

HAMPTON ROADS SHIPPING ASSOCIATION  
INTERNATIONAL LONGSHOREMEN'S ASSOCIATION  
PENSION PLAN  
AS AMENDED AND RESTATED  
EFFECTIVE OCTOBER 1, 2009

INTRODUCTION

The Hampton Roads Shipping Association-International Longshoremen's Association Pension Plan (the "Plan"), which was known before October 1, 1976 as the Hampton Roads Maritime Association - International Longshoremen's Association Plan, was established on January 1, 1950, and thereafter periodically amended. The Plan was amended and restated in its entirety effective October 1, 1976, October 1, 1980, October 1, 1983, October 1, 1989, October 1, 2001 and is hereby further amended and restated as follows effective October 1, 2009.

TABLE OF CONTENTS

ARTICLE I  
NAME AND DEFINITIONS

1.1 Name of the Plan..... 1  
1.2 Definitions..... 1

ARTICLE II  
PARTICIPATION

2.1 Current Participants..... 9  
2.2 New Participants..... 9  
2.3 Former Participants..... 9  
2.4 Termination of Participation..... 9  
2.5 Vested Terminated Participants..... 9  
2.6 Leased Employees..... 10

ARTICLE III  
RETIREMENT

3.1 Participants Retiring Before October 1, 2001..... 11  
3.2 Participants Retiring After September 30, 2001..... 11  
3.3 Normal Form of Retirement Benefit..... 11  
3.4 Normal or Early Retirement..... 13  
3.5 Disability Retirement..... 13  
3.6 Amount of Retirement Benefit (Schedule A)..... 15  
3.7 Commencement of Non-Disability Pension Benefits..... 17  
3.8 Joint and Survivor Annuities..... 17  
3.9 Facility of Payment..... 20  
3.10 Re-Employment..... 20  
3.11 Discretionary Increases in Pensions For Retired Participants..... 25  
Schedule B..... 26

ARTICLE IV  
SERVICE AND VESTING

4.1 Benefit Service..... 29  
4.2 Vesting Service..... 33  
4.3 Break in Service Rules..... 33  
4.4 Vesting..... 35

ARTICLE V  
FUNDING

5.1 The Trust Fund; Corporate Trustees..... 36  
5.2 Contributions..... 36  
5.3 Title to the Trust Fund; Irrevocability..... 37  
5.4 Expenses..... 37

ARTICLE VI  
ADMINISTRATION

6.1 Named Fiduciary: The Board of Trustees..... 38  
6.2 Powers of the Board..... 39  
6.3 Books and Records..... 43

6.4	Reserves.....	44
6.5	Reliance upon Information.....	44
6.6	No Liability of Employers, HRSA and Union.....	44
6.7	Delegation of Ministerial Duties.....	44
6.8	Appointment of Administrator.....	45
6.9	Binding Effect.....	45
6.10	Fiduciary Responsibilities.....	45
6.11	Claims Procedure.....	46

ARTICLE VII  
AMENDMENT, DURATION AND TERMINATION

7.1	Amendment.....	48
7.2	Duration.....	48
7.3	Termination.....	48

ARTICLE VIII  
MISCELLANEOUS

8.1	Non-alienation of Benefits.....	50
8.2	Construction.....	51
8.3	No Employment Rights.....	51
8.4	Contributions are not Wages.....	52
8.5	Maximum Pension Benefits; Maximum Compensation.....	52
8.6	Minimum Required Distributions.....	55
8.7	Payment of Small Benefits.....	56
8.8	General Limitation on Benefit Payments.....	57

ARTICLE IX  
TOP HEAVY PROVISIONS

9.1	Top Heavy Plan Requirements.....	58
9.2	Definitions.....	58
9.3	Top Heavy Plan.....	64
9.4	Top Heavy Vesting Requirement.....	64
9.5	Top Heavy Benefit Requirement.....	65
9.6	Top Heavy Limit on Compensation.....	66
9.7	Modification of Top Heavy Rules for Plan Years Beginning After December 31, 2001.....	66

ARTICLE X  
WITHDRAWAL LIABILITY

10.01	General.....	69
10.02	Method for Computing Withdrawal Liability.....	69
10.03	Determination of When Contributions are Made.....	69
10.04	Payment of Withdrawal Liability.....	69
10.05	Review of Withdrawal Liability.....	70
10.06	De Minimis Rule.....	71
10.07	Calculation of Fractions under ERISA Section 4211.....	71
10.08	Modification When Unfunded Vested Benefits Equal Zero.....	71

APPENDIX A

Twenty-Five Percent Lump Sum Benefit Election.....	74
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## ARTICLE I

### NAME AND DEFINITIONS

#### 1.1 Name of the Plan

This Plan shall be known as the Hampton Roads Shipping Association - International Longshoremen's Association (HRSA-ILA) Pension Plan, as Amended and Restated effective October 1, 2001.

#### 1.2 Definitions

- (a) "Amendment Date" shall mean the effective date as of which the Plan was most recently amended and restated, which is October 1, 2001.
- (b) "Anniversary Date" shall mean October 1 of each year.
- (c) "Benefit Service" shall mean those Years of Service for which an Eligible Participant receives credit under Subsection 4.1(c).
- (d) "Board" shall mean the Board of Trustees as provided in ARTICLE VI.
- (e) "Break in Service" shall mean a Break in Service as determined under Section 4.3.
- (f) "Code" shall mean the Internal Revenue Code of 1986, as amended.
- (g) "Collective Bargaining Agreement" shall mean those one or more agreements between the Employer Members of the HRSA and the ILA, including the Master Contract, as they may change from time to time.
- (h) "Contract Year" shall mean the annual period from October 1 each year to September 30 of the following year.

- (i) “Disability” shall mean a physical or mental condition which totally and permanently prevents a Participant from continuing Employment in the Industry.
- (j) “Early Retirement Date” shall mean the first day of a month after September 30, 1983 and before the Normal Retirement Date on which a Participant’s age determined as of his last birthday and his Vesting Service (as defined in Article IV) total at least 80.<sup>1</sup>
- (k) “Eligible Participant” shall mean an Employee who has at least five years of Vesting Service and has not started receiving benefits under the Plan.
- (l) “Eligible Spouse” shall mean a spouse to whom the Participant has been married throughout the one-year period ending on the earlier of the date the Participant’s benefits commence or the Participant’s death, as defined in the applicable regulations issued under Section 401(a)(11) of the Code; provided that in both cases the spouse must provide proof satisfactory to the Plan thereof in order to be treated as an Eligible Spouse hereunder.
- (m) “Employee” shall mean any person Employed in the Industry.
- (n) “Employer” shall mean an employer-member of the HRSA, the ILA and its Locals in the Port of Hampton Roads and the HRSA-ILA Funds.
- (o) “Employment,” “Employed,” “Re-employed” or “Re-employment” in the “Industry” shall mean any of the following:
  - (1) employment by one or more present or former employer-members of the HRSA in the Ports of Hampton Roads and vicinity under the Collective Bargaining Agreement;

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<sup>1</sup> A Participant who became a Vested Terminated Participant on or before October 1, 1983 shall not have an Early Retirement Date unless he is credited with at least one full or one-half year of Benefit Service after September 30, 1983.

- (2) employment by the ILA in the capacity of a Union Representative;
  - (3) employment by the HRSA-ILA Trust Funds where contributions are made for employees;
  - (5) other employment by one or more employer-members of the HRSA or the ILA for which contributions are made;
  - (6) crediting of service on account of injury incurred on the job, in accordance with Section 4.1 (d)(2) hereof; or
  - (7) employment by an employer-member of the HRSA in any position determined by the Board of Trustees to have been traditionally filled by ILA labor, but not subject to the terms of the Collective Bargaining Agreement, where such employment is: (i) in the same industry; (ii) in the same geographic area covered by the Plan; and (iii) in the same trade or craft. For purposes of this provision, “industry”, “geographic area” and “trade or craft” shall have the same definitions as contained in DOL Regulation §2530.203-3(c)(2).
  - (8) for non-collectively bargained Employees, employment in any position within the Industry in which a significant portion of such employment includes skills, tasks, responsibilities and duties that are similar to those previously performed while Employed in the Industry.
- (p) “ERISA” shall mean the Employee Retirement Income Security Act of 1974.
  - (q) “Fund” shall mean the trust fund as provided in ARTICLE V.
  - (r) “HRSA” shall mean the Hampton Roads Shipping Association.
  - (s) “HRSA Trustee” shall mean a trustee appointed by the HRSA.

- (t) “Hour of Service” shall mean:
- (1) Each hour for which an Employee is paid for the performance of duties for the Employer. These hours shall be credited to the Employee for the computation period in which the duties are performed; and
  - (2) Each hour for which an Employee is paid by the Employer on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability) layoff, jury duty, military duty or leave of absence; and
  - (3) Each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Employer. The same Hours of Service shall not be credited both under paragraph (1) or paragraph (2), as the case may be, and under this paragraph (3). These hours shall be credited to the Employee for the computation period or periods to which the award or agreement pertains rather than the computation period in which the award, agreement or payment is made. Hours of Service will be credited for employment with other members of an affiliated service group, a controlled group of corporations, or a group of trades or businesses under common control of which the Employer is a member, all as defined in Section 414 of the Code.
  - (4) Hours under this Section shall be calculated and credited pursuant to Section 2530.200b-2(b) and (c) of the Department of Labor Regulations which are incorporated herein by this reference.

- (u) “ILA” shall mean the Affiliated Locals of the Port of Hampton Roads, Virginia of the International Longshoremen’s Association, AFL-CIO.
- (v) “ILA Trustee” shall mean a member of the Board appointed by the ILA.
- (w) “Leased Employee” shall mean any person (other than an Employee as defined herein) who pursuant to an agreement between an Employer and any other person or entity (“leasing organization”) has performed services for an Employer (or for an Employer and related persons determined in accordance with section 414(n)(6) of the Code) on a substantially full-time basis for a period of at least one year, and such services are of a type historically performed by employees in the business field of the Employer. Contributions or benefits provided to a Leased Employee by the leasing organization which are attributable to services performed for the Employer shall be treated as provided by the Employer. Excluded from such definition shall be Leased Employees who are covered by a “safe harbor” plan under Section 414(n)(5) of the Code.
- (x) “Normal Retirement Date” shall mean the later of: (1) the first day of the month following the Participant’s 62<sup>nd</sup> birthday; or (2) the fifth anniversary of the first day of the Plan Year for which the Participant receives credit for a full or one-half year of Benefit Service, not including a year of Benefit Service which is not required to be taken into account because of a Break in Service under this or any Prior Plan; provided that in the case of an Employee (or former Employee) who was not a Participant, or who was a Vested Terminated Participant as of October 1, 1980 and who did not thereafter complete 500 Hours of Service during a Plan Year, the Normal Retirement Date shall be the first day of the month next



following the Employee's (or former Employee's) 65<sup>th</sup> birthday. The effective date of this Subsection (x) is October 1, 1988.

- (y) "Participant" shall mean any Employee who participates in the Plan as provided in ARTICLE II, any Participant who has retired under this Plan or a Prior Plan, and any Employee who has terminated employment with rights to a retirement benefit.
- (z) "Past Service" shall mean a Participant's credited Benefit Service prior to the Amendment Date, as determined under any Prior Plan, provided that such service has not been disregarded by a Break in Service.
- (aa) "Pensioner" shall mean any person receiving a pension under this Plan or a Prior Plan.
- (bb) "Plan" shall mean the plan named in Section 1.1.
- (cc) "Plan Year" shall mean the period beginning on October 1 each year and ending on the next succeeding September 30.
- (dd) "Prior Plan" shall mean a Hampton Roads Shipping Association-International Longshoremen's Association (HRSA-ILA) Pension Plan as amended and existing prior to the Amendment Date, including the previous Hampton Roads Maritime Association-International Longshoremen's Association (HRMA-ILA) Pension Plan.
- (ee) "Required Beginning Date" shall mean April 1 of the calendar year following the later of: (1) the calendar year in which the Participant attains age 70 ½, or (2) the calendar year in which the Participant retires. In the case of a Participant who retires in a calendar year after the calendar year in which he or she attains age 70

½, the Participant's accrued benefit shall be actuarially increased to take into account the period after age 70 ½ in which the Participant was not receiving any benefit under the Plan. Notwithstanding any other provision hereof, a Participant who has not terminated employment may elect to commence the distribution of benefits on April 1 of the calendar year following the calendar year in which the Participant attains age 70 ½.

