

**VACATION FUND**  
**OF**  
**ENGINEERS LOCAL 513 PLAN & TRUST**  
**AND**  
**SUMMARY PLAN DESCRIPTION**

**Effective May 1, 2010**

**SUMMARY PLAN DESCRIPTION**  
**VACATION FUND OF ENGINEERS LOCAL 513**

Suite 150  
3449 Hollenberg Drive  
Bridgeton, Missouri 63044  
Telephone: 314-739-2973

**BOARD OF TRUSTEES**

**Union Trustees**

Gary Broccard  
John Femmer  
Cal Bothman

**Employer Trustees**

Jay Schultehenrich  
Mark Schnoebelen  
Charlie Goodwin

**ADMINISTRATIVE MANAGER**

BeneSys, Inc.  
Suite 150  
3449 Hollenberg Drive  
Bridgeton, Missouri 63044

**LEGAL COUNSEL TO THE VACATION FUND**

Millar, Schaefer, Hoffman and Robertson  
AND  
Bartley Goffstein, L.L.C.

**ACTUARY AND CONSULTANT**

Milliman

## IMPORTANT FACTS ABOUT THE PLAN

The following information provides important facts about the Plan which you should know.

1. **Name of Plan.** This Plan is known as the Vacation Fund of Engineers Local 513.
2. **Board of Trustees.** A Board of Trustees is responsible for the operation of this Plan. The Board of Trustees consists of an equal number of Employer and Union representatives selected by the Employers and the Union which have entered into Collective Bargaining Agreements which relate to this Plan. If you wish to contact the Board of Trustees, you may use the address and telephone number below:

### BOARD OF TRUSTEES

Vacation Fund of Engineers Local 513  
Suite 150  
3449 Hollenberg Drive  
Bridgeton, Missouri 63044  
Telephone: (314) 739-2973

As of May 1, 2010, the Trustees of this Plan are as follows:

#### Union Trustees

Gary Broccard, Chairman  
International Union of Operating  
Engineers Local 513  
3449 Hollenberg Drive  
Bridgeton, MO 63044

John Femmer, Financial Secretary  
International Union of Operating  
Engineers Local 513  
3449 Hollenberg Drive  
Bridgeton, MO 63044

Cal Bothman  
International Union of Operating  
Engineers Local 513  
3449 Hollenberg Drive  
Bridgeton, MO 63044

#### Employer Trustees

Jay Schultehenrich, Secretary  
SITE Improvement Association  
American Heritage Building  
2705 Dougherty Ferry Road, Suite 203  
St. Louis, MO 63122

Mark Schnoebelen  
Massman Construction Company  
P.O. Box 22007  
12412 Rott Road  
St. Louis, MO 63126

Charlie Goodwin  
Goodwin Brothers  
1766 Highway 61 South  
Crystal City, MO 63019

3. **Plan Sponsor and Administrator.** The Board of Trustees is both the Plan Sponsor and Plan Administrator.

4. **Identification Numbers.** The number assigned to the Plan by the Board of Trustees pursuant to instructions of the Internal Revenue Service is 501. The number assigned to the Board of Trustees by the Internal Revenue Service is 43-6196259.
5. **Agent for Service of Legal Process.** BeneSys, Inc., the independent contractor engaged by the Trustees to perform the routine administration of the Trust, or any Trustee are the Plan's agents for service of legal process. Accordingly, if legal disputes involving the Plan arise, any legal documents should be served upon BeneSys, Inc., at the Fund Office, or upon any individual Trustee.
6. **Collective Bargaining Agreements.** This Plan is maintained pursuant to collective bargaining agreements between the Employers and the Union. The Fund Office will provide you, upon written request, information as to whether a particular employer is contributing to the Plan on behalf of Employees working under the collective bargaining agreements. A copy of any such collective bargaining agreement may be obtained by Employees and beneficiaries upon written request to the Plan Administrator, and is available for examination by Employees and beneficiaries at the Fund Office.
7. **Contributing Employers.** The Fund Office will provide any Employee or beneficiary, upon written request, information as to whether a particular employer is contributing to this Fund with respect to the work of Employees in the Fund and if the employer is a contributor, the employer's address.
8. **Trust Fund.** All assets are held in trust by the Board of Trustees for the purpose of providing benefits to covered Employees and their beneficiaries and defraying reasonable administrative expenses.
9. **Plan Credit Year and Fiscal Year.** The records of the Plan are kept separately for each Plan Credit Year. The Plan Credit Year and the Fiscal Year both begin on May 1 and end on April 30.
10. **Type of Plan.** This Plan is maintained for the purpose of distributing vacation pay.
11. **Eligibility and Benefits.** The eligibility requirements for benefits in general are described in Articles VI and VII, and the circumstances that may result in disqualification, ineligibility, or denial or loss of any benefits are described in Article VII, Section 4.
12. **Applying for Benefits and Appealing Adverse Decisions.** The procedure for applying for benefits is outlined in Article VII. The procedure for appealing decisions with which you disagree is outlined in Article IX, Section 9.

