

LOCAL UNION 513 ANNUITY PLAN

Effective May 1, 1995

Amended and Restated Effective August 6, 2025

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LOCAL UNION 513 ANNUITY PLAN

Effective May 1, 1995

Amended and Restated Effective August 6, 2025

The Local Union 513 Annuity Plan was originally established on May 1, 1995, pursuant to the authority of the Board of Trustees granted under the Trust Indenture of Local Union 513 Annuity Fund dated May 1, 1995, in accordance with applicable federal law. Since that time, the Local Union 513 Annuity Plan has been amended several times to comply with changes required by law as well as changes in the benefits provided under the Plan and was restated most recently on May 1, 2017. The Plan is hereby amended and restated by the Trustees as of August 6, 2025. The purpose of this August 6, 2025, restatement is to convert the Plan from a trustee directed investment structure to a Participant directed investment structure. The Plan is intended to qualify as a profit sharing plan for purposes of all applicable provisions of the Internal Revenue Code and ERISA and to fully comply with all of the applicable requirements of those laws in effect and their applicable regulations.

ARTICLE 1. DEFINITIONS

Section 1.01. Administrative Manager(s).

“Administrative Manager” means the person(s), firm(s) and/or corporation(s) employed by the Trustees, charged with receiving investment instructions from Participants, the record keeping, reporting and disclosure, processing of applications for benefits, and related ministerial functions as requested by the Trustees and attendant to the administration of the Fund and Plan.

Section 1.02. Alternate Payee.

“Alternate Payee” means a Spouse, former Spouse, child, or other dependent of a Participant who is recognized by a domestic relations order as having the right to receive all or a portion of the Participant’s benefits under this Plan.

Section 1.03. Annuitant.

“Annuitant” means an Employee for whom an annuity is purchased in payment of benefits from this Plan.

Section 1.04. Annuity Starting Date.

“Annuity Starting Date” for a Participant means the first day of the first calendar month starting after the Participant has fulfilled all of the conditions for entitlement to benefits and after the later of:

- 1) the first day of the month after submission by the Participant of a completed application for benefits, or
- 2) thirty (30) days after the Plan advises the Participant in writing of the available benefit payment options, unless the benefit is being paid out automatically as a lump sum under Section 3.05, or unless the Participant and the Participant's Qualified Spouse, if any, waive the 30-day period in writing, provided the first benefit payment in such case will not be made less than 8 days after the written explanation was provided.

The Annuity Starting Date will not be later than the Participant's Required Beginning Date.

Section 1.05. Asset Value.

“Asset Value” means the fair market value of all assets reduced by any accrued expenses or other liabilities properly chargeable against such assets.

Section 1.06. Beneficiary.

“Beneficiary” means a recipient designated by the Employee to receive benefit payment, if any, pursuant to this Plan, after the Participant’s death, and a Participant’s Spouse to whom annuity payments are due hereunder.

Section 1.07. Code.

“Code” means the Internal Revenue Code of 1986, as amended from time to time and the regulations thereunder. Reference to a section of the Code shall include that section and any comparable section(s), or any future statutory provision which amends, supplements or supersedes that section.

Section 1.08. Collective Bargaining Agreement.

“Collective Bargaining Agreement” means a written agreement between the Union and an Employer which requires Contributions on behalf of the Employer’s Employee(s) to be made to the Fund.

Section 1.09. Compensation.

For a Participant who is not a self-employed individual, “Compensation” means wages, tips and other compensation paid by the Employer and reportable on Internal Revenue Service Form W-2, excluding deferred compensation, but increased by amounts withheld under a salary reduction agreement in connection with a cash or deferred plan under Code Section 401(k), a SIMPLE retirement account under Code Section 408(p), a simplified employee pension under Code Section 408(k), or a tax—deferred annuity under Code Section 403(b), and any amount which is contributed by the Employer at the election of the Participant, which is not includable in the gross income of the Participant by reason of Code Section 125 (cafeteria plans), Code Section 132(f)(4) (qualified transportation fringe benefit programs), or Code Section 457 (deferred compensation plans of tax exempt organizations). Amounts under Code Section 125 include any amounts available to a Participant in cash in lieu of group health coverage because the Participant is unable to certify that the Participant

has other health coverage. An amount will be treated as an amount under Code Section 125 only if the Employer does not request or collect information concerning the Participant's other health coverage as part of the enrollment process for the health plan.

For a Participant who is a Self-Employed Individual, "Compensation" means the net earnings from self-employment derived by a Self-Employed Individual from the business with respect to which the Plan is established, for which personal services of the individual are a material income-producing factor, excluding items not included in gross income and the deductions allocated to such items; and reduced by: (1) contributions by the Employer to qualified plans, to the extent deductible under Code Section 404 and (2) any deduction allowed to the Employer under Code Section 164(f). A "Self-Employed Individual" means an individual who is not a common-law employee and who has earned income (within the meaning of Code Section 401(c)(2)) from the business (or would have had such earned income if the business had net profits) for the taxable year.

A Participant's Compensation for a Plan Year is subject to the limits set forth below:

- (1) For Plan Years beginning on or after January 1, 2002, the annual Compensation of each Participant taken into account for determining all Contributions provided under the Plan for any Plan Year shall not exceed \$200,000 as adjusted for increases in the cost of living in accordance with Code Section 401(a)(17)(B).
- (2) The cost-of-living adjustment in effect for a calendar year applies to any Plan Year beginning in such calendar year. If a Plan Year consists of fewer than 12 months, the annual Compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the Plan Year, and the denominator of which is 12.
- (3) Compensation for purposes of allocated Employer Contributions shall not include Compensation prior to the date the Employee's participation in the Plan commenced.
- (4) Effective for all Differential Wages paid after December 31, 2008, Compensation includes Differential Wages. "Differential Wages" means wages paid to an Employee by the Employer with regard to military service meeting the definition of differential wage payment found in Code Section 3401(h)(2).

In determining the amount of a Participant's Compensation, the rules of Section 414(q)(6) of the Code shall apply.

Section 1.10. Contributing Employer or Employer.

"Contributing Employer" or "Employer" means any employer signatory to a Collective Bargaining Agreement with the Union requiring Contributions to this Fund or the Fund itself. "Contributing Employer" or "Employer" shall also mean any employer or the Union, if signatory to an agreement requiring Contributions to this Fund, provided that in the case of an employer, the employer has been accepted as a Contributing Employer by the Trustees.

Section 1.11. Contributions.

“Contributions” means payments required to be made by an Employer to the Fund in accordance with the terms of the applicable Collective Bargaining Agreement or other written agreement. A Participant’s Individual Account is credited with Contributions as soon as administratively feasible following actual receipt of said Contributions by the Fund, not when Contributions were originally due from the Employer to the Fund.

Section 1.12. Covered Employment.

“Covered Employment” means employment of an Employee by an Employer for which Contributions are payable to the Fund.

Section 1.13. Eligible Designated Beneficiary.

An “Eligible Designated Beneficiary” is a Beneficiary that is: (1) the Participant’s surviving Spouse or minor child, (2) an individual who is disabled or chronically ill as those terms are defined within the Internal Revenue Code, or (3) an individual who is not more than 10 years younger than the Participant.

Section 1.14. Employee.

“Employee” means a person who is an employee of a Contributing Employer and who is covered by a Collective Bargaining Agreement or any other written agreement requiring Employer Contributions on behalf of such person to be made to the Fund. The employees of the Union for whom the Union contributes to this Plan are also Employees under this Plan.

The term “Employee” includes a Leased Employee of an Employer to the extent required by Section 414(n) of the Code and the regulations thereunder and to the extent the conditions for participation, vesting and/or benefit accrual under the Plan have been met.

Section 1.15. ERISA.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time and the rules and regulations promulgated thereunder. Reference to a section of ERISA shall include that section, any comparable section(s), or any future statutory provision which amends, supplements, or supersedes that section.

Section 1.16. Fiscal Year.

“Fiscal Year” means the period from May 1 to the next April 30 of any year and shall be the Plan Year of the Fund.

Section 1.17. Fund or Trust.

“Fund” or “Trust” means the Local Union 513 Annuity Fund, the trust fund established pursuant to the Trust Agreement.

Section 1.18. Individual Account.

“Individual Account” means the account(s) established pursuant to Article 2 of this Plan for the purpose of recording any Contributions made on behalf of a Participant and any income, expenses, gains, or losses incurred thereon. The Trustees or their designee shall establish and maintain sub-accounts within a Participant’s Individual Account as necessary to depict accurately a Participant’s interest under the Plan. The Trustees or their designee shall also establish and maintain such other accounts and/or sub-accounts and records as it decides in its discretion to be reasonably required or appropriate in order to discharge its duties under the Plan.

Section 1.19. Leased Employee.

“Leased Employee” means any individual who provides services for an Employer if:

- (1) Such services are provided pursuant to an agreement between an Employer and any other person;
- (2) Such individual has performed such services for an Employer (or a related person within the meaning of Section 144(a)(3) of the Code) on a substantially full-time basis for a period of at least one year; and
- (3) Such services are of a type historically performed by Employees in the business field of an Employer.

Notwithstanding any other provision of the Plan, a Leased Employee shall be deemed, on an individual by individual basis, to be in a class of Employees not eligible to participate in this Plan, unless such participation is required as a condition of the Plan’s qualification under Section 401(a) of the Code.

Section 1.20. Money Purchase Account.

“Money Purchase Account” means the portion of a Participant’s Individual Account attributable to Contributing Employer Contributions made on behalf of a Participant for Covered Employment which occurred on or before April 30, 2017 (taking into account applicable investment yield and administrative expenses).

Section 1.21. Normal Retirement Age.

“Normal Retirement Age” means age 62, or if later, the age of the Participant on the fifth anniversary of their participation in the Plan if they are a Participant on such anniversary.

Section 1.22. Participant.

“Participant” means any Employee participating in this Plan for whom an Individual Account has been established.

Section 1.23. Pensioner.

“Pensioner” means a Participant that is receiving benefit payments from the Plan other than through an annuity purchased from a third party on the Participant’s behalf.

Section 1.24. Plan.

