

LOCAL 805 PENSION AND RETIREMENT PLAN

As Amended and Restated

Effective April 1, 2014

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AMENDMENT AND RESTATEMENT OF  
LOCAL 805 PENSION AND RETIREMENT PLAN

WHEREAS the Plan was amended and restated on June 21, 2002 to comply with the requirements of Section 401(a) and Section 501(a) of the Internal Revenue Code of 1986, as amended (“the Code”), and to comply with the requirements of the Employee Retirement Income Security Act of 1974 (“ERISA”), and with the requirements of the Code, as amended by the Uruguay Round Agreements Act, the Small Business Job Protection Act of 1996, the Taxpayer Relief Act of 1997, the Uniformed Services Employment and Re-employment Rights Act of 1994 (USERRA), the Internal Revenue Service Restructuring and Reform Act of 1998, the Community Renewal Tax Relief Act of 2000, and all applicable rulings and regulations issued thereunder;

WHEREAS effective April 1, 2008, the Plan was amended to incorporate modifications required by applicable legislative and regulatory changes, including but not limited to the Economic Growth and Tax Relief and Reconciliation Act of 2001, the Pension Protection Act of 2006, Heroes Earnings Assistance and Relief Tax Act of 2008, and the Worker, Retiree and Employer Recovery Act of 2008, provided, however, that the provisions in the Plan which set forth a different effective date shall be effective as of such different effective date. The rights and benefits of any Participant who retired, died or otherwise terminated employment prior to April 1, 2008 shall be determined under the provisions of the Plan in effect at the time of the retirement, death or termination of employment, except as otherwise required by law or as otherwise provided in this Plan; and

WHEREAS Effective April 1, 2014, the Plan is hereby amended and restated in the form set forth herein. The purpose of this restatement is to incorporate all amendments that have been

made to the Plan since the 2008 restatement to bring the Plan up to date for pension law changes, including changes required so that the Plan may be filed for an Internal Revenue Service determination letter as a Cycle D plan under Revenue Procedure 2014-6. The Plan is to be operated in accordance with the provisions set forth herein (as from time to time amended). The rights and benefits of any Participant who retired, died or otherwise terminated employment prior to April 1, 2014 shall be determined under the applicable provisions of the Plan in effect at such time, except as otherwise required by law or as otherwise provided in this Plan.

NOW THEREFORE, in accordance with Article 11 of the Plan, the Trustees hereby Amend and Restate the Plan, effective as of April 1, 2014, (subject to other effective dates for certain provisions, as specified herein). This Amendment and Restatement will not operate to modify the benefits of any Pensioner hereunder who is a Pensioner on such date nor restore any Pension Service lost prior to such date as the result of prior Plan provisions, nor diminish the vested deferred benefit under this Plan of any person, nor reduce, retroactively, the Pension Service under this Plan that any person has as of April 1, 2014.

## ARTICLE 1

### DEFINITIONS AS USED HEREIN

1.1 “Act” or “ERISA” means the Employee Retirement Income Security Act of 1974 and any amendment thereof.

1.2 “Actuarial Equivalent” means a benefit of equal value to another benefit determined upon the basis of the methods, factors and assumptions used by the Trustees and consistently applied in computing the costs of the Plan at the time such determination is made.

(a) For each calculation of an Actuarial Equivalent, the 1994 Group Annuity Reserving Table projected to 2002 will be used, at 5.00% interest per annum.

(b) Notwithstanding anything in the Plan to the contrary, effective for annuity starting dates on and after April 1, 2004, and ending March 31, 2006, for purposes of adjusting any benefit under Section 415(b)(2)(B) of the Code for any form of benefit subject to Section 417(e)(3) of the Code, the interest rate assumption shall be not less than the greater of:

- (i) the interest rate specified in paragraph (a) of this Section; or
- (ii) 5.5 percent.

(c) Notwithstanding anything in the Plan to the contrary, effective for annuity starting dates in Plan Years beginning on and after April 1, 2006, for purposes of adjusting any benefit under section 415(b)(2)(B) of the Code for any form of benefit subject to Section 417(e)(3) of the Code, the interest rate assumption shall be not less than the greater of:

- (i) the interest rate specified in paragraph (a) of this Section;
- (ii) 5.5 percent; or

(iii) the interest rate that produces a benefit of not more than 105% of the benefit that would be provided using the “applicable interest rate” (as defined in Section 417(e)(3) of the Code).

(d) Effective January 1, 2008, Actuarial Equivalent single sum cash distributions shall be calculated in accordance with paragraph (c) or by using the following factors, whichever produces a greater benefit: (i) the applicable mortality table as set forth in Section 417(e)(3)(B) of the Code; and (ii) the applicable interest rate, which is the first, second, and third segment rates set forth in Section 417(e)(3)(D) of the Code for the month of February preceding the Plan Year in which the date of distribution falls.

1.3 “**Actuary**” means an enrolled actuary selected by the Trustees to provide actuarial services for the Plan.

1.4 “**Administrator**” means the person or persons or entity appointed to administer the Plan in accordance with the provisions hereof. The Administrator shall be a “named fiduciary,” as referred to in Section 402(a) of ERISA, with respect to the management, operation and administration of the Plan.

1.5 “**Age**” for the purpose of determining benefits, shall mean attained age, at last birthday.

1.6 “**Beneficiary**” means any person entitled to receive benefits which are payable upon or after a Pensioner’s death, pursuant to the Plan. Beneficiary designation forms may be obtained from the Fund Office for processing in accordance with procedures established by the Trustees. A Beneficiary designation of a Participant’s Spouse as a Beneficiary shall be automatically revoked upon the divorce of the Participant and the Spouse.

1.7 “**Code**” means the Internal Revenue Code of 1986 with any amendments thereto.

1.8 **“Compensation”** For purposes of determining statutory maximum pension benefits as required by Code section 415 and set forth in Section 20.1 of this Plan, the term “Compensation” has the meaning given such term by Treasury Regulation Section 1.415(c)-2(a). In addition, Compensation shall exclude any amount paid after the Participant’s severance from employment with an Employer, unless the amount is paid by the later of: (i) 2 1/2 months after the Participant’s severance from employment or (ii) the end of the year that includes the date of the Participant’s severance from employment and such amount is (x) regular compensation for services, including overtime, commissions, bonuses or similar payments that would have been paid to the Participant if he had continued in employment with the Employer, or (y) payment for unused accrued bona fide sick, vacation, or other leave, that the Participant would have been able to use if employment with the Employer had continued, or (z) nonqualified deferred compensation that would have been paid to the Participant at the same time if he had remained in employment with the Employer and that is includible in the Participant’s gross income. Notwithstanding the foregoing, the preceding sentence shall not apply to payments to an individual who does not currently perform services for an Employer by reason of qualified military service (as defined in section 414(u) of the Code), to the extent those payments do not exceed the amount the individual would have received had he continued to perform services for the Employer.

*Section 401(a)(17) Limitation:* In addition to other applicable limitations set forth in the Plan, and notwithstanding any other provision of the Plan to the contrary, for Plan Years beginning on or after January 1, 1994, the annual compensation of each employee taken into account under the Plan shall not exceed the OBRA ‘93 annual compensation limit. The OBRA ‘93 annual compensation limit is \$150,000, as adjusted by the Commissioner for increases in the



cost of living in accordance with Section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the OBRA '93 annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12. For Plan Years beginning on or after January 1, 1994, any reference in this Plan to the limitation under Section 401(a)(17) of the Code shall mean the OBRA '93 annual compensation limit set forth in this provision. If compensation for any prior determination period is taken into account in determining an employee's benefits accruing in the current Plan Year, the compensation for that prior determination period is subject to the OBRA '93 annual compensation limit in effect for that prior determination period. For this purpose, for determination period beginning before the first day of the first Plan Year beginning on or after January 1, 1994, the OBRA '93 annual compensation limit is \$150,000. Effective January 1, 2014, the annual compensation limit of each Participant taken into account in determining benefit accruals shall not exceed \$260,000 as adjusted by Section 401(a)(17)(B) of the Code.

1.9 **“Covered Employment”** means employment of Employee by an Employer obligated to contribute to the Pension Fund. The Plan does not cover any “Owner-Employees” as defined in Section 401(c)(3) of the Code.

1.10 **“Effective Date”** for the purpose of computing “Past Service,” as defined in Article 5 herein, means the later of (i) April 1, 1954, or (ii) the date an employer becomes a “Participating Employer” of the Pension Fund.

1.11 **“Earliest Retirement Age”** means the earliest date on which, under the Plan, the Participant could elect to receive retirement benefits.

1.12 **“Employee”** means any person employed by an Employer in a classification covered by the Collective Bargaining Agreement with the Union, or employees of this Fund, or of the Local 805 Welfare Fund, or of the Union. Any employee who is working for a contributing employer will receive credited service for vesting for future service with such employer when he leaves covered employment. The term “leased employee” shall have the meaning set forth in Section 414(n) of the Code, including for Plan Years commencing after December 31, 1996, Section 414(n)(2)(C) of the Code as amended.

1.13 **“Employer”** means each Employer who has duly executed a Collective Bargaining Agreement with the Union, which Agreement provides for employer contributions to the Fund. The term Employer shall also include an employer who in the future agrees, by means of a Collective Bargaining Agreement with the Union, to contribute to this Fund provided that such employer satisfies the requirements for participation as established by the Trustees and agrees to be bound by the terms and provisions of the Restated Agreement and Declaration of Trust establishing the Fund. The term Employer may also include this Pension Fund, the Local 805 Welfare Fund, and the Union. The term Employer shall also include the term “Participating Employer.”

1.14 **“Employer Contributions”** means payments made by Employers to the Pension Fund.

1.15 **“Hour of Service”** shall be credited to each Employee for:

- (a) Each hour for which an Employee is directly or indirectly paid or entitled to payment by the Employer for the performance of duties. These hours shall be credited to the Employee for the computation period or periods in which the duties are performed; and
- (b) Each hour (up to a maximum of 501 hours in a single continuous period) for which an Employee is directly or indirectly paid or entitled to payment by the Employer on account of a period of time during which no duties were performed (regardless of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity, disability, layoff, jury duty, military duty or leave of absence. These hours shall be credited to the Employee for the computation period or periods in which the duties were to be performed; and
- (c) Each hour for which back pay, irrespective of mitigation of damages, has been either awarded or agreed to by the Employer. The same hours of service shall not be credited to the Employee under Paragraph (a) or Paragraph (b) as the case may be, and under this Paragraph (c). The hours under this Paragraph (c) shall be credited to the Employee for the computation period or periods to which the award or agreement pertains rather than the computation period in which the award, agreement or payment was made.
- (d) Hours of service during which no duties are performed will be computed and credited in accordance with D.O.L. Regs. Section 2530. 200-2(b) and (c).

Solely for purposes of determining whether a One Year Break in Service as defined in Section 1.17 for participation and vesting purposes has occurred, an individual who was absent from work for maternity or paternity reasons shall receive credit for the Hours of Service which would otherwise have been credited to such individual but for such absence, or in any case in which such hours cannot be determined at eight (8) hours of service per day of such absence.

For purposes of this Paragraph an absence from work for maternity or paternity reasons means an absence (a) by reason of the pregnancy of the individual, (b) by reason of a birth of a child of the individual, (c) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or (d) for purposes of caring for such child for a period beginning immediately following birth or placement. The Hours of Service credited under this subparagraph shall be credited (i) in the period in which the absence begins if the crediting is necessary to prevent a One Year Break in Service in that period, or (ii) in all other cases on the basis of actual hours for which an Employee is paid or entitled to payment.

1.16 **“Normal Retirement Age”** means the Participant’s 65th birthday or the fifth anniversary of commencement of his participation in the Plan, whichever is later.

1.17 **“One Year Break in Service”** means a Plan Year during which an Employee is credited with less than 501 Hours of Service.

1.18 **“Participant”** means any Employee who is eligible to participate in the Plan and does so participate.

1.19 **“Pension Fund”** means the Local 805 Pension Fund, established under the Agreement and Declaration of Trust dated as of December 20, 1954, and as subsequently amended, and Restated and as amended and/or restated from time to time hereafter.

1.20 **“Pension Plan”** refers to the retirement plan as described herein or as from time to time hereafter amended.

1.21 **“Pensioner”** means any person, formerly a Participant, who is retired under the Plan and who is receiving pension benefits provided for herein.

1.22 **“Plan Year”** means the 12-month period commencing April 1st and ending March 31st.

1.23 (a) Effective January 1, 2000, the term “**Present Value**” shall mean the present value of a Participant’s retirement income based upon the annual interest rate on 30-year Treasury Securities as specified by the Federal Reserve for the second calendar month preceding the Plan Year for which the Present Value is payable and the applicable mortality table prescribed pursuant to Section 417(e)(3)(A)(ii) of the Code and the regulations promulgated thereunder.

(b) On and after January 1, 2000 and before December 31, 2002, the mortality rates in accordance with Revenue Ruling 95-6 shall be used. On and after December 31, 2002, the mortality rates in accordance with Revenue Ruling 2001-62 shall be used.

(c) Effective for distributions with an annuity starting date on or after April 1, 2008, Present Value shall be determined based on the “applicable mortality table” referred to in Section 417(e)(3) of the Code, and the “applicable interest rate,” as defined in Section 417(e)(3) of the Code, for the second calendar month preceding the Plan Year for which the Present Value is payable.

1.24 “**Qualified Domestic Relations Order**” means a domestic relations order, as defined in the following paragraph, that:

(a) Creates or recognizes the existence of an alternate payee’s right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a Participant under this Plan, and

(b) Clearly specifies:

(i) The name, Social Security number and last known mailing address of the Participant and of each alternate payee,

- (ii) The amount or percentage of the Participant's benefit to be paid to the alternate payee, or the manner in which the amount or percentage is to be determined,
- (iii) The number of payments or the period over which payments are to be made, and
- (iv) Each plan to which the Qualified Domestic Relations Order relates.

A domestic relations order is a judgment, decree or order that (1) relates to the provision of child support, alimony payments or marital property rights to a Spouse, former Spouse, child or other dependent of a Participant, and (2) is made pursuant to a State domestic relations law (including a community property law).

1.25 **“Qualified Election”** means a waiver of a Qualified Joint and Survivor Annuity or a Qualified Pre-Retirement Joint and Survivor Annuity. The waiver must be in writing and must be consented to by the Participant's Spouse. The Spouse's consent to a waiver must be witnessed by a notary public. Notwithstanding this consent requirement, if the Participant establishes to the satisfaction of a Fund representative that such written consent may not be obtained because there is no Spouse or the Spouse cannot be located, a waiver will be deemed a qualified election. The consent must acknowledge the effect of such election and the selection of any beneficiaries. Any consent necessary under this provision will be valid only with respect to the Spouse who signs the consent, or in the event of a deemed qualified election, the designated Spouse. Additionally, a revocation of a prior waiver may be made by a Participant without the consent of the Spouse at any time before the commencement of benefits. The number of revocations shall not be limited. A qualified election shall not be effective unless the election designates a specific beneficiary, including any class of beneficiaries or any contingent

beneficiaries which may not be changed without spousal consent. Further, a qualified election shall not be effective unless the election designates a form of benefit which may not be changed without spousal consent.

1.26 **“Qualified Joint and Survivor Annuity”** means an annuity for the life of the Participant with a survivor annuity for the life of the spouse or beneficiary, if the Participant is not married, which is 50 percent of the amount of the annuity which is payable during the joint lives of the Participant and the Spouse or beneficiary and which is the actuarial equivalent of the normal form of benefit, or, if greater, any optional form of benefit.

1.27 **“Reciprocating Pension Fund”** means another Pension Fund with which this Pension Fund has a reciprocal agreement providing for the transfer of contributions between the Pension Fund under specified conditions. Creditable employment with a Reciprocating Pension Fund shall be considered Covered Employment under this Pension Fund in accordance with the provisions of Article 15.

1.28 **“Spouse (Surviving Spouse)”** means the Spouse or Surviving Spouse of the Participant, provided that a former Spouse will be treated as the Spouse or Surviving Spouse to the extent provided under a qualified domestic relations order as described in Section 414(p) of the Internal Revenue Code.

