

MEBA
401(k) PLAN

RULES
&
REGULATIONS

(Amended & Consolidated through Amendment No. 10-3)
06/17/10

**RULES AND REGULATIONS PROVIDING BENEFITS
OF THE
MEBA 401(k) PLAN**

**(Amended and Consolidated through Amendment No. 10-03)
06/15/10**

The MEBA 401(k) Plan was established as of February 1, 1992 pursuant to and in accordance with the provisions of the Agreement and Declaration of Trust Establishing the MEBA Pension and Welfare Plan made as of August 1, 1950 and amended from time to time thereafter (the "Trust Agreement") by and between the National Marine Engineers' Beneficial Association, AFL-CIO ("MEBA") and various Employers of Licenses Officers for whom MEBA is the collective bargaining representative, and other Employer signatories to the aforesaid Trust Agreement. The MEBA 401(k) Plan provides retirement benefits to Licenses Officers covered thereunder and to Port Engineers, Port Electricians and Hull Inspectors for whom Employers agree to make contributions to the MEBA 401(k) Plan and certain other Employees as defined hereinafter. The MEBA 401(k) Plan is intended to be a profit-sharing plan.

MEBA 401(k) PLAN REGULATIONS

Pursuant to the Trust Agreement, the Board of Trustees of the MEBA 401(k) Plan establishes the following Regulations:

ARTICLE I

DEFINITIONS

The following definitions apply for all purposes under the MEBA 401(k) Plan Regulations, unless expressly stated to the contrary.

Section 1.01 Actual Deferral Percentage

The term "Actual Deferral Percentage" means the ratio (expressed as a percentage) of a Participant's Elective Contributions under this Plan to his Earnings for the Plan Year. The Actual Deferral Percentage is zero in the case of an Employee who is eligible to elect Elective Contributions under the Plan during the Plan Year but does not do so.

Section 1.01A After-tax Contributions

The term "After-Tax Contributions" means the amount of after-tax contribution made by a Participant and contributed to the Fund established under the Plan during the Plan Year. Such contributions shall be nonforfeitable when made.

Section 1.01B After-tax Contributions Account

The term "After-Tax Contributions Account" means the account established for each Employee to make After-Tax Contributions.

Section 1.02 Agreement

The term "Agreement" means a Collective Bargaining Agreement between an Employer and the Union whereby an Employer agrees to make Elective Contributions to the 401(k) Plan as authorized by an Employee and agrees to be bound by the terms of the Agreement relating to the Plan.

Section 1.03 Average Deferral Percentage

The term "Average Deferral Percentage" means the average (expressed as a percentage) of the Actual Deferral Percentages of the Participants in a defined group.

Section 1.04 Beneficiary

The term "Beneficiary" means a person designated by an Employee, pursuant hereto or by the terms hereof, who is or may become entitled to a benefit hereunder. The term "Beneficiary" can also include a trust, provided the trust meets all of the following requirements: (1) it must be valid under state law; (2) it must be irrevocable or must become irrevocable upon the death of the participant; and (3) the beneficiaries of the trust must be identifiable from the trust instrument. In addition, when designating a trust as a Beneficiary hereunder, the following documentation must be provided to the Plan Administrator: (1) a copy of the trust and an agreement to provide all amendments made thereto; or (2) a certified list of all beneficiaries of the trust and an agreement to update that list, if changed, and an agreement to provide a copy of the trust on demand.

Section 1.05 Code

The term "Code" means the Internal Revenue Code of 1986, as amended from time to time, including valid rules and regulations issued thereunder.

Section 1.06 Contributions

The term "Contributions" means the payment of Elective Contributions to the Fund under the 401(k) Plan by an Employer pursuant to the authorization of an Employee pursuant to Section 2.03.

Section 1.07 Covered Employment

The term "Covered Employment" means employment for which the Employer is obligated to pay Elective Contributions under the 401(k) Plan on or after February 1, 1992 with respect to an Employee, or would be so required if the Employee elected Elective Contributions.

Section 1.07A Designated Roth Contributions

The term "Designated Roth Contributions" means contributions made on behalf of the Participant pursuant to Section 2.08 that are designated irrevocably by the Participant's elections at the time of deferrals as a Designated Roth Contribution being made in lieu of all or a portion of the Elective Contributions the Participant is otherwise eligible to make under the Plan and treated as includible in the Participant's gross income at the time the Participant would have received the contribution absent the deferral election.

Section 1.07B Designated Roth Contributions Account

The term "Designated Roth Contributions Account" means the account established for each Participant to hold Designated Roth Contributions (including "Catch-up" Designated Roth Contributions) and earnings thereon.

Section 1.08 Earnings

The term "Earnings" means the total cash remuneration of the Participant paid by the Employer (including overtime, bonuses, premium pay, penalty time pay, incentive compensation, commissions, contributions under a cafeteria plan or deemed cafeteria plan and any other form of additional compensation paid in cash, but excluding payment from the MEBA Vacation Plan Port Relief or Night Relief Pay, meal money, travel expenses and lodging), before any reductions for Elective Contributions.

For Plan Years beginning before January 1, 1995 and after December 31, 2001, Earnings, or compensation for any purpose under this Plan, for any twelve-month period with respect to any Employer shall not exceed Two Hundred Thousand Dollars (\$200,000), as adjusted by the Secretary of Treasury for cost of living increases. For Plan Years beginning from January 1, 1995 thru December 31, 2001, Earnings are limited as set forth below. For Plan Years beginning Before January 1, 1997, in determining the Earnings (or compensation) of any individual for purposes of this section, the family member attribution rules of Code Section 414 shall apply, except that in applying such rules, the term "family" shall include only the spouse of the individual and any lineal descendants of the individual who have not attained age nineteen (19) before the close of the Plan Year.

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, 1995, 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, 1995, 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, 1995, the OBRA '93 annual compensation limit is \$150,000.

Effective January 1, 2008, Earnings shall include amounts that are paid after Termination of Employment provided such payments are made within the later of 2-1/2 months following the date

of the Termination of Employment or the end of the limitation year in which the Termination of Employment occurs and the payment would have been made to the Participant had he continued Covered Employment or amounts that would have been included in Earnings had they been paid prior to Termination of Employment.

Effective January 1, 2009, Earnings shall include the amount of any differential wage payments paid by the Employer.

Section 1.09 Elective Contributions

The term "Elective Contributions" means contributions made on behalf of the Participant pursuant to Section 2.03 that are before-tax contributions withheld from a Participant's Earnings under Section 401(k) of the Code pursuant to a salary reduction agreement at the election of the Participant, except to the extent such Elective Contributions are irrevocably designated by the Participant as Designated Roth Contributions pursuant to Section 2.08, which shall be made on an after-tax basis under Section 402A of the Code. Elective Contributions shall be nonforfeitable when made and distributed only as specified in the Plan.

Section 1.10 Elective Contributions Account

The term "Elective Contributions Account" means the account established for each Employee to receive Elective Contributions under Article 3.

Section 1.11 Employee

The term "Employee" means:

- (a) Licensed Officers employed by Employers who are obligated to make contributions to the MEBA 401(k) Plan pursuant to Agreement with the Union;
- (b) Port Engineers, Port Electricians and Hull Inspectors for whom Employers are obligated to make contributions to the MEBA 401(k) Plan pursuant to Agreements with the Union;
- (c) Other employees for whom Employers are obligated to make contributions to the MEBA 401(k) Plan pursuant to Agreements with the Union; and
- (d) Employees of (1) the Union, and any of its affiliates, (2) the Association, (3) the ROU, (4) ROU Training Plan, (5) ROU Benefits Plan, (6) MEBA Realty Holding Trust, (7) the American Maritime Congress and (8) the MEBA Pension, Medical and Benefits, Vacation and Training Plans.

Section 1.12 Employer

The term "Employer" means any Employer of Licenses Officers for whom the Union or the ROU is the collective bargaining representative and which is and may hereafter become a signatory to the Trust Agreement and any Employer who is obligated to make the necessary contributions to the MEBA 401(k) Plan on behalf of Employees. The term "Employer" shall also include (1) the Union, and any of its affiliates, (2) the Association, (3) the ROU, (4) ROU Training Plan, (5) ROU Benefits Plan and (6) MEBA Realty Holding Trust, (7) the American Maritime Congress and (8) the MEBA Pension, Medical

and Benefits, Vacation and Training Plans. Notwithstanding the preceding sentences, the term "Employer" shall not include a state or local government or political subdivision thereof, or any agency, or instrumentality thereof.

For purposes of applying the rules on participation, vesting and statutory limits on benefits under the Plan, but not for determining Covered Employment, all participants shall be treated as being employed by one entity, which shall be treated as an Employer. The preceding sentence shall not apply for purposes of identifying Highly Compensated Employees, which shall be done separately by Employer.

Section 1.13 Enrollment Date

The term "Enrollment Date" means the date described in subsection (b) or (c) of Section 2.02, as the case may be.

Section 1.14 ERISA

The term "ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, including valid rules and regulations issued thereunder.

Section 1.15 Excess Contributions

The term "Excess Contributions" means with respect to any Plan Year the aggregate amount of Elective Contributions actually paid to the Trust on behalf of Highly Compensated Employees for such Plan Year which exceeds the maximum amount of such contributions permitted under Section 3.05 below.

Section 1.16 Fund or Trust Fund

The term "Fund" of "Trust Fund" means the MEBA 401(k) Plan and its trust estate.

Section 1.17A Highly Compensated Employee

This Section 1.17A applies to determinations of Highly Compensated Employees for Plan Years beginning before 1997.

- (a) An Employee is a Highly Compensated Employee of an Employer with respect to a Plan Year if during the Plan Year the Employee performs services for that Employer and :
- (1) is a 5-percent owner of that Employer,
 - (2) receives compensation from that Employer for the Plan Year in excess of the Code Section 414 (q) (1) (B) amount for the Plan Year,
 - (3) receives compensation from that Employer for the Plan Year in excess of Code Section 414 (q) (1) (C) amount for the Plan Year and is a member of the top paid group of employees of that Employer within the meaning of the Code Section 414 (q) (4), or
 - (4) is an officer and receives compensation from that Employer for the Plan Year that is greater than 50 percent of the dollar limitation in effect under Code Section 415 (b) (1) (A). If no officer satisfies the compensation requirement for the Plan Year, the highest paid officer for such Year shall be treated as a Highly Compensated Employee.

