

**U.A. LOCALS NO. 375 AND 367 SUPPLEMENTAL PENSION PLAN  
(Inclusive of Amendment No. 1-8)**

Restated Effective January 1, 2023

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# **U.A. LOCALS NO. 375 AND 367 SUPPLEMENTAL PENSION PLAN**

## **RECITALS**

**WHEREAS**, the Board of Trustees of the U.A. Local No. 375 Supplemental Pension Trust did establish the U.A. Local No. 375 Supplemental Pension Trust effective July 1, 1994; and

**WHEREAS**, the Plan is intended to comply with the requirements of the Internal Revenue Code and the Employee Retirement Income Security Act ("ERISA"); and

**WHEREAS**, the Plan was last restated effective March 1, 2013; and

**WHEREAS**, the Trustees now desire to restate the Plan to incorporate the Amendments made since its last restatement;

**NOW, THEREFORE**, the Plan is hereby restated as follows:

## **PLAN**

### **SECTION 1. ESTABLISHMENT OF THE PLAN**

**1.1 Establishment of the Plan.** The Board of Trustees of the U.A. Local No. 375 Supplemental Pension Trust established the U.A. Local No. 375 Supplemental Pension Plan, effective as of July 1, 1994. For purposes of the Internal Revenue Code, this Plan shall be considered to be a profit sharing plan.

**1.2 Purpose of Plan.** The purpose of this Plan is to help Participants accumulate funds for retirement and to provide funds for their Beneficiaries in the event of the Participant's death. The Plan is to be maintained for the exclusive benefit of the Participants and their Beneficiaries.

**1.3 Power of Trustees to Interpret Plan.** The Board of Trustees has the power to interpret the provisions of this Plan and to determine all questions arising under the Plan and its interpretations shall be binding on all Participants, Employers, Employees, Beneficiaries and others. In determining questions under the Plan, the Board has full discretion to make all factual findings incident to its decision.

The Board of Trustees, or persons appointed or so designated by the Board, shall have the full discretionary authority to determine eligibility for benefits and construe the terms of this Plan, and any rules adopted hereunder.

The provisions of this Plan are designed and intended to comply with ERISA, as amended, and any construction or interpretation of the Plan shall be adopted and be consistent with the Trust Agreement and with ERISA.

If the Trustees determine or are advised that regulations, rulings, or Court action may determine an issue or dispute, the Trustees may defer action in making a determination hereunder for a reasonable period or until such time as they can determine the proper resolution of that issue.

No person may rely upon any interpretation by an individual Trustee, Union officer, Employer or any other person regarding Plan benefits or otherwise. Any question of interpretation should be directed in writing to the Board of Trustees. No oral statement of any person, including a Plan official, may be the basis of any claim for benefits.

**1.4 Plan Year.** The Plan Year is the calendar year.

## **SECTION 2. DEFINITIONS**

Where the following words and phrases appear in this Plan, they shall have the meaning set forth in this Article, unless the context clearly indicates otherwise. Other words and phrases with special meaning are defined where they first appear unless their meaning is apparent from the context.

**2.1 Annuity Starting Date** means (1) the first day of the first period for which an amount is payable under the Plan as an annuity or (2) for a benefit not payable as an annuity, the first day on which all events have occurred which entitle the Participant or Beneficiary to such benefit.

**2.2 Beneficiary** means any person designated by a Participant or in accordance with the Plan who is or may become entitled to benefits hereunder.

**2.3 Collective Bargaining Agreement** shall have the meaning as defined in the Trust Agreement.

**2.4 Compensation** means the total amount of all payments by an Employer to an Employee during a calendar year, including salary, wages, bonuses, commissions, overtime pay, fringe benefits, reimbursements and expense allowances. Compensation shall include any contributions under this Plan but shall not include any other payments to health, welfare, or other retirement plans maintained by or contributed to by the Employer, or any other amounts that receive special tax benefits, or amounts for reimbursement of ordinary business expenses such as automobile allowances and travel entertainment expenses.

For this purpose, Compensation shall also include any amounts paid to the employee following severance from employment, provided that such amounts are paid within 2 ½ months following a severance from employment.

The annual Compensation of each Employee taken into account under the foregoing provision shall not exceed the limit set forth in Internal Revenue Code § 401(a)(17)(A), as adjusted in accordance with Internal Revenue Code § 401(a)(17)(B).

**2.5 Employee** means any employee, or former employee, for whose benefit contributions are, or were, made or required to be made to this Plan, pursuant to a Collective Bargaining Agreement or Special Agreement, to the extent permitted under 29 U.S.C. § 302(c)(5). Employee also includes full time paid officers and representatives of the participating Local Unions and other such persons as are permitted as Employees under the Trust Agreement.

**2.6 Employer** means any “participating employer” as defined by the Trust Agreement.

**2.7 ERISA** means the Employee Retirement Income Security Act of 1974 as amended, and any lawful regulations issued thereunder.

**2.8 Hour of Service**. To the extent required by applicable law, Hours of Service means:

(a) Each hour for which an Employee is paid, or entitled to payment, for the performance of duties for an Employer. These hours will be credited to the Employee for the computation period in which the duties are performed; and

(b) Where applicable to this Plan, hours will be calculated and credited pursuant to Section 2530.200b-2 of the Department of Labor Regulations.

**2.9 Individual Account** shall mean the account established for each Employee under the Plan. It shall include all Employer, Employee and Qualifying Rollover Contributions, earnings and asset appreciation (or depreciation), minus expenses allocable to such account and any amounts distributed from such account.

**2.10 Joint Board of Trustees or Trustees** means the group of individuals appointed to administer the Trust as provided in the Trust Agreement. As a group they are referred to as the “Board” or “Trustees.” An individual member is referred to as a “Trustee.”

**2.11 Market Value** means the fair market value of the Plan’s assets on the applicable Valuation Date, which takes into account the fair market value as determined by the Trustees in accordance with applicable law and financial standards of accounting.

**2.12 Normal Retirement Date** is defined in Section 5.2.

**2.13 Participant** means a “participating employee” as defined by the Trust Agreement.

**2.14 Pipe Trades Industry** shall include all work, public or private, covered or if not actually covered, of the type covered by an Collective Bargaining Agreement of the U.A. or any Local Union of the U.A., as well as any other kind of work performed for any business engaged in the Pipe Trades Industry, whether performed as an employee, supervisor, sole proprietor, member of an unincorporated firm, officer or a corporation, or any other capacity.

