

# **EMPIRE STATE CARPENTERS PENSION FUND**

As adopted by the Board of Trustees of the Empire State Carpenters Pension Fund on June 14, 1962 and as subsequently amended and restated as of January 1, 2003.

## **ARTICLE 1. DEFINITIONS**

### **Section 1.01 Pension Fund.**

"Pension Fund" means the Empire State Carpenters Pension Fund established under the Agreement and Declaration of Trust dated January 1, 1961, as amended, and shall mean generally the monies or other things of value which comprise the corpus and additions to the Pension Fund derived from contributions made by the Employers pursuant to Collective Bargaining Agreements and the income earned thereon.

### **Section 1.02 Trustees.**

"Trustees" means the Trustees who shall be acting under the terms of the Agreement and Declaration of Trust establishing the Pension Fund dated January 1, 1961, as amended.

### **Section 1.03 Council.**

"Council" means the Empire State Carpenters affiliated with the United Brotherhood of Carpenters and Joiners of America.

### **Section 1.04 Local Union.**

"Local Union" means any one of the following named Local Unions affiliated with the Council: Local Unions 7, 11, 19, 42 and 964.

### **Section 1.05 Contributing Employer.**

"Contributing Employer" means those Employers who are obligated by virtue of a Collective Bargaining Agreement with the Council to contribute to the Pension Fund; and also any Employers who hereafter become obligated by virtue of a Collective Bargaining Agreement with the Council to contribute to the Pension Fund. The term, "Contributing Employer" shall also include the Council, a Local Union, the Empire State Carpenters Pension Fund, the Empire State Carpenters Welfare Fund, the Empire State Carpenters Annuity Fund, the Empire State Carpenters Vacation Fund, and the Empire State Carpenters Apprenticeship Committee, provided that each agrees to make contributions for Employees at the same rate as in effect for other Contributing Employers.

For purposes of identifying Highly Compensated Employees and applying the rules on Participation, vesting and statutory limits on benefits under the Pension Fund, but not for determining Covered Employment, the term "Contributing Employer" includes all corporations, trades or businesses under common control with the Contributing Employer within the meaning of Internal Revenue Code Section 414(b) and (c), all members of an affiliated service group with the Contributing Employer within the meaning of Internal Revenue Code Section 414(m), and all other businesses aggregated with the Contributing Employer under Internal Revenue Code Section 414(o).

**Section 1.06 Collective Bargaining Agreement.**

"Collective Bargaining Agreement" or "Agreement" means an agreement between the Council and an Employer which requires contributions to the Pension Fund.

**Section 1.07 Employee.**

"Employee" means an employee in a job classification covered by a Collective Bargaining Agreement. If the Pension Fund, the Empire State Carpenters Welfare Fund, the Empire State Carpenters Annuity Fund, the Empire State Carpenters Vacation Fund, the Empire State Carpenters Apprenticeship Committee, the Council, or a Local Union that is a Contributing Employer, the employees with respect to whom such Employer contributes to this Plan are to be deemed Employees.

The term "Employees" includes a leased employee of a Contributing Employer, within the meaning of Internal Revenue Code Section 414(n), but only if such leased employee otherwise meets the conditions for Participation, vesting and/or benefit accrual under this Plan.

**Section 1.08 Non-Bargained Employee.**

A "Non-Bargained Employee" is a Participant whose Participation is not covered by a Collective Bargaining Agreement.

**Section 1.09 Highly Compensated Employee.**

(a) The term "Highly Compensated Employee" includes highly compensated active employees and highly compensated former employees of a Contributing Employer. Whether an individual is a Highly Compensated Employee is determined separately with respect to each Contributing Employer, based solely on that individual's compensation or status with respect to that Contributing Employer.

(b) A highly compensated active employee is an Employee of the Contributing Employer who performs Service for the Contributing Employer during the Determination Year and who:

(i) during the Look-back Year:

- (A) received compensation from the Contributing Employer in excess of \$90,000 (as adjusted under Internal Revenue Code Section 414(q));
  - (B) received compensation from the Contributing Employer in excess of \$50,000 (as adjusted under Internal Revenue Code Section 414(q)) and was a member of the top-paid group for that year; or
  - (C) was an officer of the Contributing Employer and received compensation from the Contributing Employer in an amount greater than 50% of the dollar limitation in effect for that year under Internal Revenue Code Section 415(b) (1) (A); or
- (ii) meets one of the criteria listed in (i) above for the Determination Year and is one of the 100 Employees who received the most compensation from the Contributing Employer during the Determination Year, or
  - (iii) is a 5% owner at any time during the Look-back Year or the Determination Year.

If no officer received compensation in the Determination Year or the Look-back Year at the level described in (i) (C) above, the officer who received the highest pay in that year shall be treated as a Highly Compensated Employee.

(c) A highly compensated former employee is an Employee who separated from Service (or was deemed to have separated) before the Determination Year, performs no Service for the Contributing Employer during the Determination Year, and was a highly compensated active Employee either for the separation year or for any Determination Year ending on or after the individual's 55th birthday.

- (d) (i) The "Determination Year" is the plan year for which the test is being applied, and the "Look-back Year" is the 12-month period immediately preceding that Plan Year.
- (ii) A Contributing Employer may elect to make the Look-back Year calculation for a Determination Year on the basis of the Calendar Year ending with or within the applicable Determination Year, in accordance with temporary Treasury Regulations Section 414(g)-1T.
- (e) (i) If an Employee is, during a Determination Year or a Look-back Year, a family member of a Highly Compensated Employee who is either a 5% owner or one of the 10 most highly paid Employees of the Contributing Employer during that year, then the family member and the Highly Compensated Employee will, to the extent required by specific provisions of the Internal Revenue Code, be treated as a single aggregated individual receiving compensation and benefits equal to the sum of the compensation

and benefits of the persons aggregated. For this purpose, someone is a family member of a Highly Compensated Employee if he is that person's spouse, lineal ascendant or descendant, or the spouse of the person's lineal ascendant or descendant. In applying specific provisions of the Internal Revenue Code, the definition of "family member" may be more limited, as set forth in those provisions.

- (ii) The determination of who is a Highly Compensated Employee, including the determinations of the number and identity of Employees in the top-paid group, the top 100 Employees, the number of Employees treated as officers, and the compensation that is considered, will be made in accordance with Internal Revenue Code Section 414(q) and the regulations thereunder.

### **Section 1.10 Covered Employment.**

"Covered Employment" means employment for which an Employer is obligated by virtue of its Collective Bargaining Agreement with the Council to contribute to the Pension Fund. For purposes of Service prior to the Contribution Period, "Covered Employment" shall include employment in a category now covered by the Collective Bargaining Agreement for a Contributing Employer during periods of time immediately preceding the date when the Contributing Employer became so obligated, and during which the Employee was employed by an Employer who was party to a Collective Bargaining Agreement with the Council or a Local Union; and for purposes of the Regular Pension only, may include credit prior to the Contribution Period, only up to 15 years of employment in the Carpentry Trade under a Collective Bargaining Agreement with any local of the United Brotherhood of Carpenters & Joiners of America, whether or not such local is affiliated with the Council.

### **Section 1.11 Participant.**

"Participant" means a Pensioner, a Beneficiary, or an Employee who meets the requirements for participation in this Plan as set forth in Article 2, or a former Employee who has attained Vested Status under this Plan. A Beneficiary is a person (other than a Pensioner) who is receiving benefits under this Plan because of his or her designation for such benefits by a Pensioner or Participant.

### **Section 1.12 Contribution Period.**

"Contribution Period" means, with respect to a category of employment, the period during which the Contributing Employer is obligated by its Agreement to contribute to the Pension Fund with respect to the category of employment.

### **Section 1.13 Pensioner.**

"Pensioner" means a person to whom a pension under this Plan is being paid or to whom a pension would be paid but for time for administrative processing.

#### **Section 1.14 Normal Retirement Age.**

"Normal Retirement Age" means age 65 or, if later, the age of the Participant on the fifth anniversary of his Participation in the Plan. Participation before a Permanent Break-in-Service in the case of a former Participant who has not returned to Covered Employment and reestablished Participation in accordance with Section 2.04, is disregarded in applying this Section.

#### **Section 1.15 Calendar Year.**

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

#### **Section 1.16 Beneficiary.**

A Participant may designate one or more Beneficiaries and contingent beneficiaries to receive any benefits due and payable but not actually paid prior to the death of the Participant by forwarding such designation on a form acceptable to the Trustees to the Administrator. A Participant shall have the right to change the Beneficiary designation without the consent of the Beneficiary whose designation is on file with the Administrator, except if that Beneficiary is the Participant's lawful spouse.

If no Beneficiary is designated by a Participant, or if a designated Beneficiary predeceases the Participant, any benefits due and payable, but not actually paid prior to his death, or any Guaranteed Pension Benefits, Pre-Retirement Lump-Sum Death Benefits and Pre-Retirement 120-Month Death Benefits shall be paid to the spouse of the Participant, if then living, but if there is no spouse then alive, or if the spouse shall die prior to receiving all payments otherwise due, the balance of the benefits due and payable shall be paid to any contingent beneficiary, and if there is no contingent beneficiary, then to the estate of the Participant.

#### **Section 1.17 Year of Participation.**

"Year of Participation" means a fiscal year in which a Participant has completed 1,000 hours of work in Covered Employment during a Contribution Period.

#### **Section 1.18 Service.**

Hour of "Service" is each hour for which an Employee is paid, or entitled to payment, by the Employer(s), directly or indirectly, but excluding any time compensated under a workers' compensation or unemployment compensation law or a plan pursuant to a mandatory disability benefit law, and excluding any hours of non-work time in excess of 501 in any one continuous period, except as provided in Section 4.02. Two periods of paid non-work time shall be deemed

continuous if they are compensated for the same reason (e.g., disability) and are separated by at least ninety days. An Hour of Service is each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Employer. Hours of Service shall be credited as required by Department of Labor Regulations 2530.200b-2(b) and (c).

(a) Each Employee will be credited with an Hour of Service for:

- (1) Each hour for which an Employee is directly or indirectly paid or entitled to payment by the Employer 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 a 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, disability, layoff, jury duty, military duty or leave of absence. These hours shall be credited to the Employee for the computation period or periods in which the duties were to be performed; and
- (3) Each hour for which back pay, irrespective of mitigation of damages, has been either awarded or agreed to by the Employer. The same Hours of Service shall not be credited to the Employee under both paragraph (1) or paragraph (2), as the case may be, and under this paragraph (3). The hours under this paragraph (3) 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.

(b) Hours of Service during which no duties are performed will be computed and credited in accordance with Department of Labor Regulations Section 2530.200(b)-2(b) and (c).

(c) For purposes of determining eligibility for benefits under Article 3, a Participant may be credited with no more than 2,000 Hours of Service in any Calendar Year, and Hours of Service shall include hours of service earned pursuant to the following funds for Participants who began participation under this Plan due to the merger of such plans into this Plan:

- (i) The Westchester County New York Carpenters Pension Fund;
- (ii) The Hudson Valley District Council of Carpenters Pension Plan, with respect only to former members of Local 964 covered under such plan; and
- (iii) The Hudson Valley Carpenters Local 19 Pension Fund;

Provided; however; Hours of Service earned under the above mentioned plans shall be the lesser of the actual hours earned or the equivalent hours used to determine the pension credits earned in a Calendar Year, but in no event will Hours of Service exceed 2,000 in any Calendar Year.

### **Section 1.19 Work.**

A period of "Work" means a period in which an Employee performed services and for which he was paid or entitled to payment.

### **Section 1.20 Continuous Employment.**

Two periods of employment are "Continuous" if there is no quit, discharge, or other termination of employment between the periods.

### **Section 1.21 Named Fiduciaries.**

The term "Named Fiduciaries" as used herein will mean the persons designated as such in the summary plan description for the Pension Fund. The Pension Fund and the Agreement and Declaration of Trust are intended to allocate to each Named Fiduciary the individual responsibilities of the prudent execution of the functions assigned to each Named Fiduciary. None of the allocated responsibilities or any other responsibilities shall be shared by two or more Named Fiduciaries unless such sharing shall be provided by a specific provision of the Plan or the Agreement and Declaration of Trust. Whenever one Named Fiduciary is required by the Plan or the Agreement and Declaration of Trust to follow the directions of other Named Fiduciaries, it shall not be deemed to have been assigned a share of any responsibility, but the responsibility of the Named Fiduciary giving the directions shall be deemed to be its sole responsibility and the responsibility of the Named Fiduciary receiving those directions shall be to follow such instructions insofar as such instructions on their face are proper under applicable law.

### **Section 1.22 Enrolled Actuary.**

The term "Enrolled Actuary" means an individual who has been approved by the Joint Board for the Enrollment of Actuaries to perform actuarial services required under ERISA or regulations thereunder.

### **Section 1.23 Plan.**

The term "Plan" means this plan document describing the Pension Fund as such document may be amended from time to time.

### **Section 1.24 Administrator.**

The term Administrator means the person designated in the summary plan description for the Pension Fund.

