

**THE LONG ISLAND RAIL ROAD COMPANY  
PENSION PLAN**

**As Amended Through May 31, 1997**

## THE LONG ISLAND RAIL ROAD COMPANY PENSION PLAN

The Board of Directors of The Long Island Rail Road Company (hereinafter called the Company) has approved the following pension plan (hereinafter called the Plan), effective July 1, 1971, in order to provide pensions for all of its employees (provided they meet the eligibility conditions herein set forth) and in fulfillment of the Company's collective bargaining agreements. This Plan replaces the Company's Plan for Supplemental Pensions, with provision, however, for the preservation of certain benefit rights under that plan. Provisions are made for the trust established under the Plan for Supplemental Pension to continue in fulfillment of this Plan. This action of the Company is not a discontinuance or termination of the Plan for Supplemental Pensions but is an amendment of that plan in its entirety.

### ARTICLE I

#### Definitions

**SECTION 1. Employee.** "Employee" shall mean an individual who is a regular full-time employee of the Company, and who is referred to in Section 1 of Article II.

**SECTION 2. Compensation.** "Compensation" shall mean compensation paid to an employee by the Company and tips received by the Employee in the course of his employment with the Company. Earnings of a given Employee as reported by the Company to the Federal Government for Federal income tax purposes shall be conclusive as to the amount of such Employee's Compensation. Compensation shall not include severance pay, any benefit (except for wage or salary continuance payments made directly by the Company to an Employee in the event of his illness in which event if the Company takes as credit against the sick pay afforded to an Employee the daily benefit paid to the Employee on account of sickness pursuant to Section 2(a) of the Railroad Unemployment Insurance Act (45 U.S.C. §352(a)), or the successor provision of any subsequent legislation, such daily benefit paid on account of sickness shall be included in computing Compensation) or the amount of any Company contribution under any welfare, insurance or retirement plan, or any amount excluded from Compensation in accordance with the Company's normal pay practices or pursuant to agreement with a Union. The Compensation of a person referred to in Section 4(a)(iii) of this Article I shall be comprised of the Compensation paid to him by the carrier-employer therein referred to, as computed under this Section 2, as if he were an Employee and the carrier-employer involved was the Company.

**SECTION 3. Final Average Compensation.** "Final Average Compensation" shall mean the average monthly Compensation of an Employee for the 60 consecutive calendar Months of Service during the 120 consecutive calendar months of Credited Service immediately preceding the earlier of his actual retirement date and January 1, 1989 that produces the highest such average, provided that if the Employee has less than 60 or 120 consecutive calendar Months of Service or months of Credited Service, respectively, all such service up to 60 or 120 months, as the case may be, shall be taken into account in the calculation. For this purpose, Months of Service before and after an interruption shall be treated as consecutive and the interrupted months disregarded, except if the interruption constituted a Break in Service.

**SECTION 3A. Final Average Base Earnings.** "Final Average Base Earnings" shall mean the monthly average for an Employee obtained by (a) multiplying his hours worked during the last 12 months of Credited Service, or his actual number of full months of Credited Service, if less, immediately

preceding the earlier of his actual retirement date and January 1, 1989, not to exceed 2,080 hours, by the applicable straight time hourly rates for the hours worked (in the case of a salaried Employee, his weeks worked in such last 12 months, not to exceed 52 weeks, or lesser period, as the case may be, multiplied by his applicable salary rates) plus (b) his earned but not used vacation, all divided by 12 or, if less, his actual number of full months of Credited Service referred to in subsection (a) above. \*

#### **SECTION 4. Service.**

(a) "Month of Service" for an Employee shall mean, prior to the relevant closing date referred to in Section 4(b) but subject to the last sentence of Section 4(b)(i):

- (i) any calendar month prior to July 1, 1971, for which he received Compensation or was carried on the roster as sick, injured on duty, or furloughed, but returned to service, and any calendar month after July 1, 1971, for which he received Compensation for at least 100 hours of work;
- (ii) any calendar month during which he is on furlough for reasons of military service, provided such service is creditable as service under the Railroad Retirement Act and he makes application for and returns to Company employment after an honorable discharge within 90 days (or within such longer period as his right to re-employment may be protected by law) after the termination of such military service;
- (iii) for a person who is an Employee on July 1, 1971, any calendar month before such date for which he received Compensation from a carrier-employer (other than the Company) covered by the Railroad Retirement Act, provided he transferred directly from such carrier-employer to employment with the Company and that he would have received credit for such service as Months of Service had such service been service with the Company rather than such carrier-employer during such period; and provided further, however, that any month which was credited toward a pension which a person is eligible to receive, or is receiving, from such other carrier-employer will not be credited toward a Month of Service. A calendar month may not be counted more than once as a Month of Service;
- (iv) for a person who is an Employee on January 1, 1988 who prior thereto did not receive credit for a calendar month as a Month of Service by reason of an injury incurred while on duty after the effective date, specified below, of the Sick Leave Agreement applicable to his craft but prior to the issuance of Award No. 3 of Special Board of Adjustment No. 631 dated February 18, 1974, any such calendar month that would otherwise have been considered a Month of Service had Award No. 3 been in effect during such month. The effective date of each of the relevant Sick Leave Agreements is as follows:

Craft

Date of  
Agreement

Clerical, Office, Station and Storehouse Employees	2/23/68
Carmen, Helpers and Apprentices	2/29/68
Electricians, Helpers and Apprentices	2/29/68
Machinists, Helpers and Apprentices	2/29/68
Signalmen	3/15/68
Sheet Metal Workers, Helpers and Apprentices	6/3/68
Boilermakers and Blacksmiths	6/3/68
Stationary Engineers, Firemen and Laborers	6/26/68
Maintenance of Way Employees	8/15/68
Train Service Employees	7/3/69
Special Service Attendants	7/3/69
Police Officers Below the Rank of Captain	7/3/69
Agents, Telegraphers and Tower Operators	11/30/70
Yardmasters	6/6/73

Any other provision of this Section 4(a) to the contrary notwithstanding, and except for purposes of and as provided in Section 2(d) of Article II and Section 6 of Article II, an Employee shall not receive credit as a Month of Service for any calendar month after December 1988.

(b) Credited Service.

- (i) "Credited Service" shall mean an individual's period of continuous employment with the Company commencing on the later of his date of first employment as an Employee or the date of his re-employment as an Employee following his last Break in Service (except as otherwise provided in subsection (c) hereof) and ending on whichever of the following closing dates is applicable:

<u>Closing Date</u>		
<u>Age of Employee in 1970</u>	<u>Year</u>	<u>Last day of:</u>
67	1971	Month following month of attainment of age 68
66	1972	January
65	1973	Month following month of attainment of age 67
64	1973	January
63	1973	Month following month of attainment of age 66
62	1974	January
61 or younger	--	Month following month of attainment of age 65.

Any other provision of the Plan to the contrary notwithstanding, the Months of Service and Credited Service of an Employee shall include the Employee's period of continuous employment with the Company on or after April 1, 1987, provided that such period of continuous employment would qualify as Months of Service and Credited Service, as the case may be, pursuant to the provisions of the Plan other than the foregoing provisions of this Section 4(b)(i), and further provided that in the case of any individual whose closing date occurred prior to April 1, 1987, the individual's Months of Service and Credited Service shall not include any period after the individual's closing date and before April 1, 1987.

