

**AUTOMOTIVE INDUSTRIES PENSION PLAN**  
**(Amended and Restated as of January 1, 2010)**

**AMENDMENT REVISING  
AUTOMOTIVE INDUSTRIES PENSION PLAN**

The above-named Pension Plan is hereby revised in its entirety to read as set forth in the revised pension Plan attached hereto effective January 1, 2010.

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**AUTOMOTIVE INDUSTRIES PENSION PLAN  
(As Amended and Restated January 1, 2010)**

**ARTICLE I**

***Meaning, Construction and Definitions***

**Section 1.01 - Meaning**

Unless the context otherwise requires, the words and phrases used in this Plan shall have the same meaning as they do in the Trust Agreement.

**Section 1.02 - Construction**

The masculine gender where appearing in the Plan, shall be deemed to include the feminine gender, and the singular may include the plural, unless the context clearly indicates to the contrary.

**Section 1.03 - Definitions**

(a) "Trust Agreement" means the Automotive Industries Pension Trust agreement, originally adopted as of September 1, 1985, as amended from time to time.

(b) "Plan" means the Automotive Industries Pension Plan, adopted and maintained to provide Benefits to eligible Participants, Spouses, and Dependents and which is known as the Automotive Industries Pension Plan.

(c) "Benefit" means pension or other benefit as may be provided under this Plan.

(d) "Participant" means any Employee, Former Employee or Retired Employee who is participating in the Plan in accordance with the provisions under Article III and who is or may become eligible to receive a Benefit under the Plan or whose Spouse or Dependents may become entitled to a Benefit under the Plan.

(e) "Dependent" means (1) a surviving spouse, or if none (2) surviving children under the age of eighteen and surviving children age eighteen or older if the Participant was furnishing at least half the cost of that person's support immediately prior to the Participant's death, or if none (3) surviving parents, surviving brothers and surviving sisters if the Participant was furnishing at least half the cost of such persons' support immediately prior to the Participant's death.

(f) "Employee" means any person on whose account an Individual Employer is at the time of reference required to make Employer Contributions into this Trust Fund under a Pension Agreement. For the sole purpose of permitting employees of the Unions and the Trustees to receive pension hereunder, employees of the Unions and the Trustees shall be considered Individual Employees hereunder, if any such Union or the Individual Employer of a Trustee execute a Pension Agreement requiring the same Employer Contributions as are required of other Individual Employers.

(g) "Former Employee" means a Former Employee as defined in the Trust Agreement as in effect prior to the Effective Date.

(h) "Retired Employee" means a Retired Employee as defined in the Trust Agreement as in effect prior to the Effective Date.

(i) "Individual Employer" means any association, individual, partnership, joint venture, trust, or corporation, which at time of reference, has a Pension Agreement in effect and is a party to the Trust Agreement.

(j) "Accrued Benefit" means the Benefit as determined under Article VI of this Plan.

(k) "Employer Contributions" means payments made pursuant to a Pension Agreement into the Trust Fund by an Individual Employer.

(l) "Trust Fund" means the trust fund established by the Trust Agreement.

(m) "Pension Agreement" means any written agreement by any Individual Employer, including collective bargaining agreements and amendments and addenda thereto and subscriber agreements and stipulations thereunder, which provides for contributions, as set forth in the Trust Agreement, by such Individual Employer to the Trust Fund. Any Pension Agreement shall be subject to approval by the Trustees.

(n) "Union" means any local union or council of unions which has a Pension Agreement in effect with an Individual Employer and is a party to the Trust Agreement.

(o) "Trustee" means any person designated as a Trustee under or pursuant to the provisions of the Trust Agreement.

(p) "Total Disability" means a total disability as determined by the Social Security Administration for purposes of eligibility for Title II disability benefits.

Total Disability shall cease on the earlier of (1) the last day of the month determined by the Social Security Administration to be the last month in which the Participant is disabled and (2) the last day of the month in which the Participant returns to substantial gainful employment. The Trustees may at any time, or from time to time, require evidence of continued entitlement to such Social Security Disability Benefit.

(q) "Month of Covered Service" means a calendar month during which the Employee completes one or more hours of Covered Service.

(r) "Covered Service" means employment performed by an employee for which Employer Contributions are required under the terms of a Pension Agreement.

(s) "Related Non-Covered Service" is employment for an Individual Employer which is not Covered Service, but which immediately follows or precedes Covered Service with the same Individual Employer without any intervening quit, discharge or retirement, and which occurs while that Individual Employer is obligated to contribute to the Fund for Employees in Covered Service.

(t) "Actuarial Equivalent" means two benefits of equal actuarial present value based on the actuarial factors and assumptions specified for the provision in which that term is used. Different factors and assumptions are used for different purposes of the Plan and are set forth in more detail in Article XI.

(u) The term "Industry" means the type of business engaged in by an Individual Employer who contributes to the Plan.

(v) "Hours of Service" includes both Covered Service and Related Non-Covered Service. Whenever the phrase "Hour of Credited Service" is used, only Covered Service will be taken into account and Related Non-Covered Service will be disregarded. Hours of Service credited under this subsection will be credited solely to the Plan Year in which the absence begins if necessary to avoid a Break in Service in that year, otherwise they will be credited solely to the immediately following Plan Year.

To the extent required by the Internal Revenue Code, the Department of Labor Regulation Section 2530.210, Hours of Service will be credited for employment with other members of an affiliated service group (Code Section 414(n)), a controlled group of corporations (Code Section 414(b)), or a group of trades or businesses under common control (Code Section 414(c)), of which an Individual Employer is a member.

In the case of either Covered Service or Related Non-Covered Service, an Hour of Service is each hour of employment for which an Employee is paid, or entitled to payment, for the performance of duties for an Individual Employer, and any other hour for which back pay is payable by the Individual Employer, irrespective of mitigation of damages and whether pursuant to a final award or to an agreement by the Individual Employer.

Effective January 1, 1986, for purposes of determining whether a Break in Service has occurred, Hours of Service will also include hours when a Participant is absent from work, with or without pay, by reason of the Participant's pregnancy, by reason of birth of the Participant's child, by reason of the placement of a child with the Participant in connection with his adoption of the child, or for purposes of caring for such a child immediately following its birth or placement, provided that the Participant furnishes the Trustees adequate information establishing that the absence from work was for a permitted reason and the number of days for which there was such an absence.

There shall be no duplication of Hours for which credit is available under more than one of the foregoing rules. Furthermore, whenever it is necessary to compute Hours of Service or to determine the computation periods to which Hours of Service will be credited, the Board will establish a rule specifically permitted under applicable lawful regulations issued by the Department of Labor under ERISA.

(w) "Compensation". For purposes of this Plan, Compensation means the amount required to be included in the employee's form W-2 by the Employers for the calendar year that either coincides with or ends within a Plan Year, plus any elective deferrals under Code Section 402(g)(3) and any amounts which are contributed or deferred by an employer at the election of the employee and which are not includable in the gross income of the employee by reason of Code Sections 124, 132(f)(4) or 457. It includes wages, salaries, bonuses and fees for services rendered in the course of employment. It does not include Employer contributions under this Plan or any other qualified retirement plan. It also does not include amounts realized from the disposition of stock acquired under a qualified stock option, amounts realized from the exercise of a non-qualified stock option or when restricted, stock held by employees either becomes freely transferable or is no longer subject to a substantial risk of forfeiture, or other amounts receiving special tax benefits, such as premiums for group term insurance.



Pursuant to Code Section 401(a)(17), the annual Compensation of each employee taken into account under this Plan for any year shall not exceed the maximum amount provided therein. In applying this rule, the maximum amount was \$200,000 in 1989, was reduced to \$150,000 in 1994, and is increased in 2010 to \$245,000, but in each instance is subject to adjustment for cost of living increases in accordance with regulations issued by the Secretary of the Treasury. Any such increases shall be automatically incorporated into this Plan without the need for specifically amending the Plan each time the maximum is adjusted.

(x) For purposes of this Plan, "Normal Retirement Age" is the later of the dates specified in (1) and (2) below:

(1) The date the Participant attains age 65; or

(2) The date the Participant reaches the fifth anniversary of the date he commenced participation in the Plan.

For purposes of this subsection (2), the number of a Participant's anniversaries will be determined under the following rules:

(A) Until a person has a Permanent Break in Service, the yearly return of a person's original commencement date will constitute an anniversary if the person is a Participant on that date.

(B) After a person has a Permanent Break in Service, all prior service, including accumulated anniversaries, is permanently forfeited, and hence if the person again becomes a Participant, his anniversaries will be measured from his new commencement date.

(y) A "Collectively Bargained Employee" is an employee who is included in a unit of employees covered by a collective bargaining agreement requiring contributions to this Plan.

(z) An "Alumni" is a noncollectively bargained employee who benefits under the Plan and is treated as a Collectively Bargained Employee for purposes of meeting federal rules on minimum participation and anti-discrimination, but not with respect to vesting rules. To be an Alumni, the employee must have accrued a benefit under this Plan while being a Collectively Bargained Employee, must be employed by the Union, or an Individual Employer, and must participate in the Plan pursuant to a written Pension Agreement which provides for the employee to benefit under the Plan.

(aa) "Code" means the Internal Revenue Code of 1986, as amended from time to time, and the regulations thereunder.

(bb) "ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations thereunder.

## ARTICLE II

### *Effective Date*

#### **Section 2.01**

Unless specifically provided elsewhere hereunder, the amended and revised Plan as set forth in this document is effective as of January 1, 2010.

#### **Section 2.02**

The provisions as set forth in this Plan amend the Automotive Industries Trust Agreement effective as of September 1, 1955 and as amended from time to time which is incorporated herein by this reference. The rights and benefits, if any, of an Employee who terminated participation prior to the Effective Date shall be determined in accordance with the provisions of the Trust Agreement as in effect on the date his participation terminated.

## ARTICLE III

### *Participation, Service and Break in Service*

#### **Section 3.01 - Employment Commenced Prior to January 1, 1976**

Employees, Former Employees or Retired Employees who were participating on the date preceding January 1, 1976 in accordance with the provisions of the Trust Agreement as in effect prior to that date became Participants as of that date.

#### **Section 3.02 - Employment Commenced on or After January 1, 1976**

Since January 1, 1976, an Employee becomes a Participant in the Plan as of the first day of the first month for which an Employer contribution is made.

#### **Section 3.03 - Credited Service**

Credited Service shall mean Credited Past Service and/or Credited Future Service.

(a) ***Credited Past Service.*** The term "Credited Past Service" as used herein shall include for any Participant who was an Employee on the initial date of the Trust Agreement or who first becomes an Employee after the initial date of the Trust Agreement, work performed by such Employee of the type, and within the geographical area covered by Pension Agreements providing for contributions to the Trust Fund and performed within:

(1) For Participants who came under the Plan prior to January 1, 1975 - the 20 year period immediately preceding the date an Employee first had a required contribution made on his behalf to the Trust Fund.

(2) Except as provided in subsection (3) below, for Participants coming under the Plan on January 1, 1975 or on a subsequent date - the 10 year period immediately preceding the date an Employee first has a required contribution made on his behalf to the Trust Fund, provided, however, that for any Participants coming under the Plan after December 31, 1978, Credited Past Service which would otherwise be granted under this Section shall not exceed the amount of Credited Future Service earned by that Participant.

(3) For Participants coming under the Plan on or after June 1, 1992, who are employed by an Individual Employer which, (i) in the first month that it makes required contributions, makes the contributions on behalf of 100 or more Employees who have an average age of 40 years or less, as determined by the Trust Fund, and (ii) which so elects in writing prior to first making required contributions, the following rules will apply instead of the rules of subsection (2):

(A) For an Employee who earns two Years of Credited Future Service, Credited Past Service shall include work with the electing Individual Employer during the five year period immediately preceding the date the Employee first has a required contribution made on his behalf to the Trust Fund by that Individual Employer;

(B) For Employees who do not earn two Years of Credited Future Service, no Credited Past Service shall be granted.

(4) Notwithstanding any other provision of this Plan, for Participants coming under the Plan during or after 1978, no Past Service Retirement Benefit shall be granted for any calendar quarter during or for which the Participant accrued benefits payable under any other pension plan.

