

BRICKLAYERS AND MASONS' LOCAL UNION NO. 5, OHIO  
PENSION PLAN

(MARCH 1, 2014 RESTATEMENT)

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BRICKLAYERS AND MASONS' LOCAL UNION NO. 5, OHIO  
PENSION PLAN

(MARCH 1, 2014 RESTATEMENT)

Preamble

WHEREAS, the geographical jurisdiction of Bricklayers and Masons' Local Union No. 5, Ohio (hereinafter the "Local Union") includes all of Cuyahoga County, Ohio, Lorain County, Ohio, and Medina County, Ohio; and

WHEREAS, effective as of October 1, 2007, the Local Union became the Bricklayers and Masons' Local Union No. 5, Ohio, of the Bricklayers and Allied Craftworkers, Ohio Administrative District Council; and

WHEREAS, the Local Union's Pension Fund (the "Fund"), as established in accordance with the Labor Management Relations Act, 1947, as amended, has its origin in the provisions of the 1961-64 collective bargaining agreement entered into between the Local Union and the Mason Contractors Association now affiliated with the Construction Employers Association of Cleveland, Ohio; and

WHEREAS, since 1961 the Local Union has had, and hereafter expects to have, in effect periodic and continuous collective bargaining agreements which require specified work hour contributions to the Fund by employers who engage bricklayer and mason employees on construction activities within the Local Union's geographical jurisdiction; and

WHEREAS, the Fund is held, managed and administered pursuant to:

- (a) An Agreement and Declaration of Trust, as amended (the "Trust Agreement"), and

(b) A Pension Plan (the "Plan"), as originally executed December 4, 1961, and amended from time to time thereafter, the current provisions of which are set forth in this instrument; and

WHEREAS, the Plan is subject to the provisions of the Internal Revenue Code of 1986 ("Code"), the Employee Retirement Income Security Act of 1974 ("ERISA"), the Multiemployer Pension Plan Amendments Act of 1980 ("MPPA Act"), and other laws and regulations now or hereafter in effect; and

WHEREAS, since the March 1, 2009 Restatement of the Plan, the Plan has been amended and improved in numerous particulars, and it is deemed necessary and desirable to incorporate all interim amendments by restating the Plan;

NOW THEREFORE, effective as of March 1, 2014, but with respect only to eligible employee participants who retire, die, or otherwise terminate participation on or after that date, the Plan hereby is amended and restated in its entirety as hereinafter set forth. Eligible employee participants who retired, died, or otherwise terminated participation prior to March 1, 2014 shall have their benefits, if any, determined in accordance with previous provisions of the Plan.

## ARTICLE 1

### Effective Date - Plan Year

The effective date of the Plan was December 31, 1961. The Plan Year for the Plan and the fiscal year of the Fund are the same, namely the period beginning March 1 of each year.

## ARTICLE 2

### Administration by the Fund's Board of Trustees

2.1 In accordance with the Trust Agreement (the provisions of which are hereby incorporated by reference), the Plan is established, managed, and administered by the Fund's Board of Trustees ("Trustees") consisting of six members; three of the members thereof shall be duly designated as Employer Trustees, and the other three members being duly designated as Employee Trustees.

2.2 The Trustees shall be the "Plan Administrator" or administrator for all purposes required by law or applicable regulations and "named fiduciaries" as that term is defined in Section 402(a)(2) of ERISA.

2.3 Pursuant to the enabling provisions of the Trust Agreement, the Trustees, in part, are granted power and authority to:

- (a) interpret and construe the Plan, including the clarification of any ambiguity of the terms of the Plan or the Trust Agreement relating to all matters;
- (b) employ legal, actuarial, accounting, investment, administrative, clerical, or other services as the Trustees may deem necessary or advisable to assist in the performance of their duties and responsibilities;
- (c) delegate any of their administrative or ministerial powers and duties to an administrator, office manager, agent, or employee engaged by the Trustees;

(d) require the employee members, their beneficiaries, the Local Union, and the employers to furnish all information reasonably deemed necessary to accomplish proper and complete administration of the Plan;

(e) if necessary, to determine, compute, and collect "employer withdrawal liability" in accordance with the provisions of the MPPA Act and applicable regulations;

(f) require any member or beneficiary, as a condition to any benefit claim or distribution, to execute whatever applications, forms, or documents which the Trustees may deem necessary or appropriate; and

(g) to adopt and promulgate such rules and regulations as the Trustees may consider necessary and proper for the sound and efficient administration of the Plan.

2.4 The Trustees, upon request, shall furnish a Member or his beneficiary with pertinent information contained in the Pension Fund records, or otherwise make such records available for examination, inspection, and copying.

2.5 In exercising their powers and authorities, the Trustees at all times shall act in good faith, apply standards of uniform application, and refrain from arbitrary action.

2.6 The Trustees shall grant or deny applications for benefits as provided in Article 16. Plan benefits shall be paid on either a monthly or lump sum basis as provided in Article 17.

2.7 The provisions of the Trust Agreement relating to the appointment, designation, and decision of an impartial umpire shall be applicable to any deadlocked matter

or dispute concerned with the Plan. Before engaging in the performance of his duties, the selected or impartial umpire shall accept in writing that his decision shall be based on the provisions of the Plan and the Trust Agreement.

### ARTICLE 3

#### Eligibility for Plan Participation

3.1 All journeymen, improvers, and apprentice bricklayers and masons employed by contributing employers within the jurisdiction of the Local Union and defined as "Employees" under the provisions of the Trust Agreement shall be eligible to participate in the Plan; each such participant being referred to herein as a "Member" of the Plan.

3.2 Journeymen, improvers, and apprentices who are employed by cities, counties, or other political sub-divisions, which do not make contributions to the Fund under a collective bargaining agreement with the Local Union, will be eligible to participate in the Plan only if at least 75% of such Local Union members agree in writing in a manner satisfactory to the Trustees to make contributions to the Fund in amounts required from time to time by the existing collective bargaining agreement.

3.3 Self-employed persons who perform bricklaying or masonry work within the geographical jurisdiction of the Local Union are not permitted to make contributions to the Fund on their own behalf or be eligible to participate in the Plan, except to the extent of their possible periods of employment by contributing employers.

3.4 For purposes of Section 3.1, the term "Employee" shall include for all Plan purposes except participating in the Plan as a Member and eligibility to accrue a benefit

under the Plan any "Leased Employee," as defined below. "Leased Employee" shall mean any person (other than an employee of the recipient) who pursuant to an agreement between the recipient and any other person ("leasing organization") has performed services for the recipient (or for the recipient and related persons determined in accordance with Section 414(n)(6) of the Code and regulations promulgated thereunder) on a substantially full-time basis for a period of at least one year, and such services are performed under primary direction or control by the recipient employer. Contributions or benefits provided a Leased Employee by the leasing organization which are attributable to services performed for the recipient employer shall be treated as provided by the recipient employer. A Leased Employee shall not be considered an employee of the recipient if: (i) such employee is covered by a money purchase pension plan providing: (1) a non-integrated employer contribution rate of at least ten percent (10%) of compensation, as defined in Section 415(c)(3) of the Code and regulations promulgated thereunder, but including amounts contributed pursuant to a salary reduction agreement which are excludable from the employee's gross income under Section 125, 402(e)(3), 402(h) or 403(b) of the Code, (2) immediate participation and (3) full and immediate vesting; and (ii) Leased Employees do not constitute more than twenty percent (20%) of the recipient's non-highly compensated work force.

## ARTICLE 4

### Credited Service

4.1 The term "Credited Service" as used in this Plan means the sum of an employee's (a) "Past Service", if any, and (b) "Future Service", both as defined herein.

4.2 The term "Past Service" means the actual number of years and completed months of work performed as a journeyman or apprentice employee within the jurisdiction of the Local Union prior to the effective date of the Plan. Past Service shall be credited to only those employees who became Members of the Plan as of December 31, 1961, and shall be limited in any case to 20 years.

4.3 The term "Future Service" means the periods of employment (either as a journeyman, improver, or apprentice) from and after the effective date of the Plan and prior to the employee's retirement, disability, death or termination of membership, which are credited in accordance with the provisions of Section 4.4 hereof.

4.4 In determining and crediting Future Service for benefit eligibility purposes, the following rules shall be applied:

(a) From December 31, 1961 to March 1, 1976.

(1) One year of Future Service will be allowed for 1400 or more Hours Worked in any Plan Year in which required contributions are made to the Fund for a Member; and

(2) in any Plan Year in which a Member works less than 1400 hours, he shall be allowed a Future Service credit of 1/10th of a year for each

140 Hours Worked for which required contributions were made to the Fund on his behalf.

(b) From March 1, 1976 and Thereafter.

(1) One year of Future Service will be credited for 870 or more Hours Worked in any Plan Year during which (i) required contributions are made to the Fund for a Member and/or (ii) the Member is employed for non-covered work, without a break in his service, by the employer who last made contributions to the Fund on the Member's behalf; and

(2) in any Plan Year in which a Member, who is not terminated, works less than 870 hours, he shall be allowed a Future Service credit of 1/10th of a year for each 87 Hours Worked in accordance with paragraph (1) above.

(c) Crediting Hours Worked. The term "Hours Worked" for the purpose of determining Future Service hours to be credited to a Member during any Plan Year means:

(1) Each hour for which a Member is paid or entitled to payment by a contributing employer for the performance of duties for such contributing employer. Such hours shall be credited to the Member for the Plan Year in which such duties are performed.

(2) Each hour for which a Member is directly or indirectly paid or entitled to payment by a contributing employer for reasons (such as vacation, sickness, or disability) other than for the performance of duties; provided,

however, that such hours shall not be credited with respect to a payment made or due under a plan maintained solely for the purpose of complying with applicable workers' compensation, unemployment compensation, or disability insurance laws or with respect to a payment that solely reimburses a person for medical or medically related expenses and that credit for continuous periods of service for which compensation is paid directly or indirectly, but for which no duties are performed, shall in no event exceed five hundred one (501) hours for any single, continuous period. Such hours shall be credited pursuant to Section 2530.200b-2 of the United States Department of Labor Regulations, which are incorporated herein by reference; and

(3) Each hour worked for which back pay, irrespective of mitigation of damages, has been either awarded or agreed to by a contribution employer to the extent that such award or agreement is intended to compensate a Member for periods during which he would have been engaged in the performance of duties for such employer; provided, however, that the same hour shall not be credited both under paragraph (1) or paragraph (2) above, whichever applies, and under this paragraph (3). Such hours shall be credited to the Member for the Plan Year(s) to which the award or agreement pertains rather than the Plan Year in which the award, agreement, or payment is made.

4.5 Benefits based on credited Future Service shall be computed as of the time a Member initially submits his application for Plan benefits to the Trustees. Retirement is presumed to be continuous, except in the case where a Member is subsequently re-employed in an occupation for which additional contributions are made on his behalf to the Fund. In such case, the Member's benefits based on credited Future Service will be re-computed and the additional work credit hours will be allowed when he again applies for retirement benefits.

## ARTICLE 5

### Eligibility for Normal, Postponed, or Early Retirement Benefits

5.1 The eligibility of a Member for normal, postponed or early retirement benefits is determined as of the particular "date" the Member selects to cease all work at his trade.

5.2 The "Normal or Postponed Retirement Date" of a Member shall be the first day of any month following the later of (a) his 65th birthday, or (b) the 5th anniversary of the date on which he commenced participation in the Plan or, if earlier, the date on which he is credited with 5 years of Future Service.

5.3 Effective March 1, 2007, the "Early Retirement Date" of a Member may be the first day of any month selected by the Member following his 55th birthday, provided he has then (a) accrued either 10 years of Credited Service, or (b) 5 years of Future Service, and (c) actually retired from all work at his trade, except that any benefits based on contributions

made on his behalf on and after March 1, 2007, shall be subject in all respects to the requirements of Sections 5.5 and 5.6.

5.4 With respect to distributions under the Plan made for calendar years beginning on or after January 1, 2001, the Plan will apply the minimum distribution requirements of Section 401(a)(9) of the Code in accordance with the regulations under Section 401(a)(9) that were proposed on January 17, 2001, notwithstanding any provision of the Plan to the contrary. This provision shall continue in effect until the end of the last calendar year beginning before the effective date of final regulations under Section 401(a)(9) of the Code or such other date as may be specified in guidance published by the Internal Revenue Service.

5.5 Effective March 1, 2007, a Member shall be required to provide a detailed Social Security earnings report, including employers' names and addresses, when no hours are reported to the Funds' Administration Office for a period of twelve (12) months or when there is reason to believe that the person has had Non-Covered Masonry Employment. This Section 5.5 shall apply to all Members who are otherwise eligible for early or disability benefits, or early benefits instead of a deferred benefit. Each Member who performs an hour of service on or after March 1, 2007 for an Employer making contributions to the Plan on his behalf agrees to cooperate with the Administrator of the Plan in obtaining said reports. In this connection, the following shall be applicable:

- (a) If it is found that a Member has worked in Non-Covered Masonry Employment, the amount of his benefit based on contributions made on and after March 1, 2007 shall be suspended as provided in Section 5.5(b).

(b) The suspension shall be effected by delaying the commencement of affected pension benefits for six (6) calendar months for each calendar month in which a Member worked one (1) or more hours of service in Non-Covered Masonry Employment, but in no event past his Normal Retirement Date.

(c) For purposes of the Plan, including this Section 5.5 and Sections 5.6, 6.4 and 7.3, "Non-Covered Masonry Employment" means employment in the Bricklaying and Masonry Industry on or after March 1, 2007 for an employer or self-employed person, which employment is not subject to a signed collective bargaining agreement by and between the employer or self-employed person and a Union affiliated with the International Union of Bricklayers and Allied Craftworkers. A Member who works in Non-Covered Masonry Employment for an employer or self-employed person who has signed a collective bargaining agreement with a Union affiliated with the International Union of Bricklayers and Allied Craftworkers shall be deemed for this purpose to be working in "Covered Masonry Employment."

5.6 Effective March 1, 2007, if a Retired Member who has not attained his Normal Retirement Age and is receiving early or disability benefits or early benefits instead of a deferred benefit has been found to have worked in Non-Covered Masonry Employment, the amount of his benefit based on contributions made on and after March 1, 2007 shall be suspended as follows:

(a) The affected benefits shall be suspended for six (6) calendar months for each calendar month in which said Member worked one (1) or more hours of

service in Non-Covered Masonry Employment, but in no event past his Normal Retirement Date.

(b) This change will become effective for all benefits earned on or after March 1, 2007.

## ARTICLE 6

### Normal, Postponed, or Early Retirement Benefits

6.1 The Normal or Postponed Retirement Benefit payable to a Member shall be the sum of the Member's (a) Past Service benefits, if any, and (b) Future Service benefits.

6.2 The amount of monthly Past Service benefit provided to an eligible Member beginning on the first day of the month following his actual retirement, and continuing during his lifetime, shall be:

(a) Members who retire and lack eligibility for Future Service benefits, shall receive \$5.00 per month added in each instance to calculation of such benefits at \$1.00 per month multiplied by the Member's years of Past Service; and

(b) Members who retire and are eligible for both Past and Future Service benefits shall (in addition to Future Service benefits) be granted Past Service benefits at the rate of \$1.25 per month multiplied by the number of years of Past Service in each instance.

6.3 Each Member who retires and is eligible for Future Service benefits shall be granted such benefits in accordance with the provisions of the one paragraph applicable to him at the time of his retirement, as follows:

(a) Effective March 1, 2000, each Member who retires and is eligible for Future Service benefits shall be granted such benefits commencing on his Normal or Postponed Retirement Date and continuing during his lifetime, but guaranteed for 60 months in any event; the monthly amount of such benefits being calculated as follows:

(1) 3.0% of the total contributions made to the Fund on his behalf from and after May 1, 1961; plus

(2) an additional \$2.50 per month multiplied by the Member's Future Service credited from and after January 1, 1962 through February 28, 1990, inclusive; plus

(3) an additional \$3.00 per month multiplied by the Member's Future Service credited from and after January 1, 1962 through February 28, 1991, inclusive; plus

(4) an additional amount equal to 0.18% of the total contributions made to the Fund on his behalf from and after May 1, 1961 through February 29, 1992, inclusive; plus

(5) an additional amount equal to 0.24% of the total contributions made to the Fund on his behalf from and after May 1, 1961 through February 28, 1993, inclusive; plus

(6) an additional amount equal to 0.27% of the total contributions made to the Fund on his behalf from and after May 1, 1961 through February 28, 1994, inclusive; plus

(7) an additional amount equal to 0.15% of the total contributions made to the Fund on his behalf from and after May 1, 1961 through February 29, 1996, inclusive; plus

(8) an additional amount equal to 0.35% of the total contributions made to the Fund on his behalf from and after May 1, 1961 through February 28, 1997, inclusive; plus

(9) an additional amount equal to 0.4% of total contributions made to the Fund on his behalf from and after May 1, 1961 through February 28, 1998, inclusive; plus

(10) an additional amount equal to 0.15% of the total contributions made to the Fund on his behalf from and after May 1, 1961 through February 29, 2000, inclusive;

provided, however, that for Members who are not Local Union members but who are directly employed by the Fund and covered by the Plan in accordance with Section 21.10(b)(1), the amount of each such additional monthly benefit shall be determined by multiplying the \$2.50 rate and the \$3.00 rate for each year of Future Service credit under (2) and (3) above by a percentage that is equal to the ratio determined by dividing (I) the contribution rate for each such Member for each such year under said Section 21.10(b)(1) by (II) the contribution rate for Union members for each such year; and provided, further, that for Members who are not Local Union members but who are directly employed by the Local Union and covered by the Plan in accordance with Section 21.10(b)(2), the amount of each such additional monthly benefit shall be

determined by multiplying the \$2.50 rate and the \$3.00 rate for each year of Future Service credit under (2) and (3) above by a percentage that is equal to the ratio determined by dividing (I) the contribution rate for each such Member for each such year under said Section 21.10(b)(2) by (II) the contribution rate for Union members for each year.

The increase in benefits provided under this Section 6.3(a) shall not apply to or be payable to Members who became vested terminated Members before March 1, 2000 nor to Members eligible for an increase under Section 21.16.

