

LOCAL UNION 598 SUPPLEMENTAL PENSION PLAN

RESTATED SEPTEMBER 30, 2009

WORKING COPY THROUGH AMENDMENT NO. 6

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September 30, 2009

Local Union 598 Supplemental Pension Plan

The Local Union 598 Supplemental Pension Plan was adopted effective June 1, 1991; and was restated effective September 30, 2002 (the September 30, 2002 Restatement). The September 30, 2002 Restatement was amended nine times. Now, in order to comply with the Economic Growth and Tax Relief Reconciliation Act of 2001, with technical corrections made by the Job Creation and Worker Assistance Act of 2002, Pension Funding Equity Act of 2004, American Jobs Creation Act of 2004, Katrina Emergency Tax Relief Act of 2005, Gulf Opportunity Zone Act of 2005, Pension Protection Act of 2006, and U.S. Troop Readiness, Veterans' Care, Katrina Recovery and Iraq Accountability Appropriations Act of 2007, and in conjunction with a request to the Internal Revenue Service for a new determination letter, the Local Union 598 Supplemental Pension Plan is hereby restated effective September 30, 2009 except to the extent that certain provisions have an earlier effective date as provided in the previous amendments or as required by law.

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ARTICLE 1 DEFINITIONS

Section 1.1 Account Balance. The term "Account Balance" means the value of a Participant's Employer Contribution Account as defined in Section 5.1(a), the After-Tax Account, if one exists, as defined in Section 5.1(b), and the Rollover Account, if one exists, as defined in Section 5.1(c), as of the most recent Allocation Date adjusted for Contributions, withdrawals, loans, expenses and investment gains and losses attributed thereto since the last Allocation Date.

Section 1.2 Administrator of the Plan. The term "Administrator of the Plan" means the Trustees pursuant to the Employee Retirement Income Security Act of 1974 (ERISA).

Section 1.3 Administrative Manager. The term "Administrative Manager" means a person, company or corporation so designated by the Trustees from time to time to perform the day-to-day administration of the Plan and Trust Fund.

Section 1.4 Allocation Date. The term "Allocation Date" means the last day of each month during the Plan Year or the date on which the Plan is terminated.

Section 1.5 Annuity Starting Date. The term "Annuity Starting Date" means the definition in Section 417(f)(2) of the Internal Revenue Code and is (a) the first day of the first period for which an amount is payable as an annuity or (b) in the case of a benefit not payable in the form of an annuity, the first day in which all events have occurred which entitle the Participant to such benefits.

Section 1.6 Beneficiary. The term "Beneficiary" means the person(s) designated in writing, on a form provided or approved by the Trustees, to receive benefits from the Plan upon the death of a Participant or because of the provisions of the Plan.

Section 1.7 Collective Bargaining Agreement. The term "Collective Bargaining Agreement" means any written instrument entered into by an Employer with Local Union 598 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada or any other labor organization approved by the Trustees which

provides for Contributions to the Trust Fund on behalf of Employees who are covered by the Collective Bargaining Agreement.

Section 1.8 Contributions. The term "Contributions" shall mean the payments required to be made by an Employer to the Trust Fund pursuant to a Collective Bargaining Agreement or Written Agreement, voluntary payments made to the Trust Fund by Participants and rollovers to the Trust Fund by Participants.

Section 1.9 Employee. The term "Employee" means any person employed by an Employer who is covered by a Collective Bargaining Agreement or a Written Agreement for whom the Employer is obligated to make Contributions to the Trust Fund. The term "Employee" shall not include a sole proprietor or a partner.

Section 1.10 Employer. The term "Employer" means:

- (a) Any person, firm, partnership, association, employee benefit plan, corporation or other entity that has executed or is bound by a Collective Bargaining Agreement providing for the payment of Contributions to the Trust Fund with respect to Employees covered by the Collective Bargaining Agreement;
- (b) Any person, firm, partnership, association, employee benefit plan, corporation or other entity that has executed or is bound by a Written Agreement with the Trustees providing for the payment of Contributions to the Trust Fund with respect to Employees covered by the Written Agreement;
- (c) Local Union 598 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada for the purpose of making Contributions to the Trust Fund for its Employees and for no other purpose, provided it has executed or is bound by a Written Agreement with the Trustees which provides for the

payment of Contributions to the Trust Fund and/or has executed or is bound by a Collective Bargaining Agreement with a labor organization approved by the Trustees which provides for the payment of Contributions to the Trust Fund with respect to Employees covered by the Collective Bargaining Agreement.

Section 1.11 Fund, Trust Fund or Trust. The term "Fund," "Trust Fund" or "Trust" means the entire trust estate of the Local Union 598 Supplemental Pension Plan as it may, from time to time, be constituted.

Section 1.12 Hour of Service. The term "Hour of Service" means:

- (a) Each hour for which an Employee is paid or entitled to payment for the performance and duties for the Employer. These hours will be credited to the Employee for the computation period or periods in which the duties are performed; and
- (b) Each hour for which an Employee is paid or entitled to payment by the Employer on account of a period of time during which no duties are performed (irrespective of whether the employment relationship is terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence. No more than 501 Hours of Service will be credited under this paragraph for any single continuous period (whether or not such period occurs in a single computation period). Hours of Service under this paragraph will be calculated and credited pursuant to Section 2530.200(b)(2) of the Department of Labor regulations, as amended from time to time, and incorporated herein by reference; and
- (c) Each hour for which backpay, irrespective of mitigation of damages, is either awarded or agreed to by the Employer. The same Hours of Service will not be credited under paragraph (a) and paragraph (b), as the case may

be, and under this paragraph (c). The Hours of Service will be credited to the Employee for the computation period or periods to which the award or agreement pertains rather than the computation period in which the award, agreement or payment is made.

Section 1.13 Participant. The term “Participant” means any Employee who has had or is entitled to have a Contribution made on his or her behalf by an Employer to the Trust Fund and has an Account Balance maintained on his or her behalf as of an Allocation Date. A person shall cease to be a Participant upon his or her death or when his or her Account Balance has been reduced to zero.

Section 1.14 Plan. The term “Plan” means this document, all amendments hereto, together with all interpretations and regulations applicable hereto by law or hereafter adopted by the Trustees.

Section 1.15 Plan Year. The term “Plan Year” means each twelve (12) consecutive month period between October 1 and September 30.

Section 1.16 Qualified Joint and Survivor Annuity. The term “Qualified Joint and Survivor Annuity” means an annuity for the life of the Participant with a survivor annuity for the life of the spouse which is not less than 50 percent and not more than 100 percent of the amount of the annuity which is payable during the joint lives of the Participant and the spouse and which is the amount of benefit that can be purchased with the Participant’s Account Balance.

Section 1.17 Qualified Pre-Retirement Survivor Annuity. The term “Pre-Retirement Survivor Annuity” means a survivor annuity for the life of the surviving spouse of a Participant which is the actuarial equivalent of the Account Balance of the Participant.

Section 1.18 Retirement or Retires. The term “Retirement” or “Retires” means an Employee no longer works in the plumbing and pipefitting trade and has reached one of the retirement dates set forth in Article 7, Section 7.2.

Section 1.19 Trust Agreement. The term "Trust Agreement" means the Trust Agreement for the Local Union 598 Supplemental Pension Plan effective April 1, 2006 and all amendments thereto and restatements thereof.

Section 1.20 Trustees, Board of Trustees or Board. The term "Trustees," "Board of Trustees" or "Board" means the individuals and their successors designated in the Trust Agreement to administer this Plan.

Section 1.21 Written Agreement. The term "Written Agreement" means an instrument in writing between an Employer and the Trustees which provides for Contributions to the Trust Fund on behalf of Employees not covered under provisions of a Collective Bargaining Agreement but covered by the Written Agreement.

ARTICLE 2 PARTICIPATION

Section 2.1 Participation. Each Employee shall become a Participant in the Plan on the date an Employer is first required to make a Contribution to the Trust Fund on his or her behalf by the terms of a Collective Bargaining Agreement or Written Agreement.

Section 2.2 Participation of Part-Time Employees. The Trustees and an Employer, who are parties to a Written Agreement may, but are not required to, agree in the Written Agreement that Contributions are not required to be made to the Trust Fund for a part-time employee until the part-time employee has 1,000 or more Hours of Service for the Employer in any 12-month period. If the part-time employee meets the 1,000 or more Hours of Service requirement in the preceding sentence, Contributions to the Trust Fund shall commence with the first Hour of Service. The parties to the Written Agreement must determine who is a part-time employee on a reasonable and uniform basis.

Section 2.3 Termination of Participation. A Participant terminates participation on the Plan upon his or her death or when his or her Account Balance has been reduced to zero.

ARTICLE 3 VESTING - TERMINATION

Section 3.1 Vesting. All Contributions received by the Trust Fund and allocated to the Participant's Employer Contribution Account are fully vested. All amounts paid by a Participant to his or her After-Tax Account are fully vested, including voluntary Employee Contributions made prior to April 1, 2011. All transfers to a Participant's Rollover Account are fully vested. All investment gains and losses on such Contributions are fully vested.

Section 3.2 Termination. A Participant may be terminated from the Plan at the end of any 24 consecutive month period in which he or she fails to complete at least one Hour of Service and is no longer employed by an Employer who is obligated to make Contributions to the Trust Fund. Upon application by the Participant, at the end of the 24 consecutive month period, the Participant's Account Balance may be distributed to the Participant.

ARTICLE 4 CONTRIBUTIONS

Section 4.1 Employer Contributions. Each Employer shall contribute monthly to the Trust Fund for the account of each of its Employees who are entitled to a Contribution pursuant to the terms of a Collective Bargaining Agreement or a Written Agreement. The amount of the Contribution shall be determined in accordance with the provisions of the Collective Bargaining Agreement or a Written Agreement. All amounts contributed by the Employer shall represent irrevocable Contributions to the Trust Fund and shall not, under any circumstances, be returned to the Employer, except as allowed by applicable law and/or Section 10.13.