**2.15 Plan** means the rules and regulations set forth herein known as the U.A. Locals No. 375 and 367 Supplemental Pension Plan, as it may be amended from time to time.

**2.16 Qualified Domestic Relations Order**. A Qualified Domestic Relations Order (“QDRO”) is an order that creates or recognizes the existence of an alternative payee’s right to or assigns to an alternative payee the right to receive all or a portion of the benefits payable with respect to the Plan. The Board of Trustees shall adopt procedures relating to such Orders, which may include the use of a sample order.

To qualify as a QDRO, an order should specify: (a) the name, last known mailing address, dates of birth, marriage and separation, and Social Security number of the Participant and each Alternate Payee (such as a former spouse or a child) covered by the order; (b) the amount or percentage of the Participant’s benefits that is payable to each Alternate Payee, or the manner in which such amount or percentage is to be determined; (c) the number of payments or payment period to which such order applies; and (d) that it is applicable to this Plan, among other required information. The Board of Trustees, or its delegate, shall have total discretion in ascertaining whether an order is acceptable.

**2.17 Qualified Rollover Contribution** means an amount transferred to this Plan from another tax qualified retirement plan which meets the requirements of Section 7.

**2.18 Special Agreement** has the same meaning as defined in the Trust Agreement.

**2.19 Trust Agreement** means the Agreement and Declaration of Trust entered into as of July 1, 1994, establishing the U.A. Local No. 375 Supplemental Pension Trust, and any amendments, extensions, or successor thereof.

**2.20 Union** means Local Number 375 and Local Number 367 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, or any successors thereto, and any other union



that becomes a sponsoring Union in accordance with the terms of the Trust Agreement and executes one or more Collective Bargaining Agreements with Individual Employers, calling for contributions to be made to this Plan, and the Trustees have approved accepting contributions on behalf of such Employees.

**2.21 Valuation Date** means each day on which the New York Stock Exchange is in operation.

### **SECTION 3. CONTRIBUTIONS AND INDIVIDUAL ACCOUNTS**

**3.1 Contributions.** Each Employer shall contribute to the Plan a monthly amount equal to the total of all wage reduction contributions withheld from the wages of its Employees pursuant to wage reductions made by such Employees, and any other contributions required to be made by the Employer under the terms of a Collective Bargaining Agreement or special agreement requiring Employer contributions to be made to the Plan, provided that the amounts so contributed shall not exceed twenty-five percent (25%) of the aggregate compensation of all Participants employed by the Employer for the plan and calendar year for which the contributions are made. For purposes of this Section, the term “aggregate compensation” shall not include any elective deferrals paid pursuant to Section 3.3, below.

**3.2 Allocation of Contributions.** Contributions shall be allocated to the Individual Accounts of the Participants on whose behalf the contributions were made; provided, however, that in the event an Employer’s contributions should exceed the 25% limitation set forth in Section 3.1, above, the contributions in excess of such 25% limitation shall be paid by the Plan directly to the Participants on whose behalf the contributions were made no later than April 15 of the following calendar year.

**3.3 Cash or Deferred Election.** Each Participant may elect to defer receipt of a portion of his annual Compensation, not to exceed the “dollar amounts” specified in Section 402(g)(1)(B) of the Internal Revenue Code, and to have the amounts so deferred withheld from his Compensation, paid to the Plan by the Employer and credited to the Participant’s Individual Account.

For plan and calendar years after 2009, the “dollar amounts” shall be adjusted in accordance with Section 402(g)(4) of the Internal Revenue Code. A deferral election made pursuant to this Section shall be made as follows:

(a) A Participant may elect to defer from the Compensation any whole dollar amount per hour up to the limits of Code Section 402(g)(1)(B) that the Participant would otherwise be entitled to receive from the Employer. The election must be made on

a form prescribed by the Trustees and delivered to their administrative agent before contributions are made.

(b) An initial election by a new Participant entering the Plan shall be made in the time and manner prescribed by the Trustees. A Participant may change his or her election on January 1 or July 1 of any year, or upon any change of Employers, to increase or decrease the amount deferred, subject to the limitations set forth above. A Participant may terminate his or her deferral election at any time by giving thirty (30) days advance written notice to his or her Employer and the Trust that he or she no longer wishes to have any portion of his or her Compensation withheld and contributed to the Trust.

In addition to the “dollar amounts” specified above, a Participant who is 50 years old or older in a particular plan and calendar year may make “catch up” contributions as permitted under Section 414(v) of the Internal Revenue Code.

Notwithstanding any other provision of this Plan, “catch up” contributions made pursuant to this subsection shall not be taken into account in determining a Participant’s “actual deferral percentage” under Section 3.4. “Catch up” contributions shall be made and accounted for in the manner determined by the Trustees.

### **3.4 Nondiscrimination Requirements Applicable to Contributions Made through Deferral Elections.**

(a) In General. The nondiscrimination requirements of Code §401(k) shall be met by the Plan through the application of either or both of the following to cash or deferred arrangements provided under the Plan:

(1) The Actual Deferral Percentage (ADP) Test, as described in IRS Regulation 1.401(k)-2, conducted on a current year basis; or

(2) The nonelective contribution safe harbor rules, as described in Code § 401(k)(12) and IRS Regulation 1.401(k)-3(b).

For purposes of application of these requirements, portions of the Plan that are disaggregated under IRS Regulation 1.410(b)-7 are disaggregated for nondiscrimination testing purposes.

(b) Optional Aggregation of Collective Bargaining Units. The administrator may combine or separate two or more separate collective bargaining units (as defined by the applicable collective bargaining agreements) and treat them as a single bargaining unit for nondiscrimination testing purposes, provided that the combinations of collective bargaining units is determined on a basis that is reasonable and reasonably consistent from Plan Year to Plan Year.

**3.5 Adjustment for Excess Contributions via Deferred Election Amount.** In the event that the ADP Test described in Section 3.4(a)(1) is failed with respect to a portion of the Plan to which it applies, the excess contributions shall be distributed in accordance with IRS Regulation 1.401(k)-2(b)(2).

**3.6 Limitation on Employer Contributions.** Discretionary or matching Employer contributions shall be permitted to be made to the Trust as provided in collective bargaining agreements. In the event such contributions are made in error, they shall be returned to the Employer as soon as practicable after the error is discovered.

**3.7 Maintenance of Individual Accounts.** An Individual Account shall be established and maintained for each Participant, which shall reflect the Employer, Employee and Qualifying Rollover Contributions paid or required to be paid on his or her behalf, his or her share of the investment gains and losses attributable to such contributions and his or her share of the expenses of administering the Plan.