The term "Year of Credited Past Service" as used herein means four quarters of credited past service performed prior to the date the Employee first has a required contribution made on his behalf to the Trust Fund. In determining the number of Years of Credited Past Service, each quarter of a year during which the Employee performed any credited work for an individual Employer shall be counted as a full calendar quarter.

(5) Any Credited Past Service earned by an Employee of an Employer which avoids withdrawal liability under Title IV, Subtitle E of ERISA, as amended, as a result of a Trust Agreement rule adopted under ERISA Section 4210, shall be immediately cancelled.

(b) ***Credited Future Service.***

(1) For Service completed prior to January 1, 1976. The term "Years of Credited Future Service" as used herein means the total number of monthly payments made into the Trust Fund for an Employee by all Individual Employers after September 1, 1955 and before January 1, 1976 (excluding all payments in excess of twelve monthly payments for each Employee during any calendar year, and all payments in excess of one payment for any calendar month) divided by twelve. In determining the number of Years of Credited Future Service, fractions of a Year of Credited Future Service (but not less than 1/12) shall be taken into account.

(2) For Service completed on or after January 1, 1976. The Employee will be credited with one Year of Credited Future Service for each calendar year period subsequent to January 1, 1976 during which the Employee completes five (5) or more Months of Covered Service. No fractional credit is given.

**Section 3.04 - Break in Service**

(a) Effective January 1, 1976, a One Year Break in Service occurs at the end of any Plan Year during which a Participant has not completed at least either:

- (1) five Months of Covered Service, or
- (2) 501 Hours of Service, including both Covered Service and Related Non-Covered Service.

However, no Break in Service shall occur during a Plan Year if the Participant's failure to meet the requirements stated above was solely due to any of the following causes:

- (A) a disability which incapacitates the Participant from engaging in Covered Service;
- (B) service in the Armed Forces;

(C) engaging in this Industry in an ineligible classification.

(b) If at the time of his Break in Service the Participant did not satisfy the requirements for vested Benefits under Section 4.05, his participation shall end at that time, and all his Credited Service shall be forfeited, subject to restoration only if the requirements set forth in subsection (e) below are met.

(c) If at the time of his Break in Service the Participant satisfied the requirements for full or partial vested Benefits under Section 4.05, his participation shall end at that time but his Credited Service shall not be forfeited.

(d) When participation ends as a result of a Break in Service, the Participant's rights under the Plan based on Credited Service accrued prior to the Break in Service shall be determined in accordance with the Plan provisions in effect when the Break in Service occurred.

(e) When a Participant's Credited Service is forfeited as a result of a Break in Service, the pre-Break Credited Service shall be restored if the individual again qualifies as a Participant by returning to Covered Service, but only if the renewed participation begins before a Permanent Break in Service occurs. A Permanent Break in Service occurs when the number of the Participant's consecutive One-Year Break in service equals or exceeds his Years of Credited Service. Beginning January 1, 1986, no Permanent Break in Service will occur before there have been five consecutive One-Year Breaks in Service.

### **Section 3.05 - Related Credited Service**

(a) ***Purpose.*** Related Credited Service is provided under this Plan for Participants who would otherwise be ineligible for a pension under this Plan because their years of employment have been divided between employment creditable under this Plan and employment creditable under another pension plan.

(b) ***Related Plans.*** By resolution duly adopted, the Board of Trustees may recognize another pension plan as a Related Plan.

(c) ***Related Credited Service.*** Years of service creditable under a Related Plan to a Participant shall be recognized under this Plan as a Related Credited Service. The total of a Participant's Related Credited Service and the Pension Credits which he has accumulated and maintained directly under this Plan shall be known as his combined Credited Service. For the purposes of this Plan, the term Related Credited Service does not include employment creditable under any pension plan which is not recognized by the Board of Trustees of this Plan as a related Plan.

(d) ***Eligibility for Related Credited Service.*** A participant shall be eligible for Related Credited Service if he meets the following requirements:

(1) He would be eligible for a Normal, Unreduced Early Retirement or Disability Pension under this Plan if his Combined Credited Service is treated as Credited Service as defined in this Plan; and

(2) He has at least 2 years of Credited Future Service under this Plan.

Related Credited Service shall be construed in determining whether a Break in Service has occurred as set forth in Section 3.04 of Article III to determine whether prior Combined Credited Service shall be cancelled.

(e) **Payment.** Payment of Retirement Benefits pursuant to this Section shall be subject to all the conditions applicable to this Plan, including, without limitation, the requirements for retirement as defined in Article IV.

With respect to any Related Plan, this Section shall apply only to participants who retire under this Plan and said Related Plan after the effective date of the adopted resolution which recognizes that Related Plan.

### **Section 3.06 - Recognized Unrelated Credited Service**

The Board of Trustees may by resolution apply the rules set forth in Section 3.05 to Participants who performed work of the type covered by collective bargaining agreements that require contributions to this Plan and who were covered by a collective bargaining agreement that required contributions to a labor-management jointly negotiated pension plan other than this Plan and provided further that such Participant's Recognized Unrelated Credited Service was performed in the following geographical areas: Eleven Western States.

### **Section 3.07 - Alumni Participation Rules**

For periods prior to January 1, 1994, an Alumni employed by the Union or an Individual Employer participating in the Plan pursuant to a written Pension Agreement will have all of his Hours of Service with his Employer which are covered by such Pension Agreement treated as Hours of Service as a Collectively Bargained Employee to the extent provided in the Pension Agreement. For periods beginning on or after January 1, 1994, an Alumni's Hours of Service will be treated as Hours of Covered Service for all purposes of the Plan in accordance with the following rules:

(a) An Alumni who performs service for one or more Individual Employers, or for the Union, both as a Collectively Bargained Employee and as a noncollectively bargained employee during a Plan Year will be treated as a Collectively Bargained Employee for the entire Plan Year if at least half of the Alumni's Hours of Service during the Plan Year were performed as a Collectively Bargained Employee if the Pension Agreement covering him so provides.

(b) An Alumni who was a Collectively Bargained Employee during a Plan Year (or treated as such under other provisions of this Section 3.07 with respect to all of his Hours of Service during a Plan Year) will be treated as a Collectively Bargained Employee with respect to all his Hours of Service for the duration of the collective bargaining agreement in effect during that Plan Year, or if later, until the end of the following Plan Year, if the Pension Agreement covering him so provides.

(c) An Alumni who was treated as a Collectively Bargained Employee under subsection (b) above, will be treated as a Collectively Bargained Employee thereafter, providing the Alumni is performing services for the Union or an Individual Employer and the Pension Agreement covering him so provides. This subsection (c) will not apply if more than five percent of the employees covered by the Plan are noncollectively bargained employees determined without application of this subsection (c). Employees treated as Collectively Bargained Employees under subsections (a) and (b) will be deemed to not be noncollectively bargained employees for purposes of this subsection (c).



## ARTICLE IV

### *Eligibility for Retirement Benefits*

#### **Section 4.00 – Applicability of Benefit Adjustments**

In accordance with the Rehabilitation Plan adopted by the Board of Trustees, the benefit adjustments described in Sections 4.02(b), 4.04(b), 6.03(b), 6.04(b), 6.05(b), 7.02(b), 7.03(b), 7.04(b) and 7.04(d)(2) apply on the following effective dates:

(a) For an Employee who (1) did not incur a One Year Break in Service as of December 31, 2007 or (2) had an employer contribution required for any month between January 1, 2008 and June 30, 2008 and a total of five months of required employer contributions in 2008, (hereinafter referred to as an “active” Participant); the effective date shall be when the collective bargaining agreement of the employer of the active Participant is renewed on or after April 27, 2008 – but no later than 180 days following the expiration date of the collective bargaining agreement in effect on April 27, 2008. An active Participant’s employer for this purpose will be the Participant’s most recent employer prior to retirement. The effective date for an Active Participant shall apply to the Dependents of the active Participant.

(b) For a Participant who incurred a One-Year Break in Service as of December 31, 2007 and who either:

(1) did not have an employer contribution required for any month between January 1, 2008 and June 30, 2008 or

(2) did not have a total of five months of required employer contributions in 2008, (hereinafter referred to as a “terminated vested” Participant):

the effective date shall be July 1, 2008.

(c) For a Participant who:

(1) is an active Participant and is not a Collectively Bargained Employee with his last employer before his effective date of retirement,

(2) is employed in Related Non-Covered Service,

(3) is employed in Related Credited Service in the jurisdiction of a Related Plan, or

(4) is employed in Recognized Unrelated Credited Service:

the effective date shall be July 1, 2009.

(d) In any event, the benefit adjustments in Sections 4.02(b), 4.04(b), 6.03(b), 6.04(b), 6.05(b), 7.02(b), 7.03(b), 7.04(b) and 7.04(d)(2) do not apply to Pensioners, surviving spouses and Alternate Payees with a benefit commencement date before July 1, 2008.



#### **Section 4.01 - Normal Retirement Eligibility Date**

The Normal Retirement Eligibility Date for a Participant shall be the earlier of his or her Normal Retirement Age, as defined in Section 1.03, or the later of:

(a) The first day of the calendar month following the calendar month in which such Participant attains the age of 65 years.

(b) The first day of the calendar month following the calendar month in which the Participant then has five Years of Credited Service. Participants who came under the Plan on or after September 1, 1961 must have at least 24 months of Credited Future Service.

#### **Section 4.02 - Unreduced Retirement Eligibility Dates**

(a) The eligibility rules of this Section 4.02(a) apply only to a Participant whose benefits are not subject to adjustment under Section 4.00.

(1) The Unreduced Retirement Eligibility Date for a Participant with at least Five Years of Credited Future Service shall be the first day of the calendar month following the month during which the Participant attains the age of 62, or the first day of any month thereafter until the month in which he attains age 65.

(2) The Unreduced Rule of 85 Retirement Eligibility Date shall be the first day of the calendar month following the month in which the sum of the following numbers applicable to the Participant totals at least 85:

(A) Age of the Participant (for this purpose, each completed month after a Participant's birthday shall count as one-twelfth (1/12) of a year), plus

(B) Credited Future Service of the Participant, including fractions in one-twelfths (1/12s) where permitted under the Plan. For purposes of this subsection, Credited Future Service shall not include Credited Past Service, Related Non-Covered Service, Related Credited Service or Recognized Unrelated Credited Service.

(b) A Participant whose benefits are subject to adjustment under Section 4.00 is not eligible for an Unreduced Retirement or an Unreduced Rule of 85 Retirement.

#### **Section 4.03 - Early Retirement Eligibility Date**

The Early Retirement Eligibility Date shall be the first day of the calendar month in which the Participant attains the age of 55, or the first day of any calendar month thereafter until the calendar month preceding the calendar month in which he attains the age of sixty-five (65) years; provided that the Early Retirement Eligibility Date shall not be any date prior to the date the Participant has a total of at least sixty (60) months of Credited Future Service.

#### **Section 4.04 - Disability Retirement Eligibility Date**

(a) The eligibility rules of this Section 4.04(a) apply only to a Participant whose benefits are not subject to adjustment under Section 4.00.

The Disability Eligibility Retirement Date shall be the first day of the calendar month (prior to the first day of the calendar month in which the Participant attains the age of sixty-two (62) years) following the month that a Participant first had a Total Disability, as determined by the Social Security Administration for purposes of award of Title II disability benefits. Provided, further, that (a) the Disability Retirement Date shall not be any date prior to the date the Participant has a total of at least five (5) years of Credited Past Service and Credited Future Service and (b) such disability shall have occurred or originated while the Participant was employed by an Employer and prior to the termination of Employer Contributions on his account or, alternatively, that such disability shall have occurred or originated within twelve (12) months of the termination of the Employer Contributions on his account. Eligibility for a Disability Retirement Benefit shall cease on the last day of the month in which the Participant ceased to have a Total Disability.

(b) A Participant whose benefits are subject to adjustment under Section 4.00 is not eligible for a Disability Retirement.