**Section 1.25 Other Terms.**

Other terms are specifically defined as follows;

<b>Terms</b>	<b>Section(s)</b>	
(a)	Determination Year	1.09
(b)	Look-Back Year	1.09
(c)	ERISA	2.01
(d)	Regular Pension	3.02
(e)	Service Pension	3.03
(f)	Reduced Pension	3.04
(g)	Early Retirement Pension	3.05 and 3.06
(h)	Vested Pension	3.07
(i)	Disability Pension	3.08 through 3.13
(j)	Guaranteed Pension Benefits	3.14
(k)	Pre-Retirement Lump Sum Death Benefit	3.16
(l)	Pre-Retirement 120-Month Death Benefit	3.17
(m)	Partial Pension	3.18
(n)	Pre-Retirement Surviving Spouse's Benefit	5.03
(o)	Pension Credit	4.01 and 4.02
(p)	Years of Vesting Service	4.03
(q)	Break-in-Service (One-Year Break-in-Service, Permanent Break-in-Service)	4.04
(r)	Spouse, Qualified Spouse	5.01
(s)	Husband and Wife Pension	5.02
(t)	Applications for Pension	6.01
(u)	Effective Date of Pension	6.05
(v)	Annuity Starting Date	6.05
(w)	Required Beginning Date	6.05
(x)	Retirement	6.06
(y)	Suspension of Benefits and Payments following Suspension	6.07 and 6.08
(z)	Vested Status	6.09

**Section 1.24 Gender.**

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

**Section 1.25 Accrued Benefit.**

"Accrued Benefit" means the amount of a Participant's Vested Pension calculated at any point in time.

### **Section 1.26 Applicable Interest Rate.**

"Applicable Interest Rate" means the annual rate of interest on 30-year Treasury securities as specified by the Commissioner of Internal Revenue for the month of May (as published in June) immediately preceding the Plan Year that contains the Annuity Starting Date. The stability period, within the meaning of Treasury Regulation Section 1.417(e)-1(d)(4)(ii), shall be the Plan Year.

### **Section 1.27 Applicable Mortality Table.**

"Applicable Mortality Table" for use in the Plan Year which contains the Annuity Starting Date means the table prescribed for use in that year in Regulations under Internal Revenue Code Section 417(e), and which until modified or superseded, is the table set forth in Revenue Ruling 95-6.

## **ARTICLE 2. PARTICIPATION**

### **Section 2.01 Purpose.**

This Section contains definitions to meet certain requirements of the Employee Retirement Income Security Act of 1974 (otherwise referred to as ERISA). Once an Employee has become a Participant, the provisions of this Plan give him credit in accordance with the rules of the Plan for some or all of his Service before he became a Participant.

### **Section 2.02 Participation.**

An Employee who is engaged in Covered Employment during the Contribution Period shall become a Participant in the Plan on the earliest July 1st or January 1st following completion of a 12 consecutive month period during which he completed at least 1,000 Hours of Service in Covered Employment. The required 1,000 hours may also be completed with Hours of Service in employment with the same Contributing Employer contiguous with the Employee's Covered Employment with that Contributing Employer. A former Participant who is re-employed, before incurring a Permanent Break-in-Service, will again participate on the first date he is re-employed.

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

Subject to the provisions of Section 4.04, a person who incurs a One-Year Break-in-Service shall cease to be a Participant as of the last day of the Calendar Year which constitutes the One-Year Break-in-Service, unless such Participant is a Pensioner or a Beneficiary, or has acquired the right to a pension (other than for disability), whether immediate or deferred.

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

An Employee who has lost his status as a Participant in accordance with Section 2.03 shall again become a Participant by meeting the requirements of Section 2.02 within a 12 consecutive month period on the basis of Service after the date on which his Participation terminated.

### **ARTICLE 3. PENSION ELIGIBILITY AND AMOUNTS**

#### **Section 3.01 General.**

This Article sets forth the eligibility conditions for the pensions provided by this Plan. The accumulation and retention of Service credits for eligibility are subject to the provisions of Article 4.

The benefit amounts for the pensions provided by this Plan are set forth in the Appendix to this Plan. The preceding sentence notwithstanding, the benefit amounts for the Early Retirement Pension and the Disability Pension are set forth in this Article. The benefit amounts for all pensions are subject to reduction on account of the Husband and Wife Pension, as provided in Article 5.

Entitlement of an eligible Participant to receive pension benefits is subject to his Retirement and application for benefits, as provided in Article 6.

Eligibility depends on Pension Credits, which are defined in Sections 4.01 and 4.02 (and are based on creditable Service both before and during the Contribution Period), except that eligibility for Vested Pensions depends on years of Vesting Service, which are defined in Section 4.03 (and are based on Covered Employment during the Contribution Period) and, effective July 1, 2002, eligibility for Service Pensions depends on Hours of Service as defined in Section 1.18.

#### **Section 3.02 Regular Pension - Eligibility.**

A Participant may retire on a Regular Pension if the Participant:

- (a) has attained age 62; and
- (b) has at least 25 Pension Credits of which at least 10 Pension Credits were earned in Covered Employment during the Contribution Period.

#### **Section 3.03 Service Pension - Eligibility.**

A Participant may retire at any age on a Service Pension if the Participant has at least 40 Pension Credits. The preceding notwithstanding, effective July 1, 2002, a Participant may retire at any age on a Service Pension if the Participant has worked at least 40,000 Hours of Service in

Covered Employment. For purposes of determining eligibility for benefits under this Section 3.03, a Participant may be credited with no more than 2,000 Hours of Service in any Calendar Year.

**Section 3.04 Reduced Pension - Eligibility.**

A Participant may retire on a Reduced Pension if the Participant:

- (a) has attained age 62; and
- (b) has earned at least 10 but less than 25 Pension Credits.

**Section 3.05 Early Retirement Pension - Eligibility.**

A Participant may retire on an Early Retirement Pension if the Participant:

- (a) has attained age 55; and
- (b) has at least 10 Pension Credits.

**Section 3.06 Early Retirement Pension - Amount.**

The monthly amount of the Early Retirement Pension is the amount of the Regular Pension or Reduced Pension reduced by one-quarter of one percent (.25%) for each month by which the commencement of the pension precedes age 62.

**Section 3.07 Vested Pension - Eligibility.**

A Participant shall have the right to a Vested Pension if the Participant has credit for at least 5 years of Vesting Service. A Vested Pension shall be payable, upon retirement, after the Participant has attained Normal Retirement Age (age 65 with 5 years of participation in the Plan).

**Section 3.08 Disability Pension - Eligibility.**

A Participant who leaves Covered Employment as a result of a Total and Permanent Disability shall be entitled to retire on a Disability Pension provided the Participant:

- (a) has not yet attained age 62;
- (b) has earned at least five (5) Pension Credits; and
- (c) has worked in Covered Employment for at least 300 hours in the two consecutive Calendar Years immediately prior to the date the Participant became Totally and Permanently Disabled.

### **Section 3.09 Disability Pension - Amount.**

The amount of the Disability Pension will be calculated on the same basis as the Regular Pension or Reduced Pension to which the Participant would have been entitled had the Participant been age 62 at the date of the Participant's disability based on the Participant's Pension Credit as of the date of disability.

### **Section 3.10 Definition of Total and Permanent Disability.**

A Participant shall be deemed Totally and Permanently Disabled within the meaning of this Plan only if the Board of Trustees shall in its sole judgment, which shall be final, find on the basis of medical or other evidence that:

(a) Such Participant is totally unable, as a result of bodily injury or disease, to engage in or perform the duties of a carpenter or any other type of building trades employment for remuneration or profit;

(b) Such disability will be permanent and continuous for the remainder of his life;

(c) With respect to the Disability Pension for occupational reasons, such Total and Permanent Disability, so described above, resulted directly from bodily injury or disease incurred in the course of such Participant performing the duties of his occupation as a carpenter while in Covered Employment, as verified in writing by an award from the Workers' Compensation Board; and

(d) Provided further, that such Participant does not earn more than a total of \$6,000.00 per year in any other employment or gainful pursuit, whatsoever.

### **Section 3.11 Medical Examination.**

A Participant applying for a Disability Pension may be required to submit to an examination by a physician or physicians selected by the Trustees and may be required to submit to re-examinations periodically as the Trustees may direct. The Trustees may, in their sole and absolute discretion, require or accept as sole proof of Total and Permanent Disability, in lieu of requiring a medical examination, a Workers' Compensation Board Award or a Disability Pension Award under the Social Security Law.

### **Section 3.12 Waiting Period.**

The first monthly payment of the Disability Pension shall commence no sooner than the seventh month of disability and not before the Pension application has been completed and submitted into the Administrator and shall continue thereafter if the Pensioner remains Totally and Permanently Disabled as herein defined.

### **Section 3.13 Earnings by Disability Pensioners and Change of Status.**

A Disability Pensioner shall report any and all earnings from any employment to the Board of Trustees in writing within 15 days after the end of each month in which the Disability Pensioner has had earnings in any sort of employment or gainful pursuit. If a Disability Pensioner fails to make timely reports as required by this Section, the Disability Pensioner shall be disqualified from benefits for six months for each such violation, plus the duration of such employment.

In the event a Disability Pensioner recovers from disability or earns more than a total of \$6,000.00 per year in any employment, the Disability Pension shall terminate immediately. If a Participant recovers from his disability after age 55, he shall be entitled to apply for an Early Retirement Pension, based on the Participant's attained age as of the Effective Date of the Participant's Early Retirement Pension and on the participant's accumulated Pension Credit as of the date the Disability Pension first became effective. If a Participant recovers from disability before age 55 and returns to Covered Employment without incurring a Permanent Break-in-Service, as measured from the date of such recovery to the date of such return, the Participant shall be entitled to all Pension Credits the Participant had attained as of the date the Participant's Disability Pension commenced, provided such a Participant notifies the Administrator in writing of recovery from disability.

### **Section 3.14 Guaranteed Pension Benefits.**

The Beneficiary of a Pensioner who retired under a pension (other than a Vested Pension) and who rejected a Husband and Wife Pension shall, upon the death of the Pensioner, continue to receive the monthly pension benefit which the Pensioner was receiving, until the aggregate number of monthly benefits paid to both the Pensioner and his Beneficiary equals, but does not exceed, 60.

The Beneficiary of a Pensioner who is credited with an Hour of Service after January 1, 2000, and who retired under a pension after January 1, 2000 (other than a vested Pensioner) and who rejected a Husband and Wife Pension shall, upon the death of the Pensioner, continue to receive the monthly pension benefit which the Pensioner was receiving, until the aggregate number of monthly benefits paid to both the Pensioner and his Beneficiary equals, but does not exceed, 120.

### **Section 3.15 Pre-Retirement Lump-Sum and 120-Month Death Benefits - Eligibility.**

If any vested Participant dies while actively engaged in Covered Employment after accumulating at least ten (10) years of Vesting Service, a Pre-Retirement Lump-Sum Death Benefit and Pre-Retirement 120-Month Death Benefit shall be payable to his Beneficiary. A Participant shall be deemed actively engaged in Covered Employment if the Participant worked at least 300 Hours in the two (2) consecutive Calendar Years immediately prior to the date of the participant's death, except if the Participant is disabled as defined herein, the four (4) consecutive Calendar Years shall be substituted for two (2) consecutive Calendar Years. An unmarried Participant may name any Beneficiary for these benefits.

### **Section 3.16 Pre-Retirement Lump Sum Death Benefit - Amount.**

The amount of the Pre-Retirement Lump-Sum Death Benefit shall be \$200.00 for each Pension Credit earned during the Contribution Period, up to a maximum of \$5,000 effective April 1, 1994. For the purpose of determining the Pre-Retirement Lump Sum Death Benefit, no more than one (1) Pension Credit will be counted in a Calendar Year.

### **Section 3.17 Pre-Retirement 120-Month Death Benefit.**

The Pre-Retirement 120-Month Death Benefit shall be a 120-monthly benefit payment equal to the pension benefit the Participant was eligible for the day before the Participant died. The benefit payments will commence the first full calendar month after the Participant's death. If an eligible Participant's death occurs prior to the Participant attaining age 55, the benefit will be determined as if the Participant attained age 55 at the time of death.

### **Section 3.18 Partial Pension.**

A Participant who lacks sufficient Pension Credit to qualify for a pension under this Plan but who has earned Pension Credit under one or more pension funds, may be entitled to a partial or pro-rata pension benefit under this Plan in accordance with various reciprocal agreements.

### **Section 3.19 Non-Duplication of Pensions.**

A person shall be entitled to only one pension under this Plan, except that a Disability Pensioner who recovers may be entitled to a different type of pension.