1.29 **“Trust Agreement”** refers to the Trust created by the Agreement and Declaration of Trust dated as of the 20th day of December 1954, and as restated and amended from time to time, by and between Local 805, International Brotherhood of Teamsters, the Wholesale Tobacco Distributors of New York, Inc., and others designated as Employers, Union Trustees and Association Trustees, respectively.

1.30 “**Trustees**” means the Trustees designated in the Restated Agreement and Declaration of Trust and their successors designated and appointed in accordance with the terms of the Trust Agreement.

1.31 “**Union**” means Local 805, International Brotherhood of Teamsters, and its successor or successors.

1.32 “**Year of Credited Service**” means any Plan Year during which the Employee is credited with at least 1,000 Hours of Service in Covered Employment. This term shall be used in computing a Participant’s eligibility for vesting and for benefit accrual. Notwithstanding anything herein to the contrary, effective April 1, 2010, the 1,000 Hours of Service standard described in the previous sentence shall not apply for purposes of a Participant’s benefit accrual under Section 5.6 of the Plan and any other provision which incorporates Section 5.6; rather, for purposes of a Participant’s benefit accrual under Section 5.6 of the Plan and any other provision which incorporates Section 5.6 a Participant will receive benefit accrual credit for 1/12 of a Year of Credited Service for each calendar month of Covered Employment during the Plan Year. Notwithstanding anything herein to the contrary, in determining a Participant’s Years of Credited Service for vesting purposes, the Plan shall include years of contiguous service to the extent required by applicable law.

1.33 Masculine pronoun wherever used shall include the feminine pronoun.

## **ARTICLE 2**

### **ELIGIBLE MEMBERS**

2.1 Each Employee who is employed by an Employer who contributes to the Pension Fund in a classification covered by the Collective Bargaining Agreement and who has been so



employed on the Effective Date, is eligible to participate in this Plan as of the effective date hereof.

2.2 Each Employee who is employed by an Employer who contributes to the Pension Fund in a classification covered by the Collective Bargaining Agreement, with such employment commencing subsequent to the Effective Date, shall be eligible to participate in this Plan as of his date of Covered Employment.

2.3 Each Employee who was employed on the Effective Date or subsequent thereto by the Pension Fund, the Local 805 Welfare Fund and the Union, and for whom contributions are made to the Pension Fund pursuant to a participation agreement, shall be eligible to participate in this Plan as of his date of Covered Employment.

### **ARTICLE 3**

#### **BENEFIT ELIGIBILITY AND AMOUNTS**

##### **Normal Service Retirement Pension**

3.1 **Eligibility** - An employee shall be eligible for a normal service retirement pension when he has met all of the following conditions:

- (a) He has attained Normal Retirement Age, and
- (b) He has credit for at least 15 years of total service, as defined in Article 5 of this Plan.

##### 3.2 **Benefit Amounts**

- (a) The monthly normal service retirement pension payable in the case of a Participant who was engaged in Covered Employment on December 31, 1998, and who rendered at least one day of service on or after January 1, 1999, shall be \$2,100 (or \$2,500 if the Participant was an employee of Yellow Freight).

(b) Notwithstanding anything to the contrary contained herein, and except as otherwise provided in Appendix A, a Participant who has at least one day of Covered Employment on or after January 1, 1999 shall be entitled to a monthly retirement benefit equal to the monthly amount set forth in Section 5.6 for each Year of Credited Service, subject to Sections 5.4 and 5.5, and shall be eligible to retire and receive such benefits upon the earlier of (i) the completion of 25 or more Years of Credited Service or (ii) the fifth anniversary of the Participant's commencement of participation in the Plan and the attainment of age 65, whichever occurs later.

(c) Notwithstanding anything to the contrary contained herein, any Participant who was engaged in Covered Employment on December 31, 1998, and who rendered at least one day of service on or after January 1, 1999, shall, upon becoming eligible to receive pension benefits under this Plan, receive a retirement pension equal to the greater of (i) the monthly normal service retirement pension set forth in Section 3.2(a) or (ii) the unit credit pension set forth in Section 3.2(b) above.

### **Early Service Retirement Pension**

#### **3.3 Eligibility**

(a) A Participant shall be eligible for an Early Service Retirement Pension when he meets all of the following conditions:

- (i) He has attained age 55, but not age 65, and
- (ii) He has credit for at least 15 years of total service, as defined in Article 5

herein.

(b) A Participant who satisfies the service requirements for the Early Service Retirement Pension but separated from service (with any nonforfeitable right to a benefit) before satisfying the age requirement for such Early Service Retirement Pension, is entitled

upon satisfaction of such age requirement to receive the Early Service Retirement Pension Benefit.

The monthly Early Service Retirement Pension payable in the case of a Participant who was engaged in Covered Employment on December 31, 1998, and who rendered at least one day of service on or after January 1, 1999, shall be determined in accordance with the chart below (or the chart in paragraph (c) if the Participant was an employee of Yellow Freight).

<u>Retirement at Age</u>	<u>\$</u>
55	672
56	737
57	833
58	931
59	1,048
60	1,159
61	1,309
62	1,471
63	1,638
64	1,848
65	2,100

(c) Early Service Retirement Pension for Yellow Freight Employees:

<u>Retirement at Age</u>	<u>\$</u>
55	\$800
56	877
57	991
58	1,109
59	1,247
60	1,380

61	1,559
62	1,751
63	1,950
64	2,200
65	2,500

(d) Notwithstanding anything to the contrary contained herein,

(i) A Participant who was engaged in Covered Employment on December 31, 1998, and who rendered at least one day of service on or after January 1, 1999, who becomes eligible for an Early Service Retirement Pension, shall receive a pension equal to the greater of (A) the amount set forth in the schedule in paragraph (b) or (c) above (as applicable) or (B) the unit credit pension benefit set forth in Section 3.2(b), actuarially reduced for early retirement; and

(ii) A Participant who has at least one day of Covered Employment on or after January 1, 1999, who becomes eligible for an Early Service Retirement Pension would receive the unit credit pension benefit set forth in Section 3.2(b) actuarially reduced for early retirement.

**“20 Years and Out” Pension**

3.4 **Eligibility** — Except as provided in Appendix A, a Participant shall be eligible for the “20-Years and Out” pension, Sections 3.1, 3.2 or 3.3 notwithstanding, regardless of his age at the time, when he has met all of the following conditions:

- (a) He has credit for at least 20 (but less than 25) Years of Credited Service as defined in Article 5 herein, and
- (b) His Employer has made contributions to the Pension Fund on his behalf for at least one year preceding his leaving Covered Employment, and

(c) He must have worked in Covered Employment subsequent to January 1, 1999.

3.5 **Benefit Amounts** - The monthly "20 Years and Out" pension payable in such a case shall be \$1,250 per month.

### **Vested Pension**

3.6 **Eligibility** - A Participant shall be eligible to receive a Vested Pension if he leaves Covered Employment after he has met all of the following conditions:

(a) He must have been a Participant for at least ten (10) years of credited service or must have reached his Normal Retirement Age, whichever comes later. A non-Bargaining unit Participant must have been a Participant for at least five (5) years of credited service or must have reached his Normal Retirement Age, whichever comes later. He must have been a Participant for at least five (5) years of Credited Service or must have reached his Normal Retirement Age, whichever comes later. The immediately preceding sentence only applies to Participants who have worked in Covered Employment subsequent to April 1, 1998.

Notwithstanding anything herein to the contrary, a Participant who has worked in Covered Employment subsequent to April 1, 1998 shall be fully vested in his pension benefit on the earlier of retirement on or after his Normal Retirement Age and the date he earns five (5) Years of Credited Service.

(b) He is not eligible to receive another retirement benefit from this Plan.

3.7 **Benefit Amount of Vested Pension at Age 65** - If no other election is made by the Participant, he shall begin to receive his Vested Pension if eligible, in the first month following his attainment of age 65. The amount shall be determined as set forth in Section 3.2 with the exception that the benefit described in Section 3.2(a) shall be multiplied by (a) and (b) below:

(a) is the number of years of total credited service not exceeding 30, and

(b) is  $1/30^{\text{th}}$

3.8 **Benefit Amount of Vested Pension at Early Retirement Ages** - The Participant may elect to have his Vested Pension begin at any age between 55 and 65. The amount shall be determined as set forth in Section 3.3 with the exception that the benefit described in Sections 3.3(b) and 3.3(c) shall be multiplied by (a) and (b) below:

(a) is the number of years of total credited service not exceeding 30, and

(b) is  $1/30^{\text{th}}$

### **Disability Retirement Pension**

3.9 **Eligibility** – Except as provided in Appendix A, a Participant shall be eligible for a Disability Retirement Pension in lieu of an Early Service Retirement Pension, upon approval by the Trustees, when he has met all of the following conditions:

(a) During a period in which he is working in Covered Employment, he becomes totally and permanently disabled so as to be unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment as determined by the Social Security Administration, and has become qualified to receive disability benefits under the Federal Social Security Act.

(b) Such disability has continued for six consecutive months.

(c) He has met the conditions for an Early Service Retirement Pension as set forth in Section 3.3(a).

3.10 **Benefit Amount** - Effective October 17, 2001, the monthly Disability Retirement Pension shall be equal to the accrued benefit of the Participant, with no actuarial age reduction. Prior to October 17, 2001, the monthly Disability Retirement Pension shall be equal to 80% of the normal service retirement pension which such Participant would have received if he had continued to work until age 65.

**General Provisions**

3.11 **Change of Employer** - A Participant shall carry his pension credits with him when he transfers from one participating Employer to another, if there is a lay-off and re-hiring, provided the Participant is reemployed by a participating Employer.

3.12 **Election of Pensions** - If a Participant is eligible for more than one type of pension under this Plan, he shall be entitled to elect the type of pension he wishes to receive.

3.13 **Minimum Normal Retirement Pension** - Normal Retirement Pension shall in no event be less than the greatest Early Retirement Pension a Participant could have been eligible for had he elected an Early Retirement Pension. Upon a Participant attaining his Normal Retirement Age while working for an Employer, he shall be fully vested and have a nonforfeitable right to his benefit.

**Increased Pension Benefits for Certain Pensioners and Beneficiaries**

3.14 The monthly pension of each Pensioner (or Beneficiary of a deceased Pensioner) whose effective retirement date was on or before January 1, 1999, shall be increased as follows:

<u>Effective Date of Retirement</u>	<u>Percentage Increase</u>
Prior to January 1, 1969	30%
January 1, 1969 to March 31, 1987	20%
April 1, 1987 to March 31, 1994	10%
April 1, 1994 to January 1, 1999	3%

### **3.15 25 Years and Out Pension**

**Eligibility-** Except as provided in Appendix A, a Participant shall be eligible for the “25 Years and Out” pension, and notwithstanding Sections 3.1, 3.2 or 3.3 , regardless of his age at the time of commencement of such pension, when such Participant has satisfied all of the following conditions:

- (a) He has credit for at least 20 Years of Credited Service as defined in Article 5 herein, before April 1, 2009;
- (b) He has credit for at least 25 years of Credited Service; and
- (c) He must have worked in Covered Employment subsequent to January 1, 1999.

3.16. **Benefit Amount-** Before a Participant has attained age 55, the monthly “25 Year and Out” pension payable in such a case shall be determined according to Section 3.2(b), however, the Plan will only pay a Participant’s unreduced monthly accrued benefit for years of Credited Service earned as of March 31, 2005. Upon the attainment of age 55, the monthly pension payable pursuant to the “25 Year and Out” pension shall be increased to reflect any Credited Service earned after March 31, 2005.

## **ARTICLE 4**

### **RETIREMENT**

#### **Options Upon Retirement**

4.1 **Payment of Benefits -** The normal form of benefit payable under the Plan is a single life annuity which is an annuity payable in equal installments for the life of the Participant, terminating upon the Participant’s death. This is the maximum benefit. However, if, on the date a Participant’s pension payments commence, such Participant and his spouse have



been married to each other for at least one year, and if such Participant has then met the eligibility requirements for a Pension, as defined in Article 3, such pension shall be paid in the form of a Qualified Joint and Survivor Annuity, unless the Participant elects otherwise as provided in Section 4.2.

4.1.1 The amount of the benefit to which a Participant is entitled pursuant to Article 3 will be reduced based upon (a) the age of both the Participant and the Spouse or Beneficiary at Retirement Date, and (b) the amount of the 50% reduced benefit to be continued to the surviving Spouse or Beneficiary commencing on the first day of the month following the death of the Participant after Retirement Date and terminating with the last payment due prior to the death of the Surviving Spouse or Beneficiary; and,

4.1.2 The reduction in benefits shall not be affected by the death of the Spouse or Beneficiary after the benefit payments commence and prior to the death of the Participant.

The provisions of this Section 4.1 will also apply during the period between the actual date of retirement by the Participant and the date on which payment of his retirement benefits commence.

### **Qualified Joint and Survivor Annuity**

4.2 By written notice to the Trustees prior to Retirement Date, the Participant may elect not to take the Qualified Joint and Survivor Annuity Form during an election period which is a 180 day period ending on the effective date of pension. This period shall follow the furnishing of:

- (a) A general description or explanation of the Qualified Joint and Survivor Annuity;
- (b) The circumstances in which it will be provided, unless the Participant has elected not to have benefits provided in the Qualified Joint and Survivor Annuity Form;
- (c) The availability and effect of the election;

- (d) The rights of a Participant's spouse; and
- (e) A general explanation of the relative financial effect on the Participant's Retirement Benefit of such an election, and of the relative value of other optional forms of benefit.

The election period is a 180-day period ending on the effective date of pension. Should the Participant elect not to take the Qualified Joint and Survivor Annuity, the benefits provided hereunder shall be payable monthly to the Participant from Retirement Date to and including the last payment prior to the death of the Participant.

A married Participant may reject the Qualified Joint and Survivor Annuity only with the consent of the Spouse. Both the Participant and Spouse must "Elect Out" with a written waiver witnessed by a notary public. The Participant may revoke the waiver at any time before retirement benefits commence.

Notwithstanding the foregoing, the Plan may provide the written explanation of the Qualified Joint and Survivor Annuity described in this Section 4.2 after the annuity starting date in accordance with Section 417(a)(7) of the Code and Section 205(c)(8) and such regulations as the Secretary of the Treasury may promulgate thereunder, and in such case will permit the Participant to elect to waive such requirement in accordance and subject to Section 417(a)(7)(B) of the Code and Section 205(c)(8)(B) of ERISA.

4.2.1 By written notice to the Trustees prior to Retirement Date, the Participant may revoke a previous election of the Qualified Joint and Survivor Annuity at any time before his effective date of pension, provided, if such Participant is married, his spouse must consent to such revocation.

4.2.2 A Qualified Joint and Survivor Annuity shall not be effective under any of the following circumstances:

- (a) The Participant and Spouse were not married to each other on the effective date of pension; or
- (b) A married Participant and Spouse were married to each other for less than a year before the Participant died; or
- (c) A married Participant and Spouse were divorced from each other before the effective date of pension; or
- (d) A married Participant has rejected the Qualified Joint and Survivor Annuity in accordance with paragraph 4.2; and
- (e) The Trustees shall be entitled to rely on a written representation last filed by the Participant before the effective date of pension as to whether he or she is married. This reliance shall include the right to deny benefits to a person claiming to be the Spouse of a Participant in contradiction to the aforementioned representation of the Participant; and
- (f) Election or rejection may not be made or altered after the effective date of pension.

4.2.3 The monthly amount of the Qualified Joint and Survivor Annuity, once it has become payable, shall not be increased if the spouse is subsequently divorced from the Pensioner. If, however, the Spouse or Beneficiary of a Pensioner who has elected a Joint and Survivor Annuity pop-up option predeceases the Pensioner, an increased pension, equal to the pension that would have been payable to such Pensioner if his pension had been paid in the form of a single life annuity, shall be paid to the Pensioner for his lifetime. No such increase shall occur until the Pensioner submits a written request for such increase and proof satisfactory to the Trustees, in their sole and absolute discretion, of the Spouse or Beneficiary's death to the Plan Administrator. The effective date of any such increase shall be the first day of the month following the month in which the Spouse or Beneficiary dies.

### **4.3 Death After Retirement Age but Before Retirement**

4.3.1 If a Participant who has attained Normal Retirement Age dies before retirement at a time when he was eligible for a Pension, a Pension shall be paid to his Surviving Spouse, if any, or his Beneficiary, if not married, as if the Participant had retired on a Qualified Joint and Survivor Annuity the day before he died.

