

Restated December 17, 2001  
[March, 1995 Plan as filed with IRS + Amendments 1-11]

# RULES AND REGULATIONS OF THE NATIONAL AUTOMATIC SPRINKLER METAL TRADES PENSION PLAN

## ARTICLE 1 Definitions

### Section 1.01. Actuarial Equivalent.

“Actuarial Equivalent” means a benefit of equal Actuarial Present Value.

### Section 1.02. Actuarial Present Value.

- (a) For Calendar Years beginning before January 1, 2000. The “Actuarial Present Value” of a benefit is determined on the basis of the 1971 Group Annuity Mortality Table with a two-year setback. The interest assumption is equal to the rate promulgated by the Pension Benefit Guaranty Corporation, effective as of the beginning of the Calendar year in which the payment is due to be made, for the valuation of immediate annuities in terminated non-multiemployer pension plans that do not close out under a Notice of Sufficiency.
- (b) Effective on or after January 1, 2000. The “Actuarial Present Value” of a benefit is determined based on the “Applicable Interest Rate” and the “Applicable Mortality Table” as set forth below:
- (1) The “Applicable Mortality Table” as defined in Internal Revenue Code §417(e)(3)(A)(ii)(I) is the table prescribed by the Secretary of the Treasury.
  - (2) The “Applicable Interest Rate” as defined in Internal Revenue Code §417(e)(3)(A)(ii)(II) is the annualized rate of interest on 30-year Treasury Securities during the month of August preceding the Calendar year that includes the Effective Date of Pension. For purposes of determining the Applicable Interest Rate, the “Stability Period” is the Calendar Year and the “Look Back Period” is five (5) months.
- (c) Transitional Rules. Notwithstanding Section 1.02(a) and (b):
- (1) First Transition Rule.  
  
For the period from January 1, 2000 through October 31, 2000, the “Actuarial Present Value” of a defined benefit is determined based on—
    - (A) the assumptions specified in Section 1.02(a);

- (B) the assumptions specified in Section 1.02(b); or
- (C) the Applicable Mortality Table specified in Section 1.02(b)(1) and the annual rate of interest on 30-year Treasury Securities during December 1999 as published by the IRS,

whichever set of assumptions would result in the greatest benefit.

(2) Second Transition Rule.

For the period from November 1, 2000 through October 31, 2001, the "Actuarial Present Value" of a benefit is determined based on:

- (A) the assumptions specified in Section 1.02(b); or
- (B) the Applicable Mortality Table in Section 1.02(b)(1) and the annual rate of interest on 30-year Treasury Securities (as published by the IRS) during the month of December preceding the Plan Year when such benefit is payable,

whichever set of assumptions would result in the greater benefit.

**Section 1.03. Beneficiary.**

"Beneficiary" means a person other than a Pensioner who is receiving benefits under this Plan because of his or her designation for such benefits by a Participant or the terms of the Plan.

**Section 1.04. Calendar Year.**

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

**Section 1.05. Collective Bargaining Agreement.**

"Collective Bargaining Agreement" or "Agreement" means any written labor contract by and between a Contributing Employer and the Union which provides for contributions to this Pension Fund with any and all extensions or renewals thereof and successor agreements thereto.

**Section 1.06. Continuous Employment.**

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

### **Section 1.07. Contributing Employer.**

"Contributing Employer" or "Employer" means any employing unit subject to a Collective Bargaining Agreement and required thereby to make periodic payments to the Fund provided:

- (a) the employer has been accepted as a Contributing Employer by the Trustees, and
- (b) the Trustees have not, by resolution, terminated the employer's status as a "Contributing Employer" pursuant to Section 7.04 because the employer has failed, for period of 90 days after the due date, to make contributions to the Fund as provided for in its Agreement.

Employer also includes employers participating pursuant to an agreement with the Trustees.

An employer is not deemed a Contributing Employer simply because it is part of a controlled group of corporations or of a trade or business under common control, some other part of which is a Contributing Employer. In the case of any Employer having more than one place of business, the term "Contributing Employer" applies only to the place of business specifically covered by the Collective Bargaining Agreement requiring contributions to the Pension Fund.

### **Section 1.08. Contribution Date.**

The term "Contribution Date" means the first date for which a Contributing Employer was or shall be obligated by a Collective Bargaining Agreement to make contributions to the Pension Fund. The "Contribution Date" to be applied to each covered Employee shall be the one applicable to the first Contributing Employer who makes contributions on behalf of the Employee.

### **Section 1.09. Contribution Period.**

"Contribution Period" means the period during which the employer is a Contributing Employer with respect to a unit or classification of employment.

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

"Covered Employment" means employment of an Employee by an Employer in a category covered by a Collective Bargaining Agreement or other agreement for which the Employer is obligated to contribute to the Fund.

"Covered Employment" does not include employment by an employer after termination, for failure to pay contributions due, of that employer's status as a Contributing Employer, pursuant to the provisions of Section 7.04.

### **Section 1.11. Employee.**

"Employee" means a person who is an Employee of an Employer and who is covered by a Collective Bargaining Agreement or as additionally defined in the Trust Agreement. The term "Employee" does not include any self-employed person, sole proprietor or owner of an unincorporated business organization that is a Contributing Employer. The term "Employee" may include a person who is an officer, stockholder, or who is otherwise involved in the management of an Employer if such person performs any work regularly performed by Employees covered by a Collective Bargaining Agreement.

### **Section 1.12. ERISA**

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

### **Section 1.13. Hour of Service.**

An "Hour of Service" is each hour for which an Employee is paid, or entitled to payment, by the Employer(s), directly or indirectly including payments for disability from the National Automatic Sprinkler Metal Trades Welfare Fund, but excluding any time compensated under a worker's compensation or unemployment compensation law or plan pursuant to a mandatory disability benefits law and excluding any hours of non-work time in excess of 501 in any one continuous period. Two periods of paid non-work time shall be deemed continuous if they are compensated for the same reason (e.g., disability) and are not separated by at least ninety days. (Hours of Service shall be computed and credited in accordance with DOL Regulation 2530.200b).

### **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. Participation before a Permanent Break in Service is not counted.

**Section 1.15. Participant.**

"Participant" means a Pensioner or an Employee who meets the requirements for participation in the Plan set forth in Article 2, or a former Employee who has acquired a right to a pension under this Plan.

**Section 1.16. Pension Fund.**

"Pension Fund" or "Fund" means the National Automatic Sprinkler Metal Trades Pension Fund established under the Trust Agreement.

**Section 1.17. Pension Plan or Plan.**

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

**Section 1.18. 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 or suspension of benefits.

**Section 1.19. Trust Agreement.**

"Trust Agreement" means the Agreement and Declaration of Trust establishing the National Automatic Sprinkler Metal Trades Pension Fund made and entered into on November 19, 1973, and as thereafter amended.

**Section 1.20. Trustees.**

"Trustees" means the individuals serving as members of the Board of Trustees as established and constituted from time to time in accordance with the Trust Agreement.

**Section 1.21. Union.**

The term "Union" or "Local Union" means the local unions that have heretofore or may hereafter be chartered by the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada which have agreed to be bound by the Trust Agreement.

## Section 1.22. Other Terms.

Other terms are specifically defined as follows:

<b>Term</b>	<b>Section(s)</b>
(a) Break in Continuity	6.06(c)
(b) Break in Service (One-Year Break in Service, Permanent Break in Service)	4.06
(c) Collectively Bargained Employee	10.01(a)
(d) Compensation	10.01(e)
(e) Date of Disability	3.09(d)
(f) Determination Date	11.02(c)
(g) Disability Pension	3.09
(h) Direct Rollover	6.05(j)(2)(iv)
(i) Disqualifying Employment	6.08(a)(1), (b)(1)
(j) Distributee	6.05(j)(2)(iii)
(k) Early Retirement Pension	3.06
(l) Effective Date	3.09(e), 6.05(b)
(m) Election Period	6.05(e)
(n) Eligible Retirement Plan	6.05(j)(2)(ii)
(o) Eligible Rollover Distribution	6.05(j)(2)(i)
(p) Highly Compensated Employee	10.01(d)
(q) Husband-and-Wife Pension	5.01
(r) Key Employee	11.02(a)
(s) Limitation Year	6.18(i)
(t) Non-Collectively Bargained Employee	10.01(b)
(u) Non-Key Employee	11.02(b)
(v) Partial Pension	8.01, 8.02
(w) Pension Credit	4.02, 4.04
(x) Permissive Aggregation Group	11.02(e)
(y) Preretirement Surviving Spouse Pension	5.03
(z) Qualified Spouse	5.01(d)
(aa) Regular Pension	3.03
(bb) Required Aggregation Group	11.02(d)
(cc) Required Beginning Date	6.17
(dd) Retired or Retirement	6.07
(ee) Spouse	5.01(c)
(ff) Super Top Heavy	11.03(d)(2)
(gg) Top Heavy Compensation	11.02(f)
(hh) Top Heavy Group	11.02(h)
(ii) Top Heavy Plan	11.02(g)
(jj) Totally and Permanently Disabled	3.09(d)
(kk) Vested Pension	3.07
(ll) Vested Status	6.10

## **ARTICLE 2 Participation**

### **Section 2.01. General.**

The Pension Plan was established to provide retirement benefits for Employees who are represented for the purpose of collective bargaining by the Union. The participation by Employees of an Employer becomes effective when the group is accepted for participation by the Trustees.

### **Section 2.02. Participation.**

An Employee who is engaged in Covered Employment during the Contribution Period becomes a Participant in the Plan following acceptance of the Contributing Employer by the Trustees and completion of a 12 consecutive month period during which the Participant completed at least 950 hours in Covered Employment. Once an Employee becomes 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.

The required hours may also be completed with any Hours of Service in other employment with an Employer if that other employment is Continuous with the Employee's Covered Employment with that Employer.

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

A person who incurs a One-Year Break in Service (defined in Section 4.06) ceases to be a Participant as of the last day of the Calendar Year that constituted the One-Year Break, unless such Participant has the right to an immediate or deferred pension (other than for disability).

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

An Employee who has lost his status as a Participant in accordance with Section 2.03 becomes a Participant again by meeting the requirements of Section 2.02 in any period of 12 consecutive months on the basis of Hours of Service after the Calendar Year during which his participation terminated. However, in the case of a non-vested Employee who has not had a Permanent Break in Service under Section 4.06(c), that Employee becomes a Participant again when he completes at least 950 hours of Covered Employment within a consecutive 12-month period measured from the date of his re-employment in Covered Employment. Participation will be retroactive to the date of the Employee's re-employment in Covered Employment.

## **ARTICLE 3**

## Pension Eligibility and Amounts

### Section 3.01. General.

This Article sets forth the eligibility conditions and benefit amounts for the pensions provided by this Plan. The accumulation and retention of Pension Credits for eligibility are subject to the provisions of Article 4. The benefit amounts are subject to reduction on account of the Husband-and-Wife Pension (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 Section 4.02 and 4.04, (and are based on creditable service both before and after the Contribution Date) or Years of Vesting Service, which are defined in Section 4.05. The amount of a Participant's pension is computed in accordance with Section 6.06.

### Section 3.02. Benefit Plans A and Plan B.

(a) The following Plans of benefits are established:

Plan A: Applies to Employees of Contributing Employers as of January 1, 1979, who were accepted by the Board of Trustees into the Plan prior to January 1, 1979.

Plan B: Applies to Employees of Employers who were accepted or re-accepted by the Board of Trustees into the Plan on or after January 1, 1979.

(b) Plan Transfers - Effective January 1, 1982, Employees of Employers contributing to Plan B as of that date who had been accepted or re-accepted by the Board of Trustees into Plan B prior to January 1, 1981 are transferred to Plan A.

Plan Transfers - Effective January 1, 1984, Employees of Employers contributing to Plan B as of that date who had been accepted or re-accepted by the Board of Trustees into Plan B prior to January 1, 1983 are transferred to Plan A.

(c) At Retirement, an Employee's Pension Credit is determined as follows:

(1) All Pension Credit earned with an Employer who is contributing to Plan A or who last contributed to Plan A, will be determined under the provisions of Plan A at the time of the last contribution on the Employee's behalf.

(2) All Pension Credit earned with an Employer who is contributing to Plan B or who last contributed to Plan B, will be determined under the provisions of Plan B at the time of the last contribution on the Employee's behalf.

These provisions are subject to the calculation rules in Section 7.06. Pension Credits cannot be downgraded from Plan A to Plan B if Pension Credits were earned under Plan

A.

- (d) Effective January 1, 1995, if the contributions requirement established by the Trustees for Plan A is increased, Employees of each Plan A Employer will thereafter accrue benefits under Plan B unless and until the Collective Bargaining Agreement of the Employee's Employer is amended to provide for the required Plan A contribution. Where an Employer's Collective Bargaining Agreement is not amended to provide for payment of the required Plan A contributions, that Employer will automatically become a Contributing Employer in Plan B. Each Employee will retain all benefits accrued during participation in Plan A, including the early retirement eligibility requirements and adjustment factor on those benefits.

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

A Participant may Retire on a Regular Pension if he meets the following requirements:

- (a) he has attained age 65; and
- (b) he has at least ten (10) Pension Credits, three (3) of which are during the Contribution Period.

