

ARTICLE 21

THE LONG ISLAND RAIL ROAD COMPANY

PENSION PROGRAM

PREAMBLE

21.0 The Board of Directors of The Long Island Rail Road Company (hereinafter called "the Company") has approved the following pension plan (hereinafter called "the LIRR 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 LIRR 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 Pensions to continue in fulfillment of this Plan. This action of the Company was not a discontinuance or termination of the Plan for Supplemental Pensions but was an amendment of that plan in its entirety.

The Board of Directors of the Company has subsequently amended the LIRR Plan and the trust agreement thereunder, effective July 26, 2006, to provide that such plan shall be merged into the Metropolitan Transportation Authority Defined Benefit Pension Plan (the "MTA Plan") and to further provide that the trust under the LIRR Plan shall be merged into the trust under the MTA Plan (in each case, "Merger").

By further action, such Board of Directors has amended the LIRR Plan for Additional Pensions ("LIRR Additional Plan") to provide that the MTA Plan Board of Managers of Pensions ("Board of Managers") shall be the administrator for the LIRR Additional Plan and such Board of Directors, by further action, has amended the trust agreement under the LIRR Additional Plan to replace such Trust Agreement with the Master Trust Agreement governing the MTA Plan, as such Master Trust Agreement shall be amended from time to time, and to adopt the Master Trust Agreement.

The Metropolitan Transportation Authority ("MTA"), in order to provide for the Merger and for the LIRR Additional Plan, has amended the MTA Plan by adding the provisions of the LIRR Plan to the MTA Defined Benefit Pension Plan as "Article 21, LIRR Pension Program," as set forth below.

21.1 Definitions

21.1.01 Employee. "Employee" shall mean an individual who is a regular full-time employee of the Company, and who is referred to in Section 21.2.01.

21.1.02 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 paragraph (a)(iii) of Section 21.1.04 of shall be comprised of the Compensation paid to him by the carrier-employer therein referred to, as computed under this Section 21.1.02, as if he were an Employee and the carrier-employer involved was the Company.

21.1.03 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.

21.1.03A. 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 paragraph (a) of this Section 21.1.03A.

21.1.04 Service.

(a) "Month of Service" for an Employee shall mean, prior to the relevant closing date referred to in Section 21.1.04(b) but subject to the last sentence of Section 21.1.04(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:

<u>Craft</u>	<u>Date of Agreement</u>
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 21.1.04(a) to the contrary notwithstanding, and except for purposes of and as provided in Section 21.2.02(d) and Section 21.2.06, 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>Age of Employee</u> <u>in 1970</u>	<u>Closing Date</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 21.1.04(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 21.2.07, 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 provided in Section 21.9.

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 provided in Section 21.9. 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 Section 21.9. 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 21.2.04(e) and in the following subsections of this Section 21.1.04(c).

(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 21.1.04(c), 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 21.1.04(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 21.6.02, 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.

- 21.1.05 Pension Trust. "Pension Trust" shall mean the pension trust provided for in Section 21.4.01.
- 21.1.06 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 Section 21.9.02.
- 21.1.07 Credit Union. "Credit Union" shall mean the LIRR - MTA Employees Federal Credit Union.
- 21.1.08 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.
- 21.1.09 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 21.2.08 as well as, where the context requires, a surviving joint annuitant covered by a survivorship option operative under the Plan for Supplemental Pensions.
- 21.1.10 Service-Age Pension. "Service-Age Pension" shall mean the pension computed under Section 21.2.03.
- 21.1.11 Disability Pension. "Disability Pension" shall mean the pension computed under Section 21.2.05.

- 21.1.12 Board of Managers. “Board of Managers” shall mean the Board of Managers of Pensions provided for in Section 6.01 of Article 6 of the Plan.
- 21.1.13 Code. “Code” shall mean the Internal Revenue Code of 1986, as amended.
- 21.1.14 Joint Board. “Joint Board” shall mean the Joint Board on Pension Applications provided for in Section 21.7.01.
- 21.1.15 Masculine pronouns where used throughout the Plan shall refer to both men and women unless the context indicates otherwise.
- 21.1.16 The titles 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.

21.2 Benefits

21.2.01 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 or “Employees” within the meaning of Section 21.1.01.

21.2.02 Service-Age Pension Eligibility. Except as otherwise provided in Section 21.6.02, 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 21.1.04(a), 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 subdivision (c) or (d) above shall not commence until the individual has attained age 65.

21.2.03 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 subdivision (b) above.

21.2.04 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 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 subdivision 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 Section 21.2.04, 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 Board of Managers 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.

21.2.05 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.

21.2.06 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 21.2.08 is or can be filed, there shall be paid to his designated beneficiary or person otherwise specified in Section 21.3.06, 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 21.1.04(a), which sum shall not exceed \$5,000.