- (ff) "Union" shall mean the ILA, the Atlantic Coast District, the Hampton Roads District Council or a local of the ILA.
- (gg) "Union Representative" shall mean a member of the ILA who at some time has been Employed in the Industry, serving as a delegate, business agent, official, representative, or employee of the Union, elected or appointed, receiving a salary from the Union upon which contributions to the Plan are being made and whose duties are performed in whole or substantial part in the Ports of Hampton Roads and vicinity and in connection with the crafts covered by the Collective Bargaining Agreement.
- (hh) "Vested Terminated Participant" shall mean a Participant who has a vested right as defined in Section 4.4, has incurred two consecutive Breaks in Service as defined in Section 4.3, and has not again become an active Participant under Section 2.5; provided, however, that a Participant who incurs one or more Breaks in Service as a result of an illness which began before the Participant attained age 40 and while the Participant was Employed in the Industry shall not be a Vested Terminated Participant by reason of such Breaks in Service.

- (ii) “Applicable Interest Rate” shall mean the rate of interest on 30-year Treasury securities as specified by the Commissioner of the Internal Revenue Service. For purposes of the time for determining the Applicable Interest Rate, the stability period under the Plan is one Plan Year. The lookback month, relating to the stability period under the Plan, is the month of July preceding the first day of the stability period. The provisions of this Section 1.2(ii) and of Section 1.2(jj), relating to the Applicable Interest Rate and Applicable Mortality Table respectively, shall apply, in the case of benefits subject to Section 415(b)(2)(E) of the Code, to distributions in Plan Years beginning after September 30, 1997 and, in the case of benefits subject to Section 417(e)(3) of the Code, to Plan Years beginning after September 30, 1999. Effective for distributions payable under the Plan for Plan Years beginning in 2004 and 2005, the Applicable Interest Rate for purposes of Section 415(b)(2)(E) of the Code shall be computed in accordance with Section 101 of the Pension Funding Equity Act of 2004. Last, effective for distributions payable under the Plan on or after October 1, 2008, the Applicable Interest Rate shall mean the interest rate set forth in Section 417(e) of the Code and the regulations and guidance issued thereunder.
- (jj) “Applicable Mortality Table” shall mean, for distributions payable under the Plan on or after October 1, 2008, the mortality table described under Internal Revenue Code Section 417(e) (specifically, the mortality table under subparagraph (A) of Internal Revenue Code Section 430(h)(3) without regard to subparagraph (C) or (D) of such Section).

ARTICLE II  
PARTICIPATION

2.1 Current Participants

Any Participant under the immediately preceding Prior Plan on the Amendment Date shall continue to be a Participant in accordance with the provisions of this amended and restated Plan.

2.2 New Participants

Any other Employee who completes 500 Hours of Service in any Plan Year shall become a Participant in the Plan retroactively as of the first day of such Plan Year.

2.3 Former Participants

An Employee entitled to receive a Pension under this Plan or a Prior Plan shall continue as a Participant until the date of his death, provided that the benefits to which the Employee may be entitled shall be determined under the Prior Plan under which he retired.

2.4 Termination of Participation

An Employee shall cease to be a Participant if he or she incurs a Break in Service as defined in Section 4.3 and has not met the vesting requirements in Section 4.4. A Participant who ceases to be a Participant shall again become a Participant retroactively as of the first day of the first Plan Year in which he or she again completes 500 Hours of Service.

2.5 Vested Terminated Participants

A Vested Terminated Participant shall again become a Participant as of the first day of any subsequent Plan Year in which he or she completes at least 500 Hours of Service as an Employee.

2.6 Leased Employees

Leased Employees shall not participate in the Plan.

ARTICLE III  
RETIREMENT

3.1 Participants Retiring Before October 1, 2001

Participants who retired prior to October 1, 2001 and their Eligible Spouses shall continue to receive the pension benefits for which they are eligible in accordance with their Prior Plan. For purposes of this Section, “their Prior Plan” shall mean the plan under which the Participant was last credited with a full or one-half year of Benefit Service.

3.2 Participants Retiring After September 30, 2001

Participants who retire after September 30, 2001 shall receive the benefits provided under this Plan; provided, however, that all benefits accrued and not lost under any Prior Plan shall be preserved.

3.3 Normal Form of Retirement Benefit

The normal form of retirement benefit shall be a monthly pension for the life of the Participant with the last payment due as of the first day of the month in which his or her death occurs.<sup>2</sup> The amount of the normal form of retirement benefit shall be computed in accordance with Section 3.6 below.

(a) **Participants Retiring after September 30, 1995 and on or before October 1, 2005.**

Participants who retire after September 30, 1995 and on or before October 1, 2005 may elect (with the consent of an Eligible Spouse, if applicable) to receive twenty-five percent (25%) of the Participant’s monthly retirement benefit in the form of a lump

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<sup>2</sup> Participants who retired (or died) between October 1, 1976 and November 30, 1990 and their Eligible Spouses received retirement benefits in the form of a joint and survivor annuity. Effective November 30, 1990, Eligible Spouse retirement benefits were fully subsidized (paid) by the Plan, with no offsetting reduction in the Participant’s benefit, thus the joint and survivor annuity option was eliminated.

sum distribution (the “Lump Sum Benefit”), with the remaining seventy-five percent (75%) payable as a monthly pension payment for the life of the Participant or a joint and survivor annuity if the Participant has an Eligible Spouse. The amount of the Lump Sum Benefit shall be calculated in accordance with Appendix A.

- (b) **Participants Retiring after October 1, 2005.** Participants who retire after October 1, 2005 may elect (with the consent of an Eligible Spouse, if applicable) to receive twenty-five percent (25%) of the Participant’s monthly pension benefit **for Benefit Service prior to October 1, 2005** in the form of a lump sum distribution (the “Lump Sum Benefit”), with the remaining seventy-five percent (75%) of the benefit **accrued for such period (prior to October 1, 2005)** paid as a monthly pension benefit payment for the life of the Participant or a joint and survivor annuity if the Participant has an Eligible Spouse. The amount of the Lump Sum Benefit for the pre-October 1, 2005 Benefit Service shall be calculated in accordance with Appendix A. **There shall be added to the seventy-five percent monthly pension benefit the full (unreduced) normal form of retirement benefit for Benefit Service after September 30, 2005.** The Qualified Joint and Survivor Annuity for the Eligible Spouse of an electing Participant retiring after October 1, 2005 shall be similarly computed, having a survivor’s benefit based on the Participant’s pre-October 1, 2005 Benefit Service equal to 50% of the Participant’s 75% monthly retirement benefit, plus 50% of the Participant’s unreduced (100%) monthly pension benefit for post-September 30, 2005 Benefit Service.
- (c) **Participants who Elect to Receive a Lump Sum Benefit.** Participants who retire and elect a Lump Sum Benefit may do so only once. Participants who

retire and return to Employment in the Industry may not elect a Lump Sum Benefit upon their subsequent re-retirement.

#### 3.4 Normal or Early Retirement

Subject to Section 3.7, a Participant, including a Vested Terminated Participant,<sup>3</sup> who has reached his Normal or Early Retirement Date and ceased being Employed in the Industry may retire and become entitled to receive a monthly retirement benefit computed in accordance with Sections 3.3 and 3.6.

#### 3.5 Disability Retirement

- (a) A Participant who is not a Vested Terminated Participant, has completed 15 or more years of Benefit Service and has reached his 40th birthday shall be eligible for Disability Retirement if he becomes disabled under the rules set forth below in Subsection 3.5(c). The amount of the Disability Retirement Pension shall be computed in accordance with Section 3.6.
- (b) Payment of a Disability Retirement Pension shall commence after application with supporting documentation is properly made and approved by the Board in accordance with Subsection 3.5(c). The first Disability Pension Payment shall be made effective the first day of the month next following the date the application and all supporting documentation is received. Notwithstanding the foregoing, in the event the Participant is Employed in the Industry, the Pension Benefits will commence as of the first day of the month following the month in which the Participant is no longer Employed in the Industry.

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<sup>3</sup> A Participant who became a Vested Terminated Participant on or before October 1, 1983 shall not have an Early Retirement Date unless he is credited with at least one full or one-half year of Benefit Service after September 30, 1983.



- (c) Disability, as defined in Subsection 1.2 (i), shall be determined by the Board and such disability must be substantiated to the satisfaction of the Board.
- (d) Disability shall be considered to have ended and entitlement to a Disability Retirement Pension shall cease if the Participant:
  - (1) Is Re-employed by an Employer prior to his Normal Retirement Date or engages in any substantially gainful activity, except for such employment as is found by the Board in its sole discretion to be for the primary purpose of rehabilitation or not incompatible with a finding of total and permanent disability;
  - (2) Has sufficiently recovered, in the opinion of the Board based on a medical examination by a doctor or clinic appointed by the Board, to engage in regular employment with an Employer;
  - (3) Refuses to undergo any medical examination, medical treatment or rehabilitation program requested by the Board; or
  - (4) Reaches his Normal Retirement Date, at which time he shall be deemed to have retired with a Normal Retirement Benefit.
- (e) If disability has ended under Subsection (d)(1) above, the Participant shall be subject to the re-employment provisions of Section 3.10 whether or not he is Re-employed within the meaning of such Section. If disability has ended under Subsection (d)(4) above, the Participant shall be deemed to have retired at his Normal Retirement Date with an Applicable Plan Year (under Section 3.6(a)) effective as of the date his Disability Retirement benefits began.

- (f) The Board may require any Participant receiving a Disability Retirement Pension to submit to periodic medical examinations to determine his continuing eligibility for Disability Retirement. The Board may also require such Participant to engage in reasonable and medically accepted programs of treatment and rehabilitation for the purpose of enabling such Participant to return to Employment. The failure of a Participant to submit to such examinations or treatment and rehabilitation may result in the termination of his or her Disability Retirement Pension, in the sole discretion of the Board.
- (g) Notwithstanding anything contained in the Plan to the contrary, a Participant retiring with a Disability Retirement Pension may not elect to receive a Lump Sum Benefit for any service and benefits accrued after September 30, 2007.

### 3.6 Amount of Retirement Benefit

- (a) Regular Pension Benefit. A Participant who retires under this Plan shall receive the Normal Form of Retirement Benefit computed in accordance with the following Schedule A. For purposes of Schedule A, the term “Applicable Plan Year” appearing in the first column of Schedule A shall mean the Plan Year in which the first monthly pension payment is due, provided that:
  - (1) In the case of a Participant who has incurred a Break in Service during the Plan Year ending immediately preceding his retirement date, the term “Applicable Plan Year” shall be either the Plan Year in which such Participant was last credited with a full or one-half year of Benefit Service, or, effective October 1, 1995, the Applicable Plan Year determined in accordance with (2) below, if earlier;

- (2) Effective October 1, 1995, in the case of a Participant who has incurred a Break in Service in more than two of the seven Plan Years including or immediately preceding his retirement date, the term “Applicable Plan Year” shall mean the Plan Year in which such Participant was last credited with a full or one-half year of Benefit Service prior to such Breaks in Service (i.e., prior to all Breaks in Service during the seven year window); and
- (3) Benefit Service as used in Schedule A means Benefit Service determined in accordance with Subsection 4.1(c).

Schedule A

Applicable Plan Year		Monthly Benefit Per Year of <u>Benefit Service*</u>	Maximum Monthly <u>Benefit</u>
Retired After <u>Sept. 30</u>	But Before <u>Oct. 1</u>		
1976	1980	\$24	840
1980	1981	26	1,040
1981	1982	28	1,120
1982	1983	30	1,200
1983	1985	35 <sup>4</sup>	1,400 <sup>5</sup>
1985	1987	50	2,000
1987	1990	55	2,200
1990	1993	55 <sup>6</sup>	2,200 <sup>7</sup>
1993	1995	72.50	2,900
1995	1997	76.45	3,058
1997	2000	100.00	4,000
2000	2007	114.00	5,130
2007		100.00	5,130

\* One-half for each one-half year of Benefit Service

<sup>4</sup> \$35.00 until May 31, 1985; \$37.30 thereafter.

