



# 1199SEIU

HOME CARE EMPLOYEES  
PENSION FUND

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**SUMMARY PLAN DESCRIPTION  
OF YOUR PENSION BENEFITS**

[HOME](#) | [TABLE OF CONTENTS](#)

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May 2024

## **Dear Pension Fund Participants and Retirees:**

We are pleased to provide you with this Summary Plan Description or “SPD,” which explains your pension benefits under the 1199SEIU Home Care Employees Pension Fund, referred to in this booklet as the “Pension Fund” or “Fund.” The Pension Fund is administered by a Board of Trustees, which consists of both Employer and Union representatives. Their names and addresses are listed at the end of this SPD. Under various Collective Bargaining Agreements with your Union, 1199SEIU United Healthcare Workers East, Employers make contributions to this Pension Fund to provide pension benefits to you and other Employees covered by the Pension Fund.

This SPD is a non-technical explanation of your pension benefits. It is written to make it easier for you to understand your rights and responsibilities under the Plan. The rules and regulations of the Fund are set forth in its Plan Document and related documents (collectively called the “Plan”). Please understand that no general explanation can adequately give you all of the details of the Plan. This general explanation does not change, expand or otherwise interpret the terms of the Plan. To the extent that any of the information contained in this SPD is inconsistent with the official Plan documents, the provisions set forth in the official Plan documents will govern in all cases. To obtain additional information about the operation of the Plan, call the Pension Fund at (646) 473-8666. Outside New York City, please call (800) 575-7771. Any words that have an initial capital letter are defined terms and appear in the Plan under Article 1 — Definitions.

**Telephone conversations and other oral statements can easily be misunderstood. Therefore, you should rely on the information provided in the SPD and Plan Document rather than any oral explanation of the Plan’s provisions. Your rights and duties under the Plan are determined solely by referring to the Plan Document and Trust Agreement, as amended.**

The Plan is effective as of January 1, 2002, and amended as of **December 14, 2023** (except as specifically provided). The Plan has been amended for certain legislative changes, such as the Pension Protection Act of 2006 (PPA). Any Participant who retired or separated from service before December 14, 2023, should refer to the SPD in effect at the time of their retirement or separation from service.

**Pension Fund Counselors are available to answer your questions, and we urge you to call for an appointment three to six months prior to your planned retirement. They will explain your pension benefit and options, and help you through the application process.** If you have any questions, or want to make an appointment with a Pension Fund Counselor, call (646) 473-8666. Outside New York City, please call (800) 575-7771.

## **The Board of Trustees**

## **NEED HELP WITH THE SUMMARY PLAN DESCRIPTION (“SPD”)?**

This SPD contains a summary in English of your Plan rights and benefits under the 1199SEIU Home Care Employees Pension Fund.

If you have difficulty understanding any part of this SPD, call the Pension Fund at (646) 473-8666, from 8:00 am to 6:00 pm, Monday through Friday, or you may visit the Pension Fund from 8:00 am to 5:00 pm, Monday through Friday, for assistance. Outside New York City, please call (800) 575-7771.

## **¿NECESITA AYUDA CON LA DESCRIPCIÓN ABREVIADA DEL PLAN (SUMMARY PLAN DESCRIPTION, “SPD”)?**

Esta SPD contiene un resumen en inglés de sus derechos y beneficios con su plan, en virtud del Fondo de Pensiones para los Empleados de Cuidados en el Hogar de 1199SEIU.

Si tiene problemas para entender cualquier parte de esta SPD, llame al Fondo de Pensiones al (646) 473-8666 de 8:00 a. m. a 6:00 p. m., de lunes a viernes, o puede visitar el Fondo de Pensiones de 8:00 a. m. a 5:00 p. m., de lunes a viernes para obtener asistencia. Desde fuera de la ciudad de Nueva York, llame al (800) 575-7771.

## У ВАС ВОЗНИКЛИ ВОПРОСЫ ПОСЛЕ ОЗНАКОМЛЕНИЯ С КРАТКИМ ОПИСАНИЕМ ВАШЕГО ИНДИВИДУАЛЬНОГО ПЕНСИОННОГО ПЛАНА (SUMMARY PLAN DESCRIPTION, SPD)?

Настоящее SPD содержит краткую информацию на английском языке о ваших правах и доступных льготах, предоставляемых пенсионным фондом профсоюза работников по уходу на дому 1199SEIU (1199SEIU Home Care Employees Pension Fund).

Если у вас возникли трудности с пониманием какой-либо части настоящего SPD, позвоните в пенсионный фонд по номеру (646) 473-8666 с 8:00 до 18:00 с понедельника по пятницу или посетите пенсионный фонд лично с 8:00 до 17:00 с понедельника по пятницу для получения помощи. Если вы проживаете за пределами г. Нью-Йорка, звоните по номеру (800) 575-7771.

## 概要計畫說明(“SPD”)有需要協助嗎？

本 SPD 包含您在 1199SEIU 家庭護理僱員退休基金下的計劃權利和福利之英文摘要。

如果您對本 SPD 任何部分的理解有困難，請在週一至週五上午8:00至下午6:00致電退休基金會 (646) 473-8666，或者您也可以週一至週五上午8:00至下午5:00親訪退休基金會以尋求協助。若在紐約市以外，請致電 (800) 575-7771。

## BEZWEN ÈD AVÈK REZIME DESKRIPSYON PLAN AN (“SPD”)?

SPD sa a gen yon rezime an anglè sou dwa ak Avantaj Plan ou yo anba Fon Pansyon 1199SEIU pou Anplwaye Swen Adomisil yo.

Si w gen difikilte pou w konprann nenpòt pati nan SPD sa a, rele Fon Pansyon an nan (646) 473-8666, ant 8:00 am ak 6:00 pm, lendi jiska vandredi, oswa ou ka vizite Fon Pansyon apati 8:00 am. jiska 5:00 pm, lendi jiska vandredi, pou asistans. Andeyò Vil Nouyòk, tanpri rele (800) 575-7771.

## CONTACT THE PENSION FUND

Call **(646) 473-8666** to speak with a Pension Fund Representative or to schedule an appointment with a Pension Fund Counselor. Outside New York City, please call (800) 575-7771.

## VISIT A WALK-IN MEMBER SERVICES CENTER

### Manhattan

498 Seventh Avenue, 3rd Floor  
New York, NY 10018

Pension Member Services:  
Monday through Friday, 8:00 am to 5:00 pm  
Or call for an appointment: (646) 473-8666

### Bronx

2501 Grand Concourse, 3rd Floor  
Bronx, NY 10468  
Monday through Friday, 9:00 am to 5:00 pm

Pension Member Services:  
Third Thursday of each month, 10:00 am to 5:00 pm  
Or call for an appointment: (718) 561-0234

### Queens

97-30 64th Road  
Rego Park, NY 11374  
Monday through Friday, 9:00 am to 5:00 pm

Pension Member Services:  
Third Thursday of each month, 10:00 am to 4:00 pm  
Or call for an appointment: (646) 473-8565

### Brooklyn

25 Elm Place, 1st Floor  
Brooklyn, NY 11201  
Monday through Friday, 9:00 am to 5:00 pm

Pension Member Services:  
Third Thursday of each month, 10:00 am to 4:00 pm  
Or call for an appointment: (718) 797-2109

## VISIT A WALK-IN MEMBER SERVICES CENTER

### **Staten Island**

790 Port Richmond Avenue  
Staten Island, NY 10302

Monday through Thursday, 8:00 am to 7:00 pm

Friday, 8:00 am to 4:00 pm

Pension Member Services:

Every Wednesday and the first and third Thursdays of each month, 10:00 am to 4:00 pm

Or call for an appointment: (718) 448-7482

### **Long Island**

100 Duffy Avenue, 3rd Floor  
Hicksville, NY 11801

Monday through Friday, 9:00 am to 5:00 pm

Pension Member Services:

Monday through Friday, 8:30 am to 4:30 pm

Or call for an appointment: (516) 229-6700

### **Westchester**

Berkeley College Building  
99 Church Street, 4th Floor  
White Plains, NY 10601

Monday, Wednesday and Thursday, 9:00 am to 5:00 pm

Pension Member Services:

Monday through Friday, 9:00 am to 5:00 pm

Or call for an appointment: (914) 997-2822

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# TABLE OF CONTENTS

Letter from the Board of Trustees . . . . .	1
<b>SECTION I – PARTICIPATION AND EARNING PENSION CREDITS . . . . .</b>	<b>9</b>
I. A    When Am I Eligible to Participate in the Plan? . . . . .	10
I. B    How Is Pension Credit Accumulated? . . . . .	11
I. C    How Is Future Service Credit Earned? . . . . .	12
I. D    How Is Past Service Credit (for Service Before January 1, 1992) Earned? . . . . .	14
I. E    Can I Get Past Service Credit if My Employer Became a Contributing Employer on or After January 1, 2002? . . . . .	15
I. F    Can I Lose Past Service Credit Due to a Break-in-Service? . . . . .	15
I. G    Can I Receive Pension Credit for Time When I Did Not Work in Covered Employment? . . . . .	16
I. H    What Are “Years of Vesting Service”? . . . . .	17
I. I    Can I Receive Credit for Additional Periods of Service for Vesting Purposes Only? . . . . .	18
<b>SECTION II – BREAKS-IN-SERVICE . . . . .</b>	<b>19</b>
II. A   Can Pension Credit Be Lost or Canceled Through a Break-in-Service Before I Am Vested? . . . . .	20
II. B   What Happens if I Am Vested, Incur a One-Year Break-in-Service, Earn Additional Pension Credits and then Retire? . . . . .	22
<b>SECTION III – TYPES OF PENSIONS . . . . .</b>	<b>25</b>
III     Types of Pensions . . . . .	26
III. A   When Am I Eligible for a Regular, Reduced or Vested Pension? . . . . .	26
III. B   How Is a Pension Calculated at Age 65? . . . . .	27
III. C   When Am I Eligible for An Early Retirement Pension? . . . . .	28



- III. D [How Is An Early Retirement Pension Calculated?](#) .....28
- III. E [When Am I Eligible for a Disability Pension?](#) .....29
- III. F [How Is a Disability Pension Calculated?](#) .....29
- III. G [How Is My Benefit Rate of Pension Determined?](#) .....29

**[SECTION IV – WORK AFTER RETIREMENT](#) .....31**

- IV. A [Will I Be Allowed to Work and Still Receive Pension Benefits from the Plan?](#) .....32
- IV. B [How Will My Return to Work Affect My Pension?](#) .....33

**[SECTION V – BENEFITS TO SURVIVORS](#) .....35**

- V. A [What Pension Options Are Available When I Retire?](#).....36
- V. B [Are There Any Benefits for a Surviving Spouse If I Die Before My Pension Payments Begin?](#) .....38
- V. C [Rules Regarding Pension Options](#).....38
- V. D [What Happens to the Joint and Survivor Pension If My Spouse Dies or We Divorce Before My Pension Payments Begin?](#) .....40
- V. E [Are There Any Benefits if I Am Not Married and Die Before My Pension Payments Begin?](#) .....40
- V. F [What Is a “60-Month Guarantee Pension”?](#).....41
- V. G [When Am I Eligible to Receive a Lump-Sum Distribution from the Plan?](#) .....42

**[SECTION VI – OTHER INFORMATION YOU SHOULD KNOW](#) .....45**

- VI [Other Information You Should Know](#) .....46
- VI. A [Applying for Benefits](#) .....46
- VI. B [Delayed and Retroactive Pension Starting Dates](#) .....47
- VI. C [Appeal of a Denial of Benefits](#) .....48
- VI. D [Assignment of Benefits](#) .....50
- VI. E [How Benefits May Be Reduced, Delayed or Lost](#) .....51
- VI. F [Plan Amendment or Termination](#) .....51
- VI. G [Authority of the Plan Administrator](#) .....52

VI. H	Incapacitation	53
VI. I	Compliance with Federal Law	53
VI. J	Recovery of Overpayments	53
VI. K	Your Disclosures to the Plan	54
VI. L	Plan Funding and Administration	54
VI. M	Contributing Employers	54
VI. N	Pension Benefit Guaranty Corporation	55
<b>SECTION VII – YOUR ERISA RIGHTS</b>		<b>59</b>
VII. A	Your ERISA Rights	60
VII. B	Assistance with Your Questions	62
VII. C	Important Notice	63
<b>SECTION VIII – GENERAL INFORMATION</b>		<b>67</b>
VIII. A	General Information	68
VIII. B	Joint Board of Trustees	71
<b>PLAN DOCUMENT</b>		<b>75</b>
	Introduction	76
1	Definitions	77
2	Participation	82
3	Pension Eligibility and Amounts	83
4	Accumulation of Pension Credits	90
5	Joint and Survivor Pension	96
6	Applications, Benefit Payments and Retirement	103
7	Miscellaneous	122
8	Amendments	126
	Appendix A	127



## **SECTION I – PARTICIPATION AND EARNING PENSION CREDITS**

- A. When Am I Eligible to Participate in the Plan?
- B. How Is Pension Credit Accumulated?
- C. How Is Future Service Credit Earned?
- D. How Is Past Service Credit (for Service Before January 1, 1992) Earned?
- E. Can I Get Past Service Credit If My Employer Became a Contributing Employer on or After January 1, 2002?
- F. Can I Lose Past Service Credit Due to a Break-in-Service?
- G. Can I Receive Pension Credit for Time When I Did Not Work in Covered Employment?
- H. What Are “Years of Vesting Service”?
- I. Can I Receive Credit for Additional Periods of Service for Vesting Purposes Only?

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## SECTION I. A

# WHEN AM I ELIGIBLE TO PARTICIPATE IN THE PLAN?

Effective January 1, 2002, the 1199 Home Care Industry Pension Fund (“HCIPF”) merged into the Home Care Industry Local 32B-32J-144 SEIU Pension Fund (“32BJ Fund”). The merged Fund is called the 1199SEIU Home Care Employees Pension Fund (“Home Care Pension Fund” or “Fund”). If you were a Participant in the HCIPF or 32BJ Fund on January 1, 2002, you automatically became a Participant in this Fund — you don’t need to sign up or notify anyone.

You will become eligible to participate in the Fund on the January 1st or July 1st (whichever comes first) following the first 12-consecutive-month period in which you have worked at least 1,000 Hours of Service. An **Hour of Service** is any hour for which you are paid, or entitled to payment, by the Employer, such as working time, paid vacations and paid sick leave.

Your working time in Covered Employment is important because it is used to determine your eligibility to participate in the Fund, and the amount of your benefit. **Covered Employment** means all employment with your Employer after the start of the Contribution Period.

The **Contribution Date** is the date that your Employer first became obligated to make contributions to this Fund on your behalf. It is the first day of the **Contribution Period** — the period of time during which your Employer is obligated to make contributions to this Fund on your behalf.

### **For example:**

Ms. Hall began working for a Contributing Employer on March 1, 2012. By November 30, 2012, she worked a total of 1,200 Hours of Service. Since she worked more than 1,000 Hours of Service during the 12-consecutive-month period which ended on February 28, 2013, Ms. Hall became a Participant on July 1, 2013.

**NOTE:** If you worked in Covered Employment before January 1, 1992, you are covered by a special rule which automatically made you a Participant on January 1, 1992, provided you earned Pension Credit on or after January 1, 1992. In this case, you were not required to work 1,000 Hours of Service to become a Participant. If you became a Participant because of this special rule, you still need to earn Future Service Credits of at least .25 credits to earn a pension.

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## SECTION I. B

# HOW IS PENSION CREDIT ACCUMULATED?

Pension Credit is accumulated in two ways, depending on whether it is earned before or after the Contribution Date. Pension Credits earned before the Contribution Date are called **Past Service Credits**. Pension Credits earned after the Contribution Date are called **Future Service Credits**.

The number of Pension Credits you have accumulated determines your eligibility for a monthly pension benefit and the amount of the benefit which you are eligible to receive. You earn Pension Credits according to the number of hours you work.

As a Participant, you are entitled, subject to the Break-in-Service rules in Section II, to have all credit counted for benefit calculation purposes from your first day of eligible employment. For purposes of calculating your pension, the maximum number of Pension Credits is 25.

**For example:**

In your first year working for a Contributing Employer, you only worked 600 hours instead of the 1,000 hours necessary to become a Participant. If you subsequently become a Participant, the .50 Pension Credits earned based on the 600 hours in your first year will be counted toward your pension.

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## SECTION I. C

### HOW IS FUTURE SERVICE CREDIT EARNED?

You earn Pension Credits based on your total hours of Covered Employment worked during a calendar year, as follows:

#### STARTING ON JANUARY 1, 2015

HOURS OF SERVICE IN COVERED EMPLOYMENT IN A CALENDAR YEAR	PENSION CREDIT
1,000 or more hours	1.00
From 750 to 999 hours	.75
From 500 to 749 hours	.50
From 250 to 499 hours	.25
Under 250 hours	0

#### JANUARY 1, 2014 – DECEMBER 31, 2014

The maximum Pension Credits that can be earned for Plan Year 2014 is .25 Pension Credits.

#### JANUARY 1, 2012 – DECEMBER 31, 2013

The maximum Pension Credits that can be earned combined for Plan Years 2012 and 2013, shall be the greater of: (a) .75 Pension Credits; or (b) the amount of the Pension Credits accrued on or after January 1, 2012, and prior to June 1, 2012.

#### JANUARY 1, 2002 – DECEMBER 31, 2011

HOURS OF SERVICE IN COVERED EMPLOYMENT IN A CALENDAR YEAR	PENSION CREDIT
1,000 or more hours	1.00
From 750 to 999 hours	.75
From 500 to 749 hours	.50
From 250 to 499 hours	.25
Under 250 hours	0

**JANUARY 1, 1992 – DECEMBER 31, 2001**

If you were a Participant in the 32BJ Fund, you received Pension Credits based on the chart before this paragraph. If you were a Participant in the HCIPF, you received Pension Credits based on total Hours of Service worked during a calendar year, as follows:

<b>HOURS OF SERVICE IN COVERED EMPLOYMENT IN A CALENDAR YEAR</b>	<b>PENSION CREDIT</b>
1,500 or more hours	1.00
From 1,250 to 1,499 hours	.75
From 1,000 to 1,249 hours	.625
From 750 to 999 hours	.50
Under 750 hours	0

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# **SECTION I. D**

## **HOW IS PAST SERVICE CREDIT (FOR SERVICE BEFORE JANUARY 1, 1992) EARNED?**

### **IF YOU WERE A 32BJ FUND PARTICIPANT BEFORE JANUARY 1, 2002**

If you worked for a Contributing Employer that had a Collective Bargaining Agreement in effect with the Union on January 1, 1992, you will receive .25 Past Service Credits for each calendar quarter prior to January 1, 1992, during which you worked at least 250 Hours of Service for that Employer in a job category covered under that Collective Bargaining Agreement.

### **IF YOU WERE A FORMER HCIPF PARTICIPANT BEFORE JANUARY 1, 2002**

If you worked for a Contributing Employer that had a Collective Bargaining Agreement in effect with the Union on October 1, 1991, you will receive one Past Service Credit for each calendar year prior to January 1, 1992, in which you worked 1,500 or more Hours of Service. (The HCIPF did not provide for partial Past Service Credit. Therefore, you will not receive Past Service Credits for any year in which you did not work at least 1,500 Hours of Service.) The maximum number of Past Service Credits you may be eligible to receive is 10.



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## **SECTION I. E**

### **CAN I GET PAST SERVICE CREDIT IF MY EMPLOYER BECAME A CONTRIBUTING EMPLOYER ON OR AFTER JANUARY 1, 2002?**

If you worked for your agency before it became a Contributing Employer to the Fund and the agency became a Contributing Employer on or after January 1, 2002, you may earn Past Service Credits for the time you worked before your agency started participating in the Fund. You are eligible to receive Past Service Credits if:

- The Plan's actuary has determined that granting Past Service Credit to Employees of your Employer will not create an unfunded liability\*; and
- You are employed in a job category covered by a Collective Bargaining Agreement with an agency on the date the agency first becomes required to make contributions to the Fund; and
- You earn at least two Future Service Credits after you earn your first Hour of Service.

If you are eligible to receive Past Service Credit, you will receive one Past Service Credit for each calendar year in which you had 1,000 or more Hours of Service. The maximum number of Past Service Credits allowed is 10.

*\* You may contact the Pension Fund to determine whether your bargaining unit will be eligible to receive Past Service Credit.*

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## **SECTION I. F**

### **CAN I LOSE PAST SERVICE CREDIT DUE TO A BREAK-IN-SERVICE?**

If you were a Participant in either the HCIPF or the 32BJ Fund before January 1, 1992, and your employment was interrupted by a one-year period during which you did not work at least 500 Hours of Service, it is considered a Break-in-Past-Service (as described in Section II.A), and you will not receive Past Service Credits for any service preceding the Break.

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## **SECTION I. G**

# **CAN I RECEIVE PENSION CREDIT FOR TIME WHEN I DID NOT WORK IN COVERED EMPLOYMENT?**

There are certain periods when you may receive Pension Credit, just as if you were employed in Covered Employment, even if you were not actually employed in Covered Employment.