- (b) For purposes of subsection (a), an Employee's compensation from an Employer for a Plan Year shall be the sum of the following:
 - (1) compensation within the meaning of the Treasury Reg. 1.415-2(d) (11) (i), without modification, paid by the Employer to the Employee during the Plan Year,
 - (2) the total amount of vacation benefits paid to the Employee during the Plan Year from the MEBA Vacation Plan which are attributable to employment with the Employer, and
 - (3) the total Elective Contributions made by the Employee with respect to the Plan Year which are attributable to compensation from the Employer.
- (c) For purposes of subsection (a) (3), the plan administrator may rely on information provided by an Employer as to whether an Employee is in the Employer's top paid group of employees.
- (d) If an Employee is a family of either a 5-percent owner (whether active or former) or a Highly Compensated Employee who is one of the 10 most highly paid employees of the Employer ranked on the basis of compensation paid by the Employer during the Plan Year, then the family member and the 5-percent owner or top-ten highly paid employee shall be aggregated. In such case, the family member and the 5-percent owner to top-ten highly paid Employee shall be treated as a single Employee receiving compensation and Plan contributions or benefits equal to the sum of the compensation and contributions or benefits of the family member and the 5-percent owner or top-ten highly paid Employee. For purposes of this subsection, family member includes the spouse, lineal ascendants and descendants of the Employee or former Employee, and the spouses of such lineal ascendants and descendants.
- (e) The determination of who is a Highly Compensated Employee, including the determination of the number and identify of employees in the top-paid group, the number of employees treated as officers and the compensation taken into account, shall be made in accordance with Code Section 414 (q) and Treasury Reg. 1.414 (q) to the extent they are not inconsistent with the method established in this Section 1.17.

Section 1.17B Highly Compensated Employee

This Section 1.17B applies to determinations of Highly Compensated Employees for Plan Years beginning January 1, 1997 and thereafter.

- (a) An Employee is a Highly Compensated Employee for a Plan Year if:
 - (1) he is a five percent owner of an Employer at any time during the Plan Year or the preceding Plan Year, or
 - (2) for the preceding Plan Year he received compensation (as defined in subsection (b)) from the Employer in excess of \$80,000 (as adjusted under Code Section 415(d)).
- (b) For purposes of subsection (a), an Employee's compensation from an Employer for the preceding Plan Year is the sum of the following:

- (1) the Employee's wages as defined in Code Section 3401(a) and all other payments of compensation to the Employee by the Employer (in the course of the Employer's trade or business) during the preceding Plan Year for which the Employer is required to furnish the Employee a written statement under Code Sections 6041(d), 6051(a)(3) and 6052. Compensation is determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code Section 3401(a)(2)),
 - (2) vacation benefits paid to the Employee during the preceding Plan Year from the MEBA Vacation Plan which are attributable to employment with the Employer,
 - (3) Elective Contributions under this Plan and any other elective deferrals described in Code Section 415(c)(3)(D), which are made by the Employee and attributable to compensation from the Employer that would have been received during the preceding Plan Year but for the Employee's contribution election.
 - (4) Matching Contributions under this Plan and any other contributions described in Code Section 401(m)(4) that were made in the preceding Plan Year.
- (c) The determination of who is a Highly Compensated Employee will be made in accordance with Code Section 414(q) and the regulations thereunder. Highly Compensated Employees are determined separately by Employer.

Section 1.18 Licensed Officer

The term "Licensed Officer" means any officer participating in the MEBA Pension Trust by virtue of employment for which an Employer is obligated to make contributions to the MEBA Pension Trust. Such officer may be a member of the Union or the ROU, except as specifically excluded hereunder.

Section 1.18A Matching Contributions

The term "Matching Contributions" means an employer contribution made to a Participant pursuant to a collective bargaining agreement which is allocated on the basis of the Participant's Elective Contribution under this Plan to his Matching Contribution Account for the Plan Year in accordance with Section 2.07.

Section 1.18B Matching Contributions Account

The term "Matching Contributions Account" means an account established for each Employee eligible to receive Matching Contributions under Article 2.

Section 1.19 MEBA Pension Trust

The term "MEBA Pension Trust" means the trust established on December 13, 1955 pursuant to the MEBA Pension Trust Declaration and in accordance with the provisions of the Trust Agreement (as defined in the Preamble hereto).

Section 1.20 Non-Highly Compensated Employee

The term "Non-Highly Compensated Employee" means an Employee of the Employer who is not a Highly Compensated Employee.

Section 1.21 Normal Retirement Age

The term "Normal Retirement Age" means age 65.

Section 1.22 Participant

The term "Participant" means an Employee who meets the requirements for participating under the Plan as set forth in Article 2, or a former Employee who has acquired a right to a benefit under the Plan.

Section 1.23 Plan or 401(k) Plan

The term "Plan" or "401(k) Plan" means the rules and regulations set forth herein governing the administration and operation of the MEBA 401(k) Plan.

Section 1.24 Plan Office

The term "Plan Office" shall mean the office of the MEBA Benefit Plans, located at 1007 Eastern Avenue, Baltimore, Maryland 21202, or any successive address, and, where applicable, the plan administrator.

Section 1.25 Plan Year

The term "Plan Year" means the annual period January 1 through December 31. The initial Plan Year begins February 1, 1992 and ends December 31, 1992.

Section 1.26 Regulations

The term "Regulations" shall mean the provisions set forth herein, which shall constitute the "Plan", the method and procedures governing the amount and payment of benefits, and the determination of eligibility and the general administration and operation of the MEBA 401(k) Plan, as the Trustees may from time to time establish.

Section 1.27 Retirement or Retired

The term "Retirement" or "Retired" means that an Employee must:

- (a) withdraw completely from:
 - (1) Covered Employment;
 - (2) Work aboard any vessel; and
 - (3) In the case of a Part Engineer, Port Electrician or Hull Inspector, any service in the maritime industry that involves a Licenses Officer's knowledge or expertise (including, but not limited to, knowledge or expertise in construction, repair, operational or maintenance activities);
- (b) complete the taking of his earned vacation; and

- (c) furnish the Plan Office with satisfactory documentary proof he has withdrawn from membership in the Union.

Section 1.27A Rollover Accounts

The term "Rollover Accounts" shall refer to accounts established for each Participant to hold Rollover Contributions from an Eligible Retirement Plan pursuant to Section 3.02A, and shall include earnings attributed to such account. Separate Rollover Accounts shall be maintained for rollovers of designated Roth contribution amounts and after-tax contribution amounts, respectively as "Designated Roth Rollover Account" and "After-Tax Rollover Account."

Section 1.28 ROU

The term "ROU" shall mean the Radio Officers Union, District No. 3, MEBA, AFL-CIO.

Section 1.29 Spouse

The term "Spouse" means a person to whom a Participant is married under applicable law and, if and to the extent provided, in a Qualified Domestic Relations Order.

Section 1.30 Termination of Employment

The term "Termination of Employment" means an Employee's Retirement. An Employee who is not vested in any benefit under the MEBA Pension Trust other than his Accumulated 401(k) Share shall also have a Termination of Employment at the end of a period of three years during which he does not work in Covered Employment.

Section 1.31 Trust Declaration

The term "Trust Declaration" as used herein shall mean the MEBA Pension Trust Declaration establishing the MEBA 401(k) Plan in accordance with the provisions of the Trust Agreement (as defined in the Preamble hereto).

Section 1.32 Trustees

The term "Trustees" as used herein means the Employer Trustees and Union Trustees of the MEBA Pension Trust, collectively, and shall include their alternates when acting as Trustees.

Section 1.33 Union

The term "Union" has the same meaning as in the Trust Agreement (as defined in the Preamble hereto).

Section 1.34 Valuation Date

The term "Valuation Date" means each business day on which the Investment Funds are valued.

Section 1.35 Other Terms

The following terms are defined in other sections of these Regulations:

<u>TERM</u>	<u>SECTION</u>	<u>PAGE</u>
(a) Accumulated 401(k) Share	[4.01]	16
(b) Benefit Starting Date	[4.06]	17
(c) Disabled or Disability	[4.04]	17
(d) Hardship	[4.07]	24
(e) Investment Funds	[3.04(a)]	13
(f) Net Investment Earnings	[3.03]	13
(g) Qualified Domestic Relations Order	[5.04]	26

ARTICLE II

ELIGIBILITY AND PARTICIPATION

Section 2.01 Purpose

- (a) This Plan is adopted to provide an opportunity for participating Employees to benefit from tax-deferred savings in accordance with Section 401(k) of the Code, in addition to any benefits otherwise provided under the Plan.
- (b) All Contributions made under this Plan are expressly conditioned upon the initial qualification of the Plan as a profit-sharing plan under Section 401 of the Code, including Section 401(k). If the Internal Revenue Service determines that this Plan does not so qualify, the Trustees may modify it as necessary to obtain qualification, or may terminate it and refund any Contributions received thereunder, along with any Net Investment Earnings, to the Employees on whose behalf they were made.

Section 2.02 Eligibility

- (a) An Employee shall be eligible to participate in the Plan if he is engaged in Covered Employment.
- (b) An Employee who meets the eligibility standards in subsection (a) on February 1, 1992 shall be eligible to participate under the Plan as of the commencement of any voyage (or, in the case of an Employee who is a permanent employee, as of the first day of the first pay period) beginning on or after February 1, 1992.
- (c) An Employee who first meets the eligibility standards in subsection (a) after February 1, 1992 shall be eligible to participate under the Plan as of the commencement of any voyage (or, in the case of an Employee who is a permanent employee as of the first day of the first pay period) beginning on or after the date the Employee meets the eligibility standards.