<sup>5</sup> \$1,400 until May 31, 1985; \$1,500 thereafter.

<sup>6</sup> \$55.00 until November 30, 1990; \$60.00 thereafter.

<sup>7</sup> \$2,200 until November 30, 1990; \$2,400 thereafter.

### 3.7 Commencement of Non-Disability Pension Benefits

- (a) A Participant who is eligible to receive a Pension Benefit and who submits a proper application therefore shall be entitled to receive a benefit upon approval by the Board. The first Pension Benefit payment shall be made effective the first day of the month next following the date the application and all supporting documentation is received.
- (b) Subject to the requirements of application and approval by the Board, payment of benefits shall begin no later than the sixtieth day after the end of the first Plan Year in which the Participant has both reached his Normal Retirement Date and failed to receive credit for at least 40 Hours of Service in at least one month thereafter in such Plan Year. If the payment of benefits is delayed because the Participant is receiving credit for at least 40 Hours of Service, such delay will be treated as a suspension of benefits and the rules of Subsection 3.10(a) will apply.

### 3.8 Joint and Survivor Annuities

- (a) A Participant who retires (or dies) and has an Eligible Spouse as of the date his first monthly pension payment is due shall receive his retirement benefit in the form of a joint and survivor annuity with the Participant receiving the normal form of retirement benefit described in Section 3.3 for life (or until the earlier termination of a Disability Pension in accordance with Subsection 3.5(d)), with payments to continue after his death in monthly amounts equal to 50% of such benefit during the remaining lifetime of his Eligible Spouse. In the alternative, the Participant may elect to receive his or her benefit in the form of a Qualified Optional Survivor Annuity (“QOSA”). The QOSA provides for a monthly

reduced benefit for the life of the Participant (or until the earlier termination of a Disability Pension in accordance with Subsection 3.5(d)), and, upon the Participant's death, a 75% survivor benefit for the life of the surviving Eligible Spouse. The QOSA shall be the actuarial equivalent of a straight life annuity based on the factors as shown in Table 3.8. In the event the Eligible Spouse predeceases the Participant, the Participant's benefit will be restored to the full (unreduced) benefit level. A Participant who retires and has been married for less than one year as of the date his first monthly pension payment is due shall receive his retirement benefit in the Normal Form of Retirement Benefit described in Section 3.4 prior to the first anniversary of such marriage and, if he is alive on such first anniversary, thereafter in the form of the joint and survivor annuity as described in this Subsection 3.8(a) effective as of the first day of the month next following the first anniversary of the marriage.

(b) Effective October 1, 2007, a Participant and his Eligible Spouse, if any, shall receive, not more than one hundred and eighty (180) and not less than thirty (30) days before a distribution of benefits under the Plan (unless such period is waived), an explanation of their benefit options, an explanation of the relative value of those options, and an explanation of the consequences of failing to defer receipt of their benefits, all as set forth in Section 417(a) of the Code and the regulations and guidance issued thereunder.

(c) Pre-retirement Survivor Annuity

(1) The Eligible Spouse of an Eligible Participant who has a vested right under Section 4.4 and who dies before receiving a retirement benefit under

Section 3.4 shall automatically be eligible for a Pre-retirement Survivor Annuity determined in accordance with the following procedure. The Pre-retirement Survivor Annuity shall be payable to the Eligible Spouse for her remaining lifetime commencing on the date which would have been the Participant's earliest benefit commencement date under Section 3.4 if he had survived, unless the Eligible Spouse makes the election to receive a reduced benefit under Subsection 3.8(c)(2) below. The monthly amount of the Pre-retirement Survivor Annuity, (assuming the Eligible Spouse does not make the election to receive a reduced benefit) shall be the amount the Eligible Spouse would have received if the Participant had retired on such earliest benefit commencement date, computed on the basis of the Participant's Benefit Service as of the date of his death, and the Applicable Plan Year for the purpose of Schedule A in Section 3.6 shall be the Plan Year in effect on the first day of the month following which such death occurred, or such earlier Applicable Plan Year as may be determined under the Break in Service provisions in subsections (1) and (2) of Section 3.6(a).

- (2) In lieu of a benefit payable when the deceased Participant would have reached his earliest benefit commencement date, the Eligible Spouse may elect to receive a reduced survivor annuity commencing on the first day of the month next following the Participant's date of death. In that event, the benefit shall be computed in accordance with Subsection 3.8(c)(1) above with the following exceptions: The ages referred to in Subsection

3.8(c)(1) shall be determined as of the first day of the month next following the Participant's date of death; the reduced benefit so determined shall be further reduced actuarially to account for the Participant's earlier age at death.

### 3.9 Facility of Payment

If the Board shall find that any retired Participant or Eligible Spouse is unable to care for his or her affairs because of illness, accident or other incapacity, the Board, in its sole discretion, may discontinue any payment due to him or her and instead make the payments to: (i) a committee, guardian or conservator who is duly appointed and becomes qualified to receive such payment by a court of competent jurisdiction; or (ii) to a non-profit public charity (qualified under I.R.C. sections 501(c)(3) and 509(a)(1)), which performs bill-paying, custodial or charity services for the elderly. Any such payments made to a duly appointed representative shall be a complete discharge of any liability of the Plan and the Fund therefore.

### 3.10 Re-Employment

#### (a) Suspension or Termination of Benefits

- (1) Re-employment On or After Normal Retirement Date. A Participant who retires on or after his Normal Retirement Date may return to Employment in the Industry; however, if such Re-employment results in the crediting of 40 or more Hours of Service in any month, he shall notify the Board of such Re-employment and his monthly benefit payments shall be suspended effective as of the first day of such month; provided that if such Participant has reached his Required Beginning Date at the time of such

Re-employment then such monthly benefit payments shall not be so suspended. The suspension shall continue to be effective until the first day of the month during which the Participant is credited with less than 40 Hours of Service, of which fact the Participant shall notify the Board. Monthly benefit payments shall resume as of the first day of such month.

(2) Re-employment Before Normal Retirement Date. If Participant who retires Early or for Disability before his Normal Retirement Date returns to Employment in the Industry, except for purposes of rehabilitation as described in Subsection 3.5(d)(1), he shall immediately notify the Board of such Re-employment and his monthly benefit payments shall cease as of the first day of such month of Re-employment. No further benefit payments shall be made until the Participant again retires and applies for benefits.

(b) Repayment of Overpaid Benefits. A Participant shall reimburse the Fund, with interest, for any payments made to him in respect of any month for which such payments were suspended or terminated under (a) above. A Participant who retires, receives a Lump Sum Benefit (as defined in Section 3.3) and returns to Employment in the Industry shall also reimburse the Fund, with interest, an amount equal to the Lump Sum Benefit minus the additional monthly pension benefits the Participant would have received had the Lump Sum Benefit not been elected. In the event a Participant has not previously repaid such amounts there shall be deducted from any future benefit payments any remaining overpayments; provided that for Participants retiring on or after their Normal Retirement Date,



after the first benefit payment (one hundred percent of which shall be applied to the overpayment) subsequent benefit payments may be reduced by not more than 25 percent for this purpose. The Fund may also recover such overpayments from any other entitlements to which the Participant is or may become entitled under one or more HRSA-ILA welfare benefit funds, including the HRSA-ILA Vacation & Holiday Fund and the HRSA-ILA Container Royalty Fund.

(c) Crediting of Additional Service After Re-employment.

- (1) Service Following a Non-disability Retirement. A Participant who is Re-employed after a non-disability retirement shall receive credit for Benefit Service and Vesting Service under the provisions of ARTICLE IV, and may incur one or more Breaks in Service, during his Re-employment. If a Participant is Re-employed and the Re-employment results in crediting of additional Benefit Service, the Participant may apply to the Board for additional benefits. The monthly amount of any additional benefits shall be computed by considering only the additional Benefit Service credited as a result of the Re-employment. For purposes of this computation, the Applicable Plan Year (under Section 3.6, Schedule A) for the additional benefit shall be the Plan Year in which the Participant last received credit for a full or one-half year of Benefit Service. The additional benefit so computed shall then be added to the Participant's previous retirement benefit to provide an increased benefit.
- (2) Service Beginning Before Normal Retirement Date and After a Disability Retirement.

- (A) Five or More Years of Service After a Disability. A Participant who has retired for Disability, is Re-employed before his Normal Retirement Date and earns at least five full or one-half years of additional Benefit Service during such Re-employment shall be eligible to have such Benefit Service credited to total Benefit Service upon the Participant's subsequent retirement and approval for benefits. For purposes of computing the Participant's new retirement benefit, the Participant shall be treated in the same manner as if he had first applied for benefits on the date on which he again retires, and the Applicable Plan Year (under Section 3.6, Schedule A) shall be the Plan Year in which the Participant last received credit for a full or one-half year of Benefit Service; provided that such new monthly benefit shall equal or exceed the monthly benefit to which the Participant received prior to Re-employment. Any increases in his previous monthly benefit which became effective during his previous retirement shall be ignored, except to the extent needed to provide at least the monthly benefit he was receiving before his Re-employment.
- (B) Less than Five Years of Service After a Disability. A Participant who has retired for Disability, is Re-employed before his Normal Retirement Date and earns less than five full or one-half years of additional Benefit Service during such Re-employment shall be eligible, upon his subsequent retirement, whether before or after

his Normal Retirement Date and whether or not for disability, to apply for additional monthly benefits, which shall be computed in accordance with the procedures outlined in Subsection 3.10(c)(1) above (for service credits for additional service after a retirement), and which shall be added to the prior monthly benefit to which the Participant is otherwise entitled.

- (3) Service Beginning After Normal Retirement Date and After a Disability Retirement. A Participant who is Re-employed after his Normal Retirement Date and after a disability retirement shall receive credit for Benefit Service and Vesting Service in the manner specified in Subsection 3.10(c)(1) above.
- (d) Presumption of Re-employment by the Board. If a retired Participant fails to notify the Board of his Re-employment, the Board shall presume that Re-employment has occurred if it has received reasonable evidence thereof, including, but not limited to, any report by an Employer which indicates that contributions have been made or are required to be made on behalf of the Participant. Such presumption shall have the same effect as notice by the Participant of his Re-employment; the Board shall so notify the Participant and the Participant shall have such rights as may be afforded him hereunder. The determination of whether Re-employment has occurred shall be made by the Board, in its sole discretion, upon such evidence as it deems reasonable.

- (e) In the case of any retired Participant who has more than one period of Re-employment, the provisions of this Section 3.10 shall be applied separately as to each such period.

3.11 Discretionary Increases in Pensions For Retired Participants

Retired Participants and their Eligible Spouses shall only receive increases in their monthly pension benefits in the amounts, if any, determined by the Board from time to time in its sole discretion and without further obligation to provide increases, in accordance with the following Schedule B, commencing, unless otherwise indicated, as of the Effective Dates shown therein:

[See Schedule B on following pages]

Schedule B

Participant's Applicable Plan Year (Under Schedule A)	Effective Date	Amount of Increase In Monthly Benefit Payable To	
		Participants Receiving Monthly Benefits As of Effective Date	Surviving <sup>8</sup> Spouses Receiving Monthly Benefits As of Effective Date
a. Before 10/1/76	October 1, 1980	\$50.00	\$25.00
	October 1, 1983	50.00	25.00
	October 1, 1985	50.00	25.00
	October 1, 1987	50.00	25.00
	December 1, 1990	50.00	25.00
	October 1, 1993	60.00	30.00
	October 1, 1995	48.00	24.00
b. 10/1/76-9/30/80	October 1, 1980	25.00	25.00
	October 1, 1983	25.00	25.00
	October 1, 1985	50.00	25.00
	October 1, 1987	50.00	15.00
	December 1, 1990	*	**
	October 1, 1993	+	++
	October 1, 1995	#	##
c. 10/1/80-9/30/83	October 1, 1983	50.00	25.00
	October 1, 1985	50.00	25.00
	October 1, 1987	50.00	25.00
	December 1, 1990	*	**
	October 1, 1993	+	++
	October 1, 1995	#	##
d. 10/1/83-9/30/85	October 1, 1985	50.00	25.00
	October 1, 1987	50.00	25.00
	December 1, 1990	*	**
	October 1, 1993	+	++
	October 1, 1995	#	##
e. 10/1/85-9/30/87	October 1, 1987	50.00	25.00
	December 1, 1990	*	**
	October 1, 1993	+	++
	October 1, 1995	#	##

<sup>8</sup> Including Surviving Spouses of Participants who die after Effective Date, commencing on the first day of the month next following Participant's death.

