

**PLUMBERS AND STEAMFITTERS LOCAL 166  
PROFIT SHARING ANNUITY PLAN**

**(As Amended and Restated Effective January 1, 2015)**

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PLUMBERS AND STEAMFITTERS LOCAL 166 PROFIT SHARING ANNUITY PLAN  
RESTATED PLAN DOCUMENT

This Agreement, made and entered into by and among the persons designated by Plumbers and Steamfitters Local Union No. 166, an affiliate of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, (hereinafter referred to as the "Union") to serve as Union Trustees, and the persons designated by Mechanical Contractors Association of Indiana, Inc., Fort Wayne Area, on behalf of the individual contractors which comprise it and as the negotiating committee on behalf of other construction contractors (hereinafter referred to as the "Association") to serve as Employer Trustees, said persons collectively called the "Board of Trustees."

WITNESSETH THAT

WHEREAS, the Association and Union have heretofore entered into Collective Bargaining Agreements which provide, among other things, for the establishment of a pension plan for the benefit of employees covered thereunder, the terms of which are set forth in a written agreement currently designated as the Plumbers and Steamfitters Local 166 Profit Sharing Annuity Plan, which agreement was originally effective as of June 1, 1995, and was amended most recently effective June 1, 2009 (such agreement, as theretofore amended or restated, being hereinafter referred to as the "Predecessor Plan"); and

WHEREAS, it is the desire of the Trustees to revise, amend, restate and replace the Predecessor Plan in order to include in one document all amendments thereto, including those amendments necessary to continue to maintain said Plan and Restated Trust as a qualified Plan and Trust under Sections 401(a) and 501(a) of the internal Revenue Code of 1986, as amended.

NOW, THEREFORE, the Trustees, pursuant to the Amendment and Declaration of Trust of the Plumbers and Steamfitters Local 166 Pension and Retirement Plans Trust Fund hereby agree to restate the Plan as follows:

ARTICLE I - DEFINITIONS

**Actuarial Equivalent** means a benefit of equal value to the benefit for which it is substituted, the value of both benefits shall be based on actuarial assumptions and factors which have been adopted by the Trustees.

**Affiliated Employer** means the Employer and -

- A. any corporation which is a member of a controlled group of corporations (as defined in Code Section 414(b)) which includes the Employer;
- B. any trade or business (whether or not incorporated) which is under common control (as defined in Code Section 414(c)) with the Employer; and

- C. any organization (whether or not incorporated) which is a member of an affiliated service group (as defined in Code Section 414(m)) which includes the Employer.

**Annuity Starting Date** means the first day of the first period for which an amount is paid as an Annuity, or in the case of a benefit not payable in the form of an annuity, the first day on which all events have occurred which entitle the Participant to such a benefit.

**Association** means the Mechanical Contractors Association of Indiana, Inc., Fort Wayne Area, and any successor thereof.

**Beneficiary** means, on the death of the Participants, the Participant's Qualified Surviving Spouse, or in the event at the time of his death, the Participant does not have a Qualified Surviving Spouse, the person designated by the Participant to receive payment of his Account. If the Employee designates as a primary Beneficiary an entity or person other than (or in addition to) the person to whom the Participant is married at the date of the Participant's death, such designation shall not be effective unless the person to whom the Participant is married at the date of the Participant's death has consented in writing to such designation, such Spouse's consent acknowledges the effect of such designation, and such consent is witnessed by a representative of the Plan or by a notary public. The consent of such Spouse shall be irrevocable by such Spouse in connection with the Beneficiary designation with respect to which such consent is given. To the extent the designation of a non-Spouse Beneficiary is not effective, the primary Beneficiary shall be the Spouse to whom the Participant is married at the date of the Participant's death.

Notwithstanding anything herein to the contrary, the Spouse of a married Participant shall be a Beneficiary, provided that:

- (1) the Participant and Spouse were married to each other throughout the twelve (12) month period preceding the date on which benefits became payable; and
- (2) the Spouse has not filed with the Trustees a written waiver of the right to be a Beneficiary.