**SUMMARY PLAN DESCRIPTION**  
**ENGINEERS LOCAL 513 VACATION PLAN**  
**AGREEMENT AND TRUST**  
**AS**  
**AMENDED AND RESTATED EFFECTIVE MAY 1, 2010**

THIS AGREEMENT AND TRUST INDENTURE, first made the first day of May, 1967, by and between the ASSOCIATED GENERAL CONTRACTORS OF ST. LOUIS, a corporation, and the SITE IMPROVEMENT ASSOCIATION, a corporation, acting as collective bargaining agents for Employers whom they respectively represent as such, and other Employers signatory to collective bargaining agreements or other agreements with the Union requiring deposit by Employers of a part of Employees' wages into this Vacation Plan and Trust, hereinafter referred to as the "Associations," Parties of the First Part, and LOCAL UNION NO. 513, affiliated with the INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO, as collective bargaining agent for Employees whom it represents, hereinafter referred to as the "Union," Party of the Second Part, WITNESSETH THAT:

WHEREAS, the terms and provisions of collective bargaining agreements between the parties hereto in force and effect as of the date hereof, require and provide for certain deductions from wages of Employees represented by the Union by their Employers to be paid as vacation pay in accordance with a Vacation Plan developed and established by said parties, and

WHEREAS, said Union now has and will hereafter have in effect agreements with other Employers requiring similar deductions from wages of similar Employees by their Employers and payments thereof into a trust fund, for the purpose of providing vacation pay and funds for such contributing Employees as shall be herein provided, and

WHEREAS, to effectuate said purpose, the parties hereto desire to continue and maintain a trust fund and plan which will conform to the applicable requirements of the Labor-Management Relations Act of 1947, as amended, and which will continue to qualify as a tax exempt trust, pursuant to the provisions of the United States Internal Revenue Code and Regulations thereof, the contributions to which will be tax deductible thereunder, and which also will conform to the requirements of ERISA, and

WHEREAS, the Employee Retirement Income Security Act of 1974 makes certain amendments to this Agreement and Trust Indenture desireable and advisable, and

WHEREAS, the parties hereto now desire to amend and restate the terms and provisions of the establishment of said Trust and Plan and the administration thereof, and

WHEREAS, said Union, on behalf of the Employees it represents, the Associations, on behalf of the Employers they represent, and each other Employer who accepts this Trust Agreement and Plan, agree to bind themselves and the parties they respectively represent, by the terms and provisions hereof;

NOW, THEREFORE, in consideration of the premises, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto make and enter into this Trust and Vacation Plan as follows:

## **ARTICLE I**

### **DEFINITIONS**

**Section 1. Union:** The term “Union” shall mean Local Union No. 513, affiliated with the International Union of Operating Engineers, AFL-CIO.

**Section 2. Employer:** The term “Employer” shall mean any Employer who now or hereafter, has an agreement with the Union which requires deduction from Employees’ wages and payment thereof as vacation pay, in accordance with the Vacation Plan created by this Trust Indenture or who otherwise may make payment hereto pursuant to Article III, Section 2(d) hereof.

**Section 3. Employee:** The term “Employee” shall mean all persons covered by agreements requiring payment of part of their wages as vacation pay in accordance with the Vacation Plan created by this Trust Indenture and for whom payment of deduction of his wages shall be made hereto.

**Section 4. Trustees:** The term “Trustees” shall mean the Trustees duly appointed to serve hereunder as provided herein. The term “Board of Trustees,” or “Board” shall mean the Trustees of the “Vacation Fund of Engineers Local 513.”

**Section 5. Trust Indenture:** The term “Trust Indenture” shall mean this instrument, including any and all amendments hereto or modifications hereof.

**Section 6. Plan:** The term “Plan” shall mean the plan for receiving and disbursing wage deductions as vacation pay or savings established by this Trust Indenture, and any amendments hereafter made hereto.

**Section 7. Fund:** The term “Fund” herein shall mean the “Vacation Fund of Engineers Local 513,” consisting of wage deduction payments made to this Trust, all increments thereto and all other assets thereof.

**Section 8. Wage Payments:** The term “Wage Payments” shall mean the payment of wage deductions made by Employees through their Employers to the Fund.

**Section 9. Vacation Pay:** The term “Vacation Pay” shall mean the amount of withdrawal from the Fund by an Employee to which he shall be entitled of wage payments made by him into the Fund.

**Section 10. Administrator:** The term “Administrator” shall mean the Board of Trustees hereunder or the professional Administrator to whom has been delegated the duties and responsibilities thereof, as contemplated and authorized by ERISA.

**Section 11. ERISA:** The term “ERISA” shall mean the Employee Retirement Income Security Act of 1974, and all regulations promulgated thereunder.

## ARTICLE II

### **NAME – EFFECTIVE DATE – CREATION OF TRUST AND FUND**

**Section 1. Name:** This Trust and Fund shall be known as “Vacation Fund of Engineers Local 513,” and may hereinafter sometimes be referred to as the Trust or Fund.

**Section 2. Effective Date:** The effective date of this Trust shall remain May 1, 1967, as it was under the original trust indenture.

**Section 3. Creation of Trust and Fund:** The Trust and Fund originally established and created hereunder as the Vacation Fund of Engineers Local 513, shall continue hereunder for the uses and purposes set forth in this instrument.

The Fund shall constitute a Trust Fund and shall be used for the purpose of distributing vacation pay under the provisions hereof and any rules and regulations of the Trustees, and for the payment of any expenses of the operation and administration of the Plan and Fund in accordance with this instrument.