### **Section 3.20 Level of Benefits.**

The level of benefits to which a Participant will be entitled will be determined using the accumulated Pension Credits and the pension benefits which were in effect in the last month for which the Participant earned Pension Credit prior to his incurring three consecutive One-Year Break-in-Service. In the event such a Participant subsequently returns to Covered Employment and earns additional Pension Credits, the Participant's pension benefit shall be pro-rated on the Pension Credits accumulated prior to each such three consecutive One-Year Breaks in-Service and the benefit level in effect at the time of each such withdrawal from Covered Employment. Provided, however, Pension Credit and/or pension benefits earned under one or more pension funds in accordance with various reciprocal agreements with the Pension Fund may be used to repair Breaks-in-Service under this section. This provision shall be effective January 1, 1999 with respect to any Pensioner who earns five (5) years or more of Pension Credit subsequent to his return to Covered Employment and who commences receipt of pension benefits after that date.

### **Section 3.21 Rounding of Benefit Amounts.**

Monthly benefit amounts determined under the Plan, when not a whole dollar amount, will be rounded to the next higher whole dollar amount. Such rounding shall be applied to the final calculated benefit amount payable after reduction for any applicable optional form(s) of payment.

### **Section 3.22 Small Benefit Cashouts.**

Notwithstanding any other provision of the Plan regarding benefit payment options and Plan distributions, if the actuarial value of the vested benefit of a Participant, Beneficiary or Alternative Payee is \$5,000 or less as of the Annuity Starting Date, the benefit shall be paid out in a single sum. The actuarial value of a vested benefit will be calculated using a 5 percent interest rate assumption and the Applicable Mortality Table.

### **Section 3.23 Rollovers.**

(a) A distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(b) The following definitions apply for the purposes of this Section:

- (i) **Eligible Rollover Distribution.** 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 expectancy) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Internal Revenue Code Section 401(a)(9); any distribution from a plan qualified under Internal Revenue Code Section 401(a) that is made on account of hardship, and the portion of any distribution that is not includible in gross income.
- (ii) **Eligible Retirement Plan.** An eligible retirement plan is an individual retirement account described in Internal Revenue Code Section 408(a), an individual retirement annuity described in Internal Revenue Code Section 408(b), an annuity plan described in Internal Revenue Code Section 403(a), or a qualified trust described in Internal Revenue Code Section 401(a), that accepts the distributee's eligible rollover distribution. 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.

Effective January 1, 2002, an eligible retirement plan shall also mean an annuity contract described in Internal Revenue Code Section 403(b) and an eligible plan under Internal Revenue Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or a former spouse who is the alternate payee under a qualified domestic relations order, as defined in Internal Revenue Code Section 414(p).

- (iii) Distributee. A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Internal Revenue Code Section 414(p), are distributees with regard to the interest of the spouse or former spouse.
- (iv) Direct Rollover. A direct rollover is payment by the Plan to the eligible retirement plan specified by the distributee.

#### **Section 3.24 Special Distributions.**

Pensioners and Beneficiaries, other than Local 964 member Pensioners and their Beneficiaries, who were formerly Covered Participants in the Hudson Valley District Council of Carpenters Pension as of December 1, 1999, shall receive a .5% increase for each year of retirement.

#### **Section 3.25 Retirees' 13th Pension Check.**

The Trustees within their sole discretion may issue a 13th pension check in any Plan Year to all Participants in payment status as of a date determined by the Trustees. It is understood that this provision for a 13th pension check is not to be considered an accrued or vested benefit under the Plan.

### **ARTICLE 4. PENSION CREDITS AND YEARS OF VESTING SERVICE**

#### **Section 4.01 Pension Credits.**

(a) For Covered Employment during the Contribution Period. The following schedules do not apply to Pensioners, Beneficiaries or inactive vested Participants as of January 1, 1999.

General Rule. For periods during the Contribution Period, an Employee shall be credited with Pension Credits on the basis of his hours of Work in Covered Employment (on which contributions to the Pension Fund were made) in accordance with the following schedules:

- (i) For each Calendar Year after December 31, 1998 and prior to the Calendar Year of the Employee's sixtieth (60th) birthday:

<u>Hours Within the Calendar Year</u>	<u>Pension Credits</u>
less than 25	.000
25 but less than 50	.025
50 but less than 75	.050
75 but less than 100	.075
100 but less than 125	.100
125 but less than 150	.125
150 but less than 175	.150
175 but less than 200	.175
200 but less than 225	.200
225 but less than 250	.225
250 but less than 275	.250
275 but less than 300	.275
300 but less than 325	.300
325 but less than 350	.325
350 but less than 375	.350
375 but less than 400	.375
400 but less than 425	.400
425 but less than 450	.425
450 but less than 475	.450
475 but less than 500	.475
500 but less than 525	.500
525 but less than 550	.525
550 but less than 575	.550
575 but less than 600	.575
600 but less than 625	.600
625 but less than 650	.625
650 but less than 675	.650
675 but less than 700	.675
700 but less than 725	.700
725 but less than 750	.725
750 but less than 775	.750
775 but less than 800	.775
800 but less than 825	.800
825 but less than 850	.825
850 but less than 875	.850
875 but less than 900	.875

<u>Hours Within the Calendar Year</u>		<u>Pension Credits</u>
900 but less than	925	.900
925 but less than	950	.925
950 but less than	975	.950
975 but less than	1,000	.975
1,000 but less than	1,025	1.000 (1 Pension Credit)
1,025 but less than	1,050	1.025
1,050 but less than	1,075	1.050
1,075 but less than	1,100	1.075
1,100 but less than	1,125	1.100
1,125 but less than	1,150	1.125
1,150 but less than	1,175	1.150
1,175 but less than	1,200	1.175
1,200 but less than	1,225	1.200
1,225 but less than	1,250	1.225
1,250 but less than	1,275	1.250
1,275 but less than	1,300	1.275
1,300 but less than	1,325	1.300
1,325 but less than	1,350	1.325
1,350 but less than	1,375	1.350
1,375 but less than	1,400	1.375
1,400 but less than	1,425	1.400
1,425 but less than	1,450	1.425
1,450 but less than	1,475	1.450
1,475 but less than	1,500	1.475
1,500 but less than	1,525	1.500
1,525 but less than	1,550	1.525
1,550 but less than	1,575	1.550
1,575 but less than	1,600	1.575
1,600 but less than	1,625	1.600
1,625 but less than	1,650	1.625
1,650 but less than	1,675	1.650
1,675 but less than	1,700	1.675
1,700 but less than	1,725	1.700
1,725 but less than	1,750	1.725
1,750 but less than	1,775	1.750
1,775 but less than	1,800	1.775
1,800 but less than	1,825	1.800
1,825 but less than	1,850	1.825
1,850 but less than	1,875	1.850
1,875 but less than	1,900	1.875
1,900 but less than	1,925	1.900
1,925 but less than	1,950	1.925
1,950 but less than	1,975	1.950

<u>Hours Within the Calendar Year</u>		<u>Pension Credits</u>
1,975 but less than	2,000	1.975
2,000 or more		2.000 (2 Pension Credits maximum per year)

The preceding schedule does not apply to Plan Participants at Long Island University - C.W. Post College, who shall receive a maximum of 1 Pension Credit per year.

- (ii) For each Calendar Year after December 31, 1998 and starting with the Calendar Year of the Employee's sixtieth (60th) birthday:

<u>Hours Within the Calendar Year</u>		<u>Pension Credits</u>
less than	12.5	.000
12.5 but less than	25	.025
25 but less than	37.5	.050
37.5 but less than	50	.075
50 but less than	62.5	.100
62.5 but less than	75	.125
75 but less than	87.5	.150
87.5 but less than	100	.175
100 but less than	112.5	.200
112.5 but less than	125	.225
125 but less than	137.5	.250
137.5 but less than	150	.275
150 but less than	162.5	.300
162.5 but less than	175	.325
175 but less than	187.5	.350
187.5 but less than	200	.375
200 but less than	212.5	.400
212.5 but less than	225	.425
225 but less than	237.5	.450
237.5 but less than	250	.475
250 but less than	262.5	.500
262.5 but less than	275	.525
275 but less than	287.5	.550
287.5 but less than	300	.575
300 but less than	312.5	.600
312.5 but less than	325	.625
325 but less than	337.5	.650
337.5 but less than	350	.675
350 but less than	362.5	.700

<u>Hours Within the Calendar Year</u>		<u>Pension Credits</u>	
362.5	but less than	375	.725
375	but less than	387.5	.750
387.5	but less than	400	.775
400	but less than	412.5	.800
412.5	but less than	425	.825
425	but less than	437.5	.850
437.5	but less than	450	.875
450	but less than	462.5	.900
462.5	but less than	475	.925
475	but less than	487.5	.950
487.5	but less than	500	.975
500	but less than	1,025	1.000 (1 Pension Credit)
1,025	but less than	1,050	1.025
1,050	but less than	1,075	1.050
1,075	but less than	1,100	1.075
1,100	but less than	1,125	1.100
1,125	but less than	1,150	1.125
1,150	but less than	1,175	1.150
1,175	but less than	1,200	1.175
1,200	but less than	1,225	1.200
1,225	but less than	1,250	1.225
1,250	but less than	1,275	1.250
1,275	but less than	1,300	1.275
1,300	but less than	1,325	1.300
1,325	but less than	1,350	1.325
1,350	but less than	1,375	1.350
1,375	but less than	1,400	1.375
1,400	but less than	1,425	1.400
1,425	but less than	1,450	1.425
1,450	but less than	1,475	1.450
1,475	but less than	1,500	1.475
1,500	but less than	1,525	1.500
1,525	but less than	1,550	1.525
1,550	but less than	1,575	1.550
1,575	but less than	1,600	1.575
1,600	but less than	1,625	1.600
1,625	but less than	1,650	1.625
1,650	but less than	1,675	1.650
1,675	but less than	1,700	1.675
1,700	but less than	1,725	1.700
1,725	but less than	1,750	1.725
1,750	but less than	1,775	1.750
1,775	but less than	1,800	1.775

<u>Hours Within the Calendar Year</u>		<u>Pension Credits</u>	
1,800	but less than	1,825	1.800
1,825	but less than	1,850	1.825
1,850	but less than	1,875	1.850
1,875	but less than	1,900	1.875
1,900	but less than	1,925	1.900
1,925	but less than	1,950	1.925
1,950	but less than	1,975	1.950
1,975	but less than	2,000	1.975
2,000	or more		2.000 (2 Pension Credits maximum per year)

The preceding schedule does not apply to Plan Participants at Long Island University - C.W. Post College, who shall receive a maximum of 1 Pension Credit per year.

- (iii) Effective January 1, 1999, Employees employed in Shop and/or Mill Locals shall be credited with Pension Credits based upon the dollar amount of contributions paid by the Employers. Each one-tenth (1/10) of a Pension Credit, up to a maximum of two (2) Pension Credits per year, shall be equal to ten (10) times the dollar amount of the hourly Employer contribution rate.
- (iv) If in a Calendar Year, after December 31, 1998, a Participant completes a year of Vesting Service, but less than 50 Hours of Service in Covered Employment, he will be credited with a pro rata portion of a full Pension Credit based on the ratio of his Hours of Service in Covered Employment to 2,000.

**(b) For Covered Employment before the Contribution Period.** A Participant shall be credited with Pension Credits for periods before the Contribution Period on the basis of his Work in Covered Employment in accordance with the following:

- (i) A Participant shall be entitled to Pension Credit, provided he earned a total of at least \$3,000.00 in Covered Employment in the three Calendar Years 1959, 1960, and 1961. This shall be referred to as the "three year test" of eligibility for Pension Credit prior to the Contribution Period.
- (ii) An exception to this "three year test" requirement shall be granted to a Participant who, on the basis of medical evidence satisfactory to the Trustees, establishes that he was totally disabled during this period. Such a Participant shall be entitled to Pension Credit only if in any one of the three Calendar Years, 1959, 1960, or 1961, he earned at least \$600 in Covered Employment.

- (iii) For those years between January 1, 1939 and December 31, 1961, one Pension Credit will be granted for each Calendar Year in which a Participant earned at least \$2,500.00 in Covered Employment. For those years prior to January 1, 1939, one Pension Credit will be granted for each Calendar Year in which a Participant earned at least \$1,500.00 in Covered Employment.
- (iv) It is recognized that it may be difficult for a Participant to prove exactly where he worked and how much he earned in Covered Employment over the many years before January 1, 1962. The Trustees may accept as proof records of the Social Security Administration, of the Union, or of the Empire State Carpenters Welfare Fund or of the Brotherhood of Carpenters & Joiners of America.

(c) **For Determining Eligibility for Former Members of Merged Plans.** For purposes of determining eligibility for benefits under Article 3, Pension Credits shall include pension credits earned pursuant to the following funds for Participants who began participation under this Plan due to the merger of such plans into this Plan:

- (i) The Westchester County New York Carpenters Pension Fund;
- (ii) The Hudson Valley District Council of Carpenters Pension Plan, with respect only to former members of Local 964 covered under such plan; and
- (iii) The Hudson Valley Carpenters Local 19 Pension Fund.