If no valid beneficiary designation form has been filed with the Board of Trustees at the date of the death of the Participant (or if a deceased Participant is not survived by either a primary beneficiary or a contingent beneficiary), the death benefit shall be paid in the following order to:

- (1) the Participant's surviving Spouse; or
- (2) the Participant's surviving children in equal shares; or
- (3) the Participant's surviving parents in equal shares;

- (4) or the Participant's surviving brothers and sisters in equal shares; or
- (5) the estate of the Participant for distribution to such persons then living who would take the personal property of the Participant under the statutes of descent and distribution of the state of legal domicile of the Participant (at the time of such person's death).

If the Beneficiary is living at the Participant's death but such person dies prior to receiving the entire death benefit, the remaining portion of such death benefit shall be paid to the estate of such deceased Beneficiary in one lump sum. In any case, such lump sum shall be distributed within five years after the death of the Participant.

To the extent provided in a Qualified Domestic Relations Order, the former Spouse of a Participant shall be treated as such person's Spouse.

**Board of Trustees** means the entity comprised of the Union Trustees and the Employer Trustees appointed pursuant to the terms of the Trust Agreement, and their successors.

**Break in Service** means the failure of a non-vested Participant to complete at least one hundred (100) Hours of Work during any Plan Year. However, in the case of a non-vested Participant, years of service with the Employers maintaining the Plan (before any period of consecutive one (1) year breaks in service) are required to be taken into account after a break in service unless the number of consecutive one (1) year breaks in service equals or exceeds the greater of (1) 5 years, or (2) the aggregate number of years of service before the consecutive one (1) year breaks in service. However, a Participant's failure to accumulate one hundred (100) Hours of Work in a Plan Year will not be considered a Break in Service if that failure is due to the following exceptions:

- A. disability because of accident or illness, or
- B. Temporary Absence because of service in the Armed Forces, or
- C. the granting of unpaid leave by the Participant's Employer in accordance with the applicable requirements of the Family and Medical Leave Act of 1993.

In addition, Hours of Work shall be credited to a Participant on maternity or paternity leave at the rate of eight (8) hours per day, up to a maximum of one hundred (100) total hours, to prevent a Break in Service during the Plan Year in which the absence begins or the next following Plan Year. "Maternity or Paternity leave" means absence due to:

- A. the Participant's pregnancy,
- B. the birth of the Participant's child,
- C. adoption of a child by the Participant,

D. caring for the Participant's child immediately after its birth or adoption.

Leaves of absence under the Family and Medical Leave Act of 1993 include unpaid Maternity or Paternity Leave, whether concurrent with or in addition to such leaves, and absences by reason of:

E. the care of the Participant's Spouse, son, daughter, or parent who has a serious health condition; or

F. a serious health condition that makes the Participant unable to perform his job.

The Administrative Office must be notified of the qualifying circumstances in a form satisfactory to the Trustees for the Participant's status to be protected. In all cases, hours credited or exceptions granted are only for the purpose of continuing participation and shall not affect the Participant's benefit accrual or vesting status.

**Code** means the Internal Revenue Code of 1986 and amendments thereto.

**Collective Bargaining Agreement** means any Collective Bargaining Agreement existing between an Employer and the Union which provides for contributions to the Trust Fund, as well as any extension or extensions, renewal or renewals of any such Collective Bargaining Agreement, or any new Collective Bargaining Agreement which provides for contributions to the Trust Fund.

**Corporate Trustee** means the bank, trust company or other financial institution as may be designated by the Trustees to hold the property of the Trust Fund.

**Covered Employment** means employment under the jurisdiction of the Union for which an Employer is obligated by its Collective Bargaining Agreement with the Union or by any other separate written agreement approved by the Board of Trustees to contribute to the Fund, either individually or as a member of the Association. For the purpose of this Plan and subject to the approval of the Board of Trustees, employment as an officer or employee (not represented by a collective bargaining agent other than the Union) of the Union, the Fund Office, and the office of any welfare fund covering persons represented by the Union shall be considered Covered Employment provided contributions are made to the Fund on behalf of such persons at the same rate required of all other Employers and in accordance with applicable provisions of the Code regarding participation in a tax-qualified and tax-exempt pension plan.

