

**FIRST AMENDMENT
TO THE
BUILDING TRADES PENSION FUND
OF WESTERN PENNSYLVANIA
(As Amended and Restated January 1, 2014)**

WHEREAS, the Board of Trustees has the right to amend the Building Trades Pension Fund of Western Pennsylvania, as amended and restated January 1, 2014 (the "Plan"); and

WHEREAS, an application for determination was filed with the Internal Revenue Service for the Plan, and the Internal Revenue Service has requested certain amendments for a favorable determination.

NOW, THEREFORE, the Board of Trustees hereby amends the Plan, effective January 1, 2014, as follows:

1. Section 4.10(e)(2)(C) is amended by substituting "1.05" for "1.5."
2. Section 5.07(d) is amended to read as follows:
 - (d) In conformance with Code § 402(c)(11), a beneficiary who is not the surviving spouse and who is eligible to receive a distribution from the Plan on account of a Participant's death may elect to transfer said distribution in a direct rollover to an inherited individual retirement account or inherited individual retirement annuity (described in clause (i) or (ii) of Code § 402(c)(8) and including a Roth IRA) established by the beneficiary for this purpose, provided that (i) the beneficiary is not otherwise a Distributee, (ii) the beneficiary is a designated beneficiary as defined in Code § 401(a)(9)(E), and (iii) the distribution would otherwise be an Eligible Rollover Distribution but for the requirement that the distribution be made to a Distributee.
3. Section 7.03 is amended to read as follows:

7.03 Death in Qualified Military Service

As and to the extent required by Code § 401(a)(37), a Participant who dies on or after January 1, 2007 while performing qualified military service (within the meaning of Code § 414(u)) and who would have been entitled to reemployment rights under the Plan under the Uniformed Services Employment and Reemployment Rights Act of 1994 at his death shall be treated as follows:

- (a) he shall be credited with Years of Credited Employment for the period of his qualified military service to determine whether he is vested in his Accrued Benefit for purposes of the death benefits payable under this Article; and
- (b) he shall be treated as if he had died while in employment with an Employer for purposes of the death benefits payable under this Article and the death benefits payable under this Article shall be paid to the survivor of the Participant who is a beneficiary eligible for the Pre-Retirement Death Benefit under Section 7.01 or a Spouse eligible for the Qualified Preretirement Survivor Annuity under Section 7.02.

4. Article X-A is added to the Plan to read as follows:

**ARTICLE X-A
TOP-HEAVY PLAN RULES**

10-A.1 Definitions

For purposes of this Article:

- (a) **Determination Date** shall mean with respect to a Plan Year, the last day of the immediately preceding Plan Year.
- (b) **Key Employee** shall mean, as determined in accordance with Code § 416, an employee or former employee of an Employer (or his beneficiary in the event of his death) who at any time during the Plan Year which includes the Determination Date:
 - (1) is an officer of the Employer having annual compensation within the meaning of Code § 414(q)(4) greater than \$130,000, as adjusted pursuant to Code § 416(i)(1), for any such Plan Year; provided, however, in no event shall there be treated as officers more than fifty employees or, if fewer, the greater of three employees or ten percent of all employees of the Employer (excluding for this purpose employees described in Code § 414(q)(5));
 - (2) owns more than five percent of the Employer; or
 - (3) owns more than one percent of the Employer and has annual compensation within the meaning of Code § 414(q)(4) of more than \$150,000.
- (c) **Non-Key Employee** shall mean an employee or former employee of an Employer (or his beneficiary in the event of his death) who is not a Key Employee.
- (d) **Top-Heavy** shall mean top-heavy as determined under Section 10-A.5.
- (e) **Top-Heavy Compensation** shall mean compensation paid to a Non-Union Participant by an Employer for employment as a Non-Union Participant.
 - (1) "Compensation" used to determine Top-Heavy Compensation shall be the Non-Union Participant's wages within the meaning of Code § 3401(a) and all other payments of compensation for which the Employer is required to furnish a written statement to the Non-Union Participant under Code §§ 6041(d), 6051(a)(3), and 6052 (for purposes of income tax reporting) determined without regard to any rules under Code §3401(a) that limit the remuneration included in wages based on the nature or location of the employment or services performed. For this purpose, compensation shall be determined prior to the reduction thereof for, as applicable, (i) elective deferrals that are not includible in gross income under Code §§ 125 (including "deemed section 125 compensation" as provided for and within the meaning of Revenue Ruling 2002-27), 402(e)(3), 402(h), 403(b), (ii)

compensation deferred under a Code § 457(b) deferred compensation plan, (iii) employee pick-up contributions under Code § 414(h), and (iv) for Plan Years beginning on and after August 1, 2001, elective amounts that not includible in gross income under Code § 132(f)(4) (and any predecessors and successors to said Code sections).