Section 4.2 Voluntary Employee Contributions. Under the terms stated below, prior to April 11, 2011 a Participant could elect to make voluntary Contributions to the Trust Fund for any Plan Year. Such voluntary Contributions shall not be less than fifty dollars (\$50.00) per remittance and shall not exceed ten percent (10%) of a Participant's annual compensation. Voluntary Employee Contributions may not be made more than once a month and must be made by cashier's check or money order. Upon receipt, the amount shall be credited to an account for the Participant now known as the After-Tax Account as described in Section 5.1(b).

Effective April 1, 2011, the Plan will no longer accept voluntary Employee Contributions. Voluntary Employee Contributions made prior to April 1, 2011 will be maintained in the After-Tax Account as described in Section 5.1(b) and will be non-forfeitable at all times.

Section 4.3 Limitations on Annual Additions to a Participant's Account Balance. Notwithstanding any other provisions of the Plan to the contrary, the maximum Annual Additions to a Participant's Account Balance for any Plan Year shall not exceed the lesser of (a) or (b) below:

- (a) The dollar amount specified in Section 415(c)(1)(A) of the Internal Revenue Code which, as of January 1, 2008 was \$46,000. Said amount shall be adjusted for increases in the cost-of-living in accordance with Section 415(d) of the Internal Revenue Code and any regulations issued by the Secretary of the Treasury; or

(b) One hundred percent of the Participant's Compensation within the meaning of Section 415(c)(3) of the Internal Revenue Code. The maximum Compensation that may be taken into account is the amount described in Section 401(a)(17)(A) of the Internal Revenue Code, which, as of January 1, 2008 was \$230,000. Said amount shall be adjusted for increases in the cost-of-living in accordance with Section 401(a)(17)(B) of the Internal Revenue Code and any regulations issued by the Secretary of the Treasury.

The term "Annual Additions" means the sum, credited to a Participant's Account Balance for any Plan Year, of Employer Contributions, Employee Contributions (if any) and forfeitures (if any). The term Annual Additions does not include catch-up contributions made in accordance with Section 414(v) and 26 CFR §1.414(v)-1 of the Internal Revenue Code; restorative payments as described in 26 CFR §1.415(c)-1(b)(2)(iii); rollover contributions as described in 26 CFR §1.415(c)-1(b)(3)(i); and repayment of loans made to a Participant from the Plan as described in 26 CFR §1.415(c)-1(b)(3)(ii).

The term "Compensation" for purposes of establishing the limitations under Section 415 of the Internal Revenue Code and Sections 4.3 through 4.5 of the Plan includes all wages within the meaning of Section 3401(a) of the Internal Revenue Code (for purposes of income tax withholding at the source), plus amounts that would be included in wages but for an election under Sections 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k) or 457(b) of the Internal Revenue Code for the Plan Year which is also the Limitation Year. However, any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Section 3401(a)(2) of the Internal Revenue Code) are disregarded for this purpose. Compensation also includes payments made by the later of two and one-half (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 made 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 similar compensation. Effective October 1, 2009, Compensation also includes military pay differential wage payments as defined in Code Section 3401(h).

The Limitation Year for purposes of Section 415 of the Internal Revenue Code and Sections 4.3 through 4.5 of the Plan shall continue to be the Plan Year October 1 through September 30.

For Plan Years prior to the October 1, 2007 Plan Year, the maximum Annual Additions to a Participant's Account Balance shall be determined in accordance with the terms of the Plan which was in effect for the applicable Plan Year.

Section 4.4 Determination of Annual Additions. As soon as administratively feasible after the end of the Plan Year, the maximum Annual Additions for each Participant shall be determined in accordance with Section 4.3, the Internal Revenue Code and regulations issued by the Secretary of the Treasury.

Section 4.5 Excess Annual Additions. Starting with the October 1, 2007 Plan Year, in the event there are excess Annual Additions made on behalf of a Participant to the Plan, the excess Annual Additions will be corrected under the Internal Revenue Service's Employee Plans Compliance Resolution System.

Because this Plan is a multiemployer plan as defined in Section 414(f) of the Internal Revenue Code, the Plan shall not aggregate a Participant's Annual Additions with any other multiemployer plan as defined in Section 414(f) of the Internal Revenue Code consistent with Section 415(f)(3) of the Internal Revenue Code and any regulations issued by the Secretary of the Treasury.

Section 4.6 Receipt of Eligible Rollover Distributions. The Plan may accept from a Participant eligible rollover distributions from other eligible retirement plans. Upon receipt, the

amount shall be credited to an account for the Participant which shall be known as the Rollover Account as described in Section 5.1(c).

For purposes of Section 4.6, an eligible rollover distribution is a contribution to the Plan made on or before the 60th day following receipt thereof by the Participant. An eligible rollover distribution means a qualified distribution (as defined in Section 402 of the Internal Revenue Code) of a vested benefit from another eligible retirement plan which meets the requirements of Section 402 of the Internal Revenue Code. Notwithstanding the foregoing, no amount tendered shall be treated as an eligible rollover distribution if any portion of the amount is attributable to accumulated qualified voluntary employee contributions made and deducted under the provisions of Section 219 of the Internal Revenue Code prior to amendment by the Tax Reform Act of 1986. No amount shall be treated as an eligible rollover distribution if such distribution is made on or after the Participant's Required Beginning Date as defined in Section 7.1.

For purposes of determining whether any amount tendered by a Participant is an eligible rollover distribution, the Participant shall establish to the satisfaction of the Trustees that the amount represents a qualified distribution to the Participant from another eligible retirement plan. The Trustees shall have the authority to determine whether or not a contribution tendered by a Participant constitutes an eligible rollover distribution eligible for rollover treatment in accordance with Section 4.6 and Section 402 of the Internal Revenue Code. In making such determination, the Trustees may require reasonable proof by the Participant that the proposed contribution is an eligible rollover distribution.

Section 4.7 Direct Rollover of Eligible Rollover Distributions. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under the Plan, a distributee may elect, at the time and in the manner prescribed by the Administrator of the Plan, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

- (a) **Eligible rollover distribution:** An eligible rollover distribution is any distribution of all or any portion of the Account 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 Internal Revenue Code; and the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities). A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includable in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code, or to a qualified defined contribution plan described in Section 401(a) or Section 403(a) of the Internal Revenue Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includable in gross income and the portion of such distribution which is not so includable. Effective for distributions after December 31, 2006, after-tax employee contributions which are not includable in gross income, may also be transferred in a direct trustee to trustee transfer to a qualified trust or to an annuity contract described in Section 403(b) of the Internal Revenue Code so long as such trust or contract provides for separate accounting for amounts so transferred (and earnings thereon), including separate accounting for the portion of such distribution which is includable in gross income and the portion of such distribution which is not so includable.

- (b) Eligible retirement plan: An eligible retirement plan is an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code, an annuity contract described in Section 403(b) of the Internal Revenue Code, an eligible deferred compensation plan described in Section 457(b) of the Internal Revenue Code, which is maintained by a state, political subdivision of a state, or an 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, and a qualified trust described in Section 401(a) of the Internal Revenue Code that accepts a distributee's eligible rollover distribution. For distributions after December 31, 2007, an eligible retirement plan is a Roth IRA described in Section 408A of the Internal Revenue Code subject to the restrictions, if any, that currently apply to rollovers from a traditional IRA into a Roth IRA. The definition of eligible retirement plan shall apply in the case of a distribution to a Participant, surviving spouse or to a spouse or a former spouse who is an alternate payee under a qualified domestic relations order as defined in Section 414(p) of the Internal Revenue Code.
- (c) Distributee: A distributee includes a Participant. In addition, the Participant's surviving spouse and the 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 Internal Revenue Code, are distributees with regard to the interest of the spouse or former spouse.
- (d) Direct rollover: A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

(e) Non-Spouse Designated Beneficiary: For distributions on or after January 1, 2008, a Participant's designated Beneficiary who is not the Participant's spouse will qualify as a distributee under Section 4.7(c) provided the distribution satisfies eligible rollover distribution requirements and is transferred to an individual retirement account, or individual retirement annuity described in Section 408(a) or 408(b) of the Internal Revenue Code or, effective January 1, 2010, a Roth IRA described in Section 408A of the Internal Revenue Code that is established for the purpose of receiving the distribution on behalf of a designated Beneficiary who is a non-spouse. The individual retirement account, individual retirement annuity or Roth IRA must be established in a manner that identifies the deceased individual and the beneficiary, for example, "Tom Smith as beneficiary of John Smith." The individual retirement account, individual retirement annuity or Roth IRA will be treated as an inherited individual retirement account, individual retirement annuity or Roth IRA pursuant to Sections 402(c)(11) and 408(d)(3)(C) of the Internal Revenue Code under which benefits must be distributed in accordance with the required minimum distribution rules that apply to inherited individual retirement accounts, inherited individual retirement annuities and Roth IRAs of non-spouse beneficiaries.

ARTICLE 5 INDIVIDUAL ACCOUNTS

Section 5.1 Separate Participant Accounts.

- (a) The Administrative Manager will establish and maintain an Employer Contribution Account in the name of each Participant which will reflect the Employer Contributions made on his or her behalf, his or her share of the investment gains and losses attributable to such Contributions and his or her share of the expenses of administering the Plan and Trust Fund. The Trustees shall determine the expenses to be charged to Participants for the administration of the Plan and Trust Fund.
- (b) The Administrative Manager will also establish and maintain a separate After-Tax Account in the name of each Participant to hold previously allowed voluntary Contributions to the Trust Fund in accordance with Section 4.2 and repayment of defaulted loans under Section 10.11 which were treated as distributions for tax purposes. The After-Tax Account will reflect the Participant's voluntary Contributions, his or her share of investment gains and losses attributable to such amounts, and his or her share of the expenses of administering the Plan and Trust Fund. The Trustees shall determine the expenses to be charged to Participants for the administration of the Plan and Trust Fund.
- (c) The Administrative Manager will also establish and maintain a separate Rollover Account in the name of each Participant who transfers eligible rollover distributions from other eligible retirement plans to the Trust Fund in accordance with Section 4.6. The Rollover Account will reflect the Participant's eligible rollover distributions from other eligible retirement plans, his or her share of investment gains and losses attributable to such distributions and his or her share of the expenses of administering the Plan and Trust Fund. The Trustees shall determine the

expenses to be charged to Participants for the administration of the Plan and Trust Fund.

