

PROPOSED AGREEMENT

FOR THE

**INTERNATIONAL BROTHERHOOD OF
BOILERMAKERS, IRON SHIP BUILDERS,
BLACKSMITHS, FORGERS AND HELPERS**

TO TAKEOVER

**THE BROTHERHOOD OF MAINTENANCE OF
WAY EMPLOYEES**

MERGER AGREEMENT

between

International Brotherhood of Boilermakers,
Iron Ship Builders, Blacksmiths, Forgers and Helpers,
AFL-CIO

and

Brotherhood of Maintenance of Way Employes

Preamble

Article 5.2 of the Boilermakers' International Constitution grants the Executive Council authority to consummate a merger or affiliation of another labor organization into the International Brotherhood, including the authority to increase the number of International Vice-Presidents-At-Large where necessary to effectuate such merger or affiliation. This merger is therefore consummated pursuant to that provision.

The purpose of this merger is consistent with Article 1, purposes and objectives of the Constitution of the Boilermakers' International Union and the objectives of the Constitution of the Brotherhood of Maintenance of Way Employes (BMWE), thereby strengthening our two organizations, affording us the continued opportunity to obtain these objectives.

1. [Merger]: The International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers and the Brotherhood of Maintenance of Way Employes agree to merge into one organization to be known as the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers.
2. [Merger Agreement]: The terms contained in this Merger Agreement shall be the exclusive terms governing the merger. Oral agreements, representations or written terms not included in this Merger Agreement shall have no legal effect or consequence and shall be construed only as statements of opinion on which neither party has relied.

3. [Constitution]: The Constitution of the International Brotherhood of Boilermakers shall be the supreme law of the merged organization, subject to the terms of this Merger Agreement. The provisions of this Merger Agreement, shall, whenever the language can be reasonably interpreted, be construed as not being in conflict with any provision of the Constitution.
4. [Division]: The Brotherhood of Maintenance of Way Employes shall be merged with and become part of the Boilermakers' organization. The Boilermakers' International shall establish a Division known as the "Brotherhood of Maintenance of Way Employes Division of the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers".
 - (a) [Affiliation]: All System Divisions/Federations, Local Lodges, and other groups, who are affiliates of the Brotherhood of Maintenance of Way Employes shall, on the effective date of the Merger, become part of and remain affiliated with the Brotherhood of Maintenance of Way Employes Division of the Boilermakers' International.
 - (b) [Functions]: It shall be the function of the Brotherhood of Maintenance of Way Employes Division to assist in collective bargaining, to negotiate and administer collective bargaining agreements, and to engage in research and other related organizational activities to the end of effectively protecting and promoting the interests of the members of chartered subordinate affiliates in the Brotherhood of Maintenance of Way Employes Division. This service shall include but will not be limited to: 1. Legislative affairs, 2. Negotiation, 3. Arbitrations, 4. Legal matters affecting the Division, 5. Safety matters affecting the Division 6. Organizing, 7. Employee protection and 8. Strategic planning.
 - (c) [Administration]: The Brotherhood of Maintenance of Way Employes Division shall be administered by one (1) Executive Vice-President-At-Large and one (1) International Vice-President-At-Large, created by the merger as set forth below who shall report to the International President.
 - (d) [Offices]: The official headquarters of the Brotherhood of Maintenance of Way Employes Division of the Boilermakers' International will be at the headquarters of the Boilermakers' International which is located at the time of the merger in Kansas City, Kansas. However, the BMWWE offices in at Detroit and any other BMWWE office will remain at that location for at least the remainder of the current lease. Thereafter, the Division may maintain such office(s) at such locations as determined by the International President, after consultation with the Brotherhood of

Maintenance of Way Employees Division Executive Vice-President-At-Large.

- (e) Notwithstanding paragraph (d) above, the current Brotherhood of Maintenance of Way Employees offices located in Washington, DC and Chicago, Illinois, as well as, the staff and functions currently performed in those offices shall be respectively maintained in the Washington, DC and Chicago areas subject to the discretion of the Brotherhood of Maintenance of Way Employees Division Executive Vice-President-At-Large.
- (f) The offices of the five (5) US "Regional Directors" (former Regional Vice-Presidents of the Brotherhood of Maintenance of Way Employees) will remain at their present location for at least the remainder of their current lease. Thereafter, they shall be located as set forth in paragraph 9(c) of this Merger Agreement. The BMW Division's two (2) Canadian Regional Directors (former Regional Vice-Presidents of the Brotherhood of Maintenance of Way Employees) will continue to be headquartered at the BMW building located at 2775 Lancaster Road, Ottawa, Ontario, Canada subject to the discretion of the BMW Executive Vice-President-At-Large. No changes regarding the disposition of the building will be made by the International President without consultation with the Brotherhood of Maintenance of Way Employees Division Executive Vice-President-At-Large.

