

## ARTICLE VIII Amendments

### Section 8.01. Amendment.

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

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

### Section 8.02. Amendment Procedures.

- (a) Amendments to the Plan shall be adopted by action of the Trustees at a regular or special meeting of the Trustees, and shall be recorded in the Minutes of such meeting, or in a formal document executed by the Trustees as an amendment to the Plan document.
- (b) Any amendment to the Plan shall become effective upon adoption or, if a different date is specified by the Trustees, on such specific date.
- (c) If an amendment to the Plan is recorded in the Minutes of the meeting at which it is adopted, the amendment shall be given effect as recorded in the Minutes. If such amendment to the Plan is thereafter incorporated in a formal document executed by the Trustees as an amendment to the Plan document, the provisions of the formal document shall, upon execution, supersede the provisions of the meeting Minutes with respect to such amendment to the Plan.

## ARTICLE IX Pro-Rata Pensions

### Section 9.01. Purpose.

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

### Section 9.02. Related Plans.

By resolution duly adopted, the Board of Trustees recognizes all other pension funds, which have executed the Iron Workers International Reciprocal Pension Agreement and who have adopted Exhibit "A" of such Agreement as a Related Plan.

### Section 9.03. Related Service Credits.

Service credits accumulated and maintained by an Employee under a Related Plan shall be recognized under this Plan as Related Service Credits. The Trustees shall compute Related Service Credits on the basis on which that credit has been earned and credited under the Related Plan and certified by the Related Plan to this Fund.

### Section 9.04. Combined Service Credit.

The total of an Employee's service credit under this Plan and Related Service Credit together comprise the Employee's Combined Service Credit. Not more than one year of Combined Service Credit shall be counted in any calendar or Plan crediting year.

### Section 9.05. Pro-Rata Service Credit.

The total of an Employee's service credit under this Plan and a Related Plan(s) since January 1, 1955 shall comprise the employee's Pro-Rata Service Credit. More than one year of Pro-Rata Service Credit, on a combined basis, may be granted - for calculation purposes only - in any calendar or Plan crediting year.

### Section 9.06. Related Hours.

The term Related Hours means hours of employment which are creditable under a Related Plan for purposes of accumulating Related Service Credit and for purposes of accumulating Vesting Service Credit, including hours of employment before the Effective Date of this Article.

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### **Section 9.07. Vesting Service Credit.**

In applying the rules of this Plan with respect to Vesting Service Credit, any period in which an Employee has earned Related Hours of Vesting Service Credit in a Related Plan shall be counted to determine if such an Employee has earned a Vesting Service Credit for a calendar or Plan crediting year.

An Employee who is not fully vested under this Plan's rules and who does not have sufficient Combined Service Credits to be entitled to a pension which requires a service credit minimum, shall be entitled to a Deferred or Vested Pension based upon his Combined Service Credit if the total of Vesting Service Credit in this Plan and Related Plans make the Employee eligible for such a Pension in both Related Plans.

### **Section 9.08. Breaks in Service.**

In applying the rules of this Plan with respect to cancellation of service credit, any period in which an Employee has earned Related Hours of Vesting Service Credit in this Plan or a Related Plan, since January 1, 1955, shall be counted as Covered Employment when determining whether there has been a period of no Covered Employment sufficient to constitute a break in service in this Plan or a Related Plan. Hours of work or vesting credit earned under a non-Related Plan shall not be counted as a period of Covered Employment when determining whether there has been a period of non-Covered Employment sufficient to constitute a break-in-service in this Plan or a Related Plan.

### **Section 9.09. Eligibility.**

An Employee shall be eligible for a Pro-Rata Pension under this Plan if he satisfies all of the following requirements:

- (a) He would be eligible for any type of pension under this Plan (other than a Pro-Rata Pension) if his Combined Service Credit were treated as service credit under this Plan.
- (b) In addition to any other requirements necessary to be eligible under (a), he has, under this Plan, at least two full units of service credit based on employment since January 1, 1955, or at least one minimum unit of service credit based on employment since January 1, 1983. Full and minimum units of service credit shall be determined by each

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Plan's rules for granting service credit.

- (c) He is found to be (1) eligible for Pro-Rata Pension from a Related Plan and (2) eligible for a Pro-Rata Pension from the Terminal Plan. The Terminal Plan shall be deemed to be the Fund associated with the local union which represents the Employee at the time of, or immediately prior to, his retirement. If at that time the Employee was not represented by any one such local union, then the Terminal Plan is the one to which the bulk of contributions were paid on behalf of the Employee in the 36 consecutive calendar months immediately preceding his retirement.
- (d) A pension is not payable to him from a Related Plan independently of its provisions for a Pro-Rata Pension, provided however, an Employee who is entitled to a pension other than a Pro-Rata Pension from this Plan or a Related Plan may elect to waive the other pension and qualify for the Pro-Rata Pension.