Reference to a Participant's Account Balance shall mean his or her Employer Contribution Account, his or her After-Tax Account, if any, and/or his or her Rollover Account, if any.

Section 5.2 Adjustments of Participant Account Balances. As of each Allocation Date, the Administrator will:

- (a) Deduct from the proper Account Balance of each Participant all payments, distributions, and loans made to or on account of the Participant since the last preceding Allocation Date;
- (b) Adjust the proper Account Balance of each Participant upward or downward, pro rata, based on the net investment return of each Investment Option in which the Participant was invested since the last preceding Allocation Date;
- (c) Credit to the proper Account Balance of each Participant the Employer Contributions, the Voluntary Employee Contributions, eligible rollover distributions received from eligible retirement plans and repayment of a loan which were made to the Trust Fund by or on behalf of such Participant since the last preceding Allocation Date; and
- (d) Deduct from the proper Account Balance of each Participant the expenses of administering the Plan and Trust Fund since the last preceding Allocation Date.

Section 5.3 Expenses of Administration of the Plan and Trust Fund. All actual expenses of administering the Plan and the Trust Fund shall be paid from one or more of the separate Participant accounts identified in Section 5.1 as determined by the Trustees. The Trustees may, at any time and in their sole and absolute discretion, designate a fixed dollar

amount to be deducted from one or more of the separate Participant accounts described in Section 5.1 to defray the expenses, incurred in the administration of the Plan and Trust Fund. The method of allocating expenses shall be applied uniformly to all Participants of the Plan except that any expenses attributable to a loan to a Participant may be chargeable to the Participant involved.

The Trustees may, at any time and in their sole and absolute discretion, uniformly increase or reduce the value of all Account Balances so that on any Allocation Date the total value of all Account Balances equal the total net assets of the Trust Fund.

ARTICLE 6 INVESTMENT PROVISIONS

Section 6.1 Investment Options. Participants may direct the investment of their Account Balance by selecting from a range of investment options offered by the Trustees. The Trustees intend the Plan to qualify as a plan described in Section 404(c) of the Employee Retirement Income Security Act. Plan fiduciaries, including the Trustees, shall be relieved of liability for any investment results that are the direct result of investment instructions given by a Participant, Beneficiary or alternate payee.

Each Account Balance shall be invested by the Participant, Beneficiary, alternate payee, or Trustees in one or more of the following Investment Options in such proportions as the Participant, Beneficiary, alternate payee, or Trustees shall direct; provided the proportions are made in five percent (5%) increments in accordance with the policies adopted by the Trustees.

Option A: Income Option(s). The Income Option(s) is invested in short-term money market securities.

Option B: Fixed Option(s). The Fixed Option(s) is invested in a diversified portfolio of corporate and government bonds.

Option C: Balanced Option(s). The Balanced Option(s) is invested in a diversified portfolio of stocks, bonds and money market securities.

Option D: Real Estate Option(s). The Real Estate Option(s) is invested in a diversified portfolio of income producing commercial real estate.

Option E: Mortgage Income Option(s). The Mortgage Income Option(s) is invested in a diversified portfolio of construction and permanent loans for projects secured by first lien positions (mortgages) on real property.

Option F: U.S. Equity Option(s). The U.S. Equity Option(s) is invested in a diversified stock portfolio of publicly traded stocks of U.S. companies.

Option G: Foreign Equity Option(s). The Foreign Equity Option(s) is invested in a diversified stock portfolio of publicly traded foreign companies.

Option H: LifeCycle Option(s). The LifeCycle Option(s) is invested in a diversified portfolio that is expected to adjust risk (become more conservative) as an individual nears retirement age.

The investment options may be expanded or reduced by the Trustees from time to time without amending the Plan.

Any investment direction by a Participant, Beneficiary or alternate payee shall be deemed to be a continuing direction with regard to both past and future Contributions until the effective date of a new investment direction has been properly completed and filed with the Administrative Manager. The initial Contribution for an Employee will be invested in Option H and the specific LifeCycle Fund closest to the Employee's attaining age 65. The Administrative Manager will then provide the Employee with information about the investment options available and an election form. The Employee may then make an initial election between investment options by giving thirty (30) days' advance written notice to the Administrative Manager on a properly completed form provided by the Trustees. Such initial election shall be effective on the first day of the month following the Administrative Manager's receipt of a properly completed written notice of such election. Thereafter, a Participant, Beneficiary or alternate payee may make a change in his or her investment options on a monthly basis. Any properly completed election form received by the Administrative Manager by the 20th day of the month will be effective on the first day of the following month.

In the event a Participant, Beneficiary or alternate payee does not make an election of investment options, the Trustees shall determine, from time to time, the investment option where the Contributions and earnings shall be invested until such time as the Participant, Beneficiary or alternate payee completes an election form and delivers it to the Administrative Manager.

Section 6.2 Transactions by Trustees. The Trustees may, in their discretion, maintain in cash, without obligation to credit interest thereon, such part of the assets of the Trust Fund as

they shall deem necessary or desirable for the proper administration of the Trust Fund. Any cash for any of the investment options may, pending the disposition or investment of such cash for the purposes of such options, be temporarily invested in government securities. For this purpose, cash intended for several investment option funds may be commingled. From time to time, the Trustees shall determine the income on all such temporary investments made from commingled funds, and such income shall be allocated to the respective investment options in such a manner as the Trustees shall determine. Such government securities may, from time to time, be sold by the Trustees to provide cash for the purpose of such investment options.

Section 6.3 Reinvestment of Income. Income and proceeds of sales of investments of each investment option shall be reinvested in the same fund.

ARTICLE 7 PAYMENT OF VESTED ACCOUNT BALANCE

Section 7.1 Time of Payment. Payments from the Employer Contribution Account or the Rollover Account will be made only in the event of a Participant's Retirement, death, permanent and total disability, termination in accordance with Section 3.2, reaching the Required Beginning Date, or upon the termination of the Plan. Unless a Participant elects otherwise, payment of benefits will commence, or in the case of a lump sum, will be made, no later than sixty (60) days after the end of the month in which the Administrator of the Plan receives and approves an application for retirement benefits. The amount of benefits will be based on the value of the Account Balance as of the most recent Allocation Date before distribution of benefits begins. The entire interest of each Participant will be distributed, beginning not later than the Required Beginning Date over the life of such Participant or over the lives of the Participant and a designated Beneficiary.

Required Beginning Date means April 1 of the calendar year following the calendar year in which the Participant attains age seventy and one-half (70 ½). For Plan Years beginning October 1, 2002, and later, the Required Beginning Date for Participants who are not five percent (5%) owners is the later of April 1 of the calendar year after Retirement if that is later than the calendar year in which the Participant reaches age seventy and one-half (70 ½). For Participants who are five percent (5%) or greater owners, the Required Beginning Date is April 1 of the calendar year following the calendar year in which the Participant attains age seventy and one-half (70½).

Section 7.2 Payment Upon Retirement. A Participant who Retires may receive a distribution once he or she meets any one of the following conditions:

- (a) Early Retirement Date - any time on or after his or her fifty-fifth (55th) birthday; or
- (b) Normal Retirement Date - any time on or after his or her sixty-second (62nd) birthday; or

- (c) Late Retirement Date - any time on or after his or her sixty-second (62nd) birthday.

Upon a Participant's Retirement, the attainment of Early, Normal or Late Retirement Date, and the Administrator of the Plan receives and approves an application for retirement benefits, he or she will be entitled to his or her Account Balance. Payment will be based on the most recent Allocation Date before distribution of benefits begins.

Section 7.3 Payment Upon Death. Upon the death of a Participant before Retirement or termination pursuant to Section 3.2 and the Administrator of the Plan receives and approves an application for retirement benefits, the Beneficiary will be entitled to the Participant's Account Balance. Payment will be based on the most recent Allocation Date before distribution of benefits begins.

Section 7.4 Payment Upon Disability. Upon the total and permanent disability of a Participant before Retirement or termination pursuant to Section 3.2, and the Administrator of the Plan receives and approves an application for retirement benefits, he or she will be entitled to his or her Account Balance. Payment will be based on the most recent Allocation Date before distribution of benefits begins.

Total and permanent disability means disability by bodily injury or disease which permanently incapacitates a Participant from regularly performing any work in the plumbing and pipefitting trade. Satisfactory proof from a qualified, licensed physician of such a disability shall be submitted to the Trustees. Before ruling on the disability of a Participant, the Trustees may designate a qualified, licensed physician to examine the Participant.

Section 7.5 Payment Upon Termination Pursuant to Section 3.2. Upon termination by a Participant pursuant to Section 3.2, and the Administrator of the Plan receives and approves an application for retirement benefits, he or she will be entitled to his or her Account Balance. Payments will be based on the most recent Allocation Date before distribution of benefits begins.

Section 7.6 Payment of Voluntary Employee Contributions. A Participant may withdraw all of his or her After-Tax Account attributable to voluntary Employee Contributions after giving at least thirty (30) days' written notice of his or her intention to do so to the Administrative Manager. The payment will be based on the most recent Allocation Date before distribution of benefits begins. In the case of a married Participant, his or her spouse must consent in writing to such a withdrawal request and the consent must be witnessed by a Plan representative or notary public. Such withdrawal shall be limited to two withdrawals per Plan Year with a minimum withdrawal of \$200 or, if less, the balance of the Participant's After-Tax Account attributable to voluntary Employee Contributions. Amounts in a Participant's After-Tax Account attributable to repayment of defaulted loans may not be withdrawn under this provision and are distributable as provided in Sections 7.1 through 7.5.

ARTICLE 7A Minimum Distribution Requirements

Section 7A.1 General Rules.

- (a) Precedence. The requirements of this Article 7A will take precedence over any inconsistent provisions of the Plan.
- (b) Requirements of Treasury Regulations Incorporated. All distributions required under this Article 7A will be determined and made in accordance with the Treasury Regulations under Section 401(a)(9) of the Internal Revenue Code.

Section 7A.2 Time and Manner of Distribution.