#### **Section 4.05 - Vesting**

Upon application to the Trustees, the Participants shall receive such retirement Benefits as they may be entitled to under this Plan based on (1) their Vested status and (2) their Credited Service. Related Non-Covered Service shall be considered Covered Service for purposes of vesting. No payments of any kind other than those provided for by this Plan shall be made to any Former Employee.

A Participant's vested status will be determined under the following rules:

- (a) Any Participant upon attaining his Normal Retirement Age shall be fully vested.
- (b) Any Participant who has at least five (5) Years of Credited Service, of which at least twenty-four (24) months shall have been Credited Future Service, shall be fully vested if either of the following conditions is met:
  - (1) He earned more than one Hour of Service on or after January 1, 1997; or
  - (2) His accrual of benefits under the Plan was not a result of work under a collective bargaining agreement and he had at least an Hour of Service on or after January 1, 1989.
- (c) Any Participant who does not meet the requirements of either (a) or (b) above will become fully vested when he has a total of at least ten (10) Years of Credited Service, of which at least twenty-four (24) months shall have been Credited Future Service. Any such Participant with less than ten (10) Years of Credited Service but with at least twenty-four (24) months of Credited Future Service becomes vested as follows:

<b><u>CREDITED SERVICE</u></b>	<b><u>VESTED PERCENT AGE</u></b>
5 years	50%
6 years	60%
7 years	70%
8 years	80%
9 years	90%
10 years	100%

#### **Section 4.06 - Required Beginning Date**

Any Participant who attains age 70 ½ must begin receiving Plan benefits by April 1 of the year following the calendar year in which the Participant attains age 70 ½. If the Participant continues to accrue benefits under the Plan after attaining age 70 ½, the following rules will be applied:

- (a) In no event will the Participant's benefits be suspended after the required beginning date for work described in Section 5.02.
- (b) The distribution required to begin on April 1, will include all benefits accrued to that date.
- (c) If any additional benefits are accrued after the required beginning date, annual distribution of such amounts as a separate identifiable component will start with the first monthly payment in the calendar year immediately following the calendar year in which such amounts accrue. In calculating this amount, the normal benefit accrual shall be reduced (but not below zero) by the Actuarial Equivalent of the total Plan benefit distributions made to the Participant during the Plan Year, provided that the distributions used in this calculation are limited to those that could have been suspended under Section 5.02 but for this age 70 ½ distribution rule.

#### **Section 4.07 Required Minimum Distributions**

##### **(a) *General Rules***

(1) **Precedence and Effective Date.** The requirements of this Section 4.07 shall apply for the purposes of determining minimum required benefits for calendar years beginning after December 31, 2002. The requirements of this Section 4.07 are intended to comply with Code Section 401(a)(9) and will take precedence over any inconsistent provisions of this Plan. However, this Section 4.07 does not provide any benefit or right not otherwise provided under the provisions of this Plan.

(2) **Requirements of Treasury Regulations Incorporated.** All distributions required under this Section 4.07 shall be determined and made in accordance with Code Section 401(a)(9), including the incidental death benefit requirement in Internal Revenue Code Section 401(a)(9)(G), and the Income Tax Regulations thereunder.

(3) **Limits on Distribution Periods.** As of the first distribution calendar year, distributions to a Participant, if not made in a single sum, may only be made over one of the following periods:

- (A) the life of the Participant,
- (B) the joint lives of the Participant and a designated beneficiary,
- (C) a period certain not extending beyond the life expectancy of the Participant, or
- (D) a period certain not extending beyond the joint life and last survivor expectancy of the Participant and a designated beneficiary.

(b) ***Time and Manner of Distribution***

(1) **Required Beginning Date.** The Participant's entire interest will be distributed, or begin to be distributed, no later than the Participant's required beginning date determined under Section 4.06.

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

(A) If the Participant's surviving spouse is the Participant's sole designated beneficiary, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later.

(B) If the Participant's surviving spouse is not the Participant's sole designated beneficiary, distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(C) If there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(D) If the Participant's surviving spouse is the Participant's sole designated beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse are required to begin, this Section 4.07(b)(2)(D), other than Section 4.07(b)(2)(A), will apply as if the surviving spouse were the Participant.

For purposes of this Section 4.07(b)(2) and Section 4.07(e), unless Section 4.07(b)(2)(D) applies, distributions are considered to begin on the Participant's required beginning date. If Section 4.07(b)(2)(D) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 4.07(b)(2)(A). If distributions under an annuity meeting the requirements of this Section 4.07 commence to the Participant before the Participant's required beginning date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under Section 4.07(b)(2)(A), the date distributions are considered to begin is the date distributions actually commence.

(3) **Forms of Distribution** Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with Sections 4.07(c), (d), or (e) of this Section 4.07. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Internal Revenue Code 401(a)(9) and Section 1.401(a)(9) of the Treasury Regulations.

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

(1) General Annuity Requirements. If the Participant's interest is to be paid in the form of annuity distributions under the plan, payments under the annuity shall satisfy the following requirements:

(A) the annuity distributions will be paid in periodic payments made at uniform intervals not longer than one year;

(B) the distribution period will be over a life (or lives) or over a period certain not longer than the period described in Section 4.07(d) or (e);

(C) once payments have begun over a period, the period will be changed only in accordance with Section 4.07(f) of this article;

(D) payments will either be nonincreasing or increase only as follows:

(i) by an annual percentage increase that does not exceed the percentage increase in an eligible cost-of-living index for a 12-month period ending in the year during which the increase occurs or a prior year;

(ii) by a percentage increase that occurs at specified times and does not exceed the cumulative total of annual percentage increases in an eligible cost-of-living index since the annuity starting date, or if later, the date of the most recent percentage increase;

(iii) by a constant percentage of less than 5 percent per year, applied not less frequently than annually;

(iv) as a result of dividend or other payments that result from actuarial gains, provided:

(1) actuarial gain is measured not less frequently than annually,

(2) the resulting dividend or other payments are either paid no later than the year following the year for which the actuarial experience is measured or paid in the same form as the payment of the annuity over the remaining period of the annuity (beginning no later than the year following the year for which the actuarial experience is measured),

(3) the actuarial gain taken into account is limited to actuarial gain from investment experience,

(4) the assumed interest rate used to calculate such actuarial gains is not less than 3 percent, and

(5) the annuity payments are not increased by a

constant percentage as described in Section (iii) of this Section 4.07(c)(1)(D);

(v) to the extent of the reduction in the amount of the Participant's payments to provide for a survivor benefit, but only if there is no longer a survivor benefit because the beneficiary whose life was being used to determine the distribution period described in Section 4.07(d) dies or is no longer the Participant's beneficiary pursuant to a qualified domestic relations order within the meaning of Code Section 414(p);

(vi) to provide a final payment upon the Participant's death not greater than the excess of the actuarial present value of the Participant's accrued benefit (within the meaning of Code Section 411(a)(7)) calculated as of the annuity starting date using the applicable interest rate defined in Section 11.04 of the Plan and the applicable mortality table defined in Section 11.04 of the Plan over the total of payments before the Participant's death;

(vii) to allow a beneficiary to convert the survivor portion of a joint and survivor annuity into a single sum distribution upon the Participant's death; or

(viii) to pay increased benefits that result from a Plan amendment.

(2) Amount Required to be Distributed by Required Beginning Date and Later Payment Intervals. The amount that must be distributed on or before the Participant's required beginning date (or, if the Participant dies before distributions begin, the date distributions are required to begin under Section 4.07(b)(2)(A) or (B)) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. All of the Participant's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Participant's required beginning date.

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

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

(1) Joint Life Annuities Where the Beneficiary Is Not the Participant's Spouse. If the Participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the Participant and a nonspouse beneficiary, annuity payments to be made on or after the Participant's required beginning date to the designated beneficiary after the Participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the Participant, using the table set forth in Treasury Regulation Section 1.401(a)(9)-6, Q&A 2(c)(2), in the manner described in Q&A 2(c)(1), of the regulations, to determine the applicable percentage. If the form of distribution combines a joint and survivor annuity for the joint lives of the Participant and a nonspouse beneficiary and a period certain annuity, the requirement in the preceding sentence

will apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.

(2) **Period Certain Annuities.** Unless the Participant's spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the Participant's lifetime may not exceed the applicable distribution period for the Participant under the Uniform Lifetime Table set forth in Treasury Regulation Section 1.401(a)(9)–9, Q&A-2, for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the Participant reaches age 70, the applicable distribution period for the Participant is the distribution period for age 70 under the Uniform Lifetime Table set forth in Treasury Regulation Section 1.401(a)(9)–9, Q&A-2, plus the excess of 70 over the age of the Participant as of the Participant's birthday in the year that contains the annuity starting date. If the Participant's spouse is the Participant's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the Participant's applicable distribution period, as determined under this Section 4.07(d)(2), or the joint life and last survivor expectancy of the Participant and the Participant's spouse as determined under the Joint and Last Survivor Table set forth in Treasury Regulation Section 1.401(a)(9)–9, Q&A-3, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the calendar year that contains the annuity starting date.

**(e) *Requirements For Minimum Distributions After the Participant's Death***

(1) **Death After Distributions Begin.** If the Participant dies after distribution of his or her interest begins in the form of an annuity meeting the requirements of this article, the remaining portion of the Participant's interest will continue to be distributed over the remaining period over which distributions commenced.

**(2) *Death Before Distributions Begin.***

(A) **Participant Survived by Designated Beneficiary.** If the Participant dies before the date distribution of his or her Interest begins and there is a designated beneficiary, the Participant's entire interest will be distributed, beginning no later than the time described in Section 4.07(b)(2)(A) or (B), over the life of the designated beneficiary or over a period certain not exceeding:

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

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

(B) **No Designated Beneficiary.** If the Participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will

be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(C) **Death of Surviving Spouse Before Distributions to Surviving Spouse Begin.** If the Participant dies before the date distribution of his or her interest begins, the Participant's surviving spouse is the Participant's sole designated beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, this subsection (e) will apply as if the surviving spouse were the Participant, except that the time by which distributions must begin will be determined without regard to Section 4.07(b)(2)(A).

(f) ***Changes to Annuity Payment Period***

(1) **Permitted Changes.** An annuity payment period may be changed only in association with an annuity payment increase described in Section 4.07(b)(2)(A) or in accordance with Section 4.07(f)(2).

(2) **Reannuitization.** An annuity payment period may be changed and the annuity payments modified in accordance with that change if the conditions in Section 4.07(f)(3) are satisfied and:

(A) the modification occurs when the Participant retires or in connection with a plan termination;

(B) the payment period prior to modification is a period certain without life contingencies; or

(C) the annuity payments after modification are paid under a qualified joint and survivor annuity over the joint lives of the Participant and a designated beneficiary, the Participant's spouse is the sole designated beneficiary, and the modification occurs in connection with the Participant's becoming married to such spouse.

(3) **Conditions.** The conditions in this Section 4.07(f)(3) are satisfied if:

(A) the future payments after the modification satisfy the requirements of Code Section 401(a)(9), Section 1.401(a)(9) of the Treasury Regulations, and this Section 4.07 (determined by treating the date of the change as a new annuity starting date and the actuarial present value of the remaining payments prior to modification as the entire interest of the Participant);

(B) for purposes of Code Sections 415 and 417, the modification is created as a new annuity starting date;

(C) after taking into account the modification, the annuity (including all past and future payments) satisfies the requirements of Code Section 415 (determined at the original annuity starting date, using the interest rates and mortality tables applicable to such date); and

(D) the end point of the period certain, if any, for any modified payment period is not later than the end point available to the employee at the original annuity



starting date under Code Section 401(a)(9) and this Section 4.07.

(g) ***Payments to a Surviving Child***

(1) Special rule. For purposes of this Section 4.07, payments made to a Participant's surviving child until the child reaches the age of majority (or dies, if earlier) shall be treated as if such payments were made to the surviving spouse to the extent the payments become payable to the surviving spouse upon cessation of the payments to the child.

(2) Age of majority. For purposes of this Section, a child shall be treated as having not reached the age of majority if the child has not completed a specified course of education and is under the age of 26. In addition, a child who is disabled within the meaning of Code Section 72(m)(7) when the child reaches the age of majority shall be treated as having not reached the age of majority so long as the child continues to be disabled.

