

**INDIANA/KENTUCKY/OHIO REGIONAL COUNCIL  
OF CARPENTERS DEFINED CONTRIBUTION PENSION PLAN**

**PLAN OF BENEFITS**

Amended and Restated Effective July 1, 2014

**AMENDMENT AND RESTATEMENT OF**  
**INDIANA/KENTUCKY/OHIO REGIONAL COUNCIL**  
**OF CARPENTERS DEFINED CONTRIBUTION PENSION PLAN**  
**PLAN OF BENEFITS**

**WHEREAS**, the Indiana/Kentucky/Ohio Regional Council Of Carpenters Defined Contribution Pension Plan, was established by an Agreement and Declaration of Trust executed July 1, 1991, pursuant to which a Plan of Benefits was adopted effective July 1, 1991, and;

**WHEREAS**, the authority to formulate and amend said Plan of Benefits was reserved to the Trustees, party to and designated as fiduciaries by, the Agreement and Declaration of Trust by Article III, paragraph 4 of said Agreement and Declaration of Trust; and

**WHEREAS**, said Plan of Benefits was amended and restated effective July 1, 2001; and

**WHEREAS**, the Trustees have deemed it desirable to further amend and restate said Plan of Benefits to effect continued qualification of the Plan of Benefits under the Internal Revenue Code, as amended, the Employee Retirement Income Security Act of 1974, as amended, and other applicable Federal laws and regulations;

**NOW THEREFORE**, the Trustees in exercise of the power reserved to them in the Agreement and Declaration of Trust and this Plan do hereby amend and restate said Plan of Benefits effective July 1, 2014 as follows:

## **PREAMBLE**

The Plan of Benefits established and maintained by the Indiana/Kentucky/Ohio Regional Council of Carpenters Defined Contribution Pension Plan is maintained on behalf of the employees of employers who are signatory to collective bargaining agreements with the Indiana/Kentucky/Ohio Regional Council Of Carpenters which require contributions on behalf of said employees. The Plan of Benefits has been created by the Trustees pursuant to the power reserved to them by an Agreement and Declaration of Trust dated July 1, 1991.

The primary purpose of the Plan of Benefits is to provide benefits which will enhance the financial security of Plan participants so entitled to said benefits, in accordance with the Plan of Benefits, during their retirement. The Plan of Benefits also provides for the payment of incidental benefits which may become payable as the result of the death or disablement of any participant eligible for said benefits.

It is intended that the Plan of Benefits, together with the Agreement and Declaration of Trust, comply with all respects with the Internal Revenue Code of 1986, as amended, the Employee Retirement Income Security Act of 1974, as amended, and all other applicable Federal laws and the Rules and Regulations promulgated pursuant thereto, and the Plan shall be so interpreted to accomplish this end.

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## ARTICLE I

### DEFINITIONS AND CONSTRUCTION

#### Section 1.01. Definitions

As used herein, unless a different meaning is clearly required by the context, the following words and phrases shall have the meaning indicated:

- (a) Act. The Employee Retirement Income Security Act of 1974, and the amendments thereto and the regulations promulgated thereunder, shall be considered the “Act”.
- (b) Beneficiary. “Beneficiary” means any one or more primary or contingent beneficiaries designated by a Participant to receive any benefit on or after the Participant’s death as may be payable under the Plan. In the absence of a valid beneficiary designation by the Participant or in the event that no designated beneficiary survives the Participant, such benefit shall be paid to the Participant’s spouse, if living at the time of the Participant’s death, or if not living, then to the Participant’s surviving children, equally, or if none be living, then to the Participant’s estate. The designation of beneficiary shall be made, changed or revoked in writing in the form and manner prescribed by the Trustees. However, in no event shall any Participant who, at the time benefits are scheduled to commence, is married be permitted to designate as his beneficiary any person other than his spouse except with his spouse’s written consent as evidenced by a

designation of beneficiary form or by the Participant's application for benefits, with execution of such form or application having been witnessed by a Notary Public.

- (c) Collective Bargaining Agreement. "Collective Bargaining Agreement" means the Collective Bargaining Agreements or other written agreements entered into between the Union and the Employers who are signatory to said agreement.
- (d) Disability. "Disability" means total disability as defined under the provisions of Section 5.07.
- (e) Early Retirement Date. "Early Retirement Date" means, in the case of a Participant who has attained his fiftieth (50<sup>th</sup>) birthday, the last day of any month (prior to his Normal Retirement Date) as of which he retires after said birthday.
- (f) Effective Date. "Effective Date" of this Plan means July 1, 1991.
- (g) Employee. The term "Employee" as used herein shall mean:
  - 1. Any Employee with respect to whose employment an Employer is required to make contributions to the Plan under the provisions of a Collective Bargaining Agreement;
  - 2. Any officer or Employee of the Union who shall have been proposed for benefits under the Plan by the Union and who shall have been accepted by the Trustees and for whom the Union agrees in writing to contribute to the Trust Fund at the rate fixed for contributions for any other Employer; and

3. Any Employee of a joint apprenticeship or training committee or fund affiliated with the Union who shall have been proposed for benefits under the Plan by such committee or fund and who shall have been accepted by the Trustees and for whom such committee or fund agrees in writing to contribute to the Trust Fund at the rate fixed for contribution for any other Employer.