Periods of absence from Covered Employment will be credited if they were the result of disability arising from Covered Employment for which benefits were paid under Workers' Compensation, or the New York Disability Benefits Law. No more than six months on and after January 1, 2002, will be credited under this rule for each separate absence. This provision only applies if you have prior Pension Credits.

You may be entitled to continue to earn Pension Credits and Years of Vesting Service while you are on a leave of absence for Qualified Military Service as defined under the Plan and federal law. To receive credit: you must give advance notice, if possible, that you will be absent from Covered Employment due to military service; your leave of absence must not exceed five years; you must receive an honorable or general discharge from military service or active duty; and you must apply for reemployment within a reasonable period of time after your discharge or return from active duty.

For additional information, please refer to the Plan or contact the Pension Fund at (646) 473-8666. Outside New York City, please call (800) 575-7771.

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## SECTION I. H

### WHAT ARE “YEARS OF VESTING SERVICE”?

A **Year of Vesting Service** is a calendar year in which you work 1000 hours or more in Covered Employment.

In order to become eligible for a pension, you must become **vested** in the Plan. Once you become vested, you have a non-forfeitable right to a pension upon retirement.

In order to become vested, you must earn five Pension Credits or five Years of Vesting Service. But if you left Covered Employment before January 1, 1997, you must have earned 10 Pension Credits or 10 Years of Vesting Service to become vested. At least .25 Pension Credits must be earned during the Contribution Period.

Pension Credits are earned according to the schedule(s) in Section I.C. See Section I.I for more details about vesting in a pension.

**For example:**

Mrs. Johnson worked in Covered Employment for eight years from 2008 through 2015 with the hours shown in the chart below. The Fund determined that she had earned 5.25 Pension Credits and five Years of Vesting Service as follows:

YEAR	HOURS OF SERVICE	PENSION CREDIT	YEARS OF VESTING SERVICE
2008	1,500	1.00	1
2009	600	.50	0
2010	1,200	1.00	1
2011	800	.75	0
2012	400	.25	0
2013	1,000	.50	1
2014	1,200	.25	1
2015	1,350	1.00	1

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## SECTION I. I

# CAN I RECEIVE CREDIT FOR ADDITIONAL PERIODS OF SERVICE FOR VESTING PURPOSES ONLY?

Any period that you worked in a non-covered job for the same Employer either immediately before or immediately after (or both) working in a job title covered by this Plan, is counted toward your becoming vested (but only toward your becoming vested.) You will not receive Pension Credits that will be counted in your final benefit calculation for any time worked in a non-covered job.

For the period of January 1, 2012, through December 31, 2014, you may continue to earn Years of Vesting Service even though you are not earning Pension Credits (see Section I.C).

**For example:**

Mrs. Garcia worked as a home care worker from January 2007 until March 2013 when her client passed away. For a variety of reasons, she was not assigned a new case until early 2014. But, in the meantime, Mrs. Garcia performed some clerical activities in the Agency's bookkeeping department. She only had 380 Hours of Service as a home care worker in 2013, but had another 900 Hours of Service as a part-time clerical worker. According to this special rule, she will be granted the equivalent of one Vesting Credit for 2013 for purposes of vesting only, based on her total during 2013 of 1,280 hours.



## **SECTION II – BREAKS-IN-SERVICE**

- A. Can Pension Credit Be Lost or Canceled Through a Break-in-Service Before I Am Vested?
- B. What Happens If I Am Vested, Incur a One-Year Break-in-Service, Earn Additional Pension Credits and Then Retire?

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## SECTION II. A

# CAN PENSION CREDIT BE LOST OR CANCELED THROUGH A BREAK-IN-SERVICE BEFORE I AM VESTED?

Before you become vested, you may lose Pension Credits you've already earned if you stop working in Covered Employment, or don't work enough hours for long stretches of time. When this happens, you may have a **Permanent Break-in-Service**. You may also incur a **one-year Break-In-Service** if there is a calendar year in which you fail to work in Covered Employment for 500 or more hours.

In order to become vested, you must earn five Pension Credits or five Years of Vesting Service. But if you left Covered Employment before January 1, 1997, you must have earned 10 Pension Credits or 10 Years of Vesting Service to become vested. At least .25 Pension Credits must be earned during the Contribution Period.

### You Will Have a Permanent Break-in-Service If:

- **On or after January 1, 1997**, you have less than five Pension Credits and have five consecutive one-year Breaks-in-Service.  
**For example**, suppose you earned three Pension Credits and then incurred five or more consecutive one-year Breaks-in-Service. At that point, your previous credit is permanently cancelled.
- **On or after January 1, 1992, through December 31, 1996**, you had five or less Pension Credits and had five or more consecutive one-year Breaks-in-Service, or you had at least six but less than 10 Pension Credits and the number of your consecutive one-year Breaks-in-Service equaled or exceeded your number of Pension Credits.
- **Prior to January 1, 1992**, you will have a Permanent Break-in-Service with regard to Past Service if there is a calendar year prior to 1992 in which you failed to work at least 500 hours in Covered Employment.

A Permanent Break-in-Service prior to January 1, 1992, means all Past Service Credits for years prior to the year you worked less than 500 hours in Covered Employment are lost.

A Permanent Break-in-Service after January 1, 1992, means that you lose all Pension Credits and Years of Vesting Service earned before your one-year Break-in-Service.

If you later return to work in Covered Employment after a Permanent Break-in-Service, the Pension Fund will treat you as a new Participant. In other words, you'll have no accrued Vesting or Pension Credits when you restart participation in the Plan.

## WHAT IS NOT A BREAK-IN-SERVICE

You will not have a one-year Break-in-Service if, to the extent permitted by law, your absence from Covered Employment is the result of:

- **Family and Medical Leave Act Absences.** If you are absent from Covered Employment for any reason recognized under the Family and Medical Leave Act of 1993, any hours of work in Covered Employment that would normally have been credited to you (but for such absence) shall be credited up to a maximum of 500 hours for each such reason. You may be required to submit information sufficient to show that your absence is for one of the reasons and the number of hours for which such absence occurred.
- **Qualified Military Service.** As indicated previously in Section I.G, you may also receive credit for a leave of absence for Qualified Military Service.
- **Other home care industry employment after December 31, 1991,** by an agency under the jurisdiction of another union affiliated with the home care industry.
- **Parental Leave.** Absence from work due to pregnancy; the birth of your child; or placement of a child with you in connection to an adoption, or to care for a child immediately following birth or placement, will not constitute a Break in Service.

Keep in mind that Family and Medical Leave and Parental Leave count solely to prevent a Break in Service; unlike a Qualified Military Leave, they do *not* count toward Credited Service or Vesting Service under the Plan.

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## **SECTION II. B**

# **WHAT HAPPENS IF I AM VESTED, INCUR A ONE-YEAR BREAK-IN-SERVICE, EARN ADDITIONAL PENSION CREDITS AND THEN RETIRE?**

If you experience a one-year Break-in-Service and then return to Covered Employment and earn additional Pension Credits before you retire, the amount of your pension benefit will be calculated by applying the benefit rate in effect on your last day of Covered Employment.









## **SECTION III – TYPES OF PENSIONS**

- A. When Am I Eligible for a Regular, Reduced or Vested Pension?
- B. How Is a Pension Calculated at Age 65?
- C. When Am I Eligible for an Early Retirement Pension?
- D. How Is an Early Retirement Pension Calculated?
- E. When Am I Eligible for a Disability Pension?
- F. How Is a Disability Pension Calculated?
- G. How Is My Benefit Rate of Pension Determined?

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## SECTION III

# TYPES OF PENSIONS

### THERE ARE FIVE TYPES OF PENSIONS PROVIDED UNDER THE PLAN:

- A Regular Pension
- A Reduced Pension
- An Early Retirement Pension
- A Disability Pension
- A Vested Pension

The pension type you qualify for depends on your age and the number of your Pension Credits. For the Disability Pension, other factors may also affect your eligibility. Normal Retirement Age is age 65, or, if later, your age on the fifth anniversary of your Plan participation if you were a Covered Employee on or after January 1, 1997.

All benefit calculations in the following examples are for the **60-Month Guarantee Pension**. Benefit calculations in the examples throughout this section do not reflect a reduction in the benefit amount for a **Joint and Survivor Pension**, which provides your surviving Spouse with a benefit after your death. See Section V for an explanation of the Joint and Survivor Pension. When calculating pensions, the Fund rounds the benefit up to the nearest dollar. Note that if your service ended under the HCIPF before January 1, 2002, different rules under the HCIPF plan may apply.

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## SECTION III. A

# WHEN AM I ELIGIBLE FOR A REGULAR, REDUCED OR VESTED PENSION?

To be eligible to retire on a Regular, Reduced or Vested Pension, you must:

- Be age 65 or older; **and**
- Have earned at least five Pension Credits, up to the maximum of 25 Pension Credits (at least .25 Pension Credits must be earned during the Contribution Period).

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## SECTION III. B

### HOW IS A PENSION CALCULATED AT AGE 65?

Your pension is calculated by multiplying the Pension Credits earned by the benefit rate of \$5.60 (at least .25 Pension Credits must be earned during the Contribution Period). (If you were a former HCIPF Participant and worked an Hour of Service on or after January 1, 2002, your pension is calculated using this formula).

If you earned the maximum number of 25 Pension Credits, this is called a **Regular Pension**.

If you earned at least 10 Pension Credits, but less than 25 Pension Credits, this is called a **Reduced Pension**.

If you earned at least five Pension Credits before you left Covered Employment (or at least 10 Pension Credits, if you left Covered Employment prior to January 1, 1997), this is called a **Vested Pension**. You are also entitled to a Vested Pension if you have completed at least five years as a Participant in the Plan and have attained at least age 65, even if you have earned less than five Pension Credits at that time.

**NOTE:** If your last Hour of Service was prior to July 1, 1998, your benefit rate is \$4.00.

#### **For example:**

At age 65, when you retire, your monthly pension will be:

1. Assume that you earned the maximum of 25 Pension Credits. Your Regular Pension will be  $25 \times \$5.60 = \$140$  a month.
2. Assume that you earned 17 Pension Credits. Your Reduced Pension will be  $17 \times \$5.60 = \$96$  a month (\$95.20 rounded up).
3. Assume that you earned five Pension Credits. Your Vested Pension will be  $5 \times \$5.60 = \$28$  a month.

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## SECTION III. C

# WHEN AM I ELIGIBLE FOR AN EARLY RETIREMENT PENSION?

To be eligible to retire on an Early Retirement Pension, you must:

- Be at least age 55 but younger than age 65; **and**
- Have earned at least 10 Pension Credits (at least .25 Pension Credits must be earned during the Contribution Period).

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## SECTION III. D

# HOW IS AN EARLY RETIREMENT PENSION CALCULATED?

The Early Retirement Pension benefit is calculated by multiplying the number of your Pension Credits by \$5.60 reduced by 1/2% for each month that you are younger than age 65 when you begin receiving your pension.

**For example:**

Assume that you earned 17 Pension Credits and retire at age 63 and 10 months. Your monthly pension will be computed as follows:

**STEP 1:** Your pension is first calculated as  $17 \times \$5.60 = \$95.20$  a month

**STEP 2:** Calculate 1/2% for each month that you are younger than age 65:

Age 63 and 10 months = 14 months younger than age 65.  $14 \times 1/2\% = 7\%$ .

**STEP 3:** Reduce \$95.20 by 7% = \$89 (\$88.54 rounded up)

**NOTE:** If you retired prior to July 1, 1998, the above example would use \$4.00 as the benefit rate instead of \$5.60.

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## SECTION III. E

### WHEN AM I ELIGIBLE FOR A DISABILITY PENSION?

You are eligible for a Disability Pension if:

- You have at least 10 Pension Credits (at least .25 Pension Credits must be earned during the Contribution Period); **and**
- You worked in Covered Employment for at least 1,000 hours in the period consisting of the calendar year in which you became disabled and in the previous calendar year; **and**
- You have received a Social Security Disability award.

The day your Disability Pension will begin is the later of the first of the month after the Fund receives your pension application, or the effective date of your Social Security Disability pension.

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## SECTION III. F

### HOW IS A DISABILITY PENSION CALCULATED?

A Disability Pension benefit is calculated by multiplying the number of your Pension Credits by \$5.60 reduced by 1/2% for each month that you are younger than age 65 when you begin receiving your pension. If you are younger than age 55 when benefit payments begin, your benefit will be calculated based on the assumption that you are age 55 at that time.

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## SECTION III. G

### HOW IS MY BENEFIT RATE OF PENSION DETERMINED?

Your pension is calculated based upon your Pension Credits and your benefit rate in effect when you last worked in Covered Employment as follows:

- Prior to July 1, 1998: benefit rate of \$4.00 per year
- July 1, 1998, and after: benefit rate of \$5.60 per year

If you retired under the HCIPF prior to 2002, please contact the Pension Fund.







## **SECTION IV – WORK AFTER RETIREMENT**

- A. Will I Be Allowed to Work and Still Receive Pension Benefits from the Plan?
- B. How Will My Return to Work Affect My Pension?

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## SECTION IV. A

# WILL I BE ALLOWED TO WORK AND STILL RECEIVE PENSION BENEFITS FROM THE PLAN?

After you Retire and begin to collect a Plan pension, you may return to employment under certain circumstances and continue to receive your monthly pension.

However, if you return to employment after you Retire:

- Your service during any month for which you collect a Plan pension payment shall not be Credited Service; and
- Your pension benefit will be discontinued if you return to employment in Disqualifying Employment.

**Disqualifying Employment** means Covered Employment at your Normal Retirement Age or at the date you Retired, if earlier, that meets all of the following criteria:

- You are employed in the home care or home health aide industry or related industry.
- Employment is in the geographic area covered by the Plan at the time your pension payments begin or would have begun.
- You are employed in any “occupation, trade or craft” in which you worked while covered by the Plan at the time your pension payments begin or would have begun.

Except for these limitations, you will be free to work at anything else, without affecting your pension.

In addition, **any** Covered Employment is Disqualifying Employment before your Normal Retirement Age.

If you retire before you reach Normal Retirement Age, your pension will be suspended for any month or months in which you work in Covered Employment while you are between the ages of 55 and 65.

If you retire after reaching Normal Retirement Age, your benefits will be suspended for any month or months in which you work or were paid for 40 hours or more in Disqualifying Employment.

You will receive written notification from the Pension Fund if your pension payments are suspended due to Disqualifying Employment. You will receive this notification before the end of the month in which your payments are suspended.

If your benefits are suspended because you are working in Disqualifying Employment, your pension will be discontinued and any option you chose will be null and void, and you will have to apply for a new pension after you Retire again.

**NOTE:** There is one exception: You may collect your pension and accrue Credited Service, without regard to Disqualifying Employment, for months you work in Covered Employment after April 1 of the calendar year after the calendar year you turn 70½. Please see the rules in Section VI.A of the SPD and Article 6 of the Plan for more details.

You are required to report any Disqualifying Employment to the Pension Fund within 15 days of the commencement of Disqualifying Employment.

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## **SECTION IV. B**

### **HOW WILL MY RETURN TO WORK AFFECT MY PENSION?**

If you return to Covered Employment after you retire and do not earn at least one full Pension Credit, you may not be entitled to any additional Pension Credits at the time you subsequently retire.

If you return to Covered Employment after you retire and earn at least one full Pension Credit, you may be entitled to additional Pension Credits and your pension will be recalculated to account for this additional employment and your new age.

However, retirees from the former HCIPF who return to Covered Employment after January 1, 2002, and earn at least one full Pension Credit, may have their pension recalculated at the rate in effect at the time of their subsequent retirement.





## **SECTION V – BENEFITS TO SURVIVORS**

- A. What Pension Options Are Available When I Retire?
- B. Are There Any Benefits for a Surviving Spouse If I Die Before My Pension Payments Begin?
- C. Rules Regarding Pension Options
- D. What Happens to the Joint and Survivor Pension If My Spouse Dies or We Divorce Before My Pension Payments Begin?
- E. Are There Any Benefits If I Am Not Married and Die Before My Pension Payments Begin?
- F. What Is a “60-Month Guarantee Pension”?
- G. When Am I Eligible to Receive a Lump-sum Distribution from the Plan?

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# SECTION V. A

## WHAT PENSION OPTIONS ARE AVAILABLE WHEN I RETIRE?

This section describes the forms of pension payment the Plan offers and how to select one.

When you apply for your pension, you must choose an option that will determine:

- Your monthly pension payment;
- Whether your Spouse or Beneficiary continues to receive pension payments after you die; and
- The amount of your pension benefit that your Spouse or Beneficiary receives after you die.

It is important that you understand all of your options before choosing one, because once your pension begins, you will not be able to change it. You should make an appointment with a Pension Fund Counselor three to six months before you retire. Your Pension Fund Counselor will:

- Explain each option;
- Help you determine the amount of your pension under each option; and
- Let you know whether or not you need your Spouse's approval.

### YOUR PENSION CHOICES

#### **If You Are Not Married: 60-Month Guarantee Pension**

This means that you will receive monthly pension payments for your lifetime. If you die before 60 months (five years) of payments have been made to you, your Beneficiaries or their estates will receive monthly pension payments until the Pension Fund has made a total of 60 months of payments. **For example**, suppose you die three years and six months (42 months) after starting your pension. Your designated Beneficiary would continue to receive the same monthly pension payments for one year and six months (18 months) ( $42 + 18 = 60$ ).

#### **If You Are Married: Joint and Survivor Pension**

This means that you will receive monthly pension payments for your lifetime. After your death, your Spouse receives a benefit equal to 50% of your monthly pension amount until they die. After your Spouse dies, no further benefits will be paid. Your

monthly pension benefit during your lifetime is reduced by an actuarial amount, based on your age and your Spouse's age when you retire. The younger your Spouse, the lower your monthly pension payment will be during your lifetime.

Generally, your monthly payment will be 96% of the full monthly amount plus 0.3% for each year that your Spouse is older than you (up to 99%), or minus 0.3% for each year that your Spouse is younger than you.

The pension amount calculated in Section III is your full monthly amount under the 60-Month Guarantee Pension. A Joint and Survivor Pension or Qualified Optional Survivor Annuity are actuarially adjusted from this amount.

Since the reduction varies from case to case, the Pension Fund will furnish you with the amounts applicable to you upon retirement.

### **EXAMPLE OF THE AMOUNTS AN EMPLOYEE AND THEIR SPOUSE MIGHT RECEIVE UNDER THE JOINT AND SURVIVOR PENSION**

Mrs. Jones is planning on retiring from employment with a Contributing Employer when she earns 25 Pension Credits. At that time, she will be 65 years old, and her Spouse will be 60 years old. She wants to know how much her monthly payment will be reduced if she and her Spouse do not validly waive the Joint and Survivor Pension.

If Mrs. Jones meets all other requirements for a Regular Pension (and retires after July 1, 2002), her unadjusted monthly payment would be  $25 \times \$5.60 = \$140$  a month. Due to her and her Spouse's relative ages, the monthly Joint and Survivor Pension payment to Mrs. Jones will be \$132.30 a month for her lifetime. If she dies before her Spouse, her Spouse will receive half of that amount, or \$66 (rounded) for the remainder of the Spouse's life. Mrs. Jones' benefit is calculated as follows:  $(96\% - [5 \times 0.3\%]) \times \$140 = \$132.30$ .

### **If You Are Married: Another Form of Payment Is a Qualified Optional Survivor Annuity (QOSA)**

The **Qualified Optional Survivor Annuity** ("QOSA") means that you will receive monthly pension payments for your lifetime. After your death, your Spouse receives a benefit equal to 75% of your monthly pension amount until they die. After your Spouse dies, no further benefits will be paid. Your monthly pension benefit during your lifetime is reduced by an actuarial amount, based on your age and your Spouse's age when you retire. The younger your Spouse, the lower your monthly pension payment will be during your lifetime.

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## SECTION V. B

# ARE THERE ANY BENEFITS FOR A SURVIVING SPOUSE IF I DIE BEFORE MY PENSION PAYMENTS BEGIN?

Your surviving Spouse may be eligible to receive a monthly benefit under the Joint and Survivor Pension if:

- You were vested at the time of your death; **and**
- You were married to your surviving Spouse for at least one year immediately prior to your death; **and**
- Your Spouse submitted a pension application to the Pension Fund.

Your pension will be calculated based upon the date you last worked in Covered Employment. Your surviving Spouse may elect to receive a monthly benefit as of the earliest date following your death when you could have started to receive your pension based upon what your age would have been at the time of commencement. Your surviving Spouse will receive lifetime payments of 50% of the amount that your pension payment would have been under the Joint and Survivor Pension had you retired.

Your Spouse may elect to delay commencement of the Joint and Survivor Pension until a later date but not beyond the December 31st of the year in which you would have attained age 70 1/2, or if later, the December 31st of the year after your death. Monthly benefits to your Spouse end with the month in which your Spouse dies.