**3.8 Adjustments to Individual Accounts.** Individual Accounts will be valued on a daily basis. Each Individual Account will be increased (or decreased) to reflect the following adjustments:

(a) First, the Individual Account value will be decreased by the total amount distributed in fact (or in respect to) a Participant from that account since the last preceding valuation was performed;

(b) Second, the Individual Account value will be increased or decreased to reflect realized and unrealized gains and losses on assets in the Individual Account;

(c) Third, the amount of any administrative fee or assessment as determined by the Trustees and for which payment has not been arranged from another source, will be deducted from the Individual Account, and;

(d) Finally, the previously unallocated contributions received on behalf of the Participant will be allocated to his or her Individual Account.

**3.9 Investment of Individual Accounts.**

(a) Participant Options. Subject to the provisions of Section 3.8, above, all amounts contributed to a Participant's Individual Account shall be invested by the Trustees in one or more of the investment options approved by the Trustees, in such proportions as the Participant may direct; provided, however, that if more than one option is designated, the percentage designated for each option must be evenly divisible by one (1).

Any investment direction by a Participant shall be deemed to be a continuing direction with regard to both past and future contributions until changed by the Participant. A Participant may make an election initially with thirty (30) days' advance notice on a form provided by the Trustees. Such initial election will be effective on the first allocation date following the Trustees' receipt from the Participant of written notice of such election. Thereafter, a Participant may make a change in his election at least once each year, as of April 1 of that year, and on such additional election dates as may be approved by the Trustees from year to year. Such on-going changes of election shall require completion by the Participant and receipt by the Trustees of a "Change of Investment Option" form provided by the Trust's administrative agent by the fifteenth of the month immediately preceding the month in which the change of election is to be effective. For example, in order to change a previous election as of April 1 of a particular year, the "Change of Investment Option" form must be completed and received by the Trust's administrative agent by March 15th of that year.

In the event a Participant does not make an initial election of investment direction, such Participant's Individual Account shall be invested in such option or options as may be determined from time to time by the Trustees, until such Participant makes an initial election.

(b) Transactions by Investment Advisor or Administrator of Investment Funds. The investment advisor or administrator of the investment funds may, in its own discretion, maintain in cash, without obligation to credit interest thereon, such part of the assets of each fund as it shall deem necessary or desirable for the proper administration of such fund. Any cash in any of the funds may, pending the disposition or investment of such cash for the purposes of such fund, be temporarily invested in Government securities. For this purpose, cash in the several funds may be commingled.

(c) Reinvestment of income. Income and proceeds of sales of investments in each investment fund shall be reinvested in the same fund.

(d) Units of Participation--Valuation of Units. Each investment fund shall be divided into units and the interest of each Participant in such fund shall be evidenced by the number of units and portions thereof in such fund credited to the Participant's account. Each unit in a fund shall have an equal beneficial interest in such fund and none shall have priority or preference over any other. At or as of such times as may be prescribed by the Trustees, and such other times as the investment advisor or administrator of the investment funds may elect, the value of a unit in each fund shall be determined by dividing the value of such fund by the total number of outstanding units in such fund.

**3.10 Reports of Status of Individual Accounts.** The Plan shall provide Participants with quarterly reports as to the value of their Individual Accounts. The Trustees may change such reporting period without an amendment to the Plan so long as reports are provided at least annually.

**3.11 Vesting.** A Participant's right, title and interest in his or her Individual Account shall be 100% vested.

**3.12 Limitation on Rights to an Individual Account.** That Individual Accounts are established and then valued as of each Valuation Date shall not give any Participant or any other person any right, title or interest in the Trust or its assets, or in an Individual Account, except as provided herein.

**3.13 Allocation of Expenses.** The Trustees shall establish a procedure for allocating expenses among the Participants. Expenses of administration shall be paid out of the assets of the Trust before adjustments of the Individual Accounts, except as provided herein. The Trustees may allocate to any newly established Individual Account a reasonable charge to set up the Individual Account, which may vary over time.

The Trustees may, in their discretion, allocate to an Individual Account any non-general expenses attributable to a Participant, Beneficiary, or alternate payee, including but not limited to, the costs of any special report required by a Participant, Beneficiary or alternate payee, or any expense of litigation concerning benefits payable from an Individual Account.

## **SECTION 4. LIMITATIONS ON CONTRIBUTIONS AND ALLOCATIONS**

**4.1 Limitation on Contributions and Annual Additions.** The amount of annual additions which may be credited to a Participant's Individual Account during any calendar year shall in no event exceed the lesser of:

- (a) The limit described in Section 415(c) of the Code, as adjusted; or
- (b) One hundred percent (100%) of the Participant's Compensation for the year.

The compensation limitation referred to in (b) shall not apply to any contribution for medical benefits (within the meaning of Section 401(h) or Section 419A(f)(2) of the Code) which is otherwise treated as an annual addition under Section 415(l)(1) or 419A(d)(2) of the Code. If the Employer contribution that would otherwise be contributed or allocated to the Participant's account would cause the annual additions for the limitation year to exceed the maximum permissible amount, the amount contributed or allocated shall be reduced so that the annual additions for the limitation year shall equal

the maximum permissible amount. For these purposes, the maximum permissible amount is the maximum annual additions permitted on behalf of a Participant.

**4.2 Definition of Annual Additions.** The term “annual additions” shall mean the sum of the following amounts credited to a Participant’s Account for the calendar year:

- (a) Employer contributions;
- (b) Employee contributions;
- (c) Forfeitures; and
- (d) Excess elective deferrals, excess contributions, and excess aggregate contributions.

**4.3 Aggregation of Limitations.** If an Employer maintains another qualified defined contribution plan, as described in Section 414(i) of the Internal Revenue Code, for employees of the Employer, some or all of whom may be Participants in this Plan, then, to the extent required by law, any such Participant’s annual additions in the other plan shall be aggregated with the Participant’s annual additions derived from this Plan for purposes of determining the limitation described in Section 4.1. However, for the purpose of combining and aggregating plans under Section 415 of the Code, the special rule for multiemployer plans described in Section 1.415-8(e) of the IRS Regulations shall apply.

## **SECTION 5. ENTITLEMENT TO BENEFITS**

**5.1 Amount to be Paid of Individual Account.** When a Participant becomes eligible to take a distribution or withdrawal, the Participant is entitled to the vested amount in his or her Individual Account, as established by the most recent Valuation Date.