- (h) Employer. The term “Employer”, as used herein shall mean:
1. An Employer who is a party to, or otherwise bound by a Collective Bargaining Agreement with the Union providing for contributions to the Trust Fund by the Employer with respect to Employees covered by the Collective Bargaining Agreement;
  2. The Union, solely for the purpose of making contributions to the Fund on behalf of its Employees as defined in Section (g) hereof; and
  3. Any joint apprenticeship or training committee or fund affiliated with the Union, solely for the purpose of making contributions to the Fund on behalf of its Employees as defined in Section (g) hereof.

No Employer as defined in subsections 2 or 3 above shall participate in the selection or appointment or replacement of any Employer Trustee.

- (i) Fund. “Fund” means the Indiana/Kentucky/Ohio Regional Council Of Carpenters Defined Contribution Pension Trust Fund as established by the Agreement and

Declaration of Trust dated July 1, 1991.

- (j) Normal Retirement Date. “Normal Retirement Date” means the first day of the month after the Participant’s sixty-fifth (65<sup>th</sup>) birthday.
- (k) Participant. “Participant” is any Employee or former Employee who has worked under a Collective Bargaining Agreement.
- (l) Plan of Benefits or Plan. The written Plan, program, method, rules and procedures for eligibility and for the payment of any benefits from the Fund as are set forth herein; and in said Trust Agreement and any other documents approved by said Trustees. The Plan shall be a profit sharing plan as such is designated in the Internal Revenue Code, Section 401(a).
- (m) Trust Agreement. The “Trust Agreement” as amended from time to time, and known as the Indiana/Kentucky Regional Council Of Carpenters Defined Contribution Pension Trust Agreement.
- (n) Trustees. Those individuals who were the original Trustees for the Union and the Employers and their successor Trustees appointed as provided in said Trust Agreement to administer the Trust Fund.
- (o) Union. The “Union” means Indiana/Kentucky/Ohio Regional Council Of Carpenters and any affiliated local union participating in the Fund.
- (p) Alternate Payee. “Alternate Payee” means any spouse, former spouse, child or other dependent of a Participant who is recognized by a Qualified Domestic

Relations order, as that term is defined in Section 414(p)(8) of the Code, as having a right to receive all, or a portion of, the benefits payable under a Plan with respect to such Participant.

- (q) Plan Year. “Plan Year” shall mean the twelve (12) month period beginning July 1 and ending June 30.
- (r) Valuation Date. “Valuation Date” shall mean the end of each business day during which the New York Stock Exchange is open.
- (s) Code. “Code” shall mean the Internal Revenue Code, as amended, and all regulations issued thereunder.
- (t) Early Retirement Age. “Early retirement age” shall mean the Participant’s fiftieth (50<sup>th</sup>) birthday.

#### Section 1.02. Construction and Law Governing.

- (a) The Plan shall be construed, enforced and administered and the validity determined in accordance with the laws of the State of Indiana and the United States.
- (b) The Trustees designated pursuant to the Trust Agreement shall have the power to construe this Plan, and regulations and other documents and resolutions of the Trustees. The Trustees’ interpretation shall be binding on the parties hereto, Employees, Participants, their dependents and beneficiaries and all other persons unless it is arbitrary or contrary to law. A benefit shall be paid only if the Trustees

decide in their sole discretion that the applicant is entitled to them.

- (c) Words used herein in the masculine or feminine gender shall be construed as the feminine gender or the masculine gender, respectively, where appropriate.
- (d) Words used herein in the singular or plural shall be construed as the plural or singular, respectively, where appropriate.
- (e) In the event any provision of this Plan shall be held illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining provisions of this Plan, and the Plan shall be construed and enforced as if the illegal or invalid provisions had never been inserted herein.

## **ARTICLE II**

### **ELIGIBILITY AND PARTICIPATION**

#### **Section 2.01. Participation**

Each Employee becomes a Participant upon commencement of employment for an Employer making contributions pursuant to the Collective Bargaining Agreement on behalf of said Employee.

#### **Section 2.02. Cessation of Participation and Reinstatement.**

If a Participant suffers a cessation of employment he shall continue to be recognized as a Participant as long as his account in the Fund has assets after investment earnings or losses and after the expenses of the Fund are deducted from said account.

## **ARTICLE III**

### **INDIVIDUAL ACCOUNTS**

#### **Section 3.01. Valuation of Accounts.**

As soon as practical following each Valuation Date, the Trustees shall calculate the value of each Employee's individual account by aggregating each of the following for each Employee, the sum of which will be the balance of the Employee's individual account as of the respective Valuation Date:

- (a) The amount of the Employee's individual account as of the prior Valuation Date;  
plus
- (b) All contributions paid on behalf of the Employee since the prior Valuation Date;  
plus
- (c) The share of the gross investment yield determined by the Trustees to be allocable to each Employee's individual account in accordance with paragraph 3.03 as contained herein; minus
- (d) The share of the Fund's operating expenses as determined by the Trustees to be allocable to each Employee's individual account on a uniform basis, regardless of the amount of the Employee's individual account.