(h) ***Definitions***

(1) Actuarial gain. The difference between an amount determined using the actuarial assumptions (*i.e.*, investment return, mortality, expense, and other similar assumptions) used to calculate the initial payments before adjustment for any increases and the amount determined under the actual experience with respect to those factors. Actuarial gain also includes differences between the amount determined using actuarial assumptions when an annuity was purchased or commenced and such amount determined using actuarial assumptions used in calculating payments at the time the actuarial gain is determined.

(2) Designated beneficiary. The individual who is designated by the Participant (or the Participant's surviving spouse) as the beneficiary of the Participant's interest under the plan and who is the designated beneficiary under Code Section 401(a)(9) and Section 1.401(a)(9)-4 of the Treasury Regulations.

(3) Distribution calendar year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to Section 4.07(b)(2).

(4) Eligible cost-of-living index. An index described in subsections (b)(2), (b)(3) or (b)(4) of Section 1.401(a)(9)-6, Q&A-14, of the Treasury Regulations.

(5) Life expectancy. Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9, Q&A-1, of the Treasury Regulations.

## ARTICLE V

### *Payment of Retirement Benefits*

#### **Section 5.01 - General Payment Provision**

Every Participant retiring at or after the applicable Eligibility Date of Article IV shall receive a retirement Benefit from the Trust Fund.

The effective date of retirement of a Participant shall be deemed to be the first day of the calendar month following the calendar month in which the Trustees approve a written Application and, if applicable, the certification described in this Section 5.01; or in the case of retirement for Total and Permanent Disability, the calendar month in which the Trustees make the determination required by Section 4.04 of Article IV. Benefits become payable on the first day of the calendar month in which the Participant becomes eligible as set forth above, and on the first day of each succeeding calendar month for the remainder of the Participant's life, subject to the qualifications herein contained.

No such Retirement Benefits shall be paid, however, unless the Participant makes written application therefore. In addition, if a Participant is less than age 65, no payment of Retirement Benefits shall occur unless the Participant certifies to the Trustees that he or she has retired at the applicable Retirement Date and that he or she is not engaged in any work for which Employer Contributions are required on his or her account as of the Retirement Eligibility Date, and the Trustees approve such certification. In the case of Retirement for Total and Permanent Disability, no such retirement benefits shall be paid unless the Trustees make the determination provided for by Section 4.04 of Article IV.

No such Retirement Benefits for any Unreduced, Early or Disability Retirement shall be made retroactively for a period of more than six (6) months from the date of the Application therefore.

Such retirement Benefit is hereinafter referred to as the "Monthly Retirement Benefit."

#### **Section 5.02 - Working After Retirement**

(a) **General Rule.** If a Retired Participant is re-employed or is self-employed in any of the counties which make up the San Francisco, Oakland, or San Jose greater metropolitan areas, any other metropolitan area in which a covered Employee is employed, or any county in which a covered Employee is employed, then if the Retired Participant is performing work of the type which is also performed by a covered Employee in such county or metropolitan area (or supervisory activity related thereto) and work in a trade or craft in which the employee was employed, at any time under the Plan, the Retired Participant shall lose retirement benefits for each month during which he or she is employed in work of that type for more than forty (40) hours.

(1) For purposes of this Section, "trade or craft" means (1) a skill or skills learned during a significant period of training or practice, which is applicable in occupations in that industry, (2) a skill or skills relating to selling, retailing, managerial, clerical or professional occupations, or (3) supervisory activities relating to such skill or skills.

(2) The Retired Participant shall not be entitled to retirement benefits for any calendar month of such employment, after which period he or she shall again be entitled to benefits.

(3) A Retired Participant shall notify the Plan in writing within fifteen (15) days after starting any work of the type that is, or may be, described under the provisions of this Section.

(b) ***Exceptions to General Rule.*** Notwithstanding the general rule of subsection (a), the following exceptions to it will be applied:

(1) If in any month it is only Contributing Employers who re-employ the Retired Participant for more than forty (40) Hours of Covered Service, no loss of retirement benefits will occur for that month, but this exception

(A) shall not apply during the first ninety (90) days following the effective date of retirement, with respect to benefits accrued on or after January 1, 2004, and

(B) shall not apply for more than three (3) months in any calendar year.

(2) No loss of retirement benefits shall occur for a month in which the Retired Participant is at least age 65 on the first day of the month.

(3) In applying the rules of subsections (a) and (b) of this Section 5.02, if for any week a person receives disability benefits under the Automotive Industries Welfare Plan or any other welfare plan to which a Contributing Employer contributes, he or she will be deemed to have forty-five (45) hours of Covered Service for Contributing Employers and therefore his or her pension will be suspended for that month. The suspension of retirement benefits under this subsection (b)(2) is subject to the following limitations:

(A) the suspension of benefits shall not apply during the first three (3) months of the disability payments made by the welfare plan; and

(B) for any month in which this results in a suspension of retirement benefits, the amount suspended shall not exceed the amount of the disability payments made for that month by the welfare plan.

(C) the suspension of benefits shall not apply with respect to benefits accrued before January 1, 1993.

(4) Notwithstanding any other provision herein, retirement benefits accrued before September 1, 1982, will only be suspended for work with a contributing employer.

(c) ***Additional Benefits.*** A Retired Participant who actually works in Covered Service shall be granted additional retirement benefits on the basis of the Employer Contributions received by the Trust fund on his or her behalf during a calendar year, provided that at least five (5) such Employer Contributions were received by the Trust Fund during the calendar year, and provided further that such Retirement Participant makes written application for such additional retirement benefits in accordance with the applicable provisions of Section 5.01. Such additional retirement benefits shall be determined under the applicable provisions of Article VI at his or her then attained age and

(1) in the case of an initial applicable Retirement Date which occurs on or after the Normal Retirement Age of the Participant, shall be made payable in the benefit form received by the

Participant under Article VII at the time benefits first commenced under this Plan; and

(2) in the case of an initial applicable Retirement Date prior to the Normal Retirement Age of the Participant, shall be made payable in the benefit form separately determined under Article VII.

## ARTICLE VI

### *Amount of Monthly Retirement Benefits*

#### **Section 6.01 - Amount of Vested Benefit**

A Vested Participant eligible to receive a Monthly Retirement Benefit in accordance with the provisions of Article IV and Article V, shall have such Benefit calculation based upon his Vested Percentage.

#### **Section 6.02 - Amount of Normal Retirement Benefit**

Applicable to retirements on or after January 1, 1999, for retirement benefits that begin at or after the Normal Retirement Eligibility Date, a Participant shall receive Monthly Retirement Benefit equal to the sum of (a) and/or (b) below multiplied by his Vested Percentage.

(a) ***Past Service Retirement Benefit.*** \$10.00 times the number of Years of Credited Past Service.

(b) ***Future Service Retirement Benefit.***

(1) \$5.00 for each \$100 contributed on behalf of the Participant by an Employer for work on or after September 1, 1955 and before July 1, 2003.

(2) \$3.00 for each \$100 contributed on behalf of the Participant by an Employer for work on or after July 1, 2003 and before January 1, 2005.

(3) For work before January 1, 2005, in any case, the Benefit for twelve (12) months of Credited Future Service shall not be less than the Benefit for a full year of Credited Past Service computed as above.

(4) For work on and after January 1, 2005 but before July 1, 2008:

(A) \$0.50 for each \$100 contributed for the portion of monthly contributions less than or equal to \$250;

(B) \$1.00 for each \$100 contributed for the portion of monthly contributions greater than \$250 but less than or equal to \$500;

(C) \$2.00 for each \$100 contributed for the portion of monthly contributions greater than \$500.

(5) \$1.00 for each \$100 contributed on behalf of the Participant by an Employer for work on or after July 1, 2008.

#### **Section 6.03 – Amount of Unreduced Retirement Benefit**

(a) This Subsection 6.03(a) applies only to a Participant whose benefits are not subject to adjustment under Section 4.00, as described in Section 4.02.

(1) Effective January 1, 1986, for retirement benefits that begin at or after the Unreduced Retirement Eligibility Date, a Participant shall receive a Monthly Retirement Benefit computed in the same manner provided in Section 6.02 for Normal Retirement Benefits.

(2) Effective October 1, 1997, for retirement benefits that begin at or after the Unreduced Rule of 85 Retirement Eligibility Date, a Participant shall receive a Monthly Retirement Benefit computed in the same manner provided in Section 6.02 for Normal Retirement Benefits.

(b) A Participant whose benefits are subject to adjustment under Section 4.00 is not eligible for a Unreduced Retirement Benefit.

#### **Section 6.04 - Amount of Early Retirement Benefit**

(a) This Subsection 6.04(a) applies only to a Participant whose benefits are not subject to adjustment under Section 4.00.

For retirements effective on or after January 1, 1986, the amount of Monthly Retirement Benefits payable on retirement on or after the Early Retirement Eligibility date and prior to the Normal Retirement Eligibility Date shall be calculated by determining the amount of Monthly Retirement Benefit the Participant would have received if he were 62 years of age at the time of his early retirement and reducing that amount by 1/4 of 1% for each month (3% annually) that the Participant is younger than 62 on the effective date of his early retirement.

If the retirement of a Participant occurred before January 1, 1986, the Early Retirement provision of this Plan in effect on the date of retirement shall apply.

(b) For a Participant whose benefits are subject to adjustment under Section 4.00 the amount of Monthly Retirement Benefits payable on retirement on or after the Early Retirement Eligibility date and prior to the Normal Retirement Eligibility Date shall be calculated by determining the Actuarial Equivalent of the Monthly Retirement Benefit at the Participant's Normal Retirement Age."

#### **Section 6.05 - Amount of Disability Retirement Benefit**

(a) This Subsection 6.05(a) applies only to a Participant whose benefits are not subject to adjustment under Section 4.00.

The amount of the Monthly Retirement Benefit payable upon retirement on the Disability Retirement Eligibility Date shall be calculated by determining the amount if he were 65 years of age at the time his disability pension is to be effective.

(b) A Participant whose benefits are subject to adjustment under Section 4.00 is not eligible for a Disability Retirement Benefit.

## ARTICLE VII

### *Benefit Payment Provisions - Before and After Retirement*

#### **Section 7.01 - Automatic Joint and Survivor Benefit Before Retirement**

If a Vested Participant dies after becoming eligible for Normal, Unreduced, Unreduced Rule of 85 or Early Retirement Benefits and is survived by a spouse to whom the Participant has been lawfully married for at least one (1) year, then the surviving spouse shall receive the Automatic Joint and Survivor Benefit described in Section 7.03, based upon the Participant's Vested status and Credited Service, as if the Participant had actually retired immediately preceding the date of his death.

If a Vested Participant dies at any age before becoming eligible for Normal, Unreduced, Unreduced Rule of 85 or Early Retirement Benefits, and is survived by a spouse to whom he has been lawfully married for at least one (1) year, then the surviving spouse will receive the Automatic Joint and Survivor Benefit as described in Section 7.03, based upon the deceased Participant's Vested status and Credited Service, but such benefits will not begin until the earliest date at which the Participant would have otherwise been eligible under Article IV for Retirement Benefits had he not died.

In lieu of the Automatic Joint and Survivor Benefit, the surviving spouse of a Participant whose benefits are not subject to adjustment under Section 4.00 may elect instead the death benefit described in Section 7.02.

#### **Section 7.02 - Death Benefits Before Retirement**

(a) For a Participant whose benefits are not subject to adjustment under Section 4.00, if a Vested Participant, married or unmarried, dies before becoming eligible for any of the benefits described in Section 7.01, payments may be made to the surviving spouse, or to the eligible Dependents if there is no surviving spouse, in an amount equal to the Vested Percentage of the total of the contributions made on account of the Participant's employment, payable over a period of 36 months. In the case of unmarried Participants or married Participants whose spouses are either ineligible for the Automatic Joint and Survivor Benefit under Section 7.01 or elect not to receive it, the surviving spouse, will receive--if greater--36 monthly payments of the calculated rate of the Normal, Unreduced or Early Retirement Benefit which would have been payable to the Participant had he retired at the time of his death. Any benefits payable because of the death of a Participant shall be reduced by any Disability Retirement Benefits paid during a period of disability. If the death of a Vested Participant occurred before January 1, 1986, the Death Benefit provisions of the Plan in effect on the date of death shall apply.

