

**DIAMOND STATE PORT CORPORATION
PENSION PLAN**

Restated as of August 28, 2008

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**DIAMOND STATE PORT CORPORATION
PENSION PLAN**

THIS PLAN, the Diamond State Port Corporation Pension Plan (the "PLAN") was adopted as of the 1st day of September, 1995 (the "Effective Date"), by DIAMOND STATE PORT CORPORATION (the "Employer") and amended effective July 1, 1997 and January 19, 2007.

WHEREAS, in order to comply with recent changes in federal law and obtain a determination letter from the IRS, the Employer desires to restate the Plan, effective as of August 28, 2008;

NOW, THEREFORE, effective August 28, 2008, the Employer hereby restates the Plan for the exclusive benefit of the Participant and their beneficiaries on the following terms:

ARTICLE I

Definitions.

"Administrator" means the Board of Pension Trustees, or the person or entity designated by the Board of Pension Trustees, to administer the Plan, pursuant to the authority granted by Section 8308(c)(10), Chapter 83, Title 29, Del. C.

"Application for Benefits" The term "date on which the application for such benefit is filed" shall mean the date on which the written documentation is received by the Office of Pensions or by the individual's employer.

"Authorized Leave of Absence" means any period of absence from employment authorized by the Employer.

"Base Salary" means (i) in the case of a Chapter B Employee, base salary as established by the Employer including overtime payments but excluding any compensation paid with respect to employment in excess of 2,080 hours in any calendar year; and (ii) in the case of all other Employees, base salary as established by the Employer excluding all other compensation such as, for example, overtime pay, and, in any event, excluding any compensation paid with respect to employment in excess of 40 hours in any one calendar week. Base Salary shall include contributions picked up by the Employer pursuant to Section 414(h)(2) of the Internal Revenue Code. Base Salary taken into account shall not exceed the amount that may be taken into account pursuant to Section 401(a)(17) of the Internal Revenue Code as amended or replaced hereafter. Effective with respect to plan years beginning on and after January 1, 1996, and before January 1, 2002, the annual compensation of a Plan Participant which exceeds \$150,000 (as indexed under Section 401(a)(17)(B) of the Internal Revenue Code) shall be disregarded for purposes of determining benefits or Employee contributions. Effective only for the 1996 plan year, in determining the compensation of an Employee eligible for consideration under this Plan Section, the Rules of Section 414(g)(6) of the Internal Revenue Code shall apply, except that in applying such rules, the term "family" shall include only the spouse of the member and any lineal descendants of the Employee who have not attained age 19 before the close of the year.

Effective with respect to plan years beginning on and after January 1, 2002, the annual compensation of a Plan Participant which exceeds \$200,000, as adjusted for cost-of-living increases in accordance with Internal Revenue Code Section 401(a)(17)(B), may not be taken into account in determining benefits or Employee contributions for any plan year. 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. If the determination period consists of fewer than 12 months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is 12. If the compensation for any prior determination period is taken into account in determining a Plan Participant's contributions or benefits for the current plan year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period.

"Board of Pension Trustees" means the Board of Pension Trustees as established by Section 8308, Chapter 83, Title 29, Del. C. and pursuant to such statute the Board of Pension Trustees shall have control and management of the state pension funds provided for in this Plan.

"Chapter B Employee" means an Employee referred to as a casual Employee employed by the Employer and covered by Chapter B of the collective bargaining agreement between the Employer and the International Longshoremen's Association, A.F.L.-C.I.O. on behalf of Local 1694-1.

"City Plan I" means the City of Wilmington Employees' Retirement Act described in Article II of Chapter 39 of the Wilmington City Code, as in effect on the Effective Date.

"City Plan II" means the City of Wilmington Nonuniformed Employees' Retirement Act of 1979 described in Article III of Chapter 39 of the Wilmington City Code, as in effect on the Effective Date.

"City Plan III" means the City of Wilmington Nonuniformed Employees' Retirement Act of 1990 described in Article VI of Chapter 39 of the Wilmington City Code, as in effect on the Effective Date.

"City Plan I Participant" means an Employee who both (i) participated in City Plan I, and (ii) is designated as a City Plan I Participant on Appendix A to this Plan.

"City Plan II Participant" means an Employee who both (i) participated in City Plan II, and (ii) is designated as a City Plan II Participant on Appendix A to this Plan.

"City Plan III Participant" means an Employee who both (i) participated in City Plan III, and (ii) is designated as a City Plan III Participant on Appendix A to this Plan.

"City Plan I and III Participant" means an Employee who both (i) participated in City Plan I and City Plan III, and (ii) is designated as a City Plan I and III Participant on Appendix A to this Plan.

"City Plan II and III Participant" means an Employee who both (i) participated in City Plan II and City Plan III, and (ii) is designated as a City Plan II and III Participant on Appendix A to this Plan.

"Credited Interest" means interest credited on Employee contributions made pursuant to Article III at the rate of seven percent compounded each December 31, from July 1 of the calendar year in which the contribution is made to the first day of the calendar month of termination of active employment.

"Disability" shall refer to that period of time during which an individual:

1. Is on a properly granted medical leave of absence from his or her Employer. Up to 12 consecutive calendar months of leave may be granted by the Employer. To extend the leave beyond 12 consecutive calendar months, the Employer must apply to the Medical Committee of the Board of Pension Trustees for an extension. Such application must be received by the Medical Committee of the Board of Pension Trustees not less than 30 days prior to the expiration of said 12 month period. Upon returning to employment following a period of approved medical leave, an individual may secure restoration of his or her previously canceled pension credits by submitting medical evidence, of a nature satisfactory to the Executive Secretary to the Board of Pension Trustees, indicating that his or her disability terminated or that he or she was authorized to return to employment not more than 4 months prior to the date of his or her actual return, or

2. Was forced to terminate employment due to medical disability. On returning to employment following a period of medical disability for which a leave of absence was not granted, an individual may secure restoration of his or her previously canceled pension credits by submitting medical evidence, of a nature satisfactory to the Executive Secretary to the Board of Pension Trustees, indicating the nature of his or her disability, the date on which it commenced, and date on which he or she was authorized by his or her physician to return to employment.

"Employee" shall mean an individual who:

1. is employed by the Employer and earns at least 1500 Hours of Service per year (as defined under the definition of "Years of Credited Service" below) excluding, however, independent contractors; or
2. is a Chapter B Employee.