#### **Section 3.02. Vesting Provisions.**

When Contributions are credited to an Employee's individual account in accordance with the provisions outlined in subparagraph (b) of paragraph 3.01, the Employee's interest in

his individual account balance shall become and remain fully vested and the balance of that account as of each succeeding Valuation Date shall be non-forfeitable by the Employee. Termination of employment by an Employee for whom an individual account has been established shall not cause the Employee to incur any type of break in service under the Plan nor to forfeit any portion of the balance of his individual account.

Section 3.03. Allocation of Investment Yield.

The investment yield to be credited to each Employee's individual account as of each Valuation Date shall be calculated as follows: As of the end of each business day, the custodian shall value each investment fund, and shall adjust each Employee's individual account to reflect the effect of any income received and any changes in fair market value since the preceding business day respecting the particular fund.

Section 3.04. Restrictions on Individual Accounts.

The establishment and valuation of an Employee's individual account as of each Valuation Date shall not extend to any Employee or any other party any immediate right, title or interest in the Fund or its assets, or in the Employee's individual account, except as otherwise provided herein.

**ARTICLE IV**

**CONTRIBUTIONS**

Section 4.01. Trust Fund.

All contributions duly payable to the Trust Fund shall be paid to an institution as

designated by the Trustees to be held, managed, invested and distributed in accordance with the provisions of the Plan and the Trust Agreement. The Trustees shall establish a written investment policy giving consideration to the financial requirements of the Plan and the interests of Participants. Participants shall have the right to designate, from the choices authorized by the Trustees, the investment options for their account, and shall have the right to change them from time to time, in accordance with the options selected.

#### Section 4.02. Employer Contributions.

Each Employer shall once each month contribute to the Trust Fund such amounts as are required by the Collective Bargaining Agreement or other written agreement for each Participant in the Plan who is an Employee of an Employer. The funds will be sent to the custodial bank or institution on a monthly basis, for allocation to the investment options designated by the Participant. If a Participant fails to make a designation of investment choices, then the funds will be placed in a qualified default investment alternative as designated from time to time by the Trustees.

#### Section 4.03. Employee Contributions.

Participants shall not be permitted to make contributions under this Plan.

## **ARTICLE V**

### **RETIREMENT BENEFITS**

#### Section 5.01. Normal Retirement Benefits.

Normal retirement age under the Plan is sixty-five (65) years of age. Any Participant

who is no longer employed as an Employee shall be entitled to a normal retirement benefit at age sixty-five (65) or any time thereafter, provided application therefor is submitted to the Trustees in such manner as they may prescribe. However, a Participant whose employment as an Employee has terminated may not delay commencement of his accrued normal retirement beyond April 1 of the year after the year in which he attains age seventy and one-half (70-1/2) years. The normal retirement benefit to which any Participant may be entitled shall be paid in such manner as the Participant and his spouse, if applicable, may select in accordance with 5.03 hereof. After the first normal retirement, a Participant is allowed one (1) additional retirement per year thereafter.

Section 5.02. Early Retirement Benefit.

A Participant who both attains the age of fifty (50) years and whose employment as an Employee has terminated shall, upon application to the Trustees in such manner as they may prescribe, be entitled to receive a benefit equal to his accrued normal retirement benefit at the time of retirement. Such decision to accept early retirement benefits under this Section shall be at the sole discretion of the Participant, subject to his entitlement thereto. The payment or commencement of early retirement benefits under this Section to any Participant shall be permitted only once per year by the Trustees. A Participant who has received, or is receiving, an early retirement benefit under this section and who returns to employment as an Employee shall be entitled to subsequent benefit payments only once per year.

The Early Retirement Age shall be 45 for participants who, as of June 30, 2010, were members of the Kentucky State District Council of Carpenters and Millwrights Annuity Trust Fund, but only as to that portion of their benefit earned through that date, and only if they were at their retirement date retired from covered employment and industry employment.

**Section 5.03. Method of Benefit Payment.**

Upon application for a normal, early or disability retirement benefit, as described herein, each Participant shall be required to elect in writing the form of payment under which his benefit shall be distributed to him. In the event the Participant is unmarried at the time of his retirement, his benefits shall be distributed in the automatic form outlined below for unmarried Participants unless he has elected in writing to receive his benefit in an optional form of payment or in a lump sum payment. In the event the Participant is married, his benefit shall be distributed in the automatic form outlined below for married Participants unless he has elected in writing to receive such benefit in an optional form of payment or in a lump sum payment and, further provided, said Participant's spouse has consented in writing to such alternative election. Such written consent must be witnessed by a Notary Public. A Participant, with the required spousal consent, may change such election in writing at any time prior to commencement of his benefit.