5. [International Vice-Presidents-At-Large]: There will be established effective with the merger one (1) Executive Vice-President-At-Large position and one (1) International Vice-President-At-Large position. The Executive Vice-President-At-Large and International Vice-President-At-Large shall come from one of the affiliated Lodges of the Brotherhood of Maintenance of Way Employees Division. Effective with the merger, the position of Executive Vice-President-At-Large shall be filled by Mac Fleming, the current President of the BMW. Also effective with the merger, the International Vice-President-At-Large position shall be filled by William LaRue, the current Secretary-Treasurer, of the Brotherhood of Maintenance of Way Employees.

- (a) [Salary]: The salary of the Executive Vice-President-At-Large and the International Vice-President-At-Large shall be set in accordance with Article 8.2 of the Constitution of the Boilermakers' International or their current Brotherhood of Maintenance of Way Employees salary, whichever is higher.
- (b) [Salary Increases]: The salary of the Executive Vice-President-At-Large and the International Vice-President-At-Large shall be increased in

accordance with Articles 36 and 8.2 of the Constitution of the Boilermakers' International.

- (c) [Benefits]: The Executive Vice-President-At-Large and the International Vice-President-At-Large shall receive the same health and welfare and other benefits as are received by the other International Vice-Presidents of the Boilermakers' International, except as to pension benefits which will be equivalent or higher by virtue of the provisions of Paragraph 14 below and the use of universal credit cards that will be issued by the Boilermakers' International as set forth in Paragraph 5(d) below.
- (d) [Expenses]: In lieu of the \$55 (fifty-five dollars) per day expense allowance as set forth in Article 8.2 of the Boilermakers' International Constitution, the Executive Vice-President-At-Large and International Vice-President-At-Large will be issued universal credit cards, by the Boilermakers' International. These cards may only be used while on union business, for charging actual, necessary expenses. Receipts from the use of these cards are to be attached to their expense account.
- (e) [Vacation]: The Executive Vice-President-At-Large and the International Vice-President-At-Large who assumes office on the effective date of the Merger will continue to receive vacation benefits in accordance with the BMW National Railroad Agreement so long as they remain employed by the Merged Organization. Persons not previously employed by the Merged Organization who are elected to such positions after the effective date of the Merger, will receive vacation benefits in accordance with the Policy of the Merged Organization.
- (f) [Election]: The "Interim Election" for the Executive Vice-President-At-Large and the International Vice-President-At-Large will be held in July 2002 at a Special Conference of the BMW Division. Said election will be conducted in accordance with applicable provisions of the former BMW Constitution. They will serve for the remainder of their current term and until the July 2002 interim election is held. Thereafter, as officers of the International Brotherhood of Boilermakers, the Executive Vice-President-At-Large and the International Vice-President-At-Large whose positions are created by the Merger Agreement, shall be nominated and elected according to the procedures of Article 4.4 of the Boilermakers International Constitution, commencing with the Thirty-First Consolidated Convention of the Boilermakers' International. The nominees shall come from and must be members of, one of the affiliated Lodges of the Brotherhood of Maintenance of Way Employees Division.

6. [Vacancies]: If a vacancy occurs in the position of Executive Vice-President-At-Large or International Vice-President-At-Large within the BMW Division, the vacancy shall be filled in accordance with Article 4.5 of the Boilermakers' International Constitution except that the person appointed to fill the position shall come from one of the affiliated Local Lodges of the Brotherhood of Maintenance of Way Employees Division. The person selected to fill the position shall receive the same salary and benefits as received by the other Boilermaker International Vice-Presidents of the Boilermakers' International Union by virtue of their positions in accordance with Article 8.2 of the Constitution of the Boilermakers International, except as to pension benefits which may be higher by virtue of the provisions of Paragraph 14 below.

7. [Powers and Responsibilities]: The Executive Vice-President-At-Large shall have such powers and responsibilities as set forth in Article 8.1 of the Constitution of the Boilermakers' International and in the Merger Agreement. Additionally, he shall have overall supervision of the BMW Division.

The International Vice-President-At-Large shall work under the supervision of the International President and the Executive Vice-President-At-Large and shall

have such powers and responsibilities as otherwise set forth in Article 8.1 of the Constitution of the Boilermakers' International and this Merger Agreement.