### **Section 3.04. Regular Pension Amount.**

The amount of the Regular Pension for a Participant will be the sum of the amounts under plan A and Plan B as follows, subject to the provisions of Sections 3.02 and 6.06:

- (a) Plan A
  - (1) Effective January 1, 1990, for all Pension Credits earned under Plan A, the amount will be \$23.00 for each Pension Credit earned prior to the Contribution Date and \$24.44 for each Pension Credit earned on or after the Contribution Date and prior to January 1, 1990. The amount will be \$20.50 for each Pension Credit earned on or after the Contribution Date and on or after January 1, 1990.
  - (2) For all Participants who earned at least 2/10 of a Pension Credit after December 31, 1996, but did not earn at least 2/10 of a Pension Credit after December 31, 1997, the amount of the Pension Credits earned under Plan A on or after the Contribution Date and prior to January 1, 1997 will be \$24.44. The amount will be \$20.50 for each Pension Credit earned on or after the Contribution Date and on or after January 1, 1997.
  - (3) For all Participants who earned at least 2/10 of a Pension Credit after December 31, 1997, the amount of the Pension Credits earned under Plan A on or after the Contribution Date and prior to January 1, 1998 will be \$34.44. The amount will be \$20.50 for each Pension Credit earned on or after the Contribution Date and on or

after January 1, 1998.

- (4) For all Participants who earned at least 2/10 of a Pension Credit after December 31, 1998, the amount of the Pension Credits earned under Plan A on or after the Contribution Date and prior to January 1, 1999 will be \$39.00. The amount will be \$20.50 for each Pension Credit earned on or after the Contribution Date and on or after January 1, 1999.

(b) Plan B

- (i) Effective January 1, 1988, for all Pension Credits earned under Plan B, the amount will be \$13.00 for each Pension Credit earned prior to the Contribution Date and \$13.30 for each Pension Credit earned on or after the Contribution Date and prior to January 1, 1990. The amount will be \$12.00 for each Pension Credit earned on or after the Contribution Date and on or after January 1, 1990.
- (ii) For all Participants who earned at least 2/10 of a Pension Credit after December 31, 1996, but did not earn at least 2/10 of a Pension Credit after December 31, 1997, the amount of the Pension Credits earned under Plan B on or after the Contribution Date and prior to January 1, 1997 will be \$13.30. The amount will be \$12.00 for each Pension Credit earned on or after the Contribution Date and on or after January 1, 1997.
- (iii) For all Participants who earned at least 2/10 of a Pension Credit after December 31, 1997, the amount of the Pension Credits earned under Plan B on or after the Contribution Date and prior to January 1, 1998 will be \$20.30. The amount will be \$12.00 for each Pension Credit earned on or after the Contribution Date and on or after January 1, 1998.
- (iv) For all Participants who earned at least 2/10 of a Pension Credit after December 31, 1998, the amount of the Pension Credits earned under Plan B on or after the Contribution Date and prior to January 1, 1999 will be \$23.00. The amount will be \$12.00 for each Pension Credit earned on or after the Contribution Date and on or after January 1, 1999.

- (c) Benefit rates for terminated Employees are stated in the Summary Plan Description.

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

A Participant may Retire on an Early Retirement Pension if he meets the following requirements:

- (a) he has attained age 55; and
- (b) he has at least ten (10) Pension Credits, three (3) of which are during the Contribution Period.

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

The monthly amount of the Early Retirement Pension is the amount of the Regular Pension reduced as follows:

- (a) For pension benefits earned under Plan A, the amount of the reduction will be one-fourth of one percent ( $1/4$  of 1%) for each month by which the commencement of the pension precedes the month the Participant will attain age 62.
- (b) For amounts of pension benefit earned under Plan B, the amount of the reduction will be one half of one percent ( $1/2$  of 1%) for each month by which the commencement of the pension precedes the month the Participant will attain age 65.

### **Section 3.07. Vested Pension - Eligibility.**

A Participant has the right to a Vested Pension at his Normal Retirement Age if he has credit for at least ten (10) years of Vesting Service during the Contribution Period.

Effective January 1, 1989, for Participants who earn one or more Hours of Service on or after January 1, 1989 in Covered Employment not covered by a Collective Bargaining Agreement, a Participant will have the right to a Vested Pension at his Normal Retirement Age if he has credit for at least five (5) years of Vesting Service during the Contribution Period which has not been canceled by a Permanent Break in Service.

Effective January 1, 1997, an individual who completes more than one Hour of Service on or after January 1, 1997 has the right to a vested Pension at his Normal Retirement Age after he completes at least five (5) Years of Vesting Service during the Contribution Period, excluding Years of Service that are not taken into account because of a Permanent Break in Service determined after the application of this provision.

**Section 3.08. Vested Pension - Amount.**

The amount of Vested Pension is the same as the Regular Pension.

**Section 3.09. Disability Pension - Eligibility and Commencement.**

A Participant may Retire on a Disability Pension if:

- (a) he has at least ten (10) Pension Credits, three (3) of which are during the Contribution Period, and
- (b) he becomes Permanently and Totally Disabled as defined in (d) below, and
- (c) he worked in Covered Employment for at least 950 total hours in the period that consists of the Calendar Year in which he became Permanently and Totally Disabled and the previous Calendar Year.
- (d) A Participant is Permanently and Totally Disabled upon determination by the Social Security Administration that he is entitled to a Social Security Disability benefit under Title II of the Social Security Act (Federal Old Age, Survivor's and Disability Insurance Benefits) for a permanent disability. The Date of Disability for purposes of this Plan shall be the Date of Entitlement stated on the Participant's Social Security Award. The Trustees may periodically require the Participant to provide evidence of his continued entitlement to Social Security Disability Benefits for a permanent disability.
- (e) The Effective Date of the Disability Pensions is the first day of the month following the receipt of the Participant's Application.

**Section 3.10. Disability Pension - Amount.**

- (a) The monthly amount of the Disability Pension is the same as the Regular Pension. A Disability Pension is determined based on the Plan in effect on the last day of Covered Employment. Any periods of Covered Employment after the Effective Date (but prior to approval of the benefit by the Trustees), which constitute Pension Credit under the terms of this Plan, is counted for eligibility and benefit purposes; however, no payment will be made for any month after the Effective Date during which the Participant engaged in Covered Employment. The provisions of Section 6.06 will apply to the calculation of any benefit.
- (b) Where the Date of the Entitlement to Social Security Benefits is prior to the Effective Date of the Disability Pension, the benefit payment for the first month of the pension will be equal to the monthly benefit amount stated above in this Section 3.10 plus an additional amount equal to the monthly benefit amount times the number of months between the Effective Date and the Date of Entitlement; provided, however, that if the Pension Application is received by the Plan more than 60 days after the receipt by the Participant

of the Social Security Disability Award, the additional amount added to the first monthly benefit will not exceed the monthly benefit amount multiplied by nine (9).

### **Section 3.11. Termination of Disability Pension.**

- (a) A Disability Pension will terminate before age 62:
- (1) if a Disability Pensioner loses entitlement to Social Security Disability benefits or recovers from a disability. The Disability Pensioner must report his recovery or loss of entitlement in writing to the Trustees within 21 days of either the date of his recovery or the date he receives notice from the Social Security Administration concerning his loss of entitlement;
  - (2) if the Disability Pensioner engages in any regular gainful occupation or employment for remuneration or profit except such employment as is determined by the Trustees to be for purposes of rehabilitation. The Trustees may temporarily terminate the benefit of a Disability Pensioner for up to three (3) months to enable the Pensioner to return to any employment, whether or not for purposes of rehabilitation, on a trial basis. Any provisions of the pension regarding benefits following the death of the Pensioner remain effective until notification by the Trustees of the permanent termination of disability benefits.
  - (3) if the Trustees determine on the basis of a medical examination that the Disability Pensioner has sufficiently recovered to return to any gainful employment; or
  - (4) if the Disability Pensioner refuses to undergo a medical examination ordered by the Trustees.
- (b) In the event a Disability Pension is terminated, the former Disability Pensioner may, if otherwise eligible, convert the pension to an Early, Regular or Vested Pension. In this event, no options other than those already chosen are available; the 36 Month Guarantee in Section 5.07 applies, if applicable, based upon all payments made after the original Effective Date of the Disability Pension. Any percentage increases in Pensioner benefits granted during the period while receiving a Disability Pension will be applied to the recomputed benefit. The Early Retirement reduction under Section 3.06 in effect when the pension is converted will apply. Such conversion rights will apply until such time as one (1) additional Year of Vesting Service is earned under Covered Employment.

### **Section 3.12. Non-duplication of Pensions.**

A person is entitled to only one pension under this Plan, except that a Disability Pensioner who recovers may be entitled to a different type of pension. A Pensioner also may receive a pension as the Spouse of a deceased Pensioner.

## **ARTICLE 4**

## **Pension Credits and Years of Vesting Service**

### **Section 4.01. Purpose.**

The purpose of this Article is to define the basis on which Employees accumulate Pension Credit and Vesting Service toward eligibility for a pension. This Article also defines the basis on which Pension Credit and Vesting Service, once accumulated, may be canceled.

### **Section 4.02. Credit for Employment Before the Contribution Period (Past Service Credit).**

- (a) Past Service Credit for Years of Employment Prior to an Employer's Contribution Date. The Trustees have the right to grant Employees of an Employer Past Service Credit for any years of employment prior to the Contribution Date pursuant to the rules set forth below. The Trustees have the discretion not to grant Past Service Credit to the Employees of an Employer. In addition, the Trustees may reduce or modify the amount of Past Service Credit available under this Section.
- (b) Two-year test rule: In order to qualify for Past Service Credit for any years of employment prior to the Contribution Date, an Employee must have earned, from a Contributing Employer, an amount equal to the lesser of 25% of the Social Security base earnings or \$5,000 in each of the two Calendar Years immediately prior to the Calendar Year of the applicable Contribution Date.

One exception to this requirement will be granted to an Employee who proves, on the basis of medical evidence satisfactory to the Trustees, that his failure to earn the required amount during one of the two Calendar Years was due to total disability; provided, however, that such Employee had earned the required amount in the other Calendar Year under the conditions set forth above.

- (c) An Employee who qualifies for Past Service Credit by having met the requirements of the "Two-Year Test Rule" will be entitled to Past Service Credit for each Calendar year he earned an amount equal to the lesser of 25% of Social Security base earnings in those years or \$5,000, subject to the limitations set forth in Section 7.04, provided that (1) such employment was in a job classification and at a place of business covered by a Collective Bargaining Agreement then in effect between the Union and an Employer who subsequently became a Contributing Employer or (2) if such employment was prior to the time the first Collective Bargaining Agreement was signed by the Contributing Employer and the Union, the Participant's job classification during such period was included in the said first Collective Bargaining Agreement. The Trustees shall have the sole discretion to determine whether said prior employment comes within a classification included in the first Collective Bargaining Agreement. There will be a maximum of twenty (20) years of Past Service Credit.
- (d) As many Collective Bargaining Agreements provide that the first contribution to the

Pension Fund will commence on the date other than January 1st, there may be instances when, for the Calendar Year in which the contributions start, the Employee would be entitled to partial Past Service Credit and partial Future Service Credit. For the first Calendar Year in which employer contributions commence on a date other than January 1st, if the Employee earned the lesser of 25% of Social Security base earnings or \$5,000, he will be given sufficient Past Service Credit so that, together with Future Service Credit for each year, he will receive full credit for the year.

- (e) It is recognized that for the period prior to the Contribution Date, it may be difficult to establish with certainty the past service of an Employee in the type of employment referred to above. In making the necessary determination as to Past Service Credit, the Board of Trustees may, in its absolute discretion, consider and rely upon any relevant and material evidence, including but not limited to any or all of the following:
1. Records of employers or the Fund Office.
  2. Records of the Federal Social Security Administration.

#### **Section 4.03. Breaks in Employment Prior to the Contribution Date (Past Service).**

- (a) General Rule: If an Employee's employment with a first Contributing Employer during the period prior to his Contribution Date was interrupted by two consecutive Calendar Years in which the Employee failed to earn an amount equal to the lesser of 25% of Social Security base earnings or \$5,000 in each of the two consecutive years, it will be considered a Break in Past Service, and the period preceding such break will not be credited.
- (b) Exception on Account of Disability or Military Service:
- (1) An Employee is permitted a grace period if his failure to earn an amount equal to 25% of Social Security base earnings or \$5,000 in a year is due to total disability or service in any of the Armed Forces of the United States, provided the Employee makes himself available for Covered Employment within the time period required under applicable federal law. This grace period is to consist of up to two consecutive Calendar Years if such failure is caused by total disability, during which the Employee failed to earn an amount equal to the lesser of 25% of Social Security base earnings or \$5,000 in a year.
  - (2) This grace period is not intended to add to the Pension Credit of the Employee unless otherwise required by the terms of the Plan or applicable federal law. Rather it is a period which is to be disregarded in determining whether there was a period of two consecutive Calendar Years during which the Employee failed to earn an amount equal to the lesser of 25% of Social Security base earnings or \$5,000 in any one of the two consecutive years.

- (3) The Trustees, in their sole discretion, determine whether periods of disability claimed as grace periods hereunder should be granted.

**Section 4.04. Credit for Employment During the Contribution Period.**

For periods during the Contribution Period, a Participant will be credited with Pension Credits (or Future Service Credit) on the basis of his Hours of Service in Covered Employment on which contributions to the Pension Fund were required to be made in accordance with the following schedule:

<b>Hours</b>	<b>Years of Future Service</b>
Less than 350	None
350 – 549	.2
550 – 749	.3
750 – 949	.4
950 – 999	.5
1000 – 1199	.6
1200 - 1399	.7
1400 – 1549	.8
1550 – 1699	.9
1700 or more	1.0

**Section 4.05. Years of Vesting Service.**

(a) General Rule.

A Participant will be credited with one (1) Year of Vesting Service for each Calendar Year during the Contribution Period (including periods before he became a Participant) in which he completed at least 950 hours of Service in Covered Employment. This rule is subject to the following subsections.

(b) Additions.

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 after December 31, 1975 shall be counted toward a Year of Vesting Service.