A Participant entitled to a normal, early or disability retirement benefit must elect, in the manner outlined above, his form of benefit payment from among the following:

- (a) **Automatic Form.** Upon the retirement of an unmarried Participant, and unless

the Participant elects otherwise, the Trustees shall purchase, with the balance accumulated in the Participant's account, from a legal reserve life insurance company a single premium non-transferable contract under which monthly benefits are payable to the Participant for the remainder of his lifetime. In the event the Participant is married, the Trustees shall purchase from a legal reserve life insurance company a single premium non-transferable contract under which monthly benefits are payable to the Participant for the remainder of his lifetime, following which time an amount equal to fifty percent (50%) of the amount payable to the Participant shall be continued to the Participant's spouse for the remainder of her lifetime, should the Participant's death precede that of his spouse. Such benefit shall be purchased with the balance accumulated in the Participant's account at the time of retirement.

The Participant and his spouse may also elect a Qualified Optional Survivor Annuity which provides monthly benefits to the Participant for the remainder of his lifetime, following which time an amount equal to seventy-five percent (75%) of the amount payable to the Participant shall be continued to the Participant's spouse for the remainder of her lifetime.

- (b) Single Lump Sum Payment. Should the Participant so elect in writing, with the written and informed consent of his spouse, the balance of the Participant's accumulated account shall be paid to the Participant in a single lump sum amount.

(c) Small Lump Sum Payout. Should a Participant's accumulated account balance fail to exceed, at the time of his retirement, Five Thousand Dollars (\$5,000.00), his accumulated account balance shall be paid to him in a single lump sum payment as described in paragraph (b). above. In such case, the referenced spousal consent will not be required.

Section 5.04. Partial Lump Sum Payment Option.

When payment of an Employee's individual account is scheduled to commence, and the Employee is eligible to elect an optional form of payment, the Employee may elect to receive a partial lump sum payment directly from the individual account, with any remaining funds not selected as a lump sum payment being received on a monthly, quarterly, semi-annual or annual basis over any period of years that they wish to designate.

In the event of an Employee's death prior to his receipt of the full balance of his individual account under such extended payment option, the balance of his individual account as of the latest Valuation Date shall be paid to his designated beneficiary after his death. Further, the Employee may not elect a form of benefit payment which provides for the payment of his individual account, or a portion thereafter, only to his designated beneficiary after his death.

Once the Employee has begun to receive benefits for which he/she has been approved by the Trustees, he/she may not change nor revoke the written election for the previous

payments. However, the Employee has the option to change his method of payment at any time as long as he still has funds within the Plan. He may not make the change more than once in any quarter. Any balance remaining in the Employee's individual account following the commencement of benefit payments to him shall be credited with the Investment Yield described in Section 3.01 and shall be charged with the allocable share of the Fund's annual operating expenses as described in paragraph (d) of Section 3.01. Should an Employee who has received a distribution of the full balance of his individual account as a Normal or Disability Retirement benefit again become an Employee under the terms of this Plan, a new individual account shall be established in his behalf and he shall be treated as a new Employee under the Plan on the basis of such employment.

#### Section 5.05. Death Benefit.

In the event that a Participant shall die before his account has been paid to him, the balance accumulated in such Participant's account shall be payable to the Beneficiary (Beneficiaries) designated by the Participant in accordance with Section 1.01b. The Beneficiary may receive payment of the Participant's accumulated account balance in any one of the forms of payment for which he may qualify.

#### Section 5.06. Benefits Upon Leaving Employment.

If a Participant's employment as an Employee has ceased and an account balance is maintained on behalf of said Participant, the Participant's interest in said account balance shall be fully vested, including all interest accrued thereon. Participants shall be entitled

to receive the full balance of their account in accordance with the provisions of Section 5.14 or upon attaining their normal retirement date or early retirement date under the Plan, or upon their disablement, or their Beneficiary may receive payment of such account balance upon their death, as applicable.

**Section 5.07 Disability Retirement Benefits.**

In the event a Participant becomes totally disabled, as provided below, prior to his normal or early retirement date, he shall be entitled, upon making application to the Trustees in such form as they may prescribe, to a distribution of his full accumulated account balance in such form as he may elect under the terms of Section 5.03 of this Plan.

The term “Totally Disabled” means that the Participant is prevented, because of a physical or mental condition, from performing the duties of the trade and such condition is expected, based on the medical evidence satisfactory to the Trustees, to continue for a period of one (1) year or more. A Participant may also be eligible to receive benefits for disability by providing proof of a social security disability benefits determination with a proper application.

**Section 5.08. Vesting.**

Plan Participants shall be fully vested in their respective accumulated account balances at all times. The account balance will consist of all Employer contributions paid and investment yield, if any, less any reductions for administrative expenses.

Section 5.09. Change of Address.

Each Participant is obligated to keep the Trustees advised of his mailing address so that the Trustees may communicate with him by mail concerning his rights or other matters pertaining to this Fund.

Section 5.10. Application for Benefits.

No benefits are to be paid to any Participant without a written application in a form satisfactory to the Trustees.

Section 5.11. Maximum Contribution.

Except to the extent permitted under Section 414(v) of the Code, if applicable, annual additions that may be contributed or allocated to an Employee's account under the Plan for any limitation year shall not exceed the lesser of:

- (a) Forty Thousand Dollars (\$40,000.00), as adjusted for increases in the cost-of living under Section 415(d) of the Code, or
- (b) One Hundred percent (100%) of the Employee's compensation, within the meaning of Section 415(c)(3) of the Code, for the limitation year.