8. [Local Lodges, System Divisions and Federations]: All Local Lodges, System Divisions and Federations of the Brotherhood of Maintenance of Way Employees shall be merged with the Boilermakers' International and shall become and remain chartered, subordinate affiliates of the Boilermakers' International.

(a) [Charters]: The Boilermakers' International shall issue each Local Lodge, System Division and Federation a Charter which will signify its affiliation with the Boilermakers' International and which shall supplant the Charter (if one exists) each such entity held as an affiliate of the Brotherhood of Maintenance of Way Employees. The Executive Vice-President-At-Large will have the responsibility to work with the International Secretary-Treasurer to ensure that such Charters are issued as soon as practicable following the effective date of the Merger.

(b) [Governing Documents]: The Constitution of the Boilermakers' International together with the By-Laws of each System Division and Federation, will constitute the governing documents of each such chartered affiliate. In the event of any conflict between the By-Laws of the chartered affiliate and the Constitution, the Constitution shall control and supersede any conflicting provision in such By-Laws, subject to the terms of this Merger Agreement.

- (c) [By-Laws]: The System Division/Federation By-Laws shall continue to be applicable until otherwise amended. Should any provision of said By-Laws conflict with the Constitution of the Boilermakers' International, the Boilermakers' Constitution shall be controlling, subject to the terms of this Merger Agreement.
- (d) [Designations]: The Local Lodges shall retain their current lodge numbers preceded by a capital "B", signifying their affiliation with the Brotherhood of Maintenance of Way Employes Division of the Boilermakers' International.
- (e) The By-Laws of the System Division and Federation shall be applicable to all lodges within said division and federation. Accordingly, local lodges within the BMWE Division will not be required to adopt By-Laws.
- (f) [Government of Local Lodges]: The provisions of Article XXIII, "Government of Local Lodges", of the Brotherhood of Maintenance of Way Employes' Constitution is, by reference, incorporated into and part of this Merger Agreement as if specifically written out therein. Where such language conflicts with the Constitution of the Boilermakers' International, the Boilermakers' Constitution shall be controlling. (See attachment 7)

9. [Staff]:

- (a) The staff currently employed by the Brotherhood of Maintenance of Way Employes will be appointed by the International President as Division Staff of the Boilermakers' International. They shall continue to receive their yearly salary as paid by the Brotherhood of Maintenance of Way Employes on the effective date of this Merger.
 - 1. The use of the term "Staff" in this Merger Agreement applies solely to the BMWE Vice-Presidents (Regional Directors) and appointees. That term does not apply to the BMWE Grand Lodge President, Secretary-Treasurer, bargaining unit employees covered by a Collective Bargaining Agreement with the BMWE or office employees not covered by a Collective Bargaining Agreement, including exempt employees.
- (b) The seven (7) Brotherhood of Maintenance of Way Employes Regional Vice-Presidents will, effective with this merger, be appointed as Regional Directors for the remainder of their current term and until the July 2002 interim election is held. They shall continue to receive their yearly salary

as paid by the Brotherhood of Maintenance of Way Employes on the effective date of this Merger.

- (c) The "Interim Election" for the Regional Directors will be held in July 2002 at a Special Conference of the BMW Division. Said election will be conducted in accordance with applicable provisions of the former BMW Constitution. Thereafter, Regional Directors will be elected by the BMW Division delegates of their respective territories, for a five (5) year term. Such election will be conducted at the BMW Division Conference held immediately preceding the Boilermakers' Thirty-First Consolidated Convention and each Convention thereafter. Newly elected Regional Directors and those appointed to such positions pursuant to Paragraph 9(i) of this Merger Agreement, shall receive the same salary as provided for in 9(b) above as subsequently adjusted, and benefits as established therefor. The five U. S. Territories are as follows: Northeastern; Northwestern; Southeastern; Southwestern and Western. The International President will, after consultation with the BMW Division Executive Vice-President-At-Large, designate the territory for the two (2) Canadian Regional Directors. The offices of each US Regional Director shall be located in the Region from which elected and in the general locality of the Regional Director's residence.
- (d) Appointments made pursuant to paragraphs (a) and (b) above, will be made by letter to the individual staff representative outlining his/her salary, allowances, fringe benefits, home location and general duties.
- (e) [Salary Increases]: The Salary of all BMW Division Staff shall be increased in accordance with the Constitution of the Boilermakers' International.
- (f) [Benefits]: All BMW Division Staff shall receive the same health and welfare, pension and other benefits as are received by other Staff of the Boilermakers' International by virtue of their positions, except as to pension benefits, which will be equivalent or higher, pursuant to the provisions of Paragraph 14 below and the use of universal credit cards that will be issued by the Boilermakers' International as set forth in Paragraph 9(g) below.
- (g) [Expenses]: In lieu of the \$55 (fifty-five dollars) per day expense allowance as set forth in Article 7.4 of the Boilermakers' International Constitution, all BMW Division Staff will be issued universal credit cards, by the Boilermakers' International. These cards may only be used while on union business for charging actual, necessary expenses. Receipts from the use of these cards are to be attached to their expense accounts.