"Final Average Base Salary" means the average of the Participant's annual Base Salary for those 60 consecutive months of the Participant's last 120 months of employment with the Employer that produce the highest average.

"Former City Employee" means an Employee who both (i) participated in one or more of City Plan I, City Plan II, and City Plan III, and (ii) is listed by name on Appendix A to this Plan.

"Medical Committee of the Board of Pension Trustees" means the medical committee as established by the Board of Pension Trustees.

"Participant" means an Employee who participates in the Plan in accordance with Articles II and III of the Plan document.

"Plan" means this instrument, including all amendments hereto, and all applicable provisions of the Delaware Code, including but not limited to Chapters 83 and 87 of Title 29.

"Retirement Date" means the date on which a Participant retires under the Plan and begins to receive retirement benefits:

1. **"Normal Retirement Date"** means the first day of the month coincident with or next following the later of a Participant's 65th birthday and the completion of five Years of Credited Service.
2. **"Early Retirement Date"** means the first day of the month coincident with or next following the later of a Participant's 55th birthday and the completion of five Years of Credited Service, as provided in Article VII.

"Termination of Employment" means separation from employment whether voluntary or involuntary, other than in connection with an Authorized Leave of Absence.

"Years of Credited Service" means those years of credited service which will be credited under the Plan only with respect to employment with the Employer as an Employee in accordance with the rules of this definition and as provided below:

1. A Participant will be credited with a Year of Credited Service for every Employment Year (as defined below) in which the Participant is credited with (i) in the case of a Participant who is a Chapter B Employee, at least 800 Hours of Service; and (ii) in the case of all other Participants, at least 1,500 Hours of Service (as defined below). Partial Years of Credited Service will be credited only with respect to the last Employment Year during which a Participant terminates employment and only if the Participant is eligible to retire, is eligible for disability benefits, or if the Participant's spouse is eligible for survivor benefits under this Plan at that time.

For that year, the Participant will be credited with a partial Year of Credited Service equal to, but in no event more than, the fraction derived from dividing the number of customary working days in that full Employment Year by the number of days for which the Participant was paid for employment in that year. See the definition of a One-Year Break in Service below for circumstances under which service might be forfeited.

2. The Employment Year shall be (i) in the case of Participants who are Chapter B Employees and who were hired prior to July 1, 1997, the 12-month calendar year beginning with July 1, 1997; and (ii) in the case of all other Participants, the 12-month

calendar year beginning with the date of the Participant's first employment. A Participant's Employment Year shall remain the same unless the Participant has a break in employment exceeding one year, in which case the Participant's Employment Year will thereafter be the 12-month period beginning with the Participant's first date of reemployment and anniversary dates thereof.

3. A Participant will be credited with an Hour of Service for every hour of employment, including paid periods of absence such as vacation, holidays or sick leave, for which the Participant is paid Base Salary, provided that in the case of a Participant who is not a Chapter B Employee, such a Participant will not be credited with more than 40 Hours of Service with respect to any one calendar week. Paid hours will be determined from the Employer's payroll records. Hours of Service will be credited with respect to time served in the United States military or the National Guard of the State of Delaware in accordance with applicable federal and State veteran's reemployment laws.

4. A Participant incurs a One-Year Break in Service for every Employment Year in which the Participant is not credited with at least 500 Hours of Service; however, a Participant will not incur a break in service with respect to any period of Authorized Leave of Absence. Notwithstanding any other provision of the Plan, a Participant who is a Chapter B Employee shall not incur a One-Year Break-In-Service for years in which such a Participant is credited with less than 500 Hours of Service.

If a Participant incurs a One-Year Break in Service at a time when the Participant is not credited with at least five Years of Credited Service and if the number of the Participant's consecutive One-Year Breaks in Service equals or exceeds the Participant's prior Years of Credited Service, then all of the Participant's prior Years of Credited Service will be forfeited. However, if the Participant incurs a One-Year Break in Service and if the number of the Participant's consecutive One-Year Breaks in Service is less than the Participant's prior Years of Credited Service, such a break in service will not cause the Participant to forfeit any prior credited service. In addition, once a Participant is credited with at least five Years of Credited Service, any break in service occurring thereafter will not cause the Participant to forfeit any prior credited service.

ARTICLE II

Eligibility and Participation.

- A. All Employees of the Employer shall be eligible to participate in the Plan in accordance with the rules of this Article.
- B. Each Participant's eligibility in the Plan shall be conditioned upon and subject to the Participant's contribution to the Plan of a tax-deferred percentage of the Participant's salary through a payroll reduction.
- C. Employees shall become Participants in the Plan as follows:

1. In the case of Chapter B Employees hired on or before July 1, 1997, on July 1, 1997;
2. In the case of Chapter B Employees hired after July 1, 1997, on the date of the Employee's employment; and
3. In the case of all other Employees hired after the Effective Date, on the date of the Employee's employment.

ARTICLE III

Employee Contributions.

A. Payroll Reductions. Each Participant in the Plan shall contribute to the Plan, through payroll reductions, an amount equal to two percent of the Participant's gross salary per pay period. A Participant shall be 100 percent vested in his or her Employee contributions.

B. Election to Become Participant. All Employees of the Employer shall be eligible to participate in the Plan, provided that the Employee elects to become a Participant as provided in Section (A) of this Article and that the Participant contributes to the Plan all necessary contributions to become a full Participant in the Plan. In order to assist all such Employees to make informed decisions regarding such election to participate, the Administrator may provide information to each such Employee setting forth such data as the Administrator determines to be appropriate, but no information so provided by the Administrator to any such Employee shall be deemed to constitute a recommendation by the Administrator to any such Employee to elect to participate or not to participate in the Plan.

C. Administration of Plan. In the administration of the provisions of this Article, the amounts of all Participants' Employee contributions shall be calculated in terms of Base Salary prior to deductions of amounts for federal, state or local taxes. All contributions pursuant to the provisions of the Plan shall be accumulated at a rate of seven percent per year.

D. Provisions Regarding Refunds of Contributions. If a Participant has been an Employee of the Employer for less than five continuous years at the time of Termination of Employment, the Participant shall be eligible for a refund of the full amount of the Participant's Employee contributions pursuant to Section (A) of this Article, plus Credited Interest thereon. In addition:

1. If a Participant has been an Employee of the Employer for more than five continuous years at the time of Termination of Employment, the Participant may elect to receive in lieu of any other benefit under the Plan a refund of the full amount of the Participant's Employee contributions with Credited Interest.