- (ii) For a person who is an Employee prior to July 1, 1971, Credited Service shall also include an individual's period of continuous employment with another carrier-employer covered by the Railroad Retirement Act, provided he transferred directly from such carrier-employer to employment with the Company; and further provided that he would have received credit for such employment as Credited Service had such employment been employment with the Company rather than such carrier-employer during such period.
- (iii) For a person who becomes an Employee on or after July 1, 1971, Credited Service shall also include for the purpose of meeting the eligibility requirements for a Service Age Pension but not for the purpose of computing Months of Service, or determining vested rights under Section 7 of Article II, his period of continuous employment with another carrier-employer covered by the Railroad Retirement Act; provided he transferred directly from such carrier-employer to employment with the Company; and further provided that he would have

received credit for such employment as Credited Service had such employment been employment with the Company rather than such carrier-employer during such period.

- (iv) The provisions of subsections (ii) and (iii) above shall be applicable only if the individual involved otherwise has at least 60 calendar months of Credited Service as an Employee of the Company at the time his service with the Company terminates.

(c) Break in Service.

- (i) Termination of employment by the Company because of resignation or discharge shall constitute a Break in Service. On or after July 1, 1971, an Employee who terminates his service with the Company at a time when he has a vested interest in a Service-Age Pension under this Plan will not incur a Break in Service in the event he is re-employed by the Company within one year of such termination.
- (ii) An Employee on furlough, leave of absence, or absent because of maternity, sickness, or disability, which commenced prior to July 1, 1971, shall be deemed to have incurred a Break in Service if the rules and regulations of the Company governing such absences, have not been met as indicated by its records, and in any event, unless the Board of Managers otherwise decides, if such absences extend beyond June 30, 1972, except as in Article IX provided.

An Employee on furlough, leave of absence, or absent because of maternity, sickness, or disability, which commenced on or after July 1, 1971, shall be deemed to have incurred a Break in Service at the end of the 12th calendar month following his last preceding calendar month of Credited Service, except as in Article IX provided. Credited Service shall be allowed during the period of absence for the 12 calendar months, except for those on a leave of absence other than pursuant to Article IX. The Board of Managers may extend the period of 12 months for an Employee whose disability commenced on or after July 1, 1971. The provisions of this subsection shall be applied in a fair and impartial manner, and all individuals under similar circumstances shall be treated alike.

- (iii) No Break in Service shall be incurred because of absence due to accident or injury resulting from Company employment; and no Break in Service shall be incurred by an Employee on furlough for reasons of military service which is creditable as service under the Railroad Retirement Act, provided he makes application for and returns to Company employment after an honorable discharge within 90 days (or within such longer period as his right to re-employment may be protected by law) after the termination of such military service.
- (iv) The Credited Service of an individual and his Months of Service shall not include any period of employment preceding a Break in Service except as provided in

Section 4(e) of Article II and in the following subsections of this Section 4(c) of Article I.

- (v) An Employee who retires on or after December 31, 1986, who was in the active full-time service of the Company as of December 31, 1986, and who has had a Break or Breaks in Service not exceeding ten (10) years, in total, will be granted Credited Service and Months of Service for his periods of employment with the Company only, preceding and following such Break(s) in Service provided that, and to the extent that, such periods of employment with the Company only would otherwise qualify as Credited Service or Months of Service within the terms of the Plan.

An Employee who retires on or after December 14, 1979, who was in the active full-time service of the Company as of July 1, 1971, and who has had a Break or Breaks in Service not exceeding ten (10) years, in total, will be granted Credited Service and Months of Service for his periods of employment with the Company only, preceding and following such Break(s) in Service provided that, and to the extent that, such periods of employment with the Company only would otherwise qualify as Credited Service or Months of Service within the terms of the Plan.

- (vi) An Employee who retires on or after December 14, 1979, who was discharged from train service for failure to qualify as Conductor, thereby sustaining a Break in Service, if rehired by the Company within one (1) year of his aforesaid termination date, will be granted Credited Service and Months of Service for his periods of employment with the Company only, preceding and following such Break in Service provided that, and to the extent that, such periods of employment with the Company only, would otherwise qualify as Credited Service or Months of Service within the terms of the Plan.
- (vii) For the purposes of immediately preceding subsections (v) and (vi) of this Section 4(c) of Article I, an individual who is granted Credited Service and Months of Service for service with the Company only preceding and following a Break or Breaks in Service, will also be granted Credited Service and Months of Service for any continuous, unbroken period of employment with The Pennsylvania Railroad Company immediately preceding his transfer directly from the employ of the Pennsylvania Railroad Company to the Company provided that he transferred from The Pennsylvania Railroad Company to the Company prior to January 20, 1966, and under such circumstances, that his prior service with The Pennsylvania Railroad Company would have been treated as service with the Company at the time of his transfer pursuant to the terms of any applicable collective bargaining agreement or the personnel policies of the Company then in effect, and further provided that such period of continuous employment would otherwise qualify as Credited Service or Months of Service within the terms of the Plan.
- (viii) In the event that an individual otherwise entitled to be granted Credited Service or Months of Service for any period of employment with the Company only,

preceding a Break in Service pursuant to subsections (v) or (vi) of this Section 4(c), shall have made any contribution toward a pension and shall have received a refund of such contribution with such interest as the Board of Managers may have allowed pursuant to Section 2 of Article VI, it shall be a prerequisite to his receiving either Credited Service or Months of Service for any period of employment preceding a Break in Service that he shall have repaid the full amount of such refunded contribution and interest received by him within sixty (60) days of his re-employment as an Employee following any such Break in Service.

**SECTION 5. Pension Trust.** "Pension Trust" shall mean the pension trust provided for in Section 1 of Article IV.

**SECTION 6. Union.** "Union" shall mean the local unit of any labor organization representing Employees covered by this Plan and which is a party to a collective bargaining agreement with the Company, including with respect to employment after December 31, 1987, the international governing body of any such labor organization which after that date has entered into a contract of the type referred to in Article IX, Section 2.

**SECTION 6-(a). Credit Union.** "Credit Union" shall mean the LIRR - MTA Employees Federal Credit Union.

**SECTION 7. Plan for Supplemental Pensions.** "Plan for Supplemental Pensions" shall mean The Long Island Rail Road Company Plan for Supplemental Pensions, which is replaced by this Plan, with provision, however, for the preservation of certain benefit rights provided for therein.

**SECTION 8. Surviving Annuitant.** "Surviving Annuitant" shall mean the spouse of a pensioner entitled to a pension as a result of the operation of a survivor option under Section 8 of Article II as well as, where the context requires, a surviving joint annuitant covered by a survivorship option operative under the Plan for Supplemental Pensions.

**SECTION 9. Service-Age Pension.** "Service-Age Pension" shall mean the pension computed under Section 3 of Article II.

**SECTION 10. Disability Pension.** "Disability Pension" shall mean the pension computed under Section 5 of Article II.

**SECTION 11. Board of Managers.** "Board of Managers" shall mean the Board of Managers of Pensions provided for in Section I of Article VII.

**SECTION 12. Secretary.** "Secretary" shall mean the Secretary of the Board of Managers appointed pursuant to Section 2 of Article VII.

**SECTION 13. Joint Board.** "Joint Board" shall mean the Joint Board on Pension Applications provided for in Section 5 of Article VII.