4.3.2 If a Participant, after he has satisfied the age and service requirements for an Early Service Retirement Pension, dies prior to Normal Retirement Age and before the scheduled date for the commencement of benefit payments, and if the Participant has been married for at least 12 months immediately preceding his death, the Spouse of the Participant shall be entitled to benefits, or if the Participant is not married, his Beneficiary shall be entitled to benefits, commencing on the first day of the month next following or coincident with the death of the Participant, in an amount equal to 50% of the reduced benefit to which the Participant would have received had he retired on an Early Service Retirement Pension on the day immediately preceding his death.

The Spouse Survivor Benefit shall not be effective under any of the following conditions:

- (a) The Spouse dies before the Participant's eligibility date; or
- (b) The Participant and the Spouse were divorced from each other before the Participant's death.

The Trustees shall be entitled to rely on a written representation filed by the Participant as to whether he or she is married. This reliance shall include the right to deny benefits to a person claiming to be the Spouse of a Participant in contradiction to the aforementioned representation of the Participant.

**4.4 Contingent Annuitant Pension Form (100% and 75% Joint and Survivor Annuity)**

4.4.1 By written notice to the Trustees prior to his Normal or Early Retirement Date, the Participant may elect not to receive payments in accordance with Section 4.1 but may elect a Contingent Annuitant Pension Form (100% Joint and Survivor Annuity or 75% Joint and Survivor Annuity) whereby the amount of the benefit to which the Participant is entitled pursuant to Article 3 will be reduced (based upon the age of both the Participant and Contingent Annuitant at Retirement Date) and upon the death of the Participant after the Effective Date of Pension, either 75% or 100% of such reduced benefit, as applicable, shall be payable to the Contingent Annuitant commencing the first day of the month following the death of the Participant after Retirement Date and terminating with the last payment due prior to the death of the Contingent Annuitant.

4.4.2 If the Contingent Annuitant dies prior to the effective date of the Participant's pension, the election of this 75% or 100% Joint and Survivor Annuity shall become inoperative.

In the event the Contingent Annuitant dies subsequent to the effective date of the Participant's pension and prior to the date that payments actually commence, the Participant's election of the 100% Joint and Survivor Annuity shall become inoperative.

4.4.3 As an alternative to the optional forms of payment previously described, a Participant may elect, with spousal consent, to receive payments in the form of a 50%, 75% or 100% Joint and Survivor pop-up option as described in Section 4.2.4.

4.5 Effective Date - The provisions of this Article do not apply to a pension, the effective date of which was before April 1, 1976.

## **Pre-Retirement Death Benefits**

### **4.6 Survivor Benefit**

4.6.1 Effective June 21, 2001, unless an optional form of benefit is selected within the Election Period pursuant to a Qualified Election, if a Participant dies after the Earliest Retirement Age, the Participant's Surviving Spouse (if any), or designated beneficiary if not married, will receive the same benefit that would be payable if the Participant had retired with an immediate 100% Qualified Joint and Survivor Annuity on the day before the Participant's date of death.

4.6.2 Effective June 21, 2001, unless an optional form of benefit is selected within the Election Period pursuant to a Qualified Election, if a Participant dies on or before the Earliest Retirement Age, the Participant's Surviving Spouse (if any) or designated Beneficiary will receive the same benefit that would be payable if the Participant had:

- (a) Separated from service on the date of death,
- (b) Survived to the Earliest Retirement Age,
- (c) Retired with an immediate 100% Qualified Joint and Survivor Annuity at the Earliest Retirement Age, and
- (d) Died on the day after the Earliest Retirement Age.

4.6.3 For purposes of paragraph 4.6.2, a Surviving Spouse or designated Beneficiary will begin to receive payments at the Participant's Earliest Retirement Age unless such Surviving Spouse or Beneficiary elects a later date.

### **4.6.4 Transitional Rules**

- (a) Any living Participant not receiving benefits on August 23, 1984 who would otherwise not receive the benefits prescribed by the previous subsections of this Section 4.6 must be given the opportunity to elect to have the prior subsections apply if such

Participant is credited with at least one Hour of Service under this Plan in the Plan Year beginning on or after April 1, 1976, and such Participant had at least 10 years of Service Credit when he or she separated from service.

(b) Any living Participant not receiving benefits on August 23, 1984, who was credited with at least one Hour of Service under this Plan or a predecessor plan on or after September 2, 1974, and who is not otherwise credited with any service in a Plan Year beginning on or after April 1, 1976, must be given the opportunity to have his or her benefits paid in accordance with 4.6.4(d) below.

(c) The respective opportunities to elect (as described in 4.6.4(b)) must be afforded to the appropriate Participants during the period commencing on August 23, 1984, and ending on the date benefits would otherwise commence to said Participants.

(d) Any Participant who has elected pursuant to subsection 4.6.4(b) of this Section and any Participant who does not elect under subsection 4.6.4(a), except for a Participant who does not have at least 10 years of Service Credit when he or she separated from service, shall have his or her benefits distributed in accordance with all of the following requirements if benefits would have been payable in the form of life annuity:

(e) Automatic Joint and One-Half Survivor Annuity. If benefits in the form of a life annuity become payable to a married Participant who:

(i) Begins to receive payments under the Plan on or after Normal Retirement Date; or

(ii) Dies on or after Normal Retirement Date while still working in covered employment; or

- (iii) Begins to receive payments on or after the qualified Early Retirement Age; or
- (iv) Separates from service on or after attaining Normal Retirement Age (or qualified Early Retirement Age) and after satisfying the eligibility requirements for the payment of benefits under the Plan and thereafter dies before beginning to receive benefits:

then such benefits will be received under this Plan in the form of a Joint and One-Half Survivor Annuity, unless the Participant has elected otherwise during the election period. The election period must begin at least 6 months before the Participant attains qualified Early Retirement Age and end not more than 180 days before the commencement of benefits. Any election hereunder must be in writing and may be changed by the Participant at any time.

- (f) Election of Early Survivor Annuity. A Participant who is employed after attaining the qualified Early Retirement Age will be given the opportunity to elect, during the election period, to have a Survivor Annuity payable on death. If the Participant elects the Survivor Annuity, payments under such annuity must not be less than the payments which would have been made to the Spouse or beneficiary under the Joint and One-Half Survivor Annuity if the Participant had retired on the day before his or her death. Any election under this provision must be in writing and may be changed by the Participant at any time. The election period begins on the later of (1) the 180th day before the Participant attains the qualified Early Retirement Age or (2) the date on which the Participant terminates employment.



- (g) For purposes of this Section 4.6.4 Qualified Early Retirement Age is the latest of:
- (i) The earliest date, under the Plan, on which the Participant may elect to receive retirement benefits,
  - (ii) The first day of the 120th month beginning before the Participant reaches Normal Retirement Age, or
  - (iii) The date the Participant begins participation.

4.6.5 If the actuarial Present Value of the Pre-Retirement Survivor Benefit does not exceed \$3,500, the Trustees may direct the immediate distribution of such amount to the Participant's Spouse or designated Beneficiary. No distribution may be made under the preceding sentence after the Annuity Starting Date unless the Spouse consents in writing. If the value exceeds \$3,500, an immediate distribution of the entire amount may be made to the surviving Spouse, or designated Beneficiary, provided such surviving Spouse consents in writing to such distribution. For Plan Years commencing after December 31, 1997, if the Present Value of any nonforfeitable accrued benefit exceeds \$5,000, such benefit shall not be immediately distributed without the consent of the Participant. The Present Value shall be calculated in accordance with Section 1.23 of the Plan. For Plan Years commencing on or after April 1, 2008, lump sum distributions shall only be available if the Plan is permitted to make such distributions under Section 432 of the Code. Notwithstanding anything herein to the contrary, any mandatory distribution of an amount that exceeds \$1,000 shall be paid in a Direct Rollover to an individual retirement plan (as described more fully in Article 19 of the Plan) if the distributee does not make an affirmative election to have the amount paid in a Direct Rollover to an Eligible Retirement Plan or to receive the distribution directly.

4.6.6 If a Participant dies before distribution of his or her interest commences, i.e., the effective date of pension, the Participant's entire interest will be distributed no later than five years after the Participant's death except to the extent that an election is made to receive distributions in accordance with (a) or (b) below:

(a) If any portion of the Participant's interest is payable to a designated Beneficiary, distributions may be made in substantially equal installments over the life or life expectancy of the designated Beneficiary, commencing no later than one year after the Participant's death;

(b) If the designated Beneficiary is the Participant's surviving Spouse, the date distributions are required to begin in accordance with (a) above shall not be earlier than the date on which the Participant would have attained age 70½, and, if the Spouse dies before payments begin, subsequent distributions shall be made as if the Spouse had been the Participant.

For purposes of this Section 4.6.6, payments will be calculated by use of the return multiples specified in Regulation 1.72-9. Life expectancy of a surviving spouse may be recalculated annually. In the case of any other designated Beneficiary, life expectancy may be calculated at the time payment first commences and payments for any 12 consecutive month period will be based on such life expectancy minus the number of whole years passed since distribution first commenced.

4.6.7 Participants who continue in Covered Employment after they attain age 70½ may receive at their election a monthly pension benefit commencing on or before the first day of April of the year following the Plan Year in which the Participant retired or the first day of April following the Plan Year when such Participant attains age 70½. However, in the case of a 5%

owner of an Employer, distributions must begin no later than April 1<sup>st</sup> of the year following the Plan Year when such Owner attains age 70½.

Notwithstanding the foregoing, for Plan Years commencing after December 31, 2003, any Participant (other than a 5% owner of an Employer) must commence pension benefits under the Plan by the April 1 following the later of the end of the calendar year in which the Participant retires or the end of the calendar year in which the Participant attains age 70½. For Plan Years commencing after December 31, 1996, all distributions of benefits shall be made and the required beginning date shall be determined in accordance with Section 401(a)(9)(C) of the Code.

#### **4.7 MINIMUM DISTRIBUTION REQUIREMENTS**

##### **4.7.1 General Rules.**

4.7.1.1 **Effective Date.** The provisions of this article will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.

4.7.1.2 **Precedence.** The requirements of this article will take precedence over any inconsistent provisions of the Plan.

4.7.1.3 **Requirements of Treasury Regulations Incorporated.** All distributions required under this article will be determined and made in accordance with the Treasury regulations under section 401(a)(9) of the Internal Revenue Code.

4.7.1.4 **TEFRA Section 242(b)(2) Elections.** Notwithstanding the other provisions of this article, other than section 4.7.1.3, distributions may be made under a designation made before January 1, 1984, in accordance with section 242(b)(2) of the Tax Equity and Fiscal

Responsibility Act (TEFRA) and the provisions of the Plan that relate to section 242(b)(2) of TEFRA.

**4.7.2 Time and Manner of Distribution**

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

4.7.2.2 Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

- (a) If the Participant's surviving Spouse is the Participant's sole designated Beneficiary, then distributions to the surviving Spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later.
- (b) If the Participant's surviving Spouse is not the Participant's sole designated Beneficiary, then distributions to the designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
- (c) If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (d) If the Participant's surviving Spouse is the Participant's sole designated Beneficiary and the surviving Spouse dies after the Participant but before distributions to the surviving

Spouse begin, this section 4.7.2.2, other than section 4.7.2.2(a), will apply as if the surviving Spouse were the Participant.

For purposes of this section 4.7.2.2 and section 4.7.5, distributions are considered to begin on the Participant's required beginning date (or, if section 4.7.2.2(d) applies, the date distributions are required to begin to the surviving Spouse under section 4.7.2.2(a)). If annuity payments irrevocably commence to the Participant before the Participant's required beginning date (or to the Participant's surviving Spouse before the date distributions are required to begin to the surviving Spouse under section 4.7.2.2(a)), the date distributions are considered to begin is the date distributions actually commence.

**4.7.2.3 Form of Distribution.** Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with sections 4.7.3, 4.7.4 and 4.7.5 of this article. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of section 401(a)(9) of the Code and the Treasury regulations. Any part of the Participant's interest which is in the form of an individual account described in section 414(k) of the Code will be distributed in a manner satisfying the requirements of section 401(a)(9) of the Code and the Treasury regulations that apply to individual accounts.

**4.7.3 Determination of Amount to be Distributed Each Year**

**4.7.3.1 General Annuity Requirements.** If the Participant's interest is paid in the form of annuity distributions under the Plan, payments under the annuity will satisfy the following requirements:

- (a) the annuity distributions will be paid in periodic payments made at intervals not longer than one year;
- (b) the distribution period will be over a life (or lives) or over a period certain not longer than the period described in sections 4.7.4 or 4.7.5;
- (c) once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted;
- (d) payments will either be nonincreasing or increase only as follows:
  - (1) by an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the Bureau of Labor Statistics;
  - (2) to the extent of the reduction in the amount of the Participant's payments to provide for a survivor benefit upon death, but only if the Beneficiary whose life was being used to determine the distribution period described in section 4.7.4 dies or is no longer the Participant's Beneficiary pursuant to a qualified domestic relations order within the meaning of section 414(p);
  - (3) to provide cash refunds of employee contributions upon the Participant's death; or
  - (4) to pay increased benefits that result from a Plan amendment.

4.7.3.2 Amount Required to be Distributed by Required Beginning Date. The amount that must be distributed on or before the Participant's required beginning date (or, if the Participant dies before distributions begin, the date distributions are required to begin under section 4.7.2.2(a) or (b)) is the payment that is required for one payment interval. The second

payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payments intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the Participant's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Participant's required beginning date.

4.7.3.3 Additional Accruals After First Distribution Calendar Year. Any additional benefits accruing to the Participant in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

**4.7.4 Requirements for Annuity Distributions That Commence During Participant's Lifetime**

4.7.4.1 Joint Life Annuities Where the Beneficiary Is Not the Participant's Spouse. If the Participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the Participant and a non-Spouse Beneficiary, annuity payments to be made on or after the Participant's required beginning date to the designated Beneficiary after the Participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the Participant using the table set forth in Q&A-2 of section 1.401(a)(9)-6T of the Treasury regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the Participant and a non-Spouse Beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated Beneficiary after the expiration of the period certain.

4.7.4.2 Period Certain Annuities. Unless the Participant's Spouse is the sole designated Beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the Participant's lifetime may not exceed the applicable distribution period for the Participant under the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the Participant reaches age 70, the applicable distribution period for the Participant is the distribution period for age 70 under the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury regulations plus the excess of 70 over the age of the Participant as of the Participant's birthday in the year that contains the annuity starting date. If the Participant's Spouse is the Participant's sole designated Beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the Participant's applicable distribution period, as determined under the section 4.7.4.2, or the joint life and last survivor expectancy of the Participant and the Participant's Spouse as determined under the Joint and Last Survivor Table set forth in section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's and Spouse's attained ages as of the Participant's and Spouse's birthdays in the calendar year that contains the annuity starting date.

**4.7.5 Requirements for Minimum Distributions Where Participant Dies Before Date Distribution Begins**

4.7.5.1 Participant Survived by Designated Beneficiary. If the Participant dies before the date distribution of his or her interest begins and there is a designated Beneficiary, the Participant's entire interest will be distributed, beginning no later than the time described in



section 4.7.2.2(a) or (b), over the life of the designated Beneficiary or over a period certain not exceeding:

(a) unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated Beneficiary determined using the Beneficiary's age as of the Beneficiary's birthday in the calendar year immediately following the calendar year of the Participant's death; or

(b) if the annuity starting date is before the first distribution calendar year, the life expectancy of the designated Beneficiary determined using the Beneficiary's age as of the Beneficiary's birthday in the calendar year that contains the annuity starting date.

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

4.7.5.3 Death of Surviving Spouse Before Distributions to Surviving Spouse Begin. If the Participant dies before the date distribution of his or her interest begins, the Participant's surviving Spouse is the Participant's sole designated Beneficiary, and the surviving Spouse dies before distributions to the surviving Spouse begin, this section 4.7.5 will apply as if the surviving Spouse were the Participant, except that the time by which distributions must begin will be determined without regard to section 4.7.2.2(a).

4.7.6 **Definitions**

4.7.6.1 **Designated Beneficiary.** The individual who is designated as the Beneficiary under section 1.6 of the Plan and is the designated Beneficiary under section 401(a)(9) of the Internal Revenue Code and section 1.401 (a)(9)-1, Q&A-4, of the Treasury regulations.