### **Section 9.10. Election of Pensions.**

If an Employee is eligible for more than one type of pension under this Plan, he shall be entitled to elect the type of pension he is to receive.

### **Section 9.11. Pro-Rata Pension Amount.**

The amount of the Pro-Rata Pension shall be determined as follows:

- (a) The amount of the pension to which the Employee would be entitled under this Plan taking into account his Combined Service Credit shall be determined, then
- (b) The amount of service credit earned with this Plan since January 1, 1955, shall be divided by the total amount of Pro-Rata Service Credit earned by the Employee since January 1, 1955, then
- (c) The fraction so determined in (b) shall be multiplied by the pension amount determined in (a) and the result shall be the Pro-Rata Pension amount payable by this Plan.

### **Section 9.12. Benefit Level Amount or Pension Accrual Rate.**

The benefit level amount of pension accrual applicable to the Pro-Rata Pension payable by the Pension Fund shall be determined under the rules of this Plan.

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### **Section 9.13. Payment of Pro-Rata Pensions.**

The payment of a Pro-Rata Pension shall be subject to all of the conditions contained in this Plan applicable to other types of pensions including, but not limited to, retirement as herein defined and timely application. The execution date of the applicant on the initial pension application of a Related Plan shall be considered as the application date for each Related Plan.

### **Section 9.14. Effective Date.**

This Article shall apply only to Employees who, as of January 1, 1983, have not been previously denied a Pro-Rata Pension under the Pro-Rata Pension Agreement previously in effect and who, since January 1, 1983 have earned a minimum unit of service credit under this Plan's or a Related Plan's rules and regulations.

### **Section 9.15. Pro-Rata Disability Pensions.**

A Participant applying for a Pro-Rata Disability Pension shall not be required to submit to an examination by a physician selected by the Trustees if the Participant's present Plan is not Iron Workers Local 17 Pension Plan. The proof of disability required by the Participant's present Plan to qualify for a Pro-Rata Disability Pension will be accepted by the Trustees as adequate proof on which to base the award of a Pro-Rata Disability Pension from Iron Workers Local 17 Pension Fund.

**ARTICLE X**  
**Limitations on Benefits and Payments**

**Section 10.01. General Limit.**

- (a) Notwithstanding any other provision of this Plan, the annual pension payable with respect to any Participant shall not exceed \$90,000 (or such higher amount as the Internal Revenue Service may prescribe for a year) or, if lower, 100% of the Participant's average Compensation in the period of three consecutive calendar years in which his Compensation was the highest.
- (b) This limit shall not apply to any pension that does not exceed \$1,000 a year for each year of service with an Employer, including years before the Employer adopted this Plan up to a maximum of \$10,000, unless the Participant has also been covered by an individual account plan to which an Employer contributed on his behalf.
- (c) The limitations in this Article shall be applied as if all Employers were a single Employer, without distinguishing among them as to the source of a Participant's benefits, contributions, earnings or service.

In the case of any Participant who has less than ten (10) years of participation under the Plan at the time he begins to receive benefits under the Plan, the dollar amount limitation (currently \$90,000) resulting from the application of subsection (a) above shall be adjusted by multiplying such limitation by a fraction, the numerator of which is the number of years of participation in the Plan as of, and including, the then current limitation year, and the denominator of which is ten. The limitation reduction which is applicable in relation to Participants having less than ten years of participation under the Plan applies separately to each change in the benefit structure of the Plan, except those that were both adopted and made effective prior to May 17, 1989. For this purpose, only years of participation subsequent to the first day of the Plan Year in which the change in benefit structure is effective are included in the numerator of the fraction.

In the case of any Participant who has less than ten (10) Years of Service with the Employer (and Affiliates) at the time the Participant begins to receive benefits under the

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Plan, the application of the 100% of Compensation limitation from subsection (a) above and the limitation from subsection (b) above shall be adjusted by multiplying such limitations by a fraction, the numerator of which is the number of Years of Service with the Employer as of, and including, the then current limitation year, and the denominator of which is ten.

- (d) Notwithstanding any other provision of the Plan, the annual benefit to which a Participant is entitled under the Plan shall not, in any Limitation Year, be in an amount which would exceed the applicable limitations under Code §415 and regulations thereof, including, effective May 1, 2008, the final regulations thereunder issued April 5, 2007 as such regulations apply to multiemployer pension plans, which final regulations are incorporated herein by reference. As of January 1 of each calendar year commencing on or after January 1, 2002, the dollar limitation as determined by the Commissioner of Internal Revenue for that calendar year shall become effective as the maximum permissible dollar amount of benefit payable under the Plan during the Limitation Year ending within that calendar year. The forgoing maximums shall be increased to the extent permitted by Treasury Department Regulations to reflect cost-of-living adjustments.