(b) For a Participant whose benefits are subject to adjustment under Section 4.00, no death benefits under this Section are payable.

#### **Section 7.03 - Automatic Joint and Survivor Benefit at Retirement Date**

(a) For a Participant whose benefits are not subject to adjustment under Section 4.00, if a Participant has a spouse to whom he is lawfully married on the Benefit effective date, the Participant will receive an Automatic Joint and Survivor Benefit which is an amount that is based upon the Participant's benefit determined under Article VI and actuarially reduced as set forth in Section 11.03.

When the Automatic Joint and Survivor Benefit is in effect, the Participant's benefit during his or her lifetime is reduced, and the spouse will receive one-half of the reduced Benefit for so long as the spouse survives the Participant, but only if the Participant dies after the first anniversary of the marriage.

(b) For a Participant whose benefits are subject to adjustment under Section 4.00, the amount that is received during the lifetime of the Participant is based upon the Participant's benefit determined under Article VI and is an Actuarial Equivalent of the Participant's Normal Retirement Benefit. When the Automatic Joint and Survivor Benefit is in effect, the Participant's benefit during his or her lifetime is reduced, and the spouse will receive one-half of the reduced Benefit for so long as the spouse survives the Participant, but only if the Participant dies after the first anniversary of the marriage.

#### **Section 7.04 - Optional Forms of Benefits at Retirement Eligibility Date**

A Vested Participant may select one of the applicable following options at his or her Retirement Eligibility Date, however, a married Participant whose spouse is entitled to the Automatic Joint and Survivor Benefit described in Section 7.03 may not do so without the spouse's notarized written consent.

(a) A Participant eligible for the Normal, Unreduced, Unreduced Rule of 85, Early or Disability Benefit described in Article VI and whose benefit is not subject to adjustment under Section 4.00, may elect to receive one the following:

(1) A monthly benefit under which if the Participant dies before receiving at least thirty-six (36) monthly payments, the monthly benefits will continue to his or her surviving spouse or, if none, to the Participant's eligible Dependents until a total of thirty-six (36) monthly payments have been made under the Plan.

(2) A reduced monthly benefit under which, if the Participant dies before receiving at least one hundred twenty (120) monthly payments, the benefits will continue to his or her surviving spouse or, if none, to the Participant's eligible Dependents until a total of one hundred twenty (120) monthly payments have been paid under the Plan.

(3) For the benefit forms described in subsections (a) and (b), above, if the Disability Retirement Benefit is applicable, and the Participant dies before receiving at least thirty-six (36) or one hundred twenty (120) monthly payments, whichever is applicable, the monthly benefit will continue to the surviving spouse or to the Participant's eligible Dependents if there is no surviving spouse, until the above-described applicable total monthly payments have been made under the Plan; however, the amount payable shall be reduced by any Disability Retirement Benefits paid under a prior period of disability.

(4) A Full Joint and Survivor Option, which provides that if a Participant has a spouse to whom he is lawfully married on the Benefit effective date, the Participant will receive an actuarially reduced monthly retirement Benefit payable to the Retired Participant during his or her lifetime, and which provides for the continuance of such reduced benefit to such spouse after the Participant's death if (i) he or she survives the Participant and (ii) the Participant dies after the first anniversary of the marriage. The factors and assumptions used to determine the amount of reduction for the Full Joint and Survivor Benefit are set forth in Section 11.03.

(5) A 75% Joint and Survivor Option which provides that if a Participant has a spouse to whom he is lawfully married on the Benefit effective date, the Participant will receive an actuarially reduced monthly retirement Benefit payable to the Retired Participant during his or her



lifetime, and which provides for the continuance of seventy-five percent (75%) of such reduced benefit to such spouse after the Participant's death if (i) he or she survives the Participant and (ii) the Participant dies after the first anniversary of the marriage. The factors and assumptions used to determine the amount of reduction for the Full Joint and Survivor Benefit and the 75% Joint and Survivor Option are set forth in Section 11.03.

(b) For a Participant whose benefits are subject to adjustment under Section 4.00, the guaranteed payments described in Section 7.04(a)(1) are not available. In addition, the form of benefit under Section 7.04(a)(2) and the Disability Retirement Benefit described in Section 7.04(a)(3) are not available. Moreover, the amount of the Full Joint and Survivor Benefit under Section 7.04(a)(4) and the 75% Joint and Survivor Benefit under Section 7.04(a)(5) shall be the Actuarial Equivalent of the Participant's Normal Retirement Benefit.

(c) In addition, the following special rules are applied:

(1) If the Participant dies before the first anniversary of the marriage, the spouse, if living, otherwise the Participant's eligible Dependents, shall receive the monthly benefits which would have been paid had the Participant retired without either the Full Joint and Survivor Benefit, the 75% Joint and Survivor Benefit or Automatic Joint and Survivor Benefit, less the amount of the Benefits paid to the Participant before his or her death.

(2) Death of the Spouse After Retirement

(A) For a Participant whose benefits are not subject to adjustment under Section 4.00, if the spouse of a Participant who retired with an Full Joint and Survivor Benefit, a 75% Joint and Survivor Option or an Automatic Joint and Survivor Benefit predeceases the Participant, the monthly benefit amount payable to the Participant beginning with the month after the spouse's death will thereafter be the amount which would have been paid had the Participant retired without either a Full Joint and Survivor Benefit, a 75% Joint and Survivor Benefit or an Automatic Joint and Survivor Benefit.

(B) For a Participant whose benefits are subject to adjustment under Section 4.00, the increase in the monthly benefit amount described in subsection 7.04(c)(2)(B), above, will not be payable to the Participant.

(d) Social Security Option

(1) A Participant whose effective date of retirement is earlier than July 1, 2008, and who is eligible for Early Retirement may elect a Social Security Option in the following manner:

The Participant may at any time prior to this early retirement make a written request to the Trustees to have the amount of his or her retirement Benefit increased during the period prior to his or her attainment of Social Security Retirement Age, and decreased during the period after attainment of Social Security Retirement Age, so as to provide for the retired Participant a uniform pension benefit composed of the Participant's retirement Benefit under the Plan and his or her monthly benefit under the Social Security Act. The monthly benefit under the Social Security Act shall mean the estimated primary Social Security benefit which a Participant may be entitled by law to receive at Social Security Retirement Age, at the date such an election shall be made, based upon his or her employment prior to the date of such election. The payments to be made under this option shall be the Actuarial Equivalent of the payments which would have been payable hereunder if this option had not been

exercised. Provided, however, that for purposes of this Subsection (b), the amount shall not be less than that obtained using the mortality assumptions and applicable interest rate specified in Section 11.04(a).

In case such equivalent monthly payments shall be less in amount than such primary monthly benefits which will later be payable under the Social Security Act, such smaller payments will be made hereunder during such interim period, after which no further retirement Benefits will be payable to the retired Participant under the Plan. No death benefits of any kind are available or payable under this option.

(2) The Social Security Option is not available to a Participant with an effective date of benefits on or after July 1, 2008.

### **Section 7.05 - Manner of Making and Revoking Elections**

All elections must be in writing in a form approved by the Trustees.

If an Automatic Joint and Survivor Benefit would otherwise be payable under Section 7.03, any election by the Participant to take another benefit shall require the spouse's notarized written consent acknowledging the effect of the election. Failure by the Participant (or spouse in the event of death) to consent to an immediate distribution of any part of accrued benefits is an election to defer commencement of payment of any benefits to Normal Retirement Age. Notwithstanding the foregoing, no consent is required if:

(a) The present value of the Participant's non-forfeitable accrued benefits is less than \$5,000, using the factors specified in 11.04; or

(b) It is established to the satisfaction of the Trustees or their agent that the spouse's consent cannot be obtained because either (i) there is no spouse, or (ii) the spouse cannot be located, or (iii) such other circumstances as the Secretary of the Treasury may by regulations prescribe from time to time; or

(c) Any person eligible to make any election hereunder shall receive, written in nontechnical language, a general description or explanation of the Joint and Survivor Annuity, the Participant's right to waive the Joint and Survivor Annuity form of benefit and the effects of such waiver, the right of the Participant's spouse to consent or not consent to such waiver and the effects thereof, the Participant's right to revoke such elections, and the right to defer any distribution and the consequences of failing to defer distribution of benefits including a description of how much larger benefits will be if the commencement of distributions is deferred. In general such written explanation shall be provided no less than 30 days and no more than 180 days before the benefit commencement date. If the written explanation is provided after the benefit commencement date, the Participant shall have at least 30 days to make the election of his or her form of benefit. Any requirement that the Participant's written election be provided at least 30 days before the benefit commencement date may be waived by a Participant (with any required spousal consent) so long as the distribution commences more than 7 days after such explanation is provided.

(d) A Retroactive Annuity Starting Date is a benefit commencement date affirmatively elected by a Participant that occurs on or before the date the written explanation referred to in this Section 7.05 of Article VII is provided to the Participant and any other situations in which there is a retroactive annuity starting date under Code Section 417 and the regulations thereunder.

(1) Any make-up payment to reflect missed payments for the period from the

Retroactive Annuity Starting Date to the date of the actual make-up payment shall include appropriate interest. The Joint Board may modify the appropriate interest rate from time to time either by amending the Plan or adopting a written resolution to do so. Until the rate is changed it will be 4% simple annual interest.

(2) Conversion of Retroactive Payments After Normal Retirement Age. If a retroactive amount is payable after June 1, 1994, to a Participant who retires after his Normal Retirement Date, then instead of having it paid in a lump sum, the Participant may elect to have his Normal Retirement Benefit actuarially increased by applying all or a portion of the retroactive payment (without interest) as follows:

(A) The actuarial increase must be payable in the same form as the rest of the Participant's Normal Retirement Benefit, and in addition, the Participant or his beneficiaries will eventually receive no less than 100% of the retroactive payment.

(B) If married, the Participant's spouse must consent in writing to this election; and

(C) The increase shall be the Actuarial Equivalent of the portion of the lump sum amount of the retroactive payment which the Participant elects to have applied to increase his Normal Retirement Benefit."

#### **Section 7.06 - Single Sum Payments of Small Benefits**

(a) If at the time a monthly benefit first becomes payable to a Participant, spouse or Dependent entitled to receive a series of monthly benefits and

(1) the Actuarial Equivalent single sum payment of those monthly payments is \$1,000 or less, in lieu of the monthly benefits, a single sum payment shall be made of the amount which is the Actuarial Equivalent of the monthly benefits; or

(2) the Actuarial Equivalent single sum payment of those monthly payments is greater than \$1,000 but not greater than \$5,000, a single sum payment shall be made of the amount which is the Actuarial Equivalent of the monthly benefits, but only with the consent of the distributee.

(b) In determining the Actuarial Equivalent amount for purposes of subsections (a) and (b) above, the factors and assumptions set forth in Section 11.04 shall be used

## ARTICLE VIII

### *Amendment and Termination*

#### **Section 8.01 - Amendment**

The Board of Trustees may amend or modify this Pension Plan at any time or from time to time in accordance with the Trust Agreement. Amendments affecting the Plan's funding status shall be made, however, only after the Trustees have received competent actuarial advice and have determined that the same is reasonable, and that the Trust Fund will be on an actuarially sound basis after the amendment.

#### **Section 8.02 - Limitations on Amendments**

(a) No amendment or modification of the Plan may decrease a Participant's Accrued Benefit or eliminate an optional form of distribution with respect to benefits attributable to service before the amendment contrary to the provisions of ERISA Section 204(g) or any other provisions of ERISA or the Internal Revenue Code restricting amendments affecting accrued benefits.

(b) No amendment or modification may cause or result in any portion of the Fund to revert to or be recovered by, any Employer, the Union, or any Local Union, or cause or result in the diversion of any portion of the Fund to any purpose other than the exclusive benefit of Participants and Eligible Dependents and the payment of the administrative expenses of the Fund and the Plan.