- (h) [Vacation]: All BMW Division Staff, employed on the effective date of the Merger will continue to receive vacation benefits in accordance with the BMW National Railroad Agreement so long as they remain employed by the Merged Organization. Other staff representatives, employed after the effective date of the Merger, will receive vacation benefits in accordance with the Policy of the Merged Organization.
 - (i) [Vacancies]: Vacancies in the positions of BMW Division Staff will be filled in accordance with Article 7.4 of the Boilermakers' International Constitution and attachment 3 of the Merger Agreement. The person selected to fill said position shall come from, and be a member of, one of the affiliated local lodges of the Brotherhood of Maintenance of Way Employees Division, except for professional and technical personnel.
 - (1) [Salary]: The salary of said newly-appointed BMW Division Staff shall be set in accordance with the Boilermakers' International Constitution, except as provided in 9(c) of this Merger Agreement.
 - (2) [Benefits]: Except as otherwise provided in this Merger Agreement, such newly appointed BMW Division Staff will receive the same health and welfare, pension and other benefits as are received by other staff of the Boilermakers International by virtue of their positions.
 - (3) [Expenses]: The expense allowances for said newly appointed BMW Division Staff shall be as set forth in Article 7.4 of the Boilermakers' International Constitution. Alternatively, they may, based upon the recommendation of the Executive Vice-President-At-Large and subject to approval of the International President, receive the same expense allowances payable to other BMW Division Staff, pursuant to Paragraph 9(g) above.
10. [Executive Committee]: The current BMW Executive Board consisting of six (6) members will, effective with this Merger, be appointed as Executive Committee members for the remainder of their current term and until the July 2002 interim election is held. The "Interim Election" for the Executive Committee will be held in July 2002 at a Special Conference of the BMW Division. Said election will be conducted in accordance with applicable provisions of the former BMW Constitution. Thereafter, Executive Committee

members will be elected by the BMW Division delegates of their respective territories, for a five (5) year term. Such election will be conducted at the BMW Division Conference held immediately preceding the Boilermakers' Thirty-first Consolidated Convention and each Convention thereafter.

- (a) [Territories]: The five (5) US Territories and one (1) Canadian are as follows: Northeastern, Northwestern, Southeastern, Southwestern, Western and one (1) At-Large position from Canada.
- (b) [Duties]: The Executive Committee shall have those duties as otherwise set forth in Article VI of the former Brotherhood of Maintenance of Way Employees' Constitution. However, should any conflict exist between those duties and the Constitution of the Boilermakers International, the duties of the Boilermakers International President, or the policies of the Boilermakers International, as adopted by the Boilermakers International Executive Council, said Boilermakers Constitution, Presidential duties and/or policies shall be controlling. Additionally, the Executive Committee duties as outlined in said Article VI of the former BMW Constitution (as heretofore qualified) shall be interpreted to be applied only to the BMW Division. (See Attachment 6)
- (c) [Salary]: Executive Committee members will continue to receive the same salary while serving in active capacity on the Executive Committee as they would have otherwise received as if that time had been spent serving on the former BMW Executive Board. Said salary shall be allowed for all days in session, including travel days to and from the Executive Committee Meetings. They will continue to be paid in the same manner as previously paid by the BMW. Said salary will be adjusted in accordance with Articles 36 and 7.4 of the Boilermakers International Constitution.
- (d) [Expenses]: While attending such meeting they shall receive expenses as provided to International Representatives pursuant to Article 7.4 of the Boilermakers Constitution.
- (e) [Vacancies]: In the event of a vacancy in the position of BMW Division Executive Committee member, the BMW Executive Vice-President-At-Large shall immediately set a date for a special election and promptly give notice thereof to all General Chairmen and full-time Officers of the System Divisions and Federations from the region involved who, shall be the duly qualified electors to fill such vacancy for the remaining term of office. System officers who are not full-time may also be included among the electors eligible to participate in this election if so allowed under the By-

Laws of the respective system division or federation. In any event, each qualified elector will be entitled to cast an equal and proportionate share of his/her System Division of Federation's representative vote.