### **Section 10.02. Definitions.**

For purposes of this Article:

- (a) "Pension" means an annual benefit payable at age 65 as a straight life annuity with no ancillary benefits, and a Husband and Wife Pension. A benefit payable in any other form shall be converted to the actuarial equivalent of a straight life annuity, for purposes of applying these limits, based on a 7% interest assumption. Other required adjustments are provided for below.
- (b) "Compensation" means all earnings and any other taxable compensation received for a year from any Employer, or from any company in an Employer's controlled group or affiliated service group within the meaning of sections 414(b), (c) or (m) of the Internal Revenue Code.

- (c) "Actuarial Equivalent" means for the purposes of applying the adjustment required under Code §415(b)(2), the Actuarial Equivalent is based on the Applicable Interest Rate and the Applicable Mortality Table. The "Applicable Interest Rate" shall be determined as provided in Article I (27), provided, however, for the Limitation Years beginning in 2004 and 2005, if the annual retirement benefit is payable in a form subject to the requirements of Code §417(e), five and one-half percent (5½ %) interest shall be substituted for the Applicable Interest Rate for purposes of applying such adjustments. Further provided that for the Limitation Years beginning on or after January 1, 2008, the Applicable Interest Rate shall mean the interest rate prescribed under Code §417(e)(3)(C) (as it reads effective on and after the first day of the 2008 Plan Year) as in effect for the second month preceding the Plan Year, and Applicable Mortality Table shall mean the mortality table prescribed under Code §417(e)(3)(B) (as it reads effective on and after the first day of the 2008 Plan Year). With respect to Limitation Years beginning prior to January 1, 2008, Applicable Mortality Table means the mortality table prescribed by the Internal Revenue Service in accordance with Code §417(e) as stated in Revenue Ruling 2001-62 or any subsequent superseding Revenue Ruling.

**Section 10.03. Adjustment for Early or Late Commencement of Benefits.**

- (a) If Plan benefits to a retired Participant commence at or after age sixty-two (62), but prior to the Participant's social security retirement age (SSRA), the dollar amount limitation (currently \$90,000) contained in subsection 10.01(a) above shall be reduced by: (i) in the case of a Participant whose SSRA is 65, 5/9% of one percent for each month by which benefits commence before the month in which the Participant attains age 65; or (ii) in the case of Participant whose SSRA is greater than 65, 5/9% for each of the first 36 months and 5/12% for each of the additional months (up to 24) by which benefits commence before the month in which the Participant attains his SSRA. If Plan benefits to a retired Participant commence prior to age 62, the benefit must be limited to the Actuarial Equivalent of the Participant's limitation for benefits commencing at age 62, with a reduced dollar limitation for such benefits further reduced for each month by which benefits commence before the month in which the Participant attains age 62.

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SSRA is age 65 for persons born before 1/1/38, age 66 for persons born on or after 1/1/38 but before 1/1/55, and age 67 for persons born after 12/31/54. This Subsection 10.03(a) shall not apply to a Disability Pension.

- (b) If benefit payments start after the Participant has reached his SSRA, the dollar amount limitation (currently \$90,000) contained in Subsection 10.01(a) above shall be increased to the Actuarial Equivalent of a \$90,000 (or such other dollar amount limitation as is contained in Subsection 10.01(a)) pension starting at the Participant's SSRA. However, in no event may the increased maximum benefit exceed 100% of the Participant's high three year average Compensation.
- (c) Actuarial equivalence under this Section 10.03 shall be determined using a 5% interest assumption, and the term "\$90,000" shall include any higher amount prescribed by the Internal Revenue Service for purposes of these limitations.

### Section 10.04. Plan Aggregation.

- (a) In applying the limits of this Article, the benefits of and annual additions under all other retirement plans sponsored by the Employer shall be taken into consideration, except for multiemployer plans.
- (b) Except as noted in subsection (a), all defined plans sponsored by the Employer are treated as a single plan. Benefits payable under any other such plan with respect to a Participant shall be reduced to the extent possible before any reduction will be made in his benefits payable under this plan, if necessary, to observe these limits.
- (c) Except as noted in subsection (a), if a Participant is covered under one or more defined contribution plans sponsored by the Employer, his combined benefits and annual additions under all such defined benefit and defined contribution plans shall not exceed the applicable combined plan limits under Code §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 the other plans cannot be reduced. Effective for all Plan Years commencing after December 31, 1999, the aggregation under this subsection (c) is eliminated in its entirety.