A Participant will not be entitled to credit toward a Year of Vesting Service for years preceding a Permanent Break in Service as defined in Section 4.06.

**Section 4.06. Breaks in Service.**

(a) General Rule.

If a person has a Break in Service before he has earned Vested Status as defined in Section 6.10 it has the effect of canceling his Plan participation, his previously credited Years of Vesting Service, and his previous Pension Credits. However, a Break in Service may be temporary, subject to repair by a sufficient amount of subsequent service. A longer Break in Service may be a Permanent Break in Service.

(b) One-Year Break in Service.

A person has a One-Year Break in Service if, after any January 1 coincident with or next following his Contribution Date, he fails to earn two-tenths (.2) of a Pension Credit during a Calendar Year.

(c) Permanent Break in Service after 1975.

(1) A person has a Permanent Break in Service if he has consecutive One-Year Breaks in Service, including at least one (1) after 1975, that equal or exceed the number of years of Vesting Service with which he has been credited.

(2) However, an Employee will not have a Permanent Break in Service after December 31, 1985 until he has at least five (5) consecutive One-Year Breaks in Service.

(3) A person who had accumulated any Future Service Credit before June 1, 1974, but who incurred a Permanent Break in Service, will not lose his Future Service Credit if he earns at least two-tenths (.2) Pension Credits before January 1, 1976, through employment with a Contributing Employer. After January 1, 1976, subsection (b) will be applicable to these Employees.

(d) Leave Under the Family and Medical Leave Act.

An Employee who takes a leave of absence under the terms of the Family and Medical

Leave Act will have that period of leave credited towards Vesting Service to the extent required under that Act. Periods of leave provided under the Family and Medical Leave Act will not be counted towards a Break in Service.

(e) Disability Periods.

A person will not incur a Permanent Break in Service during periods for which he supplies evidence of disability to the satisfaction of the Trustees.

(f) Military Service.

Periods of military service in any of the Armed Forces of the United States will be credited for purposes of this Plan to the extent required under the Military Selective Service Act, as amended, and any other applicable law.

Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Internal Revenue Code.

The liability for funding any obligation of the Plan to provide benefits in accordance with Section 414(u) of the Internal Revenue Code will be allocated to the Plan.

(g) Future Service Credit for Non-Working Periods.

An Employee will receive Future Service Credit for certain periods when the Employee is not actually at work in Covered Employment. Periods of absence from Covered Employment are to be credited as if they were periods of work in Covered Employment and at the rate of 35 hours a week for each week an Employee receives a Workers Compensation benefit under a state system up to a maximum of 1,700 hours in any one year and a maximum of 1,700 hours during an Employee's lifetime.

(h) Solely for the purpose of determining whether a One-Year Break in Service has occurred, the absence of an Employee from Service by reason of (1) her pregnancy, (2) birth of a child of the Employee, (3) placement of a child with the Employee in connection with his or her adoption of the child, or (4) care for such child for a period beginning immediately after such birth or placement, will be credited as hours of Service to the extent that hours of Service would have been credited but for such absence (or, where that cannot be determined, eight hours of Service per day of absence) to a maximum of 501 hours for each such pregnancy, childbirth, or placement. The hours so credited will be applied to the Calendar Year in which such absence begins, if doing so will prevent the Employee from incurring a One-Year Break in Service in that Calendar Year; otherwise they will be applied to the next Calendar Year. The Trustees may require, as a condition for granting such credit, that the Employee establish in a timely fashion and to the satisfaction of the Trustees that the Employee is entitled to such credit. This subsection applies only to absences that begin after December 31, 1985.

## **ARTICLE 5**

### **Husband-and-Wife Pension and Other Forms of Benefits**

#### **Section 5.01. Husband-and-Wife Pension: General.**

- (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 Husband-and-Wife Pension unless:
  - (1) the Participant and Spouse elect otherwise in accordance with Section 5.02(e); or
  - (2) the Spouse is not a Qualified Spouse as defined below; or
  - (3) the benefit is payable only in a single sum, under Section 6.05(a).
- (b) A Preretirement Surviving Spouse Pension is payable as described in this Article when a married Participant (1) dies after August 22, 1984 but before his pension payments have started, (2) has attained Vested Status, and (3) has at least one (1) Hour of Service (including paid leave) after August 22, 1984.
- (c) For purposes of this Plan, a Spouse is a person to whom a Participant is considered married under applicable law and, if and to the extent provided in a Qualified Domestic Relations Order as defined in ERISA, 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 Preretirement Surviving Spouse Pension, the Spouse must be a "Qualified Spouse". A Spouse is a Qualified Spouse if the Participant and Spouse were married throughout the year ending with the date 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.

A former spouse is a "Qualified Spouse" if the couple has divorced after being married for at least twelve months and the former spouse is required to be treated as a Spouse or a surviving Spouse under a Qualified Domestic Relations Order.

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

- (a) Effective January 1, 1985, the pension of a Participant who is married to a Qualified Spouse on the date his pension payments start will be paid in the form of a Husband-and-Wife Pension, unless a valid waiver of that form of payment has been filed with the Plan. 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 50% of the Participant's adjusted monthly amount. The Participant's monthly amount will be a percentage of the full monthly amount otherwise payable as a single life pension (after adjustment, if any, for early retirement) as follows:
  - (1) If the Participant's pension is not a Disability Pension, the percentage will be 89% plus 0.4% for each full year that the Spouse is older than the Participant and minus 0.4% for each full year that the Spouse is younger than the Participant; provided, however, that the resulting percentage may not be greater than 99%.
  - (2) If the Participant's pension is a Disability Pension, the percentage will be 79% plus 0.4% for each full year that the Spouse is older than the Participant and minus 0.4% for each full year that the Spouse is younger than the Participant; provided, however, that the resulting percentage may not be greater than 88%.
- (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 or death of the Spouse before that of the Participant.
- (d) A retiring Participant and Spouse 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 amount.
- (e) The Husband-and-Wife Pension may be rejected in favor of another form of distribution (or a previous rejection may be revoked) only as follows:
  - (1) The Participant must file the rejection in writing in such form as the Trustees may prescribe. The Participant's Spouse must acknowledge the effect of the rejection and must consent to it in writing. The Spouse must also consent to a specified Beneficiary or Beneficiaries and to a specified optional benefit form. The Spouse's consent must be witnessed by a Notary Public. The Participant may not subsequently change the designated Beneficiary or Beneficiaries or the optional benefit form without the consent of the Spouse, or
  - (2) The Participant must establish to the satisfaction of the Trustees that a rejection is not required because:

- (A) the Participant is not married;
  - (B) the Spouse whose consent would be required cannot be located; or
  - (C) consent of the Spouse cannot be obtained because of extenuating circumstances, as provided in IRS regulations.
- (3) To be timely, a rejection of the Husband-and-Wife Pension and any required consent must be filed within the Election Period defined in Section 6.05(b). To be valid, such a rejection must be made after the Participant and Spouse have been provided with information which includes a general explanation of the Husband-and-Wife Pension, the circumstances in which it will be provided unless the Participant and Spouse elect otherwise, the availability of such an election, the estimated effect of the Husband-and-Wife Pension and the eligibility conditions and other material features of the optional forms of benefits provided under the Plan including the relative values of the optional forms. The Participant and Spouse may revoke a previous rejection or file a new rejection at any time during the Election Period and after the receipt of the information referred to in this subsection.
- (4) A Spouse's consent to a rejection shall be effective only with respect to that Spouse.
- (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 a year at that time, pension payments to the Participant shall be made in the amount adjusted for the Husband-and-Wife Pension and if the Participant and Spouse have not been married to each other for at least a year before 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 designated Beneficiary.

### **Section 5.03. Preretirement 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 attained Vested Status, a Preretirement Surviving Spouse Pension will be paid to his surviving Qualified Spouse.
- (b) A Spouse is a Qualified Spouse for the purposes of this Section if the Participant and Spouse have been married to each other throughout the year immediately before his death, or if the couple were divorced and the former spouse is required to be treated as a Spouse or surviving Spouse under a Qualified Domestic Relations Order.

- (c) If the Participant described in (a) above died on or after age 55, the surviving Qualified Spouse will 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 in (a) above died before age 55, the surviving Qualified Spouse will be entitled to a Preretirement Surviving Spouse Pension determined as if the Participant had left Covered Employment on the date of his death (or the date he last worked in Covered Employment, if earlier), survived to age 55, Retired at age 55 on a Husband-and-Wife Pension (Section 5.02) and died the next day. The Preretirement Surviving Spouse Pension begins when the Participant would have attained age 55 had he lived.
- (e) Notwithstanding any other provision of this Article, a Preretirement Surviving Spouse Pension will not be paid in the form, manner or amount described above if one of the alternatives set forth in this subsection applies.
  - (1) If the Actuarial Present Value of the benefit is less than \$5000, the Trustees shall make a single-sum payment to the Spouse in an amount equal to that Actuarial Present Value, in full discharge of the Preretirement Surviving Spouse Pension.
  - (2) A Qualified Spouse may elect in writing, filed with the Trustees, and on whatever form they may prescribe, to defer commencement of the Preretirement Surviving Spouse Pension until a specified date that is the later of the December 31<sup>st</sup> of the Calendar Year immediately following the Calendar Year in which the Participant died, the December 31<sup>st</sup> of the Calendar Year in which the Employee would have attained age 70 ½, or as soon as practicable after the Trustees learn of the death. The amount payable at that time will be determined under subsections (c) and (d) of this Section, except that the benefit will 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 Husband-and-Wife Pension on the date before the surviving Spouse's payments are scheduled to start, and died the next day.

#### **Section 5.04. Trustees' Reliance.**

The Trustees are 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 will be final and binding, and will discharge the Fund and the Trustees from liability to the extent of the payments made. This means that, unless the Plan is administered in a manner determined to be inconsistent with the fiduciary standards of Part 4 of Title I of ERISA, the Fund will not be liable under this Article for duplicate benefits with respect to the same Participant, or for surviving Spouse benefits in excess of the Actuarial Present Value of the benefits described in this Article, determined as of the Effective Date of the Participant's pension or, if earlier, the date of the Participant's death.

#### **Section 5.05. Continuation of Husband-and-Wife Pension Form.**

The monthly amount of the Husband-and-Wife Pension, once it has become payable, will not be increased if the Spouse is subsequently divorced from the Pensioner or if the Spouse predeceases the Pensioner.

#### **Section 5.06. Single Life Pension with 36-Month Guarantee (“Single Life Pension”).**

- (a) The normal form of benefit payment for unmarried Pensioners is a monthly amount payable for the remainder of the Pensioner's life terminating with the payment for the month in which the Pensioner dies provided that if the Pensioner dies before receiving 36 monthly payments, monthly benefits will continue to be paid to his designated Beneficiary, if any, until 36 total payments have been made to the Pensioner and Beneficiary combined. An unmarried Participant who becomes entitled to receive a pension benefit will receive it in the normal form unless the Participant has filed a timely rejection of that form of payment.
- (b) To be timely, a rejection of the normal form of payment for a single Participant must be filed within the Election Period defined in Section 6.05(b). To be valid, such a rejection must be made after the Participant has been provided with information which includes a general explanation of the normal form of payment, the circumstances in which it will be provided unless the Participant elects otherwise, the availability of such an election, the estimated effect of the normal form of payment and the eligibility conditions and other material features of the optional forms of benefits provided under the Plan including the relative values of the optional forms. The Participant may revoke a previous rejection or file a new rejection at any time during the Election Period and after the receipt of the information referred to in this subsection.
- (c) An unmarried Participant who has rejected the normal form in accordance with subsection (b), shall be entitled to elect to receive his pension benefit in accordance with optional forms of benefits provided in this Article subject to the limitations herein.

#### **Section 5.07. Other Options - General.**

For single Participants who formally reject the Single Life Pension with 36 Month Guarantee and those married Participants who formally reject the Husband-and-Wife Pension and in lieu of the amount and form of benefits otherwise commencing at or after the Participant's Effective Date, a Participant and Spouse may elect in writing an optional form of payment as is further provided in the Sections that follow. Each Participant and Spouse will be given a written explanation of the terms and conditions of the pension benefit and the effect of any election under this Article within a reasonable period before the pension starting date. An election of an optional form of payment can only be made if the Husband-and-Wife Pension is rejected by the Participant and Spouse in accordance with Section 5.02(e).

#### **Section 5.08. Joint-Life and Survivorship Option.**

- (a) An Employee eligible to receive a Regular or Early Retirement benefit may designate a Beneficiary and may elect by written application filed with the Trustees, a Joint-Life and Survivorship Pension providing a reduced monthly retirement benefit to be paid as long as the Employee lives after the Effective Date of his pension, with the further provision that all of such reduced monthly retirement benefit will be continued after his death to his surviving Beneficiary during the latter's remaining lifetime. The right to elect this option will not apply to an Employee who Retires on a monthly Disability Benefit provided under Section 3.09.

The election of this option will not be effective until the later of 12 months after the month it is filed with the Trustees or the Effective Date of the Pension. Pension payments may commence prior to the date the option is effective. The reduced benefit will apply as of the Effective Date of the option.

If the Employee or Beneficiary dies before the election becomes effective, the election will be void and the Employee will be treated as though he made no election. The election will remain in effect if the Beneficiary dies after the Effective Date of the option. Once an election has been made and accepted by the Trustees, it cannot be changed or revoked without the consent of the Trustees.

The election of this option automatically waives the payment guarantee provided for in Section 5.07, as of the Effective Date of the option.

