

**M.M.& P. INDIVIDUAL RETIREMENT ACCOUNT PLAN**

**FOURTH RESTATED REGULATIONS**

Revised: March 9, 2022  
(Through Amendment #16)

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**M.M.& P. INDIVIDUAL RETIREMENT ACCOUNT PLAN**  
**FOURTH RESTATED REGULATIONS**

The following Regulations governing the M.M. & P. Individual Retirement Account Plan are hereby promulgated and established by the Trustees thereof, pursuant to the Agreement and Declaration of Trust Establishing the M.M.& P. Individual Retirement Account Plan.

**ARTICLE I**

**DEFINITIONS**

**Section 1.01 Trust Agreement**

"Trust Agreement" shall mean the Agreement and Declaration of Trust establishing the M.M.& P. Individual Retirement Account Plan including any subsequent amendments and modifications thereof.

**Section 1.02 Plan**

The term "Plan," "Individual Retirement Account Plan," "I.R.A.P." or "M.M.& P. Individual Retirement Account Plan," as used herein, shall mean the Regulations set forth herein providing for the administration, accumulation of assets, disposition of assets, investment of assets and payment of benefits of a Defined Contribution Pension Plan.



**M.M.& P. INDIVIDUAL RETIREMENT ACCOUNT PLAN**  
**FOURTH RESTATED REGULATIONS**  
**ARTICLE I**  
**DEFINITIONS**

**Section 1.03 Trustees**

The term "Trustees," as used herein, shall mean the Board of Trustees established by the M.M.& P. Individual Retirement Account Plan Trust Agreement and the persons who at any time are acting in such capacity pursuant to the provisions of the Trust Agreement.

**Section 1.04 Organization**

The term "Organization," as used herein, shall mean the International Organization of Masters, Mates and Pilots, AFL/CIO.

**Section 1.05 Employers**

The term "Employers" shall mean various Employers of Participants working under the provisions of a Collective Bargaining Agreement with the Organization, and Employers who have executed a Participation Agreement with the Organization requiring that contributions be made on behalf of Participants.

The term "Employer" shall also be deemed to be an M.M.& P. Fund, Plan or Committee, or the Organization, and any other Employer from whom the Trustees mutually agree that contributions may be accepted, who are not covered by a Collective Bargaining Agreement or Participation Agreement.

**M.M.& P. INDIVIDUAL RETIREMENT ACCOUNT PLAN**  
**FOURTH RESTATED REGULATIONS**  
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**Section 1.06 Participant**

The term "Participant" shall mean an individual who is employed in Covered Employment under the provisions of a Collective Bargaining Agreement or whose Employer has executed a Participation Agreement with the Organization providing for contributions to the M.M.& P. Individual Retirement Account Plan.

The term "Participant" shall also include an individual employed by an M.M.& P. Fund, Plan or Committee, or the Organization, or any other Employer or individual for whom the Trustees and the Employer mutually agree that contributions may be accepted, who are not covered by a Collective Bargaining Agreement and who have not voluntarily waived the right to Employer Contributions under the Plan at the time of his hiring.

The term "Participant" shall also mean an "Active Participant" as defined in Section 1.07, and an "Inactive Participant" as defined in Section 1.08.

**Section 1.07 Active Participant**

An "Active Participant" shall mean a Participant who has not experienced a One-Year Break in Service as defined in Article IV, Section 4.03 of these Regulations, or who has repaired a One-Year Break in Service.

**Section 1.08 Inactive Participant**

An "Inactive Participant" shall mean (i) for purposes of a Participant employed in a shoreside position, a Participant who is not employed in Covered Employment and who has a fully (100%) vested interest in the Employer Contributions made on the individual's behalf to this Plan, and (ii) for purposes of a Participant employed in the maritime industry, a Participant who has

**M.M.& P. INDIVIDUAL RETIREMENT ACCOUNT PLAN**  
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**Section 1.08 Inactive Participant** (Continued)

experienced a One-Year Break in Service or Permanent Break in Service and who has a fully (100%) vested interest in the Employer Contributions made on the Participant's behalf to this Plan.

**Section 1.09 Accumulated Share**

The term "Accumulated Share" as used herein, shall mean the individual account established for each Participant pursuant to this Plan.

**Section 1.10 Valuation Date**

The term "Valuation Date," as used herein, shall mean the last business day of each calendar year.

**Section 1.11 Retirement**

The term "Retirement," as used herein, shall mean receipt of a pension benefit pursuant to the Regulations of an M.M.& P. Pension Plan, as defined in Section 1.17 of Article I, or from a governmental entity, and permanent withdrawal from the Maritime Industry, both ashore and afloat, as may be determined by the Trustees.

Effective October 1, 2006, for purposes of the payout of his Accumulated Share under Section 6.03(a), an Active Participant shall be treated as retired under the preceding sentence even though he is employed ashore in the Maritime Industry, provided that (a) such employment is not Covered Employment and (b) he has been a Participant for at least sixty (60) months.

Effective June 1, 2014, for purposes of the payout of his Accumulated Share under Section 6.03(a), an Active Participant shall be treated as retired under the first sentence of this Section if he is unable to sail under his license on account of his temporary or permanent disability, as determined by the United States Coast Guard.

**M.M.& P. INDIVIDUAL RETIREMENT ACCOUNT PLAN**  
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**Section 1.11 Retirement** (Continued)

Effective October 1, 2014, for purposes of the payment of his Accumulated Share under Sections 6.03(a) or 6.03(c), an Active or Inactive Participant shall be treated as retired under the first sentence of this Section if he transfers to a position in another membership group in the Organization that is not Covered Employment even if he is working aboard a vessel.

**Section 1.12 Annuitant**

The term "Annuitant," as used herein, shall mean a Participant who receives a benefit from this Plan.

**Section 1.13 Asset Value**

The term "Asset Value," as used herein, shall mean the value of the assets which takes into account fair market value. Insurance company fixed income accounts, in which the principal is guaranteed at cost, shall be valued at cost value.

**Section 1.14 Plan Year**

The term "Plan Year," as used herein, shall mean the fiscal year ending December 31.

**Section 1.15 Normal Retirement Age**

The term "Normal Retirement Age" shall mean the age of 65, or, if later, the tenth anniversary of the time a Plan Participant commenced participation in the Plan.

Effective January 1, 1988, the term "Normal Retirement Age" shall mean the age of 65, or, if later, the fifth anniversary of the time a Plan Participant commenced participation in the Plan. For this definition, periods of service prior to the effective date of this section shall be disregarded in determining a Participant's fifth anniversary.

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**DEFINITIONS**

**Section 1.15 Normal Retirement Age** (Continued)

Notwithstanding anything in this Section 1.15 to the contrary, a Participant will attain Normal Retirement Age upon the earlier of the above two paragraphs.

Effective January 1, 1991, for any Inactive Participant who is not eligible to become a Participant of the M.M.& P. Pension Plan, and for any Active Participant, the term "Normal Retirement Age" shall mean the age of 60, or if later, the fifth anniversary of participation.

**Section 1.16 Covered Employment**

The term "Covered Employment" shall mean employment for which an Employer agrees to contribute to the Plan.

**Section 1.17 M.M.& P. Pension Plan**

The term "M.M.& P. Pension Plan" shall mean any pension plan established by the Organization and various Employers for participation by Participants represented for collective bargaining by the Organization. The term "M.M.& P. Pension Plan," for the purpose of this Plan, shall also be any other private or governmental pension plan in which the member is a Participant as a result of employment as an M.M.& P. member either by a private enterprise or by a foreign or domestic governmental agency.

**Section 1.18 Rollover Contributions**

The term "Rollover Contribution" means an amount transferred to the Trust Fund that constitutes: (a) an eligible rollover distribution described in Section 402(c)(4), 403(b)(8) or 457(b)(16) of the Internal Revenue Code of 1986, (b) a distribution from a designated Roth account described in Section 402A(3)(A) of the Code, or (c) a distribution described in Section 408(d)(3)(A)(ii) of the Code from an individual retirement account or an individual retirement

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**Section 1.18 Rollover Contributions** (Continued)

annuity (not including any portion of the distribution that would be excludible from gross income if distributed directly to the Participant). The Trustees are authorized to accept Rollover Contributions from any Participant. The acceptance of any Rollover Contribution is conditioned upon the Participant's agreement to be solely responsible for any legal or tax implications of either acceptance or distribution by the Plan. A Participant who makes a Rollover Contribution to the Plan may elect to designate it as a Roth Contribution. Rules applicable to the Roth Contribution following this designation are set forth in Section 1.32 of the 401(k) Arrangement.

**Section 1.19 Employer Contributions**

Employer Contributions shall be made to this Plan in amounts or according to rates as specified in the various Collective Bargaining Agreements with the Organization or Participation Agreements or other forms of mutual agreement between the Trustees and the particular Employer.

Employer Contributions shall be allocated to the Accumulated Shares of Participants in accordance with the provisions of the agreements under which they are made, which are to that extent incorporated by reference into this Plan. The Trustees will not accept contributions under any agreement that does not include a predetermined allocation formula for contributions.

**Section 1.20 Highly Compensated Employee**

- (a) For Employees who are not covered by a collective bargaining agreement, the term "Highly Compensated Employee" includes Highly Compensated Active Employees and Highly Compensated Former Employees of an Employer. Whether an individual is a Highly Compensated Employee is determined separately with respect to each Employer, based solely on that individual's compensation from or status with respect to that Employer.

**M.M.& P. INDIVIDUAL RETIREMENT ACCOUNT PLAN**  
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**Section 1.20** **Highly Compensated Employee** (Continued)

- (b) Effective for years beginning after December 31, 1996, the term "Highly Compensated Employee" means any Employee who (1) was a 5% owner at any time during the year or the preceding year, or (2) for the preceding year had compensation, within the meaning of section 415(c)(3) of the Code, from an Employer in excess of \$80,000.

**Section 1.21** **Non-Highly Compensated Employee**

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

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**ACCUMULATED SHARES**

**Section 2.01 Accumulated Share**

- (a) The Trustees shall maintain a record of each Participant's interest in the Trust Fund, such interest to be referred to as his Accumulated Share. All contributions (except as noted in Section 3.01. of Article III) made on behalf of the Participant shall be credited to the Participant's Accumulated Share.

Prior to January 1, 1989, an additional 1% of Employer contributions shall be credited to such Employee's Accumulated Share on each valuation date subsequent to December 31, 1980 by reason of anticipated forfeitures arising from severance of employment, loss of eligibility, death, or otherwise of other Participants.

- (b) The records maintained by the Trustees shall identify the portion of his Accumulated Share attributable to the contributions made on his behalf by an Employer and to the portion of his Accumulated Share attributable to the Participant's own voluntary contributions. A Participant's Accumulated Share shall not include any portion attributable to Employer contributions which has been forfeited by him or any portion which has been withdrawn from the Fund to effect a distribution or return of his own voluntary contributions.



**M.M.& P. INDIVIDUAL RETIREMENT ACCOUNT PLAN**  
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**Section 2.02 Year End Valuation**

**For Plan Years Prior to 1989**

The Individual Retirement Account Plan assets shall be valued by the Trustees at Asset Value as of each December 31. Prior to allocating the investment yield to the Accumulated Shares, the Trustees shall deduct any reserves attributable to forfeitures in excess of the 1% of Employer contributions noted in Section 2.01(a) above plus administrative expenses.

**For Plan Years After 1988**

The Individual Retirement Account Plan assets shall be valued by the Trustees at Asset Value as of each December 31. Prior to allocating the investment yield, investment related expenses shall be subtracted from the total investment yield.

**Section 2.03 Investment Yield and Expense Allocation**

**For Plan Years Prior to 1989**

The annual investment yield (reflecting either net gains or net losses) shall be allocated as of each Valuation Date to each Accumulated Share in the same proportion that such Accumulated Share bears to the total of all Accumulated Shares that had been maintained in the Fund since the previous Valuation Date. Administration expenses of the Plan shall be determined and deducted on an individual account basis uniformly applied regardless of the amount in each Accumulated Share.

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**Section 2.03 Investment Yield and Expense Allocation** (Continued)

**For Plan Years After 1988 but Before 1990**

The annual investment yield (reflecting either net gains or net losses, less investment expenses) plus all forfeitures resulting from severance of employment, loss of eligibility, death, or otherwise of other Participants, shall be allocated as of each Valuation Date to each Accumulated Share in the same proportion that such Accumulated Share bears to the total of all Accumulated Shares that had been maintained in the Fund since the previous Valuation Date. Administration expenses of the Plan shall be deducted on an individual account basis uniformly applied regardless of the amount in each Accumulated Share.

**For Plan Years After 1989**

The annual investment yield (reflecting either net gains or net losses, less administration expenses allocable to the Managed Fund) shall be allocated as of each Valuation Date to each Accumulated Share that had been maintained in the Fund since the previous Valuation Date. Effective January 1, 2004, reasonable expenses associated with determining the qualified status of a domestic relations order (QDRO) shall be specifically charged against the account of the Participant or alternate payee seeking the determination (as determined after segregation of amounts pursuant to the QDRO) and therefore shall be reflected in the value of the Accumulated Share of the Participant or alternate payee, as applicable.

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**ACCUMULATED SHARES**

**Section 2.03 Investment Yield and Expense Allocation** (Continued)

Effective January 1, 2011, if owing to rounding errors or other discrepancies that cannot feasibly be corrected without undue cost to the Plan, the total Asset Value determined under Section 2.02 differs from the sum of the values of the Accumulated Shares following the foregoing allocation, the excess or deficiency shall be used to reduce or increase the Plan's administrative expenses for the Plan year.

Effective January 1, 2014, the Plan will deduct up to 1% of each Accumulated Share with a maximum amount of \$60.00 per calendar quarter to the date of distribution of the Participant's Accumulated Share.

Effective January 1, 2017, and for the Plan's subsequent calendar years, each Accumulated Share shall be charged with a portion of the Plan's administrative expenses, to be approved by the Trustees based on the recommendation of the Plan Office, which will include all expenses and fees of the Plan. The portion of the administrative expenses is to be charged to each Accumulated Share and will be deducted on a quarterly basis at the beginning of each quarter.

**Section 2.04 Reduction of Accounts**

In no event shall the total Accumulated Shares, plus amounts established for expenses and reserves of the Fund, exceed the total assets of the Fund. If such an event should occur, the portion of each Participant's Accumulated Share attributable to Employer contributions shall be reduced proportionately by the Trustees so that the said total does not exceed the total Fund assets (including expenses and reserves). Notwithstanding the preceding sentence, effective with respect to Accumulated Shares existing on December 31, 1985, and with respect to which a Participant who retired at any time during the Plan Year ending December 31, 1985 and requested that payment not

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**Section 2.04 Reduction of Accounts** (Continued)

be made until after the Valuation Date for such Plan Year (in accordance with Section 6.01), the amount of a Participant's Accumulated Share attributable to Employer contributions shall be the amount determined as of the Valuation Date immediately preceding the Participant's application for benefits, plus the nonforfeitable percentage of any Employer contributions or voluntary employee contributions made during the 1985 Plan Year.

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**ARTICLE III**  
**VOLUNTARY EMPLOYEE CONTRIBUTIONS**

**Section 3.01 Authorization**

Subject to the limitations imposed by Article VIII, Section 8.07, any Participant may make voluntary contributions to the Fund by signing and delivering to an M.M.& P. representative for transmittal to the administrative office a revocable authorization to receive from the M.M.& P. Vacation Fund or other source, an amount not greater than 10% of his total compensation received from Employers, including the balance available from prior years beginning July 1, 1979, that had not been contributed or had been withdrawn. Amounts received pursuant to such authorization during calendar years subsequent to 1980 shall be maintained apart from the balance of the Fund with any resultant investment yield attributable to the amounts fairly distributed, as determined by the Trustees, among the individual contributions as of the end of each calendar year. After the crediting of such investment yield each of these voluntary shares shall be credited to each Participant's Accumulated Share as of the first day of each January following the year in which received. Any reference in this Plan to withdrawal or payment of Participant or voluntary contributions shall include those contributions referred to above that were received during the calendar year but not credited to the Accumulated Share. Any participant may also make contributions directly to the Plan in cash or by other authorized monetary instrument, and/or may make contributions as described in Article IV, Section 4.02(e) as provided that in the aggregate, whether by authorization or by direct contributions, a contribution of no more than the maximum amount allowable under the Internal Revenue Code may be made.

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**VOLUNTARY EMPLOYEE CONTRIBUTIONS**

**Section 3.02 Full Vesting of Participant Contributions**

That portion of a Participant's Accumulated Share attributable to his voluntary contributions including the earnings thereon shall always be fully vested.

**Section 3.03 Withdrawal of Participant Contributions**

- (a) Subject to the provisions of subsection (b) below, a Participant may as of the first day of any month, withdraw all or part of that portion of his Accumulated Share consisting of his own voluntary contributions including the investment yield, which yield shall always be 100% vested, by filing a request for such withdrawal with the Plan at least one month before such withdrawal. No such request may be denied. However, if voluntary contributions are made to restore a break or provide a year of vesting service and such contributions are withdrawn, the Participant will incur the Break and/or lose Vesting Service Credit. In order to minimize administrative expenses, Participants may not make any additional voluntary contributions for one year following the date of such withdrawal.
- (b) A married Participant wishing to withdraw all or part of his own voluntary contributions may do so only with the written consent of his Spouse (as defined in Section 7.01 (d)) where the Spouse acknowledges the effect of the withdrawal and consents to it in writing witnessed by a notary public.

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**Section 3.04 Actual Contribution Percentage Test**

- (a) The "Actual Contribution Percentage" for the Highly Compensated Employees shall not exceed the greater of:
- (1) 125 percent of such percentage for the Non-Highly Compensated Employees; or
  - (2) the lesser of 200 percent of such percentage for the Non-Highly Compensated Employees, or such percentage for the Non-Highly Compensated Employees plus 2 percentage points. However, to prevent the multiple use of the alternative method described in this paragraph and Code Section 401(m)(9)(A), any Highly Compensated Employee eligible to make elective deferrals pursuant to any cash or deferred arrangement maintained by the Employer or an Affiliated Employer and to make Employee contributions under this Plan or any plan maintained by the Employer or Affiliated Employer shall have his voluntary employee contributions made pursuant to this Article III reduced pursuant to Treasury Regulation 1.401(m)-2 and any subsequent Internal Revenue Service guidance issued thereunder. The provisions of Code Section 401(m), Treasury Regulations 1.401(m)-1(b) and 1.401(m) - 2 and any subsequent Internal Revenue Service guidance issued thereunder, are incorporated herein by reference. The multiple use test described in Treasury Regulation section 1.401(m)-2 shall not apply to this Plan for Plan Years beginning after December 31, 2001.

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**Section 3.04 Actual Contribution Percentage Test** (Continued)

- (b) The Average Contribution Percentage test shall be performed each year in accordance with Code Section 401(m)(2) and Treasury Regulation Section 1.401(m)-1, which are hereby incorporated by reference, using the current year testing method. Separate tests shall be performed for Voluntary Contributions made by Participants who are not covered by any collective bargaining agreement and who are employed by each other Employer (applying the aggregation rules of Sections 414(b), (c) and (m) of the Internal Revenue Code) that participates in the Plan.

**Section 3.05 Adjustment to Actual Contribution Percentage Tests**

- (a) In the event that the "Actual Contribution Percentage" for the Highly Compensated Employees exceeds the maximum Actual Contribution Percentage permitted pursuant to Section 3.04(a), the Trustees (on or before the fifteenth day of the third month following the end of the Plan Year, but in no event later than the close of the following Plan Year) shall distribute voluntary employee contributions made pursuant to this Article III (and income allocable to such contributions) on behalf of Highly Compensated Employees in accordance with Section 401(m)(6) of the Code, the regulations thereunder, and any subsequent Internal Revenue Service guidance issued thereunder.
- (b) Any distribution of less than the entire amount of Excess Aggregate Contributions (and income) shall be treated as a pro-rata distribution of Excess Aggregate Contributions and



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**Section 3.05** **Adjustment to Actual Contribution Percentage Tests** (Continued)

income. Distribution of Excess Aggregate Contributions shall be designated by the Employer as a distribution of Excess Aggregate Contributions (and income).

- (c) The determination of the amount of Excess Aggregate Contributions with respect to any Plan Year shall be made after first determining the Excess Contributions (as defined in Treasury Regulation 1.401(k)-1(g)(13)), if any, to be treated as voluntary Employee contributions due to re-characterization for the plan year of any qualified cash or deferred arrangement (as defined in Code Section 401(k)) maintained by the Employer that ends with or within the Plan Year.
- (d) Notwithstanding the above, within twelve (12) months after the end of the Plan Year, the Employer may make a qualified non-elective contribution (as defined in Code Section 401(m)(4)(C)) on behalf of Non-Highly Compensated Employees in an amount sufficient to satisfy one of the tests set forth in Section 3.04(a). Such contribution shall be allocated to the Employee's Account of each Non-Highly Compensated Employee in the same proportion that each Non-Highly Compensated Employee's Compensation for the year bears to the total Compensation of all Non-Highly Compensated Employees. A separate accounting shall be maintained with respect to such contributions.

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**Section 3.06**   **Employees Covered by Collective Bargaining Agreements**

Sections 3.04 and 3.05 do not apply to employees covered by collective bargaining agreements or to employee contributions made by such employees.

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**Section 4.01 Vesting Service Credits - Service Prior to July 1, 1979**

A Participant on whose behalf contributions were obligated to be made to the M.M.& P. Pension Plan by a participating Employer during 1978-1979 shall be granted Vesting Service Credit for that period as follows:

Such a Participant shall receive one day of Vesting Service Credit for each day for which he receives pension credit in the M.M.& P. Pension Plan for the period from June 16, 1978 through December 31, 1978. For such period, 90 days of Vesting Service Credit shall constitute one year of Vesting Service. A Participant shall also receive one day of Vesting Service Credit for each day for which he received pension credit in the M.M.& P. Pension Plan from January 1, 1979 through June 30, 1979, which credit shall be added to the credit granted for the period July 1, 1979 through December 31, 1979, as described below in determining the credit granted for the calendar year 1979.

**Section 4.02 Vesting Service Credits On and After July 1, 1979**

A Participant, for periods on and after July 1, 1979, shall be granted one year of Vesting Service Credit for each calendar year in which either Employer contributions are obligated to be made or voluntary contributions are actually made on his behalf for at least 90 Days of Service, or for which credit is otherwise given as described below. For this purpose, a Day of Service shall mean any of the following:

- (a) A day for which a Participant is directly or indirectly paid, or entitled to such payment, by the Employer for the performance of duties during days of actual employment, as well as days of paid vacation, and days of paid disability.

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**Section 4.02 Vesting Service Credits On and After July 1, 1979** (Continued)

- (b) A day for which back pay, irrespective of mitigation of damages, has been either awarded or agreed to by the Employer. These days shall be credited to the Participant for the calendar year to which the award or agreement pertains.
- (c) If a Participant works for an Employer in a job not covered by this Plan and such work immediately precedes or follows his employment with the Employer in Covered Employment, his days of employment in such non-covered job during the contribution period to this Plan and while he continued as an Employee of the Employer shall be counted toward a year of Vesting Service Credit.
- (d) If an Employer ceases to have an obligation to contribute to this Plan and concurrently becomes obligated or previously had been and remains obligated to contribute to another defined contribution or other pension plan under the terms of a collective bargaining agreement with the Organization, the employees of such Employer for whom contributions were made by the Employer to this Plan shall continue to receive Vesting Service Credit based on Days or Hours of Service with that same Employer for which contributions are made to such other plan.
- (e) A day for which voluntary contributions are made by the Participant to the Individual Retirement Account Plan. A Participant making voluntary contributions solely for the purpose of earning days of Vesting Service Credit and/or to avoid a Break in Service, subject to Article VIII, Section 8.07, shall remain available for employment and shall make such contributions through the Organization which shall transmit them to the Plan on a form designated by the Trustees. Such contributions

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**Section 4.02 Vesting Service Credits On and After July 1, 1979** (Continued)

(e) (Continued)

must be made within the period of six (6) months after the Plan Office sends the Participant a notice that he has incurred a Break and/or has insufficient days of Vesting Service. The amount of the voluntary contribution accepted by the Organization for transmittal to the Plan shall be \$5.00 per day. Availability for employment shall be evidenced by such factors as maintenance of membership in the Organization or inclusion on an M.M.& P. shipping list. Exceptions may be made for Participants unavailable for employment solely because of disability.