#### **Section 4.02 Credit for Non-Working Periods.**

This Section recognizes certain periods when a Participant is not actually at work in Covered Employment but is to receive Pension Credit just as if he were working in Covered Employment. Periods of absence from Covered Employment are to be credited as though they were worked in Covered Employment if they were due to Service in any of the armed forces of the United States in time of war or national emergency or pursuant to a national conscription law, provided the Participant makes himself available for Covered Employment within 90 days after release from active duty or 90 days after recovery from a disability continuing after his release from active duty, but excluding periods of voluntary re-enlistment not affected during a national emergency or time of war. Any provision of this Plan to the contrary notwithstanding, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Internal Revenue Code Section 414(u).

### **Section 4.03 Years of Vesting Service.**

(a) **General Rule.** A Participant shall be credited with Vesting Service on the same basis by which Pension Credits are granted during the Contribution Period described in Sections 4.01 and 4.02 subject to the provisions of the following subsections.

(b) **Additions.** Effective July 1, 1976, if a Participant works for a Contributing Employer in a job not covered by this Plan and such employment is continuous with his employment with that Employer in Covered Employment, his Hours of Service in such non-covered job during the Contribution Period shall be counted toward a year of Vesting Service.

(c) **Exceptions.** A Participant shall not be entitled to credit toward Vesting Service for the following periods:

- (i) Years preceding a Permanent Break-in-Service as defined in Section 4.04(d) and (e) for periods prior to December 31, 1975.
- (ii) Years preceding a Permanent Break-in-Service as defined in Section 4.04(c).

(d) **For Determining Eligibility for Former Members of Merged Plans.** For purposes of determining eligibility for benefits under Article 3, Vesting Service shall include years of vesting service earned pursuant to the following funds for Participants who began participation under this Plan due to the merger of such plans into this Plan:

- (i) The Westchester County New York Carpenters Pension Fund;
- (ii) The Hudson Valley District Council of Carpenters Pension Plan, with respect only to former members of Local 964 covered under such plan; and
- (iii) The Hudson Valley Carpenters Local 19 Pension Fund.

### **Section 4.04 Breaks-in-Service.**

(a) **General.** If a person has a Break-in-Service before he has earned at least 5 years of Vesting Service, it has the effect of canceling his standing under this Plan, that is, his Participation, his previously credited years of Vesting Service, and his previous Pension Credits. However, a Break may be temporary, subject to repair by a sufficient amount of subsequent Vesting Service. A longer Break-in-Service may be permanent.

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

- (i) After December 31, 1975, a person has a One-Year Break-in-Service in any Calendar Year in which he fails to complete 300 Hours of Service.

- (ii) Time of employment with a Contributing Employer in non-covered employment after June 30, 1976 if creditable under Section 4.03(b) shall be counted as if it were Covered Employment in determining whether a Break-in-Service has been incurred.
- (iii) A One-Year Break-in-Service is repairable, in the sense that its effects are eliminated, if, before incurring a Permanent Break-in-Service, the Employee subsequently earns a year of Vesting Service (1,000 hours). More specifically:
  1. Participation is restored in accordance with the provisions of Section 2.02 or, with respect to Participants who are members of Local 19, Local 203 or Local 323, in accordance with the provisions of Section II(i) of the Appendix; and
  2. Previously earned Vesting Service and Pension Credits are restored.
- (iv) Nothing in paragraph (iii) shall change the effect of a Permanent Break-in-Service.

(c) **Permanent Break-in-Service After December 31, 1984.** A person has a Permanent Break-in-Service if he has earned fewer than five years of Vesting Service and he has five consecutive One-Year Breaks-in-Service including at least one such break after December 31, 1984.

(d) **Permanent Break-in-Service During the Period January 1, 1976 to December 31, 1984.** A person has a Permanent Break-in-Service if he has consecutive One-Year Breaks-in-Service, including at least one after December 31, 1975, that equal or exceed the number of years of Vesting Service with which he had been credited.

(e) **Permanent Break-in-Service from January 1, 1966 to December 31, 1973.** A person shall have incurred a Permanent Break-in-Service if during the period from January 1, 1966 to December 31, 1973, he fails to Work in Covered Employment and earn at least three tenths of a Pension Credit in any period of two consecutive Calendar Years.

(f) **Permanent Break-in-Service Before January 1, 1962.** A person shall have incurred a Permanent Break-in-Service if in any Calendar Year before January 1, 1962, he failed to earn at least one Pension Credit in accordance with Section 4.01(b) above.

(g) **Effect of Permanent Break-in-Service.** If a person who has not met the requirements for a pension has a Permanent Break-in-Service:

- (i) His previous Pension Credits and years of Vesting Service are canceled, and

- (ii) His Participation is canceled, new Participation being subject to the provisions of Section 2.04.

(h) **Maternity/Paternity Absences.** Effective July 1, 1986, in the event an Employee would otherwise be charged with a Break-in-Service for a Plan Year, and he is absent from employment that would earn Pension Credit or Vesting Service under the Plan in that Plan Year because of pregnancy, the birth of the Employee's child, the placement of a child with the Employee for adoption, or caring for the Employee's child immediately after the child's birth or placement, then the Employee shall be credited with the normal work hours during such absence for the purpose, only, of preventing a Break-in-Service from being incurred.

Such special crediting shall be for the Plan Year in which the absence starts. However, if the Employee is already protected against a Break-in-Service in such Plan Year, the special crediting shall apply to the immediately following Plan Year and shall include such hours even though occurring in the preceding Plan Year.

(i) **Reinstatement of Pension Credit and Vesting Service.** Effective July 1, 1986, if a person suffers a Break-in-Service when not vested, and thereafter returns to employment covered under the Plan, and earns at least 300 hours of Pension Credit in one Calendar Year, or at least 500 hours of Vesting Service in one Calendar Year, Pension Credit and Vesting Service that was forfeited will be reinstated if the number of consecutive One-Year Breaks-in-Service that the person has incurred is either less than five or less than the number of years of Vesting Service that the person had at the time of the Break.

## **ARTICLE 5. HUSBAND AND WIFE PENSION**

### **Section 5.01 General.**

This Article applies only to Participants who have at least one Hour of Service (including paid leave) for a Contributing Employer after August 22, 1984, except as provided in Section 5.04. The following general provisions are subject to all of the conditions and limitations in this Article:

- (a) If the Effective Date of a pension payable to a married Participant is after December 31, 1984, the benefit is to be paid as a 100% Husband and Wife Pension unless:
  - (i) the Participant and Spouse elect otherwise in accordance with Section 5.02(e); or
  - (ii) the Spouse is not a Qualified Spouse as defined below.

(b) If a married Participant with a vested right to a pension under the Plan (other than a Disability Pension) dies after August 22, 1984 but before his pension payments have started, a Pre-Retirement Surviving Spouse Pension shall be payable as described in this Article.

(c) For purpose of this Plan, a Spouse is a person to whom a Participant is considered married under the law of the Participant's domicile and, if and to the extent provided in a Qualified Domestic Relations Order (within the meaning of ERISA Section 206(d) and Internal Revenue Code Section 414(p)), a Participant's former Spouse.

(d) To be eligible to receive the Survivor's Pension in accordance with a Husband and Wife Pension or a Pre-Retirement Surviving Spouse Pension, the Spouse must be a "Qualified Spouse". A Spouse is a Qualified Spouse if the Participant and Spouse were married on the date of the Participant's death and had been married throughout the year ending with the date of the Participant's pension payments start or, if earlier, the date of death. A Spouse is also a Qualified Spouse if the Participant and Spouse became married within the year immediately preceding the date the Participant's pension payments start and they were married for at least a year before his death.

(e) Special provisions for certain Participants with no Hours of Service after August 22, 1984 are set forth on the following page.

## **Section 5.02 Husband and Wife Pension at Retirement.**

(a) A pension of a Participant who is married to a Qualified Spouse on the date his pension payments start shall be paid in the form of a 100% Husband and Wife Pension, unless the Participant and Spouse elect either a 50% or 75% Husband and Wife Pension or unless a valid waiver of that form or payment has been filed with the Administrator. This includes a Disability Pension that is payable.

(b) A Husband and Wife Pension means that the Participant will receive an adjusted monthly amount for life and, if the Participant dies before his Qualified Spouse, the latter will receive a monthly benefit for her lifetime of either 100%, 75% or 50% of the Participant's adjusted monthly amount. The Participant's monthly amount shall be a percentage of the full monthly amount otherwise payable as a single life pension (after adjustment, if any, for early retirement) as follows:

(i) For those Participants retiring on a pension other than a Vested Pension on or after January 1, 2000:

a. **100% Husband and Wife Pension.**

- (1) **Regular Retirement.** 85% plus .6% for each year that the Spouse's age is greater than the Participant's age, with a maximum factor of 99%, or minus .6% for each year that the Spouse's age is less than the Participant's age.
- (2) **Disability Retirement.** 75% plus .5% for each year that the Spouse's age is greater than the Participant's age, with a

maximum factor of 99%, or minus .5% for each year that the Spouse's age is less than the Participant's age.

b. **75% Husband and Wife Pension.**

- (1) **Regular Retirement.** 89% plus .6% for each year that the Spouse's age is greater than the Participant's age, with a maximum factor of 99%, or minus .6% for each year that the Spouse's age is less than the Participant's age.
- (2) **Disability Retirement.** 83% plus .5% for each year that the Spouse's age is greater than the Participant's age, with a maximum factor of 99%, or minus .5% for each year that the Spouse's age is less than the Participant's age.

c. **50% Husband and Wife Pension.**

- (1) **Regular Retirement.** 94% plus .5% for each year that the Spouse's age is greater than the Participant's age, with a maximum factor of 99%, or minus .5% for each year that the Spouse's age is less than the Participant's age.
- (2) **Disability Retirement.** 91.5% plus .4% for each year that the Spouse's age is greater than the Participant's age, with a maximum factor of 99%, or minus .4% for each year that the Spouse's age is less than the Participant's age.

(ii) For those Participants retiring on a Vested Pension on or after January 1, 2000:

a. **100% Husband and Wife Pension.**

**Regular Retirement.** 79% plus .6% for each year that the Spouse's age is greater than the Participant's age, with a maximum factor of 99%, or minus .6% for each year that the Spouse's age is less than the Participant's age.

b. **75% Husband and Wife Pension.**

**Regular Retirement.** 83% plus .5% for each year that the Spouse's age is greater than the Participant's age, with a maximum factor of 99%, or minus .5% for each year that the Spouse's age is less than the Participant's age.

c. **50% Husband and Wife Pension.**

**Regular Retirement.** 88% plus .4% for each year that the Spouse's age is greater than the Participant's age, with a maximum factor of 99%, or minus .4% for each year that the Spouse's age is less than the Participant's age.

- (iii) The adjusted amount of the Participant's pension shall be rounded to the next higher multiple of \$1.00 if it is not already a multiple of \$1.00
- (iv) The adjustment factors provided in this Section are not in any respect to be deemed a vested right of any Participant nor part of his Accrued Benefit. The factors are subject to change by the Board of Trustees, through amendment of this Plan, provided that no amendment may reduce the amount of a Participant's monthly pension accrued up to the date the factors are changed.

(c) A Husband and Wife Pension, once payments have begun, may not be revoked nor the Pensioner's benefits increased by reason of subsequent divorce.

(d) A retiring Participant shall be advised by the Trustees of the effect of payment on the basis of the Husband and Wife Pension, including a comparison of the full single life pension amount and of the adjusted amounts.

(e) The Husband and Wife Pension may be waived in favor of another form of distribution only as follows:

- (i) The Participant files the waiver in writing in such form as the Trustees may prescribe, and the Participant's Spouse acknowledges the effect of the waiver and consents to it in writing, witnessed by a notary public; or
- (ii) The Participant establishes to the satisfaction of the Trustees that:
  - (A) the Participant is not married;
  - (B) the Spouse whose consent would be required cannot be located;
  - (C) the Participant and Spouse are legally separated; or
  - (D) consent of the Spouse cannot be obtained because of extenuating circumstances.

If the Spouse is legally incompetent, consent may be given by his or her legal guardian, including the Participant if authorized to act as the Spouse's legal guardian.

- (iii) Notwithstanding any other provisions of the Plan, a waiver of the Husband and Wife Pension shall not be effective if given more than 90 days before the Annuity Starting Date nor less than 30 days prior to the Annuity Starting Date unless such 30-day notice is waived; provided, however, such waiver may be revoked at any time prior to the commencement of payments and payments shall not commence until 8 days after the date of such waiver.
- (iv) A Spouse's consent to a waiver of the Husband and Wife Pension shall be effective only with respect to that Spouse, and shall be irrevocable unless the Participant revokes the waiver to which it relates.

(f) If the Husband and Wife Pension would be payable except for the fact that the Spouse is not a Qualified Spouse on the date the Participant's pension payments start, because the Participant and Spouse have not been married for at least one year at that time, pension payments to the Participant shall be made in the amount adjusted for the Husband and Wife Pension. If the Participant and Spouse have not been married to each other for at least one year upon the death of the Participant, the difference between the amounts that had been paid and the amounts that would have been paid if the monthly amount had not been adjusted shall be paid to the Spouse, if then alive, and otherwise to the Participant's estate.