Section 2.03 Participation and Deferral Elections

- (a) Participation in the Plan is purely voluntary. An eligible Employee becomes a Participant by executing an Elective Contributions authorization form.
- (b) At the commencement of each voyage (or, in the case of an Employee who is a permanent employee, at the beginning of his first pay period as an Employee or prior to any Plan Year), an Employee may elect Elective Contributions by completing and signing the form for that purpose prescribed by the Trustees, requesting the Employer to reduce his Earnings by a specified whole percentage of such Earnings.
- (c) Each Elective Contributions authorization shall apply only to Earnings attributable to one voyage with an Employer and to Earnings paid by that Employer following a voyage, and prior to the commencement of a subsequent voyage with that Employer or a new Employer. In case of an Employee who is a permanent employee, an authorization shall remain in effect for the remainder of the Plan Year in which made until changed or revoked. A new Elective Contributions authorization form must be completed and signed at the commencement of each voyage if the Employee wants to defer Earnings under the Plan with respect to that voyage. Subject to the election limits described in Section 2.03(b), the dollar limit on total annual contributions described in Section 2.04 and the limits on Excess Contributions described in Section 3.05, a Participant who is a permanent employee may change the percentage of Earnings to be deferred for the remainder of the Plan Year each time he completes a new Elective Contributions authorization form, and he may do so prior to the beginning of any calendar quarter, effective as of the first day of the first pay period beginning on or after the beginning of such calendar quarter.

Section 2.04 Dollar Limit on Elective Contributions

- (a-1) Notwithstanding a Participant's authorization or instructions, no Participant may defer more than \$7,000 in a calendar year in Elective Contributions under the Plan, with such limit to be adjusted by the Secretary of the Treasury for inflation after 1987 in accordance with Section 415(d) of the Code.
- (a-2) Effective January 1, 2002, notwithstanding a Participant's authorization or instructions, and except as provided in Section 2.04(d), no Participant may defer more than the maximum amount set forth below in a calendar year in Elective Contributions under the Plan, with such amount to be adjusted by the Secretary of the Treasury for inflation after 2006 in accordance with Section 402(g)(5) of the Code.

2002	\$ 11,000
2003	\$ 12,000
2004	\$ 13,000
2005	\$ 14,000
2006 and after	\$ 15,000

- (b) Once a Participant's Elective Contributions for a calendar year under the Plan reach the dollar limit in subsection (a), any authorization executed by him for further Elective Contributions in that year shall be canceled, and the Fund will not accept further Elective Contributions on behalf of that Participant in that year. Any such amounts withheld from the Participant's

Earnings and transmitted to the Fund will be returned to him, with any Net Investment Earnings allocable to such amount, as promptly as possible, and in any event not later than April 15th of the next calendar year.

- (c) A Participant whose Elective Contributions are suspended because he has reached the dollar limit under this section may again participate under the Plan by executing a new Elective Contributions authorization form at the commencement of any voyage (or in the case of an Employee who is a permanent employee, prior to the beginning of the first pay period) beginning in the next calendar year, if he is eligible to participate in the Plan for that year.
- (d) A Participant who attains age 50 before the close of the Plan Year may make "Catch-up" Elective Contributions for that Plan Year, not to exceed the Applicable Dollar Amount. The Applicable Dollar Amount for each Plan Year is:

2002	\$ 1,000
2003	\$ 2,000
2004	\$ 3,000
2005	\$ 4,000
2006 and after	\$ 5,000

The Applicable Dollar Amount is increased after 2006 to reflect cost of living adjustments by the Secretary of the Treasury in accordance with Code Section 414(v)(2)(C). The Applicable Dollar Amount is reduced to the extent necessary to not exceed the limitations of Code Section 414(v). Catch-up Elective Contributions are not taken into account in determining a Participant's Actual Deferral Percentage, are not taken into account under Article VIII, nor are they subject to any other limitation on contributions under the Plan. For purposes of this subsection (d), the total of "Catch-up" Elective Contributions permitted under this subsection (d) and "Catch-up" Designated Roth Contributions permitted under Section 2.08 shall not exceed the Applicable Dollar Amount.

Section 2.05 Elective Contributions

The Employer shall forward each Participant's Elective Contributions, along with such records and reports as may be required by the Trustees in connection with those contributions, to the Fund as of the earliest date on which such contributions can reasonably be segregated from the Employer's general assets, but, in no event later than the 15th business day of the month following the month in which the Participant contribution amounts are received by the Employer, or the 15th business day of the month following the month in which such amounts would otherwise have been payable to the Participant in cash.

Section 2.06 Make-Up Contributions By Returning Veterans

Notwithstanding any other provision of these Regulations to the contrary, a Participant who is reemployed after a period of uniformed service shall be permitted to make up any missed contributions to the Plan during a period equal to the lesser of five years or three times the length of the Participant's absence due to uniformed service. Payments of missed contributions shall be limited to the amount the Participant would have been permitted to contribute had the Participant remained in Covered Employment throughout the period of uniformed service for which such contributions can be made. Provided, however, that such make-up contributions shall not be counted towards the annual plan contribution limit in the year contributed but count towards the limit in the Plan Year to which they relate. In addition, the make-up contributions are disregarded for purposes of Section 3.05.

Nothing in this Section requires any allocation of investment earnings to any amounts contributed under this Section for any period before the amounts are actually contributed.

Section 2.07 Matching Contribution

Effective August 1, 2003, certain Employers (who have not contributed to the Plan prior to August 1, 2003) have agreed to provide Participants employed by those Employers with Matching Contributions. Eligibility for such contributions and their amount shall be as provided in the applicable Agreement defined under Section 1.02.

Section 2.08 Designated Roth Contributions

Effective July 1, 2010, Participants may elect to designate in a whole percentage or dollar amount all or a portion of their Elective Contributions made on or after that date under Section 2.03 as Designated Roth Contributions. Such contributions will be credited to a separate Designated Roth Contribution Account maintained for each Participant. A Designated Roth Contribution is designated irrevocably by the Participant as a contribution being made in lieu of the before-tax elective deferrals the Participant is otherwise eligible to make under Section 1.09 and is treated as includible in the Participant's income at the time the Participant would have received that amount in cash if the Participant had not made an election. Unless specifically stated otherwise, Designated Roth Contributions will be treated as Elective Deferrals for all purposes under the Plan.

In addition, if a Participant will attain age 50 before the close of the Plan Year and is unable to make Elective Contributions (including Designated Roth Contributions) due to the limitations imposed under Section 2.04(a-2) above, "Catch-Up" Designated Roth Contributions may be made for that Plan Year, not to exceed the Applicable Dollar Amount for catch-up contributions in Section 2.04(d).

ARTICLE III

ACCOUNTS

Section 3.01 Creation of Accounts

An Elective Contributions Account shall be created for each Employee who becomes a Participant in the Plan, as of the date he becomes a participant.

Section 3.02 Amount Credited to Accounts

Each Account for a Participant shall be credited, as of the Valuation Date, with

- (a) The balance in the Account as of the last Valuation Date, plus
- (b) Contributions for that Account received by the Fund on behalf of the Participant (including the initial Contributions after he becomes a Participant) since the prior Valuation Date, minus

- (c) Any amounts refunded to the Participant since the prior Valuation Date because they are in excess of the annual dollar limit under Section 2.04 or because they are Excess Contributions as defined in Section 3.06, minus
- (d) Any other amounts withdrawn or paid out from the Account since the prior Valuation Date, plus
- (e) Net Investment Earnings since the prior Valuation Date as defined in Section 3.03.

Section 3.02A Rollovers

A Participant may elect to rollover to the Plan in a separate Rollover Account a rollover distribution from an Eligible Retirement Plan as defined by Plan Section 4.06(g)(2). The Participant may elect to rollover designated Roth deferrals and after-tax contributions from an Eligible Retirement Plan, provided that plan holds and separately accounts for such contributions.

Section 3.03 Net Investment Earnings of Accounts

- (a) The Net Investment Earnings are the investment earnings or losses since the prior Valuation Date attributable solely to gains or losses within the Participant's Accounts less any administrative charges payable from or on behalf of (or otherwise chargeable against) the Participant's Accounts under this Plan.
- (b) Net Investment Earnings are determined for each Account as of each Valuation Date.

Section 3.04 Investment Options

- (a) A Participant may elect to have his Accounts and future contributions made thereto on behalf of him invested by the Trustees in one or more of such funds, which shall be funds maintained by a bank, trust company, insurance company, broker-dealer, mutual fund or investment company, as may be designated by the Trustees as Investment Funds under this Section 3.04. Of the designated Investment Funds, at least one shall be an equity stock fund, one shall be a fixed income fund, one shall be a money market type account, and one may be a Participant-directed brokerage account, subject to such rules and regulations as may be established by the Trustees from time to time, pursuant to which Participants may select from a broad range of mutual funds. From time to time the Trustees may in their sole and absolute discretion designate additional Investment Funds; withdraw the designation of Investment Funds or change designated Investment Funds.

It is intended that the Plan will satisfy the requirements for participant-directed investments of plan accounts contained in Section 404(c) of ERISA and the regulations thereunder (DOL Reg. §2550.404c-1), so as to afford to each Participant the opportunity to exercise control over the assets of his Accumulated 401(k) Share and to choose from a broad range of investment alternatives the manner in which said assets are to be invested. Neither the Trustees, the Plan Administrator, the Plan Office, the Employer, the Union or any other Plan fiduciary shall be liable for any losses that are the result of investment instructions provided by any Participant, Beneficiary, or alternate payee (as that term is defined in Code Section 414(p)).

- (b) (i) Upon enrollment or upon request of the Plan Office, each Participant shall elect in a writing filed with the Plan Office the manner in which his Accounts and future

contributions made on behalf of him are to be invested (unless specifically permitted by the Trustees, the value of any Participant's Accounts as of the date of any election and future contributions shall be invested in the same manner and proportion). Each such election as it pertains to a Participant's Accounts shall apply to the Participant's entire interest in the Accounts as of the following Valuation Date, except in accordance with an intervening change in election pursuant to this subsection (b), including the allocable share of such Accounts in Trust Fund Net Investment Earnings.