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## SECTION V. C

# RULES REGARDING PENSION OPTIONS

- You must submit a completed post-retirement election form provided by the Pension Fund to select a pension option.
- If you are married when you retire, the normal form of payment is the Joint and Survivor Pension, with your Spouse as your Beneficiary. You will be given the opportunity to select or waive the Joint and Survivor Pension or QOSA and receive the 60-Month Guarantee Pension. If you choose to waive the Joint and Survivor Pension or QOSA and receive a 60-Month Guarantee Pension, you must submit a written notarized consent of such waiver from



your Spouse. A waiver will not be valid unless it is signed by your Spouse, notarized and received by the Pension Fund within 180 days of (but at least 30 days before) your Pension Starting Date. If your Spouse agrees in writing, as witnessed by a Notary Public, you may choose the 60-Month Guarantee Pension and you may name anyone as your Beneficiary.

- Once payment of the Joint and Survivor Pension or QOSA begins, the amount cannot be changed due to the subsequent death of or divorce from your Spouse.

Contact the Pension Fund when you first start thinking about retirement. You may make an appointment to meet with a Pension Fund Counselor, who can help you:

- Understand the pension application process and what information is needed to complete your application;
- Determine the estimated amount of your pension; and
- Understand your payment options.

## ABOUT YOUR SPOUSE

For Plan purposes, your **Spouse** is a person to whom you are legally married (determined in accordance with applicable law) when your pension begins. If you are married as of the date your pension began, you will receive your benefit in the form of a Joint and Survivor Pension or QOSA unless these options are waived by your Spouse. If, due to death or divorce, you and your Spouse are not married on the first anniversary of the date of your marriage, your pension benefit will be changed to a 60-Month Guarantee, as described in Section V.A of this SPD.

Benefits may be paid to your former Spouse if a Qualified Domestic Relations Order (“QDRO”) is timely submitted to the Plan. A QDRO gives your former Spouse a right to receive all or a part of your pension as an “Alternate Payee”.

## ABOUT SPOUSAL CONSENT

You must have your Spouse’s written, notarized consent if you elect a form of pension payment other than the Joint and Survivor Pension or QOSA. If your Spouse cannot be located, contact the Pension Fund for more information about what steps you must take.

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## **SECTION V. D**

# **WHAT HAPPENS TO THE JOINT AND SURVIVOR PENSION IF MY SPOUSE DIES OR WE DIVORCE BEFORE MY PENSION PAYMENTS BEGIN?**

If your Spouse dies or you and your Spouse divorce before your pension payments begin, the Joint and Survivor Pension or the QOSA, as applicable, will not be paid and your pension will be paid to you at the full, unadjusted amount (unless a QDRO is in force). However, once pension payments begin, the amount of your pension will not be changed in the event your Spouse predeceases you or you divorce.

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## **SECTION V. E**

# **ARE THERE ANY BENEFITS IF I AM NOT MARRIED AND DIE BEFORE MY PENSION PAYMENTS BEGIN?**

Your designated Beneficiary or your estate may be eligible to receive 60 monthly payments if:

- You had met the age and vesting requirements of one of the pension types at the time of your death; **and**
- Your Beneficiary or executor/executrix to your estate submits a 60-Month Guarantee application to the Pension Fund.

Your designated Beneficiary or your estate will be eligible to receive 60 monthly payments calculated based on the date you last worked in Covered Employment.

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## **SECTION V. F**

### **WHAT IS A “60-MONTH GUARANTEE PENSION”?**

If you are retiring and are entitled to receive a pension to be paid other than in the form of a Joint and Survivor Pension or a QOSA, your benefit will be paid in the form of a 60-Month Guarantee Pension, as discussed below. If you are married, you may elect the 60-Month Guarantee Pension only if your Spouse rejects the Joint and Survivor Pension or QOSA by signing a valid waiver in accordance with the provisions of the Plan. Any waiver of the Joint and Survivor Pension or QOSA is not valid if made more than 180 days before the commencement date of your pension payments.

With the 60-Month Guarantee Pension, you will receive a monthly benefit for life. If you die before you have received 60 monthly payments, your Spouse or other designated Beneficiary will continue to receive monthly benefit payments until a total of 60 monthly payments have been made to you and your Beneficiary, at which time payments will stop.

You may designate a primary and a secondary Beneficiary. In this case, your primary Beneficiary will be paid the remaining payments up to a total of 60 monthly payments. Should the primary Beneficiary die before a total of 60 monthly payments have been made to both of you, the remaining payments will be paid to your secondary Beneficiary. In the absence of a designation of a second Beneficiary, or in the event of the death of the second Beneficiary before a total of 60 monthly payments have been made, payment will be made to your estate. You may also designate two Beneficiaries who will share the balance of the 60 payments equally. You may designate or change your Beneficiaries at any time prior to when you begin receiving your monthly pension benefit.

If, at the time of your death, you are an active Participant, are not married and are eligible to receive, but have not started to receive, payment of your pension benefit, your designated Beneficiaries will receive 60 monthly payments equal to the amount of the pension you would have received if you had retired the day before you died. If, at the time of your death, you are in Qualified Military Service, you will be deemed to be an active Participant as of the date of your death for the purpose of this benefit.

If you were formerly in the HCIPF, and you last worked in Covered Employment prior to January 1, 2002, you received a 36-Month (Three-Year) Guarantee option form of payment. The 36-Month Guarantee works the same way as the 60-Month Guarantee option form of payment, except it is for 36, instead of 60, months.

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## **SECTION V. G**

# **WHEN AM I ELIGIBLE TO RECEIVE A LUMP-SUM DISTRIBUTION FROM THE PLAN?**

If your pension benefit under the Plan is less than or equal to \$10 per month and has a lump-sum present value of \$1,000 or less, such benefit shall be paid as a single lump sum equal to the present value of the benefit, which you would otherwise receive, as determined in accordance with the Plan's actuarial factors.

If your pension benefit is less than or equal to \$10 per month, but its lump-sum present value exceeds \$1,000, you may consent to receive a lump-sum distribution if you and your Spouse consent. In the event a monthly pension benefit under the Plan is greater than \$10, but less than or equal to \$20, you have the option of receiving either a lump-sum benefit or monthly pension benefits if you and your Spouse consent.







## **SECTION VI – OTHER INFORMATION YOU SHOULD KNOW**

- A. Applying for Benefits
- B. Delayed and Retroactive Pension Starting Dates
- C. Appeal of a Denial of Benefits
- D. Assignment of Benefits
- E. How Benefits May Be Reduced, Delayed or Lost
- F. Plan Amendment or Termination
- G. Authority of the Plan Administrator
- H. Incapacitation
- I. Compliance with Federal Law
- J. Recovery of Overpayments
- K. Your Disclosures to the Plan
- L. Plan Funding and Administration
- M. Contributing Employers
- N. Pension Benefit Guaranty Corporation

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# SECTION VI

## OTHER INFORMATION YOU SHOULD KNOW

This section contains administrative information about the Plan and an explanation of certain rights you have under federal law.

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### SECTION VI. A

## APPLYING FOR BENEFITS

#### HOW DO I FILE AN APPLICATION FOR A PENSION?

You must file an application with the Board of Trustees via a form that will be provided to you by the Pension Fund. An application for retirement must be filed in advance of your intended retirement date; however, you are urged to promptly file as soon as you decide on your intended retirement date.

You may also complete the application by logging into **MyAccount** at **www.My1199Benefits.org**. But please be advised that the Joint and Survivor Pension waiver cannot be filed more than 180 days before the Pension Starting Date. Early filing will help avoid delays in the processing of your application and payment of benefits.

Remember, the Fund requires satisfactory proof of your age, your Spouse's proof of age if you are married and proof of your legal marriage in order to process your application for retirement. The Fund may also need to obtain wage information from Social Security.

#### WHEN DO PENSION BENEFITS BEGIN?

If you have met all the requirements of the Plan, your pension will begin on the first day of the month following the later of the receipt of your application by the Pension Fund or the last date that you have worked or as soon as administratively practicable thereafter.

If you are vested and have stopped working in Covered Employment, **EVEN IF YOU ARE WORKING IN DISQUALIFYING EMPLOYMENT**, you are required to start receiving pension payments by the April 1st of the calendar year after the year you reach age 70 1/2.



If you are vested and continue to work in Covered Employment (as described in Section IV.A of this SPD):

- You are not required to begin receiving your pension by April 1st of the calendar year after the year you reach age 70 1/2; rather, you may elect to receive your pension at any time or any month thereafter.
- You will receive additional credit for each month worked past April 1st of the calendar year after the year you reach age 70 1/2 and an actuarial increase for the same period.

If you begin receiving benefits after your Normal Retirement Age, your monthly benefit will be calculated using the rates that were in effect when you terminated employment, and your monthly benefit will be actuarially adjusted (increased) to account for the payments you did not receive since Normal Retirement Age until the date your pension payments begin (except for any time that your benefits were suspended).

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## **SECTION VI. B**

### **DELAYED AND RETROACTIVE PENSION STARTING DATES**

You have at least 30 days to review any pension distribution materials you receive from the Pension Fund and to select a form of payment.

If the date of your first payment is delayed, you will have two choices:

- You can elect to change your Pension Starting Date to the date the first payment can be made and your pension will be actuarially adjusted (increased) to reflect the delay; or
- You may elect to receive your pension based on the Pension Starting Date you originally selected *plus* a retroactive payment covering any pension payment(s) missed during the delay, plus interest. This is sometimes referred to as a Retroactive Annuity Starting Date. If you are married, your Spouse must consent to this retroactive distribution.

Please note that if you are entitled to a pension, the Fund will send you a notice when you approach age 65 that addresses the suspension of pension payments. If you do not file a pension application at age 65, the Fund will presume that you are working in Disqualifying Employment. You must provide proof that you were not working in Disqualifying Employment after your Normal Retirement Age to receive an actuarial increase.

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## **SECTION VI. C**

# **APPEAL OF A DENIAL OF BENEFITS**

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

### **NOTICE OF DENIAL**

If your claim for pension benefits has been denied, you will normally be notified in writing within 90 days. The notification will include:

- The specific reasons for the denial;
- The specific Plan provisions on which the decision was based;
- A description of any additional information required to process your claim and why it is necessary; and
- The additional steps you should take if you wish to submit your claim for review.

In special circumstances, the 90-day period may be extended to 180 days after receipt of your claim. If this happens, you will be notified in writing within the original 90-day period. This written notice will give the reasons for the delay and an estimated date that you can expect a decision. If the extension of time is required because you failed to submit information necessary to decide your claim, the period for making the determination will be extended from the date on which the extension notice is sent to you until the date on which you satisfy the Pension Fund's request for information.

### **YOUR RIGHT TO APPEAL**

If your claim was denied or you believe your pension amount is not correct, or you wish to contest the Plan's recoupment of an inadvertent benefit overpayment, you have the right to appeal to the Appeals Committee of the Board of Trustees by taking the following steps:

- You must submit a written request with documentation supporting your claim to the Pension Fund. After review, the Pension Fund will send you a determination. If you wish to appeal that determination to the Pension Fund, you must do so no later than 60 days after you received notice of the adverse benefit determination. To request an appeal, write to: 1199SEIU Appeals Committee, 1199SEIU Home Care Employees Pension Fund, 498 Seventh Avenue, 7th Floor, New York, NY 10018.

- The Appeals Committee will decide on your appeal at its next regularly scheduled quarterly meeting, or, if the request is received within 30 days before that meeting, at the following regularly scheduled quarterly meeting. In special circumstances, the decision may be made at a third regularly scheduled quarterly meeting following receipt of your request. If this happens, you will be notified of the delay, the reasons for the delay and the estimated date when you can expect a decision. If the extension of time is required because you failed to submit information necessary to decide your claim, the period for making the determination will be extended from the date on which the extension notice is sent to you until the date on which you satisfy the Pension Fund’s request for information.
- The decision of the Appeals Committee will be made in writing and will include an explanation of the decision and the specific references to any Plan provisions on which the decision is based.

The Committee’s decision is final, binding and conclusive on all parties, subject to your right under ERISA to file a suit only in a federal court in New York City after you have exhausted the appeal process to the Appeals Committee, and only if you feel the decision is arbitrary and capricious. The Trustees, including the Appeals Committee, have full power and final authority and discretion to interpret and apply the Plan, determine all questions of fact (including the credibility of any person’s statement or other evidence), determine eligibility for benefits and all questions of coverage, and to make final decisions on all claims.

### **LIMITATIONS PERIOD FOR FILING SUIT**

No lawsuits related to a claim for benefits under the Plan may be brought before, or more than one year after, the date on which you fully exhausted the Plan’s administrative appeal process. No other lawsuits may be brought against the Plan, the Plan Administrator or any other Plan fiduciary more than one year following the date the claim arose, to the extent permitted by law.

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## **SECTION VI. D**

### **ASSIGNMENT OF BENEFITS**

Benefits under the Plan are for your benefit only. They cannot be sold, transferred or otherwise given to anyone; nor are benefits subject in any manner to attachment, garnishment or other charge, except as provided in the Plan. However, the Plan will comply with the following:

- A Qualified Domestic Relations Order (QDRO) that gives someone else a right to a portion of your pension, as described below;
- Any offset permitted under the Internal Revenue Code, as described below; and
- A retiree’s revocable request for deductions related to Union dues or political action contributions to 1199SEIU United Healthcare Workers East (“Union”).

#### **QUALIFIED DOMESTIC RELATIONS ORDERS (QDRO)**

A Qualified Domestic Relations Order (“QDRO”) is a court order or judgment that directs the Plan to pay benefits to your Spouse, former Spouse, child or other dependent in connection with child support, alimony or marital property rights that has been qualified by the Plan Administrator or their designees as complying with the Plan’s QDRO policy and processing procedures. The Plan Trustees are required by law to follow the terms of QDROs. In addition, until the Plan has complied with the terms of the QDRO, the Board of Trustees may restrict the pension benefits that are payable to you. These restrictions could also apply during any period when the Board of Trustees is determining whether a written order satisfies the QDRO requirements in the Internal Revenue Code and the Plan’s QDRO policy.

You will be notified if the Plan receives a proposed QDRO with respect to your pension. For more information on QDROs, or to receive a free copy of the procedures the Trustees follow in determining if an order is qualified, contact the Pension Fund at (646) 473-8666. Outside New York City, please call (800) 575-7771.

#### **OFFSETS UNDER THE INTERNAL REVENUE CODE**

Offsets permitted under the Internal Revenue Code generally involve convictions, judgments, settlements and similar dispositions entered on or after August 5, 1997, of breaches or alleged breaches of fiduciary duties under the Employee Retirement Income Security Act of 1974 (“ERISA”).

## **UNION DUES OR POLITICAL ACTION CONTRIBUTIONS**

You may agree to allow part of your pension to pay Union dues and/or political action contributions to 1199SEIU United Healthcare Workers East. Contact the Pension Fund for more information at (646) 473-8666. Outside New York City, please call (800) 575-7771.

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## **SECTION VI. E HOW BENEFITS MAY BE REDUCED, DELAYED OR LOST**

Under certain situations, benefits may be reduced, delayed or lost. These circumstances are spelled out in the preceding pages, but benefit payments also may be affected if any of the following apply to you:

- You or your Beneficiary do not file a claim for benefits properly or on time;
  - You or your Beneficiary do not furnish the information required to complete or verify a claim;
  - You or your Beneficiary do not have a current address on file with the Pension Fund;
  - The Pension Fund is recouping an overpayment;
  - Benefits are suspended due to Disqualifying Employment; or
  - A Qualified Domestic Relations Order (QDRO) is issued.
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## **SECTION VI. F PLAN AMENDMENT OR TERMINATION**

The Board of Trustees may, from time to time, make changes in the Plan, some of which may affect your benefits. These changes cannot reduce the credits you have already earned, unless permitted by federal law. However, the changes may reduce the benefits you earn in the future.

The Trustees intend to continue the benefits described in this SPD indefinitely. However, the Trustees reserve the right, in their sole and absolute discretion, to modify, amend or terminate the Plan, in whole or in part, at any time and to change or discontinue the type and amount of benefits offered by the Pension Fund. If the Plan is ended, you will be fully vested in any benefit you have accrued to the extent then funded. Plan assets will be applied to provide benefits in accordance with the applicable provisions of federal law.

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# SECTION VI. G

## AUTHORITY OF THE PLAN ADMINISTRATOR

Benefits will be paid only if the Plan Administrator decides in its discretion that the applicant is entitled to them under the terms of the Plan and Summary Plan Description (together, the “Plan”). Notwithstanding any other provision in the Plan, and to the full extent permitted by ERISA and the Internal Revenue Code, the Plan Administrator shall have the exclusive right, power and authority, in its sole and absolute discretion:

- To administer, apply, construe and interpret the Plan and any related Plan documents;
- To decide all matters arising in connection with entitlement to benefits, the nature, type, form, amount and duration of benefits, and the operation or administration of the Plan; and
- To make all factual determinations required to administer, apply, construe and interpret the Plan (and all related Plan documents).

The Plan Administrator shall also have the ultimate discretionary authority to:

- (i) Determine whether any individual is eligible for any benefits under this Plan;
- (ii) Determine the amount of benefits, if any, an individual is entitled to under this Plan;
- (iii) Interpret all of the provisions of, and the terms used in, this Plan (and all related Plan documents, including this Summary Plan Description);
- (iv) Formulate, interpret and apply rules, regulations and policies necessary to administer the Plan in accordance with its terms;
- (v) Decide questions, including legal or factual questions, relating to the eligibility for, or calculation and payment of, benefits under the Plan;
- (vi) Resolve and/or clarify any ambiguities, inconsistencies and omissions arising under the Plan or other related Plan documents, including this Summary Plan Description;
- (vii) Process and approve or deny benefit claims and rule on any benefit exclusions; and
- (viii) Delegate its authority and responsibilities to one or more committees of the Board of Trustees, as it may determine from time to time.

All determinations made by the Plan Administrator (or any duly authorized designee thereof) and/or the Appeals Committee with respect to any matter arising under the Plan and any other Plan documents shall be final and binding on all parties.

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## **SECTION VI. H INCAPACITATION**

If anyone is entitled to receive benefits from the Plan, and is judged by the Plan Administrator to be physically or mentally incapable of handling personal affairs, the Plan Administrator may pay the benefit to a legal representative or other person, as the Plan Administrator deems in the best interests of the Participant or Beneficiary or as may be ordered by a court of law.

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## **SECTION VI. I COMPLIANCE WITH FEDERAL LAW**

The Plan is governed by current federal laws, including regulations and rulings of the U.S. Department of the Treasury and the U.S. Department of Labor. The Plan will always be construed to comply with these regulations, rulings and laws. Generally, federal law takes precedence over state law.

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## **SECTION VI. J RECOVERY OF OVERPAYMENTS**

If you or your Beneficiary are overpaid or otherwise paid in error, the payment must be returned, because it belongs to the Pension Fund. The Pension Fund will have a lien on inadvertent overpayments—that portion of the benefit payments that were overpayments or were paid in error—when the Pension Fund timely notifies you of the error. The Board of Trustees also has the right to recover any benefit payments made that were based on false or fraudulent statements, information or proof submitted, in which case amounts recovered may include interest and costs.

In the event of an overpayment, the Pension Fund may request repayment of the amount of overpayment. If the repayment is not received, to the extent permitted

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by law, the amount of the overpayment may be deducted from future benefits in a manner approved by the Appeals Committee and/or, in certain circumstances, a lawsuit may be started to enforce the terms of the Plan and recover the overpayment. If any Participant, Spouse or other Beneficiary is ordered by a court or the U.S. Department of Labor to repay any amount to the Plan based on a criminal conviction or judgment, or a violation of ERISA's fiduciary rules, the order may allow the Plan to recover that amount by reducing benefits payable to that person in the future.

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## **SECTION VI. K**

### **YOUR DISCLOSURES TO THE PLAN**

The information you give to the Pension Fund, including statements concerning your age and marital status, affects the calculation of your benefits. **If any of the information you provide is false, you must indemnify and repay the Plan for any losses or damages caused by your false statements. In addition, if the Plan makes payments as a result of false statements, the Pension Fund may elect to pursue the matter by pressing civil or criminal charges or by reducing your pension.**

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## **SECTION VI. L**

### **PLAN FUNDING AND ADMINISTRATION**

The Plan is what the law calls a “defined benefit” pension plan. Benefits are provided in the amounts specified in the Plan and paid out of the Pension Fund’s assets. These assets are accumulated under the provisions of the Trust Agreement and are held in a Trust Fund for the purpose of providing benefits to Participants and defraying reasonable administrative expenses. The Pension Fund is administered by the Board of Trustees, which has been designated as the Plan Administrator for purposes of federal law.

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## **SECTION VI. M**

### **CONTRIBUTING EMPLOYERS**

The Plan is financed by contributions paid to the Pension Fund by Employers as

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required under the various Collective Bargaining Agreements (CBAs) negotiated with 1199SEIU United Healthcare Workers East. You are not required or permitted to contribute to the Plan.

Participants and their Beneficiaries may receive from the Pension Fund, upon written request, information as to whether a particular Employer or Employee organization is participating in the Pension Fund and, if the Employer or Employee organization is participating, its address. The Pension Fund may charge a reasonable cost for reproduction of records.

To obtain the above information at the Pension Fund office, you should make an appointment stating the information you wish to receive. There may be a delay if the Pension Fund has to obtain the documentation from the Employer or Union.