Participant's Applicable Plan Year (Under Schedule A)	Effective Date	Amount of Increase In Monthly Benefit Payable To	
		Participants Receiving Monthly Benefits As of Effective Date	Surviving <sup>9</sup> Spouses Receiving Monthly Benefits As of Effective Date
f. 10/1/87-11/30/90	December 1, 1990	*	**
	October 1, 1993	+	++
	October 1, 1995	#	##
g. 2/1/91-9/30/93	October 1, 1993	+	++
	October 1, 1995	#	##
h. 10/1/93-9/30/95	October 1, 1995	#	##
i. Before 10/01/97	October 1, 1997	◇	◇◇
j. Before 10/01/00	October 1, 2000	□	□□

\* \$2.50/\$1.25 for each full/one-half year of Benefit Service

\*\* \$1.25/\$.625 for each full/one-half year of Benefit Service

+ \$3.00/\$1.50 for each full/one-half year of Benefit Service

++ \$1.50/\$0.75 for each full/one-half year of Benefit Service

# \$2.40/\$1.20 for each full/one-half year of Benefit Service

## \$1.20/\$0.60 for each full/one-half year of Benefit Service

◇ One percent (1%) increase for each contract year of retirement (including the contract year in which the participant retired) to a maximum of 10% (ten contract years of retirement).

◇◇ One-half of one percent (.5%) increase for each contract year of retirement (including the contract year in which the participant retired) to a maximum of 5% (ten contract years of retirement).

□ One-half of one percent (.5%) increase for each contract year of retirement (including the contract year in which the participant retired) to a maximum of 5% (ten contract years of retirement).

□□ One-half of one percent (.5%) increase for each contract year of retirement (including the contract year in which the participant retired) to a maximum of 5% (ten contract years of retirement).

<sup>9</sup> Including Surviving Spouses of Participants who die after Effective Date, commencing on the first day of the month next following Participant's death.

The Benefits set forth in Schedule B shall be payable under the same terms and conditions as those to which they are added.

Notwithstanding anything contained in this Plan or a Prior Plan to the contrary, the Board shall be under no obligation whatsoever to provide additional increases to Pension Benefits for retired Participants and any decision from time to time to do so shall not constitute a plan or pattern of increases, nor shall there be any obligation of the Plan, a Prior Plan or the Board to provide “cost-of-living” type adjustments or increases to Pension Benefits.

ARTICLE IV  
SERVICE AND VESTING

4.1 Benefit Service

- (a) Before October 1, 1976. Subject to the Break in Service provision of this Plan and all Prior Plans, including Section 2 of the Hampton Roads Maritime Association – International Longshoremen’s Association Pension Plan effective January 1, 1950 (as preserved by the transitional rule of Code §411(a)(4)(F)), a Participant shall be credited with one year of Benefit Service for each year prior to October 1, 1976 during which he completed 700 Hours of Service. A Participant shall be credited with one-half year of Benefit Service for each year prior to October 1, 1976 during which he completed at least 400 but less than 700 Hours of Service. In addition, any participant who had satisfied the vesting requirements specified in the provisions of a Prior Plan, before October 1, 1976, shall be credited with the years of Benefit Service for which the Participant was credited at that time; provided that such years of Benefit Service have not been credited under the preceding provisions of this Subsection 4.1(a). Any service lost under any Prior Plan (for example, as the result of a Participant’s termination of Employment in the industry under Section 2 of the 1950 Plan) shall not be credited under this Plan.
- (b) After September 30, 1976. A Participant shall be credited with one year of Benefit Service for each year after September 30, 1976 during which he is credited with 1,000 Hours of Service. A Participant shall be credited with one-



half year of Benefit Service for each year after September 30, 1976 during which he is credited with at least 500 but less than 1,000 Hours of Service.

- (c) Total Benefit Service. Benefit Service for a Participant shall be the sum of the years of Benefit Service determined under Subsection 4.1(a) and the years of Benefit Service determined under Subsection 4.1(b); provided that notwithstanding anything contained in this Plan or a Prior Plan to the contrary, the sum is subject to the Break in Service provisions of all Prior Plans, including Section 2 of the 1950 Plan.
- (d) Additional Service Credits. For purposes of the Benefit Service calculations of this Section 4.1, a Participant shall receive credit for:
  - (1) Service in the Armed Forces. Any Participant who qualifies under the Uniformed Services Employment and Reemployment Rights Act (“USERRA”) for reemployment rights shall be given eligibility credit of twenty (20) hours per week for the time spent in service in the uniformed services on a voluntary or involuntary basis for the following:
    - (A) active duty;
    - (B) active duty for training;
    - (C) initial active duty for training;
    - (D) inactive duty training;
    - (E) full time National Guard duty;
    - (F) time necessary for a person to be absent from employment for examination to determine the fitness of a person to perform any of the above duties; and

(G) time necessary for a person to be absent from employment to perform funeral honors duty;

provided that the Participant complies with the terms of the USERRA, including without limitation, providing advance notice, either written or verbal, of the impending service, is not absent from Employment in the Industry for service in the uniformed services for more than a cumulative total of five years (with certain statutory exceptions) and applies for reemployment in a timely manner as provided for under USERRA. During periods of creditable Military Service the Participant shall receive pro rata credit for Benefit and Vesting Service at the rate of 20 Hours of Service a week to a maximum of 1,000 Hours of Service per year. Further, notwithstanding anything in the Plan to the contrary, the Plan shall conform to the requirements of Section 414(u) of the Code, and effective as of January 1, 2007, Section 401(a)(37) of the Code.

(2) Injury Incurred on the Job.

(A) Subject to all the following subsections of this Section 4.1(d)(2), Employees who are unable to work in all or part of the Plan Year by reason of an injury incurred on the job and who receive compensation for temporary total or temporary partial disability under any federal or state worker's compensation act shall receive credit hours for the purpose of determining benefits under this Plan at the rate necessary to qualify the Employee for benefits equal to those for which the Employee qualified in the immediate prior

year. Such credits shall not exceed the duration of the period during which the Employee received workers' compensation benefits.

- (B) No credits shall be awarded for compensation received under any federal or state worker's compensation act for permanent partial or permanent total disability.
- (C) If there is a retroactive determination of permanent total or permanent partial disability by a federal or state court of competent jurisdiction, the number of credit hours that the Employee received for periods subsequent to the beginning date of permanent disability shall be forfeited. No further credit hours shall be awarded to the Employee based on any subsequent determination of temporary total or temporary partial disability. In the event that the forfeiture of credit hours results in the Employee being ineligible for benefits already received, the Employee shall immediately repay the Plan the amount of those benefits with interest at the rates established by the Board.
- (D) No credits shall be computed for "lump sum" compensation settlements.
- (E) Notwithstanding anything in this Plan and Trust agreement to the contrary, the Trustees shall have the authority to review the form and substance of any Employee's settlement in order to determine whether the settlement artificially attempts to increase (or

lengthen) the amount of credits. The Trustees shall determine whether the Employee is entitled to credits and the amount of those credits. The Trustees may award credits based on the dollar amount of compensation paid to the Employee, rather than the duration of the payments. The decision of the Trustees to award or not to award credits shall be final and binding.

- (e) A Participant shall receive no credits for Benefit and Vesting Service after his or her retirement date, other than re-employment credits under Section 3.10(c).

#### 4.2 Vesting Service

A Participant shall be credited with one year of Vesting Service for each year or one-half year of total Benefit Service credited under Subsection 4.1(c), provided that such years of Vesting Service shall be subject to the Break in Service provisions of Section 4.3.

#### 4.3 Break in Service Rules

- (a) A non-vested Participant shall be deemed to have incurred a Break in Service if he completes less than 500 Hours of Service in any Contract Year after September 30, 1976, or less than 400 Hours of Service in any Contract Year before October 1, 1976. In the case of any non-vested Participant who has any 1-year Break in Service, years of Benefit and Vesting Service before such break shall not be taken into account until the Participant has completed 500 Hours of Service after his return; provided that in the event a Participant completes 500 Hours of Service after his return the pre-break service may be disregarded under the provisions of (b) below.

- (b) In the case of a non-vested Participant who incurs a period of consecutive 1-year Breaks in Service, Years of Benefit and Vesting Service before any such period shall not thereafter be taken into account if the number of consecutive 1-year Breaks in Service within such period equals or exceeds five (5).
- (c) If any years of Benefit or Vesting Service are not taken into account by reason of Subsection (b) above, such years of Service shall not be taken into account in applying Subsection (b) to a subsequent period of Breaks in Service.
- (d) If a Participant forfeited service under a Prior Plan, that service is not restored under this Plan. For example, in the case of a Participant who, at the time of a Break in Service prior to October 1, 1976, had 10 years of Eligibility Service, Benefit Service and Vesting Service, but did not have any vested rights under the Prior Plan, because such vested rights had been forfeited under such Prior Plan because of a Break in Service, any such years of Eligibility Service, Benefit Service and Vesting Service shall not be taken into account by this Plan.
- (e) A Break in Service shall not occur during periods for which the Participant receives credit under Section 4.1(d) for periods of Military Service or for an injury incurred on the job. A Break in Service shall be deemed not to occur during periods for which the Participant is absent from work for maternity or paternity reasons. For purposes of determining whether a Break in Service has occurred (and only for such purposes), the Participant shall be deemed to have received credit for the Hours of Service which would otherwise have been credited to such Participant but for such absence, or in any case in which such hours cannot be determined the Participant shall receive 8 Hours of Service per

day of such absence. The Hours of Service credited under this paragraph shall be credited: (1) in the Contract Year in which the absence begins if the crediting is necessary to prevent a Break in Service in that period, or (2) in all other cases, in the following Contract Year. For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence: (1) by reason of the pregnancy of the Participant; (2) by reason of a birth of a child of the Participant; (3) by reason of the placement of a child with the Participant in connection with the adoption of such child by such Participant; or (4) for purposes of caring for such child for a period beginning immediately following such birth or placement. As a condition of a Participant being credited with Hours of Service pursuant to this paragraph, the Participant shall furnish within one year from the beginning date of the absence from work such information as the Administrator (as defined in Section 6.8 below) deems reasonably necessary to establish that the absence from work was a cause stated in (1)-(4) above and the number of days attributable to such cause

#### 4.4 Vesting

A Participant shall have a vested right when he has: (a) completed (5) Years of Vesting Service; or (b) reached his Normal Retirement Age. A Participant's Normal Retirement Age means his age on his Normal Retirement Date as defined in Subsection 1.2(x). The term "Normal Retirement Age" shall be used only to determine when a Participant becomes entitled to a vested right and shall have no other meaning with respect to this Plan.

## ARTICLE V

### FUNDING

#### 5.1 The Trust Fund; Corporate Trustees

The Board and the corporate trustee or corporate trustees selected by the Board shall receive, hold, disburse and invest Plan contributions and the investment earnings thereon, in trust, pursuant to the terms of this Plan. Such contribution and the investment earnings thereon shall be referred to as the Trust Fund or Fund. The Board shall determine the form and terms of any agreement with any corporate trustee and may modify any such agreement from time to time to accomplish the purposes of the Plan. The Board may select, remove and change any corporate Trustee or successor Trustee.

#### 5.2 Contributions

- (a) Contributions to the Fund shall be made in accordance with the Collective Bargaining Agreements in effect from time to time. Contributions shall also be made in accordance with the provisions governing employer withdrawal liabilities which are required to be collected by the Board under the Multi-employer Pension Plan Amendments Act of 1980 (P.L. 96-364). The discretionary alternative provisions of such Act which require amendment of the plan in order to become effective shall not apply. The Board may commute to a single sum or a shorter period of payment any schedule of withdrawal liability payments determined under the Act if the withdrawing Employer liable for such payments consents to such commutation. Such commutation shall consider a rate of earnings currently available and shall be in accordance with applicable law.

- (b) Forfeitures arising under this Plan because of severance of employment before a Participant becomes eligible for a Pension, or for any other reason, shall be applied to reduce the cost of the Plan.
- (c) No Employee or Participant shall be required or permitted to make any contributions to the Plan or the Fund.