(f) Time associated with a leave of absence due to military service to the extent required by Federal Law.

**Section 4.03 Breaks in Service**

Notwithstanding any provision below to the contrary, an Employee who is not covered by a collective bargaining agreement and has at least one day of service in Covered Employment after December 31, 1988 who has earned at least five (5) Years of Vesting Service, is immune from a Break-in-Service.

In addition, a Participant who has at least one day of service in Covered Employment on or after December 31, 1989 and who has earned at least five (5) years of Vesting, is immune from a Break-in-Service.

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

A Participant has a One-Year Break in Service in any calendar year in which he fails to complete 62 days of Vesting Service as defined in Section 4.02 above. On

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**Section 4.03 Breaks in Service** (Continued)

(a) **One-Year Break in Service** (Continued)

or after January 1, 1987, a One-Year Break in Service is repairable if, before incurring a Permanent Break in Service, the Participant subsequently earns one year of Vesting Service Credit. A Participant may make voluntary contributions solely for the purpose of earning days of Vesting Service Credit to avoid a Break in Service but only for a year which immediately follows a year in which there was no Break in Service and only to the extent allowed pursuant to Article VIII, Section 8.07. A Participant will not be permitted to avoid a Break in Service by making voluntary contributions if he incurred a Break in Service in the immediately preceding calendar year or years. A Participant choosing to make voluntary contributions to avoid incurring a Break in Service shall remain available for employment and shall make such contributions through the Organization which shall transmit them to the Plan on a form designated by the Trustees. Such contributions must be made within the period of six (6) months after the Plan Office sends the Participant a notice that he has incurred a Break and/or has insufficient days of Vesting Service. The amount of the voluntary contribution accepted by the Organization for transmittal to the Plan shall be \$5.00 per day.

Availability for employment shall be evidenced by such factors as maintenance of Membership in the Organization or inclusion on an M.M.& P. shipping list. Exceptions may be made for Participants unavailable for employment solely

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**Section 4.03 Breaks in Service** (Continued)

(a) **One-Year Break in Service** (Continued)

because of disability. Notwithstanding anything above to the contrary, Participants shall be immune from a One-Year Break in Service for each of the two Plan Years beginning January 1, 1990 and January 1, 1991.

(b) **Permanent Break in Service**

A Participant who has earned less than 15 years of Vesting Service has a Permanent Break in Service if he has five consecutive One-Year Breaks in Service beginning on or after January 1, 1987. Prior to January 1, 1987, a Participant has a Permanent Break in Service upon his incurring a One-Year Break in Service.

For Plan Years after December 31, 1988, a Participant who has earned five (5) or fewer years of Vesting Service has a Permanent Break in Service if he has five consecutive One-Year Breaks in Service beginning on or after January 1, 1989.

A Participant who has earned six but less than ten years of Vesting Service has a Permanent Break in Service if he has a number of consecutive One-Year Breaks that equal or exceed the number of Years of Vesting Service with which he has been credited.

For Plan Years after December 31, 1989, a Participant who has earned less than five years of Vesting Service has a Permanent Break in Service if he has five consecutive One-Year Breaks in Service beginning on or after January 1, 1990.

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**Section 4.03 Breaks in Service** (Continued)

(b) **Permanent Break in Service** (Continued)

Notwithstanding the above, a Participant who has either (i) accumulated at least two (2) years of Vesting Service Credit as of January 1, 1993 and has not retired from the Plan, or (ii) has accumulated at least two (2) years of Vesting Service Credit after January 1, 1993 shall be fully vested in that portion of his Accumulated Share and shall be immune from a Permanent Break in Service.

(c) **Exceptions to a One-Year Break in Service**

A Participant shall not incur a One-Year Break in Service for any year;

- (i) In which he undertakes employment which generates contributions from the Employer to any M.M.& P. "Benefit" Plan including, but not limited to, contributions to the M.M.& P. Pension Plan, the M.M.& P. Health & Benefit Plan, the M.M.& P. M.A.T.E.S. Program, the M.M.& P. Joint Employment Committee or the Maritime Institute for Research and Industrial Development (MIRAID).
- (ii) In which such Participant is unable to undertake Covered Employment by reason of (a) her pregnancy, (b) birth of a child of the Participant, (c) placement of a child with the Participant in connection with his or her adoption of the child, or (d) care for such child for a period beginning immediately after such birth or placement. The days of Vesting Service that otherwise would normally have been credited to such Participant but for such absence, shall be treated as days of Vesting Service to a maximum or



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**Section 4.03 Breaks in Service** (Continued)

(c) **Exceptions to a One-Year Break in Service** (Continued)

(ii) (Continued)

62 days for each such pregnancy, childbirth, or placement. The days of Vesting Service so credited shall be applied to the year in which such absence begins if doing so will prevent the Participant from incurring a One-Year Break in Service; otherwise they shall be applied to the immediately following year. The Trustees shall require, as a condition for granting such credit, that the Participant establish in a timely fashion and to the satisfaction of the Trustees that the Participant is entitled to such credit. Any credit granted pursuant to this subparagraph shall be used solely as a grace period to avoid incurring a One-Year Break in Service and shall not be counted as Covered Employment for purposes of increasing a Participant's accumulated years of Vesting Service. This subparagraph shall apply only to absences that begin on or after January 1, 1987.

(iii) **Leave under the Family and Medical Leave Act**

Effective February 5, 1994, periods of absence under the Family and Medical Leave Act shall be counted as a grace period to the extent required under Department of Labor Regulation §825.215 (d)(4) and will not count toward a Break in Service.

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**Section 4.03 Breaks in Service** (Continued)

(c) **Exceptions to a One-Year Break in Service** (Continued)

- (iv) In which he undertakes employment as a Licensed Pilot in any American Port or the Panama Canal Zone while remaining available for employment as a member of the Organization.

**Section 4.04 Special Rule Regarding Organizing**

Notwithstanding any other provisions herein regarding the granting of Vesting Service Credit, the Trustees shall grant Vesting Service Credit to Participants for employment with an Employer prior to the date the Employer first contributed to the Plan where the commencement of the Participant's participation in the Plan resulted from the Employer first becoming a participating Employer after the commencement of employment.

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**Section 5.01 Percent Non-forfeitable**

**(a) Voluntary Contributions**

Voluntary contributions by all Participants, including monies earned thereon are 100% vested and non-forfeitable.

**(b) Employer Contributions**

**(i) Active Participants**

When an Active Participant's participation in this Plan is terminated by either:

- (1)** Retirement, as defined in Article I, Section 1.11; or
- (2)** Disability, but only upon receipt of Social Security Disability Award; or
- (3)** Death,

100% of that portion of his Accumulated Share attributable to Employer contributions (adjusted for monies earned thereon or for losses) shall be fully vested and non-forfeitable regardless of the actual number of years of Vesting Service Credit.

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**Section 5.01 Percent Non-forfeitable** (Continued)

(b) **Employer Contributions (Continued)**

(ii) **Inactive Participants**

Prior to January 1, 1989, an Inactive Participant shall be vested in that portion of his Accumulated Share attributable to Employer contributions in accordance with the following schedule and upon attainment of Normal Retirement Age, as defined in Article I, Section 1.15, shall be eligible to receive the vested portion of his Accumulated Share, if he meets the applicable requirements in Article VI.

<u>Years of Vesting Service</u>	<u>Percent Vested</u>
5	25%
6	30
7	35
8	40
9	45
10	50
11	60
12	70
13	80
14	90
15 or more	100

For Plan Years after December 31, 1988, an Inactive Participant who has at least one day of service in Covered Employment on or after January 1, 1989, shall be vested in that portion of his Accumulated Share attributable to Employer contributions in accordance with the following schedule and upon attainment of

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**Section 5.01 Percent Non-forfeitable** (Continued)

(b) **Employer Contributions** (Continued)

(ii) **Inactive Participants** (Continued)

Normal Retirement Age, as defined in Article I, Section 1.15, and shall be eligible to receive the vested portion of his Accumulated Share, if he meets the applicable requirements in Article VI.

<u>Years of Vesting Service</u>	<u>Percent Vested</u>
5	25%
6	30
7	35
8	40
9	45
10	100

For Plan Years after December 31, 1989, an Inactive Participant who has at least one day of service in Covered Employment on or after January 1, 1990 shall have a non-forfeitable right to his benefit and become fully vested in that portion of his Accumulated Share attributable to Employer contributions, after accumulating at least five (5) Years of Vesting Service Credit.

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**Section 5.01 Percent Non-forfeitable** (Continued)

(b) **Employer Contributions** (Continued)

(ii) **Inactive Participants** (Continued)

Notwithstanding the above, a Participant who is not covered by a collective bargaining agreement and who has at least one day of service in Covered Employment after December 31, 1988, shall have a non-forfeitable right to his benefit and become fully vested in that portion of his Accumulated Share attributable to Employer contributions, after accumulating at least five (5) Years of Vesting Service Credit.

- (iii) Notwithstanding anything in Subsections (i) or (ii) above to the contrary, a Participant shall become fully vested in that portion of his Accumulated Share attributable to Employer contributions, upon the attainment of Normal Retirement Age except to the extent all or a portion of his Accumulated Share is forfeited due to Breaks in Service as provided in Sections 4.03 and 5.02.

(c) **Certain Pacific Maritime Region Participants**

Notwithstanding anything in this Article to the contrary, certain employees of the Pacific Maritime Region who either rolled over contributions into this Plan, or had contributions made on their behalf before January 1, 1982, shall be fully vested in that portion of their Accumulated Share attributable to these amounts as well as Employer contributions for subsequent employment.

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**Section 5.01 Percent Non-forfeitable** (Continued)

- (d) A Participant who has accumulated at least two (2) years of Vesting Service Credit and has not retired as of January 1, 1993 or accumulates at least two (2) years of Vesting Service Credit after such date shall have a non-forfeitable right to his benefit and become fully vested in that portion of his Accumulated Share attributable to Employer contributions. Notwithstanding anything herein to the contrary, this two (2) year vesting provision does not apply to the previously forfeited non-vested portion of his Accumulated Share unless such portion has been restored pursuant to Section 5.02(a).

**Section 5.02 Effects of Breaks in Service**

- (a) If a Participant has a One-Year Break in Service, the non-vested portion of his Accumulated Share attributable to Employer contributions shall, as of the end of the period which constitutes such One-Year Break in Service, be forfeited. However, if a Participant whose initial One-Year Break in Service commenced on or after January 1, 1987 subsequently returns to Covered Employment and completes 90 days of Vesting Service in a calendar year prior to incurring a Permanent Break in Service, his previously forfeited non-vested portion of his Accumulated Share shall be restored.

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**Section 5.02**      **Effects of Breaks in Service**      (Continued)

- (b) If a Participant is credited with years of Vesting Service after incurring a Permanent Break in Service, such years of Vesting Service shall not be taken into account for the purpose of determining the vesting percentage applicable to contributions and forfeitures allocated prior to a Permanent Break in Service.
- (c) Years of Vesting Service credited prior to a Permanent Break in Service shall be added to the years credited after such Permanent Break in determining the percentage of vesting applicable only to Employer contributions made after the Permanent Break.

**Section 5.03**   **Application of Forfeitures**

(a)      **For Plan Years Before 1986**

Forfeitures in excess of the anticipated 1% of Employer contributions as noted in Article II, Section 2.01, may not be applied to increase the benefits any Participant would otherwise receive under this Plan. Such forfeitures shall be applied first, to restore previously forfeited non-vested portions of Participants' Accumulated Shares who returned to Covered Employment before incurring a Permanent Break in Service (pursuant to Article V, Section 5.02(a)) and, to the extent remaining; second, to be applied to offset administration expenses of the Plan and to establish or maintain such reserves as the Trustees deem necessary.



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**Section 5.03**      **Application of Forfeitures**      (Continued)

(b)      **For Plan Years After 1985 but before 1989**

Forfeitures in excess of the anticipated 1% of Employer contributions as noted in Article II, Section 2.01, shall be applied, to the extent available, in the following order:

- (i)      To restore previously forfeited non-vested portions of Accumulated Shares of Participants who returned to Covered Employment prior to incurring a Permanent Break in Service;
- (ii)     To offset administrative expenses of the Plan and to establish or maintain such reserves as the Trustees deem necessary;
- (iii)    Directly to all Participant Accumulated Shares in the same proportion that the total value of each Accumulated Share bears to the total value of all Accumulated Shares.

In the event forfeitures are less than 1% of Employer contributions in any year, such shortfall shall be made up through an additional charge to administrative expenses of the Plan.

(c)      **For Plan Years After 1988 but Before 1990**

Forfeitures will be allocated pursuant to Section 2.03 of Article II of the Plan.

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**Section 5.03 Application of Forfeitures** (Continued)

**(d) For Plan Years After 1989**

All forfeitures resulting from severance of employment, loss of eligibility, death, or otherwise of other Participants, shall be allocated as of each Valuation Date in the following manner:

- (1) Total forfeitures shall be divided into two pools, one of which shall represent the forfeitures of Participants covered by a collective bargaining agreement and the other will represent the forfeitures of Participants who are not represented by a collective bargaining agreement.

The amount of each pool shall equal that portion of all forfeitures as the total of the Accumulated Shares for Participants covered by a collective bargaining agreement and the total of the Accumulated Shares for Participants not covered by a collective bargaining agreement each bears to the total of all Accumulated Shares.

- (2) The first pool, representing the forfeitures of Participants covered by a collective bargaining agreement as determined in paragraph (1) above, shall be allocated as of each Valuation Date to each Accumulated Share of a collectively bargained Participant in the same proportion that such Accumulated Share bears to the total of all Accumulated Shares that had been maintained by the Fund since the previous Valuation Date for all collectively bargained Participants.

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**Section 5.03 Application of Forfeitures** (Continued)

(d) **For Plan Years After 1989** (Continued)

- (3) The second pool, representing the forfeitures of Participants not covered by a collective bargaining agreement, as determined in paragraph (1) above shall be allocated as of each Valuation Date to each Accumulated Share of a non-collectively bargained Participant in the same proportion that the non-collectively bargained Participant's wages bears to the total of all wages for non-collectively bargained Participants.

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**Section 6.01**            **Amount of Accumulated Share**

Upon the happening of any event calling for the distribution of a benefit from this Plan, the amount to be distributed shall be the vested portion of the Participant's Accumulated Share, as determined on the Valuation Date immediately preceding or coinciding with the event giving rise to the distribution, plus the nonforfeitable percentage of the Employer contributions or Participant contributions made during the year, but, effective July 1, 1998, less the Participant's pro-rata share of the Plan's administration expenses for the year of distribution. Any benefit payable pursuant to this Article shall commence on the first day of the month following the month in which the Trustees approved the Participant's application for benefits under the Plan. Notwithstanding the preceding sentence, effective through December 31, 1985, an Active Participant terminating participation in the Plan (1) in order to enter Retirement or (2) in accordance with Section 6.04, may request in writing that the distribution of his Accumulated Share not be made until after the Valuation Date immediately following such request.

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**Section 6.02 Payout of Voluntary Contributions**

That portion of each Participant's Accumulated Share attributable to voluntary contributions shall be paid out in a single lump-sum payment, without regard to Article VII, no later than sixty (60) days after the Trustees have received notification of an event that has caused the Participant to cease participation in the Plan. An Active Participant terminating participation in accordance with Article V, Section 5.01(b)(i), (1) or (2) or Article VI, Section 6.04, may request, in writing, that the distribution not be made until after the current calendar year's Valuation Date. In addition, he shall have the option to receive his Accumulated Share attributable to voluntary contributions in the form of a fixed monthly amount, in the same manner as set forth in Section 6.03 hereof.

**Section 6.03 Payout of Employer Contributions**

**(a) Active Participants**

An Active Participant may elect to receive his Accumulated Share at any time during the period beginning on his date of Retirement and ending on the date of mandatory commencement of benefits under Section 6.09; provided, however, that, if the value of his Accumulated Share at Retirement, including Voluntary Contributions but disregarding Rollover Contributions, does not exceed \$1,000, it will be distributed as a lump sum as soon as practicable after the Trustees receive notice of his Retirement. If the value of his Accumulated Share exceeds \$1,000, he may elect to receive his benefit in any of the forms described below:

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**Section 6.03 Payout of Employer Contributions**

(Continued)

**(a) Active Participants** (Continued)

- (i) If he is married, his Accumulated Share will be distributed as a 50% Participant and Spouse Annuity, unless he and his Spouse waive that form of distribution in accordance with Section 7.06.
- (ii) If he is not married, his Accumulated Share will be distributed as a Single-Life Annuity described in Section 7.04(b), unless he elects a different form of distribution in accordance with this Section 6.04.
- (iii) If he is married and he and his Spouse have waived the 50% Participant and Spouse Annuity, he may elect a Single-Life Annuity described in Section 7.04(b) or a 75% Participant and Spouse Annuity.
- (iv) If he is unmarried, or if he is married and he and his Spouse have waived the 50% Participant and Spouse Annuity, he may elect a lump sum payment of all or any portion of his Accumulated Share, with the balance to be paid in accordance with the Installment Payout Option.

The 75% Participant and Spouse Annuity is identical to the 50% Participant and Spouse Annuity described in Section 7.02(b), except that the monthly benefit payable to the surviving Spouse is equal to 75% of the monthly amount payable during the Participant's lifetime.

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(a) **Active Participants** (Continued)

The Installment Payout Option is a series of monthly payments over a period selected by the Participant, not to exceed one hundred twenty (120) months. The amount of each monthly payment is based on the selected payout period and a reasonable rate of interest determined by the Trustees. That amount is then distributed each month until the Participant's Accumulated Share is exhausted. The Installment Payout Option may not be elected if the calculated monthly payment is less than one hundred dollars (\$100.00).

(b) **Active Participants Retiring Prior to January 1, 1986**

Effective through December 31, 1985, an Active Participant entering Retirement (as defined in Section 1.11 of Article I, or in accordance with Article VI, Section 6.04), may request that payment of his Accumulated Share not be made until after the Valuation Date immediately following such election. Accumulated Shares existing on any Valuation Date pursuant to such an election to defer payment thereof until the next calendar year, shall be allocated the net gains or losses of the Plan occurring in the Plan as of such Valuation Date, except as otherwise provided in Section 2.04 of Article II.

(c) **Inactive Participants**

Except as provided in Subsection (e), an Inactive Participant employed in the maritime industry may elect to receive his Accumulated Share at any time during the period beginning on the later of his attainment of Normal Retirement Age or his complete and

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(c) **Inactive Participants** (Continued)

permanent termination of all employment in the maritime industry and ending on the date of mandatory commencement of benefits under Section 6.09. Notwithstanding the foregoing, an Inactive Participant who is or was formerly employed in a shoreside position, may elect to receive his or her Accumulated Share at any time beginning when he or she experiences a complete and permanent termination of Covered Employment and ending on the date of mandatory commencement of benefits under Section 6.09, regardless of whether such Inactive Participant is eligible for benefits from an M.M.&P. Pension Plan. If the value of his Accumulated Share, including Voluntary Contributions and Rollover Contributions, does not exceed \$1,000, it will be distributed as a lump sum as soon as practicable after the Trustees receive notice that he is eligible for the distribution. Otherwise, the distribution will be made as follows:

- (i) If he is married, his Accumulated Share will be distributed as a 50% Participant and Spouse Annuity, unless he and his Spouse waive that form of distribution in accordance with Section 7.06 and elect either a Single-Life Annuity described in Section 7.04(b) or a 75% Participant and Spouse Annuity described in Subsection (a) instead.
- (ii) If he is not married, his Accumulated Share will be distributed as a Single-Life Annuity described in Section 7.04(b).



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- (d) If an Active or Inactive Participant employed in the maritime industry returns to Covered Employment after having received the vested portion of his Accumulated Share, he will not be eligible to receive any Accumulated Share he earns as a result of his return to Covered Employment until the later of his Normal Retirement Age or when he has permanently terminated all employment in the maritime industry both ashore and float. Notwithstanding anything herein to the contrary, (i) an Active or Inactive Participant employed in a shoreside position, who returns to Covered Employment after having received the vested portion of his or her Accumulated Share, may elect to receive any Accumulated Share he or she earns as a result of the return to Covered Employment in a shoreside position at any time beginning when he or she experiences a complete and permanent termination of such subsequent Covered Employment; (ii) effective May 1, 2010, an Offshore Division unlicensed Participant or Offshore Division licensed engineer Participant who has been unable to work in Covered Employment due to the limited number of billets available for such ratings will be eligible to receive his Accumulated Share before his or her Normal Retirement Age if he has permanently terminated all employment aboard any vessel; (iii) provided further that a Participant who has received a Social Security disability award may elect to receive his Accumulated Share in a lump sum before his Normal Retirement Age, if the annuity or Installment Payout option is rejected in the manner provided by Article VII, as long as he has permanently retired

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(d) (Continued)

from the Maritime Industry; and (iv) a Participant who transfers to a position in another membership group pursuant to Section 1.11 may elect to receive his Accumulated Share before his or her Normal Retirement Age.

(e) **Vested Participants Not Eligible for a Pension from the M.M. & P. Pension Plan and Who Have Terminated All Employment in the Maritime Industry**

An Inactive Participant whose participation in this Plan is covered by the terms of a collective bargaining agreement and who, at the time when his Accumulated Share becomes distributable in accordance with Subsection (c), has no right to an immediate or deferred pension under the collectively bargained Masters, Mates & Pilots Pension Plan may elect to receive his Accumulated Share in any of the forms available to, and subject to the same conditions as, an Active Participant under Subsection (a). The date of distribution is governed by Subsection (a) except that the date of the Participant's permanent termination of all employment in the maritime industry is treated as his date of Retirement. Notwithstanding anything herein to the contrary, effective May 1, 2010, a licensed engineer Participant who has been unable to work in Covered Employment due to the limited number of billets available for such rating will be eligible to receive his Accumulated Share even though he is eligible for a deferred pension under the collectively bargained Masters, Mates & Pilots Pension Plan if he has permanently terminated all employment aboard any vessel.

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**Section 6.03 Payout of Employer Contributions** (Continued)

- (f) For purposes of this Section, Section 6.09(c), Section 7.01 and Section 7.07, the value of a Participant's Accumulated Share shall be determined without regard to that portion of the Accumulated Share that is attributable to Rollover Contributions (and earnings allocable thereto) within the meaning of Sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii) and 457(e)(16) of the Code. If the value of the Participant's Accumulated Share as so determined is not more than \$1,000 (\$5,000 for distributions made prior to March 28, 2005), the Participant's Accumulated Share shall be distributed in accordance with the above-cited Sections of the Plan.

**Section 6.04 Payout of Employer Contributions - Disability**

If an Active Participant retires due to disability, but without entitlement to a Social Security disability award, and is then vested in his Accumulated Share, he may elect to receive his Accumulated Share in the form of an annuity as provided in Article VII. Alternatively, he may reject the annuity in the manner provided by Article VII and elect to have his benefit paid in accordance with the Installment Payout Option.

- (a) If he elects the Installment Payout Option and dies prior to the exhaustion of his Accumulated Share, the balance of his Accumulated Share shall be paid to his designated beneficiary or otherwise distributed in accordance with Section 8.04.
- (b) After a Participant who has elected the Installment Payout Option has received at least 24 monthly installments, he may elect to receive the balance of his Accumulated Share as a

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**Section 6.04 Payout of Employer Contributions – Disability** (Continued)

**(b)** (Continued)

lump sum, if he establishes to the satisfaction of the Trustees that he has permanently retired from the Maritime Industry.