“Plan” means the plan evidenced by this plan document, as it may be amended from time to time by the Trustees. The Plan shall be known as the Local Union 513 Annuity Plan.

Section 1.25. Plan Administrator.

“Plan Administrator” means the Board of Trustees of the Local Union 513 Annuity Fund, who shall be the named fiduciary under Section 402(a) of ERISA. The Trustees may delegate various functions to the Administrative Manager(s).

Section 1.26. Profit Sharing Account.

“Profit Sharing Account” means the portion of a Participant’s Individual Account attributable to Contributing Employer Contributions made on behalf of a Participant for Covered Employment which occurred after April 30, 2017 (taking into account applicable investment yield and administrative expenses).

Section 1.27. Qualified Domestic Relations Order.

“Qualified Domestic Relations Order” means a domestic relations order which has been determined, pursuant to procedures established by the Trustees, to be a Qualified Domestic Relations Order as defined in Section 206(d) of ERISA.

Section 1.28. Required Beginning Date.

“Required Beginning Date” means the April 1st following the calendar year in which an individual attains: (1) age 70 ½ if the individual turned age 70 ½ prior to January 1, 2020, (2) age 72 if the individual turned age 70 ½ after December 31, 2019, and age 72 before January 1, 2023, (3) age 73 if the individual turned age 72 after December 31, 2022, and age 73 before January 1, 2033, or (4) age 75 for individuals who turn 74 after December 31, 2032.

Section 1.29. Spouse.

“Spouse” means a person to whom a Participant, Pensioner or Annuitant is legally married under the law of the state in which the marriage was celebrated. A former spouse will be treated as a

Spouse to the extent provided in a domestic relations order that has been determined to be a Qualified Domestic Relations Order (as defined in Code Section 414(p)) by the Trustees or their designee.

Section 1.30. Trust Agreement.

“Trust Agreement” means the Agreement and Declaration of Trust for the Local Union 513 Annuity Fund (dated May 1, 1995), and as may thereafter be amended.

Section 1.31. Trustees.

“Trustees” means the Board of Trustees as established and constituted from time to time in accordance with the Trust Agreement.

Section 1.32. Union.

“Union” means Local Union 513, affiliated with the International Union of Operating Engineers, AFL-CIO.

Section 1.33. Valuation Date.

“Valuation Date” means the date on which each Participant’s Individual Account is valued, taking into consideration the earnings and losses as well as the expenses being deducted and credited, as appropriate, to the Individual Account. The Valuation Date for the self-directed option shall be each business day that the investment manager and New York Stock Exchange are open for business.

Section 1.34. Construction.

The masculine or feminine gender, where appearing in this Plan, shall be deemed to include either or both the masculine and/or feminine gender as appropriate under the circumstances, and the singular may mean the plural and vice versa, unless the context clearly indicates to the contrary. The words “hereof,” “herein,” “hereunder” and other similar compounds of the word “here” shall mean and refer to the entire Plan, not to any particular provision or section unless such specific limitation is set out.

ARTICLE 2. INDIVIDUAL ACCOUNTS

Section 2.01. Establishment of Accounts.

As of each Valuation Date following the adoption of this Plan, Individuals Accounts shall be established for each Participant for whom Contributions are received unless an Individual Account has already been so established. Each Participant shall be at all times vested in 100% of their Individual Account balance, and no part of such Individual account shall be subject to forfeiture except as provided in Section 3.07 and 5.10.

Section 2.02. Valuation of Individual Accounts.

As of each Valuation Date, each Individual Account will be adjusted to reflect the amount of the Asset Value of the Individual Account. In so doing:

- a. Each Individual Account balance will be increased by the amount of Contributions actually received on behalf of the Participant and investment earnings allocable to the Individual Account since the prior Valuation Date; and
- b. Each Individual Account balance will be decreased by the amount of distributions from the Individual Account, expenses (as defined in Section 2.04), and investment losses allocable to the Individual Account since the prior Valuation Date.

Section 2.03. Termination of Individual Accounts.

An Individual Account shall be considered terminated as of the Valuation Date on which payment of the total Accumulated Share is made.

Section 2.04. Allocation of Fund Expenses.

Expenses shall be charged against each account on a per capita basis. This means that the total expenses shall be divided by the number of Individual Accounts and the resulting amount shall be subtracted from each Individual Account. In the event that the charge for expenses and other deductions against the Individual Account exceed the amount of any Individual Account, the excess expenses over the amount in the Individual Account shall be divided among all other existing Individual Accounts.

Section 2.05. Limitation of Accounts.

In no event and at no time shall the total amounts in all Individual Accounts at any Valuation Date, plus amounts previously established for expenses and reserves at that time, exceed the total net assets of the Plan. Should such an event occur, then all existing Individual Accounts shall automatically be proportionately reduced so that the total of all Individual Accounts, plus amounts established for expenses and reserves, is not more than the Fund's total net assets. Any Individual Account that contains sub-accounts will have any reduction under this Section 2.05 applied proportionately between the sub-accounts.

Section 2.06. Rights in Accounts.

The fact that Individual Accounts are established and valued as of each Valuation Date shall not give any Participant or others any right, title, or interest in the Fund or its assets, or in the Individual Account, except upon the terms and conditions herein provided.

Section 2.07. Military Service.

Notwithstanding any other provision of the Plan, periods of Qualified Military Service (as defined under the Uniformed Services Employment and Reemployment Rights Act of 1994 (“USERRA”)) shall be credited and allocation shall be made to accounts of eligible Participants with respect to such service in accordance with the requirements of USERRA, the Regulations thereunder, and rules established by the Trustees from time to time, assuming the applicable Participant has met all of the requirements under USERRA, including but not limited to, applying for reemployment within the time required under USERRA. Allocations required for periods of Qualified Military Service shall be funded from the Fund’s suspense/forfeiture account. If there are not enough funds in the suspense/forfeiture account to cover the required allocations, then said allocations shall be treated like an expense of the Fund under Section 2.04 and allocated per capita to all Participant accounts. Under no circumstances shall said allocations be charged to any individual Employer. No earnings will be credited to any contributions made under this Section for any period of time prior to the date the Participant is reemployed.

For death-related benefits purposes, a Participant who dies on or after January 1, 2007, while in Qualified Military Service, shall be treated as if the Participant had returned to active employment before their death; thus, the Plan will provide any death related benefits the Plan provides for Participants who are actively employed at the time of death. For benefit accrual purposes, the Plan will treat a Participant who dies or becomes disabled (as defined under the terms of the Plan) while performing Qualified Military Service, as if the Participant resumed employment in accordance with the Participant’s reemployment rights under USERRA, on the day preceding death or disability (as the case may be) and terminated employment on the actual date of death or disability. All Participants performing Qualified Military Service who die or become disabled as a result of performing said Qualified Military Service prior to reemployment will be credited with service and benefits on reasonably equivalent terms. The Participant’s credit will be calculated based on the average number of hours the Participant worked in Covered Employment in the 12-month period leading up to the date the Participant left Covered Employment to serve in Qualified Military Service. If the Participant worked in Covered Employment for less than 12-months on the date the Participant left Covered Employment to serve in Qualified Military Service, the Participant’s credit will be calculated based on the average number of hours the Participant worked in continuous Covered Employment.

Effective January 1, 2009, to the extent applicable, Differential Wages made to a Participant while in qualified military service shall be taken into account as Compensation for purposes of determining any benefits under this Plan.

ARTICLE 3. BENEFITS AND ELIGIBILITY

Section 3.01. Accumulated Share.

Upon the occurrence of any event requiring the payment of any lump-sum amount from this Fund, the amount to be paid, subject to the specific provisions of the following sections, shall be the Participant's Individual Account as of the last preceding Valuation Date plus any additional Employer Contributions made on behalf of the Participant not included in the Participant's Individual Account on the last preceding Valuation Date. The total of these two items shall be known as the Participant's "Accumulated Share."

Section 3.02. Payment of Accumulated Share.

A Participant's Accumulated Share shall become payable in the manner set forth in Section 3.03 upon the occurrence of any of the following events:

- a. Commencement of payment of a benefit to the Participant from any pension fund affiliated with the International Union of Operating Engineers, AFL-CIO, or any of its local unions;
- b. Reaching age 55 and ceasing to work in Covered Employment due to retirement;
- c. Reaching age 62;
- d. Death before retirement, as set forth in Section 3.06;
- e. Issuance of a determination of entitlement to a Social Security Disability or Supplemental Disability Benefit or a Veteran's Administration Disability Benefit, based on a disability of 75% or more;
- f. The lapse of thirty-six (36) consecutive months following termination of Covered Employment, during which time the Participant had no employment anywhere in the operating engineer trade or as a supervisor of employees in the operating engineer trade; or
- g. The Participant's Required Beginning Date.

In addition to the foregoing, a limited payment option is available in situations where: (1) a Participant is a member of a local union affiliated with the International Union of Operating Engineers other than the Union, (2) the Participant has completed a reciprocal authorization form authorizing all contributions submitted to the Fund on their behalf to be remitted to their home local union retirement plan under an applicable reciprocal agreement, and (3) no contributions have been added to the Participant's Individual Account for at least sixty (60) days. Where a Participant has met all the requirements set out in the previous sentence, the Participant can request a Rollover of their Accumulated Share to the home local union retirement plan identified on the reciprocal authorization form submitted to the Fund, so long as the retirement plan receiving the contributions is an Eligible Retirement Plan as defined in Section 9.01. None of the other payment options set out in Section 3.05 below are available for this type of payment distribution.

Any distribution under this Section 3.02 shall be payable as soon as administratively feasible following the first Valuation Date subsequent to the later of: (1) the Participant meeting the requirements of this Section 3.02 or (2) submitting a completed application for benefits. The Participant

may elect to postpone the distribution of their Accrued Benefit to a later date, but not later than the Participant's Required Beginning Date. Unless the Participant elects to postpone distribution, payment of benefits shall commence no later than 60 days after the close of the Plan Year in which occurs the latest of: (a) the Participant's Normal Retirement Date, (b) the termination of Participant's employment with an Employer, or (c) the 10th anniversary of the Participant's participation in the Plan; provided, however, that if the amount of benefits cannot be ascertained by such date, payment shall be retroactive to such date, after ascertainment, and shall commence not later than 60 days after the amount is ascertained. The failure of a Participant to submit an application for benefits and consent to a distribution as required by Section 3.03, shall be deemed to be an election to postpone payment sufficient to satisfy this Section in all cases other than when benefits are due because the Participant has reached their Required Beginning Date.