5.3 Title to the Trust Fund; Irrevocability; Overpayment of Benefits

Title to all monies paid into the Trust Fund shall be vested in and remain exclusively in the Trustees of the Fund, and neither the ILA, nor the HRSA, nor an Employer, nor any Employee or beneficiary hereunder has any right, title or interest in any of the monies of the Fund. The Fund shall constitute an irrevocable trust for the benefit of Eligible Employees. No part of the Fund shall revert to any Employer except after satisfaction of all liabilities of the Plan as set forth in Section 7.3. In the event an Employee, Participant, Eligible Spouse or Alternate Payee, or any other person receives a payment from the Fund to which he or she is not entitled, he or she shall immediately repay the Fund such amount, plus interest (at the rate(s) determined by the Board) from the date of receipt until such repayment.

5.4 Expenses

All reasonable expenses incurred in the administration of the Plan or the Trust Fund shall be paid from the assets of the Fund.



ARTICLE VI  
ADMINISTRATION

6.1 Named Fiduciary: The Board of Trustees

- (a) The Plan shall be administered by the HRSA-ILA Pension Plan Board of Trustees (referred to herein as the “Board”), seven trustees of which shall be appointed by the HRSA and seven trustees of which shall be appointed by the ILA. Both the HRSA and the ILA shall each have the right to appoint two alternate trustees who may act in the place of regularly appointed members, should regularly appointed members be unable to attend a convened meeting of the Board.
- (b) Either the HRSA or the ILA at any time may remove a trustee appointed by it and may appoint a trustee to fill any vacancy among the trustees appointed by it, whether such vacancy is due to death, resignation, removal, or any other cause. Both the HRSA and the ILA shall notify each other and each member of the Board in writing of the trustees respectively appointed by them, and upon such notice any such appointments shall be effective.
- (c) The members of the Board shall receive no compensation for services rendered by them in connection with their official duties as such, however, they shall be reimbursed for all reasonable and necessary expenses which they incur, subject to reimbursement policies established and maintained by the Board, including expenses incurred to obtain continuing education relative to their duties hereunder.

- (d) In the event of deadlock on any question before the Board, including a question of the amendment of the Plan, an impartial umpire shall be selected by mutual agreement of the HRSA and ILA members of the Board to cast the deciding vote on such question. If, within a reasonable time, the Board is unable to agree upon the selection of a person to act as impartial umpire, then the American Arbitration Association shall make such selection.
- (e) To constitute a quorum for the transaction of business, there shall be required to be present at any meeting of the Board at least three ILA members of the Board and three HRSA members of the Board. At all meetings of the Board, the HRSA members shall have a total of seven votes and the ILA members shall have a total of seven votes; the votes of any absent member being divided equally among the members present who were appointed by the same party. Decisions of the Board shall be by a majority of the votes cast.

## 6.2 Powers of the Board

- (a) The Board shall have complete control of the administration of the Plan, subject to the provisions hereof, with all powers necessary to enable it to properly carry out its duties in that respect. Not in limitation, but in amplification of the foregoing, the Board shall have powers to construe the terms of the Plan and to determine all questions that may arise thereunder. It shall determine all questions relating to the eligibility of Employees to participate in the Plan and the amount of retirement allowance or other benefits to which any Participant, Beneficiary, or annuitant may become entitled hereunder.

- (b) Subject to the limitations in Section 6.10, the Board shall have powers which are necessary and proper for the administration of the Plan, including but not limited to the following:
- (1) To make and enforce bylaws for its own governance and such rules and regulations as it shall deem necessary and proper for the efficient operation of the Plan, and to decide such questions as may arise in connection with the operation of the Plan;
  - (2) To demand, collect and receive all Employer contributions and to hold the same until applied to the ultimate purposes herein provided for, and to take such steps, including periodic audits of Employer payroll records, the institution and prosecution of or the intervention in any proceeding at law or in equity or in bankruptcy or other actions as may be necessary or desirable to effectuate the collection of such Employer contributions;
  - (3) To prescribe procedures to be followed by Employees in filing applications for benefits, and for the furnishing and verification of evidence necessary to establish Employees' rights to benefits under the Plan;
  - (4) To make determinations as to the rights of any Employee applying for pension benefits, which determinations shall be conclusive, final and binding on all persons for all purposes;
  - (5) To develop procedures for the establishment, compilation, tabulation, and analysis of employment records and for the determination, in accordance

with the provisions of the Plan, of the number of hours worked by all persons Employed in the Industry;

- (6) To obtain from any Employer, the HRSA, the Union, any Employee or former Employee, any government agency, or any other person or body, such information as shall be necessary for proper administration of the Plan;
- (7) To authorize and to make payments from the Fund to persons the Board has determined are entitled to pension benefits under the Plan;
- (8) To prepare and distribute information explaining the Plan;
- (9) To furnish to the HRSA and the ILA, upon request, such reports with respect to the administration of the Plan as are reasonable and appropriate;
- (10) To obtain and analyze reports on receipts and disbursements of the Fund; to keep books of account and records of all transactions of the Board and the members of the Board acting as such; and to provide for such actuarial valuations of the Plan as the Board shall deem desirable;
- (11) To pay from the Fund all reasonable expenses of collecting the Employer contributions and administering the Plan, including, but not limited to, all expenses which may be incurred in connection with the establishment of the Plan, the purchase, lease, construction or ownership of office space, materials, supplies and equipment, and the employment of such administrative, actuarial, legal, accounting, expert and clerical assistance as the Board, in its discretion, finds necessary or appropriate in the performance of its duties;

- (12) Appoint an enrolled Actuary who shall be independent of the Board and qualified through the Fellowship in the Society of Actuaries, and/or membership in the American Academy of Actuaries, or a firm of actuaries which has on its staff such an Actuary, to perform all necessary actuarial services in connection with the operation of the Plan, including the certification required by Section 103(d) of ERISA; and
  - (13) To designate the depositories in which the Fund or any part thereof shall be deposited.
- (b) In the administration of this Trust, and in investing and reinvesting the Trust Fund, the Board shall have the power and authority to:
- (1) invest and reinvest the funds in such investments as it deems necessary and appropriate and in accordance with the best interests of the Participants, including but not limited to the following forms of investment: real and personal property; securities, including common and preferred stocks, bonds, common trust funds; interests in mutual funds and investment trusts; and investment limited partnerships;
  - (2) appoint investment advisors and investment manager(s) (as that term is defined in ERISA §3(38)) to manage all or any part of the Pension Fund, and to vote all proxies in connection therewith, in which case, in accordance with ERISA §405(d)(1), the Trustees shall have no fiduciary liability for the acts or omissions of such investment manager(s) and shall be under no obligation to invest or otherwise manage the portion of the

Pension Fund which is subject to the management of such investment manager;

- (3) retain any and all property it may at any time receive;
- (4) to sell, exchange or lease for any period any and all property, real or personal;
- (5) to borrow money if deemed necessary or desirable to promote the purpose of the Trust;
- (6) to vote, in person or by proxy, all securities held as a part of the Trust; to deposit securities under or to become party to any voting trust or similar agreement; to cause securities to be registered in its name or in the name of a nominee, but with the addition of annotation indicating a trust relationship;
- (7) to prosecute, defend or compromise any proceeding;
- (8) to execute deeds, leases, mortgages, pledges, and any other instruments necessary or desirable to carry out the powers herein conferred; and
- (9) generally to have and exercise all powers with respect to the Trust and under this Plan as in the discretion of the Board may be necessary or desirable to promote the purpose hereof.

### 6.3 Books and Records

An annual audit of the Plan shall be made by competent auditors designated by the Trustees. More frequent audits may be made at the discretion of the Trustees. A statement of the results of said audits shall be provided to the HRSA and the ILA and shall be available for inspection by other interested persons at such office or offices as the

Board shall establish.<sup>10</sup> The Trustee shall also provide financial statements and information to the HRSA and the ILA upon request.

6.4 Reserves

The Board shall have the power to set up such reserves as it may deem wise for the effectuation of the purposes of the Plan.

6.5 Reliance upon Information

The Board and any of its members shall be entitled to rely upon the correctness of any information furnished by the HRSA, the Union, any Employer-Member of the HRSA, and the Federal Social Security Agency.

6.6 No Liability of Employers, HRSA and Union

Neither any Employer, the HRSA nor the Union shall be liable in any respect for any of the obligations of the members of the Board because such members are officers of, or in any way associated with any Employer, the HRSA, or the Union, it being understood that each of the members of the Board designated as a representative either of the Employer or of the Union acts as a representative in a statutory sense only and not as agent of any person, firm, corporation or organization.

6.7 Delegation of Ministerial Duties

The Board may delegate any of its ministerial powers or duties to the Administrator or any agent or employee engaged by the Board or to any one or more of the members of the Board.

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<sup>10</sup> The term “interested persons” shall mean those persons entitled to receive information regarding the Plan as required by ERISA.

#### 6.8 Appointment of Administrator

The Board may appoint an administrator or administrators (“Administrator,” “Plan Administrator” or “Administrators”) to administer the Plan; provided that the Administrator’s decisions shall be subject to review by the Board, pursuant to Section 6.2(a) above.

#### 6.9 Binding Effect

This Plan shall be binding upon Participants and their beneficiaries, heirs, executors, administrators and assigns. All decisions of the Board, including all those made in the interpretation and administration of the Plan, shall be conclusive, final and binding.

#### 6.10 Fiduciary Responsibilities

- (a) The Board members, and all other persons occupying the role of fiduciaries, shall discharge the duties with respect to the Plan solely in the interest of the Participants and Beneficiaries, and for the exclusive purpose of providing benefits to them and defraying reasonable administration expenses.
- (b) Each such fiduciary shall discharge his duties with the care, skill, prudence and diligence under the circumstances then prevailing, that a prudent man acting in like capacity, and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims.
- (c) The Board will prescribe in writing and will review from time to time, an investment policy and a funding policy that consider both immediate and long range financial goals of the Plan and which satisfy the requirements of Part 3 of Title I of ERISA.



- (d) Notwithstanding any other provisions hereof, no investment shall be made which will adversely affect the qualification of the Plan or the exempt status of the Trust under the Internal Revenue Code of 1986, as amended. The Board shall not engage in any transaction with the Fund which constitutes a prohibited transaction or otherwise violates the Employee Retirement Income Security Act of 1974.
- (e) The assets of the Plan shall never inure to the benefit of the Employers, except as provided in Section 7.3 hereof on termination. As stated in Section 7.3, any distribution provided for therein must not contravene any provisions of law.
- (f) The Board of Trustees, on behalf of the Plan, may purchase insurance for the Plan and the Plan fiduciaries, to cover liability or losses occurring by reason of the act or omission of a fiduciary, provided such insurance permits recourse by the insurer against the fiduciary in the case of a breach of a fiduciary obligation by such fiduciary.

#### 6.11 Claims Procedure

Claims for benefits under the Plan shall be filed, on forms to be supplied by the Plan Administrator. Every Participant, Pensioner and Eligible Spouse shall furnish, at the request of the Plan, any information or proof reasonably required (as determined by the Board) of Trustees to determine his or her benefit rights. If the claimant makes a willfully false statement material to his application or furnishes fraudulent or deceptive information or proof, material to his claim, benefits under this Plan may be denied, suspended or discontinued. The Trustees shall have the right to recover any benefit payments made in reliance on any willfully false, fraudulent or deceptive statement, information or proof submitted by a Participant, Pensioner or Eligible Spouse.

Notice of the disposition of a claim shall be furnished to the claimant in writing. In the event the claim is denied, the claimant shall be furnished written notice of the denial, set forth in a manner calculated to be understood by such claimant, containing: (1) a statement that the claim for benefits was denied; (2) the specific reason or reasons for the denial, making a reference to the Plan provisions upon which the denial was based; (3) a description of any additional material or information necessary for the claimant to provide to perfect the claim, and a statement why this information is needed; and (4) a statement that the claimant may file a written request for review of the denial within 60 days after receiving the Notice of denial.