**5.2 Conditions for Payment.** Upon the filing of a timely and complete application, a Participant is entitled to benefits as follows:

(a) Early Retirement Age. Attainment of age 52, termination of employment and the Participant files a written certification that he or she is retiring and does not intend to work in the Pipe Trades Industry.

(b) Normal Retirement Date. On or after attainment of age 62 and not later than the Participant’s Required Beginning Date.

(c) Permanent Disability. Upon application if the Trustees, within their sole discretion, determine that the Employee has become disabled, as defined in the Alaska Plumbing and Pipefitting Industry Pension Plan (i.e., the defined benefit plan), even if the Employee has not attained the age or service requirements of that Plan for Disability Retirement.

(d) Termination of Employment. The lapse of twelve (12) consecutive months since the Employee's last employment for which Employer contributions were made or required to be made to the Plan.

**5.3 Payment of Benefits.** Unless the Participant otherwise elects, benefits payable under the Plan will begin no later than the sixtieth (60th) day after the latest of the close of the Plan Year in which:

(a) The Participant attains age sixty-five (65) or the normal retirement age specified herein;

(b) Occurs the fifth (5th) anniversary of the year in which the Participant commenced participation in the Plan; or

(c) The Participant terminates his or her employment.

To be entitled to a benefit a Participant is required to file an application, as provided in Section 7.1 herein.

An Employee upon retirement may elect in lieu of distribution, to retain his or her interest in the general assets of the Plan, in which event his or her account shall continue to share in the allocation of the net appreciation or depreciation of assets and net income or loss, as provided herein, until the Participant attains his or her Required Beginning Date as defined in Section 6.6 below. Proceeds of the account shall be distributed to the Employee or Beneficiary upon application thereafter as provided herein.

A Participant who refuses to accept payment of benefits when he or she becomes entitled thereto shall be presumed to have elected to defer payments until his or her Required Beginning Date as defined in Section 6.6 below.

## **SECTION 6. METHOD AND TIMING OF DISTRIBUTIONS**

**6.1 Payment Options.** Once a Participant is entitled to benefits, benefits may be paid as follows:

(a) Joint and Survivor Annuity--Married Participants. The normal form of benefit for a married Participant is a Joint and 50% Survivor Annuity as described in Section 6.2 below, except for pension balances of \$7,000 or less. A married Participant may also select a Joint and 100% Survivor Annuity.

(b) Life Annuity. The Life Annuity is the normal form of benefit for a non-married Participant and is an option for married Participants. A life annuity is a single annuity for the life of the Participant. The total benefit payable is limited to the Participant's Individual Account balance. Therefore, the annuity will terminate when the account is exhausted, which may occur if the Participant lives longer than the period provided in life expectancy tables. The annuity may be purchased from an insurance company or other entity.

(c) Periodic Payments. Consecutive 60, 120 or 180 monthly payments not to exceed the Participant's life expectancy or the joint life expectancies of the Participant and a designated Beneficiary. During such period, the Participant's Individual Account shall continue to be credited or charged with its pro rata share of the Trust's earnings and expenses. The final payment may be in a different amount.

(d) Specified Monthly Payments. Multiples of \$100 monthly payments until the Individual Account is exhausted (example: \$100-\$200-\$300-\$400), not to exceed the Participant's life expectancy or the joint life expectancies of the Participant and a designated Beneficiary.

(e) Lump Sum Payment Subject to the requirements of Sections 6.2, 6.3 and 6.7 below, a Participant may elect to have some, or all of his Individual Account balance distributed to him in a lump sum. A lump sum distribution of less than the total balance in a Participant's Individual Account is referred to as a partial lump sum distribution. The minimum amount that may be paid in the form of a partial lump sum distribution is \$7,000 and no more than one partial lump sum distribution may be made to any Participant in any calendar year.

(f) Mandatory Lump Sum Payment. Notwithstanding any provision herein to the contrary, if a Participant or Beneficiary's Individual Account balance is \$7,000 or less (and has never exceeded \$7,000), such amount shall be distributed in a lump sum. Pursuant to applicable law, no spousal consent is required for such a distribution.

## **6.2 Qualified Joint and Survivor Annuity.**

(a) Definition. A married Participant entitled to benefits under the Plan will receive his or her benefit in the form of a Joint and 50% Survivor Annuity ("Joint Pension"), unless waived by the Participant and spouse as provided in Section 6.3 below. The Joint Pension is a pension for the life of the Participant, and upon his or her death,



the surviving lawful spouse shall be entitled to an actuarially reduced lifetime benefit equal to fifty percent (50%) of the benefit that the Participant had been receiving, commencing on the first day of the month following the date of the Participant's death.

Because a Joint and Survivor Annuity provides pension benefits for the lives of two persons, there is a reduction in the monthly pension benefit that would otherwise be payable during the Participant's life only. This reduction is based on the Participant's age and the age of his or her spouse at the date of the Participant's retirement at rates then in effect. Such an annuity may be purchased from an insurance company or other entity. A Participant, with spousal consent, may also elect a Joint and 100% Survivor Annuity.

(b) Notice Requirement. The Trust's administrative agent shall within a reasonable period prior to the Annuity Starting Date (so as to allow the Participant ninety (90) days in which to make or revoke an election) provide each Participant with a written explanation of: (1) the terms and conditions of the Joint and Survivor Annuity; (2) the Participant's right to make and the effect of an election to waive the Joint and Survivor Annuity form of benefit; (3) the rights of the Participant's spouse; and (4) the right to make, and the effect of, a revocation of a previous election to waive the Joint and Survivor Annuity.

To comply with ERISA's ninety-day election, waiver and revocation rule as set forth herein above, the Plan may delay paying a pension benefit to a married Participant until ninety (90) days has expired from the date an application for a pension has been filed with the Plan.

(c) Information Request. To process an application for a Pension, the administrative office may require a Social Security number for the spouse and any Beneficiary, acceptable proof of marriage, proof of the dates of birth of the Participant and spouse, together with the completed retirement application form. Proof of the dates of birth should be evidenced by a birth certificate unless the Participant or the spouse establish such is not available and submit alternative proof that the administrative office deems acceptable.