Notwithstanding the provisions of Section 3.02(f) above, a Participant who has received a distribution of benefits pursuant to subparagraphs (a), (c), (e) or (g) of this Section and who thereafter continues to work or resumes work in Covered Employment may receive a distribution of their Accumulated Share on any January 15 or July 15.

Furthermore, any Participant who takes all or a portion of their Accumulated Share in a distribution under Section 3.02(b) above, will not be entitled to take another distribution under Section 3.02(b).

Section 3.03. Payment Elections.

The Trustees shall distribute the Accrued Benefit of a Participant in accordance with any written request filed by the Participant (or their Spouse or Beneficiary) specifying the time and method permitted under this Article 3, by which the Participant desires distribution. A Participant shall be provided no less than 30 days and not more than 180 days prior to distribution, a notice of the payment options available to the Participant and obtain their written consent to distribution. Such consent shall be valid only if: (a) the notice includes a general description of the material features and an explanation of the relative values of the optional forms of benefit available under the Plan; (b) the notice advises the Participant of their right to make, and the effect of, an election or revocation of election regarding forms of distribution; (c) the notice advises the Participant of their right to defer distribution and consequences of failing to defer distribution of benefits; (d) the notice advises of the rights of the Participant's Spouse, if any; (e) the notices required under Section 402(f) of the Code are included; (f) the consent is signed after such notice has been received and no more than 90 days before payment commences, and (g) if the Participant is married, the Qualified Spouse also consents in accordance with the spousal consent requirements of Section 3.05(a). Except as otherwise provided in Section 3.06, such consent shall not be required if distribution commences on account of or after the death of the Participant.

Section 3.04. Involuntary Distributions.

Effective December 31, 2023, and notwithstanding any other provisions of this Plan to the contrary, where a Participant's Accrued Benefit is \$7,000 or less, and the Participant has had no Contributions made on their behalf for at least twelve (12) months, the Trustees, in their sole discretion, may distribute the Participant's Accrued Benefit without the Participant's consent. If the Participant's Accrued Benefit is \$1,000 or less, the Participant's Accrued Benefit shall be distributed in a single

lump sum payment by check. If the Participant's Accrued Benefit is more than \$1,000, the Participant's Accrued Benefit shall be automatically rolled over to an IRA established for the Participant. Upon any distribution or rollover made under this Section 3.04, the individual shall cease to be a Participant in the Fund and shall cease to have any further interest in the Fund unless the individual once again meets the participation requirements of the Plan. In the event the Participant's Accrued Benefit is \$1,000 or less and the Fund is: (1) unable to locate the Participant to distribute the Participant's Accrued Benefit, (2) the payment is returned to the Fund as undeliverable, or (3) the check issued for payment remains uncashed for at least sixty (60) days, the Trustees or their designee shall make a reasonable attempt to locate such Participant, and if unable to do so within a reasonable period of time, the benefits shall be forfeited and used as an offset against the administrative charges of the Plan. If the Participant is thereafter located and makes the required application, the Participant's benefits shall be paid to them in the amount forfeited. No interest, investment gains or other amount shall be paid in addition to the foregoing on the amount forfeited.

Section 3.05. Payment Options.

a. Joint and 50% Survivor Annuity.

- (i) **Married Participants.** Unless otherwise provided in this Section, or otherwise elected under this Section, a married Participant who becomes eligible to receive their Accumulated Share will receive payments under the Plan in the form of a Joint and 50% Survivor Annuity, which provides monthly payments for the life of the Participant and continues monthly payments upon the Participant's death for the life of the Participant's Spouse in an amount equal to 50% of the rate at which such benefit was payable to the Participant during the Participant's lifetime. The benefit payments under the Joint and 50% Survivor Annuity shall be the amount paid under an annuity purchased from a legal reserve life insurance company with the Participant's Accumulated Share.
- (ii) **Election to Waive Joint and 50% Survivor Annuity.** A married Participant who becomes entitled to receive their Accumulated Share may elect to waive, or revoke a waiver of, payment of the Participant's Accumulated Share in the form of a Joint and 50% Survivor Annuity by making a written election, in the form and manner required by the Board, within the 180-day period ending on their benefit commencement date. Such written election shall not take effect unless:
 - (a) the Participant's Spouse consents in writing to such election; such election designates a Beneficiary (or a form of benefits) which may not be changed without spousal consent (or the consent of the Spouse expressly permits designations by the Participant without any requirement of further consent by the Spouse); and the Spouse's consent acknowledges the effect of such election and is witnessed by a designated Plan representative or a notary public; or

(b) it is established to the satisfaction of a designated Plan representative that the consent required under this Section may not be obtained because there is no Spouse, because the Spouse cannot be located, or because of such other circumstances as the Secretary of the Treasury may by regulations prescribe.

Any consent by a Spouse (or establishment that the consent of a Spouse cannot be obtained) shall be effective only with respect to such Spouse. If a Participant elects to waive the Joint and Survivor 50% Annuity, the Participant shall receive payments under the Plan in the form of a single life annuity based on their life unless they elect one of the other payment forms described in Section 3.05 within the 180-day period ending on their benefit commencement date.

(iii) **Participants Who Are Not Married.** A Participant who is not married shall receive payments under the Plan in the form of a single life annuity, unless the Participant elects one of the other payment forms described in Section 3.05 within the 180-day period ending on their benefit commencement date.

b. **Lump Sum Payments.**

A Participant who becomes entitled to receive their Accumulated Share may elect in the time and manner required by the Trustees to receive their Accumulated Share in a lump sum subject to the requirements of Section 3.05(a).

c. **Partial Lump Sum Payments.**

A Participant who becomes entitled to receive their Accumulated Share may elect once each Plan Year, in the time and manner required by the Trustees, to receive a portion of their Accumulated Share, payable in a partial lump sum payment, subject to the requirements of Section 3.05(a). In order to receive a partial lump sum payment, the requested amount must be \$1,000 or greater. Participants receiving their Accumulated Share under the Monthly Payment Option will be permitted to take a partial lump sum payment hereunder, so long as the requested partial lump sum distribution does not exceed their Accumulated Share. In the event the Participant's request for a partial lump sum payment is for an amount that exceeds the Participant's Accumulated Share, the Participant's Accumulated Share will be paid out in its entirety in a final lump sum payment. Participants whose entire Accumulated Share was used to purchase an annuity under 3.05(a) or (e) are not eligible to take a partial lump sum payment.

d. **Monthly Payment Option.**

A Participant who becomes entitled to receive their Accumulated Share from this Plan pursuant to Section 3.02(a), (b), (c), (e) or (g) and is eligible to take their Accumulated Share in a lump sum in accordance with the provisions of Section 3.05(b),

may elect instead to receive their Accumulated Share in monthly payments, subject to the following terms and conditions:

- (i) The Monthly Payment Option is available only for an Accumulated Share of \$5,000 or more at the time of election.
- (ii) The Participant must request in writing, in the form and manner acceptable to the Trustees, a monthly payment amount not less than \$100. The specified amount will be paid each month until the Participant's Accumulated Share is exhausted, with a final monthly payment in the amount of the remaining balance of the Accumulated Share. After the Participant reaches their Required Beginning Date, the Trustees may increase the payment amount in any month, if necessary, to satisfy the minimum distribution amount required by the Internal Revenue Code.
- (iii) Each monthly payment will be subject to federal income tax withholding of 20%. The undistributed balance of the Participant's Accumulated Share will continue to participate in the Plan's expenses and investment gains and losses.
- (iv) The Participant may not change the amount of the monthly payment more often than once every twelve months. However, the Participant may at any time, on at least 30 days' prior written notice, receive payment in one lump sum of the entire remaining balance of the Accumulated Share.
- (v) If a Participant who has elected the Monthly Payment Option dies before receiving their entire Accumulated Share, the remaining balance will be paid in one lump sum to the Participant's Beneficiary in accordance with Section 5.05.
- (vi) The Trustees have discretion at any time to change any terms and conditions of the Monthly Payment Option, and to make such changes applicable to monthly payments in progress as well as those not yet commenced. In addition, the Trustees have discretion at any time to discontinue monthly payments requested by a Participant and pay the remaining Accumulated Share balance to the Participant in one lump sum.

e. A Participant who becomes entitled to receive their Accumulated Share may elect in the time and manner required by the Trustees to receive their Accumulated Share in the form of a 75% Joint and Survivor Annuity subject to the requirements of Section 3.05(a). Such an annuity provides monthly payments for the life of the Participant and continues monthly payments upon the Participant's death for the life of the Participant's Spouse in an amount equal to 75% of the rate at which such benefit was payable to the Participant during the Participant's lifetime. The benefit payments under the 75% Joint and Survivor Annuity shall be the amount paid under an annuity

purchased from a legal reserve life insurance company with the Participant's Accumulated Share.

Section 3.06. Death Benefits.