**Section 6.05 Payout of Employer Contributions - Death Benefit**

**(a)** **Retired Participants Receiving The Installment Payout Option**

In the event a retired Participant who is receiving benefit payment in the form of the Installment Payment Option dies prior to expiration of the payout period, the balance of his Accumulated Share shall be paid to his designated beneficiary (as defined in Article VIII, Section 8.04) in a single lump-sum payment or by continuation of the remaining payments due under the Installment Payout Option as elected by the beneficiary.

Once an Inactive Participant has elected a single-life Installment Payout Option, if he dies while receiving monthly payments before the vested portion of his Accumulated Share is exhausted, then the balance of the monthly payments shall be forfeited.

**(b)** **Active Participants**

In the event a married Active Participant who is entitled to receive benefit payment as provided herein, dies prior to commencement of benefit payment, his Accumulated Share shall be paid to his surviving Spouse pursuant to Article VII, Section 7.03. If properly rejected pursuant to such Article, or if not married, the Active Participant's Accumulated Share shall be paid to his designated beneficiary in the form of the Installment Payout

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**Section 6.05 Payout of Employer Contributions - Death Benefit** (Continued)

**(b) Active Participants** (Continued)

Option or as a lump sum, as elected by the beneficiary, on the same terms and conditions as provided in Section 6.03 above, subject to approval of the Trustees.

**(c) Inactive Participants**

In the event a married Inactive Participant, who has a Day of Service on and after August 22, 1984, dies prior to the attainment of Normal Retirement Age and commencement of benefit payments, 50% of the vested portion of his Accumulated Share shall be paid to his surviving Spouse (pursuant to Article VII, Section 7.03) at the time the Inactive Participant would have attained Normal Retirement Age, had he not died, provided, however, with respect to Inactive Participants who die on and after October 1, 2003, the surviving Spouse may request that payment be made after the Inactive Participant's death and before the time he would have attained Normal Retirement Age had he not died. If properly rejected pursuant to such Article, or if not married, the Inactive Participant's Accumulated Share shall be forfeited. Notwithstanding the preceding sentence, an Inactive Participant, who (i) performed a day of service on or after July 1, 1979, (ii) terminated from service prior to August 23, 1984, and (iii) whose Accumulated Share has not been distributed, may elect to have 50% of the vested portion of his Accumulated Share paid to his surviving Spouse (pursuant to Article VII, Section 7.03). In order to be eligible for this election, such Inactive Participant must have completed at least 10 years

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**Section 6.05 Payout of Employer Contributions – Death Benefit** (Continued)

(c) (Continued)

of Vesting Service at the time he terminated employment and be vested in all or a portion of his Accumulated Share attributable to Employer contributions.

(d) **Death of a Participant While on Leave for Military Service**

The Beneficiary of a Participant who dies while on a leave of absence to perform military service with reemployment rights described in section 414(u) of the Internal Revenue Code shall be entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) that would be provided under this Plan if he had died while in Covered Employment. This subsection shall be interpreted in accordance with section 401(a)(37) of the Internal Revenue Code.

**Section 6.06 Exceptions and Limitations**

- (a) The definitions and requirements set forth in Article VII, relating to surviving Spouse benefits, shall apply in interpreting this Section.
- (b) Effective as of August 22, 1984, notwithstanding any provisions of this Article to the contrary, if a Participant who has a Spouse dies before distribution from his Accumulated Share has begun, no more than 50% of his Accumulated Share as of the date of death may be paid to beneficiaries other than the Spouse unless there is a valid waiver of the Pre-retirement Surviving Spouse Benefit.

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**Section 6.06 Exceptions and Limitations** (Continued)

- (c) Any benefits payable to an "alternate payee" under a Qualified Domestic Relations Order, as defined in sections 206(d) of ERISA and 414(p) of the Internal Revenue Code, shall reduce any benefits payable under this Article.
- (d)
  - (i) If a Participant dies without a valid beneficiary designation in effect under this Article, death benefits otherwise payable to a beneficiary shall be paid to the Participant's Spouse, if any.
  - (ii) If a Participant who has not submitted a valid waiver of the Pre-retirement Surviving Spouse Benefit does not have a Spouse at the time of death, the amounts that would have been payable to the Spouse shall be paid to the person or persons designated as beneficiaries under Article VIII, Section 8.04.
- (e) A Participant's surviving Spouse entitled to a Pre-retirement Surviving Spouse Benefit shall have any additional benefits payable to such spouse under this Article paid at the same time, and in the same form, as the Pre-retirement Surviving Spouse Benefit.
- (f) Notwithstanding any provision of the Article to the contrary, at the beginning of each calendar year, the Plan's Trustees shall authorize a holdback percentage of a Participant's Managed Fund balance, if a Participant applies for a distribution of his Accumulated Share, pending completion of the audit of the investment performance of the Managed Fund for the previous calendar year.

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**Section 6.07 Suspension of Benefits**

- (a) In the event an Annuitant, prior to his attainment of Normal Retirement Age, is employed aboard any vessel whatsoever other than employment aboard mercy ships, the Annuitant shall not be entitled to receive any further benefits under this Plan for any calendar month in which he is so employed (including earned vacation time) and for an additional period equal to the greater of six (6) months or two times the period of actual employment (including earned vacation time), provided that such additional period shall not extend beyond his attainment of Normal Retirement Age, except when complying with requirements in (b) below. If an Annuitant who has attained Normal Retirement Age becomes employed in work of the type prohibited herein, his pension payments shall be suspended for any calendar month in which he is so employed for five or more days.
- (b) With respect to employment on any vessel or as otherwise described in (a) above, which would result in a suspension of benefits, such suspension shall not take place if prior written authorization for each job assignment is obtained through the offices of the Organization and written notice of such employment is furnished by the Organization to the Board of Trustees.

**Section 6.08 Benefit Payments Generally**

- (a) Except as otherwise provided in this Section or in Article VII, benefits shall be payable as soon as practicable after the claimant has fulfilled all the conditions for entitlement, including the requirement for filing an application with the Trustees. The filing of an application for benefits shall constitute consent by the Participant to the payment of



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**Section 6.08 Benefit Payments Generally** (Continued)

**(a)** (Continued)

benefits and, if the Participant is married, the filing of the Spouse's written consent to waive the 50% Participant and Spouse Annuity shall constitute the Spouse's consent to the payment. Commencement of payments from a Participant's Accumulated Share will not begin earlier than the month following the date that the Participant retires and submits an appropriate application, as described in Section 8.01.

Notwithstanding the above, Participants must begin to receive their benefits no later than their Required Beginning Date, as defined in Section 6.09(b), or as soon as practicable after the Required Beginning Date as the Trustees are able to locate the Participant, his heirs or his legal representative.

- (b)** If a Participant's beneficiary is not his surviving Spouse, the payment of any benefits under the Plan that become payable on account of the Participant's death shall begin no later than one year from the date of death or, if later, as soon as practicable after the Trustees learn of the death, but in no event later than such time period as may be prescribed by regulations issued by the Treasury Department.
- (c)** If a Participant begins to receive distributions from his Accumulated Share, payments shall be made over a period no longer than the joint life expectancies of the Participant and his Spouse and/or other beneficiary.

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**Section 6.08** **Benefit Payments Generally** (Continued)

(c) (Continued)

Notwithstanding any other provision of the Plan, all survivor benefits shall comply with the limits of Internal Revenue Code Section 401(a)(9) and the incidental benefit rule, and the regulations prescribed under them, including proposed Treasury Regulation Sec. 1.401 (a)(9)-1 and 1.401(a)(9)-2.

- (d) Payments continuing to a surviving Spouse or other beneficiary after the death of a Participant whose distribution had begun shall continue over a period that is no longer than the period originally scheduled when the Participant's payments started.
- (e) If the Participant died before distribution began, payments shall be made over a period no longer than the life expectancy of his Spouse or other designated beneficiary.
- (f) After the payment of benefits has begun, a benefit payment option that has been selected may not be revoked nor the Participant's benefits increased by reason of subsequent divorce or death of the spouse.

**Section 6.09** **Mandatory Commencement of Benefits**

- (a) Notwithstanding any provision of the Plan to the contrary, effective January 1, 1991 and effective January 1, 1989 for Employees not covered by a collective bargaining agreement, the Plan will begin benefit payment to all Participants by their Required Beginning Dates, whether or not they apply for benefits.
- (b) For Participants who attain age 70 ½ before January 1, 1999, the "Required Beginning Date" is April 1 of the calendar year following the year such Participant reaches age

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**Section 6.09**   **Mandatory Commencement of Benefits**   (Continued)

**(b)** (Continued)

70 ½. For Participants who attain age 70 ½ between January 1, 1999 and December 31, 2019, the “Required Beginning Date” is April 1 of the calendar year following the year such Participant reaches age 70 ½ or the date the Participant retires. For Participants who attain age 70 ½ on or after January 1, 2020, the “Required Beginning Date” is April 1 of the calendar year following the year such Participant reaches age 72 or the date the Participant retires.

**(c)** If a Participant who is definitely located fails to file a completed application for benefits on a timely basis, the Fund will establish the Participant's Required Beginning Date as defined in paragraph (b) above and begin benefit payments as follows:

- (i)** If the value of the Participant's Accumulated Share is not more than \$1,000 (\$5,000 with respect to distributions made on and after January 1, 1998 and prior to March 28, 2005), in a single-sum payment.
- (ii)** In any other case, in the form of a 50% Participant and Spouse Pension. If the Plan does not have information regarding the Participant's marital status and the age of his Spouse, the amount of the Pension will be calculated on the assumption that the Participant is and has been married for at least one year by the date payments start and that the Participant is 3 years older than the Spouse.

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**Section 6.09**   **Mandatory Commencement of Benefits**   (Continued)

(c) (Continued)

(iii)    The benefit payment form specified here will be irrevocable once it begins, with the sole exception that it may be changed to a single-life annuity if the Participant proves that he did not have a Qualified Spouse (including an alternate payee under a QDRO) on the Required Beginning Date; also, the amounts of future benefits will be adjusted based on the actual age difference between the Participant and the Spouse if proven to be different from the foregoing assumptions.

(iv)    Federal income tax, and any other applicable taxes, will be withheld from the benefit payments as required by law or determined by the Trustees to be appropriate for the protection of the Fund and the Participant.

(d)    Notwithstanding Sections 6.08 and 6.09 of this Plan, with respect to a Participant or Beneficiary who would have been required to receive Required Minimum Distributions for 2020 (or paid in 2021 for the 2020 calendar year for a Participant with a Required Beginning Date of April 1, 2021) but for the enactment of Section 401(a)(9)(I) of the Code ("2020 RMDs"), lump sum 2020 RMDs not paid on or before April 1, 2020 are suspended through December 31, 2020 unless the Participant or Beneficiary affirmatively elects to receive such 2020 RMDs. Participants or Beneficiaries who receive monthly or quarterly Required Minimum Distributions in 2020, may elect to have their Required Minimum Distributions suspended through December 31, 2020 but will not have their

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**Section 6.09**   **Mandatory Commencement of Benefits**   (Continued)

(d)   (Continued)

benefits automatically suspended. Solely for purposes of applying the direct rollover provisions of the Plan, 2020 RMDs will be treated as eligible rollover distributions.

**Section 6.10**   **Direct Rollover of Benefits**

(a)   This section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the plan to the contrary that would otherwise limit a Distributee's election under this Section, a Distributee may elect, at the time and in the manner prescribed by the Plan administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

(b)   **Definitions**

(i)   **Eligible Rollover Distribution:**   An Eligible Rollover Distribution is any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; and the portion of any distribution that is not includable

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**Section 6.10 Direct Rollover of Benefits** (Continued)

**(b)** (Continued)

**(i)** (Continued)

in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and any hardship withdrawal distribution described in Section 401(k)(2)(B)(i)(IV) of the Code after December 31, 1998. Notwithstanding anything herein to the contrary, effective for distributions on and after January 1, 2002, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be paid only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible. Effective with respect to distributions on and after January 1, 2002, an eligible rollover distribution excludes hardship distributions from any type of Plan account.

- (ii)** **Eligible Retirement Plan:** An Eligible Retirement Plan is an individual retirement account described in Section 408(a) of the Code, an individual

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**Section 6.10 Direct Rollover of Benefits** (Continued)

(b) (Continued)

(ii) (Continued)

retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, or a qualified trust described in Section 401(a) of the Code, that accepts the Distributee's Eligible Rollover Distribution. Effective for distributions on or after January 1, 2002, an Eligible Retirement Plan shall also mean an annuity contract or custodial account described in Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to account separately for amounts transferred into such plan from this Plan. The definition of Eligible Retirement Plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code. Notwithstanding the foregoing, the only plans that are Eligible Retirement Plans with respect to distributions from Roth Accounts are: (A) accounts established to hold designated Roth contributions under a qualified Roth contribution program described in Section 402A of the Code, and (B) Roth IRA's described in Section 408A of the Code.

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**Section 6.10 Direct Rollover of Benefits** (Continued)

(b) (Continued)

(iii) **Distributee:** A Distributee includes all Participants. In addition, the Participant's surviving spouse and the Participant's spouse or former spouse who is the alternate payee under a Qualified Domestic Relations Order, as defined in Section 414(p) of the Code, are Distributees with regard to the interest of the spouse or former spouse, as is a nonspouse beneficiary as provided in Subsection (c) below.

(iv) **Direct Rollover:** A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

(c) A nonspouse beneficiary, within the meaning of Section 401(a)(9) of the Code, may authorize a direct rollover to an individual retirement account or annuity described in Sections 408(a) or 408(b) of the Code (collectively referred to as an "IRA") that is established on behalf of the designated beneficiary and that will be treated as an inherited IRA pursuant to the provisions of Section 402(c)(11) of the Code.

**Section 6.11 Designation of Accumulated Share as Roth Contribution**

A Participant who has at least five (5) Vesting Service Credits, a spousal Beneficiary of a deceased Participant, or an alternate payee under a qualified domestic relations order (except an alternate payee who is not the Spouse or former Spouse of a Participant) may elect to convert into a Roth Contribution all or any portion of his Accumulated Share that he is eligible to receive as a distribution (or would be eligible to receive if he immediately terminated employment in the



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**Section 6.11 Designation of Accumulated Share as Roth Contribution** (Continued)

Maritime Industry) and that could be rolled over directly to an Eligible Retirement Plan under the provisions of Section 6.10. A conversion is not treated as a distribution for purposes of the Plan. Notwithstanding any other provision of the Plan, the consent of the Participant's Spouse to the conversion is not required. Rules applicable to the Roth Contribution following this conversion are set forth in Section 1.32 of the 401(k) Arrangement. Notwithstanding the foregoing, the requirement of five (5) Vesting Service Credits does not apply when a Participant converts a portion of his Accumulated Share attributable to Voluntary Contributions.

**Section 6.12 Recovery of Other Overpayments**

The Plan has the right, exercisable by the Trustees alone and at their sole discretion, to recover any overpayment to any Participant or beneficiary. For the purposes of this Section 6.12, an "overpayment" is any payment to a Participant or beneficiary that exceeds the amount of the benefit to which he is entitled under the terms of the Plan at the time of the payment.

**(a) Equitable Lien on Overpayments**

The Plan has a constructive trust, lien, and/or equitable lien by agreement in favor of the Plan on any overpaid benefits received by a Participant or beneficiary or a representative of a Participant or beneficiary (including an attorney) that is due to the Plan under this Section, and any such amount is deemed to be held in trust by a Participant or beneficiary for the benefit of the Plan until paid to the Plan. By accepting benefits from the Plan, each Pensioner or beneficiary consents and agrees that a constructive trust, lien, and/or equitable lien by agreement arises in favor of the

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**Section 6.12 Recovery of Other Overpayments** (Continued)

**(a)** (Continued)

Plan upon any overpayment of benefits and agrees to cooperate with the Plan in reimbursing it for all of its costs and expenses related to the recoupment of the overpayment.

Any refusal by a Pensioner or beneficiary to reimburse the Plan for an overpaid amount will be considered a breach of the agreement with the Plan that the Plan will provide the benefits available under the Plan and a Participant or beneficiary will comply with the rules of the Plan. Further, by accepting benefits from the Plan, a Participant or beneficiary affirmatively waives any defenses he may have in any action by the Plan to recover overpaid amounts or amounts due under any other rule of the Plan, including but not limited to a statute of limitations defense or a preemption defense, to the extent permissible under applicable law.

**(b)** **Notice to Recipient of Overpayment and Voluntary Repayment**

As soon as practicable after their discovery of any overpayment, the Trustees will notify the recipient of the amount of the overpayment and request repayment to the Plan. A Participant or beneficiary who disputes the fact or the amount of the overpayment must contest the Trustees' determination in accordance with the claims procedure set forth in Section 8.12. The Trustees may agree to repayment in installments, to a waiver or

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**Section 6.12 Recovery of Other Overpayments** (Continued)

**(b)** (Continued)

reduction of repayments on account of hardship, or to any other mutually agreeable resolution that is consistent with the best interests of the Plan. The Plan will not seek to recover interest on overpayments that are voluntarily repaid.

**(c)** **Method of Recoupment of Overpayment**

If a Participant or beneficiary fails to reimburse the Plan for any overpayment and is entitled to future periodic benefits under the Plan, the Plan may recoup the overpayment through a reduction in benefit payments during the recipient's lifetime that is the actuarial equivalent, determined in accordance with Section 7.05, of the overpayment or by any other reasonable and equitable method that fully reimburses the Plan for its loss. If the Pensioner or beneficiary is not entitled to future benefits or if an actuarial reduction in future benefit payments will not reimburse the Plan's loss, the Plan may recover the overpayment by bringing an action in any court of competent jurisdiction against the party to whom the overpayment was made or who has in its possession any fund created by the overpayment. In this event, the defendant shall be liable for all costs and expenses, including attorneys' fees and costs, incurred by the Plan in connection with the enforcement of the Plan's rights under this Section 6.12 and the collection of any settlement or judgment. In the event of legal action, the defendant shall also be required to pay interest at the rate determined by the Trustees from time to time from the date the

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**Section 6.12 Recovery of Other Overpayments** (Continued)

(c) (Continued)

defendant became obligated to repay the Plan through the date that the Plan is paid the full amount owed.

**Section 6.13 Benefits Due to Financial Hardship**

(a) A Participant may, upon application approved by the Trustees, withdraw amounts from his or her Accumulated Share to the extent necessary to satisfy an immediate and heavy financial hardship of a Participant. A withdrawal will be deemed necessary to satisfy an immediate and heavy financial hardship of a Participant if, and only if:

- (1) A withdrawal is not in excess of the amount of the immediate and heavy financial need of the Participant (including any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the withdrawal), as described in Section 6.13(b) below;
- (2) The Participant has obtained all distributions, other than hardship distributions, available under all plans maintained by the Employer; and
- (3) The Participant represents in writing, by electronic means or otherwise, that he has insufficient cash or other liquid assets to satisfy the financial need.

(b) Immediate and heavy financial need shall be limited to:

- (1) expenses for (or necessary to obtain) medical care described in section 213(d) of the Internal Revenue Code incurred by the Participant, his Spouse, or his dependents;

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**Section 6.13** **Benefits Due to Financial Hardship** (Continued)

**(b)** (Continued)

- (2) costs directly related to the purchase (excluding mortgage payments) of a principal residence for the Participant;
- (3) payment of tuition, related educational fees, and room and board expenses for up to the next twelve (12) months of post-secondary education for the Participant, his Spouse, or his dependent(s);
- (4) payments needed to prevent the eviction of the Participant from his principal residence or foreclosure on the mortgage of his principal residence;
- (5) payments for burial or funeral expenses for the Participant's deceased parent, his Spouse, or his dependent(s);
- (6) expenses for the repair of damage to the Participant's principal residence that would qualify for the casualty deduction under the Internal Revenue Code; or
- (7) expenses and losses (including loss of income) incurred by the Participant on account of a disaster declared by the Federal Emergency Management Agency (FEMA) under the Robert T. Stafford Disaster Relief and Emergency Act, Pub. L. 100-707, provided that the Participant's principal residence or principal place of employment at the time of the disaster was located in an area designated by FEMA for individual assistance with respect to the disaster.

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**Section 6.13 Benefits Due to Financial Hardship** (Continued)

- (c) The amount withdrawn under this Section 6.13 may not exceed the vested portion of the Participant's Accumulated Share, as determined on the Valuation Date immediately preceding or coinciding with the event giving rise to the distribution, plus the nonforfeitable percentage of the Employer Contributions or Participant Contributions made during the year, less the Participant's pro-rata share of the Plan's administrative expenses for the year of distribution.
- (d) A withdrawal under this Section 6.13 will not affect the Participant's ability to make continued Participant Contributions to the Plan in accordance with Article III.
- (e) A married Participant who elects to take a distribution under this Section 6.13 may do so only with the written consent of his or her Spouse (as defined in Section 7.01(d)) where the Spouse acknowledges the effect of the withdrawal and consents to it in writing, witnessed by a notary public.
- (f) Effective January 1, 2020 through December 31, 2020, Participants may withdraw amounts of up to \$100,000 from their vested Accumulated Share attributable to both voluntary contributions and Employer Contributions for Coronavirus ("COVID-19") related financial hardships. To receive a COVID-19 distribution, a Participant must submit adequate documentation and certify to one or more of the following:
  - (i) the Participant or the Participant's spouse or dependent (as defined in section 152 of the Code) is diagnosed with the virus SARS-CoV-2 or with COVID-19 by a test approved by the Centers for Disease Control; or

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**Section 6.13 Benefits Due to Financial Hardship** (Continued)

(f) (Continued)

- (ii) as a result of COVID-19, the Participant or a member of the Participant's household has experienced adverse financial consequences as a result of one or more of the following:
  - (A) being quarantined;
  - (B) being furloughed, laid off, or having work hours reduced;
  - (C) being unable to work due to childcare unavailability;
  - (D) being forced to close or reduce the hours of a business owned or operated by the Participant; and/or,
  - (E) any other circumstances specified by the Secretary of the Treasury under which a COVID-19 distribution may be eligible.

The amount withdrawn under this Section 6.13(f) shall be aggregated with any amounts withdrawn from the 401(k) Arrangement pursuant to its Section 4.6(e), and collectively the maximum amount distributed shall not exceed \$100,000. Amounts withdrawn may not exceed the vested portion of the Participant's Accumulated Share, as determined on the Valuation Date immediately preceding or coinciding with the event giving rise to the distribution.

A Participant may repay the amount of a COVID-19 distribution to his or her Account at any time during the three-year period beginning on the date of the distribution, in one or more contributions with an aggregate amount not to exceed the amount of the COVID-19 distribution.

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**Section 6.14 Qualified Birth and Adoption Distributions**

(a) **Distribution:** Effective June 1, 2021 and as permitted under Code Section 72(t)(2)(H) and regulations thereunder, a Participant may receive one (1) or more Qualified Birth or Adoption Distributions in accordance with procedures established by the Board of Trustees. The aggregate amount of such distributions to the Participant from their vested Accumulated Share shall not exceed five thousand dollars (\$5,000) (or, if the Participant's Accumulated Share is less than \$5,000, then the full amount of the Accumulated Share) from the Plan combined with all other eligible retirement plans in which the Participant is a participant. A Qualified Birth or Adoption Distribution must occur within the one (1) year period beginning on the date the Participant's child is born or on the date that the legal adoption by the Participant of an Eligible Adoptee is finalized. An "Eligible Adoptee" means any individual (other than a child of the Participant's spouse) who has not attained age eighteen (18) or who is physically or mentally incapable of taking care of himself or herself as defined in Code Section 72(m)(7). Qualified Birth or Adoption Distributions are not limited to the amount necessary to pay for actual expenses related to the birth or legal adoption. A Qualified Birth or Adoption Distribution shall not be treated as an eligible rollover distribution from the Plan.



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**Section 6.14** **Qualified Birth and Adoption Distributions** (Continued)

(b) **Recontribution:** A Participant who receives a Qualified Birth or Adoption Distribution from the Plan may recontribute any portion of it back to the Plan (up to the entire amount of the distribution) if the Participant is eligible to make a rollover contribution to the Plan at the time the Participant wishes to make a recontribution to the Plan. Such recontribution shall be treated as a 60-day rollover in a direct trustee-to-trustee transfer.