(b) Effective March 1, 2001, each Member who retires and is eligible for Future Service benefits shall be granted such benefits commencing on his Normal or Postponed Retirement Date and continuing during his lifetime, but guaranteed for 60 months in any event; the monthly amount of such benefits being calculated as follows:

(1) 3.0% of the total contributions made to the Fund on his behalf from and after May 1, 1961; plus

(2) an additional \$2.50 per month multiplied by the Member's Future Service credited from and after January 1, 1962 through February 28, 1990, inclusive; plus

(3) an additional \$3.00 per month multiplied by the Member's Future Service credited from and after January 1, 1962 through February 28, 1991, inclusive; plus

(4) an additional amount equal to 0.18% of the total contributions made to the Fund on his behalf from and after May 1, 1961 through February 29, 1992, inclusive; plus

(5) an additional amount equal to 0.24% of the total contributions made to the Fund on his behalf from and after May 1, 1961 through February 28, 1993, inclusive; plus

(6) an additional amount equal to 0.27% of the total contributions made to the Fund on his behalf from and after May 1, 1961 through February 28, 1994, inclusive; plus

(7) an additional amount equal to 0.15% of the total contributions made to the Fund on his behalf from and after May 1, 1961 through February 29, 1996, inclusive; plus

(8) an additional amount equal to 0.35% of the total contributions made to the Fund on his behalf from and after May 1, 1961 through February 28, 1997, inclusive; plus

(9) an additional amount equal to 0.4% of total contributions made to the Fund on his behalf from and after May 1, 1961 through February 28, 1998, inclusive; plus

(10) an additional amount equal to 0.15% of the total contributions made to the Fund on his behalf from and after May 1, 1961 through February 29, 2000, inclusive; plus

(11) an additional amount equal to 0.1% of the total contributions made to the Fund on his behalf from and after May 1, 1961 through February 28, 2001, inclusive;

provided, however, that for Members who are not Local Union members but who are directly employed by the Fund and covered by the Plan in accordance with Section 21.10(b)(1), the amount of each such additional monthly benefit shall be determined by multiplying the \$2.50 rate and the \$3.00 rate for each year of Future Service credit under (2) and (3) above by a percentage that is equal to the ratio determined by dividing (i) the contribution rate for each such Member for each such year under said Section 21.10(b)(1) by (ii) the contribution rate for Union members for each such year; and provided, further, that for Members who are not Local Union members but who are directly employed by the Local Union and covered by the Plan in accordance with Section 21.10(b)(2), the amount of each such additional monthly benefit shall be determined by multiplying the \$2.50 rate and the \$3.00 rate for each year of Future Service credit under (2) and (3) above by a percentage that is equal to the ratio determined by dividing (i) the contribution rate for each such Member for each such year under said Section 21.10(b)(2) by (ii) the contribution rate for Union members for each year.

The increase in benefits provided under this Section 6.3(b) shall not apply to or be payable to Members who became vested terminated Members before March 1, 2001 nor to Members eligible for an increase under Section 21.17.

(c) Effective March 1, 2004, each Member who retires and is eligible for Future Service benefits shall be granted such benefits commencing on his Normal or Postponed Retirement Date and continuing during his lifetime, but guaranteed for 60 months in any event, the monthly amount of such benefits being calculated as follows:

(1) 3.0% of the total contributions made to the Fund on his behalf from and after May 1, 1961 and prior to March 1, 2004; plus

(2) an additional \$2.50 per month multiplied by the Member's Future Service credited from and after January 1, 1962 through February 28, 1990 inclusive; plus

(3) an additional \$3.00 per month multiplied by the Member's Future Service credited from and after January 1, 1962 through February 28, 1991 inclusive; plus

(4) an additional amount equal to 0.18% of the total contributions made to the Fund on his behalf from and after May 1, 1961 through February 29, 1992 inclusive; plus

(5) an additional amount equal to 0.24% of the total contributions made to the Fund on his behalf from and after May 1, 1961 through February 28, 1993 inclusive; plus

(6) an additional amount equal to 0.27% of the total contributions made to the Fund on his behalf from and after May 1, 1961 through February 28, 1994 inclusive; plus

(7) an additional amount equal to 0.15% of the total contributions made to the Fund on his behalf from and after May 1, 1961 through February 29, 1996 inclusive; plus

(8) an additional amount equal to 0.35% of the total contributions made to the Fund on his behalf from and after May 1, 1961 through February 28, 1997 inclusive; plus

(9) an additional amount equal to 0.4% of total contributions made to the Fund on his behalf from and after May 1, 1961 through February 28, 1998 inclusive; plus

(10) an additional amount equal to 0.15% of the total contributions made to the Fund on his behalf from and after May 1, 1961 through February 29, 2000 inclusive; plus

(11) an additional amount equal to 0.1% of the total contributions made to the Fund on his behalf from and after May 1, 1961 through February 28, 2001 inclusive; plus

(12) an additional amount equal to 2.5% of the first \$2.60 per hour of the contributions made to the Fund on his behalf from and after March 1, 2004 with no benefit being calculated on any amount contributed on his behalf in excess of \$2.60 per paid hour;

provided, however, that for Members who are not Local Union members but who are directly employed by the Fund and covered by the Plan in accordance with Section 21.10(b)(1), the amount of each such additional monthly benefit shall be determined

by multiplying the \$2.50 rate and the \$3.00 rate for each year of Future Service credit under (2) and (3) above by a percentage that is equal to the ratio determined by dividing (i) the contribution rate for each such Member for each such year under said Section 21.10(b)(1) by (ii) the contribution rate for Union members for each such year; and provided, further, that for Members who are not Local Union members but who are directly employed by the Local Union and covered by the Plan in accordance with Section 21.10(b)(2), the amount of each such additional monthly benefit shall be determined by multiplying the \$2.50 rate and the \$3.00 rate for each year of Future Service credit under (2) and (3) above by a percentage that is equal to the ratio determined by dividing (i) the contribution rate for each such Member for each such year under said Section 21.10(b)(2) by (ii) the contribution rate for Union members for each year.

The decrease in benefits provided under Section 6.3(c) shall not decrease the accrued benefit otherwise payable to Members on February 29, 2004.

(d) Effective May 1, 2014, each Member who retires and is eligible for Future Service benefits shall be granted such benefits commencing on his Normal or Postponed Retirement Date and continuing during his lifetime, but guaranteed for 60 months in any event, the monthly amount of such benefits being calculated as follows:

(1) 3.0% of the total contributions made to the Fund on his behalf from and after May 1, 1961 and prior to March 1, 2004; plus

(2) an additional \$2.50 per month multiplied by the Member's Future Service credited from and after January 1, 1962 through February 28, 1990 inclusive; plus

(3) an additional \$3.00 per month multiplied by the Member's Future Service credited from and after January 1, 1962 through February 28, 1991 inclusive; plus

(4) an additional amount equal to 0.18% of the total contributions made to the Fund on his behalf from and after May 1, 1961 through February 29, 1992 inclusive; plus

(5) an additional amount equal to 0.24% of the total contributions made to the Fund on his behalf from and after May 1, 1961 through February 28, 1993 inclusive; plus

(6) an additional amount equal to 0.27% of the total contributions made to the Fund on his behalf from and after May 1, 1961 through February 28, 1994 inclusive; plus

(7) an additional amount equal to 0.15% of the total contributions made to the Fund on his behalf from and after May 1, 1961 through February 29, 1996 inclusive; plus

(8) an additional amount equal to 0.35% of the total contributions made to the Fund on his behalf from and after May 1, 1961 through February 28, 1997 inclusive; plus

(9) an additional amount equal to 0.4% of total contributions made to the Fund on his behalf from and after May 1, 1961 through February 28, 1998 inclusive; plus

(10) an additional amount equal to 0.15% of the total contributions made to the Fund on his behalf from and after May 1, 1961 through February 29, 2000 inclusive; plus

(11) an additional amount equal to 0.1% of the total contributions made to the Fund on his behalf from and after May 1, 1961 through February 28, 2001 inclusive; plus

(12) an additional amount equal to 2.5% of the first \$2.60 per hour of the contributions made to the Fund on his behalf from March 1, 2004 through April 30, 2014 with no benefit being calculated on any amount contributed on his behalf in excess of \$2.60 per paid hour; plus

(13) an additional amount equal to 2.0% of the first \$2.60 per hour of the contributions made to the Fund on his behalf from and after May 1, 2014 with no benefit being calculated on any amount contributed on his behalf in excess of \$2.60 per paid hour;

provided, however, that for Members who are not Local Union members but who are directly employed by the Fund and covered by the Plan in accordance with Section 21.10(b)(1), the amount of each such additional monthly benefit shall be determined by multiplying the \$2.50 rate and the \$3.00 rate for each year of Future Service credit under (2) and (3) above by a percentage that is equal to the ratio determined by

dividing (i) the contribution rate for each such Member for each such year under said Section 21.10(b)(1) by (ii) the contribution rate for Union members for each such year; and provided, further, that for Members who are not Local Union members but who are directly employed by the Local Union and covered by the Plan in accordance with Section 21.10(b)(2), the amount of each such additional monthly benefit shall be determined by multiplying the \$2.50 rate and the \$3.00 rate for each year of Future Service credit under (2) and (3) above by a percentage that is equal to the ratio determined by dividing (i) the contribution rate for each such Member for each such year under said Section 21.10(b)(2) by (ii) the contribution rate for Union members for each year.

The decrease in benefits provided under Section 6.3(d) shall not decrease the accrued benefit otherwise payable to Members on April 30, 2014.

6.4 The Early Retirement Benefit payable to an eligible Member shall be subject to the following options:

(a) A Member who elects a deferred retirement beginning at his Normal Retirement Date shall be entitled to the monthly Past Service and Future Service benefits which he has accrued at the time of Early Retirement.

(b) Effective March 1, 2007, a Member who elects an immediate retirement benefit beginning at his Early Retirement Date shall be entitled to the benefits described in paragraph (a) reduced by .5% for each month by which his Early Retirement Date precedes his 62nd birthday, except that with respect to any contributions made on his behalf on and after March 1, 2007, if the Member has

worked in Non-Covered Masonry Employment as defined in Section 5.5, the benefits attributable to such post February 28, 2007 contributions shall be reduced by .5% for each month by which either (i) his Early Retirement Date precedes his Normal Retirement Date, or (ii), in the case in which his benefits were suspended under Section 5.6 and recommence, the date his original Early Retirement Date preceded his Normal Retirement Date.

## ARTICLE 7

### Disability Benefit

7.1 A Member who is totally and permanently disabled shall be eligible for a monthly Disability Benefit, provided he has completed ten years of Credited Service or five years of Future Service.

7.2 The term "total and permanent disability" means a physical or mental condition (excluding a disability which (i) was contracted, suffered, or incurred while the Member was engaged in or resulted from his having engaged in a felonious enterprise, or (ii) resulted from an intentionally self-inflicted injury) which has been determined by the Social Security Administration to be a disability under the Social Security Act.

7.3 Effective March 1, 2007, the monthly Disability Benefit shall commence on the first day of the month following the Member's disability, or as of the first day of the month following his application for Disability Benefit, whichever is later, except that any benefits based on service performed by him on and after March 1, 2007, shall be suspended for six (6) calendar months for each calendar month in which said Member has worked one

(1) or more hours of service in Non-Covered Masonry Employment, but in no event past his Normal Retirement Date.

7.4 The monthly Disability Benefit for Members shall be \$15.00 multiplied by the number of years of the disabled Member's Credited Service, but limited to a maximum of \$300.00 per month.

7.5 Effective March 1, 2007, the monthly Disability Benefit will continue until the Member recovers from disability, dies, elects to apply for an Early Retirement Benefit, or reaches his Normal Retirement Date, whichever first occurs, except that with respect to any contributions made on his behalf on and after March 1, 2007, his Early Retirement Benefit shall be subject in all respects to the requirements of Sections 5.5, 5.6 and 6.4(b).

7.6 Subject to the provisions of Section 7.7, when a disabled Member reaches his Normal Retirement Date his Disability Benefit shall cease, and thereafter he shall be entitled to the Normal Retirement Benefit which he accrued as of the date of disability. At the time he becomes eligible for the Normal Retirement Benefit, it shall be paid in accordance with the provisions of Article 9.

7.7 Effective March 1, 2007, a Member who becomes disabled after he has reached 55 years of age and is qualified as provided in Section 5.3 may elect an Early Retirement Benefit instead of a Disability Benefit. If such member elects to receive an Early Retirement Benefit, it shall be paid in accordance with the provisions of Article 9, except that with respect to any contributions made on his behalf on and after March 1, 2007, his Early Retirement Benefit shall be subject in all respects to the requirements of Sections 5.5, 5.6 and 6.4(b).

7.8 The Trustees shall approve or disapprove all applications for Disability Benefits, and their decision shall be final and binding upon all persons affected thereby. In making a determination as to whether a Member continues to be totally and permanently disabled, the Trustees shall rely upon medical reports and other available information. During any period in which a member is receiving a Disability Benefit, the Trustees may require that he periodically submit additional information and written medical reports supporting his disability. Also, the Trustees may, at Fund expense, require such Member to submit to examination by a qualified physician or surgeon selected by the Trustees as a condition to continued payment of his disability benefit.

## ARTICLE 8

### Death Benefits

8.1 After Retirement. Subject to the provisions of Section 8.2, if a retired Member dies after beginning to receive retirement benefits but before having received retirement benefits for a 60-month period, his beneficiary shall be entitled to continued payment of the Member's Future Service benefit for the remaining portion of the 60-month period.

8.2 After Retirement When Retirement Benefits Are Payable As A Joint and Survivor Option. The provisions of Section 8.1 shall not be applicable in the case where the deceased Member had begun to receive his retirement benefits pursuant to the 50% joint and survivor option, the 75% joint and survivor annuity, or the 100% joint and survivor option effective for his eligible spouse, as hereinafter provided. However, in the event both the

Member and his eligible spouse die before retirement benefits paid to the Member and his eligible spouse under the 50% joint and survivor option, the 75% joint and survivor annuity, or the 100% joint and survivor option, as appropriate, equal or exceed contributions made to the Plan on the Member's behalf, a death benefit equal to (i) the amount of such contributions, less (ii) the total amount of the retirement benefits paid to the Member and his eligible spouse under the 50% joint and survivor option, the 75% joint and survivor option, or the 100% joint and survivor option, as appropriate, shall be paid to the "Beneficiary" determined in accordance with the provisions of Section 8.4.

8.3 Before Retirement. In the event a Member dies before beginning to receive retirement benefits, his "Beneficiary" as determined in Section 8.4, shall be entitled to a lump sum payment of 100% of the contributions (less agreed reciprocal payments to other pension funds) made to the Fund on the Member's behalf from and after May 1, 1961. Notwithstanding any other provisions of the Plan to the contrary, no death benefit shall be paid for contributions made to the Fund on the Member's behalf for hours worked on and after March 1, 2012, if either (i) the Member's spouse is eligible for a pre-retirement joint and survivor benefit under the provisions of Article 11 or (ii) the Member has terminated his participation in the Plan under the provisions of Article 12 and the terminated Member is not vested in accordance with the provisions of Section 13.1.

8.4 Death benefits shall be paid to the Beneficiary who shall be determined in the following order:

(a) The Beneficiary designated by the deceased Member on the form required by the Trustees and maintained in the records of the Fund's Administration Office.

(b) To the Beneficiary designated on another record of the Pension Fund, or the combined records maintained for the Local Union's Pension and Health and Welfare Funds.

(c) To the executor or administrator appointed by any Probate Court to administer the estate of the deceased Member.

(d) In accordance with the order of any Probate Court issued on an application to distribute the Member's estate without administration.

(e) To the beneficiary designated on the Local Union's records for the purpose of payment of death benefits.

(f) To the surviving spouse or next of kin of the deceased Member in such amounts and in a manner approved by the Trustees which will release and discharge the Fund and Plan from all liability for the death benefits involved.

## ARTICLE 9

### 50% Joint and Survivor Option

9.1 The provisions of this Article 9 are applicable only to those Members who are married and are eligible for Early, Normal, or Postponed Retirement Benefits.

9.2 Except as provided in Sections 9.3 and 9.4, a Member or terminated Member who qualifies under Section 9.1 shall receive his retirement benefit in the form of a 50% joint

and survivor option. Under this option, the Member will receive an actuarially reduced monthly benefit payable for life, with the continuance after his death of a monthly benefit equal to 50% of that monthly amount to the Member's spouse to whom he was married as of the date his benefit commenced (if she survives him) for the life of such spouse. A Member who retires or otherwise terminates participation on or after March 1, 1994, will receive under this option an actuarially reduced monthly benefit payable for life, with the continuance after his death of a monthly benefit equal to 50% of that monthly amount to the Member's spouse to whom he was married as of the date his benefit commenced (if she survives him) for the life of such spouse; provided, however, that if such Member's spouse dies after the date the Member's benefit commenced hereunder, such Member's monthly benefit shall be automatically converted to the 60-month certain and life annuity option, with payment of such 60-month certain and life annuity option being effective as of the date of such Member's retirement. The 50% joint and survivor option will become effective only upon the commencement of payments thereunder to the retired Member or terminated Member and will cease on the death of the Member and his spouse. If a Member's retirement benefit is paid in the form of a 50% joint and survivor option, the actuarial value of all monthly payments to be made, after such option becomes effective, shall be equivalent to the actuarial value, at the time such option becomes effective, of the total amount of monthly benefit that otherwise would have been payable under the Plan if the provisions of Section 9.1 did not apply to the Member or terminated Member, taking into account the age of the Member or terminated Member and the age of his spouse.

9.3 Unless a Member who is entitled to receive a retirement benefit waives the 50% joint and survivor option (as specified in Section 9.4), he is presumed in law to have elected such option.

9.4 When a Member submits an application for retirement benefits, the Funds' Administration Office shall promptly give him a notice advising him as to the respective monthly amounts which will be paid if benefits are paid, or not paid, in a 50% joint and survivor form and the relative value of each form of payment. Effective January 1, 2007, such notice shall be provided no less than 30 days and no more than 180 days prior to the date payment of his retirement benefits are to commence. If within the 180-day period ending on the date his retirement benefits commence the Member has not effectively waived the 50% joint and survivor form, he shall receive retirement benefits in the 50% joint and survivor form. During such 180-day period the Member may revoke a prior waiver of the 50% joint and survivor form and subsequent to such revocation again waive the 50% joint and survivor form; and there shall be no limit on the number of such revocations or waivers during such 180-day period. Any such waiver shall be in writing on the form provided by the Funds' Administration Office, and shall be consented to in writing by his spouse unless the Member elects (i) Option A, the 100% joint and survivor option, or (ii) on and after March 1, 2009, Option B, the 75% joint and survivor option, under Article 10 or a Plan representative finds that such consent cannot be obtained because the spouse cannot be located or because of other circumstances set forth in Internal Revenue Code Section 401(a)(11) and regulations thereunder. Such spousal consent shall acknowledge the effect of the waiver and consent and shall be witnessed by a Plan representative or a notary public. For any distribution notice

issued in Plan Years beginning after December 31, 2006, the description of the Member's right, if any, to defer receipt of a distribution also will describe the consequences of failing to defer receipt of the distribution.

9.5 Any determination of actuarially reduced benefits required by the provisions of the Plan shall be made on the basis of tables prescribed by the Fund's actuary from time to time, which tables shall be prepared in accordance with (a) the mortality assumptions set forth in the 1983 Group Annuity Mortality Table, and (b) interest at seven percent (7%) per annum, compounded annually.

## ARTICLE 10

### Optional Methods Of Payment

Upon filing written notice with the Fund's Administration Office at such time, under such conditions, and in such manner as set forth in Section 9.4, a Member to whom Article 9 applies shall have the option to have his retirement benefit paid under Option A or, on and after March 1, 2014, Option B, or Option C (with spousal consent) below in lieu of any other retirement benefit payable to him under the Plan.

#### Option A - 100% Joint and Survivor Option.

Under Option A, the 100% joint and survivor option, the Member will receive an actuarially reduced monthly benefit payable for life, with the continuance after his death of a monthly benefit in the same amount to the Member's spouse to whom he was married as of the date his benefit commenced (if she survives him) for the life of such spouse; provided, however, that if such Member's spouse dies after the date the Member's benefit commenced hereunder, such Member's monthly benefit shall be

automatically converted to the 60-month certain and life annuity option, with payment of such 60-month certain and life annuity option being effective as of the date of such Member's retirement. The 100% joint and survivor option will become effective only upon the commencement of payments thereunder to the retired Member or terminated Member and will cease on the death of the Member and his spouse.

Option B – 75% Joint and Survivor Option.