- a. Unless otherwise provided in subparagraph (d) below or in Section 3.05, or otherwise elected under subparagraph (e) below, the Spouse of a deceased Participant who was married throughout the one-year period ending on the Participant's death, and who was not an Annuitant at such date, shall receive the Participant's Accumulated Share upon their death in the form of an immediate annuity payable monthly for the Spouse's lifetime ("Pre-Retirement Survivor Annuity"). The benefit payments under the Pre-Retirement Survivor Annuity shall be the amount payable under an annuity purchased from a legal reserve life insurance company with the Participant's Accumulated Share based on the life of the surviving Spouse. Payments shall commence no later than December 1 of the year following the year in which the Participant died, except that the surviving Spouse may postpone commencement of benefits to a later date, but no later than the deceased Participant's Required Beginning Date.
- b. A Spouse eligible to receive a Pre-Retirement Survivor Annuity may elect instead to receive a lump sum distribution of the Participant's Accumulated Share by written election made on a form provided by the Trustees and filed within ninety (90) days after notice from the Trustees of the right to make such election.
- c. If the Spouse of a deceased Participant dies before receiving complete distribution of the Participant's Accumulated Share, the undistributed balance will be paid to the Participant's designated Beneficiary in a lump sum and in accordance with Section 5.05. For this purpose, purchase of a life annuity for the surviving Spouse from an insurance company will be treated as a full distribution of the Accumulated Share.
- d. Notwithstanding anything herein to the contrary, the Pre-Retirement Survivor Annuity for a surviving Spouse under subsection (a) above shall not be provided unless the Participant and their Spouse had been married throughout the one-year period ending on the Participant's date of death.
- e. A Participant who is not an Annuitant shall be provided with a written explanation of the Pre-Retirement Survivor Annuity by no later than the end of the three-year period beginning with the first day of the first Fiscal Year for which the individual is a Participant. Such explanation shall describe the terms and conditions of the pre-retirement survivor annuity and the Participant's right to make, and the effect of, any election to waive the Pre-Retirement Survivor Annuity coverage with the consent of the Participant's Spouse and the right to make, and the effect of, a revocation of any election by the Participant or the Spouse. A Participant shall make any such election or revocation in writing, in the form and manner required by the Trustees, designating a Beneficiary other than the Spouse to receive the Participant's Accumulated Share in the event of their death prior to becoming an Annuitant. Such written election shall not take effect unless:

- (i) the Participant's Spouse consents in writing to such election; such election designates a Beneficiary (or a form of benefits) which may not be changed without spousal consent (unless the consent of the Spouse expressly permits designations by the Participant without any requirement of further consent by the Spouse); and the Spouse's consent acknowledges the effect of such election and is witnessed by a designated Plan representative or a notary public; or
- (ii) it is established to the satisfaction of a designated Plan representative that the consent required under subparagraph (e)(i) above may not be obtained because there is no Spouse, because the Spouse cannot be located, or because of such other circumstances as the Secretary of the Treasury may by regulations prescribe.

Any consent by a Spouse (or establishment that the consent of a Spouse cannot be obtained) shall be effective only with respect to such Spouse.

- f. In the event of the death of a Participant who was not an Annuitant, under any circumstance in which a Pre-Retirement Survivor Annuity under subsection (a) is not payable as a matter of right to a surviving Spouse, the Participant's Accumulated Share shall be paid in one lump sum to the Participant's Beneficiary and in accordance with Section 5.05. The Beneficiary must apply for and take the benefit within the time required by Section 401(a)(9) of the Internal Revenue Code and its regulations.

Where a Participant dies prior to January 1, 2020, a designated Beneficiary eligible to receive such lump sum distribution may elect instead to receive a life annuity purchased from a legal reserve life insurance company with the Participant's Accumulated Share, based upon the life of the Beneficiary, by written election made on a form provided by the Board and filed within ninety (90) days after notice from the Board of the right to make such election.

Where a Participant dies on or after January 1, 2020, only an Eligible Designated Beneficiary eligible to receive such lump sum distribution may elect instead to receive a life annuity purchased from a legal reserve life insurance company with the Participant's Accumulated Share, based upon the life of the Beneficiary. In order to receive payment in the form of a life annuity, the Eligible Designated Beneficiary must make a written election on a form provided by the Board within the time required by Section 401(a)(9) of the Internal Revenue Code and its applicable regulations. Elections to receive payment in the form of a life annuity shall be irrevocable. If the Eligible Designated Beneficiary fails to make a written election to receive the benefit in the form of a life annuity within the time required, the Participant's Accumulated Share shall be paid to the Eligible Designated Beneficiary in the form of a single lump sum payment. The Eligible Designated Beneficiary must apply for and take the single lump sum payment by no later than the end of the calendar year containing the 10th anniversary of the Participant's death. Where the Eligible Designated Beneficiary is a minor child of the Participant, an annuity will only be purchased where the annuity company will ensure

all distributions are taken within 10 years of when the minor child reaches 18 years of age. If an annuity cannot be purchased for a minor child that will meet this requirement, the minor child must apply for and take the benefit in a single lump sum payment by no later than the end of the calendar year containing the 10th anniversary of the Participant's death.

- g. Notwithstanding the foregoing, all benefits payable upon the death of the Participant shall comply with the distribution requirements set out in Section 401(a)(9) of the Internal Revenue Code and its applicable regulations.

Section 3.07. Failure to Apply for Individual Account.

If a Participant, Alternate Payee or Beneficiary: (1) fails to make the required application in accordance with Article 5, (2) makes the required application in accordance with Article 5, but on the date that payment of the Individual Account is due to be made the Trustees are unable to locate the Participant, Alternate Payee or Beneficiary, or (3) fails to cash a check by its stale date or a check for benefit payments is returned as undeliverable, the Trustees shall make a reasonable attempt to locate such Participant, Alternate Payee or Beneficiary, and if unable to do so within a reasonable period of time, the Individual Account or benefit check shall be forfeited and used as an offset against the administrative charges of the Plan. If the Participant or Beneficiary is thereafter located and makes the required application, the Participant's Individual Account or benefit payment shall be paid to the Participant or their Beneficiary in the amount forfeited. No interest or other amount shall be paid in addition to the foregoing.

Section 3.08. Maximum Annual Additions.

In addition to any other limitations set forth in the Plan and notwithstanding any other provisions of the Plan, effective for limitation years beginning on and after January 1, 2008, no annual addition under this Plan shall exceed the maximum amount permitted under Section 415 of the Code and the regulations thereunder. For purposes of this section, the Plan's limitation year shall be a calendar year. If any annual addition exceeds any limitation contained in this Section 3.08, such excess shall be held in a suspense account and applied to pay the expenses of administration of the Plan and Trust for each succeeding Plan Year until exhausted. The Trustees shall be entitled to rely on a representation by an Employer that benefits payable to a Participant participating under the Plan, to the extent attributable to employment with that Employer, do not together with any other pension benefits payable to the Participant under any other plan maintained by that Employer (and to the extent attributable to employment with that Employer), exceed the limits of Section 415 of the Code. This Section 3.08 is intended to incorporate the requirements of Section 415 of the Code and the regulations issued thereunder by reference, except as otherwise specified herein. In accordance with Section 1.415(a)-1(d)(3) of the regulations, if no language is set forth in this Plan, and a default rule exists, then the default rule applies.

To the extent permitted by law, the application of the provisions of this Section 3.08 shall not cause the benefit that is accrued, distributed or otherwise payable for any Participant to be less than the Participant's accrued benefit as of December 31, 2007, under the provisions of the Plan that were both adopted and in effect before April 5, 2007, and that satisfied the limitations under Section 415

of the Code and the regulations thereunder as in effect prior to January 1, 2008.

Section 3.09. Continued Participation.

In the event a Participant's Accumulated Share becomes payable in accordance with the provisions of Section 3.02(a), (b), (c), (e) or (f), the Participant may file an application and receive payment of their Accumulated Share in accordance with Section 3.05 subject to the limitations set out in Section 3.02 and Section 3.10 for Participants who already received a distribution of their Accumulated Share but either continued to work or resumed work in Covered Employment.

In the event a Participant's Accumulated Share first becomes payable in accordance with the provisions of Section 3.02(a), (b), (c), (e) or (f), a Participant will be given the following options:

- a. The Participant may leave their Accumulated Share in the Fund to be valued in accordance with Article 2, or
- b. The Participant may elect to withdraw their Accumulated Share immediately.

If the Participant continues to work or resumes work in Covered Employment following their first distribution of the Participant's Accumulated Share, subsequent distributions of the Participant's Accumulated Share shall be subject to the limitations set out in Sections 3.02 and 3.10.

Section 3.10. Limitation on Distributions.

If an Employee who has received a distribution of benefits under subparagraph (f) of Section 3.02 resumes active participation in the Plan, the Employee shall not, thereafter, be eligible to again receive their Accumulated Share under subparagraph (f) of Section 3.02, until six years after their most recent termination of participation in the Plan.

Section 3.11. Limitations on Distributions Under Qualified Domestic Relations Orders.

A person who, as an Alternate Payee, seeks payment of any portion of an Employee's Accumulated Share under a Qualified Domestic Relations Order, shall not be eligible to receive the payment until six (6) months after the date of entry of the Qualified Domestic Relations Order. This six-month limitation shall not apply to:

- a. A person eligible for normal retirement benefits, disability retirement benefits or death benefits, or
- b. A Qualified Domestic Relations Order for past due child support or for periodic payments of child support, which the Trustees, in their sole discretion, determine not to be a device to evade the purposes of the six-month limitation period.

For purposes of this Section, a domestic relations order is a court judgment, decree, or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments or marital property rights to a Spouse, former Spouse, child or other dependent

of an Employee, and is made pursuant to state domestic relations law, including divorce and community property laws.

Section 3.12. Required Minimum Distributions.

Notwithstanding any provision of this Plan to the contrary, all distributions under the Plan will meet the requirements of Section 401(a)(9) of the Internal Revenue Code, including but not limited to the incidental benefit requirements of 401(a)(9)(G), and effective May 1, 2003, the regulations established under Code Section 401(a)(9), including but not limited to Treas. Reg. 1.401(a)(9)-2 through 1.401(a)(9)-9.

ARTICLE 4. CONTRIBUTIONS AND RECIPROCAL AGREEMENTS

Section 4.01. Contributions.

Each Employer shall pay over to the Trustees for each Plan Year, Contributions with respect to each of its eligible Employees in the hourly amount required by the applicable Collective Bargaining Agreement or other written agreement. The Union shall pay over to the Trustees Contributions on behalf of each of its eligible Employees in the hourly amount required by the written agreement in place with the Fund. All Contributions shall be made without regard to whether the Employer has current or accumulated earnings or profits. Contributions are due to the Fund at the time and in the matter set out by the Trustees. Employees may not make contributions to the Plan.

Section 4.02. Reciprocal Agreements.