11. [Office Employees]: All current full-time BMW E office employees will be offered a position in the Brotherhood of Maintenance of Way Employes Division, or in one of the offices of the International Brotherhood, at salaries equal to their current salary as payable by the Brotherhood of Maintenance of Way Employes or those otherwise payable by the Boilermakers' International, whichever is greater.

They will receive the same benefits provided to office employees of the Boilermakers' International, with the exception of vacation for "exempt" office employees. Such "exempt" office employees will receive vacation benefits in accordance with the BMW E National Railroad Agreement.

12. [Dues and Per Capita Tax To International]: Per capita taxes, fees and other charges paid by subordinate chartered affiliates of the Brotherhood of Maintenance of Way Employes Division of the Boilermakers' International shall be as set forth in Articles 12.2 and 31.2.2 of the Constitution of the Boilermakers' International except as modified below:
 - (a) Effective with the merger and continuing through December 31, 2001, the monthly dues, fees and assessments shall be the same as currently paid, to the Brotherhood of Maintenance of Way Employes in accordance with the BMW E Constitution and the applicable System Divisions/Federations By-Laws.
 - (b) Effective January 01, 2002, and continuing through December 31, 2002, and each year thereafter, the monthly dues and per capita tax shall each be increased by an amount as set forth in Articles 12.2 and 31.2.2 of the Constitution of the Boilermakers' International. For this purpose, the provisions of Article 31.2.2 of the Boilermakers' International Constitution shall be applied in such a manner that monthly dues and subsequent increases provided for in said Article that would otherwise be remitted to a "Boilermaker Lodge", would go to the respective BMW E System Division/Federation.
 - (c) Members of the Brotherhood of Maintenance of Way Employes Division will continue to pay the \$1.00 (monthly) State/Provincial legislative assessment. The monthly (\$1.00) State/Provincial legislative assessment shall be distributed to the State and Provincial Legislative Department on a per capita of dues paying members residing in each State or Province. On January 1 of each year, any unused monies from the one-dollar (\$1.00)

monthly legislative assessment in the individual accounts of the States and Provinces shall be transferred to the respective U.S. and Canadian National Legislative Department Funds. Monies transferred to the respective US and Canadian National Legislative Department Funds shall remain in those funds.

Members of the Brotherhood of Maintenance of Way Employes Division will continue to pay the \$1.00 (monthly) special assessment for National negotiations. The special assessment for National negotiations will terminate on January 01, 2003 unless extended by ballot referendum of the BMW Division membership. Upon expiration of the special assessment for National negotiations, any remaining funds will be retained in that account for the sole purpose of preparing for and carrying out the Division's next general round of collective bargaining and activities directly related thereto.

(d) The difference in per capita tax between Boilermakers' International and Brotherhood of Maintenance of Way Employes will be handled as follows:

(1) \$.80 will remain with the Boilermakers' International to assist in funding the National Legislative Department Fund. Monies in the National Legislative Department Fund, at the time of the Merger, will remain in that Fund.

(2) \$.75 will be retained by the Boilermakers' International to offset the cost of the seven (7) Regional Directors, their offices, and for the overall operation of the Brotherhood of Maintenance of Way Employes Division.

(3) \$.50 will go into a special (separate) account known as the "BMW Defense Fund". The Executive Vice-President-At-Large may use this fund to offset Defense related cost in connection with service to BMW Division. This fund will be established effective with the Merger with a fund balance of \$100,000. It will be capped when the assets reach \$700,000.00 and remain there for a period of three (3) consecutive months. Thereafter, all contributions to such fund will be diverted as follows:

➤ \$.20 will go to item d (1) above.

➤ \$.30 will go to item d (2) above.

When the Defense Fund assets drop below \$400,000.00 and remain there for three (3) consecutive months, the \$.50 as allocated above will be re-directed to the Defense Fund and the provisions regarding maximum and minimum fund levels shall remain in effect. This fund is in addition to any entitlement to the Boilermakers' International Defense Fund as set forth in Article 14.2 of the Boilermakers' International Constitution.

- (4) The remaining \$1.00 will be remitted back to the respective System Division/Federation on a member per capita basis. (See Example 1)
- (5) Notwithstanding the provisions of sub-paragraph 12(d)(4) above, the \$1.00 remittance that would have otherwise went to the Canadian System Divisions/Federations will be diverted into a newly established "Canadian Death Benefit Fund" until such time as that Fund has sufficient assets to pay all outstanding Death Benefit liability for the Canadian BMWE members who are entitled to receive such benefit. Such Fund will be established and maintained in Canada in a interest bearing account to be used for the sole purpose as heretofore stated. Once that purpose is satisfied, all remaining monies in that Fund will be returned to the Canadian System Divisions/Federations on a member per capita basis. Additionally, the \$1.00 that was originally diverted to establish this Fund will be re-directed to the respective Canadian System Division/Federation in accordance with paragraph 12(d)(4) above.