- (b) The Participant's monthly amount under this option will be a percentage of the full monthly amount otherwise payable as a Single Life Pension (after adjustment, if any, for early retirement) as follows: 80% minus .6 percentage points for each full year that the Beneficiary's age is less than the Participant's age or plus .6 percentage points for each full year that the Beneficiary's age is greater than the Participant's age; provided, however that the resulting percentage will not be greater than 96 percent.

#### **Section 5.09. 10-Year Guaranteed Option.**

- (a) Under this option, a Participant eligible to receive a Regular or Early Retirement benefit may elect to receive payment for life in a reduced monthly amount, with the provision that if he dies before receiving 120 monthly payments, payments will be continued to his Beneficiary at such reduced amount until a total of 120 monthly payments has been paid.
- (b) The Participant's monthly amount under this option will be a percentage of the full monthly amount otherwise payable as a Single Life Pension (after adjustment, if any, for early retirement) as follows: 92% plus .5 percentage points for each full year the Participant is younger than age 65 when the pension is first payable or minus 1.0 percentage points for each full year the Participant is older than 65 when the pension is first payable.

## **ARTICLE 6**

### **Applications, Benefit Payments, Retirement, and Benefit Suspensions**

#### **Section 6.01. Applications.**

Except as required by law, an application for the benefit must be made in writing in the form and manner required by the Trustees as a condition for the payment of any benefit from this Plan. Benefit payments will begin as of the "Effective Date" of a pension as defined in Section 6.05(b). An application may be withdrawn at any time before payments commence.

#### **Section 6.02. Information and Proof.**

Every claimant for benefits shall furnish, at the request of the Trustees, any information or proof reasonably required to determine his benefit rights. If the claimant makes a willfully false statement material to his application or furnishes fraudulent information or proof material to his claim, benefits not Vested under this Plan (as defined in Section 6.10) may be denied, suspended, or discontinued. The Trustees shall have the right to recover, through legal proceedings, any benefits paid in reliance on any false statement, information, or proof submitted by a claimant (including withholding of material fact) plus interest and costs without limitation by recovery through offset of benefit payments as permitted by this Article. If a Participant is otherwise entitled to benefits despite any false statement, any amounts paid in reliance on the false statements shall be deemed as an advance of future benefits, and shall be recoverable through offset of benefits which become payable in the future, including any benefits payable to a Participant's Beneficiary or estate.

#### **Section 6.03. Action of Trustees.**

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

Wherever in the Plan the Trustees are given discretionary powers, the Trustees shall exercise

such powers in a uniform and nondiscriminatory manner. The Trustees shall process a claim for benefits as speedily as is feasible, consistent with the need for adequate information and proof necessary to establish the claimant's benefit rights and to commence the payment of benefits.

#### **Section 6.04. Right to Appeal.**

- (a) A Participant whose application for benefits under this Plan has been denied, in whole or in part, or who has received a ruling concerning benefits, Pension Credits or any other matter concerning application of this Plan, is to be provided with adequate notice in writing setting forth the specific reasons for such denial or interpretation, 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 appeal shall be considered by the Trustees or by a person or committee designated by the Trustees.
- (b) All questions or controversies, of whatsoever character, arising in any manner or between any parties or persons, in connection with this Pension Plan or the administration thereof, whether as to any claim for any benefits preferred by an Employee, Beneficiary or any other person, or whether as to the construction or the language or meaning of the Pension Plan or the Trust Agreement, or as to any writing, decision, instrument or accounts in connection with the operation of the Pension Plan or otherwise, shall be submitted to the Trustees; and the decision of the Trustees shall be binding upon all persons dealing with the Pension Plan or claiming benefits under the Pension Plan.

#### **Section 6.05. Benefit Payments Generally.**

- (a) A Participant who is eligible to receive benefits under this Plan, who Retires as defined in Section 6.07 and who submits an application in accordance with the rules of the Plan will be entitled to receive the monthly benefits provided for the remainder of his life, subject to the provisions of this Plan.

If the Actuarial Present Value as defined in Section 1.02 of the pension payable under the Plan to a Participant, Spouse, former Spouse, or Beneficiary following the death of the Participant is \$5000 or less, the Trustees will pay a lump sum in lieu of the pension. If the Actuarial Present Value of the benefit payable under the Plan exceeds \$5000, benefits may not be paid before the Participant has attained Normal Retirement Age without the consent of the Participant. The Participant's consent will not be valid unless the Participant has previously received a general description of the material features and an explanation of the relative values of the optional forms of benefit available under the Plan

- (b) For purposes of this Section and Section 5.02, the consent of the Participant and the Participant's Spouse, if applicable, must be in writing and within the "Election Period". The "Election Period" is the period that begins 90 days before the Pension Effective Date and ends as provided in (b) below after the explanation of the optional forms of benefit has been provided to the Participant and Spouse, if applicable, in accordance with

Section 6.05(a) or 5.02 (e).

A Participant's Pension Effective Date is the first day of the first calendar month starting after the Participant has fulfilled all the conditions for entitlement to benefits including receipt by the Trustees of a written application for benefits in accordance with Section 6.01. The Effective Date of Benefits will be no later than the Required Beginning Date. The actual payment of benefits will commence no sooner than 30 days after the applicable information is supplied to the Participant and Spouse, if applicable; and notwithstanding any other provision of this Plan to the contrary, such information may be supplied after the Effective Date of Benefits in which case the applicable election must be made within 30 days after such information is supplied. The actual payment of benefits may commence before the end of the 30-day period after the information is supplied if all of the following requirements are met:

- (1) The Participant and Qualified Spouse, if applicable, are provided with information about the right to at least 30 days to consider the available payment options and whether to consent to payment;
  - (2) The Participant and Qualified Spouse, if applicable, are permitted to revoke any election until the Effective Date of Benefits, or if later, at any time prior to the expiration of the seven day period that begins the day after the explanation of available payment options is provided to the Participant, and Qualified Spouse, if applicable;
  - (3) The actual payment of benefits does not commence before the expiration of the seven day period that begins the day after the explanation of the available benefit payment options is provided to the Participant and Qualified Spouse, if applicable; and
  - (4) The Participant and Spouse, if applicable, consent in writing to the commencement of payments before the end of that thirty (30) day period.
- (c) A Participant may elect in writing signed by the Participant and filed with the Trustees to receive benefits first payable for a later month, provided that no such election filed on or after January 1, 1984 may postpone the commencement of benefits to a date later than the April 1st following the Calendar Year in which the Participant will reach age 70 ½ unless the Participant remains in Covered Employment until a later date.
- No election filed on or after January 1, 1989 may postpone the commencement of benefits to a date later than the April 1st following the Calendar Year in which the Participant will reach age 70 ½ subject to the rules of §401(a)(9) of the Internal Revenue Code and related regulations.
- (d) Benefit payments will be made as soon as practical after the Participant's Effective Date but, unless the Participant elects otherwise as provided in Section 6.05(b), the payment

of benefits will begin no later than the 60<sup>th</sup> day after the later of the end of the Calendar Year:

- (1) in which the Participant attains Normal Retirement Age, or
- (2) in which the Participant terminates his Covered Employment and Retires as that term is defined in Section 6.07 of this Article, or
- (3) the date the Participant makes a proper application.

However, the Trustees need not make payment before they are first able to ascertain entitlement to, or the amount of, the pension.

- (e) Payment of benefits will include retroactive payment for any months for which the pension is due and payable in accordance with this Section or Section 3.09 of this Plan.
- (f) A pension is payable up to and including the month in which the Pensioner dies unless the pension is being paid in a form that provides for a survivor's pension or for payments to a Beneficiary after the death of the Pensioner.
- (g) Notwithstanding any other provision of this Plan, if the Actuarial Present Value of a benefit payable under the Plan is \$5,000 or less as of the date payment would start, the benefit will be paid in a single sum equal to that value. For this purpose, Actuarial Present Value is determined in accordance with Section 1.02. This subsection does not apply after payment of the Participant's pension has begun.
- (h) A Pensioner or Beneficiary who is entitled to make payments to the National Automatic Sprinkler Metal Trades Welfare Fund for coverage by that plan may authorize in writing a deduction from his monthly pension check of the amount required for medical coverage. Such authorizations are strictly voluntary and may be revoked at any time. Such authorizations shall not be an assignment of benefits in that the Welfare Fund shall have no right enforceable against this Fund to any part of the monthly pension benefit. The Welfare Fund must acknowledge in writing that transfer of these kinds of deductions create no enforceable right in or to any benefit payment, or portion thereof, from this Fund. The deduction and transfer will only be made when or after the money would otherwise be payable to the Pensioner or Beneficiary. These deductions cannot be made unless the Welfare Fund reimburses this Fund the costs of the deductions and transfers.
- (i) Payment of benefits under this Plan to a Beneficiary other than a surviving Spouse that become payable because of a Participant's death will begin no later than one (1) year from the date of death, or if later, as soon as practical after the Trustees learn of the death.
- (j) Effective for distributions on or after January 1, 1993, which are Eligible Rollover Distributions as defined in Section 402(f)(2)(A) of the Internal Revenue Code, such

distributions will be made, as provided in this subsection, by a direct transfer to an Eligible Retirement Plan as defined in Section 402(c)(8)(B) of the Internal Revenue Code if requested by the Participant, Beneficiary or other Distributee entitled to the distribution.

(1) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this subsection, a Distributee may elect, at the time and in the manner prescribed by the Trustees, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

(2) Definitions.

(i) 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 (no less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a specified period of ten (10) years or more, any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

(ii) An "Eligible Retirement Plan" is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, or a qualified trust described in Section 401(a) of the Code, that accepts the Distributee's Eligible Rollover Distribution. However, in the case of an Eligible Rollover Distribution to the surviving spouse, an Eligible Retirement Plan is an individual retirement account or individual retirement annuity.

(iii) 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 Section 414(p) of the Internal Revenue Code, are Distributees with regard to the interest of the Spouse or former Spouse.

(iv) A "Direct Rollover" is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

## **Section 6.06. Computation of Benefits.**

- (a) The pension to which a Participant is entitled will be determined under the terms of the Plan as in effect at the time the Participant last separates from Covered Employment, subject to Section 6.06(b) and Section 3.09.

A Participant shall be deemed to have separated from Covered Employment on the last day of work which is followed by the failure to earn two-tenths (.2) of credit in one (1) complete Calendar Year.

- (b) The rules of this Section will not apply to changes in the reduction for Early Retirement (Section 3.06) which are determined under the terms of the Plan as in effect on the Effective Date of the pension; however, a return to Covered Employment by a Pensioner does not change the provisions of Section 3.06 used to calculate benefits attributable to Pension Credits earned prior to the return to Covered Employment.

- (c) Break in Continuity.

- (1) If an Employee leaves Covered Employment and incurs a Break in Continuity (i.e., fails to earn two-tenths (.2) of credit during a period of two complete consecutive Calendar Years) and returns to Covered Employment, the portion of his Pension attributable to Covered Employment prior to the Break in Continuity will be computed on the basis of the applicable Rules, Regulations and Rates in effect for Pensioners retiring at the time he left Covered Employment. The portion of his Pension attributable to Covered Employment after the Break in Continuity will be computed on the basis of the Rules, Regulations and Rates in effect at that time.
- (2) A Break in Continuity will occur on the Effective Date of any pension, except that a Disability Pensioner who recovers and, within one year of recovery, returns to Covered Employment prior to his Normal Retirement Age sufficient to earn one additional Year of Vesting Service, will not be considered to have a Break in Continuity.
- (3) A Break in Continuity will not occur during any periods a person is receiving Workers Compensation benefits or periods for which the person supplies evidence of disability to the satisfaction of the Trustees.
- (4) A Break in Continuity will not occur during any periods of service in the Armed Forces of the United States.
- (5) A Break in Continuity will occur for all employees of employers who withdraw from the Plan unless and until they earn sufficient service with another Contributing Employer to cause such Break to be disregarded.

**Section 6.07. Retirement.**

- (a) General Rule.

To be considered Retired, a Participant must have separated from Service with any and all Contributing Employers.

(b) Exception.

A Participant who separates from Service, as provided in subsection (a), will be considered Retired notwithstanding subsequent employment or reemployment after his Normal Retirement Age with a Contributing Employer as long as he works less than 40 hours in any month.

**Section 6.08. Suspension of Benefits.**

(a) Before Normal Retirement Age.

- (1) A Participant's monthly pension benefit will be suspended for any month in which the Participant is employed in Disqualifying Employment before he has attained Normal Retirement Age. "Disqualifying Employment", for the period before Normal Retirement Age, is any work of the type considered Covered Employment for his Plan, either for a person, firm or corporation, or employment or self-employment in any category of work in the sprinkler, plumbing or pipefitting industry.
- (2) In addition, a Participant's monthly pension benefit will be suspended for the five (5) consecutive months after any period of one (1) or more consecutive months during which the Participant was engaged in Disqualifying Employment.
- (3) If the Participant fails to notify the Plan of employment that may be the basis for suspension of benefits under paragraph (1), in accordance with the notification requirements of subsection (d), or willfully misrepresents to the Plan with respect to Disqualifying Employment, the Participant's monthly pension benefit will be suspended for an additional period of six (6) months.
- (4) The Trustees may, for good cause, waive either or both of these additional periods of suspension provided for in subparagraphs (2) or (3). However, benefits will not be suspended for any month after the Participant has attained Normal Retirement Age based on the provisions of subparagraphs (2) or (3).
- (5) The benefits of a Disability Pensioner who returns to employment prior to Normal Retirement Age will not be suspended as provided in this Section, but such Disability Pension may be terminated by the Trustees as provided in Section 3.11.

(b) After Normal Retirement Age.