**SECTION 14. Trustee.** "Trustee" shall mean the trustee under the Trust Agreement or such successor trustee as from time to time may be appointed by the Company in accordance with such Trust Agreement.

**SECTION 15. Trust Agreement.** "Trust Agreement" shall mean the trust agreement between the Trustee and the Company referred to in Section 2 of Article IV.

**SECTION 16.** Masculine pronouns where used throughout the Plan shall refer to both men and women unless the context indicates otherwise.

**SECTION 17.** The titles of the Articles and the headings of Sections used herein are for convenience of reference and, in case of conflict, the text of the Plan, rather than such titles or headings, shall control.

## **ARTICLE II**

### **Benefits**

**SECTION 1. Employees Covered.** The benefits of this Plan shall be effective only for individuals who retire on or after July 1, 1974, and who at no time are 'Eligible Employees' within the meaning of the Long Island Rail Road Company Money Purchase Pension Plan.

**SECTION 2. Service-Age Pension Eligibility.** Except as otherwise provided in Section 2 of Article VI an Employee shall be eligible to retire on a Service-Age Pension if:

- (a) he has attained age 50 and has accumulated at least 240 calendar months of Credited Service, or
- (b) he has accumulated at least 60 calendar months of Credited Service and he retires at age 65 or thereafter, or
- (c) he was an Employee on January 1, 1988 and has at least 120 calendar months of Credited Service, or
- (d) he had prior to January 1, 1988 incurred a Break in Service, was not an Employee on that date and has at least 60 Months of Service, computed without regard to the last sentence of Section 4(a) of Article I, after again becoming an Employee and at least 120 calendar months of Credited Service;

provided that the Service-Age Pension of an individual whose eligibility therefore is pursuant to subsection (c) or (d) above shall not commence until the individual has attained age 65.

### **SECTION 3. Amount of Service-Age Pension.**

- (a) The amount of an Employee's Service-Age Pension shall be computed as follows:
  - (i) The monthly amount of the Service-Age Pension of a retired Employee who has not attained age 65 shall, until he attains age 65, be (a) 2% of his Final Average

Compensation, or Final Average Base Earnings if larger, multiplied by 1/12th of the number of his Months of Service up to a maximum of 300, plus (b) 1.5% of his Final Average Compensation, or Final Average Base Earnings if larger, multiplied by 1/12th of the number of his Months of Service in excess of 300.

- (ii) The monthly amount of the Service-Age Pension of a retired Employee when he attains, or who has attained, age 65 shall be 1.4% of his Final Average Compensation, or Final Average Base Earnings if larger, multiplied by 1/12th of the number of his Months of Service reduced by (a) a percentage of the retirement annuity (other than any supplemental annuity) under the Railroad Retirement Act to which he is entitled at age 65 or, if he retired prior to December 14, 1979 when older than age 65, to which he is entitled at the time of his retirement, or if his retirement when older than age 65 is on or after December 14, 1979, to which he would have been entitled at age 65 had he retired under this Plan at age 65, or (b) if he is receiving a disability annuity under the Railroad Retirement Act, a percentage of such annuity.

The percentage shall be:

- (A) for an Employee who had 240 months of Credited Service prior to July 1, 1974, 25%;
- (B) for an Employee not included above who was an Employee prior to July 1, 1974, 50%; and
- (C) for any other Employee, 78.75%.

- (iii) The amount of the reduction under subsection (ii) above shall not be redetermined, after the first month for which it is applicable, on account of any subsequent legislated increases in Railroad Retirement Act annuities.

- (b) In the event an Employee whose service with the Company is terminated at a time when he has a vested interest in a Service-Age Pension is re-employed by the Company more than one year after such termination, his total Service-Age Pension will be the sum of the Service-Age Pension he would have received had he not been re-employed and his Service-Age Pension, if any, that he would receive if he had been employed for the first time when re-employed; provided that such sum may not exceed the amount of Service-Age Pension that he would have received had his periods of service been continuous.
- (c) The Service-Age Pension of a pensioner who is re-employed by the Company shall be discontinued and the amount of his Service-Age Pension payable upon his termination of service with the Company recomputed in accordance with subsection (b) above.

#### **SECTION 4. Disability Pension Eligibility.**

- (a) An Employee shall be eligible to retire on a Disability Pension if:

- (i) he becomes totally and permanently disabled for any and all employment after he has accumulated at least 120 calendar months of Credited Service, or
  - (ii) he becomes permanently disabled for his regular occupation with the Company after he has accumulated at least 240 calendar months of Credited Service, and the Board of Managers of the Joint Board, as appropriate, decides that other suitable employment at his then current wage cannot be found for him with the Company.
- (b) A Disability Pension shall not be paid to an Employee hired subsequent to July 1, 1971, nor to an Employee who on July 1, 1971, does not have a vested right to a Service-Age Pension if his disability is:
  - (i) intentionally self-inflicted,
  - (ii) a result of chronic alcoholism or drug addiction,
  - (iii) contracted while engaged in, or resulting from having engaged in, a criminal enterprise, or
  - (iv) a result of military service and a military disability pension is payable therefor.
- (c) In case of accident arising out of and in the course of employment by the Company and resulting in an injury to or the death of an Employee which entitles such Employee or his beneficiary to benefits under this Plan, the Employee or his beneficiary may elect to accept such benefits or to prosecute such claims at law as they may have against the Company. If an election is made to accept the benefits under this Plan, such election shall be in writing and shall release the Company from all claims and demands which the Employee or his beneficiary may have against it, otherwise than under this Plan, on account of such accident. The right of an Employee to a Disability Pension under the circumstances described in this subsection shall lapse if election to accept is not made within six months after injury or within such greater time as the Board of Managers shall allow.
- (d) Determination of an Employee's disability shall be made by the Board of Managers after consideration of such medical evidence as it considers appropriate and on the basis of uniform standards applied to all persons similarly situated. Receipt of a Railroad Retirement annuity on account of disability shall be accepted as satisfactory evidence of disability.
- (e) A Disability Pension being paid under subsections (a)(i) or (ii) above shall be discontinued if the pensioner recovers from his disability. If he returns to employment with the Company within 6 months after such recovery, Credited Service to his account at the time of the commencement of his Disability Pension shall be reinstated, but the months for which his Disability Pension was paid shall not be considered Credited Service except if the disability giving rise to the Disability Pension was due to accident or injury resulting from Company employment, in which case such period shall be included as Credited Service.

- (f) Where a pensioner is receiving a Disability Pension under the provisions of this Article II, and he earns, in employment or self-employment, while under age 65, more than \$140 in any one calendar month, his Disability Pension shall not be payable for that calendar month. Individuals receiving a Disability Pension who are under age 65 shall report to the Secretary any such earnings from employment or self-employment before receipt and acceptance of a Disability Pension for the second calendar month following the calendar month in which such earnings were received and shall also furnish proof of continued disability. The Board of Managers shall keep informed of the whereabouts and physical condition of pensioners and of all other circumstances which may affect their pensions.

**SECTION 5. Amount of Disability Pension.** The amount of a Disability Pension shall be 1.2% of the Employee's Final Average Compensation multiplied by 1/12th of the number of his Months of Service (which number shall not exceed 360) reduced by 78.75% of the amount of the disability annuity under the Railroad Retirement Act to which he is entitled. The amount of the reduction shall not be redetermined, after the first month for which it is applicable, on account of any subsequent legislated increases in Railroad Retirement Act annuities.