## ARTICLE III

### **SOURCE OF FUNDS**

**Section 1.** The funds of this Trust shall consist of those sums of money representing retained wages which are from time to time paid into the Fund or to the Trustees by those Employers described in Section 2 of this Article, together with whatever additional income or funds are received from the investment or reinvestment of such funds, and any other sources of income permitted by law.

**Section 2.** The Employers who may make such payments to the Fund and qualify their Employees for their vacation pay shall be limited to the following:

- a) Members of the Associated General Contractors of St. Louis and SITE Improvement Association who have collective bargaining agreements with the Union requiring deductions of sums of money from Employees’ wages to be paid as vacation pay, in accordance with the Vacation Plan developed by the parties hereto.
- b) Employers who are not members of the Associated General Contractors of St. Louis, but who execute collective bargaining agreements or otherwise obligate themselves in writing to the substantive terms and provisions of said collective bargaining agreements between the Associated General Contractors of St. Louis and the Union requiring similar deductions from Employees’ wages to be paid as vacation pay.

- c) Employers having a collective bargaining agreement with the Union which, while different from that with the Associated General Contractors of St. Louis, obligates them to make the same wage deductions for vacation pay as are provided for in said agreement with the Associated General Contractors of St. Louis.
- d) Employers having no collective bargaining relations or agreement with the Union but who, nevertheless, obligate themselves in writing to wage deductions for vacation pay similar to that provided for in said agreement with the Associated General Contractors of St. Louis, and further obligate themselves to recognize and abide by this Trust Indenture; provided, however, the Employers, referred to in this subparagraph "(d)" must be acceptable to and accepted by the Board of Trustees mentioned hereinafter.

## **ARTICLE IV**

### **BENEFICIARIES**

**Section 1.** Persons entitled to Vacation Pay from this Trust and Fund shall be those Employees of Employers who fall within any of the classifications set out in Article III hereof, for whom payments of deductions from their respective wages have been made and paid into this Fund, or if such persons shall be deceased when entitled thereto, then their respective estates or their beneficiaries, who shall be the same persons as are designated as beneficiaries to receive their benefits under the Welfare Fund of Engineers Local 513, as the Trustees hereof shall determine.

## **ARTICLE V**

### **TRUSTEES**

**Section 1.** A Board of Trustees is hereby created which shall consist of six (6) natural persons, three (3) of which persons shall be designated by and represent the Union to act and serve as Trustees, and two (2) of which persons shall be designated by and represent the Associated General Contractors of St. Louis to so act and serve. The sixth member of the Board of Trustees shall be a person designated by the SITE Improvement Association to represent those contributing Employers referred to in Section 2 of Article III, who are not members of the Associated General Contractors of St. Louis, and said latter three (3) designated Trustees shall represent Employers. The six (6) Trustees so designated shall constitute the Board of Trustees of this Trust, the Fund and Plan, and shall establish, maintain and administer this Fund and Plan provided for hereunder.

**Section 2. Tenure:** Each Trustee shall serve until his death, resignation or removal from office. Any Trustee may resign at any time by giving written notice of such resignation to the other Trustees and to the parties to this instrument. Any Trustee may be removed from his office at any time, for any reason, by the party or parties appointing him, by notice in writing given to all Trustees and to the parties to this instrument.

**Section 3. Vacancies:** In the event of the removal, resignation, death, disqualification, inability, disability or refusal to act, or of any other termination of the trusteeship hereunder, of any

Trustee, a successor Trustee shall be named and appointed promptly, by the party or parties which named and appointed his predecessor, provided that in the event either of the Associations advise the Union that they are unable to secure any person or persons willing to act as such Employer Trustees, then the other Association shall designate the successor Trustee or Trustees to fill the vacancy or vacancies, and if both Associations shall so advise the Union that they are unable to fill any vacancy in the trusteeships, then within fifteen (15) days after receipt of such notice in writing, the Chief Judge of the United States District Court for the Eastern District of Missouri shall be empowered to appoint such Trustee or Trustees from contributing Employers to fill such vacancy or vacancies to represent Employers hereunder. No vacancy or vacancies in the office of Trustee shall impair the power of the remaining Trustees to act in the manner hereinbefore or hereinafter provided and to fully administer the affairs of the Trust pending the filling of any vacancy or vacancies.

**Section 4. Alternates:** The parties appointing Trustees shall be privileged for any particular meeting, or upon any particular occasion, to designate an alternate Trustee to temporarily serve in the place of any regular Trustee, provided that the alternate shall be designated by the party who appointed the regular Trustee, that the designation of the alternate shall be in writing addressed to the Board of Trustees, and that the alternate shall only be empowered to serve as such for the period of time or for the particular occasion specified in the written designation of said alternate Trustee.

## ARTICLE VI

### WAGE PAYMENTS TO THE FUND

**Section 1.** Wage payments to the Fund shall be made in such manner and with such reports as the Board of Trustees may prescribe.

**Section 2.** Wage payments to the Fund shall commence as of May 1, 1967, for work performed on or after that date and shall be payable and made monthly on the tenth day of June, 1967, for the month of May, 1967, and on the twentieth day of each month thereafter for the work performed during the preceding calendar month during the term of the collective bargaining agreements.