2. In all instances in which a Participant's contributions to the Plan cease or terminate as a result of death or disability and the Participant's beneficiary, or the disabled Participant is not entitled to a pension benefit, then the Participant's beneficiary, or the disabled Participant, as applicable, shall be eligible for a refund of the full amount

of the Participant's Employee contributions to the Plan, plus interest at seven percent per year.

E. **Employer Contributions.** The Employer shall pick up under the provisions of Section 414(h)(2) of the Internal Revenue Code, the Employee contributions required by Section (A) of this Article. An Employee who participates in the Plan must make a contribution to the Plan and shall not have the option to receive such contribution as compensation. The Employer contributions, although designated as Employee contributions, are being paid by the Employer in lieu of contributions by the Employee. Further, it does not matter whether the Employer pays such contributions through reduction in salary, an offset against future salary increases, or a combination of both methods. The contributions so picked up shall be treated as Employer contributions in determining tax treatment under the Internal Revenue Code; however, the contributions so picked up shall be included in Base Salary for purposes of the Plan.

F. **Member and Employer Contributions.** Member and Employer contributions must be received on a monthly basis by the Office of Pensions no later than the 10th of the month following the reported period. An interest penalty fee as established by the Board of Pension Trustees will be applied to all delinquent contributions.

ARTICLE IV

Retirement Benefits.

A. **Normal Retirement.** A Participant may retire at any time on or after the Participant's Normal Retirement Date and receive a pension at the annual rate of $1\frac{3}{4}$ percent of the Participant's Final Average Base Salary multiplied by the Participant's Years of Credited Service for up to 30 Years of Credited Service.

B. **Early Retirement**

1. **With Reduction.** A Participant may retire at any time on or after the Participant's Early Retirement Date and receive a pension at the annual rate of $1\frac{3}{4}$ percent of the Participant's Final Average Base Salary multiplied by the Participant's Years of Credited Service, maximum 30 years, but such benefit shall be reduced by the factor of 0.4 percent times the number of full or partial calendar months by which the Participant's benefit commencement date precedes the earlier of the Participant's Normal Retirement Date or the date the Participant would first be eligible for unreduced benefits under the Rule of 90 based on the Participant's credited service at time of retirement.

2. **Rule of 90.** A Participant may retire at any time on or after the Participant's Early Retirement Date and receive a pension at the annual rate of $1\frac{3}{4}$ percent of the Participant's Final Average Base Salary multiplied by the Participant's Years of Credited Service, a maximum of 30 years, without reduction by a factor related to the time preceding the Participant's Normal Retirement Date, provided that the total of the Participant's age, which shall not be less than 55 years, plus number of Years of Credited Service is 90 or more.

C. Payment of Benefit to a Married Participant; Post Retirement Surviving Spouse's Benefit. If a Participant is married on the Participant's Retirement Date, 1/12 of the Participant's annual pension will be paid to the Participant on the first day of each month beginning with the Participant's Retirement Date and continuing until and including the month in which the Participant dies.

If the Participant is survived by the Participant's spouse, the spouse will receive a surviving spouse's pension equal to 50 percent of the Participant's monthly pension which will be paid to the spouse on the first day of each month beginning with the month following the Participant's death and continuing until and including the month in which the spouse dies. This surviving spouse's pension will be paid only to a spouse to whom the Participant was married on the Participant's Retirement Date.

If the aggregate payments to the Participant and surviving spouse are less than the accumulated Employee contributions with Credited Interest to date of retirement, the balance of such contribution amount shall be paid to the beneficiary designated by the Participant of the surviving spouse. If there is no designated beneficiary, it shall be paid to the spouse's estate.

D. Payment of Benefit to an Unmarried Participant. If a Participant is not married on the Participant's Retirement Date, 1/12 of the Participant's annual pension will be paid to the Participant on the first day of each month beginning with the Participant's Retirement Date and continuing until and including the first day of the month in which the Participant dies. If the Participant dies before 120 monthly payments have been made to the Participant, these monthly payments will continue to the Participant's designated beneficiary, or the beneficiary's estate, until a total of 120 payments have been made to the Participant and the Participant's beneficiary, or the beneficiary's estate, combined.

If the beneficiary is not a natural person, then, with the consent of the legal representative of that beneficiary, the commuted value of the remaining payments may be paid in a lump sum. If the beneficiary is a natural person and dies after the Participant but before a total of 120 payments have been made, then, with the consent of the beneficiary's personal representative, the commuted value of the remaining payments may be paid to the beneficiary's estate in a lump sum.

If the Participant dies before 120 payments have been made to the Participant and if there is no beneficiary designation then in effect, or if the Participant's designated beneficiary has predeceased the Participant, then the commuted value of the remaining payments shall be paid to the Participant's estate in a form to be determined by the Administrator after consultation with the Participant's personal representative.

E. Trustee Transfers. This Section E applies to distributions made on or after January 1, 1993. A distributee may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a transfer made from the Plan. The following definitions shall apply for purposes of this Section:

1. **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 the 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 Internal Revenue Code Section 401(a)(9); the portion of any distribution that is not includible in gross income; and any other distribution that is reasonably expected to total less than \$200 during the year. Effective January 1, 2002, the definition of an eligible rollover distribution also includes a distribution to a surviving spouse, or to a spouse or former spouse who is an alternate payee under a domestic relations order, as defined in Internal Revenue Code Section 414(p). Also effective January 1, 2002, a portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax Employee contributions that are not includible in gross income. However, such non-taxable portion may be transferred only to an individual retirement account or annuity described in Internal Revenue Code Section 408(a) or (b), or to a qualified defined contribution plan described in Internal Revenue Code Section 401(a), or, in addition, on or after January 1, 2007, to a qualified defined benefit plan described in Internal Revenue Code Section 401(a) or to an annuity contract described in Internal Revenue Code Section 403(b), that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible.

2. Eligible retirement plan. An eligible retirement plan is any of the following that accepts the distributee's eligible rollover distribution:

- a. an individual retirement account described in Internal Revenue Code Section 408(a);
- b. an individual retirement annuity described in Internal Revenue Code Section 408(b);
- c. an annuity plan described in Internal Revenue Code Section 403(a);
- d. a qualified trust described in Internal Revenue Code Section 401(a);
- e. effective January 1, 2002, an annuity contract described in Internal Revenue Code Section 403(b);
- f. effective January 1, 2002, a plan eligible under Internal Revenue Code Section 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into the 457(b) plan from the Plan; or

g. effective January 1, 2008, a Roth IRA described in Internal Revenue Code Section 408A.