- (ii) Notwithstanding the foregoing, if a mutual fund is designated by the Trustees as a vehicle for investing the contributions and the mutual fund permits telephonic elections of the manner in which a Participant's Accounts and future contributions made on behalf of him are invested, the Trustees may in their sole and absolute discretion provide for such telephonic elections. If no election is made the Accounts and future contributions shall be invested in a money market type fund, or in there is more than one (1) such fund or no such fund designated as an Investment Fund, the fund designated by the Trustees for such investments. If there is a change in designated Investment Funds and a Participant does not make a new election, he will be deemed to have designated investment in the designated Investment Funds most similar to those previously elected and in the same proportion as previously elected.
- (iii) A Participant may change his election of designated Investment Funds with regard to future contributions and the current value of his Accounts effective immediately upon the commencement of the first voyage (or, in the case of an Employee who is a permanent employee, the first pay period) following the end of any calendar quarter (or at such additional time as the Trustees may establish) by filing a new written election with the Plan Office at least twenty-one (21) days (or such other period as may be specified by the Trustees) in advance of the date the change is to become effective or, if telephonic elections with a mutual fund are permitted, on such notice as required by the mutual fund.
- (iv) All elections and transfers shall be subject to rules established by the Trustees in their sole and absolute discretion and by the bank, trust company, insurance company, broker-dealer, mutual fund or investment company maintaining the fund.

Section 3.05 Average Deferral Percentage Test

- (a-1) The Average Deferral Percentage test described in subsection (b) shall be performed with respect to the Elective Contributions made under this Plan by all Employers aggregated together.
- (a-2) Effective January 1, 2002, the Average Deferral Percentage test in subsection (b) is performed separately for collectively bargained Participants (including Participants treated as collectively bargained under T. Reg. §1.410(b)-6(d)(2)(ii) and for non-collectively bargained Participants. For collectively bargained Participants, the Average Deferral Percentage test is performed with all Employers aggregated together. For non-collectively bargained Participants, the Average Deferral Percentage test is performed separately by Employer.
- (b) The Average Deferral Percentage for a Plan Year for Highly Compensated Employees must satisfy one of the following limits:

- (1) The Average Deferral Percentage for Highly Compensated Employees shall not exceed the Average Deferral Percentage for Non-Highly Compensated Employees multiplied by 1.25, or
 - (2) The Average Deferral Percentage for Highly Compensated Employees shall not exceed the Average Deferral Percentage for Non-Highly Compensated Employees multiplied by 2.0, provided that the Average Deferral Percentage for Highly Compensated Employees shall not be more than two (2) percentage points higher than the Average Deferral Percentage for Non-Highly Compensated Employees, or, effective for Plan Years before January 1, 2002, such lower number of percentage points as shall be necessary to comply with applicable Treasury regulations prescribed to prevent the multiple use of this alternative limitation with respect to any Highly Compensated Employee.
- (c) To the extent not otherwise specified herein, the Average Deferral Percentage Test shall be performed consistent with any other requirements of Code Section 401(k) and the regulations thereunder.

Section 3.05A After-Tax Contribution Test

- (a) Effective January 1, 2003, After-Tax Contributions shall be tested as provided in this Section. The test shall not be performed for collectively bargained Participants. Non-collectively bargained Participants shall be tested separately by Employer.
- (b) The test will be performed by determining the rate (expressed as a percentage) of a Participant's After-Tax Contributions under the Plan to his earnings for the Plan Year. Then, the average (expressed as a percentage) of the ratios so determined (expressed as a percentage) is computed for the Participants in a defined group. The average of the ratios for Highly Compensated Employees must satisfy one of the following limits:
 - (1) The average of the ratios for Highly Compensated Employees shall not exceed the average of the ratios for Non-Highly Compensated Employees multiplied by 1.25, or
 - (2) The average of the ratios for Highly Compensated Employees shall not exceed the average of the ratios for Non-Highly Compensated Employees multiplied by 2.0, provided that the average of the ratios for Highly Compensated Employees shall not be more than two (2) percentage points higher than the average of the ratios for Non-Highly Compensated Employees.
- (c) To the extent not otherwise specified herein, the After-Tax Contribution test shall be performed consistent with any other requirements of Code Section 401(m) and the regulations thereunder.
- (d) Any After-Tax Contributions made on behalf of Participants who are Highly Compensated Employees that exceed the limits prescribed in this Section 3.05A shall be refunded to the Participants, along with any Net Investment Earnings attributable thereto through the end of the Plan Year for which the contribution was made, in accordance with the Code and the regulations prescribed thereunder, as soon as practicable after the test is performed but in any event by no later than the last day of the Plan Year following the year in which they were made.

Section 3.06 Excess Contributions

Any Elective Contributions made on behalf of Participants who are Highly Compensated Employees that exceed the limits prescribed in Section 3.05 shall be refunded to the Participants, along with any Net Investment Earnings attributable thereto through the end of the Plan Year for which the contribution was made, in accordance with Code Section 401(k)(8) and the regulations prescribed thereunder, as soon as practicable after the Excess Contributions are determined but in any event by no later than the last day of the Plan Year following the year in which they were made. In making any such refunds, the Plan shall first refund the Participant's Designated Roth Contributions and then, if applicable, and if necessary to comply with the limits in Section 3.05, refund the Participant's before-tax Elective Contributions.

Section 3.07 Nonforfeitability

Subject to the limitations on benefits and deferrals prescribed in the Plan, all amounts credited to a Participant's Accounts shall be fully nonforfeitable at all times.

ARTICLE IV

BENEFIT PAYMENTS

Section 4.01 Amount of Accumulated 401(k) Share

The benefit to which a Participant or Beneficiary shall be entitled under the Plan as of any date (subject to subsection (a) of 4.06) shall be the Participant's Elective Contributions Account, Matching Contributions Account, Rollover Account, After-Tax Contributions Account and Designated Roth Contributions Account determined as of the Valuation Date on which his benefit distribution is processed plus any additional Elective Contributions, Matching Contributions, Rollover Contributions, After-Tax Contributions, and Designated Roth Contributions received by the Fund under the Plan on behalf of the Participant after that date that were not credited to his Elective Contributions Account, Matching Contributions Account, Rollover Account, After-Tax Contribution Account, and Designated Roth Contributions Account as of that date. The total of these items shall be known as the Participant's Accumulated 401(k) Share.

Section 4.02 Benefit Upon Retirement

Upon Retirement, a Participant shall have the option to request the Trustees to pay his Accumulated 401(k) Share. Except as otherwise provided in this Article or as prohibited by law, the participant shall elect to have his Accumulated 401(k) share paid in a lump sum payment or in monthly installments, over a period of 36, 60 or 120 months. If an installment distribution is elected by a Participant, the initial monthly installment to be paid to such Participant shall equal the Participant's Accumulated 401(k) Share divided by the number of months in the designated installment period. Thereafter, the installment to be paid each month shall be the balance of the Participant's Accumulated 401(k) Share determined as of the last Valuation Date of each month divided by the number of monthly installments remaining to be distributed. A Participant may elect at any time on or after installment payments begin to have his remaining Accumulated 401(k) Share paid in a lump sum.

Section 4.03 Death Benefit

- (a) In the event that a Participant dies before receiving the Accumulated 401(k) Share, the Accumulated 401(k) Share or the remainder, if some portion of it has been paid to the Participant, shall be paid to the surviving Spouse unless the Participant and the surviving Spouse have designated in writing a qualified Beneficiary (other than the surviving Spouse) to receive the balance of the Accumulated 401(k) Share. Death Benefits payable under this Section 4.03 shall be paid only in a lump sum.
- (b) The Trustees may require and rely upon such proof of death and such evidence of the right of any Beneficiary to receive the undistributed value of the Accumulated 401(k) Share of a deceased Participant as the Trustees may deem proper, and their determination of death and of the right of such Beneficiary to receive payments shall be conclusive and binding on all parties.

Section 4.04 Benefit in Case of Total Disability

If a Participant becomes Disabled, he shall be eligible to receive his Accumulated 401(k) Share on the same terms and conditions provided in Section 4.02 of this Article 4. A Participant shall be deemed to be Disabled (and his Disability is treated as occurring) when, based on medical evidence that is satisfactory to the Trustees, an Employee is deemed to be totally and permanently unable as a result of bodily injury or disease to engage in any further employment as an Employee. The Trustees shall be the sole and final judges of disability. An Employee applying for his Accumulated 401(k) Share shall be required to submit to an examination by a physician or physicians selected by the Trustees and may be required to submit to reexamination periodically as the Trustees may direct. The Trustees may, however, in their discretion waive reexamination after the Employee attains age 65.

Section 4.05 Benefits Upon Termination of Employment

In the event that a Participant has a Termination of Employment, he shall be considered as separated from employment, and his Accumulated 401(k) Share, if any, shall upon application be paid on the same terms and conditions provided in Section 4.02 of this Article 4. The Participant shall have the right to notify the Trustees in writing that he wishes to have his Accumulated 401(k) Share remain in the Plan. All rights of the Participant and liabilities of the Plan to the Participant shall cease upon distribution of his Accumulated 401(k) Share.