If a claim for benefits is denied, the Participant may file an appeal and request a review of the denial by the Board of Trustees. Within 90 days after the Board receives a request for review it shall grant the claim, deny the claim, or notify the claimant that special circumstances require an extension of time to process the claim. The extension of time will normally not exceed 180 days from the date of the original request. A participant may appeal the review of the claim by the Board. If the claimant fails to appeal his or her claim, the failure will constitute an irrevocable consent by the claimant to the Board's decision. If the Participant submits an appeal, his or her union representative must file the appeal with the Arbitration Committee established by the Hampton Roads Shipping Association and the International Longshoremen's Association, as provided for in the Collective Bargaining Agreement. The Arbitration Committee will consider the appeal and all decisions reached by the Arbitration Committee are final and binding on the Participant and all other parties.

## ARTICLE VII

### AMENDMENT, DURATION AND TERMINATION

#### 7.1 Amendment

The Board shall have authority to review all of the provisions of the Plan that are not specifically excluded herein from review, and to make such changes, modifications and amendments to the Plan as the Board shall deem desirable; provided that accrued benefits, including Code §411(d)(6) “protected benefits”, shall not be reduced, eliminated or made subject to employer discretion except to the extent permitted by regulations under the Code or ERISA. Notwithstanding the foregoing, the Plan shall be amended in accordance with Section 432 of the Code as required.

#### 7.2 Duration

This Plan has been adopted and is maintained pursuant to the several collective bargaining agreements between the Employer-Members of the HRSA and the ILA and is subject thereto. This Plan and Trust shall continue until terminated pursuant to the Collective Bargaining Agreement and Section 7.3 hereof.

#### 7.3 Termination

(a) In the event of termination or partial termination of the Plan, a Participant’s interest under the Plan as of the date of such termination shall be nonforfeitable to the extent his interest is funded. To the extent that assets are available to provide benefits to Plan Participants and Beneficiaries, on termination of the Plan, the assets shall be allocated in accordance with ERISA Section 4044 and ERISA

Sections 4041A and 4201 et. seq. and the regulations thereunder (including DOL Reg. §2675.1 et. seq.), as such provisions may be amended from time to time.

- (b) Any residual assets of the Plan remaining after satisfying all liabilities of the Plan to Participants and beneficiaries shall be distributed to the Employer-Members provided the distribution does not contravene any provisions of law.

ARTICLE VIII  
MISCELLANEOUS

8.1 Non-alienation of Benefits

The benefits, payments, interests in or to any account or fund, proceeds or avails of any contract or any claim or right under this Plan shall not be subject to claims of any creditor of any Participant or beneficiary, and shall not be subject to the attachment, garnishment or other legal process, nor shall any Participant or beneficiary have any right to alienate, anticipate, commute, surrender, pledge, hypothecate, encumber or assign any of said benefits, payments, interest in or to any account or fund, proceeds or avails of any contract. Notwithstanding the preceding sentence;

- (a) Where a qualified domestic relations order as described in sections 401(a)(13)(B) and 414(p) of the Code has been received, it will be considered to have modified the terms and benefits of the Plan with respect to the Employee affected thereby to the extent it requires certain benefits to be paid to specific alternate payees; and
- (b) For purposes of this Section 8.1, a voluntary and revocable assignment (within the meaning of Section 401(a)(13) of the Code) of a benefit payment payable hereunder to any other plan or fund maintained by the HRSA and ILA pursuant to the Collective Bargaining Agreement shall not constitute any assignment or alienation of such benefit unless the assignment or alienation is made for the purpose of defraying plan administrative costs; and

- (c) the recovery by this Plan of pension benefit overpayments shall not be deemed to be a prohibited assignment.

## 8.2 Construction

- (a) Words used in the masculine shall apply to the feminine where applicable; and, wherever the context of the Plan dictates, the plural shall be read as the singular and the singular as the plural.
- (b) This Plan shall be construed, whenever possible, to be in conformity with the requirements of the Code, ERISA and the Collective Bargaining Agreement. To the extent not in conflict with the Code or ERISA, the construction and administration of the Plan shall be governed by and construed in accordance with the law of the Commonwealth of Virginia.
- (c) Title of Articles, Sections and Subsections are for general information only and shall not alter or amend the provisions of the Plan.

## 8.3 No Employment Rights

Neither the establishment of the Plan and Trust nor any modification thereof, nor the creation of any fund, account or trust, nor the payment of any benefits shall be construed as giving any Participant or Employee or any person whomsoever any legal or equitable right against any Employer, the Board or the Trustee unless such right shall be specifically provided for in this Plan or this Trust; or as giving any Participant or Employee the right to be retained in the service of an Employer, and all Participants and Employees shall remain subject to discharge to the same extent as if this Plan had never been adopted.

#### 8.4 Contributions are not Wages

Payments made by an Employer to the Fund and pension benefits paid by the Fund shall not constitute or be deemed to be wages.

#### 8.5 Maximum Pension Benefits; Maximum Compensation

(a) The annual benefit, as defined under Section 415(b)(2) of the Code, payable to any Participant during a Plan Year will not exceed the Defined Benefit Dollar Limitation. This Section 8.5 shall be effective for limitation years ending after December 31, 2001, except as provided in Section 8.5(c)(2)(D). Further, effective for limitation years beginning after July 31, 2007, the Plan shall incorporate by reference the final regulations issued under Section 415 of the Code in April 2007, as amended from time to time.

(b) Benefit increases resulting from the increase in the limitations of section 415(b) of the Code will be provided to all current and former Participants (with benefits limited by section 415(b)) who have an accrued benefit under the plan immediately prior to the effective date (other than an accrued benefit resulting from a benefit increase solely as a result of the increases in limitations under section 415(b)).

#### (c) Definitions

(1) The “Defined Benefit Dollar Limitation” is \$160,000, as adjusted, effective January 1 of each year, under section 415(d) of the Code in such manner as the Secretary shall prescribe, and payable in the form of a straight life annuity. A limitation as adjusted under section 415(d) will apply to limitation years ending with or within the calendar year for which the adjustment applies.

(2) Notwithstanding subsection 8.5(c)(1) above, the annual benefit shall not exceed the “Maximum Permissible Benefit.” The Maximum Permissible Benefit is the Defined Benefit Dollar Limitation adjusted where required as provided in (A) and, if applicable, in (B) or (C) below, and limited, if applicable, as provided in (D) below.

(A) If the Participant has fewer than 10 years of participation in the plan, the Defined Benefit Dollar Limitation shall be multiplied by a fraction, (i) the numerator of which is the number of years (or part thereof) of participation in the plan and (ii) the denominator of which is 10.

(B) If the benefit of a Participant begins prior to age 62, the Defined Benefit Dollar Limitation applicable to the Participant at such earlier age is an annual benefit payable in the form of a straight life annuity beginning at the earlier age that is the actuarial equivalent of the Defined Benefit Dollar Limitation applicable to the Participant at age 62 (adjusted under (A) above, if required), all as determined in accordance with Section 415(b)(2) of the Code.

(C) If the benefit of a Participant begins after the Participant attains age 65, the Defined Benefit Dollar Limitation applicable to the Participant at the later age is the annual benefit payable in the form of a straight life annuity beginning at the later age that is actuarially equivalent to the Defined Benefit Dollar Limitation applicable to the Participant at age 65 (adjusted under (A) above, if



required), all as determined in accordance with Section 415(b)(2) of the Code.

(D) Notwithstanding the above, for limitation years beginning before January 1, 2002, the Maximum Permissible Benefit will not exceed the Defined Benefit Dollar Limitation. In the case of a Participant who has fewer than 10 years of service with the Employer, the Defined Benefit Dollar Limitation shall be multiplied by a fraction, the numerator of which is the number of years (or part thereof) of service with the Employer and (ii) the denominator of which is 10.

(E) Benefit accruals under the Plan will be automatically frozen or reduced as necessary to insure that the limitations of Code §415 will not be exceeded, as provided by Treas. Reg. §§1.401(a)-1 and 1.415-1(d)(1).

(e) “Compensation” for purposes of these calculations shall mean the total compensation actually paid by the Employer to a Participant, including commissions to sales personnel, bonuses, and overtime payments (basic and premium) or any other additional payments in any form, as reported by the Employer for Federal income tax purposes; provided that only the annual compensation of each employee taken into account under the Plan for any year does not exceed the limit stated in Section 401(a)(17) of the Code, as adjusted for cost-of-living increases in accordance with Section 401(a)(17)(B) of the Code. In determining benefit accruals in Plan Years beginning after December 31, 2001, the annual compensation limit shall be \$200,000. If Compensation for any prior

determination period is taken into account in determining a Participant's benefits accruing in the current Plan Year, the Compensation for that prior determination period is subject to the limitations of Section 401(a)(17) of the Code for that prior determination period. Compensation shall include: (i) any elective deferral (as defined in Section 402(g)(3) of the Code) and, (ii) any amount which is contributed or deferred by the employer at the election of the employee and which is not includible in the gross income of the employee by reason of Sections 125 or 457 of the Code. Compensation includes wages paid for hours worked by the Participant, including overtime or shift differentials, commissions, bonuses or other similar payments, that are paid within the later of two and one half (2 ½) months after the Participant's severance from Employment in the Industry or within the limitation year during which the severance occurred, if such payments would have been paid to the Participant had he continued Employment in the Industry. Compensation also includes payments for unused accrued sick leave, vacation or holiday, or other leave, but only if the Participant would have been able to use the leave if Employment in the Industry continued.

#### 8.6 Minimum Required Distributions

With respect to distributions under the Plan made for calendar years beginning on or after January 1, 2001, the Plan will apply the minimum distribution requirements of Section 401(a)(9) and Treasury Regulation Sections 1.401(a)(9)-0 through 1.401(a)(9)-9, notwithstanding any provision of the Plan to the contrary.

## 8.7 Payment of Small Benefits

- (a) Notwithstanding any other provision hereof, if any benefit payable to a Participant or other payee shall be less than \$25.00 per month, payments by the Plan may be made quarterly or annually in advance as the Board shall determine. Further, notwithstanding any other provision hereof, the Board may pay the actuarial equivalent of a Vested Participant's benefits, as determined by the Actuary, in one lump-sum, if such lump-sum is less than \$5,000.00. If a distribution of a nonforfeitable accrued benefit of less than \$5,000 but more than \$1,000 is made and the distributee has not made an election to have the distribution paid directly to another eligible retirement plan as defined in section 402 or IRA, and has not elected to receive the distribution directly, the Plan Administrator will make the distribution to an IRA of a designated trustee.
- (b) In determining the present value of the Participant's vested accrued benefits for purposes of this paragraph, the present value shall be calculated using the Applicable Interest Rate and the Applicable Mortality Table, as of the effective date, specified in Sections 1.2(ii) and 1.2(jj).
- (c) For purposes of this Section 8.7, if the present value of a Participant's vested accrued benefit is zero, the Participant shall be deemed to have received a distribution of such vested accrued benefit. If a Participant receives or is deemed to receive a distribution pursuant to this Section 8.7 and the Participant resumes covered Employment under the Plan, such Participant shall have the right to restore his or her Employer derived accrued benefit (including all optional forms of benefits and subsidies relating to such benefits) to the extent forfeited upon

repayment to the Plan of the full amount of the distribution plus interest, compounded annually from the date of distribution at the rate determined for purposes of Section 411(c)(2)(C) of the Code. Such repayment must be made before the earlier of five years after the first date on which the Participant is subsequently Re-employed by the Employer, or the date the Participant incurs 5 consecutive 1-year Breaks in Service following the date of distribution.

8.8 General Limitation on Benefit Payments.

To the extent permissible under applicable law, and notwithstanding any other provision of this Plan, a Participant shall forfeit any non-vested benefit payable hereunder if it is determined by the Board of Trustees in its sole discretion that the Participant has engaged in a disqualifying act with respect to any of the HRSA-ILA Funds. A Participant shall be deemed to have engaged in a disqualifying act if he is determined to have: (1) been guilty of committing theft, fraud or embezzlement with respect to any of the HRSA-ILA Funds; (2) committed any criminal act or malicious act [not rising to the level of an adjudicated crime] which damages the person or property of any of the HRSA-ILA Funds; (3) has filed a false statement, document or claim with respect to any HRSA-ILA Fund.

## ARTICLE IX

### TOP HEAVY PROVISIONS

#### 9.1 Top Heavy Plan Requirements

Notwithstanding any other provisions of the Plan, if for any Plan Year the Plan is determined to be a Top Heavy Plan (as defined in Section 9.3) with respect to an Employer, then the following requirements shall apply with respect to the Employees of such Employer:

- (a) The top heavy vesting requirements of section 416(b) of the Code set forth in Section 9.4;
- (b) The top heavy minimum benefit requirement of section 416(c) of the Code set forth in Section 9.5; and
- (c) The top heavy limitation on compensation requirement of section 416(d) of the Code set forth in Section 9.6.