**Section 3.** Wage payments to the Fund shall be a vested part of the wages of Employees for whom made. Said payments shall constitute and be reported by the individual Employer as part of the compensation earned at the time the work to which such payments pertain is performed, and subject to the terms of this Agreement shall be subject to Social Security, Unemployment and Income taxes and subject to withholding by the individual Employer from the Employee's other wages as a part of the total compensation paid to the Employee, unless and until required to be treated otherwise by law or regulation thereunder, and the full amount of the per hour wage payment required, without any deduction, shall be paid and transmitted by the Employer to the Fund for the account of the Employee.

**Section 4.** The Trustees shall establish and maintain records of all wage payments received with respect to work performed by each Employee and shall credit such payments on its books or

records to an individual vacation savings account for the Employee for whom made, but notwithstanding any such record keeping, the Trustees shall have the right and authority to commingle such wage payments for each Employee with any and all other such payments received for the work performed by other Employees and with any or all other monies of the Fund.

The Trustees shall not charge against or deduct from such vacation account of any Employee, any cost of administering the Fund and Plan, which costs shall be borne solely by the earnings increment of the Fund. Any interest received on bank deposits, investments, or other income or monies (other than the wage payments themselves) by the Fund, or the Trustees, shall be used by the Trustees to defray such administrative costs and expenses, and to provide for a reserve for the payment thereof. Such sums so earned or accrued shall be credited to a separate Administrative Account maintained in the records of the Trustees. In the event that such Administrative Account shall be deemed at any time by the Trustees to be in excess of the amount reasonably necessary to maintain and defray such administrative costs and expenses and an adequate reserve for the payment of the same in the future, said Trustees may, in their sole discretion, transfer such portion of said Administrative Account ratably to the vacation accounts of the individual Employee beneficiaries hereof at that time on a per capita basis, or proportionately to the amounts standing to the credit of each said Employee, or in any other manner that the Trustees, in their sole discretion, may determine to be proper or advisable under the circumstances.

## **ARTICLE VII**

### **DISTRIBUTION OF VACATION PAY**

**Section 1.** Between the fifteenth day of November, 2001, and the thirty-first day of March, 2002, and between the fifteenth day of November of each year thereafter and the thirty-first day of March of the following year, the Trustees shall distribute, to each Employee for whom Wage Payments were made to the Fund, Vacation Pay equal to the amount of money received and credited to such Employee's vacation account as of the preceding October 31<sup>st</sup>, less any other distributions or payments made as provided herein from such Employee's vacation account after the preceding October 31<sup>st</sup>, and less any amount which the Trustees may be required to withhold on account of any taxes. Distributions made pursuant to this Section shall be subject to all other terms and conditions set forth in this Trust Indenture, and also subject to such further terms and conditions not inconsistent herewith as may be adopted by the Board of Trustees pursuant to the powers granted them in this Trust Indenture.

**Section 2.** Such payments shall be made at such time or times within said four (4) month period above-mentioned as the Fund Administrator shall determine and shall be made by check mailed by ordinary mail to the last known address of the Employee as shown by the records of the Fund. Until the checks for such payments have been drawn, the Trustees shall retain title to the funds thereby represented.

**Section 3.** In the event of the death of an Employee having Wage Payments credited to his account on the records of the Fund, the book balance thereof, less any required withholding for taxes, if any, shall be promptly paid to the beneficiary named by him for the Welfare Fund of

Engineers Local 513, unless such Employee has given other designation in writing to the Trustees. In the event there is no designation of such beneficiary, the Trustees may pay such funds, in their discretion, either to the person or persons that they deem next of kin of the Employee, or to his estate, and any such determination shall be final and binding on all concerned.

**Section 4.** In the event the Fund shall have no mailing address for any Employee account at the time for the making of such payments, or if check in payment of such account is forwarded or mailed to him pursuant to Section 1 of this Article and shall be returned to the Fund undelivered and uncashed, or if any such check not returned to the Fund shall remain uncashed for a period of ninety (90) days, or more, from its date, and twelve (12) months shall elapse following any of said event with no claim or request for payment having been made by the Employee account holder within such twelve (12) month period for such amount to which he is entitled, then in such event, the Fund Administrator may cause said Employee to be notified by ordinary mail, addressed to his last known address of record with the Fund, of the withdrawal amount standing to his credit and requesting prompt directions as to the address to which payment of said amount may be made. In the event that such directions are not received by the Trustees from said Employee within thirty (30) days of the mailing of such notice, such Employee shall forfeit any further right to any amount due him under such account and shall be conclusively deemed to have automatically and irrevocably contributed such amount to the Administrative Account of the Fund, and such amount shall be forthwith so transferred from his account to said Administrative Account.

**Section 5.** Upon receipt of an instruction in writing, signed by an Employee and satisfactory in form to the Trustees, said Trustees are hereby authorized, at any time and from time to time, to pay to such Employee, or to any other person or entity designated in such instruction, in accordance therewith, all or any part of the Vacation Pay credited to the account of such Employee; provided that no such payment shall exceed the Vacation Pay credited to the account of such Employee at the requested time for payment; and provided, further that as to any such payment made to a person or entity other than the Employee, the Trustees shall have been reimbursed by the payee for the expense of executing such instruction, as reasonably estimated by the Trustees. The Trustees may, from time to time, establish a reasonable charge, not to exceed \$100, which may be imposed on each withdrawal of cash requested by an Employee pursuant to this Section to be paid to such Employee. The charge may be deducted from the Employee's Vacation Pay account.