4.7.6.2 **Distribution calendar year.** A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to section 4.7.2.2.

4.7.6.3 **Life expectancy.** Life expectancy as computed by use of the Single Life Table in section 1.401(a)(9)-9 of the Treasury regulations.

4.7.6.4 **Required beginning date.** The date specified in section 4.6.7 of the Plan.

4.8 **No Involuntary Distributions** - Except as provided in Section 4.7, above, the Plan shall not distribute the benefits of any Participant without such Participant's written consent, regardless of the Present Value of the Participant's benefit.

**ARTICLE 5**

**BENEFIT ACCRUAL**

**Benefit Accrual Credits for Service**

5.1 **Total Service Credits** - The total service credits which determine benefits accrual shall be the sum of future service credits and past service credits provided such service is continuous service as defined in Section 5.4. Such service credits shall be granted only as provided in this Article.

5.2 **Future Service Credits** - A Participant shall be entitled to one year of future service credit for each Plan Year during which he works for a participating employer in covered employment for at least 1,000 Hours of Service. Notwithstanding anything herein to the contrary, effective April 1, 2010, the 1,000 Hours of Service standard described in the preceding sentence shall not apply for purposes of determining a Participant's accrual of future service credit. Rather, a Participant shall receive future service credit for 1/12 of Year of Credited Service for each calendar month of Covered Employment during the Plan Year.

5.3 **Past Service Credits** - A Participant shall receive credit for past service, only if rendered prior to his last entrance into the Plan, as provided in this section. Each Participant shall continue to have credit for all past service for which he had previously been allowed credit and which remained in effect as of April 1, 1976.

A person who became a Participant of this Plan prior to January 1, 1971, shall be entitled to a year of past service credit for each calendar year of employment prior to the Effective Date, as defined in Article 1 hereof if he was employed by the Employer on the Effective Date, in a classification of work and in an industry which, at the time of such employment, was normally covered by a collective bargaining agreement to which the Union was a party.

A person who became, or becomes a Participant of this Plan on or after January 1, 1971, shall be entitled to one year of past service credit for each calendar year of employment prior to the Effective Date, as defined in Article 1 hereof, by a Participating Employer of this Trust Fund, if he was employed by the employer on the Effective Date. In the case of a person who becomes a Participant on or after April 1, 1976, the "Year of Service" referred to in this paragraph shall mean a year of service as defined in Article 1 hereof.

5.4 **Continuous Service** - Employment and service shall be deemed to have been continuous provided that:

(a) (i) A Participant who has left covered employment prior to April 1, 1976 has not left such covered employment for more than 30 consecutive months. Any such Participant who re-enters covered employment after more than 30 consecutive months shall be deemed a new Participant with no prior service credit.

(ii) A Participant who is not vested and who left covered employment on or after April 1, 1976, having incurred a break in service, shall receive credit for his years of service credit prior to the break if the number of consecutive One-Year Breaks in Service as defined in Article 1 does not equal or exceed the years of service accumulated by the Participant prior to such breaks.

(b) Notwithstanding the above, except as provided in Section 5.5.4, if the breaks-in-service are incurred due to service in the Armed Forces of the United States of America, then a Participant who returns to covered employment with a participating employer will retain his prior service credits, provided such return to covered employment is within four (4) months following his discharge from said Armed Forces without intervening employment.

(c) The Participant's service shall be deemed to have been continuous if his absence from work was by reason of being disabled by a compensable industrial accident in the course of his employment. During the interruption of service due to disability from the aforementioned industrial accident, contributions shall be made by the Employer until the earlier of the following dates:

- the date the Participant is replaced; or
- six months.

The time of employment previously credited to such Participant will not be affected and said Participant shall be considered as if he were actually working during said disability for the period during which his Employer was required to make contributions to the Fund on his behalf.

Upon failure by the Participant to provide such proof at the Trustees' request, or upon termination of such award, eligibility for benefits will be governed by the provisions of Article 3.

**5.5 Permanent Break in Service** - Effective April 1, 1985 a "Permanent Break in Service" occurs if the non-vested Participant has consecutive One-Year Breaks in Service that equal or exceed the greater of 5 or the number of Years of Credited Service with which he had previously been credited.

**5.5.1 Exceptions to Breaks in Service**

(a) A Participant will not incur a Permanent Break in Service at any date after:

- (i) Attaining eligibility for an Early Retirement Pension; or
- (ii) Attaining eligibility for a Normal Retirement Pension; or
- (iii) Attaining a vested status.

(b) A Participant shall not incur a One-Year Break in Service for "maternity and paternity leaves of absence." A "maternity or paternity leave of absence" shall mean, for the Plan Years beginning after April 1, 1985, an absence from work for any period by reason of the Participant's pregnancy, birth of the Participant's child, placement of a child with the Participant in connection with the adoption of such child, or any absence for the purpose of caring for such child for a period immediately following such birth or placement. For this purpose, Hours of Service shall be credited to the computation period

in which the absence from work begins, only if credit therefor is necessary to prevent the Participant from incurring a One Year Break in Service; or, in any other case, in the immediately following computation period. The Hours of Service credit for a “maternity or paternity leave of absence” shall be those which would normally have been credited but for such absences, or, in any cause in which the plan is unable to determine such hours normally credited, eight (8) Hours of Service per day. The total Hours of Service required to be credited for a “maternity or paternity leave of absence” shall not exceed 501. Hours Credited under maternity and paternity leaves of absence are for Break in Service purposes only and do not count for benefit accrual.

**5.5.2 Effect of Permanent Break in Service** - If a Participant who has not yet attained a vested status has a Permanent Break in Service:

- (a) His previous accrued Service Credits are canceled; and
- (b) His participation in the Plan is canceled.

If a Participant who has incurred a Permanent Break in Service subsequently returns to Covered Employment, his eligibility to participate in this Plan after his re-employment shall be treated the same as a new Participant.

Notwithstanding the foregoing, effective November 1, 2007, if a Participant who (i) is currently working under Covered Employment (ii) incurs a Permanent Break in Service, and (iii) subsequently returns to Covered Employment and (iv) works in Covered Employment from that date forward continuously for five (5) years, Section 5.5.2(a) shall not apply to such Participant and his previously accrued Service Credits will be reinstated to the extent provided in the next sentence. When calculating the pension benefit of a Participant who qualifies for a reinstatement of previously accrued Service Credits under this paragraph, the rate of benefit

accruals then in effect at the time Participant incurred a break in service shall apply with regard to the reinstated Service Credits.

**5.5.3 Break in Service Under Prior Plan** - A Participant who had suffered a Break in Service under the Prior Plan at any time before April 1, 1976 will also be considered to have suffered a Permanent Break in Service under the Plan. In the event such Employee returns to Covered Employment after April 1, 1976, his eligibility to participate in this Plan after his reemployment shall be treated the same as a new Employee.

**5.5.4 USSERA Military Service**

- (a) An individual reemployed under 38 United States Code chapter 43 shall be treated with respect to the Plan as not having incurred a Break in Service with the Employer by reason of such individual's period of qualified military service.
- (b) Each period of qualified military service served by an individual is, upon reemployment under such chapter, deemed with respect to the Plan to constitute service with the Employer for the purpose of determining the nonforfeitability of the individual's accrued benefits under such Plan and for the purpose of determining the accrual of benefits under such Plan.
- (c) An individual reemployed under such chapter is entitled to accrued benefits that are contingent on the making of, or derived from, employee contributions or elective deferrals only to the extent the individual makes payment to the Plan with respect to such contributions or deferrals. No such payment may exceed the amount the individual Employer would have been permitted or required to contribute had the individual remained continuously employed by the Employer throughout the period of qualified military service. Any payment to such Plan shall be made during the period beginning with the date

of reemployment and whose duration is three times the period of the qualified military service (but not greater than five years).

(d) Any references to chapter 43 of title 38, United States Code, shall be treated as a reference to such chapter in effect on December 12, 1994 (without regard to any subsequent amendment).

(e) Notwithstanding the foregoing, effective as of December 12, 1994, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Code. In the case of a Participant who dies on or after January 1, 2007 while performing qualified military service (as such term is defined in Section 414(u) of the Code), the survivors of the Participant shall be entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) that would have been provided under the Plan had the Participant resumed Covered Employment with the Employer, and then terminated Covered Employment with the Employer on account of death.

5.6 **Benefit Accrual Table** - The rate at which pension benefits accrue for each Plan Year shall be determined pursuant to the following table:

<p><b>Prior to April 1, 2005</b></p>	<p>One Year of Credited Service for each Plan Year during which a Participant is credited with at least 1,000 Hours of Service in Covered Employment is equal to \$100.00 for benefit accrual purposes.</p>
<p><b>April 1, 2005 – September 1, 2006</b></p>	<p>Effective April 1, 2005, one Year of Credited Service for each Plan Year during which a Participant is credited with at least 1,000 Hours of Service in Covered Employment is equal to \$0.00 for benefit accrual purposes.</p>
<p><b>As of September 1, 2006</b></p>	<p>Effective September 1, 2006, one Year of Credited Service for each Plan Year during which a Participant is credited with at least 1,000 Hours of Service in Covered Employment is equal to \$50.00 for benefit accrual purposes.</p>



<p><b>As of April 1, 2008</b></p>	<p>Effective April 1, 2008, one Year of Credited Service for each Plan Year during which a Participant is credited with at least 1,000 Hours of Service in Covered Employment is equal to \$50.00 for benefit accrual purposes or such other amount as provided for in the Rehabilitation Plan.</p>
<p><b>As of April 1, 2010</b></p>	<p>Effective April 1, 2010, one Year of Credited Service for each Plan Year in which the Participant receives 12 months of Credited Service, and 1/12 of a Year of Credited Service for each calendar month of Covered Employment a Participant performs during the Plan Year. A Year of Credited Service is equal to \$50.00 for benefit accrual purposes or such other amount as provided for in the Rehabilitation Plan.</p>

## ARTICLE 6

### VESTING

6.1 **Vesting** - A Participant shall become fully vested upon the earlier of (a) reaching his Normal Retirement Age, or (b) being credited with ten (10) years of Credited Service. Anything herein contained to the contrary notwithstanding, each Employee who is referred to in Section 2.3 shall become fully vested upon the earlier of (i) reaching his Normal Retirement Age; or (ii) being credited with five (5) Years of Credited Service. A Participant who has worked in Covered Employment subsequent to April 1, 1998, shall become fully vested upon the earlier of (i) reaching his Normal Retirement Date, or (ii) being credited with five years of Credited Service.

6.2 **Total Vesting Service Credits** - The total Vested Service Credits which determine vesting shall be the sum of Future Vesting Service Credits and past Vesting Credits provided such service is continuous service as defined in Section 5.4. Such Vesting Service Credits shall be granted only as provided in Article 5.

## **ARTICLE 7**

### **SERVICE AFTER REACHING RETIREMENT AGE**

7.1 A Participant may continue to work beyond his Normal Retirement Age and to defer his pension to a later date, in which event his pension shall commence at the time of his actual retirement and be payable from the date fixed by the Trustees.

## **ARTICLE 8**

### **EMPLOYMENT AFTER COMMENCEMENT OF PENSION PAYMENTS**

8.1 **Re-Employment or Self-Employment** - A Participant who retires upon attaining retirement age may receive his pension and continue to be employed so long as his self-employment or re-employment is not in an industry covered by the Plan when the Participant's pension began and in any occupation covered by the Pension Fund at the time the Participant's pension began and in the same geographical area covered by the Pension Fund when the Participant's pension began. In the event said Participant should become self-employed or reemployed as set forth above, then in such event such said Participant shall not be entitled to any pension benefit during such period of self-employment or re-employment.

Such self-employment or re-employment shall be deemed to have occurred upon the employment of a Participant subsequent to the time the payment of benefits commenced, or would have commenced if the Participant had not remained in, or returned to, employment, and if, in such case, the self-employment or re-employment during a calendar month, or during a four or five week payroll period ending in a calendar month, results in the Participant in such month or payroll period:

- (a) Completing 40 or more hours of service; or

(b) For Participants who are at least 50 years of age and have at least 25 Years of Credited Service or who are at least 65 years of age and have at least 15 Years of Credited Service, completing 70 or more hours of service;

(c) Receiving payment of any such hours of service performed on each of 8 or more days, or separate work shifts, in such month or payroll period. Provided that the Plan has not for any purpose determined or used the actual number of hours of service which would be required to be credited to the employee; in

(i) Any industry in which employees covered by the Plan were employed and accrued benefits under the Plan as a result of such employment at the time that the payment of benefits commenced or would have commenced if the employee had not remained in or returned to employment, and

(ii) An occupation in which the employee was employed at any time under the Plan, and

(iii) The geographic area covered by the Plan at the time that the payment of benefits commenced or would have commenced if the employee had not remained in or returned to employment.

Under such circumstances the Employer shall be obligated to make contributions to the Pension Fund for such Participant during such period of re-employment or self-employment. When such Participant again retires, he shall be retired at the same monthly rate he received prior to his re-employment or self-employment.

In such case of benefits payable periodically on a monthly basis for as long as a life (or lives) continues, such as straight life annuity or a Qualified Joint and Survivor Annuity, the Plan may provide that an amount not greater than the portion of a monthly benefit payment derived

from Employer contributions may be withheld permanently for a calendar month, or for a four or five week payroll period ending in a calendar month in which the employee is employed in the circumstances set forth above.

In the case of benefits payable in the form other than the form described above, the Plan may provide for the permanent withholding of an amount of the benefit payments for a calendar month, in which the employee is employed in the circumstances set forth above, not exceeding the lesser of:

- (a) The amount of benefits which would have been payable to the employee if he had been receiving monthly benefits under the Plan since actual retirement based on a single life annuity commencing at actual retirement age; or
- (b) The actual amount paid or scheduled to be paid to the employee for such month.

Payments which are scheduled to be paid less frequently than monthly may be converted to monthly payments for these purposes.

**8.2 Pensions After Re-Employment** - After a pensioner receiving a pension is reemployed by a contributing Employer, pension payments will cease with the last payment due immediately preceding the date the pensioner is re-employed. Upon subsequent termination of such employment and upon re-application by the Participant to the Trustees, pension payments in the same amount, plus any additional pension benefits accrued by the Participant during his period of re-employment, will resume by the first day of the third calendar month following the date of such termination, provided the Participant notified the Trustees of his re-employment by no later than fifteen (15) days following such re-employment.

However, if the pensioner does not notify the Trustees of his re-employment, then upon subsequent termination of employment, and upon re-application by the Participant to the

Trustees, the resumption of pension payments will be delayed to the extent of one additional month for each month that the Participant delayed notification to the Trustees of his reemployment, for up to a period of two months. After such a period, if there are still monies owing to the Fund due to the Participant's failure to notify the Trustees, the said Participant's future payments may be offset by as much as 25% until the said monies are recovered by the Fund.

8.2.1 **Notices** - Upon commencement of pension payment, the Trustees shall notify the Pensioner of the Plan rules governing Suspension of Benefits including identity of the industry 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 industry or area covered by the Plan.

8.2.2 A Pensioner shall notify the Plan in writing within 30 days after starting any work of a type that is or may be disqualifying under the provisions of the Plan and without regard to the number of hours of such work (that is, whether or not less than 40 hours in a month). If a Pensioner has worked in Disqualifying Employment in any month and has failed to give timely notice to the Plan of such employment, the Trustees shall presume that he worked for at least 40 hours in such month and any subsequent month before the Participant gives notice that he has ceased Disqualifying Employment. The Participant shall have the right to overcome such presumption by establishing that his work was not in fact an appropriate basis under the Plan, for suspension of his benefits.

8.2.3 A Pensioner whose pension has been suspended shall notify the Plan when disqualifying employment has ended. The Trustees shall have the right to hold back benefit payments until such notice is filed with the Plan.

8.2.4 A Participant may ask the Plan whether a particular employment will be disqualifying. The Plan shall provide the Participant with its determination.

8.2.5 The Plan shall inform a Participant of any suspension of his benefits by notice given by personal delivery or first class mail during the first calendar month in which his benefits are withheld. Such notice shall include a description of the specific reasons for the suspension, copy of the relevant provisions of the Plan, reference to the applicable regulation of the U.S. Department of Labor, and a statement of the procedure for securing a review of the suspension. In addition, the notice shall describe the procedure for the Participant to notify the Plan when his Disqualifying Employment ends. If the Plan intends to recover prior overpayments by offset the suspension notice shall explain the offset procedure and identify the amount expected to be recovered, and the periods of employment to which they relate.