(c) **Certification:** The Trustees may rely on a Participant's reasonable representations that he is eligible for a Qualified Birth or Adoption Distribution unless the Trustees have actual knowledge to the contrary but in no event do the Trustees have an obligation to investigate whether the Participant's certification is accurate. Notwithstanding the foregoing, the Trustees retain discretion to require such documentation as they deem appropriate under the circumstances.

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**Section 7.01 General**

This Article applies only to Participants who have at least one day of service (including paid leave) for an Employer after August 22, 1984. All other Participants will be governed by the terms of the Plan in effect when they last worked in Covered Employment except that an Inactive Participant who does not have one day of service after August 22, 1984, who is married on his annuity starting date will be provided a joint and survivor ten year installment payout unless he elects the ten year installment single life option described under the terms of the Plan in effect when he last worked in Covered Employment. The following general provisions are subject to all of the conditions and limitations in this Article:

- (a) A distribution payable to an unmarried Participant starting on and after July 19, 1985 is to be paid as a Straight Life Annuity unless:
  - (i) the Participant's Accumulated Share is not more than \$1,000 (\$3,500 with respect to distributions made prior to March 28, 2005), or
  - (ii) the Participant consents in writing to payment in a different form as provided in Article VI.
  
- (b) A distribution payable to a married Participant starting on or after January 1, 1987 is to be paid as a 50% Participant and Spouse Annuity unless:
  - (i) the Participant and Spouse elect otherwise in accordance with Section 7.06; or
  - (ii) the spouse is not a Spouse as defined below; or
  - (iii) the benefit is payable only in a single sum, under Section 7.07(a).

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**Section 7.01 General** (Continued)

- (c) If a married Participant with a vested right to any portion of the amount in his Accumulated Share dies after August 22, 1984, but before payments from his Accumulated Share have started, a Pre-retirement Surviving Spouse Benefit shall be payable as described in Section 7.03 of this Article.
- (d) A Spouse is a person to whom a Participant is considered married under applicable state law, provided however, such marriage must be between a man and a woman, provided further, however, that a Participant's former Spouse shall be treated as a surviving Spouse of the Participant for purposes of this Article to the extent provided in a Qualified Domestic Relations Order (within the meaning of sections 206(d) of the Act and 414(p) of the Code). Notwithstanding anything herein to the contrary, effective June 26, 2013, for purposes of this Plan, a Spouse shall mean the person to whom a Participant is legally married under applicable law, provided, however, that a Participant's former Spouse shall be treated as a surviving Spouse of the Participant for purposes of this Article to the extent provided in a Qualified Domestic Relations Order (within the meaning of sections 206(d) of the Act and 414(p) of the Code). For purposes of the 50% Participant and Spouse Annuity, a Spouse is the Participant's Spouse on the date that distributions from the Participant's Accumulated Share are scheduled to start. If a participant's marital status changes between the date on which all documents were received by the Plan Office and the scheduled date of distribution, the distribution date may be postponed for up

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**Section 7.01 General** (Continued)

(d) (Continued)

to 90 days so that the effect of the change in the Participant's marital status can be taken into account.

(e) **Explanation of Pre-retirement Surviving Spouse Benefit**

The Trustees shall provide to each Participant an explanation of the Pre-retirement Surviving Spouse Benefit at the later of (i) the time of commencement of participation or (ii) within the period beginning with the first day of the Plan Year in which the Participant attains age 32 and ending with the close of the Plan Year preceding the Plan Year in which the Participant attains age 35. Such explanation shall describe the terms and conditions of the Pre-retirement Surviving Spouse Benefit, the Participant's right to waive such form of payment, the right to revoke an election, and the right to request additional specific information regarding the benefit.

**Section 7.02 50% Participant and Spouse Annuity at Retirement or Termination of Service**

(a) Any distribution to a Participant who is married on the date his payments are scheduled to start shall be paid as a 50% Participant and Spouse Annuity, unless a valid waiver of that form of payment has been filed with the Plan or Section 7.07(a) applies.

(b) A 50% Participant and Spouse Annuity means that the Participant will receive a monthly amount for life and, if the Participant dies before his Spouse, such surviving Spouse will receive a monthly benefit for her lifetime of 50% of the Participant's monthly amount. The monthly benefits shall be at the level payable under an annuity that is the actuarial

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**Section 7.02 50% Participant and Spouse Annuity at Retirement or Termination of Service**  
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(b) (Continued)

equivalent of the Participant's Accumulated Share as of the date of distribution, determined in accordance with Section 7.05.

(c) Once a 50% Participant and Spouse Annuity becomes payable it cannot be revoked. If the Participant and Spouse are divorced or the Spouse predeceases the Participant, the Participant's monthly annuity benefit shall not be increased, and no one shall be substituted as the Participant's contingent beneficiary in lieu of the Spouse.

(d) A Participant who applies for a distribution from his Accumulated Share shall be advised by the Trustees of the estimated effect of payment on the basis of the 50% Participant and Spouse Annuity, including a comparison between the estimated monthly annuity benefits and the amount that would be withdrawn in a single lump-sum payment.

(e) If there is a valid waiver of the 50% Participant and Spouse Annuity, the amount in the Participant's Accumulated Share will be paid out in accordance with Article VI.

**Section 7.03 Pre-retirement Surviving Spouse Benefit**

(a) If a vested Participant who has a Spouse dies before distribution of his Accumulated Share has begun, a Pre-retirement Surviving Spouse Benefit shall be paid to his Surviving Spouse, unless the Participant and Spouse have waived the benefit, in accordance with Section 7.06.

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**Section 7.03**   **Pre-retirement Surviving Spouse Benefit**   (Continued)

- (b)      The Pre-retirement Surviving Spouse Benefit is a monthly annuity for the life of the Spouse that is the actuarial equivalent (determined in accordance with Section 7.05) of 50% of the Participant's vested Accumulated Share as of the date of the Participant's death.
  
- (c)      Except as provided below or in Section 7.07(b), the Pre-retirement Surviving Spouse Benefit shall be payable as described in subsection (b) above, starting as of the first day of a month that is no later than 60 days following the month in which the Trustees approved the application. A Surviving Spouse may not postpone the commencement of benefit payments beyond the first day of the month starting 60 days after the later of (i) the date the Participant would have reached Normal Retirement Age or age 62 if later or (ii) the date of the Participant's death. A Spouse who requests that payment begin within one year after the Participant's death may elect to receive the Pre-retirement Surviving Spouse Benefit in the form of a lifetime annuity or in any manner described in Article VI. Any death benefits to which the Spouse is entitled under this Plan in addition to the Pre-retirement Surviving Spouse Benefit shall be paid at the same time and in the same manner as the Pre-retirement Surviving Spouse Benefit.

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**Section 7.04 Single-Life Annuity at Retirement or Termination of Service**

- (a) Any distribution to a Participant who is not married to a Spouse (as defined in Section 7.01(b) of this Article) on the date his payments are scheduled to start shall be paid as a Single-Life Annuity unless rejected in writing in favor of another form of benefit payment or Section 7.07(a) applies.
- (b) The Single-Life Annuity shall be an annuity paying level monthly payments, starting within 60 days after the scheduled date of distribution and continuing for the Participant's lifetime, and which is the actuarial equivalent of the Participant's Accumulated Share as of the scheduled date of distribution. For this purpose, "actuarial equivalent" shall be determined in accordance with Section 7.05 and the annuity shall be provided through the purchase of an insurance contract as described in Section 7.08.
- (c) A Participant shall be informed by the Trustees of the estimated effect of payment in the form of a Single-Life Annuity. Acceptance of payment in a single sum, or a request for payment in installments or some other form, shall constitute consent to such other form of payment, if the Participant is informed of the opportunity to receive the Single-Life Annuity form of payment.

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**Section 7.05 Actuarial Equivalent Benefits**

For purposes of this Article, the following principles shall apply in determining the actuarial equivalent of a Participant's Accumulated Share:

- (a) The value of the vested portion of a Participant's Accumulated Share shall be deemed to be the value of the balance credited to the Accumulated Share as of the most recent Valuation Date coinciding with, or preceding the date as of which the value is to be determined, increased by any amounts allocated to the Accumulated Share after that Valuation Date and reduced by any amounts withdrawn from the Accumulated Share after that Valuation Date. The value of the Accumulated Share shall be adjusted in accordance with Article II as of each subsequent Valuation Date, until the amount in the Accumulated Share is distributed by purchase of an annuity or otherwise.
- (b) The conversion of an Accumulated Share, or part of it, to an actuarial equivalent annuity shall be based on the actuarial assumptions and other terms prescribed by the insurance company selected by the Trustees to issue the annuity. These need not be the same factors (or the same insurance company) used to estimate the annuity benefits for purposes of informing the Participant and Spouse about the effect of receiving the benefit in annuity form.
- (c) Any costs directly incurred in connection with the purchase of an annuity will be deducted from the Accumulated Share immediately before the purchase.



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**Section 7.06 Waiver of Spousal Benefits**

(a) The 50% Participant and Spouse Annuity and the Pre-retirement Surviving Spouse Benefit may be waived provided that:

- (i) The Participant files the waiver in writing in such form as the Trustees may prescribe, and the Participant's Spouse acknowledges the effect of the waiver and consents to it in writing witnessed by a notary public.
- (ii) The Participant establishes to the satisfaction of the Trustees that a waiver is not required because:
  - (1) the Participant is not married;
  - (2) the Spouse whose consent would be required cannot be located; or
  - (3) the Participant and Spouse are legally separated; or
  - (4) the Participant has been abandoned by the Spouse as confirmed in a court order; or
  - (5) consent of the Spouse cannot be obtained because of extenuating circumstances, as provided in Treasury Regulations.

If the Spouse is legally incompetent, consent under this Section may be given by his or her legal guardian, including the Participant if authorized to act as the Spouse's legal guardian.

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**Section 7.06 Waiver of Spousal Benefits** (Continued)

- (b) To be timely, a waiver of the 50% Participant and Spouse Annuity (and any required consent) must be filed no more than 180 days before the date the Participant's Accumulated Share is to be distributed, whether by purchase of an annuity or otherwise. The Participant may file a new waiver or revoke a previous waiver at any time during the 180-day period after he is notified by the Trustees of the estimated effect of the Participant and Spouse Annuity.
- (c) On and after the first day of the Plan Year in which he reaches age 35, a Participant may waive the Pre-retirement Surviving Spouse Benefit, revoke any previous waiver, and file a new waiver, at any time before the start of distribution from the Participant's Accumulated Share. In addition, a Participant who leaves covered service before the Plan Year may, at that time, waive the Pre-retirement Surviving Spouse Benefit with respect to the amounts allocated to his Accumulated Share.
- (d) A Spouse's consent to a waiver shall be effective only with respect to that spouse, and shall be irrevocable unless the Participant revokes the waiver to which it relates.

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**Section 7.06**   **Waiver of Spousal Benefits**   (Continued)

- (e)      Any waiver of the 50% Participant and Spouse Annuity or the Pre-retirement Surviving Spouse Benefit must identify any beneficiary other than the Participant's surviving Spouse who is to receive any portion of his Accumulated Balance payable after his death. Unless the Spouse's written consent to the waiver states otherwise, any subsequent change in the beneficiary shall again require the Spouse's written consent in accordance with Subsection (a).
- (f)      Thereafter, any changes of beneficiary shall be void if the Participant has a Spouse at the date of death, unless the change of beneficiary is consistent with Spouse's written consent.

**Section 7.07**   **Exceptions to Single-Life and Spousal Benefits**

Notwithstanding any other provisions in this Plan to the contrary:

- (a)      If the value of the Participant's Accumulated Share including voluntary contributions as of the scheduled date of distribution is not more than \$1,000 (\$5,000 for distributions made prior to March 28, 2005), the Trustees shall pay such amount in a single sum.

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**Section 7.07**   **Exceptions to Single-Life and Spousal Benefits**      (Continued)

- (b)      If the value of the Pre-retirement Surviving Spouse Benefit including voluntary contributions as of the date of the Participant's death, plus any other death benefits to which the Surviving Spouse may be entitled under the Plan is not more than \$1,000 (\$5,000 for distributions made prior to March 28, 2005), the Trustees shall pay such amount to the Surviving Spouse in a single sum.
- (c)      The value of any benefits owed to an "alternate payee" under a Qualified Domestic Relations Order, as defined in sections 206(d) of ERISA and 414(p) of the Internal Revenue Code, shall be subtracted from benefits otherwise payable under this Article.

**Section 7.08**   **Insurance Contracts**

Unless the Trustees determine otherwise, any annuities payable under this Article shall be provided by the purchase of an irrevocable annuity from an insurance company. The purchase of the annuity shall discharge the Trustees' obligations to the Participant and/or Spouse and thereafter the payment of benefits under the annuity, and any other matters relating to the administration of the benefit, shall be the sole responsibility of the insurance company.

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**Section 7.09 Trustees' Reliance**

The Trustees shall be entitled to rely on written representations, consents, and revocations submitted by Participants, Spouses or other parties in making determinations under this Article and, unless such reliance is arbitrary or capricious, the Trustees' determinations shall be final and binding, and shall discharge the Plan and the Trustees from liability to the extent of the payments made. The Plan shall not be liable under this Article for duplicate benefits with respect to the same Participant, or for any combination of surviving Spouse and other death benefits with respect to the Participant in excess of the value of the Participant's Accumulated Share determined as of the date scheduled for the start of payments to the Participant or, if earlier, the date of the Participant's death.

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**Section 8.01 Applications for Benefits**

Applications for all benefits must be made in writing in a form and manner prescribed by the Trustees.

**Section 8.02 Information Required**

Every Annuitant, Participant or beneficiary shall furnish, at the request of the Trustees, any information or proof required for the administration of the Plan or for the determination of any matter that the Trustees may have before them. Failure to furnish such information or proof promptly and in good faith shall be sufficient reason for the denial of benefits to such Participant or beneficiary, or the suspension or discontinuance of benefits to such Annuitant. The falsity of any statement material to an application or the furnishing of fraudulent information or proof shall be sufficient reason for the denial, suspension, or discontinuance of benefits under this Plan and in any such case, the Trustees shall have the right to recover any benefit payments made in reliance thereon. Such denial suspension, or discontinuance of benefits shall be rescinded and payments may be restored upon furnishing, to the satisfaction of the Trustees, any lacking or falsely stated information.

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**Section 8.03 Standards of Proof**

The Trustees shall be the sole judges of the standard of proof required in any case. In the application and interpretation of any of the provisions of this Plan, the decisions of the Trustees shall be final and binding on all parties including Participants, Employers, Union, Annuitants and the beneficiaries.

**Section 8.04 Designation of Beneficiary**

A Participant may designate a beneficiary on a form provided by the Trustees and delivered to the Trustees before death. A Participant may change his beneficiary (without the consent of the beneficiary) in the same manner. If no beneficiary has been designated, or no beneficiary has survived the Participant or Annuitant, distribution shall be made to the deceased Participant's or Annuitant's surviving spouse, or if none, to his surviving children in equal shares, or if none, to his surviving parent or parents in equal shares, or if none, to his executor or administrator, or if none, the balance shall revert to the reserve account of the M.M.& P. Individual Retirement Account Plan to be used for whatever lawful benefit the Trustees of the M.M.& P. Individual Retirement Account Plan shall determine to be appropriate for the remaining Participants of the Individual Retirement Account Plan.

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**Section 8.05 Payments to Incompetents or Minors**

- (a) In the event it is determined that a Participant, or any adult beneficiary hereunder, is unable to care for his or her affairs because of illness, accident or incapacity, either mental or physical, any payment due, unless claim shall have been made theretofore by a legally-appointed guardian, committee or other legal representative, shall be applied to the maintenance and support of such Participant or adult beneficiary.
- (b) In the event the beneficiary hereunder is a minor, the Trustees until claim is made by the duly-appointed guardian or committees of such minor, shall make such payments, in full or at such rate as they shall determine is required for the maintenance and support of the minor (provided the full amount is eventually paid), to any relative by blood or connection by marriage of such beneficiary, or to any other person or institution appearing to have assumed custody of such beneficiary.
- (c) Any application or payment made pursuant to this Section shall constitute a full discharge of the Trustees to the extent thereof.



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**Section 8.06 Merger, Consolidation or Transfer**

In the event of any merger or consolidation with, or transfer of assets or liabilities, to any other plan, the amount of the benefit which a Participant would receive upon a termination of the Plan immediately after such merger, consolidation, or transfer shall be no less than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer if the Plan had been terminated.

**Section 8.07 Maximum Benefits**

Notwithstanding any other provision of this Plan, the annual additions for the benefit of any Participant, taking into account Employer contributions, forfeitures, Voluntary Contributions and contributions under the 401(k) Arrangement, for any Plan Year may not exceed the maximum annual addition permitted by Section 415 of the Internal Revenue Code, which is hereby incorporated by reference, including cost-of-living adjustments prescribed by Section 415(d) of the Internal Revenue Code. If a Participant has at any time been covered by a defined contribution plan maintained by an Employer (other than another multiemployer plan), (a) the limitations of Section 415 of the Internal Revenue Code shall also apply to the sum of the annual additions under this Plan attributable to his employment by that Employer and the benefits under the Employer's other plans, and (b) any reduction in annual additions required to avoid exceeding the limitations of Section 415(c) shall be made first by the Employer's other plans. For the purpose of determining the

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**Section 8.07** **Maximum Benefits** (Continued)

maximum annual addition under section 415(c)(1)(B) of the Internal Revenue Code, the general definition of “compensation” set forth in section 1.415(c)-2(a), (b) and (c) of the Income Tax Regulations is incorporated by reference.

**Section 8.08** **Assignment of Benefits Prohibited**

- (a) To the end of making it impossible for Participants, Annuitants, or beneficiaries covered by these Regulations improvidently to imperil the provisions made for their support and welfare by directly anticipating, pledging, or disposing of their payments hereunder, it is expressly stipulated that no Participant, Annuitant, or beneficiary hereunder shall have any right to assign, alienate, transfer, sell, hypothecate, mortgage, encumber, pledge, commute, or anticipate any payments, and that such payments shall not, in any way, be subject to any legal process to levy execution upon, or attachment or garnishment proceedings against the same for the payment of any claim against any Participant, Annuitant, or beneficiary; nor shall such payments be subject to the jurisdiction of any bankruptcy court or insolvency proceedings by operation of law or otherwise any such assignment shall be void and of no effect whatsoever, and in any such event the Trustees shall have the right to terminate any payments to such Participant, Annuitant or beneficiary.

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**Section 8.08 Assignment of Benefits Prohibited** (Continued)

- (b) Notwithstanding subsection (a) above or any other provision of these Regulations, benefits shall be paid in accordance with a Qualified Domestic Relations Order as defined in Section 206(d)(3) of ERISA, and with written procedures adopted by the Trustees in connection with such Orders, which shall be binding on all Participants, beneficiaries and other parties. The Plan's interpretation of such Orders shall be subject to review under the arbitrary and capricious standard. In no event shall the existence or enforcement of a Qualified Domestic Relations Order cause the Plan to pay benefits with respect to a Participant in excess of the total value of the Participant's Accumulated Share without regard to such Qualified Domestic Relations Order. Benefits otherwise payable under the Plan shall be reduced by the actuarial present value of any payment ordered to be made under a Qualified Domestic Relations Order.
- (c) Notwithstanding subsection (a) or any other provision of the Plan, if a Participant commits a breach of fiduciary duty to the Plan or commits a criminal act against the Plan, such Participant's benefits may be reduced if a court order or requirement to offset such benefits arises from:
- (1) a judgment of conviction for a crime involving the Plan;

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(c)      (Continued)

(2) a civil judgment (or consent order or decree) that is entered into by a court in an action brought in connection with a breach (or alleged breach) of fiduciary duty under ERISA; or

(3) a settlement agreement entered into by the Participant and either the Secretary of Labor or the Pension Benefit Guaranty Corporation in connection with a breach of fiduciary duty under ERISA by a fiduciary or any other person.

If the Participant is married at the time the benefit is offset to satisfy the liability, spousal consent to the offset will be required unless:

- (1)      the spouse is also required to pay an amount to the Plan;
- (2)      the judgment, order, decree or settlement preserves an annuity right for the spouse; or

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**Section 8.08** **Assignment of Benefits Prohibited** (Continued)

(c) (Continued)

- (3) the spouse previously waived the right to annuity benefits. The spouse's consent must be in writing and witnessed by a Plan representative or notary public. No consent shall be required if it has been established to the satisfaction of the Plan representative that there is no spouse, the spouse cannot be located or because of other circumstances that may be prescribed in Treasury Regulations.

**Section 8.09** **Annual Compensation Limitation**

- (a) For Plan years beginning on or after January 1, 1989 and before January 1, 1997, the amount of a Participant's annual Compensation or Earnings from any single Employer that may be taken into account for any Plan purpose shall not exceed \$200,000, as that amount may be adjusted from time to time by the Secretary of the Treasury under Code §401(a)(17).
- (b) For Plan years beginning on or after January 1, 1997, the amount of a Participant's annual Compensation or Earnings from any single Employer that may be taken into account for any Plan purpose shall not exceed \$150,000, as that amount may be adjusted from time to time by the Secretary of the Treasury under Code §401(a)(17).

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**Section 8.09 Annual Compensation Limitation** (Continued)

- (c) The annual Compensation of each Participant taken into account in determining allocations for any Plan Year after December 31, 2001, shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with Section 401(a)(17)(B) of the Code. Annual Compensation means Compensation during the Plan Year or such other consecutive 12-month period over which compensation is otherwise determined under the Plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual Compensation for the determination period that begins with or within such calendar year.

**Section 8.10 Amendments**

The Trustees may amend or modify the Plan at any time in accordance with the Trust Agreement and applicable law, except that no amendment or modification may reduce any benefits which have been approved for payment prior to amendment, so long as funds are available for payment of such benefits, nor may an amendment or modification reduce the vested portion of a Participant's Accumulated Share other than for losses in the Trust.

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**Section 8.11 Termination**

- (a) In the event of termination of the Plan, each Participant shall have a "nonforfeitable right," and the assets then remaining after providing for the expenses of the Plan, for the payment of the portion of the Accumulated Share attributable to each Participant's voluntary contributions, and for the payment of any Accumulated Share theretofor approved, shall be distributed among the Participants. Each Participant shall receive that part of the total remaining assets in the same ratio as the value of the Employer-contributed portions of his Accumulated Share bears to the aggregate value of the Employer-contributed portion of the Accumulated Shares of all Participants.
- No part of the assets shall be returned to any Employer or inure to the benefit of any Employer or the Organization. In the event that a Participant cannot be located and no claim is made by him for payment of his Accumulated Share within six months following the sending of notice by Registered Mail to the Participant's last known address, the Employer-contributed portion of his Accumulated Share shall be forfeited and redistributed on a uniform basis among Participants to whom payments have or can be made.

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**Section 8.11 Termination** (Continued)

- (b) In the event the liquidation value of the assets on the date of termination is less than the total of the Employer-contributed portion of all Accumulated Shares plus expenses, the Trustees shall have the option of paying out the Employer-contributed portion of all Accumulated Shares to Participants over a period not to exceed ten years to the extent permitted by the assets available.
- (c) The foregoing provisions shall also apply in the case of partial termination to Participants who are affected thereby and who, as a result, sustain a Break in Service as defined in these Regulations.