- (1) If the Participant has attained Normal Retirement Age, his monthly pension benefit will be suspended for any month in which he worked or was paid for at least forty

- (40) hours in Disqualifying Employment. "Disqualifying Employment" means employment or self-employment that is
- (A) in an industry covered by the Plan when the Participant's pension payments began,
  - (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. However, if a Participant worked in Covered Employment only in a skilled trade or craft, that is, as a metal trades fabricator, employment or self-employment will 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. In any event, work for which contributions are required to be made to the Plan is Disqualifying Employment.
- (2) The term, "industry covered by the Plan," means the Sprinkler Industry and any other 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 United States of America including Alaska and Hawaii and any other area covered by the Plan when the Participant's pension began or, but for suspension under this Article, would have begun.
- (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" will be the industry and area covered by the Plan when his pension was resumed.
- (5) For purposes of suspension of benefits, hours include Hours of Service under this Plan as well as service with non-contributing employers. Hours include service for which either direct or indirect compensation or benefit is received by the Pensioner.
- (6) Notwithstanding any provision of the Plan to the contrary, a Participant's benefits will be suspended after Normal Retirement Age if he continues to work in Covered Employment for which employer contributions to the Plan are required or continues to work in Disqualifying Employment. However, no benefits will be suspended after a Participant's Required Beginning Date, as defined in Section 6.17.

(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 overpayment may be recovered through deductions from future pension payments, pursuant to subsection (g), and in accordance with Section 6.03.

(d) Notices.

- (1) Upon commencement of pension payments, the Trustees will notify the Pensioner of the Plan rules governing suspension of benefits, including 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 Pensioner must notify the Plan in writing within 21 days after starting any work of any 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). The Trustees will inform all retirees at least once every 12 months of the re-employment notification requirements.
- (3) A Participant whose pension has been suspended must notify the Plan in writing when Disqualifying Employment has ended. The Trustees may hold back benefit payments until such notice is filed with the Plan.
- (4) A Pensioner may ask the Plan whether a particular employment will be disqualifying. The Trustees will provide the Pensioner with their determination.
- (5) The Plan will inform a Participant of any suspension of benefits by notice given by personal delivery or first class mail during the first calendar month in which his benefits are withheld. This notice will 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 will describe the procedure for the Participant to notify the Plan when his disqualifying employment ends. If the Plan will recover overpayments by offset under subsection (g)(2), the suspension notice will explain the offset procedure and identify the amount expected to be recovered and the periods of employment to which they relate.

- (6) Notice will be given to all Participants who have not Retired at Normal Retirement Age that benefits may be permanently forfeited for periods of work past Normal Retirement Age to the extent that additional credits earned do not increase the eventual benefit paid to the Actuarial Equivalent of the accrued benefit at Normal Retirement Age.

(e) Review.

A Participant is entitled to a review of a determination suspending his benefits by written request filed with Trustees within 180 days of the notice of suspension.

A Participant also is entitled to a review under the same terms, to a determination by or on behalf of the Trustees that contemplated employment will be Disqualifying Employment.

(f) Waiver of Suspension.

The Trustees may, upon their own motion or on request of a Participant, waive suspension of benefits subject to such limitations as the Trustees in their sole discretion may determine, including any limitations based on the Participant's previous record of benefit suspensions or noncompliance with reporting requirements under this Article.

(g) Resumption of Benefit Payments.

(1) Benefits will resume for months after the last month for which benefits are suspended provided the Participant has complied with the notification requirements of subsection (d)(3) above.

(2) Overpayments attributable to payments made for any month or months for which the Participant had disqualifying employment will be deducted from pension payments otherwise paid or payable subsequent to the period of suspension. A deduction from a benefit after the Pensioner attained Normal Retirement Age will not exceed 25% of the pension amount (before deduction), except that the Plan may withhold up to 100% of the first pension payment made upon resumption after a suspension. If a Pensioner dies before recoupment of overpayments has been completed, deductions will be made from the benefits payable to his Beneficiary or Spouse, subject to the 25% limitation on the rate of deduction if applicable.

**Section 6.09. Benefit Payments Following Suspension.**

(a) The monthly amount of pension when resumed after suspension will be determined under paragraph (1), and adjusted for any optional form of payment in accordance with paragraphs (2) and (3). Nothing in this Section will 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) The amount of benefit payable prior to suspension, including any retiree increases, will be increased by an amount equal to the reduction for early Retirement for each month benefits are suspended, not to exceed the total reduction used to calculate the benefit at original Retirement. This result will be added to the benefit

attributable to Pension Credits earned during the period of suspension, determined as if it were then being determined for the first time using the benefit rates in effect for the calculation of the original benefit. The reduction for early Retirement will be the reduction(s) used to calculate the benefit prior to suspension for the benefit payable prior to suspension, and the reduction specified in Section 3.06 for Pension Credits earned during the suspension of benefits.

- (2) The amount determined under the above paragraph will be adjusted for the Husband-and-Wife Pension in accordance with which the benefits of the Participant and any contingent annuitant or Beneficiary are payable.
- (3) The benefit determined under the provisions of paragraphs (1) and (2) will not be adjusted in any event to an extent that would result in forfeiture of the Participant's Regular Retirement Pension at Normal Retirement Age in violation of Section 203(a)(3)(B) of ERISA. Following Normal Retirement Age, benefits may be permanently forfeited to the extent that additional credits earned do not increase the benefit to the Actuarial Equivalent of the accrued benefit at Normal Retirement Age.

(b) A Husband-and-Wife Pension in effect immediately prior to suspension of benefits and any other benefit following the death of the Pensioner will remain effective if the Pensioner's death occurs while his benefits are in suspension, except as specified in this subsection. Survivor benefits will be restored in accordance with Section 5.03(c). Guaranteed benefits under Sections 5.07 or 5.09 will not apply after a Participant re-qualifies for benefits under Section 5.03. In all cases of death while benefits are suspended, penalties in Section 6.08(a)(2) will not apply. If a Pensioner has returned to Covered Employment, he will not be entitled to a new election as to the Husband-and-Wife Pension except if, upon such return, he had sufficient Covered Employment to earn at least three consecutive years of Vesting Service. Guarantees under Sections 5.07 or 5.09 will include all payments subsequent to the first Effective Date of any benefit payment under this Plan.

(c) Additional Benefits Earned Following Suspension.

- (1) Benefit accruals will not cease and the rate of accrual will not be reduced, because a Participant has reached any age and continues to work in Covered Employment.
- (2) Benefit increases will apply to reemployed Pensioners to the same extent that they apply to any other Participants who have stopped working in covered service under the Plan for a comparable period for reasons other than Retirement.
- (3) A Participant's benefits accrued after Normal Retirement Age will be reduced, but not below zero, by the Actuarial Equivalent of the benefits paid to the Participant for the periods in which the additional benefits were accrued. The actuarial assumptions specified in Section 1.02 of the Plan will be used for these

calculations.

- (4) Any additional pension amount earned by a Participant in Covered Employment after Normal Retirement Age will be determined at the end of each Calendar Year and will be payable as of the first month following the end of the Calendar Year in which it accrued, provided payment of benefits at that time is not suspended due to the Participant's continued employment.
- (5) If a Participant Retires at or after Normal Retirement Age and then returns to Covered Employment, any subsequent benefit accrued will be payable in the benefit form selected at Retirement. With respect to the Single Life Pension with 36 Month Guarantee in Section 5.07, payment of any additional benefit amounts earned after Normal Retirement Age will be guaranteed for 36 months from the date payment of such additional amount commences or would have commenced if it had not been suspended due to the Participant's continued employment.
- (6) If a Participant Retires before Normal Retirement Age and then returns to Covered Employment, any subsequent benefits accrued will be payable in the benefit form selected following the resumption of the Participant's benefit payments. The requirements of Section 6.05 will apply to such additional benefits.
- (7) If benefit payments are suspended pursuant to Section 6.08(b)(6) of the Plan for a Participant who continues in Covered Employment after Normal Retirement Age without a separation and who does not receive a benefit payment, the commencement of benefit payments following such suspension will be the Effective Date.

#### **Section 6.10. Vested Status or Nonforfeitability.**

Vested Status is earned as follows:

- (a) A Participant's right to his Regular Pension is nonforfeitable upon his attainment of Normal Retirement Age, except to the extent that benefits are canceled, pursuant to Section 7.04, because the Employer has ceased to contribute to the Plan with respect to the employment unit in which the Participant was employed.
- (b) Before January 1, 1997, a Participant acquires Vested Status after completion of ten (10) Years of Vesting Service for Collectively Bargained Employees or five (5) Years of Vesting Service for Non-Collectively Bargained Employees, excluding Years of Service that are not taken into account because of a Permanent Break in Service.

In addition, an individual who completes more than one (1) Hour of Service on or after January 1, 1997, earns Vested Status after he completes at least five (5) Years of Vesting Service during the Contribution Period, excluding Years of Service that are not taken into account because of a Permanent Break in Service determined after the application of this

provision.

**Section 6.11. Non-duplication with Disability Benefits.**

No pension benefits are payable for any month for which the Participant or Pensioner receives wage indemnification for disability from the National Automatic Sprinkler Metal Trades Welfare Fund. However, this provision is subject to the provisions of Section 6.05.

**Section 6.12. Incompetence or Incapacity of a Pensioner or Beneficiary.**

If the Trustees determine that a Pensioner or Beneficiary is unable to care for his affairs because of a 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 a legal guardian, committee, or other legal representative; or, in the absence of any of them, to any relative of blood or connection by marriage who is determined by the Trustees to be equitably entitled thereto. Any such payment will be completely discharge the Trustees' liability with respect to the benefit.

**Section 6.13. Non-Assignment of Benefits.**

No Participant, or Beneficiary under this Plan will have the right to assign, alienate, transfer, sell, mortgage, encumber, pledge or anticipate any payments. Payments will not in any way be subject to any legal process to levy, execution upon, or attachment or garnishment proceedings for the payment of any claim against the Participant or Beneficiary. Payments will not be subject to the jurisdiction of any bankruptcy court or insolvency proceedings by operation of law, or otherwise. However, a Participant's or Beneficiary's benefits may be reduced pursuant to a judgment, order, decree or settlement entered into on or after August 15, 1997 where the Participant has committed a breach of fiduciary duty against the Plan or committed a criminal act against the Plan. Payments may be made by the Fund to an Alternate Payee of a Participant in accordance with the terms of a Qualified Domestic Relations Order.

#### **Section 6.14. No Right to Assets.**

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

#### **Section 6.15. Mergers.**

In the event of any merger or consolidation with or transfer of assets or liabilities to any other plan, each Participant will receive a benefit immediately after the merger, consolidation or transfer that is equal to or greater than the benefit they would have been entitled to receive immediately before the merger, consolidation or transfer.

#### **Section 6.16. Increases to Retirees.**

From time to time, the Trustees may increase benefit payments to Pensioners and Beneficiaries, providing such increases are applied in a uniform and nondiscriminatory manner. Such increases apply only to Pensioners and Beneficiaries whose Effective Date is prior to the effective date of the increase and who have not returned to work under Section 6.07.

The Trustees have adopted the following increases for Pensioners and Beneficiaries with an Effective Date before the effective date of the increase:

- (a) Pensioners and Beneficiaries on the rolls as of December 31, 1996, received a pension increase effective January 1, 1997 in the amount of 2% of the pension benefit in effect as of December 31, 1996.
- (b) Pensioners and Beneficiaries on the rolls as of December 31, 1997, received a pension increase. Beneficiaries on the rolls as of December 31, 1996, received a pension increase effective January 1, 1998 to the pension benefit in effect as of December 31, 1997 in the amount of \$18.00.
- (c) Pensioners and Beneficiaries on the rolls as of December 31, 1998, received an additional pension benefit payment in the amount of \$525.00.
- (d) Pensioners and Beneficiaries on the rolls as of December 31, 1998, received a pension increase. Beneficiaries on the rolls as of December 31, 1998, received a pension increase effective January 1, 1999 to the monthly pension benefit in effect as of December 31, 1998 in the amount of \$7.50.

### **Section 6.17. Required Distributions.**

- (a) Benefit payments which are required to commence in accordance with this Section shall be automatically made to the Participant to whom benefits are payable by the Fund but who fail or refuse to apply for benefits. Benefits shall be paid on the Required Beginning Date, as follows:
- (1) in a single sum if the Actuarial Present Value (as defined in Section 1.02) of the Participant's benefit is no more than \$5000; and
  - (2) in the form of a Husband-and-Wife Pension calculated on the assumption 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.
  - (3) Once benefit payments commence, the form of benefit in the Husband-and-Wife Pension is irrevocable except that it may be changed to a Single Life Pension with 36 Month Guarantee if the Participant proves that he was not married on the Required Beginning Date and the amount of future benefit payments will be adjusted based on the actual ages of the Participant and Spouse if different from the assumption in (2) above.
- (b) Participants or Beneficiaries who cannot be located through reasonable efforts shall be presumed dead and their benefits shall be forfeited, subject to reinstatement if the Participant or Beneficiary later makes application for benefits.
- (c) A Participant's Required Beginning date is the April 1st of the Calendar Year following the year in which the Participant attains the age of 70 1/2 subject to the provisions of §401(a)(9) of the Internal Revenue Code and related regulations.
- (d) Payment of benefits under this Plan to a Beneficiary or surviving Spouse will commence by the applicable Required Beginning Date. The Required Beginning Date is as follows:
- (1) In the case of benefits to a Beneficiary other than a surviving Spouse, which become payable on account of the Participant's death, payments shall begin no later than one year from the date of death, or if later, as soon as practical after the Trustees learn of the death.
  - (2) In the case of benefits to a surviving Spouse, payments shall begin on or before the later of the December 31st of the Calendar Year immediately following the Calendar Year in which the Participant died, the December 31<sup>st</sup> of the Calendar Year in which the employee would have attained age 70½, or as soon as practicable after the Trustees learn of the death.