## ARTICLE VIII

### FUNCTIONS AND POWERS OF TRUSTEES

**Section 1. Administration:** The Trustees hereof shall operate and administer this Trust and the Plan and Fund thereunder and shall have all general and incidental powers and duties appropriate to the performance of such functions, including, but without limitation, the powers and duties listed in the following sections. The Trustees shall not, however, have the power, duty or authority to add to, amend, or revoke, the provisions of this Trust, such being reserved to the parties hereto and their successors. The Trustees shall constitute the Plan Administrator,

provided, however, that they may employ a professional Plan Administrator and delegate to such the duties and responsibilities thereof, as contemplated and authorized by ERISA.

**Section 2. Collection and Investment of Funds:** The Trustees hereof shall have power to collect and receive all payments due and payable to the Fund; shall insure or bond the collection and safekeeping of said payments as may be required by law or prudent judgment at the Fund's expense; and may, in their discretion, invest and reinvest such portion or portions of the Trust Fund not required for payment of Vacation Pay or other expenditures and expenses of the Fund, and in connection therewith, in their discretion, employ investment counsel of an Investment Manager.

Any Investment Manager so employed shall meet the definitions and qualifications of such as required under ERISA, and if so, no Trustee shall be liable for the acts or omissions of any such Investment Manager in the investment or management delegated to such Investment Manager of any of the Fund's assets.

The Trustees hereof shall have power to invest and reinvest from time to time, funds of the Trust in such stocks, bonds, debentures, shares or participations in common or mutual funds, pooled investment trusts, real estate, real estate loans, deeds of trust, mortgages, notes, commercial paper, participation in real estate trusts and similar investment media, securities of the United States, any state thereof, or any subdivision thereof, savings accounts and certificates of deposit of banks or federally insured savings and loans associations, and other securities as to them seem safe and appropriate, and being subject to no greater liability therefor than is imposed by the prudent man rule and the requirements with respect thereto of ERISA.

The Trustees, in their discretion, may delegate their power and duty to invest funds of this Trust to professional investment managers meeting the requirements as such under the Employee Retirement Income Security Act of 1974, and regulations promulgated pursuant thereto, such as banks, national banking associations, trust companies, insurance companies, and qualified independent investment managers – in addition to making such investments themselves – in one or more of such investments, as are hereinabove authorized for investment by the Trustees themselves, and said Trustees, pursuant hereto, may enter into and execute agreements with one or more banks, national banking associations, or trust companies whose principal offices are located in the City or County of St. Louis, Missouri, and with insurance companies having professional investment services, or other investment managers qualified under ERISA to act as such offering professional investment services, authorizing them, or any of them, to invest and reinvest funds of this Trust in any one or more of such abovementioned investments as such bank, national banking association, trust company, insurance company, or other qualified investment manager under ERISA, in its absolute discretion, may select or determine, for and on behalf of this Trust Fund and containing all such terms and conditions as the said Trustees deem necessary or advisable in connection therewith. Said Trustees shall exercise reasonable and prudent care in such delegation and the selection of such bank, national banking association, trust company, insurance company, or other investment manager, and if such investment managers meet the definitions and qualifications of such, as required under ERISA, no Trustee shall be liable for the acts or omissions of any such investment manager in the investment or management of any of the Fund assets delegated to such investment manager. The Trustees shall

have power to pay reasonable compensation for any such investment managerial services rendered pursuant to this paragraph.

Any agreement made by the Trustees hereunder for the delegation of the power to invest the funds of this Trust shall provide that the same may be revoked by either of the parties thereto at any time upon not more than thirty (30) days' notice thereof in writing to the other party.

The Trustees may also enter into and execute agreements with any aforementioned investment vehicles to act solely as custodian of investments of the Trust.

All securities or other investments of the Trust funds made directly by the Trustees shall be held or registered in the name of Engineers Local 513 Vacation Plan, or their nominee. Investments of the Trust funds made by a bank, national banking association, trust company, or other investment manager, under delegation of authority by the Trustees hereinabove provided for, may be held for the Fund in the name of such bank, national banking association, trust company, investment manager, or their authorized nominee, in order to facilitate the purchase, sale and handling of investments by them.

The Trustees shall also have power to authorize the Chairman and Secretary of the Trustees to sign all agency or delegation agreements above authorized by the Trustees, stock, bond or note endorsements, stock powers, affidavits, deeds, bills of sale, or other instrument or documents necessary in connection with the investment and reinvestment of the Trust funds and the purchase and sale of securities belonging thereto under the provisions of this Section.

**Section 3. General Powers:** The Trustees hereof, in their discretion, shall have power:

- a) To establish and accumulate out of the Administrative Account as part of the Fund, such reserve funds as may be necessary in the opinion of the Trustees to provide for administration expenses and other proper obligations of the Trust and Plan.
- b) To employ such executive, administrative, clerical, secretarial, and legal personnel or services and other persons and facilities as they deem necessary in connection with the administration of the Trust and Plan and cause to be paid, out of the Administrative Account of the Fund, the reasonable compensation and expenses of such persons, services, facilities, office space and equipment, if deemed necessary or advisable, furnishings and supplies and other essentials deemed requisite in such administration.
- c) To consult with, secure the advice of, retain and employ one or more legal counsel, at the Fund's expense, on any matter arising in connection with the administration of the Plan; the Employee Trustees shall have the right to also submit any particular legal question to an attorney of their choice and the Union Trustees may likewise also submit such legal question to an attorney of their choice, and such attorneys shall each be instructed to confer and, if possible, to

submit a joint opinion to the Trustees on such question, and the reasonable cost of such retainers, consultations and advice shall be paid out of the Fund.