From time to time, Participants in this Plan may work temporarily in the jurisdiction of other locals affiliated with the International Union of Operating Engineers, AFL-CIO, and employees from such other locals may work temporarily in the jurisdiction of the Union. The Trustees may enter into reciprocal agreements with the trustees of one or more other pension funds affiliated with such other locals to provide for the transfer of pension contributions made to another pension fund to the pension fund of the local to which the employee belongs or in whose jurisdiction the employee is customarily employed (the employee's "Home Fund").

- a. **Reciprocal Payments Received from Other Funds.** All contributions received by this Plan pursuant to a reciprocal agreement shall be credited to the account of the Participant on whose behalf such contributions were received on the same basis as if such contributions were paid directly to this Plan. This Plan shall incur no liability in the event of the failure of another pension fund to collect or remit contributions which should have been remitted to this Plan pursuant to a reciprocal agreement.
- b. **Reciprocal Payments to Other Funds.** Contributions received by this Plan on behalf of an employee whose Home Fund is not this Plan shall be remitted to such Home Fund in accordance with the terms of the applicable reciprocal agreement once the employee submits the employee's reciprocity authorization form and such employee shall look solely to such Home Fund for any benefits to which the employee may be entitled. This Plan shall incur no liability for the application of funds transferred from this Plan to the employee's Home Fund pursuant to a reciprocal agreement.

ARTICLE 5. GENERAL PROVISIONS

Section 5.01. Application for Benefits: Initial Date.

Application for benefits must be made in writing in a form and manner prescribed by the Trustees. No benefits shall be paid under the Plan unless a properly completed application has been submitted to the Fund, except when required under Section 3.12.

Section 5.02. Proof to be Furnished; Penalties for Fraud.

Every Participant, Pensioner, Annuitant, or Beneficiary shall furnish, at the request of the Trustees, any information or proof reasonably required for the administration of this Plan or for the determination of any matter that the Trustees may legitimately have before them. Failure to furnish such information or proof promptly and in good faith shall be sufficient reason for the denial of benefits to such person. The falsity of any statement material to an application or the furnishing of fraudulent information or proof shall be sufficient reason for denial, suspension or discontinuance of benefits under this Plan except to the extent that the benefits are non-forfeitable and, in any such case, the Trustees are entitled to recovery of any benefit payments made in reliance on such false statement or fraudulent information or proof.

The Trustees shall be entitled to rely on written representations, consents, and revocations submitted by Participants, Spouses, Beneficiaries, Alternate Payees or other parties in making benefit determinations under the Plan and, unless such reliance is arbitrary or capricious, the Trustees' determinations shall be final and binding and shall discharge the Fund and the Trustees from liability to the extent of the payments made. To the extent provided by law the Fund shall not be liable for duplicate benefits with respect to the same Participant, or for any combination of surviving Spouse and other death benefits with respect to the Participant in excess of the value of the Participant's Accumulated Share determined as of the date scheduled for the start of payments to the Participant or, if earlier, the date of the Participant's death.

Section 5.03. Question or Controversies and Statute of Limitations.

All questions or controversies of whatsoever character arising in any manner or between any parties or persons in connection with this Plan or its operation, whether as to any claim for benefits; as to the construction of the language of this Plan or any rules and regulations adopted by the Trustees, or as to any writing, decision, instrument or account in connection with the operation of this Plan or otherwise, shall be submitted to the Board of Trustees for decision. In the event a claim for benefits has been denied, no lawsuit or other action against the Fund or its Trustees may be filed until the matter has been submitted for review under the review procedure set forth in Article 6. The decision on review shall be binding upon all persons dealing with the Plan or claiming any benefit hereunder.

No action at law or in equity may be brought by any Participant, Pensioner, Employee, Beneficiary, Alternate Payee or other third party after the expiration of two (2) years from the date of the action giving rise to the claim, except where a longer statute of limitations is specifically provided herein. Failure to bring an action within this two (2) year period shall forever bar such action. Any action at law or in equity, brought by a Participant, Pensioner, Employee, Beneficiary, Alternate Payee or other third party, must be

brought in the United States District Court for the Eastern District of Missouri. This Section shall not pertain to claims related to benefit/appeal denials, which shall be handled in accordance with the provisions of Article 6 below.

Section 5.04. Powers of Trustees.

The Trustees shall be the sole judges of the standard of proof required in any case. In the application and interpretation of any of the provisions of the Plan, the decisions of the Trustees shall be final and binding on all parties, including Participants, Pensioners, Employees, Employers, the Union, the Associated General Contractors of Missouri, the SITE Improvement Association, Annuitants, and Beneficiaries or any of their heirs, successors or assigns.

Section 5.05. Designation of Beneficiary.

A Participant may designate a Beneficiary on a form provided by or acceptable to the Trustees and delivered to the Trustees before death. A Participant may change their Beneficiary (without the consent of the Beneficiary) in the same manner. If no Beneficiary has been designated or no designated Beneficiary has survived the Participant, the person or persons in the first of the following successive classes of persons surviving at the death of the Participant shall be deemed the designated Beneficiary:

- a. The beneficiary (if any) designated by the Participant or Pensioner and in effect for the Welfare Fund of Engineers Local 513.
- b. The surviving Spouse.
- c. The surviving children in equal shares.
- d. The surviving parents in equal shares.
- e. The Participant's estate.

If any benefit becomes payable to a person who is under the age of twenty-one (21) years, the Trustees in their discretion may appoint any adult individual as custodian for such person under the Missouri Transfers to Minors Law or similar statute and may pay the benefits to such custodian, whose receipt shall be a complete acquittance of the Trustees.

No change in Beneficiary shall be effective or binding on the Trustees unless it is received by the Fund Office prior to the time any payments are made to the Beneficiary whose designation is on file with the Fund Office. Should the Participant's Beneficiary be the Participant's Spouse and the Participant and Spouse subsequently divorce, the designation of the Spouse as the Participant's Beneficiary will be void unless otherwise prohibited herein. In order for the former Spouse to remain the Participant's Beneficiary following the divorce, the Participant will need to redesignate the Spouse as their Beneficiary after the divorce or the Fund will need a valid Qualified Domestic Relations Order naming the Spouse as the Participant's Beneficiary.

Section 5.06. Incompetency of Payee.

In the event the Trustees determine, in their discretion, that any Participant, Pensioner, Alternate Payee or Beneficiary is unable to care for their affairs because of mental or physical incapacity, any benefit due such person, unless claim therefor has been made by their legal guardian or legal representative, may be applied in the discretion of the Trustees for their maintenance and support or the maintenance and support of their Spouse and minor children.

Section 5.07. Prohibition Against Assignment.

To the end of making it impossible for Participants, Pensioners, or Beneficiaries covered by these regulations improvidently to imperil the provisions made for their support and welfare by directly anticipating, pledging or disposing of their payments hereunder, it is hereby expressly stipulated that no Participant, Pensioner, or Beneficiary hereunder shall have any right to assign, alienate, transfer, sell, hypothecate, mortgage, encumber, pledge, commute or anticipate any payments and that such payments shall not in any way be subject to any legal process to levy execution upon, or attachment or garnishment proceedings against the same for the payment of any claim against any Participant, Pensioner, or Beneficiary; nor shall such payments be subject to the jurisdiction of any bankruptcy court or insolvency proceedings by operation of law or otherwise, and any such assignment shall be void and of no effect whatsoever. Notwithstanding the foregoing, benefits shall be paid in accordance with the applicable provisions of any Qualified Domestic Relations Order.

Section 5.08. Plan Amendment.

The Trustees may amend or modify the Plan at any time. No amendment or modification may reduce any benefits which have been approved for payment prior to amendment so long as funds are available for payment of such benefits. No amendment or modification may be made which violates the anti-cutback provisions of ERISA and the Internal Revenue Code and any rules and regulations issued thereunder.

Amendment to the Plan shall be adopted by action of the Trustees at a regular or special meeting of the Trustees and shall be recorded in the minutes of such meeting, or in a formal document executed by the Trustees as an amendment to the Plan document.

Any such amendment to the Plan shall become effective upon adoption or, if a different effective date is specified by the Trustees, on such specified date.

If an amendment to the Plan is recorded in minutes of the meeting at which it is adopted, the amendment shall be given effect as recorded in the minutes. If such amendment to the Plan is thereafter incorporated in a formal document executed by the Trustees as an amendment to the Plan document, the provisions of the formal document shall, upon execution, supersede the provisions of the meeting minutes with respect to such amendment to the Plan.

Section 5.09. Plan Merger or Consolidation.

In the event of any merger or consolidation with, or transfer of assets or liabilities to, any other plan, the amount of benefit which a Participant would receive upon a termination of the Plan immediately after such merger, consolidation, or transfer shall be no less than the benefit the Participant would have been entitled to receive immediately before the merger, consolidation, or transfer if the Plan had been terminated.

Section 5.10. Plan Termination.

In the event of termination of this Plan or in the event of complete discontinuance of Contributions, each Participant shall have a nonforfeitable right, and the assets then remaining, after providing for expenses of the Plan and for the payment of any Individual Account theretofore approved, shall be distributed among the Participants. No part of the assets shall be returned to any Employer or inure to the benefit of any Employer, the Associated General Contractors of Missouri, the SITE Improvement Association, or Union. In the event a Participant cannot be located and no claim is made by the Participant for payment of their Individual Account within six months following the sending of notice by registered mail to the Participant's last known address, the Participant's Individual Account shall be forfeited and shall be used as an offset against the expenses of operating the Fund.

Section 5.11. Release of Trustees.

When the accounts of the Trustees shall have been settled and the assets of the Trust shall have been fully applied or distributed, the Trustees shall be released and discharged from all further accountability or liability with respect to the Trust and shall not be responsible in any way or to any person for the further disposition of the Trust or any part thereof so applied or distributed.

Section 5.12. Recovery of Overpayments.