- (2) Notwithstanding the foregoing, to the extent and in the manner prescribed by Code § 401(a)(17), Top-Heavy Compensation taken into account each Plan Year shall not exceed \$200,000, with said dollar amount proportionately reduced for any period shorter than twelve months and adjusted at the same time and in the same manner as provided by Code § 401(a)(17).
- (f) **Non-Union Participant** shall mean a Participant who is not in a collective bargaining unit and who is not an employee of the Union.
- (g) **Year of Top-Heavy Benefit Service** shall mean a Plan Year during which a Participant works 1,000 or more hours of service with an Employer as a Non-Union Participant for which Employer Contributions are required to be made to the Trust Fund on his behalf.

10-A.2 Top-Heavy Plan Requirements - In General

Notwithstanding any contrary provisions, if the Plan is Top-Heavy in a Plan Year, the Plan shall satisfy the requirements set forth in Sections 10-A.3 and 10-A.4 for such Plan Year with respect to Non-Union Participants.

10-A.3 Vesting Requirements

- (a) Notwithstanding any contrary provisions, a Non-Union Participant shall have a nonforfeitable right (within the meaning of Code § 411) to 100 percent of his Accrued Benefit if he has completed at least three Years of Credited Employment, and if during a Plan Year in which the Plan is Top-Heavy, he is employed in employment of the type for which service is credited under the Plan for the purpose of determining vesting in an Accrued Benefit.
- (b) If such a Non-Union Participant terminates employment with all Employers in the jurisdiction of the Fund before retirement and on or after the date he is 100% vested in accordance with subsection (a) of this Section, and if he is not otherwise eligible for a Pension under Article IV, such Participant shall be eligible to receive, in the manner set forth in the applicable terms of the Plan, the deferred vested Pension set forth in Section 4.05.
- (c) If the Plan is not Top-Heavy in a Plan Year subsequent to a Plan Year in which it is Top-Heavy, then subsections (a) and (b) of this Section shall not apply to any Non-Union Participant who did not have at least two (2) Years of Service at the close of the last Plan Year in which the Plan was Top-Heavy.

10-A.4 Minimum Accrued Benefit

- (a) The minimum annual Accrued Benefit as determined in accordance with Code § 416 for a Non-Union Participant who is a Non-Key Employee and who is credited with a Year of Top-Heavy Benefit Service in a Plan Year in which the Plan is Top-Heavy shall not at that time be less than the product of:
 - (1) two percent of his average annual Top-Heavy Compensation for the period of five consecutive Plan Years of employment with an Employer as a Non-Union Participant during which he had the highest aggregate Top-Heavy Compensation from the Employer for said employment (or for the consecutive Plan Years of said employment during which he had Top-Heavy Compensation if less than five), but excluding Plan Years after the close of the last Plan Year in which the Plan was Top-Heavy and Plan Years in which the Participant is not credited with a Year of Top-Heavy Benefit Service; and
 - (2) his Years of Top-Heavy Benefit Service up to a maximum of ten Years of Top-Heavy Benefit Service, but excluding any Year of Top-Heavy Benefit Service credited (i) in Plan Years beginning before August 1, 1984, (ii) in Plan Years that the Plan is not Top-Heavy and (iii) for a Plan Year during which the Plan benefits (within the meaning of Code § 410(b)) no Key Employee or former Key Employee.
- (b) If a Participant's Annuity Starting Date is on his Normal Retirement Date, his Accrued Benefit shall not be less than his minimum annual Accrued Benefit under subsection (a) of this Section.
- (c) If a Participant's Annuity Starting Date is before his Normal Retirement Date, his minimum annual Accrued Benefit determined under subsection (a) of this Section shall be reduced to the actuarial equivalent of the amount payable at the Normal Retirement Date using the 1983 Group Annuity Table for Males and interest at the rate of 7% compounded annually.
- (d) If a Participant's Annuity Starting Date is after his Normal Retirement Date, his minimum annual Accrued Benefit determined under subsection (a) of this Section shall be increased to the actuarial equivalent of the amount payable at the Normal Retirement Date (to the extent not otherwise increased under the Plan) using the assumptions in effect under Section 1.02(b) at that time (and if applicable, using only the first segment interest rate).
- (e) If payment of a Participant's Pension is based upon his minimum annual Accrued Benefit under subsection (a) of this Section, and if payment of such Participant's Pension is suspended upon his reemployment pursuant to Code § 411(a)(3)(B) and Article VIII, then upon the resumption of said Participant's Pension, any payment of said minimum annual Accrued Benefit withheld for a month during the period of reemployment shall (to the extent not otherwise paid under the Plan) shall be paid to the Participant plus interest on each said withheld payment at the rate of 7% compounded annually.