- (a) Required Beginning Date. The Participant's entire Account Balance will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date as defined in Section 7.1.
- (b) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire Account Balance will be distributed, or begin to be distributed, no later than as follows:
 - (i) If the Participant's surviving spouse is the Participant's sole designated Beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70 ½, if later.
 - (ii) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, then distributions to the designated Beneficiary will begin by December 31 of the calendar year

immediately following the calendar year in which the Participant died.

- (iii) If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (iv) If the Participant's surviving spouse is the Participant's sole designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Section 7A2(b), other than Section 7A2(b)(i), will apply as if the surviving spouse were the Participant.

For purposes of this Section 7A2(b) and Section 7A4, unless Section 7A2(b)(iv) applies, distributions are considered to begin on the Participant's Required Beginning Date. If Section 7A2(b)(iv) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under section 7A2(b)(i). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's Required Beginning Date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under section 7A2(b)(i)), the date distributions are considered to begin is the date distributions actually commence.

- (c) Forms of Distribution. Unless the Participant's Account Balance is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first distribution calendar year distributions will be made in accordance with Sections 7A3 and 7A4 of this Article. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Internal Revenue Code and the Treasury Regulations.

Section 7A.3 Required Minimum Distributions During Participant's Lifetime.

- (a) Amount of Required Minimum Distribution For Each Distribution Calendar Year. During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:
 - (i) the quotient obtained by dividing the Participant's Account Balance by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations, using the Participant's age as of the Participant's birthday in the distribution calendar year; or
 - (ii) if the Participant's sole designated beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury Regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.
- (b) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under this Section 7A3 beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

Section 7A.4 Required Minimum Distributions After Participant's Death.

- (a) Death On or After Date Distributions Begin.
 - (i) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the

Participant's death is the quotient obtained by dividing the Participant's Account Balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated Beneficiary, determined as follows:

- (1) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
- (2) If the Participant's surviving spouse is the Participant's sole designated Beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.
- (3) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, the designated Beneficiary's remaining life expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(ii) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution

calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(b) Death Before Date Distributions Begin.

- (i) Participant Survived by Designated Beneficiary. If the Participant dies before the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the remaining life expectancy of the Participant's' designated Beneficiary, determined as provided in Section 7A4(a).
- (ii) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (iii) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Section 7A2(b)(i), this Section 7A4(b) will apply as if the surviving spouse were the participant.

Section 7A.5 Definitions.

- (a) Designated Beneficiary. The individual who is designated as the Beneficiary under Section 10.2 of the Plan and is the designated Beneficiary under Section 401(a)(9) of the Internal Revenue Code and Section 1.401(a)(9)-1, Q&A-4, of the Treasury Regulations.
- (b) Distribution Calendar Year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under Section 7A2(b). The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's Required Beginning Date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's Required Beginning Date occurs, will be made on or before December 31 of that distribution calendar year.
- (c) Life expectancy. Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury Regulations.
- (d) Participant's Account Balance. The Account Balance as of the last Allocation Date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any Contributions made and allocated or forfeitures allocated to the Account Balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The Account Balance for the valuation calendar year includes any amounts rolled over or transferred to

the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

- (e) Required Beginning Date. The date specified in Section 7.1 of the Plan.

ARTICLE 8 FORM OF BENEFIT

Section 8.1 Normal Form of Benefit. In the case of a Participant who is married on his or her Retirement, permanent and total disability or termination pursuant to Section 3.2, his or her normal form of benefit shall be a Qualified Joint and Survivor Annuity unless an optional form of benefit is selected pursuant to a qualified election (defined below) within the 180 day period ending on the Annuity Starting Date.

In the case of a Participant who is not married on his or her Retirement, permanent and total disability or termination pursuant to Section 3.2, his or her normal form of benefit, absent selection of another form of benefit, shall be a single life annuity.

Section 8.2 Waiver of Normal Form of Benefit by a Married Participant.

- (a) Within a 180-day period ending on the Annuity Starting Date, a married Participant and spouse may make a qualified election (defined below) to select a form of benefit other than the Qualified Joint and Survivor Annuity.
- (b) Qualified election means a waiver of the Qualified Joint and Survivor Annuity. Any waiver of the Qualified Joint and Survivor Annuity shall not be effective unless the notice requirements (defined below) are met and (i) the Participant's spouse consents in writing to waive the Qualified Joint and Survivor Annuity; (ii) the election designates a specific beneficiary including any class of beneficiaries or contingent beneficiaries, which may not be changed without spousal consent (or the spouse expressly permits designations by the Participant without further spousal consent); (iii) the spouse's consent acknowledges the effect of the election; and (iv) the spouse's consent is witnessed by an employee of the Administrative Manager, a Trustee or Notary Public. Additionally, a Participant's waiver of the Qualified Joint and Survivor Annuity shall not be effective unless the election designates a form of benefit which may not be changed without spousal consent. Spousal consent shall not be

required if it is established to the satisfaction of the Administrative Manager or Trustees that there is no spouse or the spouse cannot be located.

Any consent by a spouse contained in this Section (or establishment that the spouse cannot be located) shall be effective only with respect to that spouse. A consent that permits designations by a Participant without any requirements of further consent by such spouse must acknowledge that the spouse has the right to limit consent to a specific beneficiary, and a specific form of benefit where applicable, and the spouse voluntarily elects to relinquish either or both of these rights. A revocation of a prior waiver of the Qualified Joint and Survivor Annuity may be made by a Participant without consent of the spouse at any time prior to the commencement of benefits. The number of revocations shall not be limited. No consent obtained under this Section shall be valid unless the Participant has received the notice provided in paragraph (c) below.

- (c) The Administrative Manager shall, not less than 30 days and no more than 180 days prior to the Annuity Starting Date, provide the Participant a written explanation of: (i) the terms and conditions of the Qualified Joint and Survivor Annuity; (ii) material features of each option form of benefit under the Plan and sufficient information to explain the relative value of the options; (iii) the Participant's right to make and the effect of an election to waive the Qualified Joint and Survivor Annuity form of benefit; (iv) the right of the Participant's spouse regarding the election; (v) the Participant's right, if any, to defer distribution and the consequences of failing to defer a distribution of benefits; and (vi) the right to make and the effect of a revocation of a previous election to waive the Qualified Joint and Survivor Annuity. The 180-day period to waive the Qualified Joint and Survivor Annuity form of payment shall not end before the 30th day after the date the explanation is provided. A Participant may elect, with

spousal consent, to waive any requirement that the written explanation be provided at least 30 days before the Annuity Starting Date if the distribution commences more than 7 days after the explanation in this paragraph has been provided.

Section 8.3 Death of Participant Before Retirement. If a Participant dies before the Annuity Starting Date, the full value of the Participant's Accrued Benefit will be paid under Section 8.3 (b) or (c) as applicable.

(b) The automatic form of benefit for a Participant who is married and dies before the Annuity Starting Date shall be the Qualified Pre-Retirement Survivor Annuity. However, a Participant may elect, subject to the consent of his spouse, in accordance with the following procedures, not to elect the Qualified Pre-Retirement Survivor Annuity. No later than the first day of the Plan Year in which the Participant attains the age of 32 and ending with the close of the Plan Year preceding the Plan Year in which the Participant attains age 35, a written explanation of the Qualified Pre-Retirement Survivor Annuity comparable to that required for the Qualified Joint and Survivor Annuity shall be provided to the Participant. If the individual is not a Participant in the Plan during the time period described in the preceding sentence, the Participant shall be provided with the written explanation of the Qualified Pre-Retirement Survivor Annuity within a reasonable period after the individual becomes a Participant in the Plan.

Beginning on the first day of the Plan Year in which the Participant attains age 35 and ending on the date of the Participant's death, the Participant shall have the right to decline the Qualified Pre-Retirement Survivor Annuity, subject to the written consent of his spouse. The Participant, with the written consent of his spouse, may revoke an election not to take the Qualified Pre-Retirement Survivor Annuity or choose again to take the Qualified Pre-Retirement Survivor Annuity at any time and any number of times within the applicable election period. When

“consent of the spouse” is required under this Section 8.3(b), it shall have the same meaning as a qualified election in Section 8.2(b). Payment of the Qualified Pre-Survivor Annuity must start within the applicable time described in Article 7A. Not notwithstanding the above, the spouse may waive, in writing, after the death of the Participant, the Qualified Pre-Survivor Annuity and elect one of the optional forms of benefit in Section 8.5.

- (c) Non-Spouse Beneficiary. If a Participant dies before his Annuity Starting Date and has no spouse or there has been an appropriate election to select a non-spouse Beneficiary, the Participant’s Accrued Benefit shall be distributed to the Beneficiary or default Beneficiary in Section 10.2 under one of the optional forms of benefit in Section 8.5.

Section 8.4 Death After Retirement. For other than an insured retirement benefit, a Participant’s Beneficiary shall be entitled to a benefit equal to the remaining value of the Participant’s Accrued Benefit upon his death. If an insured retirement benefit was selected by the Participant, the conditions of the insured retirement benefit contract will prevail.

Section 8.5 Optional Forms of Benefit. Benefits pursuant to the provisions of Article 7, where the Participant or Beneficiary has waived the normal form of payment in accordance with the provisions of Section 8.2, shall be made in accordance with the Participant’s or Beneficiary’s election of one of the following forms of payment:

- (a) A single lump sum payment of all or a portion of his or her Account Balance, in cash; or
- (b) Conversion of his or her Account Balance to an annuity which would be purchased from an insurance company; or
- (c) Payment of his or her Account Balance in equal annual installments, in an amount selected by the Participant. Such equal annual installments shall continue until the earlier of:

- (i) the Participant's Account Balance is zero (0); or
- (ii) ten (10) annual installments have been made. In the event that money remains in the Participant's Account Balance at the end of the ten (10) annual installments, a supplemental payment shall be made of the remaining Account Balance which shall be included in the tenth (10th) payment. If the Participant should die before receiving his or her entire interest, the balance will be paid to his or her Beneficiary in one lump sum; or

(d) Payment of the Participant's Account Balance in a 50 percent Qualified Joint and Survivor Annuity, a 75 percent Qualified Joint and Survivor Annuity or a 100 percent Qualified Joint and Survivor Annuity which will be purchased from an insurance company for the life of the Participant with a survivor annuity for the life of the spouse which is 50 percent, 75 percent or 100 percent of the amount of the annuity which would be payable during the joint lives of the Participant and the spouse and which is the amount of the benefit that can be purchased with the Participant's Account Balance.