3. **Distributee.** A distributee includes an Employee or former Employee. It also includes the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Internal Revenue Code Section 414(p). Effective July 1, 2007, a distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined by Internal Revenue Code Section 401(a)(9)(E). However, a nonspouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution and the account or annuity will be treated as an "inherited" individual retirement account or annuity.

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

F. **Effective Date of Pensions.** A monthly benefit shall not be payable for any period earlier than the first day of the second month preceding the date on which the Application for Benefits is filed.

G. **Deceased Pensioner Monthly Benefit and Survivor's Effective Date of Pension.** The full pension benefit shall be payable for the month in which a pensioner's death occurs and shall be payable to the pensioner or his or her estate. Survivor's monthly pension benefit, if any, shall become effective the first day of the next month following the month in which a pensioner's death occurs.

ARTICLE V

Death Benefits.

A. **Preretirement; Married Participant.** If a Participant dies while still employed but at a time when the Participant is eligible for early or normal retirement and if the Participant is survived by a spouse, the Participant's surviving spouse shall receive the surviving spouse's benefit described in Section (C) of Article IV which the spouse would have been entitled to receive if the Participant had retired the day before the Participant died. If a Participant dies while still employed but at a time when the Participant has completed at least 15 Years of Credited Service and if the Participant is survived by a spouse, the Participant's surviving spouse shall receive a monthly pension at the annual rate of 50 percent times $1\frac{3}{4}$ percent of the Participant's Final Average Base Salary multiplied by the Participant's Years of Credited Service to date of death, a maximum of 30 years. A surviving spouse who is eligible for the benefit described in both the preceding two sentences shall receive only the larger benefit. The surviving spouse's monthly pension payments shall commence on the first of the month coincident with or immediately following the Participant's death and shall terminate with the last payment made in the month in which the spouse dies. If the aggregate payments to the Participant and surviving spouse are less than the accumulated Employee contributions with

Credited Interest at retirement, the balance of such contribution amount will be paid to the designated beneficiary. If there is no designated beneficiary, it shall be paid to the spouse's estate.

B. Preretirement; Unmarried Participant. If a Participant dies while still employed but at a time when the Participant is eligible for early or normal retirement and the Participant is not survived by a spouse, then the Participant's designated beneficiary, or the beneficiary's estate, shall receive the survivor benefit described in Section (D) of Article IV which that beneficiary or estate would have been entitled to receive if the Participant had retired the day before the Participant died.

C. Preretirement and Less Than 15 Years of Service; Married or Unmarried Participant. If a Participant dies while still employed but at a time prior to completion of 15 Years of Credited Service, if the Participant is survived by a spouse, the Participant's surviving spouse, or if the Participant is unmarried, the Participant's designated beneficiary, or the beneficiary's estate, shall be eligible to receive a refund of contributions determined in accordance with the provisions of Section (D) of Article III.

D. Trustee Transfers. Any distributions that meet the definition of an eligible rollover distribution under Section (E) of Article IV shall be subject to the provisions of that Section.

ARTICLE VI

Disability Benefits.

A. Any Participant who becomes totally disabled after the completion of at least 15 Years of Credited Service and while still employed by the Employer shall receive a disability benefit at the annual rate of $1\frac{3}{4}$ percent of the Participant's Final Average Base Salary multiplied by the Participant's Years of Credited Service, a maximum of 30 years. This benefit shall be reduced by the amount of any workers' compensation benefit paid to the disabled Participant. In addition, if the disabled Participant thereafter engages in any gainful occupation or business, this benefit shall be further reduced by the excess, if any, of the compensation or profit earned from such occupation or business, over one-half of the compensation for a comparable period last received by the Participant from the Employer. This benefit shall not be reduced by early retirement factors on account of payments beginning prior to the Participant's Normal Retirement Date.

B. The disability benefit shall be paid monthly beginning on the first day of the month immediately following Termination of Employment on account of the disability and continuing until and including the month in which the Participant is no longer totally disabled, or in which the Participant dies, or in which the Participant reaches the Participant's Normal Retirement Date, whichever occurs sooner.

C. If the disabled Participant recovers prior to the Participant's Normal Retirement Date, the Participant shall thereafter be eligible for early or normal retirement in accordance with Article IV. The Participant will not be credited with service during the period of the Participant's disability. If the Participant is not then eligible for early retirement and does not return to the

Employer's employ within 90 days of notice from the Administrator, the Participant will be treated as having terminated employment on the date the Participant's disability commenced and the Participant will thereafter be eligible for benefits for terminated vested Employees in accordance with Article VII.

D. If the disabled Participant dies while still eligible to receive disability benefits and if the Participant is survived by a spouse, the Participant's surviving spouse shall be paid a monthly pension at the annual rate of 50 percent times $1\frac{3}{4}$ percent of the Participant's Final Average Base Salary multiplied by the Participant's Years of Credited Service, a maximum of 30 years.

This benefit shall be reduced by the amount of any workers' compensation survivor benefit paid to the surviving spouse. The surviving spouse's monthly pension benefit shall be paid on the first day of each month beginning with the month following the Participant's death and continuing until and including the month in which the spouse dies or remarries. This surviving spouse's pension will be paid only to a spouse to whom the Participant was married when the Participant became disabled.

If the disabled Participant dies while still eligible to receive disability benefits and after attaining age 55, as applicable and in accordance with Section (B) of Article VII, and the Participant is not survived by a spouse, the Participant's designated beneficiary, or the beneficiary's estate, shall receive the survivor benefit which that beneficiary or estate would have been entitled to receive if the Participant had retired the day before the Participant died.

E. If the Participant remains disabled until the Participant's Normal Retirement Date, the Participant will then begin to receive the Participant's normal retirement pension in accordance with Section (A) of Article IV. The Participant will not be credited with service during the period of the Participant's disability.