**Credit Account** means the account created and maintained for accounting purposes for each Participant by the Trustees, to which shall be credited the amounts contributed by the Employer on behalf of such Employee under section 4.01(a) and Elective Contributions under section 4.01(b), including any earnings or losses on those contributions, less such Participant's share of administrative expenses.

**Employee means:**

- A. any person who is actively employed by an Employer who is obligated to make Employer Contributions to the Fund on his/her behalf;
- B. any person employed by the Union for whom Employer Contributions are made to the Fund; and
- C. employees of the Board of Trustees.

The Plan adopts the "alumni rule" as set forth in Treasury Regulation §1.410(b)-6(d)(2)(ii) for the purpose of defining a "collectively bargained employee" under the Code.

**Employee Contributions** mean contributions to the Plan made by a Participant during the Plan Year.

**Employer and/or Affiliated Employer means:**

- A. any individual, firm, association, partnership, corporation, or member of the Association which is bound by the Collective Bargaining Agreement with the Union and to the terms of which require contributions to the Trust Fund.
- B. the Union, to the extent and solely to the extent, that it acts in the capacity of an Employer of its Employees on whose behalf it makes contributions to the Trust Fund in accordance with the Collective Bargaining Agreement or a participation agreement.
- C. the Board of Trustees of the Plan, to the extent that they act in the capacity of an Employer of their Employees on whose behalf they make contributions to the Fund in accordance with the Collective Bargaining Agreement or a participation agreement.
- D. any other Employer who is obligated by a Collective Bargaining Agreement, or other written agreement satisfying the requirements of the National Labor Relations Act and acceptable to the Trustees, to make Contributions to the Fund.

**Employer Contribution** means any payment by an Employer to the Fund.

**ERISA** means the Employee Retirement Income Security Act of 1974, as amended.

**Forfeiture of Account** means the permanent loss by a Participant who has no vested interest in the balance of the Credit Account, as a result of a Break in Service, pursuant Article 1 and 5.05. This shall not apply to Elective Contributions under section 4.01(b), which are at all times 100% vested.

**Fund or Trust Fund** means the assets of the Trust, of whatever kind, nature and description.

**Geographical Jurisdiction** shall include that geographical area as provided in the collective bargaining agreement which an Employer is bound to wherein contributions were made or were required to be made by or on behalf of an Employer.

**Highly Compensated Employee** means an:

- A. Employee who, at any time during the Plan Year or the preceding Plan Year, was a five percent owner (as defined in Code Section 416(i)(1)) of the Employer; or
- B. Employee who received "compensation" during the preceding Plan Year from the Employer in excess of \$100,000 effective January 1, 2007, subject to adjustment by the Secretary of Treasury pursuant to Code Section 415(d)

For purposes of this Section, "compensation" means compensation within the meaning of Code Section 415(c)(3).

**Hour of Work** means:

- A. Each hour for which an Employee is paid, or entitled to payment, for the performance of duties for the Employer during the applicable computation period; 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 has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence. No more than 501 Hours of Work will be credited under this paragraph for any single continuous period (whether or not such period occurs in a single computation period); and
- C. Each hour for which back pay, irrespective of mitigation of damages, if either is awarded or agreed to by the Employer. The same Hours of Work shall not be credited both under Subsections (A) and (B), as the case may be, and under this Subsection (C).

The crediting of such Hours of Work shall be on a basis consistent with Department of Labor Regulation Section 2530.200(b)-2(b) and Section 2530.200(b)-2(c), the provisions of which are hereby incorporated by reference.

If the Board of Trustees enters into a reciprocity agreement, any money and hours transferred to the Fund under such reciprocity agreement shall be credited to the Participant's Credit Account pursuant to policies and procedures adopted by the Trustees. Any money and hours transferred from the Fund in accordance with such reciprocity

agreement shall be removed from the records of the Fund and shall no longer be credited for the purpose of determining the value of the Participant's Credit Account.