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## **SECTION VI. N**

### **PENSION BENEFIT GUARANTY CORPORATION**

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

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

The maximum benefit that the PBGC guarantees is set by law. Under the multi-employer plan program, the PBGC guaranteed benefit as of the effective date of this SPD equals a Participant’s Years of Service multiplied by: (1) 100% of the first \$11 of the monthly benefit accrual rate; and (2) 75% of the next \$33. The PBGC’s maximum guarantee limit is \$35.75 per month multiplied by a Participant’s Years of Service. For example, the maximum annual guarantee for a retiree with 30 Years of Service would be \$12,870. In no event will the PBGC guarantee a benefit higher than what was promised to you under the terms of this Plan.

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

The PBGC guarantee generally does not cover:

- Benefits greater than the maximum guaranteed amount set by law;
- Benefit increases and new benefits based on Plan provisions that have been in place for fewer than five years, at the earlier of the date the Plan terminates or the time the Plan becomes insolvent;
- Benefits that are not vested because you have not worked long enough;
- Benefits for which you have not met all of the requirements at the time the Plan becomes insolvent;
- Non-pension benefits, such as health insurance, life insurance, certain death benefits, vacation pay and severance pay; and
- Pre-retirement survivor annuities for Participants who have not died as of the Plan's termination date.

For more information about the PBGC and the benefits it guarantees, ask your Plan Administrator or contact the PBGC's Technical Assistance Division, 1200 K Street, NW, Suite 930, Washington, DC 20005-4026 or call (202) 326-4000 (this is not a toll-free number). TTY/TDD users may call the federal relay service toll-free at (800) 877-8339 and ask to be connected to (202) 326-4000. Additional information about the PBGC's pension insurance program is available through the PBGC's website at [www.PBGC.gov](http://www.PBGC.gov).







## **SECTION VII – YOUR ERISA RIGHTS**

- A. Your ERISA Rights
- B. Assistance with Your Questions
- C. Important Notice

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# SECTION VII. A

## YOUR ERISA RIGHTS

As a Participant in this Plan, you are entitled to certain rights and protections under the Employee Retirement Income Security Act of 1974 (“ERISA”).

### GETTING INFORMATION

You have the right to:

- Examine, without charge, all governing Pension Fund documents at the Pension Fund’s office and copies of the latest annual report (Form 5500 Series) filed by the Pension Fund with the U.S. Department of Labor, which is available at the Public Disclosure Room of the Employee Benefits Security Administration, 200 Constitution Avenue NW, Suite N-1513, Washington, DC 20210, or on the EFAST website at [www.EFAST.DOL.gov](http://www.EFAST.DOL.gov);
- Obtain, upon written request to the Pension Fund, copies of documents governing the operation of the Pension Fund, including Collective Bargaining Agreements and copies of the latest annual report (Form 5500 Series), as well as an updated summary plan description; amortization extension applications and determinations; trust agreement; and other Pension Fund information;
- Receive a summary of the Plan’s annual financial report. You may receive this report through Union and Pension Fund periodicals;
- Obtain a statement telling you whether you have a right to receive a pension at Normal Retirement Age (age 65) and, if so, what your benefits would be at Normal Retirement Age if you stop working under the Plan now. If you do not have a right to a pension, the statement will tell you how many more years you have to work to get a right to a pension. This statement must be requested in writing and is not required to be given more than once every 12 months. The Plan must provide the statement free of charge;
- Receive a notice of changes in the Plan that materially affect your benefits. Union and Pension Fund periodicals may be used for this purpose; and
- Request a statement from the Pension Fund as to whether a particular Employer is a Contributing Employer to the Plan and, if so, the address of such Employer.

When requesting these documents, you are limited to one request per copy per year, and you must make your requests by writing to the Plan Administrator

at PO Box 2661, New York, NY, 10108-2661. The Pension Fund can charge a reasonable fee for copies. You can also examine these documents without charge at the Pension Fund's headquarters.

## **FINDING OUT WHEN YOU QUALIFY FOR A PENSION**

You can get a statement telling you whether or not you may qualify to receive a pension at Normal Retirement Age (age 65), based on information available to the Pension Fund.

- If you are vested for a pension, the statement will give you an estimate of what your benefits will be at the Normal Retirement Age of 65 if you stop working now.
- If you are not vested for a pension, the statement will tell you how many Years of Service you have.

You must request this statement in writing or by logging into **MyAccount** at [www.My1199Benefits.org](http://www.My1199Benefits.org). The Pension Fund must provide it to you free of charge and is only required to provide you with such a statement once a year. Any such statement is an estimate *only*, based on the information you provide to the Pension Fund. Your actual pension benefit may be different.

## **FIDUCIARY RESPONSIBILITY**

In addition to creating rights for Plan Participants, ERISA imposes duties upon the people who are responsible for the operation of the Plan. The people who operate your Plan, called **fiduciaries** of the Plan, have a duty to do so prudently and in the interest of you and other Plan Participants and Beneficiaries. No one, including your employer, your union or any other person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining a pension benefit or exercising your rights under ERISA.

If your written claim for a pension benefit is entirely or partially denied, you must receive a written explanation of the reason it was denied. You have the right to have the Appeals Committee review and reconsider your claim, using the Appeals Procedure described in Section VI.C.

## **ENFORCING YOUR RIGHTS**

Under ERISA, there are steps you can take to enforce your rights. For instance:

- If you request a copy of Plan documents or the latest annual report from the Plan Administrator in accordance with this section and do not receive them within 30 days, you may file a suit only in a federal court in New York City.
- In such a case, the court may require the Pension Fund to provide materials and pay you up to \$110 a day until you receive the materials, unless the materials were not sent because of reasons beyond the control of the Pension Fund.
- If you have a claim for benefits which is denied or ignored, in whole or in part, you may file a suit only in a federal court in New York City, but only after you have followed the complete appeals procedure described in Section VI.C, and only if you believe that the decision against you is arbitrary and capricious or violates ERISA.
- If you disagree with the Pension Fund's decision or lack thereof concerning the qualified status of a domestic relations order, you may file a suit only in a federal court in New York City.
- If the Pension Fund's fiduciaries misuse the Pension Fund's money, or if you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file a suit only in a federal court in New York City.
- The court will decide who should pay court costs and legal fees. If you are successful, the court may order that you be paid these costs and fees. If you lose, the court may order you to pay these costs and fees (for example, if it finds your claim is frivolous).

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## **SECTION VII. B**

### **ASSISTANCE WITH YOUR QUESTIONS**

If you have any questions about your Plan, you should contact the Pension Fund:

- For questions about receiving a pension payment, contact the Pension Fund at (646) 473-8666. Outside New York City, please call (800) 575-7771.



- For questions about your Pension Fund’s procedures or the Plan, contact the Pension Fund at (646) 473-8666. Outside New York City, please call (800) 575-7771.
- For questions about this statement or your rights under ERISA, or if you need assistance in obtaining documents from the Pension Fund, contact the nearest U.S. Department of Labor–Employee Benefits Security Administration office, which you can find online, [www.DOL.gov/Agencies/EBSA/About-EBSA/About-Us/Regional-Offices](http://www.DOL.gov/Agencies/EBSA/About-EBSA/About-Us/Regional-Offices), or write to:

**Division of Technical Assistance and Inquiries  
Employee Benefits Security Administration  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington DC, 20210**

You may also obtain certain publications about your rights and responsibilities under ERISA by calling the publications hotline of the Employee Benefits Security Administration at (866) 444-3272.

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## **SECTION VII. C IMPORTANT NOTICE**

The rules and regulations of the Plan are set forth in a document called the 1199SEIU Home Care Employees Pension Plan, and in related documents. This SPD is not legally binding. Your rights to benefits are determined solely under the terms of the Plan documents (including the Trust Agreement establishing the Plan), as interpreted by the Board of Trustees in its sole and absolute discretion. To the extent that any of the information contained in the SPD is inconsistent with the official Plan documents, the provisions set forth in the official Plan documents will govern in all cases.

We strongly urge you to review the full text of the official Plan Document, the Trust Agreement and all related documents, in order to understand the terms of the Plan as they apply to your particular situation.

Please be aware that neither this SPD nor the Plan is a contract of employment; they neither guarantee employment with an Employer nor diminish in any way the right of an Employer to terminate the employment of any Employee. Furthermore, the Board of Trustees reserves the right, in its sole and absolute discretion, to amend or modify the Plan from time to time, and to terminate

the Plan and the Fund (in whole or in part) at any time, in accordance with the procedures set forth in the Plan Document and the Trust Agreement, and subject to the Internal Revenue Code and law.









## **SECTION VIII – GENERAL INFORMATION**

- A. General Information
- B. Joint Board of Trustees

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# SECTION VIII. A

## GENERAL INFORMATION

<b>Plan Name and Address</b>	The 1199SEIU Home Care Employees Pension Fund Plan 498 Seventh Avenue, 3rd Floor New York, NY 10018
<b>Employer Identification Number (EIN)</b>	13-3943904
<b>Plan Number</b>	001
<b>Fund's Fiscal Year</b>	January 1 – December 31
<b>Merger or Consolidation of the Plan or Transfer of Plan Assets</b>	If the Plan merges or consolidates with any other Plan, or transfers its assets to any other Plan, your benefits (or accrued benefits) cannot be less than what you would have been entitled to if the Plan were terminated immediately before the merger, consolidation or transfer.
<b>Agent for Service of Legal Process</b>	For the purposes of service of process, the proper address to serve the Pension Fund is on the Chief Pension Officer at the 498 Seventh Avenue address (above) or the Board of Trustees (which also can be sued) at the same address.
<b>Administration</b>	The Fund is self-administered.

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**Plan Sponsor and Administrator** The 1199SEIU Home Care Employees Pension Fund is sponsored and administered by a joint Board of Trustees composed of Union Trustees and Employer Trustees. Employer Trustees are elected by the Employers on a geographical basis. Union Trustees are designated by the Union. The names and addresses of the Trustees appear in Section VIII.B, although they may be changed from time to time. The Board of Trustees may be contacted at:

Board of Trustees  
1199SEIU Home Care Employees  
Pension Fund  
498 Seventh Avenue  
New York, NY 10018

Phone: (646) 473-8666  
Outside New York City,  
please call (800) 575-7771.

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**Contributing Employers** The 1199SEIU Home Care Employees Pension Fund will provide you, upon written request, with information as to whether a particular Employer is contributing to the Plan on behalf of Employees, as well as the address of such Employer.

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**Type of Plan** Defined benefit pension plan

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**Plan Effective Date** The Plan was originally adopted effective April 1, 1997, and has been amended and restated since then. The most recent amendments are as of December 14, 2023.

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**How the Plan Is Funded**

Payments are made to the Pension Fund by your Employer and other Contributing Employers. Your Employer's contribution rate is set in your Union contract. It is estimated to adequately meet the cost of benefit payments and administration. Since this is a multi-employer fund, costs for Employees of all Contributing Employers are calculated on a pooled basis.

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# SECTION VIII. B

## JOINT BOARD OF TRUSTEES

UNION TRUSTEES	
<p>Yvonne Armstrong Senior Executive Vice President 1199SEIU United Healthcare Workers East 498 7th Avenue New York, NY 10018</p>	<p>Kwai (David) Ho Vice President 1199SEIU United Healthcare Workers East 498 7th Avenue New York, NY 10018</p>
<p>Allen Chan Organizer 1199SEIU United Healthcare Workers East 498 7th Avenue New York, NY 10018</p>	<p>Keith Joseph Vice President 1199SEIU United Healthcare Workers East 498 7th Avenue New York, NY 10018</p>
<p>Ana Dubovici Organizer 1199SEIU United Healthcare Workers East 498 7th Avenue New York, NY 10018</p>	<p>Daniel Ratner Trustee 1199SEIU United Healthcare Workers East 498 7th Avenue New York, NY 10018</p>
<p>Vladimir Fortunny Vice President 1199SEIU United Healthcare Workers East 498 7th Avenue New York, NY 10018</p>	<p>Rene Ruiz Vice President 1199SEIU United Healthcare Workers East 498 7th Avenue New York, NY 10018</p>
<p>Katia Guillaume Vice President 1199SEIU United Healthcare Workers East 498 7th Avenue New York, NY 10018</p>	<p>Rona Shapiro Executive Vice President 1199SEIU United Healthcare Workers East 498 7th Avenue New York, NY 10018</p>

## UNION TRUSTEES

Benicia Williams  
Organizer  
1199SEIU  
United Healthcare Workers East  
498 7th Avenue  
New York, NY 10018

## EMPLOYER TRUSTEES

Gladys Confident  
Director  
Home Care Services for  
Independent Living  
2044 Ocean Avenue, Ste B-4  
Brooklyn, NY 11230

Adria Powell  
President  
Cooperative Home Care Associates  
400 East Fordham Road, 12th Floor  
Bronx, NY 10458

Ling Ma  
Director  
Chinese American Planning Council  
Home Attendant Program  
40 Worth Street, Rm 1301-4  
New York, NY 10013

Andrea Thomas-Randall  
Associate Executive Director  
Sunnyside Community Services  
4331 39th Street  
Sunnyside, NY 11104

**Note:** This list is current as of the date of this SPD and does not include Alternate Trustees.





# PLAN DOCUMENT

## THE 1199SEIU HOME CARE EMPLOYEES PENSION FUND

Adopted April 1, 1997

As Amended and Restated

December 14, 2023

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# INTRODUCTION

The Plan, as amended and restated from time to time, and the trust established hereunder, are intended to qualify as a plan and a trust which meet the requirements of the Employee Retirement Income Security Act of 1974, as amended, and Sections 401(a) and 501(a), respectively, of the Internal Revenue Code of 1986, as amended. The Plan was amended and restated effective January 1, 2002 (except as otherwise specifically provided), to reflect the merger of the 1199 Home Care Industry Pension Fund into the Home Care Industry Local 32B-32-J-144 SEIU Pension Fund and the renaming of the latter Fund as “The 1199SEIU Home Care Employees Pension Fund.”

The Plan, last restated as of January 1, 2015, is now amended and restated in its entirety to incorporate prior amendments to make certain additional changes and clarifications as adopted by the Trustees.

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# ARTICLE 1

## DEFINITIONS

**AS USED HEREIN, THE WORDS AND PHRASES BELOW SHALL HAVE THE FOLLOWING MEANING:**

### **SECTION 1.01 TRUST AGREEMENT**

“Trust Agreement” means the Agreement and Declaration of Trust dated April 1, 1997, establishing the Home Care Industry Local 32B-32-J-144 SEIU Pension Fund (now known as the 1199 SEIU Home Care Employees Pension Fund) effective January 1, 1997, as amended and restated, effective September 1, 2008, and further amended and restated as of April 3, 2012.

### **SECTION 1.02 PENSION FUND**

“Pension Fund” or “Fund” means the 1199 SEIU Home Care Employees Pension Fund established under the Trust Agreement.

### **SECTION 1.03 TRUSTEES**

“Trustees” means the Board of Trustees as established and constituted from time to time in accordance with the Trust Agreement.

### **SECTION 1.04 PENSION PLAN OR PLAN**

“Pension Plan” or “Plan” means this document as adopted by the Trustees and as thereafter amended by the Trustees.

### **SECTION 1.05 UNION**

“Union” means 1199SEIU United Healthcare Workers East (f/k/a 1199/SEIU, New York’s Health and Human Service Employees Union, AFL-CIO, provided, however, prior to January 1, 2000, “union” meant the Local 32B-32J-144 Service Employees International Union, AFL-CIO.)

### **SECTION 1.06 CONTRIBUTING EMPLOYER**

“Contributing Employer” or “Employer” means an employer signatory to a Collective Bargaining Agreement with the Union requiring contributions to this Fund and an employer signatory to any other agreement requiring contributions to this Fund.

For purposes of identifying highly compensated employees and applying the rules on participation, vesting and statutory limits on benefits under the Fund but not for determining Covered Employment, the term “Employer” includes all corporations, trades or businesses under common control with the Employer within the meaning of Internal Revenue Code §414(b) and (c), all members of an affiliated service group with the Employer within the meaning of Internal Revenue Code §414(m) and all other businesses aggregated with the Employer under Internal Revenue Code §414(o).

## **SECTION 1.07 COLLECTIVE BARGAINING AGREEMENT**

“Collective Bargaining Agreement” or “Agreement” means an agreement between the Union and an Employer which requires contributions to the Fund.

## **SECTION 1.08 EMPLOYEE**

“Employee” means a person who is an Employee of an Employer and who is covered by a Collective Bargaining Agreement or any written agreement requiring Employer contributions on their behalf. If this Pension Fund or the Union is a Contributing Employer, the employees with respect to whom such Employer participates in this Plan, whether or not they are covered by a Collective Bargaining Agreement, are to be deemed Employees.

The term “Employee” includes a leased employee of an Employer, within the meaning of §414(n) of the Internal Revenue Code, who otherwise meets the conditions for participation, vesting and/or benefit accrual under the Fund.

## **SECTION 1.09 COVERED EMPLOYMENT**

“Covered Employment” means employment of an Employee by an Employer. For purposes of Past Service Credit, Covered Employment may include periods of employment preceding the Contribution Period which were not covered by a Collective Bargaining Agreement with the Union.

## **SECTION 1.10 PARTICIPANT**

“Participant” means a Pensioner, a Beneficiary, an Employee who meets the requirements for participation in the Plan as set forth in Article 2, or a former employee who has vested with 5\* Pension Credits under this Plan.

\* 10 Pension Credits for a Participant who was covered by a Collective Bargaining Agreement and failed to earn at least one Hour of Service on or after January 1, 1997, while an active Participant.



## **SECTION 1.11 BENEFICIARY**

“Beneficiary” means a person (other than a Pensioner) who is receiving benefits under this Plan because of their designation for such benefits by a Pensioner or Participant.

## **SECTION 1.12 NON-BARGAINED EMPLOYEE**

A Non-Bargained Employee is a Participant whose participation is not covered by a Collective Bargaining Agreement.

## **SECTION 1.13 HIGHLY COMPENSATED EMPLOYEE**

- (a) The term “highly compensated employee” includes highly compensated active employees and highly compensated former employees of an Employer. Whether an individual is a highly compensated employee is determined separately with respect to each Employer, based solely on that individual’s compensation from or status with respect to that Employer. A highly compensated active employee is an Employee who
- (i) earned more than \$85,000 from the Employer in the previous Calendar Year as adjusted under §414(q) of the Internal Revenue Code, or
  - (ii) owns more than 5 percent of the Employer during the calendar year or preceding calendar year.

A highly compensated former employee is an Employee who was a highly compensated employee when such employee separated from service, or such employee was a highly compensated employee at any time after attaining age 55.

## **SECTION 1.14 CONTRIBUTION PERIOD**

“Contribution Period” means, with respect to a category of employment, the period during which the Employer is obligated by its Agreement to contribute to the Fund with respect to the category of employment.

## **SECTION 1.15 PENSIONER**

“Pensioner” means a person to whom a pension under this Plan is being paid or to whom a pension would be paid but for time for administrative processing.

## **SECTION 1.16 NORMAL RETIREMENT AGE**

“Normal Retirement Age” means for a Participant, age 65, or if later, the age of the Participant on the fifth anniversary of their Participation. Participation before a Permanent Break in Service and participation before a One-Year Break

in Service in the case of a former Participant who has not returned to Covered Employment and reestablished participation in accordance with Section 2.03 are disregarded in applying this section.

### **SECTION 1.17 CALENDAR YEAR**

“Calendar Year” means the period from January 1 to the next December 31. For purposes of ERISA regulations, the Calendar Year shall serve as the vesting computation period and benefit accrual computation period.

### **SECTION 1.18 SERVICE**

An “Hour of Service” is:

- (a) each hour for which an Employee is paid or entitled to payment, directly or indirectly, by an Employer. These hours shall be credited to the Employee for the computation period or periods in which the duties are performed; and
- (b) each hour for which an Employee is paid or entitled to payment by the Employer(s) for reasons other than the performance of duties, including but not limited to vacation, sickness or disability, irrespective of whether the employment relationship has terminated. These hours shall be credited to the Employee for the computation period or periods in which the non-performance of duties occur; and
- (c) each hour for which back pay, irrespective of mitigation of damage, has been either awarded or agreed to by the Employer. These hours shall be credited to the Employee for the computation period or periods to which the award or agreement pertains rather than the computation period in which the award, agreement, or payment was made. These same hours of Service shall not be credited under both paragraph (a) or paragraph (b) of this Section, and under this paragraph (c).
- (d) Hours of Service shall be computed and credited in accordance with paragraphs (b) and (c) of Section 2530.200b-2 of the Department of Labor Regulations which are incorporated by reference.

### **SECTION 1.19 PENSION CREDIT**

“Pension Credit” (or “Credited Service”) shall mean the credits and partial credits earned in accordance with the provisions of Article 4.

## **SECTION 1.20 VESTING OR VESTED RIGHTS**

For each Calendar Year a Participant earns at least one thousand Hours of Service, they will be credited with one year of Vesting Service. Once a person has achieved Vested Status as described in Article 3, Section 3.12, their Pension Credit becomes vested and is nonforfeitable.