F. A Participant shall be considered totally disabled if the Participant is physically or mentally incapable of continuing the regular duties of the Participant's occupation or any other duties which are consistent with the Participant's education and prior employment experience. The physical or mental condition of the Participant shall be determined by a physician selected by the Administrator. Disability benefits shall be paid retroactive to the time the disability was determined to have begun except that benefits shall not be paid with respect to any period more than one year prior to the filing of a written claim with the Administrator. While the Participant is receiving disability benefits, the Administrator may require the Participant to submit, at least annually, satisfactory evidence of the Participant's continuing disability. The frequency of review of disability pensioners under the age of 60 shall be determined by the Medical Committee of the Board of Pension Trustees based on the relevant facts in individual situations.

G. In the event of the death of a Participant prior to reaching age fifty-five, the Participant's surviving spouse, or the Participant's designated beneficiary, or the beneficiary's estate, as the case may be, shall be eligible to receive a refund of the Participant's contributions as determined in accordance with the provisions of Section (D)(2) of Article III.

H. Any Participant who becomes totally disabled and has not completed at least 15 Years of Credited Service while employed by the Employer shall not be entitled to receive benefits under this Article.

I. Recovery of Disability Pensioners. In the event a disability pension is terminated because of recovery prior to the Participant's normal retirement date, the disability pensioner shall become eligible for a vested pension if his or her period of credited service, excluding the period for which he or she received disability pension payments, meets the service requirements for a vested pension specified at the time the disability pension commenced.

J. Rights of Disability Pensioners who Return to Active Employment. A disability pension constitutes an individual's involuntary retirement; therefore, a disability pensioner who is reinstated as an Employee shall be eligible for his or her subsequent retirement to be considered as a regular retirement under the provisions of the pension law in effect at the time of his or her subsequent retirement.

K. Any distributions that meet the definition of an eligible rollover distribution under Section E of Article IV shall be subject to that Section.

ARTICLE VII

Termination of Employment Prior to Eligibility for Retirement Benefits.

A. Entitlement to Benefits. If a Participant terminates employment with fewer than five Years of Credited Service, the Participant shall be entitled to only a refund of the Participant's accumulated Employee contributions with Credited Interest. If a Participant terminates employment with at least five Years of Credited Service, a terminated vested Participant, the Participant shall be entitled at the Participant's Normal Retirement Date to receive the normal retirement pension described in Section (A) of Article IV multiplied by the vested percentage indicated in the table below depending on the number of the Participant's Years of Credited Service:

<u>Years of Credited Service</u>	<u>Vested Percentage</u>
Less than 5	0
5 or more	100

A Participant who attains the Participant's Normal Retirement Date while in the employment of the Employer shall be 100 percent vested. Such Participant may elect in lieu of a deferred retirement benefit a refund of accumulated Employee contributions plus Credited Interest. If a Participant elects a refund, the Participant shall forfeit any other benefits accrued under the Plan.

Solely for purposes of determining the vested percentage of a Participant's accrued benefit under the Plan, each Participant employed by the Employer on the Effective Date, other than those Participants who are Chapter B Employees, shall be credited with one Year of Credited Service for each year of vesting service theretofore credited to the Participant under the terms of any defined benefit plan sponsored by the City of Wilmington, Delaware.

B. Early Retirement Option at Age 55. If a Participant terminates employment with at least five Years of Credited Service, the Participant shall be entitled to elect at any time on or after the first of the month coincident with or following the Participant's 55th birthday to receive the early retirement pension described in Section (B) of Article IV multiplied by the vested percentage indicated in the table in Section (a) of this Article depending on the number of the Participant's Years of Credited Service.

C. Payment of Benefit to an Unmarried Participant. If a terminated vested Participant is not married on the Participant's Retirement Date, the Participant's pension will be paid to the Participant monthly in the form of a ten-year certain and life basis annuity. That is, 1/12 of the Participant's annual pension will be paid to the Participant on the first day of each month beginning with the Participant's Retirement Date and continuing until and including the first day of the month in which the Participant dies. If the Participant dies before 120 monthly payments have been made to the Participant, these monthly payments will continue to the Participant's designated beneficiary, or the beneficiary's estate, until a total of 120 monthly payments have been made to the Participant and the Participant's beneficiary, or beneficiary's estate, combined.

D. Payment of Benefit to a Married Participant. If a terminated vested Participant is married on the Participant's Retirement Date, the Participant's pension shall be paid to the Participant in the form of a joint and 50 percent surviving spouse's annuity, unless the Participant elects one of the optional forms of benefit described below in this Section, which total benefit shall be the actuarial equivalent of a single life annuity for the Participant. That is, 1/12 of the Participant's annual pension, actuarially reduced on account of payment over two lives rather than one, shall be paid to the Participant monthly on the first day of each month beginning with the Participant's Retirement Date and continuing until and including the first day of the month in which the Participant dies.

After the Participant's death, 50 percent of the Participant's actuarially reduced pension will be continued to the Participant's surviving spouse with monthly payments to begin the first day of the month following the Participant's death and continuing until and including the first day of the month in which the spouse dies or remarries. This surviving spouse's benefit will only be paid to a spouse to whom the Participant was married on the Participant's Retirement Date.

Notwithstanding the above, a married Participant may elect for the Participant's benefit to be paid in the form of a single life annuity with no benefits to be paid after the Participant's death or in the form of a single life annuity on a ten-year certain basis, both as described in Section (C) of this Article.

E. Preretirement Spouse's Death Benefit. If a Participant terminates employment with at least five Years of Credited Service, and if the Participant dies after the first day of the month coincident with or immediately following the Participant's 55th birthday, but before retirement payments begin, and if the Participant is survived by a spouse, then, unless the Participant makes the election described below in this Section, the Participant's surviving spouse will receive a survivor's pension equal to 50 percent of the actuarially reduced pension to which the Participant would have been entitled if the Participant had retired on the day the Participant died with a joint and 50 percent surviving spouse's benefit in effect. This surviving spouse's pension will be paid monthly beginning on the first day of the month coincident with or immediately following the

Participant's death and continuing until and including the first day of the month in which the spouse dies or remarries. If such a married Participant does not die during the period this surviving spouse's benefit is in effect, then at the Participant's subsequent Retirement Date the Participant's pension will be actuarially reduced to reflect the cost of the Participant's death benefit. Notwithstanding the above, a terminated Participant who is married may elect for this surviving spouse's benefit not to be in effect, in which case no survivor benefit will be paid after the Participant's death if the Participant dies prior to the Participant's Retirement Date. If a terminated vested Participant dies prior to becoming eligible for normal or early retirement, no survivor benefits shall be paid on account of the Participant's death to a surviving spouse or any other beneficiary.

