

**PENSION PLAN FOR THE  
UTAH SHEET METAL  
PENSION TRUST FUND**

**SUMMARY PLAN DESCRIPTION  
January 1, 2005**

**BOARD OF TRUSTEES**

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The Internal Revenue Service has assigned  
to this Plan the number 87-6156446

**A MESSAGE FROM THE BOARD OF TRUSTEES  
OF THE UTAH SHEET METAL PENSION TRUST FUND**

To All Covered Employees:

We are happy to provide you with a new booklet explaining the updated Pension Plan, which recently received a favorable tax-qualification determination letter from the Internal Revenue Service. All changes since the last booklet was printed have been incorporated. Some of the changes may affect your eligibility to receive benefits. We believe that you will want to read these rules and their explanation very carefully in order to understand your rights to a pension.

However, this is only a Summary of the Pension Plan and is not intended, nor should it be viewed, as a substitute for the complete Pension Plan which is printed in the second section of this booklet and begins after page 46. If the terms of this Summary and the Pension Plan are found to be in conflict, the Pension Plan will govern.

Please read this booklet carefully. It is important that you are aware of your retirement benefits. We also suggest that you keep this booklet available for future reference.

It is important to remember that if pensions commenced, or if the facts and circumstances of a particular situation occurred prior to January 1, 2005, then such pensions, facts, and circumstances are determined in accordance with the applicable provisions of the pension plan rules then in effect. Such provisions may be different from the rules and regulations of the Pension Plan included within this booklet.

We would like to stress that only the Board of Trustees or someone specifically authorized by the Board of Trustees may interpret the Pension Plan, or tell you about your rights and benefits. For example, if an individual Trustee, a local union or district council official, or business representative, or an employer makes representations about your rights, you should not rely on that information. If you have questions, or if you require any additional information regarding the Pension Plan, and how it affects your Pension rights and benefits, you should contact the Administrator at the Administrative Office, in writing.

Please let the Administrative Office of the Pension Trust know of any change in your mailing address to ensure that you receive all communications. The success of this Pension Plan depends as much on your interest and commitment as it does on our administration of it. We hope that you will share our pride in this Pension Plan, which was designed to reward your years of service to the construction industry.

With our best wishes for the future.

Sincerely,

**BOARD OF TRUSTEES**

## TABLE OF CONTENTS

Page

### SUMMARY

Pension Plan Terms .....	4
Participation .....	6
Pension Credit .....	7
Past Service Credit .....	7
Future Service Credit .....	7
Pension Credit and Vesting Service for Military Service .....	9
Vesting Service .....	10
Vesting of Credits .....	10
Break In Covered Employment .....	11
Separation From Covered Employment .....	14
Types of Pension .....	15
Regular Pension .....	15
Early Retirement Pension .....	16
Full Disability and Reduced Disability Pensions .....	17
Vested Pension .....	20
Special Normal Retirement Age Pension .....	20
Pro-Rata and Reciprocal Pensions .....	21
Provisions Affecting Beneficiaries .....	23
Husband-and-Wife Pension .....	23
Joint and Survivor Option .....	25
Qualified Domestic Relations Orders .....	26
Death Benefits .....	26
Lump Sum Payment of Monthly Pension .....	28
Retirement and Suspension of Pension Payments .....	29
Special Rules for Non-Contributing Employers .....	32
How To Apply For Benefits .....	33
Annuity Starting Date .....	34
How To Appeal A Decision Of The Trustees .....	35
Checklist: Things For You To Do .....	41
Information Required by ERISA .....	42

### THIRD RESTATED PENSION PLAN

Article I	-	Definitions
Article II	-	Participation
Article III	-	Pension Eligibility and Amounts
Article III-A	-	Pro Rata Pensions
Article III-B	-	Reciprocal Pensions
Article IV	-	Husband-and-Wife Pension
Article V	-	Death Benefit
Article VI	-	Pension Credit and Years of Vesting Service
Article VII	-	Optional Form of Pension
Article VIII	-	Application, Benefit Payments, Retirement and Suspension of Benefits
Article IX	-	Miscellaneous
Article X	-	Amendment and Termination
Article XI	-	Amendments to Comply with EGTRRA and 2001/02 Regulatory Changes
Article XII	-	Top-Heavy Provisions
Article XIII	-	Withdrawal Liability

## PENSION PLAN TERMS

The following are general definitions of some of the terms used in explaining the Pension Plan. The actual text of the Plan which is printed in the second part of this booklet includes these and other definitions in greater detail.

**Administrative Office:** The office to which you should send all communications about your pension, including questions concerning your participation, eligibility, vesting, pension benefits, and the notices you may be required to provide to the Board of Trustees. The address and telephone number of the Administrative Office is:

Board of Trustees  
Utah Sheet Metal Pension Trust Fund  
4885 South 900 East, #202  
Salt Lake City, Utah 84117  
(801) 266-3271  
Fax: (801) 266-4383

**Active Participant:** The term “Active Participant” as used in this booklet means a person who meets the requirements for participation in this Pension Plan and who has not incurred a One-Year Break in Covered Employment.

**Covered Employment:** Work under a Written Agreement which requires the Employer to contribute to this Pension Fund.

**Continuous Non-Covered Employment:** Work for a Contributing Employer in a job classification not covered by this Plan, which is continuous with Covered Employment. Non-Covered Employment is considered continuous only when there is no quit, discharge or other termination of employment between periods of Covered and Non-Covered Employment.

**Hour of Service:** Hours worked in Covered Employment and hours paid but not worked (such as vacation or holiday). Continuous Non-Covered Employment, as defined above, will be included in your Hours of Service, as well as Qualified Military Service (see page 9).

**Pension Credits and Vesting Service Credits:** These terms are used to measure the amount of time a Participant has worked in Covered Employment. A Participant’s eligibility for pension is determined by Pension Credits or Vesting Service Credits. The amount of a Participant’s monthly pension benefit is based only on Pension Credits.

**Break in Covered Employment:** If a Participant does not earn the required Hours of Covered Employment or Vesting Service in a Plan Year, he can incur a Break in Covered Employment. Unless certain conditions are met, a Break in Covered Employment can cause the cancellation of a Participant’s previously-earned credits. A detailed explanation of what is a Break in Covered Employment and how it can become permanent is in the section entitled “Break in Covered Employment”, on pages 11 through 13.

**Parental Leave:** A Participant’s absence from work due to the Participant’s pregnancy, or to the birth of the Participant’s child (and newborn care after that birth), or to placement of a child in connection with an adoption by the Participant (including a trial period). A maximum of 390 Hours of Service will be given

in any calendar year (or in the following calendar year if the Participant has already worked 390 Hours) for a Participant's absence for Parental Leave.

**Plan Year:** The 12-consecutive-month period from *November 1st* of one year to *October 31st* of the next year.

**Sheet Metal Industry:** Any and all types of work covered by Written Agreements to which the Union is a party, regardless of where the work is performed.

## **PARTICIPATION**

You will become an Active Participant in this Plan on either the November 1 or May 1 immediately following a consecutive 12-month period during which you complete at least 1000 Hours of Service in Covered Employment. Hours of Service with an Employer in non-Covered Employment also may count toward this requirement if that non-Covered Employment is continuous with your Covered Employment.

If you have a Break in Service, you will no longer be a Participant unless you are a pensioner or are “vested”, which is explained in more detail starting on page 10. An inactive individual will attain Active Participant status in the Plan once that individual again completes 1000 Hours of Service in Covered Employment as noted in the previous paragraph.

## PENSION CREDIT

Pension Credit is used to qualify for most types of pension provided by the Plan and determines the amount of benefit payable for all types of pensions. Your Pension Credit is based on your years of service in Covered Employment. There are two basic types of Pension Credit — *Past Service Credit* earned for periods before November 1, 1964, and *Future Service Credit* earned for periods after November 1, 1964.

### **Past Service Credit (Before November 1, 1964)**

You will be entitled to receive one year of Past Service Credit (or a portion) for each Plan Year before November 1, 1964, in which you worked in the geographical area covered by a Written Agreement in any job classification of the type now included in the Written Agreement provided you earned at least one quarter of Future Service Credit before November 1, 1966. You will be credited with one year of Past Service Credit for each Plan Year in which you were so employed for 1600 or more hours. If you worked less than 1600 hours, you will receive 1/4 of a credit for each 400 hours of such employment.

An apprentice who performed work of the type covered by the Written Agreement will receive Past Service Credit in accordance with the schedule outlined above for all periods before May 1, 1981.

Since it may be difficult to establish years of service before November 1, 1964, the Trustees may accept records of Union membership, W-2 forms, statements from the Social Security Administration or from the Administrator of the Utah Sheet Metal Welfare Fund as evidence of employment.

### **Future Service Credit (On and After November 1, 1964)**

Beginning November 1, 1964, you will earn Future Service Credit based on your hours of work in Covered Employment according to the following schedules:

#### **For work performed on and after November 1, 1964 and before November 1, 1967**

<b>Hours Worked In A Plan Year</b>	<b>Future Service Credit</b>
Less than 400	None
400 to 799	One Quarter
800 to 1,199	Two Quarters
1,200 to 1,599	Three Quarters
1,600 and over	One Year

**For work performed on and after November 1, 1967**

<b>Hours Worked In A Plan Year</b>	<b>Future Service Credit</b>
Less than 390	None
390 to 519	3/12 Year
519 to 649	4/12 Year
650 to 779	5/12 Year
780 to 909	6/12 Year
910 to 1,039	7/12 Year
1,040 to 1,169	8/12 Year
1,170 to 1,299	9/12 Year
1,300 to 1,429	10/12 Year
1,430 to 1,559	11/12 Year
1,560 and Over	One Year
1,690 and over	13/12 Year

In any Plan Year after November 1, 1976, if you earn a Year of Vesting Service but work less than 390 hours in Covered Employment, for the purpose of computing the amount of your pension, you will receive partial Future Service Credit equal to the number of hours worked divided by 2,000.

If your hours in Covered Employment equal or exceed 3,120 in a period of two consecutive Plan Years, you will receive two Future Service Pension Credits based on an average of the hours of the two-Plan Year period.

On and after November 1, 1999, if you earn at least 1,690 hours of Covered Employment, you may receive 13/12ths of a Pension Credit for that Plan Year. However, you are not eligible for the 13/12<sup>th</sup> credit if your hours were used for the two-Plan Year averaging described in the preceding paragraph.

## **PENSION CREDIT AND VESTING SERVICE FOR MILITARY SERVICE**

Participants who satisfy conditions imposed by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) will be entitled to have their period of military service treated the same as Covered Employment for vesting and benefit accrual purposes. To receive credit, you must have left employment for an Employer in a job classification covered by a Collective Bargaining Agreement to join the military.

Your entitlement to benefits for time spent in military service also depends on your compliance with other legal requirements of USERRA, including the following:

- Your separation from military service must be other than disqualifying under USERRA, such as where you have a dishonorable or bad conduct discharge.
- The total length of your absence due to military service may not exceed five years.
- You report or submit an application for re-employment following military service within the time allowed by law.

Length of Military Service	Reemployment Deadline
Less than 31 days	1 day after discharge
31 through 180 days	14 days after discharge
More than 180 days	90 days after discharge

Each full week of Qualified Military Service is equal to the average weekly hours of Service in Covered Employment earned during the 12 months preceding the start of Qualified Military Service. Future service credit is pro-rated on 40 hours if the period of Qualified Military Service is less than a full week. Until you or your employer notifies the Fund Office that you have met the foregoing conditions you will not receive credit for your military service.

As the rules for crediting military service are complex, we recommend that you contact the Administrative Office before you leave and after you return from military service. If you think you may be eligible for contributions for a period of military service, please provide the Administrative Office with accurate records of your service. This change is effective for veterans returning to employment on or after December 12, 1994.

## VESTING SERVICE

Vesting Service is another measure of your service in Covered Employment. However, Vesting Service is different from Pension Credit in three ways:

- It is earned only for work after November 1, 1964;
- It is calculated by a different formula; and
- It is only used to establish your right to a Vested Pension or to determine whether you have had a Break in Covered Employment (which is explained later in this booklet).

You earn one year of Vesting Service Credit for each Plan Year in which you complete 1,000 or more Hours of Service in Covered Employment. If you complete less than 1,000 hours in a Plan Year, you will not earn any Vesting Service Credit for such Plan Year.

Vesting Service Credit is awarded after January 1, 1976, for Continuous Non-Covered Employment, which is explained in the section “Pension Plan Terms” on page 4.

*Remember, Vesting Service is used to determine when you have a vested right to a pension that you cannot lose. The actual calculation of the amount of your pension is based on Pension Credits earned, as explained later.*

## VESTING OF CREDITS

You can achieve Vested status in two ways:

1. By earning at least five (5) years of Vesting Service without a Permanent Break in Covered Employment or five (5) years of Pension Credit (including not less than one quarter of Future Service Credit earned during the Plan Year ending October 31, 1998) on or after January 1, 1998. Prior to January 1, 1998, an employee achieved vested status by earning at least ten (10) years of Vesting Service without a Permanent Break in Covered Employment or ten (10) Years of Pension Credit, including not less than two quarters of Future Service Credit since November 1, 1964.
2. By attaining Normal Retirement Age.

Normal Retirement Age is based on two factors: your age and the number of years you have participated in the Plan. Your Normal Retirement Age is the first day of the month following the month in which you meet both of the following requirements:

- (1) You are at least age 65; **and**
- (2) either:
  - (a) 10 years have elapsed (without a Permanent Break in Covered Employment) since your participation in the Plan began; or

(b) 5 years of participation (without a Permanent Break in Covered Employment) have elapsed since November 1, 1988.

All Future Service Credit not canceled by a permanent Break in Covered Employment will be vested on the date a Participant attains Normal Retirement Age. Such a Participant will be eligible for a Special Normal Retirement Age Vested Pension as described on page 20.

A non-bargaining unit employee covered by this Plan will become vested if he has earned at least five (5) Years of Vesting Service, so long as he also has earned at least an Hour of Service on or after November 1, 1988.

Once you are fully vested, you cannot lose your accumulated Pension Credit or Vesting Service through a Break in Covered Employment. You will be entitled to receive a pension starting at the permitted retirement age even if you leave Covered Employment or earn no additional Pension Credit or Vesting Service.

On and after November 1, 1986, if you perform employment in the Sheet Metal industry that is not covered by a Written Agreement between the union and the employer, you will not be eligible to retire on a Vested Pension until you reach age 65. However, this rule will not apply on and after November 1, 1998 if you earn one quarter of Future Service Credit following your prohibited employment, for each calendar quarter in which you worked one or more hours in prohibited employment.

### **BREAK IN COVERED EMPLOYMENT**

The Pension Plan was established for the purpose of providing a retirement benefit to those Participants who worked most of their years in the Sheet Metal Industry. To make sure that the Pension Plan meets this purpose, certain rules have been adopted with regard to Breaks in Covered Employment.

If you should leave Covered Employment before you are vested, you may incur a Permanent Break in Covered Employment and lose all of your Vesting Service and Pension Credits. If this occurs, you will not be eligible for any type of pension or death benefit.

The following information explains how Breaks become Permanent Breaks in Covered Employment and how they are determined according to the particular rules in effect at the time the break occurs.

**Permanent Break in Covered Employment Before November 1, 1976:** Between *November 1, 1964*, and *November 1, 1976*, you incur a Permanent Break in Covered Employment if you do not work at least 400 hours in Covered Employment in two (2) consecutive Plan Years. If this occurs, you will forfeit all Pension Credits you previously accumulated. There were exceptions to this particular “break” rule which are called “grace periods”.

**Grace Periods Before January 1, 1976:** These are periods when a Participant was absent from Covered Employment, due to:

- (1) Disability,
- (2) Service in the Armed Forces,
- (3) Employment with an Employer signatory to a Written Agreement which does not require contributions to this Pension Fund,

(4) Salted Employment.

Grace periods of up to two consecutive Plan Years may be granted for disability. There is no limit to the length of time for which a grace period may be granted for service in the Armed Forces and non-contributory employment. Grace periods will be given for 390 hours of Salted employment.

Grace periods are not intended to increase your Pension Credits. Rather, they are periods which are disregarded in determining whether you have incurred a Break in Covered Employment.

**PLEASE NOTE:** There are time limits and other conditions for applying to the Board of Trustees for recognition of any of the grace periods described above. Be sure to contact the Administrative Office as soon as possible if you think you qualify for a grace period.

**One-Year Break in Covered Employment On and After November 1, 1976:** You incur a One-Year Break in Covered Employment if you do not complete 390 Hours of Service in any Plan Year.

Hours of Service as a Qualifying Signatory Employer (see page 14) will be taken into account in determining whether or not you have incurred a One-Year Break.

**Permanent Break in Covered Employment Between November 1, 1976, and October 31, 1987:** You incur a Permanent Break in Covered Employment if you have at least two (2) consecutive One-Year Breaks in Covered Employment and the number of One-Year Breaks equals or exceeds the number of years of Vesting Service you have previously accumulated.

**Example 1:** A Participant earns five (5) years of Vesting Service from 1976 to 1980. He then has four (4) years from 1981 to 1984 in which he completes less than 390 Hours of Service. In 1985, he works 1,100 hours, which adds one more year to his five years of Vesting Service, giving him a total of six (6) years, and clearing away all his Breaks in Covered Employment years. Showing this period in the following chart:

YEAR	Hours Worked	Considered as...	Total
1976	1,400	Year of Vesting Service	1 year
1977	1,800	Year of Vesting Service	2 years
1978	1,100	Year of Vesting Service	3 years
1979	1,300	Year of Vesting Service	4 years
1980	1,400	Year of Vesting Service	5 years
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1981	250	Break in Covered Employment	1 year
1982	250	Break in Covered Employment	2 years
1983	0	Break in Covered Employment	3 years
1984	100	Break in Covered Employment	4 years
-----			
1985	1,100	Year of Vesting Service	6 years

In this example, all Break in Covered Employment years are “erased” because the Participant returned to service before having an *equal or greater number* of break years.

**Permanent Break in Covered Employment On and After November 1, 1987:** Beginning *November 1, 1987*, you incur a Permanent Break in Covered Employment if you have *at least* five (5) or more consecutive One-Year Breaks in Covered Employment, and the number of One-Year Breaks equals or exceeds the number of years of Vesting Service you have earned.

**Example 2:** You earn four (4) years of Vesting Service from 1987 to 1990. You then have five (5) years (1991 - 1995) in which you complete less than 390 Hours of Service. You lose your previous four years of Vesting Service as of December 31, 1995.

**Example 3:** You earn four (4) years of Vesting Service from 1987 to 1990. You then have four (4) years from 1991 to 1994 in which you complete less than 390 Hours of Service. In 1995, you work 1,100 hours, which adds one more year to your four years of Vesting Service, giving you a total of five (5) years, and clearing away all your Breaks in Covered Employment years. Showing this period in the following chart:

<b>YEAR</b>	<b>Hours Worked</b>	<b>Considered as...</b>	<b>Total</b>
1987	1,400	Year of Vesting Service	1 year
1988	1,800	Year of Vesting Service	2 years
1989	1,100	Year of Vesting Service	3 years
1990	1,300	Year of Vesting Service	4 years
-----			
1991	250	Break in Covered Employment	1 year
1992	250	Break in Covered Employment	2 years
1993	0	Break in Covered Employment	3 years
1994	100	Break in Covered Employment	4 years
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1995	1,100	Year of Vesting Service	5 years

In this example, even though your Break in Covered Employment years equaled your previous years of Vesting Service at the end of 1994, you did not have a Permanent Break because you did not have *at least five (5)* Breaks in Covered Employment years. Your Break in Covered Employment years also are erased out because you returned to service before incurring a Permanent Break.

These examples show that One-Year Breaks in Covered Employment can be “cured” or repaired, as long as the Break in Covered Employment is not permanent.

The term “Hours of Service” referred to above is defined in the Pension Plan on page 4 of this booklet, and can include periods of Continuous Non-Covered Employment, Qualified Military Service, and as a Qualifying Signatory Employer (see page 14). Beginning **November 1, 1987**, “Hours of Service” also include certain periods of Parental Leave. Parental Leave is explained in the section “Pension Plan Terms” on page 4 and defined in the Pension Plan at Article VI, page 5.

## SEPARATION FROM COVERED EMPLOYMENT

The calculation of all types of pensions under this Plan is subject to the rules for Separation from Covered Employment. A Separation from Covered Employment can determine if a past benefit value for your Pension Credit must be used to calculate the amount of all or a portion of your pension.

Beginning November 1, 1983, you will have a Separation from Covered Employment if you do not work at least 780 hours in Covered Employment in three (3) consecutive Plan Years. You will be considered to be “separated” as of the last day of the Plan Year before that three-year period.

If you have a Separation from Covered Employment, your benefit amount is “frozen” at the benefit rates in effect at the beginning of your Separation. If you later return to work in Covered Employment and earn additional Pension Credit, your benefit for those additional credits will be calculated based on the benefit rates in effect at the time of your actual retirement or a later Separation, if any.

You can “cure” a Separation by returning to work in Covered Employment and earning at least three (3) full years of Future Service Credit before you retire. If your Separation is cured, the Pension Credit earned prior to your Separation will be calculated at the rate in effect on the date of your retirement or subsequent Separation from Covered Employment, whichever is earlier.

However, if you worked in the Sheet Metal Industry on or after November 1, 1986 in employment that is not covered by a Written Agreement between the Union and the employer, you will not be allowed to cure any Separation from Covered Employment unless, starting November 1, 1998, you earn or have earned one quarter of Future Service Credit following your prohibited employment for each calendar quarter in which you worked in prohibited employment. Starting January 1, 2002, if you incur a Separation by working in non-covered sheet metal work, you can cure the Separation by earning at least (3) full years of Future Service Credit before you retire, as above. However, you may only cure one such Separation in this way.

If you leave Covered Employment to become a Qualifying Signatory Employer or Qualifying Non-Covered Employee, you will not incur a Separation as long as you meet the requirements to be considered as such. When you no longer qualify as a Qualifying Signatory Employer or Qualifying Non-Covered Employee, your benefit level will be frozen at the level in effect at the time that you cease to be qualified in either category. You may, however, begin work again in Covered Employment immediately following the cessation as a Qualifying Signatory Employer or Qualifying Non-Covered Employee, and avoid incurring a Separation.

A **Qualifying Signatory Employer** is an individual who leaves Covered Employment (or leaves a position as a Qualifying Non-Covered Employee) and becomes an Owner (see page 29) of a sheet metal company, which signs a Written Agreement providing for contributions to the Pension Fund with Local Union No. 312 of the Sheet Metal Workers International Association within 60 days after leaving Covered Employment (or if applicable, within 60 days after leaving the position in Qualifying Non-Covered Employment).

A **Qualifying Non-Covered Employee** is an individual who leaves Covered Employment (or leaves a position as a Qualifying Signatory Employer) and within 60 days becomes an employee of a Contributing Employer, performing non-covered work for such Contributing Employer (or if applicable, within 60 days after leaving the position in Qualifying Signatory Employer).

If you have had a Separation from Covered Employment and wish to know the benefit rates in effect for your Pension Credit before your Separation, contact the Administrative Office.

## TYPES OF PENSION

There are several types of pensions available to eligible participants under this Plan. Eligibility requirements as to Pension Credits, age and other factors vary for different types of pensions. The Administrative Office can advise you about your eligibility, and explain various factors which should be considered when you are ready to think about retirement. In order to be eligible for any type of pension provided under this Plan, you must file an application with the Administrative Office.

This section describes the types of pension and the service, age and other requirements for each. The amount of monthly pension payment with each type will vary according to a number of factors, including when your Pension Credits were earned, when you apply for pension, the payment form you select, etc. Information bearing on the amount of payment will be found in the section "Provisions Affecting Beneficiaries" starting on page 23, as well as in this section.

**NOTE:** *The monthly pension payable to a married participant, regardless of the type of pension, will be reduced as explained under the Husband-and-Wife Pension, unless the participant and spouse decide they want the pension paid as a single-life pension (explained beginning on page 23). If you are married at retirement but do not want the Husband-and-Wife Pension provision to apply, you and your spouse must reject this form of payment in writing with the Administrative Office when you apply for a pension.*

## REGULAR PENSION

**Eligibility:** Upon application, you are eligible for a Regular Pension if you meet all of the following requirements:

- (1) You are at least 65 years of age.
- (2) You have earned at least 10 years of Pension Credit without a Permanent Break in Covered Employment.
- (3) You have earned at least two quarters of Future Service Credit since November 1, 1964.

**Pension Amount:** Subject to the Separation from Covered Employment rules as described on page 14, the amount of a Regular Pension is \$66.00 for each full year of Pension Credit earned before November 1, 1998 and \$69 for each full year of Pension Credit earned on and after November 1, 1998 for retirements on and after November 1, 2001. The monthly pension amount is rounded to the next higher multiple of fifty (50) cents (if not already a multiple of fifty (50) cents). If you are married, the Regular Pension will be payable in the form of a Husband-and-Wife Pension as explained on pages 23 through 25 of this booklet, unless you and your spouse elect in writing to have the pension paid in an optional form of payment.

*For Example:* An unmarried participant reaches age 65 and retires on January 1, 2002 with twenty-five (25) years of Future Service Credit, 22 credits were earned prior to November 1, 1998 and 3 credits were earned on or after November 1, 1998. That participant's single-life pension starting on that date is \$1,659 per month (\$69 x 3 years)+(\$66 x 22).