### **Section 6.18. Maximum Benefit Limitation.**

- (a) Notwithstanding any other provision of this Plan, the Annual Pension Benefit payable to a Participant under this Plan in the form of a single life annuity (with no ancillary benefits) actuarially adjusted will not at any time within the Limitation Year exceed the lesser of:
- (1) \$90,000.00 or such higher amount as adjusted for cost of living increases as permitted by Internal Revenue Service Regulations, or
  - (2) 100% of the Participant's average compensation for the three consecutive Calendar Years during which the Participant was both an active Participant in the Plan and had the greatest aggregate compensation from Contributing Employers.
- (b) The limitations of (a)(1) and (2) shall not apply if the Annual Pension Benefit payable to a Participant does not exceed \$10,000 and the Employee was never a Participant in a defined contribution plan of an Employer.
- (c) In the case of a Participant who has accrued less than 10 years of participation, the maximum Annual Pension Benefit payable to such Participant may not exceed the Annual Pension Benefit determined under (a)(1) multiplied by a fraction, the numerator of which is his years of participation and the denominator of which is 10.
- (d) If the Annual Pension Benefit of a Participant begins before the Social Security Retirement Age, the \$90,000 limitation set forth in (a)(1), or, if applicable, (c) above is reduced as follows:
- (1) If a Participant begins to receive his annual pension benefit at or before age 62, but prior to the Participant's Social Security Retirement Age, the maximum annual pension benefit of \$90,000 is reduced as follows:
    - (A) If the Participant's Social Security Retirement Age is 65, the \$90,000 limit is reduced by five-ninths of one-percent for each month by which benefits begin before the month in which the Participant reaches age 65.
    - (B) If the Participant's Social Security Retirement Age is later than 65, the \$90,000 limit is reduced by five-ninths of one-percent for each of the first 36 months and five-twelfths of one-percent for each additional month (up to 24) by which benefits before the month in which the Participant attains his or her Social Security Retirement Age.
  - (2) If a Participant's annual pension benefit begins prior to age 62, the \$90,000 is reduced to the Actuarial Equivalent of the benefit payable at age 62, adjusted for cost of living. For purposes of this provision, the Actuarial Equivalent of the annual pension payable at age 62 is determined as follows:
    - (A) Calendar Years beginning before January 1, 2000. For Calendar Years beginning before January 1, 2000, the Actuarial Equivalent amount is

computed using an interest assumption that is not less than the greater of the rate specified in the Plan or five percent (5%) and the 1971 Group Annuity Mortality Table.

(B) Calendar Years beginning on or after January 1, 2000. For Calendar Years beginning on or after January 1, 2000, the Actuarial Equivalent amount is computed using an interest assumption that is not less than the greater of the Plan's early retirement reduction factors or five percent (5%) interest rate and the Applicable Mortality Table as defined under Section 1.02(b)(1).

(e) If a Participant's annual pension benefit begins after the Participant's Social Security Retirement Age, the \$90,000 limitation set forth in subsection (a)(1) or, if applicable, section (c) above will be increased so that it is the Actuarial Equivalent of the benefit payable at the Participant's Social Security Retirement Age. For purposes of this provision, actuarial equivalence is determined as follows:

(1) Calendar Years beginning before January 1, 2000. The Actuarial Equivalent amount is computed using an interest assumption that is no greater than the lesser of the rate specified in the Plan or five percent (5%) and the 1971 Group Annuity Mortality Table.

(2) Effective on or after January 1, 2000. The Actuarial Equivalent amount is computed using an interest assumption that is no greater than the lesser of the Plan's late retirement increase factors or five percent (5%) interest rate and the Applicable Mortality Table as defined under Section 1.02(b)(1).

(f) In the case of the plan maintained by Local Unions, which are tax exempt organizations, for their employees:

(1) If the Participant's annual pension benefit begins before age 65, but on or after age 62, the dollar limit is not reduced.

(2) If the Participant's annual pension benefit begins before age 62, but on or after age 55, the dollar limit is reduced to the Actuarial Equivalent (within the meaning of subsection (d)(2) above) of the benefit payable at age 62, but not below \$75,000.

(3) If the Participant's annual pension benefit begins before age 55, the dollar limit is reduced to the Actuarial Equivalent (within the meaning of subsection (d)(2) above) of a \$75,000 benefit payable at age 55.

(4) If the Participant's annual pension benefit begins after age 65, the dollar limit is increased to the Actuarial Equivalent (within the meaning of subsection (e) above) of a benefit payable at age 65.

(g) If a Participant is covered by a defined benefit plan of an Employer (or any other employer

under common control with an Employer) which is qualified under Section 401(a) of the Internal Revenue Code and which is other than a multiemployer plan, such plan will be aggregated with this Plan in accordance with IRS Regulation §1.415-8(e) for purposes of determining compliance with the limitations under 415(b) of the Internal Revenue Code.

- (h) In any Calendar Year before January 1, 2000, if a Participant is covered by a defined contribution plan of an Employer (or any other employer under common control with an Employer) which is qualified under Section 401(a) of the Internal Revenue Code and which is other than a multiemployer plan, such plan will be aggregated with this Plan in accordance with IRS Reg. §1.415-8(e) for purposes of determining compliance with the limitations under 415(e) of the Code.
- (i) "Limitation Year" shall be the Calendar Year.
- (j) For purposes of this Section, "Compensation" shall mean the Participant's earned income for services rendered in the course of employment with an Employer maintaining the Plan, but shall not include any contributions made to this Plan, to any other plan of deferred compensation, or any other fringe benefit.
- (k) The Trustees shall be entitled to rely on a representation by an Employer that the pension payable to a Participant under this Plan to the extent attributable to employment with that Employer, does not, together with any other pension payable to him under any other plan maintained by that Employer, whether or not terminated, and to the extent attributable to employment with that Employer, exceed the limitations of Section 415 of the Internal Revenue Code.
- (l) In the case of an Employee who has less than 10 years of service with an Employer, the limitations referred to in Sections 6.18(a)(2), 6.18(b), 6.18(g) and 6.18(h) shall be the limitations determined under such subsections multiplied by a fraction, the numerator of which is his years of service with an Employer and the denominator of which is 10.
- (m) The benefits paid under this Plan shall not exceed the limitations set forth in this Section. If a Participant on his Effective Date is not eligible for full monthly benefits under this Plan because of the operation of this Section, his monthly benefit shall thereafter be recalculated annually until he is receiving a full monthly benefit under the Plan's terms without operation of this Section to reflect cost of living increases as set forth in subsection (a).
- (n) In applying this Section, a Participant's annual benefit from this Plan may be divided into separate portions attributable to different Contributing Employers for which he worked in Covered Employment, and this Section may be applied separately to each such portion or to any combination of such portions.
- (o) If the Participant's accrued benefit is paid in any form other than a single life Pension or joint and survivor option, the limitation in subsection (a)(1) above is applied to the annual

pension benefit before it is converted to the alternative payment form, so that the amount payable under the payment form selected will be the Actuarial Equivalent of the accrued benefit (which is defined as a single life annuity) as limited by subsection (a)(1).

- (1) Benefits not subject to Code Section 417(e)(3). In the case of benefits that are not subject to the rules of Code Section 417(e)(3):
  - (A) Calendar Years beginning before January 1, 2000. For Calendar Years beginning before January 1, 2000, the Actuarial Equivalent of such other forms of benefits will be determined based on an interest assumption that is not less than the greater of the Plan's interest rate or a five percent (5%) interest assumption and the 1971 Group Annuity Mortality Table.
  - (B) Calendar Years Beginning on or after January 1, 2000. For Calendar Years beginning on or after January 1, 2000, the Actuarial Equivalent of such other forms of benefits will be determined using an interest assumption that is not less than the greater of the Plan's interest rate and mortality table used to determine actuarial equivalence for the form of benefit payable, if any, or a five percent (5%) interest rate and the Applicable Mortality Table as defined in Section 1.02(b)(1).
- (2) Benefits subject to Code Section 417(c)(3). In the case of benefits that are subject to the rules of Code Section 417(c)(3), for purposes of adjusting the retirement benefit to a straight life annuity, the rules set forth in Section 6.18(o)(1) will apply except that in Section 6.18(o)(10)(B), the "Applicable Interest Rate" as defined in Section 1.02(b)(1) will be substituted for a "five percent (5%) interest rate."

## **ARTICLE 7**

### **Miscellaneous**

#### **Section 7.01. Non-Reversion.**

It is expressly understood that in no event will 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 the time limits prescribed by law.

#### **Section 7.02. Limitation of Liability.**

This Pension Plan has been established on the basis of an actuarial calculation which has established, to the extent possible, that the contributions will, if continued, be sufficient to maintain the Plan on a permanent basis, fulfilling the funding requirements of ERISA. Nothing in this Plan may be construed to impose any obligation to contribute beyond the obligation of the Employer to make contributions as stipulated in the Collective Bargaining Agreement or Agreements to which the Employer is bound.

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

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

- (a) If an Employer is sold, merged or otherwise undergoes a change of company identity, the successor company will participate as to the Employees theretofore covered in the Pension Plan just as if it were the original company, provided it remains a Contributing Employer as defined in Section 1.07.
- (b) No new employer may be admitted to participate in the Pension Fund except upon approval by the Trustees. A written Notice of Acceptance may be sent by the Trustees to any new Contributing Employer who is accepted for participation in the Fund.
- (c) An Employer may be accepted by the Trustees as a "Contributing Employer" upon application by the Union, if:
  - (1) the Employer, along with the Union, signs the standard language for participation in the Fund, as approved by the Trustees, which sets forth the full details of the basis for contributions to the Fund and the basis for acceptance as a Contributing Employer, and
  - (2) the Employer and Union furnish the name, date of birth, and employment history of each Employee then covered by the Collective Bargaining Agreement between the Union and the new Employer, and

- (3) such acceptance will not adversely affect the actuarial soundness of the Fund as determined by the Trustees after consultation with the actuaries for the Fund. If the acceptance of an Employer will, in the judgement of the Trustees, adversely affect the actuarial soundness of the Fund, then the Trustees may, as a condition of acceptance, impose any terms and conditions they consider necessary to preserve an equitable relationship between the basis of contributions of all Contributing Employers and the benefits provided for all Employees. Such conditions may include, but may not be limited to, the imposition of special waiting periods before the commencement of benefits to Pensioners and/or the granting of a lower scale of benefits.

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

If a Contributing Employer terminates its participation in the Fund with respect to a bargaining unit, the Trustees are empowered to reduce or cancel that part of any pension for which a person was made eligible because of employment in such bargaining unit prior to the Contribution Period with respect to that unit.

Any active Employee of the said Contributing Employer who earns at least two (2) additional Years of Future Service Credits as a result of employment by another Contributing Employer, and has not suffered a Break in Employment as defined in Section 4.06, will not lose his previously accumulated Service Credits as a result of the termination.

The Trustees may, by resolution, terminate an Employer's status as a Contributing Employer if the Employer has failed, for a period of 90 days after the due date, to make contributions to the Fund as provided for in the Collective Bargaining Agreement to which the Employer is signatory.

If the delinquent Employer wishes to once again participate in this Plan, he will be required to post bond in an amount equal to twice the amount of the delinquency. If all delinquent contributions are not paid within three months of the posting of the bond, such bonds shall be forfeited by the Employer and his participation in the Fund will be canceled.

#### **Section 7.05. Termination.**

(a) Right to Terminate.

The Trustees have the right to discontinue or terminate this Plan in whole or in part in accordance with the Trust Agreement. The rights of all affected Employees, Retired Employees, surviving Spouses and Beneficiaries to benefits accrued to the date of termination, partial termination or discontinuance to the extent funded as of such date will be nonforfeitable.

(b) Termination of this Plan will occur as a result of:

- (1) the adoption of a Plan amendment that provides that Employees will receive no credit for any purpose under the Plan for service with any Employer after the date

specified by such amendment; or

- (2) the withdrawal of every Employer from the Plan, or the cessation of the obligation of all Employers to contribute under the Plan; or
  - (3) the adoption of an amendment to the Plan that causes the Plan to become a defined contribution plan.
- (c) (1) The date of termination under subsection (b)(1) or (b)(3) is the later of:
- (A) the date on which the amendment was adopted, or
  - (B) the date on which the amendment takes effect.
- (2) The date on which termination occurs under subsection (b)(2) is the earlier of:
- (A) the date on which the last Employer withdraws, or
  - (B) the first day of the first Plan Year for which no Employer contributions were required under the Plan.
- (d) In case of termination under subsection (b)(2), the Plan sponsor will, except as provided in subsection (g) below:
- (1) limit the payment of benefits to benefits that are nonforfeitable under the Plan as of the date of the termination, and
  - (2) pay benefits attributable to Employer contributions, other than death benefits, only in the form of an annuity, unless the Plan assets are distributed in full satisfaction of all nonforfeitable benefits under the Plan.
- (e) In case of a termination under subsection (b)(2), the Plan sponsor will reduce benefits and suspend benefit payments in accordance with Section 7.06.
- (f) In the case of a termination under subsections (b)(1) or (b)(3), the rate of an Employer's contributions under the Plan for each Plan Year beginning on or after the Plan termination date will equal or exceed the highest rate of Employer contributions at which the Employer had an obligation to contribute under the Plan in the five (5) preceding Plan years ending on or before the Plan termination date, unless the PBGC approves of a reduction in the rate based on a finding that the Plan is or soon will be fully funded.
- (g) The Plan sponsor may authorize the payment other than in the form of an annuity of an Employee's entire nonforfeitable benefit attributable to Employer contributions, other than a death benefit, if the value of the entire nonforfeitable benefit does not exceed \$1,750. The PBGC may authorize the payment of benefits under the terms of the terminated Plan

other than nonforfeitable benefits, or the payment other than in the form of an annuity of benefits having a value greater than \$1,750, if the PBGC determines that such payment is not adverse to the interest of the Plan's Participants and Beneficiaries generally and does not unreasonably increase the PBGC's risk of loss with respect to the Plan.