(c) If the Plan's vesting schedule is amended, any Participant who could be adversely affected by the amendment and who has at least three Years of Credited Service may elect to have his or her nonforfeitable percentage computed under the Plan without regard to such amendment. Such election must be made during the period beginning with the date the amendment is adopted and ending 60 days after the latest of the date (i) the amendment is adopted, or (ii) the amendment becomes effective, or (iii) the Participant is given written notice of the amendment.

#### **Section 8.03 - Termination**

If this Pension Plan is terminated, the assets then remaining in the Pension Plan, after providing for the expenses of the Plan, shall be allocated to the extent that they shall be sufficient for the purpose of paying pension benefits (based on Pension Credit to the date of termination of the Pension Plan) in the following order or precedence:

(a) to provide pensions to Pensioners who shall have retired under the Plan prior to its termination, without reference to the order of retirement.

(b) to provide pensions upon attainment of age 65 to Employees aged 60 or over but less than 65 on the date of termination, without reference to the order in which they shall attain age 65.

(c) to provide pensions upon attainment of age 65 to Employees aged 50 or over but less than 60 on the date of termination, without reference to the order in which they attain age 65.

(d) to provide pensions upon attainment of age 65 to Employees aged 50 or over but less than 60 on the date of termination, without reference to the order in which they shall attain age 65.

(e) to provide pensions upon attainment of age 65 to Employees less than 50 years of age on the date of termination without reference to the order in which they shall reach age 65.

In no event shall any of the Pension Plan refer to or be recoverable by any Employer, the Unions or any Local Union.

If the Plan terminates or partially terminates, the rights of all affected Participants to benefits accrued to the date of such termination or partial termination, to the extent funded as of such date, are nonforfeitable.

#### **Section 8.04 - Merger or Consolidation**

No merger or consolidation with, or transfer of assets and liabilities to, any other qualified plan shall occur unless each Employee and Pensioner in the successor plan shall, if such successor plan is immediately terminated, receive a benefit at least equal to the benefit he would have received under this plan if it had been terminated immediately prior to the merger, consolidation or transfer.

## ARTICLE IX

### *Claims and Appeals Procedures*

#### **Section 9.01 - General Rules**

(a) ***Claims.*** All claims for benefits under the Automotive Industries Pension Plan and the Automotive Industries Individual Account Retirement Plan (hereinafter collectively “Plan”) after the effective date will be decided in accordance with these claims procedures.

(b) ***Definitions.***

(1) **Claimant:** A participant or beneficiary under the Plan with a claim for benefits.

(2) **Joint Board:** Joint Board means the Joint Board of Trustees of this multiemployer plan which meets at least quarterly. Its address is:

Automotive Industries Pension Plan  
% Associated Third Party Administrators  
1640 South Loop Road  
Alameda, CA 94502  
Phone: 510-337-3050  
Fax: 510-337-3060

(3) **Plan Manager:** The Plan Manager of this Plan is:

Associated Third Party Administrators  
1640 South Loop Road  
Alameda, CA 94502  
Phone: 510-337-3050  
Fax: 510-337-3060

#### **Section 9.02 - Filing Initial Claim Forms**

(a) ***Initial Claims.*** All initial claims must be filed with the Plan Manager in written form or electronically using such forms or standards as the Joint Board may specify from time to time. If a claim does not contain all the necessary information, including information required from the Social Security Administration, the Plan Manager shall notify Claimant or the Claimant’s authorized representative in written or electronic form as soon as possible.

(b) ***Determinations.*** The Plan Manager shall determine initial claims within the time periods specified in Article III.

(c) ***Calculating Time Periods.*** The time period from which a benefit determination is to be made begins at the time a claim is filed without regard to whether all the information necessary to make a benefit determination accompanies the filing. If the period of time is extended as hereafter provided, the period for making the benefit determination shall be tolled from the date on which the notification of extension is sent to Claimant until the date on which the Claimant or other entity supplying the information (such as the Social Security Administration) responds to the request for additional

information.

### **Section 9.03 - Time of Initial Claims Determinations**

(a) ***Determination Period.***

(1) The Plan Manager shall notify a Claimant of any adverse benefit determination within a reasonable period of time, but not later than 90 days after receipt of the claim.

(2) If the Plan Manager determines that there is not sufficient information to determine the claim within the time limit in subsection (a)(1) above and notifies the Claimant prior to the expiration of that time limit of the circumstances requiring the extension and the date by which a decision is expected to be rendered, then the time period for a decision can be extended for up to 90 days.

(3) Notification of initial claim determinations shall contain the information listed in Article IV.

(b) ***Expiration of Time Periods.*** If a claim is not acted upon within the time periods prescribed by this Section 9.03, the Claimant may proceed to the appeal procedure as if the claim were denied.

### **Section 9.04 - Notification of Initial Claims Denials**

(a) ***Contents of Notification.*** The Plan's notification of an adverse benefit determination on an initial claim shall set forth, in a manner calculated to be understood by the Claimant, the following matters:

(1) The specific reason or reasons for the decision.

(2) Reference to the specific Plan provision on which the decision is based.

(3) A description of any additional material or information necessary for the Claimant to perfect the claim and an explanation of why such material or information is necessary.

(4) A description of the Plan's review procedure and the time limits applicable to such procedures.

(5) A statement of the Claimant's right to bring a court action under ERISA Section 502(a) following an adverse decision on review.

(b) ***Manner of Notification.*** The notification shall be in written or electronic form.

### **Section 9.05 - Appeals of Adverse Initial Claims Determinations**

(a) ***General Rules.*** All adverse decisions of initial claims may be appealed by Claimants to

the Joint Board or an authorized subcommittee thereof (hereinafter collectively referred to as “Joint Board”) pursuant to the following rules:

(1) Claimants must file with the Joint Board an appeal in writing within 60 days following receipt of the Plan notification of an adverse initial determination. There is no specific form for this purpose. Late applications may be considered by the Joint Board in its sole discretion if it finds that the delay in filing was reasonable under the circumstances. Failure to file an appeal within the designated period will constitute a waiver of the Claimant’s right to review the denial of his claim whether or not the Plan is prejudiced by the failure.

(2) Claimants may submit written comments, documents, records or other information relating to the claim.

(3) Upon written request, Claimant will be provided, free of charge, reasonable access to and copies of any documents, records and other information if they (A) were relied upon in making the initial determination, (B) were submitted, considered or generated in the course of making the benefit determination even if not relied upon, (C) demonstrate that the Plan provisions have been followed and applied consistently with respect to similarly situated individuals, or (D) constitute a statement of policy or guidance with respect to the Plan concerning the denied benefit whether or not relied upon.

(4) The appeal will take into account all comments, documents, records, and other information submitted by Claimant relating to the claim, without regard to whether such information was submitted or considered in the initial determination.

(5) The Claimant shall have no right to personally appear before the Joint Board unless the Joint Board in its sole discretion concludes that such an appearance would be of value in enabling it to review the adverse initial determination.

(b) **Determinations.** Claims appeals will be determined within the time periods specified in Article VI.

(c) **Calculating Time Periods.** The time period from which an appeal is to be made begins at the time the appeal is filed without regard to whether all the information necessary to make a benefit determination accompanies the filing. If the period of time is extended as hereafter provided, the period for deciding the appeal shall be tolled from the date on which the notification of extension is sent to Claimant until the date on which the Claimant responds to the request for additional information.

#### **Section 9.06 - Time of Claims Appeal Determinations**

(a) **General Rule.** In general, the Joint Board shall decide appeals at the next regularly scheduled meeting. However, if the appeal is received within 30 days preceding the date of such meeting, the appeal may be decided by no later than the date of the second meeting following receipt of the appeal.

(b) **Extensions.** If special circumstances require a further extension, the appeal will be decided not later than the third meeting following receipt of the appeal. The Plan Manager shall notify the Claimant in writing of the extension describing the special circumstances and the date as of which to benefit determination will be made before the start of the extension.



(c) **Notice.** The Plan Manager shall notify the Claimant of the Joint Board's decision as soon as possible, but not later than 5 days after the appeal is decided.

(d) **Contents of Notification.** Adverse decisions on appeal shall be made in accordance with and contain the information listed in Section 9.07.

#### **Section 9.07 - Notification of Appeals Decisions**

(a) **Manner of Notification.** Decisions on appeals will be communicated to Claimants by written or electronic notification.

(b) **Contents of Notification.** Adverse appeals decisions shall set forth, in a manner calculated to be understood by the Claimant, the following information:

(1) The specific reason or reasons for the decision.

(2) Reference to the specific Plan provisions on which the appeal is based.

(3) A statement that the Claimant is entitled to receive upon request and free of charge reasonable access to and copies of all documents, records, and other information relevant to the Claimant's claim as described in Section 9.04(a)(3).

(4) A statement of the Claimant's right to bring a court action under ERISA Section 502(a).

(c) **No Further Appeals.** Following issuance of the decision on appeal, there is no further right under these procedures to appeal or arbitrate the decision.

#### **Section 9.08 - Legal Proceedings**

(a) **Legal Actions.** Claimants may pursue their claims for benefits in court under ERISA Section 502(a) but only after they exhaust their administrative remedies as provided in these claims procedures. Failure of a Claimant to exhaust his or her administrative remedies will preclude further judicial review.

(b) **Legal Standards.**

(1) The Joint Board is given full discretionary authority (A) to finally determine all facts relevant to any claim, (B) to finally construe the terms of the Plan and all other documents relevant to the Plan, and (C) to finally determine what benefits are payable from the Plan.

(2) Any decision made by any Joint Board shall be binding on all persons affected to the fullest extent permitted by law.

(3) No decision of the Joint Board shall be revised, changed or modified by any arbitrator or court unless the party seeking such action is able to show by clear and convincing evidence that the Joint Board's decision was an abuse of discretion in light of the information actually available to it at the time of its decision.

## **Section 9.09 - Miscellaneous Provisions**

(a) ***Authorized Representatives.*** A Claimant may appoint in writing an authorized representative to act on his behalf in pursuing a claim or appeal under these claim procedures. There is no required form for this purpose.

(b) ***Plan Records.*** The Plan Manager shall maintain records designed to ensure and verify that determinations are made in accordance with Plan documents and that where appropriate, the Plan provisions have been applied consistently with respect to similarly situated Claimants. Plan participants' privacy will be protected at all times.

(c) ***Appeal of Adverse Determinations.*** Any decisions affecting a Claimant's benefits under the Plan may be appealed under these claims procedures, including:

- (1) A denial, reduction or termination of any Plan benefit.
- (2) A failure to provide or make payment in whole or in part for any Plan benefit.
- (3) A refusal to provide a Plan benefit based on a determination that the Claimant is not eligible under the terms of the Plan.

(d) ***Rights of Joint Board.*** The Joint Board retains the right to interpret and amend these Claims Procedures. Furthermore, if these procedures are ambiguous or do not provide an explicit procedure for a specific circumstance, the Joint Board is authorized to adopt such rules as it in its discretion deems necessary and appropriate to provide Claimants with appropriate initial determinations and an opportunity for a full and fair review of any adverse benefit determination."

## ARTICLE X

### *Miscellaneous*

#### **Section 10.01 - Proof Required of Employees**

An employee shall prove his age and the number of Years of his Credited Past Service and Credited Future Service to the satisfaction of the Trustees; and the Trustees may in their discretion grant any employee a hearing and the opportunity to present evidence in this connection. The Trustees may in their unlimited discretion accept or reject any evidence presented by the Employee, whether at a hearing or otherwise; and the determination by the Trustees of an Employee's age and of his Years of Credited Past Service and Credited Future Service shall be conclusive upon all parties.

#### **Section 10.02 - Assignment and Alienation of Benefits**

All of the benefits provided under this Plan are non-assignable and not subject to alienation, and all benefits under this Plan will be exempt from the claims of creditors to the maximum extent permitted by law. The only exceptions are (1) assignments to make payments required to maintain eligibility under the Automotive Industries Welfare Fund Retiree Plan and (2) those required under applicable law (including Internal Revenue Code Section 414(p) relating to "qualified domestic relations orders").