**SECTION 6. Death Benefits.** Upon the death of an Employee to whom a pension has not yet become payable under this Plan and with respect to whom no effective survivor option under Section 8 of this Article II is or can be filed, there shall be paid to his designated beneficiary or person otherwise specified in Section 6 of Article III a sum equal of \$500 plus \$500 for each twelve Months of Service after June 30, 1971, computed without regard to the last sentence of Section 4(a) of Article I, which sum shall not exceed \$5,000.

**SECTION 7. Vested Rights.** Except as otherwise herein provided, an Employee who satisfies the requirements in subsection (a), (c) or (d) of Article II, Section 2 for eligibility for a Service-Age Pension (determined without regard to when such Service-Age Pension could commence) shall have a vested right to a Service-Age Pension under the terms of this Plan as in effect at that time. Such Service-Age Pension shall not be payable prior to the later of his retirement or the age specified in Article II, Section 2 applicable to the Service-Age Pension to which he is entitled, and then only upon receipt of appropriate application therefor.

**SECTION 8. Survivor Option.**

- (a) Each Employee may, subject to the provisions of this Section 8, elect Option A or Option B and convert the Service-Age Pension benefits otherwise payable to him under the terms of this Plan into a pension of equivalent actuarial value in accordance with the terms of such option. No election for any survivor option shall be available hereunder with respect to a Disability Pension.
- (b) Option A shall mean the election by an Employee, in accordance with subsection (d) of this Section 8, of a reduced Service-Age Pension payable during his lifetime with the provision that after his death, such reduced pension shall continue to be paid during the further lifetime of his spouse at the time the election is made, if surviving as his spouse at the time of his death.

Under Option A, an Employee may elect to have his pension calculated in accordance with either of two actuarially equivalent methods designated as A and A-1. The A calculation provides for a fixed monthly pension payment for the retired Employee and a surviving spouse benefit would equal the fixed amount received by the retired Employee. The A-1 calculation provides for an initially greater monthly pension payment to the retired Employee until he reaches age 65 at which time such pension will be reduced and, in addition, the appropriate offset for the retirement annuity under the Railroad Retirement Act will be applied as set forth in Section 3(a)(ii) and (iii) of this Article. In the event of the death of the retired Employee before attaining age 65, the surviving spouse benefit will be the same as the pension received by the retired Employee until the deceased retiree would have attained age 65, at which time it will be reduced to equal the pension which would have been payable to the retiree after application of the appropriate reduction and offset as aforesaid had the retiree attained age 65. The Railroad Retirement Act annuity schedule that is in effect at the time the retiree reaches age 65, or would have reached age 65, will be utilized.

- (c) Option B shall mean the election by an Employee, in accordance with subsection (d) of this Section 8, of a reduced Service-Age Pension payable during his lifetime with the provision that after his death, one-half of such reduced pension shall continue to be paid during the further lifetime of his spouse at the time the election is made, if surviving as his spouse at the time of his death.

Under Option B, an Employee may elect to have his pension calculated in accordance with either of two actuarially equivalent methods designated as B and B-1. The B calculation provides for a fixed monthly pension payment for the retired Employee and a surviving spouse benefit would equal 50% of the fixed amount received by the retired Employee.

The B-1 calculation provides for an initially greater monthly pension payment to the retired Employee than that under the B calculation until he reaches age 65 at which time such will be reduced and, in addition, the appropriate offset for the retirement annuity under the Railroad Retirement Act will be applied as set forth in Section 3(a)(ii) and (iii) of this Article. In the event of the death of the retired Employee before reaching age 65, the surviving spouse benefit will be 50% of the pension received by the retired Employee until the deceased retiree would have attained age 65, at which time it will be reduced to equal 50% of the pension which would have been payable to the retiree after application of the appropriate reduction and offset, as aforesaid, had the retiree attained age 65. The Railroad Retirement Act annuity schedule that is in effect at the time the retiree reaches age 65, or would have reached age 65, will be utilized.

- (d) The election of either Option A or Option B shall be subject to the following rules:
- (i) The election of the option may be made at any time prior to retirement, and shall be in writing in a form prescribed by the Board of Managers. The election shall become effective when it is filed with the Board of Managers, but not before the Employee has vested rights in accordance with Section 7 or satisfies the eligibility requirements for the Service-Age

Pension to which he would be entitled if no election was made. An election once made shall remain in force except that it shall become ineffective on the date of receipt by the Board of Managers of a notice from an Employee in writing rescinding the election then in effect. A rescinded election may be reinstated by filing it in the same manner as an original election. An election may not be rescinded after the electing Employee retires.

- (ii) If an electing Employee's designated spouse shall die or the Employee and his designated spouse shall be divorced after the option becomes effective but before the Employee has actually terminated his service, the election of the option shall be void and any pension or amounts otherwise payable under the Plan shall be paid as if no election had been made. If the Employee shall die after the option has become effective, whether or not the Employee has actually terminated his service, the appropriate reduced pension payments shall commence to be paid to his spouse, if surviving. If the spouse shall die after the option has become effective, and the Employee has actually terminated his service, the pension payable to the Employee shall be reduced in the same manner as if the death of the spouse had not occurred. In the event that an Employee who could have filed an effective option pursuant to the subsection (i) of this Section 8(d) shall die on or after December 14, 1979, without having filed any option and shall leave a surviving spouse at the time of his death, he shall be deemed to have elected such option as his surviving spouse may choose unless he shall have delivered to the Board of Managers a written statement signed by him and acknowledged before a notary public expressing his desire that his spouse receive no pension benefits hereunder in the event of his death.
- (e) An annuity payable to a surviving spouse in accordance with Option A or Option B shall commence on the first day of the calendar month next following the later of the date of death of the electing Employee or the date he would have attained age 50 had he lived.
- (f) For purposes of this Section 8, and as may otherwise be relevant under the Plan for purposes of computing the amount of any optional form of benefit, actuarial equivalent values shall be determined by the Board of Managers using an interest rate of 6% per annum, compounded annually, and based on the 1971 TPF&C Forecast Mortality Table: (i) in the case of pensioners, weighted to reflect 97% of male mortality rates and 3% of female mortality rates, and (ii) in the case of Surviving Annuitants, weighted to reflect 3% of male mortality rates and 97% of female mortality rates.

**SECTION 9. Cancellation of Benefits.** Notwithstanding any other provision of this Plan, an Employee whose employment commences on or after July 1, 1971, and whose service is terminated on account of misconduct, dishonesty theft, or willful destruction of Company property occurring after July 1, 1971, shall thereby receive no benefits under this Plan and no benefits shall be paid hereunder to a person claiming as beneficiary or Surviving Annuitant of such Employee; and the pension of a pensioner whose employment commenced on or after July 1, 1971, and who it is subsequently determined has

engaged in such acts during his employment with the Company on or after July 1, 1971, shall be discontinued, and no pension shall be paid to his Surviving Annuitant, if any.

This Section 9 shall not be applicable after this Plan has been terminated or Company contributions hereunder have been discontinued.