The above requirements shall not apply to any Employee Employed in the Industry (as defined in Section 1.2(o)).

#### 9.2 Definitions

For purposes of this ARTICLE IX, the following terms shall have the respective meanings set forth below:

- (a) “Aggregation Group” means either a Permissive Aggregation Group (as defined in Subsection 9.2(j)) or a Required Aggregation Group (as defined in Subsection 9.2(k)).
- (b) “Compensation” has the meaning given such term in Section 8.5(e) of this Plan.

- (c) “Determination Date” means, with respect to any plan year, the last day of the immediately preceding plan year or, in the case of the first plan year for any plan, the last day of such plan year.
- (d) “Five Percent Owner” means any person who owns (or is considered as owning within the meaning of section 318 of the Code, as modified by substituting “5 percent” for “30 percent” in section 318 (a) (2) (C)) more than five percent of the outstanding stock of an Employer (not including other members of a controlled group) or stock possessing more than five percent of the total combined voting power of all stock of the Employer (not including other members of the controlled group).
- (e) “Key Employee” means, for any plan year, any employee or former employee of an Employer or beneficiary of such employee who, at any time during the Testing Period, is:
  - (1) An officer of the Employer having an annual Compensation from the Employer during any plan year in the Testing Period during which he was an officer greater than 50 percent of the amount in effect under section 415(b)(1)(A) of the Code for the calendar year in which such plan year ends. However, no more than the lesser of: (i) 50 employees of the Employer, or (ii) the greater of ten percent of the greatest number of employees of the Employer at any time during the Testing Period (if not an integer, increased to the next integer) or three of such employees shall be treated as officers. If the number of officers is limited by the preceding sentence, the employees who are treated as officers will be those

employees who had the largest annual Compensation for the plan years in the Testing Period during which they were officers;

- (2) One of the ten employees of the Employer owning (or considered as owning within the meaning of section 318 of the Code, as modified by substituting “5 percent” for “50 percent” in section 318(a)(2)(C)) at any time during the Testing Period the largest interests in the Employer. The above notwithstanding, no employee shall be included as a Key Employee under this Subsection 9.2(e)(2) unless the Employee’s ownership interest exceeds 1/2 percent at the time he is one of the ten employees and the annual Compensation for the plan year in which the ownership interest exceeds 1/2 percent is greater than the dollar limitation in effect under section 415(c)(1)(A) for the calendar year in which such plan year ends. If two employees have the same percentage interest in the Employer (not including other members of a controlled group), the employee having a greater annual Compensation from the Employer during the plan year during any part of which that ownership interest existed shall be treated as having a larger interest. An employee whose annual Compensation for any plan year in the Testing Period exceeds the limitation in effect under section 415(c)(1)(A) for the calendar year in which such plan year ends and who has an ownership interest greater than 1/2 percent in that plan year is considered to be one of the top ten owners unless at least ten other employees own a greater percentage interest in the Employer during any plan year of the Testing Period and have annual Compensation during

such plan year of ownership greater than the limit under section 415(c)(1)(A) for the calendar year in which such plan year ends;

- (3) A five Percent Owner (as defined in Subsection 9.2(d)), within the meaning of section 416(i)(1)(A)(iii) and (B)(i) of the Code and the regulations thereunder;
  - (4) A One Percent Owner (as defined in Subsection 9.2(h)) having aggregate annual Compensation from the Employer for a plan year of more than \$150,000, within the meaning of section 416(i)(1)(A)(iv) and (B) (ii) of the Code and the regulations thereunder.
- (f) “Minimum Benefit Compensation” means the Participant’s average Compensation for the period of consecutive Plan Years (not exceeding five and counting only years in which the Participant has a year of Benefit Service) during which the Participant’s Compensation was highest. However, Compensation shall be considered only if such Compensation was paid to the Participant in a Plan Year: (i) beginning after December 31, 1983, and (ii) beginning before the end of the last Plan Year in which the Plan was a Top Heavy Plan with respect to the Employer employing the Participant.
- (g) “Non-Key Employee” means any employee or former employee of an Employer or beneficiary of such employee who is not a Key Employee, within the meaning of section 416(i)(2) of the Code and regulations thereunder.
- (h) “One Percent Owner” means any person who would be described in Subsection 9.2(d) as a Five Percent Owner if “one percent” were substituted for “five percent” each place it appears in Subsection 9.2(d).



- (i) “Pension Plan” means any defined benefit or defined contribution plan of an Employer.
- (j) “Permissive Aggregation Group” means a Required Aggregation Group (as defined in Subsection 9.2(k)) plus any or all other Pension Plan or Plans maintained by an Employer which is or are not required to be included in the Required Aggregation Group, provided that such Permissive Aggregation Group would continue to meet the requirements of sections 401(a)(4) and 410 of the Code when considered together with the Required Aggregation Group.
- (k) “Required Aggregation Group” means: (i) each Pension Plan maintained by an Employer in which a Key Employee is a participant at any time during the Testing Period, and (ii) each other Pension Plan maintained by the Employer which, at any time during the Testing Period, enables any Pension Plan described in the immediately preceding clause (i) to meet the requirements of section 401(a)(4) or 410 of the Code.
- (l) “Testing Period” means the plan year containing the Determination Date and the four preceding plan years.
- (m) “Top Heavy Group” means, with respect to any plan year, an Aggregation Group if, as of the Determination Date with respect to such plan year, the sum of the present value of the cumulative accrued benefits and the aggregate of accounts for Key Employees under all Pension Plans maintained by an Employer included in such Aggregation Group exceeds sixty percent of a similar sum determined for Key Employees and Non-Key Employees. Such sums shall be determined by considering only the accrued benefits and accounts of the employees of an

Employer. When two or more plans constitute an Aggregation Group, the present value of cumulative accrued benefits and the aggregate of accounts will be determined separately for each plan as of each plan's Determination Date. The plans will then be aggregated by adding together the results for each plan as of the Determination Dates that fall within the same calendar year. If any employee is a Non-Key Employee with respect to any Pension Plan for any plan year, but such employee was a Key Employee with respect to such Pension Plan for any prior plan year, any accrued benefit for such employee shall not be taken into account for purposes of the foregoing determination. The present value of the cumulative accrued benefits and the aggregate of accounts shall be determined in accordance with section 416(g) of the Code and the regulations thereunder. The present value of cumulative accrued benefits and aggregate of accounts will be based on the benefit under each Pension Plan and determined as of the most recent valuation date for each Pension Plan falling within the twelve-month period ending on the Determination Date for each Pension Plan. In determining the present value of the cumulative accrued benefit and aggregate of accounts of any employee under each Pension Plan, such present value shall be increased by the aggregate distributions with respect to such employee under the Pension Plan during the five-year period ending on the Determination Date. For plan years beginning after December 31, 1984, if any individual has not received any Compensation from the Employer (not including any other members of a controlled group) maintaining the plan (other than benefits under the plan) at any time during the five-year period ending on the Determination Date, any accrued

benefit or account for such individual under such plan shall not be taken into account. The actuarial assumptions used in determining such present values shall be the same as those used by this Plan for purposes of the minimum funding standards under section 412 of the Code, except that no assumption as to future withdrawal or future salary increases shall be used.

### 9.3 Top Heavy Plan

This Plan shall be a Top Heavy Plan with respect to an Employer for any Plan Year commencing after December 31, 1983, in which the Plan is included in the Required Aggregation Group (as defined in Subsection 9.2(k)) and the Top Heavy Group (as defined in Subsection 9.2(m)).

### 9.4 Top Heavy Vesting Requirement

For purposes of Section 4.4, a Participant of an Employer with respect to which the Plan is a Top Heavy Plan will have a vested right in accordance with this Section 9.4. A Participant who, because of this Section 9.4, has a percentage of a vested right shall become entitled under Subsection 3.7(a) to such percentage of a monthly pension computed in accordance with Section 3.6. A Participant shall have a 20 percent vested right after completing two years of Vesting Service, 40 percent after three years, 60 percent after four years, 80 percent after five years, and 100 percent after six years. However, if such a Participant becomes a Vested Terminated Participant in a subsequent Plan year during which the Plan is not a Top Heavy Plan with respect to such Participant's Employer and such Participant has not completed 10 years of Vesting Service or had not completed five years of Vesting Service by the end of the last Plan Year in which the Plan was a Top Heavy Plan with respect to such Participant's

Employer, such Participant will be entitled to a monthly pension equal to his vested monthly pension as of the last day of the last Plan Year in which the Plan was a Top Heavy Plan. Section 3.11 shall not apply to the minimum benefits required by Section 9.5 to the extent such benefits are nonforfeitable by reason of this Section 9.4. This Section 9.4 shall not apply to any Employee who has not completed one Hour of Service after the beginning of the Plan Year during which the Plan first becomes Top Heavy with respect to such Employee's Employer.

9.5 Top Heavy Benefit Requirement

The benefits of a Participant of an Employer with respect to which the Plan is a Top Heavy Plan who is otherwise eligible for benefits under Article III of this Plan and who is not a Key Employee shall not be less than the Participant's Minimum Benefit. Such Minimum Benefit shall be the actuarial equivalent of a single life annuity (with no post-retirement ancillary benefits) commencing at the Participant's Normal Retirement Date determined by multiplying two percent of such Participant's Minimum Benefit Compensation by the Participant's years of Benefit Service. However, a Participant's years of Benefit Service shall not include years completed in a Plan Year beginning before January 1, 1984, or years beginning in a Plan Year during which the Plan was not a Top Heavy Plan with respect to the Participant's Employer. Furthermore, in no event shall a Participant's Minimum Benefit exceed a benefit in such a form determined by multiplying 20 percent times such Minimum Benefit Compensation. The Minimum Benefit of a Participant who is entitled to a benefit under another plan or plans of an Employer will be reduced by the benefits provided by such other plan or plans, except that if the Minimum Benefit exceeds the benefits provided under such other plan or plans,

the Minimum Benefit will be provided under such other plan or plans if such plan or plans are top heavy for the plan year. This Section 9.5 shall not apply to any Employee who has not completed one Hour of Service after the beginning of the Plan Year during which the Plan first becomes Top Heavy with respect to such Employee's Employer. For purposes of this Section 9.5, actuarial equivalence shall be based on the actuarial assumptions specified in Sections 1.2(ii) and 1.2(jj).

9.6 Top Heavy Limit on Compensation

For any Plan Year with respect to which, the Plan is determined to be a Top Heavy Plan with respect to an Employer, not more than \$200,000 of the annual Compensation of any Participant who is an employee of such Employer shall be taken into account for any purpose, or such other sum as the Secretary from time to time shall prescribe. However, the preceding sentence shall not cause a Participant's accrued benefit, immediately prior to such Plan Year, to be reduced. For Plan Years beginning after January 1, 1989, only that amount of a Participant's Compensation which does not exceed the limitations set forth in Section 401(a)(17) of the Code will be taken into account for purposes of determining benefits under the Plan.

9.7 Modification of Top Heavy Rules for Plan Years Beginning After December 31, 2001

- (a) Effective Date. Notwithstanding Sections 9.1 through 9.6 of this Plan, this Section 9.7 shall apply for purposes of determining whether the Plan is a top-heavy plan under section 416(g) of the Code for Plan Years beginning after December 31, 2001, and whether the Plan satisfies the minimum benefits requirements of section 416(c) of the Code for such years.
- (b) Determination of top-heavy status.