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- (d) If the benefit payable under the Plan would (but for this Section) exceed the limitations of Code §415 by reason of a benefit payable under another defined benefit plan aggregated with this Plan under Code §415(f), the extent to which the benefit payable under this Plan shall be reduced as compared with the extent to which the annual benefit under any other defined benefit plan shall be reduced in order to achieve compliance with the limitations of §415 of the Code shall be determined by the Trustees in such a manner so as to maximize the aggregate benefits payable to such Participant. If such reduction is under this Plan, the Trustees shall advise affected Participants of any additional limitation on their monthly benefits required by this paragraph.
- (e) Where a participating employer maintains both this Plan and a plan that is not a multiemployer plan, only the benefits provided by such employer under the multiemployer plan are aggregated with the benefits under the non-multiemployer plan. Furthermore, for purposes of the \$10,000 minimum benefit limitation of Code §415(b)(4), Participant contributions, whether mandatory or voluntary, shall not be considered a separate defined contribution plan maintained by the Employer and no adjustment for the age at which a Participant's benefit commences or for the form of the benefit shall be required.
- (f) Pursuant to Code §415(f)(3)(B), this Plan shall not be aggregated with other multiemployer plans for purposes of applying the limits of Code §415. The limit under Code §415(b)(1)(B) and §1.415(b)-1(a)(ii) of the Income Tax Regulations do not apply to this Plan.

### **Section 10.05. Protection of Prior Benefits.**

- (a) For any year before 1986 the limitations prescribed by Section 415 of the Internal Revenue Code as in effect before enactment of the Tax Equity and Fiscal Responsibility Act of 1982 shall apply, and no pension earned under this Plan prior to 1986 shall be reduced on account of the provisions of this Article if it would have satisfied those limitations under that prior law.
- (b) The application of the Plan changes effective May 1, 2008 as outlined in this Article X

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

**Section 10.06. Minimum Distribution Requirements.**

(a) General Rules

The provisions of this Section will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.

The requirements of this Section will take precedence over any inconsistent provisions of the Plan. Except to the extent inconsistent with this Section, all distribution options provided under the Plan are preserved. This Section does not authorize any distribution options not otherwise provided under the Plan.

All distributions required under this Section will be determined and made in accordance with the Treasury regulations under Section 401(a)(9) of the Internal Revenue Code.

Notwithstanding the other provisions of this Section, other than the previous paragraph, distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the Plan that relate to Section 242(b)(2) of TEFRA.

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(b) Time and Manner of Distribution.

The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date.

If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

- (1) If the Participant's surviving Spouse is the Participant's sole designated Beneficiary, distributions to the surviving Spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later.
- (2) If the Participant's surviving Spouse is not the Participant's sole designated Beneficiary, distributions to the designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
- (3) If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (4) If the Participant's surviving Spouse is the Participant's sole designated Beneficiary and the surviving Spouse dies after the Participant but before distributions to the surviving Spouse begin, this subsection (b) other than paragraph (1) above, will apply as if the surviving Spouse were the Participant.

For purposes of this subsection (b) and subsection (e), distributions are considered to begin on the Participant's Required Beginning Date (or, if paragraph (4) of this subsection (b) applies, the date distributions are required to begin to the surviving Spouse under paragraph (1) of this subsection (b)). If annuity payments irrevocably commence to the Participant before the Participant's Required Beginning Date (or to

the Participant's surviving Spouse before the date distributions are required to begin to the surviving Spouse under paragraph (1) of this subsection (b)), the date distributions are considered to begin is the date distributions actually commence.

Unless the Participant's interest is distributed in a single sum on or before the Required Beginning Date, as of the first distribution calendar year distributions will be made in accordance with subsections (c), (d) and (e) of this Section.

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

If the Participant's interest is paid in the form of annuity distributions under the Plan, payments under the annuity will satisfy the following requirements:

- (1) the annuity distributions will be paid in periodic payments made at intervals not longer than one year;
- (2) the distribution period will be over a life (or lives) or over a period certain not longer than the period described in subsection (d) or (e);
- (3) once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted;
- (4) payments will either be non-increasing or increase only as follows:
  - (A) by an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the Bureau of Labor Statistics;
  - (B) to the extent of the reduction in the amount of the Participant's payments to provide for a survivor benefit upon death, but only if the Beneficiary whose life was being used to determine the distribution period described in subsection (d) dies or is no longer the Participant's Beneficiary pursuant to a qualified domestic relations order within the meaning of Internal Revenue Code Section 414(p);

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- (C) to provide cash refunds of employee contributions upon the Participant's death; or
- (D) to pay increased benefits that result from a Plan amendment.