**Delayed Retirement:** If the effective date of your pension is on or after November 1, 1989 and is after your Normal Retirement Age (generally age 65, but see page 44), and you do not work at least 40 hours in each month between Normal Retirement Age and your Annuity Starting Date, your benefit may be calculated differently. You will receive the greater of:

- (1) the benefit calculated on the basis of total years of Pension Credit earned at actual retirement and the benefit rates in effect at that time (subject to the Separation from Covered Employment rules); or
- (2) the benefit you would have received if you had retired at Normal Retirement Age, calculated using your Pension Credit as of that date and the benefit rates then in effect (subject to the separation in Covered Employment rules), and actuarially increased for each month after Normal Retirement Age in which you work less than 40 hours in prohibited employment. The actuarial increase will be 1% per month for the first 60 months after Normal Retirement Age, and 1.5% per month for each month afterward.

*For Example:* A Participant has 20 years of Future Service Credit earned when he reaches Normal Retirement Age on December 1, 2000. Instead of retiring, he continues to work sporadically. During the next two years, he earns one additional Future Service Credit, but has 12 months in which he works less than 40 hours. His benefit would be:

21 total years of Future Service Pension Credit on January 1, 2003:

$$\begin{aligned} & (18 \text{ years} \times \$66) = \$1,188 \\ \text{OR } & (3 \text{ years} \times \$69) = \underline{\$207} \\ & \qquad \qquad \qquad \$1,395 \end{aligned}$$

Benefit payable at Normal Retirement Age (December 1, 2000)

- (\$65 x 20 years) = \$1,300
- plus an actuarial increase for 12 months in which he worked less than 40 hours = 12%; \$1,300 x 1.12 = \$1,456

Since the benefit is greater under method 2, the benefit for delayed retirement in this case would be \$1,456.00.

### **EARLY RETIREMENT PENSION**

**Eligibility:** Upon application, you are eligible for an Early Retirement Pension if you meet all of the following requirements:

- (1) You are at least 55 years of age.
- (2) You have ten (10) years of Pension Credit without a Permanent Break in Covered Employment.
- (3) You have earned at least two quarters of Pension Credit since November 1, 1964.
- (4) You have not worked in employment in the Sheet Metal Industry that is not covered by a Written Agreement between the Union and the employer on or after November 1, 1986. However, on or after November 1, 1998, if you are an Active Participant, your non-covered Sheet Metal work will not count against your eligibility if you earn one quarter of Future Service Credit for each calendar quarter of prohibited employment following such prohibited employment.

**Pension Amount:** The amount of the Early Retirement Pension is calculated in the same way as the Regular Pension, but is reduced since you are younger than 65 years of age, and are likely to receive payments for a longer period of time.

To determine the amount of your Early Retirement Pension, you must first determine what the amount of Regular Pension would be if you were age 65 and retiring with the same amount of Pension Credit you now have. If you have at least 25 years of Pension Credit, your Early Retirement Pension will be equal to the Regular Pension. If you have accrued fewer than 25 years of Pension Credit, your benefit will be reduced.

The amount of the reduction is equal to ½ of 1% for each month you are younger than age 65. The following table illustrates percentage adjustments at various ages:

<b>Age on Effective Date of Pension</b>	<b>Percentage of Regular Pension Payable</b>
55 years	40%
56 years	46%
57 years	52%
58 years	58%
59 years	64%
60 years	70%
61 years	76%
62 years	82%
63 years	88%
64 years	94%

If you are not exactly one of the ages shown when your Early Retirement Pension is effective, the percentage will be adjusted to reflect the number of months since your last birthday.

**For Example:** An unmarried participant is eligible for a Regular Pension of \$760.00 per month payable at age 65, and decides to retire at age 57. His monthly payment at age 57 will be 52% of the amount otherwise payable at age 65 (see table). Multiplying \$760.00 by 52% equals \$395.20, which is then rounded to \$395.50. This is the lifetime monthly pension payment for this Participant.

If you are married when you retire, the Early Retirement Pension will be paid in the form of a Husband and Wife Pension as explained on pages 23 through 25 of this booklet, unless you and your spouse elect in writing to have the pension paid as a single-life pension.

### **FULL DISABILITY and REDUCED DISABILITY PENSIONS**

**Full Disability Pension Eligibility:** Upon application, you are eligible for a Full Disability Pension if you are Totally and Permanently Disabled before you reach age 65, and meet all of the following requirements:

- (1) You have been awarded a Social Security Disability Benefit under Title II of the Social Security Act.
- (2) You have earned ten (10) years of Pension Credit without a Permanent Break in Covered Employment.
- (3) You have earned at least 6/12 of Future Service Credit during the three consecutive Plan Year periods immediately preceding the date of your disability. However, this requirement may be

waived if there were extenuating circumstances which prevented you from earning the Credit, provided you have earned at least 6/12 of Future Service Credit since November 1, 1964.

- (4) You have not worked in employment in the Sheet Metal Industry that is not covered by a Written Agreement between the Union and the employer on or after November 1, 1986.

**Reduced Disability Pension Eligibility:** Effective for disabilities occurring on and after October 1, 2004, upon application, if you do not have a Social Security Disability Award you may be eligible for a Reduced Disability Pension if you are Totally and Permanently Disabled before you reach age 65. You will be eligible if the combined total of the your age plus years of service equals 70, and the Board of Trustees, in its sole and absolute discretion, finds that you are Totally Disabled by being totally and permanently unable, as a result of bodily injury or disease, to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long, continued and indefinite duration.

**Proof of Disability:** You may furnish to the Board of Trustees a determination by the Federal Social Security Administration that you are entitled to a Social Security Disability Award. In its absence, the Board of Trustees may obtain and use such competent medical evidence, as it may require to be shown, as proof of disability.

Even if the Board of Trustees has previously granted a Disability Pension under the Plan to you, the Trustees may at any time, or from time to time, require medical evidence of your continued entitlement to a Disability Pension.

#### **Disability Pension Amounts**

**Full Disability Pension:** The amount of the Full Disability Pension is equal to the monthly Regular Pension you would be entitled to receive as if you were age 65 on your Disability Annuity Starting Date.

**Reduced Disability Pension:** The monthly amount of a Reduced Disability Pension is equal to the monthly Regular Pension you would be entitled to receive if you were age 65 on your Disability Annuity Starting Date, reduced by  $\frac{1}{4}$  of 1% per month for each month by which you are younger than age 65 on the Annuity Starting Date.

In the event that you obtain a Social Security Award, the amount of your Reduced Disability Pension will be increased to the amount of the Regular Pension you would receive if you were age 65 at the time you became Totally Disabled. If you file the Social Security Award *within sixty (60) days after* the Social Security Administration's determination of entitlement, the increase in the monthly benefit will be effective as of the Annuity Starting Date, or, if later, as of the Social Security Disability date of entitlement. If the Award is not timely filed, the increase will be prospective only.

**Disability Payments:** Payment of a Full Disability Pension will start on the first day of the month after you apply for and are determined to be eligible for a pension, but not earlier than the date of entitlement to Social Security disability benefits (generally, the sixth month of disability). For Reduced Disability Pensions, payment will start on the first day of the month after you apply for and are determined to be eligible for a pension, but not earlier than the sixth month of disability. Payments will continue for as long as you remain totally disabled, except that when you reach age 65, the Disability Pension will be continued even if you recover from your disability.

If you file an application for a Full Disability Pension along with a copy of your Social Security Disability Award *within sixty (60) days after* the Social Security Administration's determination of

entitlement, disability benefits from this Plan will become effective as of the date of entitlement to Social Security disability benefits. Otherwise, benefits will be effective with the first of the month following the later of (1) the date you have filed your application and your Social Security Award, or (2) the date you become entitled to Social Security disability benefits.

If you are married, the Disability Pension will be paid in the form of a Husband-and-Wife Pension as explained on pages 23 through 25 of this booklet, unless you and your spouse elect in writing to have the pension paid in an optional form of payment.

**Recovery of a Disability Pensioner:** If you are receiving a Disability Pension and recover from your disability or lose your Social Security disability benefit, you will no longer be entitled to a Disability Pension under this Plan. If you go back to work in Covered Employment, you can, of course, earn additional pension benefits under this Plan.

If you are under age 65, receiving a Disability Pension and no longer eligible for a Social Security disability benefit (or no longer disabled), you **must** report this to the Administrative Office within twenty-one (21) days after the date you receive notice of termination from the Social Security Administration or the date you recover, or your pension will be delayed when you retire again.

## **VESTED PENSION**

### **Eligibility:**

Upon application, on and after **November 1, 1998**, you have a vested right to receive a pension benefit even if you have left Covered Employment if:

- (1) You are at least age 65 and have earned 5 years of Vesting Service or at least 5 years of Pension Credit, including not less than one quarter of Future Service Credit during the Plan Year ending October 31, 1998 without a Permanent Break in Covered Employment; or
- (2) You are at least age 55 and have earned 10 years of Pension Credit, including at least two quarters of Future Service Credit after November 1, 1964.

However, if you have worked in employment in the Sheet Metal Industry that is not covered by a Written Agreement between the Union and the employer on or after November 1, 1986, the Vested Pension will not be payable until you reach age 65. You are exempt from this rule, however, if on or after November 1, 1998 you are an Active Participant and earn one quarter of FSC for each calendar quarter in which you worked one or more hours in prohibited employment.

**Pension Amount:** The amount of the Vested Pension is calculated in the same way as the Regular Pension or Early Retirement Pension, depending on your age when you retire. Vesting Service Credits establish your vested right to a pension, but your pension amount will be based on your accumulated years of Pension Credit.

If you are married, the Vested Pension will be paid in the form of a Husband-and-Wife Pension as explained on pages 23 through 25 of this booklet, unless you and your spouse elect in writing to have the pension paid in an optional form of payment.

## **SPECIAL NORMAL RETIREMENT AGE VESTED PENSION**

### Eligibility

Upon application, you are eligible for a Special Normal Retirement Age Vested Pension if you meet the following requirements:

- (1) You have attained Normal Retirement Age (see page 44); and
- (2) You are an Active Participant in the Plan on the date you attain Normal Retirement Age.

### Pension Amount

The amount of the Special Normal Retirement Age Vested Pension is calculated in the same way as the Regular Pension.

If you are married, the Special Normal Retirement Age Vested Pension will be paid in the form of a Husband-and-Wife Pension as explained on pages 23 through 25 of this booklet, unless you and your spouse elect in writing to have the pension paid in an optional form of payment.

## PRO-RATA AND RECIPROCAL PENSIONS

The Pension Plan has made arrangements with other sheet metal pension trust funds so that credit earned under the other plans can be combined with credit under this Plan to provide Pro Rata Pensions. These are called Related Plans. The Plan is also signatory to the International Reciprocal Agreement for Sheet Metal Workers' Pension Funds which provides additional reciprocity with other plans around the country that adopt it. These are called Reciprocal Pensions. In addition, this Agreement permits the transfer of contributions between pension plans in certain circumstances as described on page 21.

Combining credits earned under more than one pension plan may make it possible for you to qualify for a pension which you would not be able to qualify for on the basis of your credits under any one plan. In the same way you may be able to qualify for higher benefits. Work under Related Plans can also be counted to prevent a break in service.

In effect, the Pro Rata and Reciprocal provisions allow you — for the purpose of establishing eligibility requirements for a pension or to increase your payments or avoid a Break in Covered Employment — to consider Pension Credits earned under Related Plans as though they were Utah Sheet Metal Pension Trust Fund Credit. See Article III-A, Pro Rata Pensions and Article III-B, Reciprocal Pensions in the Plan for complete rules and regulations.

### Eligibility for a Pro Rata Pension

You are eligible for a Pro Rata Pension if you meet the following conditions:

- For a Pro-Rata Pension, your Combined Pension Credits, if treated as Utah Pension Trust Fund Credit, would be enough to make you eligible for a Regular, Early Retirement, Disability or Vested Pension under this Pension Plan.
- You have accumulated at least two quarters of Future Service Credit with this Pension Plan.

A Pro-Rata Pension is for a payable for Pension Credits earned under other sheet metal pension trust funds and the Utah Sheet Metal Pension Trust Fund.

Your Related Hours will be taken into consideration in determining whether or not you have failed to earn one quarter of Pension Credit in 2 consecutive Plan Years. See Article VI, pages 4 through 8 of the Plan for the complete rules and regulations on Breaks in Covered Employment and the Cancellation of Pension Credit.

If you are considering work under another plan, you should call the Fund Office to find out whether that plan and the Utah Sheet Metal Pension Trust Fund are related plans.

### Eligibility for a Reciprocal Pension

You are eligible for a Reciprocal Pension if you meet the following conditions:

- For a Reciprocal Pro-Rata Pension, you are eligible for any type of pension under this Plan (other than a Pro-Rata or Reciprocal Pension) if your Combined Pension Credit is treated as Pension Credit under this Plan.
- Under this Plan you have earned at least one year of Pension Credit based on hours of employment for which contributions were payable to this Fund.

- You are found to be eligible for a Reciprocal Pension from this Plan and at least one Related Plan.

#### Pension Amount

A Pro Rata Pension is determined in the same way as the Regular, Early Retirement, Disability or Vested Pension under this Plan. Whichever type of pension you qualify and decide to apply for, the payments will be calculated on the basis of your Pension Credit earned under this Plan. Each Pension Trust under which you earned credits will pay its proportionate share of your pension payments. However, in determining your pension, the number of years of Utah Sheet Metal Trust Fund Pension Credit can not exceed 35 years.

#### Transfer of Contributions

In addition to the Pro Rata Pension explained above, this Fund has adopted Exhibit B of the International Reciprocal Agreement for Sheet Metal Workers' Pension Funds which permits the transfer of contributions from one pension fund to another. This is often called "money-follows-the-man" reciprocity because a participant who travels and works temporarily in the jurisdiction of another plan signatory to the Agreement may have the contributions made on his behalf forwarded to his home pension fund. The participant will receive credit for these contributions under the terms of the pension plan ultimately receiving them so it is important to evaluate the terms of each plan before deciding which plan should receive the contributions.

Under this Agreement, a "cooperating pension fund" is any other pension fund which has adopted Exhibit B to the said International Reciprocal Agreement. The "home pension fund" is the fund sponsored by the local union to which the participant is a member. If you are a member of Local 312, your home fund is the Utah Sheet Metal Pension Trust Fund.

If you are temporarily employed outside the jurisdiction of your home fund and within the jurisdiction of a cooperating pension fund, you may elect to have the contributions made on your behalf transferred to your home fund. Your election must be in writing on a form provided for that purpose and filed with both funds. Please note that contributions received before your election is filed cannot be transferred. For the complete rules and regulations on transfer of contributions, see Article III-B, Section 2 of the Plan which is shown on pages 3 through 6 of Article III-B.

If you intend to work outside the area covered by this Plan, please contact the Administrative Office to determine whether a money-follows-the-man reciprocity agreement is in effect in the area you will be working.

## PROVISIONS AFFECTING BENEFICIARIES

The monthly pension amounts described in the preceding section entitled “TYPES OF PENSIONS” commencing on page 15, are for “single-life” protection. This means the benefit level is based on payment of benefits only for your lifetime (as a Pensioner), with a minimum of 60 monthly payments.

With “single-life” protection, if you should die before receiving 60 monthly pension payments, the payments would be continued to your beneficiary (see Article I, page 2 of the Plan for definition of beneficiary) until a total of 60 monthly payments have been made. Otherwise, all benefit payments cease after your death. This is the automatic form for unmarried participants.

If you are married, the Plan provides a payment form which makes it possible for you to make sure that your spouse will continue to receive benefits for the rest of her lifetime, in the event you die first. This is called the Husband-and-Wife Pension and is the automatic form for married participants.

The Plan also provides Joint and Survivor Optional forms of payment which provide that, upon your death, payments will continue to your beneficiary for his or her lifetime at 66-2/3% or 100% of the amount you received. These and other provisions which may affect beneficiaries on the death of a participant before and after retirement are explained in this section.

### HUSBAND-AND-WIFE PENSION

The Husband-and-Wife Pension provides that after your death, your surviving spouse will receive monthly benefits for the rest of his or her lifetime equal to 50 percent of the monthly amount you were receiving.

*For example:* If you were receiving a monthly pension of \$840 on a Husband-and-Wife Pension, following your death, your spouse would receive a monthly benefit of \$420 for life.

If your spouse dies before you and your Annuity Starting Date (see page 34) is on or after November 1, 1998, your monthly benefit will be increased to the amount that would have been payable had your benefit been paid in the form of a single life annuity at retirement.

#### **When does the Husband-and-Wife Pension apply?**

- (1) *At Retirement.* If you are married, you automatically receive your pension in the form of a Husband-and-Wife Pension unless you and your spouse reject that form (as explained later in this section) in favor of single-life protection or a Joint and Survivor Option. This automatic form also applies to Disability Pensions, however if you are disabled prior to age 55, payments to your surviving spouse will begin only when you would have reached age 55.
- (2) *Upon Death, Before Retirement.* If you have been married for at least one year and die after becoming vested (see page 20) but before receiving your pension, payment will be made to your surviving spouse in the form of a Husband-and-Wife Pension, as if you had elected that form of payment and retired on the day before your death (or the day you last worked in Covered Employment).

Your surviving spouse will receive half of the monthly amount you would have received under a Husband-and-Wife Pension. If you were under age 55, benefit payments will not commence until the date when you would have reached age 55. The benefit amount will be calculated using the

credit and your age on the date when payments begin. If you were older than 55 on your death, the payments will begin the month following the date of death.

**Adjustment for the Husband-and-Wife Pension:** Since the Husband-and-Wife Pension extends protection over two lifetimes, benefit levels are adjusted accordingly. During your lifetime, you will receive monthly benefits at a lower amount than you would have received with single-life protection; after your death, monthly benefits to your spouse will continue for his or her life at 50% of the amount you were receiving.

How much your benefit is reduced for the Husband-and-Wife Pension depends on the difference in age between you and your spouse. If your spouse is much younger, benefits will be reduced more than if you are close in age, or if your spouse is older. The reason for this is that, statistically speaking, a younger spouse is likely to receive benefits for a longer period of time.

Here are the formulas:

**Non-Disability Pensions:** If you are eligible for any type of pension other than a Disability Pension, your single-life pension benefit will be reduced for the Husband-and-Wife Pension by multiplying your single-life benefit by 90%, minus .4% for each year your spouse is younger, or plus .4% for each year your spouse is older. The maximum percentage is 100%.

**For Example:** You are eligible for a monthly Regular Pension of \$560.00, you are 62 years old and your spouse is 57 years old. To calculate the monthly amount you would receive under the Husband-and-Wife Pension, you first determine how many years younger or older your spouse is than you, and multiply that number of years by .4%. In this case, your spouse is 5 years younger than you, so you would multiply 5 years by .4% which equals 2%. Since your spouse is younger than you, you must subtract the 2% from 90%, which equals 88%. Your monthly Regular Pension of \$560.00 is multiplied by 88%, which equals \$492.80 (or \$493 after rounding). This is the monthly pension you would receive for the rest of your life under the Husband-and-Wife Pension. Following your death, your surviving spouse will receive 50 percent of that amount for life, or \$246.50.

**Disability Pensions:** If you are eligible for a Disability Pension, the single-life pension benefit will be reduced for the Husband-and-Wife Pension by multiplying the single-life pension benefit by 82%, minus .4% for each year your spouse is younger, or plus .4% for each year your spouse is older. If you are disabled and under age 55 on the effective date of your Disability Pension, an additional .5% will be added to the percentage for each year you are under age 55. The maximum percentage after all adjustments is 100%.

*If you have difficulty determining the amount of your Husband-and-Wife Pension, you can write the Administrative Office. They will be happy to help you with the calculation.*

**How do you elect the Husband-and-Wife Pension at retirement?** When you file a pension application, the Administrative Office will give you a statement of what the monthly benefit will be with single-life protection and with Husband-and-Wife Pension protection. If you are married, your pension will be paid on the basis of Husband-and-Wife Pension unless you and your spouse notify the Administrative Office that you do not want it that way.

If you are married and want your pension with single-life protection or a Joint and Survivor Option, you and your spouse must notify the Administrative Office in writing before your pension payments start. Notice to the Administrative Office that you do NOT want the Husband-and-Wife Pension must be signed

by you and your spouse in front of a notary public. If you do not notify the Administrative Office, your payments will be made under the Husband-and-Wife Pension if you are married. Spousal consent may not be required to reject the Husband-and-Wife Pension, if you can prove to the Trustees' satisfaction that you have no spouse or that your spouse cannot be located.

Once monthly benefits have started under a Husband-and-Wife Pension, payments must continue in that form, even if your marriage is dissolved or if your spouse dies before you.

#### **Rules for Payment of Husband-and-Wife Pension:**

- If you are married, you will automatically receive a Husband-and-Wife Pension at retirement unless you and your spouse file a notarized statement with the Administrative Office indicating you both want the pension in another form.
- The Husband-and-Wife Pension protects only the spouse to whom you are legally married when pension payments begin.
- With respect to the Husband-and-Wife Pension coverage at death before retirement, you and your Spouse must be legally married at the time of your death and for at least one year before your death.
- Once Husband-and-Wife Pension payments begin, they will continue at the same level even if your marriage is legally dissolved.
- Payments to a surviving spouse continue for life; they do not stop even if he or she remarries.
- If your pension commences on or after November 1, 1998 and your spouse dies before you, Husband-and-Wife Pension payments will be increased to the amount that would have been payable had your benefit been paid in the form of a single life annuity at retirement.

#### **JOINT AND SURVIVOR OPTION**

If you are retiring on a Regular or Early Retirement Pension, you may elect a 66-2/3% Joint and Survivor Pension or a 100% Joint and Survivor Pension. These options provide that after your death, your beneficiary will receive monthly benefits for the rest of his or her lifetime at either 100% or 66-2/3% of the amount you received, depending on the option you elected.

*For example:* if you received a monthly pension of \$500.00 per month on an optional Joint and Survivor Pension and died, your beneficiary would receive a monthly benefit of \$500.00 per month under the 100% Joint and Survivor Pension, or \$333.37 (\$334, after rounding) under the 66-2/3% Joint and Survivor Pension, for the rest of his or her life.

As with the 50% Husband-and-Wife Pension, your benefits under these options will be reduced, based on the difference in age between you and your beneficiary. The formulas are as follows:

#### **66-2/3% Joint and Survivor Pension:**

Your single-life benefit will be reduced for the 66-2/3% Joint and Survivor Pension by multiplying it by 87% minus .5% for each year your beneficiary is younger than you or plus .5% for each year your beneficiary is older than you. The maximum percentage is 100%.

### **100% Husband-and-Wife Pension:**

Your single-life benefit will be reduced for the 100% Joint and Survivor Pension by multiplying it by 81% minus .7% for each year your beneficiary is younger than you or plus .7% for each year your beneficiary is older than you. The maximum percentage is 100%.

### **Significant Notes about the Joint and Survivor Option:**

- To elect the Joint and Survivor Option, you must apply in writing. The election cannot take effect until at least 24 months after it has been received by the Administrative Office.
- The Joint and Survivor Option will not take effect unless you and your beneficiary are alive on the date your pension becomes effective. If your beneficiary dies before your pension is effective, the Option is automatically revoked. You can apply the Option to another beneficiary if you notify the Administrative Office of this intention in writing within 90 days.
- After the end of the month in which your first pension payment is due, you can no longer cancel an election of the Joint and Survivor Option. Before that, if you want to cancel the option, you must notify the Administrative Office in writing. The cancellation will become effective 24 months after it is received by the Administrative Office.
- If you are married, you cannot elect the Joint and Survivor Option unless you and your spouse indicate in a notarized statement that you do not want the Husband-and-Wife Pension.
- Federal regulations may restrict the benefit payable to a non-spouse beneficiary who is more than 10 years younger than you. Please contact the Administrative Office if the beneficiary you wish to name is more than 10 years younger than you are and is not your spouse.

### **DOMESTIC RELATIONS ORDERS/DIVORCE DECREES**

The Retirement Equity Act of 1984 provides that the Plan must recognize any Qualified Domestic Relations Order and make payments as directed by the Order to any spouse, former spouse, child or other dependent (called an "alternate payee") of a Plan participant specified by the Order. A Qualified Domestic Relations Order (QDRO) is a state domestic relations order such as a divorce decree, which creates or recognizes an alternate payee's right to receive all or a portion of the benefits payable to a participant under the Plan.

Any lawful judgment, decree, order, or property settlement agreement which has been entered into may be a QDRO if it relates to the provision of child support, alimony payments, or marital property of a spouse, former spouse, child or other dependent of a Plan participant and is made pursuant to State domestic relations law.

The Trustees cannot recognize or honor a domestic relations order, such as a divorce decree which attempts to divide a pension, unless the order or decree contains certain information and otherwise complies with federal law. If you are considering a divorce or are a party to any other domestic relations action which may involve the Pension Fund, you should contact the Administrative Office for additional information before any such domestic relations order or decree is signed by the judge.

The Trustees have adopted formal procedures for the treatment of domestic relations orders received by the Plan, and a copy of those procedures is available without charge from the Administrative Office.

## DEATH BENEFITS

Death benefits may be payable on the death of a Participant or a Pensioner, if the surviving spouse will not be receiving a Husband-and-Wife Pension. Death benefits also may be payable to the beneficiary of an unmarried Participant or Pensioner.