Section 4.06 Benefits Payments

- (a) Notwithstanding any other provision of this Plan to the contrary, a Participant's Accumulated 401(k) Share shall be available to the Participant for distribution only upon the occurrence of any of the following:
 - (1) The Participant's Retirement at or after his Normal Retirement Date;
 - (2) The Participant's Death or Disability (as defined in Section 4.04);
 - (3) The Participant's Termination of Employment;
 - (4) The Participant's Hardship (as defined in Section 4.07); or

- (5) The Participant's attainment of age 59 ½ ;
- (6) The termination of the Plan without establishment or maintenance of another defined contribution plan (other than an employer stock ownership plan as defined in Code Section 4975 (e) or Code Section 409 or a simplified employee pension as defined in Code Section 408(k)), excluding any such other plan if fewer than two percent (2%) of the employees who are eligible hereunder at the time of termination are or were eligible under such other plan at any time during the twenty-four (24) month period beginning twelve (12) months before the date of termination of the Plan, or if such other plan does not exist at such date of termination or within the period ending twelve (12) months after distribution of all assets from the Plan;
- (7) The distribution by the Employer of substantially all of the assets (within the meaning of Code Section 409 (d) (2)) used by the Employer in a trade or business of the Employer, but only with respect to an Employee who continues employment with the corporation acquiring the assets; or
- (8) The disposition by an Employer of its interest in a subsidiary (within the meaning of Code Section 409 (d) (2)) used by the Employer in a trade or business of the Employer, but only with respect to an Employee who continues employment with the corporation acquiring the assets.
- (9) Effective January 1, 2009, if the Participant (by reason of being a member of a reserve component, as defined in section 101 of the title 37, United States Code) ordered or called to active duty for a period in excess of 179 days or for an indefinite period, the Participant may request a Qualified Reservist Distribution (as defined in Code Section 72(t)(2)(G)). Such Qualified Reservist Distribution must be (a) taken only from the Participant's Elective Contributions Account, and (b) paid by the Plan during the period beginning on the period beginning on the date of such order or call, and ending at the close of the active duty period.

A Participant shall be entitled to receive a distribution as soon as administratively feasible on or after a Valuation Date that occurs after an event described above. Such Valuation Date shall be elected by the Participant in writing and shall be deemed the Benefit Start Date. If distribution is to be made in installments, the undistributed portion of the Participant's Elective contributions Account shall be retained in the Trust Fund and the designated Investment Funds during the period of distribution.

Notwithstanding anything to the contrary herein, if the value of a Participant's Accumulated 401(k) Share exceeds (or at the time of any prior distribution exceeded) Five Thousand (\$5,000) Dollars, the Participant must consent to any distribution of his Accumulated 401(k) Share prior to his Normal Retirement Age.

Notwithstanding the foregoing, if a distribution is one to which Section 401(a) (11) and (417) of the Internal Revenue Code do not apply, such distribution may commence less than 30 days after the notice required under Section 1.411 (a)-11(c) of the Income Tax Regulations is given, provided that:

- (1) the Plan Office clearly informs the Participant that the Participant has a right to a period of at least 30 days after receiving the notice to consider the decision of whether or not to elect a distribution and, if applicable, a particular distribution option), and

- (2) the Participant, after receiving the notice, affirmatively elects a distribution. Notwithstanding the foregoing, the consent of the Participant shall not be required to the extent that a distribution is required to satisfy Section 401 (a) (9) or Section 415 of the Code.
- (b) Notwithstanding any other provision of this Plan, if the value of a Participant's Accumulated 401(k) Share is equal to or less than Five Thousand (\$5,000) Dollars at the time of his Retirement, Disability or Termination of Employment and at all times thereafter, such Accumulated 401(k) Share shall be immediately distributed in the form of a lump sum distribution without the consent of the Participant or Beneficiary.
- (c) Notwithstanding anything else herein, unless a Participant otherwise consents in writing to the contrary, the Participant shall receive payment, or commencement of payment, under the Plan of his benefits no later than sixty (60) days after the end of the Plan Year in which the latest of the following occurs:
- (i) the Participant's attainment of age sixty-five (65);
 - (ii) the tenth (10th) anniversary of the year in which the Participant began participating in the Plan; or
 - (iii) the Participant's Termination of Employment.
- (d) With regard to paragraph (5) of subsection (a) above, a Participant may not request more than one distribution in any Plan Year and any such request must be for a distribution of the Participant's entire Accumulated 401(k) Share. Distributions payable under paragraph (5) of subsection (a) shall be paid only in a lump sum.
- (e) With regard to paragraphs (6), (7) and (8) of subsection (a) above, any distributions must be a lump sum distribution (as defined in Code Section 402(d) (4) without regard to clauses (i), (ii), (iii) and (iv) of subparagraph (A), subparagraph (B) or subparagraph (F) of Code 402(d) (4) by reason of the event. Subparagraphs (7) and (8) of subsection (a) above shall be applicable only if the Employer continues to maintain the Plan after the disposition.
- (f) (1) Notwithstanding the foregoing, except as otherwise permitted by law, the payment of benefits to a Participant shall begin not later than the April 1st following the calendar year in which the Participant attains age 70 ½ or retires whichever is later. Unless the Participant has made a written election of a different method of distribution, payment under this subsection will be made as a lump sum distribution of the Participant's entire Accumulated 401(k) Share.
- (2) This subsection (f) and the Plan shall be interpreted and administered in accordance with Code Section 401(a)(9) and the regulations thereunder (including without limitation, Treasury Regulation Section 1.401(a) (9)-2), and notwithstanding anything else in this Plan to the contrary, the payment of benefits with respect to any Participants shall be made in accordance therewith, which shall in no event expand the requirements and limitations on benefit payments set forth elsewhere herein.

(g) Direct Rollovers

- (1) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this subsection, a distributee may elect at the time and in the manner prescribed by the Trustees, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.
- (2) For purposes of this subsection, the following terms have the following meanings:

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 to the extent such distribution is required under Code Section 401(a)(9), and the portion of any distribution that is not includable in gross income determined without regard to the exclusion for net unrealized appreciation with respect to employer securities). Notwithstanding the preceding, a hardship withdrawal under Section 4.07 is not an eligible rollover distribution.

Notwithstanding the preceding, effective January 1, 2007, the nontaxable portion of an eligible rollover distribution may be rolled over tax-free to another qualified plan or 403(b) annuity, but only if the rollover is made in a direct trustee-to-trustee transfer and the recipient plan or 403(b) annuity provides for separate accounting of the amount transferred and earnings on such amounts.

Eligible retirement plan – An eligible retirement plan is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), or a qualified trust described in Code Section 401(a), 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.

Effective for distributions made on and after January 1, 2002, (1) the preceding sentence will no longer apply, so that eligible retirement plan has the same meaning for surviving spouses as it does for employees and (2) an eligible deferred compensation plan described in Code Section 457(b) which is maintained by an eligible employer described in Code Section 457(e)(1)(A) and an annuity contract described in Code Section 403(b) can also be an eligible retirement plan.

Effective January 1, 2008, eligible retirement plan shall include an individual retirement account described in Code Section 408A, provided the eligible rollover distribution is considered a qualified rollover contribution under Code Section 408A(e).

Effective June 1, 2007, for purposes of distributions to a non-spouse designated Beneficiary, eligible retirement plan shall mean an inherited individual retirement account as defined in Code Section 408(d)(3)(C).

Effective for distributions made on or after July 1, 2010, an eligible retirement plan for the purpose of a direct rollover of a distribution of a Designated Roth Contributions Account shall include only another Roth elective deferral account under an applicable retirement plan described in Code Section 401A(e)(1) or a Roth IRA described in Code Section 408A.

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 an 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. Distributee also includes a non-spouse designated Beneficiary to the extent permitted under Code Section 402(c)(11).

Direct rollover – A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

Section 4.06A Minimum Distributions

(a) General Rules.

- (i) **Effective Date.** The provisions of this Section 4.06A will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.
- (ii) **Precedence.** The requirements of this Section 4.06A will take precedence over any inconsistent provisions of the Plan.
- (iii) **Requirements of Treasury Regulations Incorporated.** All distributions required under this Section 4.06A will be determined and made in accordance with the Treasury regulations under Section 401(a)(9) of the Code.

(b) Time and Manner of Distribution.

- (i) **Required Beginning Date.** The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date.
- (ii) **Death of Participant Before Distributions Begin.** If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
 - (1) If the Participant's surviving spouse is the Participant's sole designated Beneficiary, then, except as elected pursuant to Section 4.06A (b)(ii)(5), distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70 ½, if later.

- (2) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, then, except as elected pursuant to Section 4.06A (b)(ii)(5), distributions to the designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
 - (3) If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
 - (4) If the Participant's surviving spouse is the Participant's sole designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Section 4.06A (b)(ii), other than Section 4.06A(b)(ii)(1), will apply as if the surviving spouse were the Participant.
 - (5) Elections.
 - a. Participants or Beneficiaries may elect on an individual basis whether the 5-year rule or the life expectancy rule in Section 4.06A (b)(ii) and Section 4.06A (d)(ii) of the Plan applies to distributions after the death of a Participant who has a designated Beneficiary (and an election by a Beneficiary after the death of the Participant will supersede any election by the Participant). The election must be made no later than the earlier of (A) September 30 of the calendar year in which distribution would be required to begin under Section 4.06A (b)(ii) of the Plan, or (B) by September 30 of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, surviving spouse's) death. If neither the Participant nor the Beneficiary makes an election under this Section 4.06A (b)(ii)(5), distributions will be made in accordance with Section 4.06A (b)(ii) and Section 4.06A (d)(ii) of the Plan (as apply in the absence of such election).
 - b. A designated Beneficiary who is receiving payments under the 5-year rule may, until December 31, 2003, make a new election to receive payments under the life expectancy rule provided that all amounts that would have been required to be distributed under the life expectancy rule for all distribution calendar years before 2004 are distributed by the earlier of December 31, 2003 or the end of the 5-year period.
- (c) Required Minimum Distributions During Participant's Lifetime.
- (i) Amount of Required Minimum Distribution For Each Distribution Calendar Year. During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

- (1) the quotient obtained by dividing the Participant's Account balance by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a) (9)-9 of the Treasury regulations, using the Participant's age as of the Participant's birthday in the distribution calendar year; or
 - (2) if the Participant's sole designated Beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's Account balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.
- (ii) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under this Section 4.06A(c) beginning with the Fifth distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.
- (d) Required Minimum Distributions After Participant's Death.
- (i) Death On or After Date Distributions Begin.
 - (1) Participant Survived by Designated Beneficiary: If the Participant dies on or after the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated Beneficiary, determined as follows:
 - a. The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
 - b. If the Participant's surviving spouse is the Participant's sole designated Beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.
 - c. If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, the designated Beneficiary's remaining

life expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(2) No Designated Beneficiary: If the Participant dies on or after the date distributions begin and there is no designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(ii) Death Before Date Distributions Begin.