- d) To adopt rules and regulations for the administration of the Plan not inconsistent with the provisions and intent thereof and which rules and regulations shall include, but not be limited to, the following:
  - 1) To prescribe procedures to be followed by applicants for benefits hereunder, and in furnishing evidence necessary to establish the right to benefits under the Plan, including the right of review by, or appeal to, the Trustees that will meet the requirements of ERISA;
  - 2) To make determinations as to the rights of any Employee or other beneficiary applying for benefits hereunder, and to afford such applicant dissatisfied with any determination the right to a full and fair hearing thereon by the Trustees;
  - 3) To obtain from the Employers, from the Union and from other persons such information as shall be necessary in connection with, or for, the proper administration of the Plan;
  - 4) To prepare and distribute in such manner as the Board of Trustees determines to be appropriate, information explaining the Plan;
  - 5) To prepare and furnish to the Employer, the Union and Employee Participants in the Plan, such reports with respect to the administration of the Plan as may be required by ERISA.
  - 6) To authorize Vacation Pay from the Fund to persons entitled to Vacation Pay under the Plan;
  - 7) To construe the provisions of this Trust and the Plan adopted hereunder. Any reasonable interpretation of the provisions made by the Trustees in good faith shall be binding on all interested parties.
- e) To compromise, settle, arbitrate, adjust and release claims or demands in favor of or against the Fund or the Trustees, including claims for Employer payments into the Fund, on such terms and conditions as the Trustees deem advisable, which shall be final and binding on all parties in interest, provided that any such action is in compliance with ERISA.
- f) To sue and be sued on behalf of the Fund in its own name as an entity.

**Section 4. Records and Information:** The Trustees shall maintain or cause to be maintained suitable and adequate records of and for the administration of the Plan and Fund. The Trustees may require the Employees, any individual Employer, the Union, any individual Employee or

any other beneficiary under the Plan to submit to it any information, data, and report of documents reasonably relevant and suitable for the purposes of such administration. The parties agree that they will use their best efforts to secure compliance with any reasonable request of the Trustees for any such information, data, report or documents.

**Section 5. Audits and Reports:** The books of account and records of the Fund shall be audited at least once each year by a qualified certified public accountant to be selected by the Trustees. The Trustees shall also make all other reports and accountings required by law. A statement of the results of all audits, reports and accountings shall be made available for inspection to all interested persons at the principal office of the Fund and at such other places as may be designated by the Trustees.

**Section 6. Compensation:** The Trustees shall be paid such reasonable compensation for their services out of the Fund as shall be authorized by them by resolution and as permitted under ERISA and shall be reimbursed for expenses incurred in the performance of their duties. The cost and expense of any suit or proceeding brought by or against the Fund or the Trustees as such, including attorneys' fees, shall be paid from the trust estate.

**Section 7. Fidelity Bonds:** All of the Trustees or Trust Employees, who handle, receive or disburse funds, sign or countersign checks or vouchers against the assets of the Trust, shall furnish surety bonds in adequate form and amounts as required by ERISA or other law. The premium for said bonds shall be paid out of the Administrative Account of the Trust.

**Section 8. Meetings:** Meetings of the Trustees shall be held from time to time as required on call of the Chairman and they shall select from their number a Chairman who shall preside at the meetings, and a Secretary, both of whom shall serve as such, respectively, for one year, or until his respective successor shall have been duly selected and qualified. In the event the Chairman is a Union-appointed Trustee, then the Secretary shall be an Employer-appointed Trustee for that year, and vice versa.

**Section 9. Quorum and Voting:** At least two (2) Employer-appointed Trustees and two (2) Union-appointed Trustees shall be necessary for and constitute a quorum for all meeting purposes. All decisions of the Board of Trustees shall be by simple majority vote, but all matters to be voted upon shall require the presence of, and the opportunity to vote of, an equal number of Trustees designated respectively by Employers and the Union. If the number of Union-designated and Employer-designated Trustees is not equal at any meeting, then the aggregate votes of all the Union-designated Trustees or of the Employer-designated Trustees, as the case may be, shall be limited to the number represented by the group having the fewer votes present.

**Section 10. Enforcement of Payments:** The Trustees shall have power, in their discretion, to enforce through suit, if advisable, the payments required under the Plan by individual Employers. If any individual Employer defaults in the making of such payments and if the Trustees consult legal counsel with respect thereto, there shall be added to the obligation of the Employer who is in default, reasonable attorneys' fees, court costs, and all other reasonable expenses incurred by the Trustees in connection with such default. This provision shall not limit any power to enforce such payments given under any collective bargaining agreement.

**Section 11. Fiduciary Insurance.** The Trustees may purchase and pay out of the assets of the Fund, insurance for the benefit of the Fund and for the protection of the fiduciaries of the Plan, to cover liability or losses occurring by reason of the act or omission of a fiduciary, provided that such insurance permits recourse by the insurer against the fiduciary in the case of a breach of a fiduciary obligation by such fiduciary.