F. Refund of Contributions. If a terminated vested Participant and the Participant's beneficiary die prior to receiving benefits equal to the Participant's Employee contributions with interest at Termination of Employment, the remaining amount shall be paid to the Participant's designated beneficiary. If there is no designated beneficiary, the balance shall be paid to the Participant's estate.

G. Withdrawal Benefits. Effective for Employees terminating employment, an Employee's accumulated contributions, with interest rate as adopted by the Board, shall not be paid to him or her until, in the ordinary course of business, the Pension Office has verified the Employee's total pension contributions.

H. Trustee Transfers. Any distributions that meet the definition of an eligible rollover distribution under Section (E) of Article IV shall be subject to the provisions of that Section.

ARTICLE VIII

Claims Procedure; Plan Administration; Funding.

A. A Participant, surviving spouse, or any other beneficiary shall not be entitled to receive any benefit provided under the Plan prior to having given written notice of such claim to the Administrator, provided that payment will be made retroactive to the time it was first due except that no benefit will be paid with respect to any period more than one year prior to the filing of such a written claim with the Administrator. Any notice called for under the Plan to a Participant (or beneficiary) shall be deemed given when delivered to the U.S. mail with first class postage paid and addressed to the last address of the Participant or beneficiary in the personnel records of the Employer. Any notice called for under this Section to the Administrator shall be deemed given when actually received in writing by the Administrator.

B. The Plan shall be administered by the Administrator, which may make rules and regulations not inconsistent with the Plan for the purposes of carrying out the Administrator's administrative duties, pursuant to the powers and duties set forth in Section 8308, Chapter 83, Title 29, Del. C.

C. The Board of Pension Trustees shall be responsible for the management and investment of Plan assets, pursuant to Section 8308 (c)(4), Chapter 83, Title 29, Del. C.

D. The Administrator shall submit to the Employer, not later than six months after the close of the Plan's fiscal year, a financial report for that year audited by an independent certified public accountant.

E. The Employer will make contributions to the Administrator to fund the Plan in accordance with actuarial determinations made not less frequently than once every three years. The Employer's contributions shall be designated to amortize the unfunded liability over a period of time as established by the Board of Trustees. In any event, the Employer's contribution in any one year shall not be less than the full current cost plus the interest on the unfunded liability. The Administrator shall report to the Employer with respect to the contribution required to meet the funding requirements under the Plan.

F. All Plan assets shall be held by the Board of Pension Trustees as trustee in trust for the exclusive benefit of the Plan Participants and their beneficiaries. No Plan funds may revert to the Employer prior to the satisfaction of all Plan liabilities. Forfeitures under the Plan shall not be used to increase any Participant's benefit but rather shall be applied to reduce the cost of funding the Plan.

G. None of the benefits provided under the Plan shall be subject to the claims of, or to execution, attachment, garnishment or other legal process, by a creditor of a Participant or beneficiary. No Participant or beneficiary under the Plan shall have any right to alienate, encumber or assign any of the benefits provided herein, or any interest arising out of or created by the Plan.

H. Appeals from Predecessor Boards or Commissions. All appeals from a decision of any predecessor boards or commissions will be automatically denied by the Board of Pension Trustees unless the aggrieved party shows that the Board of Pension Trustees has jurisdiction in the matter.

ARTICLE IX

Amendment, Termination, Limitations on Benefits, Merger

A. The Plan may be amended from time to time by the Employer; however, no such amendment shall impair any Participant's rights in the Plan prior to the amendment. Upon termination, partial termination, or complete cessation of contribution, all affected Participants shall become 100 percent vested in their benefits accrued to date to the extent then funded.

B. The Plan may not be consolidated or merged with another plan unless the benefits provided for Participants immediately after such merger, consolidation or transfer, in the event such successor plan should then terminate, will be at least equal to the benefits to which such Participants would have been entitled if the Plan had terminated immediately before such merger or consolidation.

C. In the event the Plan is terminated, to the extent the Plan benefits are not already guaranteed by an insurance company, the assets of the Plan will be allocated to pay all Plan administration expenses and then will be allocated to provide benefits as follows:

1. First, for each Participant employed by the Employer, for each retired or disabled Participant, for each survivor beneficiary eligible to receive a benefit, and for each Participant eligible to retire, an amount will be allocated to provide a refund of the full amount of each Participant's contributions to the Plan, plus interest at a rate to be determined at such time by the Administrator;
2. Second, for each retired or disabled Participant, for each survivor beneficiary eligible to receive a benefit, and for each Participant eligible to retire, an amount will be allocated to provide the Participant's pension benefit;
3. Third, for each other Participant who has at least five Years of Credited Service and is therefore at least partially vested, an amount will be allocated to provide the Participant's accrued vested benefit;
4. Fourth, for each Participant an amount will be allocated to provide the Participant's accrued benefit which is not vested; and
5. Fifth, any excess will be refunded to the Employer.

No assets will be allocated to a lower order of priority unless all higher orders of priorities have been fully satisfied. If assets are insufficient to fully satisfy any one order of priority, allocation will be made pro rata within that order of priority. In the event the U.S. Secretary of the Treasury determines that the Plan assets must be allocated in some different manner in order to satisfy the nondiscrimination requirements of Internal Revenue Code Section 401(a)(4), to the extent such Section may be found applicable to governmental plans, the assets shall be so allocated.

ARTICLE X

Miscellaneous Provisions.

A. Competence of Recipient. If an individual entitled to any payment under the Plan is a minor or is, in the opinion of the Administrator, mentally or physically incapable of managing his or her financial affairs, the Administrator may direct that payment be made to the person or institution providing for that individual's care and maintenance. Any such payment shall completely discharge the Plan's liability for the amount paid.

B. Frequency of Payment; Lump Sum Payment. If any benefit under the Plan is payable at a monthly rate smaller than \$25.00, the Administrator may direct that payment be made less frequently for an equitably adjusted amount. If the actuarial equivalent of any benefit is smaller than \$3,500.00, the Administrator may pay that actuarial equivalent in a single lump sum. If the actuarial value of benefit payments becomes payable under the Plan, such value will be calculated on the basis of the actuarial assumptions used by an independent actuary in connection with the most recent actuarial valuation of the Plan assets.