The compensation limit referred to in (b) shall not apply to any contribution for medical benefits after separation from service (within the meaning of Section 401(h) or Section 419A(f)(2) of the Internal Revenue Code which is otherwise treated as an annual addition.

- (c) The annual compensation of each participant taken into account in determining

allocations for any plan year beginning after December 31, 2001, shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with section 401 (a)(17)(B) of the Code. Annual compensation means compensation during the plan year or such other consecutive 12-month period over which compensation is otherwise determined under the plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.

- (d) The definition of compensation as defined in 5.11 (c) includes payments made by the later of 2 ½ months after severance from employment, or the end of the limitation year that includes the date of severance from employment, if, absent a severance from employment, such payments would have been paid to the employee, while the employee continued in employment with the employer and are regular compensation for services during the employee's regular working hours, compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar compensation.

#### Section 5.12. Assignment of Benefits.

No Participant may assign, transfer, encumber or sell in any manner or any way the benefits vested in this Plan. However, The Trustees will make arrangements to comply with orders under state law that are "Qualified Domestic Relations Orders" that direct benefits to be paid to an Alternate Payee. The Plan is not required to comply with such an order unless it meets the statutory standards for a Qualified Domestic Relations Order.

The Trustees shall establish procedures to determine the qualified status of such orders as are tendered to them. The Trustees shall not be responsible for any retroactive payments.

Section 5.13. Distribution Rules.

Distributions payable under this Plan will begin, or will be distributed, no later than the required beginning date, as required by the Code, over the life of a Participant or over the lives of such Participant and his designated Beneficiary. Any form of benefit payable under the Plan shall provide that if the Participant were to die before his benefit has been paid in full, the remaining portion of said benefit shall be distributed at least as rapidly as under the method of distribution being paid to the Participant at the time of his death.

Notwithstanding any other provisions of this Plan to the contrary, if a Participant should die before the distribution of his benefit commences, any portion of his benefit not payable to a Beneficiary designated by him will be distributed within five (5) years after the Participant's death.

Section 5.14. Cash-out Distribution of Individual Account Balance.

The cash-out distribution of a Participant's individual account balance shall be made, under certain circumstances, where the employment of such Participant for an Employer has terminated.

In the event the balance of the individual account of the Participant whose employment has terminated is not in excess of Five Thousand Dollars (\$5,000.00) and no contributions are received for two (2) Plan years, the Participant may make application

for the distribution of such amount on a form prescribed and furnished by the Trustees for such purpose.

The amount to be distributed to the Participant shall be equal to the entire balance of the Participant's individual account as of the last Valuation Date preceding the distribution.

Participants who as of June 30, 2010, were members of the Kentucky State District Council of Carpenters and Millwrights Annuity Trust Fund, who had no employer contributions for at least two consecutive Plan Years as of that date, and none after that date, and who did not engage in covered or industry employment during such years, may be entitled to a cash-out distribution of their benefit earned prior to June 30, 2010, without limitation.

Section 5.15. Direct Rollover of Eligible Distributions.

(a) Notwithstanding any provision of this Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the Trustees, to have any portion of an eligible rollover distribution paid directly to an eligible retirement Plan specified by the distributee in a direct rollover.

(b) Definitions:

1. Eligible Rollover Distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic

payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; and the portion of any distribution that is not includable in gross income. Any amount that is distributed on account of hardship shall not be an eligible rollover distribution and the distributee may not elect to have any portion of such a distribution paid directly to an eligible retirement plan.

- (2) Eligible Retirement Plan: An eligible retirement Plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity Plan described in Section 403(a) of the Code, a qualified trust described in Section 401(a) of the Code, or an annuity contract described in Section 403(b) of the Code that accepts the distributee's eligible rollover distribution. An eligible retirement Plan shall also mean an eligible Plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such Plan from this Plan. The definition of eligible retirement Plan shall also apply in the case of a distribution to a surviving spouse, or to a

spouse, or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code. Effective for distributions made on or after August 1, 2008, an Eligible Retirement Plan also includes a Roth IRA.

- (3) Distributee: A distributee includes a Participant or former Participant. In addition, the Participant or former surviving spouse and the Participant's or former Participant's spouse or former spouse who is the Alternate Payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse. For plan years beginning after 12/31/2009, Distributee will include a non spouse designated beneficiary.
- (4) Direct Rollover: A direct rollover is a payment by the Plan to the eligible retirement Plan specified by the distributee.

Section 5.16. Requirements of Internal Revenue Code and Regulations Incorporated.

All distributions required under this Section will be determined and made in accordance with IRC Section 401(a)(9), the Incidental Death Benefit requirements of IRC §401(a)(9)(G), and Treasury Regulations 1.401 (a)(9)-2 through -9. This section will take precedence over any other plan section.