The Trustees shall be responsible for the actions of their Co-Trustees, other fiduciaries or agents and employees of the Trust and Fund only to the extent as required under the provisions of ERISA.

## ARTICLE IX

### GENERAL PROVISIONS

**Section 1. Protection of Persons Dealing with Fund:** No person, individual or corporation dealing with the Trustees, or any of them, shall be obligated to see to the application of any monies or property of the Fund, or to see that the terms of the Plan have been complied with, or to inquire as to the necessity or expedience of any act of the Trustees. Every instrument certified by the Chairman or Secretary of the Board of Trustees shall be conclusively in favor of every person who relies on it that (a) at the time of the delivery of the instrument, the Plan was in full force and effect; (b) that the instrument was executed in accordance with the terms and conditions of the Plan; and (c) the Trustees are duly authorized to execute the instrument or direct its execution.

Neither the Associations, nor any Employer, nor the Union shall in any way be liable in any respect for any of the acts, omissions or obligations of the Trustees, individually or collectively.

**Section 2. Successors:** This Agreement shall be binding upon the successors and assigns of all of the parties who are signatory hereto.

**Section 3. Saving Clause:** If any provision of this Plan, or any step in the administration of the Fund is held illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining portions of the Plan or the rules and regulations promulgated by the Trustees, unless such illegality or invalidity prevents the accomplishment of the objectives and purposes of the Plan. In the event of any such holding, the appropriate parties will adopt valid provisions to take the place of the provisions declared illegal or invalid.

**Section 4. Depositing and Withdrawal of Funds.** The Trustees shall receive such funds paid to them in trust and any other money or property which may come into their hands as Trustees and shall deposit all monies received by them in such bank or banks as they designate for that purpose in the name of the Trustees of the Fund.

All withdrawals of monies of such bank accounts shall be made only by checks signed by those Trustees duly authorized by the Trustees to sign such checks. Except as hereinafter provided, no checks shall be valid unless signed by two (2) persons, one (1) of whom shall be a Union-

designated Trustee and one (1) an Employer-designated Trustee. The Trustees may, however, in their discretion, by resolution or motion of record, designate and authorize one (1) Trustee or an employee of the Trust to sign checks, upon separate and specific bank accounts, for such limited amounts as the Trustees may designate and establish for such purpose. The name of the particular Employer Trustee who may sign checks shall be designated in writing, or of record, by the Employer Trustees and the name of the particular Union Trustee so authorized shall be designated in writing, or of record, by the Union Trustees.

**Section 5. Liability for Debts:** Neither any of the parties signatory hereto, nor any Employer, nor any individual Employee, nor any Trustee in his capacity as an individual, or individually, shall be liable or responsible for any debts, liabilities, or obligations of the Fund, or the Board of Trustees as such.

**Section 6. Non-Alienation:** Neither the Fund, nor any contributions to the Fund, shall be in any manner liable for or subject to the debts, contracts or liabilities of any individual Employer, Employee or beneficiary. No part of the Fund, or any benefits payable in accordance therewith prior to actual distribution thereof to the beneficiary, shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, execution, garnishment or charge by any person other than as provided for in the Plan itself, or as provided for in this Agreement.

**Section 7. Limitation of Interest in Fund:** Neither the Associations, nor any Employer, the Union, any individual Employee nor any beneficiary shall have any right, title or interest in the Fund, other than as specifically provided for in the Plan itself or as specifically provided in this Agreement.

**Section 8. Settlement of Disputes:** Any dispute as to the eligibility, type, amount or duration of the benefits shall be resolved by the Board of Trustees, and its decision of the dispute shall be final and binding upon all parties concerned. No action may be brought for benefits under the Plan or to enforce any right thereunder until the claim therefor has been submitted to and determined by the Board.

**Section 9. Appeals:** If an Employee or beneficiary's claim for benefits is denied, he/she will be informed in writing of the denial. The Employee/beneficiary will also be told the reason for the denial and the way in which he/she can appeal the decision. If applicable, the denial will also include the specific Plan provisions on which the denial is based and a description of any additional material or information necessary for him/her to complete the claim (including an explanation of why that material or information is necessary). If the Employee/beneficiary wants to appeal the decision, he/she must file a written appeal with the Board of Trustees at the Fund Office no later than 90 days after receipt of the notice of denial. The Employee/beneficiary may designate a representative to act on his/her behalf by filing a written notice of his/her designated representative with the Fund Office. The Employee/beneficiary or his/her representative may review relevant documents and submit issues and comments in writing related to the appeal. The appeal will be reviewed by the Trustees or a person or committee designated by the Trustees after it is received, and the decision will be communicated to the Employee/beneficiary. In general, the Employee/beneficiary will be notified of the decision no later than 60 days following

the Fund's receipt of the appeal. Under special circumstances, the decision on the appeal can be deferred, but will be made not later than 120 days after receipt of the appeal. The Employee/beneficiary will be notified that the decision has been deferred and the reasons for the deferral.

**Section 10. Notices:** Any notice required to be given under the terms of this Trust Agreement of the Vacation Plan shall be deemed to have been duly given if delivered personally to the person to be notified in writing, or if mailed in a sealed envelope, postage pre-paid, to such person at his last known address as shown in the records of the Fund, or if sent by telegraph to such person at said last known address.