C. Refund Provisions. Participants in the Plan may be eligible for refunds of contributions to the Plan only in accordance with the provisions of the Plan.

D. **Construction of Gender.** In the construction of the Plan, the masculine shall include the feminine and the singular the plural in all cases in which such meanings are appropriate.

E. **Distribution.** Notwithstanding any other provisions of the Plan to the contrary, distributions will be made in accordance with a good-faith interpretation of Section 401(a)(9) of the Internal Revenue Code (which is hereby incorporated herein by reference) and the regulations promulgated thereunder, including 1.401(a)(9)-(12). Notwithstanding any other provision of these rules and regulations, effective on and after January 1, 2003, the Plan is subject to the following provisions:

1. Benefits must begin by the required beginning date, which is the later of April 1 of the calendar year following the calendar year in which the Plan Participant reaches 70½ years of age or April 1 of the calendar year following the calendar year in which the Plan Participant terminates employment. If a Plan Participant fails to apply for retirement benefits by April 1 of the calendar year following the calendar year in which he or she reaches 70½ years of age or April 1 of the calendar year following the calendar year in which he or she terminates employment, whichever is later, the Administrator will begin distributing the benefit as required by this Section.
2. The Plan Participant's entire interest must be distributed over the Plan Participant's life or the lives of the Plan Participant and a designated survivor under state law, or over a period not extending beyond the life expectancy of the Plan Participant or of the Plan Participant and a designated survivor under state law. Death benefits must be distributed in accordance with Internal Revenue Code Section 401(a)(9), including the incidental death benefit requirement in Internal Revenue Code Section 401(a)(9)(G), and the regulations implementing that Section.
3. The life expectancy of a Plan Participant, the Plan Participant's spouse or the Plan Participant's survivor under state law may not be recalculated after the initial determination for purposes of determining benefits.
4. If a Plan Participant dies after the required distribution of benefits has begun, the remaining portion of the Plan Participant's interest must be distributed at least as rapidly as under the method of distribution before the Plan Participant's death and no longer than the remaining period over which distributions commenced.
5. If a Plan Participant dies before required distribution of the Plan Participant's benefits has begun, the Plan Participant's entire interest must be either
 - a. distributed (in accordance with federal regulations) over the life or life expectancy of the designated survivor under state law, with the distributions beginning no later than December 31 of the calendar year immediately following the calendar year of the Plan Participant's death, or
 - b. distributed by December 31 of the calendar year containing the fifth anniversary of the Plan Participant's death.

6. The amount of an annuity paid to a Plan Participant's Beneficiary may not exceed the maximum determined under the incidental death benefit requirement of the Internal Revenue Code.

7. The death and disability benefits provided by the Plan are limited by the incidental benefit rule set forth in Treasury Regulation Section 1.401-1(b)(1)(i) or any successor regulation thereto.

F. **Military Service.** Effective December 12, 1994, notwithstanding any other provision of law, contributions, benefits and service credit with respect to qualified military service are governed by Internal Revenue Code Section 414(u) and the Uniformed Services Employment and Reemployment Rights Act of 1994. The military service credit provisions of this Section are to be interpreted so as not to diminish any rights granted under any state law relating to military service.

G. **Prohibited Transactions.** The Administrator may not engage in a transaction prohibited by Internal Revenue Code Section 503(b).

H. **Actuarial Assumptions.** The factors used to determine the actuarial equivalence of benefits paid by the Plan shall be adopted by resolution of the Board of Pension Trustees and will not be subject to Employer discretion.

I. **Creditable Service.**

1. Repayment of Withdrawal Benefits.

a. If a former Employee, who withdrew his or her accumulated contributions upon termination of service after the date of affiliation with this Plan by the Employer, again becomes an Employee, his or her service credits to the date of termination shall be restored if he or she repays the total amount withdrawn, plus an interest rate charge as adopted by the Board of Pension Trustees, compounded annually, within 90 days after notification from the Office of Pensions.

b. If the repayment occurs subsequent to 90 days after notification from the Office of Pensions, the repayment shall be equal to the amount in (a) plus, for each full month or fraction thereof following the last day of the 90 day period, an interest rate charge as adopted by the Board of Pension Trustees.

2. **Credit for Vacation and Accrued Sick Leave.** An Employee or his or her survivor may elect to use accrued periods of vacation and/or accrued sick leave as credited service provided that an Employee or his or her survivor may not receive a pension for any month during the periods of vacation and/or sick leave so used. Service so credited may be used to establish eligibility for a service, disability, survivor or vested pension.

3. **Employee Work Conditions for Credited Service.** To be deemed an Employee for credited service, an Employee must:

a. report for and work in an official workplace of the Employer or must report for and attend a school or course of instruction in the manner required by the school or other institution pursuant to the direction or authorization of the Employer, and be directly accountable to his or her Employer who supervises his or her work or course of instruction; or

b. become eligible for Worker's Compensation in the course of employment as defined in subsection (a) hereof, in which event the Employee's accrual of credited service shall continue only so long as he or she shall remain eligible for and be receiving Worker's Compensation and remains an Employee.

4. **Leave of Absence Without Pay.** Any Employee granted a leave of absence without pay shall not incur a break-in-service provided that the leave of absence without pay must be approved in writing and validated by the Employer and a copy thereof must be immediately filed with the Office of Pensions and provided further that the leave of absence without pay may not exceed a period of 12 consecutive calendar months.

5. **Credited Service.** In no case shall more than one year of credited service be granted for any employment services during any 12 month period.

J. **Erroneous Payments.** Any overpayment of benefits to a pensioner shall be recovered by the State Pension Administrator who, after written notice to the pensioner, shall withhold the amount due from the pensioner's monthly pension benefit within a 12 month period, provided that the amount of monthly withholding may not exceed 15% of the monthly pension benefit. If repayment of any overpayment amount will require more than 12 months, the withholding shall be made at the rate of 15% of the monthly pension benefit until the overpayment has been recovered in full.

ARTICLE XI

Special Rules Concerning Certain Former City Employees.

A. **Limitation on Benefits.** Former City Employees shall not be entitled to benefits under the Plan except as provided in this Article.

B. **City Plan I Participants.** For purposes of determining eligibility, participation, vesting, benefits, and the timing of payments under the Plan with respect to City Plan I Participants, (i) the terms of the Plan shall be deemed to be identical to the terms of City Plan I, and (ii) each City Plan I Participant shall be credited in the Plan for service with the Employer and for service credited in City Plan I.