The amount that must be distributed on or before the Participant's Required Beginning Date (or, if the Participant dies before distributions begin, the date distributions are required to begin under paragraph (1) or (2) of subsection (b)) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the Participant's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Participant's Required Beginning Date.

Any additional benefits accruing to the Participant in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

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

If the Participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the Participant and a non-spouse Beneficiary, annuity payments to be made on or after the Participant's Required Beginning Date to the designated Beneficiary after the Participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the Participant using the table set forth in Q&A-2 of Section 1.401(a)(9)-6 of the Treasury regulations as adjusted in the manner set forth in Q&A-2(c) of that regulation. If the form of distribution combines a joint and survivor annuity for the joint lives of the Participant and a non-spouse Beneficiary and a period certain annuity, the requirement

in the preceding sentence will apply to annuity payments to be made to the designated Beneficiary after the expiration of the period certain.

Unless the Participant's Spouse is the sole designated Beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the Participant's lifetime may not exceed the applicable distribution period for the Participant under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations for the calendar year that contains the Annuity Starting Date. If the Annuity Starting Date precedes the year in which the Participant reaches age 70, the applicable distribution period for the Participant is the distribution period for age 70 under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations plus the excess of 70 over the age of the Participant as of the Participant's birthday in the year that contains the Annuity Starting Date. If the Participant's Spouse is the Participant's sole designated Beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the Participant's applicable distribution period, as determined under this paragraph, or the joint life and last survivor expectancy of the Participant and the Participant's Spouse as determined under the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's and Spouse's attained ages as of the Participant's and Spouse's birthdays in the calendar year that contains the Annuity Starting Date.

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

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

- (i) unless the Annuity Starting Date is before the first distribution calendar year, the life expectancy of the designated Beneficiary determined using the

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Beneficiary's age as of the Beneficiary's birthday in the calendar year immediately following the calendar year of the Participant's death; or

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

If the Participant dies before the date distributions begin and there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

If the Participant dies before the date distribution of his or her interest begins, the Participant's surviving Spouse is the Participant's sole designated Beneficiary, and the surviving Spouse dies before distributions to the surviving Spouse begin, this subsection (e) will apply as if the surviving Spouse were the Participant, except that the time by which distributions must begin will be determined without regard to paragraph (1) of subsection (b).

(f) Definitions.

- (1) The individual who is designated as the Beneficiary under Section 3.20 of the Plan and is the designated Beneficiary under Section 401(a)(9) of the Internal Revenue Code and Section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.
- (2) A distribution calendar year is a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first distribution

calendar year is the calendar year in which distributions are required to begin pursuant to subsection (b).

- (3) Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury regulations.
- (4) The Required Beginning Date is the date specified in Section 1.19 of the Plan.

**ARTICLE XI**  
**Top Heavy Provisions**

This Plan is a multiemployer collectively bargained Plan established and maintained under the Taft-Harley Act and is not subject to Code §416 Top Heavy requirements.

**ARTICLE XII**  
**Non-Bargained Employees**

**Section 12.01. Employer.**

- (a) For purposes of identifying Highly Compensated Employees and applying the rules on participation, vesting and statutory limits on benefits under the Fund for such employees, but not for determining covered service, the term "Employer" includes all members of an affiliated service group with the Employer within the meaning of Section 414(m) of the Internal Revenue Code and all other businesses aggregated with the Employer under Section 414(o) of the Internal Revenue Code.
- (b) For this purpose, an "Employer" also includes all corporations, trades or businesses under common control with the Employer within the meaning of Sections 414(b) and (c) of the Internal Revenue Code.
- (c) For all other purposes, the term "Employer" shall have the meaning stated at Section 1.

**Section 12.02. Non-Bargained Employee.**

A "Non-Bargained Employee" means a person who is employed by an Employer and who is not covered by a Collective Bargaining Agreement, but is covered by another written agreement requiring Employer contributions on his or her behalf.

**Section 12.03. Highly Compensated Employee.**

- (a) The term "Highly Compensated Employee" includes highly compensated active employees and highly compensated former employees of an Employer. Whether an individual is a Highly Compensated Employee is determined separately with respect to each Employer, based solely on that individual's compensation form or status with respect to that Employer.
- (b) Effective May 1, 1997, a highly compensated active employee is an employee of the Employer who performs service for the Employer during the determination year and who during the look-back year:
  - (1) received compensation from the Employer in excess of \$80,000 annually (as