Effective March 1, 2009, Option B, the 75% joint and survivor option, is added to the Plan for a Member who is entitled to elect a "qualified optional survivor annuity" in lieu of the 50% joint and survivor option under Article 9. Under Option B, the 75% joint and survivor option, the Member will receive an actuarially reduced monthly benefit payable for life, with the continuance after his death of a monthly benefit equal to 75% of that monthly amount to the Member's spouse to whom he was married as of the date his benefit commenced (if she survives him) for the life of such spouse; provided, however, that if such Member's spouse dies after the date the Member's benefit commenced hereunder, such Member's monthly benefit shall be automatically converted to the 60-month certain and life annuity option, with payment of such 60-month certain and life annuity option being effective as of the date of such Member's retirement. The 75% joint and survivor option will become effective only upon the commencement of payments thereunder to the retired member or terminated Member and will cease on the death of the Member and his spouse.

Option C - 60-Month Certain and Life Annuity Option.

Under Option C, the 60-month certain and life annuity option, the Member will receive a monthly benefit payable for life, except that if the Member dies before 60 monthly payments have been made after such Option C becomes effective, the Member's beneficiary shall be paid a single sum amount equal to the balance of the monthly payments that would have been made for the remainder of the 60-month period.

Spousal consent for election of Option C shall be in accordance with the provisions of Section 9.4. If a Member elects either Option A or Option B, the actuarial value of all monthly payments to be made after such Option A or Option B, as the case may be, becomes effective, shall be equivalent to the actuarial value, at the time such Option A or Option B, as the case may be, becomes effective, of the total amount of monthly benefit that would have been payable under the Plan if Option A or Option B, as the case may be, had not been elected and if the provisions of Section 9.1 did not apply to the Member, taking into account the age of the Member and the age of his spouse. For purposes of Option A and Option B above, any determination of actuarially reduced benefits required by the provisions of the Plan shall be made in accordance with the provisions of Section 9.5.

## ARTICLE 11

### Preretirement Spouse's Option

11.1 A Member or terminated Member who is vested in his retirement benefit under the Plan, who dies prior to the commencement of his retirement benefits under the Plan, and who is married to an eligible spouse (as defined in this Section 11.1) on the date of his death shall be eligible for a pre-retirement 50% joint and survivor benefit, as provided in this Article 11 (hereinafter an "eligible Member" or "eligible terminated Member"). For purposes of this Article 11, the term "eligible spouse" shall mean the spouse to whom the Member was married throughout the 12-month period immediately prior to the date of his death.

11.2 In the case of an eligible Member or eligible terminated Member who dies after his 55th birthday, the amount of such spouse's benefit shall be equal to the amount the spouse would have been entitled to receive under the 50% joint and survivor provisions of Article 9 if the Member or terminated Member had retired and begun to receive payments under such form of payment on the date of his death, and such benefit shall commence on the first day of the month following the Member's or terminated Member's date of death. In the case of an eligible Member who dies prior to his 55th birthday, the amount of such spouse's benefit shall be equal to the amount the spouse would have been entitled to receive if the Member had ceased to accrue Credited Service on the date of his death, survived to his 55th birthday, and retired on such 55th birthday under the 50% joint and survivor provisions of Article 9, and such benefit shall commence on the first day of the month next following the later of the date the eligible Member would have attained age 55 or the date the eligible

spouse's written application therefor is received by the Trustees. In the case of an eligible terminated Member who dies prior to his 55th birthday, the amount of such spouse's benefit shall be equal to the amount the spouse would have been entitled to receive if the terminated Member had survived to his 55th birthday and retired on such 55th birthday under the 50% joint and survivor provisions of Article 9 (based on his Credited Service on the date of his death), and such benefit shall commence on the first day of the month next following the later of the date the eligible terminated Member would have attained age 55 or the date the eligible spouse's written application therefor is received by the Trustees. Notwithstanding the preceding, if the deceased eligible Member or eligible terminated Member had not attained age 62, his eligible spouse may elect that commencement of the spouse benefit be deferred until the deceased eligible Member or eligible terminated Member would have attained age 62 (in which case no reduction for early commencement pursuant to Section 6.4 shall apply.) Notwithstanding any other provision of the Plan to the contrary, in no event shall the spouse's benefit be payable unless the eligible spouse survives until the time at which such benefit is due to commence (including any elective deferral of commencement), nor shall such spouse's benefit be payable after such spouse's death.

## ARTICLE 12

### Terminated Members

12.1 A Member shall be deemed to have terminated participation in the Plan if during 2 successive Plan Years he fails in each year to have contributions made on his behalf for at least 100 Hours Worked.

12.2 A terminated Member shall be entitled to the vested and nonforfeitable benefits provided in Article 13 if he satisfies the requirements stated therein.

## ARTICLE 13

### Vested and Nonforfeitable Benefits

13.1 A Member shall be deemed vested if he has (a) accrued either 10 years of Credited Service, or (b) 5 years of Future Service.

13.2 Effective March 1, 2007, a terminated Member who is vested as provided in Section 13.1 shall be entitled to a Deferred Normal Retirement Benefit to commence at his Normal Retirement Date in the amount equal to the sum of the Past Service benefits and Future Service benefits that he had accrued as of the date of termination; and at his option, a terminated Member who satisfies the requirements of Section 5.3 may elect to receive a reduced Early Retirement Benefit instead of his Deferred Benefit, except that any benefits based on contributions made on his behalf on and after March 1, 2007, shall be subject in all respects to the requirements of Sections 5.5, 5.6 and 6.4(b).

13.3 If a terminated Member dies before beginning to receive one of the alternative retirement benefits provided in Section 13.2, his beneficiary shall be entitled to payment of the death benefit provided in Section 8.3.

13.4 If following termination a Member is employed in a position for which applicable contributions are made to the Fund on his behalf, he shall be treated as follows:

- (a) If he was a vested Member on the date of his last termination, his prior Credited Service will be continued in force and any additional work hour

contributions remitted on his behalf following re-employment shall be added to his vested Credited Service.

(b) If he was not a vested Member as of the date of his last termination and is re-employed prior to March 1, 1986, he shall forfeit all prior Credited Service and be treated as a new Member, except that if the number of his years of Future Service in which he was credited with at least 870 Hours Worked as of the date of his last termination exceeds the number of consecutive Plan Years in which he was credited with less than 435 Hours Worked, his prior Credited Service shall be reinstated.

(c) If he was not a vested Member as of the date of his last termination and is reemployed on or after March 1, 1986, he shall forfeit all prior Credited Service and be treated as a new Member, except that if his prior Credited Service would not have been forfeited under paragraph (b) of this Section 13.4 if he had been reemployed on February 28, 1985, or if the number of his years of Future Service in which he was credited with at least 870 Hours Worked as of the date of his last termination exceeds the number of consecutive Plan Years in which he was credited with less than 435 Hours Worked, or if the number of consecutive Plan Years in which he was credited with less than 435 Hours Worked is less than five (5), his prior Credited Service shall be reinstated; provided, however, that solely for purposes of applying the rule of parity set forth in this paragraph (c), an individual who is absent from work commencing on or after March 1, 1986 for maternity or paternity reasons shall receive credit for Hours Worked which would otherwise have been credited to

such individual but for such absence, or in any case in which such hours cannot be determined, credit for eight (8) Hours Worked per day of such absence to a maximum of five hundred and one (501) Hours Worked. For purposes of this paragraph (c), an absence from work for maternity or paternity reasons means an absence (1) by reason of the pregnancy of the individual, (2) by reason of a birth of a child of the individual, (3) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or (4) for purposes of caring for such child for a period beginning immediately following such birth or placement. Credit for Hours Worked under the foregoing provision shall be credited in the computation period in which the absence begins if the crediting is necessary to prevent a forfeiture of Credited Service in that period, or in all other cases in the immediately following computation period.

## ARTICLE 14

### Re-Employment After Initial Retirement

14.1 When a retired Member is subsequently re-employed in a position for which contributions are required to be made to the Fund, benefit payments will cease, and, upon proper application, will be recommenced only in accordance with the rules stated in Sections 14.2, 14.3, and 14.4 hereof.

14.2 Re-Employment during Permissive Periods.

(a) Effective March 1, 2007, during the months of May through October in any year (“a permissive period”), retired Members may work at the trade without termination of their retirement benefits, except for the months during which they are employed and except as provided by Section 5.6.

(b) When a retired Member becomes re-employed at the trade, his employer shall be required to make full contributions to the Fund, and the retired Member upon reinstatement to his retirement benefit shall be given credit therefor.

(c) Retirees who perform work during a permissive period are required to give prompt written notice to the Fund's Administration Office of both when they commence work and terminate employment. If, in either instance, a retiree fails to give such notice, his retirement benefits will not be reinstated until 6 months after termination of such employment.

14.3 Re-Employment other than during Permissive Periods. If a retired Member becomes re-employed at the trade at any time other than during a permissive period, his retirement benefit will cease, and he will not be eligible to make application for reinstatement thereof for a period of 1 year following cessation of such re-employment. When so re-employed, the Member shall notify the Fund's Administration Office in writing within 10 days following commencement of re-employment. If the Member fails to so advise the Fund's Administration Office, the minimum period after which application for retirement benefits may be submitted shall, in the discretion of the Trustees, be extended from 1 year to 18 months.

14.4 ERISA 203(a)(3)(B) Service. Notwithstanding any other provision of the Plan to the contrary, a Member who, on or after January 1, 1982, continues in employment covered under the Plan after his Normal Retirement Date or who, on or after January 1, 1982, is reemployed in employment covered under the Plan after his Normal Retirement Date shall be eligible for his benefits, if any, for any month in which he is not employed with respect to the Plan in "Section 203(a)(3)(B) service" as defined in ERISA, as amended, and regulations issued thereunder. No payment shall be withheld or suspended by the Plan for Section 203(a)(3)(B) service by a Member after his Normal Retirement Date until the Fund's Administration Office has notified the Member or retired Member by personal delivery or first class mail of the fact that such withholding or suspension is occurring or will occur. Such notification will contain a detailed description of the specific reasons why benefit payments are being suspended or withheld, a general description of the Plan provisions relating to the suspension of benefit payments, a copy of such provisions, and a statement that the applicable Department of Labor regulations governing suspensions of benefits may be found at Title 29, Code of Federal Regulations, section 2530.203-3. The notification shall also advise the Member or the retired Member to whom directed of the Plan's procedure for affording a review of the suspension of benefits. In addition, if benefit payments have been suspended with respect to such Member pursuant to this Article 14, payments shall resume no later than the first day of the third calendar month after the calendar month in which such Member or retired Member ceases to be employed in Section 203(a)(3)(B) service, provided that the retired Member has complied with any reasonable procedure adopted by the Plan for notifying the Plan that he has ceased such employment. The initial payment after benefits

have been suspended shall include the payment scheduled to occur in the calendar month when payments resume and any amounts withheld during the period between the cessation of employment and the resumption of payments, less any amounts which are subject to offset. The Plan shall deduct from benefit payments to be made by the Plan any payments previously made by the Plan during those calendar months or pay periods in which such Member or retired Member was employed in Section 203(a)(3)(B) service, provided that such deduction or offset does not exceed, in any one month, 25 percent of that month's total benefit payment that would have been due but for the offset (excluding the initial resumption payment described above, which shall be offset without limitation). Any such Member or retired Member shall notify the Plan of any employment covered under the Plan and provide reasonable information for the purpose of verifying such employment. Furthermore, any such Member or retired Member shall, at such time and with such frequency as may be reasonable, as a condition to receiving future benefits, either certify that he is unemployed or provide factual information sufficient to establish that any employment does not constitute Section 203(a)(3)(B) service if specifically requested by the Plan. Any monthly benefit payments made pursuant to this Section 14.4 shall be paid in accordance with the provisions of the Plan otherwise applicable to determining the amount of his benefit payments, the duration of such benefits, and the method of payment. Notwithstanding the foregoing, no pension benefits will be suspended under this Section 14.4 after April 1 of the year after the year in which the Member attains age 70-1/2.

## ARTICLE 15

### Financing of Benefits

All benefits provided by the Plan shall be funded. The method, or methods, of funding, as recommended from time to time by the Fund's actuary, shall be approved and applied by the Trustees in determining the nature, amount, and duration of Plan benefits.

## ARTICLE 16

### Processing of Claims - Appeal Procedure

16.1 All applications for Plan benefits, following processing by the Fund's Administration Office Manager, shall be presented to the Board of Trustees for decision at regularly scheduled meetings. If a claim for benefits under the Plan is denied, in whole or in part, the Member or his beneficiary (hereinafter called the "claimant") shall be notified within a reasonable time in writing of the denial, the specific reason for the denial and the Plan provisions on which the denial is based. Such claimant shall also be advised whether any additional material or information is necessary to perfect the claim and shall be provided with an explanation of the reasons why such material is necessary and with an explanation of the Plan's claim review procedure under Section 16.2.

16.2 In the event a claim for benefits under the Plan is denied in whole or in part:

- (a) The claimant (or his duly authorized representative) shall be entitled to request in writing a review of the denial of his claim by the Trustees within sixty (60) days after the claimant receives notice of the denial of his claim.

(b) The claimant (or his duly authorized representative) may review pertinent Plan documents and submit issues and comments to the Trustees in writing.

(c) All written claims that are neither granted nor denied in accordance with Section 16.1 within ninety (90) days after filing thereof with the Trustees shall be deemed denied and the claimant shall have the immediate right to file a written request for review.

(d) The decision of the Trustees on review shall be rendered within sixty (60) days after the request for review is received by the Trustees unless special circumstances require an extension of time for processing the claim in which case a decision shall be rendered not later than one hundred twenty (120) days after receipt of the request for review by the Trustees.

(e) The decision of the Trustees on review shall be in writing and shall include specific reasons for the decision and specific references to the pertinent Plan provisions on which the decision is based.

(f) The decision of the Trustees on review is final and is binding on the claimant, his beneficiaries, and all other interested parties.

(g) Effective January 1, 2002, in the case of a claim for a Disability Benefit where a physician chosen by the Trustees (rather than relying upon a determination of disability for Social Security purposes) determines there is no disability, then in lieu of the above procedure, the Trustees will provide the claimant with written notification of the Trustees' adverse decision within a reasonable period of time, but not later than 45 days after receipt of the claim by the Trustees. This

period may be extended by the Trustees for up to 30 days, provided that the Trustees both determine that such an extension is necessary due to matters beyond its control and notifies the claimant prior to the expiration of the initial 45-day period of the circumstances requiring the extension of time and the date by which the Trustees expect to render a decision. If, prior to the end of the first 30-day extension period the Trustees determine that, due to matters beyond its control, a decision cannot be rendered within that extension period, the period for making the determination may be extended for up to an additional 30 days, provided that the Trustees notify the claimant prior to the expiration of the first 30-day extension period of the circumstances requiring the extension and the date as of which the Trustees expect to render a decision. In the case of any such extension, the notice of extension will specifically explain the standards on which entitlement to a benefit is based, the unresolved issues that prevent a decision on the claim, and the additional information needed to resolve those issues, and the claimant will be afforded at least 45 days within which to provide the specified information.

16.3 If requested by a claimant, the Fund's Administration Office Manager will give him all reasonable assistance in presenting his appeal, including the scheduling of a personal appearance by the claimant before the Trustees at their next regular meeting.

## ARTICLE 17

### Payment of Benefit Checks

17.1 When a retirement or disability application has been approved, the Fund's Administration Office Manager will advise the Member by letter. Thereafter, monthly retirement or disability benefit checks will be mailed directly to the Member or his beneficiary by the Trust Department of First Merit Bank, National Association or such other bank as determined by the Trustees, as agent of the Trustees. In lieu of payments being made by a bank trust department, the Funds' Administration Office may mail checks directly to Members and beneficiaries. A death benefit lump sum payment check will be mailed to the Member's beneficiary by the Administration Office Manager with an explanatory letter.

17.2 All notices of changes of address, or inquiries regarding non-receipt of benefit checks, shall be directed to the Fund's Administration Office, and not to the bank serving as agent of the Trustees.

## ARTICLE 18

### Amendments to the Plan

The Pension Plan may be amended from time to time by the Trustees; provided, however, that no amendment shall be in contravention of or inconsistent with the terms and provisions of any collective bargaining agreement, the aforementioned Trust Agreement, or applicable law including Section 411(d)(6) of the Code and regulations thereunder.

## ARTICLE 19

### Termination of the Plan

19.1 The Trustees shall terminate the Plan if:

(a) there is no longer in effect a collective bargaining agreement requiring employers to make contributions to the Fund and all benefits have been paid from the Fund; or

(b) the Trustees unanimously and lawfully determine to terminate the Plan, provided that termination thereof is duly approved by the parties to the Trust Agreement; or

(c) termination is required by applicable law and order.

19.2 In terminating the Plan, the Trustees shall continue to manage and administer the Fund and Plan until final liquidation in a manner which will best accomplish the basic purposes and objectives for which the Fund was created.

## ARTICLE 20

### Disposition of Fund Assets Upon Termination

20.1 After first making provision for the payment of all Fund and Plan obligations and the expenses of administration and liquidation in connection with termination procedures, the Trustees shall allocate the remaining Fund assets among the Members and their beneficiaries, giving due consideration to any vested and non-forfeitable rights they may have under the Plan.

20.2 In allocating the assets of the Fund among the Members and their beneficiaries, the Trustees shall apply and adhere to the requirements of ERISA, the Internal Revenue Code, the MPPA Act, and all other applicable laws and regulations then in effect.

20.3 Notwithstanding any other provision of the Plan, (a) a Member's right to a Normal Retirement Benefit under the Plan shall be nonforfeitable upon and after the later of his 65th birthday or the 5th anniversary of the date on which he commenced participation in the Plan; and (b) in the event of the termination or a partial termination of the Plan, the rights of all Members who are affected by such termination to benefits accrued to the date of such termination, to the extent funded as of such date, shall be nonforfeitable.

## ARTICLE 21

### Miscellaneous

21.1 No employee participating in the Plan shall have a right to receive any part of employer contributions in lieu of Plan benefits, nor to receive a cash consideration instead of such benefits.

21.2 The Plan does not confer on an employee the right to continue in the employ of any employer, or to continue his membership in the Local Union.

21.3 Effective March 1, 2007, a retired member receiving Plan benefits shall be entitled to continue receiving his retirement benefit under the Plan regardless of any employment other than employment as described in Section 5.5 and Article 14 hereof.

21.4 The assets of the Fund shall not be used for or diverted to purposes other than the exclusive benefit of the Members and/or their beneficiaries and the necessary expenses required for administration of the Plan.

The Plan shall not be merged or consolidated with any other plan, nor shall any of its assets or liabilities be transferred to another plan, unless, immediately after such merger, consolidation, or transfer of assets or liabilities, each Member and former Member of the Plan would receive a benefit which is at least equal to the benefit he would have received immediately prior to such merger, consolidation, or transfer of assets or liabilities (assuming in each instance that the Plan had then terminated).

21.5 Except as provided in Section 401(a)(13)(B) of the Code relating to qualified domestic relations orders, or as provided in the last paragraph of this Section 21.5, no benefit under the Plan at any time shall be subject in any manner to anticipation, alienation, assignment (either at law or equity), encumbrance, garnishment, levy, execution, or other legal or equitable process. No person shall have power in any manner to anticipate, transfer, assign (either at law or in equity), alienate, or subject to attachment, garnishment, levy, execution, or other legal or equitable process, or in any way encumber his benefits under the Plan, or any part thereof, and any attempt to do so shall be void.