## **SECTION 1.21 ACTUARIAL EQUIVALENT**

“Actuarial Equivalent” means a benefit or form of payment of equivalent value and, unless otherwise stated in the Plan, is computed on the basis of the Applicable Interest Rate and Applicable Mortality Table identified in Section 3.17.

## **SECTION 1.22 ANNUITY STARTING DATE**

A Participant’s “Annuity Starting Date” is the first day of the first calendar month starting after the Participant has fulfilled all of the conditions for entitlement to benefits including the filing of an application for benefits.

The “Annuity Starting Date” is also the “Effective Date of Benefits”.

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# ARTICLE 2

## PARTICIPATION

### SECTION 2.01 PARTICIPATION

An Employee who is engaged in Covered Employment during the Contribution Period shall become a Participant in the Plan on the earliest January 1 or July 1 following completion of a 12 consecutive month period during which they completed at least 1,000 Hours of Service in Covered Employment. For purposes of determining an Employee's eligibility for participation, a computation period shall begin on the commencement date of employment (first hour of Service). When necessary, the second computation period shall be the Calendar Year which includes the first anniversary of the employment commencement date, and succeeding computation periods shall also be on the basis of a Calendar Year. The required number of hours may also be completed with any Hours of Service in other employment with an Employer if that other employment is continuous with the Employee's Covered Employment with that Employer. Notwithstanding the foregoing, if an Employee has accrued Pension Credit as of January 1, 1992, such Employee shall become a Participant in the Plan as of the Effective Date of the Plan.

### SECTION 2.02 TERMINATION OF PARTICIPATION

A person who incurs a Permanent Break in Service (defined in Section 4.05(b)) shall cease to be a Participant as of the last day of the Calendar Year which constituted the Permanent Break in Service.

### SECTION 2.03 REINSTATEMENT OF PARTICIPATION

An Employee who has lost their status as a Participant in accordance with Section 2.02 shall again become a Participant by meeting the requirements of Section 2.01 within a Calendar Year on the basis of Service after the Calendar Year during which their participation terminated.

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# ARTICLE 3

## PENSION ELIGIBILITY AND AMOUNTS

### SECTION 3.01 REGULAR PENSION - ELIGIBILITY

A Participant may retire on a Regular Pension if the Participant meets the following requirements:

- (a) they have attained age 65; and
- (b) they have 25 Pension Credits, at least one-quarter ( $\frac{1}{4}$ ) of a Pension Credit of which was earned during the Contribution Period.

A Participant's right to a normal retirement benefit is non-forfeitable upon attainment of Normal Retirement Age.

### SECTION 3.02 REGULAR PENSION - AMOUNT

The monthly amount of the Regular Pension is \$4.00 for each of the Participant's Pension Credits, but not exceeding \$100 in total. Notwithstanding the above, effective July 1, 1998, such amount shall be \$5.60 for each Pension Credit, but not exceeding \$140.00 in total. Such amount, effective July 1, 1998, shall apply for all Service prior to and after the merger of the 1199 Home Care Industry Pension Fund into the Home Care Industry Local 32B-32-J-144 SEIU Pension Fund for any former participant of the 1199 Home Care Industry Pension Fund who, effective January 1, 2002 (except as otherwise specifically provided), became a Participant in the Plan as a result of the merger and who completed one Hour of Service under the Plan.

### SECTION 3.03 REDUCED PENSION - ELIGIBILITY

A Participant may retire on a Reduced Pension if they meet the following requirements:

- (a) has attained age 65; and
- (b) has at least 10 but less than 25 Pension Credits, at least one-quarter ( $\frac{1}{4}$ ) of a Pension Credit of which was earned during the Contribution Period.

### SECTION 3.04 REDUCED PENSION - AMOUNT

The monthly amount of the Reduced Pension shall be calculated in the same manner as the amount of the Regular Pension based on the Participant's Pension Credits under Section 3.02.

### **SECTION 3.05 EARLY RETIREMENT PENSION - ELIGIBILITY**

A Participant may retire on an Early Retirement Pension if the Participant meets the following requirements:

- (a) they have attained age 55; and
- (b) they have at least 10 Pension Credits, at least one-quarter ( $\frac{1}{4}$ ) of a Pension Credit of which was earned during the Contribution Period.

A Participant who has 10 Pension Credits shall not be entitled to receive an Early Retirement Pension until they have attained age 55.

### **SECTION 3.06 EARLY RETIREMENT PENSION - AMOUNT**

The monthly amount of the Early Retirement Pension is the amount of the Regular Pension reduced by one-half of one percent for each month (or 6% per year) by which the commencement of the pension precedes the date the Participant will attain age 65.

### **SECTION 3.07 DISABILITY PENSION - ELIGIBILITY**

A Participant shall be eligible for a Disability Pension if the Participant:

- (a) worked in Covered Employment for at least 1,000 hours in the period that consists of the Calendar Year in which they became disabled and the previous Calendar Year; and
- (b) has at least 10 Pension Credits or more, at least one-quarter ( $\frac{1}{4}$ ) of a Pension Credit of which was earned during the Contribution Period; and
- (c) is disabled as defined herein.

### **SECTION 3.08 DISABILITY PENSION - AMOUNT**

The Disability Pension shall be a monthly amount equal to the Early Retirement Pension. If the Participant is younger than age 55 the benefit amount will be calculated on the assumption that they were age 55 on the effective date of their pension.

### **SECTION 3.09 DISABILITY DEFINED**

On or after January 1, 2002, a Participant shall be deemed to be totally and permanently disabled if they have received a determination by the Social Security Administration that they are entitled to a Disability Pension in connection with their Old Age and Survivors Insurance Coverage.

### **SECTION 3.10 RE-EMPLOYMENT OF A DISABILITY PENSIONER**

A Disability Pensioner who is no longer totally disabled may re-enter employment covered by this Plan and they may thereupon resume the accrual of Pension Credits.

### **SECTION 3.11 NON-DUPLICATION OF PENSIONS**

Except for a Disability Pensioner, a person shall be entitled to only one type of pension under this Plan.

### **SECTION 3.12 VESTED PENSION - ELIGIBILITY**

A Participant shall have a right to a Vested Pension if they have:

- (a) at least 5\* Pension Credits, at least one-quarter ( $\frac{1}{4}$ ) of a Pension Credit of which was earned during the Contribution Period; or
  - \* 10 Pension Credits for a Participant who was covered by a Collective Bargaining Agreement and failed to earn at least one Hour of Service on or after January 1, 1997
- (b) attained Normal Retirement Age; or
- (c) has met the vesting requirements of Section 6.09.

A Vested Pension shall be payable after the Participant has attained age 55 under the same provisions as contained in Sections 3.05 and 3.06 of this Plan, or later if applicable under Sections 3.02 and 3.04 of this Plan.

If a Participant works for a Contributing Employer in a job not covered by this Plan, and such employment is continuous with their employment with that Employer in Covered Employment, their Hours of Service in such non-covered job during the Contribution Period shall be counted toward a year of Vesting Service, but not for purposes of benefit accrual.

### **SECTION 3.13 VESTED PENSION AMOUNT**

The monthly amount of the Vested Pension is \$4.00 for each of the Participant's Pension Credits, subject to the provisions of Section 3.06 of this Plan.

Notwithstanding the above, effective July 1, 1998, such amount shall be \$5.60, subject to the provisions of Section 3.06 of this Plan.

### **SECTION 3.14 60-MONTH GUARANTEE**

- (a) If a Pensioner whose pension is not being paid in the form of a Joint and Survivor Pension or in the form of a Qualified Optional Survivor Annuity (Article 5) dies before they have received 60 monthly pension benefit payments, the balance of these monthly benefit payments shall be paid to their designated beneficiary.
- (b) The designated beneficiary of an active Participant who dies while immediately eligible to retire on Pension and who is not covered under the Joint and Survivor Pension (Article 5), will be entitled to 60 monthly benefit payments. Notwithstanding the foregoing, if a Participant dies or becomes disabled on or after January 1, 2007, while performing qualified military service in the Armed Forces of the United States in accordance with §414(u) of the Internal Revenue Code, such Participant shall be considered an active Participant for purposes of this benefit.

Those Participants, however, who qualify for a Preretirement Surviving Spouse Pension may not elect this option.

### **SECTION 3.15 60-MONTH GUARANTEE - AMOUNT**

The amount payable under this provision is the same as that paid to the Pensioner or that which would have been paid had they retired the day before they died.

### **SECTION 3.16 APPLICATION OF BENEFIT INCREASES**

The pension to which a Participant is entitled shall be determined under the terms of the Plan as in effect at the time they separate from Covered Employment.

A Participant shall be deemed to be separated from Covered Employment on the last day of the year which is followed by a One-Year Break-in-Service except if they subsequently earn at least a 1/2 year of Pension Credit.

### **SECTION 3.17 LUMP-SUM PAYMENT**

In the event a monthly pension benefit under the Plan is less than or equal to ten dollars, such benefit shall be paid as a single lump sum equal to the actuarial present value of the benefit to which the Participant otherwise would have been entitled; provided, however, if such actuarial present value of such benefit exceeds \$1,000, the lump sum distribution of such benefit shall require the consent of the Participant. In the event a monthly pension benefit under the Plan is greater than ten but less than or equal to twenty dollars, such benefit, at the Participant's option, may be paid as a single lump sum equal to the actuarial present value of



the benefit to which the Participant otherwise would have been entitled.

The following interest and mortality rates shall be used in determining the present value of the benefit:

- (a) The interest rate shall be the annual rate of interest on 30-year Treasury Securities as specified by the Commissioner of the Internal Revenue Service is the period for which the applicable interest rate is consistently applied. The Lookback Month is the month used to determine the applicable interest rate. The Stability Period is the Plan Year. The Lookback Month is October. Effective for Plan Years beginning on and after January 1, 2008, the “Applicable Interest Rate” shall mean the three segmented rates derived from a corporate bond yield curve as set forth in Section 417(e)(3)(C) and Section 417(e)(3)(D) of the Code. The Stability Period is the Plan Year. The Lookback Month is October; and
- (b) The mortality rates shall be the table ascribed by the Secretary of the Treasury under the provision of Section 417(e) of the Internal Revenue Code. The following provisions shall apply to distributions with annuity starting dates on or after December 31, 2002. Notwithstanding any other Plan provisions to the contrary, the Applicable Mortality Table used for purposes of adjusting any benefit or limitation under Section 415(b)(2)(B), (C), or (D) of the Internal Revenue Code, for purposes of satisfying the requirements of Section 417(e) of the Internal Revenue Code and for determining present value of a lump sum benefit hereunder, is the table prescribed in Rev. Rul. 2001–62. Effective for Plan Years beginning on and after January 1, 2008, the Applicable Mortality Table shall mean the applicable 417(e)(3) mortality table, as currently prescribed in Revenue Ruling 2007-67 and each subsequent mortality table.

### **SECTION 3.18 DIRECT ROLLOVER**

- (a) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee’s election under this Section, a distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.
- (b) **Definitions.**
  - (i) For purposes of this Section, “eligible rollover distribution” means any distribution of all or any portion of the balance to the credit of the distributee, excluding: (a) any distribution that is one of a series of

substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; (b) any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and (c) prior to January 1, 2002, any portion of a distribution that is not included in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities). In the case of a non-spouse Beneficiary, an eligible rollover distribution is a direct trustee-to-trustee transfer of any portion of a distribution from an eligible retirement plan to an individual retirement plan described in Section 408(a) of the Code or an individual retirement account (IRA) that is established on behalf of a designated beneficiary who is a non-spouse Beneficiary.”

- (ii) 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), a qualified trust described in Code Section 401(a), and for eligible rollover distribution made on or after January 1, 2002, an annuity contract described in Code Section 403(b), and an eligible plan described under Code Section 457(b) (which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state which agrees to separately account for amounts transferred into such plan from this Plan), that accepts the distributee's eligible rollover distribution. Effective January 1, 2008, an eligible retirement plan shall also mean a Roth IRA described in Section 408(A) of the Code. In addition, effective January 1, 2008, in the case of an Eligible Rollover Distribution to a non-spouse Beneficiary, an Eligible Retirement Plan is an individual retirement account (IRA) or Roth IRA established on behalf of such non-spouse Beneficiary and that will be treated as an inherited IRA pursuant to Section 402(c)(11) of the Code. This definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p). In the case of an eligible rollover distribution to a non-spouse Beneficiary, an eligible retirement plan is an individual retirement account (IRA).
- (iii) **Distributee.** A distributee includes an Employee or former Employee. In addition, a non-spouse beneficiary, the Employee's or former

Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.

- (iv) **Direct Rollover.** A direct rollover is payment by the Plan to the eligible retirement plan specified by the distributee.

### **SECTION 3.19 ROUNDING**

The resulting figure for a Participant's pension, if not a whole dollar amount, shall be rounded to the next higher whole dollar amount.

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## **ARTICLE 4**

# **ACCUMULATION OF PENSION CREDITS**

### **SECTION 4.01 CREDIT FOR PERIODS BEFORE JANUARY 1, 1992**

- (a) A Participant may receive Pension Credit for the period or periods of their work prior to January 1, 1992, if such work was performed for an Employer (as defined in Section 1.06) who is or was signatory to a Collective Bargaining Agreement with the Union on January 1, 1992, or on a date thereafter and such employment was in a job category defined in the Collective Bargaining Agreement. A quarter of Pension Credit shall be granted if the Participant was employed for at least 250 hours in a calendar quarter. If such employment was interrupted by a one-year period in which the Participant did not have at least 500 hours of such Employment, it shall be considered a break in past Service and the period preceding such a break shall not be credited.
- (b) In addition to the foregoing, a Participant who was a participant in the 1199 Home Care Industry Pension Fund prior to December 31, 2001, may receive Pension Credit for the period or periods of their work prior to October 1, 1991, if such work was performed for an Employer (as defined in Section 1.06) who is or was signatory to a Collective Bargaining Agreement with the Union on or before October 1, 1991, and such employment was in a job category defined in the Collective Bargaining Agreement. No fractional Pension Credits will be granted for periods prior to October 1, 1991, and the maximum number of Pension Credits which a Participant can be granted for periods prior to such date is 10. Continuous employment with one or more Employers prior to October 1, 1991, shall be counted. If such employment was interrupted by a one-year period in which the Participant did not have at least 500 Hours of such employment, it shall be considered a break in Past Service and the period preceding such a break shall not be credited.

## **SECTION 4.02 CREDIT FOR NON-WORKING PERIODS**

This section recognizes certain periods when a Participant is not actually working in Covered Employment but is to receive Pension Credits just as if she were working in Covered Employment.

### **Prior to January 1, 1992**

This provision applies only if the Participant has prior credits. Periods of absence from Covered Employment are to be credited as if they were periods of work in Covered Employment if they were due to temporary or permanent disability arising from Covered Employment for a period (not exceeding 12 months) while the Participant is compensated by the Workers' Compensation Law, or New York Disability Benefits Law.

### **On and after January 1, 1992**

This provision applies only if the Participant has prior Pension Credits. Periods of absence from Covered Employment are to be credited as if they were periods of work in Covered Employment if they were due to temporary or permanent disability arising from Covered Employment for a period (not exceeding 6 months) while the Participant is compensated by the Workers' Compensation Law, or New York Disability Benefits Law. Notwithstanding the foregoing, for Participants who were Participants in the 1199 Home Care Industry Pension Fund prior to January 1, 2002, the provisions of this Section 4.02 shall only apply on and after January 1, 2000.

## **SECTION 4.03 CREDIT FOR PERIODS BEFORE THE CONTRIBUTION PERIOD FOR NEW EMPLOYERS ADMITTED ON OR AFTER JANUARY 1, 2002**

In accordance with the provisions of Section 7.03, an Employee of a new Employer may be granted Pension Credits for work with that Employer prior to the Employer's Contribution Period subject to the following conditions:

- (a) The maximum number of Pension Credits which a Participant can be granted for periods prior to the Contribution Period is 10,
- (b) Only employment in a job category covered by the Collective Bargaining Agreement with the new Employer shall be recognized for the purposes of this Section,
- (c) The Employee accumulates at least 2 Pension Credits after they accrue their first Hour of Service, and

(d) The Plan Actuary has determined, based on an analysis of the age, gender and service characteristics of Employees of the new Employer at the time it becomes a Contributing Employer, that the effect of granting credit for service prior to the Contribution Period will not create a projected unfunded vested liability for withdrawal purposes for the first five Plan years following the date on which the Employer commences contributions to the Fund or increase a projected unfunded vested liability for withdrawal purposes during that period. Notwithstanding the foregoing, Employees of a new Employer shall not earn credit for service prior to the Contribution Period until approved by the Trustees as set forth in Section 7.03. In addition, the Trustees may, by resolution, suspend this condition during such times as it can be determined, based on the most recent actuarial valuation of the Fund, that granting credit would be unlikely to create such an unfunded vested liability.

If the Plan Actuary determines that participation of a new Employer would either create a projected unfunded vested liability for withdrawal purposes during the five years following commencement of contributions or increase a projected unfunded vested liability for withdrawal purposes during that period, then the Trustees may grant pre-contribution service credit, but may impose additional conditions for the granting of pre-contribution credit under this Section. These conditions shall include one or more of the following: (i) a reduction in the maximum number of years of credit, (ii) a reduction in the benefit levels described in Article 3, calculated on pre-contribution credit or (iii) an increase in the number of years of service required during the Contribution Period for benefit eligibility. These conditions shall only be imposed to the extent necessary to avoid creating a projected withdrawal liability for the first five years following commencement of contributions or increasing an existing projected withdrawal liability for that period.

In addition, if the Plan Actuary's analysis of the age and service characteristics of the new Employer's employees projects that participation of the new Employer will either create a projected unfunded vested liability for withdrawal purposes during the second five years following commencement of contributions or increase the projected unfunded vested liability for withdrawal purposes during that period, then the Trustees may impose additional conditions for the granting of pre-contribution credit under this Section. These additional conditions shall include one or more of the following: (i) a reduction in the maximum number of credits, (ii) a reduction in the benefit levels described in Article 3, calculated on pre-contribution credit, or (iii) an increase in the number of years of service required during the Contribution Period for benefit eligibility. These conditions shall only be imposed to the extent necessary to avoid creating a projected withdrawal liability

for the second five years following commencement of Employer contributions or increasing an existing projected withdrawal liability for that period.

If the Trustees determine pursuant to this Section that the pre-contribution service credit for any employees of new Employers will be different than that under Section 4.01(a) or (b), the Plan will be amended to specify how pre-contribution service credit for that group of employees will be calculated.

A Participant will earn one Pension Credit for each Calendar Year before the Contribution Period in which the Participant worked at least 1,000 hours in employment in a job category covered by the Collective Bargaining Agreement with the new Employer. No partial Pension Credit may be earned for a period prior to the Contribution Period.

#### **SECTION 4.04**

- (a) **Pension Credit Prior to January 1, 2002.** A Participant who was a Participant in either this Fund or the 1199 Home Care Industry Pension Fund prior to January 1, 2002, shall be credited with the Pension Credits with which they had been credited as of December 31, 2001.
- (b) **Pension Credit On and After January 1, 2002.** A Participant shall be credited with Pension Credit on or after January 1, 2002, in accordance with the following schedule:

Notwithstanding anything herein to the contrary, the maximum aggregate accrual for a Participant for Plan Years 2012 and 2013 shall be the greater of: (a) .75 Pension Credits or (b) the amount of Pension Credit accrued on and after January 1, 2012, and prior to June 1, 2012. Notwithstanding anything herein to the contrary, the maximum aggregate benefit accrual for a Participant for Plan Year 2014 shall be .25 Pension Credits.

<b>HOURS OF SERVICE IN COVERED EMPLOYMENT DURING A CALENDAR YEAR</b>	<b>PENSION CREDITS</b>
Less than 250	0
250 but less than 500	1/4
500 but less than 750	1/2
750 but less than 1,000	3/4
1,000 or more	1

Once a Participant has accumulated 5 Pension Credits, the right to a pension shall be nonforfeitable.

A Participant shall receive appropriate Hours of Service for a Period of Military Service. The term “Period of Military Service” shall mean, for an Employee who (i) served as a member of the armed forces of the United States (including the Reserves and National Guard), and (ii) was reemployed at a time when the Employee had a right to reemployment in accordance with seniority rights as protected under Title 38 of the U.S. Code including, without limitation, the provisions of the Uniformed Services Employment and Reemployment Rights Act (or any successor provisions), the period of time from the date the Employee was first absent from active work because of such military duty to the date the Employee was reemployed. An Employee who has a Period of Military Service must notify the Plan administrator in writing of such upon reemployment and supply the Plan administrator with such evidence as the Board of Trustees shall require in order to substantiate such claim and determine such Employee’s right under the Plan.

In the case of a Participant in the Plan who dies on or after January 1, 2007, while performing Qualified Military Service (as defined in Section 414(u) of the Internal Revenue Code), the survivors of the Participant shall be entitled to any additional benefits (other than benefit accruals relating to the Qualified Military Service) provided under the Plan had the Participant resumed and then terminated employment with the Contributing Employer on account of death, which benefits shall include receiving service credit for vesting purposes under the Plan for the period of the deceased Participant’s Qualified Military Service.

Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to Qualified Military Service will be provided in accordance with Section 414(u) of the Internal Revenue Code.

## **SECTION 4.05 BREAKS IN SERVICE ON OR AFTER JANUARY 1, 1992**

### **(a) One-Year Break in Service.**

- (i) A Participant has a One-Year Break in Service in any Calendar Year after December 31, 1991, in which they fail to complete more than 500 Hours of Service in Covered Employment.
- (ii) Employment after December 31, 1991, under the jurisdiction of a Local Union affiliated with the Service Employees International Union and/or another Union in the home care industry shall be considered a grace period and shall not cause the Participant to incur a One-Year Break in Service.
- (iii) If a Participant enters active service of the Armed Forces of the United States, the period of service in the Armed Forces shall not cause the Participant to incur a One-Year Break in Service for a maximum of 5 years of such service.



- (iv) The effects of a One-Year Break in Service are eliminated if, before incurring a Permanent Break in Service, as defined below, the participant meets the requirements of Plan Sections 2.01 and 2.03.
- (v) Solely for the purpose of determining whether a One-Year Break in Service has occurred, if a Participant is absent from Covered Employment by reason of (a) pregnancy, (b) birth of a child of such Participant, (c) placement of a child with such Participant in connection with adoption of such child, (d) caring for such child for a period beginning immediately following such birth or placement, or (e) periods of leave under a qualified leave under the Family and Medical Leave Act, the Hours of Service that otherwise would normally have been credited to such Participant but for such absence shall be treated as Hours of Service hereunder to a maximum of 501 Hours of Service for each such pregnancy or placement. The Hours of Service so credited shall be applied to the year in which such absence begins if doing so will prevent the Participant from incurring a One-Year Break in Service that year; otherwise, they shall be applied to the immediately following year. The Fund may require, as a condition of granting such credit, that the Participant establish to the satisfaction of the Trustees that the absence is for one of the reasons specified and the number of Hours of Service for which absence occurred.

(b) **Permanent Break in Service.** A Participant who has earned 5 or fewer Pension Credits has a Permanent Break in Service if, after their Contribution Date and after January 1, 1997, they have five consecutive One-Year Breaks in Service. (Prior to January 1, 1997, a Participant had a Permanent Break in Service if they earned six but less than ten Pension Credits and the number of consecutive One-Year Breaks in Service equaled or exceeded the number of Pension Credits with which they were credited.)

(c) **Effect of a Permanent Break in Service.** If a Participant has a Permanent Break in Service while in active service, their previously credited Years of Vesting Service and Pension Credits are cancelled. A Non-Bargained Employee who has at least one Hour of Service after January 1, 1992, and has a Permanent Break in Service before they have earned at least 5 Pension Credits shall have their standing under the Plan cancelled.

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# ARTICLE 5

## JOINT AND SURVIVOR PENSION

### SECTION 5.01 GENERAL

This Article applies only to Participants who have at least one Hour of Service (including paid leave) for an Employer on or after January 1, 1992, except as provided in section 5.04. The following general provisions, that is, subsections 5.01(a), (b), (c), and (d), are subject to all of the conditions and limitations in this Article:

- (a) If a married Participant makes an application for a pension benefit after December 31, 1992, the benefit is to be paid as a Joint and Survivor Pension unless:
  - (i) the Participant and Spouse elect otherwise in accordance with Section 5.02(e); or
  - (ii) the Spouse is not a Qualified Spouse as defined below.
- (b) If a married Participant, who has achieved Vested Status under the Plan (other than a Disability Pension), dies after December 31, 1993, but before any pension payments have started, a Preretirement Surviving Spouse Pension shall be payable as described in this Article.
- (c) For purposes of this Plan, a Spouse is a person to whom a Participant is considered married under applicable law and, if and to the extent provided in a Qualified Domestic Relations Order (within the meaning of Section 206(d) of the Act and 414(p) of the Code), a Participant's former Spouse.
- (d) To be eligible to receive the Survivor's pension in accordance with a Joint and Survivor Pension, a Qualified Optional Survivor Annuity or a Preretirement Surviving Spouse Pension, the Spouse must be a "Qualified Spouse." A Spouse is a Qualified Spouse if the Participant and Spouse were married on the date of the Participant's death and had been married throughout the 365 day period immediately preceding the date the Participant's payments start. A Spouse is also a Qualified Spouse if the Participant and Spouse were married within the 365 days immediately preceding the date the Participant's pension payments start and they were married for at least 365 days before his death.

## **SECTION 5.02 JOINT AND SURVIVOR PENSION AT RETIREMENT**

- (a) The pension of a Participant who is married to a Qualified Spouse on the date their pension payments start shall be paid in the form of a Joint and Survivor Pension, unless a valid waiver of that form of payment has been filed with the Plan. This includes a Disability Pension that is payable.
- (b) A Joint and Survivor Pension means that the Participant will receive an adjusted monthly amount for life and, if the Participant dies before their Qualified Spouse, the latter will receive a monthly benefit for their lifetime of 50% of the Participant's adjusted monthly amount. The Participant's monthly amount shall be a percentage of the full monthly amount otherwise payable as a single life pension as follows:
  - (i) If the Participant's pension is not a Disability Pension - the percentage shall be 96% plus 0.3% for each full year that the Spouse is older than the Participant and minus 0.3% for each full year that the Spouse is younger than the Participant;
  - (ii) If the Participant's pension is a Disability Pension - the percentage shall be 85.5% plus 0.5% for each full year that the Spouse is older than the Participant and minus 0.5% for each full year that the Spouse is younger than the Participant;
  - (iii) In no event is the percentage to be greater than 99%.
- (c) A Qualified Optional Survivor Annuity means that the Participant will receive an adjusted monthly amount for life and, if the Participant dies before their Qualified Spouse, the latter will receive a monthly benefit for their lifetime of 75% of the Participant's adjusted monthly amount. The Participant's monthly amount shall be a percentage of the full monthly amount otherwise payable as a single life pension as follows:
  - (i) If the Participant's pension is not a Disability Pension - the percentage shall be 94% plus 0.4% for each full year that the Spouse is older than the Participant and minus 0.4% for each full year that the Spouse is younger than the Participant;
  - (ii) If the Participant's pension is a Disability Pension - the percentage shall be 78% plus 0.6% for each full year that the Spouse is older than the Participant and minus 0.6% for each full year that the Spouse is younger than the Participant;
  - (iii) In no event is the percentage to be greater than 99%.

- (d) A Joint and Survivor Pension or a Qualified Optional Survivor Annuity, once payments have begun, may not be revoked nor the Pensioner's benefits increased by reason of subsequent divorce or death of the Spouse before that of the Participant.
- (e) Each Participant, when filing for Retirement, shall be advised in writing by the Trustees of the effect of payment on the basis of the Joint and Survivor Pension, including a comparison of the full single life pension amount and of the adjusted amount.
- (f) The Joint and Survivor Pension may be waived in favor of the 60-Month Guarantee under Plan Section 3.15(a) only as follows:
  - (i) The Participant files the waiver in writing in such form as the Trustees may prescribe, the Participant's Qualified Spouse acknowledges the effect of the waiver and consents to it in writing, witnessed by a notary public. In the event the Participant wishes to designate a Beneficiary other than their Spouse for the 60-Month Guarantee, such designation shall be null and void unless the Spouse, if any, has acknowledged the designation of the alternate Beneficiary in connection with the Spouse's consent to the Participant's waiver of the Spousal death benefits, or otherwise in writing, witnessed by a notary public.
  - (ii) The Participant establishes that:
    - (A) there is no Spouse;
    - (B) the Spouse whose consent would be required cannot be located; or
    - (C) consent of the Spouse cannot be obtained because of such circumstances, as may be prescribed in IRS regulations.

In order to establish the requirements in (ii)(A), (B) or (C) above, the Participant must furnish the Trustees with an appropriate, notarized statement plus any other evidence or information the Trustees may require.

- (iii) No less than 30 days, and no more than 180 days, prior to a Participant's Annuity Starting Date, the Plan administrator shall furnish the Participant, by mail or personal delivery, a written explanation of (i) the terms and conditions of the normal form of payment applicable to the Participant, (ii) the availability of a qualified election to waive the Joint and Survivor Pension, or a written election to waive the normal form of payment described in Section 5.02, as applicable, (iii) the right of the Participant's Qualified Spouse to consent to, or withhold consent from, a qualified election, if applicable, (iv) the general financial effect

of an election not to receive the applicable normal form of payment, and (v) the eligibility conditions, other material features and relative values of the optional forms of benefit available. For notices given in Plan Years beginning after December 31, 2006, such notification shall also include a description of how much larger benefits will be if the commencement of distributions is deferred. Notwithstanding the foregoing, distribution may commence fewer than 30 days (but no fewer than seven days) after the written explanation is given, provided that (i) the Plan administrator clearly informs the Participant that the Participant has a right to a period of at least 30 days to consider whether to waive the normal form of payment and elect an optional form of payment, and (ii) the Participant, after receiving the explanation, affirmatively elects to receive a distribution sooner (with consent of the Participant's Qualified Spouse, if applicable) on the form(s) provided by the Plan administrator for such purpose, and (iii) the Participant is permitted to revoke any affirmative election at least until the Annuity Starting Date or, if later, at anytime prior to the expiration of the seven day period that begins the day after the explanation of the normal form of payment is provided to the Participant, and (iv) the Annuity Starting Date is a date after the date the written explanation was provided to the Participant.

- (iv) A Qualified Spouse's consent to a waiver of the Joint and Survivor Pension shall be effective only with respect to that Spouse, and shall be irrevocable unless the Participant revokes the waiver to which it relates.

### **SECTION 5.03 PRERETIREMENT SURVIVING SPOUSE PENSION**

- (a) If a Participant who has a Qualified Spouse dies before their pension payments start but at a time when they had achieved Vested Status, a Preretirement Surviving Spouse Pension shall be paid to their surviving Qualified Spouse.
- (b) A Spouse is a Qualified Spouse for the purpose of this Section 5.03 if the Participant and Spouse have been married to each other throughout the 365 day period immediately before their death, or if the couple were divorced after being married for at least 365 days and the former Spouse is required to be treated as a Spouse or Surviving Spouse under a Qualified Domestic Relations Order.
- (c) If the Participant described in (a) above died at a time when they would have been eligible to begin receiving payment of a pension (other than a Disability Pension) had they retired, the surviving Qualified Spouse shall be entitled to a lifetime Preretirement Surviving Spouse Pension determined in accordance

with the provisions of Section 5.02 as if the Participant had retired the day before they died.

- (d) If the Participant described in (a) above died before they would have been eligible to begin receiving pension payments had they retired (other than a Disability Pension if they died before its Effective Date), the surviving Qualified Spouse shall be entitled to a Preretirement Surviving Spouse Pension calculated as if the Participant: (i) had separated from service under the Plan on the earlier of the date they last worked in Covered Employment or the date of their death, (ii) had survived to the earliest age at which a pension (other than a Disability Pension) would be payable to them under the Plan, (iii) had retired at that age with an immediate Joint and Survivor Pension, and (iv) had died the next day. In other words, the Preretirement Surviving Spouse Pension begins when the deceased Participant would have attained the earliest retirement age for which they would have been qualified and the amount of the Preretirement Surviving Spouse Pension is 50% of what the Participant's pension amount would have been, after adjustment, if any, for the early retirement and for the Joint and Survivor Pension benefit. The amount of the Preretirement Surviving Spouse Pension shall be determined under the terms of the Plan in effect when the Participant last worked in Covered Employment, unless otherwise expressly specified.
- (e) Notwithstanding any other provisions of this Article, a Preretirement Surviving Spouse Pension shall not be paid in the form, manner or amount described above if the Spouse elects in writing filed with the Trustees, and on whatever form they may prescribe, to defer commencement of the Preretirement Surviving Spouse Pension until a specified date that is no later than the first of the month on or immediately before the date on which the Participant would have reached age 70 1/2, or if later, December 1, of the calendar year following the year of the Participant's death. The amount payable at that time shall be determined as described in this Article 5 except that the benefit shall be paid in accordance with the terms of the Plan in effect when the Participant last worked in Covered Service (unless otherwise specified) as if the Participant has retired with a 50% Joint and Survivor Pension on the day before the Surviving Spouse's payments are scheduled to start, and died the next day.

Notwithstanding any other provisions of the Plan, if the Annuity Starting Date for the Preretirement Surviving Spouse Benefit is after the Participant's earliest retirement date, the benefit shall be determined as if the Participant had died on the Surviving Spouse's Annuity Starting Date after retiring with a

Joint and Survivor Pension the day before, taking into account any actuarial adjustments to the Participant's accrued benefit that would have applied as of that date.

#### **SECTION 5.04 INACTIVE VESTED PARTICIPANTS**

- (a) A Participant who (1) had at least one Hour of Service under the Plan after December 31, 1992; (2) is Vested, (3) is not otherwise entitled to, or eligible to elect, protection for a surviving Spouse through a "qualified joint and survivor annuity" within the meaning of Section 205 of the Act, either before or after enactment of the Retirement Equity Act, shall be entitled to elect to receive their benefit as a Joint and Survivor Pension in accordance with the provisions of this Plan in effect before the effective date of this Article, by written request filed with the Trustees before the Effective Date of their Pension.
- (b) A Participant who (1) had at least one Hour of Service for an Employer in the first Calendar Year after 1992, (2) has a Vested right to a pension and credit for at least 5 Pension Credits\*, (3) is not otherwise entitled to, or eligible to elect, protection for a surviving Spouse through a "qualified joint and survivor annuity" under this Article as amended on account of the Retirement Equity Act of 1984, and shall be entitled to elect coverage for the Preretirement Surviving Spouse Pension under Section 5.03 by written request filed with the Trustees before their death or, if earlier, the date their pension payments start.  
\* 10 Pension Credits for a Participant who was covered by a Collective Bargaining Agreement and failed to earn at least one Hour of Service on or after January 1, 1997, while an active Participant.
- (c) The benefit schedule applied under this Section 5.04 shall be in effect as of January 1, 1992, or, if later, the beginning of the Calendar Year immediately after the Participant last completed a year of Service.

#### **SECTION 5.05 RELATION TO QUALIFIED DOMESTIC RELATIONS ORDER**

Any rights of a former Spouse or other alternative payee under a Qualified Domestic Relations Order, with respect to a Participant's pension, shall take precedence over those of any later Spouse of the Participant under this Article.

#### **SECTION 5.06 TRUSTEES' RELIANCE**

In making determinations under this Article, the Trustees shall be entitled to rely on written representations, consents, and revocations submitted by Participants, Spouses or other parties in making determinations under this Article and, unless

such reliance is arbitrary or capricious, the Trustees' determinations shall be final and binding, and shall discharge the Fund and the Trustees from liability. This means that, unless the Plan is administered in a manner determined to be inconsistent with the fiduciary standards of Part 4 of Title I of the Act, the Fund shall not be liable under this Article for, among other things, duplicate benefits with respect to the same Participant, or for surviving Spouse benefits in excess of the actuarial present value of the benefits described in this Section, determined as of the Effective Date of the Participant's pension or, if earlier, the date of the Participant's death.

### **SECTION 5.07 CONTINUATION OF JOINT AND SURVIVOR PENSION FORM**

The monthly amount of the Joint and Survivor Pension, once it has become payable, shall not be increased if the Spouse is subsequently divorced from the Pensioner or if the Spouse predeceases the Pensioner.

### **SECTION 5.08 60-MONTH BENEFIT GUARANTEE**

On or after January 1, 2008, if a Participant elects the Joint and Survivor Pension (or if a Participant fails to reject such form of payment upon Retirement), or if the Participant elects the Qualified Optional Survivor Annuity, the 60-Month Benefit Guarantee as provided in Section 3.14(a) of this Plan shall not be applicable.



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# **ARTICLE 6**

## **APPLICATIONS, BENEFIT PAYMENTS AND RETIREMENT**

### **SECTION 6.01 APPLICATIONS**

A pension must be applied for in writing, filed with the Trustees in advance of the first month for which benefits are payable.

### **SECTION 6.02 INFORMATION AND PROOF**

Every Participant, Pensioner, Qualified Spouse or Beneficiary shall furnish, at the request of the Trustees, any information or proof reasonably required to determine their benefit rights. If the claimant makes a willfully false statement material to their application or furnishes fraudulent information or proof, material to their claim, benefits not vested under this Plan may be denied, suspended, or discontinued. The Trustees shall have the right to recover any benefit payments made in reliance on any willfully false or fraudulent statement, information or proof submitted by a Participant, Pensioner, Qualified Spouse or Beneficiary.

### **SECTION 6.03 ACTION OF TRUSTEES**

The Trustees shall, subject to the requirements of the law, judge the standard of proof required in any case and the application and interpretation of this Plan, and decisions of the Trustees shall be final and binding on all parties.

The Trustees may, from time to time, adopt by resolution objective standards under which benefits, eligibility or administration of the Plan are provided or operated.

### **SECTION 6.04 RIGHT OF APPEAL**

The Fund shall adopt reasonable claims-and-appeals procedures pursuant to Department of Labor Regulations Section 2560.503-1. For all purposes under the Plan, decision on claims (where no review is requested) and decision on review (where review is requested) shall be final, binding and conclusive on all interested persons as to participation and benefits eligibility, the amount of benefits and as to any other matter of fact or interpretation relating to the Plan.

## **SECTION 6.05 BENEFIT PAYMENTS GENERALLY**

- (a) A Participant who is eligible to receive benefits under this Plan and makes application in accordance with the rules of this Pension Plan shall be entitled upon retirement (and as provided in section 6.05(h)) to receive the monthly benefits provided for the remainder of their life, subject to the provisions of this Plan. A Participant's Annuity Starting Date is the first day of the month following the month in which the Participant has fulfilled all of the conditions for entitlement to benefits including the filing of an application.

For purposes of this Plan, the "Effective Date" of a Participant's pension is the "Annuity Starting Date" of the Participant's pension.

Notwithstanding any other provisions of the Plan, a Disability Pension is payable to the eligible Participant on the later of the first of the month after the Trustees' receipt of the Participant's pension application, or the effective date of the Participant's Social Security disability pension.

- (b) However, in no event unless a Participant elects otherwise, shall the payment of benefits begin later than the 60th day after the later of the close of the Plan Credit Year in which:
- (i) The Participant attains age 65 or
  - (ii) occurs the fifth anniversary of the year in which the Participant commenced participation in the Plan; or
  - (iii) The Participant terminates Covered Employment and retires as that term is defined in Section 6.06 of this Article.

A Participant may, however, elect in writing filed with the Trustees, to receive benefits first payable for a later month, provided that no such election postpones the Annuity Starting Date of the Participant's pension until after the Required Beginning Date as defined in Section 6.05(d).

- (c) A Participant who retires before their Normal Retirement Age and then earns additional benefit accruals under the Plan through reemployment will have a separate Annuity Starting Date determined under Section 6.05(a) or, if later, 30 days after the Plan advises the Participant of the available benefit payment options, unless the benefit is being paid as a Joint and Survivor Pension at or after the Participant's Normal Retirement Age or the Participant and spouse (if any) consent in writing to the commencement of payments before the end of that 30-day period, with respect to those additional accruals, except that an Annuity Starting Date that is on or after Normal Retirement Age shall apply for any additional benefits accrued through reemployment after that date.

**(d) Required Beginning Date.**

- (i) Notwithstanding any provision of the Plan to the contrary, the Fund will begin benefit payments to all Participants by their Required Beginning Dates, whether or not they apply for benefits.
- (ii) Effective January 1, 2015, a Participant's Required Beginning Date is April 1, of the calendar year following the later of
  - (A) the calendar year in which the Participant attains age 70 ½ or
  - (B) the calendar year in which the Participant retires.
- (iii) If a Participant who is definitely located fails to file a completed application for benefits on a timely basis, the Fund will establish the Participant's Required Beginning Date as the Annuity Starting Date and begin benefit payments as follows:
  - (A) In the form of a Joint and Survivor Pension calculated on the assumptions that the Participant is and has been married for at least one year by the date payments start and that the spouse is 3 years older than the Participant.
  - (B) The benefit payment form specified here will be irrevocable once it begins, with the sole exception that it may be changed to a single-life annuity if the Participant proves that they did not have a qualified spouse (including an alternate payee under a QDRO) on the Required Beginning Date; also, the amounts of future benefits will be adjusted based on the actual age difference between the Participant and spouse if proven to be different from the foregoing assumptions.
  - (C) Federal, state and local income tax, and any other applicable taxes, will be withheld from the benefit payments as required by law or determined by the Trustees to be appropriate for the protection of the Fund and the Participant.
- (e) Any additional benefits earned by a Participant in Covered Employment after Normal Retirement Age will be determined at the end of each Plan Year and will be payable as of January 1, following the end of the Plan Year in which it accrued, provided payment of benefits at that time is not suspended pursuant to Section 6.07 or postponed due to the Participant's continued employment. Additional benefits described in this Subsection that are not suspended or postponed will be paid in the payment form in effect for the Participant as of the Annuity Starting Date most recently preceding the date the additional benefit became payable.