**Limitation Year** shall mean the Plan Year.

**Named Fiduciary** means the Trustees.

**Normal Retirement Age** shall mean the date a Participant attains age fifty-nine and one-half (59 1/2).

**Normal Retirement Date** means the first day of the month coincident with or next following the month in the Participant attains age fifty-nine and one-half (59 1/2).

**Participant** means an Employee who meets the eligibility requirements set forth in Article II and has not ceased participation pursuant thereto.

**Pensioner** means a person (other than a Beneficiary) who is receiving retirement benefits under the Plan.

**Plan** means this document, the Plumbers and Steamfitters Local 166 Profit Sharing Annuity Plan, as amended from time to time.

**Plan Year** means a twelve (12) month period beginning June 1 and ending the following May 31, or any other twelve (12) month period established by the Trustees.

**Pre-Retirement Survivor Annuity** means a survivor annuity for the life of the Qualified Surviving Spouse of the Participant upon death, the payments under which are equal to the actuarial equivalent of the Participant's Credit Account as of the date of death.

**Qualified Domestic Relations Order** means such order which is determined to be a Qualified Domestic Relations Order as defined in Code Section 414(p), and which may include any judgment, decree or order (including approval of a property settlement agreement) which relates to the provision of child support, alimony payments or marital property rights to a Spouse, former Spouse, child or other dependent of a Participant and which is made pursuant to a state domestic relations law (including a community property law).

**Qualified Joint and Survivor Annuity** means an immediate annuity for the life of the Participant with a survivor annuity for the life of the Qualified Surviving Spouse which provides:

- A. monthly payments to the Participant for life; and
- B. monthly payments for the life expectancy of the Qualified Surviving Spouse to whom the Participant was married at the time payments to the Participant commenced in an amount which is not less than 50 percent (50%) and not more than 100 percent (100%) of the amount that was being paid to the Participant, provided the Qualified Surviving Spouse survives the former Participant.

**Qualified Surviving Spouse** means that person, if any, who is recognized under the State of Indiana as being legally married to the Participant and who has not been declared legally separated from the Participant by any judicial order. (The former Spouse of a Participant shall be treated as a "Spouse" under the Plan only if and to the extent required under a Qualified Domestic Relations Order, as described herein).

**Single Life Annuity** means an immediate annuity for the life of the Participant, the payments of which are equal to the actuarial equivalent of the Participant's Account as of the Annuity Starting Date.

**Temporary Absence** means the absence of a Participant because of active service in the Armed Forces of the United States of America in time of war or national emergency or because of the provisions of any compulsory service law. In the event such Employee does not return to the service of the Employer prior to the expiration of reemployment rights which are guaranteed by law, service shall be deemed to have terminated upon entry into the Armed Forces.

**Termination of Employment** means when a Participant, following a Break in Service, states, in writing, that he will no longer be performing work within the Union's trade jurisdiction.

**Total and Permanent Disability** means a disability caused by accident or illness which, in the sole discretion of the Board of Trustees, based upon medical evidence, has lasted or can be expected to last for a continuous period of not less than twelve (12) months and prevents such Participant from performing duties as an Employee. A Participant shall not be considered to be Totally and Permanently Disabled if the Participant's illness is the result of alcoholism; addiction to narcotics; commission of a felony; service in the Armed Forces of any country; or an intentionally self-inflicted injury.

**Trust Agreement** means the Agreement and Declaration of Trust of the Plumbers and Steamfitters Local 166 Profit Sharing Annuity Plan, as said Trust Agreement may from time to time be amended.

**Trust** means the Trust created by the Trust Agreement.

**Trustee** means any natural person designated as a Trustee pursuant to the provisions of the Trust Agreement or his successor or successors.

**Union** means the Plumbers and Steamfitters Local Union No. 166, an affiliate of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, and its successor.

**Valuation Date** means the last day of the Plan Year, May 31, or any other date established by the Trustees on which the Credit Accounts are revalued in accordance with Article IV.

## ARTICLE II - ELIGIBILITY FOR PARTICIPATION

### 2.01 Time of Participation

Each Employee on whose behalf the Employer is required to contribute to the Fund pursuant to the Collective Bargaining Agreement or other written agreement shall become a Participant in the Plan upon the completion of one hundred (100) Hours of Work in Covered Employment within any Plan Year.