In the case of any domestic relations order received by the Plan, the Plan Administrator shall promptly notify the Member and any other "alternate payee" (as defined in Section 414(p)(8) of the Code) of the receipt of such order and of the procedures for determining the qualified status of domestic relations orders. Within a reasonable period after receipt of such order, the Plan Administrator shall determine whether such order is

qualified ("QDRO") and shall notify the Member and each alternate payee of such determination in accordance with these procedures.

Effective August 5, 1997, the following provisions shall apply to the Plan:

(a) If, on or after August 5, 1997, a judgment, order or decree entered against any Member or a settlement agreement is entered into between a Member and an appropriate party, and such judgment, order, decree or settlement agreement expressly provides for the offset of all or part of the amount ordered or required to be paid from the Fund to the Member, then such amount as is required to be applied as an offset from the benefits due the Participant from the Fund shall be handled, dealt with and disposed of as provided in such judgment, order, decree or settlement agreement. For the purposes hereof, the terms "judgment, order or decree" and "settlement agreement" aforesaid shall be understood to mean:

(1) A judgment or conviction for a crime involving the Plan, as provided in Section 401(a)(13)(C)(i)(I) of the Code;

(2) A civil judgment (including a consent order or decree) entered by a court in an action brought in connection with a violation (or an alleged violation) of ERISA's fiduciary responsibility provisions or Section 401(a)(13)(C)(i)(II) of the Code; or

(3) A settlement agreement between the Internal Revenue Service and the Member or a settlement agreement between the Pension Benefit Guarantee Corporation and the Member in connection with a violation (or an alleged violation) of ERISA's fiduciary responsibility provisions by a

fiduciary or any other person, all pursuant to Section 401(a)(13)(C)(i)(III) of the Code.

(b) The spouse of a Member shall be affected by the judgment, order, decree or settlement agreement only to the extent that the rules of Section 401(a)(13)(C)(iii)(I), (II) and (III) of the Code require that the spouse's interest is affected thereby.

Effective April 6, 2007, the following additional provisions shall apply to the Plan.

(c) A domestic relations order that otherwise satisfies the requirements for a qualified domestic relations order will not fail to be a QDRO: (i) solely because the order is issued after, or revises, another domestic relations order or QDRO; or (ii) solely because of the time at which the order is issued, including issuance after the annuity starting date or after the Participant's death.

(d) A domestic relations order described in the foregoing paragraph (c) is subject to the same requirements and protections that apply to QDROs.

21.6 All questions pertaining to the validity, construction, and administration of the Plan shall be construed and determined in accordance with the laws of the United States and the State of Ohio.

21.7 Maximum Benefits

(a) Definitions. For purposes only of this Section 21.7, the following definitions shall apply:

(1) The term "Employer" shall mean any employer contributing to the Plan and any related corporation as defined for purposes of Section 415 of the Code; provided, however, that for this purpose the meaning of "related corporation" shall be as modified by Section 415(h) of the Code.

(2) A "limitation year" shall mean each calendar year.

(3) An "Employee" shall mean any Member or former Member of the Plan.

(4) The "Code" shall mean the Internal Revenue Code of 1986, as amended.

(5) Prior to March 1, 2008, Applicable Interest Rate shall mean the annual rate of interest on 30-year Treasury securities as in effect for the full calendar month occurring prior to the first day of the Plan Year in which the Annuity Starting Date occurs. On and after March 1, 2008, Applicable Interest Rate shall mean: the adjusted first, second, and third segment rates applied under rules similar to the rules of Section 430(h)(2)(C) of the Code for the second full calendar month occurring prior to the first day of the Plan year in which the Annuity Starting Date occurs. For purposes of this paragraph (b), the adjusted first, second, and third segment rates are the first, second, and third segment rates which would be determined under Section 430(h)(2)(C) of the Code if –

(i) Section 430(h)(2)(D) of the Code were applied

by substituting the average yields for the month described in the first

sentence of this paragraph (b) for the average yields for the 24-month period described in such Section,

(ii) Section 430(h)(2)(G)(i)(II) of the Code were applied by substituting Section 417(e)(3)(A)(ii)(II) of the Code for Section 412(b)(5)(B)(ii)(II) of the Code; and

(iii) the applicable percentage under Section 430(h)(2)(G) of the Code were determined in accordance with the following table:

In the case of Plan Years beginning in:	The applicable percentage is
2008	20 percent
2009	40 percent
2010	60 percent
2011	80 percent

(6) Prior to March 1, 2008, Applicable Mortality Table shall mean the mortality table required by Section 417(e) of the Code. On and after March 1, 2008, Applicable Mortality Table shall mean the mortality table required by Section 417(e)(3)(B) of the Code.

(b) The provisions of this Section 21.7(b) as in effect prior to January 1, 2000, are as follows:

An Employee's benefit payable annually in the form of a straight life annuity as a result of participation in the Plan and any other defined benefit plans sponsored by any related corporation (considered as one plan) shall not be greater than the lesser of: (i) \$90,000, increased as permitted by regulations of the Secretary of the Treasury to reflect cost of living

adjustments; or (ii) 100% of the Employee's Average Annual Earnings for the Employee's highest three consecutive calendar years. As a result of adjustments made pursuant to clause (i), above, the pension of an active or terminated Employee which had been limited by the provisions of this Section 21.7 in a previous year may be increased with respect to future payments. In computing the benefit, the value of a surviving spouse's pension shall be excluded, and the computation shall assume a continuation of employment until the age at which the Employee is eligible, or would be eligible, for full benefits under the provisions for Old Age Insurance Benefits of the Federal Social Security Act as then in effect ("Social Security Full Retirement Age"), and the same level of Average Annual Earnings as in the Plan Year of computation. If the Employee's benefit is paid in a form other than a straight life annuity, that benefit will be adjusted for purposes of applying the limitation of this Section 21.7 to an Actuarially Equivalent straight life annuity (but using an interest rate no greater than 5%).

The provisions of this Section 21.7(b) as in effect on and after January 1, 2000, are as follows:

An Employee's benefit payable annually in the form of a straight life annuity as a result of participation in the Plan and any other defined benefit plans sponsored by any related corporation (considered as one plan) shall not be greater than the lesser of: (i) \$90,000, increased as permitted by regulations of the Secretary of the Treasury to reflect cost of living

adjustments; or (ii) 100% of the Employee's Average Annual Earnings for the Employee's highest three consecutive calendar years. As a result of adjustments made pursuant to clause (i), above, the pension of an active or terminated Employee which had been limited by the provisions of this Section 21.7 in a previous year may be increased with respect to future payments. In computing the benefit, the computation shall assume a continuation of employment until the age at which the Employee is eligible, or would be eligible, for full benefits under the provisions for Old Age Insurance Benefits of the Federal Social Security Act as then in effect (Social Security Full Retirement Age), and the same level of Average Annual Earnings as in the Plan Year of computation. If the Employee's benefit is paid in a form other than a straight life annuity, that benefit will be adjusted to an actuarially equivalent straight life annuity before applying the limits of this Section 21.7. The actuarially equivalent straight life annuity shall be the greater of the actuarial equivalent using Plan assumptions or the actuarial equivalent using a 5% interest rate, or, in the case of a lump sum payment, the Applicable Interest Rate and the Applicable Mortality Table. The annual benefit does not include any benefits attributable to employee contributions or rollover contributions, or the assets transferred from a qualified plan that was not maintained by the Employer. No actuarial adjustment to the benefit is required for: (i) the value of the qualified joint and survivor annuity, (ii) the value of benefits that are not directly related to

retirement benefits (such as the qualified disability benefit, pre-retirement death benefits, and post-retirement medical benefits), and (iii) the value of post-retirement cost-of-living increases made in accordance with Section 415(d) of the Code and Regs. '1.415-3(c)(2)(iii).

(c) In the case of an Employee who is a participant in both the Plan and any defined contribution plan sponsored by an Employer or any related corporation (considered as one plan), the sum of the Defined Benefit Plan Fraction and the Defined Contribution Plan Fraction for a Plan Year shall not exceed 1.0. Where the sum of the Defined Benefit Plan Fraction and the Defined Contribution Plan Fraction would otherwise exceed 1.0, the Participant shall continue to accrue benefits under the Plan if accruals under the other plan cease in such a manner that the sum of the above two fractions shall be maintained at 1.0. This Section 21.7(c) shall not apply to Plan Years commencing on and after January 1, 2000.

(d) The provisions of this Section 21.7(d) as in effect prior to January 1, 2000, are as follows:

If payment of an Employee's benefit begins before Social Security Retirement Age, the determination whether the above limitations have been exceeded shall be made by actuarially reducing such benefit to the equivalent of a benefit beginning at Social Security Full Retirement Age, using for this purpose a reduction factor of 5/9 of 1% per month for each of the first thirty-six months that the Employee's benefit commencement date precedes Social Security Full Retirement Age; 5/12 of 1% per month for each additional

month age sixty-two precedes Social Security Full Retirement Age; and then an actuarial factor of not less than the greater of 5% per year or the percentage rate specified in the Plan for the reduction of a pension payable on account of early retirement. For a pension benefit which begins after Social Security Full Retirement Age, the determination shall be made by adjusting such benefit to the actuarial equivalent of a benefit beginning at Social Security Full Retirement Age (but using an interest rate no greater than 5%).

The provisions of this Section 21.7(d) as in effect on and after January 1, 2000, are as follows:

If payment of an Employee's benefit begins before Social Security Retirement Age, the determination whether the above limitations have been exceeded shall be made by actuarially reducing such benefit to the equivalent of a benefit beginning at Social Security Full Retirement Age, using for this purpose a reduction factor of  $\frac{5}{9}$  of 1% per month for each of the first thirty-six months that the Employee's benefit commencement date precedes Social Security Full Retirement Age; and  $\frac{5}{12}$  of 1% per month for each additional month age sixty-two precedes Social Security Full Retirement Age.

If the annual benefit of an Employee commences before age 62, as determined above, reduced for each month by which benefits commence before the month in which the Employee attains age 62. The defined benefit dollar limit shall be the lesser of (i) the equivalent annual benefit commencing at age 62 using the Plan assumptions or (ii) the actuarial

equivalent using a 5% interest rate and the Applicable Mortality Table. Any decrease in the defined benefit dollar limit determined in accordance with this paragraph (c) shall not reflect the mortality decrement to the extent that benefits will not be forfeited upon the death of the Employee. If the Employee's annual benefit commences after the Employee's Social Security Retirement Age, the defined benefit dollar limitation as reduced above, if necessary, shall be adjusted so that it is the actuarial equivalent of an annual benefit of such dollar limit beginning at the Employee's Social Security Retirement Age. The actuarial equivalent shall be the lesser of (i) the actuarial equivalent amount using Plan assumptions or (ii) the actuarial equivalent amount using a 5% interest rate and the Applicable Mortality Table.

(e) The provisions of this Section 21.7(e) shall not apply to Plan Years beginning after December 31, 1999. With respect to any Plan Year, any part of which is also a Top Heavy Plan Year and either: (i) the Plan does not satisfy the minimum benefit requirements of Section 416(h)(2)(A)(ii)(I) of the Code for such Top Heavy Plan Year, or (ii) the Plan Year would remain a Top Heavy Plan Year if 90% were substituted for 60%, then a multiplier of 1.0 shall be substituted for each multiplier of 1.25 in the Defined Benefit Plan Fraction and Defined Contribution Plan Fraction, and an amount of \$41,500 shall be substituted for \$51,875 in the Transition Fraction.

(f) At the election of the Plan Administrator in computing the denominator of the Defined Benefit Plan Fractions for Plan Years 1983 and after, the amount of the denominator of such Fraction for all Plan Years 1982 and prior to be taken in account shall be an amount equal to the product of (a) the denominator of such Fraction as otherwise determined for Plan Years 1981 and prior, multiplied by (b) the Transition Fraction.

(g) This Section 21.7 shall not be applied to reduce the annual benefit of a Participant who has never been a participant in any defined contribution plan maintained by an Employer or a related corporation below \$10,000, unless such Employee has fewer than 10 years of Service, in which event this Section 21.7 shall not be applied to reduce his annual benefit below the product of \$1,000 times his years of Service.

(h) In the case of an Employee with less than 10 years of participation in the Plan, the dollar limitation of Subsection 21.7(b) above shall be further reduced by multiplying it by a fraction (but not more than 1.0), the numerator of which is the Employee's years (and fractions thereof) of participation in the Plan (but not less than 1.0) and the denominator of which is 10; and in the case of an Employee with less than 10 years of Service, the percentage limitation of such subsection shall be further reduced by multiplying it by a fraction (but not more than 1.0), the numerator of which is the Employee's years of Service (and fractions thereof) (but not less than 1.0), and the denominator of which is 10. The foregoing provisions shall also apply

to any "change in benefit structure" to the extent required and as defined in regulations promulgated under Section 415(b)(5)(D) of the Code.

(i) The Annual Addition, if any, made to the Plan on behalf of any Participant shall not exceed the lesser of:

(1) \$30,000 (or such other amount as determined under Section 415(d)(1)(C) of the Code); or

(2) 25% of the Earnings paid to the Participant by the Company or a Participating Affiliate in that Plan Year. For purposes of this Section 21.7, Earnings shall not include the total of contributions made for such Participant under a cash or deferred arrangement pursuant to Section 401(k) of the Code, but shall include all amounts otherwise properly defined as Earnings.

For limitation years beginning after December 31, 1997, for purposes of applying the limitations of this Section 21.7, the term "Earnings" includes any elective deferral (as defined in Section 402(g)(3) of the Code), and any amount which is contributed or deferred by an Employer at the election of the Employee which is not includable in the gross income of the Employee by reason of Sections 125, 132(f)(4) or 457 of the Code. The term "Earnings" does not include the following:

(3) Any distributions from a plan of deferred compensation (other than amounts of deferred compensation received pursuant to an unfunded nonqualified plan in the taxable year such amounts are includable in the gross income of the Employee);

(4) Amounts realized from the exercise of a nonqualified stock option, or when restricted stock (or property) held by the Employee either become freely transferable or is no longer subject to a substantial risk of forfeiture;

(5) Amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option;

(6) Any contribution for medical benefits (within the meaning of Section 419A(f)(2) of the Code) after separation from service which is otherwise treated as an annual addition; and

(7) Any other amounts that receive special tax benefits.

(j) Adjustments for Other Forms of Benefit. Effective March 1, 2006, when a benefit is payable in any form other than a straight life annuity or a joint and survivor annuity, the equivalent annual benefit in the form of a straight life annuity shall be computed. The equivalent annual benefit in the form of a straight life annuity shall be the actuarial equivalent using Plan assumptions. In the case of a benefit payment subject to Section 417(e)(3) of the Code, the equivalent annual benefit shall be the greater of the equivalent annual benefit using the Applicable Mortality Table and the greatest of (i) 5.5 percent, (ii) the Applicable Interest Rate, or (iii) the rate that provides a benefit of not more than 105 percent of the benefit that would be provided if the Applicable Interest Rate were the interest rate assumption. Actuarial equivalence under Plan assumptions for annuity forms not subject to Section 417(e) of the Code shall be based on the Applicable Mortality Table and the

greatest of (iv) 5.5 percent, (v) the Applicable Interest Rate, or (vi) the rate that provides a benefit of not more than 105 percent of the benefit that would be provided if the Applicable Interest Rate were the interest rate assumption.

Transition Rule. In the case of any distribution after February 28, 2004 and before March 1, 2006, the amount payable in any form other than a straight life annuity or a qualified joint and survivor annuity with the Participant's spouse as beneficiary thereunder shall not be less than the amount that would have been so payable had the amount payable been determined using the Applicable Interest Rate in effect as of the last day of the last Plan Year beginning before January 1, 2006.

(k) The limitations of this Section 21.7 shall apply notwithstanding any other provision of the Plan to the contrary.

(l) Supersession of Section 21.7 by Article 26. Article 26 of the Plan supersedes the provisions of this Section 21.7, effective as of March 1, 2009, and such earlier dates as may be specified in Article 26.

21.8 The Trustees shall establish reasonable procedures to determine the status of domestic relations orders and to administer distributions under domestic relations orders which are deemed to be qualified orders. Such procedures shall be in writing and shall comply with the provisions of Section 414(p) of the Internal Revenue Code and regulations issued thereunder.

21.9 Reserved.

21.10 Coverage and Benefits of Certain Employees of Fund and Local Union.

(a) Eligibility for Plan Participation. Any person (i) who is not a Local Union member, but who is directly employed by the Fund or (ii) who is not a Local Union member, but who is directly employed by the Local Union shall be eligible to participate in the Plan and shall be a Member of the Plan.

(b) Future Service and Contributions.

(1) A person who is not a Local Union member, but who is directly employed by the Fund (a "Fund Employee") shall, with respect to periods of such employment, be credited with Hours Worked for the purpose of determining Future Service and with contributions made to the Fund on the Fund Employee's behalf from and after May 1, 1961, based on a per hour contribution rate that is the same proportion of the per hour contribution rate (as in effect from time to time) of "journeymen Employees" described in Section 3.1 as the Fund Employee's taxable hourly wage rate (as in effect from time to time) bears to such journeymen Employees' taxable hourly wage rate (as in effect from time to time), including the crediting of Hours Worked and contributions for overtime in the same manner as for such journeymen Employees. To the extent that a Fund Employee does not have an hourly wage rate, his taxable hourly wage rate shall be determined by dividing his weekly salary by the number of work hours in his standard work week.

(2) A person who is not a Local Union member, but who is directly employed by the Local Union (a "Union Employee") shall, with respect to periods of such employment be credited with Hours Worked for the purpose of determining Future Service and with contributions made to the Fund on the Union Employee's behalf on and after May 1, 1961, based on a per hour contribution rate that is the same proportion of the per hour contribution rate (as in effect from time to time) of "journeymen Employees" described in Section 3.1 as the Union Employee's taxable hourly wage rate (as in effect from time to time) bears to such journeymen Employees' taxable hourly wage rate (as in effect from time to time), including the crediting of Hours Worked and contributions for overtime in the same manner as for such journeymen Employees. To the extent that a Union Employee does not have an hourly wage rate, his taxable hourly wage rate shall be determined by dividing his weekly salary by the number of work hours in his standard work week.

(3) A person who is a Local Union member and who is directly employed by the Fund shall, with respect to periods of such employment, be credited with Hours Worked for the purpose of determining Future Service and with contributions made to the Fund on his behalf from and after May 1, 1961, based on the per hour contribution rate (as in effect from time to time) for "journeymen Employees" described in Section 3.1 and the number of hours in his standard work week (as in effect from time to time); provided,

however, that in no event shall the provisions of this paragraph result in any duplication of benefits or contribution requirements with respect to hours or contributions for periods ending on or before February 28, 1989.

(c) Employer Status. The Local Union and, with respect to their allocable shares, the Fund and the Bricklayers and Masons' Local Union No. 5, Ohio Health and Welfare Fund shall be considered employers and shall pay to the Fund their respective contributions for their employees.

(d) Overriding Provisions. The provisions of this action 21.10 shall apply notwithstanding anything to the contrary contained in the Trust Agreement or elsewhere in the Plan.

21.11 Eligible Rollover Distributions. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section 21.11, a Qualified Distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the distributee in a Direct Rollover.

Definitions.