#### **Section 10.03 - Maximum Benefits and Top-Heavy Rules**

Notwithstanding any other provision of this Plan, benefits are subject to the following special rules required by federal law and set forth in the Appendices attached hereto and made a part hereof.

- (a) Maximum Monthly Retirement Benefit Rules (Appendix A);
- (b) Top-Heavy Rules (Appendix B).

## ARTICLE XI

### *Actuarial Factors and Assumptions*

#### **Section 11.01 - General Rule**

If no other factors or assumptions are specified, the following assumptions shall be used for determining Actuarial Equivalents:

(a) ***Mortality***. Mortality assumptions will be based upon the unisex UP 1984 Mortality Table with the following adjustments:

- (1) For participants, ages shall be set forward one year.
- (2) For spouses or Contingent Beneficiaries, ages shall be set back four years.

(b) ***Interest***. The interest rate assumption shall be 6%.

#### **Section 11.02 - Disability Payments**

(a) For a Participant whose benefits are not subject to adjustment under Section 4.00, for calculation of alternative forms of disability payments, other than the Automatic Joint and Survivor Benefit, the following assumptions shall be used for determining Actuarial Equivalents:

(1) ***Mortality***. Mortality assumption will be based upon the PBGC Mortality Table for Disabled Lives Eligible for Social Security Disability Benefits.

(2) ***Interest***. The interest rate assumption shall be 6%.

(3) ***Sex Mix***. For Participants, 100% male and 0% female.

(b) For a Participant whose benefits are subject to adjustment under Section 4.00, no Disability Retirement Benefits are payable.

#### **Section 11.03 - Joint and Survivor Benefit Factors**

(a) For a Participant whose benefits are not subject to adjustment under Section 4.00:

(1) ***All Benefits Other than Disability***. The factors for determining the amount of the Joint and Survivor Benefit for all benefits other than Disability Benefits are as follows:

(A) Automatic Joint and Survivor Benefit (Section 7.03). If the Participant and spouse are the same age, the factor under this subsection (A) is 95%.

(B) Full Joint and Survivor Option (Section 7.04(a)(4)). If the Participant and spouse are the same age, the factor under this subsection (B) is 85%.

(C) 75% Joint and Survivor Option (Section 7.04(a)(5)). This benefit shall be the Actuarial Equivalent of the Participant's Normal Retirement Benefit.

(2) **Disability Benefits.** For a Participant who is eligible for a Disability Retirement Benefit, his or her factors for determining the amount of the Joint and Survivor Benefit are as follows:

(A) Automatic Joint and Survivor Benefit (Section 7.03). If the Participant and spouse are the same age, the factor under this subsection (A) is 85%.

(B) Full Joint and Survivor Option (Section 7.04(a)(4)). If the Participant and spouse are the same age, the factor under this subsection (B) is 70%.

(3) If the Participant and spouse are not the same age, the following adjustments will be made to the factors in subsections (1) and (2), above.

(A) The factor will be decreased by 0.3% for each full year the spouse is younger than the Participant; or

(B) The factor will be increased by 0.3% for each full year the spouse is older than the Participant, subject to a maximum factor of 99%.

(C) 75% Joint and Survivor Option (Section 7.04(a)(5)). This benefit shall be the Actuarial Equivalent of the Participant's Normal Retirement Benefit.

(b) For a Participant whose benefits are subject to adjustment under Section 4.00:

(1) **All Benefits Other Than Disability:** Shall be the Actuarial Equivalent of the Participant's Normal Retirement Benefit.

(2) **Disability Benefits:** No Disability Retirement Benefits are payable.

#### **Section 11.04 - Single Sum Payments**

(a) For benefits paid in connection with an effective date of retirement before January 1, 2008, for calculation of single sum payments that may be made without a Participant's consent as described in Section 7.06, the following assumptions shall be used in determining Actuarial Equivalents:

(1) The mortality assumption and interest rate which produces the greater single sum payment:

(A) The mortality assumptions specified by the Secretary of Treasury for the purposes of satisfying Code Section 417(e)(Rev. Rul. 95-6 before January 1, 2003, Rev. Rul. 2001-62 effective January 1, 2003), and the "applicable interest rate" which is defined as the average annual rate on 30-year Treasury bonds as of the November (published in December) preceding the calendar year in which the distribution occurs; or

(B) The mortality assumptions specified in Section 11.01(a), and the interest rate specified in Section 11.01(b).

(2) The interest rate, as determined under this Section, shall apply for the entire calendar year following the November referred to in subsection (a)(1), above.

(b) For benefits paid in connection with an effective date of retirement on or after January 1, 2008:

(1) The Applicable Interest Rate means the adjusted first, second, and third segment rates applied under rules similar to the rules of Code Section 430(h)(2)(C) for the month of November (as published in December) immediately preceding the Plan Year (which serves as the stability period). For this purpose, the segment rates shall be subject to the conditions set forth in Code Section 417(e)(3)(D), and

(2) The Applicable Mortality Table is based on the mortality table specified for the calendar year under subsection (A) of Code Section 430(h)(3) (without regard to subsection (C) or (D) of such section).

## ARTICLE XII

### *Eligible Rollover Distributions*

#### **Section 12.01 - Eligible Rollover Distributions**

This Plan does not accept eligible rollover distributions.

#### **Section 12.02 - Transfers from the Plan**

This Section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the Board of Trustees, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

#### **Section 12.03 - Definitions**

The following definitions shall apply to this Article XII:

(a) ***Eligible Rollover Distribution.*** An Eligible Rollover Distribution is any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); any hardship distribution; the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and any other distribution(s) that is reasonably expected to total less than \$200 a year.

A portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax employee contributions which are not includable in gross income. However, such portion may be transferred only to (1) an individual retirement account or annuity described in Code Section 408(a) or (b); (2) for taxable years beginning after December 31, 2001 and before January 1, 2007, to a qualified trust which is part of a defined contribution plan that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includable in gross income and the portion of such distribution which is not so includable; or, (3) for taxable years beginning after December 31, 2006, to a qualified trust or to an annuity contract described in Code Section 403(b), if such trust or contract provides for separate accounting for amounts so transferred (including interest thereon), including separately accounting for the portion of such distribution which is so includable in gross income and the portion of such distribution which is not so includable.

(b) ***Eligible Retirement Plan.*** An Eligible Retirement Plan is a qualified plan described in Code Section 401(a), an annuity plan described in Code Section 403(a), an annuity contract described in Code Section 403(b), an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), or an eligible plan under Code Section

457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of state and which agrees to separately account for amounts transferred into such plan from this Plan, that accepts the Distributee's Eligible Rollover Distribution.

Effective on and after January 1, 2008, Eligible Retirement Plan includes a Roth IRA described in Code Section 408A. An amount rolled over to a 408A plan must be an Eligible Rollover Distribution, and, pursuant to Code Section 408A(d)(3)(A), include in gross income any amount that would be includible if the distribution was not rolled over. For taxable years beginning before January 1, 2010, a Distributee will not be permitted to make a Direct Rollover to a Code Section 408A plan if, for the year the eligible rollover is made, the Distributee has a modified adjusted gross income ("MAGI") exceeding \$100,000 or is married and files separate return. The restriction in the foregoing sentence shall not apply in taxable years beginning on or after January 1, 2010.

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 relations order as defined under Code Section 414(p).

(c) ***Distributee.*** A Distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p), are Distributees with regard to the interest of the spouse or former spouse. A Distributee also includes the Participant's nonspouse designated beneficiary under Section 1.03(e) of the Plan. In the case of a nonspouse beneficiary, the Direct Rollover may be made only to an individual retirement account or annuity described in Code Sections 408(a) or 408(b) ("IRA") that is established on behalf of the designated beneficiary and that will be treated as an inherited IRA pursuant to the provisions of Code Section 402(c)(11). Also, in this case, the determination of any required minimum distribution under Code Section 401(a)(9) that is ineligible for rollover shall be made in accordance with Notice 2007-7, Q&A 17 and 18, 2007-5 I.R.B. 395.

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



## ARTICLE XIII

### *Reemployment Under the Uniformed Services Employment and Reemployment Rights Act*

It is the intent of this Plan to comply with the reemployment rights of members of the Uniformed Services as specified in 38 United States Code Chapter 43 ("USERRA") and Code Section 414(u). Therefore, notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to Qualified Military Service will be provided in accordance with Code Section 414(u).

#### **Section 13.01 - Definitions**

(a) Qualified Military Service means any service in the Uniformed Services of the United States by any individual if such individual is entitled to reemployment rights with respect to such service under USERRA.

(b) Uniformed Services means:

- (1) the Armed Forces;
- (2) the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty for training, or full-time National Guard duty;
- (3) the commissioned corps of the Public Health Service; and
- (4) any other category of persons designated by the President of the United States in time of war or emergency.

#### **Section 13.02 - Breaks in Service**

Notwithstanding any other provision of this Plan to the contrary, an individual reemployed under USERRA will not be treated as having incurred a One-Year in Service by reason of such person's period of Qualified Military Service.

#### **Section 13.03 - Years of Vesting Credit**

Each period of Qualified Military Service served by an individual is, upon reemployment by an Employer under USERRA, deemed to constitute service with the Employer during the period it was a contributing Employer to the Plan. For purposes of determining Years of Vesting Credit, the individual will be credited with 190 Hours of Service for each month, or partial month, of Qualified Military Service.

#### **Section 13.04 - Benefit Accruals**

Each period of Qualified Military Service served by an individual, is upon reemployment by an employer under USERRA, deemed to constitute service with that Employer for purposes of determining the accrual of benefits under the Plan as follows:

(a) only periods during which the Employer was a party to a collective bargaining agreement pursuant to which the Plan was maintained will be counted;

(b) the returning employee will be considered to have been in the same category of employment during Qualified Military Service as the category in which he was employed immediately before such Service;

(c) the amount of benefit accrued shall be computed,

(1) at the rate the employee would have received but for the period of Qualified Military Service, or

(2) if the determination of such rate is not reasonably certain, on the basis of the employee's average pay rate, hours, or compensation during the 12-month period immediately preceding such Service (or, if shorter, the period of employment immediately preceding such Service); and

(3) in the same manner and to the same extent that benefits were accrued for other employees during the period of Qualified Military Service.

#### **Section 13.05 - Notice**

Any Employer who reemploys a person under USERRA shall, within 30 days after the date of such reemployment, provide information, in writing, of such reemployment to the Plan.

#### **Section 13.06 - Cost**

The cost of any additional benefits earned by a person during Qualified Military Service shall be paid for as provided in the reemploying Employer's collective bargaining agreement, provided that if the Employer is required to pay the cost, that payment must be completed within one year of reemployment.

In the absence of any specific provision in such agreement, the cost shall be borne by the Plan, and no additional contributions shall be required from the Employer.

## **APPENDIX A**

### **1. General Rule**

Notwithstanding any other provision of this Plan, a Participant's maximum annual benefit under this Plan shall be limited in accordance with Code Section 415 and the Treasury Regulations thereunder. The requirements of Code Section 415 are hereby incorporated by reference except as otherwise specified herein.

### **2. Limitation Year**

The limitation year for Code Section 415 purposes shall be the calendar year.

### **3. Limit on Accrued Benefits**

For Limitation Years beginning on or after January 1, 2008, in no event shall a Participant's benefit accrued under the Plan for a Limitation Year exceed the annual dollar limit determined in accordance with Code Section 415 of the code and the Treasury Regulations thereunder (the "annual dollar limit") for that Limitation Year. If a Participant's Plan Benefit for a Limitation Year beginning on or after January 1, 2008 would exceed the annual dollar limit for that Limitation Year, the accrued benefit, but not the Plan Benefit, shall be frozen or reduced so that the accrued benefit does not exceed the annual dollar limit for that Limitation Year.

### **4. Limits on Benefits Distributed or Paid**

For Limitation Years beginning on or after January 1, 2008, in no event shall the annual amount of benefit distributed or otherwise payable to or with respect to a Participant under the Plan in a Limitation Year exceed the annual dollar limit for that Limitation Year. If the benefit distributable or otherwise payable in a Limitation Year would exceed the annual dollar limit for that Limitation Year, the benefit shall be reduced so that the benefit distributed or otherwise payable does not exceed the annual dollar limit for that Limitation Year.