8.2.6 **Review** - A Participant shall be entitled to review of a determination suspending his benefits by written request filed with the Trustees within 180 days of the notice of suspension. The same right of review shall apply, under the same terms, to a determination by or on behalf of the Trustees that contemplated employment will be disqualifying.

## **ARTICLE 9**

### **PAYMENT TO THE TRUST FUND**

9.1 Each Employer shall make continuing and prompt payment to the Pension Fund as required by its applicable collective bargaining agreement.

9.2 Any and all contributions made by an Employer shall be irrevocable and shall be transferred to the Trustees and held by them for the purpose of this Pension Plan, subject to the provisions of the Trust Agreement.

9.3 The Pension Fund shall be used exclusively in accordance with the terms of this Pension Plan to provide the benefits for the Participants entitled thereto and to pay the expenses of the Pension Fund, and no part of the corpus or income of said Pension Fund shall be used for or diverted to any other purposes. No Employee, Employer, Participant, pensioner or any other person shall have any claim, interest or rights in or to said Pension Fund or to the earnings of the said Pension Fund except as expressly provided in this Pension Plan.

## **ARTICLE 10**

### **ADMINISTRATION OF THE PLAN**

10.1 The fiduciary of the Pension Plan who shall have authority to control and manage the operation and administration of the Pension Plan is, collectively, the Trustees of the Local 805 Pension Fund.

10.2 The Trustees may designate an Administrator to perform the operational functions of the Pension Plan at the direction of and in accordance with procedures established by the Trustees. The Administrator shall perform only such duties and have only such authority as may be delegated to him by the Trustees.

## **ARTICLE 11**

### **AMENDMENTS**

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

(a) As necessary to establish or maintain the qualification of the Pension Plan or the Pension Fund under the Code and to maintain compliance of the Pension 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 Code.

For the purposes of the above, a Plan amendment which has the effect of: (i) eliminating or reducing an Early Retirement Benefit or a retirement-type subsidy; or (ii) eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment, shall be treated as reducing accrued benefits. In the case of a retirement-type subsidy, the preceding sentence shall apply only with respect to a Participant who satisfies (whether before or after the amendment) the pre-amendment conditions for the subsidy. In general, a retirement-type subsidy is a subsidy that continues after retirement, but does not include a qualified disability benefit, a medical benefit, a social security supplement, a death benefit (including life insurance), or a plant shutdown benefit (that does not continue after retirement age). Furthermore, no amendment to the Plan shall have the effect of decreasing a Participant's vested interest determined without regard to such amendment as of the later of the date such amendment is adopted, or becomes effective.

11.2 Notwithstanding the foregoing, effective for Plan Years beginning after December 31, 2007, no amendment to the Plan shall decrease the Accrued Benefit of any Participant unless the amendment satisfies the requirements of Section 412(d)(2) of the Code and the regulations thereunder. In addition, any amendment to the Plan shall be subject to and in compliance with the restrictions on amendments contained in Section 432 of the Code (for plans in endangered or critical status), to the extent those rules apply.



## **ARTICLE 12**

### **TERMINATION OF PLAN**

12.1 The Board of Trustees may terminate the Plan, completely or partially, at any time. The Plan may also be terminated, completely or partially, as a result of a determination to that effect made by the Internal Revenue Service or the Pension Benefit Guaranty Corporation, or by an appropriate court of law. The rights of all affected Participants to benefits accrued to the date of termination or partial termination, shall be non-forfeitable.

12.2 Upon complete or partial termination of the Plan: (a) the pension accrued under the Plan for each affected Participant as of the date of such termination shall be non-forfeitable and (b) subject to notification to and approval by the Pension Benefit Guaranty Corporation with respect to such termination, available assets shall be allocated in accordance with Regulation 1.401-4(c) of the Code and Section 4044(a) of ERISA, as amended from time to time.

12.3 Missing Participants in Terminated Plans. For Plan Years commencing after January 1, 1996, upon termination of the Plan, benefits of missing Participants shall be treated in accordance with Section 4050 of ERISA.

## **ARTICLE 13**

### **ADDITIONAL EMPLOYERS**

13.1 Additional Employers may be admitted to participation in the Pension Fund and this Pension Plan, upon approval by the Trustees. The participation of any such additional Employer shall be subject to such terms and conditions as the Trustees may prescribe. In adopting applicable terms or conditions, the Trustees shall take into account such requirements as they in their sole discretion may deem necessary to preserve an equitable relationship with the contributions required from presently participating Employers and the benefits provided to their employees.

## ARTICLE 14

### GOVERNING LAW

14.1 Except to the extent preempted by Federal law, the Pension Plan shall be construed, administered and enforced in accordance with the laws of the State of New York.

## ARTICLE 15

### RECIPROCAL BENEFITS UNDER THE NATIONAL RECIPROCAL AGREEMENT FOR TEAMSTER PENSION FUNDS

15.1 **Reciprocal Pension Benefits** - An eligible Participant may elect to receive a Reciprocal Pension Benefit, as provided below, with respect to any pension benefit provided by this Plan, including a normal early retirement, a disability pension, a service-regardless-of-age pension and a statutory vested or minimum pension, if the Participant would have been eligible for such pension benefit if all his or her Combined Service Credit were Service Credit under this Plan.

15.2 **Related Plans** - In accordance with the provisions of the National Reciprocal Agreement for Teamster Pension Funds (the "National Reciprocal Agreement"), the Trustees of this Plan recognize each multi-employer defined benefit pension plan covering Participants employed under one or more Teamsters collective bargaining agreements, or covering employees of the International Brotherhood of Teamsters ("IBT") or its affiliates, which has executed or hereafter executes the National Reciprocal Agreement, as a Related Plan.

15.3 **Service Credit Under This Plan** - For purposes of this Article, Service Credit under this Plan shall mean years of employment or fractions thereof under this Plan for which this Plan gives benefit accrual or vesting credit under its provisions other than this Article. Such Service Credit shall include contributory and non-contributory service to the extent that such

service is credited and for the purposes that such contributory or non-contributory Service is recognized under this Plan.

15.4 **Related Service Credit** - Service Credit, credited to a Participant under a Related Plan from which the Participant is entitled to Reciprocal Benefits, for employment only under that Related Plan, certified by the Related Plan to this Plan, shall be recognized under this Plan as Related Service Credit. No Related Service Credit shall be recognized with respect to employment under the Related Plan that is simultaneously credited under the provisions of this Plan.

15.5 **Combined Service Credit** - The total of a Participant's Service Credit under this Plan and Related Service Credit shall comprise the Participant's Combined Service Credit. No more than one year of Combined Service Credit shall be counted in any calendar year.

15.6 **Eligibility**

- (a) A Participant shall be eligible for Reciprocal Pension Benefits under this Plan only if the Participant satisfies all of the following minimum requirements:
- (i) The Participant has one or more years of Service Credit under this Plan based on actual employment during the Contribution Period;
  - (ii) The Participant is eligible for Reciprocal Pension Benefits from one or more Related Plans, and
  - (iii) The Participant elects the Reciprocal Pension Benefit under this Plan and one or more Related Plans in lieu of any other pension benefit payable under such Plans.
- (b) The foregoing is not to be construed to require this Plan or any Related Plan to grant Reciprocal Pension Benefits to a Participant who does not satisfy the minimum

requirements of this Plan and the Related Plan or Plans. Nor is this Plan required to recognize non-contributory service credit under a Related Plan as contributory service for any purposes under this Plan to the extent that this Plan specifically requires contributory service.

15.7 **Break In Service** - A period during which a Participant earns Related Service Credit shall not be counted as a Break in Service under the rules of this Plan. Recommencement of service under a Related Plan paying the Participant a Reciprocal Pension Benefit shall be deemed equivalent to a return to Covered Employment under this Plan.

15.8 **Reciprocal Benefit Amount** - The amount of the Reciprocal Pension Benefit shall be the Participant's accrued benefit with respect to Service Credit under this Plan calculated at the level of benefits in effect when the Participant last earned credit under this Plan shall be determined as follows:

- (a) The amount of the pension to which the Participant would be entitled under this Plan if all the Participant's total service under this Plan and all contributory and non-contributory service under all Related Plans under which the Participant is entitled to a Reciprocal Pension Benefit were contributory and non-contributory Service Credit, respectively, under this Plan shall first be determined on the basis of the benefit level in effect when the Participant last earned credit under this Plan , then
- (b) The amount of Service Credit under this Plan shall be divided by the total amount of service earned by the Participant under this Plan, then
- (c) The fraction so determined in (b) shall be multiplied by the pension amount determined in (a), and the result shall be the Reciprocal Pension Benefit payable by this Plan.

15.9 **Form of Benefit Payment** - A Participant who is entitled to receive a Reciprocal Pension Benefit in accordance with this Article, shall be entitled to elect any form of benefit payment provided under this Plan with respect to non-Reciprocal Pension Benefits, at the same time and in the same manner as all other Participants.

15.10 **Qualified Pre-Retirement Survivor Annuity** - The surviving spouse of a deceased married Participant shall be eligible for the qualified pre-retirement survivor annuity provided under this Plan if the spouse would have been eligible for the benefit if the Participant's Combined Service Credit had all been Service Credit under this Plan.

15.11 **Other Benefits** - An eligible Participant, as defined above, shall not be eligible for any other benefit provided by the Plan which is not described in Section 15.1 above, including, but not limited to, death benefits, other than the statutorily required qualified preretirement survivor annuity provided to the surviving spouses of married Participants. The amount of any such other benefit shall be determined in accordance with the provisions of Section 15.8 above, as if the Participant's contributory and non-contributory Service Credit had all been contributory and non-contributory Service Credit, respectively, under this Plan.

15.12 **Payment of Reciprocal Pension Benefits** - Payment of Reciprocal Pension Benefits under this Article shall be subject to all other limitations of this Plan applicable to all other types of benefits provided under the Plan. The Participant shall be required to comply with all of the lawful conditions regarding post-retirement employment adopted by this Plan.

15.15 **Effective Date**

- (a) This Article shall become effective on April 1, 2002.
- (b) Participants who were eligible for and had applied for, or were receiving Reciprocal Benefits under any predecessor National Reciprocal Agreement shall not, by reason of the adoption of this Article governing Reciprocal Pension Benefits, forfeit or suffer any

reduction of their Reciprocal Pension Benefits. The benefits provided pursuant to this Article shall not apply to any Participant who has retired prior to the effective date of this Article.

## **ARTICLE 16**

### **CLAIMS PROCEDURE**

**16.1 Application For Benefits** - Every application for retirement, disability or survivor benefits shall be made in writing on forms prescribed by the Trustees. Application forms may be obtained from the Fund Office for processing in accordance with procedures established by the Trustees.

**16.2 Notification to Claimant of Decision** - Within 90 days after receipt of any claim for benefits, the Administrator shall notify the claimant, in writing, of the action taken on his claim. If the claim is denied in whole or in part, the Administrator shall set forth in a written notice the specific reasons for such denial, specific references to the Pension Plan provisions on which the denial is based, a description of any additional material necessary, and an explanation of the Pension Plan's claim review procedure. The Administrator shall also notify the claimant of his right to appeal from such denial.

**16.3 Claims Review Procedure** - The procedures set forth in this Section will be the sole and exclusive remedy for an Employee, Participant or Beneficiary ("Claimant") to make a claim for benefits under the Plan. These procedures will be administered and interpreted in a manner consistent with the requirements of ERISA § 503 and the regulations thereunder. Any electronic notices provided by the Administrator will comply with the standards imposed under regulations issued by the Department of Labor. All claims determinations made by the Administrator will be made in accordance with the provisions of this Section and the Plan, and will be applied consistently to similarly situated Claimants.

(a) **Written Claim** - A Claimant, or the Claimant's duly authorized representative, may file a claim for a benefit to which the Claimant believes that he or she is entitled under the Plan. Any such claim must be filed in writing with the Administrator.

(b) **Denial of Claim** - The Administrator, in its sole and complete discretion, will make all initial determinations as to the right of any person to benefits. If the claim is denied in whole or in part, the Administrator will send the Claimant a written or electronic notice, informing the Claimant of the denial. The notice must be written in a manner calculated to be understood by the Claimant and must contain the following information: the specific reason(s) for the denial; a specific reference to pertinent Plan provisions on which the denial is based; if additional material or information is necessary for the Claimant to perfect the claim, a description of such material or information and an explanation of why such material or information is necessary; and an explanation of the Plan's claim review (i.e., appeal) procedures, the time limits applicable to such procedures, and the Claimant's right to other legal remedies. Written or electronic notice of the denial will be given within a reasonable period of time (but no later than 90 days) from the date the Administrator receives the claim, unless special circumstances require an extension of time for processing the claim. In no event may the extension exceed 90 days from the end of the initial 90-day period. If an extension is necessary, prior to the expiration of the initial 90-day period, the Administrator will send the Claimant a written notice, indicating the special circumstances requiring an extension and the date by which the Administrator expects to render a decision.

(c) **Request for Appeal** - If the Administrator denies a claim in whole or in part, the Claimant may elect to appeal the denial. If the Claimant does not appeal the denial

pursuant to the procedures set forth herein, the denial will be final, binding and unappealable. A written request for appeal must be filed by the Claimant (or the Claimant's duly authorized representative) with the Administrator within 60 days after the date on which the Claimant receives the Administrator's notice of denial. If a request for appeal is timely filed, the Claimant will be afforded a full and fair review of the claim and the denial. As part of this review, the Claimant may submit written comments, documents, records, and other information relating to the claim, and the review will take into account all such comments, documents, records, or other information submitted by the Claimant, without regard to whether such information was submitted or considered in the Administrator's initial benefit determination. The Claimant also may obtain, free of charge and upon request, records and other information relevant to the claim, without regard to whether such information was relied upon by the Administrator in making the initial benefit determination.

(d) **Review of Appeal** - The Trustees will determine, in their sole and complete discretion, whether to uphold all or a portion of the initial claim denial. If, on appeal, the Trustees determine that all or a portion of the initial denial should be upheld, the Trustees will send the Claimant a written or electronic notice informing the Claimant of the decision to uphold all or a portion of the initial denial, written in a manner calculated to be understood by the Claimant and containing the following information: the specific reason(s) for the denial; a specific reference to pertinent Plan provisions on which the denial is based; a statement that the Claimant is entitled to receive, upon request and free of charge, reasonable access to and copies of all documents and other information relevant to the claim. Final written or electronic notice will be given within a reasonable period of



time (but no later than 60 days) from the date the Administrator receives the request for appeal, unless special circumstances require an extension of time for reviewing the claim, but in no event may the extension exceed 60 days from the end of the initial 60-day period. If an extension is necessary, prior to the expiration of the initial 60-day period, the Administrator will send the Claimant a written notice, indicating the special circumstances requiring an extension and the date by which the Trustees expect to render a decision. The decision of the Trustees concerning an appeal shall be final and binding on all affected parties. No legal or equitable action for benefits under the Plan, to enforce the Claimant's rights under the Plan, or to clarify the Claimant's right to future benefits under the Plan may be brought unless and until the Claimant has exhausted the claims and appeal procedures that are described in this Article 16 and the benefits requested by the Claimant have been denied in whole or in part, or there is any other adverse benefit determination.

## **ARTICLE 17**

### **MERGER OR CONSOLIDATION OF PENSION PLAN**

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

- (a) each Participant would (if either this Plan or the other plan then terminated) receive a benefit immediately after the merger, consolidation or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation or transfer (if this Plan had then terminated);
- (b) such other plan and trust qualified under Section 401(a) and 501(a) of the Code.

## ARTICLE 18

### MISCELLANEOUS

18.1 Each Pensioner receiving retirement benefits hereunder shall submit, from time to time, on request of the Trustees, a sworn statement of his existence including a statement that he has obtained no new employment in any capacity in the industry, as defined in the Collective Bargaining Agreement and as provided for in Article 8 hereof. If such statement is not submitted within sixty (60) days after request is mailed to the last address of the Pensioner appearing on the records of the Trustees, all future retirement benefits may be terminated until such statement is submitted and approved by the Trustees.