(f) Pension payments shall end with the payment for the month in which the death of the Pensioner occurs except as provided in accordance with a Joint and Survivor Pension (Article 5) and any other provision of this Plan for payments after the death of the Pensioner.

(g) **Delayed Retirement.**

If the Annuity Starting Date is after the Participant's Normal Retirement Age,

(i) the amount of the monthly benefit shall be the accrued benefit at Normal Retirement Age actuarially increased for each complete calendar month between Normal Retirement Age and the Annuity Starting Date for which benefits were not suspended;

converted as of the Annuity Starting Date to the benefit payment form elected in the pension application or to the Joint and Survivor Pension if no other form is elected.

The actuarial increase described above shall be 1% per month for the first 60 months after age 65 and 1.5% per month for each month thereafter.

(ii) Notwithstanding Section (g)(i), Effective as of January 1, 2004, the Plan permits the retroactive payment of benefits to the Participant's Normal Retirement Age in accordance with the provisions of Treasury Regulation 1.417(e)-1(b)(iv) and (v) provided that:

(A) The Participant must affirmatively elect the retroactive Annuity Starting Date in lieu of an actuarially equivalent retirement benefit;

(B) The Participant's Spouse or Alternate Payee must consent to the election of the retroactive annuity unless the amount of the survivor payments under the retroactive annuity are no less than the amount that the survivor payments would have been under the Joint and Survivor Pension with an Annuity Starting Date after the date the Joint and Survivor Pension explanation was provided;

(C) The distribution pursuant to the retroactive Annuity Starting Date shall be a lump sum payment equal to the monthly benefit amount calculated based on Pension Credits earned, pursuant to Section 3.02 or 3.04, multiplied by the number of months for which benefits were not suspended between the retroactive Annuity Starting Date and the pension commencement date, and adjusted for simple interest at a rate equal to the average one-year Treasury bill rate for the month of December preceding the calendar year for which interest is being applied.

If any of the foregoing conditions are not met, an actuarially equivalent retirement benefit, determined under subparagraph (i) above, will be paid prospectively. Notwithstanding the foregoing, only subparagraph (i) above shall be applicable if the Participant's Annuity Starting Date is on or after the Required Beginning Date.

Effective January 1, 2015, a Participant who has not retired but is eligible to receive benefits under this Plan and makes application in accordance with the rules of this Pension Plan shall also be entitled to elect to commence receiving monthly benefits beginning on the April 1 of the year after the year the Participant has attained age 70 ½. A Participant's Annuity Starting Date is the first day of the month following the month in which the Participant has fulfilled all of the conditions for entitlement to benefits including the filing of an application.

## **SECTION 6.06 RETIREMENT**

To be considered retired, a Participant must have separated from any employment with Contributing Employers within the "geographic area" covered by this Plan. The "geographic area" covered by the Plan is the State of New York and any other area covered by the Plan when the Participant's pension began or, but for suspension under this Article, would have begun.

## **SECTION 6.07 SUSPENSION OF BENEFITS**

- (a) **Before Normal Retirement Age.** If any Pensioner engages in any category of employment for which contributions are payable to the Fund, and/or to the 1199SEIU National Benefit Fund for Home Care Employees, in any place within the jurisdiction of the Union, no pension benefit shall be payable for any month during which such Pensioner was engaged in such employment. If any Pensioner engages in any such employment subsequent to Retirement, they shall notify the Trustees of the same within 15 days of the commencement of such employment.
- (b) **After Normal Retirement.** If the Participant has attained Normal Retirement Age their monthly benefit shall be suspended for any month in which they worked or were paid for at least 40 hours in Disqualifying Employment in the "geographic area" covered by the Plan, and within the meaning of "Section 202(a)(3)(B) Service" pursuant to 29 CFR §2530.203-3.
- (c) **Definition of Suspension.** "Suspension of benefits" for a month means non-entitlement to benefits for the month.

(d) **Notices.**

- (i) At Normal Retirement Age or upon commencement of pension payments, the Trustees shall notify the Participant of the Plan rules governing suspension of benefits, including identity of the industries and area covered by the Plan. If benefits have been suspended and payment resumed, new notification shall, upon resumption, be given to the Participant, if there has been any material change in the suspension rules or the identity of the industries or area covered by the Plan.
- (ii) A Participant shall notify the Plan in writing within 30 days after starting any work of a type that is or may be disqualifying under the provisions of the Plan and without regard to the number of hours of such work (that is, whether or not less than 40 hours in a month). If a Participant has worked in disqualifying employment in any month and has failed to give timely notice to the Plan of such employment, the Trustees shall presume that they worked for at least 40 hours in such month and any subsequent month before the Participant gives notice that they have ceased disqualifying employment. The Participant shall have the right to overcome such presumption by establishing that their work was not in fact an appropriate basis, under the Plan, for suspension of their benefits.

If a Participant has worked in disqualifying employment for any number of hours and they have failed to give timely notice to the Plan of such employment, the Trustees shall presume that they have engaged in such work for as long as the employer has been and remains actively engaged at that location. The Participant shall have the right to overcome such presumption by establishing that their work was not in effect an appropriate basis, under the Plan, for suspension of their benefits.

The Trustees shall inform all Participants at least once every 12 months of the re-employment notification requirements and the presumptions set forth in this paragraph.

- (iii) A Participant whose pension has been suspended shall notify the Plan when disqualifying employment has ended. The Trustees shall have the right to hold back benefit payments until such notice is filed with the Plan.
- (iv) A Participant may ask the Plan whether a particular employment will be disqualifying. The Plan shall provide the Participant with its determination.

- (v) The Plan shall inform a Participant of any suspension of benefits by notice given by personal delivery or first class mail during the first calendar month in which their benefits are withheld. Such notice shall include a description of the specific reasons for the suspension copy of the relevant provisions of the Plan, reference to the applicable regulation of the U.S. Department of Labor and a statement of the procedure for securing a review of the suspension. In addition, the notice shall describe the procedure for the Participant to notify the Plan when their disqualifying employment ends.
- (vi) If the Plan intends to recover prior overpayments by offset, the suspension notice shall explain the offset procedure and identify the amount expected to be recovered and the periods of employment to which they relate.
- (e) **Age 70-1/2.** If the Pensioner attains age 70-1/2 on or after January 1, 1992, they may, at that time, work in any trade or occupation and continue to receive pension benefits from this Fund without any restrictions and/or penalties.
- (f) **Review.** A Participant shall be entitled to a review of a determination suspending their benefits by written request filed with the Trustees within 180 days of the notice of suspension.

The same right of review shall apply, under the same terms, to a determination by or on behalf of the Trustees that contemplated employment will be disqualifying.

## **SECTION 6.08 BENEFIT PAYMENTS FOLLOWING SUSPENSION**

- (a) **Resumption of Benefit Payments.** Benefits shall be resumed for months after the last month for which benefits were suspended, with payments beginning no later than the third month after the last calendar month for which the Participant's benefit was suspended, provided the Participant has complied with the notification requirements of Section 6.07 (d)(iii).
- (b) **Increase in Benefits.** If a Pensioner returns to Covered Employment after termination of employment and earns at least one full Pension Credit, they shall be entitled to a redetermination of their benefit based upon their then-attained age, Pension Credit earned prior to the date they first retired under this Plan and any additional Pension Credits which they earned upon return to Covered Employment.
- (c) **Proportion of Benefits.** If a Pensioner returns to Covered Employment after they retire from employment, but does not earn at least one full

Pension Credit, they shall not be entitled to a complete redetermination of benefit when and if they retire but their benefit will be calculated as follows: that portion of Pension Credit earned after return to employment will be calculated at the rate in effect when they separate from Covered Employment by retirement or otherwise.

- (d) **Exception to Preserve Nonforfeitable Benefits.** Suspension before Normal Retirement Age in accordance with Section 6.07 because of employment of a type for which benefits could not be suspended after Normal Retirement Age shall not have the effect of reducing the value of the Participant's pension below the Actuarial Equivalent of the pension as accrued for payment at their Normal Retirement Age and to the extent necessary to avoid such reduction, the monthly amount of the pension shall be adjusted so as not to deprive the Pensioner of the value of the benefit as payable from their Normal Retirement Age.

## **SECTION 6.09 VESTED STATUS OR NONFORFEITABILITY**

The benefits to which a Participant is entitled under the terms of this Plan upon their attainment of Normal Retirement Age are Vested (nonforfeitable), subject, however, to retroactive amendment made within the limitations of Section 411(a)(3)(C) of the Internal Revenue Code and Section 302(c)(8) of ERISA. The benefits to which their surviving spouse may be entitled shall likewise be nonforfeitable. "Vested" or "Vested Status" means fulfillment by a Participant of the service requirements for receipt, after their attainment of Normal Retirement Age and retirement, of a nonforfeitable pension.

ERISA also provides certain limitations on any Plan amendment that may change the Plan's vesting schedule. In accordance with those legal limitations, no amendment of this Plan may take away a Participant's Vested Status if they have already earned it at the time of the amendment. Also, an amendment may not change the schedule on the basis of which a Participant acquires Vested Status, unless each Participant who has credit for at least three Years of Vesting Service at the time the amendment is adopted or effective (whichever is later) is given the option of achieving Vested Status on the basis of the preamendment schedule. That option may be exercised within 60 days after the latest of the following dates:

- (a) when the amendment was adopted,
- (b) when the amendment was effective, or
- (c) when the Participant was given written notice of the amendment.



For purposes of applying the provisions of this section and of determining when a Participant has acquired nonforfeitable rights, as defined under the law, the vesting schedule of this Plan consists of 100 percent nonforfeitability for a Participant who has completed at least 5 years of Vesting Service\*. However, a Non-Bargained Employee who has at least one Hour of Service after January 1, 1993, will have 100 percent nonforfeitability after they have accumulated 5 years of Vesting Service.

\* 10 years for a Participant who was covered by a Collective Bargaining Agreement and failed to earn at least one Hour of Service on or after January 1, 1997.

### **SECTION 6.10 NON-DUPLICATION WITH DISABILITY BENEFITS**

Pension benefits shall not be payable for any month for which the Pensioner receives wage indemnification for disability under the State of New York Disability Benefits Law.

### **SECTION 6.11 INCOMPETENCE OR INCAPACITY OF A PENSIONER OR BENEFICIARY**

In the event it is determined to the satisfaction of the Trustees that a Pensioner or Beneficiary is unable to care for their affairs because of mental or physical incapacity, any payment due may be applied to the maintenance and support of such Pensioner or Beneficiary or to such person as the Trustees find to be an object of the natural bounty of the Pensioner or Beneficiary, based upon available information, unless, prior to such payment, claim shall have been made for such payment by a legally-appointed guardian, committee, or other legal representative appropriate to receive such payments on behalf of the Pensioner or Beneficiary.

### **SECTION 6.12 NON-ASSIGNMENT OF BENEFITS**

(a) Except insofar as may otherwise be required by law, pursuant to the terms of a Qualified Domestic Relations Order, or as permitted in accordance with Title 26 U.S. Code Section 401(a)(13), and the Internal Revenue Service Regulations promulgated thereunder, no Participant, Pensioner or Beneficiary entitled to any benefits under this Pension Plan shall have the right to assign, alienate, transfer, encumber, pledge, mortgage, hypothecate, anticipate or impair in any manner their legal or beneficial interest, or any interest in assets of the Pension Fund, or benefits of this Pension Plan. Neither the Pension Fund nor any of the assets thereof, shall be liable for the debts of any Participant, Pensioner or Beneficiary entitled to any benefits under this Plan, nor be subject to attachment or execution or process in any court or action of proceeding.

- (b) For purposes of the Plan, a “Qualified Domestic Relations Order” means any judgment, decree, or order (including approval of a property settlement agreement) which has been determined by the Trustees or person or persons appointed by the Trustees in accordance with procedures established under the Plan, to constitute a qualified domestic relations order within the meaning of Section 414(p)(1) of the Internal Revenue Code.
- (c) In accordance with IRC Section 401(a)(13), the benefits of a Participant, Spouse or other Beneficiary may be reduced based on violation of ERISA’s fiduciary rules or a criminal act against the Plan.

### **SECTION 6.13 NO RIGHT TO ASSETS**

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

### **SECTION 6.14 LIMITATIONS ON BENEFITS UNDER CODE SECTION 415**

In addition to any other limitations set forth in the Plan and notwithstanding any other provisions of the Plan, effective for Limitation Years beginning on and after January 1, 2008, benefits under the Plan shall be limited in accordance with section 415 of the Code and the Treasury Regulations thereunder, in accordance with this Section. This Section 6.14 is intended to incorporate the requirements of section 415 of the Code by reference except as otherwise specified herein.

- (a) **Definitions.** For purposes of this Section 6.14, the following terms shall have the following meanings:
  - (i) “Limitation Year” means the calendar year.
  - (ii) Plan Benefit.  
“Plan Benefit” means, as of any date, the amount of a Participant’s benefit as determined under the applicable provisions of the Plan before the application of the limits in this Section 6.14.
- (b) **Limit on Accrued Benefits.** For Limitation Years beginning on or after January 1, 2008, in no event shall a Participant’s benefit accrued under the Plan for a Limitation Year exceed the annual dollar limit determined in accordance with section 415 of the Code and the Treasury Regulations thereunder (the “annual dollar limit”) for that Limitation Year. If a Participant’s Plan Benefit for a Limitation Year beginning on or after January 1, 2008, would exceed the annual dollar limit for that Limitation Year, the accrued benefit, but

not the Plan Benefit, shall be frozen or reduced so that the accrued benefit does not exceed the annual dollar limit for that Limitation Year.

- (c) **Limits on Benefits Distributed or Paid.** For Limitation Years beginning on or after January 1, 2008, in no event shall the annual amount of the benefit distributed or otherwise payable to or with respect to a Participant under the Plan in a Limitation Year exceed the annual dollar limit for that Limitation Year. If the benefit distributable or otherwise payable in a Limitation Year would exceed the annual dollar limit for that Limitation Year, the benefit shall be reduced so that the benefit distributed or otherwise payable does not exceed the annual dollar limit for that Limitation Year.
- (d) **Protection of Prior Benefits.** To the extent permitted by law, the application of the provisions of this Section 6.14 shall not cause the benefit that is accrued, distributed or otherwise payable for any Participant to be less than the Participant's accrued benefit as of December 31, 2006, under the provisions of the Plan that were both adopted and in effect before April 5, 2007, and that satisfied the limitations under section 415 of the Code and the Treasury Regulations thereunder as in effect as of January 1, 2008.
- (e) **Aggregation of Plans.** In the event that the aggregate benefit accrued in any Plan Year by a Participant exceeds the limits under section 415 of the Code and the Treasury Regulations thereunder as a result of the mandatory aggregation of the benefits under this Plan with the benefits under another plan maintained by an Employer, the benefits of the other plan shall be reduced to the extent necessary to comply with section 415 of the Code and the Treasury Regulations thereunder.
- (f) **General.**
  - (i) To the extent that a Participant's benefit is subject to provisions of section 415 of the Code and the Treasury Regulations thereunder that have not been set forth in the Plan, such provisions are hereby incorporated by reference into this Plan and for all purposes shall be deemed a part of the Plan.
  - (ii) This Section 6.14 is intended to satisfy the requirements imposed by section 415 of the Code and the Treasury Regulations thereunder and shall be construed in a manner that will effectuate this intent. This Section 6.14 shall not be construed in a manner that would impose limitations that are more stringent than those required by section 415 of the Code and the Treasury Regulations thereunder.

(iii) If and to the extent that the rules set forth in this Section 6.14 are no longer required for qualification of the Plan under section 401(a) and related provisions of the Code and the Treasury Regulations thereunder, they shall cease to apply without the necessity of an amendment to the Plan.

**(g) Interpretation or Definition of Other Terms.**

The terms used in this Section that are not otherwise expressly defined in the Plan, shall be defined, interpreted and applied for purposes of this Section 6.14 as prescribed in section 415 of the Code and the Treasury Regulations thereunder.

## **SECTION 6.15 MERGERS**

In the case of any merger or consolidation with, or transfer of assets or liabilities to, any other qualified pension plan, each Participant shall receive a benefit immediately after the merger, consolidation or transfer which is equal to, or greater than, the benefit they would have been entitled to receive immediately before the merger, consolidation, or transfer from this Plan or such other plan, as applicable. This Section shall apply to the extent determined by the Pension Benefit Guaranty Corporation.

## **SECTION 6.16 TRANSFER BETWEEN BARGAINED AND NON-BARGAINED STATUS**

Effective for a Participant who has at least One Hour of Service after January 1, 1992:

- (a) If a Participant who is in a non-bargained job when they complete the fifth year of service, or if the Participant accumulates 5 years of service in non-bargained positions even if they are not consecutive (as long as they are not separated by a permanent break in service), the person will be fully vested in all benefits accrued under the Plan, including those accrued through bargaining-unit work.
- (b) In every other case the Participant's status at time of termination of service will control the classification for this purpose.
- (c) A Participant who has both bargained-for and non-bargained service during a Plan year is treated as a Non-Bargained Employee for that year if (a) they have enough service in non-bargained covered employment to earn a year of vesting service, or (b) the majority of their covered employment for the Plan year is as a Non-Bargained Employee.

## SECTION 6.17 BENEFICIARY DESIGNATION

Each Participant shall file with the Trustees a written designation of one or more persons as the Beneficiary who shall be entitled to receive the amount, if any, payable under the Plan upon his death. A Participant may from time to time revoke or change his Beneficiary designation without the consent of any prior Beneficiary by filing a new designation with the Trustees. Notwithstanding the foregoing, if the Participant is married, their Spouse must consent in writing to the designation of a Beneficiary other than the Participant's Spouse (unless the Trustees make a written determination in accordance with the Code and Regulations that no such consent is required). If no valid Beneficiary designation is in effect at the time of a Participant's death, or if no validly designated Beneficiary survives the Participant or if each surviving validly designated Beneficiary is legally impaired or prohibited from taking, then the Participant's Beneficiary shall be their Surviving Spouse, if any, or if the Participant has no Surviving Spouse, then their estate. If the Trustees are in doubt as to the right of any person to receive such amount, the Trustees may retain such amount, without liability for any interest thereon, until the rights thereto are determined, or the Trustees may pay such amount into any court of appropriate jurisdiction and such payment shall be a complete discharge of the liability of the Plan and the Trust therefor.

## SECTION 6.18 MINIMUM DISTRIBUTION REQUIREMENTS

### (a) General Rules.

- (i) **Effective Date.** The provisions of this Section will apply for purposes of determining required minimum distributions for calendar years beginning with the 2005 calendar year.
- (ii) **Precedence.** The requirements of Section will take precedence over any inconsistent provisions of the Plan.
- (iii) **Requirements of Treasury Regulations Incorporated.** All distributions required under Section will be determined and made in accordance with Internal Revenue Code Section 401(a)(9) and the Treasury regulations promulgated thereunder.
- (iv) **Limits on Distribution Periods.** As of the first distribution calendar year, distributions to a Participant, if not made in a single sum, may only be made over one of the following periods: the life of the Participant, the joint lives of the Participant and Beneficiary, a period certain not extending beyond the life expectancy of the Participant, or a period

certain not extending beyond the joint life and last survivor expectancy of the Participant and Beneficiary.

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

- (i) **Required Beginning Date.** The Participant's entire interest shall be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date (as defined in Section 6.18(f)).
- (ii) **Death of Participant Before Distributions Begin.** If the Participant dies before distributions begin, the Participant's entire interest shall be distributed, or begin to be distributed, no later than as follows:
  - (A) If the Participant's surviving Spouse is the Participant's sole designated Beneficiary, then distributions to the surviving Spouse shall begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later.
  - (B) If the Participant's surviving Spouse is not the Participant's sole designated Beneficiary, then distributions to the designated Beneficiary shall begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
  - (C) If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest shall be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
  - (D) If the Participant's surviving Spouse is the Participant's sole designated Beneficiary and the surviving Spouse dies after the Participant but before distributions to the surviving Spouse begin, this paragraph (ii), other than subparagraph (ii)(A), will apply as if the surviving Spouse were the Participant.

For purposes of this paragraph (ii) and subsection (e), distributions are considered to begin on the Participant's Required Beginning Date (or, if subparagraph (ii)(D) applies, the date distributions are required to begin to the surviving Spouse under subparagraph (ii)(A)). If annuity payments irrevocably commence to the Participant before the Participant's Required Beginning Date (or to the Participant's surviving Spouse before the date distributions are required to begin to the surviving Spouse under subparagraph (ii)(A)) the date distributions are considered to begin is the date distributions actually commence.

(iii) **Form of Distribution.** Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first distribution calendar year distributions will be made in accordance with subsections (c), (d) and (e) of this Section. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Internal Revenue Code Section 401(a)(9) and the Treasury regulations.