### **Pre-Retirement Death Benefit**

If you should die before becoming vested (see page 20), a lump-sum payment equal to the contributions paid on your behalf, will be paid to your designated beneficiary, provided you earned at least 6/12 of Future Service Credit in the two consecutive Plan Year periods before the Plan Year in which you died. However, this benefit is not payable if you worked in the Sheet Metal Industry on or after November 1, 1986 in employment that is not covered by a Written Agreement between the Union and the employer unless on or after November 1, 1998 you earned one quarter of Future Service Credit following prohibited employment for each calendar quarter you worked in prohibited employment. In determining the amount of the lump-sum payment, however, only contributions received subsequent to the last Break in Covered Employment, if any, will be counted.

This Pre-Retirement Death Benefit is not payable if payments are to be made under the Husband-and-Wife Pension at the time of your death. If your surviving Spouse is eligible for the Husband-and-Wife Pension as explained on pages 23 through 25, she may elect to receive the lump-sum instead of the Husband-and-Wife Pension. However, if the lump sum death benefit is less than the actuarial present value of her benefit under the Husband-and-Wife Pension, the actuarial present value will be paid in a lump sum.

When the Trustees receive notice of a Participant's death, they will send the surviving spouse an explanation of the amount of benefits payable under each type of death benefit. The spouse will then have 90 days to elect which type of death benefit he or she would prefer. An election cannot be changed once payments have started.

**Pensioner's 60-Month Guarantee of Benefits:** This Plan provides a 60-month guarantee feature, which means that if your benefits are paid as a single life annuity and you die before receiving 60 monthly payments, your monthly pension benefit will continue to be paid to your beneficiary until a combined total of 60 monthly payments have been made to both.

*For example:* If you retire and begin to receive payments on a single-life basis in **September, 1995**, and then die in **November, 1996**, your beneficiary would receive monthly pension payments from this Plan through **August, 2000**. If you should die in **October, 2000**, no further monthly payments would be made to your beneficiary since a total of 60 payments would have already been made.

**Naming a Beneficiary:** You may designate a beneficiary or beneficiaries to receive any payments due and payable but not actually paid before your death, or any other benefits described above by forwarding the designation on a form acceptable to the Board of Trustees to the Administrative Office.

You have the right to change your designation of beneficiary on a form prescribed by the Board of Trustees, which must bear the notarized signature of you (and, if you are married, your Spouse). No change will take effect or be considered binding, unless it is received by the Administrative Office before the time any payments are made to your beneficiary whose designation is currently on file with the Administrative Office.

If you do not designate a beneficiary, or if a designated beneficiary dies before you, any benefits due and payable but not actually paid before your death will be paid to your spouse, if the spouse is then living. If there is no spouse, then any benefits due will be paid to any other person who is an object of your natural bounty, or to your estate, as the Board of Trustees, in its sole discretion, may designate.

#### **LUMP SUM PAYMENT OF MONTHLY PENSION**

If at the time a monthly benefit becomes payable to you, the actuarial value of the monthly benefit is \$5,000 or less, the Board of Trustees will pay you or your beneficiary the lump sum amount of that actuarial value, instead of the monthly benefit which otherwise would be payable.

## RETIREMENT AND SUSPENSION OF PENSION PAYMENTS

To receive monthly pension payments, you must *retire* according to the Plan's rules, meaning that you may not work in Prohibited Employment as described below. If you take work that is prohibited by Plan rules, you must notify the Plan *in writing* within 21 days after you start work. Your monthly pension will be suspended while you are in Prohibited Employment and possibly longer, as explained later in this section.

**Before Normal Retirement Age:** To be considered *retired* before Normal Retirement Age (generally age 65, but see page 44), you must withdraw completely from and refrain from any employment (or self-employment) for wages or profit in the construction industry. This type of employment is called Prohibited Employment for Plan purposes.

*Suspension of Pension Payments.* If you are employed in work of the type described above, your pension payments will be suspended for a period equal to the number of months during which you were so employed. If you worked in the Sheet Metal Industry on or after November 1, 1986 in employment that is not covered by a Written Agreement between the Union and the employer, your benefits will be suspended until the month in which you attain age 65. Also, if you fail to properly notify the Administrative Office as described below, your payments will be suspended for six months after you stop working but not beyond Normal Retirement Age.

**After Normal Retirement Age:** To be considered *retired* after you have attained age 65, you must refrain from working more than 40 hours in any calendar month in the same industry, the same trade or craft, and in the same geographic area covered by the Pension Plan.

*Suspension of Pension Payments.* If you become employed in work of the type described in the preceding paragraph, your pension payments will be suspended for any calendar month in which you complete more than 40 hours of Prohibited Employment. Your pension will resume as of the first month following the date you end your Prohibited Employment.

*Exception to Suspension Rule after Normal Retirement Age.* Your pension payments will not be suspended for working over 40 hours in a calendar month if, immediately following your retirement date, you have an Owner position with your Contributing Employer. An **Owner** is a sole proprietor, a partner owning at least 25% of the partnership, a shareholder owning at least 25% of the corporation, and/or a member owning at least 25% of a limited liability company.

If you work in Prohibited Employment in any month after Normal Retirement Age, and have not given timely notice to the Administrative Office (as explained below) of this employment, the Trustees will presume that you worked for at least 40 hours in that month and, if such employment is at a construction site, that you were so employed for as long as the employer for whom you worked has been engaged at that site. You have the right to appeal this presumption by presenting satisfactory proof to the contrary.

**After Required Beginning Date:** Beginning on April 1 of the year following the calendar year in which you attain age 70½, there are no restrictions on the type, duration or location of the work you may perform while receiving pension payments from this Plan.

## Required Notices:

- (1) *Notices to the Participant/Pensioner:* The Administrative Office will notify you before your retirement of the Plan rules governing suspension of benefits. If benefits have been suspended and then payment has resumed, you will be given a new notification when payment resumes if there has been any material change in the suspension rules.

The Administrative Office also will inform you of any suspension of your benefits by notice given by personal delivery or first-class mail during the first calendar month in which your benefits are suspended. This notice will include a description of the specific reasons for the suspension, a copy of the relevant provisions of the Pension Plan, reference to the applicable regulation of the U.S. Department of Labor, and a statement of the procedure for securing a review of the suspension. The notice also will describe the procedure for you to notify the Administrative Office when your Prohibited Employment ends. If the Board of Trustees intends to recover past overpayment by offset, the suspension notice will explain the offset procedure and identify the amount expected to be recovered, and the periods of employment to which they relate.

You may ask the Board of Trustees to provide a determination as to whether any potential employment will be considered Prohibited Employment causing suspension of payments.

- (2) *Notices required from the Participant/Pensioner:* Once your benefits start, you **must** notify the Administrative Office, in writing, within 21 days after starting any work of a type that is or may be prohibited as previously explained, and without regard to the number of hours of this work.

If your pension has been suspended, you must notify the Administrative Office when Prohibited Employment has ended. The Board of Trustees has the right to withhold benefit payments until this notice is filed with the Administrative Office.

At least once each year, you will be required to certify on a form furnished by the Administrative Office that you are retired according to the rules of the Pension Plan. Any pension payments otherwise due will be withheld until you have adequately responded to this request.

**Resumption of Benefit Payments:** If you comply with the notification requirements previously explained, benefit payments will resume for months after the last month during which your benefits were suspended, with payment of the resumed benefits beginning no later than the third month after the last calendar month during which your benefit was suspended.

Overpayments made for any month(s) in which you worked in Prohibited Employment will be deducted from pension payments otherwise paid or payable following the period of suspension. A deduction from a monthly benefit for a month after you attain age sixty-five (65) will not exceed 25% of that monthly amount, except for the *first* pension payment made on resuming benefits after a suspension. If you die before the overpayment has been fully recouped, deductions also will be made from the benefit payable to your spouse or beneficiary, subject to the 25% limit on the amount of deduction. This provision does not limit the right of the Board of Trustees to recover an overpayment by means other than deduction from pension payments.

**Benefit Payments Following Suspension:** The monthly amount of pension payable following suspension will be determined according to Pension Plan rules set forth in Article VIII, pages 9 and 10 of the Plan.

**Review:** You are entitled to a review of a determination suspending your benefits by filing a written request with the Administrative Office within sixty (60) days of the notice of suspension. The same right of review will apply, under the same terms, to a determination by or on behalf of the Board of Trustees that potential employment will be Prohibited Employment resulting in suspension of benefits.

## **SPECIAL RULES FOR NON-CONTRIBUTING EMPLOYERS**

If you worked in the Sheet Metal Industry on or after November 1, 1986 in employment that is not covered by a Written Agreement between the Union and the employer, the following Special Rules will apply to you.

1. **Early Retirement Pension.** The effective date of your Early Retirement Pension will be delayed until you attain age 65.
2. **Vested Pension.** The effective date of your Vested Pension will be delayed until you attain age 65.
3. **Disability Pension.** You will not be eligible to receive a Disability Pension.
4. **Death Benefits.** The Pre-Retirement Lump Sum Death Benefit will not be payable in the event of your death prior to retirement.
5. **Suspension of Pension Benefits.** If you are younger than Normal Retirement Age and return to work in Prohibited Employment, your pension payments will be suspended until you reach age 65.
6. **Separation from Covered Employment.** Prior to November 1, 1998, you could not cure any Separation from Covered Employment you may have incurred. On and after that date and prior to January 1, 2002, however, you may cure such Separation by earning one quarter of Future Service Credit for each calendar quarter in which you worked one or more hours in prohibited employment. Effective January 1, 2002, you can cure such Separations only once by returning to work in Covered Employment and earning three full years of Future Service Credit prior to your retirement.

The Sheet Metal Industry includes sheet metal work in the geographical jurisdiction of this Plan or a Related Plan for an employer which does not have, or self-employment which is not covered by a Written Agreement with a Sheet Metal Workers' Union requiring contributions to this Plan or a Related Plan. This includes those areas which have signed the National Reciprocal Agreement. It includes all work or services of the kind performed by participating Employees covered by the Plan. It includes such jobs as management, ownership, sales, estimating or consulting positions for Sheet Metal employers or in the Sheet Metal Industry, as well as work of the type done by bargaining unit members and related work.

These Special Rules do not apply on and after November 1, 1998, if, as an Active Participant, you earned one quarter of Future Service Credit, subsequent to the prohibited employment, for each calendar quarter in which you worked one or more hours in prohibited employment.

## HOW TO APPLY FOR BENEFITS

The first step in applying for pension benefits from the Fund is to request a pension application from the Administrative Office at the address shown on page 4. You will then need to complete, sign, and return your application to the Administrative Office. If you are eligible for a pension benefit, payments will begin on the date(s) described in the section entitled “Annuity Starting Dates” on page 34.

At the same time you submit your pension application form to the Administrative Office, you also will need to provide written proof of your date of birth, your spouse’s date of birth (birth certificate, certificate of blessing or baptism, etc.), and a photocopy of your marriage certificate.

**Applying for a Disability Pension:** If you are applying for a Disability Pension, you must also provide a photocopy of the Social Security Disability Benefit Award or Denial Letter you have received from the Social Security Administration. If you provide a photocopy of a Social Security Denial Letter, then the Administrative Office will send additional forms to you to be completed by both you and your physician(s). When you have returned these completed forms, the Board of Trustees will review your eligibility for a Disability Pension on the basis of the medical evidence submitted. It also may be necessary to have an independent medical examination performed by a medical doctor selected by the Board of Trustees.

**Applying for a Pro Rata Pension:** If you apply for a Pro Rata Pension from this Fund, you also must apply to each Related Plan with whom Pension Credit will be combined for a Pro Rata Pension under their requirements.

**If you are age 65 and do not apply for a pension:** According to federal law, your benefits will be suspended if you continue to work in Prohibited Employment (see page 29) after age 65 (or your Normal Retirement Age, if later). This means that if you do not apply for benefits when you reach age 65, pension payments will be suspended for every month after then in which you work more than 40 hours. You will continue to accrue Pension Credit based on the hours you work in Covered Employment. When you retire, your pension will be calculated as a delayed retirement as explained on pages 15 and 16.

**Federal Income Tax Withholding; Rollover to Another Qualified Account:** If benefits are paid as a lump sum or in installments over a period of less than ten (10) years, federal law requires 20% withholding for federal income tax on those payments, unless the individual to receive the payments elects to rollover those payments to another eligible tax-qualified account, such as an Individual Retirement Account (IRA). The Administrative Office can provide you with a special tax notice describing rollovers and withholding, however you should consult with your financial and/or tax advisor to select the best approach.

**Application for Death Benefits:** An eligible Participant’s surviving spouse or beneficiary must file a Death Benefit Application form with the Administrative Office for the death benefits payable. The Death Benefit Application form can be obtained from the Administrative Office at the address shown on page 4.

**IMPORTANT:** Notification of the death of a Participant should be made *as soon as possible*.

## ANNUITY STARTING DATES

Pensions (except for Disability Pensions) are usually effective on the first day of the month following the month the completed pension application form has been received by the Administrative Office. Before benefits can be paid, however, it is necessary to verify your Past and Future Service Credit. This may take ninety (90) days or more following receipt of the pension application form. Once the pension application has been processed, including verifying your eligibility, you will receive benefits retroactive to the first day of the month following the date the pension application form was received.

### **30-Day Waiting Period for Payment**

By law, participants and their spouses, if any, have a 30-day notice and election period to decide the form in which they want monthly benefits to be payable. The automatic form for married retirees is a Qualified Joint and Survivor Annuity, and, for unmarried retirees, it is a single life annuity.

**Regardless of what form of benefit you choose, your Annuity Starting Date (the date as of which your benefits become effective) cannot occur – and neither may the actual distribution of your pension commence – before this notice period ends unless you elect to waive the minimum 30-day notice and election period and your spouse, if any, consents to that waiver.**

An election to waive the 30-day minimum waiting period will be granted as long as:

- (1) you are informed of the right to take at least 30 days to consider whether to waive the automatic form of payment and consent, if applicable to an alternate form of payment, and
- (2) distribution of benefits does not begin until you and your spouse, if any, have had at least a seven-day period in which to consider the form in which your benefits will be paid.

This change will allow you to have benefits begin as of the eighth day after you are provided with the written explanation of the forms of payment, although administrative delay in processing the pension application may delay issuance of your first benefit payment. This change is effective for retirements on or after June 1, 2002.

**After Normal Retirement Age:** If you are eligible for pension benefits from this Plan, payments must begin to you no later than the April 1st of the calendar year which immediately follows the calendar year in which you reach age 70½. Payments which are required under this rule, but not made timely, will be subject to a 50% federal excise tax.

**Disability Pension:** Disability benefits may begin on the effective date of the Social Security Award entitlement, if you file your notice of entitlement to a Social Security Disability benefit not later than sixty (60) days after the date shown on the notice and following the determination of the Trustees of your entitlement to a disability pension. Otherwise, payments will not begin until the first of the month after you file the notice or the Disability Pension application with the Administrative Office.

## **HOW TO APPEAL A DECISION OF THE TRUSTEES**

Final Regulations developed by the United States Department of Labor are effective for benefit claims filed with the Fund on and after January 1, 2002. The Regulations express minimum requirements for employee benefit plan procedures pertaining to claims for benefits by participants and beneficiaries.

This Section, “How to Obtain Benefits and Secure Review”, sets forth the Fund’s rules, developed to conform to the Regulations, that apply after January 1, 2002 to pension benefit determinations and the review of adverse benefit determinations.

Hopefully, the process set forth in this Section will allow the prompt initial determination of your pension benefit claims and the full and fair review of adverse pension claim determinations for which you request review.

### **Authorized Representatives**

The Regulations contemplate that you may pursue pension benefit claims through authorized representatives. They also contemplate that a benefit plan may establish procedures for determining whether an individual has been authorized to act on your behalf.

This Fund will recognize the following individuals as representatives for claims and claim review requests:

1. If you are an adult participant or beneficiary, you may speak on your own behalf.
2. If you are a parent (natural or adoptive) you may speak on behalf of a child – beneficiary.

All other purported representatives must supply evidence that they are authorized to speak on your behalf. For the Fund to recognize such a representative, the representative must present to the Administrative Office a court order, a “Power of Attorney” or a similar document expressing the representative capacity.

### **Claim Determination Consistency**

It goes without saying that like claims should receive like treatment. The Administrative Office of the Fund will take steps to ensure and to verify that your benefit claim determinations are made in accordance with governing plan documents and that these plan provisions have been applied consistently with respect to you and other similarly-situated claimants.

### **Benefits Available**

The Pension Plan provides benefits to a number of different individuals who qualify for those benefits. The benefits are summarized on pages 15 through 28.

## **Filing of Pension Claims/Issues**

If you believe that you are eligible for benefits under the Pension Plan, you should contact the administrative office of the Fund (Fund Office) and request the appropriate benefit application forms. The Fund Office will mail the appropriate application forms to you. A claim is filed, or “received”, for purposes of these rules, when the signed benefit application form is received by the Fund Office, although additional information, including election forms, tax forms, retirement declarations, etc. may be required before an initial determination can be made on the application. The Fund Office will specify what additional information may be needed.

If you wish to pose any other issue to the Fund for determination, you should put the issue in writing and submit it to the Fund Office. An issue other than a benefit application is filed, or “received”, for purposes of these rules, when the writing posing the issue is received by the Fund Office.

## **Section 1. Benefit Claims and Disability Benefit Claims based on Social Security Disability award**

### **Initial Determination – Notice**

Pension claims/issues are required to be initially determined by the Fund and notice of any decision given to you, within a reasonable period of time, not later than 90 days after receipt of the claim. This period may be extended one time by the Fund for up to 90 days, provided that the Fund both: (1) determines that special circumstances require the extension; and (2) notifies you, prior to the expiration of the initial 90-day period, of the circumstances requiring the extension of time and the date by which the Fund expects to make the determination.

If the special circumstance requiring the extension of time under this provision is your failure to supply information needed to perfect the claim, and such information is not received by the Fund Office within the 180 day time period specified by this provision, the claim will be denied, and a new application must be filed with the Fund Office under the Filing paragraph of these rules.

### **Form of Notice of Initial Determination**

If an adverse determination is made by the Fund with respect to a benefit claim/issue, the Fund is required to provide to you written notification setting forth, in a manner suited to your understanding:

1. The specific reason(s) for the determination;
2. Reference to the specific plan provision(s) on which the determination is based;
3. A description of any additional material or information necessary to perfect the claim and any explanation of why the additional material or information is necessary; and
4. A description of the Fund’s review procedures and the time limits applicable to such procedures, including a statement of your right to sue under Section 502(a) of ERISA after exhaustion of the review procedures.

### **Time Frame to Request Review**

You have 60 days following receipt of notification of an adverse determination to file a request for review. Any request for review received by the Fund after this time frame is untimely and subject to denial on review on that basis alone.

### **Request for Review**

You may request review of an adverse determination by filing a written review request with the Board of Trustees at the Fund Office.

### **Full and Fair Review**

You will be given the opportunity to submit written comments, documents, records and other information relating to the claim. The Fund will provide you, free of charge, reasonable access to and copies of all documents, records and other information relevant to the claim. The review of the claim will take into account all comments, documents, records and other information you submit relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination.

### **Determination on Review – Notice**

A determination on review is required to be made by the Board of Trustees no later than the date of the meeting of the Board of Trustees that immediately follows receipt of the request for review, unless the request for review was filed within 30 days preceding the date of such meeting. In such a case, a benefit determination on review may be made no later than the date of the second meeting following the receipt of the request for review. If special circumstances require a further extension of time for processing, a benefit determination on review shall be rendered not later than the third meeting of the Board of Trustees following the receipt of the request for review. If special circumstances require such an extension, the Fund will notify you in writing of the extension, describing the special circumstances and the date on which the benefit determination on review will be made. If an extension is due to your failure to submit information necessary to decide the claim, the period for making the determination on review will be tolled from the date on which the notification or extension is sent to you until the date on which you respond to the request for additional information. Notice of the benefit determination on review will be given not later than 5 days after such a determination is made.

### **Form of Notice of Determination on Review**

The Fund will provide you with written notification of the determination on review. If the determination is adverse, the Fund is required to provide written notice to you setting forth, in a manner calculated for your understanding:

1. The specific reason(s) for the determination;
2. Reference to the specific plan provision(s) on which the determination is based;
3. A statement that you are entitled to receive, upon request and free of charge, reasonable access to and copies of all documents, records and other information related to the claim; and
4. A statement of your right to sue under Section 502(a) of ERISA.

## **Section 2. Disability Benefit Claims Based Solely on Medical Evidence (No Social Security Award)**

### **Initial Determination – Notice**

Disability Benefit Claims based only on medical evidence are required to be initially determined by the Fund, and notice of the determination given to you within a reasonable period of time appropriate to the

circumstances, but not later than 45 days after the receipt of the claim. This period may be extended two times by the Fund for up to 30 days, provided that the Fund decision-maker both: (1) determines that such an extension is necessary due to matters outside the control of the Fund; and (2) notifies you, prior to the expiration of the initial 45-day period, of the circumstances requiring the extension of time and the date by which the Fund expects to make the determination. Any notice of extension shall explain the standard on which the entitlement to benefits is based, the unresolved issues that prevent a decision on the claim, and any additional information needed to resolve those issues.

If the special circumstance requiring the extension of time under this provision is your failure to supply information needed to perfect the claim, the notice of extension is required to describe the missing information, and you will have at least 45 days from receipt of the notice to provide the information. The time periods for making determinations under this provision are tolled from the date you are notified of missing information until the date you respond to the notice.

### **Form of Notice of Initial Determination**

If an adverse determination is made by the Fund with respect to a disability benefit claim based on medical evidence, the Fund is required to provide written notification to you setting forth, in a manner suited to your understanding:

1. The specific reason(s) for the determination;
2. Reference to the specific plan provision(s) on which the determination is based;
3. A description of any additional material or information necessary to perfect the claim and any explanation of why the additional material or information is necessary; and
4. A description of the Fund's review procedures and the time limits applicable to such procedures, including a statement of your right to sue under Section 502(a) of ERISA after exhaustion of the review procedures.
5. (a) If the determination was based on an internal rule, guideline, protocol or similar criterion, notification that the rule, guideline, protocol or similar criterion will be provided to you free of charge upon request.
6. (b) If the determination was based on a finding that the service was not medically necessary, was experimental, or was subject to some similar exclusion or limit, notification that an explanation of the scientific or clinical judgment for the determination, taking into account the terms of the plan and the claimant's medical circumstances, will be provided to you free of charge.

### **Time Frame to Request Review**

You have 180 days following receipt of notification of an adverse benefit determination on a disability benefits claim based on medical evidence to file a request for review. Any request for review received by the Fund after this time frame is untimely and subject to denial on review on that basis alone.

### **Request for Formal Review**

You may request review of an adverse determination on a disability benefit claim based on medical evidence by filing a written review request with the Board of Trustees at the Fund Office.

## **Formal Review**

You will be given the opportunity to submit written comments, documents, records and other information relating to the claim. The Fund will provide you, free of charge, reasonable access to and copies of all documents, records and other information relevant to the claim. The named fiduciary's review of the claim will take into account all comments, documents, records and other information you submit relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination. Any expert whose advice was obtained in connection with the initial determination will be identified, whether or not such advice was used in making the determination.

The review process will not afford deference to the initial determination. The named fiduciary conducting the review will not be the same individual who made the initial determination nor the subordinate of such individual. The named fiduciary conducting the review will consult with a health care professional who has appropriate training and expertise with respect to any review involving a medical judgment, and such health care professional will not be an individual who was consulted with respect to the initial determination nor the subordinate of such individual.

## **Determination on Review – Notice**

A determination on formal review of a disability benefits claims based on medical evidence is required to be made by the Board of Trustees no later than the date of the meeting of the Board of Trustees that immediately follows receipt of the request for review, unless the request for review was filed within 30 days preceding the date of such meeting. In such a case, a benefit determination may be made no later than the date of the second meeting following the receipt of the request for review. If special circumstances require a further extension of time for processing, a benefit determination shall be rendered not later than the third meeting of the Board of Trustees following the receipt of the request for formal review. If special circumstances require such an extension, the Fund will notify you in writing of the extension, describing the special circumstances and the date on which the benefit determination will be made. If an extension is due to your failure to submit information necessary to decide the claim, the period for making the determination on review will be tolled from the date on which the notice of extension is sent to you until the date on which you respond to the request for additional information. Notice of the benefit determination on formal review will be given not later than 5 days after such a determination is made.

## **Form of Notice of Determination on Review**

The Fund will provide you with written notification of the determination on review. If the determination is adverse, the Fund is required to provide written notice to you setting forth, in a manner calculated for your understanding:

1. The specific reason(s) for the determination;
2. Reference to the specific plan provision(s) on which the determination is based;
3. A statement that you are entitled to receive, upon request and free of charge, reasonable access to and copies of all documents, records and other information related to the claim;
4. (a) If the determination was based on an internal rule, guideline, protocol or similar criterion, notification that the rule, guideline, protocol or similar criterion will be provided to you free of charge upon request;

- (b) If the determination was based on a finding that the service was not medically necessary, was experimental, or was subject to some similar exclusion or limit, notification that an explanation of the scientific or clinical judgment for the determination, taking into account the terms of the plan and the claimant's medical circumstances, will be provided to you free of charge.

- 5. A statement of your right to sue under Section 502(a) of ERISA.

#### **TRUSTEE AUTHORITY**

In carrying out their responsibilities under the Plan, the Trustees have discretionary authority to interpret the terms of the Plan and to interpret any facts relevant to the determination, and to determine eligibility and entitlement to Plan benefits in accordance with the terms of the Plan. Any interpretation or determination made under this discretionary authority will be given full force and effect, unless it can be shown that the interpretation or determination was arbitrary and capricious.