**Section 8.12 Application and Appeal**

(a) **Notification of Action**

A Participant or beneficiary whose application or claim for benefits under the Plan has been denied, in whole or in part, shall be provided with adequate notice in writing thereof by the Trustees or their designated Committee. Such notice shall include the reasons for denial and references, when appropriate, to specific Plan provisions on which the denial is based; a description of any additional material or information necessary to perfect the claim, if applicable, and an explanation of why such material or information is necessary; appropriate information



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**Section 8.12**   **Application and Appeal**   (Continued)

(a)   **Notification of Action**   (Continued)

concerning the steps to be taken to submit the claim for review (including applicable time limits) pursuant to the review procedure set forth in this section; and a statement of a claimant's right to bring a civil action under Section 502(a) of ERISA following a denial on review. Such notice shall be provided to the Participant or beneficiary no later than ninety (90) days after the Trustees' or Administrator's receipt of his claim or application for benefits, unless special circumstances require an extension of time for processing the claim or application. If such special circumstances exist, written notice of the extension shall be furnished to the Participant or beneficiary prior to the termination of the initial ninety (90) day period, which notice shall indicate the circumstances requiring an extension as well as the date by which the Trustees or their designated Committee expect to render a decision. In no case shall an extension of time exceed a period of ninety (90) days from the end of the initial period.

If the claim is one for disability benefits, including an application or claim for benefits under Section 6.04, such notice shall be provided within a reasonable period of time, not later than forty-five (45) days after receipt

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**Section 8.12**   **Application and Appeal**   (Continued)

(a)   **Notification of Action**   (Continued)

of the claim by the Administrator. If the Administrator decides that special circumstances require an extension of time for processing the claim, the Administrator will provide the Participant or beneficiary with written notice of the extension, before the end of the initial forty-five day (45-day) period, explaining the reason for the extension and the date the Administrator expects a decision will be made. This extension will not exceed thirty (30) days, unless the Administrator determines that the decision cannot be made within the extension period. The Administrator may then begin a second thirty-day (30-day) extension, as long as the Administrator provides the Participant or beneficiary with written notice, by the end of the first thirty-day (30-day) extension, of the reason(s) for the second extension and the date it expects a decision to be rendered. Both notices for extension will include: (1) the standards on which entitlement to a benefit is based; (2) any unresolved issues that prevent a decision on the claim; and (3) the additional information needed to resolve the issues. The Participant or beneficiary will have forty-five (45) days to provide any specific information needed.

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**Section 8.12**   **Application and Appeal**   (Continued)

**(b)**   **Review Procedures**

- (i)**   A Participant or beneficiary (or a duly authorized representative thereof) may seek review of any such decision by the Trustees or their designated Committee denying his application or claim for benefits, in whole or in part. In order to do so, the claimant (or his duly authorized representative) must file a written appeal requesting such a review to the Trustees or the Administrator within sixty (60) days after his receipt of the written notice denying his application or claim for benefits in whole or in part. If the claim is one for disability benefits, including an application or claim for benefits under Section 6.04, the claimant (or his duly authorized representative) must file a written appeal requesting such a review to the Trustees or the Administrator within one hundred eighty (180) days after his receipt of the written notice denying his application or claim for benefits in whole or in part. Such written appeal must be addressed to the Trustees and must state the claimant's name, address, the fact that he is appealing the initial decision (giving the date of the decision appealed from), and

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**Section 8.12**   **Application and Appeal**   (Continued)

(b)   **Review Procedures**   (Continued)

(i)   (Continued)

the basis of his appeal. If a claimant (or his duly authorized representative) files such an appeal, or if he makes such a request before the appeals period expires, the Trustees and Administrator shall provide him with an opportunity to review pertinent documents at the Employer's office. In addition, a claimant (or his duly authorized representative) may submit written comments, documents, records or other information relating to the claim. The Trustees or their designated Committee will conduct a review that takes into account all comments, documents, records and other information submitted by the claimant (or his duly authorized representative) without regard to whether such information was submitted by the claimant (or his duly authorized representative) in the initial benefit determination.

- (ii) Unless special circumstances require an extension of time, the Trustees or their designated Committee shall render a final decision on any written appeal by the date of their next regularly

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**Section 8.12**   **Application and Appeal**   (Continued)

(b)   **Review Procedures**   (Continued)

(ii)   (Continued)

scheduled meeting following receipt of the written appeal or, in cases where the written appeal is received within thirty (30) days of the date of such meeting, by the date of their second regularly scheduled meeting following receipt of the written appeal. If special circumstances require an extension of time, the Trustees or their designated Committee shall provide the claimant with written notice of the extension prior to the commencement of the extension. Such notice shall describe the special circumstances and the date as of which the benefit determination will be made. Notification of the determination will be made to the claimant as soon as possible, but not later than five (5) days after the benefit determination is made. In no case will the period for rendering a decision be extended beyond the date of the third regularly scheduled meeting of the Trustees or their designated Committee following receipt of the written appeal.

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(b)   **Review Procedures**   (Continued)

- (iii)   The decision of the Trustees or their designated Committee on such written appeal shall be written in clear and understandable language and shall include specific reasons for the decision as well as specific references to the pertinent Plan provisions on which the decision is based; a statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records and other information relevant to the claims; a statement of a claimant's right to bring a civil action under Section 502(a) of ERISA; and a description of any voluntary appeals procedures offered by the Plan. Such written decision shall be furnished to the claimant within the time frames for rendering a decision specified above.
  
- (iv)   If a claim for disability benefits, including an application or claim for benefits under Section 6.04, is filed on or after April 1, 2018 this Section 8.12(b)(iv) shall apply. A Participant or beneficiary whose claim for disability benefits has been denied, in whole or in part, shall be provided with adequate notice that contains the following information (in addition to the information listed in

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(b)   **Review Procedures**   (Continued)

(iv)   (Continued)

Section 8.12(a): (1) an explanation of the medical judgment for the determination, if the adverse determination is based on medical necessity, experimental treatment or another limitation or a statement that such is available free of charge to the claimant upon request; (2) a discussion of the decision, including an explanation of the basis for disagreeing with or not following the views presented by the claimant to the Trustees of health care professionals treating the claimant and vocational professionals who evaluated the claimant, the views of medical or vocational experts whose advice was obtained on behalf of the Trustees in connection with a claimant's claim, without regard to whether the advice was relied upon in making the benefit determination, and/or a disability determination regarding the claimant presented by the claimant to the Trustees made by the Social Security Administration; (3) either the specific internal rules, guidelines, protocols, standards or other similar criteria of the Plan relied

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**Section 8.12**   **Application and Appeal**   (Continued)

(b)   **Review Procedures**   (Continued)

(iv)   (Continued)

upon in making the adverse determination or, alternatively, a statement that such rules, guidelines, protocols, standards or other similar criteria of the Plan do not exist; (4) a statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits; and (5) a statement prominently displayed in any applicable non-English language, as defined in guidance published by the Secretary of Labor pursuant to 29 C.F.R. § 2560.503-1(o), clearly indicating how to access the language services provided.

In the case of an appeal of a claim described in the preceding paragraph, the provisions of Section 8.12(ii) shall apply, with the addition of the following requirements: (1) before an adverse benefit determination on review can be issued, the Administrator will provide the claimant, free of charge, with any new or additional evidence considered, relied upon, or generated by the Trustees, their designated Committee, or other person making the



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(iv)   (Continued)

benefit determination (or at the direction of the Trustees, their designated Committee, or such other person) in connection with the claim; such evidence will be provided as soon as possible and sufficiently in advance of the date on which the notice of adverse benefit determination on review is to be provided to give the claimant (or his duly authorized representative) a reasonable opportunity to respond prior to that date; (2) before an adverse benefit determination on review can be issued based on a new or additional rationale, the Administrator will provide the claimant, free of charge, with the rationale; the rationale will be provided as soon as possible and sufficiently in advance of the date on which the notice of adverse benefit determination on review is to be provided to give the claimant a reasonable opportunity to respond prior to that date; (3) any notification of benefit determination on appeal shall include the information described in Section 8.15 and shall include a statement indicating that the claimant's right to bring a Section 502 claims is subject to the limitations period set

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(b) **Review Procedures** (Continued)

(iv) (Continued)

forth in Section 8.15, including the calendar date on which the contractual limitations period expires for the claim.

**Section 8.13 Effective Date**

The Plan is effective July 1, 1979.

**Section 8.14 Special Rules Relating to Veterans' Reemployment Rights**

Notwithstanding any provision of this Plan to the contrary, contributions, benefits and Vesting Service Credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Code.

**Section 8.15 Civil Actions**

No person whose application for benefits under the Plan has been denied, in whole or in part, may bring any action in any court or file any charge, complaint or action with any state, federal or local government agency prior to exhausting his available appeals within the time limits as provided in this Article. A claimant whose claim for benefits and appeal has been denied who wishes to bring suit must do so within three (3) years from the date on which the Board makes its final decision on the claimant's appeal. For all other actions, the claimant must commence that litigation within three (3) years of the date on which the violation of Plan terms is

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**Section 8.15 Civil Actions** (Continued)

alleged to have occurred. For any action to enforce the terms of the Plan, including but not limited to benefit claims denied on appeal, if a claimant wishes to file suit, the claimant must bring that litigation in the United States District Court for the District of Maryland. A claimant includes, but is not limited to, a Participant and his or her spouse, dependent, or beneficiary, and any provider suing with respect to payment alleged to be owed by the Plan for services rendered to a Participant, spouse, or other dependent. This Section applies to all litigation against the Plan, including litigation in which the Plan is named as a third party defendant.

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**Section 9.01**    **Purpose**

Reciprocal pension benefits and retirement account benefits are to be provided for Plan Participants who, because of transfer of membership between the M.M.& P. Plan and another multi-employer pension plan with which the M.M.& P. IRAP has a reciprocity arrangement pursuant to an agreement between the Organization and the union whose members participate in such other maritime multi-employer pension plan (individually and collectively referred to hereafter as "Plan" or "Plans"), may become ineligible for benefits or qualify for a reduced benefit under either Plan.

**Section 9.02**    **Signatory Funds**

- (a) Under this reciprocity agreement, the "Host Fund" shall transfer contributions to the "Primary Fund", subject to the conditions set forth in Section 4. The terms "Host Fund" and "Primary Fund" shall have the respective meaning set forth in Section "3".
- (b) Each Plan will retain its own Plan Year.
- (c) Eligibility for benefits under each respective Plan shall be determined on the basis of the rules and regulations of each Plan.

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**Section 9.03 Definitions**

- (a) "Temporary Participant" means, with respect to each Plan, an employee who (i) was, or is, a Participant in a Plan maintained by a Fund, and either (ii) was a Participant in the Plan maintained by the other Fund prior to such participation in (i) above, or (iii) has requested, in the manner provided in subsection (d), that he be deemed a Participant in the Plan maintained by the other Fund and is licensed for employment in the job classifications covered by the collective bargaining agreements pursuant to which the other fund was established and is maintained.
- (b) "Host Plan" means, with respect to each Temporary Participant, the Plan maintained by a Fund to which employer contributions are required on account of a Participant's employment subsequent to this commencement of participation in the Primary Plan.
- (c) "Primary Plan" means, with respect to each Temporary Participant, the Plan maintained by a Fund in which an employee participated prior to the first date on which he was employed under conditions requiring contributions to the Host Plan, or in which the employee has requested to be deemed a participant, pursuant to subsection (a) (iii).

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**Section 9.03 Definitions** (Continued)

- (d) A request by an employee pursuant to subsection (a) (iii) shall be made in writing and filed with the Plan Administrator. Such request shall be filed prior to the date on which, in the absence of such request, the employee would become a participant in the Plan other than the Plan in which he wishes to be deemed a Participant. Notwithstanding the preceding sentence, a request pursuant to subsection (a) (iii) shall be deemed timely if made prior to May 1, 1987. Any request made pursuant to subsection (a) (iii) shall be subject to the approval of the Board of Trustees of the Plan of which the employee requests to be deemed a Participant.

**Section 9.04 Transfer of Contributions Attributable to Temporary Participants**

- (a) The Host Plan with respect to a Temporary Participant will transfer to the Primary Plan the "transferable contributions" received on account of the employment of a Temporary Participant.
- (b) The portion of the employer contributions received on account of the employment of a Temporary Participant that are transferable contributions hereunder shall be equal to the lesser of:

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**Section 9.04** **Transfer of Contributions Attributable to Temporary Participants**  
(Continued)

(b) (Continued)

- (i) 100% of such employer contributions, or
- (ii) the amount of employer contributions that would have been payable on account of the employment of such Temporary Participant if such employment had been subject to the terms of the collective bargaining agreement pursuant to which contributions are made to the Primary Plan; provided, however, that if there is more than one collective bargaining agreement, the agreement requiring the smallest employer contributions shall be the collective bargaining agreement of reference.

(c) Amounts required to be transferred under the terms of this Section shall be transferred within 30 days after receipt of the employer contributions attributable to the employment of a Temporary Participant.

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**Section 9.04   Transfer of Contributions Attributable to Temporary Participants**  
(Continued)

- (d) In the event that an employer is delinquent in making contributions to the Host Plan, the Primary Plan shall suspend any credit to the Temporary Participants of such employer until such delinquencies are satisfied. If it is necessary for a Host Plan to undertake collection procedures against a Temporary Participant's employer, the Host Plan shall deduct from the amount determined under subsection (b) of this section the amounts expended in collecting the delinquencies.

**Section 9.05   Crediting of Employment of Temporary Participants**

- (a) For each Temporary Participant, employment for which employer contributions to a Host Plan are made shall be treated for all purposes as if it were employment for which contributions are made to the Primary Plan.
- (b) In the event contributions are transferred by the Host Plan to the Primary Plan pursuant to Section 4, the Host Plan shall not credit any service by such Temporary Participant for purposes of determining eligibility for or the amount of benefits under the Host Plan.
- (c) This provision is not intended to alter or modify in any way the existing eligibility rules of the Primary Plan or the Host Plan.



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**THE M.M.& P. INDIVIDUAL RETIREMENT ACCOUNT PLAN**  
**AND OTHER MARITIME MULTI-EMPLOYER PENSION PLANS**

**Section 9.06 Arbitration**

This provision shall apply for purposes of this Article, notwithstanding any provision in either Plan to the contrary. Any dispute, controversy or claim arising out of or relating to the application of this Reciprocal Agreement or any portion thereof, shall be settled by arbitration before an arbitrator designated by the American Arbitration Association in accordance with its then prevailing rules. The award of the arbitrator shall be final, binding and conclusive upon the parties to the dispute and may be enforced in any federal court of competent jurisdiction

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**SELF-DIRECTED INDIVIDUAL ACCOUNTS**

**Section 10.01 Self-Directed Individual Accounts**

- (a) The Trustees shall establish under the Plan self-directed individual accounts, other than 401(k), (the "Individual Accounts"), in accordance with the requirements of Section 404(c) of ERISA and, with respect to which a Participant may elect, subject to the provisions of this Article X, to exercise independent control over the assets in such Individual Account. The Trustees may delegate responsibility for the establishment of procedures, maintenance, administration and investment of the Individual Account assets in accordance with the Trust Agreement, the Plan and ERISA.
- (b) The Trustees may employ such professional assistance from investment managers, including an investment company registered under the Investment Company Act of 1940 (and the investment manager of such company), and other service providers as may be required to maintain and administer the Individual Accounts, including the investment of, and record keeping with respect to, Individual Account assets.
- (c) The Trustees shall not be liable (for a breach of fiduciary responsibility or otherwise) for any loss to the assets of a Participant's Individual Account, or by reason of any act or omission, which results from a Participant's exercise of control (or failure to exercise control) over his or her Individual Account assets.

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**Section 10.02 Investment of Individual Account Assets**

The investment of Individual Account assets shall be the responsibility of the Trustees as set forth in the Trust Agreement (including any provision of the Trust Agreement) for the appointment of, or delegation of investment authority to, an investment manager, including an investment company registered under the Investment Company Act of 1940 (and the investment manager of such company), except as subject to the independent control of Participants in accordance with the terms and provisions of this Article X (and any procedures established pursuant thereto) and Section 404(c) of ERISA.

**Section 10.03 Establishment of Separate Investment Funds**

The Trustees shall select an investment manager to provide or select a diversified group of separate investment funds for the investment of Plan assets to be held in Individual Accounts in accordance with ERISA Section 404(c) (the "Separate Investment Funds"). No other investments of Individual Account assets shall be permitted. The Separate Investment Funds may, without limitation, be invested in individual funds managed by a regulated investment company described in Section 3(a) of and duly registered under the Investment Company Act of 1940 in accordance with Section 3(21) of ERISA, separate accounts of insurance companies duly licensed under applicable state laws or the commingled collective trusts of bank, or any combination of the foregoing. The Trustees shall provide for at least five Separate Investment Funds. The Separate Investment Funds shall satisfy the following primary objectives

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**Section 10.03 Establishment of Separate Investment Funds** (Continued)

(provided, however, that if the regulations issued under ERISA Section 404(c) require the provision of funds with other objectives, such primary objectives shall be deemed substituted for the following):

- (a) Maximum current income, consistent with the preservation of capital and liquidity, through investments in securities issued or guaranteed by the U.S. Treasury or agencies of the U.S. Government;
- (b) High level of current income consistent with the maintenance of principal and liquidity, by investing primarily in mortgage-backed securities guaranteed as to principal and interest by the U.S. Government;
- (c) High level of current income consistent with the maintenance of principal and liquidity, by investing in a diversified portfolio of high yielding medium and lower quality bonds;
- (d) Long-term growth of capital and income by investing primarily in common stocks, with a secondary objective to provide current income; and
- (e) Long-term growth of capital by investing principally in common stocks chosen primarily on the basis of greater-than-average earning growth potential and quality of management, with dividend income incidental to this objective.

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**Section 10.04 Election By Participant**

- (a) Subject to uniform and nondiscriminatory procedural rules and regulations to be established by the Trustees or the Administrator, a Participant may elect in writing, timely filed with the Trustees, to transfer to his or her Individual Account (i) up to 40% of his or her Accumulated Share as of December 31, 1987 and/or such other designated percentage the Trustees may determine for subsequent years; and/or (ii) up to 100% of Employer Contributions made on his or her behalf for Employment on or after January 1, 1989; and/or (iii) effective October 1, 1996, up to 100% of a Participant's voluntary contributions made under Section 3.01 of Article III hereinabove.
- (b) Subject to uniform and nondiscriminatory procedural rules and regulations to be established by the Trustees or the Administrator, a Participant may elect in writing (in accordance with any maximum or minimum amounts, any designated percentages, time limitations or other applicable rules and regulations) as may be prescribed by the Trustees (or a service provider, including, without limitation, an investment manager, to whom responsibilities have been delegated by the Trustees or Administrator): (i) the Separate Investment Fund or Funds in which his or her Individual Account shall be invested; (ii) to change the Separate Investment Fund or Funds in which his or her Individual Account shall be invested; (iii) to transfer assets from his or her Accumulated Share or voluntary contributions account into his or her Individual Account, or from his or her Individual Account into his or her Accumulated Share or voluntary contributions account;

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**Section 10.04 Election By Participant** (Continued)

(b) (Continued)

or (iv) to direct (or modify the percentage of) future Employer Contributions or voluntary contributions to be invested in his or her Individual Account. The assets in the Individual Account attributable to a Participant's voluntary contributions under Section 3.01 of Article III hereinabove shall be accounted for separately from assets attributable to Employer Contributions or assets transferred from a Participant's Accumulated Share.

**Section 10.05 Valuation and Distribution of Individual Accounts**

(a) The aggregate value of a Participant's Individual Account shall be increased or decreased solely by the net earnings or losses attributable to the portion of the Participant's Individual Account invested in a Separate Investment Fund or Funds or other investment during the period of such investment, and any administrative charges payable from or on behalf of, or otherwise chargeable against, the Participant's Individual Account (or any Separate Investment Fund or Funds or other investment in which the Participant's Individual Account was invested).

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**Section 10.05 Valuation and Distribution of Individual Accounts** (Continued)

- (b) Notwithstanding any Plan provision to the contrary, during any period when monies are invested in an individual account, such monies shall not participate in the net investment yield or losses (as described in Section 2.03 hereof) attributable to any other Plan investment(s) other than as described in Section 10.05(a) above, but shall be subject to allocation of expense charges.
- (c) Except as provided in this Article X (including, without limitation, the valuation provisions of Section 10.05(a) and (b) above, a Participant's Self-Directed Individual Account assets shall be considered for all purposes hereunder (including, without limitation, the payment of benefits pursuant to Article VI) to be part of a Participant's Accumulated Share.

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The provisions of this Article XI apply separately to each Employer that contributes to the Plan for the benefit of Participants whose benefits are not determined through collective bargaining.

**Section 11.01 Special Definitions for Article XI**

As used in this Article XI, the following terms have the meanings indicated, unless the context clearly requires a different meaning:

- (a) “Affiliate” means any entity that is part of the same controlled group, within the meaning of section 414(b) or (c) of the Code, or the same affiliated service group, within the meaning of section 414(m) of the Code, as the Employer.
- (b) “Compensation” means an Employee’s compensation within the meaning of section 415(c)(3) of the Code for the plan year, not to exceed \$265,000 or such other amount as may be prescribed in accordance with section 401(a)(17)(B) of the Code.
- (c) “Cumulative Accrued Benefit” means the sum of the present values of an Employee’s accrued benefits under all defined benefit plans maintained by the Employer or Affiliates and his account balances, including any contribution not made as of the Determination Date but includible under section 416 of the Code, under this Plan and all other defined contribution plans maintained by the Employer and Affiliates; *provided, however*, that –
  - (1) accrued benefits and account balances under another plan will not be included in Participants’ Cumulative Accrued Benefits if (1) no Key Employee who participates in this Plan participates in the other plan or in any plan with which the other plan is aggregated for the purpose of satisfying the requirements of section



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**Section 11.01 Special Definitions for Article XI** (Continued)

(c) (Continued)

(1) (Continued)

401(a)(4) or 410(b) of the Code and (2) the aggregation of the other plan with this Plan would cause the aggregated plan to fail to satisfy the requirements of section 401(a)(4) or 410(b) of the Code; and

(2) if the accrual method, within the meaning of section 411(b) of the Code, for determining accrued benefits under all defined benefit plans that are taken into account in determining Cumulative Accrued Benefits is not identical, the accrued benefits of all Participants other than Key Employees will be determined under the method that results in the slowest accrual rate permitted under section 411(b)(1)(C) of the Code.

(d) “Determination Date” means, for any Plan Year, the last day of the preceding Plan Year.

(e) “Determination Period” means the one-year period ending on the Determination Date (or five (5) year period if the distribution was made for a reason other than separation from service, death or disability).

(f) “Employee” means any employee of the Employer or an Affiliate.

(g) “Key Employee” means an Employee who, at any time during the Plan Year, is (1) an officer of the Employer or an Affiliate with Compensation greater than \$170,000 or such other amount as may be prescribed in accordance with section 416(i)(1)(A) of the Code,

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**Section 11.01 Special Definitions for Article XI** (Continued)

(g) (Continued)

(2) a five percent (5%) owner of the Employer or an Affiliate or (3) a one percent (1%) owner of the Employer or an Affiliate with Compensation greater than \$150,000.

(h) “Key Employee Contribution Percentage” means the highest percentage obtained by dividing (1) the sum of Employer Contributions (Section 1.19), Pre-Tax Contributions (401(k) Arrangement, Section 1.31), Roth Contributions (401(k) Arrangement, Section 1.33), Matching Contributions (401(k) Arrangement, Section 1.35) and employer contributions under other defined contribution plans of the Employer or an Affiliate made for the benefit of any Participant who is a Key Employee by (2) that Participant’s Compensation.

**Section 11.02 Determination of Top-Heavy Status**

The Plan is top-heavy for a Plan Year with respect to an Employer if the top-heavy ratio as of the Determination Date exceeds sixty percent (60%). The top-heavy ratio is determined by dividing –

- (a) the sum of the Cumulative Accrued Benefits of all Key Employees as of the Determination Date by
- (b) the sum of the Cumulative Accrued Benefits of all Employees as of the Determination Date, other than (1) Employees who have performed no services for the Employer or any Affiliate during the one-year period ending on the Determination Date and (2) Employees who are not Key Employees as of the Determination Date but who have been Key Employees at any time, in each case adding to each Employee’s Cumulative Accrued

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**Section 11.02 Determination of Top-Heavy Status** (Continued)

Benefit any distributions made within the Determination Period. Rollovers and transfers between plans are also taken into account to the extent required by regulations issued under section 416 of the Code.