10-A.5 Determination of Top-Heavy Status

- (a) The Plan shall be Top Heavy for a Plan Year if, as of the Determination Date, the present value of cumulative accrued benefits of Key Employees exceeds 60 percent of the present value of cumulative accrued benefits of Key Employees and Non-Key Employees.
- (b) For purposes of determining whether the Plan is Top-Heavy, there shall be excluded:
 - (1) the present value of the cumulative accrued benefit of any Non-Key Employee who was a Key Employee for any prior Plan Year; and
 - (2) the present value of the cumulative accrued benefit of any Key Employee or any Non-Key Employee who has not performed services under the Plan at any time during the one year period ending on the Determination Date.
- (c) For purposes of this Section, the "present value of cumulative accrued benefits" shall mean, at any given Determination Date, the Actuarial Equivalent present value of a Key Employee's or Non-Key Employee's Accrued Benefit determined as of the most recent valuation date (the date used to compute Plan costs for Code § 412 minimum funding purposes) which is within the twelve consecutive month period ending on the Determination Date. The Accrued Benefit of an Active Participant shall be determined as if he had voluntarily terminated employment for purposes of the Plan as of such valuation date. The determination of the present value of cumulative accrued benefits shall take into account the aggregate distributions made under this Plan during the one year period ending on the Determination Date (and five year period for a distribution for a reason other than severance from employment, death or disability) to the extent required by Code § 416(g)(3), and shall exclude rollovers and direct transfers to the extent provided by Code § 416(g)(4)(A).

10-A.6 Aggregation of Plans

- (a) Only the benefits provided under the Plan to Key Employees and Non-Key Employee for whom an Employer is required to make Employer Contributions to the Plan shall be taken into account under another plan maintained by the Employer that is not a multiemployer plan for top-heavy aggregation purposes.
- (b) If a Key Employee is included in the required aggregation group of the Employer contributing to the Plan on behalf of the Key Employee, and if the required aggregation group of the Employer, taking into account with respect to this Plan, only Key Employees and Non-Key Employee for whom the Employer is required to make Employer Contributions to the Plan, is a top-heavy group (i.e., the aggregate present value of cumulative accrued benefits for all Key Employees in all plans in the required aggregation group is more than 60% of the aggregate present value of cumulative accrued benefits of Key Employees and Non-Key Employees in such plans as determined in accordance with Code § 416), the minimum benefit or contribution required for a Non-Key Employee under Code § 416 shall be accrued under the other plan(s) of the Employer before this Plan, and any minimum benefit required for such Non-Key Employee under Section 10-A.4 shall be reduced or

eliminated to the extent the other plan(s) of the Employer provides such Non-Key Employee with the minimum top-heavy benefit required under Internal Revenue Code § 416. In such case, in no event shall any Participants other than the Key Employees or Non-Key Employees for whom the Employer is required to make Employer Contributions to the Plan be subject to the top-heavy requirements of Code § 416 (or entitled to the benefits thereunder).

IN WITNESS WHEREOF, this Amendment has been duly executed on this 13th day of May, 2016.

Union Trustee

Employer Trustee

By: *Norman L. Ringer*

By: *P. A. B. [Signature]*