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

- (i) **General Annuity Requirements.** If the Participant's interest is paid in the form of annuity distributions under the Plan, payments under the annuity will satisfy the following requirements:
- (A) the annuity distributions will be paid in periodic payments made at intervals not longer than one year;
  - (B) the distribution period will be over a life (or lives) or over a period certain not longer than the period described in subsection (d) or subsection (e) of Section;
  - (C) once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted;
  - (D) payments will either be non-increasing or increase only as follows:
    - (I) by an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index for a 12-month period ending in the year during which the increase occurs or a prior year;
    - (II) by a percentage increase that occurs at specified times and does not exceed the cumulative total of annual percentage increases in an eligible cost-of-living index since the Annuity Starting Date, or if later, the date of the most recent percentage increase;
    - (III) by a constant percentage of less than 5 percent per year, applied not less frequently than annually;
    - (IV) to the extent of the reduction in the amount of the Participant's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to

determine the distribution period described in subsection (d) of this Section dies or is no longer the Participant's Beneficiary pursuant to a qualified domestic relations order within the meaning of Code Section 414(p);

- (V) to provide a final payment upon the Participant's death not greater than the excess of the actuarial present value of the Participant's accrued benefit (within the meaning of Section 411(a)(17) of the Code) calculated as of the Annuity Starting Date using the Applicable Interest Rate and the Applicable Mortality Table over the total of payments before the Participant's death; or
- (VI) to allow a Beneficiary to convert the survivor option of a joint and survivor annuity into a single sum distribution upon the Participant's death; or
- (VII) to pay increased benefits that result from a Plan amendment.

(ii) **Amount Required to be Distributed by Required Beginning Date.**

The amount that must be distributed on or before the Participant's Required Beginning Date (or, if the Participant dies before distributions begin, the date distributions are required to begin under subparagraph (b)(ii)(A) or (b)(ii)(B) of this Section) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the Participant's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Participant's Required Beginning Date.

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



(d) **Requirements for Annuity Distributions that Commence During Participant's Lifetime.**

- (i) **Joint Life Annuities Where the Beneficiary Is Not the Participant's Spouse.** If the Participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the Participant and a non-Spouse Beneficiary, annuity payments to be made on or after the Participant's Required Beginning Date to the Designated Beneficiary after the Participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the participant using the table set forth in Q&A-2 of Section 1.401(a)(9)-6T of the Treasury regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the Participant and a non-Spouse Beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated Beneficiary after the expiration of the period certain.
- (ii) **Period Certain Annuities.** Unless the Participant's Spouse is the sole Designated Beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the Participant's lifetime may not exceed the applicable distribution period for the Participant under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the Participant reaches age 70, the applicable distribution period for the Participant is the distribution period for age 70 under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations plus the excess of 70 over the age of the Participant as of the Participant's birthday in the year that contains the annuity starting date. If the Participant's Spouse is the Participant's sole Designated Beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the Participant's applicable distribution period, as determined under this subparagraph (d)(ii), or the joint life and last survivor expectancy of the Participant and the Participant's Spouse as determined under the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's and Spouse's attained ages as of the Participant's and Spouse's birthdays in the calendar year that contains the annuity starting date.

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

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

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

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

(I) unless the Annuity Starting Date is before the first distribution calendar year, the life expectancy of the Designated Beneficiary determined using the Beneficiary's age as of the Beneficiary's birthday in the calendar year immediately following the calendar year of the Participant's death; or

(II) if the Annuity Starting Date is before the first distribution calendar year, the life expectancy of the Designated Beneficiary determined using the Beneficiary's age as of the Beneficiary's birthday in the calendar year that contains the Annuity Starting Date.

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

(C) **Death of Surviving Spouse Before Distributions to Surviving Spouse Begin.** If the Participant dies before the date distribution of their interest begins, the Participant's surviving Spouse is the Participant's sole Designated Beneficiary, and the surviving Spouse dies before distributions to the surviving Spouse begin, this paragraph (e) will apply as if the surviving Spouse were the Participant, except that the time by which distributions must begin will be determined without regard to subparagraph (b)(ii)(A) of this Section.

(f) **Definitions.**

- (i) **Designated Beneficiary.** The individual who is designated by a Participant (or the Participant's surviving spouse) as the beneficiary of the Participant's interest under the Plan and who is the designated beneficiary under Treasury Regulation Section 1.401(a)(9)-4.
- (ii) **Distribution Calendar Year.** A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year that contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to paragraph (b)(ii) of this Section.
- (iii) **Life Expectancy.** Life expectancy as computed by use of the Single Life Table in Treasury regulation Section 1.401(a)(9)-9.
- (iv) **Required Beginning Date.** The date specified in Section 6.05(d)(ii) of the Plan.

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# ARTICLE 7

## MISCELLANEOUS

### SECTION 7.01 NON-REVERSION

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

Notwithstanding the preceding paragraph or any provision of the Plan to the contrary, in the event that the Commissioner of the Internal Revenue Service determines that the Plan is not initially qualified under the Internal Revenue Code, any contribution made incident to that initial qualification by the Employers may, within the discretion of the Trustees, be returned to the Employers within one year after the date the initial qualification is denied.

All contributions by the Employers are conditioned on deductibility of such contributions under IRC Section 404. to the extent that the deduction under IRC Section 404 for any year is disallowed, the contribution shall be returned to the Employers within one year after disallowance of the deduction.

If a contribution is made by an Employer by a mistake of fact, the contribution may be returned to the Employer within one year after the payment of the contribution.

Notwithstanding the above, earnings attributable to amounts described in the preceding paragraphs shall not be returned to the Employer; losses attributable to such amounts shall reduce the amount returned.

### SECTION 7.02 LIMITATION OF LIABILITY

This Pension Plan has been established on the basis of an actuarial calculation which has established, to the extent possible, that the contributions will, if continued, be sufficient to maintain the Plan on a permanent basis, fulfilling the funding requirements of ERISA. Except for liabilities which may result from provisions of ERISA, nothing in this Plan shall be construed to impose any obligation to contribute beyond the obligation of the Employer to make contributions as stipulated in its collective bargaining agreement with the Union. There shall be no liability upon the Trustees individually, or collectively, or upon the Union to provide the benefits established by this Pension Plan, if the Pension Fund does not have assets to make such payments.

### **SECTION 7.03 NEW EMPLOYERS**

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

### **SECTION 7.04 TERMINATION**

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

### **SECTION 7.05 PLAN INTERPRETATION AND DETERMINATIONS**

Notwithstanding any other provision of this Plan, the Board of Trustees shall have exclusive authority and discretion to:

- (a) determine whether an individual is eligible for any benefits under this Plan;
- (b) determine the amount of benefits, if any, an individual is entitled to from this Plan;
- (c) determine or find facts that are relevant to any claim for benefits from this Plan;
- (d) interpret all of the provisions of this Plan;
- (e) interpret the provisions of any Collective Bargaining Agreement or written Participation Agreement involving or impacting on this Plan;
- (f) interpret all of the terms used in this Plan;
- (g) interpret the provisions of the Trust Agreement governing the operation of this Plan;
- (h) interpret all of the provisions of any other document or instrument involving or impacting on this Plan; and
- (i) interpret all of the terms used in this Plan and in all of the other previously mentioned agreements, documents and instruments.

All such determinations and interpretations made by the Trustees, or their designee, pursuant to this Section shall be final and binding upon any individual claiming benefits under this Plan and upon all Employees, all Employers, the Union and any party who has executed any agreement with the Trustees or the Union; be given deference in all arbitrations and in all courts of law, to the greatest extent allowed by applicable law; not be overturned or set aside by any arbitrator or court of law unless the Trustees' or their designees' determinations or interpretations are found to be arbitrary and capricious, or made in bad faith.

### **SECTION 7.06 EXCLUSIVE BENEFIT**

Prior to the satisfaction of all liabilities with respect to Participants and Beneficiaries, the assets of the Trust shall not inure to the benefit of any Employer and shall be held for the exclusive purpose of providing benefits to Participants and/or their Beneficiaries and for defraying the reasonable expenses of administering the Plan. Notwithstanding the foregoing, (i) any portion of an Employer's contribution which is made by virtue of a mistake of fact shall be returned to the Employer within one year after the payment of the contribution; (ii) each Employer's contribution is conditioned upon the deductibility of the contribution for federal income tax purposes under IRC Section 404 and, to the extent any such contribution is disallowed as a deduction, such contribution (to the extent disallowed) shall be returned to the Employer within one year of the disallowance; and (iii) each Employer's contribution is conditioned upon the Plan's initial qualification for favorable federal income tax treatment under IRC Section 401(a) and, in the event the IRS determines that the Plan does not initially qualify under IRC Section 401(a), any contribution made incident to such initial qualification shall be returned to the Employer within one year following the date of denial of such initial qualification.

### **SECTION 7.07 NUMBER AND GENDER**

Except as the context may specifically require otherwise, use of the singular shall be understood to include the plural and vice versa and use of the feminine (or masculine) shall be understood to include both the feminine and masculine.

### **SECTION 7.08 CAPTIONS**

The captions preceding the Sections and Subsections of the Plan have been inserted solely as a matter of convenience and in no way define or limit the scope or intent of any provisions of the Plan.

## **SECTION 7.09 GOVERNING LAW**

The Plan and all rights thereunder shall be governed by and construed in accordance with ERISA and the laws of the State of New York.

## **SECTION 7.10 LEGAL PROCEEDINGS**

No legal action against the Plan for the recovery of any claim shall be commenced until a Participant has exhausted all of the administrative claims review procedures under this Plan, including a final appeal to the Trustees. Any legal action commenced against the Plan must be filed in a federal court in New York City.

## **SECTION 7.11 AGENT OF SERVICE OF PROCESS**

The Trustees or any other person designated by the Trustees from time to time shall be the agent for service of process in any legal action initiated under ERISA or otherwise.

## **SECTION 7.12 RECOVERY OF OVERPAYMENTS**

After the acceptance of the Participant's application by the Pension Fund office, if the pension to be paid and owed to the Participant is less than the amount which had been paid to them in accordance with Section 3 or as determined in the discretion of the Trustees for any other reason, the Plan may reduce the amount of the monthly pension paid to the Participant (except as provided in Section 6.07) until the Fund has been reimbursed for the amount of the pension overpayment, in accordance with criteria established by the Appeals Committee and federal law (29 U.S. Code § 1056(h)).

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# ARTICLE 8

## AMENDMENTS

### SECTION 8.01 AMENDMENT

This Plan may be amended in whole or in part at any time by the Trustees at a meeting duly called in accordance with the provisions of the Trust Agreement. However, no amendment may decrease the accrued benefit of any Participant, except:

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



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# APPENDIX A

The following terms shall apply in any year in which the Plan is considered top-heavy:

- (a) **Key employee:** Key employee means any employee or former employee (including any deceased employee) who, at any time during the plan year that includes the determination date, is an officer of the employer having an annual compensation greater than \$130,000 (as adjusted under § 416(i)(1) of the Code for plan years beginning after December 31, 2002), a 5% owner of the employer or a 1% owner of the employer having an annual compensation of more than \$150,000. For purposes of this paragraph (a), annual compensation means compensation within the meaning of compensation as defined in (k) below. The determination of who is a key employee will be made in accordance with § 416(i)(1) of the Code.
- (b) **Top-heavy plan:** For any plan year beginning after December 31, 1983, this plan is top-heavy if any of the following conditions exist:
  - (i) If the top-heavy ratio for this plan exceeds 60 percent and this plan is not part of any required aggregation group or permissive aggregation group of plans.
  - (ii) If this plan is a part of a required aggregation group of plans but not part of a permissive aggregation group or permissive aggregation group of plans and the top-heavy ratio for the group of plans exceeds 60 percent.
  - (iii) If this plan is a part of a required aggregation group and part of a permissive aggregation group of plans and the top-heavy ratio for the permissive aggregation group exceeds 60 percent.
- (c) **Top-heavy ratio:**
  - (i) If the employer maintains one or more defined benefit plans and the employer has not maintained any defined contribution plan (including any simplified employee pension, as defined in § 408(k) of the Code) which during the five-year period ending on the determination date(s) has or has had account balances, the top-heavy ratio for this plan alone or for the required or permissive aggregation group as appropriate is a fraction, the numerator of which is the sum of the present value of accrued benefits of all key employees as of the determination date(s) (including any part of any accrued benefit distributed in the (l) one-year period ending on the determination

date(s); or (II) five-year period ending on the determination date in the case of a distribution made for a reason other than severance from employment, death or disability), and the denominator of which is the sum of the present value of the accrued benefits (including any part of any accrued benefits distributed in the (I) one-year period ending on the determination date(s); or (II) five-year period ending on the determination date in the case of a distribution made for a reason other than severance from employment, death or disability), determined in accordance with § 416 of the Code and the regulations thereunder.

- (ii) If the employer maintains one or more defined benefit plans and the employer maintains or has maintained one or more defined contribution plans (including any simplified employee pension), which, during the five-year period ending on the determination date(s), has or has had any account balances, the top-heavy ratio for any required or permissive aggregation group as appropriate is a fraction, the numerator of which is the sum of the present value of the accrued benefits under the aggregated defined benefit plan or plans for all key employees, determined in accordance with (a) above, and the sum of account balances under the aggregated defined contribution plan or plans for all key employees as of the determination date(s), and the denominator of which is the sum of the present value of accrued benefits under the defined benefit plan or plans for all participants, determined in accordance with (a) above, and the account balances under the aggregated defined contribution plan or plans for all participants as of the determination date(s), all determined in accordance with § 416 of the Code and the regulations thereunder. The account balances under a defined contribution in both the numerator and denominator of the top-heavy ratio are increased for any distribution of an account balance made in the one-year determination date in the case of the distribution made for a reason other than severance from employment, death or disability.
- (iii) For the purposes of (i) and (ii) above, the value of the account balances and the present value of accrued benefits will be determined as of the most recent valuation date that falls within or ends with the 12-month period ending on the determination date, except as provided in § 416 of the Code and the regulations thereunder for the first and second plan years of a defined benefit plan. The account balances and the accrued benefits of a participant who (I) is not a key employee but who was a key employee in a prior year, or (II) has not been credited with

at least an hour of service of any employer maintaining the plan at any time during the one-year period ending on the determination date will be disregarded. The calculation of the top-heavy ratio, and the extent to which distributions, rollovers and transfers are taken into account, will be made in accordance with § 416 of the Code and the regulations thereunder. Deductible employee contributions will not be taken into account for purposes of computing the top-heavy ratio. When aggregating plans, the value of account balances and accrued benefits will be calculated with reference to the determination dates that fall within the same calendar year.

The accrued benefit of a participant—other than a key employee—shall be determined (I) under the method, if any, that uniformly applies for accrual purposes under all defined benefit plans maintained by the employer, or (II) if there is no such method, as if such benefit accrued not more rapidly than the slowest accrual rate permitted under the fractional rule of § 411(b)(1)(C) of the Code.

- (d) Permissive aggregation group: The required aggregation group of plans plus any other plans of the employer which, when considered as a group with the required aggregation group, would continue to satisfy the requirements of § 401(a)(4) and 410 of the Code.
- (e) Required aggregation group: (I) Each qualified plan of the employer in which at least one key employee participates or participated at any time during the plan year containing the determination date or any of the four preceding plan years (regardless of whether or not the plan has been terminated), and (II) any other qualified plan of the employer which enables a plan described in (I) to meet the requirements of § 401(a)(4) or 410 of the Code.
- (f) Valuation date: December 31 of each plan year.
- (g) Present value: For purposes of establishing present value to compute the top-heavy ratio, any benefit shall be discounted only for mortality and interest based on the following:
  - Interest rate: 7¼%
  - Mortality tables: The 1951 Group Annuity Table of Mortality for Females projected to 1967 with Scale C for all participants and the 1951 Group Annuity Table for Males projected to 1967 with Scale C for joint participants.
- (h) Minimum accrued benefit:
  - (i) Notwithstanding any other provision in this plan except (iii), (iv), (v) and (vi) below, for any plan year in which this plan is top-heavy, each

participant who is not a key employee and has completed 1,000 hours of service will accrue a benefit (to be provided solely by employer contributions and expressed as a life annuity commencing at normal retirement age) of not less than two percent of their highest average compensation for the five consecutive years for which the participant had the highest compensation. The aggregate compensation for the years during such five-year period in which the participant was credited with a year of service will be divided by the number of such years in order to determine average annual compensation. The minimum accrual is determined without regard to any Social Security contribution. The minimum accrual applies even though under other plan provisions the participant would not otherwise be entitled to receive an accrual, or would have received a lesser accrual for the year, because (I) the non-key employee's compensation is less than a stated amount; (II) the non-key employee is not employed on the last day of the accrual computation period; or (III) the plan is integrated with Social Security.

- (ii) For purposes of computing the minimum accrued benefit, compensation shall mean compensation as defined in (I) below, as limited by § 401(a)(17) of the Code.
- (iii) No accrual shall be provided pursuant to (i) above for a year in which the plan does not benefit any key employee or former key employee.
- (iv) No additional benefit accruals shall be provided pursuant to (i) above to the extent that the total accruals on behalf of the participant attributable to employer contributions will provide a benefit expressed as a life annuity commencing at normal retirement age that equals or exceeds 20 percent of the participant's highest average compensation for the five consecutive years for which the participant had the highest compensation.
- (v) The provision in (i) above shall not apply to any participant to the extent the participant is covered under any other plan or plans of the employer and the employer has provided that the minimum allocation or benefit requirement applicable to top-heavy plans will be met in other plan or plans of the employer.
- (vi) All accruals of employer-derived benefits, whether or not attributable to years for which the plan is top-heavy, may be used in computing whether the minimum accrual requirements of paragraph (iii) above are satisfied.

- (i) Adjustment for benefit form other than life annuity at normal retirement age: If the form of benefit is other than a straight life annuity, the employee must receive an amount that is the actuarial equivalent of the minimum straight life annuity benefit. If the benefit commences at a date other than at normal retirement age, the employee must receive at least an amount that is the actuarial equivalent of the minimum straight life annuity benefit commencing at normal retirement age.
- (j) Non-forfeatability of minimum accrued benefit: The minimum accrued benefit required (to the extent required to be nonforfeitable under § 416(b) of the Code) may not be forfeited under § 411(a)(3)(B) or 411(a)(3)(D) of the Code.
- (k) Minimum vesting: The participant shall be 100% vested after three years of service. This minimum vesting schedule applies to all benefits within the meaning of § 411(a)(7) of the Code, except those attributable to employee contributions, including benefits accrued before the plan became top-heavy. Further, no decrease in a participant's nonforfeitable percentage may occur in the event the plan's status as top-heavy changes for any plan year. However, this section does not apply to the accrued benefit of any employee who does not have an hour of service after the plan has initially become top-heavy, and such employee's account balance attributable to employer contributions and forfeitures will be determined without regard to this section.
- (l) 415 safe-harbor compensation: Compensation is defined as wages, differential wage payments under § 3401(h) made after December 31, 2008, salaries and fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the employer maintaining the plan to the extent that the amounts are includible in gross income (including, but not limited to, commissions-paid salespersons, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits and reimbursements) or other expense allowances under a nonaccountable plan (as described in § 1.62 of the Income Tax Regulations) and excluding the following:
  - (i) Employer contributions (other than elective contributions described in § 402(e)(3), § 408(k)(6), § 408(p)(2)(A)(i) or § 457(b)) to a plan of deferred compensation (including a simplified employee pension described in § 408(k) or a simple retirement account described in § 408(p), and whether or not qualified) to the extent such contributions are not includible in the employee's gross income for the taxable year in which contributed, and any distributions (whether or not includible in

gross income when distributed) from a plan of deferred compensation (whether or not qualified), other than amounts received during the year by an employee pursuant to a nonqualified unfunded deferred compensation plan to the extent includible in gross income;

- (ii) Amounts realized from the exercise of a non-statutory stock option (that is, an option other than a statutory option as defined in § 1.421-1(b) of the Income Tax Regulations), or when restricted stock (or property) held by the employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;
- (iii) Amounts realized from the sale, exchange or other disposition of stock acquired under a statutory stock option;
- (iv) Other amounts that receive special tax benefits, such as premiums from group-term insurance (but only to the extent that the premiums are not includible in the gross income of the employee and are not salary reduction amounts that are described in § 125); and
- (v) Other items of remuneration that are similar to any of the items listed in (i) through (iv).

(m) Plan Year Compensation: For Plan Years beginning on or after July 1, 2007, compensation for a Plan Year shall also include compensation paid by the later of 2½ months after an employee's severance from employment with the employer maintaining the Plan or the end of the Plan Year that includes the date of the employee's severance from employment with the employer maintaining the plan, if:

- (i) The payment is regular compensation for services during the employee's regular working hours, or compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments that would have been paid to the employee while the employee continued in employment with the employer;
- (ii) The payment is for unused accrued bona fide sick, vacation or other leave that the employee would have been able to use if employment had continued; or
- (iii) The payment is received by the employee pursuant to a nonqualified deferred compensation plan and would have been paid at the same time if employment had continued, but only to the extent includible in gross income.

Any payments not described above shall not be considered compensation if paid after severance from employment, even if they are paid by the later of 2½ months after the date of severance from employment or the end of the Plan Year that includes the date of severance from employment.









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**HOME | TABLE OF CONTENTS**

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