C. **City Plan II Participants.** For purposes of determining eligibility, participation, vesting, benefits, and the timing of payments under the Plan with respect to City Plan II Participants, (i) the terms of the Plan shall be deemed to be identical to the terms of City Plan II, and (ii) each City Plan II Participant shall be credited in the Plan for service with the Employer and for service credited in City Plan II.

D. **City Plan III Participants.** City Plan III Participants shall be treated in the same manner as Employees who are not Former City Employees for all purposes under the Plan, except that they shall be credited in the Plan for service with the Employer and for service credited in City Plan III.

E. **City Plan I and III Participants; City Plan II and III Participants.** City Plan I and III Participants and City Plan II and III Participants shall be treated in the same manner as Employees who are not Former City Employees for all purposes under the Plan, except that (i) they shall be credited in the Plan for service with the Employer and for service with the City of Wilmington after December 31, 1990, and (ii) they shall be entitled to retirement benefits under the Plan for service with the City of Wilmington prior to January 1, 1991. Retirement benefits described in clause (ii) above shall be (A) calculated, determined, and paid in accordance with terms and conditions identical to those of the Plan (either City Plan I or City Plan II) in which the Employee had been a Participant and (B) based on the Employee's service with the City of Wilmington as of December 31, 1990 and the Employee's salary history with the Employer and the City of Wilmington through the Employee's date of termination of employment with the Employer.

F. **Buy-Back Contributions.** Notwithstanding any other provision of this Article, each City Plan I and III Participant and each City Plan II and III Participant who has paid into City Plan III, or is in the process of paying into City Plan III, an amount constituting a buy-back contribution as described in Section 39-275 (d) of the Wilmington City Code shall be eligible to become a Participant in the Plan for all of his or her years of service credited in City Plan I or City Plan II prior to January 1, 1991 (but shall not be entitled to the retirement benefits described in Clause (ii) of Section (E) of this Article), provided that he or she pays into the Plan any portion of the buy-back contribution that has not been paid into City Plan III prior to the date he or she becomes an Employee. All such buy-back contribution payments made into the Plan shall be made in accordance with the terms of the amortization schedule described in Section 39-275(e) of the Wilmington City Code.

ARTICLE XII

Maximum Benefit Limits and Maximum Contribution Limits

A. Employee contributions paid to, and retirement benefits paid from, the Plan may not exceed the annual limits on contributions and benefits, respectively, allowed by Internal Revenue Code Section 415.

B. For purposes of applying these limits only and for no other purpose, the definition of compensation where applicable will be compensation actually paid or made available during a limitation year, except as noted below and as permitted by Treasury Regulation Section 1.415(c)-2), or successor regulation. Specifically, compensation will be defined as wages within the meaning of Internal Revenue Code Section 3401(a) and all other payments of compensation to an Employee by an Employer for which the Employer is required to furnish the Employee a written statement under Internal Revenue Code Section 6041(d), 6051(a)(3) and 6052. Compensation will be determined without regard to any rules under Internal Revenue Code Section 3401(a) that limit the remuneration included in wages based on the nature or location of

the employment or the services performed (such as the exception for agricultural labor in Internal Revenue Code Section 3401(a)(2)).

1. However, for limitation years beginning after December 31, 1997, compensation will also include amounts that would otherwise be included in compensation but for an election under Internal Revenue Code Sections 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b). For limitation years beginning after December 30, 2000, compensation will also include any elective amounts that are not includible in the gross income of the Employee by reason of Internal Revenue Code Section 132(f)(4).

2. The definition of compensation will exclude Employee contributions picked up under Internal Revenue Code Section 414(h)(2).

3. For limitation years beginning on and after January 1, 2007, compensation for the limitation year will also include compensation paid by the later of 2 ½ months after an Employee's severance from employment or the end of the limitation year that includes the date of the Employee's severance from employment if the payment is regular compensation for services during the Employee's regular working hours, or compensation for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to the Employee while the Employee continued in employment with the Employer.

4. Back pay, within the meaning of Treas. Reg. § 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

C. Before January 1, 1995, a Plan Participant may not receive an annual benefit that exceeds the limits specified in Internal Revenue Code Section 415(b), subject to the applicable adjustments in that Section. On and after January 1, 1995, a Plan Participant may not receive an annual benefit that exceeds the dollar amount specified in Internal Revenue Code Section 415(b)(1)(A), subject to the applicable adjustments in Internal Revenue Code Section 415(b).

D. On and after January 1, 2009, for purposes of applying the limits under Internal Revenue Code Section 415(b) (the "Limit"), the following will apply:

1. a Plan Participant's applicable Limit will be applied to the Plan Participant's annual benefit in the first limitation year without regard to any automatic cost of living increases;

2. to the extent the Plan Participant's annual benefit equals or exceeds the Limit, the Plan Participant will no longer be eligible for cost of living increases until such time as the benefit plus the accumulated increases are less than the Limit; and

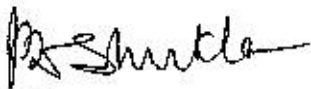
3. thereafter, in any subsequent limitation year, the Plan Participant's annual benefit including any automatic cost of living increase applicable shall be tested under the then

applicable benefit limit including any adjustment to the Code Section 415(b)(1)(A) dollar limit under Code Section 415(d) and the regulations thereunder; and

E. In no event shall a Plan Participant's annual benefit payable from the Plan in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Code Section 415(d) and the regulations thereunder. If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity, then the preceding sentence is applied by reducing the Code Section 415(b) limit applicable at the annuity starting date to an actuarially equivalent amount (determined using the assumptions specified in Treasury Regulation § 1.415(b)-1(c)(2)(ii)) that takes into account the death benefits under the form of benefit.

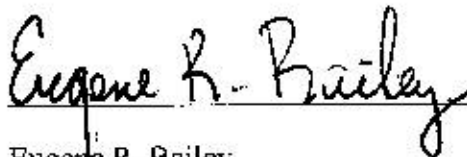
F. For purposes of Internal Revenue Code Section 415, the limitation year is the calendar year.

Signed for and on behalf of Diamond State Port Corporation, this 28th day of August, 2008 at Wilmington, Delaware.



Parul Shukla

Director, Finance & Administration



Eugene R. Bailey

Executive Director