## **ARTICLE VI**

### **TITLE AND RIGHTS TO FUND**

#### **Section 6.01. Rights to the Fund.**

The Fund created by the Trust Agreement is an irrevocable Trust Fund created pursuant to Section 302(c)(5) of the Labor Management Relations Act of 1947, as amended, and is intended to be in compliance with the applicable provisions of the Code and of the Act. The title to all property in said Fund shall be vested in and remain exclusively in the Trustees of the Fund; no Employers, Employees, nor the Union, nor any other person claiming by, through, or under any of them, shall have any right, title or interest in or to the Fund, or any part thereof, except such rights as are conferred upon any such parties by the Trust Agreement.

#### **Section 6.02. Refund of Employer Contributions.**

In no event shall any Employer, directly or indirectly, receive any refund of contributions made to the Fund, except in case of a bona fide erroneous payment or overpayment of contributions in which case a refund shall be made to the extent permitted by law or as approved by the Trustees.

## **ARTICLE VII**

### **ADMINISTRATION OF TRUST AND PLAN**

#### **Section 7.01. Application for Benefits:**

A benefit must be applied for in writing and filed on an approved form with the Trustees

in advance of the effective date. A benefit shall first be payable in accordance with Article II, Section 3.

Section 7.02. Notification of Non-Approval of Application:

Within 90 days after receiving the completed application forms for benefits, along with all supplemental documents and information necessary for proper determination thereon, the applicant shall be notified in writing if his application has been disapproved in whole or in part. The notice shall set forth the specific reasons therefor and afford the applicant a reasonable opportunity for a full and fair review of the decision denying his claim. The notice shall set forth, in addition to the specific reasons for the denial, the following:

- A. Reference to pertinent provisions of the Plan;
- B. Such additional information as may be relevant to the denial of the claim;
- C. An explanation of the claims review procedure;
- D. Advice that the applicant may request the opportunity to review pertinent Plan documents and submit a statement of issues and comments.

Section 7.03. Claims Appeal Procedure:

- A. Any Participant or Beneficiary of a Participant who applies for benefits under this Plan and is ruled ineligible by the Trustees (or by an Administrator acting for the Trustees) or who believes he did not receive the full amount of benefits to which he is entitled or who is otherwise

adversely affected by any action of the Trustees, shall have the right to request the Board of Trustees to review its decision in light of any further information or comments submitted by such applicant provided that he makes such a request in writing within sixty (60) days (180 days in the case of a denial of a disability benefit application) after being apprised of, or on learning of, the Board's action. The Board shall be empowered to hold a hearing at which such applicant shall be entitled to present the basis of his claim for review and at which he may be represented by Counsel or other representatives. The Trustees shall render a decision within sixty (60) days after the applicant's request for review [which may be extended to one hundred twenty (120) days if circumstances so require] and shall advise the applicant in writing of their decision of such review, specifying the reasons and identifying appropriate provisions of the Plan.

- B. The procedure specified in this Section shall be the sole and exclusive procedure available to a Participant or Beneficiary of a Participant who is dissatisfied with an eligibility determination or benefit award, or who is otherwise adversely affected by any action of the Trustees.

#### Section 7.04. Decision of Trustees:

The Trustees or persons acting for them, such as a claims appeal committee, have sole authority to make final determinations regarding any application for benefits and the

interpretation of the Plan of Benefits, the Trust Agreement and any other regulations, procedures or administrative rules adopted by the Trustees. Decisions of the Trustees (or, where appropriate, decisions of those acting for the Trustees) in such matters are final and binding on all persons dealing with the Plan or claiming a benefit from the Plan. If a decision of the Trustees or those acting for the Trustees is challenged in court, it is the intention of the parties to the Trust that such decision is to be upheld unless it is determined to be arbitrary or capricious. Benefits under this Plan will be paid only if the Trustees decide in their discretion that the applicant is entitled to them.

## **ARTICLE VIII**

### **TERMINATION**

#### **Section 8.01. Termination and Method of Dissolution.**

The Trust Agreement and Fund will be terminated when there is no longer any Collective Bargaining Agreement requiring contributions to the Fund and as otherwise provided by said Trust documents. In the event of said termination of this Fund, the Trustees will be required to liquidate the Fund in the manner hereinafter provided as promptly as such liquidation can be accomplished. The Trustees shall first convert all assets into cash or certificates of deposit. They shall pay or provide for the payment of all obligations of the Fund to creditors, including the expenses of administering the liquidation of the Fund. After said allowance for expenses, the Trustees will proceed to promptly distribute to each Participant the amount to which he is entitled in accordance with any adjustments.

In the event any money remains after such distribution, because of interest earnings on the money while the liquidation is taking place, or because the expenses of liquidation are less than anticipated, or otherwise, the Trustees shall distribute and apply any such remaining money in such manner as will, in their opinion, best effectuate the purpose of the Trust; provided, however, that no part of the income of said Trust shall be used for or diverted to purposes other than the exclusive benefit of the Participants, or the administrative expenses of the Fund.

## **ARTICLE IX**

### **MISCELLANEOUS PROVISIONS**

#### **Section 9.01. Examination of Documents.**

The Trustees or the Fund manager shall make available to each Participant for examination by each Participant at the Fund office and at the principal office of the Union all documents of the Fund as required by law when requested to do so in writing by a Participant or a Beneficiary.