**6.3 Spousal Consent to Waive Joint Pension.** A married Participant may not elect any form of benefit other than a Joint and Survivor Annuity without the written consent of his or her spouse on a spousal consent form provided by the Plan. This applies to all benefit options in Section 6.1 except for distributions of balances of \$7,000 or less. An election by a married Participant to waive such annuity is effective only if the Participant's lawful spouse consents to such election, such consent is witnessed by a Plan representative or notary public, and the spouse acknowledges the effect of such election. The Plan shall provide a Participant and his or her lawful spouse with a written explanation of the terms and conditions of the Joint and Survivor Annuity and other information required by ERISA.

The Participant may revoke an election not to select a Joint and Survivor Annuity at any time and any number of times during the ninety-day period before the Participant's Annuity Starting Date.

Notwithstanding this consent requirement, a Participant may establish to the satisfaction of the Plan that the consent of a lawful spouse may not be obtained because there is no lawful spouse, or such spouse cannot be located despite reasonable efforts to do so. Upon such a determination, a waiver by the Participant shall be deemed a qualified election. The Board shall have total discretion in making such determinations.

**6.4 Spouse.** A "spouse" is the spouse or surviving spouse of the Participant as follows:

(a) A person shall be considered as the spouse of a Participant only if he or she is a party to a legal marriage evidenced by a valid marriage license and certificate; and

(b) A former spouse will be treated as the spouse or surviving spouse to the extent provided under the Qualified Domestic Relations Order as described in Section 414(p) of the Internal Revenue Code.

**6.5 Preretirement Death Benefits.** When a married Participant dies prior to his or her Annuity Starting Date, a Preretirement Survivor Annuity will be paid to the Participant's surviving spouse. The spouse will be entitled to a survivor benefit that can be provided by the Participant's Individual Account balance. The Plan may purchase an annuity from an insurance company or other entity.

Upon a married Participant's death, the Participant's surviving lawful spouse may waive the Preretirement Survivor Annuity and, like a Beneficiary of an unmarried Participant, select a lump sum distribution or other benefit option in the Plan, subject to Section 6.7 below and applicable Internal Revenue Code requirements.

**6.6 Required Beginning Date.** Notwithstanding any provision herein to the contrary, distributions under the Plan must commence no later than April 1<sup>st</sup> of the year following:

(a) For a Participant or Beneficiary who attains age 70 ½ prior to January 1, 2020, the year the Participant or Beneficiary attained age 70 ½, regardless of whether the Participant retired or terminated his or her employment.

(b) For a Participant or Beneficiary who attains age 70 ½ on or after January 1, 2020, the year the Participant or Beneficiary attained age 72, regardless of whether the Participant retired or terminated his or her employment.

(c) For a Participant or Beneficiary who attains age 72 on or after December 31, 2022, the year the Participant or Beneficiary attained age 73, regardless of whether the Participant retired or terminated his or her employment.

(d) For a Participant or Beneficiary who attains age 74 on or after December 31, 2032, the year the Participant or Beneficiary attained age 75, regardless of whether the Participant retired or terminated his or her employment.

## **6.7 Internal Revenue Code Distribution Rules.**

(a) Mandatory Commencement of Benefits. In no event may the commencement of a lump sum payment, annuity or installment payment be deferred beyond April 1 of the calendar year following the calendar year in which the Participant reaches the Required Beginning Date.

(b) Special Rules for Calendar Year 2020. A required minimum distribution for 2020 (including a distribution to a Participant whose Required Beginning Date is April 1, 2021) (2020 RMDs), which is waived pursuant to Code §401(a)(9)(I), will be distributed unless a Participant or Beneficiary affirmatively elects not to receive it. A Participant or Beneficiary will be given an opportunity to make an election as to whether or not to receive those distributions. A direct rollover will be offered only for distributions that would be Eligible Rollover Distributions in the absence of Code §401(a)(9)(I).

### **(c) Minimum Required Distribution (MRD) Option.**

(1) Beginning on the later of the year in which this distribution form is elected or the year the Participant reaches the Required Beginning Date, and continuing each year thereafter, the Participant's account is paid in annual cash installments of an amount at least equal to the minimum required distribution for such calendar year, as determined in accordance with Code section 401(a)(9) and the regulations thereunder. Payments shall be made not later than December 31 of each calendar year, or, for the year in which the Participant reaches the Required Beginning Date, no later than April 1 following the calendar year in which the Participant reaches the Required Beginning Date. The Participant may elect in any given year to receive a larger installment, or to receive the entire remaining account in a single lump sum. Payments are subject to the conditions in Section 6.

(2) The aggregate of the installment payments under this form of payment may be more or less than the value of the Participant's account at retirement,

depending on the earnings, losses, expenses and appreciation and depreciation in value of the Trust during the period over which the installments are paid. In the event of the death of the Participant prior to the complete distribution of the account, the undistributed portion of his or her account shall be distributed in a single sum, in cash, to the Participant's Beneficiary.

(d) Death of Participant before Distributions Begin.

(1) If the Participant dies before benefit payments have begun, a death benefit payment payable solely to a surviving spouse must begin before the later of December 31 of the calendar year immediately following the calendar year in which the Participant would have attained age 72, or the calendar year containing the first anniversary of the Participant's death. If a death benefit payment is due to a designated Beneficiary who is not a surviving spouse, payments must begin no later than December 31 of the calendar year containing the first anniversary of the Participant's death. If the surviving spouse should die prior to the beginning of death payments, payment shall begin to his or her designated beneficiary by not later than December 31 of the calendar year containing the first anniversary of the death of the Surviving Spouse.

(2) Notwithstanding the foregoing, if no designated Beneficiary is determined as of September 30 of the calendar year containing the first anniversary of the Participant's death, the Participant's entire Account will be distributed not later than December 31 of the calendar year containing the fifth anniversary of the Participant's death to the designated Beneficiary subsequently determined under the terms of Section 13.2.

**6.8 Beneficiaries.** A Participant may designate a Beneficiary to receive any amount payable upon the Participant's death, subject to the following rules:

(a) Rules Applying to All Designations.

(1) Each married Participant shall designate a Beneficiary in a form and manner provided by the Plan. A Participant may change his or her designated Beneficiary by providing a change in Beneficiary form or new Beneficiary form to the Plan in a manner satisfactory to the Plan.

(2) For a married Participant the designation of a Beneficiary other than the Participant's spouse shall require the spouse's consent as provided in Section 6.3. If a married Participant subsequently desires to revoke a spousal Beneficiary designation and choose a different non-spouse Beneficiary, the Participant's spouse must consent to such revocation and alternative Beneficiary selection.