### 2.02 Cessation of Participation

A Participant shall cease participation in the Plan when such person no longer has a balance in the Credit Account.

## ARTICLE III – VESTING

A Vested Participant means a person who:

- (a) has completed at least one hundred (100) Hours of Work in a Plan Year prior to incurring a permanent Break in Service; and
- (b) has a balance in the Credit Account.

The Participant's interest in the Credit Account shall be totally nonforfeitable upon completion of one hundred (100) Hours of Work in Covered Employment within any Plan Year. A Participant shall have no partially vested interest in the Credit Account. This paragraph shall not apply to Elective Contributions under section 4.01(b), which are at all times 100% vested.

In the event a Participant who has no vested interest in the Employer Contributions under 4.01(a) in Credit Account fails to complete one hundred (100) Hours of Work initially, the Employer Contributions under 4.01(a) amount in the Credit Account shall be forfeited as of the last day of the Plan Year after a permanent Break in Service. A permanent Break in Service cannot occur unless five (5) consecutive one (1) year breaks in service have been incurred. Forfeitures shall not be applied to increase the benefits of other Participants, but shall be used to defray proper expenses of administering the Plan and Fund.

## ARTICLE IV – CONTRIBUTION / CREDIT ACCOUNTS

### 4.01 Employer Contributions and Elective Contributions

#### (a) Employer Contributions

Contributions to the Trust Fund by an Employer shall be made pursuant to the terms of the applicable Collective Bargaining Agreement or other written agreement, and by the Trust Agreement.

(b) Elective Contributions

- (1) Effective September 1, 2012, a Participant who meets the eligibility requirements under Article II may elect through payroll deduction, in accordance with a Deferral Election Form filed with the Trustees, to have his wage for each hour worked reduced by \$1.50, \$2.50, or \$3.50, and to have a corresponding amount contributed to the Trust on his behalf by an Employer as an elective deferral (Elective Contributions). The Employers shall remit a Participant's Elective Contributions to the Trustees no later than the date required under Labor Regulation Section 2510.3-102.

Elective Contributions are made on a pre-tax basis.

- (2) A Participant may change, as of the first day of January or July of any Plan Year, the amount of his Elective Contribution by giving such advance written notice of the change to the Trustees as the Trustees may require.

A Participant may suspend his Elective Contributions at any time by giving advance written notice to his/her Employer. A Participant who has suspended his Elective Contributions may resume Elective Contributions while working for the same Employer no sooner than the following January 1st or July 1st.

An Employee must complete a new Deferral Election Form when he commences employment with a new Employer if he/she desires to continue Elective Contributions.

- (3) Notwithstanding any other provision of the Plan to the contrary, a Participant's Elective Contributions may not exceed the dollar limitation contained in Code Section 402(g)(1) in effect at the beginning of such calendar year.

Elective Contributions in excess of the limitation described in Code Section 402(g) and any income or loss allocable to such excess amount for the calendar year shall be distributed to Participants who claim excess Elective Contributions for a calendar year no later than April 15 following the calendar year in which such excess Elective Contributions are made.

The Participant's claim shall be in writing; shall be submitted to the Trustees no later than the March 1 following the close of the calendar year in which the excess Elective Contribution is made; shall specify the amount by which the Participant's Elective Contributions exceed the limitation described in Code Section 402(g) for such calendar year; and shall be accompanied by the Participant's written statement that if such amounts are not distributed, such excess Elective Contributions, when

added to amounts deferred under other plans or arrangements described in Code Sections 401(k), 408(k), 403(b) or 501(c)(18), exceed the limit imposed on the Participant by Code Section 402(g) for the year in which the deferral occurred. Notwithstanding the foregoing, a Participant will be deemed to have notified the Trustees of an excess Elective Contribution to the extent that the individual has excess Elective Deferrals for the calendar year taking into account only Elective Contributions under the Plan.