#### **SECTION 10. Direct Rollover Distributions.**

- (a) Upon receiving directions from an Employee who is eligible to receive a distribution from the Plan which constitutes an "eligible rollover distribution", as defined in section 402(c)(4) of the Internal Revenue Code of 1986, as amended (the "Code"), to transfer all or any part of such distribution to an "eligible retirement plan", as defined in Code section 402(c)(8)(B), the Board of Managers shall cause the portion of the distribution which the Employee has elected to so transfer to be transferred directly to such eligible retirement plan; provided, however, that the Employee shall be required to notify the Board of Managers of the identity of the eligible retirement plan at the time and in the manner that the Board of Managers shall prescribe and the Board of Managers may require the Employee or the eligible retirement plan to provide a statement that the eligible retirement plan is intended to be qualified under Code section 401(a) (if the plan is intended to be so qualified) or otherwise meets the requirements necessary to be such an eligible retirement plan.
- (b) Upon receiving instructions from a beneficiary who is the Employee's surviving spouse who is eligible to receive a distribution pursuant to the Plan that constitutes an eligible rollover distribution to transfer all or any part of such distribution to a plan that constitutes an eligible retirement plan with respect to that distribution, the Board of Managers shall cause the portion of the distribution which such spouse has elected to so transfer to the eligible retirement plan so designated; provided, however, that the spouse shall be required to notify the Board of Managers of the identity of the eligible retirement plan at the time and in the manner that the Board of Managers shall prescribe.
- (c) The Board of Managers may accomplish the direct transfer described in subsection (a) or (b), as applicable, by delivering a check to the Employee or surviving spouse which is payable to the trustee, custodian or other appropriate fiduciary of the eligible retirement plan involved, or by such other means as the Board of Managers may in its discretion determine. The Board of Managers may establish such rules and procedures regarding minimum amounts which may be the subject of direct transfers and other matters pertaining to direct transfers as it deems necessary from time to time.

### **ARTICLE III**

#### **Payment of Benefits**

**SECTION 1. Applications.** To secure benefits under this Plan, the person involved must make written application to the Secretary in the form prescribed by the Board of Managers.

**SECTION 2. Furnishing Information.** An applicant for, or recipient of, benefits under this Plan must comply with any reasonable request by the Secretary for information, proof, or documentation, including without limitation, requests pertaining to proof of age, cooperation in securing official verification

by the Railroad Retirement Board of its benefit determination, benefit payments, railroad employment, and cooperation in securing records of employment from the Social Security Administration. Failure to comply with such request or to execute the requests or authorizations necessary to secure relevant records or, to forward such records to the Secretary when so requested shall be sufficient basis for the Board of Managers to deny benefits under this Plan.

**SECTION 3. Period of Payment.** Pension payments shall commence with, and for, the first calendar month after the Employee has fulfilled all conditions for pension payment, including retirement and the filing of an application, and will be made on the first day of every month thereafter. The final pension payment shall be made for the month in which the death of the pensioner occurs, except as otherwise required by operation of Section 8 of Article II. Notwithstanding any other provision of the Plan to the contrary, distributions of benefits from the Plan shall be made in accordance with the Treasury Regulations under section 401(a)(9) of the Code, including Treasury Regulation §1.401(a)(9)-2, which are incorporated herein by reference.

**SECTION 4. Inalienability of Benefits.** The right of any person to receive any payment under the provisions of this Plan shall not be subject to alienation or assignment, and if such person shall attempt to assign, transfer or dispose of such right, or should such right be subjected to attachment, execution, garnishment, sequestration or any legal, equitable or other process, it shall ipso facto pass and be transferred to such one or more persons as may be appointed by the Board of Managers from the beneficiary, spouse, dependents or relatives of the person with respect to whom such rights arises, in such shares and proportions as the Board of Managers may determine; provided, however, that notwithstanding any of the foregoing conditions or any appointments so made, the Board of Managers, in its sole discretion, may reappoint the first above-mentioned person to receive any payments thereafter becoming due, either in whole or in part. Any appointment made by the Board of Managers under this Section may be revoked by it at any time and a further appointment made.

**SECTION 5. Non-duplication of Benefits.** If, for a calendar month for which he would otherwise be entitled to receive a pension under this Plan (or under such provisions of the Plan for Supplemental Pensions as are continued under this Plan), a pensioner receives sick leave pay from the Company, or sickness or disability benefits from any welfare or insurance plan for which the Company has made contributions, then the pension amount otherwise payable to such pensioner under this Plan for that month shall be reduced, but not below zero, by the total amount of any one or more of the aforementioned benefits for that calendar month.

**SECTION 6. Beneficiary Designation.** Each Employee shall file a designation of beneficiary in written form prescribed by the Board of Managers. In the absence of a designated beneficiary, any benefits which would otherwise be payable to such a beneficiary shall be cancelled. Notwithstanding the foregoing, solely with respect to Employees who either are not members of a collective bargaining unit representing employees of the Company or are a member of such a unit for which an effective collective bargaining agreement so provides, in the absence of a designated beneficiary, any benefits which would otherwise be payable to such a beneficiary shall be paid to the Employee's surviving spouse or, if the Employee has no surviving spouse, to the Employee's estate.

**SECTION 7. Missing Recipients.** If a person having a right to the payment of benefits under this Plan has not applied for such benefits within five years after such benefits are to be paid in the case of death benefits, or are to commence, in the case of pensions, the Board of Managers may send a notice of such right to him at his last known address as shown on the records of the Company, and if written

application is not made for the benefits within 183 days after such notice is sent, his right to the benefits may be cancelled.

#### ARTICLE IV

##### Continuation of Trust

**SECTION 1. Continuation of Trust.** The trust established by the Company on September 30, 1967, in accordance with the Plan for Supplemental Pensions shall be continued as the Pension Trust for the exclusive purpose of fulfilling this Plan.

**SECTION 2. Administration of the Pension Trust.** The Pension Trust shall be held and administered by the Trustee under the Trust Agreement with the Company dated September 30, 1967. All disbursements for the payment of pensions or for such other payments as may be authorized by the Board of Managers shall be made by the Trustee by its check or draft from the monies in the Pension Trust.

#### ARTICLE V

##### Plan for Supplemental Pensions

**SECTION 1. Supersedure of Plan for Supplemental Pensions.** The provisions of the Plan for Supplemental Pensions are hereby superseded by the provisions of this Plan, except as otherwise provided herein, effective July 1, 1971.

Any pension payable under the terms of the Plan for Supplemental Pensions after its supersedure shall continue to be paid in full out of the Pension Trust, and the amount thereof shall not be changed by reason of the effectiveness of this Plan. A person who on June 30, 1971, was in the employ of the Company and who on that date had a vested right to a pension under the Plan for Supplemental Pensions, shall at his election made in writing to the Secretary prior to the commencement of payments under this Plan, be entitled to have his benefits computed under this Plan or under the Plan for Supplemental Pensions, provided that he continued to make contributions required thereunder, if any, to the Pension Trust in an amount which would have been required under the Plan for Supplemental Pensions had not such plan been superseded by this Plan. No other person shall be entitled to have his benefits computed under the Plan for Supplemental Pensions.