(3) If a Participant has not filed a written designation of Beneficiary or if the designated Beneficiary dies before the Participant, and the Participant has not named someone else to receive that person's share, the death benefit will be paid to the first of the following classes of successive preference Beneficiaries in which a member survives the Participant:

- (A) surviving spouse, if married;
- (B) surviving children, if any, natural or adopted;
- (C) surviving father and/or mother;
- (C) surviving sisters and/or brothers;
- (D) Participant's estate.

In determining such person or persons, the Trustees may rely upon a declaration by a member of any of the classes of preference Beneficiaries. Payment based upon such declaration shall be full acquittance of any benefit payable under the Plan unless, before the payment is made, the Plan has received written notice of a valid claim by some other person. If two or more persons become entitled to benefits as preference Beneficiaries, they shall share equally. If no preference Beneficiaries survive the Participant and the Participant has no estate, then no death benefit shall be payable.

(b) Early Payment to Alternate Payee. The Plan may make a lump sum distribution to an alternate payee who is a former spouse, prior to the Participant's earliest distribution date, of the benefits awarded to the former spouse in a Qualified Domestic Relations Order, provided the Order has been delivered to the Plan, together with a notice of entry of judgment of dissolution of the marriage.

(c) Subsequent Marriage. If a Participant becomes married after naming a Beneficiary, that prior Beneficiary designation is revoked. A Participant may redesignate the prior Beneficiary with consent of the Participant's new spouse.

(d) Dissolution of Marriage. Any designation of a spouse as Beneficiary is revoked on entry of a final decree of dissolution of marriage. A Participant may, however, designate an ex-spouse as Beneficiary by filing a designation of Beneficiary form subsequent to the entry of a final decree of dissolution.

## **6.9 Eligible Rollover Distributions.**

(a) This Section applies only after a Participant or Beneficiary is entitled to receive benefits under the Plan. Notwithstanding any provision herein to the contrary

that would otherwise limit an election under this Section, a Participant or Beneficiary may elect, at the time and in the manner prescribed by the Trustees, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee (i.e., Participant or Beneficiary) in a direct rollover.

(b) Definitions.

(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 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 (10) years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; and the portion of any distribution that is not includable in gross income.

(2) Eligible Retirement Plan: An eligible retirement plan is an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Code, a Roth IRA described in Section 408A(b) of the Code, an annuity plan described in Section 403(a) of the Code, a qualified trust described in Section 401(a) of the Code, an annuity contract described in Section 403(b) of the Code or an eligible plan under Section 457 of the Code that accepts the distributee's eligible rollover distribution.

(3) Distributee: The term "distributee" includes a Participant, the surviving spouse of a Participant and a former spouse of a Participant who is the alternate payee under a "qualified domestic relations order," as defined in Section 414(p) of the Internal Revenue Code. Effective February 1, 2008, the term "distributee" also includes a Participant's non-spouse Beneficiary provided, however, that any eligible rollover distribution made to a Participant's non-spouse Beneficiary shall comply with the special rules relating to such distributions set forth in IRS Notice 2007-7.

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

**6.10 Lost Participants and Beneficiaries.** If any benefits payable to a Participant, spouse, alternate payee, or Beneficiary remain unclaimed after the later of: (i) the end of the fifth (5th) Plan Years after notification or attempted notification; or, (ii) the Participant's Required Beginning Date, and despite a diligent search the Trustees are unable to locate such individuals, the Trustees shall as of March 31 prior to the Participant's Required Beginning Date apply such amounts to the expenses of the Plan,

subject to reinstatement of the Participant or Beneficiary's benefit if they present a claim to the Trust.

**6.11 Release of Trust.** Payments to any Participant or Beneficiary in accordance with this Plan and in satisfaction of his or her rights hereunder shall constitute a release and discharge of all further claims against the Trust, and Board of Trustees, the Union, the Association and the Employers.

(a) If it is determined to the satisfaction of the Trustees that a Participant or Beneficiary is unable to care for his or her affairs because of mental or physical incapacity, any payment due may be applied, in the discretion of the Trustees, to the maintenance and support of such Participant or Beneficiary or to such person as the Plan determines is the appropriate person to be responsible for handling such Participant's or Beneficiary's affairs, unless prior to such payment, a legally appointed guardian, committee, or other legal representative appropriate to receive such payments on behalf of the Participant or Beneficiary has made a claim for payment. Any such payment shall completely discharge the Trustees' liability with respect to such payment.

(b) If a person entitled to receive payments is a minor, whether or not actually so adjudicated, the Board may direct that such payments be made for the benefit of such minor to whomsoever may be acting as his or her parent or legal or natural guardian or any other person the Trustees deem appropriate to receive such funds. Receipt by the person to whom such payment is made shall be a complete discharge to the Trust, the Board, and any persons involved in the decision to make such a distribution.

**6.12 Advance Distribution for Hardship.**

(a) The Trustees, at the election of the Participant, shall distribute to the Participant in any Plan Year up to the lesser of the Maximum Distributable Amount, as defined in paragraph 6.13(b), below, or the amount necessary to satisfy the immediate and heavy financial need of the Participant. Any distribution made pursuant to this Section shall be deemed to be made as of the first day of the Plan Year or, if later, the Valuation Date immediately preceding the date of distribution, and the Participant's Individual Account shall be reduced accordingly. Withdrawal under this Section shall be authorized only if and to the extent the distribution is on account of:

(1) Expenses for medical care described in Section 213(d) of the Internal Revenue Code previously incurred by the Participant, his spouse or any of his dependents (as defined in Code Section 152) or necessary for those persons to obtain medical care;

(2) The costs directly related to the purchase of a principal residence for the Participant, excluding mortgage payments;

- (3) Funeral expenses for a member of the Participant's family;
- (4) Payment of tuition and related educational fees for the next twelve (12) months of post-secondary education for the Participant, his spouse, children or dependents;
- (5) Payments necessary to prevent the eviction of the Participant from his principal residence or foreclosure on the mortgage of the Participant's principal residence; or
- (6) Expenses for the repair of damage to the Participant's principal residence that would qualify for the casualty deduction under Section 165 of the Internal Revenue Code, determined without regard to whether the loss exceeds 10% of the Participant's adjusted gross income.

(7) Expenses and losses (including loss of income) incurred by the Participant on account of a disaster declared by the Federal Emergency Management Agency (FEMA), provided that the Participant's principal place of residence or principal place of employment at the time of the disaster was located in the area designated by FEMA for individual assistance with respect to the disaster.