**If at any time while a claim or other issue is pending, you feel that the rules expressed in this booklet are not being honored, you should contact the Board of Trustees, which is authorized, but is not required, to suspend these rules and move the pending claim or issue directly to their attention for final determination. The Trustees may be contacted c/o the Administrative Office.**

## CHECKLIST: THINGS FOR YOU TO DO

**Let us know where you are:** You should provide the Administrative Office with your mailing address, including any changes in your mailing address, to ensure you receive all of our communications. Our address and telephone are:

Board of Trustees  
Utah Sheet Metal Pension Trust Fund  
4885 South 900 East, #202  
Salt Lake City, Utah 84117  
(801) 266-3271  
Fax: (801) 266-4383

**If you leave Covered Employment:** Be sure to review the Pension Plan rules regarding “Break in Covered Employment”. Please remember that if you do not earn sufficient Pension Credit over a number of years, it may result in a loss of all of your previously accrued credits and benefits! **This does not apply if you have already become vested (see page 10). Once you are vested, you cannot lose your right to a pension even if you leave Covered Employment permanently.** If you have questions on this matter, you should direct your questions in writing to the Board of Trustees.

**If your marital status changes:** You should notify the Administrative Office, in writing, of any change.

**If you are considering retirement:** Be sure you allow sufficient time to process your pension application. Please remember you will need copies of certain documents such as birth certificates, marriage certificate, etc. The staff at the Administrative Office can advise you of the documents and information needed.

**Check your benefit options:** There may be waiting periods and deadlines in connection with the various types of pensions provided by the Pension Plan. You should periodically check your benefit options, especially whenever there is a change in your family status.

**Keep your work history records:** Your work history records, such as payroll check stubs and time sheets, are important records that may be used to verify the hours you have worked in Covered Employment. We strongly encourage you to retain all of your work history records.

**Designate a Beneficiary:** To protect the person or persons you want to receive death benefits which may be due, please be sure you have completed and filed a Beneficiary Designation card with the Administrative Office. If your beneficiary should die before you, or if you wish to change your beneficiary designation, you must complete and file a new Beneficiary Designation card with the Administrative Office.

**Any questions?** If you have any questions, they should be directed in writing to the Board of Trustees at the address shown above.

**INFORMATION REQUIRED BY THE EMPLOYEE RETIREMENT  
INCOME SECURITY ACT OF 1974**

1. **Name of Plan.** This Plan is known as the Pension Plan for the Utah Sheet Metal Pension Trust Fund. This Plan is a Defined Benefit Plan.
2. **Board of Trustees.** The Board of Trustees is responsible for the operation of this Plan, and consists of an equal number of employer and union representatives, who are selected by the employers and the unions which have entered into Written Agreements establishing this Pension Fund and Plan. The Trustees of this Plan are:

**Union Trustees**

Sam L. Johnson  
Sheet Metal Local #312  
2261 South Redwood Road  
Suite 16  
Salt Lake City, Utah 84119

Lloyd J. Cummings  
Sheet Metal Local #312  
2261 South Redwood Road  
Suite 16  
Salt Lake City, Utah 84119

Robert Edginton  
Sheet Metal Local #312  
2261 South Redwood Road  
Suite 16  
Salt Lake City, Utah 84119

**Employer Trustees**

John B. Yates  
A-J Sheet Metal  
9554 South 560 West  
Sandy, Utah 84070

James F. Paull  
Sheet Metal Contractors  
Association of Utah  
179 West Haven Avenue  
Salt Lake City, Utah 84115

Stephen R. Richards  
Richards Sheet Metal  
2680 Industrial Drive  
Ogden, Utah 84401

3. **Address and Telephone Number.** If you wish to contact the Board of Trustees, you may use the following address and telephone number:

Board of Trustees  
Utah Sheet Metal Pension Trust Fund  
4885 South 900 East, #202  
Salt Lake City, Utah 84117  
(801) 266-3271  
Fax: (801) 266-4383

4. **Plan Administrator.** The Board of Trustees is the Plan Administrator. This means that the Board of Trustees is responsible for seeing that information regarding the Plan is reported to government agencies and disclosed to Plan Participants and Beneficiaries in accordance with the requirements of the Employee Retirement Income Security Act of 1974 (ERISA). The Board of Trustees has engaged the Contract Administrator named below to provide administrative services to the Plan:

D.A. Jensen  
JAS, Inc.  
4885 South 900 East, #202  
Salt Lake City, Utah 84117  
(801) 266-3271  
Fax: (801) 266-4383

5. **Identification Numbers.** The Employer Identification Number assigned to the Plan and issued to the Board of Trustees is 87-6156446. The Plan Number assigned to the Plan by the Board of Trustees is 001.
6. **Agent for Service of Legal Process.** Richard W. Perkins, Esquire, is the Plan's Agent for the service of legal process. Accordingly, when legal disputes involving the Plan arise, any legal document should be served upon:

Richard W. Perkins  
Attorney at Law  
343 South, 400 East  
Salt Lake City, Utah 84111

7. **Written Agreements.** All contributions to this Fund are made by Employers in accordance with their Written Agreement with the Union. Plan Participants and Beneficiaries may examine these Written Agreements and may obtain a copy of any such Agreement for a reasonable charge by writing to the Board of Trustees at the address listed in paragraph 3.
8. **Source of Financing of the Fund and Identification of Any Organization Through Which Benefits are Paid.** All contributions to the Fund are made by Employers in accordance with the Written Agreements. Benefits are provided from Fund assets which are accumulated under the provisions of the Written Agreement and the Trust Agreement and held in a Trust Fund for the purpose of providing benefits to Plan Participants and Beneficiaries and defraying reasonable administrative expenses. The Fund's assets and reserves are held by U.S. Bank, as custodial agent. The Investment Managers are NWQ Investment Management Company LLC, Alta Capitol Management, The Boston Company Asset Management LLC, Waddell & Reed Asset Management Group, and Weiss, Peck & Greer Investments.
9. **Recordkeeping Period.** The recordkeeping period is November 1st through October 31st.
10. **The Plan's Requirements Respecting Eligibility for Participation and Benefits.** The Plan's requirements respecting eligibility for participation and benefits are described in Article II, Article III, Article V, and Article VI of the Plan.
11. **Description of Provisions for Non-Forfeitable Pension Benefits.** A Participant becomes entitled to a Vested Pension in accordance with the provisions of Section 12 of Article III of the Plan, or a Special Normal Retirement Age Vested Pension in accordance with Section 14 of Article III of the Plan. Also see page 20 of this booklet.

12. **Normal Retirement Age.** The Normal Retirement Age under the Plan is the later of (i) age 65, or (ii) the earlier of the Participant's tenth anniversary of participation in the Plan counting all participation, or the fifth anniversary counting participation after January 1, 1988.
13. **Husband-and-Wife Pension.** The provisions of the Husband-and-Wife Pension which provide a lifetime benefit for a surviving spouse are set forth in Article IV of the Plan. Also see pages 23 through 25 of this summary.
14. **Description of Circumstances Which May Result in Disqualification, Ineligibility, Denial, or Loss of Benefits.**

Refer to pages 11 through 13 of this summary and Article VI, Section 4 of the Plan regarding Permanent Breaks in Covered Employment; pages 17 through 19 of this summary and Article III, Sections 6 through 11 of the Plan regarding disability entitlement requirements; pages 30 and 33 through 40 of this summary and Article VIII, Sections 1 and 4 of the Plan regarding benefit claims and appeals; page 14 of this summary and Article III, Section 16 of the Plan regarding separation from covered employment and the freezing of the value of prior accrual; page 29 of this summary and Article VIII, Section 8 of the Plan regarding prohibited employment for a pensioner; pages 30 and 31 of this summary and Article VIII, Section 9 of the Plan regarding suspension of benefits; and page 32 of this summary and Article III, Section 4(d), Article III, Section 6(c), and Article V, Section 1(a) of the Plan regarding delay or denial of benefits for non-covered sheet metal work.

The maximum annual benefit payable by the Plan is limited by Section 415 of the Internal Revenue Code. If the annual retirement benefit exceeds the maximum benefit permitted, the retired employee's benefit will be reduced to the limit then in effect. In following years, as cost of living increases raise the limits on benefits, payments may be increased. Refer to Article VIII, Section 15 of the Plan.

15. **Claims and Review Procedure.**

The procedures for filing a claim for benefits and for appealing a denial, in whole or in part, of a claim for benefits are set forth on pages 33 through 40.

16. **Plan Termination.** The collective bargaining parties intend that this Plan continue indefinitely. However, the collective bargaining parties reserve the right, subject to the provisions of the Trust Agreement, to terminate the Plan. To do so, they must notify and receive approval from a governmental agency called the Pension Benefit Guaranty Corporation (PBGC).

Your pension benefits under this multiemployer plan are insured by the Pension Benefit Guaranty Corporation (PBGC), a federal insurance agency. A multiemployer plan is a collectively bargained pension arrangement involving two or more unrelated employers, usually in a common industry.

Under the multiemployer plan program, the PBGC provides financial assistance through loans to plans that are insolvent. A multiemployer plan is considered insolvent if the plan is unable to pay benefits (at least equal to the PBGC's guaranteed benefit limit) when due.

The maximum benefit that the PBGC guarantees is set by law. Under the multiemployer program, the PBGC guarantee equals a participant's years of service multiplied by (1) 100% of the first \$11 of the monthly benefit accrual rate and (2) 75% of the next \$33. The PBGC's maximum guarantee limit is \$35.75 per month times a participant's years of service. For example, the maximum annual guarantee for a retiree with 30 years of service would be \$12,870.

The PBGC guarantee generally covers: (1) Normal and early retirement benefits; (2) disability benefits if you become disabled before the plan becomes insolvent; and (3) certain benefits for your survivors.

The PBGC guarantee generally does not cover: (1) Benefits greater than the maximum guaranteed amount set by law; (2) benefit increases and new benefits based on plan provisions that have been in place for fewer than 5 years at the earlier of: (i) The date the plan terminates or (ii) the time the plan becomes insolvent; (3) benefits that are not vested because you have not worked long enough; (4) benefits for which you have not met all of the requirements at the time the plan becomes insolvent; and (5) non-pension benefits, such as health insurance, life insurance, certain death benefits, vacation pay, and severance pay.

For more information about the PBGC and the benefits it guarantees, ask your plan administrator or contact the PBGC's Technical Assistance Division, 1200 K Street, N.W., Suite 930, Washington, D.C. 20005-4026 or call 202-326-4000 (not a toll-free number). TTY/TDD users may call the federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4000. Additional information about the PBGC's pension insurance program is available through the PBGC's website on the Internet at <http://www.pbgc.gov>.

17. **Statement of ERISA Rights.** As a Participant in the Pension Plan under the Utah Sheet Metal Pension Trust Fund, you are entitled to certain rights and protection under the Employee Retirement Income Security Act of 1974. ERISA provides that all Plan Participants shall be entitled to:

**Receive Information About Your Plan and Benefits.**

Examine, without charge, at the plan administrator's office and at other specified locations, such as worksites and union halls, all documents governing the plan, including insurance contracts and collective bargaining agreements, and a copy of the latest annual report (Form 5500 Series) filed by the plan with the U.S. Department of Labor and available at the Public Disclosure Room of the Pension and Welfare Benefit Administration.

Obtain, upon written request to the plan administrator, copies of documents governing the operation of the plan, including insurance contracts and collective bargaining agreements, and copies of the latest annual report (Form 5500 Series) and updated summary plan description. The administrator may make a reasonable charge for the copies.

Receive a summary of the plan's annual financial report. The plan administrator is required by law to furnish each participant with a copy of this summary annual report.

Obtain a statement telling you whether you have a right to receive a pension at normal retirement age (age 65, or, if later, an applicable anniversary date) and if so, what your benefits would be at normal retirement age if you stop working under the plan now. If you do not have a right to a pension, the statement will tell you how many more years you have to work to get a right to a pension. This statement must be requested in writing and is not required to be given more than once every twelve (12) months. The plan must provide the statement free of charge.

**Prudent Actions by Plan Fiduciaries**

In addition to creating rights for plan participants, ERISA imposes duties upon the people who are responsible for the operation of the employee benefit plan. The people who operate your plan, called "fiduciaries" of the plan, have a duty to do so prudently and in the interest of you and other

plan participants and beneficiaries. No one, including your employer, your union, or any other person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining a pension benefit or exercising your rights under ERISA.

### **Enforce Your Rights**

If your claim for a pension benefit is denied or ignored, in whole or in part, you have a right to know why this was done, to obtain copies of documents relating to the decision without charge, and to appeal any denial, all within certain time schedules.

Under ERISA, there are steps you can take to enforce the above rights. For instance, if you request a copy of plan documents or the latest annual report from the plan and do not receive them within 30 days, you may file suit in a Federal court. In such a case, the court may require the plan administrator to provide the materials and pay you up to \$110 a day until you receive the materials, unless the materials were not sent because of reasons beyond the control of the administrator. If you have a claim for benefits which is denied or ignored, in whole or in part, you may file suit in a state or Federal court. In addition, if you disagree with the plan's decision or lack thereof concerning the qualified status of a domestic relations order or a medical child support order, you may file suit in Federal court. If it should happen that plan fiduciaries misuse the plan's money, or if you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit in a Federal court. The court will decide who should pay court costs and legal fees. If you are successful the court may order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees, for example, if it finds your claim is frivolous.

### **Assistance with Your Questions**

If you have any questions about your plan, you should contact the plan administrator. If you have any questions about this statement or about your rights under ERISA, or if you need assistance in obtaining documents from the plan administrator, you should contact the nearest office of the Pension and Welfare Benefits Administration, U.S. Department of Labor, listed in your telephone directory or the Division of Technical Assistance and Inquiries, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210. You may also obtain certain publications about your rights and responsibilities under ERISA by calling the publications hotline of the Pension and Welfare Benefits Administration.

**IMPORTANT:** No Local Union, Local Union Officer, Business Agent, Local Union Employee, Employer or Employer Representative or Administrative Office personnel, consultant or attorney is authorized to speak for, or on behalf of, or to commit the Trustees of this Plan on any matter relating to the Plan without the express authority of the Board of Trustees.

Only the Board of Trustees of the Plan have the authority to determine eligibility for benefits and the right to participate in the Plan, including the manner in which hours are credited, eligibility for any benefit, discontinuance of benefits, status as a covered or non-covered employee, the level of benefits, and the interpretation and application of the Rules and Regulations of the Plan.

**THE RULES AND REGULATIONS OF THE  
PENSION PLAN FOR THE  
UTAH SHEET METAL PENSION TRUST FUND**

This document sets forth the Third Restatement of the Rules and Regulations of the Pension Plan (effective January 1, 2002) for the above named Pension Trust Fund, together with subsequent Amendments 1, 2, 4 through 8 and 10. Pensions or benefits which commenced prior to January 1, 2002 are to be determined under the prior Pension Plan.

**ARTICLE I. DEFINITIONS**

Unless the context or subject matter otherwise requires, the following definitions shall govern in the Plan.

Section 1. The term “Active Participant” means an Employee who meets the requirements for participation in the Plan and excludes a Pensioner, Beneficiary or Vested Participant.

Section 2. Annuity Starting Date.

(a) Subject to section (b), below, a Participant’s Annuity Starting Date is the first day of the first calendar month starting after the Participant has fulfilled all of the conditions for entitlement to benefits and after the later of the Participant’s submission of a completed application for benefits, or 30 days after the Plan advises the Participant of the available benefit payment options, unless

- (1) the benefit is being paid as a 50% Husband-and-Wife Pension or one of the Joint and Survivor Options at or after the Participant’s Normal Retirement Age,
- (2) the benefit is being paid out automatically as a lump sum under Article VIII, Section 7, or
- (3) the Participant and Spouse (if any) consent in writing to the commencement of payments before the end of that 30-day period. Consent of the Participant and Spouse to the commencement of benefits before the end of the 30-day minimum notice period will be valid as long as the following conditions are satisfied:

- (A) the Participant is informed of the right to take up to 30 days to consider whether to waive the Husband-and-Wife Pension or one of the Joint and

Survivor Options and consent to one of the alternate forms of benefit allowed by the Plan,

(B) the Participant is given at least seven days to change his/her mind and cancel an election to waive the Husband-and-Wife Pension or one of the Joint and Survivor Options,

(C) distribution of the benefits begins more than seven days after the written explanation was provided to the Participant and Spouse.

(b) The Annuity Starting Date will not be later than the Participant's Required Beginning Date as defined in Article VIII.

(c) The Annuity Starting Date for a Beneficiary or alternate Payee will be determined under subsections (a) and (b), except that references to the 50% Husband-and-Wife Pension and the Joint and Survivor Options and spousal consent do not apply.

Section 3. Applicable Interest Rate. The "Applicable Interest Rate" for a Calendar Year is the annualized rate of interest on 30-year Treasury securities as specified by the Commissioner of Internal Revenue for the month of November immediately preceding the Calendar Year which contains the Annuity Starting Date.

Section 4. Applicable Mortality Table. The "Applicable Mortality Table" is the table prescribed in regulations under Section 417(e) of the Internal Revenue Code for use in the Calendar Year which contains the Annuity Starting Date, and which, until modified or superseded, is the table set forth in Revenue Ruling 95-6.

Section 5. The term "Beneficiary" means a person (other than a Pensioner) who is (a) legally entitled to receive benefits under this Plan because of his or her designation for such benefits by an Active Participant, by a Vested Participant or a Pensioner or (b) who is legally entitled to and receiving or is entitled to receive benefits by operation of law.

Section 6. Compensation.

- (a) Solely for the purposes of identifying Highly Compensated Employees and establishing the limitations under section 415 of the Internal Revenue Code, a Participant's annual Compensation shall mean the total cash salary or wages paid to the Participant during a Plan Year and reportable as earnings subject to income tax on Form W-2. In addition, Compensation shall include any elective deferral (as defined under Code § 402(g)(3)), and any amount which is contributed or deferred by the Employer at the election of the Employee, and which, by reason of Code §§ 125 or 457, is not includible in the gross income of the Employee.
- (b) Compensation shall not include:
- (1) Amounts realized from the exercise of a non-qualified stock option, or when restricted stock (or property) held by the employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;
  - (2) Amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option; and
  - (3) Other amounts which received special tax benefits, other than amounts referred to in subsection (a).
- (c) In addition to other applicable limitations set forth in the Plan, and notwithstanding any other provision of the Plan to the contrary, for Plan Years beginning on or after January 1, 1994, the annual compensation of each employee taken into account under the Plan shall not exceed the OBRA '93 annual compensation limit. The OBRA '93 annual compensation limit is \$150,000 as adjusted by the Commissioner for increases in the cost of living in accordance with Section 401(a)(17)(B) of the Internal Revenue Code. The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the OBRA '93 annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

For Plan Years beginning on or after January 1, 1994, any reference in this Plan to the limitation under section 401(a)(17) of the Code shall mean the OBRA '93 annual compensation limit set forth in this provision.

If Compensation for any prior determination period is taken into account in determining an Employee's benefits accruing in the current Plan Year, the Compensation for that prior determination period is subject to the OBRA '93 annual compensation limit in effect for that prior determination period. For this purpose, for determination periods beginning before the first day of the first Plan Year beginning on or after January 1, 1994, the OBRA '93 annual compensation limit is \$150,000. To the extent required by Section 401(a)(17), in effect prior to January 1, 1997, the foregoing shall be applied to family members in the aggregate. The foregoing limit shall be applied on an Employer-by-Employer basis.

Section 7. "Continuous Employment." Two periods of employment are continuous if there is no quit, discharge or other termination of employment between the periods.

Section 8. The term "Contributing Employer" or "Employer" means (a) any Employer employing persons performing sheet metal work and who is required by a Written Agreement to make contributions to the Pension Fund, (b) Local Union No. 312 of the Sheet Metal Workers' International Association in the event that it participates as an Employer pursuant to application by it to the Board of Trustees and pursuant to resolution of the Board of Trustees, and (c) the Utah Sheet Metal Education and Training Trust. An employer shall not be deemed an Employer simply because he is part of a controlled group of corporations or of a trade or business under common control, some other part of which is a Contributing Employer.

Section 9. The term "Covered Employment" means employment performed by an Employee as defined in Section 9 of this Article for a Contributing Employer.

Section 10. The term "Employee" means:

- (a) An individual in the employment of an Employer who is a party or hereafter becomes a party to a Written Agreement and performs one or more hours of Work covered by such Agreement.

- (b) An employee, officer or business representative of the Union, if previously an employee within the meaning of subparagraph (a) of this Section, and if contributions are made to the Fund on substantially the same basis upon which subsection (a) employees participate in the Fund. Contributions must be made to the Fund for and on behalf of all such employees pursuant to regulations adopted by the Board of Trustees, unless the Union is making contributions for any such employees into another trust pursuant to a collective bargaining agreement.
- (c) An Owner employed or previously employed by a Contributing Employer, if previously an Employee within the meaning of subsection (a) of this Section, and if contributions are made to the Fund on substantially the same basis upon which subsection (a) employees participate in the Fund, and is presently an Owner of a Contributing Employer. In no event will any Owner be allowed to participate until 1,000 Hours of Service, or more, have been credited in the 12-month period following inception of employment with a Contributing Employer.

The term "Owner" shall mean a sole proprietor, a partner owning at least 25% of the partnership, a shareholder owning at least 25% of a corporation and/or a member owning at least 25% of a limited liability company.

- (d) Except as permitted by subsection (c) above, the term "Employee" shall not include any self-employed person, whether a sole proprietor or partner of a business organization that is a Contributing Employer, or any other person excluded as an employee pursuant to the provisions of the Trust Agreement.

Employees participating in the Pension Plan described in subsections (b) and (c) of this Section shall be limited to no more than five percent (5%) of the total number of Employees participating in the Fund and shall be subject to the execution of appropriate participation agreements.

Section 11. The terms "Employer Association" or "Association" mean the Sheet Metal Contractors' Association of Utah.

Section 12. The terms "Employer Contributions" or "Contributions" mean payments made or to be made to the Pension Fund by an Employer under the provisions of or in accordance with a Written Agreement

and the Trust Agreement or, with regard to the Union, payments to the Pension Fund pursuant to and in accordance with Section 1.04(b) and (c) of the Trust Agreement.

Section 13. The term “ERISA” means the Employment Retirement Income Security of 1974.

Section 14. The term “Future Service Credit” means periods of employment on and after November 1, 1964 credited in accordance with Article VI of this Plan.

Section 15. Highly Compensated Employee.

(a) The term "Highly Compensated Employee" includes highly compensated active Employees and highly compensated former Employees of an Employer. Whether an individual is a Highly Compensated Employee is determined separately with respect to each Employer, based solely on that individual's Compensation from or status with respect to that Employer.

(b) A Highly Compensated Employee is any Employee who:

(1) was a 5-percent owner of the Employer at any time during the determination year or the look-back year, or

(2) for the look-back year

(A) had Compensation from the Employer in excess of \$80,000 (as adjusted annually for increases in the cost-of-living in accordance with regulations prescribed by the Secretary of the Treasury), and

(B) was in the top-paid group of employees of such Employer for such year. For this purpose, the top-paid group of Employees shall consist of the top 20 percent of the Employees when ranked on the basis of Compensation paid during such year.

For purposes of determining if an Employee’s Compensation from an Employer exceeds \$80,000 (adjusted for changes in the cost of living) in the look-back year, the look-back year shall be the calendar year beginning within the Plan Year immediately preceding the Plan Year for which the test is being applied.

Section 16. The term “Hour of Service” shall mean:

- (a) Each hour for which an Employee is paid or entitled to payment, directly or indirectly by an Employer for the performance of duties. Such hours shall be credited to the computation period in which the duties are performed.
- (b) Each hour for which an Employee is paid or entitled to payment, directly or indirectly, by an Employer for a period of time during which no duties are performed, excluding any time compensated under a worker's compensation or unemployment compensation or disability insurance law. Such hours shall be credited to the computation period in which the period during which no duties are performed occurs. No more than 501 Hours of Service shall be credited under this Subsection (b) in any continuous period. Two periods of paid non-work time shall be deemed to be continuous if they are compensated for the same reason and are not separated by at least 90 days. Hours under this paragraph shall be calculated and credited pursuant to Section 2530.200b-2 of the Department of Labor Regulations which are incorporated herein by this reference.
- (c) Each hour for which back-pay, irrespective of mitigation of damages, is either awarded or agreed to by an Employer. Such hours shall be credited to the computation period to which the award or agreement pertains. In no event will hours be credited under this Subsection (c) if they are credited under Subsection (a) or Subsection (b).

Section 17. The term "Non-Bargained Employee" includes and shall mean an Employee, as defined in Article I, Section 10(b), whose participation is not covered by a Written Agreement.

Section 18. Effective November 1, 1988, the term "Normal Retirement Age" shall mean the later of:

- (a) age 65; or
- (b) the earlier of:
  - (1) the fifth anniversary of the Participant's plan participation, disregarding participation before November 1, 1988, or
  - (2) the tenth anniversary of the Participant's plan participation.

Participation before a Permanent Break in Service shall be disregarded in applying the above subsection (2).

Section 19. The term “Participant” means (a) an Active Participant, (b) a Pensioner, (c) a Beneficiary or (d) a Vested Participant.

Section 20. The term “Past Service Credit” means periods of employment prior to November 1, 1964 to the extent credited in accordance with Article VI of this Plan.