(g) Notwithstanding anything to the contrary herein, if the Participant's spouse predeceases the Participant, the Participant's monthly benefit will be increased to the full monthly amount otherwise payable as a single life pension (after adjustment, if any, for early retirement).

### **Section 5.03 Pre-Retirement Surviving Spouse Pension.**

(a) If a Participant who has a Qualified Spouse dies before his pension payments start but at a time when he had earned a vested right to a pension, a Pre-Retirement Surviving Spouse Pension shall be paid to his surviving Spouse.

(b) A Spouse is a Qualified Spouse for the purpose of this subsection if the Participant and Spouse have been married to each other throughout the year immediately before his death, or if the former Spouse is required to be treated as a Qualified Spouse under a Qualified Domestic Relations Order.

(c) If the Participant described in (a) above died at a time when he would have been eligible to begin receiving payment of a pension (other than a Disability Pension) had he retired, the surviving Qualified Spouse shall be entitled to a lifetime Surviving Spouse Pension determined in accordance with the provisions of Section 5.02 as if the Participant had retired the day before he died.

(d) If the Participant described in (a) died before he would have been eligible to begin receiving pension payments had he retired (other than a Disability Pension if he died before its Effective Date), the surviving Qualified Spouse shall be entitled to a Pre-Retirement Surviving

Spouse Pension determined as if the Participant had separated from Service under the Plan on the earlier of the date he last worked in Covered Employment or the date of his death, had survived to the earliest age at which a pension (other than a Disability Pension) would be payable to him under the Plan, retired at that age with an immediate 100% Husband and Wife Pension, and died the next day. If an eligible Participant's death occurs prior to the Participant attaining age 55, the benefit will be determined as if the Participant has attained age 55 at the time of death. The amount shall be determined under the terms of the Plan in effect when the Participant last worked in Covered Employment, unless otherwise expressly specified.

(e) Notwithstanding any other provisions of this Article, a Pre-Retirement Surviving Spouse Pension shall not be paid in the form, manner or amount described above if the Spouse elects in writing filed with the Trustees, and on whatever form they may prescribe, to defer commencement of the Pre-Retirement Surviving Spouse Pension until a specified date that is no later than the first of the month on or immediately before the date on which the Participant would have reached age 70½ or, if later, December 1st of the Calendar Year following the year of the Participant's death. The amount payable at that time shall be determined as described in paragraphs (c) and (d) of this Section except that the benefit shall be paid in accordance with the terms of the Plan in effect when the Participant last worked in Covered Employment (unless otherwise specified) as if the Participant had retired with a 100% Husband and Wife Pension on the day before the Surviving Spouse's payments are scheduled to start, and died the next day.

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

#### **Section 5.04 Inactive Vested Participant.**

(a) A Participant who (1) had at least one Hour of Service under the Plan after September 1, 1974, (2) is vested, (3) had not retired under the Plan before August 23, 1984, and (4) is not otherwise entitled to, or eligible to elect, protection for a surviving Spouse through a "qualified joint and survivor annuity" within the meaning of ERISA Section 205, either before or after enactment of the Retirement Equity Act, shall be entitled to elect to receive benefits as a Husband and Wife Pension in accordance with the provisions of the Plan in effect before January 1, 1985, by written request filed with the Trustees before the Effective Date of the Participant's pension.

(b) A Participant who (1) has at least one Hour of Service for an Employer in the first Plan Year after 1975, (2) has a vested right to a pension and credit for at least ten years of Vesting Service, (3) was not receiving pension payments under the Plan as of August 23, 1984, and (4) is not otherwise entitled to, or eligible to elect, protection for a surviving Spouse through a "qualified joint and survivor annuity" under this Article as amended on account of the Retirement Equity Act of 1984, shall be entitled to elect coverage for the Pre-Retirement

Surviving Spouse Pension under Section 5.03 by written request filed with the Trustees before his death or, if earlier, the date his pension payments start.

(c) The benefit schedule applied under this subsection shall be that in effect as of the beginning of the Plan Year immediately after 1975 or, if later, the beginning of the Plan Year immediately after the Participant last completed a Year of Service, unless otherwise expressly specified.

#### **Section 5.05 Relation to Qualified Domestic Relations Order.**

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

#### **Section 5.06 Trustees' Reliance.**

The Trustees shall be entitled to rely on written representations, consents and revocations submitted by Participants, Spouses or other parties in making determinations under this Article and, unless such reliance is arbitrary or capricious, the Trustees' determinations shall be final and binding, and shall discharge the Pension Fund and the Trustees from liability to the extent of the payment made.

#### **Section 5.07 Minimum Number of Pension Payments.**

If a Participant elects the Husband and Wife Pension or if a Participant fails to reject such option upon Retirement, the Guaranteed Pension Benefits shall not be applicable.

#### **Section 5.08 Delayed Retirement.**

If a Participant's Annuity Starting Date is after the Participant's Normal Retirement Age, the Participant's monthly benefit will be the accrued benefit at Normal Retirement Age, actuarially increased for each complete calendar month between Normal Retirement Age and the Annuity Starting Date for which benefits were not suspended, and then converted as of the Annuity Starting Date to the benefit payment form applicable to the Participant. However, if a Participant first becomes entitled to additional benefits for any reason after Normal Retirement Age, the actuarial increase with respect to such additional benefits will start when they first became payable. For the purposes of this Section, the actuarial increase will be 1% per month for the first 60 months after Normal Retirement Age and 1.5% per month for each month thereafter.

**ARTICLE 6.**  
**APPLICATIONS, BENEFIT PAYMENTS AND RETIREMENT**

**Section 6.01 Applications.**

No pension shall be granted unless an application shall be made in writing and filed with the Trustees.

**Section 6.02 Information and Proof.**

Every Participant, Pensioner and 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, benefits under this Plan may be denied, suspended or discontinued. The Trustees shall have the right to recover any benefit payments made in reliance on any false or fraudulent statement, information or proof submitted by a Participant, Pensioner or Beneficiary.

**Section 6.03 Action of Trustees.**

The Trustees shall, subject to the requirements of the law, be the sole judges of the standard of proof required in any case. Decisions of the Trustees concerning the application and interpretation of this Plan shall be final and binding on all parties.

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

**Section 6.04 Right of Appeal.**

A Participant whose application for benefits under this Plan has been denied, in whole or in part, shall be provided with adequate notice in writing setting forth the specific reasons for such denial and shall have the right to appeal the decision by written request filed with the Trustees within 180 days after receipt of such notice. The Trustees shall adopt a procedure for processing and hearing claims appeals. Appeals shall be considered by the Trustees or by a person or committee designated by the Trustees and the decision on the appeal shall be final and binding on all persons.

**Section 6.05 Benefit Payments Generally.**

(a) A Participant who is eligible to receive benefits under this Plan and makes application in accordance with the rules of this Plan shall be entitled upon Retirement to receive the monthly benefits provided for the remainder of his life, subject to the provisions of this Plan. A Participant's Annuity Starting Date is the first day of the month following the month in which the Participant has fulfilled all the conditions for entitlement to benefits, including the filing of an application.

For purposes of this Plan, the "Effective Date" of the Participant's pension is the "Annuity Starting Date" of the Participant's pension.

A Participant's Annuity Starting Date for a Disability Pension is the first day of the month in which the Participant has been granted a Social Security Disability Award; provided, however, such Disability Pension payments may not commence until the end of the waiting period described under Section 3.12.

(b) However, in no event, unless a Participant elects otherwise, shall the payment of benefits begin later than the 60th day after the later of the close of the Plan Credit Year in which:

- (i) the Participant attains Normal Retirement Age, or
- (ii) the Participant terminates his Covered Employment and retires as that term is defined in Section 6.06 of this Article.

A Participant may, however, elect in writing filed with the Trustees, to receive benefits first payable for a later month, provided that no such election postpones the Annuity Starting Date of the Participant's pension until after the Required Beginning Date as defined in Section 6.05(d).

(c) A Participant who retires before his or her Normal Retirement Age and then earns additional benefit accruals under the Plan through reemployment will have a separate Annuity Starting Date determined under Section 6.05(a) or, if later, 30 days after the Plan advises the Participant of the available benefit payment options, unless the benefit is being paid as a Husband and Wife Pension at or after the Participant's Normal Retirement Age or the Participant and Spouse (if any) consent in writing to the commencement of payments before the end of that 30-day period, with respect to those additional accruals, except that an Annuity Starting Date that is on or after Normal Retirement Age shall apply for any additional benefits accrued through reemployment after that date.

- (d)
  - (i) Notwithstanding any provision of the Plan to the contrary, effective July 1, 1990, the Pension Fund will begin benefit payments to all Participants by their Required Beginning Dates, whether or not they apply for benefit.
  - (ii) A Participant's Required Beginning Date is April 1 of the Calendar Year following the year the Participant reaches age 70½, provided that, for a Participant who reaches 70½ before 1988 other than a 5% owner, the Required Beginning Date is April 1 of the Calendar Year in which the Participant ceases Work in Covered Employment if that is later.
  - (iii) If a Participant who is definitely located fails to file a completed application for benefits on a timely basis, the Pension Fund will establish the Participant's Required Beginning Date as the Annuity Starting Date and begin benefit payments as follows:

- (A) In the form of a Husband and Wife Pension calculated on the assumptions that the Participant is and has been married for at least one year by the date payments start and that the husband is 3 years older than the wife.
- (B) The benefit payment form specified here will be irrevocable once it begins, with the sole exception that it may be changed to a single life annuity if the Participant proves that he did not have a Qualified Spouse (including an alternate payee under a QDRO) on the Required Beginning Date; also, the amounts of future benefits will be adjusted based on the actual age difference between the Participant and Spouse if proven to be different from the foregoing assumption.
- (C) Federal, state and local income tax, and any other applicable taxes, will be withheld from the benefit payments as required by law or determined by the Trustees to be appropriate for the protection of the Pension Fund and the Participant.

(e) Effective as of July 1, 1990, any additional benefits earned by a Participant in Covered Employment after Normal Retirement Age will be determined at the end of each Plan Year and will be payable as of February 1 following the end of the Plan Year in which they are accrued, provided payment of benefits at that time is not suspended pursuant to Section 6.07 or postponed due to the Participant's continued employment.

Additional benefits described in this subsection that are not suspended or postponed will be paid in the payment form in effect for the Participant as of the Annuity Starting Date most recently preceding the date the additional benefit became payable.

(f) Pension payments shall end with the payment for the month in which the death of the Pensioner occurs except as provided in accordance with a Husband and Wife Pension (Article 5) and any other provision of this Plan for payments after the death of the Pensioner.

#### **Section 6.06 Retirement.**

General Rule: To be considered retired, a Participant must have separated from Service with any and all Employers in the industry.

#### **Section 6.07 Suspension of Benefits.**

(a) **Before Age 62.** The monthly benefit shall be suspended for any month in which the Participant is employed in Disqualifying Employment before he has attained age 62. "Disqualifying Employment" for the period before age 62, is any employment or job function covered by any Collective Bargaining Agreement of the District Council of Nassau County and

Vicinity or of any other District Council or Local Union affiliated with the United Brotherhood of Carpenters and Joiners of America, whether or not such work is performed for a union or non-union Employer or is engaged in on a self-employed basis and to the extent such work is performed on a construction jobsite where carpenters covered under this Plan are employed. The Trustees may, for good cause, waive a period of Suspension of Benefits.

(b) **After Age 62.**

- (1) If the Participant has attained age 62, his monthly benefit shall be suspended for any month in which he worked or was paid for at least 40 hours in Disqualifying Employment. After attainment of age 62, "Disqualifying Employment" means employment or self-employment that is (A) in an industry covered by the Plan when the Participant's pension payments began, and (B) in the geographic area covered by the Plan when the Participant's pension began, and (C) in any occupation in which the Participant worked under the Plan at any time or any occupation covered by the Plan at the time the Participant's pension payments began, subject to the conditions hereinafter set forth. However, if a Participant worked in Covered Employment only in a skilled trade or craft, employment or self-employment shall be disqualifying only if it is in work that involves the skill or skills of that trade or craft directly or, as in the case of supervisory work, indirectly, and such work shall be disqualifying only if it is performed on a construction job at which participants in this Plan are employed. However, in any event, any work for at least 40 hours in a month for which contributions are required to be made to the Plan shall be disqualifying.
- (2) The term "industry covered by the Plan" means any industry in which Employees covered by the Plan were employed when the Participant's pension began or, but for suspension under this Article, would have begun.
- (3) The geographic area covered by the Plan is the State of New York and any other area covered by the Plan when the Participant's pension began or, but for suspension under this Article, would have begun. The geographic area covered by the Plan shall also include any area covered by a plan which, under a reciprocal agreement in effect when the Participant's pension payments began, had forwarded contributions to this Plan, on the basis of which this Plan Accrued Benefits for the Participant.
- (4) If a retired Participant re-enters Covered Employment to an extent sufficient to cause a Suspension of Benefits, and his pension payments are subsequently resumed, the industry and area covered by the Plan when the Participant's pension began shall be the industry and area covered by the Plan when his pension was resumed.