(b) The Maximum Distributable Amount" is equal to the total elective contributions made pursuant to Section 3.3 of this Plan.

(c) No distribution shall be made pursuant to this Section unless the Trustees determine, based on the Participant's representation and such other facts are known to the Trustees, that all of the following conditions are satisfied:

(1) The distribution is not in excess of the amount of the immediate and heavy financial need of the Participant. The amount of the immediate and heavy need may include any amounts necessary to pay any federal, state or local income taxes or penalties reasonably anticipated to result from the distribution; and

(2) The Participant has obtained all distributions, other than hardship distributions currently available under all plans maintained by the Participant's Employer;

(d) No distribution shall be made pursuant to this Section unless the Trustees determine, based upon the Participant's representation, that the Participant has insufficient cash or other liquid assets to satisfy the immediate and heavy financial need. In evaluating a hardship distribution request, the Board of Trustees shall be entitled to rely upon the employee's written representation that he or she has insufficient cash or



other liquid assets to satisfy the immediate and heavy financial need, provided that the Board has no actual knowledge to the contrary.

(e) Any distribution made pursuant to this Section shall be made in a manner which is consistent with and satisfies the provision of Sections 6.1 through 6.4 above, including, but not limited to, all notice and consent requirements of Sections 417 and 411(a)(11) of the Internal Revenue Code and the regulations thereunder.

#### **6.14 Coronavirus Related Distribution.**

(a) The Trustees, at the election of the Participant, shall distribute to the Participant the Maximum Distributable Amount, as defined in paragraph 6.14(d), below and the following conditions are satisfied:

(1) When, regardless of age, a Participant meets the requirements for a “coronavirus-related distribution” as defined by Section 2202(a)(4)(A) of the Coronavirus Aid, Relief and Economic Security Act (“CARES Act”);

(2) The Participant submits a written application for benefits which is received by the Trust Administration Office on or before December 15, 2020;

(3) The Participant has not previously received the Maximum Distributable Amount under this Plan Section 6.14; and

(4) The Maximum Distributable Amount will be in the amount elected by the Participant, but not to exceed 100% of the Participant’s Individual Account Balance up to a maximum amount of \$25,000. A separate Annuity Starting Date shall be established for distribution of the balance.

(b) Distributions on this Section 6.14 shall not be eligible for a direct rollover.

### **SECTION 7. QUALIFIED ROLLOVER CONTRIBUTIONS**

**7.1 Receipt of Distributions from Other Retirement Plans.** A Participant who receives a lump sum distribution of his or her entire interest in another tax qualified retirement plan may elect to transfer the amount distributed from such other plan to this Plan if the following requirements are met:

(a) All amounts distributed from the other plan, less any nondeductible employee contributions, must be transferred to this Plan within sixty (60) days of the Employee’s receipt thereof; and

(b) The distribution from the other plan must have been made in cash, and the transfer to this Plan must also be made in cash.

A Participant who is eligible to receive an “eligible rollover distribution” from another tax qualified retirement plan may elect to have the amount distributed from such other plan paid directly to this Plan and allocated to his or her Individual Account.

For purposes of this subsection, the term “tax qualified retirement plan” means a retirement plan which, at the time of the distribution, is a qualified plan under Section 401(a) of the Internal Revenue Code, and the term “eligible rollover distribution” means a distribution defined in subsection 6.9(b)(1), above.

**7.2 Treatment of Qualifying Rollover Contributions.** Qualifying Rollover Contributions shall be allocated to the Participant’s Individual Account and shall be considered part of the pension or death benefit payable on the Participant’s retirement, termination of employment or death. Distributions of Qualifying Rollover Contributions shall be made in the same form and subject to the same limitations and restrictions as any other benefits payable under this Plan.

## **SECTION 8. GENERAL PROVISIONS**

**8.1 Application for Benefits.** Except as provided in Section 6.7 above, an application for benefits must be made in writing in a form and manner prescribed by the Trustees at least ninety (90) days prior to the date payment of the Participant’s benefit is to be made in accordance with Section 6.

**8.2 Proof to be Furnished.** Every Employee, Participant, annuitant or Beneficiary shall furnish, at the request of the Trustees or their administrative agent, any information or proof reasonably required for the administration of the Plan or for the determination of any matter that the Trustees may be considering. Failure to furnish such information or proof promptly and in good faith shall be sufficient reason for the denial, delay or suspension of benefits to such person.

**8.3 False Statements.** The knowing or negligent falsification of any statement pertaining to a pension application or knowingly or negligently furnishing of fraudulent information or proof shall be sufficient reason for the denial, suspension or discontinuance of benefits under this Plan.

Any Participant or other person who knowingly or negligently makes a false statement or provides false information to the Plan regarding the payment of benefits or other issues related to the Plan will be liable to the Plan for any benefits paid as a result of such false statements or information, and any attorney fees and costs incurred in effecting recovery or which were incurred as a result of the false statement or information.

The Plan may deduct any such fees and costs from any benefits otherwise payable to the Participant or other person or entity.

**8.4 Prohibition of Assignment of Plan Benefits.** No Participant, Beneficiary or other person entitled to benefits shall have the right to assign, alienate, transfer, encumber, pledge, mortgage, hypothecate, anticipate, or impair in any manner his or her legal or beneficial interest, or any interest in assets of the Trust or benefits of this Plan, except that any Employee may with the approval of the Board of Trustees direct that benefits due him or her be paid to another for care and services rendered.

Neither the Trust nor any of the assets thereof, shall be liable for the debts of any Participant or Beneficiary entitled to any benefits under this Plan, nor be subject to attachment or execution or process in any court or action or proceeding.

The Board shall, however, comply with a Qualified Domestic Relations Order as defined in Section 2.16. Because claims against the Plan arising from a Participant's marital dissolution, support obligations or community property interests will otherwise unjustly create a drain on other Participants' interests in the Plan's assets, the Plan may assess against a Participant's interest in the Fund for any or all reasonable attorneys' fees and costs incurred by the Plan as a result of any claims against the Plan, whether as a party to litigation, an alleged garnishee, or otherwise, arising from said Participant's marital dissolution, support obligations or community property interests. The Trustees may establish a standard administrative fee for processing such orders. Such fee shall be divided equally between the Participant and an alternate payee, unless provided otherwise in the order or agreed to by the parties.

**8.5 Non-Guarantee of Employment.** Nothing contained in this Plan shall be construed as a contract of employment between an Employer and any Employee, or as a right of any Employee to be continued in the employment of an Employer.