Section 21. The term “Pensioner” means a person to whom a pension is being paid under this Plan or to whom a pension would be paid but for the time required for administrative processing. A Pensioner who has returned to Covered Employment and is accruing benefits on the same basis as other Employees as of the effective date of a benefit increase shall not be considered a Pensioner for purposes of that benefit increase.

Section 22. The term “Pension Credit” means the years of employment which are accumulated and maintained for Employees in accordance with Article VI of this Plan.

Section 23. The terms “Pension Fund” or “Fund” mean the Utah Sheet Metal Pension Trust Fund.

Section 24. The terms “Pension Plan” or “Plan” mean this Pension Plan and any amendment, alteration, modification, extension or renewal thereof.

Section 25. The term “Plan Year” means the period November 1 of any year to October 31 of the succeeding year. For purposes of ERISA and ERISA regulations, the Plan Year shall serve as the vesting computation period and benefit accrual computation period and, after the initial period of employment or of re-employment following a break in service, the computation period for eligibility to participate in the Plan.

Section 26. Qualified Military Service.

Notwithstanding any provision to the contrary, vesting, benefits and service credit with respect to Qualified Military Service will be provided in accordance with the Uniformed Services Employment and Re-employment Rights Act of 1994, as amended, (USERRA) and Section 414(u) of the Internal Revenue Code for individuals who were absent from Covered Employment due to, and who returned to Covered Employment from, Qualified Military Service on or after December 12, 1994. Qualified Military Service

will be counted for purposes of earning Future Service Credit, Years of Service for vesting, avoiding a Break in Service, and avoiding a Separation in Service provided the following conditions are satisfied.

- (a) An individual must have re-employment rights under USERRA in order for any period of Qualified Military Service to be recognized.
- (b) The individual must return to Covered Employment within the time period required by USERRA in order for any period of Qualified Military Service to be recognized.
- (c) No more than five years of Qualified Military Service may be recognized for any purpose except as required by law.
- (d) The Board of Trustees determines, in accordance with USERRA, that an individual is entitled to a period of Qualified Military Service.

Section 27. The term “Sheet Metal Industry” shall mean any and all types of work covered by collective bargaining agreements to which the Union is a party without regard to geographical location.

For purposes of Article III, Section 4(d), Section 6(c), Section 12, Section 16, Article V, Section 1(a) and Article VIII, Section 9(a) only, however, effective November 1, 1989 the term “Sheet Metal Industry” shall not include:

- (a) employment as a bona fide “Salted” organizer, as certified in writing to the Fund by the Sheet Metal Workers’ International Association, provided however that any single period of employment with the same employer as a bona fide “Salted” organizer shall not exceed 6 months per year of such employment, unless the Trustees, in their sole discretion, are satisfied on the basis of the evidence submitted to them by the Sheet Metal Workers’ International Association, that it is appropriate to recognize such a period of employment in excess of 6 months for purposes of this Section 24 and the Trustees evidence their decision to this effect in writing; or
- (b) employment in a related building trade, provided, however that such employment is on referral by and authorized by the Union.

Section 28. The term “Spouse” means the person to whom the Participant is married which said marriage is recognized as valid under the laws of the State of Utah.

Section 29. The terms “Trust, Trust Agreement” or “Agreement and Declaration of Trust” mean the Second Restated Agreement and Declaration of Trust establishing the Utah Sheet Metal Pension Trust Fund dated September 19, 1988, and any modification, amendment, extension or renewal thereof.

Section 30. The terms “Trustee” or “Trustees” mean any persons designated as Trustees pursuant to Article III of the Trust Agreement, together with their successors from time to time in such office. The terms “Board of Trustees” and “Board” mean the Board established by Article III of the Trust Agreement.

Section 31. The term “Union” means Local Union No. 312 of Sheet Metal Workers’ International Association.

Section 32. The term “Vested Participant” means an Employee who qualifies for a Vested Pension in accordance with the provisions of Article III, Sections 12 or 14.

Section 33. The term “Work” means a period in which an Employee performed services and for which he was paid or entitled to payment.

Section 34. The term “Written Agreement” means any written agreement by and between the Employer Association, or any employer, and the Union, including any and all extensions or renewals thereof.

Section 35. “Year of Participation” means a Plan Year after October 31, 1976 during which a Participant performs 2,000 hours of work in Covered Employment.

Section 36. “Year of Vesting Service” means a Plan Year after November 1, 1964 during which an Active Participant completes at least 1,000 Hours of Service in Covered Employment in accordance with Article VI, Section 3.

Section 37. Fiscal Year. Effective July 1, 1998, the Pension Plan’s Fiscal Year is the twelve (12) consecutive month period from July 1 through June 30 of any calendar year. Prior to July 1, 1998, the Fiscal Year was the same as the Plan Year (November 1 through October 31). Notwithstanding the foregoing, November 1, 1997 through June 30, 1998 will serve as the transitional Fiscal Year.

## **ARTICLE II. PARTICIPATION**

Section 1. Purpose. This Article contains definitions to meet certain requirements of the Employee Retirement Income Security Act of 1974 (otherwise referred to as ERISA). It should be noted that once an Employee has become a Participant, the provisions of this Plan give him credit in accordance with the rules of the Plan for some or all of his service before he became a Participant.

Section 2. Participation. The initial eligibility computation period for purposes of this Article II only, is the 12 consecutive month period following an Employee's initial date of employment in Covered Employment. For purposes of this Article II only, an Employee who works in Covered Employment shall become an Active Participant in the Plan on the earliest November 1 or May 1 next following a 12 consecutive month period during which he completed at least 1,000 Hours of Service in Covered Employment. The required hours may also be completed with any Hours of Service in other employment with an Employer if the other employment is continuous with the Employee's Covered Employment with that Employer. After the initial eligibility computation period, the Plan Year which includes the first anniversary of an Employee's employment commencement date, shall serve as the computation period for eligibility to participate in the Plan.

Section 3. Termination of Participation. For purposes of this Article II only, an Active Participant who incurs a Break in Service (defined in Article VI) shall cease to be an Active Participant as of the last day of the Plan Year which constituted the Break, unless such individual has become a Pensioner or a Vested Participant. However, a Participant shall not incur a Separation from Covered Employment because of any period of Qualified Military Service.

Section 4. Reinstatement of Participation. For purposes of this Article II only, an individual who has lost his status as an Active Participant in accordance with Section 3 of this Article and who incurs a number of Breaks in Service equal to or in excess of the aggregate number of years of Service credited to the Employee prior to the Breaks shall again become an Active Participant by meeting the requirements of Section 2 of this Article on the basis of Service after the Plan Year during which his participation terminated.

### **ARTICLE III. PENSION ELIGIBILITY AND AMOUNTS**

Section 1. General. This Article sets forth the eligibility conditions and amounts for the pensions provided by this Plan. The accumulation and retention of Pension Credits for eligibility are subject to the provisions of Article VI. The benefit amounts are subject to reduction on account of the Husband-and-Wife Pension (Article IV). Entitlement of an eligible Participant to receive pension benefits is subject to his retirement and application for benefits, as provided in Article VIII.

Eligibility depends on Pension Credits which are defined in Article VI and take into account creditable employment both before and after November 1, 1964, except that eligibility for Vested Pensions depends on Years of Vesting Service, which are also defined in Article VI. Accumulation of Pension Credits is subject to the Break in Service rule which is defined in Article VI. Only Pension Credits or Vesting Service earned subsequent to a Permanent Break in Service, if any, or for a period of Qualified Military Service, will apply towards the eligibility for a pension hereunder.

Section 2. Eligibility for Regular Pension. An Active Participant may retire on a Regular Pension if he meets the following requirements:

- (a) He has attained age 65; and
- (b) He has at least 10 years of Pension Credit; and
- (c) He has earned at least two quarters of Future Service Credit since November 1, 1964.

Section 3. Amount of Regular Pension.

For Annuity Starting Dates on and after November 1, 1999, the monthly amount of the Regular Pension shall, subject to the provisions of Section 16 of this Article, be the rate of \$65.00 for each full year (and proportionately less for fractional years) of Pension Credit attributable to hours earned before November 1, 1998, and \$68.00 for each full year (and proportionately less for fractional years) of Pension Credit attributable to hours earned on and after November 1, 1998. Notwithstanding the foregoing, if the benefit multiplier is less than \$65.00, this increase shall not exceed \$3.00 for any individual.

For Annuity Starting Dates on and after November 1, 2001, the monthly amount of the Regular Pension shall, subject to the provisions of Section 16 of this Article, be the rate of \$66.00 for each full

year (and proportionately less for fractional years) of Pension Credit attributable to hours earned before November 1, 1998, and \$69.00 for each full year (and proportionately less for fractional years) of Pension Credit attributable to hours earned on and after November 1, 1998.

The benefit multiplier for retirees with Annuity Starting Dates prior to November 1, 1999 is increased by \$1.00 from \$65.00 to \$66.00 effective with payments for months on and after November 1, 2001.

Then benefit multiplier for retirees with Annuity Starting Dates on and after November 1, 1999 is increased by \$1.00 from \$68.00 to \$69.00 effective with payments for months on and after November 1, 2001.

Section 4. Eligibility for Early Retirement Pension. An Active Participant may retire on an Early Retirement Pension if he meets the following requirements:

- (a) He has attained age 55; and
- (b) He has at least 10 years of Pension Credit; and
- (c) He has earned at least two quarters of Future Service Credit since November 1, 1964; and
- (d) He has not, on or after November 1, 1986, performed employment in the Sheet Metal Industry that is not covered by a Written Agreement between the Union and the employer. The preceding sentence shall not apply on or after November 1, 1998 if the Active Participant has earned one quarter of Future Service Credit, subsequent to the prohibited employment, for each calendar quarter in which he worked one or more hours in such prohibited employment.

Section 5. Amount of Early Retirement Pension.

- (a) If the Participant has less than 25 years of Pension Credit, the monthly Early Retirement Pension shall be equal to the amount of the Regular Pension to which the individual would be entitled if he were 65 years of age on his Annuity Starting Date, reduced by  $\frac{1}{2}$  of 1% for each month that the individual is younger than 65.
- (b) For pensions effective on and after July 1, 1978, if the Participant has 25 years or more of Pension Credit, the monthly Early Retirement Pension shall be equal to the amount of the Regular Pension

to which the Participant would be entitled if he were 65 years of age on the Annuity Starting Date. For pensions effective on and after July 1, 1978, if the Participant has 25 years or more of Pension Credit, the monthly Early Retirement Pension shall be equal to the amount of the Regular Pension to which the Participant would be entitled if he were 65 years of age on the Annuity Starting Date. No more than one Pension Credit in a Plan Year may be used to accumulate the 25 years or more of the Pension Credit requirement for this Early Service Pension.

Section 6. Eligibility for a Full or Reduced Disability Pension.

- (a) Full Disability Pension. An Active Participant who has retired and filed an application for benefits in accordance with Article VIII, Section 1 shall be entitled to a Full Disability Pension if, prior to attaining age 65, he:
- (1) is Totally Disabled due to having been awarded a Social Security Disability Benefit under Title II of the Social Security Act;
  - (2) has at least 10 years of Pension Credit; and
  - (3) has earned at least six-twelfths of Future Service Credit during the three consecutive Plan-Year period immediately preceding the date of his disability. This requirement may be waived by the Trustees in the event there were extenuating circumstances which prevented employment, provided the Active Participant had earned at least six-twelfths of Future Service Credit since November 1, 1964; and
  - (4) has not, on or after November 1, 1986, performed employment in the Sheet Metal Industry that is not covered by a Written Agreement between the Union and the employer. The preceding sentence shall not apply on or after November 1, 1998 if the Active Participant has earned one quarter of Future Service Credit, subsequent to the prohibited employment, for each calendar quarter in which he worked one or more hours in such prohibited employment.
- (b) Reduced Disability Pension. Effective for disabilities occurring on and after October 1, 2004, an Active Participant who has retired and filed an application for benefits in accordance with Article VIII, Section 1 shall be entitled to a Reduced Disability Pension if, prior to attaining age 65, the

combined total of the Participant's age and years of service equals 70 and the Board of Trustees, in its sole and absolute discretion, finds that the Participant is Totally Disabled by being totally and permanently unable, as a result of bodily injury or disease, to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long, continued and indefinite duration.

For purposes of determining attained age, months and days since the Participant's last attained integer age in years shall be disregarded, and for purposes of determining Pension Credit, any fraction of a Pension Credit over and above the highest integer shall be disregarded.

In exercising such discretion, the Board may obtain and act upon such competent medical evidence as it may require to be shown to it.

- (c) As a prerequisite to the continuance of either form of Disability Pension granted under the Plan, the Board of Trustees may at any time, or from time to time, require evidence of continued entitlement to such Social Security Disability Benefit as required under Section 7(a) and may at any time, or from time to time, require that the Pensioner satisfy the requirements of Section 7(b).

Section 7. Amount of the Monthly Disability Pension.

- (a) Full Disability Pension. The monthly amount of a Full Disability Pension for a Participant who is Totally Disabled under Section 6(a) of this Article shall be equal to the Regular Pension the individual would receive if he were age 65 at the time he became Totally Disabled.
- (b) Reduced Disability Pension The monthly amount of a Reduced Disability Pension for a Participant who is Totally Disabled under Section 6(b) of this Article shall be equal to the Regular Pension the individual would receive if he were age 65 at the time he became Totally Disabled, reduced by ¼ of 1% per month for each month by which the Participant is younger than age 65 on the Annuity Starting Date.

In the event that a Social Security Award is ultimately received by a Participant receiving a Reduced Disability Pension, the amount of the Reduced Disability Pension will be increased to the amount of the Regular Pension the individual would receive if he were age 65 at the time he

became Totally Disabled. If the Social Security Award is provided to the Administrative Office within 60 days after the Social Security Administration's determination of entitlement, the increase in the monthly benefit will be effective as of the Annuity Starting Date, or, if later, as of the Social Security Disability date of entitlement. If the Award is not timely filed, the increase will be prospective only.

Section 8. Reserved.

Section 9. Disability Pension Payments.

- (a) Payments Generally. Payment of the Disability Pension shall commence on the Participant's Annuity Starting Date and shall continue thereafter for so long as such disability continues and the Pensioner remains entitled to either a Social Security Disability Benefit or remains Totally Disabled as defined in Section 6(b) of this Article, except that upon attainment of age 65 a Disability Pensioner shall have his pension continued regardless of whether or not he remains Totally Disabled. In no event will disability benefits under the Plan be payable with respect to months prior to the sixth month following the onset of disability, as established by the Social Security Administration or, if applicable, by the Trustee's finding of satisfactory medical evidence.
- (b) Auxiliary Disability Benefit. If the Annuity Starting Date for a Participant's Disability Pension is later than the first of the month following the sixth month in which the disability occurs and he has met the filing requirements of this subsection (b), he will be entitled to an Auxiliary Disability Benefit.

If the Participant's application for Disability Pension and a copy of the Social Security award are filed within 60 days of a determination by the Social Security Administration of his entitlement to a Social Security Disability award, such application shall be considered timely, and payment of the Auxiliary Disability Benefit shall commence on the effective date of his Social Security Disability award. If the Participant's application for Disability Pension is filed more than

60 days following the determination by the Social Security Administration of his entitlement to a Social Security Disability award, the Auxiliary Disability Benefit shall not be payable.

The Auxiliary Disability Benefit is an amount, payable as a lump sum, equal to the benefit which would have been payable under the Participant's Disability Pension (in the payment form chosen for that pension) between the commencement date of the Auxiliary Disability Benefit and the Annuity Starting Date of the Disability Pension.

Section 10. Recovery by a Disability Pensioner. If a Disability Pensioner should lose entitlement to a Social Security Disability Pension or recovers from his disability, such fact shall be reported by him in writing to the Board of Trustees within 21 days after the date he recovers or receives notice of loss of benefits from the Social Security Administration. If such written notice is not provided by the Pensioner, he shall, upon his subsequent retirement, not be eligible for benefits for a period of six months following the date of his retirement, plus the number of months in which he received a Disability Pension under this Plan after he recovered or received notice of termination of the Social Security Disability Pension. In no event will such six-month period extend beyond his Normal Retirement Age.

Section 11. Return to Covered Employment by a Disability Pensioner. A Disability Pensioner who is no longer totally disabled may re-enter Covered Employment and will thereupon resume the accrual of Pension Credit to his account.

Section 12. Eligibility for Vested Pension.

- (a) Beginning November 1, 1998, a Participant shall have the right to a Vested Pension if either he has credit for at least 5 Years of Vesting Service or at least 5 years of Pension Credit (including not less than one quarter of Future Service Credit earned during the Plan Year ending October 31, 1998.) Beginning November 1, 1976, a Participant shall have the right to a Vested Pension if either he has credit for at least 10 Years of Vesting Service or at least 10 Years of Pension Credit, including not less than two quarters of Future Service Credit since November 1, 1964.

Exception: A Non-Bargained Employee who has earned at least one Hour of Service after November 1, 1988 shall have the right to a Vested Pension after he has accumulated 5 Years of Vesting Service.

A Vested Pension shall be payable upon retirement after the Vested Participant has attained age 65 or after the Vested Participant has attained age 55 if he has fulfilled the service requirements for an Early Retirement Pension as set forth in Section 4 of this Article.

If a Participant, on or after November 1, 1986 performs employment in the Sheet Metal Industry that is not covered by a Written Agreement between the Union and the employer. The preceding sentence shall not apply on or after November 1, 1998 if the Active Participant has earned one quarter of Future Service Credit, subsequent to the prohibited employment, for each calendar quarter in which he worked one or more hours in such prohibited employment.

- (b) The right to a Vested Pension payable to a former Employee who incurred a Break in Covered Employment prior to November 1, 1976 shall be determined in accordance with the rules of the Pension Plan as in effect prior to November 1, 1976 as follows:

Between November 1, 1966 and October 31, 1976, an Employee shall have his years of Pension Credit “vested” and the Break rules as set forth in Section 4(c) of Article VI shall not operate to deprive him of his accumulated Pension Credit if he has at least 10 years of Pension Credit without a Break in Employment as defined in Article VI, Section 4(c).

Section 13. Amount of Vested Pension. The Vested Pension payable to a Vested Participant who has attained age 65 shall be calculated in the same manner as the Regular Pension.

If the payment of the Vested Pension is to commence before the Vested Participant’s attainment of age 65 but after age 55, and he has met the service requirements of an Early Retirement Pension, the Vested Pension shall be calculated in the same manner as the Early Retirement Pension.

Section 14. Eligibility for Special Normal Retirement Age Vested Pension. Beginning November 1, 1976, a Participant shall upon retirement be eligible for a Special Normal Retirement Age Vested Pension if he meets the following requirements:

- (a) He has attained Normal Retirement Age, as defined in Article I of this Plan; and
- (b) He was an Active Participant (as defined in Article I of this Plan) in the Plan on the date he attained Normal Retirement Age.

Section 15. Amount of Special Normal Retirement Age Vested Pension. The monthly amount of the Special Normal Retirement Age Vested Pension shall be calculated in the same manner as the Regular Pension under Section 3 of this Article.

Section 16. Separation from Covered Employment

- (a) A Participant shall incur a Separation from Covered Employment if, after October 30, 1983, he fails to earn two quarters of Pension Credit in any period of three consecutive Plan Years. The Participant shall be deemed to be separated on the last day of the Plan Year preceding the three Plan-Year period during which he fails to earn two quarters of Pension Credit.
- (b) If a Participant incurs a Separation from Covered Employment, it has the effect of freezing the monthly benefit factor applicable to Pension Credits earned prior to the Separation at the level in effect on the date the Participant separated but, in no event, less than \$27.
- (c) If a Participant returns to Covered Employment following a Separation from Covered Employment and earns additional Future Service Credit, his monthly benefit for such additional Future Service Credit shall be calculated based on the benefit factor in effect on the date of his retirement or subsequent Separation from Covered Employment, whichever is earlier.
- (d) If a Participant has incurred a Separation from Covered Employment and subsequently returns to work in Covered Employment and earns three full years of Future Service Credit prior to his retirement, his Separation from Covered Employment shall be cured and the Pension Credit he earned prior to the Separation shall be calculated based on the benefit factor in effect on the date of his retirement or subsequent Separation from Covered Employment, whichever is earlier.
- (e) If a Participant, on or after November 1, 1986, performs employment in the Sheet Metal Industry that is not covered by a Written Agreement between the Union and the employer, he shall not be allowed to cure any Separation from Covered Employment he may have incurred. The preceding

sentence shall not apply on or after November 1, 1998 if the Active Participant has earned one quarter of Future Service Credit, subsequent to the prohibited employment, for each calendar quarter in which he worked one or more hours in such prohibited employment. Notwithstanding the foregoing, effective January 1, 2002, if a Participant has incurred a Separation from Covered Employment by working in employment in the sheet metal industry that is not covered by a Written Agreement between the Union and the employer, no more than one such Separation shall be cured. Such cure shall be as provided by subsection (d) above.

- (f) (1) A Participant who becomes a Qualifying Signatory Employer or a Qualifying Non-Covered Employee, as defined below, shall not incur a Separation from Covered Employment as long as such individual continues to meet the requirements to be considered a Qualifying Signatory Employer or a Qualifying Non-Covered Employee. However, when such individual ceases to be a Qualifying Signatory Employer or a Qualifying Non-Covered Employee, the monthly Benefit Factor applicable to Pension Credits earned prior to such cessation shall be frozen at the level in effect at the time of such cessation. This freeze shall be permanent unless the individual cures the Separation in accordance with Article III, Section 16(d). In addition, if such individual becomes employed in the Sheet Metal Industry by a non-signatory employer, then such individual shall not be eligible for any type of Pension payable from this Plan until attaining Normal Retirement Age unless the Plan's requirements for curing the effects of such non-covered service are also met.
- (2) If a Qualifying Signatory Employer, as an owner, officer, director, or shareholder of a corporation, has gone out of business, or goes out of business at any time in the future, having a delinquency in payment of contributions to the Pension Fund, or leaves such corporation at a time when it has a delinquency in the payment of contributions to the Pension Fund, then such individual will not be eligible for any additional increase in the monthly benefit factor applicable to his Pension Credits until such time as the delinquency is paid in full, together with liquidated damages, accrued interest on such delinquency, and any costs and attorney's

fees incurred as a result of the delinquency. If this delinquency is paid in full, then the benefit factor shall be reinstated at the level in effect at the applicable time as determined in accordance with paragraph (1) above.

- (3) For purposes of this subsection (f), the term “Qualifying Signatory Employer” shall refer to an individual who leaves Covered Employment (or leaves a position as a Qualifying Non-Covered Employee) and becomes an Owner of a sheet metal company, which company signs a Written Agreement providing for contributions to the Pension Fund with Local Union No. 312 of the Sheet Metal Workers International Association within 60 days after leaving Covered Employment (or, if applicable, within 60 days after leaving a position as a Qualifying Non-Covered Employee).
  - (4) For purposes of this subsection (f), the term “Qualifying Non-Covered Employee” shall refer to an individual who leaves Covered Employment (or leaves a position as a Qualifying Signatory Employer) for the purpose of becoming an employee of the same or different signatory Contributing Employer, and who performs non-covered work for such Contributing Employer within 60 days after leaving Covered Employment (or, if applicable, within 60 days after leaving a position as a Qualifying Signatory Employer).
- (g) Notwithstanding the foregoing, on or after January 1, 1985 an Employee shall avoid a Separation from Covered Employment if his failure to earn Pension Credit or Vesting Service is due to full-time employment as an International Representative of the Sheet Metal Workers’ International Association. Full-time employment as an International Representative of the Sheet Metal Workers’ International Association is to be determined to the satisfaction of the Board of Trustees. An Employee claiming a grace period for any such period of employment must present such evidence, in writing, as the Board of Trustees may determine in its sole discretion.

Section 17. Basic Pension. A Participant who is retired shall be entitled to a Basic Pension if he is not eligible for a Regular, Early Retirement or Disability Pension under this Pension Plan; and:

- (a) He had retired before November 1, 1964 and was at least 65 years of age on the date of his retirement;
- (b) At the time of such retirement he had at least 15 years of service of the type for which Pension Credit is provided to Participants under Article VI; and
- (c) He presents evidence of his retirement in the form of a federal Social Security award.

Section 18. Amount of Basic Pension. Effective September 1, 1995, the amount of the Basic Pension shall be \$500.00 per calendar month.

## **ARTICLE III-A. PRO RATA PENSIONS**

Section 1. Purpose. Pro Rata Pensions are provided under this Plan for Employees who would otherwise be ineligible for a pension because their years of employment have been divided between employment creditable under this Plan and employment creditable under another pension plan or whose pensions would otherwise be in less than the full amount because of such division of employment.

Section 2. Related Plans. By resolution duly adopted, the Board of Trustees may recognize another pension plan as a Related Plan.

Section 3. Related Hours. The term “Related Hours” means hours of employment which are creditable under a Related Plan.

Section 4. Related Credit. The term “Related Credit” means years of service, or portions thereof, creditable to an Employee under a Related Plan.

Section 5. Combined Pension Credit. The term “Combined Pension Credit” means the total of an Employee’s Related Credit plus the Pension Credit accumulated under the Utah Sheet Metal Pension Trust (hereinafter referred to as “Utah Pension Credit”).

Section 6. Contributory Credit. The term “Contributory Credit” means Related Credit or Utah Pension Credit which results from Related Hours for which contributions were made or required to be made to a Related Plan or the Utah Sheet Metal Pension Trust.