- (5) Paid non-work time shall be counted toward the measure of 40 hours if paid for vacation, holiday, illness or other incapacity, layoff, jury duty, or other leave of absence. A Participant shall be considered as paid for a day if he is paid for at least one hour of Work or non-work time, as described in the preceding sentence, performed on or attributed to that day.

(c) **Definition of Suspension.** "Suspension of Benefits" for a month means non-entitlement to benefits for the month. If benefits were paid for a month for which benefits were later determined to be suspended, the over-payment shall be recoverable through deductions from future pension payments, pursuant to subsection (g), and in accordance with Section 6.03.

(d) **Notices.**

- (1) At Normal Retirement Age or upon commencement of pension payments, the Trustees shall notify the Participant of the Plan rules governing Suspension of Benefits, including the identity of the industries and area covered by the Plan. If benefits have been suspended and payment resumed, new notification shall, upon resumption, be given to the Participant, if there has been any material change in the suspension rules or the identity of the industries or area covered by the Plan.
- (2) A Participant shall notify the Plan in writing within 30 days after starting any work of a type that is or may be disqualifying under the provisions of the Plan and without regard to the number of hours of such work (that is, whether or not less than 40 hours in a month). If a Participant has worked in Disqualifying Employment in any month and has failed to give timely notice to the Plan of such employment, the Trustees shall presume that he worked for at least 40 hours in such month and any subsequent month before the Participant gives notice that he has ceased Disqualifying Employment. The Participant shall have the right to overcome such presumption by establishing that his Work was not in fact an appropriate basis, under the Plan, for suspension of his benefits.

If a Participant last worked in Disqualifying Employment for any number of hours for a contractor at a building or construction site and he has failed to give timely notice to the Plan of such employment, the Trustees shall presume that he has engaged in such work for as long as the contractor has been and remains actively engaged at that site. The Participant shall have the right to overcome such presumption by establishing that his work was not in fact an appropriate basis, under the Plan, for suspension of his benefits.

The Trustees shall inform all Participants at least once every twelve months of the re-employment notification requirements and the presumptions set forth in the above paragraphs.

- (3) A Participant whose pension has been suspended shall notify the Plan when Disqualifying Employment has ended. The Trustees shall have the right to hold back benefit payments until such notice is filed with the Plan.
- (4) A Participant may ask the Plan whether a particular employment will be disqualifying. The Plan shall provide the Participant with its determination.
- (5) The Plan shall inform a Participant of any suspension of his benefits by notice given by personal delivery or first class mail during the first calendar month in which his benefits are withheld. Such notice shall include a description of the specific reasons for the suspension, a copy of the relevant provisions of the Plan, reference to the applicable regulation of the U.S. Department of Labor, and a statement of the procedure for securing a review of the suspension. In addition, the notice shall describe the procedure for the Participant to notify the Plan when his Disqualifying Employment ends. If the Plan intends to recover prior overpayments by offset under subsection (g) (2), the suspension notice shall explain the offset procedure and identify the amount expected to be recovered, and the periods of employment to which it relates.

(e) **Review.** A Participant shall be entitled to a review of a determination suspending his benefits by written request filed with the Trustees within 180 days of the notice of suspension.

The same right of review shall apply, under the same terms, to a determination by or on behalf of the Trustees that contemplated employment will be disqualified.

(f) **Waiver of Suspension.** The Trustees may, from time to time, adopt by resolution, objective standards under which benefits will not be suspended for engaging in specified types or categories of Disqualifying Employment, for the period specified in the resolution granting the exemption.

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

- (1) Benefits shall be resumed for months after the last month for which benefits were suspended, with payments beginning no later than the third month after the last calendar month for which the Participant's benefit was suspended, provided the Participant has complied with the notification requirements of paragraph (d) (3) above.
- (2) Overpayments attributable to payments made for any month or months for which the Participant had Disqualifying Employment shall be deducted from pension payments otherwise paid or payable subsequent to the period of suspension. A deduction from a monthly benefit for a month after the Participant attained Normal Retirement Age shall not exceed 25 percent of

the pension amount (before deduction), except that the Plan may withhold up to 100 percent of the first pension payment made upon resumption after a suspension. If a Pensioner dies before recoupment of overpayments has been completed, deductions shall be made from the benefits payable to his Beneficiary or Spouse receiving a pension subject to the 25 percent limitation on the rate of deduction.

(h) **No Suspension after Required Beginning Date.** No benefits shall be suspended under this Article for months starting on and after a Participant's Required Beginning Date as defined in Section 6.05.

### **Section 6.08 Benefit Payments Following Suspension.**

(a) The monthly amount of pension when resumed after suspension shall be determined under paragraph (1) and adjusted for any optional form of payment in accordance with paragraph (2). Nothing in this Section shall be understood to extend any benefit increase or adjustment effective after the Participant's initial Retirement to the amount of pension upon resumption of payment, except to the extent that it may be expressly directed by other provisions of the Plan.

- (1) **Resumed Amount.** The amount shall be determined as if it were then being determined for the first time, but on the basis of an adjusted age. The adjusted age shall be the age of the Participant at the beginning of the first month for which payment is resumed, reduced by the months for which he previously received benefits to which he was entitled.
- (2) The amount determined under the above paragraphs shall be adjusted for any survivor's pension option or any other optional form of benefit in accordance with which the benefits of the Participant and any contingent annuitant or Beneficiary are payable.

(b) A Pensioner who returns to Covered Employment for an insufficient period of time to earn a year of Vesting Service, shall not, on subsequent termination of employment, be entitled to a recomputation of pension amount based on the additional Service.

If Pensioner who returns to Covered Employment completes a year of Vesting Service, he shall, upon his subsequent Retirement, be entitled to a recomputation of his pension amount, based on any additional Pension Credits.

(c) A Husband and Wife Pension in effect immediately prior to Suspension of Benefits and any other benefit following the death of the Pensioner shall remain effective if the Pensioner's death occurs while his benefits are in suspension. If a Pensioner has returned to Covered Employment, he shall not be entitled to a new election as to the Husband and Wife Pension or any other optional form of benefit.

(d) A Pensioner retired with a Disability Pension who loses entitlement may re-enter Covered Employment. In the event such a Participant subsequently retires after accruing at least one additional year of Pension Credit, his pension benefit shall be computed without regard to his previous pension benefit. The period of time during which such an Employee had been receiving a Disability Pension shall not constitute a Break-in-Service.

#### **Section 6.09 Vested Status or Nonforfeitability.**

(a) The Employee Retirement Income Security Act requires that certain of the benefits under this Plan be vested (in the term used in the Act, "Nonforfeitable")

(b) Vested Status is earned as follows:

- (i) A Participant's right to his Regular Pension is Nonforfeitable upon his attainment of Normal Retirement Age.
- (ii) A Participant acquires Vested Status after completion of five years of Vesting Service, except of course for years of Vesting Service that are not taken into account because of a Break-in-Service.

(c) ERISA also provides certain limitations on any Plan amendment that may change the Plan's vesting schedule. In accordance with those legal limitations, no amendment of this Plan may take away a Participant's Vested Status if he has already earned it at the time of the amendment. Also, an amendment may not change the schedule on the basis of which a Participant acquires Vested Status, unless each Participant who has credit for at least five years of Vesting Service at the time the amendment is adopted or effective (whichever is later) is given the option of achieving Vested Status on the basis of the pre-amendment schedule. That option may be exercised within 60 days after the latest of the following dated:

- (i) when the amendment was adopted,
- (ii) when the amendment became effective, or
- (iii) when the Participant was given written notice of the amendment.

(d) For purposes of applying the provisions of this Section and of determining when a Participant has acquired Nonforfeitable rights, as defined under law, the vesting schedule of this Plan consists of 100 percent Nonforfeitability for a Participant who has completed at least 5 years of Vesting Service and has at least one Hour of Service after January 1, 1997. However, a Non-Bargained Employee who has at least one Hour of Service after December 31, 1987 will have 100 percent Nonforfeitability after the Non-Bargained Employee has accumulated 5 years of Vesting Service.

#### **Section 6.10 Transfer Between Bargained and Non-Bargained Status.**

Effective for a Participant who has at least one Hour of Service after June 30, 1988:

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

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

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

### **Section 6.11 Incompetence or Incapacity of a Pensioner or Beneficiary.**

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

In addition to their other powers, the Trustees are specifically empowered in the event of the incompetency of a Pensioner, to make pension payments directly into a joint bank account established by a Pensioner, provided that the Pensioner has established such an account while he was still competent, and while still competent, requested the Trustees, in writing, to make payments into said joint account in the event of his incompetency. In addition to their other powers, the Trustees are specifically empowered, in the event of the incompetency of a Pensioner, to make pension payments to a Beneficiary previously designated, in writing, by a Pensioner, while competent, to be the recipient of pension benefits in the event of the incompetency of the Pensioner. The Trustees may require certain forms to be used and filed in connection with the foregoing.

Any payment made pursuant to this Section shall be in full satisfaction of any benefits due under this Plan for the period of time such payment or payments are made and no person, Pensioner or Beneficiary shall have any claim because of the application of this Section.

### **Section 6.12 Non-Assignment of Benefits.**

(a) No Participant, Pensioner or Beneficiary who is or may hereafter become entitled to any benefit under this Plan shall have the right to assign, alienate, transfer, encumber, pledge, mortgage, hypothecate, anticipate, or impair in any manner his legal or beneficial interest or any

interest in assets of the Pension Fund, or benefits of this Plan. Neither the Pension Fund nor any of the assets thereof, shall be liable for the debts of any Participant, Pensioner or Beneficiary entitled to any benefits under this Plan, nor be subject to attachment or execution or process in any court or action or proceeding.

However, the Plan recognizes Qualified Domestic Relations Orders provided they comply with applicable Federal law and the procedures adopted by the Board of Trustees.

(b) An order will be treated as a Qualified Domestic Relations Order (QDRO) if the Trustees determine that:

- (1) The Order is made pursuant to a State domestic relations law (including a community property law);
- (2) The Order creates or recognizes an Alternate Payee's right to (or assigns an Alternate Payee the right to) receive all or a portion of the Participant's benefits. An "Alternate Payee" is defined as any Spouse, former Spouse, child or other dependent of the Participant who is recognized in the Domestic Relations Order as having a right to receive all (or a portion of) the benefits payable to the Participant under the Plan
- (3) The Order clearly specifies the name (if any) of the Participant and the name and mailing address of each Alternate Payee covered by the Order;
- (4) The Order clearly specifies the amount or percentage of the benefits to be paid by the Plan to each such Alternate Payee (or the manner in which the amount or percentage is to be determined);
- (5) The Order clearly specifies the number of payments or the period to which the Order applies;
- (6) The Order clearly specifies each plan to which the Order relates;
- (7) The Order does not require the Plan to provide any form of benefit option not otherwise available under the Plan;
- (8) The Order does not require the Plan to provide actuarially increased benefits;
- (9) The Order does not require the Plan to provide benefits to an Alternate Payee which are to be paid to another Alternate Payee under a separate order previously determined to be a Qualified Domestic Relations Order.
- (10) An order will be treated as a QDRO, if it meets the requirements of paragraph 1, even if it requires the payment of benefits to an Alternate

Payee at any time prior to the Participant's separation from Service, provided that:

- (A) The Participant has attained (or would have attained) the earliest retirement age under the Plan;
  - (B) Benefit payments are computed as if the Participant had retired on the date on which payments are to begin (based on the present value of benefits actually accrued);
  - (C) Such payments are in a form in which benefits may be paid under the Plan to the Participant (other than in the form of a joint and survivor annuity with respect to the Alternative Payee and his or her subsequent Spouse).
- (11) To receive benefits from the Plan pursuant to a QDRO, the Alternative Payee must furnish the Trustees with a copy of the QDRO, certified by the Clerk of the Court issuing the QDRO.
- (12) Upon receipt of a certified copy of a QDRO, the Trustees shall promptly:
- (A) Notify the Participant and any other Alternate Payee of the receipt of the QDRO and provide said persons with a copy of this Plan Section;
  - (B) Determine whether the Order is a QDRO;
  - (C) Notify the Participant and all Alternate Payees of such determination. If the determination is that the Order is a QDRO, the notification shall set forth the date on which payments are scheduled to begin. If the determination is that the Order is not a QDRO, the notification shall set forth the specific reasons for the conclusion. The Participant and Alternate Payee(s) may appeal any determination made in accordance with the Plan's appeal process, a copy of which shall be included with the determination letter.
- (13) (A) In the event the Trustees are unable to make a determination whether an Order is or is not a QDRO, prior to the next scheduled distribution of benefits to the Participant whose benefits are subject to the Order, the Trustees shall segregate in a separate account the amount that would have been payable to the Alternate Payee(s), had the Order been determined to be a QDRO, and shall continue to segregate such amounts until the earlier of the date a determination is made or the expiration of eighteen months.