**SECTION 2. Refund of Member Contributions.** Except as hereinafter provided, as of July 1, 1971, a refund shall be payable within 60 days thereof or within 60 days of the receipt from the Internal Revenue Service of a determination that the Plan and the Pension Trust are qualified under the Internal Revenue Code of 1954, as amended, whichever is later, to each member of the Plan for Supplemental Pensions if he has made contributions under that plan. The refund shall be equal to 106 percent of the amount of his contributions. However, no such refund shall be made to, or on behalf of, any person retired on a pension under the Plan for Supplemental Persons prior to July 1, 1971. Moreover, a person referred to in Section 1 of this Article who maintains a vested right to a pension under the Plan for Supplemental Pensions shall not be entitled to such a refund unless he makes an election in writing filed with the Secretary not to receive any benefits under that plan, in which case the refund shall be payable to him within 60 days of the receipt from the Internal Revenue Service of a determination that the Plan and the Pension Trust are qualified under the Internal Revenue Code of 1954, as amended, or within 60

days of the receipt of the aforementioned election in writing filed with the Secretary not to receive any benefits under that plan, whichever is later.

**SECTION 3. Discontinuance of Survivorship Option Covering Death in Active Service.** The right to elect the survivorship option permitted by Section B of Article VIII of the Plan for Supplemental Pensions is terminated, effective July 1, 1971, except that it shall continue to be available for persons who on June 30, 1971, were in the employ of the Company and who on that date had a vested right to a pension under the Plan for Supplemental Pensions. However, no benefit shall be paid pursuant to a survivorship option elected under that plan by such a person unless, in accordance with an election made pursuant to Section 1 of this Article V, he or a person claiming as his beneficiary or Surviving Annuitant is to receive no benefits under this Plan.

**SECTION 4. Non-duplication.** In no event shall any Employee, pensioner, Surviving Annuitant or the beneficiary of any such person be entitled to payments both under this Plan and under the terms of the Plan for Supplemental Pensions.

## **ARTICLE VI**

### **Contributions**

#### **SECTION 1. Contributions Required.**

- (a) As to Employees hired on or after July 1, 1978, such newly hired Employees shall contribute three percent (3%) of their total gross wages to the Plan on a weekly basis through payroll deduction. No such contributions, however, are to be made on gross wages for service with the Company after December 31, 1988.
- (b) The Company shall contribute annually such additional amounts as may be determined to be actuarially necessary to meet the costs of this Plan.
- (c) Forfeitures arising for any reason under this Plan shall not be applied to increase the benefits any Employee would otherwise receive hereunder but shall be used to reduce the Company's contributions.

**SECTION 2. Refund of Employee Contributions.** Contributions made by an Employee pursuant to Section 1(a) of this Article VI, together with interest thereon for such period and at such rate or rates as the Board of Managers may determine (not in excess of the net aggregate rate of ordinary investment income actually earned by the Pension Trust during that period), shall be refunded only as follows:

- (a) In the case of an Employee who resigns or is discharged from service with the Company at a time when the Employee does not have a vested right pursuant to Article II, Section 7, or has not met the eligibility requirements for a Disability Pension under Article II, Section 4, the refund shall be paid to him.
- (b) In the event an Employee dies while in the service of the Company, and with respect to whom no effective survivor option under Article II, Section 8, is, is deemed to be or could have been filed, the refund shall be paid to his estate.

- (c) In the event a former Employee dies subsequent to termination of his service with the Company and he was not entitled to or did not receive a refund pursuant to subsection (a) or (e) of this Section 2 and had not at the time of his death been the recipient of a Disability Pension under Article II, Section 4, or a Service-Age Pension under Article II, Section 2, and with respect to whom no survivor option under Article II, Section 8, is effective, the refund shall be paid to his estate.
- (d) In the event of the death of the surviving spouse of a deceased Employee (who died during or subsequent to his service with the Company) in whose favor a survivor option is effective under Article II, Section 8, in a situation where at the time of the spouse's death the spouse had not met the requirements of Article II, Section 8(e), for receipt of an annuity referred to in that section, the refund shall be paid to the estate of such surviving spouse.
- (e) In the case of an Employee who resigns or is discharged from service with the Company, who has a vested right to a Service-Age Pension pursuant to Article II, Section 7 and who executes a written waiver, in the form prescribed by the Board of Managers, of all rights and benefits which would otherwise be paid to or in respect of the Employee under the Plan, the refund shall be paid to him.
- (f) In the event of the death while in the service of the Company of an Employee with a vested right to a Service-Age Pension pursuant to Article II, Section 7 and with respect to whom an effective survivor option under Article II, Section 8 has been or is deemed to have been filed, if the Employee's surviving spouse executes a written waiver, in the form prescribed by the Board of Managers, of all rights and benefits which would otherwise be paid under the survivor option, the refund shall be paid to the Employee's surviving spouse.

Refunds under this Section 2 shall be made as soon as practicable after the occurrence of the event giving rise thereto and the receipt by the Secretary of an application therefor upon such form as the Board of Managers may prescribe. In the event a refund is made under this Section 2 to or in respect of an Employee or former Employee, neither such Employee, former Employee nor the surviving spouse of such Employee or former Employee shall be eligible to receive any pension, annuity or other benefit (except a death benefit pursuant to Section 6 of Article II) under this Plan.

**SECTION 3. Limitation of Company Liability.** The liability of the Company shall be only for the making of contributions as specified above. Pensions and refunds pursuant to Section 2 of this Article shall be payable solely from the Pension Trust.

No Employee, pensioner, beneficiary or Surviving Annuitant, even after payment of a benefit shall have been approved or made, shall be entitled to have any part of the monies or assets under this Plan set aside for his benefit, nor shall he be entitled to any claim on the Company.

**SECTION 4. No Change in Employment Rights.** Nothing contained in this Plan shall be construed to give any Employee any right whatever to be retained in the service of the Company or to become entitled to a pension except in accordance with the terms of this Plan.

## ARTICLE VII

### Administration

**SECTION 1. Board of Managers of Pensions.** This Plan shall be administered by the Board of Managers of Pensions composed of five persons appointed by the Board of Directors of the Company, each to serve until his successor is appointed. The Board of Managers is authorized to adopt any rules consistent with the provisions of this Plan deemed necessary to effectuate it.

**SECTION 2. Organization.** The members of the Board of Managers may, if they so desire, elect one of their members as Chairman, and they shall appoint a Secretary. The Internal Auditor of the Company shall be responsible for the inspection and audit of all accounts, books and records open to the Company pursuant to the provisions of the Trust Agreement, and he shall also be responsible for the audits of all reports submitted under the Trust Agreement. The Treasurer-Controller of the Company shall, upon certification of the Internal Auditor of the Company as to the amount due, remit such amount to the Trustee.

The Board of Managers may authorize one of their members to execute on their behalf tax returns, any other documents required by governmental or regulatory agencies and any legal papers in court proceedings involving the Plan or the Board of Managers.

**SECTION 3. Meetings and Voting.** A majority of the Board of Managers shall constitute a quorum for all purposes. Decisions of the Board of Managers shall be by a majority vote of the members present at the meeting.

**SECTION 4. Passing on Applications.** The Board of Managers may authorize the Secretary to pass upon pension applications, subject to the right of an applicant to secure review of an unfavorable decision. In the case of applicants who are not covered by a collective bargaining agreement, or of persons claiming as beneficiaries or Surviving Annuitants of such non-represented persons, the review shall be by the Board of Managers, whose decision shall be final. In the case of applicants who are covered by a collective bargaining agreement or whose last employment was covered by an agreement, or of persons claiming as beneficiaries or Surviving Annuitants of such represented persons, the review shall be by the Joint Board on Pension Applications pursuant to Section 5 below.