(a) Eligible Rollover Distribution: An Eligible Rollover Distribution is any distribution of all or any portion of the balance of a Member's benefits under the Plan; provided, however, that an Eligible Rollover Distribution does not include: any distribution that is one of a series of substantially equal periodic payments made not less frequently than annually for the life or life expectancy of the Qualified Distributee or the joint lives or joint life expectancies of the Qualified Distributee and

the Qualified Distributee's designated Beneficiary or for a specific period of ten years or more; or any distribution to the extent such distribution is required under Section 401(a)(9) of the Code. A distributee may not have any portion of amounts excluded under the preceding sentence paid directly to an Eligible Retirement Plan. For distributions made after December 31, 2007, a participant may elect to roll over directly an eligible rollover distribution to a Roth IRA described in Code Section 408A(b).

(c) Eligible Retirement Plan: An Eligible Retirement Plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, or a qualified trust described in Section 401(a) of the Code that accepts rollovers. Effective for distributions made after December 31, 2001, an Eligible Retirement Plan shall also mean an annuity contract described in Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. This definition of Eligible Retirement Plan applies for distributions to a Qualified Distributee.

(d) Qualified Distributee: A Qualified Distributee is an Employee or former Employee, his surviving Spouse, or his Spouse or former Spouse who is the

alternate payee under a qualified domestic relations order as defined in Section 414(p) of the Code.

(e) Direct Rollover: A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan specified by the distributee.

21.12 Mandatory Withholding. In the event that a distributee shall fail to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan after December 31, 1992, the Plan Administrator (or the Trustee or other payor) shall withhold twenty percent (20%) of the amount not paid directly to an Eligible Retirement Plan as provided in Section 3405 of the Code, except that if the amount of the Eligible Rollover distribution in any taxable year of the distributee is less than \$200, no such withholding is required.

21.13 Retirement Protection Act of 1994 Provisions. Effective March 1, 2000, the following provisions shall apply notwithstanding any provision of the Plan to the contrary:

(a) RPA >94 Old Law Benefit is the Participant=s Accrued Benefit under the terms of the Plan as of February 29, 2000 (the ARPA >94 Freeze Date@), for the Annuity Starting Date and optional form and taking into account the limitations of Section 415 of the Code, as in effect on December 7, 1994, including the participation requirements under Section 415(b)(5) of the Code. In determining the amount of a Participant=s RPA >94 Old Law Benefit, the following shall be disregarded:

(i) any Plan amendment increasing benefits adopted after the RPA >94 Freeze Date; and

(ii) any cost of living adjustments that become effective after such date.

A Participant=s RPA >94 Old Law Benefit is not increased after the RPA >94 Freeze Date, but if the limitations of Section 415 of the Code, as in effect on December 7, 1994, are less than the limitations that were applied to determine the Participant=s RPA >94 Old Law Benefit on the RPA >94 Freeze Date, then the Participant=s RPA >94 Old Law Benefit will be reduced in accordance with such reduced limitation. If, at any date after the RPA >94 Freeze Date, the Participant=s total Plan benefit, before the application of Section 415 of the Code, is less than the Participant=s RPA >94 Old Law Benefit, the RPA >94 Old Law Benefit will be reduced to the Participant=s total Plan benefit.

In the case of an individual who was a Participant participating in one or more defined benefit plans of the Employer as of the first day of the first limitation year beginning after December 31, 1994, the application of the limitations of this Section shall not cause the maximum annual pension for such individual under all such defined benefit plans to be less than the individual=s Retirement Protection Act of 1994 (RPA >94) Old Law Benefit. The preceding sentence applies only if such defined benefit plans met the requirements of Section 415 of the Code on December 7, 1994.

(b) RPA >94 Protected Benefit. To the extent necessary, the Plan shall use Method 3 as described in Q&A 14 of Revenue Ruling 98-1 in applying the Section 415(b) of the Code limitations to a Participant=s benefits under the Plan.

(c) The final implementation date shall be February 29, 2000.

21.14 Military Service. Effective December 12, 1994, any provision of the Plan to the contrary notwithstanding, benefits and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Code.

21.15 Mandatory Distribution. With respect to distributions under the Plan made for calendar years beginning on or after January 1, 2001, the Plan will apply the minimum distribution requirements of Section 401(a)(9) of the Code in accordance with the regulations under Section 401(a)(9) that were proposed on January 17, 2001, notwithstanding any provision of the Plan to the contrary. This provision shall continue in effect until the end of the last calendar year beginning before the effective date of final regulations under Section 401(a)(9) of the Code or such other date as may be specified in guidance published by the Internal Revenue Service.

21.16 Increased Retirement and Survivor Benefits for Certain Retired and Disabled Members. Retirement and survivor benefits, respectively, under the Plan for Members who retired under conditions for Normal, Early, or Deferred Retirement prior to March 1, 2000, and surviving spouses of Members who so retired or died prior to March 1, 2000, and in each instance who are receiving benefits from the Plan on February 29, 2000, shall be increased, effective as of March 1, 2000, by 2% of the amount of benefit payable on February 29, 2000.

Retirement and survivor benefits under the Plan, respectively, for disabled Members whose Disability Benefits commenced prior to March 1, 2000, and surviving spouses of disabled Members whose Disability Benefits commenced prior to March 1, 2000, shall be increased, effective as of the date such disabled Member converts to an Early or Normal Retirement Benefit, or dies if earlier, by 2% of the amount of the benefit that would otherwise be payable to such Member or surviving spouse under the Plan on February 29, 2000.

21.17 Increased Retirement and Survivor Benefits for Certain Retired and Disabled Members. Retirement and survivor benefits, respectively, under the Plan for Members who retired under conditions for Normal, Early, or Deferred Retirement prior to March 1, 2001, and surviving spouses of Members who so retired or died prior to March 1, 2000, and in each instance who are receiving benefits from the Plan on February 28, 2001, shall be increased, effective as of March 1, 2001, by 1.3% of the amount of benefit payable on February 28, 2001.

Retirement and survivor benefits under the Plan, respectively, for disabled Members whose Disability Benefits commenced prior to March 1, 2001, and surviving spouses of

disabled Members whose Disability Benefits commenced prior to March 1, 2001, shall be increased, effective as of the date such disabled Member converts to an Early or Normal Retirement Benefit, or dies if earlier, by 1.3% of the amount of the benefit that would otherwise be payable to such Member or surviving spouse under the Plan on February 28, 2001.

## ARTICLE 22

### Employer Withdrawal Liability

#### 22.1 In General.

(a) An employer that withdraws from the Plan after April 28, 1980, in either a complete or partial withdrawal, shall owe and pay withdrawal liability to the Plan as determined under this Article 21 and ERISA, as amended by the MPPA Act.

(b) For purposes of this Article 22, all corporations and trades or business under common control, as defined in regulations promulgated by the Pension Benefit Guaranty Corporation ("PBGC"), are considered to be a single employer, and the entity resulting from a change in corporate structure or a change in the form of a business enterprise, as described in Section 4218(1) of ERISA, is considered to be the original employer.

#### 22.2 Complete Withdrawal Defined.

(a) A complete withdrawal occurs if:

(1) An employer ceases to have an obligation to contribute under the Plan, and

(2) the employer:

(A) continues to perform work in the jurisdiction of the collective bargaining agreement of the type for which contributions were previously required, or

(B) resumes such work within five years after the date on which the obligation to contribute under the Plan ceases, and does not renew the obligation to contribute at the time of the resumption.

(b) For this purpose, an employer's obligation to contribute is not considered to have ceased solely because:

(1) the employer is not, at the particular time, engaged in activity for which it has a contractual obligation to contribute, or

(2) the employer temporarily suspends contributions during a labor dispute involving its employees.

(c) The date of a complete withdrawal is the date of the cessation of the employer's obligation to contribute.

### 22.3 Amount of Liability for Complete Withdrawal.

(a) General. The amount of an employer's liability for a complete withdrawal will be its initial liability amount, reduced in accordance with subsection (g) of this Section 22.3. The amount will be determined as of the end of the Plan Year preceding the date of the employer's withdrawal.

(b) Initial Liability Amounts. The initial liability amount is:

(1) In the case of the employer that was obligated to contribute for any part of the Plan Year ending before September 25, 1980--

(A) its proportional share of the balance of the Plan's unfunded vested liability as of the end of the Plan Year ending before September 25, 1980, plus

(B) the sum of its proportional shares of the balances of the changes in the Plan's unfunded vested liability and of the reallocated liability amounts for each Plan Year that ended after September 25, 1980 and before the date of the employer's withdrawal.

(2) In the case of an employer that was first obligated to contribute after September 25, 1980, the sum of its proportional share of the balances of the changes in the Plan's unfunded vested liability and of the reallocated amounts for each Plan Year that ended after September 25, 1980 and before the date of the employer's withdrawal.

(c) Unfunded Vested Liability Defined.

(1) For purposes of this Article 22, the term "vested benefit" means a benefit for which a Member has satisfied the conditions for entitlement under the Plan (other than submission of a formal application, retirement or completion of a required waiting period) whether or not the

benefit may subsequently be reduced or suspended by a Plan amendment, by the occurrence of a condition, or operation of law, and whether or not the benefit is considered "vested" or "nonforfeitable" for any other purpose under the Plan.

(2) The Plan's liability for vested benefits as of a particular date is the actuarial present value of the vested benefits under this Plan, as of that date. Actuarial present value will be determined on the basis of methods and assumptions used to prepare the actuarial valuation of the Plan, as prepared by the Plan's enrolled actuary.

(3) The unfunded vested liability will be the amount, not less than zero, determined by subtracting the value of the Plan's assets from the Plan's liability for vested benefits. The Plan's assets are to be valued on the basis of rules adopted for this purpose by the Trustees upon recommendation of the Plan's enrolled actuary.

(d) Annual Change in Unfunded Vested Liability.

(1) The change in the Plan's unfunded vested liability for a Plan Year is the amount (which may be less than zero) determined by subtracting the unfunded vested liability as of the end of the Plan Year from the sum of:

(A) the balance (as of the end of the Plan Year) of the unfunded vested liability for the Plan Year ending before September 26, 1980, plus

(B) the sum of the balances (as of the end of the Plan Year) of the changes in the unfunded vested liability for each Plan Year that ended after September 25, 1980, and before the Plan Year for which the change is determined.

(2) The balance of the change in the Plan's unfunded vested liability for a Plan Year is the change in the Plan's unfunded vested liability for that year reduced by five percent (5%) of such amount for each succeeding complete Plan Year.

(e) Reallocated Liability Amount. For each Plan Year ended after September 25, 1980, the reallocated liability amount is:

(1) any amount of unfunded vested liability that the Trustees determine in the Plan Year to be uncollectible for reasons arising out of cases or proceedings under Title 11, United States Code, or similar proceedings;

(2) any amount of unfunded vested liability that the Trustees determine in the Plan Year will not be assessed as a result of the limitations on liability described in Sections 4209, 4219(c)(1)(B) or 4225 of ERISA against an employer to whom a notice of liability under Section 4219 of ERISA has been sent; and

(3) any amount that the Trustees determine to be uncollectible or unassessable in the Plan Year for other reasons under standards not inconsistent with such regulations as may be prescribed by the Pension Benefit Guaranty Corporation.

The balance of the reallocated liability amount for a Plan Year is the reallocated liability amount for that year reduced by five percent (5%) of such amount for each succeeding complete Plan Year.

(f) Assignment of Unfunded Liability to Employer that Has Withdrawn.

An employer's proportional share of the change in the unfunded vested liabilities and of the reallocated liability amount will be determined by multiplying each of those amounts, if any, as determined for a Plan Year by a fraction:

(1) the numerator of which is the total contributions that the employer was obligated to make to the Plan for the Plan Year and the four (4) preceding Plan Years;

(2) the denominator of which is the total employer contributions to the Plan for the Plan Year and the four (4) preceding Plan Years. The total employer contributions will be the employer contributions reported in the Plan's audited financial statement for that Plan Year.

(g) Limitations on the Amount of Withdrawal Liability.

(1) Deductible. From the initial liability amount, there shall be deducted the lesser of:

(A) \$50,000.

(B) 3/4 of 1.0% of the Plan's unfunded vested liability as of the end of the Plan Year preceding the employer's withdrawal, less the excess of the initial amount over \$100,000.

(C) The amount of initial liability remaining after application of paragraph 1 of this Section 22.3(g) shall be reduced, to the extent applicable, in accordance with Section 4219(c)(1)(B) of ERISA.

(2) The amount of initial liability remaining after application of paragraph (2) of this Section 22.3(g) shall be reduced in accordance with Section 4225 of ERISA, if and to the extent that the employer demonstrates that the limitations under that Section apply.

22.4 Satisfaction of Withdrawal Liability.

(a) Withdrawal liability shall be payable in installments, in accordance with Section 22.5. The total amount due in each 12-month period beginning on the date of the first installment shall be the product of:

(1) the highest rate at which the employer was obligated to contribute to the Plan in the Plan Year in which the withdrawal occurred and in the preceding nine Plan Years, multiplied by

(2) the employer's average annual contribution base units for the three consecutive Plan Years, within the ten consecutive Plan Years ending before the year in which the withdrawal occurred, during which the employer's contribution base units were the highest, except that the number of installments due in the final year shall be reduced to assure that the total payments will not exceed the employer's total amortized withdrawal liability.

(b) If, in connection with the employer's withdrawal, the Plan transfers benefit liabilities to another pension plan to which the employer will contribute, the employer's withdrawal liability shall be reduced in an amount equal to the value of the unfunded vested benefits that are transferred, determined as of the end of the Plan Year preceding the withdrawal on the same basis as the determination of the Plan's unfunded vested liability under Section 22.3.

22.5 Notice and Collection of Withdrawal Liability.

(a) General. Notice of withdrawal liability, reconsideration, and determination of the amortization period and of the maximum years of payment shall be as provided in Section 4219 of ERISA and in this Section 22.5.

(b) Arbitration. A dispute between an employer and the Plan concerning a determination of withdrawal liability shall be submitted to arbitration as provided in Section 4221 of ERISA, to be conducted in accordance with rules adopted by the Trustees not inconsistent with regulations of the PBGC. No issue concerning the computation of withdrawal liability may be submitted for arbitration unless the matter has been reviewed by the Plan in accordance with Section 4219(b)(2) of ERISA and any Plan rules adopted thereunder.

(c) Schedule of Payment.

(1) Withdrawal liability shall be paid in equal quarterly installments. Notwithstanding the pendency of any review, arbitration, or other proceedings, payment shall begin on the first day of the month that begins at least ten days after the date notice of, and demand for, payment is

sent to the employer. Interest shall accrue on any late payment from the date the payment was due until the date paid, at the rate described in subparagraph (d)(2) of this Section 22.5.

(2) If, following review, arbitration, or other proceedings, the amount of the employer's withdrawal liability is determined to be different from the amount set forth in the notice and demand, adjustment shall be made by reducing or increasing the total number of installment payments due. If the employer has paid more than the amount finally determined to be its withdrawal liability, the Plan shall refund the excess with interest at the rate used to determine the amortization period under Subsection (a) of this Section 22.5.

(d) Default.

(1) An employer is in default with respect to its withdrawal liability if:

(A) any installment is not paid when due,

(B) the Plan has notified the employer of its failure to pay the liability, and

(C) the employer has failed to pay the past-due installment within 60 days after notice of the late payment has been given.

(2) Interest shall be charged on any amount in default from the date the payment was due to the date it is paid at an annual rate equal to the prime rate charged by KeyBank, N.A. of Cleveland, Ohio on the first day of

the calendar quarter preceding the due date of the payment. For each succeeding 12-month period that any amount in default remains unpaid, interest shall be charged on the unpaid balance (including accrued interest) at the prime rate in effect on the anniversary date of the date as of which the initial interest rate was determined.

(3) In the case of a default on withdrawal liability, the Plan may require immediate payment of some or all installments that would otherwise be due in the future.

(4) In addition to the event described in subparagraph (d)(1) of this Section 22.5, an employer is in default if it is the subject of a petition under the Bankruptcy Code, or similar proceedings under state or other Federal laws, or substantially all of the employer's assets are sold, distributed, or transferred out of the jurisdiction of the State of Ohio.

(e) In any suit by the Trustees to collect withdrawal liability, including a suit to enforce an arbitrator's award and a claim asserted by the Trustees in an action brought by an employer or other party, if judgment is awarded in favor of the Plan, the employer shall pay to the Plan, in addition to the unpaid liability and interest thereon as determined under paragraph (d)(2) of this Section 22.5, liquidated damages equal to 20.0% of the unpaid amount awarded. The employer shall also pay attorneys' and accountants' fees and all costs incurred in the action, as awarded by the court. Nothing in this paragraph (e) of this Section 22.5 shall be construed as a waiver or limitation of the Plan's right to any other legal or equitable relief.

(f) Prepayment. An employer may prepay all or part of its withdrawal liability without penalty.

(g) Other Terms and Conditions. The Trustees may require that an employer post a bond or provide the Plan other security for payment of its withdrawal liability if:

(1) the employer's payment schedule would extend for longer than 18 months;

(2) the employer is the subject of a petition under the Bankruptcy Code, or similar proceedings under state or other Federal laws; or

(3) substantially all of the employer's assets are sold, distributed or transferred out of the jurisdiction of the State of Ohio.

#### 22.6 Partial Withdrawal Defined.

(a) A partial withdrawal occurs on the last day of the Plan Year in which the employer's work mix within the craft and area jurisdiction of a collective bargaining agreement under which it is obligated to contribute to the Plan shifts, with the result that no more than an insubstantial portion of such work remains covered under the Plan.

(b) Partial withdrawal shall be determined on the basis of the employer's work mix within a period of three consecutive Plan Years ("Test Period") compared to its work mix within the five Plan Years preceding the Test Period ("Base Period"). A partial withdrawal shall be deemed to have occurred if the hours of work on the

basis of which the employer has been obligated to contribute to the Plan are, for each of the three years in the Test Period:

(1) less than 30.0% of what they had been, on average, in the two Base Period years in which such hours had been highest, and

(2) less than 30.0% of the total work level (as measured by man-hours) of the employer of the type that is within the craft and area jurisdiction of the collective bargaining agreement under which the employer is obligated to contribute.

The employer's covered hours and total work level for any Plan Year ended by February 29, 1980 shall be deemed to be not greater than its covered hours and total work level for the Plan Year ended February 29, 1980.

#### 22.7 Partial Withdrawal Amount.

(a) Total Amount. The amount of an employer's liability for a partial withdrawal shall be its liability calculated under Section 22.3 as if the employer had withdrawn completely on the last day of the first year of the Test Period, multiplied by a fraction that is 1 minus a fraction:

(1) the numerator of which is the total hours for which the employer was obligated to contribute for the Plan Year following the Test Period, and

(2) the denominator of which is the average of the annual total hours for which the employer was obligated to contribute for each year in the Base Period.

(b) Annual Amount. The total amount due in a 12-month period with respect to a partial withdrawal shall be the amount determined as if for a complete withdrawal multiplied by the fraction described in paragraph (a) of this Section 22.7.

#### 22.8 Liability Adjustments and Abatement.

(a) Successive Withdrawals. If, after a partial withdrawal, an employer again incurs liability for a complete or partial withdrawal, the liability incurred as a result of the later withdrawal(s) shall be adjusted to the extent necessary to avoid duplication of liability.