Section 8.6 Payment of Small Account Balances. If the value of the Participant's Accrued Benefit is \$5,000 or less on the date distribution or commencement of benefits is set to occur, the Participant's account balance shall be paid in a single lump sum payment. No lump sum payment, however, shall be made after a Participant's Annuity Starting Date even if the amount of the distribution does not exceed \$5,000 unless the Participant and, if applicable, the Participant's spouse, have consented in writing to such a lump sum distribution.

Section 8.7 Automatic Rollover of Mandatory Distributions. In the event of a mandatory distribution as described in Internal Revenue Service Notice 2005-5, Q&A-2 that is greater than \$1,000.00 is made in accordance with the terms of the Plan including, but not limited to, Section 8.6, and if the Participant does not elect to have such distribution paid directly to an eligible retirement plan specified by the Participant in a direct rollover, or to receive the

distribution directly in accordance with one of the options allowed by the Plan, then the Trustees will pay the distribution in a direct rollover to an individual retirement plan designated by the Trustees.

ARTICLE 9 CHANGE OR DISCONTINUANCE OF THE PLAN

Section 9.1 Amendment of the Plan. The Trustees shall have the right, from time to time, to modify, amend or restate, in whole or in part, any or all of the provisions of the Plan on a prospective or retroactive basis.

The Trustees shall not make any amendment to the Plan which would cause the Plan to lose its status as a qualified plan within the meaning of Section 401(a) of the Internal Revenue Code.

Though the continuation of the Plan is contingent upon the continued existence of Collective Bargaining Agreements which require Contributions to the Trust Fund, the Trustees intend to continue the Plan indefinitely for the benefit of Participants and Beneficiaries but reserve the right to terminate the Plan at any time. A temporary period between Collective Bargaining Agreements shall not cause a termination or partial termination of the Plan.

Section 9.2 Amendment of Trust Agreement or Collective Bargaining Agreement. If the Trust Agreement or the Collective Bargaining Agreement is amended by the insertion, modification or deletion of any provisions relating to or affecting this Plan, the Trustees, to the extent legally permissible and in conformity with Section 9.1, shall amend the Plan to effectuate the intent of such amendment of the Trust Agreement or the Collective Bargaining Agreement.

Section 9.3 Qualification of the Plan. It is intended that the Plan will constitute a qualified plan under the applicable provisions of Section 401(a) of the Internal Revenue Code, as now in effect or hereafter amended. Any modifications or amendments of the Plan may be made retroactively, if necessary or appropriate, to qualify or maintain the Plan as a plan meeting the requirements of the applicable provisions of the Internal Revenue Code as now in effect or hereafter amended or adopted, and the regulations issued thereunder.

Section 9.4 Allocation to Participants on Termination of the Plan. If the Plan is terminated, the rights of each affected Participant in and to their Account Balance shall be nonforfeitable. Thereafter, the Administrator of the Plan shall provide for a final adjustment to

Participants' Account Balance in accordance with Section 5.2 and make a final distribution to all Participants.

ARTICLE 10 MISCELLANEOUS PROVISIONS

Section 10.1 Employer-Employee Relationship Not Affected. This Plan is not intended to affect in any way the Employer-Employee relationship between an Employer and Employee. Such relationship shall continue under any Collective Bargaining Agreement or other agreement between those parties which may be in effect from time to time.

Section 10.2 Designation of Beneficiary. Each Participant may designate or change a prior designation of the person or persons to whom his or her benefits are to be paid if he or she dies before he or she receives all the benefits due him or her under the Plan. Such designation shall be in writing on a form approved by the Trustees which is signed by the Participant and filed with the Administrative Manager. If the Participant is married, his or her spouse must be the designated Beneficiary unless the spouse consents to the designation of another Beneficiary. The spouse's consent must be in writing and witnessed by a Plan representative or a notary public.

If a deceased Participant fails to designate a Beneficiary as provided above, or if the designated Beneficiary dies before the Participant or before the complete payment of the benefits due the Participant, the benefits will be paid in the following order of priority:

- (a) The surviving spouse;
- (b) If there is no surviving spouse, to the Participant's children, including adopted children in equal shares;
- (c) If there is no surviving spouse or children, to the Participant's surviving brothers and sisters in equal shares; or
- (d) If there is no surviving spouse, children, brothers or sisters, to the personal representative of the Participant's estate.

Section 10.3 Information to be Furnished. Participants shall be entitled to obtain periodic reports showing the amount of Employer Contributions credited to their Employer Contribution Account. Participants who contend they are entitled to be credited with a greater

amount of Employer Contributions for any calendar year must file evidence in support of such claim with the Administrative Manager within six (6) months after the receipt of the report for the disputed year or Employer Contributions shall remain as credited. The Trustees shall determine the proper amount of Employer Contributions, if any, to be credited to such Participants.

It shall be the duty of every Participant and Beneficiary entitled to benefits under the Plan to furnish any information or proof that the Trustees deem necessary or reasonable in order to administer the Plan properly (i.e., to keep the Trustees informed as to current address, supply proof of age, etc.).

All applications for benefits under this Plan, whether on account of Retirement, disability, death or termination in accordance with Section 3.2, and all elections and designations made by Participants or Beneficiaries under this Plan shall be made in writing to the Trustees in the form and manner prescribed by the Trustees. Any misrepresentation by the applicant may constitute grounds for the suspension of benefits, in whole or in part, for such applicant or for the recovery of benefit payments made in reliance thereon.

The Trustees shall have the right to require a submission of all necessary information before any benefit is paid, including records of employment, and proof of dates of birth, marriage, divorce, disability or death. No benefit dependent in any way upon such information shall be payable unless and until the information so required has been furnished. Upon receipt of such information, the Trustees shall determine the eligibility of the applicant for such benefit and shall notify the applicant of their determination and the amount of any benefit payable.

Section 10.4 Payment to Alternate Persons. If any Participant or Beneficiary eligible to receive payments under the Plan shall be, in the opinion of the Trustees, legally, physically or mentally incapable of personally receiving and receipting for any payment under this Plan, the Trustees may direct payments to such other person, persons or institutions who, in the opinion of the Trustees, shall have the custody of such payee until the claim shall be made by a duly appointed guardian or other legal representative of such payee. Such payments shall constitute a full discharge of the liability of the Plan to the extent thereof.

Section 10.5 Claims Review Procedures.

- (a) General Rule. No Employee, Participant, Beneficiary or any other person shall have any right or claim to benefits from the Plan and Trust Fund except as specified in the rules of the Plan. If the Employee, Participant, Beneficiary or any other person has a dispute with the Trustees concerning eligibility to participate in the Plan, eligibility for benefits, the type of benefit, the amount or duration of benefits or is otherwise adversely affected by a decision of the Administrative Manager or Trustees, the dispute shall be resolved by the Trustees or a subcommittee as set forth in Section 10.5(a) and their decision shall be final and binding on all persons and parties affected thereby. The only exception is a dispute regarding disability pension benefits which is subject to Section 10.5(b).
 - (1) Any Employee, Participant, Beneficiary or other person (hereinafter Claimant), whose eligibility to participate in the Plan, application for a benefit, application for a certain type of benefit, application for a benefit in a certain amount or any other type of application is wholly or partially denied, shall be notified in writing by the Administrative Manager of the decision. The notice shall advise the Claimant of the specific reason(s) for the denial, the section(s) of the Plan on which the denial is based, a description of any additional material or information needed to perfect the claim with an explanation why such material or information is necessary, if the decision is based on any internal rule, guideline, protocol or similar criterion, the internal rule, guideline, protocol or similar criterion will be described or provided free of charge upon request, an explanation of the Plan's review procedures and the time limits applicable to such procedures, including a statement of the Claimant's right to bring a civil action under Section 502(a) of the Employee Retirement

Income Security Act after an adverse benefit determination on appeal.

- (2) Thereafter, the Claimant may file an appeal in writing. The appeal must be filed with the Administrative Manager not more than 60 days after the Claimant has received the notice of the denial of the application. Failure to file an appeal within 60 days will be a complete waiver of the Claimant's right to appeal and the initial decision of the Administrative Manager will be final and binding.
- (3) If an appeal is filed, the appeal shall be in writing, must state in clear and concise terms the reason(s) why the Claimant feels the decision of the Administrative Manager is in error and may include documents, records and other information relevant to the appeal. All arguments, issues and comments in support of the appeal shall be set forth in the written appeal. The Claimant, or his or her representative, in order to perfect the appeal, may examine any relevant non-privileged documents in the possession of the Administrative Manager or the Trustees. Whether a document, record or other information is relevant to the appeal will be determined in accordance with 29 CFR § 2560.502-1(m)(8).
- (4) After receipt of a timely filed appeal, and upon the written request of the Claimant or his or her representative for a hearing, the Trustees or a subcommittee shall hold a hearing within a reasonable time and permit the Claimant and his or her representative to personally appear in support of the appeal.
- (5) The review of the decision of the Administrative Manager will take into account all comments, documents, records and other information submitted by the Claimant relating to the claim without regard to whether such information was submitted to the

Administrative Manager. The Trustees or a subcommittee will review the claim de novo (meaning without deference to the decision made by the Administrative Manager).