The Boilermakers International will place sufficient "seed money" into this Fund to satisfy initial liability for Death Benefit claims. This money will be withdrawn from the Fund assets and returned to the Boilermakers International once the Fund has sufficient assets to do so.

Note: Death Benefits for eligible US members will be handled in accordance with Side Letter 1.

13. [Health and Welfare Plan(s)]: Any health and welfare plan(s) or coverage(s) provided by the Brotherhood of Maintenance of Way Employes prior to the merger to its officers, employees or retirees shall be discontinued and will be

supplanted by the health and welfare plan(s) or coverage(s) provided by the Boilermakers' International to its officers, employees or retirees.

- (a) Effective with this Merger, all full-time officers and employees of the System Divisions and Federations will become eligible, and authorized to participate in the Boilermakers' International Health and Welfare Plan, "International Brotherhood of Boilermakers Employee Health Care Plan". The full cost of said participation, including retiree coverage, shall be borne by the respective System Division or Federation. (See example 2)
- (b) Those retired officers, staff and employees of the BMW (including their eligible dependents), who are: (1) retired on the effective date of the Merger; or (2) an eligible dependent of a retired officer, staff or employee on the effective date of the Merger, and are (3) receiving dental and/or vision coverage as provided and paid for by the BMW, or the System Divisions and Federations will continue to be eligible for dental and/or vision coverage under the terms of the current BMW plan or the Boilermakers International Health and Welfare plan as determined by the Boilermakers International President, after consultation with the Executive Vice-President-At-Large. Such dental and/or vision coverage will be provided at no cost to such retired officer, staff, employee or eligible dependent, except for normal co-pay as otherwise provided for in those plans and subject to all plan provisions.

Any expense related to such coverage for retired officers, staff, employees or eligible dependents of the System Divisions and Federations, shall be the responsibility of the respective System Division or Federation. (See attachment 5)

14. [Pension Plan(s)]: The Pension Plan provided by the Brotherhood of Maintenance of Way Employees for its officers and employees shall be consolidated with and merged into the Boilermakers Officers and Employees Pension Plan. The Plan(s) shall be amended as necessary to accomplish such consolidation and merger and may be, from time to time thereafter, amended in accordance with their terms. If the Boilermakers' International determines it is not feasible or practical to accomplish said consolidation and merger, the two Plans will be continued in their present forms, with such amendments as from time to time may occur, until such time as it is both feasible and practical to effect a consolidation and merger of the two Plans.

- (a) Any person who retired prior to the effective date of the merger shall continue to be covered according to the benefit levels and terms of the Brotherhood of Maintenance of Way Employees Pension Plan.

- (b) Any person who becomes an officer or employee of the Boilermakers' International or a full-time officer of a subordinate body on the effective date of the merger will be eligible to participate in the Boilermakers' Officers and Employees Pension Plan and shall be given past service credit equivalent to the credit such employee earned under the Brotherhood of Maintenance of Way Employees' Officers and Employees Pension Plan. Upon retirement, such officer or employee will be given the option to elect to receive benefits under, and at the level provided by, either (1) the Brotherhood of Maintenance of Way Employees' Officers and Employees Pension Plan, or (2) the Boilermakers' Officers and Employees Pension Plan, but not both.
- (c) Any person who becomes an officer and employee of the Boilermakers' International or a full-time officer of a subordinate body on or after the effective date of the merger will also be eligible to participate in any other pension plans provided to officers and employees of the Boilermakers' International, with past service credits, as set forth in, and in accordance with, the Boilermakers' Plans.
- (d) Effective with this Merger, all full-time officers and employees of the System Divisions and Federations will become eligible, and authorized to participate in the Boilermakers' Officers and Employees Pension Plan and the Boilermaker-Blacksmith National Pension Trust. Those "US" employees participating in the Boilermaker-Blacksmith National Pension Trust shall receive up to fifteen (15) years of past service credit for service with the System Division or Federation and/or railroad service performed under a BMWE contract in accordance with the provisions of said pension plan. The full cost of said participation shall be borne by the respective System Division or Federation. Note: Canadian participation in the Boilermaker National Pension Fund shall be as provided in paragraph (f) below.
- (e) Effective with this Merger, all full-time officers and employees of the System Divisions/Federations will become eligible, and authorized to participate in the Boilermakers National Annuity Trust. The full cost of said participation shall be borne by the respective System Division or Federation.
- (f) Effective with this Merger, all full-time officers and employees of the Canadian System Divisions/Federations will become eligible, and authorized to participate in the Boilermakers National Pension Fund [Canadian]. The full cost of said participation shall be borne by the respective System Division or Federation.