18.2 To the end of making it impossible for Participants or Pensioners covered by this Pension Plan improvidently to imperil the provisions made for their support and welfare by directly or indirectly anticipating, pledging or disposing of their retirement payments hereunder, it is hereby expressly stipulated that no Employee, Participant or Pensioner hereunder will have any right to assign, alienate, transfer, sell, hypothecate, mortgage, encumber, pledge, commute or anticipate any retirement payments, and that such payments will not in any way be subject to any legal process, to levy, execution upon or attachment or garnishment proceedings against the same for the payments of any claim against any Employee, Participant or Pensioner nor will such payments be subject to the jurisdiction of any bankruptcy court or insolvency proceedings by operation of law or otherwise. Notwithstanding the above, the Plan may provide benefits in accordance with any Qualified Domestic Relations Order, as defined in Section 414(p) of the Code, in effect with respect to a Participant.

18.3 If benefit payments are made to any person in excess of the amount which is due and payable under the Plan for any reason (including, without limitation, mistake of fact or law, reliance on any false or fraudulent statements, information or proof submitted by a claimant, or

the continuation of payments after the death of a Employee, Participant, Pensioner or Beneficiary, entitled to them), the Trustees (or their delegate) shall have full authority, in its sole and absolute discretion to the extent permissible by applicable law, to recover the amount of any overpayment plus interest and costs. That authority shall include, but shall not be limited to:

- (a) The right to reduce benefits payable in the future to the person who received the overpayment;
- (b) The right to reduce benefits payable to any Beneficiary (including a surviving spouse) who is or becomes entitled to receive payments under the Plan derived from the rights of a Participant or Pensioner who received an overpayment; and
- (c) The right to initiate legal action against any person that received the overpayment or the estate of any such person

18.4 This Pension Plan and any decisions made by the Trustees hereunder shall be binding upon the heirs, executors and administrators of any Employee, Participant, Pensioner or any person claiming any benefit hereunder.

18.5 If a Pensioner fails to inform the Trustees in writing sent by registered mail of a change of address and the Trustees are unable to communicate with the Pensioner at the address last recorded by the Trustees and a letter sent by registered mail to such Pensioner is returned, any payments due on the Pensioner's account shall be held without interest until he makes claim therefor.

18.6 Should any provision contained in the Pension Plan be held unlawful, such provision shall be of no force and effect, and the Plan shall be treated as if such portion had not been contained herein.

18.7 Payment of benefits hereunder, unless the Participant elects otherwise, will commence not later than the sixtieth (60th) day after the close of the Plan Year in which the Participant is eligible for any pension benefit for which he has applied.

18.8 An application must be filed with the Trustees in order to collect any benefits. Retroactive payments will not be made to any Participant for a period which occurred a year before any application for benefits was filed.

18.9 It is expressly understood that in no event shall any of the corpus or assets of the Pension Fund revert to the Employers or be subject to any claims of any kind or nature of the Employers, except for the return of an erroneous contribution within the time limits prescribed by law.

18.10 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 and fulfill the funding requirements of ERISA. Notwithstanding anything in the Plan to the contrary, the minimum funding requirements for the Plan shall be determined under the applicable provisions of Sections 412 and 431 of the Code as in effect for the Plan Years beginning after December 31, 2007 (or such later applicable effective date as permitted for the Plan by any subsequent guidance). Except for liabilities which may result from provisions of the Code or ERISA, nothing in this Plan shall be construed to impose any obligation to contribute beyond the obligation of the Employer to make contributions as stipulated in its Collective Bargaining Agreement with the Union.

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

18.11.1 If an Employer is sold, merged or otherwise undergoes a change of company identity, the successor company shall participate as to the Employees theretofore covered in the Pension Plan just as if it were the original company, provided it remains an Employer as defined in Section 1.13.

18.11.2 The participation of any such new Employer shall be subject to such terms and conditions as the Trustees may lawfully prescribe including, but not limited to, the imposition of waiting periods in connection with the commencement of benefits, a requirement for retroactive contributions, or the application of modified benefit conditions and amount. In adopting applicable terms or conditions, the Trustees shall take into account such requirements as they, in their sole discretion, may deem necessary to preserve the actuarial soundness of this Pension Plan and to preserve an equitable relationship with the contributions required from other Employers and the benefits provided to their Employees.

The provisions of this Plan shall apply only to a covered Employee who terminates employment on and after April 1, 2008. The eligibility or benefit rights, if any, of a former covered Employee and the eligibility or benefits rights, if any, of a former covered Employee' and the eligibility or benefits rights, if any, which an Employee covered by the Plan on March 31, 2008 has earned to that date shall be determined in accordance with the prior provisions of the Plan. If the Participant was eligible for a retirement benefit on March 31, 2008, eligibility is retained. Also, his retirement benefit will not be less than the amount that would have been payable April 1, 2008, using Plan provisions in effect March 31, 2008.

## **ARTICLE 19**

### **DIRECT ROLLOVERS**

19.1 This Article applies to distributions made on or after March 31, 2002. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a

Distributee's election under this Article, a Distributee may elect, at the time and in the manner presented 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".

19.2 For purposes of this Article 19, the following terms shall have the meanings indicated:

(a) **Eligible Rollover Distribution** - An Eligible Rollover Distribution is any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a) (9) of the Code; the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and any amount that is distributed on account of hardship.

Notwithstanding the foregoing, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includable in gross income. However, such portion consisting of after-tax contributions may be transferred only to an individual retirement account or annuity described in Code Section 408(a) or (b), or to a qualified defined contribution plan described in Code Section 401(a) or 403(a) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includable in gross income and the portion of such distribution which is not so includable..

(b) **Eligible Retirement Plan** - 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, an annuity contract described in Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code which is maintained by a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan, that accepts the Distributee's Eligible Rollover Distribution,. The definition of an eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code. Effective with respect to distributions made after December 31, 2007, an "eligible retirement plan" shall also mean a Roth IRA described in Code Section 408A. Effective with respect to distributions made after December 31, 2009, in the case of an eligible rollover distribution to a nonspousal distributee (a "Nonspouse Rollover"), an eligible retirement plan is an individual retirement account described in Section 408(a) of the Code or an individual retirement annuity described in Section 408(b) of the Code that was established for the purpose of receiving the distribution on behalf of such nonspousal distributee. In order for such eligible retirement plan to accept a Nonspouse Rollover on behalf of a nonspousal distributee, (1) a direct trustee-to-trustee transfer must be made to such eligible retirement plan and shall be treated as an eligible rollover distribution for purposes of the Code, (2) the individual retirement plan shall be treated as an inherited individual retirement account or individual retirement annuity (within the meaning of Section 408(d)(3)(C) of the Code)

for purposes of the Code, and (3) Section 401(a)(9)(B) of the Code (other than clause (iv) thereof) shall apply to such plan.

(c) **Distributee** - A Distributee includes an Employee or former Employee who is a Participant in the Plan. In addition, such 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 Code, are Distributees with regard to the interest of the spouse or former spouse. Effective with respect to distributions made after December 31, 2009, a distributee shall include an Employee's designated beneficiary who is not the Employee's spouse or former spouse ("nonspousal distributee").

(d) **Direct Rollover** - A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

## ARTICLE 20

### MAXIMUM BENEFITS

#### 20.1 Maximum Limits In General -

(a) Notwithstanding any other provision of this Plan, no accrual of benefits under the Plan and no benefits distributed under the Plan shall exceed the limitations prescribed in Section 415 of the Code and the Treasury Regulations thereunder, which are incorporated herein by reference.

(b) At all times, the Plan's Limitation Year is the Plan Year.

(c) The cost-of-living adjustments in the dollar limits provided for in Section 415(d) of the Code are hereby incorporated by reference and shall be automatic, including those for Participants who have incurred a "severance from employment," as defined in Treasury



Regulation § 1.415(a)-(1)(f)(5), but shall not apply to Participants whose benefits under the Plan are in pay status.

(d) For purposes of applying the limitations of Section 415(b), all defined benefit plans (whether or not terminated) of an Employer shall be treated as one defined benefit plan; provided, however, that this Plan shall not be aggregated with other multiemployer plans. If an Employer sponsors a plan which is not a multiemployer plan, such plan shall be aggregated with this Plan (except for purposes of applying the limits of Code Section 415(b)(1)(B)) only to the extent that benefits provided under this Plan are provided by the Employer with respect to an Employee who participates in both plans. For purposes of applying the limitations hereunder, only contributions and benefits of the Employer employing the Employee shall be taken into account.

(e) Notwithstanding the foregoing, any higher limits, or any lower limits, provided for in Article 20 of the Plan as in effect prior to April 1, 2008, are hereby grandfathered and preserved.

20.2 Notwithstanding any provision of the Plan to the contrary, effective for Plan Years beginning on or after December 31, 2007, all benefits, benefit accruals, and distributions of benefits under the Plan shall be subject to the rules contained in Section 432 of the Code, to the extent those rules apply, and the actions of the Trustees to comply therewith.

## **ARTICLE 21**

### **WITHDRAWAL LIABILITY**

21.1 If an Employer withdraws from the Plan after July 1, 1981 in a complete withdrawal or partial withdrawal, then the Employer is liable to the Plan in the amount determined under part I of the Subtitle (e) of the Multiemployer Pension Plan Amendments Act of 1980 to be the withdrawal liability.

21.2 The amount of the unfunded vested benefits allocable to an Employer is the product of:

(a) The Plan's unfunded vested benefits as of the end of the Plan Year preceding the Plan Year in which the Employer withdraws, less the value as of the end of such year of all outstanding claims for withdrawal liability which can reasonably be expected to be collected from Employers withdrawing before such year; multiplied by

(i) a fraction

(A) the numerator of which is the total amount required to be contributed by the Employer under the Plan for the last five Plan Years ending before the withdrawal; and

(B) the denominator of which is the total amount contributed under the Plan by all Employers for the last five Plan Years ending before the withdrawal, increased by the Employer contributions owed with respect to earlier periods which were collected in those Plan Years, and decreased by any amount contributed to the Plan during those Plan Years by Employers who withdrew from the Plan during the years.

21.3 The amount of the unfunded vested benefits allocable under Paragraph 2 above to an Employer who withdraws from the Plan shall be reduced by the smaller of:

(a)  $\frac{3}{4}$ 's of one percent of the Plan's unfunded vested obligations determined as of the end of the Plan Year ending before the date of withdrawal, or

(b) \$50,000 reduced by an amount, if any, by which the unfunded vested benefits allocable to the Employer, determined before application of this reduction exceeds \$100,000.

## ARTICLE 22

### ADDITIONAL BENEFITS FOR EMPLOYEES OF YELLOW FREIGHT

#### 22.1 Definitions as used in this Article 22

22.1.1 **“Employer”** means Yellow Freight Company, Inc. The term Employer shall also include the term “Participating Employer.”

22.1.2 **“Employee”** means persons employed by the Employer in a classification for which contributions are required to be made to this Plan pursuant to a Collective Bargaining Agreement with the Union, who are active participants in the Local 805 Pension and Retirement Plan as of April 1, 2000, and who are listed by name in the attached Schedule A.

22.1.3 **“Day of Service”** means a day during which the Employer makes a required contribution to the Pension Fund on behalf of an Employee. A Day of Service also means a day of employment for which Employer contributions are required to be made to the Pension Fund, including each day for which the Employee is paid, or entitled to payment, by the Employer on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, jury duty, military duty (in the U.S. armed forces) or leave of absence. Notwithstanding the preceding sentence, a day for which an Employee is directly or indirectly paid, or entitled to payment, on account of a period during which no duties are performed is not to be credited to the Employee if such payment is made or due under a plan maintained solely for the purpose of complying with applicable workers’ compensation, or unemployment compensation or disability insurance laws; and

For purposes of this subsection, a payment shall be deemed to be made by, or due from the Employer regardless of whether such payment is made by or due from the Employer directly, or indirectly, through, among others a trust fund, or insurer, to which the Employer contributes or pays premiums and regardless of whether contributions made or due to the trust fund, insurer or other entity are for the benefit of particular Employees or are on behalf of a group of Employees in the aggregate.

22.1.4     **“Year of Service”** means a Year after January 1, 1996, during which the Employer makes a required contribution to the Pension Fund on behalf of an Employee for at least 180 Days of Service. A Year of Service shall be prorated for Employees who work for less than 180 Days of Service.

22.1.5     **“Weekly Compensation”** means an amount equal to the Employee’s average weekly compensation during his last three years of Covered Employment prior to April 1, 2000. In determining a Participant’s Weekly Wage Rate, all extraordinary compensation shall be excluded. Compensation shall not include Employer Contributions made pursuant to a salary reduction agreement which are not includible in the gross income of the participant under Sections 125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), 403(b) or 457 of the Code.

22.1.6     **“Covered Employment”** means employment after April 1, 2000 by the Employer for which the Employer is required by a Collective Bargaining Agreement to contribute to the Pension Fund.

## 22.2     **Eligible Employees**

22.2.1     Each Employee who was an active participant in the Local 805 Pension and Retirement Plan as of April 1, 2000 and who is listed by name on the attached Schedule A.

## 22.3     **Accounts and Contributions**

22.3.1 A separate account will be maintained for each Employee which will be credited with an opening account balance in an amount equal to three times the Employee's Weekly Compensation multiplied by the Employee's Years of Service.

22.3.2 Effective April 1, 2000 and thereafter, the Employer will contribute for each Employee \$250 for each month in which the Employee completes five (5) Days of Service.

22.3.3 Effective April 1, 2000 and thereafter, each Employee's account will be credited with the Employer contributions made on the Employee's behalf and the earnings of the Pension Fund allocated to the Employee's account less the expenses and any investment losses of the Pension Fund allocated to the Employee's account.

22.3.4 **Maximum Annual Addition** - The maximum Annual Addition (as defined in paragraph (c) below) made to a Participant's various accounts maintained under the Plan for any Limitation Year will not exceed the lesser of the Dollar Limitation set forth in paragraph (a) below or the Compensation Limitation set forth in paragraph (b) below, as follows:

(a) **Dollar Limitation** - For Limitation Years beginning after December 31, 2013, the Dollar Limitation is \$52,000 as adjusted in accordance with Code § 415(d).

(b) **Compensation Limitation** - The Compensation Limitation is an amount equal to 100% of the Participant's Code § 415 Compensation for the Limitation Year. However, this limitation will not apply to any contribution made for medical benefits within the meaning of Code § 401(h) or Code § 419A(f)(2) after separation from service which is otherwise treated as an Annual Addition under Code § 415(1) (1) or Code § 419A(d)(2).

(c) **Annual Additions** - The term "Annual Additions" means the sum of the following amounts credited to a Participant's Account for the Limitation Year:

(i) Employer contributions; (ii) Employee contributions; (iii) Forfeitures; (iv) amounts allocated, after March 31 1984, to an individual medical account, as defined in Code § 415 (1)(2), which is part of a pension or annuity plan maintained by the Employer; and (v) amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after such date, which are attributable to post-retirement medical benefits, allocated to the separate account of a key employee, as defined in Code § 419A(d)(3), under a welfare fund, as defined in Code § 419(e), maintained by the Employer. Notwithstanding the foregoing, a Participant's Annual Additions do not include his or her rollovers, loan repayments, repayments of prior Plan distributions or prior distributions of mandatory contributions, direct transfers of contributions from another plan to this Plan, deductible contributions to a simplified employee pension plan, or voluntary deductible contributions.

#### **22.4 Distributions**

22.4.1 The normal form of distribution under the Plan is a life annuity equal to the value of the Employee's vested account balance. However, if, on the date an Employee's distribution payments commence, such Employee and his spouse have been married to each other for at least one year, such distribution shall be paid in the form of a Qualified Joint and Survivor Annuity, unless the Employee elects otherwise as provided in Article 4.2.

22.4.2 The optional form of distribution for benefits under this Article 22 is payment in a lump sum of the full amount of the Employee's account balance.

#### **22.5 Vesting**

22.5.1 Each Employee, listed by name on the attached Schedule A, shall have a fully vested and non-forfeitable interest in the Employee's account balance.

## 22.6 **Distribution Requirements**

22.6.1 The amount to be distributed to each Employee is the account balance as of the last valuation date in the calendar year immediately preceding the distribution date, increased by the amount of any contributions allocated to the account balance subsequent to that date and by the amount of the earnings of the Pension Fund allocated to the account balance in the valuation calendar year after the valuation date; and decreased by distributions from the account balance and the amount of the expenses of the Pension Fund allocated to the account balance in the valuation calendar year after the valuation date.