No Participant, Spouse, Beneficiary or Alternate Payee shall have or acquire any right, title or interest in or to the Trust assets or any portion of the Trust assets, except by the actual payment or distribution from the Trust to such Participant, Spouse, Beneficiary or Alternate Payee of such Participant, Spouse, Beneficiary or Alternate Payee's benefit to which **they are** entitled under the provisions of the Plan. Whenever the Plan pays a benefit in excess of the maximum amount of payment required under the provisions of the Plan, the Plan Administrator will have the right to recover any such excess payment, plus earnings at the Plan Administrator's discretion, on behalf of the Plan from the Participant, Spouse, Beneficiary and/or Alternate Payee, as the case may be. Notwithstanding anything to the contrary herein stated, this right of recover includes, but is not limited to, a right of offset against future benefit payments to be paid under the Plan to the Participant, Spouse, Beneficiary and/or Alternate Payee as the case may be, which the Plan Administrator may exercise in its sole discretion.

Section 5.13. No Tax Advice.

Neither the Fund, the Fund's service providers or employees, nor the Trustees shall provide tax or legal advice. Employers, Participants, Spouses, Beneficiaries and Alternate Payees are strongly encouraged to consult with their attorneys or tax advisors with regard to their specific situations.

Article 6. Benefit Determination and Appeal Procedures

No Participant or Beneficiary shall have any right or claim to benefits under the Plan or from the Board of Trustees, except as specified in the Plan. Any dispute as to eligibility, type, amount or duration of benefits under the Plan, or any amendment or modification thereof shall be resolved under the following Benefit Determination and Appeal Procedures. All benefit claim determinations will be made in accordance with governing Plan documents and, where appropriate, the Plan provisions will be applied consistently with respect to similarly situated claimants. No action may be brought for benefits provided under the Plan or any amendment or modification thereof, or to enforce any right thereunder, until after the claim has been submitted to and determined under the following Benefit Determination and Appeal Procedures, unless otherwise permitted by law.

A benefit claim is a “Disability Claim” under these Benefit Determination and Appeal Procedures, subject to the special rules for Disability Claims set out herein, if the Fund conditions the benefit’s availability upon a finding of disability and the Fund or its designee is responsible for making that finding of disability. Where the finding of disability is made by a party other than the Fund or its designee, for purposes other than making a benefit determination under the Plan, such as the Social Security Administration, and the Fund relies on said third party’s finding of disability, then the special rules for Disability Claims set out in these Benefit Determination and Appeal Procedures shall not apply.

All Disability Claims under the Plan will be adjudicated in a manner designed to ensure the independence and impartiality of the persons involved in making the decision. Accordingly, decisions regarding hiring, compensation, termination, promotion or other similar matters with respect to any individuals (such as a claims adjudicator or medical or vocational expert) will not be made based upon the likelihood that the individual will support the denial of benefits.

Any claimant pursuing a claim for benefits or an appeal of an adverse benefit determination under these Benefit Determination and Appeal Procedures, shall be entitled to be represented by a duly authorized representative without expense to the Fund. Claimants must submit their authorized representative designation in writing to the Fund Office.

When the Fund is required to provide notifications in a culturally and linguistically appropriate manner under these Benefit Determination and Appeal Procedures, the Fund will: (1) provide oral language services (such as a telephone customer assistance hotline) that includes answering questions in any applicable non-English language and providing assistance with filing claims and appeals (including external review) in any applicable non-English Language; (2) provide, upon request, a notice in any applicable non-English language; and (3) include, in the English versions of all notices, a statement prominently displayed in any applicable non-English language clearly indicating how to access the language services provided by the Fund. With respect to an address in any Untied States county to which a notice is sent, a non-English language is an “applicable non-English language” if ten percent or more of the population residing in the county is literate only in the same

non-English language, as determined in guidance published by the Secretary of the Department of Labor.

a. Timing and Notification of Benefit Determination

If a claimant's application for benefits (other than a Disability Claim) under this Plan has been denied, in whole or in part, the claimant will be notified of the denial within a reasonable period of time, but not later than 90 days after receipt of the claim by the Fund Office, unless it is determined by the Board of Trustees' designee that special circumstances require an extension of time for processing the claim. If the Board of Trustees' designee determines that an extension of time for processing is required, written notice of the extension shall be furnished to the claimant prior to the termination of the initial 90-day period. In no event shall such extension exceed a period of 90 days from the end of such initial period. The extension notice shall indicate the special circumstances requiring an extension of time and the date by which the Board of Trustees' designee expects to render the benefit determination.

If a claimant's Disability Claim under this Plan has been denied, in whole or in part, the claimant will be notified of the denial within a reasonable period of time, but not later than 45 days after receipt of the claim by the Fund Office. This period may be extended by the Board of Trustees' designee for up to 30 days, provided that the Board of Trustees' designee both determines that such an extension is necessary due to matters beyond the control of the Fund 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 Board of Trustees' designee expects to render a decision. If, prior to the end of the first 30-day extension period, the Board of Trustees' designee determines that, due to matters beyond the control of the Fund, 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 Board of Trustees' designee notifies 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 Board of Trustees' designee expects to render a decision. Any notice of extension under this paragraph shall specifically explain the standards on which entitlement to a disability benefit is based, the unresolved issues that prevent a decision on the claim for disability benefits and the additional information needed to resolve those issues, and the claimant shall be afforded at least 45 days within which to provide the specified information.

The period of time within which a claimant's entitlement to benefits under the Plan shall be determined, shall begin at the time the claimant's application is filed with the Fund Office, without regard to whether all the information necessary to make a benefit determination accompanies the application. In the event that a period of time is extended for making the benefit determination as provided for in the paragraphs above due to the claimant's failure to submit information necessary to decide the claimant's entitlement to a benefit, the period for making the benefit determination shall be tolled from the date on which the notification

of the extension is sent to the claimant until the date on which the claimant responds to the request for additional information.

The Board of Trustees' designee shall provide a claimant with written or electronic notification of any adverse benefit determination. Any electronic notification shall comply with the standards imposed by 29 C.F.R. 2520.104b-1(c)(1)(i), (iii) and (iv). The notification shall set forth, in a manner calculated to be understood by the claimant the following:

- i. The specific reason(s) for the adverse benefit determination;
- ii. Reference to the specific Plan provisions on which the determination is based;
- iii. A description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary;
- iv. A description of the Fund's appeal procedures and the time limits applicable to such procedures, including a statement of the claimant's right to bring a civil action under Section 502(a) of the Act following an adverse benefit determination on appeal;
- v. In the case of an adverse benefit determination with respect to a Disability Claim:
 - (a) A discussion of the decision, including an explanation of the basis for disagreeing with or not following (i) the views presented by the claimant to the Fund of health care professionals treating the claimant and vocational professionals who evaluated the claimant; (ii) the views of medical or vocational experts whose advice was obtained on behalf of the Fund in connection with a claimant's adverse benefit determination, without regard to whether the advice was relied upon in making the benefit determination; and (iii) a disability determination regarding the claimant presented by the claimant to the Fund made by the Social Security Administration;
 - (b) Either the specific internal rules, guidelines, protocols, standards or other similar criteria of the Fund relied upon in making the adverse determination or, alternatively, a statement that such rules, guidelines, protocols, standards or other similar criteria of the Fund do not exist; and
 - (c) A statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits. A document, record, or other information shall be considered "relevant" to the claimant's claim if such document, record or other information: (i) was

relied upon in making the benefit determination; (ii) was submitted, considered, or generated in the course of making the benefit determination, without regard to whether such document, record, or other information as relied upon in making the benefit determination; (iii) demonstrates compliance with the administrative process and safeguards required by 29 C.F.R. 2560.503-1 in making the benefit determination; or (iv) constitutes a statement of policy or guidance with respect to the Fund concerning the denied treatment option or benefit for the claimant's diagnosis without regard to whether such advice or statement was relied upon in making the benefit determination.

In the case of an adverse benefit determination with respect to Disability Claim, the notification shall be provided in a culturally and linguistically appropriate manner.

b. Appeal Procedures

Any claimant whose claim for benefits has been denied in whole or in part may appeal the adverse benefit determination by filing a written request for a full and fair review by the Board of Trustees with the Fund Office not more than 180 days after receipt by the claimant of written notification of the adverse benefit determination. Claimants shall have the right to submit written comments, documents, records and other information relating to the claim for benefits.

Claimants shall have the right to receive, upon written request to the Fund Office reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits. These documents, records and other information shall be provided by the Fund free of charge. A document, record, or other information shall be considered "relevant" to the claimant's claim if such document, record or other information: (i) was relied upon in making the benefit determination; (ii) was submitted, considered, or generated in the course of making the benefit determination, without regard to whether such document, record, or other information was relied upon in making the benefit determination; (iii) demonstrates compliance with the administrative process and safeguards required by 29 C.F.R. 2560.503-1 in making the benefit determination; or (iv) constitutes a statement of policy or guidance with respect to the Fund concerning the denied treatment option or benefit for the claimant's diagnosis without regard to whether such advice or statement was relied upon in making the benefit determination.

No claimant shall be entitled, as a matter of right, to appear personally before the Board of Trustees and no hearing shall be required to be held in connection with any appeal.

The appeal will be decided by the Board of Trustees and the Board of Trustees shall take into account all comments, documents, records and other information submitted by the

claimant relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination.

With respect to an appeal of an adverse benefit determination related to a Disability Claim, the Board of Trustees shall, prior to issuing an adverse benefit determination on appeal: (i) ensure that the claimant is provided, free of charge, with any new or additional evidence considered, relied upon, or generated by the Fund or Board of Trustees (or at the direction of the Fund or Board of Trustees) in connection with the Disability Claim; and (ii) ensure that the claimant is provided, free of charge, with any new or additional rationale upon which the adverse benefit determination on review will be based. The new or additional evidence and/or rationale must be provided as soon as possible and sufficiently in advance of the date on which notice of adverse benefit determination on appeal is required to be provided to the claimant, so that the claimant has a reasonable opportunity to respond prior to that date.

The decision on appeal shall be made by the Board of Trustees no later than the date of the meeting of the Board of Trustees that immediately follows the Fund Office's receipt of the appeal, unless the request for appeal is filed within 30 days preceding the date of such meeting. In such case, a benefit determination will be made by no later than the date of the second Board of Trustees' meeting following the Fund Office's receipt of the request for appeal. If special circumstances require a further extension of time for processing, a benefit determination shall be rendered no later than the third Board of Trustees' meeting following the Fund Office's receipt of the request for appeal. If such an extension of time is required because of special circumstances, the Fund Office shall provide the claimant with written notice of the extension, describing the special circumstances and the date as of which the benefit determination will be made, prior to the commencement of the extension.