- (1) Key employee. Key employee means any employee or former employee (including any deceased employee) who at any time during the plan year that includes the determination date was an officer of the employer having annual compensation greater than \$130,000 (as adjusted under section 416(i)(1) of the Code for plan years beginning after December 31, 2002), a 5-percent owner of the employer, or a 1-percent owner of the employer having annual compensation of more than \$150,000. For this purpose, annual compensation means compensation within the meaning of section 415(c)(3) of the Code. The determination of who is a key employee will be made in accordance with section 416(i)(1) of the Code and the applicable regulations and other guidance of general applicability issued thereunder.
- (2) Determination of present values and amounts. This section 9.7(b)(2) shall apply for purposes of determining the present values of accrued benefits and the amounts of account balances of employees as of the determination date.
  - (A) Distributions during year ending on the determination date. The present values of accrued benefits and the amounts of account balances of an employee as of the determination date shall be increased by the distributions made with respect to the employee under the plan and any plan aggregated with the plan under section 416(g)(2) of the Code during the 1-year period ending on the determination date. The preceding sentence shall also apply to

distributions under a terminated plan which, had it not been terminated, would have been aggregated with the plan under section 416(g)(2)(A)(i) of the Code. In the case of a distribution made for a reason other than severance from employment, death, or disability, this provision shall be applied by substituting “5-year period” for “1-year period.”

- (B) Employees not performing services during year ending on the determination date. The accrued benefits and accounts of any individual who has not performed services for the employer during the 1-year period ending on the determination date shall not be taken into account.
- (c) Minimum benefits. For purposes of satisfying the minimum benefit requirements of section 416(c)(1) of the Code and the plan, in determining years of service with the employer, any service with the employer shall be disregarded to the extent that such service occurs during a plan year when the plan benefits (within the meaning of section 410(b) of the Code) no key employee or former key employee.

ARTICLE X  
WITHDRAWAL LIABILITY

10.01 General

This Article X sets forth rules and regulations of the Plan governing withdrawal liability under the Employee Retirement Income Security Act of 1974 (ERISA), as amended by the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA). To the extent this Article does not address any matter affecting an Employer's withdrawal liability, the relevant provisions of ERISA shall apply as if fully set forth in this Article. The Trustees reserve the right to amend the provisions of this Article from time to time both with respect to withdrawals occurring after, and to the extent permitted by law, to withdrawals occurring on or before the date such amendment is adopted.

An Employer that withdraws from the Plan after September 25, 1980, in either a complete withdrawal or a partial withdrawal, shall be liable to the Plan for an amount determined to be its withdrawal liability under this Article and the provisions of ERISA.

10.02 Method for Computing Withdrawal Liability

Withdrawal liability will be calculated under the Presumptive Method, the method explained in ERISA Section 4211(b).

10.03 Determination of When Contributions are Made

Contributions shall be considered paid in the year in which they accrue.

10.04 Payment of Withdrawal Liability

An Employer who is assessed withdrawal liability shall have the following options for satisfaction of the debt:



- (a) pay the entire withdrawal liability immediately in one lump sum;
- (b) pay the withdrawal liability in annual installments, determined under ERISA Section 4219, provided that each installment is fully paid at the beginning of the Plan Year for which the installment is due; or
- (c) pay the entire sum in quarterly installments determined by the Administrator in accordance with ERISA Section 4219.

The Administrator shall have authority to make reasonable changes in any payment schedule promulgated under this rule, provided that the modified schedule secures all the Plan's rights guaranteed by ERISA.

#### 10.05 Review of Withdrawal Liability

An Employer who is assessed withdrawal liability may seek review through the following procedures. The time limits for invoking these procedures are set forth in ERISA Section 4219 and 4221.

- (a) Request for Review. Pursuant to ERISA Section 4219(b)(2)(A), an Employer may:
  - (1) request the Fund to review any specific matter relating to determination of the withdrawal liability or the payment schedule;
  - (2) identify any inaccuracy in the assessment; and
  - (3) furnish any additional relevant information.

Any such Request for Review shall be made in writing, addressed to the Administrator, and shall identify the specific matter that the Employer challenges or questions. The Administrator shall make a preliminary examination of each Request for Review. The Administrator shall then either issue a ruling on the

Request for Review or refer the matter to the Board of Trustees for a final ruling.

If the matter is submitted to the Trustees, each Trustee may be consulted and vote individually if the Administrator determines that a formal meeting is not practical.

- (b) **Arbitration.** An Employer who wishes to submit any disputes concerning withdrawal liability to arbitration under ERISA Section 4221 shall do so under the auspices of the American Arbitration Association (“AAA”). The Employer must initiate the arbitration proceeding in accordance with the AAA rules and simultaneously serve upon the Administrator written notice of the initiation of arbitration and the issues that shall be contested. The Employer shall pay the filing fee necessary to initiate the arbitration.
- (c) **Litigation.** As provided by ERISA Sections 4201 and 4301, any party to an arbitration under ERISA Section 4221 may file suit in United States District Court to enforce, vacate, or modify the arbitration award.

#### 10.06 De Minimis Rule

The fund will employ the de minimis rule as set forth by ERISA Section 4209(a).

#### 10.07 Calculation of Fractions under ERISA Section 4211

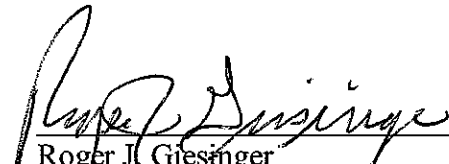
The Fund shall not employ the option in ERISA Section 4211(c)(5)(C) to modify any of the fractions used in applying in the Presumptive Method. The 5-Year fraction will be used in all instances.

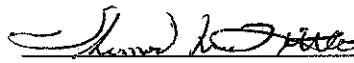
#### 10.08 Modification When Unfunded Vested Benefits Equal Zero

Effective September 30, 1998, in the event the actuary determines that as of the end of the Plan Year of any year the unfunded present value of vested benefits for withdrawal liability purposes is zero, then the following will become zero:

- (a) the unamortized amount of the change in the Plan's unfunded vested benefits for all prior years;
- (b) the unamortized amount of the Plan's unfunded vested benefits determined as of the Plan Year ended September 30;
- (c) the unamortized amount of the reallocated unfunded vested benefits as determined under paragraph (4) of ERISA Section 4211(b).

IN WITNESS WHEREOF, the duly authorized Co-Chairmen of the Board of Trustees  
hereto have executed this instrument this 29th day of September, 2010.

  
\_\_\_\_\_  
Roger J. Giesinger  
Employer Trustee Co-Chairman

  
\_\_\_\_\_  
Thomas M. Little  
Union Trustee Co-Chairman

## APPENDIX A

### TWENTY-FIVE PERCENT LUMP SUM BENEFIT ELECTION:

A Participant who submits a retirement benefit application and is eligible to retire under the provisions of Section 3.4 (Normal or Early Retirement) or 3.5 (Disability Retirement), or their Eligible Spouse who is entitled to receive a survivor annuity under the provisions of Section 3.8 of the Plan, or an Alternate Payee<sup>2</sup>, may make a one-time election to receive a Lump Sum Benefit which is actuarially equivalent to twenty-five percent (25%) of the Participant's monthly retirement benefit for Benefit Service prior to October 1, 2005, with the remaining seventy-five percent (75%) payable as a monthly pension benefit for the life of the Participant or in the form of a Qualified Joint and Survivor Annuity in the event the Participant is married. Married Participants must submit a Consent (on forms provided by the Administrator, executed by the Eligible Spouse and witnessed by a notary public or the Plan Administrator), waiving the right to receive their entire benefit in the form of a Qualified Joint and Survivor Annuity, to the extent necessary, for the Participant to receive part of their benefit in the form of Lump Sum Benefit.

Married Participants who elect (with the Consent of the Eligible Spouse) to receive the Lump Sum Benefit will receive the remaining monthly pension benefit in the form of a Joint and Survivor Annuity. The Joint and Survivor Annuity shall provide a monthly benefit to the Participant for his lifetime equal to seventy-five percent (75%) of the normal form of monthly retirement benefit computed with respect to the Participant's Benefit Service prior to October 1, 2005, with one-half of such monthly benefit (thirty-seven and one-half percent (37 1/2%) of the monthly retirement benefit) payable to the surviving Eligible Spouse for the spouse's lifetime.

Participants who retire after September 30, 2005 and elect to receive a Lump Sum Benefit (for pre-October 1, 2005 Benefit Service) shall receive, in addition to the Lump Sum Benefit and remaining (75%) monthly retirement benefit computed above, the normal form of monthly

retirement benefit for Benefit Service after September 30, 2005. Married Participants shall receive this additional benefit in the form of a Qualified Joint and Survivor Annuity, with fifty percent (50%) of such additional amount (for Benefit Service after September 30, 2005) payable to a surviving Eligible Spouse for the spouse's lifetime.

Participants who retire and elect a Lump Sum Benefit may do so only once. Participants who retire and return to Employment in the Industry may not elect a Lump Sum Benefit upon their subsequent re-retirement.

A Participant who retires, receives a Lump Sum Benefit and returns to Employment in the Industry (as defined in Section 1.2(o)) must repay to the Plan an amount equal to the Lump Sum Benefit, plus interest compounded annually at the variable rate of 120 percent of the Federal mid-term rate (as in effect under Section 1274 of the Code for the 1<sup>st</sup> month of each Plan Year during which the Lump Sum Payment was outstanding), minus the additional monthly retirement benefits the Participant would have received had the Participant not elected the Lump Sum Benefit.

For purposes of the calculations described above, actuarial equivalence shall be determined using the interest rate and mortality table as set forth in Sections 1.2(ii) and 1.2(jj).

In the event of the death of a Participant who elected but has not received a Lump Sum Benefit, the Lump Sum Benefit shall be paid to the Participant's designated beneficiary, or to the Participant's estate if no beneficiary is designated or if the designated beneficiary predeceases the Participant.

#### **Direct Transfer of the Lump Sum Benefit**

A Participant (with the consent of the Participant's Eligible Spouse, if applicable) may elect a direct rollover of all or any portion of the Lump Sum Benefit to an Eligible Retirement

Plan as defined in Section 402 of the Code or IRA, on forms provided by the Administrator, as follows:

- (a) The Plan Administrator shall advise the Participant, or designated beneficiary if applicable, (“distributee” for purposes of this Section), within the procedural requirements of the Code and the applicable Regulations thereunder, of his right to elect a direct transfer to an eligible retirement plan. If the distributee is entitled to receive an eligible rollover distribution, the distributee may request in writing to the Plan Administrator that all or a specified portion of the eligible rollover distribution be transferred directly to an Eligible Retirement Plan. The Plan Administrator may establish reasonable procedures for ascertaining that the transferee plan meets the preceding requirements and that it will accept the transfer. If more than one distribution will be made, the notice specified in the first sentence of this Subsection (a) must state that the distributee’s initial election to make or not to make a direct transfer will remain in effect unless he gives the Plan Administrator written instructions to change the election, in which case the new election will remain in effect until changed. The distributee shall not be entitled to elect a direct transfer pursuant to this Subsection (a) unless he has obtained a waiver of any applicable Qualified Joint Survivor Annuity requirements.
- (b) The notice specified in Subsection (a) shall not be required if the Participant’s vested accrued benefit at the time of the distribution does not exceed \$5,000.00.

- (c) For purposes of Subsection (a) above, an “eligible rollover distribution” is any distribution from this Plan on or after January 1, 1993 except for distributions (or portions thereof) that are:
- (i) part of a series of substantially equal periodic payments (not less frequently than annually) made over the life of the Participant (or the joint lives of the Participant and the Participant’s Eligible Spouse), the life expectancy of the Participant (or the joint life and last survivor life expectancy of the Participant and the Participant’s Eligible Spouse), or a specified period of ten (10) years or more;
  - (ii) required under Section 401(a)(9) of the Code (relating to the minimum distribution requirements); or
  - (iii) the portion of any distribution that is not includable in gross income (determined without regard to the exclusion of net unrealized appreciation described in Section 402(e)(4) of the Code).
- (d) Direct Rollovers after December 31, 2001. This section shall apply to distributions made after December 31, 2001. For purposes of the direct rollover provisions of the Plan, an “Eligible Retirement Plan” shall be defined as in Section 402(c)(8)(B) of the Code. The definition of Eligible Retirement Plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in section 414(p) of the Code. Further, effective January 1, 2008, an Eligible Retirement Plan shall include a Roth IRA as defined in Section 408A of the Code; and effective October 1, 2010, non-spouse beneficiaries shall



have rollover rights to “inherited IRAs” as set forth in Section 402(c)(11) of the Code.

Federal and state income taxes will be withheld from all Lump Sum Benefits which are not subject to a direct rollover. The Plan shall provide a notice of rollover rights in accordance with Section 402(f) of the Code, and effective October 1, 2007 such notice shall be given not more than one hundred eighty (180) days prior to distribution.