(1) Participant Survived by Designated Beneficiary: Except as elected at Section 4.06A(b)(ii)(5), if the Participant dies before the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account balance by the remaining life expectancy of the Participant's designated Beneficiary, determined as provided in Section 4.06A(d)(i).

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

(3) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin: If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Section 4.06A (b)(ii)(4), this Section 4.06A(d)(ii) will apply as if the surviving spouse were the Participant.

(e) Definitions.

(i) Designated Beneficiary. The "designated Beneficiary" means the individual who is designated as the Beneficiary under the Plan and is the designated Beneficiary under Code Section 401(a) (9) and Section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.

(ii) Distribution calendar year. The "distribution calendar year" means a calendar year for which a minimum distribution is required. For distributions

beginning before the Participant's death, the Fifth distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the Fifth distribution calendar year is the calendar year in which distributions are required to begin under Section 4.06A(b)(ii). The required minimum distribution for the Participant's Fifth distribution calendar year will be made on or before the Participant's Required Beginning Date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.

- (iii) Life expectancy. "Life expectancy" means the life expectancy as computed by the use of the Single Life Table in Section 1.401(a) (9)-9 of the Treasury regulations.
- (iv) Participant's Account balance. The "Account balance" means the Account balance as of the last Valuation Date in the calendar year immediately preceding the distribution calendar year ("valuation calendar year") increased by the amount of any contributions made and allocated or forfeitures allocated to the Account balance as of dates in the valuation calendar year after such Valuation Date and decreased by distributions made in the valuation calendar year after such Valuation Date. The Account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.
- (v) Required Beginning Date. "Required Beginning Date" means (1) for a Participant who is not a 5% owner (as defined in Code Section 416(i)(1)) the April 1 following the later of the calendar year in which the Participant attains age 70 ½ or the calendar year in which the Participant terminates employment and (2) for a Participant who is a 5% owner (as defined in Code Section 416(i)(1)) the April 1 following the calendar year in which the Participant attains age 70 ½.

Section 4.07 Withdrawals for Hardship

- (a) In the event of Hardship (as hereinafter defined), a Participant shall have the right to withdraw up to the amount of the Hardship, all or a part of his Elective Contributions Account (including his Designated Roth Contributions Account), but not in excess of the actual contributions on his behalf to such account determined as of the date of distribution, upon twenty-one (21) days prior written notice to the Plan Office.
- (b) For the purposes of this Section 4.07, a Participant shall experience a "Hardship" if, and only if, such Participant experiences an immediate and heavy financial need (as defined in (c) below) and the withdrawal is necessary to satisfy the financial need of the Participant (as defined in (d) below).
- (c) A Participant will be deemed to experience an immediate and heavy financial need if, and only if, he needs the withdrawal for one of the following reasons:

- (1) To pay expenses for medical care described in Code Section 213(d) previously incurred by the Participant, or the Participant's spouse or dependents (as defined in Code Section 152), or necessary for these persons to obtain medical care described in Code Section 213(d);
 - (2) To pay costs directly related to the purchase of a principal residence for the Participant (excluding mortgage payments);
 - (3) To pay tuition and related educational fees and room and board expenses for the next twelve (12) months of post-secondary education for the Participant, or the Participant's spouse, children or dependents (as defined in Code Section 152);
 - (4) To pay amounts necessary to prevent eviction of the Participant from his principal residence or foreclosure of the mortgage on the Participant's principal residence; or
 - (5) Such other financial needs as may be specifically promulgated by the Internal Revenue Service.
- (d) A withdrawal will be deemed necessary to satisfy the financial need of a Participant if, and only if:
- (1) The withdrawal is not in excess of the amount of the immediate and heavy financial need of the Participant (including any amounts necessary to pay any federal, state or local income taxes or penalties reasonably anticipated to result from the withdrawal).
 - (2) The Participant has obtained all distributions, other than hardship distributions, and all nontaxable loans currently available under all plans maintained by the Employer.
- (e) In the event the Participant makes a withdrawal pursuant to this Section 4.07, then:
- (1) The Participant shall be suspended from making Elective Contributions (including Designated Roth Contributions) pursuant to Article III hereof and before-tax elective or after-tax voluntary contributions to any other qualified or nonqualified plan maintained by the Employer (which shall be deemed to include all qualified and nonqualified plans of deferred compensation, other than the mandatory employee contribution portion of a defined benefit plan, stock option, stock purchase or similar plan, but shall not include health or welfare benefits plans) for twelve (12) months, or effective January 1, 2002, for six (6) months, following the withdrawal; and
 - (2) In the taxable year following the withdrawal, the Participant's Elective Contributions under this Plan and any other permitted pre-tax elective contribution to any other plan maintained by the Employer may not be greater than the excess of the applicable limit under Code Section 402(g) for such next taxable year less the amount of such Participant's Elective Contributions hereunder and any other permitted pre-tax elective contributions to any other plan maintained by the Employer for the taxable year of the hardship distribution. Effective January 1, 2002, this paragraph (e)(2) will no longer apply.

- (f) No withdrawal shall be for less than (i) One Thousand Dollars (\$1,000) or (ii) the full value of the Participant's Accumulated 401(k) Share, if less. All withdrawals over One Thousand Dollars (\$1,000) shall be in multiples of One Hundred Dollars (\$100). Only one withdrawal may be made under this Section 4.07 in any twelve (12) consecutive month period. The Plan Office may establish rules and regulations which do not discriminate in favor of officers, stockholders and Highly Compensated Employees, as to procedures, forms and required notice periods for withdrawal requests.

Section 4.08 Loans

Unless otherwise specified under the terms of an applicable Agreement, effective July 1, 2009, each Participant and alternate payee under a qualified domestic relations order as defined in Section 414(p) of the Code ("Participant" for purposes of this Section 4.08) may request a loan of a portion of the vested balance of his Accumulated 401(k) Share under the Plan. For clarity, a Beneficiary may not request a loan under this Section 4.08. All loans made to a Participant from the Trust Fund shall be subject to the rules and regulations herein set forth.

(a) General

The Trustees shall determine the time or times each year when loans shall be made available to Participants, and may formulate a loan policy containing such rules and procedures consistent with the provisions contained in this Section, as it deems appropriate.

(b) Availability

Loans shall be made available to all Participants (including alternate payees under a qualified domestic relations order as defined in Section 414(p) of the Code and former Employees, but excluding Beneficiaries) on a reasonably equivalent basis, except that the Plan Administrator may make reasonable distinctions based upon the loan applicant's credit-worthiness or other obligations, state law restrictions affecting deductions for repayment, and other factors that may adversely affect the ability to assure timely repayment. The Plan Administrator may reduce or refuse a requested loan where it determines that timely repayment of the loan is not assured. Only one loan shall be outstanding at any time. A new loan application may not be made until all outstanding loans have been repaid in full.

(c) Loan Amount

No loan may be made to a Participant to the extent that such loan when added to the outstanding balance of all other loans to the Participant would exceed the lesser of:

- (i) \$50,000, reduced by the excess (if any) of the highest outstanding balance of loans during the one-year period ending on the day before the loan is made, over the outstanding balance of loans from the Plan on the date the loan is made; or
- (ii) one-half of the vested Participant's Accumulated 401(k) Share balance.

For purposes of the above limitation, all loans from all plans of any Employer shall be aggregated. No loan shall be made hereunder in an amount less than \$1,000.

(d) Loan Length

The loan shall be repayable by deduction from the bank account designated by the Participant and shall by its terms require that repayment of the loan be amortized in level payments of principal and interest, not less frequently than quarterly, over a period not extending beyond five (5) years from the date of the loan, or 20 years if such loan is used to acquire a dwelling unit which, within a reasonable time, will be used as the principal residence of the Participant. The repayment terms shall be in full annual increments of 12-month periods, with no partial years allowed, up to the foregoing maximums. No extension of the maximum repayment period hereunder shall be permitted. A Participant shall be permitted to prepay a loan in full (including all accrued interest up to the date of payment) without penalty at any time.

(e) Interest Rate

The loan shall be evidenced by a note and shall be secured by the Participant's Accumulated 401(k) Share and by such other security, if any, as the Trustees may require. Each loan shall bear a fixed rate of interest equal to one (1) percent above the prime rate as calculated by Reuters on the last day of the month preceding the month in which application for the loan is made.

(f) Security for Repayment

A note evidencing a loan to a Participant shall be an asset of the Trust which is allocated to the Accumulated 401(k) Share of the Participant, and shall for purposes of the Plan be deemed to have a fair market value at any given time equal to the unpaid balance of the note plus the amount of any accrued but unpaid interest.

(g) Hierarchy of Accounts

A Participant may borrow from his Elective Contributions Account, Designated Roth Contributions Account, Matching Contribution Account (to the extent vested therein), Rollover Accounts and After-tax Contributions Account.

The amount of any loan shall be deemed an investment of, and allocated to, the vested portion of the Participant's Accumulated 401(k) Share in the following order: 1) After-tax Contributions Account; 2) Rollover Accounts; 3) Matching Contributions Account (to the extent vested therein); 4) Designated Roth Contributions Account; and 5) Elective Contributions Account; and subject to any limitations of the Investment Funds selected, shall be taken from the Participant's Investment Fund or Funds on a pro rata basis.

Loan repayments shall be applied to the Participant's Accumulated 401(k) Share in the following order: 1) After-tax Contributions Account; 2) Rollover Accounts; 3) Matching Contributions Account; 4) Designated Roth Contributions Account; and 5) Elective Contributions Account; and shall be invested in accordance with the Participant's investment options then in effect.

(h) Default

Failure to make any installment when due under the terms of the loan (taking into account any grace period) for any reason, including but not limited to (i) failure to pay the full amount of any payment on the date it is due; or (ii) death of the Participant, shall be an event of default and shall result in a deemed distribution of the entire outstanding balance of the loan at the time of such default. In no event shall the grace period for any required installment extend beyond the last day of the calendar quarter following the calendar quarter in which the required installment was due.