The period of time within which a benefit determination on appeal is required to be made shall begin at the time an appeal is filed in writing with the Fund Office, without regard to whether all the information necessary to make a benefit determination on review accompanies the filing. In the event the time to make a determination on appeal is extended as permitted above due to a claimant's failure to submit information necessary to decide the claim, the period for making the benefit determination on appeal shall be tolled from the date on which the notification of extension is sent to the claimant until the date on which the claimant responds to the request for additional information.

The Fund Office shall provide the claimant with written or electronic notification of the Board of Trustees' benefit determination as soon as possible, but not later than five days after the benefit determination is made on appeal. Any electronic notification shall comply with the standards imposed by 29 CFR 2520.104b-1(c)(1)(i), (iii), and (iv). In the case of an adverse benefit determination on appeal, the notification shall set forth, in a manner calculated to be understood by the claimant the following:

- i. The specific reason(s) for the adverse benefit determination on appeal;

- ii. Reference to the specific Plan provisions on which the benefit determination is based;
- iii. A statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits. A document, record, or other information shall be considered "relevant" to the claimant's claim if such document, record or other information: (i) was relied upon in making the benefit determination; (ii) was submitted, considered, or generated in the course of making the benefit determination, without regard to whether such document, record, or other information as relied upon in making the benefit determination; (iii) demonstrates compliance with the administrative process and safeguards required by 29 C.F.R. 2560.503-1 in making the benefit determination; or (iv) constitutes a statement of policy or guidance with respect to the Fund concerning the denied treatment option or benefit for the claimant's diagnosis without regard to whether such advice or statement was relied upon in making the benefit determination.
- iv. A statement of the claimant's right to bring an action under Section 502(a) of the Act and any applicable contractual limitations period that applies to the claimant's right to bring such an action, including the calendar date on which the contractual limitations period expires for the claim;
- v. In the case of an adverse benefit determination on appeal with respect to a Disability Claim:
 - (a) A discussion of the decision, including an explanation of the basis for disagreeing with or not following: (i) the views presented by the claimant to the Fund of health care professionals treating the claimant and vocational professionals who evaluated the claimant; (ii) the views of medical or vocational experts whose advice was obtained on behalf of the Fund in connection with a claimant's adverse benefit determination, without regard to whether the advice was relied upon in making the benefit determination; and (iii) a disability determination regarding the claimant presented by the claimant to the Fund made by the Social Security Administration;
 - (b) Either the specific internal rules, guidelines, protocols, standards or other similar criteria of the Fund relied upon in making the adverse benefit determination on appeal or, alternatively, a statement that such rules, guidelines, protocols, standards or other similar criteria of the Fund do not exist;

In the case of an adverse benefit determination on appeal with respect to a Disability Claim, the notification shall be provided in a culturally and linguistically appropriate manner.

While claimants have the right to bring timely legal action for benefits under ERISA, no action at law or in equity may be brought by any Participant, Beneficiary or other third party after the expiration of three (3) years from the date the Board of Trustees provides written notice of a decision on an appeal of an adverse benefit determination, or, in the case where a decision on an initial benefit determination or on appeal is not furnished within the time limits set forth herein, the date on which such decision was due. Failure to bring an action within this three (3) year period shall forever bar such action. Any action at law or in equity, brought by a Participant, Beneficiary or other third party, must be brought in the United States District Court for the Eastern District of Missouri.

ARTICLE 7. SELF-DIRECTION

Section 7.01. General Rule.

The Trustees shall have the authority to designate and describe one or more investment vehicles, which shall be available for the investment of Contributions and existing balances in Individual Accounts. The Trustees may, from time to time, add, remove or change investment vehicles available for self-direction under this Article 7.

Section 7.02. Restriction and Conditions.

The Trustees may, from time to time, establish such restrictions, conditions or limitations on the ability of Participants to have Contributions made to a specific investment vehicle or to transfer assets from or to a specific investment vehicle and shall have the right to adopt and enforce such other rules as they deem necessary or appropriate with respect to all matters relating to this Article 7.

Section 7.03. Right of Self-Direction.

Each Participant (including for purposes of this Section, Spouses, Beneficiaries and Alternate Payees with Individual Accounts) shall have the right and the opportunity to designate the manner in which such Contributions and Individual Account balances shall be allocated among the investment vehicles established under Section 7.01. If and to the extent that a Participant fails to designate or complete an allocation for Contributions made on their behalf or for the Participant's Individual Account, the undesignated amounts shall be invested in the predetermined investment vehicle (also known as the "Qualified Default Investment Alternative" or "Default Fund") to be chosen by the Trustees.

Section 7.04. Designation as Section 404(c) Plan.

The Plan is intended to constitute a plan described in Section 404(c) and Title 29, CFR Section 2550.404(c)-1. No Trustee, employee, or agent of the Plan shall have the duty to question the direction of a Participant, Spouse, Beneficiary or Alternate Payee in the investment of their Individual Account, nor shall any such Trustee, Plan employee, or agent be liable to said Participant, Spouse, Beneficiary or Alternate Payee or to any other person claiming through such individual for any losses or damages which may result from said Participant, Spouse, Beneficiary or Alternate Payee's exercise of control over their Individual Account. The Trustees may designate one or more Administrative Managers as its agent or agents for the purpose of receiving investment instructions from Participants, Spouses, Alternate Payees and Beneficiaries and for such other purposes as the Trustees may permit.

ARTICLE 8. NON-BARGAINED EMPLOYEES

Section 8.01. Employer Defined.

“Employer” shall be defined throughout this Article as follows:

- a. For purposes of identifying Highly Compensated Employees and applying the rules on participation, vesting and statutory limits on benefits under the Fund for such Employees, but not for determining covered service, the term “Employer” includes all members of an affiliated service group with the Employer within the meaning of Section 414(m) of the Code and all other businesses aggregated with the Employer under Section 414(o) of the Code.
- b. For this purpose, an “Employer” also includes all corporations, trades or businesses under common control with the Employer within the meaning of Section 414(b) and (c) of the Code.
- c. For all other purposes, the term “Employer” shall have the meaning stated in Article 1.

Section 8.02. Non-Bargained Employee Defined.

“Non-Bargained Employee” means a person who is employed by an Employer and who is not covered by a Collective Bargaining Agreement but is covered by another written agreement requiring Employer Contributions on their behalf.

Section 8.03. Additional Definitions.

For purposes of this Article, the following definitions shall apply:

- a. The term “Highly Compensated Employee” includes Highly Compensated Active Employees and Highly Compensated Former Employees of an Employer. Whether an individual is a Highly Compensated Employee is determined separately with respect to each Employer, based solely on that individual’s Compensation form or status with respect to that Employer.
- b. A “Highly Compensated Active Employee” is an Employee of the Employer who performs services for the Employer during the Determination Year and who during the Look-Back Year:
 - i. Received Compensation from the Employer in excess of \$160,000 (as adjusted under Section 414(q) of the Code) and if elected by the Employer is in the top 20% of the Employees who received the most Compensation from the Employer; or
 - ii. Is a 5% owner at any time during the Look-Back Year or the Determination

Year.

- c. A “Highly Compensated Former Employee” is an Employee who separated from service, or was deemed to have separated, before the Determination Year, performs no service for the Employer during the Determination Year, and was a Highly Compensated Employee either for the separation year or for any Determination Year ending on or after the individual reaches age 55.
- d. The “Determination Year” is the Plan Year for which the test is being applied, and the “Look-Back Year” is the 12-month period immediately preceding that Plan Year.
- e. An Employer may elect to make the Look-Back Year calculation for a Determination Year on the basis of the calendar year ending with or within the applicable Determination Year, in accordance with Treasury Regulation 1.414(q)-1T.

Section 8.04. Non-discrimination, Coverage, and Participation.

Participation in this Plan by Non-Bargained Employees shall be in compliance with Section 401(a)(4) (non-discrimination rules) and 410(b)(coverage rules).

ARTICLE 9. SPECIAL PROVISIONS FOR ELIGIBLE ROLLOVER DISTRIBUTIONS

Section 9.01. Definitions.

The following definitions shall apply for purposes of this Article:

- a. **Eligible Rollover Distribution:** An “Eligible Rollover Distribution” is any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include: any distribution that is: (i) one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee’s designated Beneficiary, or for a specified period of ten years or more; (ii) required under Section 401(a)(9) of the Internal Revenue Code; (iii) the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities), and (iv) less than \$200 during a year.
- b. **Eligible Retirement Plan:** An “Eligible Retirement Plan” is: (1) an individual retirement account described in Section 408(a) of the IRC; (2) an annuity plan described in Section 403(a) of the IRC; (3) an individual retirement annuity contract described in Section 408(b) of the Code (other than an endowment contract); (4) an annuity contract described in Section 403(b) of the Code; (5) an eligible deferred compensation plan described in Section 457(b) of the Code, which is maintained by an eligible employer described in Section 457(e)(1)(A); (6) a Roth IRA under Section 408A of the Code, or (7) a qualified trust described in Section 401(a) of the Code, that accepts the Distributee’s Eligible Rollover Distribution.
- c. **Distributee:** A “Distributee” includes a Participant. In addition, the Participant’s surviving Spouse and the Participant’s Spouse or former Spouse who is identified as an Alternate Payee under a QDRO, are Distributees with regard to the interest of the Spouse or former Spouse. A designated Beneficiary of a Participant, who is not the Participant’s Spouse, may be a Distributee to the extent provided for in Section 402(c)(11) of the Code.
- d. **Direct Rollover:** A Direct Rollover is a distribution of proceeds by the Plan to the Eligible Retirement Plan specified by the Distributee.

Section 9.02. Rollovers from The Plan.

Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee’s election under this Article, a Distributee may elect, at the time and in the manner prescribed by the Plan Administrator, that any portion of an Eligible Rollover Distribution be paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover. The Plan Administrator will

provide a written explanation to recipients of distributions eligible for rollover treatment as required under Section 402(f) of the IRC no less than 30 (unless waived) and no more than 180 days prior to the Annuity Starting Date.