#### **Section 7.06. Benefits After Termination.**

- (a) Upon termination of the Plan under Section 7.05(e), the Trustees will amend the Plan to reduce benefits and will suspend benefit payments, as required by this Section.
- (b)
  - (1) Upon termination under subsection (a), the value of nonforfeitable benefits under the Plan and the value of the Plan's assets will be determined in writing, in accordance with regulations prescribed by the PBGC, as of the end of the Plan Year during which Section 7.05(e) becomes applicable to the Plan and each Plan Year thereafter.
  - (2) For purposes of this Section, Plan assets include outstanding claims for withdrawal liability.
- (c)
  - (1) If, according to the determination made under subsection (b), the value of nonforfeitable benefits exceeds the value of the Plan's assets, the Plan sponsor will amend the Plan to reduce benefits under the Plan to the extent necessary to ensure that the Plan's assets are sufficient, as determined and certified in accordance with regulations prescribed by the PBGC, to discharge when due all of the Plan's obligations with respect to nonforfeitable benefits.
  - (2) Any Plan amendment adopted under this subsection will, in accordance with regulations prescribed by the Secretary of the Treasury:
    - (A) reduce benefits only to the extent necessary to comply with (c)(1);
    - (B) reduce accrued benefits only to the extent that those benefits are not eligible for the PBGC's guarantee under Section 4022A(b) of ERISA;
    - (C) comply with the rules for and limitations on benefit reductions under a Plan in reorganization, as prescribed in Section 4244A of ERISA except to the extent that the PBGC prescribes other rules and limitations in regulations under this Section; and
    - (D) take effect no later than six (6) months after the end of the Plan Year for which it is determined that the value of nonforfeitable benefits exceeds the value of the Plan's assets.
- (d)
  - (1) If the Plan is insolvent under (d)(2)(A) of this Section and the benefit payments exceed the resource benefit level, any such payments that are not basic benefits

will be suspended, in accordance with this subsection, to the extent necessary to reduce the sum of such payments and such basic benefits to the greater of the resource benefit level or basic benefits, unless an alternative procedure is prescribed by the PBGC in connection with a supplemental guarantee program established under Section 4022A(g)(2) of ERISA.

- (2) For purposes of this subsection, for a Plan Year:
  - (A) the Plan is insolvent if:
    - (i) the Plan has been amended to reduce benefits to the extent permitted under subsection (c), and
    - (ii) the Plan's available resources are not sufficient to pay benefits under the Plan when due for the Plan Year.
  - (B) "Resource benefit level" and "available resources" have the meanings set forth in paragraphs (2) and (3), respectively, of Section 4245(b) of ERISA.
- (3) If the Plan is insolvent under subsection (d)(2)(A), the Plan sponsor has the powers and duties of the plan sponsor of a plan in reorganization which is insolvent within the meaning of Section 4245(b)(1) of ERISA, except that regulations governing the Plan sponsor's exercise of those powers and duties under this Section will be prescribed by the PBGC, and the PBGC will prescribe by regulation notice requirements that assure that Plan Participants and Beneficiaries receive adequate notice of benefit suspensions.
- (4) The Plan is not required to make retroactive benefit payments with respect to that portion of a benefit that was suspended under this subsection, except that the provisions of Section 4245(c)(4) and (5) of ERISA will apply if the Plan is insolvent under (2)(A) in connection with the Plan Year during which such Section 7.05(e) first became applicable to the Plan and every year thereafter, in the same manner and to the same extent as such provisions apply to insolvent plans in reorganization under Section 4245 of ERISA in connection with insolvency years under Section 4245.

#### **Section 7.07. Rights of Employees.**

Nothing in this Plan gives any Employee the right to be retained in the service of an Employer or to interfere with the right of an Employer to discharge such Employee at any time, nor does it give an Employer the right to require the Employee to remain in his service nor is it to interfere with the Employee's rights to terminate his service at any time.

#### **Section 7.08. Appointment of Actuary.**

The Trustees will appoint an Actuary who shall be independent of the Union and the Contributing Employers and qualified through Fellowship in the Society of Actuaries to perform all necessary actuarial services in connection with the operation of the Plan, or a firm of actuaries which has on its staff such an Actuary.

#### **Section 7.09. Unauthorized Representations.**

The Fund is not bound by the representations of any person, other than the Board of Trustees, regarding participation in and eligibility for benefits under this Plan, status of Employees or Employers or any other matter relating to the Pension Plan or Fund.

#### **Section 7.10. Designation of Beneficiary.**

A Participant (including a Beneficiary receiving payments) may designate a person or persons as a Beneficiary or Beneficiaries to receive the benefits, if any, provided in accordance with Sections 5.06 and 5.09 by forwarding such designation in a form acceptable to the Trustees to the Fund Office. An unmarried Participant has the right to change his designation of Beneficiary without the consent of the Beneficiary. A married Participant may change his designation of Beneficiary only with consent of his Spouse. The consent must be in writing, must acknowledge the Beneficiary or Beneficiaries designated, and must be notarized.

A change of Beneficiary designation will not be effective or binding on the Trustees unless it is received by the Fund Office before the death of the person making the designation. Any benefits provided in accordance with Sections 5.06 and 5.09 will be paid to the most recently designated Beneficiary filed with the Trustees. The divorce of the Participant and designated Beneficiary does not invalidate the designation; the Participant must submit a change of Beneficiary designation to the Fund to remove the former spouse as a Beneficiary. If the designated Beneficiary, who has survived the Participant and is therefore entitled to the benefits provided, dies before receipt of the benefits, the benefits will be paid in accordance with the procedure provided in Section 7.11.

#### **Section 7.11. No Beneficiary.**

If a Participant or Pensioner (including Beneficiaries receiving payments) has not designated a Beneficiary or there is no designated Beneficiary alive at the death of a Participant or Pensioner, any benefit provided under Sections 5.06 or 5.09 will be payable to the person listed below in the order listed:

- (a) in accordance with the most recent properly executed beneficiary form from the National Automatic Sprinkler Metal Trades Welfare Fund or any other sprinkler local welfare fund;
- (b) to the Spouse of the Participant or Pensioner;
- (c) if no surviving Spouse, to his surviving children, divided equally among them;

- (d) if no surviving Spouse or children, to his surviving natural parents, divided equally between them.

If a Participant fails to designate a Beneficiary and none of the persons listed above are living, the Trustees, in their discretion, may make payment to the person who has assumed the responsibility for paying the expenses of the Participant; otherwise, no benefits will become payable under Sections 5.06 or 5.09.

**Section 7.12. Gender.**

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

**ARTICLE 8  
Partial Pensions**

**Section 8.01. Eligibility for Partial Pension.**

Partial Pensions are provided under this Plan solely for Employees who have become vested in the National Sprinkler Industry Pension Plan (hereinafter called the "Other Plan") for credited service earned under the National Automatic Sprinkler Metal Trades Pension Plan (hereinafter called "this Plan"). A Partial Pension shall be available in the form of a Disability Pension to the extent the Employee meets the requirements for a Disability Pension under Section 3.09 of this Plan.

For an Employee to be eligible for a Partial Pension from the this Plan, he must have at least two years of Pension Credits based on actual employment for which contributions have been made to this Plan.

In applying the rules of this Plan with respect to Breaks in Service, any period in which an Employee has earned credited service in the Other Plan will be considered a grace period under this Plan but only for the purpose of not incurring a Permanent Break in Service as provided in Section 4.06.

**Section 8.02. Partial Pension Amount.**

The amount of the Partial Pension is computed by multiplying the credited service under this Plan by the retirement benefit in effect during each period of service under this Plan. In the event of more than one period of service, the monthly pension benefit will be determined by (1) multiplying the credited service for each period by the appropriate rate for that period and (2) adding together each of these amounts.

**ARTICLE 9  
Amendments**

### **Section 9.01. Amendment.**

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

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

## **ARTICLE 10 Rules Affecting the Participation of Non-Collectively Bargained Employees**

### **Section 10.01. Definitions.**

The following definitions apply to the participation of non-collectively bargained employees in this Plan:

- (a) Collectively Bargained Employee
  - (1) A Collectively Bargained Employee for any Plan Year is an employee who is included in a unit of employees covered by a Collective Bargaining Agreement, as defined in Section 1.05 of the Plan, between an Employer and the employee's employee representative provided there is evidence that retirement benefits were the subject of good faith bargaining between the Employer and employee representative. An employee who is not covered by a Collective Bargaining Agreement as defined in Section 1.05 of the Plan may not participate in the Plan without the prior approval of the Trustees.
  - (2) A Non-Collectively Bargained Employee may be treated as a Collectively Bargained Employee (A) if the Employee is or was a member of a unit of employees covered by a Collective Bargaining Agreement and that agreement or another agreement, such as an agreement with the Trustees, provides for the Employee to benefit under the Plan in the Calendar Year; and (B) the Employee performs services for an Employer during that Calendar Year both as a Collectively Bargained Employee and as a Non-Collectively Bargained Employee, provided at least half of the Employee's Hours of Work during the Calendar Year are performed as a Collectively Bargained Employee.

- (3) An Employee who was a Collectively Bargained Employee for a Plan Year, may be treated as a Collectively Bargained Employee for the duration of the Collective Bargaining Agreement applicable for that Calendar Year, or if later, until the end of the following Calendar Year (A) if the Employee is or was a member of a unit of employees covered by a Collective Bargaining Agreement and that agreement or another agreement, such as an agreement with the Trustees, provides for the Employee to benefit under the Plan in the Plan Year; and (B) the terms of the Plan providing for benefit accruals treat the employee in a manner that is generally no more favorable than similarly situated Employees who are currently in a unit of employees covered by a Collective Bargaining Agreement.
- (4) A Non-Collectively Bargained Employee may be treated as a Collectively Bargained Employee (A) if the Employee is or was a member of a unit of employees covered by a Collective Bargaining Agreement and that agreement or another agreement, such as an agreement with the Trustees, provides for the Employee to benefit under the Plan in the Calendar Year; (B) the Employee is performing services for an Employer, for this Plan or for a Participating Local Union; (C) the terms of the Plan providing for benefit accruals treat the employee in a manner that is generally no more favorable than similarly situated Employees who are currently in a unit of employees covered by a Collective Bargaining Agreement; and (D) no more than five percent (5%) of the Employees covered under the Plan are Non-Collectively Bargained Employees determined without regard to this subsection 10.01(a)(iv). For purposes of this five percent (5%) limitation, employees described in subsections 10.01(a)(ii) and (iii) are treated as Collectively Bargained Employees.

(b) Non-Collectively Bargained Employee

A Non-Collectively Bargained Employee for any Plan Year is an Employee who is not a Collectively Bargained Employee for that Plan Year as defined in subsection 10.01(a)(i). Provided, however, that certain Non-collectively Bargained Employees may be treated as Collectively Bargained Employees in accordance with subsections 10.01(a)(ii), (iii) and (iv) above.

(c) Employer

For purposes of determining the group of highly compensated employees and for purposes of this Article but not for purposes of determining Covered Employment, the term "Employer" includes all corporations, trades or businesses under common control with the Employer within the meaning of Section 414(b) or (c) of the Code; all members of an affiliated service group with the Employer within the meaning of Section 414(m) of the Code and all other businesses aggregated with the Employer under Section 414(o) of the Code. The term "Employer" includes a Participating Local Union or fund whose officers or employees participate in the Plan.

(d) Highly Compensated Employee

A Highly Compensated Employee is a highly compensated active employee or a highly compensated former employee of an Employer. Whether an individual is a Highly Compensated Employee is determined separately with respect to each Employer, based solely on that individual's compensation from that Employer and relationship to that Employer. A Highly Compensated Employee may be determined based on the Employer's workforce on a single day during the Calendar Year in accordance with IRS Revenue Procedure 93-42.

A highly compensated active employee is an employee of the Employer who performs services for the Employer during the Calendar Year and who during the Calendar Year:

- (1) was a 5-percent owner; or
- (2) received compensation from the Employer in excess of \$80,000, as adjusted.

A highly compensated former employee for a Calendar Year is any former employee who, with respect to the Employer, had a separation year prior to the Calendar Year and was a highly compensated active employee for either the employee's separation year or any Calendar Year ending on or after the employee's 55th birthday.

An employee who performs no services for an Employer during the Calendar Year is treated as a former employee for that Calendar Year. Such employee's separation year is the year in which the employee last performed services for the Employer.

(e) Compensation

For purposes of determining the group of Highly Compensated Employees (HCEs) under this Article, "Compensation" is compensation within the meaning of Section 415(c)(3) of the Code including elective or salary reduction contributions to a cafeteria plan, cash or deferred arrangement or tax-sheltered annuity and shall also mean the gross wages paid to an Employee by the Employer as reported on Form W-2 but shall not include reimbursement for expenses or other expense allowances, fringe benefits, moving expenses, deferred compensation and welfare benefits or any gross wages in excess of \$150,000 per annum, adjusted pursuant to Section 401(a)(17) of the Code. Only compensation received by an Employee during the applicable Calendar Year. For Limitation Years beginning on and after January 1, 1998, for purposes of applying the limitations described in this Section, Compensation paid or made available during such Limitation Years will include elective amounts that are not includible in the gross income of the employee by reason of Section 132(f)(4) of the Code.

(f) Hour of Service

For purposes of this Article, an Hour of Service is defined in accordance with Section 1.13 of the Plan.