15. [Strike Benefits]: Strike benefits will be provided in accordance with both, Side Letter 3 and Article 16 of the Boilermakers' Constitution.
16. [Convention Expenses]: Convention expenses and allowances for delegates to the Thirty-first Consolidated Convention of the Boilermakers' International shall be paid as set forth in Article 2.6 of the Constitution of the Boilermakers' International, except that Local Lodges, System Divisions and Federations who become affiliated with the Boilermakers' International by virtue of the Merger shall have reimbursable delegate expenses and allowances reduced by the following formula that takes into account the number of months the subordinate body has been chartered by the Boilermakers' International during the five years preceding the Convention. The expenses and allowance reimbursable by the International to the Local/System Division and Federation delegate (provided said delegate meets the eligibility requirements of Article 2.2 and 28 of the International Constitution) shall be calculated by using the following steps to reach the "final reimbursable expenses" as defined in Step Two:
 - (a) [Step One]: The International Secretary-Treasurer determines convention expenses otherwise payable but for reductions calculated by using Step Two. This figure is "allowable expense", which is used in Step Two.
 - (b) [Step Two]: Multiply "allowable expense" by the fraction determined as follows: $1/60$ times total months the delegate's Local Lodge, System Division/Federation paid per capita tax to the Boilermakers' International following the merger. This figure is "final reimbursable expense".
 - (c) Notwithstanding the foregoing, any delegate appointed to a convention committee shall be reimbursed for full expenses for such committee members as provided in Article 2.10.3 of the Constitution of the Boilermakers' International.
17. [System Divisions, Federations, Joint Protective Boards, International and Regional Associations]: The provisions of Article XXIV, "Government of Protective Department, System Divisions and Federations", of the Brotherhood of Maintenance of Way Employes' Constitution is, by reference, incorporated into and part of this Merger Agreement as if specifically written out therein. Where such language conflicts with the Constitution of the Boilermakers' International, the Boilermakers' Constitution shall be controlling. (See attachment 1)

Notwithstanding the provisions of the International Brotherhood Constitution pertaining to mergers and consolidations, as long as the System Divisions, Federations and Local Lodges are able to provide the necessary services within

their financial resources, there will be no involuntary mergers or consolidations of said System Divisions, Federations or Local Lodges, except as otherwise provided in this Paragraph and Paragraph 8(f) of this Merger Agreement. Necessary services shall include, but shall not be limited to, electing officers, holding membership meetings, filing all required reports, handling claims and grievances and all other duties normally required of System Divisions/Federations and Local Lodges.

18. [United States (US) and Canadian Legislative Departments]: The provisions of Article XVII of the BMWWE Constitution is, by reference incorporated into and part of this Merger Agreement as if specifically written out therein. Where such language conflicts with the Constitution of the Boilermakers' International, the Boilermakers' Constitution shall be controlling. (See attachment 2)
19. [Transactions Prior to Effective Date of Merger]: The Brotherhood of Maintenance of Way Employes warrants it has provided to the Boilermakers' International before the effective date of this Merger Agreement, a complete list of assets and liabilities, threatened litigation, and asserted or unasserted claims of which it was aware at the time this list was composed and has notified the Boilermakers' International of any subsequent material changes therein. The Brotherhood of Maintenance of Way Employes further warrants it has not made, or contracted for, any substantial acquisition or disposition of assets or securities. The Boilermakers International warrants it has provided BMWWE with the same information.
20. [Funds and Assets]: The funds and assets of the various entities comprising the Brotherhood of Maintenance of Way Employes shall be handled as follows:
 - (a) [Brotherhood of Maintenance of Way Employes]: Effective with the Merger, all books, records, properties, funds and assets, of any kind whatsoever, of the Brotherhood of Maintenance of Way Employes shall be transferred to and become the property of the Boilermakers' International, which shall be administered in accordance with the provisions of the Constitution of the Boilermakers' International. Title, legal and equitable, to all such property, real, personal or mixed, shall be transferred to the Boilermakers' International as soon as practicable following the effective date of the Merger. Any financial obligation owing by any subordinate affiliate of the Brotherhood of Maintenance of Way Employes to the Brotherhood of Maintenance of Way Employes shall be deemed to be, effective with the Merger, a financial liability owing to the Boilermakers' International.
 - (b) [Subordinate Affiliates of the Brotherhood of Maintenance of Way Employes]: Effective with the Merger, all books, records, properties,