**Section 11.03 Effect of Top-Heavy Status**

For any Plan Year in which the Plan meets the conditions specified in Section 11.02 and any contribution is made for the benefit of any Key Employee, each Participant whose benefits are not determined under the terms of a Collective Bargaining Agreement, who is an Employee of the Employer and who is not a Key Employee must receive an Employer Contribution for that Plan Year equal to at least the lesser of –

- (a) three percent of, or
- (b) the Key Employee Contribution Percentage for the Plan Year,  
reduced by any employer contributions (other than elective deferrals described in section 401(k) of the Code, Roth contributions described in section 402A of the Code or matching contributions described in section 401(m) of the Code) made for the Participant's benefit under other defined contribution plans of the Employer or an Affiliate.

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**MASTERS, MATES & PILOTS 401 (k) ARRANGEMENT**

By resolution, the Board of Trustees of the Masters, Mates and Pilots Individual Retirement Account Plan and Trust adopted the following 401(k) Arrangement to be effective April 1, 1991. This Arrangement was adopted to provide additional benefits under the M.M.& P. Individual Retirement Account Plan pursuant to the authority of said Board of Trustees granted under the Agreement and Declaration of Trust establishing the M.M.& P. Individual Retirement Account Plan. All rules, regulations, definitions and provisions of the M.M.& P. Individual Retirement Account Plan apply for purposes of this Agreement, which is incorporated into and made part of that Plan, except to the extent a different provision is specified for purposes of this Arrangement in the instant Rules and Regulations.

**ARTICLE I**

**DEFINITIONS**

The following definitions apply for all purposes under the Masters, Mates and Pilots 401(k) Arrangement, unless expressly stated to the contrary.

**Section 1.1**    **Trust Agreement**

The term "Trust Agreement" as used herein shall mean the Agreement and Declaration of Trust establishing the Masters, Mates and Pilots Individual Retirement Account Plan as the same may hereafter be amended.

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**Section 1.2**    **Fund or Trust Fund**

The term "Fund" or "Trust Fund" means the M.M.& P. Individual Retirement Account Plan and its trust estate.

**Section 1.3**    **Arrangement or 401(k) Arrangement**

The term "Arrangement" or "401(k) Arrangement" means the Rules and Regulations set forth herein governing the administration and operation of the 401(k) Arrangement.

**Section 1.4**    **Plan or IRAP**

The term "Plan" or "IRAP" means the Masters, Mates and Pilots Individual Retirement Account Plan.

**Section 1.5**    **Trustees**

The term "Trustees" as used herein shall mean the Board of Trustees established by the Trust Agreement and the persons who at any time are acting in such capacity pursuant to the provisions of the Trust Agreement.

**Section 1.6**    **Union**

The term "Union" means the International Organization of Masters, Mates and Pilots.

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**Section 1.7**    **Contributing Employer or Employer**

The term "Contributing Employer" or "Employer" means an Employer that is signatory to a Collective Bargaining Agreement with the Union calling for the payment of Tax Deferred Savings Contributions under the 401(k) Arrangement in accordance with the authorization of an Employee. Solely for the purposes of identifying Highly Compensated Employees and applying the rules on participation, vesting and statutory limits on benefits under the Arrangement but not for determining Covered Employment, the term "Employer" includes all corporations, trades or businesses under common control with the Employer within the meaning of Internal Revenue Code § 414(b) and (c), all members of an affiliated service group with the Employer within the meaning of Internal Revenue Code § 414(m) and all other businesses aggregated with the Employer under Internal Revenue Code § 414(o). Effective January 1, 1997, the term "Contributing Employer" or "Employer" shall also mean the M.M.& P. Funds. Effective January 1, 2002, the term "Contributing Employer" or "Employer" shall also mean the Union. Effective October 1, 2018, the term "Contributing Employer" or "Employer" shall also mean any Other Employer.

**Section 1.8**    **Agreement**

The term "Agreement" means a Collective Bargaining Agreement with the Union whereby the Employers agree to make Tax Deferred Savings Contributions to the 401(k) Plan as authorized by the Employee and agree to be bound by the terms of the Plan Trust.

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**Section 1.8**   **Agreement**   (Continued)

Effective January 1, 1997, the term "Agreement" shall also include any agreement with an M.M.& P. Fund whereby the Fund or Funds agree to make Tax Deferred Savings Contributions to the 401(k) Plan as authorized by the Employee.

Effective January 1, 2002, the term "Agreement" shall also include any agreement with the Union whereby the Union agrees to make Tax Deferred Savings Contributions to the 401(k) Plan as authorized by the Employee. Effective October 1, 2018, the term "Agreement" shall also include any agreement with any Other Employer whereby the Other Employer agrees to make Tax Deferred Savings Contributions to the 401(k) Plan as authorized by the Employee.

**Section 1.9**   **Employee**

The term "Employee" means a person employed in a position for which contributions may be made under the 401(k) Arrangement in accordance with the terms of an Agreement.

**Section 1.10**   **Covered Employment**

The term "Covered Employment" means employment for which an Employer is required to pay Tax Deferred Savings Contributions under the 401(k) Arrangement on or after April 1, 1991, with respect to an Employee, or would be so required if the Employee elected Tax Deferred Savings.

**Section 1.11**   **Contributions**

The term "Contributions" means the payment of Tax Deferred Savings or Roth Contributions to the Fund under the 401(k) Arrangement by an Employer pursuant to the authorization of an Employee under Article III or Article V.

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**Section 1.12 Tax Deferred Savings Account**

The term "Tax Deferred Savings Account" means the account established for each Participant under Articles III and V and includes his Pre-Tax Contribution Account and his Roth Account.

**Section 1.13 Plan Year or Fiscal Year**

The term "Plan Year" or "Fiscal Year" means the annual period January 1, through December 31.

**Section 1.14 Valuation Date**

The term "Valuation Date" means the end of each business day in the Plan Year.

**Section 1.15 Participant**

The term "Participant" means an Employee who meets the requirements for participation under the Arrangement set forth in Article 2, or a former Employee who has acquired a right to a benefit under the Arrangement. Unless otherwise specified, an Employee's waiver of participation in the M.M.&P. Individual Retirement Account Plan at the time of his hiring shall not be construed as a waiver of participation in the 401(k) Arrangement.

**Section 1.16 Spouse**

The term "Spouse" means a person to whom a Participant is married under applicable law, provided, however, such marriage must be between a man and a woman; provided further, however, that a Participant's former Spouse shall be treated as a Surviving Spouse of the



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**Section 1.16 Spouse** (Continued)

Participant for purposes of this Arrangement to the extent provided in a Qualified Domestic Relations Order (within the meaning of Sections 206(d) of the Act and 414(p) of the Code)."

Notwithstanding anything herein to the contrary, effective June 26, 2013, for purposes of this Arrangement, a Spouse shall mean the person to whom a Participant is legally married under applicable law, provide however, that a Participant's former Spouse shall be treated as a Surviving Spouse of the Participant for purposes of this Arrangement to the extent provided in a Qualified Domestic Relations Order (within the meaning of Sections 206(d) of the Act and 414(p) of the Code).

**Section 1.17 Normal Retirement Age and Early Retirement Age**

The term "Normal Retirement Age" means age 65 and "Early Retirement Age" shall mean any age after attainment of age 59 1/2 until Normal Retirement Age.

**Section 1.18 Retires**

The term "Retires" means the complete withdrawal by an Employee or Participant from any and all employment in the Maritime Industry.

Effective October 1, 2006, a Participant shall be treated as retired under the preceding sentence even though he is employed ashore in the Maritime Industry, provided that (a) such employment is not Covered Employment and (b) if he has not yet attained age 59-1/2, he has had a bona fide severance from employment of not less than 90 days from all Employers.

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**Section 1.18** **Retires** (Continued)

Effective October 1, 2007, a Participant shall be treated as retired under the first sentence hereof even though he is employed afloat in the Maritime Industry, provided that (a) such employment is not Covered Employment and (b) if he has not yet attained age 59-1/2, he has had a bona fide severance from employment of not less than 90 days from all Employers.

**Section 1.19** **Market Value**

The term "Market Value" means the value of the assets which takes into account fair market value.

**Section 1.20** **Beneficiary**

The term "Beneficiary" means a person, other than an Employee or a Spouse, who is receiving or entitled to receive benefits from a Participant's 401(k) Account because of designation for such benefits by a Participant and Spouse, if any, in accordance with the provisions of the Arrangement.

**Section 1.21** **Earnings**

The term "Earnings" means the total cash remuneration of the Participant paid by the Employer, including overtime, bonuses, incentive compensation, commissions and any other form of additional compensation paid in cash, before any reductions for Tax-Deferred Savings.

**Section 1.22** **Enrollment Date**

The term "Enrollment Date" means the payday coincident with or next following the first day of any January or July.

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**Section 1.23 Tax Deferred Savings**

The term "Tax Deferred Savings" means the amount of Elective Deferral from a Participant's Earnings pursuant to Section 2.3 and contributed to the Fund under the Arrangement during the Plan Year by an Employer, at the election of the Participant, in lieu of cash compensation and shall include contributions that are made pursuant to a salary reduction agreement. Such contributions must be nonforfeitable when made and distributed only as specified in this Arrangement. Tax Deferred Savings include both Pre-Tax Contributions and Roth Contributions.

**Section 1.24 Termination of Employment**

The term "Termination of Employment" means termination of all employment in the Maritime Industry.

Effective October 1, 2006, a Participant shall be treated as having a termination of employment under the preceding sentence even though he is employed ashore in the Maritime Industry, provided that (a) such employment is not Covered Employment and (b) if he has not yet attained age 59-1/2, he has had a bona fide severance from employment of not less than 90 days from all Employers.

Effective October 1, 2007, a Participant shall be treated as having a termination of employment under the first sentence hereof even though he is employed afloat in the Maritime Industry, provided that (a) such employment is not Covered Employment and (b) if he has not yet attained age 59-1/2, he has had a bona fide severance from employment of not less than 90 days from all Employers.

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**Section 1.25 Actual Deferral Percentage**

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

**Section 1.26 Average Deferral Percentage**

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

**Section 1.27 Excess Deferrals**

The term "Excess Deferrals" shall mean with respect to any Plan Year the aggregate amount of Elective Deferrals actually paid to the Trust on behalf of Highly Compensated Employees for such Plan Year, that exceeds the maximum amount of such contributions permitted under Section 3.5 below.

**Section 1.28 Highly Compensated Employee**

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

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**Section 1.28** **Highly Compensated Employee** (Continued)

- (b) Effective for years beginning after December 31, 1996, the term "Highly Compensated Employee" means any Employee who: (1) was a 5% owner at any time during the year or the preceding year, or (2) for the preceding year had compensation from the Employer in excess of \$80,000. The \$80,000 amount is adjusted at the same time and in the same manner as under § 415(d) of the Internal Revenue Code, except that the base period is the calendar quarter ending September 30, 1996. A Highly Compensated Former Employee's status is based on the rules applicable to determining Highly Compensated Employee status as in effect for that determination year, in accordance with § 1.414(q)-1T, A-4 of the temporary Treasury Regulations and Notice 97-45. In determining whether an Employee is a Highly Compensated Employee for years beginning in 1997, the amendments to § 414(q) of the Internal Revenue Code stated above are treated as having been in effect for years beginning in 1996.

**Section 1.29** **Non-Highly Compensated Employee**

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

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**Section 1.30 Pre-Tax Contribution Account**

The term “Pre-Tax Contribution Account” means the portion of a Participant’s Tax Deferred Savings Account established to hold elective deferrals pursuant to Section 2.3 that are not designated as Roth Contributions.

**Section 1.31 Pre-Tax Contribution**

The term “Pre-Tax Contribution” means a Contribution made pursuant to a Tax Deferred Savings authorization that is not designated as a Roth Contribution.

**Section 1.32 Roth Account**

The term “Roth Account” means the portion of a Participant’s Tax Deferred Savings Account established to hold elective deferrals pursuant to Section 2.3 that have been designated as Roth Contributions in accordance with Section 5.2 and to hold any other portion of his interest in the Plan that has been converted into a Roth Contribution. The following rules apply to Roth Contributions resulting from conversions:

- (a) Each of the following sources of a Participant's Roth Contributions resulting from conversions is accounted for separately and may be the subject of a separate investment election by the Participant.
  - (1) Pre-Tax Contributions converted into Roth Contributions in accordance with Section 4.9;
  - (2) Matching Contributions converted into Roth Contributions in accordance with Section 4.9;
  - (3) Accumulated Share (other than voluntary contributions as described in Article III) converted into Roth Contributions in accordance with Section 6.11 hereinabove;

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**Section 1.32 Roth Account** (Continued)

- (a) (Continued)
- (4) Voluntary contributions as described in Article III converted into Roth Contributions in accordance with Section 6.11 hereinabove;
- (5) Rollover Contributions designated as Roth Contributions in accordance with Section 1.18 hereinabove.
- (b) Following the conversion of a Participant's Accumulated Share, Voluntary Contributions or Rollover Contributions into Roth Contributions, all Plan provisions that applied prior to the conversion remain in force unless otherwise specified. A conversion has no effect on the Participant's subsequent receipt of benefits in accordance with Section 3.03 or Articles VI and VII hereinabove, except as otherwise provided in Section 6.10.
- (c) The conversion of a Participant's Pre-Tax Contributions or Matching Contributions into Roth Contributions has no effect on any outstanding loans or on his subsequent loan or distribution options.

**Section 1.33 Roth Contribution**

The term "Roth Contribution" means a contribution, including earnings thereon, that has either (a) been designated as a Roth Contribution pursuant to the Participant's election under Section 5.2 or (b) been converted into a Roth Contribution in accordance with Section 1.18 or 6.11 hereinabove or Section 4.9 of the 401(k) Arrangement.

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**Section 1.34 Matching Contribution Account**

The term “Matching Contribution Account” means the portion of a Participant’s Tax Deferred Savings Account established to hold Matching Contributions made with respect to his elective deferrals in accordance with Section 2.3(f).

**Section 1.35 Matching Contribution**

The term “Matching Contribution” means an Employer contribution that is contingent upon a Participant’s making of an elective deferral under Section 2.3.

**Section 1.36 Other Employer**

The term Other Employer means any employer, aside from the Union or an M.M.&P. Fund, from whom the Trustees mutually agree that Tax Deferred Savings Contributions to the 401(k) Plan as authorized by an Employee may be accepted, who are not covered by a Collective Bargaining Agreement or Participation Agreement.



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**Section 2.1 Purpose**

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

**Section 2.2 Eligibility**

- (a) An Employee shall be eligible to participate in the Arrangement if he is a Participant in the IRAP and is engaged in Covered Employment.
- (b) An Employee who meets the eligibility standards in subsection (a) on April 1, 1991, shall be eligible to participate under the Arrangement as of the commencement of any sign-on or voyage beginning on or after April 1, 1991.
- (c) An Employee who first meets the eligibility standards in subsection (a) after April 1, 1991, shall be eligible to participate under the Arrangement as of the commencement of any sign-on or voyage or any employment in the Pacific Maritime Region beginning on or after the first day of the first Plan Year beginning on or after the date the Employee meets the eligibility standards.

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**Section 2.2**    **Eligibility** (Continued)

- (d)    An Employee of an M.M. & P. Fund, the Union, or any Other Employer who meets the eligibility standards in subsection (a) shall be eligible to participate under the Arrangement on the first day of any calendar quarter (January 1, April 1, July 1 or October 1) or after the first day of the first Plan Year beginning on or after the date the Employee meets the eligibility standards.

**Section 2.3**    **Participation and Deferral Elections**

- (a)    Participation in the Arrangement is purely voluntary. An eligible Employee becomes a Participant by executing a Tax Deferred Savings authorization form.
- (b)    At the commencement of any sign-on or voyage or at the commencement of any employment in the Pacific Maritime Region, an Employee may elect Tax Deferred Savings by completing and signing the form for that purpose prescribed by the Trustees, requesting the Employer to reduce his Earnings.
- (c)    Each Tax Deferred Savings authorization shall apply only to Earnings attributable to one sign-on or voyage, unless such sign-on or voyage is less than three weeks in length, in which case the Tax Deferred Savings authorization will apply for subsequent voyages with the same Employer until a maximum of three months have past. A new Tax Deferred Savings authorization form must be completed and signed at the commencement of each sign-on or voyage, except as noted above, if the Employee wants to defer Earnings under the Arrangement with respect to that sign-on or voyage. For any employment in the Pacific Maritime Region, each Tax Deferred Savings authorization shall apply to earnings throughout the calendar year in which the election is made, unless changed or revoked by the submission of a new Tax Deferred Savings authorization prior

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**Section 2.3**    **Participation and Deferral Elections**            (Continued)

(c)    (Continued)

to the beginning of any calendar quarter. Subject to the dollar limit on total annual deferrals described in Section 2.4 and the limits on Excess Deferrals described in Section 3.6, a Participant may change the percentage of Earnings to be deferred each time he completes a new Tax Deferred Savings authorization form.

For the purpose of deferral elections under this Section, Earnings attributable to vacation pay may not be deferred.

(d)    An Employee of an M.M.&P. Fund, the Union, or any Other Employer at the beginning of any calendar quarter (January 1, April 1, July 1 or October 1) may elect Tax Deferred Savings by completing and signing the form for that purpose prescribed by the Trustees, requesting the Employer to reduce his Earnings.

Each Tax Deferred Savings authorization shall apply to Earnings throughout the calendar year in which the election is made, unless changed or revoked by the submission of a new Tax Deferred Savings authorization prior to the beginning of any calendar quarter. Subject to the dollar limit on total annual deferrals described in Section 2.4 and the limits on Excess Deferrals described in Section 3.6, a Participant may change the percentage of earnings to be deferred each time he completes a new Tax Deferred Savings authorization form.

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**Section 2.3**    **Participation and Deferral Elections**            (Continued)

- (e)    Effective January 1, 2002, all Participants who are eligible to make elective deferrals under this Plan and who have (or will have) attained age 50 before the close of the taxable year will be eligible to make catch-up contributions in accordance with, and subject to the limitations of, Section 414(v) of the Code. Such catch-up contributions shall not be taken into account for purposes of Section 2.4 of the 401(k) Arrangement and Section 8.07(a) of the general Plan provisions. The Plan shall not be treated as failing to satisfy the provisions of the Plan implementing the requirements of Section 401(k)(3), 401(k)(11), 401(k)(12), 410(b) or 416 of the Code, as applicable, by reason of the making of such catch-up contributions.
  
- (f)    If so provided in its Collective Bargaining Agreement, an Employer shall make Matching Contributions in the amount required by the Agreement. Matching Contributions with respect to elective deferrals during any Plan Year must be forwarded to the Fund no later than twelve (12) months after the end of that year (or sooner, if required by the Agreement). Matching Contributions may be made only for Employees covered by collective bargaining. Matching Contributions are fully vested at all times.

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**Section 2.4**    **Dollar Limit on Tax Deferred Savings**

- (a) Notwithstanding a Participant's authorization or instructions, no Participant may defer more than the lesser of 15% of Earnings or \$10,500 in a calendar year in Tax Deferred Savings under the Arrangement, with the \$10,500 limit to be adjusted by the Secretary of the Treasury for inflation after 2001 in accordance with § 415(d) of the Internal Revenue Code. Notwithstanding anything herein to the contrary, effective January 1, 2001, notwithstanding his authorization or instructions, no Participant who is a seagoing member of the Organization's Offshore Membership Group may defer more than the lesser of 20% of Earnings or \$10,500 in a calendar year in Tax Deferred Savings under the Arrangement, with the \$10,500 limit to be adjusted by the Secretary of the Treasury for inflation in accordance with § 415(d) of the Internal Revenue Code thereto:

Effective January 1, 2002, no Participant shall be permitted to have elective deferrals made under this Plan in excess of the lesser of 25% of Earnings or the dollar limitation contained in Section 402(g) of the Code in effect for such taxable year, except to the extent permitted under Subsection 2.3(e) of this 401(k) Arrangement and Section 414(v) of the Code.

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**Section 2.4**    **Dollar Limit on Tax Deferred Savings** (Continued)

**(a)**    (Continued)

Effective January 1, 2003, no Participant shall be permitted to have elective deferrals made under this Plan in excess of the lesser of 100% of Earnings or the dollar limitation contained in Section 402(g) of the Code in effect for such taxable year, except to the extent permitted under Subsection 2.3(e) of this 401(k) Arrangement and Section 414(v) of the Code.

- (b)**    Once a Participant's Tax Deferred Savings for a calendar year under the Arrangement reaches the dollar limit in subsection (a), any authorization executed by him for further Tax Deferred Savings for sign-ons or voyages or further employment in the Pacific Maritime Region commencing in that year shall be cancelled, and the Fund will not accept Tax Deferred Savings contributions on behalf of that Participant with respect to such sign-ons or voyages or employment. Any such amounts withheld from the Participant's Earnings and transmitted to the Fund will be returned as promptly as possible, adjusted for gains and losses during the period when the excess amount was held in the Fund.

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**Section 2.4**    **Dollar Limit on Tax Deferred Savings** (Continued)

- (c)    A Participant whose Tax Deferred Savings are suspended because they have reached the dollar limit under this Section may again participate under the Plan by executing a new Tax Deferred Savings authorization form at the commencement of any sign-on or voyage beginning in the next calendar year, or for any employment in the Pacific Maritime Region as of January 1 in the next calendar year if he is eligible to participate in the Arrangement for that year.

**Section 2.5**    **Tax Deferred Savings Contributions**

The Employer shall forward each Participant's Tax Deferred Savings Contributions, along with such records and reports as may be required by the Trustees in connection with those contributions, to the Fund upon the completion of the voyage or sign-on to which they relate and within the deadlines established by the Trustees for this purpose.

Tax Deferred Savings Contributions from any employment in the Pacific Maritime Region or from employment with an M.M.& P. Fund, the Union, or any Other Employer shall be forwarded to the Fund as of at least the last pay period of each month and within the deadlines established for this purpose by the Trustees.

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**Section 2.5**    **Tax Deferred Savings Contributions** (Continued)

In the event contributions received by the Fund are received or made in error as a result of a mistake of fact, the excess of the amount contributed over the amount that would have been made had no mistake been made shall be returned pursuant to IRS Regulation 1.401(a)(2)-1, effective for refunds made after July 22, 2002.



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**Section 3.1**    **Creation of Accounts**

A Tax Deferred Savings Account shall be created for each Employee who becomes a Participant in the Arrangement, as of the Valuation Date next following the date he becomes a Participant. Within a Participant's Tax Deferred Savings Account, Sections 3.2 and 3.3 shall be applied separately to his Pre-Tax Contribution Account, his Matching Contribution Account and his Roth Account.

**Section 3.2**    **Amount Credited to Account**

Each Participant's Tax Deferred Savings Account shall be credited, as of each Valuation Date, with

- (a) the balance in the Account as of the last Valuation Date, plus
- (b) Tax Deferred Savings Contributions received by the Fund on behalf of the Participant since the prior Valuation Date, minus
- (c) any amounts refunded to the Participant because they are in excess of the annual dollar limit under Section 2.4 or because they are Excess Deferrals as defined in Section 3.6, minus
- (d) any other amounts withdrawn or paid out from the Account during the Plan Year, plus
- (e) Net Investment Earnings for the Plan Year as defined in Section 3.3.

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**Section 3.3 Net Investment Earnings**

- (a) The Net Investment Earnings are the investment earnings for the Plan Year attributable solely to gains or losses within the Participant's Tax Deferred Savings Account less any administrative charges payable from or on behalf of or otherwise chargeable against, the Participant's Tax Deferred Savings Account under this Arrangement.

For purposes of this section, effective January 1, 2004, reasonable expenses associated with determining the qualified status of a domestic relations order (QDRO) shall be specifically chargeable against the Tax Deferred Savings Account of the Participant or alternate payee seeking the determination (as determined after segregation of amounts pursuant to the QDRO).