In the event of default, foreclosure on the note and attachment of the security shall not occur until a distributable event occurs. If, at the time benefits are to be distributed to a Participant or Beneficiary, there remains any unpaid balance of a loan hereunder, such unpaid balance shall become immediately due and payable in full. Such unpaid balance, together with any accrued but unpaid interest on the loan, shall be deducted from the Participant's Accumulated 401(k) Share before any such distribution of benefits are made.

If repayment is not made within the foregoing grace period, the entire outstanding balance of the loan will be deemed a distribution from the Plan to the Participant for tax purposes. Whenever a default occurs, the Plan Administrator is authorized to take such action as it deems necessary or desirable to preserve Plan assets. A deemed distribution to the Participant for tax purposes will be reported to the Internal Revenue Service as a taxable distribution and may result in immediate recognition of income by the Participant, as well as a possible ten (10) percent early-distribution tax penalty. However, even if the loan is treated as a taxable distribution, it still must be repaid according to its terms and interest will continue to accrue. As a result, a defaulted loan will count as an outstanding loan and will prevent a Participant from subsequently borrowing, or refinancing the outstanding loan, against his account balance in the Plan, unless the outstanding loan balance on the defaulted loan is repaid.

(i) Refinancing

No loan may be made to a Participant to the extent that at the time such loan is requested, there is outstanding a prior loan made to the Participant under this Plan. Notwithstanding the preceding, a Participant may refinance an existing loan if (i) the Participant's loan is still in active status on or before its original maturity date (i.e., payments are still being made on the loan and it is not in default); and (ii) the maturity date of the refinanced loan is less than five years from the date of commencement of the original loan. If the original loan was used to acquire the principal residence of the Participant, the loan may be refinanced if the condition of (i) above is satisfied, even if the maturity date of the original loan is greater than five (5) years.

(j) Military Leave

Loan repayments for Employees will be suspended during periods of uniformed military service as determined under the Uniformed Services Employment and Reemployment Rights Act of 1994. Upon the Employee's timely return to employment after such service, the Employee may re-amortize the remaining loan balance so that the entire outstanding amount (including interest that accrued during the suspension) is repaid by the end of the original loan term plus the period of uniformed military service for which the loan

payments were suspended. The interest rate shall not exceed six (6) percent during an Employee's period of military service pursuant to the Servicemembers Civil Relief Act of 2003.

(k) Domestic Relations Order

No loan shall be made to a Participant during a period when a domestic relations order affecting his Accumulated 401(k) Share is under review for a determination of qualification as a Qualified Domestic Relations Order. In addition, a default on an existing loan will occur if a distribution is required to be made from a Participant's Accumulated 401(k) Share under a Qualified Domestic Relations Order and the amount of the required distribution exceeds the value of the Accumulated 401(k) Share less the outstanding loan balance.

(l) Cost Paid by Participant

All costs and expenses in connection with obtaining and maintaining a loan and securing the Plan's security interest therein, shall be deducted from the Participant's Accumulated 401(k) Share.

ARTICLE V

DISTRIBTUIONS - - CLAIM AND APPEAL PROCEDURE

Section 5.01 Advance Written Applications Required

Application for distribution of a Participant's Accumulated 401(k) Share, Elective Contributions Account or any portion thereof shall be made in writing, in the form and manner provided by the Trustees, no later than in the calendar month immediately preceding the first month for which such distribution is payable.

Section 5.02 Information Required

Each Employee, Participant, or Beneficiary shall furnish to the Trustees any information or proof requested by them and reasonably required to administer these Regulations.

Section 5.03 Standard of Proof

The Trustees shall be the sole and absolute judges of the standard of proof required in any case. In the application and interpretation of these Regulations, the decision of the Trustees shall be final and binding on all parties including, but not limited to, Employees, Participants, Beneficiaries, Employers, the Union, and the ROU. The Trustees may adopt procedures for the determination of account balances in advance of the filing of applications for distribution.

Section 5.04 Non-Assignment of Benefits

No Employee, Participant, or Beneficiary shall have any right to assign, alienate, transfer, sell, hypothecate, mortgage, encumber, pledge, commute or anticipate any benefits under this Plan and,

except as set forth below, such benefits shall not in any way be subject to any legal process to levy execution upon, or attachment proceedings against, the same for the payment of any claim against any Employee, Participant, or Beneficiary, nor shall such payment be subject to the jurisdiction of any bankruptcy court or insolvency proceedings by operation of law or otherwise, and any such assignment shall be void and of no effect whatsoever.

This section shall apply to the creation, assignment or recognition of a right to any benefit payable with respect to an Employee or Participant pursuant to a domestic relations order, except that this section shall not apply if such order is determined to be a Qualified Domestic Relations Order, as defined in Section 414(p) of the Code, and the procedures established by the Trustees.

Section 5.05 Incompetence of Recipient

In the event it is determined that any individual is unable to care for his affairs, because of illness, accident or any incapacity, either mental or physical, any payment due to such individual hereunder, unless claims shall have been made theretofore by a legally appointed guardian, committee or other legal representative, may be applied in the discretion of the Trustees to the maintenance and support of such individual.

Section 5.06 Appeal Procedure

If a person files a claim for benefits and payment of such benefits is wholly or partially denied, the Plan Office shall, within 90 days of the date the claim for benefit was filed, provide notice in writing to such claimant setting forth the specific reason or reasons for denying payment of the benefits, which reason shall be stated in as clear a manner as possible and in a fashion calculated to be understood by the claimant. If special circumstances require additional time for processing the claim, written notice of this extension of time shall be sent to the claimant within the 90 day period. Such extension shall not exceed 180 days from the date the claim was filed.

Any notice sent by the Plan Office denying, in whole or in part, any claim, shall also make reference to the specific and pertinent provisions of the Regulations upon which the denial is based, and, if appropriate, shall describe any additional material or information necessary for the claim to be honored along with an explanation of why such material or information is necessary. Such notice shall also include a statement that the claimant has a right within 60 days of written notification of the denial of the claim in whole or in part, to request in writing a review by the Trustees of the decision denying the claim.

A claimant whose application for benefits is denied in whole or in part shall have the right to file a request for review of the denied claim within 60 days of the date of the mailing of the written notification of the denial of the claim. The claimant or his duly authorized representative shall have the right to review pertinent documents concerning the claim and to subject issues and comments in connection with the appeal in writing.

All such appeals or requests for review of the decision denying, in whole or in part, any claim, shall be referred by the Plan Office to the Chairman and Secretary of the Trustees. If the request for review is made within 60 days prior to a scheduled meeting of the Trustees, the claim shall be referred to the subcommittee of the Trustees for determination. If the request for review or appeal is filed more than 60 days prior to a scheduled meeting of the Trustees, the appeal or request for review may be referred by the Chairman and Secretary to one or more Trustees who shall be delegated to hear and determine the appeal.

A decision on a request for review or appeal shall be made within 60 days after receipt of a request for review by the Plan Office unless special circumstances require an extension of time for the processing of the claim for review. In such event, a decision shall be rendered as soon as possible, but no later than 120 days after receipt of the request for review. Written notice of the extension of time for the making of a decision on the request for review shall be furnished to the claimant prior to the extension. The decision of the Trustees, the subcommittee, or the one or more Trustees to whom is delegated the authority to reach a decision on an appeal or request for review shall be in writing and shall be final and binding on all parties. The decision shall include specific reasons for the denial or grant of the claim and specific references to the provisions of the Regulations upon which the decision is based.

Any claimant or person filing an appeal or request for review shall have the right to appear in person and/or by his counsel before the subcommittee or the Trustees who have been delegated authority to reach a decision or determination on the appeal. The subcommittee or Trustees hearing the appeal will consider the evidence presented and will listen to argument for a reasonable period of time on behalf of the appeal.

Section 5.07 New Participating Employer

- (a) If an Employer first contributes to the Trust Fund with respect to a unit of Employees after February 1, 1992, any Employee within such unit shall be deemed within Covered Employment from the date for which the contribution is first made.
- (b) For purposes of this section, a successor company's initial date of contribution shall be deemed to be the initial date of contribution by its predecessor.

Section 5.08 Vesting; No Other Rights

Each Participant shall at all times and in all events be fully vested in his Elective Contributions Account, the Elective Contributions received by the Fund on his behalf, his Accumulated 401(k) Share and any other amount accrued in the Fund on his behalf. Notwithstanding the foregoing, no Employee, Participant, or Beneficiary shall have any right or interest in any of the income or property received or held by or for the account of the MEBA Pension Trust with respect to the MEBA 401(k) Plan, or vested right to benefits, except through fulfillment of all the conditions and requirements set forth in these Regulations.

- (a) Except as provided in subsection (b), in the event an Employee, Participant, or Beneficiary is paid an amount above that to which he was entitled pursuant to the appropriate rules, Regulations and interpretations of the Plan, the overpayment shall be refunded to the Plan upon due notice to the payee. If such refund is not made to the Plan within the time specified in such notice, such overpayment shall be deducted from future payments, if any, due the payee. The Plan shall, in any event, have the right to proceed to collect such overpayment upon due notice to the payee. Future payments, if any, shall be made on the correct and appropriate basis.
- (b) If notice of any overpayment is not sent to the payee by registered mail to the address last filed with the Plan, within one year of such overpayment, the overpayment may be retained by the payee and no claim for refund will be made nor shall a proceeding to collect such overpayment be authorized.

Section 5.09 Facility of Payment

If following the death of a Participant there is no validly designated Beneficiary to receive payment of any benefits that may be payable hereunder on account of the Participant's death, or if the Trustees determine that the Beneficiary cannot be located, then the Participant shall be deemed to have designated a Beneficiary or Beneficiaries determined from the following order of precedence: (1) spouse; (2) children, in equal shares; (3) named beneficiary under the MEBA Medical and Benefits Plan (or the ROU Benefits Plan, if applicable), and (4) his estate.

ARTICLE VI

MAXIMUM ANNUAL ADDITIONS

Section 6.01 Section 415 Limit

Contributions and other annual additions under the Plan are subject to the limitations of Section 415 of the Code.