Section 7. Non-Duplication of Credits. An Employee shall not receive double credit for the same period of employment. No more than one year of Pension Credit or Related Credit shall be given for all employment in any given calendar year.

Section 8. Eligibility for a Pro Rata Pension

- (a) An Employee who is retired in accordance with Section 8 of Article VIII shall be eligible for a Pro Rata Pension if he meets the following requirements:
  - (1) He would be eligible for a Regular, Disability, Early Retirement or Vested Pension under this Plan were his Combined Pension Credits treated as Utah Pension Credit.
  - (2) He has accumulated at least two quarters of Future Service Credit with this Plan.

- (b) Related Hours shall be considered in determining whether an Employee has failed to earn one quarter of Pension Credit in a period of two consecutive Plan Years, as required by Section 4 of Article VI in order to prevent the cancellation of accumulated Pension Credits.

Section 9. Amount of the Pro Rata Pension. The amount of the Pro Rata Pension is determined by multiplying the monthly benefit factor payable with respect to the Regular Pension by the number of years (plus any fractions thereof) of Utah Pension Credit. The benefit amount so obtained is adjusted in accordance with Section 5 of Article III if the Employee is qualified for a Pro Rata Early Retirement Pension.

Section 10. Payment

- (a) Payment of a Pro Rata Pension shall be subject to all of the conditions applicable to the other types of pensions under this Plan.
- (b) In order to permit a Pensioner receiving a Pro Rata Pension to receive his aggregate benefits on one monthly pension check, the Board of Trustees may authorize the trustees of a Related Plan to pay a Pro Rata Pension as agent for the Board of Trustees of this Plan if the Pensioner's most recent Contributory Credit was earned in the jurisdiction of the Related Plan. The Trustees of this Plan may also act as agent for the trustees of a Related Plan in paying pensions for which the Related Plan is obligated to Pensioners under this Plan, if the Pensioner's most recent Contributory Credit was earned in this jurisdiction of this Plan.

## **ARTICLE III-B. RECIPROCAL PENSIONS**

### Section 1. Reciprocal Pensions.

- (a) Purpose - Reciprocal Pensions are provided under this Plan for employees who would otherwise lack sufficient service credit to be eligible for any pension because their years of employment were divided between Pension Plans or, if eligible, whose pensions would be less because of such division of employment.
- (b) Home Fund - The Trustees recognize as the Home Fund that Fund which has executed the International Reciprocal Agreement for Sheet Metal Workers' Pension Funds and which was established in part by the local union in which an Employee holds or has applied for membership or by which an Employee was first represented.

The designation of a Home Fund may be changed:

- (1) By a member if he transfers his membership to another local union which participates in a signatory Fund by giving a notice both to his former and new Home Funds.
  - (2) By any other Employee if he has earned at least one pension credit in the jurisdiction of a local union which participates in a signatory Fund by giving notice to his former and new Home Funds.
- (c) Related Plans - The Trustees recognize one or more other Plans of Pension Funds which have executed the International Reciprocal Agreement for Sheet Metal Workers' Pension Funds and which have adopted Exhibit A of such Reciprocal Agreement as a Related Plan.
  - (d) Related Pension Credits - Related Pension Credits earned under a Related Plan shall be determined in accordance with the rules and regulations of the Related Pension Plan. Such Related Pension Credit, including Pension Credit earned before the effective date of this Agreement, to the extent creditable under a Related Plan shall be recognized as Related Pension Credits. The Trustees of the Related Plan shall certify to this Plan the amount of such Related Pension Credits which have been earned and credited under the Related Plan.

- (e) Combined Pension Credit - The total of any Employee's Pension Credit under this Plan and Related Pension Credit together comprises the employee's Combined Pension Credit. Not more than one year of Combined Pension Credit shall be counted in any Plan Year.

It is not the intent of the Reciprocal Agreement to grant duplicate pension credit under two or more Related Plans for the same period of covered employment. Therefore, an exception to the definition of Related Pension Credits shall be made in the case of pension credits earned simultaneously for covered employment in a local union jurisdiction for which contributions are made to both a signatory Local Pension Fund and the Sheet Metal Workers' National Pension Fund. In such case, such service shall not be considered to be Related Pension Credits between the Plan of the signatory Local Union Pension Fund and the Plan of the Sheet Metal Workers' National Pension Fund.

- (f) Eligibility - An Employee shall be eligible for a pro rata pension under this Plan if he satisfies all of the following requirements:

- (1) He would be eligible for any type of pension under this Plan (other than a pro rata or reciprocal pension) if his Combined Pension Credit were treated as pension credit under this Plan; and
- (2) In addition to any other requirements necessary to be eligible under (1) above, he has, under this Plan, at least one year of pension credit based on hours of employment for which contributions were payable to this Fund.
- (3) He is found to be eligible for a reciprocal pension from this Plan and at least one Related Plan.

- (g) Breaks in Service - In applying the rules of this Plan with respect to cancellation of service credit, any period in which an employee has earned Related Pension Credit shall not be counted in determining whether there has been a period of no covered employment sufficient to constitute a break in service.

- (h) Non-Duplication - In order to receive a reciprocal pension from this Plan an employee must waive his right to receive any other pension under this Plan.
- (i) Reciprocal Pension Amount - The amount of the reciprocal pension payable by each signatory Plan under which an Employee qualifies for a pension shall be based on the years of Pension Credit he earned under that Plan and the benefit levels in effect under each such Plan.
- (j) Payment of Reciprocal Pensions - The payment of a reciprocal pension shall be subject to all of the conditions contained in this Plan applicable to all other types of pensions, including, but not limited to, retirement as herein defined and timely application. Reciprocal pension payments subject to this Article shall be limited to monthly pension payments to a pensioner or to monthly payments to the survivor of a pensioner.
- (k) Applies to Pension Benefits Only - This Article applies to pension benefits only. It shall not apply to death benefits, termination benefits or any variation thereof.
- (l) Limited Transfer of Contributions - Except as provided in this Section, no contributions shall be transferred between Funds that are signatory only to Exhibit A. However, if an Employee whose Home Fund is signatory to Part A only or both Part A and Part B works in the jurisdiction of a Fund signatory only to Exhibit A and earns less than one year of pension credit in said Fund, then all contributions made on his behalf to said Fund shall be transferred to his Home Fund within a reasonable period of time after he has returned to his Home Fund. Such transfer shall only be made if authorized by the Employee in writing on a form provided for that purpose.

Section 2. Transfer of Contributions.

- (a) Purpose - A pension is provided under this Plan for employees who would otherwise lack sufficient pension credit to be eligible for any pension because their years of employment were divided between Pension Plans or, if eligible, whose pension would be less because of such division of employment.
- (b) Home Fund - The Trustees recognize as the Home Fund that Fund which has executed the International Reciprocal Agreement for Sheet Metal Workers' Pension Funds and which has

adopted Exhibit B of such Reciprocal Agreement and which was established in part by the local union in which an Employee holds or has applied for membership or by which an Employee was first represented.

The designation of a Home Pension Plan may be changed:

- (1) By a member if he transfers his membership to another local union which participates in a signatory Fund by giving a notice both to his former and new Home Funds.
- (2) By any other Employee if he has earned at least one pension credit in the jurisdiction of a local union which participates in a signatory Fund by giving notice to his former and new Home Funds.

At the request of a member or employee designating a new Home Fund, a lump sum transfer from the former Home Fund to the new Home Fund may be made, provided the terms and conditions of such a transfer are agreed to by the Trustees of both such Funds. If such a transfer is not made, then the two Funds will provide for reciprocity under Section 1 of this Article III-B.

- (c) Cooperating Pension Fund - By resolution duly adopted, the Trustees recognize all other Pension Funds which have executed the International Reciprocal Agreement for Sheet Metal Workers' Pension Funds and which have adopted Exhibit B of such Reciprocal Agreement as a Cooperating Pension Fund.
- (d) Transfer of Contributions - Each Cooperating Fund shall collect and forward contributions to a travelling Employee's Home Fund, at least quarterly, in accordance with the following:
  - (1) All contributions required to be paid into this Fund on behalf of any travelling Employee working within its territorial jurisdiction unless it is determined that the credit given by the Home Fund of said Employee does not reflect the difference, if any, by which the contribution rate of this Fund is greater than the contribution rate in the Home Fund. If such a determination is made this Fund shall forward to the Home Fund an amount based on the lesser of the contribution rate of this Fund or the Home Fund.

- (2) Contributions shall only be forwarded to the Employee's Home Fund if the transfer is authorized by the Employee in writing on a form provided for that purpose.
- (3) The Cooperating Fund shall at the same time forward to the Home Fund the travelling employee's employment records. In making such transfers of contributions, the Cooperating Fund will act solely as the agent of the Home Fund and Employee will continue to remain subject to the rules of eligibility of such Home Fund.

For purposes of this section, in the event the local union in which an Employee holds or has applied for membership, or which first represented such Employee, participates solely in a Local Pension Plan and the Employee works in a jurisdiction of a local union that participates both in a Local Pension Plan and the Sheet Metal Workers' National Pension Plan, then the Local Pension Plan in whose jurisdiction he is working shall transfer to the member's Home Fund the lesser of the contribution rate in effect in the Home Fund or the Local Pension Fund in whose jurisdiction he is working. In the event that the Local Pension Fund in whose jurisdiction he is working has a higher contribution rate than his Home Fund, then the difference shall be transferred to the Sheet Metal Workers' National Pension Fund.

For purposes of this section, in the event the local union in which an employee holds or has applied for membership, or which first represented such employee, participates in both a Local Pension Plan and the Sheet Metal Workers' National Pension Plan, and the member works in another local union jurisdiction which participates both in a Local Pension Plan and the Sheet Metal Workers' National Pension Plan, then the Local Pension Plan in whose jurisdiction he is working shall transfer to the Home Local Pension Plan the lesser of the contribution rate in effect in the Home Local Pension Plan or the Local Pension Plan in whose jurisdiction he is working. In the event the contribution rate in effect in the Home Local Pension Plan is less than the contribution rate of the Local Pension Fund in whose jurisdiction he is working, then the difference shall be transferred to the Sheet Metal Workers' National Pension Plan.

- (e) Eligibility - In determining whether an employee is eligible to receive benefits under the Home Fund, credit shall be given for time worked under any Cooperating Fund from which contributions have been received to be credited on his behalf. For the purpose of any break in service rule, any time worked in a Cooperating Fund area shall be counted as if the employee worked in the Home Fund provided contributions for such time worked are transferred.
- (f) Amount of Pension - In computing the amount of the benefits payable under the Home Fund, credit shall be given for contributions forwarded to said Fund by Cooperating Funds as well as those contributions received by the Home Fund directly.
- (g) Payment of Pension - The payment of the pension shall be subject to the provisions of the Home Fund's Plan rules and regulations.

## **ARTICLE IV. HUSBAND-AND-WIFE PENSION**

### Section 1. Effective Date.

- (a) The provisions of this Article apply only to pensions where the entitlement to benefit payment commences on or after November 1, 1976.
- (b) The provisions of this Article shall not apply if the Participant incurred a Break in Service before November 1, 1976, unless it was subsequently cured by a return to Covered Employment for sufficient time to accrue at least a minimum Pension Credit under Section 2(b) of Article VI.

Section 2. Amount of Husband-and-Wife Pension. The monthly amount to be paid to the eligible surviving Spouse is one-half of the monthly amount received by the Pensioner at the time of his death, or, if applicable, one-half of the amount that would have been paid to the Active Participant or Vested Participant under this Article, had his pension been effective on the day before he died, as if the Husband-and-Wife Pension had been in effect on such date.

The monthly amount of the Husband-and-Wife Pension, once it has become payable, shall not be increased if the Spouse is subsequently divorced from the Pensioner or if the Spouse predeceases the Pensioner, provided that, the monthly amount of a Husband-and-Wife Pension which first becomes effective on or after November 1, 1998, once it has become payable, shall, if the Spouse predeceases the Pension, be increased to the amount that would have been payable to such Pensioner if his pension had been paid in the form of a life annuity (including the 60-payment guarantee described in Article V, Section 1(b)). Such increased pension shall be effective with the month following the month in which the Spouse's death occurs, provided the Pensioner files with the Administrative Office a certified copy of the Spouse's Death Certificate within twelve (12) months of the date of the spouse's death. If the Death Certificate is filed with the Administrative office more than twelve (12) months following the Spouse's date of death, the increased pension shall be effective with the month following the month in which the Death Certificate is received by the Administrative Office.

Section 3. Upon Retirement.

- (a) A pension shall be paid in the form of a Husband-and-Wife Pension to a married Participant and his Spouse unless the Participant and his Spouse have filed with the Trustees in writing a timely rejection of that form of pension, subject to all the conditions of this Article.
- (b) Subject to Section 7 of this Article, a married Participant and his Spouse may reject the Husband-and-Wife Pension (or revoke a previous rejection) at any time during the period not more than 90 days prior to the Participant's Annuity Starting Date or less than 30 days after they are provided a detailed explanation of the amount payable under the normal form of payment and a financial comparison of the other payment options. A Participant shall in any event have the right to exercise this choice up to 90 days after he has been advised by the Trustees of the effect of such choice on his pension. A Participant may reject the Husband-and-Wife Pension or revoke a previous rejection any number of times within the election period.

Section 4. Before Retirement. If a married Vested Participant dies before his Annuity Starting Date, his surviving Spouse shall be eligible for a Husband-and-Wife Pension.

- (a) Subject to subsections (b) and (d) below, the surviving Spouse of a Participant who dies before the Participant's Annuity Starting Date may apply for and receive the pre-retirement Husband-and-Wife Pension to which he or she is entitled on or after the earliest date the Participant would have been eligible to receive benefits, had he survived.
- (b) Payment of the pre-retirement Husband-and-Wife Pension must begin no later than December 1 of the calendar year in which the Participant would have reached 70½ or, if later, December 1 of the calendar year following the year of the Participant's death. If the Trustees confirm the identity and whereabouts of a surviving legal Spouse who has not applied for benefits by that time, payments to that surviving legal Spouse in the form of a single life annuity (subject to the provisions of Article VIII, Section 7 on small benefit cashouts) shall begin as of that date.
- (c) If a surviving legal Spouse dies before the Annuity Starting Date of the pre-retirement Husband-and-Wife Pension, that benefit shall be forfeited and there shall be no payments to any other party.

- (d) The monthly amount payable to the surviving legal Spouse shall be determined as follows:
- (1) After Age 55. If the Participant's death occurs after his attainment of age 55, the surviving Spouse shall be entitled to a pre-retirement Husband-and-Wife Pension in an amount calculated as if the Participant had retired on the day before his death. Payments to the surviving Spouse shall commence with the month following the month in which the Participant's death occurs.
  - (2) Prior to Age 55. If the Participant's death occurs prior to his attainment of age 55, the surviving Spouse shall be entitled to a pre-retirement Husband-and-Wife Pension commencing with the month following the month in which the Participant would have attained age 55 had he lived. The amount of the pre-retirement Husband-and-Wife Pension shall be calculated as if the Participant had left Covered Employment on the earlier of the date he last worked in Covered Employment or the date of death, retired on a Husband-and-Wife Pension upon reaching age 55 and died on the last day of the month in which age 55 was reached.

Section 5. Retirement Before Age 55. If the Annuity Starting Date of a married Active Participant's Disability Pension occurs before he attains age 55, payment shall be made in the form of a Husband-and-Wife Pension, unless the individual and his Spouse have rejected such form of payment in writing in a rejection filed with the Trustees before the first pension payment has been made to him.

The Husband-and-Wife Pension shall provide payment to the surviving Spouse, if any, starting on the later of (a) the first of the month following the death of the Participant or (b) the first of the month following the date when the Participant would have attained age 55 had he lived.

Section 6. Adjustment of Pension Amount. Effective on or after November 1, 1998, when a Husband-and-Wife Pension becomes effective, the amount of the Active Participant's or Vested Participant's monthly pension shall be reduced in accordance with the following:

- (a) Non-Disability Pensions. If payment of a pension, other than a Disability Pension, is to be made in the form of a Husband-and-Wife Pension, the pension amount shall be adjusted by multiplying it

by the following percentage: 90% minus .4 percentage points for each year the Spouse's age is less than the Participant's age or plus .4 percentage points for each year the Spouse's age is greater than the Participant's age; provided, however, that in no event shall the resulting percentage be greater than 100%.

- (b) Disability Pensions. If payment of a Disability Pension is to be made in the form of a Husband-and-Wife Pension, the pension amount shall be adjusted by multiplying it by the following percentage: 82% minus .4 percentage points for each year the Spouse's age is less than the Participant's age or plus .4 percentage points for each year the Spouse's age is greater than the Participant's age.

If the Participant is younger than age 55 on the Annuity Starting Date of his Disability Pension, an additional .5 percentage points for each year the Participant is younger than age 55 shall be added to the percentage determined above. In no event shall the resulting percentage be greater than 100%.

Section 7. Additional Conditions. A Husband-and-Wife Pension shall not be effective under any of the following circumstances:

- (a) The Participant and Spouse were not recognized under Utah laws as lawfully married to each other on the Annuity Starting Date of the Participant's pension.
- (b) The Participant and Spouse were lawfully married to each other for less than a year before he died.
- (c) The Spouse died before the Participant's Annuity Starting Date or before his death, if he died before a pension was payable to him.
- (d) The marriage of the Participant and the Spouse was legally dissolved before the Participant's Annuity Starting Date or before his death, if he died before a pension was payable to him.
- (e) The Trustees shall be entitled to rely on the written representation last filed by the Participant before his pension payments commenced as to whether he is married. If such representation later proves to be false, the Trustees may adjust for any excess benefits paid as a result of the misrepresentation. Any payment made in good faith pursuant to the statements contained in an

election application for pension shall discharge all the obligations of the Board of Trustees to the extent of such payments. A person claiming to be the Spouse of a Pensioner or Participant, which relationship is not reflected in the records of the Fund or which is denied by the Pensioner or the Participant, is entitled to a hearing on the issue as provided in Section 4 of Article VIII.

The Trustees shall recoup, offset or recover from any sum due to the Pensioner or Participant the amount of any payments made in reliance on false statements including any legal expenses incurred for such recovery.

- (f) Any written election, rejection or revocation (including any change of a previous choice) made under Article IV, shall not take effect unless (1) the Spouse of the Participant consents in writing to such election, (2) such election designates a beneficiary (or a form of benefits) which may not be changed without spousal consent (or the consent of the Spouse expressly permits designations by the Participant without any requirement of further consent by the Spouse), and (3) the Spouse's consent acknowledges the effect of such election and is witnessed by a plan representative or a notary public. Notwithstanding the preceding sentence, no spousal consent shall be required if it is established to the satisfaction of the Trustees that spousal consent may not be obtained because there is no Spouse, because the Spouse cannot be located, or because of such other circumstances as the Internal Revenue Service may by regulations prescribe.
- (g) Except as provided in Subsection 3(b) of this Article, election or revocation may not be made or altered after payment of the pension has commenced. An election cannot be made or changed after the pension has commenced even if at the time of the commencement of the pension the Pensioner was not married and he subsequently marries or, if married, the marriage is later dissolved.

## ARTICLE V. DEATH BENEFIT

### Section 1. Eligibility for and Amount of Death Benefit

- (a) Death Before Retirement. In the event a Participant dies before a pension is payable to him, a lump-sum payment equal to the contributions paid on that Participant's behalf will be paid to the Participant's designated Beneficiary, or the person or persons selected in accordance with Section 3 of this Article, provided the Participant has as a result of work in Covered Employment, earned at least six twelfths of Future Service Credit in the two consecutive Plan-Year periods prior to the Plan Year in which he died.

Benefits provided by this Subsection (a) shall not be payable if payments were due under the Husband-and-Wife Pension unless the surviving Spouse elects within 90 days after being given written notice from the Plan, to receive these benefits instead of the Husband-and-Wife Pension. If the surviving Spouse elects to receive this lump-sum death benefit instead of the Husband-and-Wife Pension and the actuarial present value of the Husband-and-Wife Pension is greater than the amount of the lump-sum death benefit, then the actuarial present value of the Husband-and-Wife Pension shall be paid to the surviving Spouse in one lump-sum payment. The Actuarial present value of the Husband-and-Wife Pension shall be determined on the basis of the Applicable Interest Rate, as defined in Article I, Section 3, and the Applicable Mortality Table, as defined in Article I, Section 4.

If a Participant, on or after November 1, 1986, performed employment in the Sheet Metal Industry that is not covered by a Written Agreement between the Union and the employer, no Death Before Retirement benefit shall be payable under this Section 1(a). The preceding sentence shall not apply on or after November 1, 1998 if the Active Participant has earned one quarter of Future Service Credit, subsequent to the prohibited employment, for each calendar quarter in which he worked one or more hours in such prohibited employment.

(b) Death After Retirement. If a Pensioner dies before receiving a total of 60 monthly pension payments from the Fund, his monthly pension payments shall be continued until a total of 60 such payments have been made to such Pensioner and his designated Beneficiary or the person or persons selected in accordance with Section 3 of this Article and shall thereupon cease.

If payments are due under the Husband-and-Wife Pension or the Joint-and-Survivor Option, no benefit shall be provided by this Subsection (b).

Section 2. Designation of Beneficiary. When a Husband-and-Wife Pension is not in effect, a Participant may designate a Beneficiary to receive any benefits provided under this Article by filing such designation at the Fund Office on a form prescribed by the Board of Trustees.

A Participant who is unmarried shall have the right to change his designation of Beneficiary without the consent of the Beneficiary, but no such change shall be effective or binding on the Board unless it is received by the Board prior to the time any payment is made to the Beneficiary whose designation is on file at the Fund Office.

If the Participant is married at the time he desires to change his Beneficiary, unless such change is to designate his Spouse, no change shall be effective or binding on the Board unless such change is approved by the Spouse and in no event shall it be effective or binding on the Board unless it is received by the Board prior to the time any payment is made to the Beneficiary whose designation is on file at the Fund Office.

Section 3. Failure to Designate Beneficiary or Death of Beneficiary. If no Beneficiary is designated by a Participant who is not subject to the Husband-and-Wife Pension, or if a designated Beneficiary predeceases the Participant or survives him but dies prior to receipt of any benefits under this Article, the benefits provided under this Article shall be paid to the surviving Spouse or, if none, such payments may be made to any other person who is an object of natural bounty of the Participant or to his estate, as the Board of Trustees in its sole discretion may designate. Any such payment shall, to the extent thereof, be a complete discharge of all liability under the Plan with respect thereto.

Section 4. Benefit Limitations. Notwithstanding any other provisions of the Plan, all benefits shall comply with the following:

- (a) If the distribution of the Participant's entire interest is not made in a lump sum, the distribution shall be made:
  - (1) over the life of the Participant; or
  - (2) over the lives of the Participant and designated beneficiary; or
  - (3) over a period certain not extending beyond the life expectancy of the Participant or the life expectancy of the Participant and a designated beneficiary.
- (b) If distribution of the Participant's benefits commenced in accordance with the Regulations before the Participant's death, the remaining interest shall be distributed at least as rapidly as under the method used as of the date of the Participant's death.
- (c) If the Participant dies before his benefits commenced in accordance with the Regulations, the method of distribution must satisfy the following requirements:
  - (1) any remaining portion of the Participant's interest that is not payable to a beneficiary designated by the Participant shall be distributed within five years after the Participant's death; and
  - (2) any portion of the Participant's interest that is payable to a beneficiary designated by the Participant shall be distributed either (i) within five years after the Participant's death, or (ii) over the life of the beneficiary or over a period certain not extending beyond the life expectancy of the beneficiary commencing not later than the end of the calendar year following the calendar year in which the Participant died (or, if the designated beneficiary is the Participant's surviving Spouse, commencing not later than the end of the calendar year following the calendar year in which the Participant would have attained age 70½).
- (d) All survivor benefits shall comply with the limits of Internal Revenue Code §401(a)(9) and the incidental benefit rule and the regulations prescribed under them, including proposed Treas. Reg. §§1.401(a)(9)-1 and 1.401(a)(9)-2.

## ARTICLE VI. PENSION CREDIT AND YEARS OF VESTING SERVICE

### Section 1. Years of Pension Credit for Periods Prior to November 1, 1964 (Past Service Credit).

- (a) A Participant shall be entitled to Past Service Credit for each Plan Year or portion thereof he was regularly employed prior to November 1, 1964 in one or more classifications included in the Written Agreements in the geographical territory to which the Written Agreements are applicable. A Participant shall be entitled to a full year of such credit for each Plan Year in which he was so employed for 1,600 hours or more. If a Participant was so employed for less than 1,600 hours but for at least 400 hours in any Plan Year, he shall receive one-quarter of a year's credit for each 400 hours of such employment. Provided, however, that in order to be granted Past Service Credit hereunder, a Participant must earn at least one quarter of Future Service Credit prior to November 1, 1966. Such Future Service Credit requirement may be waived for the purpose of establishing a Participant's eligibility for a Basic Pension as provided in Article III, Section 17.

Exception: An Apprentice who performs work of the type covered by the Written Agreement shall receive Past Service Credit in accordance with the schedule set forth in the preceding paragraph for all periods prior to May 1, 1981.