21.2.07 Vested Rights. Except as otherwise herein provided, an Employee who satisfies the requirements in subdivisions (a), (c) or (d) of Section 21.2.02 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 Section 21.2.02 to the Service-Age Pension to which he is entitled, and then only upon receipt of appropriate application therefor.

21.2.08 Survivor Option.

- (a) Each Employee may, subject to the provisions of this Section 21.2.08, 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 subdivision (d) of this Section 21.2.08, 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 21.2.03(a)(ii) and (iii). 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 subdivision (d) of this Section 21.2.08, 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 21.2.03(a)(ii) and (iii). 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 21.2.07 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 21.2.08(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 21.2.08, 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.

21.2.09 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 21.2.09 shall not be applicable after this Article has been terminated or Company contributions hereunder have been discontinued.

21.3 Payment of Benefits

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

21.3.02 Furnishing Information. An applicant for, or recipient of, benefits under this Plan must comply with any reasonable request by the Board of Managers 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 Board of Managers when so requested shall be sufficient basis for the Board of Managers to deny benefits under this Plan.

21.3.03 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 21.2.08. Notwithstanding any other provision of this Article 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.

21.3.04 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.

- 21.3.05 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 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.
- 21.3.06 Missing Recipients. If a person having a right to the payment of benefits under this Article 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.

21.4 Incorporation and Merger of Trusts

- 21.4.01 Incorporation and Merger of Trusts. The trust established by the Company on September 30, 1967, in accordance with the Plan for Supplemental Pensions and subsequently continued as the Pension Trust for the exclusive purpose of fulfilling the LIRR Company Pension Plan shall be replaced by the Master Trust Agreement governing the Plan, as provided in Article 7 hereof, as the Master Trust Agreement shall be amended from time to time, and the funds from the LIRR trust established by the Company on September 30, 1967, shall be incorporated into the Master Trust now including the MTA Plan Trust.

21.5 Plan for Supplemental Pensions

- 21.5.01 Supersedure of Plan for Supplemental Pensions. The provisions of the Article for Supplemental Pensions are hereby superseded by the provisions of this Article, 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 Board of Managers 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.

- 21.5.02 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 21.01 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 Board of Managers 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 Board of Managers not to receive any benefits under that plan, whichever is later.

- 21.5.03 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 21.5.01, he or a person claiming as his beneficiary or Surviving Annuitant is to receive no benefits under this Article.
- 21.5.04 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 Article and under the terms of the Plan for Supplemental Pensions.

21.6 Contributions

21.6.01 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 Article.
- (c) Forfeitures arising for any reason under this Plan shall not be applied to increase the benefits that any Employee would otherwise receive hereunder but shall be used to reduce the Company's contributions.

- 21.6.02 Refund of Employee Contributions. Contributions made by an Employee pursuant to subdivision (a) of Section 21.6.01, 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 Section 21.2.07, or has not met the eligibility requirements for a Disability Pension under Section 21.2.04, 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 Section 21.2.08 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 subdivision (a) or (e) of this Section 21.6.02 and had not at the time of his death been the recipient of a Disability Pension under Section 21.2.04, or a Service-Age Pension under Section 21.2.02, and with respect to whom no survivor option under Section 21.2.08, 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 Section 21.2.08, in a situation where at the time of the spouse's death, the spouse had not met the requirements of Section 21.2.08(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 Section 21.2.07 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 Section 21.2.07 and with respect to whom an effective survivor option under Section 21.2.08 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 21.6.02 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 21.6.02 or in respect of an Employee or former Employee, neither 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 21.2.06) under this Article.

- 21.6.03 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 21.2 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.

- 21.6.04 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.

21.7 Administration

- 21.7.01 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 Board of Managers within thirty (30) calendar days of the date of receipt of notice of the deadlock by the Joint Board.

- 21.7.02 Board of Managers. This Article shall be administered by the Board of Managers of Pensions as provided in Article 6 of the Plan, except to the extent provided in Section 21.7.01.

21.8 Amendment and Termination

- 21.8.01 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.

21.8.02 Termination. In case of termination of this Article, 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 Section 21.2.06, or Section 21.6.02, to which entitlement arose prior to the termination of the Plan.
- (b) Payment of refunds referred to in Section 22.6.02(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.

21.8.03 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 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 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.

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

21.9.01 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

21.9.02 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 Sections 21.1.04(a)(i) and (ii) and the last sentence of Section 21.1.04(a), 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 21.9.02, 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 Section 21.1.04(a)(i). The Compensation of an individual covered by this Section 21.9.02 for purposes of computing benefits under this Plan shall be comprised of his

Compensation and the Compensation, as determined pursuant to Section 21.1.02, 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.

21.9.03 Contributions. A contract referred to in Section 21.9.02 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 21.9.2) 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 21.9.02) 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 21.9.03(a) and 21.9.03(b) 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, Section 21.9.03(a) 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 Section 21.9.03(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 subdivisions (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.

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