**8.6 Titles and Use of Words.** The titles of the various articles and sections of this Plan are inserted solely for the convenience of reference and are not a part of, nor shall they be used to construe, any term or provision hereof. Whenever appropriate, words used herein the singular may include the plural, or the plural may be read as the singular, and the masculine may include the feminine.

**8.7 Savings Clause/Illegality.** If any provision of the Plan is held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining provisions of the Plan.

**8.8 Governing Law.** This Plan and the Trust shall be construed, administered and governed under ERISA and applicable federal law. The laws of the State of Alaska shall be applied only when applicable. If any provision is susceptible to more than one

interpretation, such interpretation shall be given thereto as is consistent with this Plan being a qualified employee's pension plan within the meaning of the Internal Revenue Code.

**8.9 Limitations on Trustee Liability.** Nothing in this Plan shall be construed to prevent any Trustee from receiving any benefit to which he or she may be entitled as a Participant or Beneficiary in this Plan, so long as the benefit is computed and paid on a basis which is consistent with the terms of this Plan as applied to all other Participants and Beneficiaries. Nor shall this Plan be interpreted to prevent any Trustee from receiving reimbursements of expenses properly and actually incurred in the performance of his or her duties with respect to the Plan.

**8.10 Reciprocity Agreements.** The Trustees are authorized to enter into reciprocity agreements with other qualified employee benefit plans for the purpose of protecting and securing pension benefits earned by Participants of this Plan while working in employment covered by other employee benefit plans. The form and content of any such reciprocity agreement shall be within the discretion of the Trustees.

**8.11 No Reversion to Employers.** The contributions and all funds of the Plan are to be administered, maintained, invested and handled for the sole and exclusive benefit of the Participants and their Beneficiaries. Other than any lawful refund of mistaken contribution to an Employer, there shall be no reversion of any Plan assets to a contributing Employer.

**8.12 Credit for Military Service.** Notwithstanding any other provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Internal Revenue Code.

## **SECTION 9 RIGHT OF APPEAL AND DETERMINATION OF DISPUTES**

**9.1 Trustees to Resolve Benefit Disputes.** No Participant, Employee, Beneficiary or other person shall have any right or claim to benefits under the Pension Plan, or any right or claim to payments from the Trust, other than as specified herein. Any dispute as to eligibility, type, amount or duration of benefits or any right or claim to payments from the Plan shall be resolved by the Trustees under and pursuant to this Plan, and their decision on the dispute, right or claim, shall be final and binding upon all parties thereto. The Trustees shall establish a claims and appeal procedure that complies with ERISA. Pursuant to Section 1.3, herein, the Board of Trustees shall have full discretionary authority to decide claims and appeals, including making factual findings.

**9.2 Denial of Benefit.** Any person whose application for benefits has been denied in whole or in part, or whose claim for benefits or against the Trust Fund is otherwise denied, shall be notified in writing of such denial within ninety (90) days after receipt of

such application or claim. An extension of time not exceeding ninety (90) days may be required by special circumstances.

**9.3 Right to Appeal.** Any person whose claim for benefits has been denied, may petition the Trustees for a review of the denial pursuant to Article X of the Trust Agreement. A petition for review (also known as an “appeal”) shall be in writing, state the reason or reasons for disputing the denial, be accompanied by any pertinent document on material not already furnished to the Plan, and be filed by the petitioner or his or her duly authorized representative with the Plan within sixty (60) days after the petitioner received notice of the denial.

## **SECTION 10. AMENDMENT AND TERMINATION**

**10.1 Trustees’ Power to Amend Plan.** The Board of Trustees may amend or modify the Plan at any time in accordance with the Trust Agreement, except that no amendment or modification may reduce any benefits which have been approved for payment prior to amendment, so long as funds are available for payment of such benefits. Any amendment shall comply with ERISA and applicable federal law.

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

**10.3 Termination.** In the event of a termination or partial termination of this Plan, the rights of all affected Participants to benefits accrued to the date of termination or partial termination, to the extent funded as of such date, shall be nonforfeitable.

**10.4 Distribution of Assets on Plan Termination.** In the event of termination of the Plan, the assets then remaining, after providing for the expenses of the Plan and for the payment of any benefits theretofore approved, shall be distributed among the Participants in the manner determined prudent by the Trustees and consistent with ERISA.

If following the termination of the Plan, a Participant cannot be located and no claim is made for payment of his or her Individual Account within one (1) year following the sending of notice by certified or registered mail to the Participant’s last known address, or such shorter period as may be required by applicable law or regulations, the Trustees may, in their discretion and to the extent permitted by law, establish a reserve fund consisting of the Individual Account of Participants who cannot be located.

## **SECTION 11. NON-BARGAINING UNIT EMPLOYEE REQUIREMENTS**

**11.1 Top-Heavy Participation and Coverage Requirements.** The continued participation in the Plan of Employees who are not covered by a collective bargaining agreement (non-bargaining unit Employees) is subject to compliance with the Top-Heavy requirements of Internal Revenue Code Section 416. To the extent required by applicable law, such provisions of the Code are incorporated herein by this reference.

The Plan shall meet the following supplemental conditions and limitations:

(a) The non-bargaining unit Employees of each Employer on whose behalf the Employer contributes to the Trust Fund must comprise a group that meets the Internal Revenue Code's minimum coverage and participation requirements for qualified pension plans and not favor Highly Compensated Employees, as in effect from time to time.

(b) Each Employer which has or had any non-bargaining unit Employees participating in the Plan must cooperate with any rules and procedures adopted by the Trustees calling for Employers to provide compliance reports and certifications, and with such random compliance audits as the Trustees may deem necessary to ensure compliance with the minimum participation and coverage requirements.

(c) To the extent required by law, a non-bargaining unit Highly Compensated Employee (as defined in Section 414(q) of the Internal Revenue Code and the regulations thereunder) will not accrue a benefit for a Plan Year unless his or her Employer contributes on behalf of sufficient non-bargaining unit Employees to meet the requirements of Sections 401(a)(4), 401(a)(26) and 410(b) of the Internal Revenue Code and the regulations thereunder.

**11.2 Highly Compensated Employee.** The term "Highly Compensated Employee" means an Employee who, during the Plan Year in question or the immediately preceding Plan Year:

(a) Was at any time a five percent (5%) owner; or

(b) Received Compensation from the Employer in excess of the limit described in Section 414(q)(1) of the Code, as adjusted.

Adopted at a Trust meeting on \_\_\_\_\_.