- (b) It is recognized that for the periods prior to November 1, 1964, it may be difficult to establish with certainty the Past Service of a Participant in the type of employment referred to in (a) above. In making the necessary determinations as to the Past Service Credit, the Board of Trustees may, at its absolute discretion, consider and rely upon such relevant and material evidence, including without limitation, any or all of the following:
- (1) A statement from the Administrator of the Utah Sheet Metal Welfare Fund certifying to the receipt of employer reports with respect to hours worked by the Participant for an employer and stating the number of hours reported for the period covered by the statement.
  - (2) A statement from an employer certifying that the Participant performed work for such employer entitling him to Past Service Credit during such period if such employer was

known or reputed to be operating in the Sheet Metal Industry in the geographical territory to the which the Written Agreement is applicable during such period.

- (3) A statement from the Secretary or other authorized officer of the Union certifying that the Participant was a member in good standing in such Union during such period.
- (4) A W-2 form or check stub furnished for work performed during the period for any employer known or reputed to have been operating in the Sheet Metal Industry in the geographical territory to which the Written Agreement is applicable during such period.
- (5) A statement from the Social Security Administration to the effect that according to its records, the Participant was employed during the period by a named employer, which employer was known or reputed to be operating in the Sheet Metal Industry in the geographical territory to which the Written Agreement is applicable during such period.

Section 2. Credit for Periods on and After November 1, 1964 (Future Service Credit).

- (a) Between November 1, 1964 and October 31, 1967, an Active Participant shall receive Future Service Credit, as herein specified, for each Plan Year during which he works in Covered Employment for 1,600 hours or more. If he works less than 1,600 hours in a Plan Year in Covered Employment, an Active Participant shall receive Pension Credit in quarter-year units according to the following schedule:

<u>Hours Worked in Plan Year</u>	<u>Pension Credit</u>
Less than 400 Hours	None
400 to 799	One Quarter
800 to 1,199	Two Quarters
1,200 to 1,599	Three Quarters

- (b) On and after November 1, 1967, an Active Participant shall receive Future Service Credit in accordance with the following schedule:

<u>Hours Worked in Plan Year</u>	<u>Pension Credit</u>
Less than 390 Hours	None
390 to 519	3/12
520 to 649	4/12
650 to 779	5/12
780 to 909	6/12
910 to 1,039	7/12
1,040 to 1,169	8/12
1,170 to 1,299	9/12
1,300 to 1,429	10/12
1,430 to 1,559	11/12
1,560 and Over	One Year

If an Active Participant earns a Year of Vesting Service in a Plan Year after November 1, 1976 but less than 390 hours of work in Covered Employment, he shall, for the purpose of computing his pension amount only, be credited with a prorated portion of a full Pension Credit in the ratio which his hours of work bear to 2,000.

- (c) If an Active Participant's hours in two consecutive Plan Years equals or exceeds 3,120, the Participant will receive two Future Service Credits based on an averaging of the hours over the two-Plan Year period.
- (d) On and after November 1, 1999, an Active Participant who has at least 1,690 hours of Covered Employment in a Plan Year may receive 13/12ths of a Pension Credit for that Plan Year. An Active Participant is only eligible for 13/12ths of a Pension Credit for a Plan Year in which no hours were used for the two-year averaging under Section 2(c) of this Article.
- (e) For those individuals resuming employment in Covered Employment on or after December 12, 1994, following a period of Qualified Military Service, Future Service Credit shall be granted for the period of Qualified Military Service on the basis of the individual's average weekly hours earned under this Plan during the twelve month period immediately preceding the period of Qualified Military Service (or, if shorter, the period of employment immediately preceding the period of Qualified Military Service). Future Service Credit will be pro-rated based on 40 hours if the period of Qualified Military Service is less than a full week. The contributions required to pay for Future

Service Credit granted for periods of Qualified Military Service will be allocated from general assets of the Fund, and no individual Employer will be liable to make contributions for such Credit.

Section 3. Years of Vesting Service.

- (a) An Active Participant shall be credited with one year of Vesting Service for each Plan Year following November 1, 1964 (including periods before he became a Participant), in which he completes at least 1,000 Hours of Service in Covered Employment.

For those individuals resuming employment in Covered Employment on or after December 12, 1994, following a period of Qualified Military Service, Vesting Service Credit shall be granted for the period of Qualified Military Service on the basis of the individual's average weekly hours earned under this Plan during the twelve month period immediately preceding the period of Qualified Military Service (or, if shorter, the period of employment immediately preceding the period of Qualified Military Service). Vesting Service Credit will be prorated based on 40 hours if the period of Qualified Military Service is less than a full week.

- (b) If a Participant works for the Employer or an affiliate of the Employer in a job not covered by this Plan and work immediately precedes or follows his employment in such non-covered job after October 31, 1976, while he continues as an Employee of the Employer, his employment shall be counted toward a year of Vesting Service.

- (c) Exceptions. No Participant shall be entitled to credit toward a year of Vesting Service for the following periods:

(1) Years preceding a Break in Covered Employment in accordance with the rules of the Pension Plan as in effect prior to November 1, 1976.

(2) Years preceding a Break in Covered Employment as defined in Section 4 of this Article.

Section 4. Breaks in Covered Employment and Cancellation of Pension Credit and Vesting Service. The Break in Covered Employment rules do not apply to a Pensioner or to a Vested Participant.

- (a) One-Year Break in Covered Employment after November 1, 1976.

- (1) An Active Participant has a One-Year Break in Covered Employment in any Plan Year after October 31, 1976 in which he fails to complete 390 Hours of Service.
- (2) Time of employment with a Contributing Employer in noncovered employment after October 31, 1976, if creditable under Section 3(b) of this Article, shall be counted as if it were Covered Employment in determining whether a Break in Covered Employment has been incurred.
- (3) If an Employee enters active service of the Armed Forces of the United States, his period of service in the Armed Forces shall not be counted as a Break in Covered Employment for up to five years of such service prior to August 1, 1961 and for up to five years thereafter.
- (4) Parental Leave. For Plan Years beginning on or after November 1, 1987, Hours of Service used to determine whether a One-Year Break in Covered Employment has been incurred shall include hours during which a Participant was absent from Covered Employment on account of parental leave, up to a maximum of 390 such hours in the Plan Year of such absence. If the Participant already has 390 or more hours during such Plan Year, the hours shall be credited to the immediately following Plan Year. For purposes of this paragraph (4), a Participant shall be deemed to be on parental leave if the Participant is absent from work by reason of the pregnancy of the Participant, by reason of the birth of a child of the Participant, by reason of the placement of a child in connection with the adoption of the child by the Participant, or for purposes of caring for the child of the Participant, during the period immediately following the birth or placement for adoption, including time involved for a trial period prior to adoption.
- (5) Salted Employment. For Plan Years beginning on or after November 1, 1976, Hours of Service used to determine whether a One-Year Break in Covered Employment has been incurred shall include hours during which a Participant was absent from Covered Employment on account of being a Salted organizer, up to a maximum of 390 such in the Plan Year of such absence. For purposes of this paragraph (5), a Participant shall be deemed to be bona fide Salted organizer as certified in writing to the Fund by the Sheet Metal International Association.

(6) A One-Year Break in Covered Employment shall be cured and its effects eliminated if, before he incurs a Permanent Break in Covered Employment, the individual subsequently earns a year of Vesting Service (1,000 hours in a Plan Year). If a One-Year Break in Covered Employment is cured, it has the effect of:

(A) Restoring the individual's status as a Participant under Article II; and

(B) Restoring the individual's previously earned years of Pension

Credit and years of Vesting Service;

provided, however, nothing in this paragraph (6) shall alter the effect of a Permanent Break in Covered Employment as specified in Subsections (b), (c) and (d) below.

(7) Qualified Signatory Employers. For Plan Years beginning on or after November 1, 1976, Hours of Service used to determine whether a One-Year Break in Covered Employment has been incurred shall include hours during which a Participant was absent from Covered Employment on account of being a Qualified Signatory Employer as defined in Article III, Section 16(f)(3).

(b) Permanent Break in Covered Employment after November 1, 1976.

(1) Between November 1, 1976 and October 31, 1987. An Active Participant has a Permanent Break in Covered Employment if he has at least two consecutive One-Year Breaks in Covered Employment and the number of such consecutive One-Year Breaks equals or exceeds the number of years of Vesting Service which he had previously accumulated.

(2) On and after November 1, 1987. Beginning November 1, 1987, an Active Participant has a Break in Covered Employment if he has at least five consecutive One-Year Breaks and the number of such consecutive One-Year Breaks equals or exceeds the number of years of Vesting Service which he had previously accumulated.

(c) Permanent Break in Covered Employment before November 1, 1976. Between November 1, 1964 and November 1, 1976, an Employee shall have incurred a Permanent Break in Service and his

previously accumulated Pension Credit and accrued benefits cancelled if he failed to earn at least one-quarter of Future Service Credit in two consecutive Plan Years.

A Participant may be allowed grace periods under the following circumstances if he failed to earn at least one-quarter of Future Service Credit in any period of two consecutive Plan Years prior to November 1, 1976 because he:

- (1) Is disabled and unable to work in Covered Employment but not to exceed two consecutive years.
- (2) Is in any of the Armed Forces of the United States in time of war or national emergency, provided the Participant makes himself available for Covered Employment within 90 days after release from active duty or within 90 days after recovery from a disability continuing after his release from active duty for the period during which he has employment rights with a Contributing Employer pursuant to federal law.
- (3) Is employed by an Employer signatory to a Written Agreement with the Union which does not require contributions to this Fund.
- (4) Is a Salted organizer and absent from Covered Employment. For purposes of this paragraph (4), a Participant shall be deemed to be a bona fide Salted organizer as certified in writing to the Fund by the Sheet Metal International Association.

These grace periods are not intended to add to the Pension Credit of the Participant. Rather, they are periods which are to be disregarded in determining whether there has been a period of two consecutive Plan Years during which the Participant has failed to earn at least one quarter of Pension Credit.

The Board of Trustees, in its sole and absolute judgment, shall determine disability. A Participant claiming disability, must give written notice to the Board of such disability and submit to such examination as the Board may determine in its sole discretion. A Participant shall not be granted any such grace period for more than one year prior to his filing the written notice required by this Section, unless the Board finds there are extenuating circumstances

which prevented a timely filing. In order to secure a grace period for periods of service in any of the Armed Forces of the United States, the Participant must give written notice to the Board of his availability for Covered Employment and must furnish, in writing, such information and proof concerning such service as the Board may, in its sole discretion, determine.

(d) Effect of a Permanent Break in Covered Employment. If an Active Participant is not a Vested Participant and has a Permanent Break in Covered Employment:

- (1) His Pension Credit and Vesting Service are cancelled; and
- (2) His status as a Participant is cancelled.

Renewal participation of an individual who experiences a Permanent Break in Covered Employment is subject to the provisions of Article II.

## **ARTICLE VII. OPTIONAL FORM OF PAYMENT**

Section 1. Joint-and-Survivor Option. Instead of the pension otherwise payable to him, a Participant who is not subject to the Husband-and-Wife Pension but who is entitled to a Regular or Early Retirement Pension may elect to receive payment on the basis of a Joint-and-Survivor Option, in accordance with which he will receive a lower monthly amount with 100% or 66 2/3% of that lower monthly amount (whichever the Participant elects) continuing after his death for the lifetime of the Co-annuitant named by him. However, in no event shall the actuarial value of the benefit payable to the Co-annuitant be more than the actuarial value of the reduced benefit payable to the Participant; furthermore, payments to a Co-annuitant may not exceed the limits described in Treasury Regulation §1.401(a)(9)-2. Notwithstanding the foregoing, if a Joint-and-Survivor becomes effective in accordance with this Section on or after November 1, 1998, once the benefit becomes payable, shall, if the Co-Annuitant predeceases the Participant be increased to the amount that would have been payable to such Participant if his pension had been paid in the form of a life annuity (including the 60-payment guarantee described in Article V, Section 1(b)). Such increased pension shall be effective with the month following the month in which the Co-Annuitant's death occurs, provided the Participant files with the Administrative Office a certified copy of the Co-Annuitant's Death Certificate within twelve (12) months of the date of the Co-Annuitant's death. If the Death Certificate is filed with the Administrative office more than twelve (12) months following the Co-Annuitant's date of death, the increased pension shall be effective with the month following the month in which the Death Certificate is received by the Administrative Office.

(a) Election of the Joint-and-Survivor Option shall be subject to the following conditions:

- (1) The option shall take effect with the first pension payment, provided the Participant filed a written notice with the Trustees in a form prescribed by the Trustees at least 24 months before the first month for which a pension benefit will be paid to the Pensioner.
- (2) If the election was filed with the Trustees later but prior to commencement of benefits, the option shall not take effect until 24 months have elapsed after such filing and it shall then be effective with respect to all subsequent months.

Unless and until the option takes effect, the benefit shall be payable in the regular form only as if the option had not been elected and benefit so paid shall not be retroactively adjusted when the option is put into effect.

- (3) The Joint-and-Survivor Option shall take effect only if the Pensioner and his Co-annuitant are both alive on the date when the option is otherwise to take effect.
- (b) Once elected, the Joint-and-Survivor Option may not be revoked except under the following conditions:
- (1) Revocation must be made in writing in a form prescribed by the Trustees and filed with the Trustees before the end of the first calendar month for which a pension benefit will be paid to the Pensioner.
  - (2) Revocation shall not become effective until 24 months after it has been filed and until then any benefits shall be paid in the amount determined under the option without retroactive adjustment of such payments once a revocation takes effect.
  - (3) The option shall be automatically revoked if the Co-annuitant dies before a pension in the optional form has become effective. In such event, the individual may continue the option if, within 90 days of such an event, he makes a choice of another Co-annuitant and communicates it to the Trustees in writing.
- (c) When a Joint-and-Survivor Option becomes effective, the amount of the Participant's monthly pension will be reduced in accordance with the following:
- (1) 100% Joint-and-Survivor Option. If the Joint-and-Survivor Option elected provides for a 100% continuation to the Co-annuitant, the pension amount shall be adjusted by multiplying it by the following percentage: 81% minus .7 percentage points for each year the Co-annuitant's age is less than the Participant's age or plus .7 percentage points for each year the Co-annuitant age is greater than the Participant's age; provided, however, that in no event shall the resulting percentage be greater than 100%.

- (2) 66 2/3% Joint-and-Survivor Option. If the Joint-and-Survivor Option elected provides for a 66 2/3% continuation to the Co-annuitant, the pension amount shall be adjusted by multiplying it by the following percentage: 87% minus .5 percentage points for each year the Co-annuitant's age is less than the Participant's age or plus .5 percentage points for each year the Co-annuitant's age is greater than the Participant's age; provided, however that in no event shall the resulting percentage be greater than 100%.
- (d) The Joint and Survivor Option shall not be payable if it would result in a monthly benefit of less than \$20.00 to the Pensioner or to the Co-annuitant.

**ARTICLE VIII. APPLICATION, BENEFIT PAYMENTS, RETIREMENT  
AND SUSPENSION OF BENEFITS**

Section 1. Advance Written Application Required. An application for a pension shall be made in writing on a form and in the manner prescribed by the Board of Trustees and shall contain such information as the Trustees may deem necessary. Such application shall be a condition for payment of a pension and must be filed with the Board prior to the first month for which benefits are payable. If an application for a Disability Pension is filed within 60 days after a determination by the Social Security Administration of entitlement to a Social Security Disability, such application shall be considered timely and payment of the Disability Pension shall commence in accordance with Article III, Section 9(b), but if not timely filed, shall commence with the month next following the month in which the application is received.

Section 2. Information and Proof. Every Participant shall furnish, at the request of the Trustees, any information or proof reasonably required to determine his benefit rights. If a person willfully makes a false statement material to an application or furnishes fraudulent information or proof, or fails to provide the notifications required, benefits under this Plan may be denied, suspended or discontinued. The Trustees shall have the right to recover (by recoupment, offset or other lawful means) any benefit payments made in reliance on any false or fraudulent statement, information or proof submitted by a Participant or Pensioner prior to the receipt of the required notifications.

Section 3. Action of Trustees. The Trustees shall, when exercising discretionary powers, exercise such powers in a uniform and nondiscriminatory manner and be the sole judges of the standard of proof required in any case and the application and interpretation of this Plan and decisions of the Trustees shall be final and binding on all parties.

Section 4. Right of Appeal. Each Participant or Beneficiary whose claim for benefits under the Plan has been denied shall be provided adequate notice in writing setting forth the specific reasons for such denial, written in a manner calculated to be understood by the Participant/Beneficiary. A Participant/Beneficiary aggrieved by such decision may request review. The Trustees shall establish and make available to

Participants and Beneficiaries rules and procedures for the review of denied claims. Such rules and procedures shall comply with ERISA and regulations promulgated thereunder.

Claims may not be split and filed under several requests. If the Participant or Beneficiary has an issue, the full basis for such issue, together with all the relief requested, shall be set forth in the request. A Participant or Beneficiary may not file separate requests for benefits each month the benefits are alleged to be in arrears. This section applies to and includes any and every claim to benefits from the Plan regardless of the basis asserted for the claim and regardless of when the act or omission upon which the claim is based occurred.

A failure to file timely a request for review shall not preclude the Participant or Beneficiary from establishing entitlement at a later date based on additional information and evidence which was not available at the time the decision was made; provided, however, a subsequent request is not a means to reconsider and re-argue matters already reviewed, and such subsequent request may be dismissed without action if the Trustees conclude that it sets forth no newly discovered information or evidence.

A decision on a request for review shall be final and binding upon all parties concerned, except that a Participant or Beneficiary may pursue such remedies provided, if any, under the Internal Revenue Code and ERISA.

Section 5. Benefit Payments Generally.

(a) Commencement of Benefits. A Participant who is eligible to receive a pension under this Plan and makes application in accordance with the rules of this Pension Plan shall be entitled upon retirement to receive the monthly benefits provided for the remainder of his life, subject to the provisions of this Plan. Benefit payments shall be payable commencing with the first day of the month following the month in which the Participant has fulfilled all the conditions of entitlement to a pension, including the filing of an application.

However, in no event, unless the Active Participant or Vested Participant elects otherwise, shall the payment of benefits begin later than the 60th day after the later of the close of the Calendar Year in which the Active Participant or Vested Participant attains Normal Retirement Age or terminates

his Covered Employment and retires, as that term is defined in Section 8 of this Article; provided that an election to defer the commencement of benefits which is filed on or after November 1, 1989, may not postpone the commencement of benefits to a date later than the Participant's Required Beginning Date.

(b) Required Beginning Date. A Participant's Required Beginning Date is April 1 of the calendar year following the year the Participant reaches 70½, provided that, for a Participant who reaches 70½ before 1988 other than a 5% owner, the Required Beginning Date is April 1 of the calendar year in which the Participant ceases work in Covered Employment if that is later.

(c) Delayed Retirement. Effective as of November 1, 1989, if the Annuity Starting Date is after the Participant's Normal Retirement Age, the monthly benefit shall, subject to the provisions of Article III, Section 16 be the greater of:

- (1) the total years of Pension Credit accrued at his Annuity Starting Date multiplied by the applicable amount in Section 3 of Article III; or
- (2) the accrued benefit at Normal Retirement Age actuarially increased for each complete calendar month between Normal Retirement Age and the Annuity Starting Date for which benefits were not suspended;

converted as of the Annuity Starting Date to the benefit payment form elected in the pension application or to the automatic form of Husband-and-Wife Pension if no other form is elected.

The actuarial increase described in paragraph (2) shall be 1% per month for the first 60 months after Normal Retirement Age and 1.5% per month for each month thereafter.

(d) Payment of Benefits Accrued After Retirement.

- (1) Any additional benefits earned by a Pensioner in Covered Employment after Retirement will be determined at the end of each Plan Year and will be payable as of November 1 following the end of the Plan Year in which it accrued, provided payment of benefits at that time is not suspended pursuant to Section 8 of this Article.

- (2) In the case of a Participant who retired at or after Normal Retirement Age who is reemployed and earns additional benefits, the original Annuity Starting Date and the benefit payment elections made at that time will apply when benefit payments begin again at a later date.
  - (3) Subject to the provisions of Section 10(d) of this Article, a Participant who retired at any age and had benefit payments suspended on account of work in covered or covered-type employment, the original Annuity Starting Date and the benefit payment selections made at that time will apply to benefits accrued prior to the original Annuity Starting Date when benefit payments begin again at a later date.
  - (4) In the case of a Participant who retired before Normal Retirement Age who is reemployed and earns additional benefits, a new Annuity Starting Date will be established for payment of those new benefit accruals (but only for additional benefits due solely to the Participant's renewed employment after early retirement) when the Participant again retires. The benefits earned during that period of reemployment will be paid as a Husband-and-Wife Pension, if applicable as of the new Annuity Starting Date, or, if that is properly rejected, any other payment form available to the Participant under the Plan.
- (e) If the present value of a Participant's vested accrued benefit derived from Employer contributions exceeds (or at the time of any prior distribution exceeded) \$5,000 (\$3,500 prior to November 1, 1997), and the accrued benefit is immediately distributable, the Participant and the Participant's Spouse (or where either the Participant or the Spouse has died, the survivor) must consent to any distribution of such accrued benefit.

An accrued benefit is immediately distributable if any part of the accrued benefit could be distributed to the Participant (or surviving Spouse) before the Participant attains (or would have attained if not deceased) Normal Retirement Age.

- (f) Termination of Benefits. Pension payments shall end with the payment for the month in which the death of the Pensioner occurs except as provided in accordance with a Husband-and-Wife Pension,

the Joint-and-Survivor Option or, if applicable, upon completion of the guaranteed payments provided for in Article V.

Section 6. Duplication of Pensions. A Pensioner shall not be entitled to the payment under this Plan of more than one type of pension at any one time.

Section 7. Lump-Sum Payment in Lieu of Monthly Pensions. If at the time a monthly pension is payable to a Participant, the actuarial value of his lifetime pension is \$5,000 or less (\$3,500 or less prior to November 1, 1997), the Trustees shall pay him the lump-sum amount of such actuarial value instead of the monthly pension otherwise due him.

The actuarial present value of the lump-sum payment shall be determined on the basis of the 1971 Group Annuity Mortality Table for males for Employees and the 1971 Group Annuity Mortality Table for males set back seven (7) years for Beneficiaries. The interest assumption shall be 7%. However, in no event shall the actuarial present value be less than that determined using the Applicable Mortality Table and the Applicable Interest Rate.

When a lump sum has been paid by the Fund, the Fund shall have no liability for the payment of any additional benefit to the Participant or his Beneficiary with respect to the Pension Credit for which the lump sum was made.

Exception: Notwithstanding the foregoing, if a Pensioner has started to receive payments in the form of the Husband-and-Wife Pension, the surviving Spouse shall receive monthly payments after the Pensioner's death unless the surviving Spouse consents, in writing, in a form prescribed by the Trustees, to a lump-sum payment.

Section 8. Retirement.

(a) Before Normal Retirement Age. To be considered retired and entitled to a pension under this Plan before he has attained Normal Retirement Age, a Participant must not be engaged in Prohibited Employment which results in the suspension of pension benefits under Section 9 of this Article. A Pensioner is engaged in Prohibited Employment if he is engaged in any employment or activity for

wages or profit, including self-employment, in the construction industry, wherever such employment or activity may be performed.

(b) After Normal Retirement Age. To be considered retired and entitled to a pension under this Plan after he has attained Normal Retirement Age, a Participant must withdraw and refrain from employment for wages or profit in excess of 40 hours in a calendar month, including hours paid but not worked, in the same industry, in the same trade or craft and in the same geographic area covered by the Plan. For purposes of Subsections (a) and (b) of this Section 8:

(1) The “same industry” means any business activity of any employer, including self-employment, that includes any employment which was covered by the Plan when the Participant’s pension payments commenced.

(2) The “same trade or craft” means an occupation in which the Participant was employed at any time under the coverage of the Plan, any occupation utilizing the same skill(s) and any self-employment or supervisory employment related to the same skill(s) as were involved in such occupation(s).

(3) The “same geographic area” means the State of Utah.

(4) The Normal Retirement Age shall have the same meaning as defined in Article I, Section 18.

(5) Notwithstanding the foregoing, a Participant who has attained Normal Retirement age shall not be subject to the employment for wages or profit in excess of 40 hours in a calendar month rule if immediately following the effective date of his Pension, the Participant continues to have an ownership position with his Contributing Employer. Ownership position means a Pensioner who is a sole proprietor; a partner owning at least 25% of the partnership; a shareholder owning at least 25% of the corporation; and/or a member owning at least 25% of a limited liability company.

(c) No Suspension After the Required Beginning Date. No benefits shall be suspended under this Article for months starting on and after an Employee’s Required Beginning Date, as defined in Section 5(b) of this Article.

Section 9. Suspension of Benefits.