- (b) Net Investment Earnings are determined for each Tax Deferred Savings Account as of each Valuation Date.

**Section 3.4 Investment Options**

- (a) The Trustees shall designate at least three funds in which assets credited to Participants' Tax Deferred Savings Accounts may be invested. A Participant may direct the Trustees or their agent designated for this purpose to allocate the assets in his account to any or all of the investment funds made available, subject to such reasonable and objective limitations, including a minimum investment in any single fund, as the Trustees or the investment managers may establish from time to time.

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**Section 3.4**    **Investment Options**                      (Continued)

- (b)    A Participant's investment election shall be in writing and filed with the Trustees or their designated agent in such manner as the Trustees may prescribe. Participants may change their investment elections at the commencement of any sign-on or voyage, or for employment in the Pacific Maritime Region or with an M.M.&P. Fund, the Union, or any Other Employer at the beginning of each calendar quarter, or at such other time as the Trustees shall establish.
- (c)    The Trustees may add to, change or eliminate the funds offered for investments under this Section from time to time as they deem appropriate.

**Section 3.5**    **Average Deferral Percentage Test**

- (a)    The Average Deferral Percentage for a Plan Year for Highly Compensated Employees must satisfy one of the following limits:
  - (1)    The Average Deferral Percentage for Highly Compensated Employees shall not exceed the Average Deferral Percentage for Non-Highly Compensated Employees multiplied by 1.25, or
  - (2)    The Average Deferral Percentage for Highly Compensated Employees shall not exceed the Average Deferral Percentage for Non-Highly Compensated Employees multiplied by 2.0, provided that the Average Deferral Percentage for Highly Compensated Employees shall not be more than two (2) percentage points higher than the Average Deferral Percentage for Non-Highly Compensated Employees.

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**Section 3.5**    **Average Deferral Percentage Test**                      (Continued)

- (b)            The Average Deferral Percentage test shall be performed each year in accordance with Section 401(k)(3) of the Code and Section 1.401(k)-2 of the regulations thereunder, which are hereby incorporated by reference, using the current year testing method. Separate tests shall be performed for Tax Deferred Savings Contributions made by (1) Participants covered by Agreements with the Union and (2) Participants, who are not covered by any collective bargaining agreement and who are employed by each other Employer (applying the aggregation rules of Sections 414(b), (c) and (m) of the Internal Revenue Code) that participates in the Plan.

**Section 3.6**    **Excess Deferrals**

- (a)            From time to time, the Trustees shall review the Tax Deferred Savings authorized by Participants. If, upon such review, the Trustees determine that the Average Deferral Percentage for Highly Compensated Employees is likely to exceed the maximum percentage necessary to comply with the requirements of Section 3.5, or if they have insufficient data to determine whether the requirements of Section 3.5 will be satisfied, the Trustees may reduce or suspend future Tax Deferred Savings Contributions to the extent deemed necessary to comply with the above rules.
- (b)            Any Tax Deferred Savings Contributions made on behalf of Participants who are Highly Compensated Employees that exceed the limits prescribed in Section 3.5 will be refunded to the Participants, along with any Net Investment Earnings attributable thereto, in accordance with Subsection (c) as soon practicable after the Excess Deferrals are determined, but in any event by

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**Section 3.6**    **Excess Deferrals** (Continued)

**(b)**    (Continued)

no later than the last day of the Plan Year following the year in which they were made. If the Participant has made both Pre-Tax Contributions and Roth Contributions during the year, refunds will be made first from Pre-Tax Contributions. All refunds will be determined and distributed in accordance with the rules set forth in the regulations under section 401(k) of the Code, and the provisions of this Section 3.6 will be interpreted in a manner consistent with those regulations.

**(c)**    If refunds to Participants are required by Subsection (b), the amount to be refunded to each Participant is determined as follows:

- (1)**    The Trustees will determine the total amount by which Tax Deferred Savings Contributions would have to be reduced in order to reduce Excess Deferrals to zero, assuming that the deferrals of the Highly Compensated Employee Participant with the highest deferral percentage were reduced until his percentage equaled that of the Highly Compensated Employee Participant with the second highest percentage, that those percentages were reduced to that of the third, and so on, to the extent (but only to the extent) needed to equalize the Average Deferral Percentage for Highly Compensated Employees with the maximum percentage permitted by Section 3.5(a)(2).
- (2)**    The amount determined under Paragraph (1) will then be refunded to Participants who are Highly Compensated Employees, beginning with the Highly

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**Section 3.6**    **Excess Deferrals** (Continued)

(c)    (Continued)

      (2) (Continued)

Compensated Employee Participant with the largest dollar amount of Tax Deferred Savings Contributions, refunding the amount required to equalize his net Tax Deferred Savings Contributions with those of the Highly Compensated Employee Participant with the second highest dollar amount, refunding to both the amounts required to equalize their net Tax Deferred Savings Contributions with those of the Highly Compensated Employee Participant with the third highest amount, and so on until (but only until) the total refunds equal the amount determined under Paragraph (1).

(3)    Each Participant's refund determined under Paragraph (2) will be increased or decreased by attributable Net Investment Earnings through the end of Plan Year with respect to which the Average Deferral Percentage test is performed.

**Section 3.7**    **Non-forfeiture**

Subject to the limitations on benefits and deferrals prescribed in this Arrangement and in the Plan, all amounts credited to a Participant's Tax Deferred Savings Account shall be fully nonforfeitable at all times.

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**Section 4.1**    **Amount of Accumulated 401(k) Share**

The benefit to which a Participant, Beneficiary or Spouse shall be entitled under this Arrangement as of any date shall be the Participant's Tax Deferred Savings Account as of the last preceding Valuation Date plus any additional Tax Deferred Savings Contributions received by the Fund under the Arrangement on behalf of the Participant after that date that were not credited to his Account as of that date. The total of these two items shall be known as the Participant's Accumulated 401(k) Share.

**Section 4.2**    **Benefit Upon Retirement**

Upon retirement, a Participant shall have the option to request the Trustees to pay his Accumulated 401(k) Share in the form of a lump-sum payment or equal monthly installments, together with interest at a rate which the Trustees shall uniformly adopt for the payment of monthly annuities over a period of 36, 60 or 120 months until the Accumulated 401(k) Share is exhausted. A Participant may make separate elections for the portion of his Accumulated 401(k) Share consisting of his Pre-Tax Contribution Account and the portion consisting of his Roth Account. The Participant's election with respect to his Pre-Tax Contribution Account will also apply to his Matching Contribution Account.

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**Section 4.3    Death Benefit**

In the event that a Participant dies before receiving the Accumulated 401(k) Share, the Accumulated 401(k) Share or the remainder if some portion of it has been paid to the Participant shall be paid to the Surviving Spouse unless the Participant and the Surviving Spouse have designated in writing a qualified Beneficiary to receive the balance of the Accumulated 401(k) Share. The Spouse's consent to the designation of a different Beneficiary must be given in accordance with Section 7.06 of the Plan.

The definition of a qualified Beneficiary for purposes of paying the death benefit is set forth in Article VII of the Plan.

**Section 4.4    Benefit in Case of Total Disability**

If a Participant becomes totally disabled, he shall be eligible to receive his Accumulated 401(k) Share on the same terms and conditions provided in Section 4.2 of this Article IV. A Participant shall be deemed to be totally disabled only if the Board of Trustees shall find on the basis of medical evidence that he has been totally disabled by bodily injury or disease so as to be prevented from engaging in any further employment in Covered Employment.



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**Section 4.5    Benefits Upon Separation**

In the event that a Participant has completely and permanently terminated employment in the Maritime Industry, he shall be considered as having experienced a severance from employment, and his Accumulated 401(k) Share, if any, shall upon application be paid on the same terms and conditions provided in Section 4.2 of this Article IV. The Participant shall have the right to notify the Trustees in writing that he wishes to have his Accumulated 401(k) Share remain in the Plan. All rights of the Participant and liabilities of the Plan to the Participant shall cease upon distribution of his Accumulated 401(k) Share.

Effective October 1, 2006, a Participant shall be treated as having a complete and permanent termination from employment under the first sentence hereof even though he is employed ashore in the Maritime Industry, provided that (a) such employment is not Covered Employment and (b) if he has not yet attained age 59-1/2, he has had a bona fide severance from employment of not less than 90 days from all Employers.

Effective October 1, 2007, a Participant shall be treated as having a complete and permanent termination from employment under the first sentence hereof even though he is employed afloat in the Maritime Industry, provided that (a) such employment is not Covered Employment and (b) if he has not yet attained age 59-1/2, he has had a bona fide severance from employment of not less than 90 days from all Employers.

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**Section 4.6**    **Benefits Due to Financial Hardship**

- (a)    A Participant may, upon application approved by the Trustees, withdraw amounts from his or her Pre-Tax Contribution Account, Roth Account, or Matching Contribution Account to the extent necessary to satisfy an immediate and heavy financial hardship of a Participant. A withdrawal will be deemed necessary to satisfy an immediate and heavy financial hardship of a Participant if, and only if:
- (1)    A withdrawal is not in excess of the amount of the immediate and heavy financial need of the Participant (including any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the withdrawal), as described in Section 4.6(b) below;
  - (2)    the Participant has obtained all distributions, other than hardship distributions, available under all plans maintained by the Employer; and
  - (3)    the Participant represents in writing, by electronic means or otherwise, that he has insufficient cash or other liquid assets to satisfy the financial need.
- (b)    Immediate and heavy financial need shall be limited to:
- (1)    expenses for (or necessary to obtain) medical care described in section 213(d) of the Internal Revenue Code incurred by the Participant, his Spouse, or his dependents;
  - (2)    costs directly related to the purchase (excluding mortgage payments) of a principal residence for the Participant;

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**Section 4.6**    **Benefits Due to Financial Hardship** (Continued)

(b)    (Continued)

- (3)    payment of tuition, related educational fees, and room and board expenses for up to the next twelve (12) months of post-secondary education for the Participant, his Spouse, or his dependent(s);
- (4)    payments needed to prevent the eviction of the Participant from his principal residence or foreclosure on the mortgage of his principal residence;
- (5)    payments for burial or funeral expenses for the Participant's deceased parent, his Spouse, or his dependent(s);
- (6)    expenses for the repair of damage to the Participant's principal residence that would qualify for the casualty deduction under the Internal Revenue Code; or
- (7)    expenses and losses (including loss of income) incurred by the Participant on account of a disaster declared by the Federal Emergency Management Agency (FEMA) under the Robert T. Stafford Disaster Relief and Emergency Act, Pub. L. 100-707, provided that the Participant's principal residence or principal place of employment at the time of the disaster was located in an area designated by FEMA for individual assistance with respect to the disaster.

(c)    The amount withdrawn from a Participant's Pre-Tax Contribution Account under this Section 4.6 may not exceed the sum of his Pre-Tax Contributions, the amount withdrawn from his Roth Account may not exceed the sum of his Roth Contributions, and the amount withdrawn from his

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**Section 4.6**    **Benefits Due to Financial Hardship** (Continued)

**(c)**    **(Continued)**

Matching Contribution Account may not exceed the sum of his Matching Contributions. The withdrawal may not in any event exceed the balance of the Account less any outstanding loans.

**(d)**    A withdrawal under this Section 4.6 will not affect the Participant's ability to make continued deferral elections under Section 2.3 of the Plan.

**(e)**    Effective January 1, 2020 through December 31, 2020 Participants may withdraw amounts of up to \$100,000 from their Pre-Tax Contribution Account, Roth Account, or Matching Contribution Account attributable to both elected deferrals and Employer Contributions for Coronavirus ("COVID-19") related financial hardships. To receive a COVID-19 related hardship distribution, a Participant must submit adequate documentation and certify to one or more of the following:

**(i)**    the Participant or the Participant's spouse or dependent (as defined in section 152 of the Code) is diagnosed with the virus SARS-CoV-2 or with COVID-19 by a test approved by the Centers for Disease Control; or

**(ii)**   as a result of COVID-19, the Participant or a member of the Participant's household has experienced adverse financial consequences as a result of one or more of the following:

**(A)**    being quarantined;

**(B)**    being furloughed, laid off, or having work hours reduced;

**(C)**    being unable to work due to childcare unavailability;

**(D)**    being forced to close or reduce the hours of a business owned or operated by the Participant; and/or,

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**Section 4.6**    **Benefits Due to Financial Hardship** (Continued)

(e)      (Continued)

        (ii) (Continued)

            (E)          any other circumstances specified by the Secretary of the Treasury under which a  
                                COVID-19 distribution may be eligible.

The amount withdrawn under this Section 4.6(e) shall be aggregated with any amounts withdrawn from the Individual Retirement Account Plan pursuant to its Section 6.13(f), and collectively the maximum amount distributed shall not exceed \$100,000. The amount withdrawn from a Participant's Pre-Tax Contribution Account under this Section 4.6(e) may not exceed the sum of his Pre-Tax Contributions, the amount withdrawn from his Roth Account may not exceed the sum of his Roth Contributions, and the amount withdrawn from his Matching Contribution Account may not exceed the sum of his Matching Contributions. The withdrawal may not in any event exceed the balance of the Account less any outstanding loans.

A Participant may repay the amount of a COVID-19 distribution to his or her Account at any time during the three-year period beginning on the date of the distribution, in one or more contributions with an aggregate amount not to exceed the amount of the COVID-19 distribution.

**Section 4.7**    **Benefit Payments**

(a)      Except as provided in Section 4.6 of this Article IV, in no event shall any portion of a Participant's Accumulated 401(k) Share be distributed prior to the earliest of:

        (1)      his death or disability; or

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**Section 4.7**    **Benefit Payments** (Continued)

**(a)**    (Continued)

**(2)**    his complete and permanent termination from employment in the Maritime Industry.

Effective October 1, 2006, a Participant shall be treated as having a complete and permanent termination from employment under the preceding sentence even though he is employed ashore in the Maritime Industry, provided that (a) such employment is not Covered Employment and (b) if he has not yet attained age 59-1/2, he has had a bona fide severance from employment of not less than 90 days from all Employers.

Effective October 1, 2007, a Participant shall be treated as having a complete and permanent termination from employment under the first sentence hereof even though he is employed afloat in the Maritime Industry, provided that (a) such employment is not Covered Employment and (b) if he has not yet attained age 59-1/2, he has had a bona fide severance from employment of not less than 90 days from all Employers.

**(b)**    Except for refunds of Tax Deferred Savings Contributions in excess of the dollar limit in Section 2.4 or Excess Deferrals under Section 3.6, no amounts shall be distributed under this Arrangement prior to January 1, 1992.

**(c)**    **Required Minimum Distributions**

**(i)**    In general, commencement of payments from a Participant's Pre-Tax Contribution Account, Roth Account, or Matching Contribution Account shall begin the month following when the Participant retires and submits an appropriate application.

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**Section 4.7**   **Benefit Payments** (Continued)

**(c)**   **Required Minimum Distributions** (Continued)

**(i)**   (Continued)

Notwithstanding the above, Participants must begin their benefits by their Required Beginning Date or as soon as practicable after the Required Beginning Date as the Trustees are able to locate the Participant, his heirs or his legal representative.

For Participants who attain age 70 ½ before January 1, 1999, the “Required Beginning Date” is April 1 of the calendar year following the year such Participant reaches age 70 ½ .

For Participants who attain age 70 ½ between January 1, 1999 and January 1, 2020, the “Required Beginning Date” is April 1 of the calendar year following the year such Participant reaches age 70 ½ or the date the Participant retires. For Participants who attain age 70 ½ on or after January 1, 2020, the “Required Beginning Date” is April 1 of the calendar year following the year such Participant reaches age 72 or the date the Participant retires.

- (ii)** Notwithstanding section (i) above, with respect to a Participant or Beneficiary who would have been required to receive Required Minimum Distributions for 2020 (or paid in 2021 for the 2020 calendar year for a Participant with a Required Beginning Date of April 1, 2021) but for the enactment of Section 401(a)(9)(I) of the Code (“2020 RMDs”), lump sum 2020 RMDs not paid on or before April 1, 2020 are suspended through December 31, 2020

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**Section 4.7**    **Benefit Payments** (Continued)

(c)    **Required Minimum Distributions** (Continued)

(ii) (Continued)

Distributions in 2020, may elect to have their Required Minimum Distributions suspended through December 31, 2020 but will not have their benefits automatically suspended. Solely for purposes of applying the direct rollover provisions of the Plan, 2020 RMDs will be treated as eligible rollover distributions.

**Section 4.8**    **Loans to Participants**

A Participant may borrow from his Tax Deferred Savings Account under the Arrangement in accordance with this Section 4.8. Applications for loans must be approved by the Trustees, who have the sole discretion to grant or deny loans. Loans may be made only to Employees and to other Participants who are “parties in interest” within the meaning of Section 3(14) of ERISA. If a loan application is granted, the borrowing Participant must execute a note containing the terms prescribed by this Section 4.8 and any others required by the Trustees. All loans must satisfy the following requirements:

- (a)    The principal of the loan may not be less than \$1,000 and may not exceed the lesser of (1) \$50,000, reduced by the Participant’s highest outstanding indebtedness to the Plan during the preceding 12 month period or (2) 50% of the Participant’s interest in his Tax Deferred Savings Account (excluding his Matching Contribution Account), reduced by any outstanding indebtedness to the Plan at the time when the loan is made.



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**Section 4.8**    **Loans to Participants** (Continued)

- (b) The loan will bear a rate of interest at the Prime Rate (as supplied by Reuters, which is the current source of The Wall Street Journal Prime Rate) plus 1%.
- (c) The loan must be repayable in substantially equal installments, payable not less often than monthly, over a period not in excess of five (5) years from the date on which funds are remitted to the borrower, or ten (10) years if the loan proceeds are applied in their entirety toward the purchase of a principal place of residence for the Participant. Prepayment is permitted at any time without penalty. Any distribution elected by a Participant, other than a distribution on account of financial hardship pursuant to Section 4.6, will be treated first as a prepayment of any outstanding loan and will be applied to reduce the loan principal before any amount is distributed to the Participant or his Beneficiary.
- (d) The Participant must execute an agreement, in a form satisfactory to the Trustees, for automatic clearing house debits of installments as they become due. Any failure by the Participant to maintain an adequate bank account balance to cover all debits is an event of default.
- (e) If the Participant is married, his Spouse must consent to the loan in accordance with Section 7.06 of the Plan.
- (f) Repayment of the principal of, and payment of interest on, the loan are secured by fifty percent (50%) of the Participant's interest in his Tax Deferred Savings Account. In the event of default, the amount owed will become immediately due and payable, and, unless the default is fully corrected no later than the last day of the calendar quarter following the quarter in which it occurred, the Trustees will foreclose on the security to the extent necessary to cure the default.

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**Section 4.8    Loans to Participants** (Continued)

**(f)** (Continued)

Any such foreclosure will be treated as a deemed distribution from the Plan to the Participant. A Participant who has defaulted on a loan and has failed to cure his default may not take out any further loans.

**(g)** When a Participant obtains a loan, the amount borrowed is deducted pro-rata from his Pre-Tax Contribution Account and from his Roth Account. A proportionate share is deducted from each of the Account's investment funds. The Participant's note is allocated to a segregated account earmarked for his benefit. All repayments of principal and payments of interest are credited to his Pre-Tax Contribution Account or Roth Account in the same proportions as those Accounts were reduced at the time of the loan and are credited to the Account's investment funds in the same manner as if they were new Contributions. The segregated account holding the Participant's note does not share in any income, expense, gains or losses of the Trust Fund, and other Participants' Accounts do not share in any payments made with respect to the loan. The rules set forth in this Paragraph (f) supersede any contrary provision of Article III.

**(h)** A Participant may not have more than two loans outstanding at any time.

**(i)** The Plan may charge reasonable fees for processing the loan against the Participant's Account.

**(j)** **(i)**     **Temporary Loan Amount Increase:** Effective for a loan made to a Participant between March 27, 2020 and September 23, 2020, the maximum amount of the loan is

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**Section 4.8**    **Loans to Participants** (Continued)

**(j)**      **(i)** (Continued)

increased to the lesser of one hundred percent (100%) of the Participant's Accounts, or one hundred thousand dollars (\$100,000), reduced by the Participant's highest outstanding loan balance within the last twelve (12) months. For this purpose, a Participant is qualified if he or she certifies in writing that he or she would qualify for a COVID-19 distribution under the criteria listed in Section 4.6(e)(i) or (ii).

**(ii)**      **Temporary Voluntary Loan Repayment Suspension:** Effective March 27, 2020, the payment of any outstanding loan repayments due on or after March 31, 2020 through December 31, 2020 may be suspended for up to one (1) year upon written certification to the Plan by the Participant that he or she would qualify for a COVID-19 distribution under the criteria listed in Section 4.6(e) and would like to suspend repayments. Interest on any repayment amounts suspended hereunder shall continue to accrue on the outstanding loan balance at the applicable rate under the Participant's loan.

Loan repayments shall resume immediately after the end of the suspension period and interest accruing during the suspension period shall be added to the remaining principal balance of the loan. The loan shall be re-amortized and repaid in substantially equal installments over the remaining period of the loan. The suspension of loan repayments hereunder shall not count toward the loan's five (5) year maximum repayment period.

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**Section 4.9 Transfers to Roth Rollover Accounts**

- (a) A Participant who is at least fifty-nine and one-half (59 ½) years old, a Beneficiary who is the surviving Spouse of a deceased Participant or an alternate payee under a qualified domestic relations order (except an alternate payee who is not the Spouse or former Spouse of a Participant) may elect to convert all or any portion of his Tax Deferred Savings Account into a Roth Contribution in accordance with this Section 4.9.
- (b) The conversion of a Tax-Deferred Savings Account into a Roth Contribution is not treated as a distribution for purposes of the Plan. Notwithstanding any other provision of the Plan, the consent of the Participant's Spouse to the transfer is not required.

**Section 4.10 Qualified Birth and Adoption Distributions**

- (a) **Distribution:** Effective June 1, 2021 and as permitted under Code Section 72(t)(2)(H) and regulations thereunder, a Participant may receive one (1) or more Qualified Birth or Adoption Distributions in accordance with procedures established by the Board of Trustees. The aggregate amount of such distributions to the Participant from their Pre-Tax Contribution Account, Roth Account, or Matching Contribution Account (both elected deferrals and Employer Contributions) shall not exceed five thousand dollars (\$5,000) from the Plan combined with all other eligible retirement plans in which the Participant is a participant and must occur within the one (1) year period beginning on the date the Participant's child is born or on which the legal adoption by the Participant of an Eligible Adoptee is finalized. An "Eligible Adoptee" means any individual (other than a child of the Participant's spouse) who has not attained age eighteen (18) or who is

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**Section 4.10 Qualified Birth and Adoption Distributions** (Continued)

(a) (Continued)

physically or mentally incapable of taking care of himself or herself as defined in Code Section 72(m)(7).

Qualified Birth or Adoption Distributions are not limited to the amount necessary to pay for actual expenses related to the birth or legal adoption. A Qualified Birth or Adoption Distribution shall not be treated as an eligible rollover distribution from the Plan.

(b) **Recontribution:** A Participant who receives a Qualified Birth or Adoption Distribution from the Plan may recontribute any portion of it to the Plan (up to the entire amount of the distribution) if the Participant is eligible to make a rollover contribution to the Plan at the time the Participant wishes to make a recontribution to the Plan, and such repayment shall be treated as a 60-day rollover in a direct trustee-to-trustee transfer.

(c) **Certification:** The Trustees may rely on a Participant's reasonable representations that he or she is eligible for a Qualified Birth or Adoption Distribution unless the Trustees have actual knowledge to the contrary but in no event do the Trustees have an obligation to investigate whether the Participant's certification is accurate. Notwithstanding the foregoing, the Trustees retain discretion to require such documentation as they deem appropriate to the circumstances.

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**ROTH ACCOUNTS**

**Section 5.1**      **Creation of Roth Accounts**

A Roth Account is created for each Participant who designates Elective Deferrals as Roth Contributions in accordance with Section 5.2. Roth Accounts must be accounted for separately from Pre-Tax Contribution Accounts.