Such transfer is subject to the Trustees' receipt of a proper application and verification from the institution and/or fund receiving such monies that the account to which the monies will be transferred is an Eligible Retirement Plan. The Trustees shall have the sole authority to determine whether or not the institution and/or fund receiving such monies is an Eligible Retirement Plan that can receive the Eligible Rollover Distribution in accordance with the provisions of this Article and Section 402 of the Code. The Trustees may rely conclusively upon the opinion of legal counsel for the Fund in making any such determination. Upon transfer of such monies, the Trustees of this Plan shall not be accountable for or held responsible for any future earnings or losses attributable to said monies and shall have no responsibility in how those monies are handled by the institution or fund to whom said monies were transferred.

Section 9.03. Rollovers to the Plan.

The Participant may make an Eligible Rollover Distribution to this Plan from another Eligible Retirement Plan. The Plan does not accept rollovers of after tax or Roth Deferrals. Rollover contributions are always 100% vested and are eligible for distribution upon the same terms and conditions under the Plan as other Contributions made to the Participant's Individual Account.

The Plan may refuse to accept a rollover contribution if the Plan reasonably believes the rollover contribution: (a) is not being made from an Eligible Retirement Plan; (b) is not being made within sixty (60) days from receipt of the amounts from the Eligible Retirement Plan; (c) could jeopardize the tax-exempt status of the Plan; or (d) could create adverse tax consequences for the Plan or any of the Employers. Prior to accepting a rollover contribution, the Plan may require the Participant to provide satisfactory evidence establishing that the rollover contribution meets the requirements of this Article. The Trustees shall have the sole authority to determine whether a rollover contribution meets the requirements of this Article and Section 402 of the Code and can be accepted. The Trustees may rely conclusively upon the opinion of legal counsel for the Fund in making any such determination.

The Plan may apply different conditions for accepting rollover contributions from qualified retirement plans and IRAs. Any conditions on rollover contributions will be applied uniformly to all Participants under the Plan.

Section 9.04. Rollover by Non-Spouse Beneficiary.

A non-Spouse Beneficiary eligible to receive a distribution on behalf of a deceased Participant may make a direct trustee-to-trustee transfer to an individual retirement account described in Internal Revenue Code Section 408(a) or an individual retirement annuity as described in Code Section 408(b), each referred to herein as an IRA. The IRA shall be treated as an "Inherited IRA," within the meaning of Internal Revenue Code Section 408(d)(3).

ARTICLE 10. TOP-HEAVY PROVISIONS

Section 10.01. Definitions.

For purposes of this Article, the following words and phrases shall have the following meanings:

- a. **Accrued Benefit**: As defined in Article 1. In determining the Accrued Benefit or the present value of the cumulative accrued benefit in one or more Defined Benefit Plans (as defined in Section 415 of the Code and the regulations thereunder) for any Employee or former Employee, (i) such Accrued Benefit and present value shall be increased by the aggregate distributions made with respect to such Employee or Former Employee under this Plan (and under any other plan or terminated plan of the Employer with respect to the determination of a Top-Heavy Group) during the 1-year period ending on the Determination Date, provided, however, that in case a distribution was made for any reason other than separation from service, death, or disability, this provision shall be applied by substituting “5-year period” for “1-year period,” and (ii) such Accrued Benefit and present value of an Employee who is a Non-Key Employee but who was a Key Employee in a prior year, or of any former Employee who has performed no services for the Employer at any time during the 1-year period ending on the Determination Date shall not be taken into account.
- b. **Compensation**: As defined in Section 415 of the Code and the regulations thereunder.
- c. **Determination Date**: With respect to any Plan Year, the last day of the preceding Plan Year, or, in the case of the first Plan Year of the Plan, the last day of such Plan Year.
- d. **Key Employee**: Any Employee or former Employee (including a deceased Employee) who at any time during the Plan Year that includes the Determination Date was:
 - i. An officer of the Employer having Compensation from the Employer for such Plan Year in excess of \$160,000 (as adjusted under Section 416(i)(1) of the Code);
 - ii. a 5% owner of the Employer; or
 - iii. a 1% owner of the Employer having annual Compensation from the Employer in excess of \$150,000.

For purposes of subparagraph (i) above, no more than 50 Employees (or, if lesser, the greater of 3 or 10% of the Employees) shall be treated as officers. The Beneficiary of a Key Employee is also a Key Employee. The determination of who is a Key Employee shall be made in accordance with Section 416(i)(1) of the Code, the Regulations or other guidance of general applicability issued thereunder.

- e. Non-Key Employee: Any Employee or Beneficiary who is not a Key Employee.
- f. Permissive Aggregation Group: A group of qualified plans of the Employer not required to be included in a Required Aggregation Group but whose inclusion would not cause such group to fail to meet the requirements of Section 401(a)(4) or Section 410 of the Code.
- g. Required Aggregation Group: Each qualified plan of the Employer in which a Key Employee participates (or participated at any time during the 5-year period ending on the Determination Date) and each other qualified plan (whether or not terminated) of the Employer which enables any such plan to meet the requirements of Section 401(a)(4) or Section 410 of the Code.
- h. Top-Heavy Plan: With respect to any Plan Year, this Plan, if as of the Determination Date: (i) the aggregate Accrued Benefits under the Plan of Key Employees exceed 60% of the aggregate Accrued Benefits under the Plan of all Employees; or (ii) the Plan is part of a Required Aggregation Group that is a Top-Heavy Group. Notwithstanding the foregoing, in no event shall the Plan be considered a Top-Heavy Plan for any Plan Year in which it is part of a Required Aggregation Group or Permissive Aggregation Group which is not a Top-Heavy Group.
- i. Top-Heavy Group: A Required Aggregation Group or a Permissive Aggregation Group in which as of the Determination Date, the sum of: (i) the aggregate of the Accrued Benefits of Key Employees in all Defined Contribution Plans (as defined in Section 415 of the Code and the regulations thereunder) included in such group, and (ii) the present value of the cumulative accrued benefits of Key Employees under all Defined Benefit Plans included in such group exceeds 60% of a similar sum determined for all Employees. For purposes of making the foregoing determination for any Defined Benefit Plan, the accrued benefit of each Non-Key Employee shall be determined under the method which is used for accrual purposes for all such plans of the Employer, or, if there is no such method, as if such benefit accrued no more rapidly than the slowest accrual rate permitted under the fractional rule of Section 411(b)(1)(C) of the Code. When plans with different Determination Dates are aggregated, the Determination Dates that fall within the same calendar year shall be used.

Section 10.02. Applicability.

The provisions of this Article 10 shall be effective for any Plan Year in which the Plan is determined to be a Top-heavy Plan and shall supersede any conflicting provisions in the Plan.

Section 10.03. Minimum Employer Contribution.

Except to the extent a minimum contribution is not required under the Regulations because a minimum benefit has been provided to each Non-Key Employee under another plan of the Employer,

the minimum Employer Contribution allocated for any such Plan Year to each Non-Key Employee who is an Active Participant and who was an Employee of the Employer at the end of such Plan Year, regardless whether such Non-Key Employee completed 1,000 Hours of Service in such Plan Year, shall be not less than the lesser of: (a) 3% of such Non-Key Employee's Compensation for such Plan Year or (b) the largest percentage of Compensation allocated to any Key Employee for such Plan Year under this Plan and all other Defined Contribution Plans which are a part of its Required Aggregation Group, if any.

Section 10.04. Exception for Employees Covered by Collective Bargaining Agreements.

The provisions of Section 10.03 shall not apply with respect to any Employee included in a unit of employees covered by a Collective Bargaining Agreement between the Union and one or more Employers if there is evidence that retirement benefits were the subject of good faith bargaining between the Union and such Employers.

ARTICLE 11. MISCELLANEOUS PROVISIONS

Section 11.01. Addresses.

Each Participant, Spouse, Beneficiary, and Alternate Payee shall keep the Trustees informed as to their current residence address. The Trustees shall not be required to do anything further than sending all papers, notices, payments, or the like to the last known residence address given, unless they can be shown to have acted in bad faith, having had actual knowledge of the Participant, Spouse, Beneficiary, or Alternate Payee's whereabouts.

Section 11.02. Impossibility.

In case it becomes impossible for the Trustees to perform any act under this Plan, that act shall be performed which, in the judgment of the Trustees, shall most nearly carry out the intent and purpose of this Plan. Any individual or entity in any way interested in this Plan and the Trust shall be bound by any acts performed under such conditions.

Section 11.03. Necessary Acts.

All parties to this Plan, or claiming any interest hereunder, agree to perform any and all acts and execute any and all documents and papers which are necessary or desirable for carrying out any provisions of this Plan.

Section 11.04. Discharge of Trustees.

The Trustees shall be fully discharged from all liability for any amount paid to a Participant, Spouse, Alternate Payee, or Beneficiary or anyone else in accordance with the provisions hereof, and the Trustees shall be under no obligation or duty to see to the application of any monies so paid.

Section 11.05. Underscored References.

The underscored references contained herein are included only for convenience, and they shall not be construed as a part of this Plan or in any respect affecting or modifying its provisions.

Section 11.06. Governing Law.

This Plan shall be construed and administered in accordance with the laws of the State of Missouri to the extent that such laws are not preempted by the laws of the United States.

Section 11.07. Binding Effect.

This Plan shall be binding upon the heirs, executors, administrators, distributees, successors, and assigns of all parties hereto, present and future.

Section 11.08. Severability.

If any provision or provisions hereof shall be held by a court of competent jurisdiction to be invalid or unenforceable, in whole or in part, neither the validity nor the enforceability of the remainder of the Plan shall be affected in any way.

IN WITNESS WHEREOF, the Trustees have hereby adopted the Local Union 513 Annuity Plan Amended and Restated Effective August 6, 2025, by affixing their signatures as of this 5th day of August, 2025.

EMPLOYER TRUSTEES

Charles L. Lakin
J. B.
John D. Kiff

UNION TRUSTEES

Brian J. Koff
Steven R. Stratton
Mark A.