- (4) The ADP test will be satisfied pursuant to Treas. Reg. §1.401(k)-2(a), including the use of the current year testing method described in Treas. Reg. §1.401(k)-2(a)(2)(ii). As determined by the ADP test, the Plan will make corrective distributions within 2 ½ months of the end of the plan year. For purposes of ADP testing, the Plan may use any permissible definition of compensation under Code Section 414(s) or as otherwise permitted by the Internal Revenue Code.

#### 4.02 Crediting of Contribution

The Employer contributions and Elective Contributions shall be credited to the Credit Account of each Participant on whose behalf the contributions are made. However, although Participants will receive credit for purposes of vesting, Participants will not receive monetary credit for the amount of money that the Employer did not contribute since the Fund did not receive the money. Therefore, each Participant's Credit Account will only reflect the amount of contributions made by the Employer that have been received by the Fund. Nothing contained herein shall be construed as requiring the Board of Trustees to establish a separate trust for each Participant or to physically segregate the assets of the Fund on behalf of each Participant.

#### 4.03 Credit For Military Service

- (a) Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service under the Uniformed Services Employment and Reemployment Rights Act ("USERRA") shall be provided in accordance with Code Section 414(u) or pursuant to the Plan's Rules and Regulations, provided such Rules and Regulations are not inconsistent with Code Section 414(u).
- (b) Loan repayments shall be suspended under this Plan as permitted under Code Section 414(u)(4).
- (c) in the case of a Participant who dies while performing qualified military service on or after January 1, 2007, the Participant's survivors shall be entitled to any additional benefits provided under the Plan as if the Participant had resumed employment with the Employer in accordance with USERRA and then terminated employment with the Employer on account of death.

- (d) Notwithstanding the foregoing, the Beneficiary of a Participant on a leave of absence to perform military service with reemployment rights under Code Section 414(u) shall be entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) that would be provided under the Plan had the Participant died as an Active Participant in accordance with Code Section 401(a)(37).

#### 4.04 Rollover Contributions

"Rollover Contribution" means an amount transferred to this Plan directly from another tax-qualified defined contribution plan. A Vested Participant may make a Rollover Contribution to this Plan; provided, however, that the trust from which the funds are transferred must permit the transfer to be made, and further provided, that the Trustees are reasonably satisfied that such transfer will not jeopardize the tax-exempt status of this Plan or Trust. This Plan shall accept Rollover Contributions only from tax-qualified defined contribution plans. Further, the Plan may accept rollovers only in the form of a direct transfer from such plans. The Trustees shall have the sole discretion to determine whether to accept a Rollover Contribution, and their decision in this regard shall be final.

Rollover Contributions shall be made by delivery of such contribution to the Administrative Manager for deposit in the Plan and Trust. All Rollover Contributions must be in cash or property satisfactory to the Trustees, who shall render approval in their sole discretion, and their decision shall be final. The amount to be rolled over must be at least \$200. If the Administrative Manager accepts such transfer of funds, it shall allocate the funds to the Employee's Credit Account, or to a separate or segregated account established for such purpose (commonly referred to as a "Rollover Account"), and the Employee shall be 100% vested in the amount corresponding to such Rollover Contribution. The funds shall be invested separately, and any appreciation, depreciation, gain, or loss with respect to such account, and any related expenses, shall be allocated to such account. For all other purposes, such funds shall be treated as if they had been allocated to the Vested Participant's Credit Account. Rollover Contributions shall not be considered to be Employee contributions for the purpose of calculating the limitations under Article X.

#### 4.05 Excess Contributions

- (a) Excess Contributions shall mean, with respect to any Plan Year, the excess of:
  - (1) the aggregate amount of Employer Contributions, as defined in 2.15, actually taken into account in computing the ADP, of Highly Compensated Employees for such Plan Year, over
  - (2) the maximum amount of such contributions permitted by the ADP test (determined by reducing contributions made on behalf of Highly Compensated Employees in order of the dollar amount of such contributions, beginning with the highest of such percentages).

(b) Treatment of Excess Contributions

Excess Contributions (including the amounts re-characterized) shall be treated as Annual Additions under the Plan.