22.6.2 Distributions will be made no later than the 60<sup>th</sup> day after the latest of the close of the Plan Year in which:

- (a) the Employee retires from Covered Employment;
- (b) occurs the 5<sup>th</sup> anniversary of the year in which the Employee commenced participation in the Plan; or,
- (c) the Employee terminates service with the Employer.

Notwithstanding the foregoing, the failure of an Employee and spouse to consent to a distribution while a benefit is immediately distributable, within the meaning of this section, shall be deemed to be an election to defer commencement of payment of any benefit sufficient to satisfy this section.

## 22.7 **Employment after Distribution**

22.7.1 An Employee who has received a distribution of benefits provided by this Article 22 and who becomes re-employed with the Employer shall either:

- (a) return to the Plan the full amount of the distribution received and resume participation under this Article 22 of the Plan in the first full month following receipt by the Plan of the returned distribution; or
- (b) Resume participation under this Article 22 of the Plan with an account balance of \$0.00.



**SCHEDULE A**  
**EMPLOYEES COVERED BY ARTICLE 22**

S. Acosta

D.A. Brito

J.J. Cahill

G.S. Coombs

F.J. Darcy

W.B. Fowler

B. George

L. Gonzalez

A. Jaime

R. Jimenez

W.S. Kelly

P. Lonzello

W.W. McKeever

L.E. McPartland

W. Perez

E. Rivera

G.E. Stewart

J.M. Vislosky

R.H. Williams

## **APPENDIX A**

### **LOCAL 805 PENSION AND RETIREMENT PLAN**

#### **REHABILITATION PLAN**

Effective for the Plan Year Commencing April 1, 2014

#### **Introduction**

The Pension Protection Act of 2006 (“PPA”) requires the Board of Trustees (the “Trustees”) of a multiemployer pension plan that has been certified by its actuary as being in critical status (also known as the “red zone”) to develop a Rehabilitation Plan that is intended to enable the plan to emerge from critical status by the end of the Rehabilitation Period. On June 27, 2008, the Local 805 Pension and Retirement Plan (the “Plan”) was first certified by its actuary to be in critical status for the Plan Year beginning on April 1, 2008 and ending on March 31, 2009. The Plan was certified to be in critical status because the Plan was projected to have an accumulated funding deficiency on March 31, 2011. Effective April 1, 2013, the Plan was certified by the Plan actuary as continuing to be in critical status.

A Rehabilitation Plan sets forth the actions to be taken by the bargaining parties and the Trustees of the Plan, based on reasonably anticipated experience and reasonable actuarial assumptions, to enable the Plan to cease to be in critical status at the end of the Plan’s Rehabilitation Period. The requirements referenced above are outlined in Section 305(e)(3) of the Employee Retirement Income Security Act of 1974 (“ERISA”) and Section 432(e)(3) of the Internal Revenue Code (“Code”).

#### **Rehabilitation Period and Rehabilitation Plan Requirements**

The Rehabilitation Period is the 13-year period beginning on April 1, 2011 and ending on March 31, 2024. A Rehabilitation Plan is generally composed of one or more schedules that reflect changes in employer contributions, adjustable benefits, future benefit accruals, and/or other provisions which, based on reasonably anticipated experience and reasonable actuarial assumptions, are designed and intended to enable the plan to emerge from critical status by the end of the Rehabilitation Period.

However, there is an exception to this requirement if the pension plan’s Trustees determine that, based on reasonable actuarial assumptions and upon exhaustion of all reasonable measures, the plan cannot reasonably be expected to emerge from critical status by the end of the Rehabilitation Period. In this case, a Rehabilitation Plan is a plan which consists of reasonable measures to enable the plan to emerge from critical status at a later time or to forestall possible insolvency.

After research, consultation with Plan professionals and an extensive review of a wide range of factors described below, the Trustees have concluded that, based on reasonable actuarial assumptions and upon exhaustion of all reasonable measures, the Plan cannot reasonably be

expected to emerge from critical status by the end of the 13-year Rehabilitation Period. As such, as described below, the Trustees have developed this Rehabilitation Plan consisting of reasonable measures to enable the Plan to forestall insolvency. The Trustees' determination is based on various considerations, including:

- The constraints imposed on the contributing employers to pass price increases on to their customers to cover the increased contributions required by a Rehabilitation Plan that would allow the Plan to emerge from critical status after a 13-year period. Substantially all of the Plan's contributing employers operate in the cigarette distribution industry. The tobacco industry is regulated and taxed at both the federal and state levels. The regulatory burdens imposed on employers in the industry, together with the tax imposition on cigarette sales, add immeasurably to the contributing employers' costs of doing business in this industry. For example, cigarettes are one of the most heavily taxed consumer products in the United States. The current state excise tax on cigarettes in New York State is \$4.35 per pack. The cigarette tax was increased from \$2.75 per pack to \$4.35 per pack in June 2010 (effective July 1, 2010) and is currently the highest state tax in the nation. New York State law gives New York City the authority to impose an additional tax on cigarettes sold within the city. Currently, New York City's cigarette tax rate is \$1.50 per pack, which means that the combined state and local taxes on a pack of cigarettes sold in New York City total \$5.85 per pack. In addition to state and local taxes, there is a \$1.01 federal tax on each pack of cigarettes. The federal tax was increased by \$0.62 per pack in 2009 to fund an expansion of the State Children's Health Insurance Program. These significant taxes imposed on cigarette sales limit the ability of contributing employers to pass additional increases on to customers. The economic issues are being exacerbated by the competition for cigarette sales that are being presented by on-line sales of cigarettes as well as sales of cigarettes on American Indian reservations where lower cost cigarettes can easily be obtained.
- As of April 1, 2013 it was projected that an annual contribution rate increase of 34.85% will be required in order for the Plan to emerge from critical status by the end of the 13-year Rehabilitation Period. The Trustees believe that the crushing burden of these contribution increases would inevitably lead to the complete and/or partial withdrawal from the Plan of a significant number of contributing employers.
- Significant investment losses were suffered by the Plan during 2008. For the 2008 calendar year, the Plan's total investment losses were -22%. The market value of Plan assets on March 31, 2008 was \$102,968,405. The market value of Plan assets as of March 31, 2009 was \$70,628,713. This constitutes an almost 31.4% decrease in Plan assets during this period. The market value of Plan assets as of February 28, 2014 stood at \$66.5 million. Thus, in nearly 6 years the Plan's assets have not recovered to their level of March 31, 2008. Indeed, assets total approximately \$36.5 million lower than the period 6 years earlier.
- There has been a precipitous decline in the number of Plan members and contributing employers. In 2008, there were 647 active participants. There were only 570 active participants in 2013, which constitutes an almost 11.9% reduction in Plan participation

since 2008. Additionally, since 2009, at least two employers withdrew from the Plan, leaving only eleven current contributing employers.

- Increases in underfunding. The funding deficiency in the Plan's Funding Standard Account increased from \$12,521,135 as of March 31, 2012 to \$18,761,256 as of March 31, 2013. The Plan's funded percentage declined from 52.3% as of March 31, 2012 to 49.1% as of March 31, 2013.
- New members have not been joining the union. The number of union members decreased from 1,201 in 2007 to 1,034 in 2013, a reduction of 167 or almost 14% during this period.

In attempting to develop a feasible Rehabilitation Plan, the Trustees reviewed various options, including benefit reductions and employer contribution increases. Even if some of the contributing employers could financially withstand the contribution increases required to emerge from critical status within a 13-year Rehabilitation Period, the Trustees believe that these contributing employers would demand that the Trustees significantly reduce the current plan of benefits. The Trustees believe that a Rehabilitation Plan with benefit reductions and employer contribution increases sufficient to enable the Plan to emerge from critical status by the end of a 13-year Rehabilitation Period could be expected to result in decertification of the union by bargaining units, withdrawals by a significant number of the Plan's contributing employers and/or increases in employer bankruptcy filings. These outcomes would have a severe detrimental, long-term impact on the Plan.

The Trustees have developed the Rehabilitation Plan, described herein, as the best long-term option for the Plan. The Trustees have formulated three schedules to be provided to the bargaining parties: (1) The "Default Schedule", which is required by the PPA; and (2) The "Alternative Schedule I" (which applies only to Yellow Freight participants) and the Alternative Schedule II. Each of the schedules employs reasonable measures to enable the Plan to forestall insolvency.

Except as provided in Section 432(e)(8)(A)(ii) of the Code, the benefits of any participant whose benefit commencement date is before July 28, 2008 shall not be reduced under this Rehabilitation Plan, except that an increase in benefits that was adopted or took effect within 60 months of April 1, 2008 can be reduced or eliminated.

### **Rehabilitation Plan Objectives**

This Rehabilitation Plan consists of reasonable measures, which, based on reasonable actuarial assumptions, can be expected to forestall insolvency and enable the Plan to emerge from critical status.

In the absence of any benefit changes in the Plan or increases in employer contribution rates, the Plan would not be expected to emerge from critical status and insolvency is projected. Under the Rehabilitation Plan adopted by the Trustees, the Plan is projected to forestall insolvency.

### **Alternatives Considered By the Trustees**

The Trustees considered various alternatives that would enable the Plan to emerge from critical status by the end of the 13-year Rehabilitation Period. The alternatives that were considered by the Trustees were determined to be unreasonable measures. The default, preferred and alternative schedules considered by the Trustees that would enable the Plan to emerge from critical status by the end of a 13-year Rehabilitation Period are as follows:

<b>Schedule</b>	<b>Benefit Reductions</b>	<b>Contribution Rate Increases</b>
Default	Immediate reduction of future benefit accruals and adjustable benefits to the maximum extent permitted by law.	Annual compounded contribution rates increases to be determined by the Trustees after consultation with the Plan's actuary.
Preferred	Immediate reduction of future benefit accruals and adjustable benefits.	Annual compounded contribution rate increases to be determined by the Trustees after consultation with the Plan's actuary.
Alternative	No reduction and/or elimination of adjustable benefits.	Employers subject to Alternative Schedule contribute to the Plan at the rate of \$556 per month for each participant.

After considering the schedules set forth above, the Trustees concluded that requiring the bargaining parties to adopt the default schedule, the preferred schedule or the alternative schedule (which applies only to Yellow Freight participants) described above would be unreasonable and would involve considerable risk to the long-term health of the Plan. Therefore, the Trustees decided to adopt this Rehabilitation Plan, which, based on reasonable actuarial assumptions, can be expected to forestall insolvency, rather than enable the Plan to emerge from critical status.

Additionally, contributing employers are also required to contribute to the Local 805 Welfare Plan. Those contribution obligations, coupled with contribution increases to the Local 805 Pension and Retirement Plan, have placed a significant financial burden on employers in the collective bargaining process.

## **I. DEFAULT SCHEDULE**

The Default Schedule assumes that there are no increases in contributions under the Plan other than the increases necessary to emerge from critical status after future benefit accruals and other benefits (other than benefits the reduction or elimination of which are not permitted under Section 411(d)(6) of the Code) have been reduced to the maximum extent permitted by law.

The changes described in the Default Schedule will be implemented upon the *earlier of*:

- (i) the effective date of a collective bargaining agreement that adopts a contribution schedule that contains terms consistent with this Default Schedule, or

- (ii) 180 days after the expiration date of a collective bargaining agreement providing for contributions under the Plan that was in effect on April 1, 2008, *if* by such date the bargaining parties have failed to adopt a contribution schedule that contains terms consistent with this Default Schedule or an Alternative Schedule.

This date is referred to below as the “Default Schedule Implementation Date.”

Once the Default Schedule is implemented with respect to a particular employer (and its employees), the Trustees shall only accept a subsequent collective bargaining agreement covering such bargaining unit employees that contains terms consistent with the Alternative Schedule then in effect. The benefits of participants who are subject to the Default Schedule may be restored to the extent provided in an Alternative Schedule, if they later become subject to such Schedule.

Employers to which the Default Schedule does not apply remain subject to the surcharges imposed under the PPA until such time as they adopt provisions in their collective bargaining agreements that contain terms consistent with this Default Schedule, or are party to a collective bargaining agreement that contains provisions consistent with an Alternative Schedule.

Reduction in Rate of Future Benefit Accruals: The future benefit accruals of covered employees whose employer is subject to the Default Schedule will be reduced for any Service Credit earned on or after the Default Schedule Implementation Date. For Service Credit earned prior to the Default Schedule Implementation Date, benefits will be determined by using the accrual rate in effect under the Plan at the time when the Service Credit was earned. For Service Credit that is earned on or after the Default Schedule Implementation Date, the employee/participant will accrue a monthly benefit (payable as a single life annuity at Normal Retirement Age, as such term is defined in the Pension Plan) equal to one (1) percent of the contributions required to be made with respect to such employee/participant under the Collective Bargaining Agreements in effect as of April 1, 2008. For example, for a contribution rate of \$100 per month, the accrual rate under this Default Schedule would be \$12 per month ( $\$100 \times 1\% \times 12$ ) for each year of service.

Reduction and/or Elimination of Adjustable Benefits: The Default Schedule requires the reduction and/or elimination of “adjustable benefits” (as such term is defined in Section 432(e)(8) of the Code) under the Plan. The normal retirement benefit payable at Normal Retirement Age *is not* an adjustable benefit and *will not* be reduced or eliminated.

For covered employees whose employer is subject to the Default Schedule, all adjustable benefits will be reduced to the maximum extent provided under Section 432(e)(8) of the Code. These reductions will include:

- (i) Elimination of the “25-Years-and-Out” pension benefit.
- (ii) Elimination of the “20-Years-and-Out” pension benefit.
- (iii) Elimination of the Disability Retirement Pension benefit.

The reductions and/or eliminations of adjustable benefits described in this Default Benefit Schedule were effective on the date that the Plan provided notice to participants that it was certified to be in critical status (*i.e.*, July 28, 2008).

Contribution Increase: The Default Schedule requires an increase in employer contributions of 3% per year, on a compounded basis. The effective date for this contribution increase is the Default Schedule Implementation Date. This means that for the first year that an employer is subject to the Default Schedule (*i.e.*, the first year beginning on the Default Schedule Implementation Date), the employer will be required to increase its contributions from the contribution rate then in effect under the existing or expired contract, by 3%. In each successive year during which an employer is subject to the Default Schedule, such employer's contribution rate will increase by 3% over the prior year's contribution rate.

## **II. A. ALTERNATIVE SCHEDULE I**

The changes described in this Alternative Schedule I will take effect upon the effective date of a collective bargaining agreement that contains terms that are consistent with this Alternative Schedule I.

Employers to whom the Alternative Schedule I does not apply remain subject to the surcharges imposed under the PPA until such time as they are party to a collective bargaining agreement that contains terms consistent with this Alternative Schedule I or they become subject to the Default Schedule or Alternative Schedule II.

No Change in Rate of Future Benefit Accruals: The Alternative Schedule I does not require a change in the rate of future benefit accruals under the terms of the Plan.

No Reduction and/or Elimination of Adjustable Benefits: The Alternative Schedule I does not require a reduction or elimination of adjustable benefits under the Plan.

Contribution Rate: The Alternative Schedule I requires that employers subject to the Alternative Schedule contribute to the Plan at the current contribution rate per month for each participant.

## **B. ALTERNATIVE SCHEDULE II**

The changes described in this Alternative Schedule II will take effect upon the effective date of a collective bargaining agreement that contains terms that are consistent with this Alternative Schedule II.

Employers to whom the Alternative Schedule II does not apply remain subject to the surcharges imposed under the PPA until such time as they are party to a collective bargaining agreement that contains terms consistent with such Alternative Schedule II or they become subject to the Default Schedule or Alternative Schedule I.

Reduction in Rate of Future Benefit Accruals: The future benefit accruals of covered employees whose employer is subject to the Alternative Schedule II will be reduced for any Service Credit earned on or after the effective date of Alternative Schedule II. For Service Credit earned prior to the effective date of Alternative Schedule II, benefits will be determined by using the accrual rate in effect under the Plan at the time when the Service Credit was earned.