#### **Section 9.02. Non-Discriminatory Action.**

Neither the Plan nor Trust Agreement shall require the Trustees or Fund manager to take any action with respect to any of the rights, benefits or obligations of Participants under the Plan which would be discriminatory in favor of the Employees because of race, color, sex, creed or national origin.

#### **Section 9.03. Compliance with the Uniformed Services Employment and Reemployment**

Rights Act of 1994.

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

Any Participant who is covered by USERRA and complies with the terms and requirements of the Act and the Plan is entitled to be credited into his or her account such sums from the Plan as are equal to the average number of hours worked by the Participant in the 24 months immediately prior to commencement of his service under the terms and conditions of USERRA.

For Military Service on or after January 1, 2007, the survivors of a Participant who dies while performing qualified Military Service (as defined in Internal Revenue Code Section 414(u)), shall receive any additional benefits (other than benefit accruals relating to the period of qualified Military Service) provided under the Plan had the Participant resumed and then terminated employment on account of death.

Section 9.04. Amendments to Plan of Benefits.

The provisions of this Plan may be amended at any time by a written instrument executed by all Trustees.

Section 9.05. Hardship Distributions.

Effective January 1, 2015, Participants will be able to elect to withdraw some or all of their individual account on account of hardship, in accordance with the following provisions:

(a) The Trustee shall make the distribution only from the Participant's profit sharing account, and the amount of the distribution shall be limited to the value of the profit sharing account (hereafter "Account"). If the Participant has received a previous distribution under this paragraph, then the remaining Account available for distribution shall be determined by subtracting the distributions previously made under this paragraph from total cumulative Account. If the Participant has received a distribution from his or her Account pursuant to any other provision of this Plan, then the amount of the Account remaining for distribution shall be determined by subtracting the withdrawn amount from total cumulative Account.

(b) The Participant must represent in writing that he or she requires the distribution to meet an immediate and heavy financial need which must fall under one of the following categories:

- (1) Medical expenses (as defined in Code Section 213(d)) which are incurred by the Participant, on his or her family.
- (2) Purchase of a principal residence for the Participant. This does not include making mortgage payments on the Participant's principal residence.
- (3) Payment of tuition for the next 12 months of post-secondary education for the Participant, or his or her family.
- (4) To prevent eviction or foreclosure on the mortgage of the Participant from his or her principal residence.
- (5) Payments for funeral or burial expenses for the employee's

deceased parent, spouse, child or dependent.

(6) Expenses to repair damage to the employee's principal residence that would qualify for a casualty loss deduction under Code § 165 (determined without regard to whether the loss exceeds 10 percent of adjusted gross income).

(7) Any other financial need specifically listed by the Secretary in Regulations or other official guidelines that allows the Plan to make hardship distributions

(c) The Participant must satisfy all of the following requirements:

(1) The Participant has obtained all distributions, other than hardship distributions, and all non-taxable loans under all plans which his/her employer maintains or to which it makes contributions.

(2) The distribution must not exceed that amount necessary to meet any of the needs described in paragraph (b) above. This amount includes amounts needed to pay federal, state, and local income taxes and penalties reasonably anticipated to result from the distribution.

The Administrator may rely on these representations where it is reasonable to do so. The Participant's resources include assets owned by the Participant and the Participant's spouse and minor children, where these assets are reasonably available to the Participant. However, property held in an irrevocable trust or under state uniform gifts to minor act, for the benefit of a child, shall not be considered a resource of the Participant.

- (d) Before the Plan may distribute any benefits pursuant to this Section, the Administrator must determine that the distribution is not in excess of the amount of the immediate and heavy financial need of the Participant.
- (e) All distributions the Plan makes under this Article shall be made in a single lump sum.
- (f) The Plan shall make distributions under this Article as soon as administratively feasible.

## **ARTICLE X**

### **TOP HEAVY PROVISIONS (Non-Bargained Participant Only):**

If the plan is top-heavy in any plan year the provisions of this Article will supersede any conflicting provisions in the plan or adoption agreement.

#### **Section 10.1 Definitions.**

- (a) Key employee: Any employee or former employee (including any deceased employee) who at any time during the plan year that includes the determination date is an officer of the employer having an annual compensation greater than \$130,000 (as adjusted under § 416 (i) (1) of the Code for plan years beginning after December 31, 2002), a 5-percent owner of the employer, or a 1-percent owner of the employer having an annual compensation of more than \$150,000. In determining whether a plan is top-heavy for plan years beginning before January 1, 2002, key employee means any employee or former employee (including any deceased employee) who at any time during the 5-year period

ending on the determination date, is an officer of the employer having an annual compensation that exceeds 50 percent of the dollar limitation under § 415 (b) (1) (A), an owner (or considered an owner under § 318) of one of the ten largest interests in the employer if such individual's compensation exceeds 100 percent of the dollar limitation under § 415 (c) (1) (A), a 5-percent owner of the employer, or a 1-percent owner of the employer who has an annual compensation of more than \$150,000. For purposes of this paragraph (i), annual compensation means compensation within the meaning of Section 5.11.