Section 6.02 Maximum Annual Additions

- (a-1) Notwithstanding any other provisions contained in these Regulations to the contrary, the maximum contributions to any Employee's Elective Contributions Account, plus all annual additions credited to him under all defined contribution plans of Employers, for any calendar year shall not exceed the lesser of \$30,000 (as increased by regulations issued by the Secretary of the Treasury) or 25% of the Employee's compensation as defined in Section 415 of the Code.
- (a-2) Effective January 1, 2002, notwithstanding any other provisions contained in these Regulations to the contrary, the maximum contributions to any Employee's Elective Contributions Account, plus all annual additions credited to him under all single employer defined contribution plans of Employers, for any calendar year shall not exceed the lesser of \$40,000 (as increased by regulations issued by the Secretary of the Treasury) or 100% of the Employee's compensation as defined in Section 415(c)(3) of the Code and Treasury Regulation Section 1.415(c)-2. Effective January 1, 2009, compensation as defined in Code Section 415(c)(3) and Treasury Regulation § 1.415(c)-2 shall include the amount of any differential wage payments paid by the Employer to a Participant in accordance with Code Section 3401(h) and Code Section 414(u)(12).
- (b) To the extent the contributions hereunder otherwise allocable to an Employee's Elective Contributions Account exceed the limitation in subsection (a), the contributions with respect to the Employee shall be reduced by the amount necessary to comply with that subsection and shall be returned to him in accordance with Treasury Regulation Section 1.402(g)-1(e)(2) or pursuant to Treasury Regulation Section 1.415(c)-1(b)(2)(D).
- (c) Notwithstanding anything herein to the contrary, in the event the annual addition on behalf of a Participant in any limitation year exceeds the limitation of Code Section 415, then the contributions hereunder shall be reduced first as set forth in subsection (b) above to eliminate such excess and, if any excess then still exists, contributions to other plans of the Employer or

any other entity aggregated under Section 415(h) of the Code, qualified under Section 401(a) of the Code may be reduced to the extent provided therein and to the extent provided under the Code.

ARTICLE VII

INTERPRETATION, AMENDMENT, TERMINATION AND OTHER MISCELLANEOUS PROVISIONS

Section 7.01 Amendment

The Trustees are authorized, in their sole and absolute discretion, to amend or modify these Regulations at any time in accordance with the Trust Declaration, including, but not limited to, any change in contribution amount, types of benefit, and conditions of eligibility and payment, provided that no amendment or modification may reduce any benefit rights which may have accrued prior to amendment, so long as Plan assets are available for payment of such benefits.

Section 7.02 Discontinuance

The Trustees shall have complete authority, in their sole and absolute discretion, to discontinue the Plan, in whole or in part, at any time and for any reason. If this Plan is discontinued, the Trustees shall continue in office for the purpose of distributing the assets then remaining, to the extent they are sufficient after provision for expenses therefor, as retirement benefits of Employees in such manner as the Trustees determine is most equitable and efficient.

Section 7.03 Plan Interpretation and Benefit Determination

The Trustees shall have complete authority, in their sole and absolute discretion, to (i) interpret the terms of the Trust, the Plan, any insurance contracts or policies (and any related documents or underlying policies) and (ii) determine eligibility for, and the amount of, benefits under the Plan. All such interpretations and determinations of the Trustees shall be final and binding upon all parties and persons affected thereby.

Section 7.04 Gender and Number

Any gender, whenever used, shall include any other, as the context requires. Whenever any words are used herein the singular, they shall be construed as though they were also used in the plural in all cases where they would so apply.

Section 7.05 Merger, Consolidation or Transfer

In the event of the merger or consolidation of the Plan with another plan or transfer of assets or liabilities from the Plan to another plan, each participant shall be entitled on the day following such merger, consolidation or transfer to at least the benefit he was entitled to on the day prior to the merger, consolidation or transfer, determined as if the Plan had then terminated.

Section 7.06 Military Service Benefits

Notwithstanding any provision of this Plan to the contrary, effective December 12, 1994, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Code Section 414(u).

ARTICLE VIII

TOP-HEAVY PROVISIONS

Section 8.01 Determination of Top-Heavy

- (a) (1) The Plan will be considered a Top-Heavy Plan with respect to any Employer for any Plan Year if as of the Determination Date (A) the sum of the Elective Contribution Accounts of Participants who are Key Employees of that Employer determined as of the Determination Date (not including any allocations to be made as of or after the Determination Date except contributions actually made and allocated on or before the Determination Date) exceeds 60% of the sum of the Elective Contribution Accounts of all Participants employed by that Employer determined as of the Determination Date (not including any allocations to be made as of or after the Determination Date except contributions actually made and allocated on or before the Determination Date), excluding former Key Employees (the "60% Test") or (B) the Plan is part of a Required Aggregation Group which is Top-Heavy. Notwithstanding the results of the 60% Test, the Plan is not considered a Top-Heavy Plan for any Plan Year in which the Plan is a part of a Required or Permissive Aggregation Group which is not Top-Heavy.
 - (2) This Article VIII is applied separately to each Employer, except that Employers that are treated as one employer under Code Sections 414(b), (c) or (m) are treated as one Employer for purposes of this Article VIII.
- (b) For purposes of the 60% Test:
- (1) All distributions made from Elective Contribution Accounts within the five year period ending on the Determination Date are taken into account (provided that for Plan Years beginning January 1, 2002 and thereafter, distributions other than hardship distributions are only taken into account if made within the one year period ending on the Determination Date);
 - (2) If any Participant is a non-Key Employee for any Plan Year, but the Participant was a Key Employee for any prior Plan Year, the Elective Contribution Account of the Participant is not considered;
 - (3) If a Participant has not performed any service for an Employer at any time during the five year period ending on the Determination Date (one year period for Plan Years beginning January 1, 2002 and thereafter), the Elective Contribution Account of such Participant is not considered; and
 - (4) The portion of a Participant's Elective Contribution Account attributable to Catch-up Elective Contributions under Section 2.04(d) and earnings thereon is disregarded.

(c) Minimum Allocations: For any Plan Year during which the Plan is a Top-Heavy Plan, the contributions allocated to the Elective Contribution Accounts of Participants (i) who are non-Key Employees, (ii) who are not members of a collective bargaining unit covered by a collective bargaining agreement that satisfies Treasury Regulations §1.416-1, Q&A T-3, and (iii) who remain employed by the Employer at the end of the Plan Year (regardless of the Participant's hours of service or level of compensation during the Plan Year) will not be less than the lesser of:

- (1) three percent (3%) of the non-Key Employee Participant's Earnings; or
- (2) the highest percentage of Earnings at which Elective Contributions (disregarding Catch-up Elective Contributions) are made for any Key Employee for the Plan Year.

If a Participant is covered by more than one defined contribution plan on account of his employment with the Employer, the minimum allocation required by this Section is determined by aggregating allocations under all plans.

Section 8.02 Top-Heavy Definitions

Determination Date – For any Plan Year, the last day of the preceding Plan Year, or in the case of the first Plan Year that an Employer maintains the Plan, the last day of that Plan Year.

Key Employee – (a) For Plan Years beginning before January 1, 2002. Any Employee or former Employee who at any time during the Plan Year containing the Determination Date or during any of the four preceding Plan Years is or was (1) an officer of the Employer having annual Earnings for the Plan Year which exceed 50% of the dollar limit in effect under Code Section 415(b)(1)(A) for the calendar year in which the Plan Year ends (but in no event will the number of officers taken into account as Key Employees exceed the lesser of (i) 50 or (ii) the greater of 3 or 10% of all employees); (2) an owner of (or considered as owning within the meaning of Code Section 318) both more than a ½ percent interest as well as one of the ten largest interests in the Employer and having annual Earnings greater than the dollar limit in effect under Code Section 415(c)(1)(A) for the Year; (3) a five percent owner of the Employer; or (4) a one percent owner of the Employer who has annual Earnings of more than \$150,000. For purposes of determining five percent and one percent owners, neither the aggregation rules nor the rules of subsections (b), (c) and (m) of the Code Section 414 apply. Beneficiaries of an Employee acquire the character of the Employee who performed services for the Employer. Also, inherited benefits retain the character of the benefits of the Employee who performed services for the Employer. A non-Key Employee is any Employee who is not a Key Employee, or who is a former Key Employee.

(b) For Plan Years beginning January 1, 2002 and thereafter. Any Employee or former Employee who at any time during the Plan Year containing the Determination Date is or was (1) an officer of the Employer having annual Earnings for the Plan Year which exceed \$130,000 (as adjusted under Code Section 416(i)(1)(A)) (but in no event will the number of officers taken into account as Key Employees exceed the lesser of (i) 50 or (ii) the greater of 3 or 10% of all employees); (2) a five percent owner of the Employer; or (3) a one percent owner of the Employer who has annual Earnings of more than \$150,000. For purposes of determining five percent and one percent owners, neither the aggregation rules nor the rules of subsections (b), (c) and (m) of the Code Section 414 apply. Beneficiaries of an Employee acquire the character

of the Employee who performed services for the Employer. Also, inherited benefits retain the character of the benefits of the Employee who performed services for the Employer. A non-Key Employee is any Employee who is not a Key Employee, or who is a former Key Employee.

Permissive Aggregation Group - Each employee pension benefit plan maintained by the Employer which is considered part of the Required Aggregation Group, plus one or more other employee pension benefit plans maintained by the Employer that are not part of the Required Aggregation Group but that satisfy the requirements of Code Sections 401(a)(4) and 410 when considered together with the Required Aggregation Group.

Required Aggregation Group - Each employee pension benefit plan maintained by the Employer whether or not terminated, in which a Key Employee participates in the Plan Year containing the Determination Date or any of the four preceding Plan Years, and each other employee pension benefit plan maintained by the Employer, whether or not terminated, in which no Key Employee participates but which during the same period enables any employee pension benefit plan in which a Key Employee participates to meet the requirements of Code Sections 401(a)(4) or 410.

APPENDIX A*

LIST OF EMPLOYERS

*The list included in Appendix A is available at the MEBA Plan Office and all Branch Offices of the National M.E.B.A.