- (a) Except as provided herein, if a Pensioner who is younger than Normal Retirement Age subsequently becomes employed in Prohibited Employment as described in Section 8(a) of this Article, his pension payments shall be suspended for any calendar month in which he is so employed and if such Pensioner performed employment on or after November 1, 1986 in the Sheet Metal Industry that is not covered by a Written Agreement between the Union and the employer, his pension payments shall be suspended until the month in which he attains age 65. The first sentence of this subsection shall not apply on or after November 1, 1998 if the Active Participant has earned one quarter of Future Service Credit, subsequent to the prohibited employment, for each calendar quarter in which he worked one or more hours in such employment. After that period, his pension shall again become payable subject to Section 8(b) of this Article.
- (b) If a Participant who has attained Normal Retirement Age subsequently becomes employed in Work of the type and for the duration described in Section 8(b) of this Article, his pension payments shall be suspended for any calendar month in which he is so employed. After that period, his pension shall again become payable.
- (c) If a Participant becomes employed in Prohibited Employment or Work of the type described in Section 8 of this Article, he must notify the Trustees in writing within 21 days following commencement of such employment. If he fails to give such written notice within such 21-day period and:
  - (1) He is younger than Normal Retirement Age, his pension shall be suspended for an additional period of six months over and above the suspension period specified in the preceding Subsection (a) but not beyond Normal Retirement Age; or if
  - (2) He has attained Normal Retirement Age and the Trustees become aware that he may be employed in Work of the type described in Section 8(b) of this Article, it will be presumed, unless and until the Participant provides evidence to the contrary that:
    - (A) He was employed in excess of 40 hours for that month; and

- (B) If such employment is at a construction site, he was employed for as long as the employer for whom he is employed has been engaged at that site.
- (d) A Participant shall provide the Trustees with such information as they may request in order to establish the nature and extent of any employment by the Participant. In addition, at least once each year, a Pensioner shall be required to certify on a form acceptable to the Trustees that he is retired within the meaning of the Plan. Any pension payments otherwise due shall be withheld pending adequate response by the Participant to such request.
- (e) A Participant whose pension has been suspended shall advise the Trustees in writing when disqualifying employment has ended. Benefit payments shall be held back until such notice is filed with the Trustees.
- (f) A Participant may, in writing, request of the Trustees a determination whether contemplated employment will be disqualifying and the Trustees shall provide the Participant with their determination.
- (g) Notice of Suspension. The Trustees shall inform a Participant of any suspension of benefits by notice given by personal delivery or first class mail during the first calendar month in which his benefits are withheld. Such notice shall include a description of the specific reasons for the suspension, a description and a copy of the relevant plan provisions, reference of the applicable regulations of the U.S. Department of Labor, a statement of the procedure for securing a review of the suspension and a description of the procedures with any necessary forms that must be filed before benefits can be resumed.
- (h) Review. A Participant shall be entitled to a review of a determination suspending his benefits by written request filed with the Trustees within 60 days of the notice of suspension of benefits. The same right of review shall apply, under the same terms, to a determination by or on behalf of the Trustees that contemplated employment will be disqualifying.

Section 10. Pension Payment Following Suspension

(a) Pension payments to a Pensioner who has ended his disqualifying employment shall be resumed beginning no later than the third month after the last calendar month for which his benefit was suspended provided the Participant has complied with the notification requirements of this Plan.

(b) A Pensioner who returns to Covered Employment shall be entitled to receive, upon the applicable date as provided by Section 5(d) of this Article, a recalculated pension based upon his age, and taking into account Pension Credit and Contributions accumulated during his subsequent period(s) of work in Covered Employment, except that the monthly pension payable upon recalculation shall be reduced by the product of 1 percent and the total of the Early Retirement Pension payments he received during his previous period(s) of retirement and prior to Normal Retirement Age.

In no event, however, shall the monthly amount payable upon reinstatement following suspension be less than the monthly amount payable at the time the Pensioner returned to Covered Employment.

(c) Suspension before Normal Retirement Age in accordance with Section 9(a) of this Article because of employment of a type or of a duration for which benefits could not be suspended after Normal Retirement Age, shall not have the effect of reducing the value or the Participant's pension for payment at his Normal Retirement Age and to the extent necessary to avoid such reduction, the monthly amount of the pension shall be adjusted so as not to deprive the Pensioner of the value of his benefits which became payable following his Normal Retirement Age.

Any additional benefits earned by a Pensioner in Covered Employment after Retirement will be determined at the end of each Plan Year and will be payable as of February 1 following the end of the Plan Year in which it accrued, provided payment of benefits at that time is not suspended pursuant to Section 8 of this article.

(d) Notwithstanding the preceding Subsections (b) and (c) of this Section 10, a Participant who has retired, elected and received either a Husband-and-Wife Pension or a single-life benefit will be

allowed to make a new election following his suspension of pension benefits provided he returned to Covered Employment and earned at least one year of Vesting Service Credit.

- (e) Suspension before Normal Retirement Age in accordance with Section 9(a) of this Article because of employment of a type or of a duration for which benefits could not be suspended after Normal Retirement Age shall not have the effect of reducing the value of the Participant's pension for payment at his Normal Retirement Age and to the extent necessary to avoid such reduction, the monthly amount of the pension shall be adjusted so as not to deprive the Pensioner of the value of his benefits which became payable following his Normal Retirement Age.
- (f) If a Participant received pension payment to which he was not entitled in accordance with Section 9 of this Article, the Trustees may recover the amount of such payments by deducting the amount of the overpayment from the Participant's future monthly payments until such overpayment is fully recovered. If a Participant has attained Normal Retirement Age, the amount of such offset shall be limited to 100% of the amount due to the Participant for the first payment upon resumption of benefits and 25% of the monthly pension benefit amount thereafter, until all overpayments are fully recovered.

This provision shall not limit the right of the Trustees to recover an overpayment by means other than deduction from the pension.

- (g) A Disability Pensioner who recovers from his total disability and returns to Covered Employment shall be entitled, upon his subsequent retirement, to a pension in an amount calculated at the amount payable under the applicable provision of Article III at the time of his subsequent retirement, including any additional Pension Credit earned during his period of subsequent employment.

Section 11. Nonforfeitability and Vested Status. The benefits to which an Active Participant or Vested Participant is entitled under this Plan upon his attainment of Normal Retirement Age are nonforfeitable, subject however, to retroactive amendment within the limitations of Section 411(a)(3)(C) of the Internal Revenue Code and Section 302(c)(8) of ERISA. The benefits to which a surviving legal Spouse is

entitled shall likewise be nonforfeitable. Participants and Beneficiaries shall be entitled to any of the other benefits of this Plan subject to all of the applicable terms and conditions.

An Active Participant attains status as a Vested Participant when he has fulfilled the age and service requirements for receipt after retirement of a nonforfeitable pension.

Section 12. Incompetence or Incapacity of a Pensioner or Beneficiary. In the event it is determined to the satisfaction of the Trustees that a Pensioner or Beneficiary is unable to care for his affairs because of mental or physical incapacity, any payment due may be suspended until a guardian or conservator is appointed for the person and estate of such Pensioner or Beneficiary and thereafter all payments, including those suspended, shall be made to the duly appointed guardian or conservator.

Section 13. Nonassignment of Benefits. No Employee or Participant entitled to any benefits under this Pension Plan shall have the right to assign, alienate, transfer, encumber, pledge, mortgage, hypothecate, anticipate or impair in any manner his legal or beneficial interest or any interest in assets of the Pension Trust or benefits of this Pension Plan. Neither the Pension Trust nor any of the assets thereof shall be liable for the debts of any Participant entitled to any benefits under this Plan nor be subject to attachment or execution or process in any court of action or proceeding.

Notwithstanding the foregoing, benefits shall be paid in accordance with the applicable requirements of any “qualified domestic relations order” as defined in Section 206(d)(3) of ERISA.

Section 14. No Right to Assets. No person other than the Trustees of the Pension Fund shall have any right, title or interest in any of the income or property of any funds received or held by or for the account of the Pension Fund and no person shall have any vested right to benefits provided by the Pension Plan except as expressly provided herein.

Section 15. Maximum Limitation.

(a) General Rule.

- (1) Notwithstanding any other provision of this Plan, the annual Accrued Benefit relating to employment with a contributing Employer payable with respect to any Participant shall not exceed:

- (A) \$90,000 or, if lower,
  - (B) 100 percent of the Participant's average Compensation in the period of three consecutive calendar years in which his Compensation was the highest. For this purpose Compensation shall be considered zero in the absence of reliable information confirming a Participant's Compensation. Information on Participants' Compensation furnished to the Administrator by a contributing Employer shall be deemed reliable. In addition, the Administrator may rely on information on Compensation furnished by a Participant or Beneficiary if, in the Administrator's judgment, the information is reliable.
- (2) This limit shall not apply to any benefits payable in a year that do not exceed \$1,000 a year for each Year of Service, up to a maximum of \$10,000, unless the Participant has also been covered by an individual account plan to which the Employer contributed on his behalf, and such plan was maintained as a result of collective bargaining involving the same employee representative as this Plan.
- (3) (A) The \$90,000 limit in subsection (a)(1)(A) is increased annually in accordance with IRS rulings and regulations under Code §415(d).
- (B) For purposes of subsection (a)(1)(B), a Participant's average Compensation is deemed to be increased in each calendar year following his termination of service with the Employer for increases in the cost of living, based on adjustment procedures similar to the procedures used to adjust benefit amounts under §215(i)(2)(A) of the Social Security Act.
- (C) Benefit payments that are limited by this Section shall be increased annually to the level permitted by the limitations of this Section as adjusted for later years in accordance with this subsection, but in no event to a level higher than the benefits attributable to Benefit Credits earned by the Participant.
- (4) The benefit under this Plan considered as payable with respect to a Participant and an Employer shall equal the excess of the benefit over the benefit computed as if the Participant had no covered service with the Employer.

- (5) The benefit limitations applied in this Article VIII will be applied by considering the Participant's benefits, service, Plan participation and Compensation as if attributable to a single Employer, to the extent that the resulting benefits payable to the Participant are no less than what would otherwise be payable.
- (b) Adjustment for Early or Late Retirement.
- (1) If a Participant's benefit payments begin before the Participant's Social Security retirement age, but on or after age 62, the dollar limit under subsection (a)(1) is reduced as follows:
- (A) If the Participant's Social Security retirement age is 65, the dollar limit is reduced by  $\frac{5}{9}$  of 1% for each month by which benefits begin before the month in which the Participant reaches 65.
- (B) If the Participant's Social Security retirement age is later than 65, the dollar limit is reduced by  $\frac{5}{9}$  of 1% for each of the first 36 months and  $\frac{5}{12}$  of 1% for each additional month (up to 24) by which benefits begin before the month of the Participant's Social Security retirement age.
- (2) If a Participant's benefit payments begin prior to age 62, the dollar limit is reduced to the Actuarial Equivalent of the benefit payable at age 62.
- (3) If a Participant's benefit payments begin after Social Security retirement age, the limit is increased to the Actuarial Equivalent of the dollar limit otherwise payable at the Social Security retirement age.
- (4) For purposes of this Section, Social Security retirement age is:
- (A) Age 65, for a Participant born before January 1, 1938;
- (B) Age 66, for a Participant born after December 31, 1937 and before January 1, 1955, and
- (C) Age 67, for a Participant born after December 31, 1954.
- (5) In the case of a Participant employed by a tax-exempt Employer:
- (A) If the Participant's benefit payments begin before age 65, but on or after age 62, the dollar limit is not reduced.

- (B) If the Participant's benefit payments begin before age 62, but on or after age 55, the dollar limit is reduced to the Actuarial Equivalent of the benefit payable at age 62, but not below \$75,000.
- (C) If the Participant's benefit payments begin before age 55, the dollar limit is reduced to the Actuarial Equivalent of a \$75,000 benefit at age 55.
- (D) If the Participant's benefit payments begin after age 65, the dollar limit is increased to the Actuarial Equivalent of the benefit payable at age 65.
- (6) For purposes of this Section, the Actuarial Equivalent is based on a 5 percent interest assumption and the Applicable Mortality Table.
- (c) Adjustment for Optional Payment Form. The limitations in Section 15(a)(1) (as otherwise modified under this Article) are applied to an annual benefit in the form of a straight life annuity (without a certain period) or a Husband and Wife Pension. If the Participant's benefit is to be paid in some other form, it must first be converted to actuarial equivalent of one of those benefit forms using the actuarial factors described herein. If the Plan benefit is not subject to Internal Revenue Code Section 417(e)(3), the benefit that is equivalent to the Plan benefit is equal to the greater of (1) the benefit computed using the interest rate and mortality table, or tabular factor, specified in the Plan for actuarial equivalence for the particular form of benefit payable, and (2) the benefit computed using a 5% interest rate and the Applicable Mortality Table. If the Plan benefit is subject to Internal Revenue Code Section 417(e)(3), the equivalent annual benefit is equal to the greater of (1) the benefit computed using the interest rate and mortality table, or tabular factor, specified in the Plan for actuarial equivalence for the particular form of benefit payable, and (2) the benefit computed using the Applicable Interest Rate and the Applicable Mortality Table.
- (d) Plan Aggregation.
- (1) In applying the limits of this Section, the benefits of and contributions to all other retirement plans sponsored by the Employer or any Affiliate shall be taken into consideration, except for multiemployer plans. For purposes of this Section, the term Employer includes all

corporations, trades or businesses under common control with the Employer within the meaning of Internal Revenue Code §414(b) and (c) (as modified by Code §415(h)), all members of an affiliated service group with the Employer within the meaning of Internal Revenue Code §414(m) and all other businesses aggregated with the Employer under Internal Revenue Code §414(o).

- (2) Except as noted in subsection (d)(1), all defined benefit plans sponsored by the Employer or any Affiliate are treated as a single plan. Benefits payable under any other such plan with respect to a Participant shall be reduced to the extent possible before any reduction will be made in his benefits payable under this plan, if necessary to observe these limits.
- (3) For Plan Years beginning before 2000 and except as noted in subsection (d)(1), if a Participant is covered under one or more defined contribution plans sponsored by the Employer or any Affiliate, his combined benefits and annual additions under all such defined benefit and defined contribution plans shall not exceed the applicable combined plan limits under Code §415(e) and the rules and regulations thereunder. If necessary to observe these limits, benefits under any other defined benefit plans will be reduced before benefits under this plan, but benefits under this plan will be reduced to the extent necessary if benefits under the other plans cannot be reduced.

(e) Phase-In Over Years of Service.

- (1) The limit in subsection (a)(1)(B) shall be phased in, with respect to each Participant, at the rate of 10% for each of the Participant's years of service with the Employer or Affiliate, up to 10 years of service.
- (2) In applying this rule to benefits under other plans with which benefits under this Plan are aggregated under subsection (d), the phase-in for those other plans' benefits shall be based on years of service as defined in those other plans.

- (f) Phase-In Over Years of Participation. If a Participant has fewer than 10 years of participation in this Plan the \$90,000 limitation in subsection (a)(1)(A) shall be multiplied by a fraction, the numerator of which is the Participant's total years of participation in this Plan and the denominator of which is 10.
- (g) Limitation Year. The annual limits of this Section shall be applied on a calendar year basis.
- (h) Protection of Prior Benefits.
  - (1) For any year before 1983, the limitations prescribed by Section 415 of the Code 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.
  - (2) For any year before 1992, the limitations prescribed by Section 415 of the Code as in effect before enactment of the Tax Reform Act of 1986 shall apply, and no benefit earned under this 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.
- (i) Interpretation or Definition of Other Terms. All terms used in this Section not otherwise expressly defined in the Plan shall be defined, interpreted and applied as prescribed in Code §415 and the regulations and rulings issued thereunder.

## **ARTICLE IX. MISCELLANEOUS**

Section 1. Nonreversion. It is expressly understood that in no event shall any of the corpus or assets of the Pension Fund revert to the Employers, Employer Association or the Union nor cause or result in the diversion of any portion of the Fund to any purpose other than the exclusive benefit of Employees and Participants under the Plan and the payment of the administrative expenses of the Fund and the Plan, nor be subject to any claims of any kind or nature by Employers, Employer Association or the Union except for the return of contributions to the extent and in the manner permitted by applicable law.

Section 2. Gender. Wherever any words are used in this Pension Plan in the masculine gender, they should be construed as though they were also used in the feminine gender in all situations where they would so apply. Wherever any words are used in this Pension Plan in the singular form, they should be construed as though they were also in the plural form in all situations where they would so apply and vice versa.

Section 3. Limitation of Liability. This Pension Plan has been adopted on the basis of an actuarial calculation which has established, to the extent possible, that the contributions will, if continued, be sufficient to maintain the Plan on a permanent basis fulfilling the funding requirements of ERISA. Except for liabilities which may result from provisions of ERISA, nothing in this Plan shall be construed to impose any obligation to contribute beyond the obligation of the Employer to make contributions as stipulated in its Written Agreement with the Union.

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

Section 4. New Employers. If an Employer is sold, merged or otherwise undergoes a change of company identity, the successor company shall participate as to its employees theretofore covered in the Pension Plan just as if it were the original company, provided it remains an Employer as defined in Section 8 of Article I.

Section 5. Merger. The Trustees shall not consent to or be a party to any merger or consolidation with another plan or to a transfer of assets or liabilities to another plan unless immediately after the merger, consolidation or transfer, the surviving plan provides each Participant a benefit equal to or greater than the benefit each Participant would have received had the Plan terminated immediately before the merger or consolidation or transfer, subject to modification, depending on final regulations issued by the Pension Benefit Guaranty Corporation as they relate to multiemployer plans.

Section 6. Direct Rollovers. 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 Article, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

- (a) Eligible rollover distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated Beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).
- (b) Eligible retirement plan: An eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, or a qualified trust described in Section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving Spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

- (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 Section 414(p) of the Code, are distributees with regard to the interest of the Spouse or former Spouse.
- (d) Direct rollover: A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

Section 7. Administration. The general administration of the Plan and the responsibility for carrying out its provisions shall be placed in the Trustees.

The Trustees (or where Trustee responsibility has been delegated to others) shall be the sole judges of the standard of proof required in any case and the application and interpretation of this Plan, and decisions of the Trustees shall be final and binding.

All questions or controversies of whatsoever character arising in any manner or between any parties or persons in connection with this Plan or its operation, whether as to any claim for benefits, as to the construction of the language of this Plan, or any rules and regulations adopted by the Trustees, or as to any writing, decision, instrument, or account in connection with the operation of the Plan or otherwise, shall be submitted to the Trustees or their delegates for decision. In the event a claim for benefits has been denied, no lawsuit or other action against the Fund or its Trustees may be filed until the matter has been submitted for review under the ERISA-mandated review procedure set forth in Section 4 of Article VIII. The decision on review shall be binding upon all persons dealing with the Plan or claiming any benefit hereunder, except to the extent that such decision may be determined to be arbitrary or capricious by a court or arbitrator having jurisdiction over such matter.

Section 8. Laws Applicable. This Plan is intended to comply with the Employee Retirement Income Security Act of 1974 and with the requirements for tax qualification under the Code and all regulations thereunder, and is to be interpreted and applied consistent with that intent.

## **ARTICLE X. AMENDMENT AND TERMINATION**

Section 1. Amendment. This Plan may be amended at any time by the Trustees consistent with the provisions of the Trust Agreement. However, no amendment may decrease the accrued benefit of any Participant except:

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

Section 2. Termination of Participation by an Employer. If an Employer terminates its participation in the Trust with respect to a bargaining unit, the Trustees are empowered to reduce or cancel that part of any pension for which a Participant was made eligible because of employment in such bargaining unit prior to November 1, 1964 with respect to that unit. Neither shall the Trustees, the Employers who remain as Contributing Employers or the Union be obligated to make such payments.

Section 3. Termination of Plan. The Trustees shall have the right to discontinue or terminate this Plan in whole or in part. In the event of a termination or partial termination of this Plan the rights of all affected Participants to benefits then accrued, to the extent then funded, shall thereupon become one hundred percent (100%) vested and nonforfeitable. Upon a termination of the Plan, the Trustees shall take such steps as they deem necessary or desirable to comply with Sections 4041A and 4281 of ERISA.

## **ARTICLE XI. AMENDMENTS TO COMPLY WITH EGTRRA AND 2001/02 REGULATORY CHANGES**

Section 1. Purpose and Scope. The plan amendments set forth in this Article are adopted to reflect certain provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). These amendments are intended to constitute good faith compliance with the requirements of EGTRRA and are to be construed in accordance with EGTRRA and the guidance issued thereunder. Except as otherwise provided herein, the amendments contained in this Article shall be effective as of the first day of the first Plan Year beginning after December 31, 2001. The provisions of this Article shall supersede the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Article.

Section 2. Limitations on Benefits.

(a) In General.

- (1) Effective for limitation years beginning after December 31, 2001, a Participant's accrued benefit shall not exceed the maximum permissible benefit.
- (2) To the extent that any provisions of Article VIII, Section 15 are inconsistent with the provisions of this Section, the provisions of this Section shall govern.

(b) Effect on Participants. Benefit increases resulting from the increase in the IRC §415(b) limitations enacted in the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA") will be provided to all current and former Participants (with benefits limited by §415(b)) who have an accrued benefit under the Plan immediately prior to the effective date of this section (other than an accrued benefit resulting from a benefit increase solely as a result of the increases in limitations under IRC §415(b));

(c) Definitions.

- (1) Defined Benefit Dollar Limitation. The "defined benefit dollar limitation" is \$160,000, as adjusted, effective January 1 of each year, under IRC §415(d) in such manner as the Secretary shall prescribe, and payable in the form of a straight life annuity. A limitation as

adjusted under IRC §415(d) will apply to limitation years ending with or within the calendar year for which the adjustment applies.

(2) Maximum Permissible Benefit. The “Maximum Permissible Benefit” is the defined benefit dollar limitation (adjusted where required, as provided in (A) and, if applicable, in (B) or (C) below, and limited, if applicable, as provided in (D) below).

(A) Fewer Than 10 Years of Participation. If the Participant has fewer than 10 years of participation in the Plan, the defined benefit dollar limitation shall be multiplied by a fraction, (i) the numerator of which is the number of years (or part thereof) of participation in the Plan and (ii) the denominator of which is 10.

(B) Benefits Beginning before Age 62. If the benefit of a Participant begins before the Participant attains age 62, the defined benefit dollar limitation applicable to the Participant at such earlier age is an annual benefit payable in the form of a straight life annuity beginning at the earlier age that is the actuarial equivalent of the defined benefit dollar limitation applicable to the Participant at age 62 (adjusted under (A) above, if required). The defined benefit dollar limitation applicable at an age before age 62 is determined as the lesser of (i) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using the interest rate and mortality table (or other tabular factor) specified in the Plan, if any, for purposes of determining actuarial equivalence for the most generous early retirement benefit for which the Participant qualifies as of the Annuity Starting Date and (ii) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using a 5 percent interest rate and the Applicable Mortality Table.

(C) Benefits Beginning after Age 65. If the benefit of a Participant begins after the Participant attains age 65, the defined benefit dollar limitation applicable to the Participant at the later age is the annual benefit payable in the form of a straight life annuity beginning at the later age that is actuarially equivalent to the defined benefit

dollar limitation applicable to the Participant at age 65 (adjusted under (A) above, if required). The actuarial equivalent of the defined benefit dollar limitation applicable at an age after age 65 is determined as (i) the lesser of the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using the interest rate and mortality table (or other tabular factor) specified in the Plan, if any, for purposes of determining actuarial equivalence for late retirement (whether or not applicable in an individual case) and (ii) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using a 5 percent interest rate and the Applicable Mortality Table. For these purposes, mortality between age 65 and the age at which benefits commence shall be ignored.

- (d) Aggregation. Effective for limitation years beginning after December 31, 2001, this Plan shall not combined or aggregated with a non-multiemployer plan for purposes of applying the IRC §415(b)(1)(B) compensation limit to the non-multiemployer plan.

Section 3. Increase in Limit on Compensation Taken into Account.

- (a) Increase in Limit. 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”). For purposes of determining benefit accruals in a Plan Year beginning after December 31, 2001, compensation for any prior determination period shall be limited as provided in subsection (c) below. To the extent that the provisions of Article I, Section 6 are inconsistent with the provisions of this Section, the provisions of this Section shall govern.
- (b) Cost-of-Living Adjustment. The \$200,000 limit on annual compensation in subsection (a) above shall be adjusted for cost-of-living increases in accordance with IRC §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.

- (c) Compensation Limit for Prior Determination Periods. 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.

Section 4. Reserved.

Section 5. Direct Rollover of Plan Distributions.

- (a) Effective Date. This Section shall apply to distributions made after December 31, 2001. To the extent that the provisions of Article IX, Section 6 are inconsistent with the provisions of this Section, the provisions of this Section shall govern.
- (b) Modification of Definition of Eligible Retirement Plan. For purposes of the direct rollover provisions in Article IX, Section 6 of the Plan, an “eligible retirement plan” also shall include an annuity contract described in IRC §403(b) and an eligible plan under IRC §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 a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of eligible retirement plan also shall apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order as defined in IRC §414(p).

Section 6. Applicable Mortality Table.

Effective Date. This section shall apply to distributions with Annuity Starting Dates on or after December 31, 2002.

Notwithstanding any other plan provisions to the contrary, any reference in the plan to the Applicable Mortality Table or the mortality table prescribed in Revenue Ruling 95-6 shall be construed as a reference to the mortality table prescribed in Revenue Ruling 2001-62 for all purposes under the Plan.

## **ARTICLE XII. TOP-HEAVY PROVISIONS**

Section 1. Top-Heavy Plan Requirements. If the Plan becomes Top-Heavy, pursuant to the provisions of Internal Revenue Code Section 416, and related regulations, in any Plan Year, beginning after December 31, 1983, such provisions will supersede any conflicting provisions in the Plan.

### **ARTICLE XIII. WITHDRAWAL LIABILITY**

Section 1. Withdrawal Liability. An Employer that withdraws from the Plan after September 26, 1980, in either a complete or partial withdrawal, shall owe and pay withdrawal liability to the Plan, as determined by the Plan's Actuary, in accordance with ERISA, as amended, by the Multi-Employer Pension Plan Amendments Act of 1980. For purposes of this Article, all corporations, trades, or businesses that are under common control, as defined in regulations of the Pension Benefit Guaranty Corporation (PBGC), are considered to be a single employer, and the entity resulting from a change in business form described in Section 4218 (a) of ERISA is considered to be the original employer.

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