- (B) If within such eighteen months, the Trustees determine the Order to be a QDRO, the Trustees will pay the segregated amounts (plus interest earned thereon) to the person or persons entitled to receive them. If, within the eighteen months, the Order is determined not to be a QDRO, or after the 18-month-period has expired, no determination is made, the segregated amounts (plus any interest) will be paid to the person who would have received the amounts if there had been no Order. Thereafter any determination that an Order is a QDRO will apply prospectively (i.e., the Plan shall not be liable for payments to Alternative Payee(s) for the period before the Order was determined to be a QDRO). The Plan shall be discharged from any obligation or liability to any Participant or Alternate Payee(s) to the extent of any payment made pursuant to these procedures, provided the Trustees have acted in accordance with their fiduciary responsibility.
- (C) The Trustees may require any Participant and any Alternate Payee(s) to furnish to the Trustees, such releases, documents or information as the Trustees require for the administration of the Plan and this Section.

**Section 6.13 No Right to Assets.**

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

**Section 6.14 Maximum Benefit Amounts.**

(a) **General Rule.**

- (i) Except as provided in subparagraph (a)(iii), and notwithstanding any other provision of this Plan, the annual benefit relating to employment with a contributing Employer that is payable with respect to any Participant shall not exceed:
  - (A) \$90,000 or, if lower,
  - (B) 100 percent of the Participant's average Compensation from the Employer in the period of three consecutive Calendar Years, or 12-month periods, in which his Compensation was the highest. For this purpose, Compensation shall be determined based on wage rates established in Collective Bargaining Agreements and covered service as reported to the Pension Fund, to the extent available, or on other records deemed by the Administrator to be reliable.

Information on Participants' Compensation furnished to the Administrator by a contributing Employer shall be deemed reliable. In addition, the Administrator may rely on information on Compensation furnished by a Participant or Beneficiary unless the Administrator determines that it is not reliable.

- (ii) This limit shall not apply to any benefits payable in a year and attributable to the Employer that do not exceed \$1,000 a year for each Plan Year in which the Participant earns a year of Vesting Service with that Employer, up to a maximum of \$10,000. If the Participant earns a fraction of a year of service, the \$1,000 amount for that year is reduced by multiplication by that fraction.

This subparagraph (ii) shall not apply if the Participant has also been covered by an individual account plan to which the Employer contributed on his behalf, and such plan was maintained as a result of collective bargaining involving the same employee representative as this Plan.

- (iii) (A) The \$90,000 limit in subparagraph (a)(i)(A) and a Participant's average Compensation shall be increased in each Calendar Year following his termination of service with the Employer for increases in the cost of living, based on the procedures used to adjust benefit amounts under Section 215(I)(2)(A) of the Social Security Act.
  - (B) Benefit payments that are limited by this Section 6.14 shall be increased annually to the level permitted by the limitations of this Section as adjusted for later years in accordance with this subsection.
- (iv) For purposes of applying the limitations of this Section with respect to a Participant who is an Employee of an Employer, only the benefits accrued as a result of covered service with such Employer shall be taken into account. The benefit under this Plan considered as payable with respect to a Participant and an Employer shall be determined by multiplying the Participant's total benefit by the ratio of covered service with the Employer to total covered service.
- (v) The benefit limitations applied in this Section 6.14 will be applied by considering the Participant's benefits, service, Plan participation and Compensation as if attributable to a single Employer, to the extent that the resulting benefits payable to the Participant are no less than what would otherwise be payable.
- (b) **Adjustment of Dollar Limit for Early or Late Retirement.**
  - (i) If a Participant's benefit payments begin before the Participant's Social Security Retirement Age, but on or after age 62, the dollar limit under subparagraph (a)(i)(A) is reduced as follows:

- (A) If the Participant's Social Security Retirement Age is 65, the dollar limit is reduced by 5/9 of 1% for each month by which benefits begin before the month in which the Participant reaches 65.
- (B) If the Participant's Social Security Retirement Age is later than 65, the dollar limit is reduced by 5/9 of 1% for each of the first 36 months and 5/12 of 1% for each additional month (up to 24) by which benefits begin before the month of the Participant's Social Security Retirement Age.
- (ii) If a Participant's benefit payments begin prior to age 62, the dollar limit is reduced to the Actuarial Equivalent, as defined in subparagraph (b)(vi), of the benefit payable at age 62.
- (iii) If a Participant's benefit payments begin after Social Security Retirement Age, the limit is increased to the Actuarial Equivalent, as defined in subparagraph (b)(vi), of the dollar limit otherwise payable at the Social Security Retirement Age.
- (iv) For purposes of this Subsection, Social Security Retirement Age is:
  - (A) Age 65, for a Participant born before January 1, 1938;
  - (B) Age 66, for a Participant born after December 31, 1937 and before January 1, 1955, and
  - (C) Age 67, for a Participant born after December 31, 1954.
- (v) 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 benefit at age 55.
  - (D) If the Participant's benefit payments begin after age 65, the dollar limit is increased to the Actuarial Equivalent of the benefit payable at age 65.
- (vi) For purposes of subparagraphs (b)(v)(B) and (C), Actuarial Equivalent means the lesser of (1) the equivalent amount computed using the Plan rate and Plan mortality table (or Plan tabular factor) used for actuarial equivalence for early retirement benefits under the Plan and (2) the amount computed using 5 percent interest and the Applicable Mortality Table. For purposes of subparagraph (b)(iii) and (v)(D), Actuarial Equivalent means the lesser of (1) the equivalent amount

computed using the Plan rate and Plan mortality table (or Plan tabular factor) used for actuarial equivalence for late retirement benefits under the Plan and (2) the amount computed using 5 percent interest and the Applicable Mortality Table.

(c) **Adjustment for Optional Payment Form.** If the Participant's benefit is to be paid in any form other than a single life annuity or a Husband and Wife Pension, the limitations in subparagraph (a)(i) (as otherwise modified under this Section 6.14) are applied to the annual benefit in the form of a straight life annuity commencing at the same age that is actuarially equivalent to the Plan benefit. If the Plan benefit is not subject to Internal Revenue Code Section 417(e)(3), the equivalent to the Plan benefit is equal to the greater of (1) the benefit computed using the interest rate and mortality table, or tabular factor, specified in the Plan for actuarial equivalence for the particular form of benefit payable, and (2) the benefit computed using a 5% interest rate and the Applicable Mortality Table. If the Plan benefit is subject to Internal Revenue Code Section 417(e)(3), the equivalent annual benefit is equal to the greater of (1) the benefit computed using the interest rate and mortality table, or tabular factor, specified in the Plan for actuarial equivalence for the particular form of benefit payable, and (2) the benefit computed using the Applicable Interest Rate and the Applicable Mortality Table.

(d) **Plan Aggregation.**

- (i) In applying the limits of this Section 6.14, the benefits and contributions to all other retirement plans sponsored by the Employer or any other member of the same controlled group shall be taken into consideration, except for multiemployer plans.
- (ii) Except as noted in subparagraph (i), all defined benefit plans sponsored by the Employer or any other member of the same controlled group are treated as a single plan. Benefits payable under any other plan with respect to a Participant shall be reduced to the extent possible before any reduction will be made in his benefits under this Plan, if necessary to observe these limits.
- (iii) For Limitation Years beginning before 2000 and except as noted in subsection (a), if a Participant is covered under one or more defined contribution plans sponsored by the Employer or any other member of the same controlled group, his combined benefits and annual additions under all such defined benefit and defined contribution plans shall not exceed the applicable plan limits under Internal Revenue Code Section 415(e) and the rules and regulations thereunder. If necessary to observe these limits, benefits under any other defined benefit plans will be reduced before benefits under this Plan, but benefits under this Plan will be reduced to the extent necessary if benefits under the other plans cannot be reduced.

(e) **Phase-In Over Years of Service.**

- (i) The limit in subparagraph (a)(i)(B) shall be phased in, with respect to each Participant, at the rate of 10% for each Plan Year in which the Participant earns a year of Vesting Service or Pension Credit with the Employer, up to 100%. If the Participant earns a fraction of a year of Service or Credit, the 10% rate for the year is reduced by multiplication by that fraction.
- (ii) In applying this rule to benefits under other plans with which benefits under this Plan are aggregated under subparagraph (d)(i), the phase-in for those other plans' benefits shall be based on years of Vesting Service as defined in those other plans.

(f) **Phase-In Over Years of Participation.** If a Participant has fewer than 10 years of participation in this Plan, the dollar limitation in subparagraph (a)(i)(A) shall be multiplied by a fraction, the numerator of which is the Participant's total years and fractional years of participation in this Plan and the denominator of which is 10. The limitation thus obtained shall not be less than 10% of the dollar limitation.

(g) **Limitation Year.** The annual limits of this Section 6.14 shall be applied on a Calendar Year basis.

(h) **Protection of Prior Benefits.**

- (i) For any year before 1983, the limitations prescribed by Internal Revenue Code Section 415 as in effect before enactment of the Tax Equity and Fiscal Responsibility Act of 1982 shall apply, and no benefit earned under this Plan shall be reduced on account of the provisions of this Section 6.14 if it would have satisfied those limitations under the prior law.
- (ii) For any year before 1992, the limitations prescribed by Internal Revenue Code Section 415 as in effect before enactment of the Tax Reform Act of 1986 shall apply, and no benefit earned under this Plan as of the close of the last Limitation Year beginning before January 1, 1987 shall be reduced on account of the provisions of this Section if it would have satisfied those limitations under the prior year.

(i) **Interpretation or Definition of Other Terms.** The terms "Employer" and "Compensation," and other terms used in this Section 6.14 that are not otherwise expressly defined in the Plan, shall be defined, interpreted and applied for purposes of this Section as prescribed in Internal Revenue Code Section 415 and the regulations and ruling issued thereunder.

(j) **Maximum Benefit Amount Effective For Limitation Years Beginning on and after January 1, 2002.**

- (i) The provisions of this subsection (j) shall be effective for limitation years beginning on and after January 1, 2002 and will supersede any other provisions of this Plan to the extent those provisions are inconsistent with the provisions in this subsection 6.14(j).
- (ii) **Effect on Participants.** Benefit increases resulting from the increase in the limitations of Internal Revenue Code Section 415(b) will be provided to all current and former Participants (with benefits limited by Internal Revenue Code Section 415(b) who have an accrued benefit under the Plan immediately prior to the effective date (other than an accrued benefit resulting from a benefit increase solely as a result of the increases in limitations under Internal Revenue Code Section 415(b)).
- (iii) **Dollar Limit.** The dollar limit under subparagraph (a)(i)(A) is \$160,000, as adjusted, effective January 1 of each year, under Internal Revenue Code Section 415(d) in such a manner as the Secretary shall prescribe, and payable in the form of a straight life annuity. A limitation as adjusted under Internal Revenue Code Section 415(d) will apply to limitation years ending with or within the calendar year for which the adjustment applies.
- (iv) **Maximum Benefit Amount.** The maximum benefit amount is the defined benefit dollar limitation, defined above (adjusted where required, as provided in subparagraph (A) below and, if applicable, in subparagraph (B) or (C) below).
- (A) If the Participant has fewer than 10 years of participation in the Plan, the defined benefit dollar limitation shall be multiplied by a fraction, the numerator of which is the number of years (or part thereof) of participation in the Plan, and the denominator of which is 10.
- (B) If the benefit of a Participant begins prior to age 62, the defined benefit dollar limitation applicable to the Participant at such earlier age is an annual benefit payable in the form of a straight life annuity beginning at the earlier age that is the actuarial equivalent of the defined benefit dollar limitation applicable to the Participant at age 62 (adjusted under (A) above, if required). The defined benefit dollar limitation applicable at an age prior to age 62 is determined as the lesser of (i) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using the interest rate and mortality table (or other tabular factor) used for actuarial equivalence for early retirement benefits under the Plan and (ii) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using a 5 percent interest rate assumption and the applicable mortality table used to calculate lump sums under the Plan. Any decrease in the defined benefit dollar limitation determined in accordance with this subparagraph (B) shall not reflect a mortality decrement if benefits are not forfeited upon the death of the Employee. If

any benefits are forfeited upon death, the full mortality decrement is taken into account.

- (C) If the benefit of a Participant begins after the Participant reaches age 65, the defined benefit dollar limitation applicable to the Participant at the later age is the annual benefit payable in the form of a straight life annuity beginning at the later age that is actuarially equivalent to the defined benefit dollar limitation applicable to the Participant at age 65 (adjusted under subparagraph (A), if required). The actuarial equivalent of the defined benefit dollar limitation applicable at an age after 65 is determined as the lesser of (1) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using the interest rate and mortality table (or other tabular factor) used for actuarial equivalence for late retirement benefits under the Plan and (2) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using a 5 percent interest rate assumption and the applicable mortality table used to calculate lump sums under the Plan. For these purposes, mortality between age 65 and the age at which benefits commence shall be ignored.