For Service Credit that is earned on or after the effective date of Alternative Schedule II, the employee/participant will accrue a monthly benefit (payable as a single life annuity at Normal

Retirement Age, as such term is defined in the Plan) equal to the following amounts: \$35 for the Plan Year beginning April 1, 2014, \$35.65 for the Plan Year beginning April 1, 2015, \$36.40 for the Plan Year beginning April 1, 2016, \$37.10 for the Plan Year beginning April 1, 2017, and \$38.25 for the Plan Year beginning on April 1, 2018, with 3% increases thereafter. Notwithstanding the preceding sentence, in no event shall the annual accrual rate determined under this updated Rehabilitation Plan, effective April 1, 2014, result in an annual accrual rate for any employer that is more than \$50 or less than the annual accrual rate that was in effect for such employer as of March 31, 2014.

Reduction and/or Elimination of Adjustable Benefits: Alternative Schedule II requires the reduction and/or elimination of “adjustable benefits” (as such term is defined in Section 432(e)(8) of the Code) under the Plan. The normal retirement benefit payable at Normal Retirement Age *is not* an adjustable benefit and *will not* be reduced or eliminated.

For covered employees whose employer is subject to Alternative Schedule II, all adjustable benefits will be reduced to the maximum extent provided under Section 432(e)(8) of the Code, except as follows:

- (i) A participant who has 20 or more years of Credited Service under the Plan as of April 1, 2009 shall continue to be eligible to receive the (A) the “20-Years-and-Out” pension benefit under the rules of the Plan as in effect on March 31, 2009, and (B) the “25-Years-and-Out” pension benefit upon the attainment of 25 years of Service Credit under the rules of the Plan as in effect on March 31, 2009.
- (ii) The Disability Retirement Pension benefit will continue to be provided under the terms of the Plan.

Accordingly, for individuals who do not have 20 or more years of Credited Service under the Plan as of April 1, 2009, both the “20-Years-and-Out” pension benefit and the “25-Years-and-Out” pension benefit will be eliminated.

The reductions and/or eliminations of adjustable benefits described in this Alternative II Benefit Schedule were effective on the date that the Plan provided notice to participants that it was certified to be in critical status (*i.e.*, July 28, 2008).

Contribution Increase: Alternative Schedule II requires employer contributions of \$291.61 per participant for the Plan Year beginning April 1, 2014, \$297.44 per participant per month for the Plan Year beginning April 1, 2015, \$303.39 per participant per month for the Plan Year beginning April 1, 2016, and \$309.46 per participant per month for the Plan Year beginning April 1, 2017; and increases of 3% per year, on a compounded basis, in employer contributions for Plan Years beginning on or after April 1, 2018. Notwithstanding the preceding sentence, in no event shall the contribution rate per participant determined under this updated Rehabilitation Plan, effective April 1, 2014, result in a contribution rate per participant for any employer that is less than the contribution rate per participant that was in effect for such employer as of March 31, 2014.



### **Non-Collectively Bargained Participants under the Rehabilitation Plan**

In the case of an employer that contributes to the Plan on behalf of collectively bargained *and* non-collectively bargained participants, the contributions for, and the benefits provided to, the non-collectively bargained employees, including surcharges on those contributions, shall be determined as if those non-collectively participants were covered under such employer's first to expire collective bargaining agreement that was in effect when the Plan entered critical status.

In the case of an employer that contributes to the Plan on behalf of non-collectively bargained employees *only*, the rules contained in this Rehabilitation Plan should be applied as if the employer were the bargaining party, and its participation agreement (or other operative agreement) were a collective bargaining agreement with a term ending on the April 1<sup>st</sup> following the date when the employer is provided with the schedules contained herein.

### **Annual Standards and Updating of Rehabilitation Plan**

Pursuant to the PPA, the Plan has adopted the following procedures:

- (i) The Plan's actuary shall conduct an annual review of the Rehabilitation Plan and the schedules thereto.
- (ii) The Plan's actuary shall report to the Trustees the results of its annual review.
- (iii) In consultation with the Plan's actuary, the Trustees shall have the authority and discretion to update the Rehabilitation Plan.

Notwithstanding the foregoing, schedules of contribution rates provided by the Trustees and relied upon by bargaining parties in negotiating a collective bargaining agreement shall remain in effect for the duration of that collective bargaining agreement. Collective bargaining agreements that are entered, renewed or extended after the date of any changes to the Rehabilitation Plan will be subject to the Rehabilitation Plan then in effect at the time of such entry, renewal or extension.

### **Employer Surcharge**

Pursuant to the PPA, a surcharge is imposed on all contributing employers until they adopt a contribution schedule that contains terms consistent with the Default Schedule or an Alternative Schedule. The amount of the surcharge for the 2009 Plan Year (*i.e.*, the Plan's "initial critical year") is 5% of the contribution otherwise required under the applicable CBA (or other agreement pursuant to which the employer contributes). For subsequent years in which the plan is in critical status, the surcharge is 10% of the contribution otherwise required. The surcharges go into effect 30 days after the employer has been notified by the plan sponsor that the plan is in critical status and the surcharge is in effect. Surcharges are due and payable on the same schedule as the contributions on which the surcharges are based.

Employers that have not adopted the Default Schedule shall remain subject to the surcharges imposed under the PPA until such time as they adopt provisions in their CBAs that contain terms consistent with the Default Schedule. Employers on whom the Default Schedule is *imposed*

shall remain subject to the surcharges imposed under the PPA until such time as they adopt provisions in their CBAs that contain terms consistent with the Default Schedule.

### **Delinquent Contributions/Withdrawal from the Plan**

A contributing employer's failure to contribute to the Plan at the rates required by an applicable Schedule will result in the deficient amounts being treated as delinquent contributions to the Plan and the contributing employer will be subject to excise taxes (equal to 100% of the unpaid contributions) as provided under the PPA. Additionally, this may result in a determination by the Trustees that the employer has failed to maintain (and thus has withdrawn) from the Plan, and such employer will then be subject to withdrawal liability under the terms of the Plan and Title IV of ERISA.

### **Notices Required Before Benefit Reductions**

Pursuant to Section 432(e)(8)(C) of the Code, no reduction will be made to adjustable benefits unless and until written notice of such reduction has been given at least 30 days before the general effective date of such reduction to participants and beneficiaries, contributing employers and Local Union 805, affiliated with the International Brotherhood of Teamsters. Notwithstanding anything herein to the contrary, the benefits of any participant who submits a complete application for benefits prior to the expiration of the 30-day period referenced in the preceding sentence shall not be reduced under this Rehabilitation Plan.

### **Application of Rehabilitation Plan to Future Agreements**

The rules contained herein shall be applied upon the expiration (or earlier amendment or renegotiation thereof) of the first collective bargaining agreement that conforms to the Rehabilitation Plan (the "Initial Compliant CBA") and each subsequent compliant collective bargaining agreement (a "Subsequent Compliant CBA") as if the Initial Compliant CBA or Subsequent Compliant CBA, as the case may be, were "in effect" at the time the Plan entered critical status, provided that the contribution surcharges imposed under the PPA shall apply prospectively only and shall be based upon the contribution rate in the expired Initial Compliant CBA or Subsequent Compliant CBA, as the case may be.

### **Rehabilitation Plan Standards**

The PPA requires that a Plan set forth annual standards for meeting the requirements of the Rehabilitation Plan. The annual standard for satisfying the requirements of the Rehabilitation Plan will be a determination that, based on the updated actuarial projections each year using reasonable actuarial assumptions, the Rehabilitation Plan (as updated and amended from time to time) will enable the Plan to forestall insolvency.

### **Construction and Modifications**

The Fund's Board of Trustees reserves the right to construe, interpret and/or apply the terms and provisions of this Rehabilitation Plan in a manner that is consistent with applicable law. Any and all constructions, interpretations and/or applications of the Rehabilitation Plan by the

Trustees shall be final and binding on all parties affected thereby. Subject to applicable law and notwithstanding anything herein to the contrary, the Trustees further reserve the right to make any modifications to this Rehabilitation Plan that they, in their absolute discretion, determine are necessary and/or appropriate.

**IN WITNESS WHEREOF**, the Plan is hereby executed as of this \_\_\_\_ day of \_\_\_\_\_, 2014.

Employer Trustees

Union Trustees

\_\_\_\_\_  
Leonard Schwartz

\_\_\_\_\_  
Alexandra Pope

\_\_\_\_\_  
Arthur Katz

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William O'Bayley

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Barry Feldman

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Andrew Basile

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John Lagana

IN WITNESS WHEREOF, the Plan is hereby executed as of this 20 day of DEC, 2014.

Employer Trustees

Union Trustees

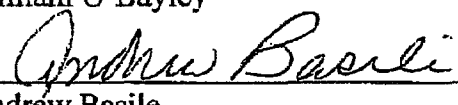
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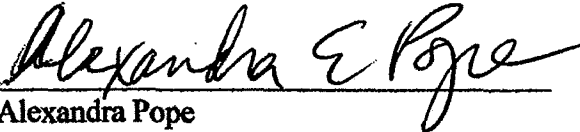
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John Lagana

IN WITNESS WHEREOF, the Plan is hereby executed as of this \_\_\_\_ day of \_\_\_\_\_, 2014.

Employer Trustees

Union Trustees

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Leonard Schwartz

  
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Andrew Basile

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John Lagana

IN WITNESS WHEREOF, the Plan is hereby executed as of this 30 day of Dec, 2014.

Employer Trustees

Union Trustees

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Leonard Schwartz

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Alexandra Pope

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Arthur Katz

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*William M. O'Bayley*  
William O'Bayley

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Andrew Basile

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John Lagana

IN WITNESS WHEREOF, the Plan is hereby executed as of this 30 day of Dec, 2014.

Employer Trustees

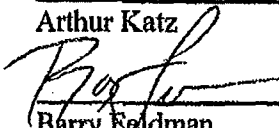
Union Trustees

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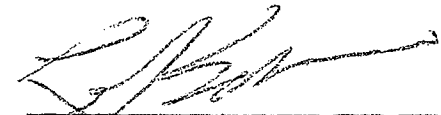
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John Lagana



IN WITNESS WHEREOF, the Plan is hereby executed as of this \_\_\_\_ day of \_\_\_\_\_, 2014.

Employer Trustees

Union Trustees



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Andrew Basile

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John Lagana

IN WITNESS WHEREOF, the Plan is hereby executed as of this 26 day of Dec., 2014.

Employer Trustees

Union Trustees

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Leonard Schwartz

Arthur Katz  
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Arthur Katz

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Alexandra Pope

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John Lagana

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Andrew Basile

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IN WITNESS WHEREOF, the Plan is hereby executed as of this 29<sup>TH</sup> day of Dec, 2014.

Employer Trustees

Union Trustees

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Leonard Schwartz

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Alexandra Pope

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Andrew Basile

*John Lagana*  
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John Lagana

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**BY:** .....

**RESOLUTION OF THE BOARD OF TRUSTEES OF THE  
TEAMSTERS LOCAL 805 PENSION TRUST FUND**

**WHEREAS**, the Board of Trustees of the Teamsters Local 805 Pension Trust Fund (the “Board”) sponsors and administers the Teamsters Local 805 Pension and Retirement Plan (the “Plan”); and

**WHEREAS**, Section 11.1 of the Plan provides that the Board may amend the Plan at any time; and

**WHEREAS**, the Board is desirous of adopting an amended and restated Plan document, effective as of April 1, 2014, except as specifically stated, to comply with recent changes in applicable law and to incorporate amendments and certain other modifications since issuance of the prior determination letter; and

**WHEREAS**, the Trustees are also now desirous of submitting the Plan to the Internal Revenue Service (the “IRS”) for approval;

**NOW, THEREFORE**, it is hereby

**RESOLVED**, that the Plan document, as amended and restated effective as of April 1, 2014, except as expressly stated, is hereby adopted by the Board in the form presented; and be it further

**RESOLVED**, that Proskauer Rose LLP is hereby authorized and directed, on behalf of the Board, to submit the Plan, and the Agreement and Declaration of Trust under which the Plan was established and is maintained (the “Trust”), to the IRS for a determination that the Plan, as amended and restated, continues to satisfy, and be qualified under, Section 401(a) of the Internal Revenue Code, as amended (the “Code”), and that the Trust remains exempt from income taxes under Section 501(a) of the Code; and be it further

**RESOLVED**, that the Plan Administrator be, and hereby is, authorized and directed, in the name (and on behalf) of the Board, to take all steps necessary and appropriate to effectuate the foregoing resolutions, including, without limitation, the execution and delivery of any documents, as may be necessary, appropriate or advisable to submit the Plan and the Trust to the IRS (including, but not limited to, the execution and issuance of a power of attorney to Proskauer Rose LLP, or such other person or persons as the Plan Administrator may deem appropriate, to represent the Board, the Plan and the Trust before the IRS in connection with all matters relating to the continued qualification of the Plan and the tax exempt status of the Trust, and distribution of appropriate notices to participants); and be it further

**RESOLVED**, that this Resolution may be executed in counterpart copies, each of which shall be deemed an original but all of which shall be considered the same instrument.

**IN WITNESS WHEREOF**, the above action is taken on behalf of the Trustees of the Teamsters Local 805 Pension Trust Fund on this 28 day of DEC 2014

Employer Trustees

Union Trustees

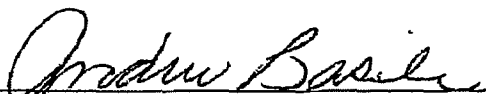
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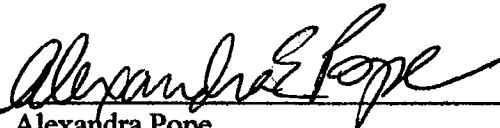
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John Lagana

**IN WITNESS WHEREOF**, the above action is taken on behalf of the Trustees of the Teamsters Local 805 Pension Trust Fund on this \_\_\_\_ day of \_\_\_\_\_.

Employer Trustees

Union Trustees

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Leonard Schwartz

  
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John Lagana

**Employer Trustees**

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Leonard Schwartz

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Arthur Katz

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Barry Feldman

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John Lagana

**Union Trustees**

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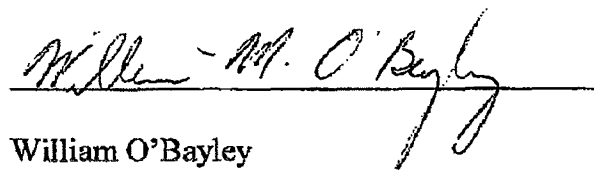
Alexandra Pope

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William O'Bayley

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Andrew Basile

A handwritten signature in cursive script, appearing to read "William - M. O'Bayley", is written over a horizontal line. The signature is fluid and somewhat stylized.

**IN WITNESS WHEREOF**, the above action is taken on behalf of the Trustees of the Teamsters Local 805 Pension Trust Fund on this 29 day of 2014.

Employer Trustees


Union Trustees

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Leonard Schwartz

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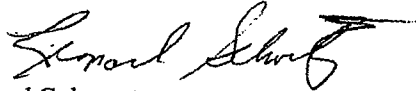
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John Lagana



**IN WITNESS WHEREOF**, the above action is taken on behalf of the Trustees of the Teamsters Local 805 Pension Trust Fund on this 30 day of Dec. 2014

Employer Trustees

Union Trustees



Leonard Schwartz

Alexandra Pope

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Arthur Katz

William O'Bayley

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Barry Feldman

Andrew Basile

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John Lagana

IN WITNESS WHEREOF, the above action is taken on behalf of the Trustees of the Teamsters Local 805 Pension Trust Fund on this 29<sup>TH</sup> day of Dec 2014

Employer Trustees

Union Trustees

\_\_\_\_\_  
Leonard Schwartz

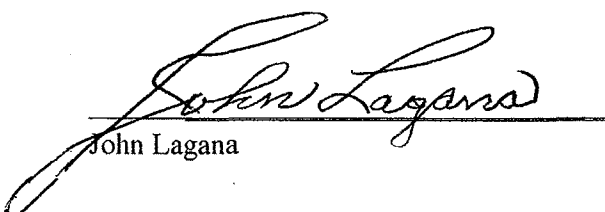
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BY: .....

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JAN 23 2015  
BY: \_\_\_\_\_

IN WITNESS WHEREOF, the above action is taken on behalf of the Trustees of the Teamsters Local 805 Pension Trust Fund on this 20 day of Jan. 2015

Employer Trustees

Union Trustees

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Leonard Schwartz

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