### **5. Protection of Prior Benefits**

(a) To the extent permitted by law, the application of the provisions of this Appendix A shall not cause the benefit that is accrued, distributed or otherwise payable for any Participant, including the Participant's annual benefit accrued under the Plan as separately determined for each Individual Employer, to be less than the Participant's accrued benefit as of December 31, 2007 under the provisions of the Plan that were both adopted and in effect before April 5, 2007 and that satisfied the limitations under Code Section 415 of the Code and the Treasury Regulations thereunder as in effect as of December 31, 2007.

(b) For any year before 1983, the limitations prescribed by Code Section 415 as in effect before enactment of the Tax Equity and Fiscal Responsibility Act of 1982 shall apply, and no benefit earned under this Plan shall be reduced on account of the provisions of this Section if it would have satisfied those limitations under the prior law.

(c) For any year before 1992, the limitations prescribed by Code Section 415 as in effect before enactment of the Tax Reform Act of 1986 shall apply, and no benefit earned under the Plan as of

the close of the last Limitation Year beginning before January 1, 1987 shall be reduced on account of the provisions of this Section if it would have satisfied those limitations under the prior law.

## **6. Aggregation**

This Plan shall not be aggregated with any other multiemployer plan for purposes of compliance with Code Section 415. However, if a non-multiemployer plan must be aggregated with this Plan for purposes of complying with Code Section 415, the benefits of such non-multiemployer plan will be reduced before benefits of this Plan. If that non-multiemployer does not reduce its benefits to comply with Code Section 415, then this Plan will reduce its benefits to such a level that Code Section 415 will not be violated.

## **7. Compensation**

(a) For purposes of compliance with Code Section 415, a Participant's compensation for a limitation year means remuneration received from the Employer during the calendar year for a limitation year for covered service, as defined in Code Section 415 and Section 1.415(c)-2(d)(4) of the Treasury Regulations.

(1) Code Section 415 Compensation must be paid within the calendar year, and paid or treated as paid before Severance from Employment in accordance with the general timing rule of Section 1.415(c)-2(e)(1) of the Treasury Regulations.

(2) Code Section 415 Compensation must include amounts paid by the later of 2 ½ months after Severance from Employment or the end of the Limitation Year that includes the Severance from Employment date in accordance with Section 1.415(c)-2(e)(3)(i) of the Treasury Regulations. Such post-severance compensation includes regular pay as defined in Section 1.415(c)-2(e)(3)(ii) of the Treasury Regulations, leave cashouts and deferred compensation as defined in Section 1.415(c)-2(e)(3)(iii) of the Treasury Regulations, and salary continuation payments for military service and disabled participants in accordance with Section 1.415(c)-2(e)(4) of Treasury Regulations.

(b) The annual compensation of each Participant taken into account in determining benefit accruals in any Plan Year beginning after December 31, 2001 shall not exceed \$200,000. For this purpose, annual compensation means compensation during the Plan Year or such other consecutive 12-month period over which compensation is determined under the Plan (the "determination period"). To the extent that the provisions of Section 1.03(e) are inconsistent with the provisions of this Section, the provisions of this Section shall govern.

(c) The \$200,000 limit on annual compensation above shall be adjusted for cost-of-living increases in accordance with Code Section 401(a)(17)(B). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.

(d) In determining benefit accruals in Plan Years beginning after December 31, 2001, the annual compensation limit in subsection (a) above, for determination periods beginning before January 1, 2002, shall be \$200,000.

## **8. Dollar Limitation**

To the extent permitted by law, in applying the dollar limitation specified in Code Section 415(b)(1)(A), the Plan will make the following adjustments:

(a) The dollar amount will be automatically adjusted each January 1 following the Participant's Severance from Employment or the Participant's Annuity Starting Date, if earlier, to reflect increases in the cost of living as specified under rules issued by the Internal Revenue Service. Provided, however, that in no event shall any increase under the subsection cause the amount of a Participant's accrued, distributed or otherwise payment benefit to exceed the amount of the Participant benefit payable in the absence of Code Section 415. For the purpose of this Appendix A, Severance of Employment occurs when a Participant is no longer an employee of any Employer of the Plan.

(b) If the Participant has less than 10 years of participation in the Plan, the dollar amount will be multiplied by a fraction (i) the numerator of which is the number of years (or part thereof) of participation in the Plan (not less than one), and (ii) the denominator of which is 10.

(c) If the Participant begins to receive a retirement benefit before the social security retirement age, the dollar limit will be reduced on an Actuarial Equivalent basis as specified under rules issued by the Internal Revenue Service. The applicable mortality table shall be that described in Section 11.04(a) and the interest rate shall be the greater of five percent (5%) per year or the rate otherwise specified in the Plan.

(d) If the Participant begins to receive a retirement benefit after the social security retirement age, the dollar limit will be increased on an Actuarial Equivalent basis as specified under rules issued by the Internal Revenue Service. The applicable mortality table shall be that described in Section 11.04(a) and the interest rate shall be the greater of five percent (5%) per year or the rate otherwise specified in the Plan.

Notwithstanding the other provisions in this Section 8 of Appendix A, if the Annuity Starting Date is in a Plan Year beginning in 2004 or 2005, for purposes of adjusting any benefit under Section 415(b)(2)(B) for any form of benefit subject to Code Section 417(e)(3), the interest rate assumption shall not be less than the greater of (1) the interest rate specified in the Plan for actuarial equivalence for the particular form of benefit payable, and (2) 5.5 percent.

## **9. Minimum Benefits**

The Plan may pay benefits within the minimum benefit provision of Code Section 415 even if they would exceed the otherwise applicable limitations, and in the case of a Participant who was a Participant in the Plan on or before December 31, 1982, the maximum monthly benefit shall not be less than the Participant's accrued benefit as of December 31, 1982.

## **10. Annual Benefit**

Code Section 415 limits the amount of the annual benefit payable by the Plan. The Plan's annual benefit means a benefit payable annually in the form of a straight life annuity. It does not include any benefits attributable to either employee contributions or rollover contributions, or ancillary benefits not directly related to retirement income benefits. If there is a transfer of assets or liabilities to this Plan from another qualified plan, the annual benefit attributable to the assets transferred does not have to be taken into account by this Plan for Code Section 415 purposes.

## **11. Adjustments for Form of Benefit**

(a) If Plan benefits are paid in a form other than a straight life annuity, they will be actuarially adjusted in accordance with rules issued by the Internal Revenue Service.

**(b) Mortality**

The applicable mortality table shall be that described in Section 11.04(a).

**(c) Interest Rates**

(1) For an effective date of retirement in years beginning before January 1, 2004, the interest rate shall be the greater of five percent (5%) per year or the rate otherwise specified in the Plan.

(2) For effective dates of retirement in Plan Years beginning in 2004 and 2005, for purposes of adjusting any benefit under Code Section 415(b)(2)(B) for any form of benefit subject to Code Section 417(e)(3), the interest rate assumption shall be not less than the greater of:

(A) The interest rate specified in Plan, and

(B) 5.5 percent.

(3) For effective dates of retirement in years beginning on and after January 1, 2006, for purposes of adjusting any benefit under Code Section 415(b)(2)(B) for any form of benefit subject to Code Section 417(e)(3), the interest rate assumption shall be not less than the greater of:

(A) The interest rate specified in the Plan,

(B) 5.5 percent, and

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

(d) However, no adjustments are required for:

(1) The value of a qualified joint and survivor annuity provided by the Plan to the extent such value exceeds the sum of (i) the value of a straight life annuity beginning on the same date and (ii) the value of any post-retirement death benefits which would be payable even if the benefits were not paid in the joint and survivor annuity form.

(2) The value of the benefits that are not directly related to retirement benefits (such as pre-retirement disability and death benefits).

(3) The value of any other ancillary benefits not directly related to retirement income benefits.

**12. Increases of Benefits**

For Benefits for limitation years ending on or before December 31, 2001, if the Benefit a Participant would have received in any such limitation year without the Code Section 415 limits is reduced, the Plan will keep track of such reductions and will pay them to the Participant in future

limitation years to the extent it can so without violation of the Code Section 415 limitations. This subsection does not apply to Benefits for limitation years ending after December 31, 2001.

**13. Plan Disqualification**

If under Code Section 415 and the Treasury Regulations thereunder, this Plan must be combined or aggregated with any other plan or plans, and if that aggregation results in the limitations of Code Section 415 being exceeded, then to the extent permitted by law the other plan or plans will be disqualified before this Plan.

## **APPENDIX B**

### **1. GENERAL RULE**

If the Plan is determined to be Top-Heavy (as defined in subsection 2) for any Plan Year, then for that year and all subsequent years until specifically amended to the contrary, the special vesting, minimum benefit and compensation limitations of subsection 3 shall apply to any employee not included in a unit of employees covered by a collective bargaining agreement between employee representatives and one or more employers.

### **2. DETERMINATION OF TOP-HEAVY STATUS**

(a) ***Determination Date.*** The determination date for any Plan Year is the last day of the preceding Plan Year.

(b) ***Top-Heavy Status.*** The determination whether the Plan is Top-Heavy for any Plan Year shall be made in accordance with Code Section 416 which is incorporated herein by this reference.

(c) ***Key Employees.*** A Participant is a Key Employee for purposes of this Plan if her or she is a “key employee” for purposes of Code Section 416(i) and the regulations issued thereunder, all of which are incorporated herein by this reference.

### **3. SPECIAL VESTING, MINIMUM BENEFIT, AND COMPENSATION RULES**

The following rules will apply only to employees not included in a unit of employees covered by a collective bargaining agreement requiring contribution to this Plan and only if the Plan as a whole becomes Top-Heavy. Such employees are referred to herein as Top-Heavy Employees.

(a) ***Vesting***

(1) ***Applicability.*** If the Plan becomes Top-Heavy, the vesting schedule set forth in subsection (2) below shall apply to the accrued benefit of every Top-Heavy Employee who has at least one Hour of Service after the date the Plan becomes Top-Heavy. Participants who do not have any Hours of Service after that date will have their vesting determined under the regular vesting schedule.

(2) ***Special Vesting Schedule.*** If the Plan becomes Top-Heavy, the following vesting schedule shall apply instead of the Plan's regular vesting schedule for all Plan Years beginning after the first determination date as of which the Plan is determined to be Top-Heavy:

<u><b>YEARS OF VESTING SERVICE</b></u>	<u><b>PERCENTAGE</b></u>
2	20
3	40
4	60
5	80
6 or more	100

(b) ***Special Minimum Benefit Rules***



(1) Applicability. If the Plan becomes Top-Heavy, then for the first year that the Plan is Top-Heavy, and for all subsequent years, the minimum benefit set forth in subsection (2) below shall apply to all Top-Heavy Employees who have not separated from service at the end of any such Plan Year or have a year of Credited Service during any such Plan Year.

(2) Special Minimum Benefit. If the Plan becomes Top-Heavy, the minimum Normal Retirement Benefit for Top-Heavy Employees (other than Key Employees) shall be the greater of (I) the Plan's Normal Retirement Benefit determined under Article VI, Section 6.02, or (II) 2 percent of the Participant's Average Top-Heavy Compensation for each Plan Year during which the Participant earned 1,000 or more Hours of Service (whether or not he was employed at the end of that year) which begins on or after January 1, 1985, and during which the Plan was Top-Heavy, up to a maximum of 10 such years.

(3) Average Top-Heavy Compensation shall mean the average Compensation for the period of consecutive Top-Heavy years, not exceeding 5, during which the Participant had the greatest aggregate Compensation. Top-Heavy Years are those Plan Years beginning on or after January 1, 1985, for which the Plan is determined to be Top-Heavy.

(4) Defined Benefit and Defined Contribution Top-Heavy Plans. If a Top-Heavy Employee (other than a Key Employee) is covered by both this defined benefit plan and a defined contribution plan of an Employer and both plans become Top-Heavy, the Top-Heavy Employee shall receive the defined benefit minimum described in subsection (b)(2) above.