(b) Abatement after Renewed or Increased Participation. If an employer that has withdrawn from the Plan later renews the obligation to contribute, or if an employer that has partially withdrawn later increases the share of its work in the craft and area jurisdiction of the collective bargaining agreement under which the employer is obligated to contribute to the Plan so that the portion of such work that is covered under the Plan is determined by the Trustees to be more than insubstantial, the unpaid balance of the employer's liability incurred on account of the earlier withdrawal or partial withdrawal shall be reduced in accordance with rules adopted by the Trustees pursuant to regulations of the PBGC.

22.9 Mass Withdrawal. Notwithstanding any other provision of this Article 22, if all or substantially all contributing employers withdraw from the Plan pursuant to an agreement or arrangement, as determined under Sections 4209 and 4219(c)(1)(D) of ERISA, the withdrawal liability of each such employer shall be adjusted in accordance with those ERISA Sections and Section 4203(b)(3) of ERISA.

22.10 Notice to Employer.

(a) Any notice that must be given to an employer under this Article 22 or under Subtitle E of Title IV of ERISA shall be effective if given to the specific member employer of a commonly controlled group of corporations that has or has had the obligation to contribute under the Plan.

(b) Notice shall also be given to any other member of the controlled group that the employer identifies and designates to receive notices hereunder in accordance with a procedure adopted by the Trustees.

22.11 Non-Construction Contributors.

(a) Sections 22.2, 22.6, and 22.7 do not apply to an employer that is not a construction contributor. For this purpose, an employer is a "construction contributor" if substantially all the employees with respect to whom the employer has an obligation to contribute under the Plan perform work in the building and construction industry.

(b) In the case of an employer that is not a construction contributor, whether a withdrawal or partial withdrawal has occurred, and the liability and payments for a partial withdrawal will be determined in accordance with the applicable provisions of sections 4203, 4205, 4208, and 4219 of ERISA.

## ARTICLE 23

### Pro Rata Pensions

23.1 Purpose. Pro Rata Pensions are provided under this Plan for Employees who would otherwise lack sufficient service credit to be eligible for any pension because their years of employment were divided between Pension Plans or, if eligible, whose pensions would be less because of such division of employment.

23.2 Home Pension Plan. The Trustees recognize as the Home Pension Plan, that Plan which has executed the International Reciprocal Agreement for Bricklayers Pension Funds and which was established in part by the local union in which an Employee holds or has applied for membership or by which an Employee was first represented.

In the case of an Employee who holds or has applied for membership in or who was first represented by a local union which is not a sponsor of or a participant in a signatory Pension Fund, the applicable Home Pension Plan shall be the first signatory Pension Fund into which contributions were made on behalf of such Employee.

The designation of a Home Pension Plan may be changed:

(a) By a Member if he transfers his membership to another local union which participates in a signatory Pension Fund by giving a notice both to his former and new Home Pension Plans on a form approved by the Review Committee.

(b) By any other Employee if he has worked at least two years in the jurisdiction of a local union which participates in a signatory Pension Fund by giving notice to his former and new Home Pension Plans on a form approved by the Review Committee.

23.3 Related Plans. The Trustees recognize one or more other Plans of Pension Funds which have executed the International Reciprocal Agreement for Bricklayers Pension Funds and which have adopted Exhibit A of such Reciprocal Agreement as a Related Plan.

23.4 Related Service Credits. Related Service Credits shall be determined in accordance with the provisions of the Related Pension Plan except that no year after the effective date for contributions to such Plan shall constitute a year of Related Service Credit for purposes of this Article unless it is based on at least 500 hours of employment for which contributions are required to be paid to the Related Plan.

Such Related Service Credit including service credits earned before the effective date of this Agreement to the extent creditable under this Plan shall be recognized as Related Service Credits. The Trustees of the Related Plan shall certify to this Plan the amount of such Related Service Credits which have been earned and credited under the Related Plan.

23.5 Combined Service Credit. The total of an employee's service credit under this Plan and Related Service Credit together comprises the employee's Combined Service Credit. Not more than one year of Combined Service Credit shall be counted in any Plan year.

It is not the intent of the Reciprocal Agreement to grant duplicate service credit under two or more Related Plans for the same period of covered employment. Therefore, an exception to the definition of Related Service Credits shall be made in the case of service credits earned simultaneously for covered employment in a local union jurisdiction for which contributions are made to both a signatory local Pension Fund and the Bricklayers and Trowel Trades International Pension Fund. In such case, such service shall not be considered

to be Related Service Credits between the Plan of the signatory Local Union Pension Fund and the Plan of the Bricklayers and Trowel Trades International Pension Fund.

23.6 Eligibility. An Employee shall be eligible for a pro rata pension under this Plan if he satisfies all of the following requirements:

(a) He would be eligible for any type of pension under this Plan (other than a pro rata pension) if his Combined Service Credit were treated as Service Credit under this plan; and

(b) In addition to any other requirements necessary to be eligible under (a), he has, under this Plan, at least one year of Service Credit based on at least 500 hours of employment for which contributions were payable to this Fund; and

(c) He is found to be eligible for a pro rata pension from this Plan and a Related Plan.

23.7 Breaks in Service. In applying the rules of this Plan with respect to cancellation of Service Credit, any period in which an Employee has earned Related Service Credit shall not be counted in determining whether there has been a period of no covered employment sufficient to constitute a break in service.

23.8 Non-Duplication. In order to receive a pro rata pension from this Plan an Employee must waive his right to receive any other pension under this Plan.

23.9 Pro Rata Pension Amount. The amount of the pro rata pension payable by each signatory Pension Fund under which an Employee qualifies for a pension shall be the benefit amount he accrued under that Plan during the period he earned service credit under that Plan.

23.10 Payment of Pro Rata Pensions. The payment of a pro rata pension shall be subject to all of the conditions contained in this Plan applicable to all other types of pensions, including, but not limited to, retirement as herein defined and timely application. Pro rata pension payments subject to this Article shall be limited to monthly pension payments to a pensioner or to monthly payments to the survivor of a pensioner.

23.11 Applies to Pension Benefits Only. This Article applies to pension benefits only. It shall not apply to death benefits, termination benefits or any variation thereof.

23.12 Limited Transfer of Contributions. Notwithstanding any other provisions of this Article to the contrary, an Employee whose Home Pension Plan is signatory to Exhibit A only or both Exhibit A and Exhibit B works in the jurisdiction of a Plan signatory only to Exhibit A shall have all contributions made on his behalf to said Plan transferred to his Home Pension Plan if at the end of any three calendar year period, or at time of death or retirement if earlier, such Employee has not earned a total of at least one year of Pension Credit based on at least 500 hours in said Fund. Once an Employee has earned at least one year of Pension Credit based upon at least 500 hours, no contributions shall be transferred.

For purposes of this section, in the event the local union in which an Employee holds or has applied for membership or which first represented such Employee participates in both a Local Pension Plan and the Bricklayers and Trowel Trades International Pension Plan, both Plans shall be considered to be Home Pension Plans if they have adopted Exhibit A only or Exhibit A and Exhibit B and the Employee works in the jurisdiction of a Plan signatory only to Exhibit A and contributions shall be transferred to such Plans under a proportionate allocation determined according to the contribution rates then in effect under such Plans.

## ARTICLE 24

### Minimum Distribution Requirements Beginning with the 2003 Calendar Year

#### 24.1 General Rules.

(a) Effective Date. Subject to Article 9, the provisions of this Article 24 will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.

(b) Precedence. The requirements of this Article 24 will take precedence over any inconsistent provisions of the Plan.

(c) Requirements of Treasury Regulations Incorporated. All distributions required under this Article 24 will be determined and made in accordance with Section 401(a)(9) of the Code, including the incidental death benefit requirements in Section 401(a)(9)(G) and the Treasury regulations thereunder.

(d) TEFRA Section 242(b) (2) Elections. Notwithstanding the other provisions of this Article 24, other than Section 24.1(d), and subject to Article 9, distributions on behalf of any Employee, including a 5-percent owner, who has made a designation under Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (a “Section 242(b)(2) election”) may be made in accordance with all of the following requirements (regardless of when such distribution commences):

(1) The distribution by the Plan is one which would not have disqualified the Plan under Section 401(a)(9) of the Code as in effect prior to amendment by the Deficit Reduction Act of 1984.

(2) The distribution is in accordance with a method of distribution designated by the Employee whose interest in the Plan is being distributed or, if the Employee is deceased, by a beneficiary of such Employee.

(3) Such designation was in writing, was signed by the Employee or the beneficiary, and was made before January 1, 1984.

(4) The employee had accrued a benefit under the plan as of December 31, 1983.

(5) The method of distribution designated by the Employee or the beneficiary specifies the time at which distribution will commence, the period over which distributions will be made, and in the case of any distribution upon the Employee's death, the beneficiaries of the Employee listed in order of priority.

A distribution upon death will not be covered by this transitional rule unless the information in the designation contains the required information described above with respect to the distributions to be made upon the death of the Employee.

For any distribution which commences before January 1, 1984, but continues after December 31, 1983, the Employee, or the beneficiary to whom such distribution is being made, will be presumed to have designated the method of distribution under which the distribution is being made if the method of distribution was specified in writing and the distribution satisfies the requirements in paragraphs (1) and (5) above.

24.2 Time and Manner of Distribution.

(a) Required Beginning Date. The Employee's entire interest will be distributed, or begin to be distributed, to the Employee no later than the Employee's Required Beginning Date.

(b) Death of Employee Before Distributions Begin. If the Employee dies before distributions begin, the Employee's entire interest will be distributed, or begin to be distributed, no later than as follows:

(1) If the Employee's surviving spouse is the Employee's sole Designated Beneficiary, then, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Employee died, or by December 31 of the calendar year in which the Employee would have attained age 70-1/2, if later.

(2) If the Employee's surviving spouse is not the Employee's sole Designated Beneficiary, then, distributions to the Designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Employee died.

(3) If there is no Designated Beneficiary as of September 30 of the year following the year of the Employee's death, the Employee's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Employee's death.

(4) If the Employee's surviving spouse is the Employee's sole Designated Beneficiary and the surviving spouse dies after the Employee but

before distributions to the surviving spouse begin, this Section 24.2(b), other than Section 24.2(b)(1), will apply as if the surviving spouse were the Employee.

For purposes of this Section 24.2(b) and Section 24.5 hereof, unless Section 24.2(b)(4) applies, distributions are considered to begin on the Employee's Required Beginning Date. If Section 24.2(b)(4) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 24.2(b)(1). If distributions under an annuity meeting the requirements of this Article 24 commence to the Employee before the Employee's Required Beginning Date (or to the Employee's surviving spouse before the date distributions are required to begin to the surviving spouse under Section 24.2(b)(1)), the date distributions are considered to begin is the date distributions actually commence.

(c) Form of Distribution. Unless the Employee's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first distribution calendar year distributions will be made in accordance with Sections 24.3, 24.4 and 24.5 hereof. If the Employee's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a) (9) of the Code and the Treasury regulations thereunder. Any part of the Employee's interest which is in the form of an individual account described in Section 414(k) of the Code will be distributed in a manner

satisfying the requirements of Section 401(a)(9) of the Code and Section 1.401(a)(9) of the Treasury regulations that apply to individual accounts.

24.3 Determination of Amount to be Distributed Each Year.

(a) General Annuity Requirements. If the Employee's interest is paid in the form of annuity distributions under the Plan, payments under the annuity will satisfy the following requirements:

(1) the annuity distributions will be paid in periodic payments made at intervals not longer than one year;

(2) the distribution period will be over a life (or lives) or over a period certain not longer than the period described in Sections 24.4 or 24.5 hereof;

(3) once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted;

(4) payments will either be non-increasing or increase only as follows:

(A) by an annual percentage increase that does not exceed the annual percentage increase in an eligible cost-of-living index for a 12-month period ending in the year during which the increase occurs or a prior year;

(B) to the extent of the reduction in the amount of the Employee's payments to provide for a survivor benefit upon death,

but only if the beneficiary whose life was being used to determine the distribution period described in Section 24.4 dies or is no longer the Employee's beneficiary pursuant to a qualified domestic relations order within the meaning of Section 414(p) of the Code;

(C) to provide cash refunds of Employee contributions upon the Employee's death; or

(D) to pay increased benefits that result from a Plan amendment.

(b) Amount Required to be Distributed by Required Beginning Date and Later Payment Intervals. The amount that must be distributed on or before the Employee's Required Beginning Date (or, if the Employee dies before distributions begin, the date distributions are required to begin under Sections 24.2(b)(1) or (2) hereof) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the Employee's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Employee's Required Beginning Date.

(c) Additional Accruals After First Distribution Calendar Year. Any additional benefits accruing to the Employee in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval

ending in the calendar year immediately following the calendar year in which such amount accrues.

24.4 Requirements For Annuity Distributions That Commence During Employee's Lifetime.

(a) Joint Life Annuities Where the Contingent Annuitant Is Not the Employee's Spouse. If the Employee's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the Employee and a non-spouse Contingent Annuitant, annuity payments to be made on or after the Employee's Required Beginning Date to the Designated Beneficiary after the Employee's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the Employee using the table set forth Section 1.401(a)(9)-6, Q&A-2, of the Treasury regulations in the manner described in Q&A-2(c)(1) of the Treasury regulations to determine the applicable percentage. If the form of distribution combines a joint and survivor annuity for the joint lives of the Employee and a non-spouse Contingent Annuitant and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the Designated Beneficiary after the expiration of the period certain.

(b) Period Certain Annuities. Unless the Employee's spouse is the sole Designated Beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the Employee's lifetime may not exceed the applicable distribution period for the Employee under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations for the calendar year that contains the annuity starting date. If

the annuity starting date precedes the year in which the Employee reaches age 70, the applicable distribution period for the Employee is the distribution period for age 70 under the Uniform Lifetime Table set forth in Section 1.401(a) (9)-9, Q&A-2, of the Treasury regulations plus the excess of 70 over the age of the Employee as of the Employee's birthday in the year that contains the annuity starting date. If the Employee's spouse is the Employee's sole Designated Beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the Employee's applicable distribution period, as determined under this Section 24.4(b), or the joint life and last survivor expectancy of the Employee and the Employee's spouse as determined under the Joint and Last Survivor Table set forth in Section 1.401(a) (9)-9, Q&A-3, of the Treasury regulations, using the Employee's and spouse's attained ages as of the Employee's and spouse's birthdays in the calendar year that contains the annuity starting date.

24.5 Requirements For Minimum Distributions Where Employee Dies Before Date Distributions Begin.

(a) Employee Survived by Designated Beneficiary. If the Employee dies before the date distribution of his or her interest begins and there is a Designated Beneficiary, the Employee's entire interest will be distributed, beginning no later than the time described in Sections 24.2(a) or (b), over the life of the Designated Beneficiary or over a period certain not exceeding:

- (1) unless the annuity starting date is before the first distribution calendar year, the life expectancy of the Designated Beneficiary determined

using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the Employee's death; or

(2) if the annuity starting date is before the first distribution calendar year, the life expectancy of the Designated Beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.

(b) No Designated Beneficiary. If the Employee dies before the date distributions begin and there is no Designated Beneficiary as of September 30 of the year following the year of the Employee's death, distribution of the Employee's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Employee's death.

(c) Death of Surviving Spouse Before Distributions to Surviving Spouse Begin. If the Employee dies before the date distribution of his or her interest begins, the Employee's surviving spouse is the Employee's sole Designated Beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, this Section 24.5 will apply as if the surviving spouse were the Employee, except that the time by which distributions must begin will be determined without regard to Section 24.2(b)(1) hereof.

(d) Limits on Distribution Periods. As of the first distribution calendar year, distributions to a Participant, if not made in a single sum, may only be made over one of the following periods:

(1) the life of the Participant,

- (2) the joint lives of the Participant and a designated beneficiary,
- (3) a period certain not extending beyond the life expectancy of the Participant, or
- (4) a period certain not extending beyond the joint life and last survivor expectancy of the Participant and a designated beneficiary.

24.6 Requirements For Minimum Distributions After Employee's Death.

(a) Death After Distributions Begin. If the Employee dies after distribution of his interest begins in the form of an annuity meeting the requirements of this Article 24, the remaining portion of the Employee's interest will continue to be distributed over the remaining period over which distributions commenced.

(b) Death Before Distributions Begin.

(1) Employee Survived by Designated Beneficiary. If the Employee dies before the date distribution of his interest begins and there is a designated beneficiary, the Employee's entire interest will be distributed, beginning no later than the time described in Section 24.2(b)(1) or (2), over the life of the designated beneficiary or over a period certain not exceeding:

(i) unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the Employee's death; or

(ii) if the annuity starting date is before the first distribution calendar year, the life expectancy of the designated

beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.

(2) No Designated Beneficiary. If the Employee dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the Employee's death, distribution of the Employee's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Employee's death.

(3) Death of Surviving Spouse Before Distributions to Surviving Spouse Begin. If the Employee dies before the date distribution of his or her interest begins, the Employee's surviving spouse is the Employee's sole designated beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, this Section 3 will apply as if the surviving spouse were the Employee, except that the time by which distributions must begin will be determined without regard to section 24.2(b)(1).

#### 24.7 Definitions.

(a) Designated Beneficiary. The individual who is designated as the beneficiary under Articles 9 or 10 of the Plan and is the Designated Beneficiary under Section 401(a)(9) of the Code and Section 1.401(a)(9)-4 of the Treasury Regulations.

(b) Distribution Calendar Year. A calendar year for which a minimum distribution is required. For distributions beginning before the Employee's death, the

first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Employee's Required Beginning Date. For distributions beginning after the Employee's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to Section 24.2(b) hereof.

(c) Eligible Cost-of-Living Index. An index described in paragraph (b)(2), (b)(3), or (b)(4) of Section 1.401(a)(9)-6, Q&A-14, of the Treasury regulations.

(d) Life Expectancy. Life expectancy as computed by use of the Single Life Table in Section 1.401 (a) (9)-9 of the Treasury regulations.

(e) Required Beginning Date. An Employee's required beginning date is the first day of April following the calendar year in which he attains age 70 ½. Distribution to an Employee shall commence no later than the Employee's required beginning date, and unless the Member otherwise elects, in no event later than the time specified by Section 401(a)(14) of the Code and the Treasury regulations thereunder.

## ARTICLE 25

### Non-Spousal Rollovers

#### 25.1 Effective Date of Article.

The provisions of this Article are effective for distribution made on or after January 1, 2010.

### 25.2 Non-Spouse Beneficiary Rollover Right.

For distributions on or after January 1, 2010, a non-spouse beneficiary who is a "designated beneficiary" under Section 401(a)(9)(E) of the Code and the regulations thereunder, by a direct trustee-to-trustee transfer ("direct rollover"), may roll over all or any portion of his or her distribution to an individual retirement account the beneficiary establishes for purposes of receiving the distribution. In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of an Eligible Rollover Distribution. If a non-spouse beneficiary receives a distribution from the Plan, the distribution is not eligible for a "60-day" rollover.

### 25.3 Trust Beneficiary.

If the Member's named beneficiary is a trust, the Plan may make a direct rollover to an individual retirement account on behalf of the trust, provided the trust satisfies the requirements to be a designated beneficiary within the meaning of Section 401(a)(9)(E) of the Code.

25.4 Required Minimum Distributions not Eligible for Rollover.

A non-spouse beneficiary may not roll over an amount which is a required minimum distribution, as determined under applicable Treasury regulations and other Revenue Service guidance. If the Member dies before his or her required beginning date and the non-spouse beneficiary rolls over to an IRA the maximum amount eligible for rollover, the beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to Treas. Reg. §1.401(a)(9)-3, A-4(c), in determining the required minimum distributions from the IRA that receives the non-spouse beneficiary's distribution.