## ARTICLE X

### AMENDMENTS

**Section 1.** The provisions of this Agreement may be modified or amended to any extent, and at any time, and from time to time, by an instrument in writing executed by all of the Associations, or the survivor of them, or their successors, and the Union, provided that no amendment or modification shall divert the Fund or any part thereof, to purposes other than that set forth herein, nor shall there by any modification which would result in an unequal number of Union-designated Trustees and Employer-designated Trustees.

## ARTICLE XI

### ARBITRATION

**Section 1.** In the event the Trustees deadlock on any matter arising in connection with the administration of the Plan, or on any other matter within their jurisdiction under the terms hereof, they shall agree upon a neutral person to serve as an impartial umpire to decide the dispute. The Employer-designated Trustees and the Union-designated Trustees shall select an equal number of representatives from their respective groups to sit with the umpire to constitute a Board of Arbitration. The decision of a majority of this Board of Arbitration shall be final and binding in all respects and upon all parties, but the Board shall be bound by the provisions of the Plan and shall have no authority to alter or amend the terms hereof.

**Section 2.** If the parties are unable to agree upon an impartial umpire under the circumstances and in the manner last above provided, then, in such event, the impartial umpire shall be designated upon the request of any Trustee by the Chief Judge of the United States District Court for the Eastern District of Missouri, Eastern Division.

**Section 3.** The expenses of any arbitration, including any necessary court proceedings to secure enforcement of the arbitration award, shall be a proper charge against the Fund.

## **ARTICLE XII**

### **TERMINATION**

This Trust shall terminate when the Trustees no longer are entitled to receive any payments from sources mentioned in Article III hereof and the funds hereunder are exhausted. It may also be terminated by an instrument in writing executed by the Union and the Employer(s) then contributing to the Fund, or their respective agents. Upon termination, the Trustees shall continue to apply the funds available to them to the obligations and purposes of this Trust until all such funds are exhausted, whereupon this entire trust estate shall be wound up and terminated and the Trustees shall be discharged from their duties and obligations. Under no circumstances shall any portion of the Fund, directly or indirectly, revert or accrue to the benefit of any contributing Employer or the Union.

Notwithstanding any provision hereof, all actions resulting in the termination of this Trust shall be subject to pertinent provisions therefor of the Employee Retirement Income Security Act of 1974, and its applicable regulations.

In no event shall the Trust established by this Indenture continue for a longer period than is permitted by law.

This Trust is created and accepted in the State of Missouri and all questions pertinent to the validity or construction of this instrument and of the acts and transactions of the parties hereto, shall be determined in accordance with the laws of the State of Missouri.

IN WITNESS WHEREOF, the Associations and the Union have caused this instrument to be executed by their duly authorized representative the day and year first above written.

Union Trustees

Employer Trustees

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### **STATEMENT OF ERISA RIGHTS**

As a participant in this Plan, you are entitled to certain rights and protections under the Employee Retirement Income Security Act of 1974 (“ERISA”). Although these rights and protections first became a part of the federal law with the passage of ERISA, the Trustees have always considered the fair management of this Plan as their primary objective. The Trustees, therefore, intend to fully comply with all aspects of the law and encourage you to first seek assistance by contacting the Fund Office when you have questions or problems that involve the Plan.

ERISA provides that all Plan participants shall be entitled to:

1. Examine, without charge, at the Plan Administrator's office and at other specified locations, such as union halls and worksites at which more than fifty Plan participants are customarily employed, all Plan documents filed by the Plan with the U.S. Department of Labor, such as detailed annual reports and Plan descriptions.
2. Obtain copies of all Plan documents and other Plan information upon written request to the Plan Administrator. The Plan Administrator may make a reasonable charge for the copies.
3. Receive a summary of the Plan's annual financial report. The Plan Administrator is required by law to furnish each participant with a copy of the summary annual report.

In addition to creating rights for Plan participants, ERISA imposes duties upon the people who are responsible for the operation of the Plan. The people who operate your Plan, called "fiduciaries" of the Plan, have a duty to do so prudently and in the interest of you and other Plan participants and beneficiaries. No one, including your employer, your union, or any other person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining a vacation benefit or exercising your rights under ERISA. If your claim for a vacation benefit is denied in whole or in part, you must receive a written explanation of the reason for the denial. You have the right to have the Plan review and reconsider your claim. Under ERISA, there are steps you can take to enforce the above rights. For instance, if you request materials from the Plan and do not receive them within 30 days, you may file suit in a federal court. In such a case, the court may require the Plan Administrator to provide the materials and pay you up to \$100 a day until you receive the materials, unless the materials were not sent because of reasons beyond the control of the Administrator. If you have a claim for benefits which is denied or ignored, in whole or in part, you may file suit in a state or federal court.

If it should happen that the Plan fiduciaries misuse the Plan's money, or if you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit in federal court. The court will decide who should pay court costs and legal fees. If you are successful, the court may order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees, for example, if it finds your claim is frivolous. If you have any questions about your Plan, you should contact the Plan Administrator. If you have any questions about this statement or about your rights under ERISA, you should contact the nearest office of the Office of Pension and Welfare Benefits Programs, U.S. Department of Labor.

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Nothing in this explanatory statement is meant to interpret or extend or change in any way the express provisions of the Plan. The Trustees reserve the right to amend, modify or discontinue all or part of this Plan whenever, in their judgment, conditions so warrant.