### **SECTION 4A. Investment Managers and Consultants.**

- (a) The Board of Managers shall have exclusive authority and responsibility, as elaborated on below, (i) to appoint and remove any Investment Consultant or Investment Manager, (ii) to direct the segregation of assets of the Plan fund into one or more Investment Accounts at any time, and from time to time to add to or withdraw assets from any such Investment Account as it deems desirable or appropriate, and to direct the Company's contribution or any portion thereof into any Investment Account, and (iii) to establish investment guidelines for any Investment Account. Except as expressly set forth above, the Board of Managers shall have no responsibility for or control over the investment of any assets held in the Plan fund.

- (b) The Board of Managers shall adopt such investment objectives, standards, restrictions and guidelines with respect to the Plan fund and each Investment Account as it shall determine, and the same shall become effective upon their delivery in writing to the Investment Manager responsible for managing each separate Investment Account to which such objectives, standards, restrictions and guidelines are applicable. The Board of Managers may from time to time request that an Investment Consultant recommend such investment objectives, investment standards, investment restrictions and investment guidelines as it deems necessary or appropriate for the investment of assets of the Plan fund. Such investment objectives, standards, restrictions and guidelines may be applicable to the Plan fund as a whole or to any one or more separate Investment Accounts. The Board of Managers shall make such use of the recommendations of an Investment Consultant as the Board of Managers deems appropriate in adopting, modifying or withdrawing investment objectives, standards, restrictions and guidelines for the investment of assets of the Plan fund.
- (c) The Board of Managers may, but shall have no duty to, appoint one or more Investment Consultants. The duties of an Investment Consultant may include the recommendation to the Board of Managers of investment objectives, restrictions and guidelines in accordance with Article VII, Section 5(b) of the Plan, the recommendation of the appointment or removal of any Investment Manager, the allocation of Plan fund assets to any Investment Manager in accordance with Article VII, Section 5(d) of the Plan, and such other duties and responsibilities as may be specified by the Board of Managers. The Board of Managers shall enter into a written contract with an Investment Consultant containing such terms and provisions, consistent with the Trust Agreement, as the Board of Managers shall consider desirable, including, without limitation the right of the Board of Managers to require reports from the Investment Consultant at such times and containing such information as the Board of Managers determines to be appropriate. The Investment Consultant may recommend to the Board of Managers the terms of any agreement to be entered into with an Investment Manager, including the duties of, and the fees to be paid to, the Investment Manager.
- (d) The Board of Managers may from time to time direct the segregation of any portion or portions of the Plan fund into one or more separate Investment Accounts, and, in such event, may appoint one or more Investment Managers to direct the investment and reinvestment of each such Investment Account, subject to any applicable investment objectives, restrictions and guidelines established by the Board of Managers. The Board of Managers shall enter into an agreement on behalf of the Plan fund with each such Investment Manager, which agreement shall contain such terms and conditions as the Board of Managers shall determine. Each Investment Manager must be either (i) an investment consultant registered as such under the Investment Advisers Act of 1940, as amended, (ii) a bank as defined in that Act, or (iii) an insurance company qualified to perform investment management services under the laws of more than one State. No Investment Manager may be affiliated with an Investment Consultant. The Board of Managers shall notify the Trustee in writing of the appointment of each Investment Manager.

**SECTION 5. Joint Board on Pension Applications.** A Joint Board of Pension Applications shall be established to review determinations by the Secretary with respect to pension applications by

applicants who are covered by a collective bargaining agreement or whose last employment was covered by such an agreement, or by persons claiming as beneficiaries of Surviving Annuitants of such represented persons. The Joint Board shall consist of three members of the Board of Managers appointed by the Board of Managers and three Union representatives. The Union representatives shall be named by The Long Island Rail Road Labor Council, and each shall serve for a term of one year and until his successor is named.

The Joint Board shall choose a Chairman and a Secretary, one of whom shall be one of the members of the Board of Managers and the other shall be one of the Union members. These offices shall be rotated every twelve months, from Board of Managers' member to Union member and vice-versa.

Four members of the Joint Board shall constitute a quorum.

Decisions of the Joint Board shall be by majority vote of the members present at the meeting. In the event of a tie vote, the question shall be put over until the next meeting of the Joint Board. If the question is not resolved at that time, it shall be submitted to a special board of adjustment established pursuant to the Railway Labor Act, as amended, and known as The Long Island Rail Road Company - Joint Board on Pension Applications Special Board of Adjustment, provided written request is made to the Secretary, Board of Managers of Pensions within thirty (30) calendar days of the date of receipt of notice of the deadlock by the Joint Board.

## ARTICLE VIII

### Amendment and Termination

**SECTION 1. Right to Amend or Terminate.** The Company reserves the right to modify, amend, or restrict this Plan or to discontinue it altogether, subject however to the obligations of the Company under its collective bargaining agreements.

However, no amendment shall adversely affect pensions previously granted nor divert any part of the Pension Trust to any purpose other than the exclusive benefit of pensioners, Employees, their Surviving Annuitants and beneficiaries.

**SECTION 2. Termination.** In case of termination of this Plan, the Pension Trust shall be used for the exclusive benefit of pensioners, Employees, their Surviving Annuitants and beneficiaries. Allowance from the Pension Trust may be made for necessary and reasonable expenses for terminating the Plan. On termination of the Plan, all Employees shall be fully vested to the extent of their then accrued benefits. To the extent that they suffice, the assets of the Trust Fund shall be applied to provide benefits in the following order of precedence:

- (a) Payment of amounts pursuant to Article II, Section 6, or Article VI, Section 2, to which entitlement arose prior to the termination of the Plan.
- (b) Payment of refunds referred to in Article VI, Section 2(a), by applying that Section as if the termination of the Plan was a termination from service with the Company of the Employees involved of a type specified therein.

- (c) Payment of pensions to persons already retired on pensions on the date of termination and to their Surviving Annuitants.
- (d) Payment of pensions to Employees not yet retired but eligible for retirement on pensions, and to their Surviving Annuitants, in the following order of precedence:
  - (i) Those Employees who have attained age 60.
  - (ii) Those Employees who are 55 but not yet 60.
  - (iii) Those Employees who are 50 but not yet 55.
- (e) All other individuals.

If the assets available for allocation for any of the priority classes set forth above are insufficient to provide the full pensions for all individuals in such class, then the pensions to be provided for each individual in such class shall be proportionately reduced, and no allocation shall be made for any individual in a class of lesser order of precedence.

A complete discontinuance of Company contributions shall constitute a termination of this Plan.