**Section 5.2**      **Designation of Roth Contributions**

At the time when he makes a Deferral Election in accordance with Section 2.3, a Participant may designate all or part of his Elective Deferrals under the election as Roth Contributions, provided that his Employer has agreed to account for Roth Contributions separately from other Tax Deferred Savings Contributions. This designation is irrevocable for the voyage or employment to which it relates. In the case of an election under Section 2.3(d), the designation will continue to be effective from calendar quarter to calendar quarter until revoked by a new election at the beginning of a quarter.

**Section 5.3**      **Direct Rollovers of Distributions from Roth Accounts**

For purposes of Section 6.10 of the Plan, the only plans that are Eligible Retirement Plans with respect to distributions from Roth Accounts are (a) accounts established to hold designated Roth contributions under a qualified Roth contribution program described in Section 402A of the Code and (b) Roth IRA's described in Section 408A of the Code.

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### **APPENDIX PR**

#### **Amendment No. 12**

Pursuant to Section 8.10 of the Masters, Mates & Pilots Individual Retirement Account Plan (the "Plan"), the Trustees hereby amend the Plan, effective as of January 1, 2009, by revising Appendix PR in its entirety, to read as follows:

### **APPENDIX PR SPECIAL PROVISIONS RELATED TO PUERTO RICO PARTICIPANTS**

**PR-1. Purpose and Effect.** The purpose of this Appendix PR is to amend the Masters, Mates & Pilots Individual Retirement Account Plan (the "Plan") to comply with the requirements for qualification and tax-exemption under Sections 1165(a) and 1165(e) of the Puerto Rico Internal Revenue Code of 1994, as amended (the "94 PR Code"), and Sections 1081.01(a) and 1081.01(d) of the Puerto Rico Internal Revenue Code of 2011, as amended (the "2011 PR Code" and together with the 94 PR Code, the "PR Code"), and any subsequent legislation that modifies or supersedes the foregoing. With respect to any Participant who (i) is a bona-fide resident of the Commonwealth of Puerto Rico, or (ii) performs labor or services primarily within the Commonwealth of Puerto Rico, regardless of residence for other purposes ("Puerto Rico Participant(s)" or "Puerto Rico Employee(s)"), the following provisions shall also apply and, to the extent that these provisions conflict with other provisions of the Plan, the rules in this Appendix PR shall control solely for purposes of complying with the PR Code for such Puerto Rico Participants. The only provisions included in this Appendix PR are those that differ from provisions otherwise contained in the Plan. To the extent not otherwise provided in this Appendix PR, the general provisions of the Plan shall govern. Any capitalized terms utilized, but not defined, in this Appendix PR shall have the same meaning as set forth under the Plan.

**PR-2. Puerto Rico Highly-Compensated Employee.** For purposes of this Appendix PR for Plan Years beginning prior to January 1, 2011, the term "Puerto Rico Highly Compensated Employee" means any Puerto Rico Employee who is more highly compensated than two-thirds of all Eligible Employees who are permanent residents of Puerto Rico ("Puerto Rico Eligible Employees"), taking into account compensation as prescribed by the Secretary of the Treasury of Puerto Rico for purposes of determining a Puerto Rico Participant's actual deferral percentage. To the extent that there are too few employees to determine two-thirds as a whole number, the Plan will test as if there are no Puerto Rico Highly Compensated Employees.

For Plan Years beginning on or after January 1, 2011, the term "Puerto Rico Highly Compensated Employee" means any Puerto Rico Employee who: (a) is an officer of an Employer (b) received compensation during the prior Plan Year from the

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Employer in excess of \$110,000 or such other amount in effect under Section 414(q)(1)(B) of the United States Internal Revenue Code of 1986, as amended (the "US Code" as used in this Appendix PR) and 2011 PR Code Section 1081.01(d)(3)(E)(iii), as such may be amended or substituted from time to time; or (c) meets such other additional or substitute definition required or permitted under the PR Code to be deemed a Highly Compensated Employee. Effective for Plan Years beginning on or after January 1, 2017, a Puerto Rico Participant shall be considered a Highly Compensated Employee if he is (a) a shareholder owning more than 5% of the voting shares or total value of all classes of stock of the Employer or owns more than 5% of the capital interest or the profits of the Employer, if such Employer is not a corporation, as defined in the PR Code and its regulations, or (b) for the preceding Plan Year received compensation from the Employer in excess of \$150,000. Effective for Plan Years beginning on or after January 1, 2019, a Puerto Rico Participant shall be considered a Highly Compensated Employee if he is (i) a shareholder owning more than 5% of the voting shares or total value of all classes of stock of the Employer or owns more than 5% of the capital interest or the profits of the Employer, if such Employer is not a corporation, as defined in the PR Code and its regulations, or (ii) for the preceding Plan Year received compensation from the Employer in excess of \$125,000 or such other amount in effect pursuant to Section 414(q)(1)(B) of the US Code or as otherwise in effect under PR Code Section 1081.01(d)(3)(E)(iii).

**PR-3. Limitation of Annual Contributions.** The total contributions by an Employer to the Plan in any Plan Year with respect to a Puerto Rico Participant shall not exceed the limitations contained in Section 1023(n) of the 94 PR Code, or Section 1033.09 of the 2011 PR Code, as applicable, or as otherwise provided or permitted under the PR Code.

In addition to the limits set forth above, effective for tax years beginning on or after January 1, 2012, and notwithstanding any other provisions of the Plan to the contrary, the amount of annual contributions by the Employer and the Puerto Rico Participants, and other additions with respect to Puerto Rico Participants (but excluding amounts transferred from other qualified retirement plans) shall not exceed the lesser of: (i) 100% of the Puerto Rico Participant's Compensation paid by the Employer during the natural year, or the Plan Year, as selected by the Employer; or (ii) such other amount specified under 2011 PR Code Section 1081.01(a)(11)(B). For these purposes, Puerto Rico Participant contributions include contributions made by a Puerto Rico Participant to a qualified plan pursuant to a cash or deferred arrangement for such year. In order to comply with this limitation, all applicable contributions under other qualified defined contribution plans maintained by the Employer shall be aggregated and shall be considered as a single plan. Any contributions with respect to a Puerto Rico Participant that exceed the limitations of this paragraph shall be corrected in accordance with any procedures or methods required or permissible under the PR Code.



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**PR-4. Compensation.** For purposes of determining the Compensation of a Puerto Rico Participant, Compensation shall include, to the extent not otherwise included, Compensation reduction amounts under any cash or deferred arrangement under 94 PR Code Section 1165(e) or under 2011 PR Code Section 1081.01(d).

Effective for tax years beginning on or after January 1, 2012, for purposes of determining contributions or benefits under the Plan, nondiscrimination testing and limits on benefits and contributions, if any, and as applicable, Compensation for any Puerto Rico Participant for any Plan Year shall not exceed the applicable limitation under Section 401(a)(17) of the US Code as described in Section 8.09 of Article VIII of the Plan and amount specified in Section 1081.01(a)(12) of the 2011 PR Code.

**PR-5. Affiliate with respect to Puerto Rico Participants.** Means, effective for Plan Years beginning on or after January 1, 2012, any corporation, partnership or other person: (i) that is a member of a “controlled group of corporations” as described in Section 1010.04 of the 2011 PR Code; (ii) that is a member of a “group of related entities” as described in Section 1010.05 of the 2011 PR Code; (iii) that is a member of an “affiliated service group” as described under Section 1081.01(a)(14)(B) of the 2011 PR Code; or (iv) that is under “common control” as defined by the Puerto Rico Secretary of Treasury; and that has Employees that are bona fide residents of Puerto Rico, as this may be further defined by regulations promulgated under the 2011 PR Code. For purposes of the Plan with respect to Puerto Rico Participants, all references to an Employer shall include any Affiliates as described herein.

**PR-6. Direct Rollover of Benefits.** A Puerto Rico Participant may transfer from the Plan his interest in the Plan in whole or in part to another tax qualified plan or individual retirement account, subject to the following rules, and subject to the Eligible Rollover Distribution rules under the Plan. If all or a portion of a Puerto Rico Participant’s benefit is to be distributed in the form of a Direct Rollover distribution, such Direct Rollover distribution may only be made for an amount equal to the Puerto Rico Participant’s account balance to a Puerto Rico Eligible Retirement Plan that is also qualified under US Code Section 401(a), and, effective for Plan Years beginning on or after January 1, 2011, in compliance with 2011 PR Code Section 1081.01(b)(2)(A). For purposes of this paragraph, the term “Puerto Rico Eligible Retirement Plan” shall mean a qualified plan and trust as described in 94 PR Code Section 1165(a) and/or 2011 PR Code Section 1081.01(a), as applicable.

**PR-7. Return of Contributions.** To the extent permitted by ERISA and the US Code, if the Puerto Rico Department of Treasury, on timely application made after the establishment of the Plan, determines that the Plan is not qualified under Sections 1165(a) and 1165(e) of the 94 PR Code or Sections 1081.01(a) and 1081.01(d) of the 2011 PR Code, as applicable, or refuses, in writing, to issue a determination as to whether the Plan is so qualified, the Employer’s contributions made on or after the date on which that determination or refusal is applicable shall be returned to the Employer. The return shall be made within one year after the denial of qualification. The provisions of this paragraph shall apply only if the application for

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the determination is made by the time prescribed by law for filing the Employer's return for the taxable year in which the Plan was adopted, or such later date as the Secretary of the Treasury may prescribe.

To the extent permitted by ERISA and the US Code, each contribution made by a Employer to the Plan to satisfy the funding requirements for benefits of Puerto Rico Participants is intended to be deductible under the PR Code for the taxable year for which contributed. If the Puerto Rico Department of Treasury disallows the deduction or if the contribution was made by a mistake of fact, to the extent permissible under ERISA and the US Code, such contribution may be returned to the Employer within one year after the disallowance of the deduction or after the mistaken contribution, respectively.

**PR-8. Payment of Contributions.** Contributions made by an Employer to the Plan with respect to a Puerto Rico Participant shall be paid to the Board of Trustees by the date due under the Employer's collective bargaining agreement, but no later than the due date for filing the Employer's Puerto Rico income tax return for the taxable year in which such payroll period falls, including any extension thereof.

**PR-9. Limitation of After-Tax Contributions.** A Puerto Rico Participant's after-tax contributions (if otherwise permitted as voluntary contributions under the Plan) for a taxable year may not exceed 10% of the Puerto Rico Participant's Compensation for such year; provided, however, that the total of the Puerto Rico Participant's after-tax contributions for that taxable year and all prior taxable years shall not exceed 10% of the Puerto Rico Participant's total annual compensation for the taxable years in which he or she has been a Puerto Rico Participant; and provided further that with respect to Plan Years beginning on or after January 1, 2012 the maximum amount of after-tax contributions a Puerto Rico Participant may elect to make shall not exceed ten (10) per cent of the Employee's aggregate compensation for all years since he or she is a Participant, or as otherwise provided under 2011 PR Code Section 1081.01(a)(15). After-tax contributions will be fully vested and not forfeitable at all times, and shall be used solely to provide benefits to the applicable Participant or his or her beneficiaries.

**PR-10. Limitations on Participant Elective Deferrals.** A Participant's Elective Deferrals for a particular year shall not exceed the maximum contribution, adjusted to be in accordance with Section 1165(e)(7)(A) of the 94 PR Code, and Section 1081.01(d)(7)(A) of the 2011 PR Code, as follows (hereinafter collectively referred to as the "Maximum Contribution"):

- (a) for Plan Years;
  - (i) ending on or before December 31, 2007, 10% of the annual salary of the Participant, up to a maximum of \$8,000;
  - (ii) ending after December 31, 2007, but on or before December 31, 2008, \$8,000;

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- (iii) beginning on or after January 1, 2009, but before January 1, 2011, \$9,000;
  - (iv) beginning on or after January 1, 2011, but before January 1, 2012, not to exceed \$10,000;
  - (v) beginning on or after January 1, 2012, but before January 1, 2013, not to exceed \$13,000, provided however, that if the Plan is also qualified under Section 401(k) of the US Code, the limits set forth under US Code Section 402(g) and not the limits provided herein shall apply;
  - (vi) beginning on or after January 1, 2013 and thereafter, not to exceed \$15,000 provided however, that if the Plan is also qualified under Section 401(k) of the US Code, the limits set forth under US Code Section 402(g) and not the limits provided herein shall apply, and
  - (vii) such amount as adjusted in accordance with amendment(s) to the PR Code in this respect, as such amendments may be enacted or approved from time to time.
- (b) If the Puerto Rico Participant participates in two (2) or more cash or deferred contribution plans that are qualified under the PR Code, these shall be treated as a single plan for purposes of these limits.
  - (c) The Plan Administrator may prescribe such nondiscriminatory rules and procedures for implementing the Maximum Contribution limit as it may deem necessary and appropriate.
  - (d) Effective with respect to Plan Years beginning on or after January 1, 2011, Contributions made by a Puerto Rico Participant to an Individual Retirement Account described under 2011 PR Code Section 1081.02 ("IRA") will not be considered toward the limits listed in subsection (a), above; provided however that if the Plan is also qualified under US Code Section 401(k), the maximum combined limits of IRA contributions and participant elective deferrals under paragraph (a) above shall not exceed the combined limit applicable under 2011 PR Code Sections 1081.02 and 1081.01(d)(7)(A)(ii), but excluding any IRA contributions with respect to a Participant's spouse.
  - (e) Catch-up Contributions shall not be considered for the purpose of the Maximum Contribution limit.

**PR-11. Roth Elective Deferrals.** Roth Elective Deferrals, as defined in the Plan Document, are not permitted with respect to Puerto Rico Participants. To the extent that a Puerto Rico Participant has previously made Roth Elective Deferrals under this Plan, such contributions shall be treated as after-tax voluntary Employee contributions for Puerto Rico tax purposes only.

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**PR-12. Excess Deferrals.** In the event a Participant's Pre-Tax Contributions exceed the applicable maximum contribution, or in the event the Participant notifies the Plan Administrator, at the time and in the manner as prescribed by the Plan Administrator, of a specific amount of Pre-Tax Contributions that will exceed the applicable limit of 94 PR Code Section 1165(e)(7), or 2011 PR Code Section 1081.01(d)(7), as applicable, when added to amounts deferred by the Participant in other plans or arrangements, such excess amount (the Excess Deferrals), plus any income and minus any loss allocable to such amount, shall be returned to the Participant by the close of the following Plan Year, or, if earlier, as provided under the PR Code. Any Excess Contribution shall include the allocable gain or loss for the Plan Year in which the Excess Deferral occurred. The amount of any Excess Deferrals to be distributed to a Participant for a taxable year shall be reduced by Excess Contributions as defined in Treasury Regulation 1.401(k)-1(g)(13) for the Plan Year beginning in such taxable year. The income or loss attributable to the Participant's Excess Deferral for the Plan Year shall be determined as prescribed in the Puerto Rico Treasury Regulations to 94 PR Code Section 1165(a) or 2011 PR Code Section 1081.01(a), as applicable. Excess Deferrals shall be treated as annual additions for purposes of the annual maximum benefits and corrections under Section 8.07 of the Plan.

**PR-13. Catch-up Contributions.** Puerto Rico Participants who have attained, or will attain, age 50 before the close of the Plan Year shall be eligible to make catch-up contributions in accordance with, and subject to the limitations of 94 PR Code Section 1165(e)(7)(C) and 2011 PR Code Section 1081.01(d)(7)(C), not to exceed the following amounts:

- (a) For Plan Years beginning on January 1, 2006, \$500; and
- (b) For Plan Years beginning on or after January 1, 2007, but before January 1, 2012, \$1,000; and
- (c) For Plan Years beginning on or after January 1, 2012, \$1,500; and
- (d) Such amount as adjusted in accordance with amendment(s) to the PR Code in this respect, as such amendments may be enacted or approved from time to time.

Catch-up contributions shall not be subject to the limits of Section PR-11 of this Appendix PR related to Maximum Contribution, nor to the limits of Sections PR-9, PR-19 and PR-20 of this Appendix PR related to Puerto Rico Testing. If the Puerto Rico Participant participates in two (2) or more cash or deferred contribution plans that are qualified under the PR Code, these shall be treated as a single plan for purposes of these limits.

## **M.M.&P. INDIVIDUAL RETIREMENT ACCOUNT PLAN REGULATIONS**

**PR-14. Distribution of Benefits.** Distributions are distributable as provided in the Plan, but no earlier to Puerto Rico Participants or other beneficiaries than:

- (a) separation from service, Retirement, death or disability;
- (b) reaching age 59 ½;
- (c) termination of the Plan without the establishment of a successor plan;
- (d) the date of the sale of the Employer of substantially all of the assets used by the Employer in its trade or business with respect to a Participant who continues employment with the company acquiring such assets;
- (e) the date of sale by the Employer of its shares in a subsidiary when the Participant continues his employment with such subsidiary; or
- (f) a case of extreme economic emergency, in the form of a hardship distribution.

**PR-15. Hardship distributions.** The advance distribution for hardship provisions of Section 4.6 of Article IV of the Masters Mates & Pilots Plans 401(k) Arrangement of the Plan are supplemented with respect to Puerto Rico Participants by the following:

- (a) In the calendar year following the date of the hardship withdrawal, the Puerto Rico Participant may not make pre-tax Elective Deferrals which, when added to his or her pre-tax Elective Deferrals during the calendar year of the withdrawal, exceed the dollar limitation specified in PR-10 of this Appendix PR.

**PR-16. Rollovers into the Plan.** A Puerto Rico Participant may transfer to the Plan his interest in a plan of a prior employer only if such plan is qualified under both Sections 1165(a)/1081.01(a) of the PR Code and Section 401(a) of the Code, subject to the rules contained in the body of the Plan, except that the rollover contribution must also comply with applicable sections of the PR Code.

**PR-17. Rollovers out of the Plan.** Notwithstanding any provision of the Plan to the contrary, if all or a portion of a Puerto Rico Participant's benefit is to be distributed in the form of a direct rollover distribution, such direct rollover distribution may only be made for an amount equal to the Puerto Rico Participant's account balance to a Puerto Rico Eligible Retirement Plan that is also qualified under US Code Section 401(a), and, effective for Plan Years beginning on or after January 1, 2011, in compliance with 2011 PR Code Section 1081.01(b)(2)(A). For purposes of this paragraph, the term "Puerto Rico Eligible Retirement Plan" shall mean a qualified plan and trust as described in 94 PR Code Section 1165(a) and/or 2011 PR Code Section 1081.01(a), as applicable.

## **M.M.&P. INDIVIDUAL RETIREMENT ACCOUNT PLAN REGULATIONS**

**PR-18. Testing of Puerto Rico Participants.** Puerto Rico Participants shall be tested separately from other Plan Participants for the purpose of satisfying the coverage testing and the Actual Deferral Percentage Limits testing requirements in accordance with Sections 1165(a) and 1165(e) of the 1994 Code, as amended, respectively or Sections 1081.01(a) 1081.01(d) of the 2011 Code, as may be amended from time to time, respectively and the Regulations promulgated thereunder, as applicable.

**PR-19. Actual Deferral Percentage Limits.** The following terms and conditions shall apply for the purpose of Puerto Rico Testing:

- (a) Actual Deferral Percentage Limits: The Actual Deferral Percentage for Highly Compensated Employees for any Plan Year bears a relationship to the Actual Deferral Percentage of all other eligible Puerto Rico Employees ("Puerto Rico Eligible Employees") for such Plan Year, which meets either of the following tests:
  - (i) the Actual Deferral Percentage for the group of eligible Highly Compensated Employees is not more than the Actual Deferral Percentage for the group of all other Puerto Rico Eligible Employees multiplied by 1.25; or
  - (ii) the excess of the Actual Deferral Percentage for the group of eligible Highly Compensated Employees over the Actual Deferral Percentage of all other Puerto Rico Eligible Employees is not more than two percentage points, and the Actual Deferral Percentage for the Highly Compensated Employees is not more than the Actual Deferral Percentage of all other Puerto Rico Eligible Employees multiplied by two.
  - (iii) The "actual deferral percentage" of a group of Puerto Rico Eligible Employees for a Plan Year means the average of the ratios (determined separately for each Puerto Rico Eligible Employee in such group) of: (i) the amount of Employer contributions actually paid over to the Trust on behalf of each Puerto Rico Eligible Employee for such Plan Year; to (ii) the Puerto Rico Eligible Employee's Compensation for such Plan Year.
  - (iv) For purposes of this Subsection, Employer contributions on behalf of any Puerto Rico Employees shall include Pre-Tax Elective Deferrals as defined in Section 1.27 of Article I of the Masters Mates & Pilots Plans 401(k) Arrangement of the Plan, but shall exclude catch-up contributions under Section PR-17 of this Appendix PR.

## **M.M.&P. INDIVIDUAL RETIREMENT ACCOUNT PLAN REGULATIONS**

**PR-20. Correction Methods.** If application of the rules provided in Sections PR-18 and PR-19 of this Appendix PR result in a failure of the testing, corrections shall be made as provided in Section 3.6 of Article III of the Masters Mates & Pilots Plans 401(k) Arrangement of the Plan, provided however that any such Puerto Rico Testing correction shall be made not later than the last day allowed for the Employer to file its Puerto Rico income tax return, including any extensions, for the tax year of the Employer during which the excess contributions were made, or any other period of time allowed or provided under the PR Code, or the regulations promulgated thereunder.

**PR-21. Participant Loans.** Effective for Plan Years beginning on or after January 1, 2012, Participant loans with respect to Puerto Rico Participants shall comply with the requirements under 2011 PR Code Section 1081.01(b)(3)(E), including the requirements that: (i) said loans be paid in partial payments that are substantially similar, at least quarterly; and (ii) that all participant loans must be repaid in a term not to exceed five (5) years, except in the case of loans to finance the acquisition of a principal residence, in which the term may be extended for up to 10 years.

**PR-22. Special Taxation of Single Sum Distributions.** In the case of a single sum distribution, if (i) the Plan's trust is organized under the laws of the Commonwealth of Puerto Rico, or has a trustee that is a resident of Puerto Rico and uses said trustee as paying agent; and (ii) the Plan complies with a certain Puerto Rico investment rule under 2011 PR Code Section 1081.01(b)(1)(B), then the amount of such lump-sum distribution in excess of amounts contributed by the Participant that have already been subject to taxation shall be subject to the special income tax rate and the reduced income tax withholding rate of 10% as provided in Sections 1081.01(b)(1)(B) and 1081.01(b)(3)(A). A lump-sum distribution due to a separation of employment or plan termination is considered as a long-term capital gain, except if the Participant elects to treat such a distribution as ordinary income, and is subject to a 20% income tax withholding rate (10% for distributions in 2018) as provided in Sections 1081.01(b)(1)(B) and 1081.01(b)(3)(A).

**PR-23. Merger or Consolidation of the Plan.** Solely with respect to the Puerto Rico Participants, any merger or consolidation of the Plan with, or transfer in whole or in part of the assets and liabilities of the Plan to another trust, will be limited to the extent such other plan and trust are qualified under 94 PR Code Section 1165(a) or 2011 PR Code Section 1081.01(a) and 1081.01(b), as applicable.

**PR-24. Right to Amend.** In addition to the provisions under Section 8.10, the Trustees reserve the right to amend the Plan, including this Appendix PR, to ensure the continued qualification of the Plan under the 2011 PR Code.

**PR-25. Applicable Law.** Except as otherwise required by ERISA or the US Code, the provisions of this Appendix PR shall be construed, enforced and administered according to the laws of the Commonwealth of Puerto Rico.

**M.M.&P. INDIVIDUAL RETIREMENT ACCOUNT PLAN REGULATIONS**

Except as specifically amended hereby, the Plan shall remain in full force and effect prior to this Amendment,

\_\_\_\_\_  
DATE

By: \_\_\_\_\_  
Title: Chairman, Board of Trustees

\_\_\_\_\_  
DATE  
20067891v1

By: \_\_\_\_\_  
Title: Secretary, Board of Trustees