internal Revenue Code and matching contributions with respect to which the requirements of Section 401(m)(11) of the Internal Revenue Code are met).

**Restatement of the
United Food and Commercial Workers
Unions and Employers Midwest Pension Plan**

The Board of Trustees (the “Board”) of the United Food and Commercial Workers Unions and Employers Midwest Pension Fund (the “Fund”), who maintain the United Food and Commercial Workers Unions and Employers Midwest Pension Plan (the “Plan”), hereby adopts the following resolution:

WHEREAS, under Article XIV of the Plan, the Plan may be amended to comply with the provisions of the Internal Revenue Code and to make other changes that are in the best interest of participants and beneficiaries; and

WHEREAS, the Plan must be restated to comply with the applicable provisions of the Retirement Protection Act of 1994 provisions of 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 administrative changes;

NOW, THEREFORE, BE IT RESOLVED that the Plan, as Amended and Restated Effective December 1, 1997 including Plan Amendments through December 1, 2002, is hereby adopted as set forth herein at length.

EXECUTED as of this 26 day of November, 2002 on behalf of the Board of Trustees.

_____/s/_____
Daniel W. Ryan
Administrative Manager