funds and assets, of any kind whatsoever, of each chartered, subordinate affiliate of the Brotherhood of Maintenance of Way Employes that becomes a chartered, subordinate affiliate of the Boilermakers' International shall remain the property of, and in the possession of, the chartered subordinate affiliate, to be managed, expended and otherwise handled in a fashion consistent with the Constitution of the Boilermakers' International and such provisions in the subordinate affiliates' By-Laws that do not conflict with the Constitution of the Boilermakers' International, as long as the chartered, subordinate affiliate remains a chartered subordinate affiliate of the Boilermakers' International. Should the chartered, subordinate affiliate cease to be a chartered, subordinate of the Boilermakers' International, the provisions of the Boilermakers' Constitution dealing with the disposition of books, records, properties, funds and assets under such circumstances shall control.

21. [Arbitration]:

- (a) Disputes Subject to Arbitration - Should a dispute arise between the BMW Division and the merged International Union over the interpretation or application of this Merger Agreement, such dispute shall be resolved as follows:
 - (1) Such dispute shall be reduced to writing and referred by Certified Mail to the International President and/or the Executive Vice-President-At-Large of the BMW Division.
 - (2) The International President and the BMW Division Executive Vice-President-At-Large, or their designees, shall meet in an attempt to resolve such dispute.
 - (3) If the dispute is not resolved within ten (10) days from receipt of the notice of the dispute, either the International President or the Executive Vice-President-At-Large of the BMW Division may submit the matter to final and binding expedited arbitration. Only the International President and the Executive Vice-President-At-Large of the BMW Division may invoke this arbitration provision.
- (b) Arbitration Procedure - The following provisions shall apply for any disputes properly submitted to arbitration under the provisions of the above paragraph 21(a).
 - (1) The party requesting arbitration (either the International President or the BMW Division Executive Vice-President-At-Large) shall give written notice to the other which shall contain a clear

statement of the question or dispute it proposes to be arbitrated. This notice must be submitted within ten (10) days of the meeting between the International President and the Executive Vice-President-At-Large as set forth above.

- (2) The International President and the Executive Vice-President-At-Large, or their designees, shall attempt to agree upon an arbitrator within ten (10) days of receipt of the notice to arbitrate. If the parties are unable to agree upon an arbitrator, then the parties will request from the Federal Mediation and Conciliation Service a panel of seven (7) arbitrators. The parties will select an arbitrator by alternating strikes until one arbitrator remains with the party requesting arbitration striking first.
 - (3) The parties will request the arbitrator to hear this matter on an expedited basis, but in no event later than sixty (60) days after notification of the arbitrator of his/her appointment.
 - (4) The arbitrator shall issue a written decision within thirty (30) days of the close of said hearing.
 - (5) The decision of the arbitrator shall be final and binding on all parties.
 - (6) The arbitrator's authority is limited only to decide the question submitted and in no event shall the arbitrator have the authority to add to, subtract from, or modify any terms of the Merger Agreement.
 - (7) Each Party will pay one-half the cost of the arbitration, with the BMW Division share being payable from the BMW Defense Fund.
22. [Agreement Content]: This Agreement shall consist of pages 1 through 17, Side Letters #1 through #22, attachments 1 through 7 and Examples 1 and 2.
23. [Savings Clauses]: If any provision of this Merger Agreement shall be declared invalid or inoperative by any competent authority of the executive, judicial or administrative branch of federal or state government, the operation of such provision shall be suspended pending the period of its invalidity. If any provision of the Merger Agreement shall be held invalid by operation of law or by a tribunal of competent jurisdiction, the remainder of the Merger Agreement, or the application of such term thereof to persons or circumstances other than those to which it has been held invalid, shall not be affected thereby.

24. [Amendments]: This Merger Agreement may only be amended by the Delegates assembled at a Boilermakers' International Convention, after the BMWWE Delegates to that Convention have voted to do so by a majority vote at the BMWWE Conference, immediately proceeding said Boilermakers International Convention.

25. [Effective Date]:

This Agreement will become effective this ____ day of _____, 2001.

For: International Brotherhood of
Boilermakers, Iron Ship Builders,
Blacksmiths, Forgers and Helpers

For: Brotherhood of Maintenance
of Way Employes

PENDING MEMBERSHIP RATIFICATION

Charles W. Jones
International President

Mac A. Fleming
President