ARTICLE 26

Limitations Under Section 415 of the Code

26.1 In General.

The limitations of this Article 26 shall apply in Limitation Years beginning on or after July 1, 2007, except as otherwise provided herein.

26.2 Limitations.

The Annual Benefit otherwise payable to a Member under the Plan at any time shall not exceed the Maximum Permissible Benefit. If the benefit the Member would otherwise accrue in a Limitation Year would produce an Annual Benefit in excess of the Maximum Permissible Benefit, the benefit shall be limited (or the rate of accrual reduced) to a benefit that does not exceed the Maximum Permissible Benefit.

26.3 Participation in Other Plan of Contributing Employer.

If the Member is, or has ever been, a Member in another qualified defined benefit plan (without regard to whether the plan has been terminated), other than another multiemployer plan, maintained by his employer or a predecessor employer, the sum of the Member's Annual Benefits from all such plans may not exceed the Maximum Permissible Benefit.

26.4 Limitation on Effect of Article.

The application of the provisions of this Article 26 shall not cause the Maximum Permissible Benefit for any Member to be less than the Member's benefit under the Plan as of the end of the last Limitation Year beginning before July 1, 2007 under provisions of the Plan that were both adopted and in effect before April 5, 2007. The preceding sentence applies only if the provisions of the Plan that were both adopted and in effect before April 5, 2007 satisfied the applicable requirements of statutory provisions, regulations, and other published guidance relating to Section 415 of the Code in effect as of the end of the last Limitation Year beginning before July 1, 2007, as described in § 1.415(a)-1(g)(4) of the Treasury regulations.

26.5 Compliance with Other Rules.

The limitations of this Article shall be determined and applied taking into account the rules in Section 26.7.

26.6 Definitions.

(a) Annual Benefit.

A benefit that is payable annually in the form of a straight life annuity. Except as provided below, where a benefit is payable in a form other than a straight life annuity, the benefit shall be adjusted to an actuarially equivalent straight life annuity that begins at the same time as such other form of benefit and is payable on the first day of each month, before applying the limitations of this Article 26. For a Member who has or will have distributions commencing at more than one annuity starting date, the Annual Benefit shall be determined as of each such annuity starting date (and shall satisfy the limitations of this Article 26 as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other annuity starting dates. For this purpose, the determination of whether a new annuity starting date has occurred shall be made without regard to § 1.401(a)-20, Q&A 10(d), and with regard to § 1.415(b)1(b)(1)(iii)(B) and (C) of the Treasury regulations.

No actuarial adjustment to the benefit shall be made for (a) survivor benefits payable to a surviving spouse under a qualified joint and survivor annuity to the extent such benefits would not be payable if the Member's benefit were paid in another form; (b) benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and post-retirement medical benefits); or (c) the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to

Section 417(e)(3) of the Code and would otherwise satisfy the limitations of this Article 26, and the Plan provides that the amount payable under the form of benefit in any Limitation Year shall not exceed the limits of this Article 26 applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d) of the Code. For this purpose, an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

The determination of the Annual Benefit shall take into account social security supplements described in Section 411(a)(9) of the Code and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant to § 1.411(d)-4, Q&A-3(c), of the Treasury regulations, but shall disregard benefits attributable to employee contributions or rollover contributions.

Effective for distributions in Plan years beginning after December 31, 2003, the determination of actuarial equivalence of forms of benefit other than a straight life annuity shall be made in accordance with Section 26.6(i) or Section 26.6(ii).

- (i) Benefit Forms Not Subject to Section 417(e)(3): The straight life annuity that is actuarially equivalent to the Member's form of benefit shall be determined under this Section 26.6(a)(i) if the form of the Member's benefit is either (1) a nondecreasing annuity (other than a straight life annuity) payable for a period of not less than the life of the Member (or, in the case of a qualified pre-retirement survivor annuity, the life of the surviving spouse), or (2) an annuity that decreases during the life of the Member merely because

of (a) the death of the survivor annuitant (but only if the reduction is not below 50% of the benefit payable before the death of the survivor annuitant), or (b) the cessation or reduction of Social Security supplements or qualified disability payments (as defined in Section 401(a)(11) of the Code).

(A) Limitation Years beginning before July 1, 2007. For Limitation Years beginning before July 1, 2007, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Member's form of benefit computed using whichever of the following produces the greater annual amount. (I) the interest rate specified in Section 26.9 of the Plan and the mortality table specified in Section 26.9 of the Plan for adjusting benefits in the same form; and (II) a 5 percent interest rate assumption and the applicable mortality table defined in Section 26.9 of the Plan for that annuity starting date.

(B) Limitation Years beginning on or after July 1, 2007. For Limitation Years beginning on or after July 1, 2007, the actuarially equivalent straight life annuity is equal to the greater of (1) the annual amount of the straight life annuity (if any) payable to the Member under the Plan commencing at the same annuity starting date as the Member's form of benefit; and (2) the annual amount of the straight life annuity commencing at the same annuity starting date that has the

same actuarial present value as the Member's form of benefit, computed using a 5 percent interest rate assumption and the applicable mortality table defined in Section 26.9 of the Plan for that annuity starting date.

(ii) Benefit Forms Subject to Section 417(e)(3). The straight life annuity that is actuarially equivalent to the Member's form of benefit shall be determined under this paragraph if the form of the Member's benefit is other than a benefit form described in Section 26.6(a)(i). In this case, the actuarially equivalent straight life annuity shall be determined as follows:

(A) Annuity Starting Date in Plan Years Beginning After 2005. If the annuity starting date of the Member's form of benefit is in a Plan year beginning after 2005, the actuarially equivalent straight life annuity is equal to the greatest of: (I) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Member's form of benefit, computed using the interest rate specified in Section 26.9 of the Plan and the mortality table specified in Section 26.9 of the Plan and for adjusting benefits in the same form; (II) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Member's form of benefit, computed using a 5.5 percent interest rate assumption and the applicable mortality table defined in Section 26.9 of the Plan; and

(III) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Member's form of benefit, computed using the applicable interest rate defined in Section 26.9 of the Plan and the applicable mortality table defined in Section 26.9 of the Plan, divided by 1.05.

(B) Annuity Starting Date in Plan Years Beginning in 2004 or 2005. If the annuity starting date of the Member's form of benefit is in a Plan year beginning in 2004 or 2005, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Member's form of benefit computed using whichever of the following produces the greater annual amount: (I) the interest rate specified in Section 26.9 of the Plan and the mortality table specified in Section 26.9 of the Plan for adjusting benefits in the same form; and (II) a 5.5 percent interest rate assumption and the applicable mortality table defined in Section 26.9 of the Plan.

If the annuity starting date of the Member's benefit is on or after the first day of the first Plan year beginning in 2004 and before December 31, 2004, the application of this Section 6.1(b)(ii) shall not cause the amount payable under the Member's form of benefit to be less than the benefit calculated under the Plan, taking into account the

limitations of this Article 26, except that the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the Member's form of benefit, computed using whichever of the following produces the greatest annual amount:

- (I) the interest rate specified in Section 26.9 of the Plan and the mortality table specified in Section 26.9 of the Plan for adjusting benefits in the same form;
- (II) the applicable interest rate defined in Section 26.9 of the Plan and the applicable mortality table defined in Section 26.9 of the Plan; and
- (III) the applicable interest rate defined in Section 26.9 of the Plan (as in effect on the last day of the last Plan year beginning before January 1, 2004, under provisions of the Plan then adopted and in effect) and the applicable mortality table defined in Section 26.9 of the Plan.

- (b) Reserved.
- (c) Reserved.
- (d) Defined Benefit Dollar Limitation.

Effective for Limitation Years ending after December 31, 2001, the Defined Benefit Dollar Limitation is \$160,000, automatically adjusted under Section 415(d)

of the Code, effective January 1 of each year, as published in the Internal Revenue Bulletin, and payable in the form of a straight life annuity. The new limitation shall apply to Limitation Years ending with or within the calendar year of the date of the adjustment, but a Member's benefits shall not reflect the adjusted limit prior to January 1 of that calendar year.

- (e) Reserved.
- (f) Reserved.
- (g) Reserved.
- (h) Limitation Year.

The Limitation Year shall be the calendar year.

- (i) Maximum Permissible Benefit.

The Defined Benefit Dollar Limitation (adjusted where required, as provided below).

(A) Adjustment for Less Than 10 Years of Participation or Service. If the Member has fewer than 10 years of participation in the Plan, the Defined Benefit Dollar Limitation shall be multiplied by a fraction, -- (i) the numerator of which is the number of Years (or part thereof, but not less than one year) of Participation in the Plan, and (ii) the denominator of which is 10.

(B) Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement before Age 62 or after Age 65. Effective for benefits commencing in Limitation Years ending after December 31, 2001, the Defined Benefit Dollar Limitation shall be adjusted if the annuity starting date of the Member's benefit is before age 62 or after age 65. If the annuity

starting date is before age 62, the Defined Benefit Dollar Limitation shall be adjusted under Section 26.6(i)(B)(1), as modified by Section 26.6(i)(B)(3). If the annuity starting date is after age 65, the Defined Benefit Dollar Limitation shall be adjusted under Section 26.6(i)(B)(2), as modified by Section 26.6(i)(B)(3).

(1) Adjustment of Defined Benefit Dollar Limitation for Benefit

Commencement before Age 62.

(I) Limitation Years Beginning Before July 1, 2007. If the annuity starting date for the Member's benefit is prior to age 62 and occurs in a Limitation Year beginning before July 1, 2007, the Defined Benefit Dollar Limitation for the Member's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Member's annuity starting date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted under Section 26.6(i)(A) for years of participation less than 10, if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (1) the factor specified in Section 6.4(b); or (2) a 5-percent interest rate assumption and the applicable mortality table as defined in Section 26.9 of the Plan.

(II) Limitation Years Beginning on or After July 1, 2007.

A. Plan Does Not Have Immediately Commencing Straight Life Annuity Payable at Both Age 62 and the Age of Benefit

Commencement. If the annuity starting date for the Member's benefit is prior to age 62 and occurs in a Limitation Year beginning on or after July 1, 2007, and the Plan does not have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the Defined Benefit Dollar Limitation for the Member's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Member's annuity starting date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted under Section 26.6(i)(A) for years of participation less than 10, if required) with actuarial equivalence computed using a 5 percent interest rate assumption and the applicable mortality table for the annuity starting date as defined in Section 26.9 of the Plan (and expressing the Member's age based on completed calendar months as of the annuity starting date).

B. Plan Has Immediately Commencing Straight Life Annuity Payable at Both Age 62 and the Age of Benefit Commencement. If the annuity starting date for the Member's benefit is prior to age 62 and occurs in a Limitation Year beginning on or after July 1, 2007, and the Plan has an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the Defined Benefit Dollar Limitation for the Member's annuity starting date is the lesser of the limitation determined under Section

26.6(i)(B)(II)A and the Defined Benefit Dollar Limitation (adjusted under Section 26.6(i)(A) for years of participation less than 10, if required) multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under the Plan at the Member's annuity starting date to the annual amount of the immediately commencing straight life annuity under the Plan at age 62, both determined without applying the limitations of this Article 26.

(2) Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement after Age 65.

(I) Limitation Years Beginning Before July 1, 2007. If the annuity starting date for the Member's benefit is after age 65 and occurs in a Limitation Year beginning before July 1, 2007, the Defined Benefit Dollar Limitation for the Member's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Member's annuity starting date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted under Section 26.6(i)(A) for years of participation less than 10, if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (1) the factor specified in Section 6.4(b); or (2) a 5-percent interest rate assumption and the applicable mortality table as defined in Section 26.9 of the Plan.

(II) Limitation Years Beginning Before July 1, 2007.

A. Plan Does Not Have Immediately Commencing Straight Life Annuity Payable at Both Age 65 and the Age of Benefit Commencement. If the annuity starting date for the Member's benefit is after age 65 and occurs in a Limitation Year beginning on or after July 1, 2007, and the Plan does not have an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the Defined Benefit Dollar Limitation at the Member's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Member's annuity starting date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted under Section 26.6(i)(A) for years of participation less than 10, if required), with actuarial equivalence computed using a 5 percent interest rate assumption and the applicable mortality table for that annuity starting date as defined in Section 26.9 of the Plan (and expressing the Member's age based on completed calendar months as of the annuity starting date).

B. Plan Has Immediately Commencing Straight Life Annuity Payable at Both Age 65 and the Age of Benefit Commencement. If the annuity starting date for the Member's benefit is after age 65 and occurs in a Limitation Year beginning on or after July 1, 2007, and the Plan has an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the Defined Benefit Dollar Limitation at the

Member's annuity starting date is the lesser of the limitation determined under Section 26.6(i)(B)(II)A and the Defined Benefit Dollar Limitation (adjusted under Section 26.6(i)(A) for years of participation less than 10, if required) multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the Plan at the Member's annuity starting date to the annual amount of the adjusted immediately commencing straight life annuity under the Plan at age 65, both determined without applying the limitations of this Article 26. For this purpose, the adjusted immediately commencing straight life annuity under the Plan at the Member's annuity starting date is the annual amount of such annuity payable to the Member, computed disregarding the Member's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing straight life annuity under the Plan at age 65 is the annual amount of such annuity that would be payable under the Plan to a hypothetical Member who is age 65 and has the same accrued benefit as the Member.

- (3) Notwithstanding the other requirements of this Section 26.6(i)(B), no adjustment shall be made to the Defined Benefit Dollar Limitation to reflect the probability of a Member's death between the annuity starting date and age 62, or between age 65 and the annuity starting date, as applicable, if benefits are not forfeited upon the death of the Member prior to the annuity starting date. To the

extent benefits are forfeited upon death before the annuity starting date, such an adjustment shall be made. For this purpose, no forfeiture shall be treated as occurring upon the Member's death if the Plan does not charge Members for providing a qualified preretirement survivor annuity, as defined in Section 417(c) of the Code, upon the Member's death.

(iii) Minimum Benefit Permitted. Notwithstanding anything else in this Section 26.6(i) to the contrary, the benefit otherwise accrued or payable to a Member under this Plan shall be deemed not to exceed the Maximum Permissible Benefit if:

(1) the retirement benefits payable for a Limitation Year under any form of benefit with respect to such Member under this Plan and, except as provided in paragraph (3) below, under all other defined benefit plans (without regard to whether a plan has been terminated) ever maintained by a employer maintaining the Plan do not exceed \$10,000 multiplied by a fraction (I) the numerator of which is the Member's number of Years (or part thereof, but not less than one year) of Service (not to exceed 10) with the Employer, and (II) the denominator of which is 10;

(2) the employer maintaining the Plan (or a predecessor employer) has not at any time maintained a defined contribution plan in which the Member participated (for this purpose, mandatory employee contributions under a defined benefit plan, individual

medical accounts under Section 401(h) of the Code, and accounts for postretirement medical benefits established under Section 419A(d)(1) of the Code are not considered a separate defined contribution plan); and

Notwithstanding the foregoing paragraphs (1) and (2), the \$10,000 minimum benefit shall be determined without regard to a Member's participation in one or more other plans maintained by an employer maintaining the Plan, provided that none of such other plans were maintained as a result of collective bargaining involving the same employee representative as the Plan.

(C) Defined Benefit Compensation Limit Before Limitation Years Beginning Before January 1, 2002. Notwithstanding (A) and (C) above, the Maximum Permissible Benefit will not exceed the defined benefit compensation limitation. In the case of a participant who has fewer than 10 Years of Service, the defined benefit compensation limitation shall be multiplied by a fraction, (i) the numerator of which is the number of Years (or part thereof) of Service and (ii) the denominator of which is 10.

(j) Reserved.

(k) Severance from Employment.

An employee has a severance from employment when the employee ceases to be an employee of any employer maintaining the Plan. An employee does not have a

severance from employment if, in connection with a change of employment, the employee's new employer maintains the Plan with respect to the employee.

(1) Year of Participation.

The Member shall be credited with a Year of Participation (computed to fractional parts of a year) for each accrual computation period for which the following conditions are met: (1) the Member is credited with at least the number of hours of service for benefit accrual purposes required under the terms of the Plan in order to accrue a benefit for the accrual computation period, and (2) the Member is included as a Member under the eligibility provisions of the Plan for at least one day of the accrual computation period. If these two conditions are met, the portion of a year of participation credited to the Member shall equal the amount of benefit accrual service credited to the Member for such accrual computation period. A Member who is permanently and totally disabled within the meaning of Section 415(c)(3)(C)(i) of the Code for an accrual computation period shall receive a Year of Participation with respect to that period. In addition, for a Member to receive a Year of Participation (or part thereof) for an accrual computation period, the Plan must be established no later than the last day of such accrual computation period. In no event shall more than one Year of Participation be credited for any 12-month period.

(1) Year of Service.

For purposes of Section 26.6(g), the Member shall be credited with a Year of Service (computed to fractional parts of a year) for each accrual computation period for which the Member is credited with at least the number of hours of service for benefit

accrual purposes required under the terms of the Plan in order to accrue a benefit for the accrual computation period.

26.7 Other Rules.

(a) Benefits Under Terminated Plans.

If a defined benefit plan maintained by an employer maintaining the Plan has terminated with sufficient assets for the payment of benefit liabilities of all plan participants and a Member in the Plan has not yet commenced benefits under the Plan, the benefits provided pursuant to the annuities purchased to provide the Member's benefits under the terminated plan at each possible annuity starting date shall be taken into account in applying the limitations of this Article 26. If there are not sufficient assets for the payment of all participants' benefit liabilities, the benefits taken into account shall be the benefits that are actually provided to the Member under the terminated plan.

(b) Benefits Transferred from the Plan.

If a Member's benefits under a defined benefit plan maintained by an employer maintaining the Plan are transferred to another defined benefit plan maintained by the employer maintaining the Plan and the transfer is not a transfer of distributable benefits pursuant to § 1.411(d)-4, Q&A-3(c), of the Treasury regulations, the transferred benefits are not treated as being provided under the transferor plan (but are taken into account as benefits provided under the transferee plan).

If a Member's benefits under a defined benefit plan maintained by an employer maintaining the Plan are transferred to another defined benefit plan that is

not maintained by the employer maintaining the Plan and the transfer is not a transfer of distributable benefits pursuant to § 1.411(d) -4, Q&A-3(c), of the Treasury Regulations, the transferred benefits are treated by the employer maintaining the Plan as if such benefits were provided under annuities purchased to provide benefits under a plan maintained by the employer maintaining the Plan that terminated immediately prior to the transfer with sufficient assets to pay all participants' benefit liabilities under the plan. If a Member's benefits under a defined benefit plan maintained by the employer maintaining the Plan are transferred to another defined benefit plan in a transfer of distributable benefits pursuant to § 1.411(d)-4, Q&A-3(c), of the Treasury regulations, the amount transferred is treated as a benefit paid from the transferor plan.

(c) Formerly Affiliated Plans of Employers.

A formerly affiliated plan of an employer maintaining the Plan shall be treated as a plan maintained by the employer maintaining the Plan, but the formerly affiliated plan shall be treated as if it had terminated immediately prior to the cessation of affiliation with sufficient assets to pay participants' benefit liabilities under the plan and had purchased annuities to provide benefits.

(d) Plans of a Predecessor Employer.