**Section 6.15 New Participants Hired Within Five (5) Years Before Normal Retirement Age.**

Anyone who becomes a Participant within the five (5) years before age 65 will be eligible for a benefit on the fifth anniversary of his commencement of Participation. This change is effective for Plan Years beginning on or after July 1, 1990 and only with respect to Service performed on or after such Effective Date.

**ARTICLE 7.  
MISCELLANEOUS**

**Section 7.01 Non-Reversion.**

It is expressly understood that in no event shall any of the corpus or assets of the Pension Fund revert to the Employers or be subject to any claims of any kind or nature by the Employers, except for the return of an erroneous contribution within one year of the date paid to the Pension Fund, or later if permitted by subsequent regulations.

**Section 7.02 Limitation of Liability.**

This Plan has been established on the basis of an actuarial calculation which has established, to the extent possible, that the contributions will, if continued, be sufficient to maintain the Plan on a permanent basis, fulfilling the funding requirements of ERISA. Except for liabilities which may result from provisions of ERISA, nothing in this Plan shall be construed to impose any obligation to contribute beyond the obligation of the Employer to make contributions as stipulated in its Collective Bargaining Agreements 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 Plan, if the Pension Fund does not have assets to make such payments. The Trustees shall have prepared annually an actuarial valuation of the Pension Fund.

### **Section 7.03 New Employers.**

(a) If an Employer is sold, merged or otherwise undergoes a change of identity, the successor shall participate as to the Employees theretofore covered by the Plan just as if it were the original Employer, provided it remains a Contributing Employer as defined in Section 1.05.

(b) The Trustees shall have the right to impose such terms and conditions as they may lawfully prescribe including, but not limited to, the imposition of waiting periods in connection with the commencement of benefits, a requirement for retroactive contributions, or the application of modified benefit conditions and amounts as they, in their sole discretion, may deem necessary to preserve an equitable relationship in regard to the contributions required from participating Employers and the benefits provided to their Employees.

### **Section 7.04 Terminated Employer.**

If an Employer ceases to remain party to a Collective Bargaining Agreement requiring contributions to this Pension Fund, the Trustees may, from time to time, adopt by resolution, objective standards for reduction or cancellation of that part of a pension, if any, for which a person was made eligible because of employment in such bargaining unit prior to the Contribution Period with respect to that unit.

### **Section 7.05 Termination.**

(a) **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 benefits accrued to the date of termination, partial termination or discontinuance to the extent funded or as required by the Pension Benefit Guaranty Corporation as of such date shall be Nonforfeitable.

(b) **Priorities of Allocation.** In the event of termination, the assets then remaining in the Plan after providing for any administrative expenses, shall be allocated among the Pensioners, Beneficiaries, and Participants in the following order:

- (i) First, in the case of benefits payable as a pension:
  - (1) In the case of the pension 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) In the case of a pension 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 been eligible to retire and 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 5 year period ending on such date) under which the pension would be the least.
  - (ii) Second, to all other benefits (if any) of the individuals under the Plan guaranteed under Title IV of ERISA.
  - (iii) Third, to all other vested benefits under this Plan.
  - (iv) Fourth, to all other benefits under this Plan.
- (c) **Allocation Procedure.** For purposes of Subsection (b) hereof:
  - (i) The amount allocated under any paragraph of Subsection (b) 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 Subsection.
  - (ii) If the assets available for allocation under any paragraph of Subsection (b) (other than paragraphs (iii) and (iv) are insufficient to satisfy the individuals who are covered by that paragraph, the assets shall be allocated pro rata among such individuals on the basis of the present value as determined by regulations issued by PBGC (as of the termination date) of their respective benefits described in that paragraph.
  - (iii) This paragraph applies if the assets available for allocation under Subsection (b) (iii) are not sufficient to satisfy in full the benefits of individuals described in that paragraph.
    - (1) If this paragraph applies, except as provided in Subparagraph (1) below, the assets shall be allocated to the benefits of individuals described in Subsection (b) (iii) on the basis of the benefits of individuals which would have been described in such Subsection (b) (iii) under the Plan as in effect at the beginning of the 5-year period ending on the date of the Plan termination.
    - (2) If the assets available for allocation under Subparagraph 2, 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 paragraph 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 and any assets remaining to be allocated under Subparagraph 1 on the basis of the Plan as amended by the next succeeding Plan amendment effective during such period.

## **ARTICLE 8. AMENDMENTS**

### **Section 8.01 Amendments.**

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

(a) As necessary to establish or maintain the qualification of the Plan or the Pension Fund under the Internal Revenue Code and to maintain compliance of the Plan with the requirements of ERISA, or

(b) If the amendment meets the requirements of ERISA Section 302(c)(8) and Internal Revenue Code Section 412(c) (8), and the Secretary of Labor has been notified of such amendment and has either approved of it, or within 90 days after the date on which such notice was filed, has failed to disapprove.

## **ARTICLE 9. MERGER OR CONSOLIDATION OF PENSION FUND**

### **Section 9.01 Merger or Consolidation of Pension Plan.**

Before this Pension Fund can be merged or consolidated with any other qualified plan or its assets or liabilities transferred to any other qualified plan, the Trustees must secure a certification from a government enrolled actuary, that the benefits which would be received by a Participant of this Pension Fund, in the event of a termination of the Pension Fund immediately after such transfer, are at least equal to the benefits the Participant would have received if the Pension Fund had terminated immediately before the transfer.

## **APPENDIX**

### **I. FOR PARTICIPANTS OF THE EMPIRE STATE CARPENTERS PENSION FUND WHO ARE MEMBERS OF LOCALS 7, 11, 42 AND 964**

#### **Regular Pension – Amount.**

Effective January 1, 2002, Employees who retire on or after January 1, 2002, and who are credited with an Hour of Service after January 1, 2002, shall receive as a monthly Regular Pension, \$75 for each Pension Credit earned after January 1, 2002, plus \$68 for each Pension Credit earned from January 1, 1962 through December 31, 2001, plus \$12 for each Pension Credit earned prior to January 1, 1962. This does not apply to current Pensioners, Beneficiaries or inactive vested Participants as of January 1, 2002.

Former Covered Participants in the Westchester County New York Carpenters Pension Fund Who Have at Least One Hour of Service under this Plan on or after October 1, 1998. For purposes of the preceding paragraph, Pension Credits shall include pension credits earned pursuant to the Westchester County New York Carpenters Pension Fund, provided the Participant had at least one hour of service under this Plan on or after October 1, 1998. In no event will the benefit stated above be less than the accrued benefit earned under the Westchester County N.Y. Carpenters Pension Plan as of December 31, 1998.

Former Members of Local 964 Who Were Covered Participants in the Hudson Valley District Council of Carpenters Pension Plan Who Have at Least One Hour of Service under this Plan on or after October 1, 1998. Effective January 1, 2002, Employees who were members of Local 964 and were Covered Participants in the Hudson Valley District Council of Carpenters Pension Plan who retire on or after January 1, 2002, and who are credited with an Hour of Service under the provisions of this Plan after January 1, 2002, shall receive as a monthly Regular Pension, \$75 for each Pension Credit earned under this Plan after January 1, 2002, plus \$68 for each Pension Credit earned under this Plan from January 1, 2000 through December 31, 2001, plus \$60 for each Pension Credit earned under this Plan in 1999, provided such Employee had at least one hour of service under this Plan on or after October 1, 1998.

This amount shall be added to the amount accrued under the provisions of the Hudson Valley District Council of Carpenters Pension Plan and such total benefit shall be payable from this Plan. In no event will the total benefit payable from this Plan be less than the accrued benefit earned under the Hudson Valley District Council of Carpenters Pension Plan.

This does not apply to current Pensioners, Beneficiaries or inactive vested Participants as of January 1, 2002.

#### **Service Pension – Amount**

The monthly amount of the Service Pension is the amount of the Regular Pension, without reduction.

### **Reduced Pension - Amount**

The monthly amount of the Reduced Pension is the amount of the Regular Pension, without reduction.

### **Vested Pension – Amount**

The monthly amount of the Vested Pension is the amount of the Regular Pension, without reduction.

## **II. FOR PARTICIPANTS OF THE EMPIRE STATE CARPENTERS PENSION FUND WHO ARE MEMBERS OF LOCAL 19, LOCAL 203 AND LOCAL 323**

### **Participation**

Notwithstanding the provisions of Article 2 of this Plan, except as otherwise stated herein, a former participant of The Hudson Valley Carpenters Local 19 Pension Fund is eligible to participate in this Plan, provided the former participant:

- (a) Was an active participant in the Hudson Valley Carpenters Local 19 Pension Fund on June 30, 2002;
- (b) Worked in covered employment for at least 300 hours between the period beginning January 1, 2001 and ending December 31, 2001 or from the period beginning July 1, 2001 and ending June 30, 2002; and
- (c) Worked in covered employment at least one hour on or after July 1, 2002.

A member of Local 19, Local 203 or Local 323 who does not meet the above requirements becomes eligible to participate under the Plan in accordance with the following:

- (i) **Participation:** An Employee who is engaged in Covered Employment during the Contribution Period shall become a Participant in the Plan on the earliest July 1<sup>st</sup> or January 1<sup>st</sup> following completion of a 12-consecutive month period during which he completed at least 1,000 Hours of Service in Covered Employment. The required 1,000 hours may also be completed with Hours of Service in employment with the same Contributing Employer continuous with the Employee's Covered Employment with that Contributing Employer.
- (ii) **Termination of Participation:** Subject to the provisions of Section 4.04 of the Plan, a person who incurs a One-Year Break-in-Service shall cease to be a Participant as of the last day of the Calendar Year which constitutes the One-Year Break, unless such Participant is a Pensioner or a Beneficiary, or has acquired the right to a pension (other than for disability), whether immediate or deferred.

- (iii) **Reinstatement of Participation:** An Employee who has lost his status as a Participant in accordance with (ii) above shall again become a Participant by meeting the requirements of (i) above within a 12-consecutive month period on the basis of Service after the date on which his Participation terminated.

### **Regular Pension - Amount**

Employees who are members of Local 19, Local 203 or Local 323 who retire on or after July 1, 2002, and are credited with an Hour of Service on or after July 1, 2002 under the provisions of this Plan, shall receive as their Regular, Service, or Reduced Pension \$50 for each Pension Credit earned under this Plan on or after July 1, 2002. If applicable, this amount shall be added to the amount accrued under the provisions of the Hudson Valley Carpenters Local 19 Pension Fund and such total benefit shall be payable from this Plan. In no event will the total benefit payable from this Plan be less than the accrued benefit earned under the Hudson Valley Carpenters Local 19 Pension Fund as of the 30<sup>th</sup> day of June, 2002. This does not apply to current Pensioners, Beneficiaries or inactive vested Participants as of June 30, 2002 under the Hudson Valley Carpenters Local 19 Pension Fund.

### **Service Pension - Amount**

The monthly amount of the Service Pension is the amount of the Regular Pension, without reduction.

### **Reduced Pension - Amount**

The monthly amount of the Reduced Pension is the amount of the Regular Pension, without reduction.

### **Vested Pension - Amount**

The monthly amount of the Vested Pension is the amount of the Regular Pension, without reduction.

## **III. FOR PARTICIPANTS OF THE EMPIRE STATE CARPENTERS PENSION FUND WHO ARE MEMBERS OF LOCAL 9**

Article 2 of this Plan notwithstanding, a current or former participant of the Buffalo Carpenters Retirement Fund is eligible to participate in this Plan as of January 1, 2002, if the participant:

- (a) Was an active participant in the Buffalo Carpenters Retirement Fund on December 31, 2001;
- (b) Worked a total of 1,000 or more Hours of Service in Covered Employment under the Buffalo Carpenters Retirement Plan and the Empire State Carpenters Fund during the period beginning January 1, 2000 and ending December 31, 2001 with respect to the Buffalo Carpenters

Retirement Plan and during the period beginning January 1, 2002 and ending December 31, 2002 with respect to the Empire State Carpenters Plan; and

(c) Worked a 100 or more Hours of Service in Covered Employment under the Empire State Carpenters Plan on or after January 1, 2003.

With respect to members of Local No. 9 of the United Brotherhood of Carpenters and Joiners of America, the terms Covered Employment, Contribution Period and Contributing Employer will be applied effective as of January 1, 2002.

For purposes of determining eligibility for benefits under Article 3, Vesting Service includes years of vesting service earned under the vesting rules of the Buffalo Carpenters Retirement Plan prior to January 1, 2002 for Participants who began participation under this Plan effective January 1, 2002.

Members of Local No. 9 of the United Brotherhood of Carpenters and Joiners of America who retire on or after January 1, 2002, and who are credited with an Hour of Service after January 1, 2002, will receive as a monthly Regular Pension, \$45 for each Pension Credit earned after January 1, 2002 under this Plan. This does not apply to benefits accrued under the Buffalo Carpenters Retirement Fund or to current pensioners, beneficiaries or inactive vested participants under the Buffalo Carpenters Retirement Fund. The monthly amount of a Reduced Pension or Vested Pension is the amount of the Regular Pension, without reduction.