- (6) A decision will be made by the Trustees or a subcommittee at their next regularly scheduled meeting following receipt of the appeal unless the appeal is received less than 30 days prior to such meeting. If this is the case, the Trustee or subcommittee will review the appeal no later than the date of the second meeting following receipt of the appeal. If special circumstances require a further extension of time, the Trustees or a subcommittee will provide the Claimant with a written notice of the extension describing the special circumstances and when the decision will be made.
- (7) The Trustees or a subcommittee will notify the Claimant of the decision as soon as possible but not later than five days after the decision is made. The decision shall be in writing, shall state the specific reason(s) for the decision, with reference to the specific Plan provision(s) upon which the decision is based, a statement of the Claimant's right to receive, upon request and free of charge, reasonable access to and copies of all non-privileged documents, records and other information relevant to the appeal and the right to bring a civil action under Section 502(a) of the Employee Retirement Income Security Act.
- (8) The Trustees or a subcommittee has full and exclusive authority to administer the Plan, interpret the Plan and resolve all questions arising in the administration, interpretation and application of the Plan as it relates to the appeal. The Trustees' or subcommittee's authority includes, but is not limited to, the right to resolve all matters when an appeal has been filed, the right to establish and

enforce rules and procedures for the administration of appeals so long as the rules and procedures are consistent with the Employee Retirement Income Security Act and the right to construe and interpret the Plan. The exercise of such power and authority by the Trustees or a subcommittee shall be final and binding upon the Claimant and all persons claiming by or through the Claimant, given the fullest deference allowed by law and be subject to judicial review only for abuse of discretion.

(9) Except for claims subject to Section 10.5(b), this Claims Review Procedure shall apply to and shall include any and all claims or rights arising under the Trust Agreement or Plan or against the Trust Fund, Plan or Trustees, regardless of when the act or omission upon which the claim is based occurred.

(b) Claims Review for Disability Pension Benefits. No Employee, Participant, Beneficiary or any other person shall have any right or claim to disability pension benefits from the Plan and Trust Fund except as specified in the rules of the Plan. If the Employee, Participant, Beneficiary or any other person has a dispute with the Trustees concerning disability pension benefits, the dispute shall be resolved by the Trustees or a subcommittee as set forth in Section 10.5(b), and their decision shall be final and binding on all persons and parties affected thereby.

(1) Any Employee, Participant, Beneficiary or other person (hereinafter Claimant) whose application for disability pension benefits is denied in whole or in part by the Administrative Manager will be notified of such denial in writing within a reasonable period of time, but not later than 45 days after receipt of the application or claim. This 45-day period may be extended up to an additional 30 days provided the Administrative Manager determines that such an extension is necessary due to matters

beyond control of the Plan and notifies the Claimant prior to the end of the initial 45-day period, in writing, of such extension and the circumstances requiring the extension of time and the date by which the Administrative Manager expects to render a decision. If prior to the end of the first 30-day extension, the Administrative Manager determines that, due to matters beyond the control of the Plan, a decision cannot be made within the extension period, the period for making the decision may be extended for up to an additional 30 days, provided the Administrative Manager notifies the Claimant prior to the end of the first 30-day extension, in writing, of the circumstances requiring the extension and the date the Administrative Manager expects to make a decision. The notice will be in writing and will specifically explain the Plan provision(s) on which the entitlement to disability pension benefits is based, the unresolved issue(s) that prevents a decision, the additional information needed to resolve those issues, and the Claimant will be given at least 45 days within which to provide the specified information.

The period of time in which a benefit determination is required to be made will begin at the time an application or claim is filed with the Administrative Manager without regard to whether all of the information necessary to make a benefit determination accompanies the filing. In the event that a period of time is extended, as permitted above, due to the Claimant's failure to submit information necessary to make a benefit determination, the period of time for making the benefit determination will be tolled from the date on which the notification of extension is sent to the Claimant until the date on which the Claimant responds to the request for additional information.

- (2) If the Administrative Manager denies the Claimant's application or claim for disability pension benefits, the notice shall advise the Claimant of the specific reason(s) for the denial, the section(s) of the Plan on which the denial is based, if the decision is based on any internal rule, guideline, protocol, or similar criterion, the internal rule, guideline, protocol, or similar criterion will be described or provided free of charge upon request, an explanation of the Plan's review procedures, and the time limits applicable to such procedures, including a statement of the Claimant's right to bring a civil action under Section 502(a) of the Employee Retirement Income Security Act after an adverse benefit determination on appeal.
- (3) Thereafter, the Claimant may file an appeal in writing. The appeal must be filed with the Administrative Manager not more than 180 days after the Claimant has received the notice of denial. Failure to file an appeal within 180 days will be a complete waiver of the Claimant's right to appeal, and the initial decision of the Administrative Manager will be final and binding.
- (4) If an appeal is filed, the appeal shall be in writing, must state in clear and concise terms the reason(s) why the Claimant feels the decision of the Administrative Manager is in error, and may include documents, records and other information relevant to the appeal. All arguments, issues, and comments in support of the appeal shall be set forth in the written appeal. The Claimant, or his or her representative, in order to perfect the appeal, may examine any relevant, non-privileged documents in the possession of the Administrative Manager or the Trustees. Whether a document, record or other information is relevant to the appeal shall be determined in accordance with 29 CFR § 2560.502-1(m)(8).

- (5) After receipt of a timely filed appeal, and upon written request of the Claimant or his or her representative for a hearing, the Trustees or a subcommittee shall hold a hearing within a reasonable time and permit the Claimant and his or her representative to personally appear in support of the appeal.
- (6) The Trustees or a subcommittee will review the claim *de novo* (meaning without deference to the decision of the Administrative Manager). If the appeal involves issues of medical judgment, the Trustees or subcommittee shall consult with a health care professional with appropriate training and experience in the field of medicine involved in the appeal. Such consultant shall be different from any individual consulted in connection with the initial determination and shall not be the subordinate of such person. If the Trustees or a subcommittee consult a medical or vocational expert, he will be identified regardless of whether the Trustees or subcommittee rely on his opinion. The Trustees or subcommittee will take into account all comments, documents, records and other information submitted by the Claimant related to the application or claim without regard to whether such information was submitted or considered by the Administrative Manager.
- (7) A decision will be made by the Trustees or subcommittee at their next regularly scheduled meeting following receipt of the appeal unless the appeal was received less than 30 days prior to such meeting. If this is the case, the Trustees or subcommittee will review the appeal no later than the date of the second meeting following receipt of the appeal. If special circumstances require a further extension of time, the Trustees or subcommittee will provide the Claimant with a written notice of the extension,

describing the special circumstances, and when a decision will be made.

- (8) The Trustees or subcommittee will notify the Claimant of the decision as soon as possible, but not later than five days after the decision is made. The decision shall be in writing, shall state the specific reason(s) for the decision, with reference to the specific Plan provision(s) upon which the decision is based, a statement of the Claimant's right to receive, upon request and free of charge, reasonable access to and copies of all non-privileged documents, records and other information relevant to the appeal, and the right to bring a civil action under Section 502(a) of the Employee Retirement Income Security Act.
- (9) The Trustees or a subcommittee has full and exclusive authority to administer the Plan, interpret the Plan, and resolve all questions arising in the administration, interpretation, and application of the Plan as it relates to disability pension benefits. The Trustees' or subcommittees' authority includes, but is not limited to, the right to resolve all matters when an appeal has been filed, the right to establish and enforce rules and procedures for the administration of appeals so long as the rules and procedures are consistent with the Employee Retirement Income Security Act, and the right to construe and interpret the Plan. The exercise of such power and authority by the Trustees or a subcommittee shall be final and binding upon the Claimant and all persons claiming by or through the Claimant, given the fullest deference allowed by law, and be subject to judicial review only for abuse of discretion.

Section 10.6 Inalienability. Except as may otherwise be provided by law, no distribution or payment under the Plan to any Participant, Beneficiary or alternate payee shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance

or charge, whether voluntary or involuntary, and any attempt to so anticipate, alienate, sell, transfer, assign, pledge, encumber or charge, whether voluntary or involuntary, shall be void. No distribution or payment shall be in any way liable for or subject to the debts, contracts, liabilities, engagements or torts of any person entitled to such distribution or payment. If any Participant, Beneficiary or alternate payee is adjudicated bankrupt or purports to anticipate, alienate, sell, transfer, assign, pledge, encumber or charge any such distribution or payment, voluntarily or involuntarily, the Trustees, in their discretion, may hold or cause to be held or applied such distribution or payment or any part thereof to or for the benefit of such Participant, Beneficiary or alternate payee in such manner as the Trustees shall direct.

Section 10.7 Merger or Consolidation. In the event this Plan merges or consolidates with, or transfers its assets or liabilities to, any other qualified plan, the amount of benefits which a Participant or Beneficiary would receive upon a termination of the Plan immediately after such merger, consolidation or transfer shall not be less than the benefit to which he or she is entitled on the day preceding such event.

Section 10.8 Benefits Payable by Trust Fund. The Trust Fund shall be the sole source of benefits under this Plan and each Participant, Beneficiary or any other person who shall claim the right to any payment or benefit under this Plan shall be entitled to look to the Trust Fund for such payment or benefit. Except as may be otherwise provided by the Employee Retirement Income Security Act or other applicable law, neither the Administrator of the Plan nor an Employer shall have any liability to make, or continue from its own funds, the payment of any benefits under the Plan.

Section 10.9 Applicable Law. The Plan shall be construed, administered and governed according to the laws of the State of Washington to the extent such laws are not preempted by the laws of the United States of America.

Section 10.10 Uniformed Services Employment and Re-Employment 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.

Section 10.10A. Death Benefits While Performing Qualified Military Service. In the case of death or disability occurring on or after January 1, 2007, if a Participant dies while performing qualified military service as defined in Section 414(u) of the Internal Revenue Code, that qualifies the Participant for re-employment rights with his/her former employer, the survivors of the Participant are entitled to any additional Plan benefits, other than benefit accruals relating to the period of qualified military service, that would have been provided under the Plan had the Participant resumed participation in the Plan and then terminated participation in the Plan on account of death.

Section 10.11 Loans to Participants. The Trustees may, upon written application of a Participant, authorize a loan or loans to the Participant subject to the following requirements:

- (a) Loans shall be available to all Participants on a reasonably equivalent basis. However, loans shall not be made for less than one thousand dollars (\$1,000.00).
- (b) An application for a loan by a Participant shall be made in writing to the Administrative Manager.
- (c) No loan to any Participant can be made to the extent that such loan, when added to the outstanding balance of all other loans to the Participant, would exceed the lesser of:
 - (1) Fifty thousand dollars (\$50,000.00) reduced by the Participant's highest outstanding loan balance (if any) during the one-year period ending on the day before the loan is made; or
 - (2) One-half the present value of the non-forfeitable Account Balance of the Participant's Employer Contribution Account and one-half the present value of the non-forfeitable Account Balance of the Participant's Rollover Account as of the Allocation Date most recently preceding the date of the loan.