If the employer maintaining the Plan maintains a defined benefit plan that provides benefits accrued by a Member while performing services for a predecessor employer, the Member's benefits under a plan maintained by the predecessor employer shall be treated as provided under a plan maintained by the employer maintaining the Plan.

However, for this purpose, the plan of the predecessor employer shall be treated as if it had terminated immediately prior to the event giving rise to the predecessor employer relationship with sufficient assets to pay participants' benefit liabilities under the plan, and had purchased annuities to provide benefits; the employer maintaining the Plan and the predecessor employer shall be treated as if they were a single employer immediately prior to such event and as unrelated employers immediately after the event; and if the event giving rise to the predecessor relationship is a benefit transfer, the transferred benefits shall be excluded in determining the benefits provide under the plan of the predecessor employer.

(e) Special Rules.

The limitations of this Article shall be determined and applied taking into account the rules in § 1.415(f)-1(d), (e) and (h) of the Treasury Regulations.

(f) Aggregation with Other Plans.

(i) If an employer maintaining the Plan maintains another defined benefit plan, such plan shall be taken into account for purposes of this Article 26. Only the benefits under the Plan that are provided by such employer maintaining the Plan shall be treated as benefits provided under a plan maintained by such employer maintaining the Plan.

(ii) Effective for Limitation Years ending after December 31, 2001, a multiemployer plan shall be disregarded for purposes of applying the compensation limitation of Section 26.3 and Section 26.6(i)(A) to a plan which is not a multiemployer plan.

26.8 Applicable Interest Rate and Applicable Mortality Table.

(a) Prior to March 1, 2008, Applicable Interest Rate shall mean the annual rate of interest on 30-year Treasury securities as in effect for the full calendar month occurring prior to the first day of the Plan Year in which the Annuity Starting Date occurs. On and after March 1, 2008, Applicable Interest Rate shall mean the interest rate required by Section 417(e)(3)(C) of the Code.

(b) Prior to March 1, 2008, Applicable Mortality Table shall mean the mortality table required by Section 417(e) of the Code. On and after March 1, 2008, Applicable Mortality Table shall mean the mortality table required by Section 417(e)(3)(B) of the Code.

26.9 Effect on Members.

Benefit increases resulting from the increase in the limitations of Section 415(b) of the Code will be provided to all current and former Members (with benefits limited by Section 415(b) of the Code) who have an accrued benefit under the Plan immediately prior to the effective date (other than an accrued benefit resulting from a benefit increase solely as a result of the increases in limitations under Section 415(b) of the Code).

ARTICLE 27

Limitations Under Section 436 of the Code

27.1 Limitations Applicable if the Plan's Adjusted Funding Target Attainment Percentage Is Less than 80 Percent, but not Less than 60 Percent.

Notwithstanding any other provisions of the Plan, if the Plan's adjusted funding target attainment percentage for a Plan Year is less than 80 percent (or would be less than 80 percent to the extent described in Section 27.1(b) below) but is not less than 60 percent, then the limitations set forth in this Section 27.1 apply.

(a) 50 Percent Limitation on Single Sum Payments, Other Accelerated Forms of Distribution, and Other Prohibited Payments. A Member or Beneficiary is not permitted to elect, and the Plan shall not pay, a single sum payment or other optional form of benefit that includes a prohibited payment with an annuity starting date on or after the applicable section 436 measurement date, and the Plan shall not make any payment for the purchase of an irrevocable commitment from an insurer to pay benefits or any other payment or transfer that is a prohibited payment, unless the present value of the portion of the benefit that is being paid in a prohibited payment does not exceed the lesser of:

- (i) 50 percent of the present value of the benefit payable in the optional form of benefit that includes the prohibited payment; or
- (ii) 100 percent of the PBGC maximum benefit guarantee amount (as defined in § 1.436-1(d)(3)(iii)(C) of the Treasury Regulations).

The limitation set forth in this Section 27.1(a) does not apply to any payment of a benefit which under Section 411(a)(11) of the Code may be immediately distributed without the consent of the Member. If an optional form of benefit that is otherwise available under the terms of the Plan is not available to a Member or beneficiary as of the annuity starting date because of the application of the requirements of this Section 27.1(a), the Member or beneficiary is permitted to elect to bifurcate the benefit into unrestricted and restricted portions (as described in § 1.436-1(d)(3)(iii)(D) of the Treasury Regulations). The Member or beneficiary may also elect any other optional form of benefit otherwise available under the Plan at that annuity starting date that would satisfy the 50 percent/PBGC maximum benefit guarantee amount limitation described in this Section 27.1(a), or may elect to defer the benefit in accordance with any general right to defer commencement of benefits under the Plan.

(b) Plan Amendments Increasing Liability for Benefits. No amendment to the Plan that has the effect of increasing liabilities of the Plan by reason of increases in benefits, establishment of new benefits, changing the rate of benefit accrual, or changing the rate at which benefits become nonforfeitable shall take effect in a Plan Year if the adjusted funding target attainment percentage for the Plan Year is:

- (i) Less than 80 percent; or
- (ii) 80 percent or more, but would be less than 80 percent if the benefits attributable to the amendment were taken into account in determining the adjusted funding target attainment percentage.

The limitation set forth in this Section 27.1(b) does not apply to any amendment to the Plan that provides a benefit increase under a Plan formula that is not based on compensation, provided that the rate of such increase does not exceed the contemporaneous rate of increase in the average wages of Members covered by the amendment.

27.2 Limitations Applicable if the Plan's Adjusted Funding Target Attainment Percentage Is Less than 60 Percent.

Notwithstanding any other provisions of the Plan, if the Plan's adjusted funding target attainment percentage for a Plan year is less than 60 percent (or would be less than 60 percent to the extent described in Section 27.2(b) below), then the limitations in this Section 27.2 apply.

(a) Single Sums, Other Accelerated Forms of Distribution, and Other Prohibited Payments Not Permitted. A Member or beneficiary is not permitted to elect, and the Plan shall not pay, a single sum payment or other optional form of benefit that includes a prohibited payment with an annuity starting date on or after the applicable section 436 measurement date, and the Plan shall not make any payment for the purchase of an irrevocable commitment from an insurer to pay benefits or any other payment or transfer that is a prohibited payment. The limitation set forth in this Section 27.2(a) does not apply to any payment of a benefit which under Section 411(a)(11) of the Code may be immediately distributed without the consent of the Member.

(b) Shutdown Benefits and Other Unpredictable Contingent Event Benefits Not Permitted to Be Paid. An unpredictable contingent event benefit with respect to an unpredictable contingent event occurring during a Plan Year shall not be paid if the adjusted funding target attainment percentage for the Plan Year is:

(i) Less than 60 percent; or

(ii) 60 percent or more, but would be less than 60 percent if the adjusted funding target attainment percentage were redetermined applying an actuarial assumption that the likelihood of occurrence of the unpredictable contingent event during the Plan year is 100 percent.

(c) Benefit Accruals Frozen. Benefit accruals under the Plan shall cease as of the applicable section 436 measurement date. In addition, if the Plan is required to cease benefit accruals under this Section 27.2(c), then the Plan is not permitted to be amended in a manner that would increase the liabilities of the Plan by reason of an increase in benefits or establishment of new benefits.

### 27.3 Limitations Applicable If the Plan Sponsor Is In Bankruptcy.

Notwithstanding any other provisions of the Plan, a Member or beneficiary is not permitted to elect, and the Plan shall not pay, a single sum payment or other optional form of benefit that includes a prohibited payment with an annuity starting date that occurs during any period in which the Plan sponsor is a debtor in a case under Title 11, United States Code, or similar Federal or State law, except for payments made within a Plan Year with an annuity starting date that occurs on or after the date on which the Plan's enrolled actuary certifies that the Plan's adjusted funding target attainment percentage for that Plan Year is not less than

100 percent. In addition, during such period in which the Plan sponsor is a debtor, the Plan shall not make any payment for the purchase of an irrevocable commitment from an insurer to pay benefits or any other payment or transfer that is a prohibited payment, except for payments that occur on a date within a Plan Year that is on or after the date on which the Plan's enrolled actuary certifies that the Plan's adjusted funding target attainment percentage for that Plan Year is not less than 100 percent. The limitation set forth in this Section 27.3 does not apply to any payment of a benefit which under Section 411(a)(11) of the Code may be immediately distributed without the consent of the Member.

27.4 Provisions Applicable After Limitations Cease to Apply.

(a) Resumption of Prohibited Payments. If a limitation on prohibited payments under Section 27.1(a), Section 27.2(a), or Section 27.3 applied to the Plan as of a section 436 measurement date, but that limit no longer applies to the Plan as of a later section 436 measurement date, then that limitation does not apply to benefits with annuity starting dates that are on or after that later section 436 measurement date.

(b) Resumption of Benefit Accruals. If a limitation on benefit accruals under Section 27.2(c) applied to the Plan as of a section 436 measurement date, but that limitation no longer applies to the Plan as of a later section 436 measurement date, then benefit accruals shall resume prospectively and that limitation does not apply to benefit accruals that are based on service on or after that later section 436 measurement date, except as otherwise provided under the Plan. The Plan shall comply with the rules relating to partial years of participation and the prohibition on

double proration under Department of Labor regulation 29 CFR § 2530.204-2(c) and (d).

(c) Shutdown and Other Unpredictable Contingent Event Benefits. If an unpredictable contingent event benefit with respect to an unpredictable contingent event that occurs during the Plan Year is not permitted to be paid after the occurrence of the event because of the limitation of Section 27.2(b), but is permitted to be paid later in the same Plan Year (as a result of additional contributions or pursuant to the enrolled actuary's certification of the adjusted funding target attainment percentage for the Plan Year that meets the requirements of § 1.436-1(g)(5)(ii)(B) of the Treasury Regulations), then that unpredictable contingent event benefit shall be paid, retroactive to the period that benefit would have been payable under the terms of the Plan (determined without regard to Section 27.2(b)). If the unpredictable contingent event benefit does not become payable during the Plan Year in accordance with the preceding sentence, then the Plan is treated as if it does not provide for that benefit.

(d) Treatment of Plan Amendments That Do Not Take Effect. If a Plan amendment does not take effect as of the effective date of the amendment because of the limitation of Section 27.1(b) or Section 27.2(c), but is permitted to take effect later in the same Plan Year (as a result of additional contributions or pursuant to the enrolled actuary's certification of the adjusted funding target attainment percentage for the Plan year that meets the requirements of § 1.436-1(g)(5)(ii)(C) of the Treasury Regulations), then the Plan amendment must automatically take effect as of the first day of the Plan Year (or, if later, the original effective date of the amendment). If the

Plan amendment cannot take effect during the same Plan Year, then it shall be treated as if it were never adopted, unless the Plan amendment provides otherwise.

27.5 Notice Requirement.

See Section 101(j) of ERISA for rules requiring the Plan administrator of a single employer defined benefit pension plan to provide a written notice to participants and beneficiaries within 30 days after certain specified dates if the Plan has become subject to a limitation described in Section 27.1(a), Section 27.2, or Section 27.3. The provisions of this Section 27.5 shall apply only to the extent, if any, required.

27.6 Methods to Avoid or Terminate Benefit Limitations.

See Sections 436(b)(2), (c)(2), (e)(2), and (f) of the Code and § 1.436-1(f) of the Treasury Regulations for rules relating to employer contributions and other methods to avoid or terminate the application of the limitations set forth in Sections 27.1 through 27.3 for a Plan year. In general, the methods a plan sponsor may use to avoid or terminate one or more of the benefit limitations under Sections 27.1 through 27.3 for a plan year include employer contributions and elections to increase the amount of plan assets which are taken into account in determining the adjusted funding target attainment percentage, making an employer contribution that is specifically designated as a current year contribution that is made to avoid or terminate application of certain of the benefit limitations, or providing security to the plan.

27.7 Special Rules.

(a) Rules of Operation for Periods Prior to and After Certification of Plan's Adjusted Funding Target Attainment Percentage.

(i) In General. Section 436(h) of the Code and § 1.436-1(h) of the Treasury Regulations set forth a series of presumptions that apply (1) before the Plan's enrolled actuary issues a certification of the Plan's adjusted funding target attainment percentage for the Plan Year and (2) if the Plan's enrolled actuary does not issue a certification of the Plan's adjusted funding target attainment percentage for the Plan Year before the first day of the 10th month of the Plan Year (or if the Plan's enrolled actuary issues a range certification for the Plan Year pursuant to § 1.436-1(h)(4)(ii) of the Treasury Regulations but does not issue a certification of the specific adjusted funding target attainment percentage for the Plan by the last day of the Plan Year). For any period during which a presumption under Section 436(h) of the Code and § 1.436-1(h) of the Treasury Regulations applies to the Plan, the limitations under Sections 27.1 through 27.3 are applied to the Plan as if the adjusted funding target attainment percentage for the Plan Year were the presumed adjusted funding target attainment percentage determined under the rules of Section 436(h) of the Internal Revenue Code and § 1.436-1(h)(1), (2), or (3) of the Treasury Regulations. These presumptions are set forth in Section 27.7(a)(ii) through (iv).

(ii) Presumption of Continued Underfunding Beginning First Day of Plan Year. If a limitation under Section 27.1, 27.2, or 27.3 applied to the Plan on the last day of the preceding Plan Year, then, commencing on the first day of the current Plan Year and continuing until the Plan's enrolled actuary issues a certification of the adjusted funding target attainment percentage for the Plan for the current Plan Year, or, if earlier, the date Section 27.7(a)(iii) or Section 27.7(a)(iv) applies to the Plan:

(1) The adjusted funding target attainment percentage of the Plan for the current Plan Year is presumed to be the adjusted funding target attainment percentage in effect on the last day of the preceding Plan Year; and

(2) The first day of the current Plan Year is a section 436 measurement date.

(iii) Presumption of Underfunding Beginning First Day of 4th Month. If the Plan's enrolled actuary has not issued a certification of the adjusted funding target attainment percentage for the Plan Year before the first day of the 4th month of the Plan Year and the Plan's adjusted funding target attainment percentage for the preceding Plan Year was either at least 60 percent but less than 70 percent or at least 80 percent but less than 90 percent, or is described in § 1.436-1(h)(2)(ii) of the Treasury Regulations, then, commencing on the first day of the 4th month of the current Plan Year and continuing until the Plan's enrolled actuary issues a certification of the

adjusted funding target attainment percentage for the Plan for the current Plan Year, or, if earlier, the date Section 27.7(a)(iv) applies to the Plan:

(1) The adjusted funding target attainment percentage of the Plan for the current Plan Year is presumed to be the Plan's adjusted funding target attainment percentage for the preceding Plan Year reduced by 10 percentage points; and

(2) The first day of the 4th month of the current Plan Year is a section 436 measurement date.

(iv) Presumption of Underfunding On and After First Day of 10th Month. If the Plan's enrolled actuary has not issued a certification of the adjusted funding target attainment percentage for the Plan Year before the first day of the 10th month of the Plan Year (or if the Plan's enrolled actuary has issued a range certification for the Plan Year pursuant to § 1.436 1(h)(4)(ii) of the Treasury Regulations but has not issued a certification of the specific adjusted funding target attainment percentage for the Plan by the last day of the Plan Year), then, commencing on the first day of the 10th month of the current Plan Year and continuing through the end of the Plan Year:

(1) The adjusted funding target attainment percentage of the Plan for the current Plan year is presumed to be less than 60 percent; and

(2) The first day of the 10th month of the current Plan year is a section 436 measurement date.

(b) New Plans, Plan Termination, Certain Frozen Plans, and Other Special Rules. (i) First 5 Plan Years. The limitations in Section 27.1(b), Section 27.2(b), and Section 27.2(c) do not apply to a new plan for the first 5 plan years of the plan, determined under the rules of Section 436(i) of the Internal Revenue Code and § 1.436 1(a)(3)(i) of the Treasury Regulations.

(ii) Plan Termination. The limitations on prohibited payments in Section 27.1(a), Section 27.2(a), and Section 27.3 do not apply to prohibited payments that are made to carry out the termination of the Plan in accordance with applicable law. Any other limitations under this section of the Plan do not cease to apply as a result of termination of the Plan.

(iii) Exception to Limitations on Prohibited Payments under Certain Frozen Plans. The limitations on prohibited payments set forth in Sections 27.1(a), 27.2(a), and 27.3 do not apply for a Plan Year if the terms of the Plan, as in effect for the period beginning on September 1, 2005, and continuing through the end of the Plan Year, provide for no benefit accruals with respect to any Participants. This Section 27.7(b)(iii) shall cease to apply as of the date any benefits accrue under the Plan or the date on which a Plan amendment that increases benefits takes effect.

(iv) Special Rules Relating to Unpredictable Contingent Event Benefits and Plan Amendments Increasing Benefit Liability. During any

period in which none of the presumptions under Section 27.7(a) apply to the Plan and the Plan's enrolled actuary has not yet issued a certification of the Plan's adjusted funding target attainment percentage for the Plan Year, the limitations under Section 27.1(b) and Section 27.2(b) shall be based on the inclusive presumed adjusted funding target attainment percentage for the Plan, calculated in accordance with the rules of § 1.436-1(g)(2)(iii) of the Treasury Regulations.

(c) Special Rules under PRA 2010.

(i) Payments under Social Security Leveling Options. For purposes of determining whether the limitations under Section 27.1(a) or 27.2(a) apply to payments under a social security leveling option, within the meaning of § 436(j)(3)(C)(i) of the Code, the adjusted funding target attainment percentage for a Plan Year shall be determined in accordance with the "Special Rule for Certain Years" under Section 436(j)(3) of the Internal Revenue Code and any Treasury Regulations or other published guidance thereunder issued by the Internal Revenue Service.

(ii) Limitation on Benefit Accruals. For purposes of determining whether the accrual limitation under Section 27.2(c) applies to the Plan, the adjusted funding target attainment percentage for a Plan Year shall be determined in accordance with the "Special Rule for Certain Years" under Section 436(j)(3) of the Internal Revenue Code (except as provided under

Section 203(b) of the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, if applicable).

(d) Interpretation of Provisions. The limitations imposed by this Article of the Plan shall be interpreted and administered in accordance with Section 436 of the Code and § 1.436-1 of the Treasury Regulations.

27.8 Definitions.

The definitions in the following Treasury Regulations apply for purposes of Sections 27.1 through 27.7: § 1.436-1(j)(1) defining adjusted funding target attainment percentage; § 1.436-1(j)(2) defining annuity starting date; § 1.436-1(j)(6) defining prohibited payment; § 1.436-1(j)(8) defining section 436 measurement date; and § 1.436-1(j)(9) defining an unpredictable contingent event and an unpredictable contingent event benefit.

27.9 Effective Date.

The rules in Sections 27.1 through 27.8 are effective for Plan Years beginning after December 31, 2007.

27.10 Applicability.

The limitations of this Article shall apply with respect to forms of payment and benefits provided under the terms of the Plan other than this Article and shall not create additional forms of payment or benefits.

\* \* \* \*

EXECUTED at Cleveland, Ohio this 16<sup>TH</sup> day of January, 2015, by an Employer  
Trustee and an Employee Trustee on behalf of the duly qualified and acting Trustees of  
Bricklayers and Masons' Local Union No. 5, Ohio Pension Fund, in accordance with  
resolutions adopted by the Trustees at their January 13, 2015 meeting.

  
\_\_\_\_\_  
Employer Trustee

  
\_\_\_\_\_  
Employee Trustee