**SECTION 3. Non-Discriminatory Termination.** In the event of termination of this Plan before July 1, 1984, the provisions of this Plan shall be subject to the following limitations with respect to each of the twenty-five (25) highest paid Employees of the Company as of July 1, 1974, excluding, however, any Employee whose anticipated annual benefit will not exceed \$1,500 per year:

- (a) While the Plan is in full effect and its full current costs have been met, any of such 25 Employees may receive his full benefits called for by the Plan.
- (b) If the Plan is terminated or if and so long as the full current costs have not been met, the funds and benefits which any of such 25 Employees may receive shall not exceed the largest of the following amounts:
  - (i) The contributions (or funds attributable thereto) which would have been applied to provide benefits for such Employee if the Plan for Supplemental Pensions as in effect on June 30, 1974, had been continued without change;
  - (ii) \$20,000; or
  - (iii) The sum of (a) the contributions of the Company (or funds attributable thereto) which would have been applied to provide benefits for such Employee if the Plan for Supplemental Pensions had been terminated on June 30, 1974, plus (b) an amount computed by multiplying the smaller of \$10,000 or 20 percent of the first \$50,000 of the average annual compensation of such Employee during the last five years of service, by the number of years since July 1, 1974.
- (c) In the event of termination of the Plan, any funds not paid to Employees described in subsection (b) above as a result of this Section 3 shall be used first to meet any current

costs not properly funded, and to the extent there shall remain any excess, said excess shall be used to increase in the same proportion the amounts of the benefits of all Employees participating in the Plan on the date of termination, excluding Employees described in subsection (b) above. Any computation required to be made under this Section shall be made by the Board of Managers.

In the event that it should subsequently be determined by statute, court decisions, ruling by the Internal Revenue Service, or otherwise, that some or all of the provisions of this Section are no longer necessary to qualify the Plan as exempt under the Internal Revenue Code, this Section shall be deemed to have been modified or eliminated pro tanto without any necessity for an amendment to the Plan.

**SECTION 4. Internal Revenue Service Approval.** The Plan is subject to obtaining and retaining approval of the Internal Revenue Service that:

- (a) the Plan (including such provisions of the Plan for Supplemental Pensions as continue operative) and Pension Trust are qualified under section 401(a) of the Internal Revenue Code of 1954, as amended ("1954 Code"); and
- (b) the Pension Trust (as successor to the trust under the Plan for Supplemental Pensions) is exempt from tax under section 501(a) of the 1954 Code. Any provision of the Plan to the contrary notwithstanding, the Plan shall be amended, retroactively if necessary or appropriate, in any respect necessary to secure the above-referred-to determinations.

## ARTICLE IX

### **Split Employment-Company, Union, Welfare Trust Fund and or Pension Trust Fund**

**SECTION 1. Retirement and Continuity of Service.** If prior to July 1, 1971, an individual ceased, or if on or after such date an Employee ceases, to be actively employed by the Company by reason of a grant to him by the Company of a leave of absence for his full-time employment by a Union, the Credit Union or by a welfare trust fund or a pension trust fund established by a Union:

- (a) his service with the Company shall not be deemed to have been terminated for purposes of the Plan during the continuance of his full-time employment with the Union, the Credit Union, the welfare trust fund or the pension trust fund; and
- (b) his absence from Company employment because of such full-time employment with the Union, the Credit Union, the welfare trust fund or the pension trust fund shall not constitute a Break in Service.

**SECTION 2. Credited Service.** A Union, the Credit Union, or the trustee or trustees of a welfare trust fund or of a pension trust fund established by a Union, will enter into a written contract with the Board of Managers for the inclusion as Months of Service of full or part-time employment with the Union, the Credit Union, the welfare trust fund or the pension trust fund toward a pension under this Plan for persons who (i) have had such employment directly after 60 calendar months of continuous employment

with the Company, or (ii) have such employment during service with the Company in the case of part-time employees.

When such a contract is entered into, the Months of Service of an individual covered thereby who had been employed by the Company and who thereafter entered employment with the Contracting Union, the Credit Union, welfare trust fund or pension trust fund shall include his Months of Service with the Company and his Months of Service, computed by application of the provisions of Section 4(a)(i) and (ii) of Article I and the last sentence of Section 4(a) of Article I, with the Union, the Credit Union, the welfare trust fund or pension trust fund, provided that in the case of such a contract entered into on or after January 1, 1988, the Months of Service with the Union, the Credit Union, the welfare trust fund or the pension trust fund to which the contract relates shall include only Months of Service on or after the date specified for the purpose in the contract, and the contract shall apply only with respect to individuals in the employ of the Company on or after the date the contract is entered into, including, but not limited to, individuals on a leave of absence for full-time employment by such Union, Credit Union, welfare trust fund or pension trust fund. In the case of individuals who are Employees and who are employed part-time by a Union, the Credit Union, or fund which enters into a contract referred to in this Section 2, the periods of service during a given month with both employers shall be aggregated for purposes of the determination to be made with reference to Article I, Section 4(a)(i). The Compensation of an individual covered by this Section 2 for purposes of computing benefits under this Plan shall be comprised of his Compensation and the Compensation, as determined pursuant to Section 2 of Article I, paid to him in the course of his employment by the Union, the Credit Union, or fund during the Months of Service for which credit is given under the contract as if such employment was with the Company and the payer was the Company. Final Average Base Earnings will be determined in a consistent manner. Retirement, in the case of such an individual, shall mean his separation from the employment of the Company, the Union, the Credit Union, the welfare trust fund and the pension trust fund.

**SECTION 3. Contributions.** A contract referred to in Section 2 of this Article shall require quarterly payments to the Company by the Union, the Credit Union, the welfare trust fund or the pension trust fund as the case may be, for each individual involved as follows:

- (a) For each 12 calendar months of employment after June 30, 1971 and before January 1, 1989, with the Union, the Credit Union, the welfare trust fund or the pension trust fund, 12% of the Compensation (as defined in Section 2 of this Article IX) paid to each such individual by the Union or fund, plus
- (b) For each 12 calendar months of employment before July 1, 1971, with the Union, the Credit Union, the welfare trust fund or the pension trust fund, 6% of the Compensation (as defined in Section 2 of this Article IX) paid to each such individual by the Union or fund for the year ended June 30, 1971. This aggregate amount must be paid to the Company in full not later than January 1, 1972. If a person on behalf of whom the past service payments referred to in this Section are due retires on a pension under this Plan before the payment of the aggregate of the past service payments on his behalf has been completed, the remainder shall be contributed by the time his pension commences.
- (c) Notwithstanding the above, all payments which would have been past due pursuant to Section 3(a) and 3(b) of this Article had participation by the above-described Credit Union employees been permitted from the inception of this Plan, on July 1, 1971, shall be due and payable not later than January 1, 1984 together with interest from the dates they

would have been payable had participation by such Credit Union employees been permitted from the inception of this Plan, compounded annually at the rate of interest actually earned by the pension trust in each year, as calculated by the Company.

- (d) Notwithstanding the above, in the case of a contract entered into on or after January 1, 1988 for the inclusion only of Months of Service with a Union, the Credit Union or a welfare or pension trust fund, subsection 3(a) of this Article IX shall apply by substituting for June 30, 1971 the actual date from which Months of Service are to be included pursuant to the contract, and all payments which would have been required pursuant to such subsection 3(a) for the period on and after that actual date to the date the contract was entered into had the contract in fact been entered into on that actual date shall be due and payable on the date the contract is entered into together with interest from such actual date compounded annually to the date the contract is entered into at the rate of interest actually earned by the pension trust in each year commencing with the year in which the actual date occurs through the end of the year prior to the date the contract is entered into, as calculated by the Company.
- (e) In the event that the payments required by subsections (a) and (b) above are not completed with respect to any person by the time his pension hereunder is to commence, the pension payable to him may be terminated or reduced by the percentage which the payments not then paid bears to the payments required.