For the purpose of the above limitations, all loans from the plans of the Employer and other members of a group of employers described in Sections 414(b), 414(c) and 414(m) of the Internal Revenue Code are aggregated.

- (d) All loans shall, by their terms, require repayment (principal and interest), be amortized in level payments, made not less frequently than quarterly, over a period not extending beyond five (5) years from the date of the loan, unless such loan is used to acquire a dwelling unit which within a reasonable time (determined at the time the loan is made) will be used as the principal residence of the Participant in which case the loan shall, by its terms, require repayment (principal and interest), be amortized in level payments, made not less frequently than quarterly, over a period not extending beyond ten (10) years from the date of the loan.
- (e) The loan must bear a reasonable interest rate as determined by the Trustees. The Trustees shall not discriminate among Participants in the matter of interest rates; but loans granted at different times may bear different interest rates if, in the opinion of the Trustees, the difference in interest rates is justified by a change in general economic conditions.
- (f) A Participant must obtain the written consent of his or her spouse, if any, to use any part of the Account Balance as security for the loan. Spousal consent shall be obtained no more than ninety (90) days before the date on which the loan is made. The consent must be in writing, must acknowledge the effect of the loan and must be witnessed by a Plan representative or notary public. Such consent shall, thereafter, be binding with respect to the consenting spouse or any subsequent spouse with respect to that loan. A new consent shall be required if the Account Balance is used for renegotiation, extension, renewal or other revision of the loan.

- (g) All loans under this Section shall be made to the Participant from his Employer Contribution Account and/or his Rollover Account and shall be charged against the applicable account or accounts. Interest and principal repayments shall be added to the Participant's Employer Contribution Account and/or Rollover Account as applicable.
- (h) All loans must be adequately secured as evidenced by a promissory note where the borrower personally guarantees the repayment of the loan and secures the loan by the Account Balance of the Participant's Employer Contribution Account and/or Rollover Account.
- (i) To the extent applicable, in the event there is a default under the promissory note, foreclosure on the promissory note and attachment of security will not occur until a distributable event occurs in the Plan.
- (j) The Trustees may adopt loan policies provided that the policies do not conflict with the Plan. The Trustees may delegate authority for the administration of the loan program to the Administrative Manager.

Section 10.12 Trustees' Authority. The Trustees shall have the full, absolute and unlimited power and authority to administer and operate the Plan and Trust Fund, establish rules and procedures as they deem necessary or proper for the administration and operation of the Plan and Trust Fund, and interpret, construe and apply the provisions of the Plan and Trust Agreement and amendments thereto, administrative rules and regulations, minutes, motions and any other writings they may have entered into and any such interpretation, construction or application adopted by the Trustees shall be final and binding on all parties and persons affected thereby, subject to any appeal rights allowed in the Plan. Any review of any decision, interpretation, construction or application reached by the Trustees, shall be given the fullest deference allowed by law and be subject to judicial review only for abuse of discretion.

Section 10.13 Non-Revision. This Plan and the Trust Fund have been established by the Trustees for the exclusive benefit of the Participants and their Beneficiaries. Under no circumstances shall any Contributions, at any time, revert to or be used by an Employer, nor shall

any funds or assets of any kind be used other than for the benefit of the Participants and their Beneficiaries and to pay the reasonable expenses of the Trust Fund and Plan. Notwithstanding the above, the Trustees, in their discretion, may return a Contribution to an Employer made by mistake of fact or law within six months after the Trustees determine the Contribution was made by such a mistake in accordance with the provisions of Section 403(c)(2)(A) of the Employee Retirement Income Security Act.

Section 10.14 Severability. If any provision of the Plan is held to be illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining provisions of the Plan unless such illegality or invalidity prevents accomplishment of the purposes and objectives of the Plan. In the event of any such holding, the Trustees will immediately amend the Plan to remedy the defect.

Section 10.15 Gender/Number. Whenever any words are used in this Plan in the masculine gender, they shall be construed as though they were also used in the feminine gender in all situations where they would so apply. Whenever any words are used in the Plan in the singular form, they shall be construed as though they were also in the plural form in all situations where they would so apply, and vice versa.

ARTICLE 11 CONTINGENT TOP-HEAVY RULES

Section 11.1 General Rule. If the Plan is determined to be top-heavy (as defined in Section 416(g) of the Internal Revenue Code) for any Plan Year, then for any such year the provisions of Article XI will supersede any conflicting provisions of the Plan and apply to any Employee not included in a unit of Employees covered by a Collective Bargaining Agreement (if retirement benefits were the subject of good faith bargaining) between a labor organization and one or more of the Employers.

Section 11.2 Determination of Top-Heavy Status. The following definitions shall apply when determining whether the Plan is top-heavy.

- (a) Determination Date. The Determination Date for any Plan Year is the last day of the preceding Plan Year.
- (b) Top-Heavy Status. The Plan is top-heavy for any Plan Year if, as of the Determination Date, any of the following conditions exist:
 - (1) If the Top-Heavy Ratio for this Plan exceeds sixty percent (60%) and this Plan is not part of any required aggregation group or permissive aggregation group of plans.
 - (2) If this Plan is part of a required aggregation group of plans but not part of a permissive aggregation group and the Top-Heavy Ratio for this group of plans exceeds sixty percent (60%).
 - (3) If this Plan is 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 of plans exceeds sixty percent (60%).
- (c) Top-Heavy Ratio means:
 - (1) If the Plan sponsor maintains one (1) or more defined contribution plans (including any Simplified Employee Pension Plan as defined

in Section 408(k) of the Internal Revenue Code) and the Plan sponsor has not maintained any defined benefit plan which during the five-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 Balances distributed in the one-year period ending on the Determination Date(s)) (five-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 the denominator of which is the sum of all Account Balances (including any part of any Account Balances distributed in the one-year period ending on the Determination Date(s)) (five-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) both computed in accordance with Section 416 of the Internal Revenue Code and the regulations thereunder. Both the numerator and denominator of the Top-Heavy Ratio are increased to reflect any Contributions not actually made as of the Determination Date but which are required to be taken into account on that date under Section 416 of the Internal Revenue Code and the regulations thereunder.

- (2) For purposes of the preceding paragraph, the value of Account Balances will be determined as of the most recent Valuation Date that falls within or ends within the twelve-month period ending on the Determination Date, except as provided in Section 416 of the Internal Revenue Code and the regulations thereunder. The Account Balances of a Participant (i) who is not a Key Employee but who was a Key Employee in a prior year or (ii) who has not

been credited with at least one Hour of Service with any Employer maintaining the Plan at any time during the one-year period 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 Section 416 of the Internal Revenue Code and the regulations thereunder. Deductible employee contributions, if any, will not be taken into account for purposes of computing the Top-Heavy Ratio.

- (d) Key Employee. A Key Employee means 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 an Employer having annual Compensation greater than \$130,000 (as adjusted under Section 416(i)(1) of the Internal Revenue Code for the Plan Years beginning after December 31, 2002); a five-percent (5%) owner of the Employer; or a one-percent (1%) owner of an Employer and having annual Compensation of more than \$150,000. For purposes of this Section 11.2(d), annual Compensation means Compensation within the meaning of Section 4.3(b) as limited by Section 401(a)(17) of the Internal Revenue Code. The determination of who is a Key Employee will be made in accordance with Section 416(i)(1) of the Internal Revenue Code and the applicable regulations and other guidance of general applicability issued thereunder.
- (e) Aggregation Rules. In determining if the Plan is top-heavy, the Plan shall be aggregated with each other plan in the required aggregation group as defined in Section 416(g)(2)(A)(i) of the Internal Revenue Code and may, in the Trustees' discretion, be aggregated with any other plan in the permissive aggregation group as defined in Section 416(g)(2)(A)(ii) of the Internal Revenue Code.

- (f) Valuation Date. The most recent date within the twelve (12) month period ending on the Determination Date as of which Account Balances are valued and the net income (or loss) thereof allocated to Account Balances.
- (g) Special Rules. The Trustees are authorized to adopt any other rules or regulations necessary to ensure that the Plan complies in all respects with the Top-Heavy Rules of the Internal Revenue Code and applicable regulations.

Section 11.3 Special Employer Contribution Requirements. The following rules apply only to Employees who are not Key Employees and not included in a unit of Employees covered by a Collective Bargaining Agreement (if retirement benefits were the subject of good faith bargaining) between a labor organization and one or more Employers and only if the Plan becomes top-heavy. Such Employees are referred to as Top-Heavy Employees.

- (a) Except as provided in (c) below, the Employer Contributions and forfeitures, if any, allocated on behalf of a Top-Heavy Employee shall not be less than the lesser of three percent (3%) of such Top-Heavy Employee's Compensation or in the case where the Employer has no defined benefit plan which designates this Plan to satisfy Section 401(a) of the Internal Revenue Code, the largest percentage of Employer Contributions and forfeitures, if any, as a percentage of a Key Employee's Compensation, as limited by Section 401(a)(17) of the Internal Revenue Code, allocated on behalf of any Key Employee for that year. This minimum allocation shall be made even though, under other Plan provisions, the Top-Heavy Employee would not otherwise be entitled to receive an allocation, or would have received a lesser allocation for the year because (i) the Top Heavy Employee's failure to complete 1,000 Hours of Service (or any equivalent provided in the Plan), or (ii) the Top Heavy Employee's failure to make a mandatory Contribution to the Plan (if one is ever required) or (iii) the Top Heavy Employee's Compensation is less than a stated amount.

- (b) For purposes of computing the minimum allocation, Compensation shall mean Compensation as defined in Section 4.3(b), as limited by Section 401(a)(17) of the Internal Revenue Code.
- (c) The provisions in (a) above shall not apply to any Top-Heavy Employee who is not employed by the Employer on the last day of the Plan Year.