The determination of who is a key employee will be made in accordance with § 416 (i) (1) of the Code and the applicable regulations and other guidance of general applicability issued thereunder.

- (b) Top-heavy plan: This plan is top-heavy if any of the following conditions exists:
  - (i) If the top-heavy ratio for this plan exceeds 60 percent and this plan is not part of any required aggregation group or permissive aggregation group of plans.
  - (ii) If this plan is a part of a required aggregation group of plans but not part of a permissive aggregation group and the top-heavy ratio for the group of plans exceeds 60 percent.
  - (iii) If this plan is a part of a required aggregation group and part of a permissive aggregation group of plans and the top-heavy ratio for the permissive aggregation group exceeds 60 percent.
- (c) Top-heavy ratio:
  - (i) If the employer maintains one or more defined contribution plans

(including any Simplified Employee Pension Plan) and the employer has not maintained any defined benefit plan which during the 5-year period ending on the determination date(s) has or has had accrued benefits, the top-heavy ratio for this plan alone or for the required or permissive aggregation group as appropriate is a fraction, the numerator of which is the sum of the account balances of all key employees as of the determination date(s) (including any part of any account balance distributed in the 1-year period ending on the determination date(s)) (5-year period ending on the determination date in the case of a distribution made for a reason other than severance from employment, death or disability and in determining whether the plan is top-heavy for plan years beginning before January 1, 2002), and the denominator of which is the sum of all account balances (including any part of any account balance distributed in the 1-year period ending on the determination date(s)) (5-year period ending on the determination date in the case of a distribution made for a reason other than severance from employment, death or disability and in determining whether the plan is top-heavy for plan years beginning before January 1, 2002), both computed in accordance with § 416 of the Code and the regulations thereunder. Both the numerator and denominator of the top-heavy ratio are increased to reflect any contribution not actually made as of the determination date, but which is required to be taken into account on that date under § 416 of the Code and the regulations thereunder.

(ii) For purposes of (i) above the value of account balances and the present value of accrued benefits will be determined as of the most recent valuation date

that falls within or ends with the 12-month period ending on the determination date, except as provided in § 416 of the Code and the regulations thereunder for the first and second plan years of a defined benefit plan. The account balances and accrued benefits of a participant (1) who is not a key employee but who was a key employee in a prior year, or (2) who has not been credited with at least one hour of service with any employer maintaining the plan at any time during the 1-year period (5-year period in determining whether the plan is top-heavy for plan years beginning before January 1, 2002) ending on the determination date will be disregarded. The calculation of the top-heavy ratio, and the extent to which distributions, rollovers, and transfers are taken into account will be made in accordance with § 416 of the Code and the regulations thereunder. Deductible employee contributions will not be taken into account for purposes of computing the top-heavy ratio. When aggregating plans the value of account balances and accrued benefits will be calculated with reference to the determination dates that fall within the same calendar year.

The accrued benefit of a participant other than a key employee shall be determined under (a) the method, if any, that uniformly applies for accrual purposes under all defined benefit plans maintained by the employer, or (b) if there is no such method, as if such benefit accrued not more rapidly than the slowest accrual rate permitted under the fractional rule of § 411 (b) (1) (C) of the Code.

- (d) Permissive aggregation group: The required aggregation group of plans plus any other plan or plans of the employer which, when considered as a group with the

required aggregation group, would continue to satisfy the requirements of § 401

(a) (4) and 410 of the Code.

- (e) Required aggregation group: (1) Each qualified plan of the employer in which at least one key employee participates or participated at any time during the plan year containing the determination date or any of the four preceding plan years (regardless of whether the plan has terminated), and (2) any other qualified plan of the employer which enables a plan described in (1) to meet the requirements of § 401 (a) (4) or 410 of the Code.
- (f) Determination date: For any plan year subsequent to the first plan year, the last day of the preceding plan year. For the first plan year of the plan, the last day of that year.
- (g) Valuation date: The date elected by the employer as of which account balances or accrued benefits are valued for purposes of calculating the top-heavy ratio.

## Section 10.2. Required Allocation

- (a) Except as otherwise provided in (c) below, the employer contributions and forfeitures allocated on behalf of any participant who is not a key employee shall not be less than the lesser of three percent of such participant's compensation or in the case where the employer has no defined benefit plan which designates this plan to satisfy § 401 of the Code, the largest percentage of employer contributions and forfeitures, as a percentage of key employee's compensation, as limited by § 401 (a) (17) of the Code, allocated on behalf of any

key employee for that year. The minimum allocation is determined without regard to any Social Security contribution. This minimum allocation shall be made even though, under other plan provisions, the participant would not otherwise be entitled to receive an allocation.

- (b) For purposes of computing the minimum allocation, compensation shall mean compensation as defined in Section 5.11 as limited by § 401 (a) (17) of the Code.
- (c) The provision in (a) above shall not apply to any participant who was not employed by the employer on the last day of the plan year.

THIS RESTATEMENT is adopted this 16<sup>th</sup> day of December, 2014, to be effective on  
July 1, 2014.