**Section 10.02. Rules for Participation of Non-Collectively Bargained Employees.**

- (a) Effective January 1, 1994, Non-Collectively Bargained Employees, including those employees described in subsections 10.01(a)(ii), (iii) and (iv) may participate in the Plan on the terms and conditions set forth in this Article pursuant to a written agreement between the Employer of such Non-Collectively Bargained Employees and the Trustees.
- (b) Non-Collectively Bargained Employees who are eligible to participate in the Plan are owners, officers and employees of incorporated Employers; officers and staff employees of Participating Local Unions and employees of trust funds affiliated with Participating Local Unions. Non-collectively Bargained Employees of an Employer will not be eligible to participate in this Plan if they perform work of the type covered by a collective bargaining agreement in the building and construction industry (except the Sprinkler Industry) or perform work as a fabricator or truck driver. Owners of unincorporated Employers may not participate in the Plan.
- (c) Non-Collectively Bargained Employees covered by this Agreement must provide services to the Employer and receive compensation for those services from the Employer. Whether or not an individual is an Employee of the Employer will be determined based upon whether the Employer is the employer of the individual for purposes of reports and tax returns filed with the Federal or state governments or agencies. Other information will be considered by the Trustees if necessary to determine whether an individual is employed by the Employer. The Employer agrees to furnish such information to the Trustees upon request.
- (d) The Employer must keep adequate records of a Non-Collectively Bargained Employee's Hours of Service. The Employer must also keep adequate records to document the individual's eligibility to participate in the Plan. These records must be provided to the Trustees upon request.
- (e) The Employer must make contributions on behalf of its Non-Collectively Bargained Employees to the National Automatic Sprinkler Metal Trades Pension Fund for each Hour of Service. Contributions must be made at the rate established by the Collective Bargaining Agreement for Collectively Bargained Employees employed by the Employer.
- (f) Contributions as set out in subparagraph (e) above must be paid starting as of the date a Non-Collectively Bargained Employee performs an Hour of Service under an agreement requiring contributions to the Plan.
- (g) Payments must be made at the time and in the manner established by the Trustees. The

Trustees have the authority to retain an accountant or representative to review the records of the Employer to determine whether the correct contributions have been made.

- (h) A Non-Collectively Bargained Employee will commence and terminate participation in the Plan in accordance with the provisions of Article II of the Plan.
- (i) The participation in the Plan of the Non-Collectively Bargained Employees of an Employer for each Calendar Year is conditioned on the Employer's compliance with the requirements of the Plan and the requirements of Sections 401(a)(4) and 410(b) of the Internal Revenue Code for that Calendar Year. A Non-Collectively Bargained Employee will not accrue a benefit under the Plan during a Calendar Year unless the Non-Collectively Bargained Employees of the Employer meet the requirements of Sections 401(a)(4) and 410(b) of the Internal Revenue Code for that Calendar Year and the Employer provides the Plan with information deemed necessary by the Trustees to monitor compliance with the requirements of the Plan and the Internal Revenue Code.

If the Employer fails to provide information requested by the Trustees or fails to comply with the requirements of the Plan or the requirements of Sections 401(a)(4) and 410(b) of the Internal Revenue Code, the Employer must immediately take appropriate and necessary remedial action. Such action may include the withdrawal of the Employer's Non-Collectively Bargained Employees from participation in the Plan, or the curing of the defect. If the Employer fails to take necessary and appropriate remedial action, the participation of its Non-Collectively Bargained Employees will terminate as of the end of the Calendar Year immediately preceding the Calendar Year in which it failed to comply or for which information or certifications to determine compliance was requested but not provided.

- (j) In determining and certifying compliance with the coverage and non-discrimination requirements of the Plan and the Internal Revenue Code, an Employer may use "substantiation quality data" as defined in IRS Revenue Procedure 93-42. In addition, an Employer may determine and certify compliance on the basis of the Employer's workforce on a single day during the Calendar Year (snapshot day) in accordance with IRS Revenue Procedure 93-42.
- (k) In addition to the provision of subsection (i) the participation of its Non-Collectively Bargained Employees in the Plan will end upon termination of the agreement with the Trustees or upon termination of the Employer's Collective Bargaining Agreement.

## **ARTICLE 11**

### **Top-Heavy Provisions**

#### **Section 11.01. Application of Top Heavy Provisions.**

The Trustees will determine whether the Plan as a whole is Top Heavy, as defined in Section 416(g) of the Internal Revenue Code and the regulations promulgated thereunder as of each Determination Year. In the event that the Plan as a whole is found to be Top Heavy, the

provisions of this Article shall apply to the Plan during the following Plan Year, to the exclusion of all other inconsistent provisions contained elsewhere in this Plan.

Each individual Employer will be responsible to determine if the portion of this Plan attributable to service with that Employer is part of a Top Heavy Group and to notify the Trustees of that determination. In the event that the Plan as a whole is not Top Heavy, but a portion of this Plan attributable to service with an individual Employer is part of a Top Heavy Group, the provisions of this Article shall apply to the portion of this Plan that is part of the Top Heavy Group of the individual Employer during the following Plan Year, to the exclusion of all other inconsistent provisions contained elsewhere in this Plan.

The Trustees will notify Employers of the notification requirements of this Section. The Trustees may rely on representations of Employers to the extent it is reasonable to do so.

### **Section 11.02. Definitions.**

For purposes of this Article, the following special definitions shall apply:

- (a) "Key Employee" means each Employee or former Employee who is, at any time during the Plan Year ending on the "Determination Date," or was, during any one (1) of the four (4) Plan Years preceding the Plan Year ending on the Determination Date, any one or more of the following:
- (1) An Officer of the Employer whose annual compensation for the Plan Year exceeds 50% of the dollar limit in Section 415(b)(1)(A) of the Code for such Plan Year; or
  - (2) One of the ten employees owning (by attribution or otherwise) the largest interests in the Employer and who have annual compensation from the Employer for the Plan Year of more than the dollar limitation in Section 415(c)(1)(A) of the Code for such Plan Year; or
  - (3) A five (5) percent owner of the Employer; or
  - (4) A one (1) percent owner of the Employer who has annual compensation from the Employer for the Plan Year of more than \$150,000.

For purposes of determining whether a person is an Officer in paragraph (1) above, no more than 50 Employees (or, if less, the greater of three or 10% of employees) will be treated as Officers. In addition, persons who are merely nominal Officers will not be treated as Key Employees solely by reason of their titles as officers.

For purposes paragraph (2) above, if two employees have the same interest in the Employer, the employee with the greater annual compensation from the Employer will be treated as having the larger interest.

- (b) "Non-Key Employee" means any person who is employed by an Employer in any Plan Year, but who is not a Key Employee for that Plan Year.
- (c) "Determination Date" means the last day of the immediately preceding Plan Year.
- (d) "Required Aggregation Group" means a group of plans consisting of each Plan of an Employer in which a Key Employee is a Participant, including this Plan, and each other plan of the Employer which enables any plan in which a Key Employee participates to meet the requirements of IRC Sections 410(b) and 401(a)(4).
- (e) "Permissive Aggregation Group" means a group of plans consisting of a Required Aggregation Group and any other plan not required to be included in the Required Aggregation Group, provided the resulting group, taken as a whole, would continue to satisfy the provisions of Code Sections 401(a)(4) and 410(b).
- (f) "Top Heavy Compensation" means an employee's compensation as defined in Section 10.01(e) for any Plan Year that this Plan is "Top Heavy".
- (g) "Top Heavy Plan" means a Plan, under which the aggregate present value of accrued benefits for "Key Employees" exceeds sixty percent (60%) of the present value of accrued benefits for all Employees under such plan and which is not part of a Required or Permissive Aggregation Group that is not a Top Heavy Group. "Top Heavy Plan" also means a Plan which is part of a Required Aggregation Group that is a Top Heavy Group. The value of an Employee's accrued benefit distributed during the five-year period ending on the Determination Date will be included in determining whether a plan is a Top Heavy Plan. However, if a former Employee has received no compensation from the Employer during the five year period ending on the Determination Date, or if an Employee is not a Key Employee on the Determination Date but was a Key Employee for any Plan Year prior to the Determination Date, the value of his or her accrued benefit will not be included in determining whether a plan is a Top Heavy Plan.
- (h) "Top Heavy Group" means a Required or Permissive Aggregation Group in which, as of the Determination Date, the sum of: (1) the present value of accrued benefits for Key Employees under all defined benefit plans included in the Group, and (2) the aggregate value of account balances of Key Employees under all defined contribution plans included in Group exceeds sixty percent (60%) of a similar sum determined for all employees under all Plans of the Employer which are part of such Group. The value of an Employee's accrued benefit or account balance distributed during the five-year period ending on the Determination Date will be included in determining whether a Group is a Top Heavy Group. However, if a former Employee has received no compensation from the Employer during the five year period ending on the Determination Date or if an Employee is not a Key Employee on the Determination Date but was a Key Employee for any Plan Year prior to the Determination Date, the value of the accrued benefits or account balances will not be included in determining whether the Group is a Top Heavy Group.

### **Section 11.03. Top Heavy Minimum Benefits.**

- (a) (1) In any Plan Year in which this Plan as a whole is a Top Heavy Plan, the Plan will provide a minimum benefit to each Non-Collectively Bargained Non-Key Employee in this Plan of the lesser of (i) two percent (2%) times the number of Years of Vesting Service under the Plan during which the Plan was Top Heavy, or (ii) twenty percent (20%) of his Compensation for the five consecutive years for which the Non-Collectively Bargained Non-Key Employee had the highest Compensation from Employers.
- (2) In any Plan Year in which this Plan as a whole is not Top Heavy but a group of plans of an Employer, including the portion of this Plan attributable to service with the Employer, is a Top Heavy Group, this Plan will provide a minimum benefit to each Non-Collectively Bargained Non-Key Employee of that Employer of the lesser of (i) two percent (2%) times the number of Years of Vesting Service with that Employer during which the Group was Top Heavy, or (ii) twenty percent (20%) of his Compensation for the five consecutive years for which the Non-Collectively Bargained Non-Key Employee had the highest Compensation from that Employer.
- (3) The minimum benefit refers to a benefit payable at the Non-Key Employee's Normal Retirement Age in the form of a single life annuity. A Non-Key Employee will not fail to accrue a minimum benefit because the Non-Key Employee:
  - (A) was not employed on a specified day; or
  - (B) received compensation less than a stated amount; or
  - (C) failed to make a mandatory employee contribution, if any.
- (b) In any Calendar Year in which a Non-Key Employee is a Participant in both this Plan and defined contribution plan included in a Top Heavy Aggregation Group, the Plans of the Employer, including the portion of this Plan attributable to service with the Employer, will not be required to provide a Non-Key Employee with both the full separate minimum defined benefit plan benefit and the full separate defined contribution plan allocation. Therefore, for Non-Collectively Bargained Non-Key Employees who are participating in a defined contribution Plan maintained by the Employer, the minimum benefits provided to such Employee above will be offset by benefits provided to the Employee under the defined contribution plan of the Employer.
- (c) (1) For any Plan Year in which this Plan as a whole Top Heavy, the vested portion of each Non-Collectively Bargained Non-Key Employee's Accrued Benefit will be determined under the vesting schedule in (c)(iii) below.

(2) For any Plan Year in which this Plan as a whole is not Top Heavy but a group of plans of an Employer, including the portion of this Plan attributable to service with the Employer, is a Top Heavy Group, the vested portion of the Accrued Benefit of each Non-Collectively Bargained Non-Key Employee of that Employer will be determined under the vesting schedule in (c)(iii) below.

(3) Vesting Schedule

<u>Years of Vesting Service</u>	<u>Vested Percentage</u>
1	0%
2	0%
3	100%

(4) If in any subsequent Plan Year, the Plan as a whole or, if applicable, a group of plans of an Employer, including the portion of this Plan attributable to service with the Employer, ceases to be a Top Heavy Plan or a Top Heavy Group, the Trustees may, in their sole discretion, elect to (1) continue to apply this vesting schedule in determining the vested portion of the benefit of the Non-Collectively Bargained Non-Key Employee's to which it applied, or (2) revert to the vesting schedule in effect before the Plan or Group became Top Heavy. Any portion of an Employee's benefit that was vested before the Plan or Group ceased to be Top Heavy will remain vested, and any Non-Collectively Bargained Non-Key Employee to which the Top Heavy Vesting Schedule applied with five or more Years of Vesting Service must be given the option of remaining under the Top Heavy vesting schedule.

(d) Adjustment of Limitation on Annual Benefit

(1) If, for any Plan Year, this Plan as a whole or the portion of this Plan attributable to service with an individual Employer is a Top Heavy Plan, paragraphs (2)(B) and (3)(B) of Internal Revenue Code Section 415(e) will be modified by substituting the number "1.0" for "1.25" in that Section. However, this modification will not apply if the minimum benefit provided under Section 11.03(a)(1)(i) or 11.03(a)(2)(i) above is changed to three (3) percent, and the percentage in Section 11.03(a)(1)(ii) or 11.03(a)(2)(ii) above is increased by one (1) percent for each Plan Year taken in account under IRC Section 416(h) (not to exceed 30%).

(2) If this Plan as a whole or the portion of this Plan attributable to service with an individual Employer is "Super Top Heavy" (that is, it would be a Top Heavy Plan if "90%" were substituted for "60%" in Sections 11.03(g) and (h), the exception provided for in Section 11.03(d)(1) will not apply.

(3) This subsection (c) will not apply to Plan Years beginning on or after December 31, 1999.

Adopted: \_\_\_\_\_

**UNION TRUSTEES**

**EMPLOYER TRUSTEES**

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