Section 11.4 Termination of Top-Heavy Status. If the Plan has been determined to be top-heavy for one (1) or more Plan Years and thereafter ceases to be top-heavy, the provisions of this Article 11 shall cease to apply to the Plan effective as of the Determination Date on which the Plan is determined no longer to be top-heavy.

Section 11.5 Effective Date. The effective date of Article 11, CONTINGENT TOP-HEAVY RULES, is June 1, 1991 which is the effective date of the Plan. Any application of Article 11 prior to the date of its adoption (May 26, 2010) will be pursuant to the provisions of Section 416 of the Internal Revenue Code and applicable regulations which were in effect at the time of application.

EMPLOYEE TRUSTEE

EMPLOYER TRUSTEE

September 8, 2009

September 8, 2009

APPENDIX A

ADJUSTMENTS AND LIMITATIONS UNDER SECTION 401(m) OF THE INTERNAL REVENUE CODE

A1.01 Section 401(m) of the Internal Revenue Code Adjustments and Limitations.

- (a) Automatic Satisfaction for Collectively Bargained Employees. The requirements of Section 401(m) of the Internal Revenue Code and Treasury Regulations § 1.401(m) et seq., are automatically satisfied with respect to Employee voluntary Contributions made by collectively-bargained employees pursuant to Treasury Regulation § 1.401(m)-1(b)(2). In the event any non-collectively bargained employee makes an Employee voluntary Contribution to the Plan, the following rule shall apply.
 - (b) Maximum Annual Allocation. The annual allocation derived from Employee voluntary Contributions to the Employee Contribution Account shall satisfy the Actual Contribution Percentage ("ACP") test of Section 401(m)(2) of the Internal Revenue Code as described in (1) or (2). The Plan provisions relating to Section 401(m) of the Internal Revenue Code limits are to be implemented and applied in accordance with Section 401(m) of the Internal Revenue Code, which are incorporated by this reference and in such manner as to satisfy such other requirements relating to Section 401(m) of the Internal Revenue Code as they may be prescribed by the Secretary of the Treasury from time to time.
 - (1) 1.25 Test. ACP for the group of Highly Compensated Participants shall not exceed the average Contribution Percentage of the group of Non-Highly Compensated Participants multiplied by 1.25; or
 - (2) Two Percent (2%) Test. The excess of ACP of the group of Highly Compensated Participants over the ACP of the group of Non-Highly Compensated Participants shall not exceed two (2) percentage points (or such lesser amount as prescribed by the Secretary of the Treasury to prevent multiple use of this alternative limitation with respect to any Highly Compensated Participant), and the ACP of the group of Highly Compensated Participants shall not exceed the ACP of the group of Non-Highly Compensated Participants multiplied by two (2).
- (c) Definitions and Rules. For the purposes of this A1.01, the following definitions and rules shall apply:
 - (1) "Aggregate Contributions" means, for a Plan Year, the sum of a Participant's Employer matching Contributions, if any, and the Employee's voluntary Contributions.

- (2) "Contribution Percentage" means the ratio of an Employee's Aggregate Contributions to such Employee's Compensation for such Plan Year.
- (3) "Actual Contribution Percentage" means, with respect to the group of all Highly Compensated Participants and the group of all Non-Highly Compensated Participants for a Plan Year, the average of the Contribution Percentages. The determination of the ACP shall be made in accordance with the provisions of Section 401(m)(2) of the Internal Revenue Code and the Treasury Regulations § 1.401(m)-1(et seq.), the provisions of which are incorporated by this reference.
- (4) "Highly Compensated Participant" shall be construed consistently with Section 414(q) of the Internal Revenue Code and means any Participant who, during the determination year or look-back year,
 - (A) Is at any time a 5 percent (5%) owner, or,
 - (B) Receives compensation from the Employer in excess of \$80,000 (or such other amount prescribed by the Secretary of the Treasury to reflect changes in the cost of living).
- (5) "Non-Highly Compensated Participant" means any Participant who is not a Highly Compensated Participant.
- (6) "Participant Pool" means all Employees eligible to make an Employee voluntary Contribution for the Plan Year shall be included in the group of Highly Compensated Participants or Non-Highly Compensated Participants (as appropriate), whether or not an Employee voluntary Contribution was made by such Participant; provided, however, that for testing purposes, the Plan shall be disaggregated into the following two groups for testing purposes under this Appendix A:
 - (A) Bargaining Unit Employees. Bargaining Unit Employees including bargaining unit alumni and Employees of the Union covered by the Plan shall be tested as a separate testing pool as provided in Treasury Regulations § 1.410(b)-7(c)(4)(ii)(B).
 - (B) Non-Bargaining Employees. Employees of all other Employers shall be separately tested from bargaining unit Employees and each other as provided in Treasury Regulations § 1.410(b)-7(c)(4)(ii)(B).
- (7) Multiple 401(m) Plans. If two (2) or more plans which include Employer matching Contributions are considered one (1) plan for purposes of

Section 410(b) of the Internal Revenue Code, the Employer matching Contribution arrangements included in such plans shall be treated as one (1) arrangement. In addition, the average Contribution percentage for any Highly Compensated Participant who is a Participant under two (2) or more plans of the Employer which include Employer matching Contributions shall be the sum of the average Contribution percentages for such Employee under each of such plans.

(8) Family Member Aggregation.

- (A) For purposes of determining the ACP of a Highly Compensated Participant who was either a five percent (5%) owner or in the group of the ten (10) Highly Compensated Participants paid the greatest compensation during the Plan Year, the Employer matching Contributions and the compensation of such Participant shall, respectively, include both the Employer matching Contributions and compensation of a Non-Highly Compensated Participant who is a family member (as defined in Section 414(q)(6)(B) of the Internal Revenue Code) of such Participant.
- (B) The Employer matching Contributions and the compensation of any family members of a Highly Compensated Participant (described in (A)) shall be disregarded in determining the average Contribution percentage of Non-Highly Compensated Participants.

(9) “Employer Matching Contribution” means, for purposes of A1.01, the Employer matching Contribution, if any, allocated to the Participant’s match account, less any matching Contribution amounts relating to elective deferrals distributed as excess Contributions.

(c) Adjustment for Excess Aggregate Contributions.

- (1) Excess Aggregate Contributions Defined. Excess Aggregate Contributions are the amount of Aggregate Contributions allocated on behalf of the Highly Compensated Participants which cause the Plan to fail to satisfy the ACP test.
- (2) Timing. In the event that there are Excess Aggregate Contributions, the Administrator of the Plan shall reduce (for the Plan Year during which the Excess Aggregate Contribution occurs) first the Employee voluntary Contributions for Highly Compensated Participants and next the Employer matching Contributions, if any, for Highly Compensated Participants in an amount necessary to satisfy one of the tests set forth in A1.01(b) in the manner described in (3) and (4), below. The Employer may incur an

excise tax with respect to the amount of Excess Aggregate Contributions for a Plan Year not distributed to the appropriate Highly Compensated Participants during the first two and one-half (2½) months of that next Plan Year.

- (3) **Determination of Excess.** The Administrator of the Plan will determine the amount of the Excess Aggregate Contributions by starting with the Highly Compensated Participant who has the greatest Contribution Percentage, reducing his Contribution Percentage (but not below the next-highest Highly Compensated Participant's Contribution Percentage), then, if necessary, reducing the Contribution Percentage of the Highly Compensated Participant whose Contribution Percentage the Administrator of the Plan has already reduced (but not below the next highest Contribution Percentage), and continuing in this manner until the ACP for the Highly Compensated Participant group satisfies the ACP test.
- (4) **Distribution of Excess.** Once the Administrator of the Plan has determined the Excess Aggregate Contribution amount in (3), above, the Administrator of the Plan, then will distribute to each Highly Compensated Participant his respective share of the Excess Aggregate Contributions. The Administrator of the Plan will determine the respective shares of Excess Aggregate Contributions by starting with the Highly Compensated Participant who has the greatest amount of Aggregate Contributions, reducing the amount of his Aggregate Contributions (but not below the next highest amount of another Highly Compensated Participant), then, if necessary, reducing the amount of Aggregate Contributions of the Highly Compensated Participant(s) whose Aggregate Contributions the Administrator of the Plan has already reduced (but not below the next-highest level of Aggregate Contributions), and continuing in this manner until all Excess Aggregate Contributions have been distributed. Distributed Excess Aggregate Contributions shall be treated as Employer Contributions for purposes of Sections 404 and 415 of the Internal Revenue Code, even if distributed from the Plan.
- (5) **Income Allocable to Excess Aggregate Contributions.**
 - (A) **General Rule.** The income allocable to Excess Aggregate Contributions is equal to the sum of the allocable gain or loss for the Plan Year and the allocable gain or loss for the period between the end of the Plan Year and the date of distribution.
 - (B) **Allocable Income for Plan Year.** The income allocable to Excess Aggregate Contributions for the Plan Year is determined by multiplying the income for the Plan Year allocable to the

Participant's immediately vested account by a fraction. The numerator of the fraction is the amount of Excess Aggregate Contributions made by the Participant for the Plan Year. The denominator of the fraction is the total account balance of the Participant's immediately vested account as of the end of the Plan Year, reduced by the gain allocable to such total amount for the Plan Year and increased by the loss allocable to such total amount for the Plan Year.

(C) Allocable Income for the Period Between the End of the Plan Year and Distribution. The allocable income for the period between the end of the Plan Year and the distribution date is equal to ten percent (10%) of the income allocable to Excess Aggregate Contributions for the Plan Year (as calculated under (B)) multiplied by the number of calendar months that have elapsed since the end of the Plan Year. A distribution occurring on or before the fifteenth day of the month will be treated as having been made on the last day of the preceding month, and a distribution occurring after such fifteenth day will be treated as having been made on the first day of the next month.

A1.02 Effective Date. The effective date for Appendix A is June 1, 1991 which is the effective date of the Plan. Any application of Appendix A prior to the date of its adoption (September 30, 2009) will be pursuant to the provisions of Section 401(m) of the Internal Revenue Code and applicable regulations which were in effect at the time of application.