(c) Determination of Income or Loss

Excess Contributions shall be adjusted for any income or loss up to the date of distribution. The income or loss allocable to Excess Contributions is the sum of:

- (1) income or loss allocable to the Participant's Elective Deferral account (and, if applicable, the Qualified Non-Elective Contribution account or the Qualified Matching Contributions account or both) for the Plan Year multiplied by a fraction, the numerator of which is such Participant's Excess Contributions for the year and the denominator is the Participant's account balance attributable to Elective Deferrals (and, Qualified Non-Elective Contributions or Qualified Matching Contributions, or both, if any of such contributions are included in the ADP test) without regard to any income or loss occurring during such Plan Year; and
- (2) ten percent (10%) of the amount determined under (1) multiplied by the number of whole calendar months between the end of the Plan Year and the date of distribution, counting the month of distribution if distribution occurs after the 15th of such month.

4.06 Valuation of Assets/Credit Accounts

As of each Valuation Date, the Trustees shall cause each Participant's Credit Account, the assets of which Credit Account has been invested according to the directions of the Participant, to be valued on the basis of the fair market value of its assets and shall cause to be determined the net increase or decrease in value of the Credit Account since the immediately preceding Valuation Date, due to all operating investment and other expenses properly attributable to that Credit Account and due to investment gains and losses in that Credit Account during the Plan Year ("Net Change"). The Net Change in each such Credit Account shall be allocated to that account as of the Valuation Date.

4.07 Maximum Annual Additions

- (a) Notwithstanding anything to the contrary contained herein, the total annual additions to a Participant's Account for a "limitation year" (herein defined as the Plan Year) will not exceed the lesser of \$40,000 or 100% of the Participant's total "compensation" for the limitation year, subject to adjustment annually as provided in Code Section 415(d) pursuant to Treasury Regulations. For purposes of this Section, "compensation" means compensation as defined in Code Section 415(c)(3) and its corresponding regulations, including, for Plan Years beginning

after December 31, 1997, any elective deferral as defined in Code Section 402(g)(3) and amounts which are contributed by an Employer pursuant to a salary reduction agreement which are not includable in the gross income of the Participant under Code Sections 125 or 457.

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

- (b) For purposes of this Article, "Annual Additions" shall mean the sum of the following amounts credited to a Participant's Accounts for the limitation year under this Plan and any other defined contribution plan to which an Employer contributes:
  - (1) Employer contributions,
  - (2) Employee contributions,
  - (3) Forfeitures,
  - (4) Amounts allocated after March 1, 1984, to an individual medical account as defined in Code Section 415(l)(2), and
  - (5) Amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after such date, which are attributable to post-retirement medical benefits allocated to the separate account of a key employee (as defined in Code Section 419A(d)(3)) under a welfare fund (as defined in Code Section 419(e)) maintained by an Employer.
- (c) All defined contribution plans maintained by an Employer will be aggregated for the purposes of determining the maximum annual additions and if the primary maximum annual additions limitation is violated, contributions to the other defined contribution plan(s) will be reduced first and then, to the extent necessary, contributions under this Plan will be reduced.
- (d) If, as a result of the allocation of forfeitures, a reasonable error in estimating a Participant's annual compensation, a reasonable error in determining the amount of elective deferrals (within the meaning of Code Section 402(g)(3)) that may be made with respect to any individual under the limits of Code Section 415 or under other limited facts and circumstances provided in Treasury Regulations, the annual additions for a Participant would cause the limitations of Code Section 415 applicable to that Participant for the limitation year to be exceeded, the excess amounts will be disposed of as follows:

- (1) Elective deferrals (within the meaning of Code Section 402(g)(3)) and gains attributable thereto will be distributed to a Participant to the extent that the distribution would reduce the excess amounts in the Participant's Account.
  - (2) If, after the application of paragraph (1), an excess amount still exists, the excess amount in the Participant's Account will be allocated and reallocated to other Participants. However, if the allocation or reallocation of the excess amounts causes the limits of Code Section 415 to be exceeded with respect to each Participant for the limitation year, then the amounts must be held unallocated in a suspense account.
  - (3) If a suspense account is in existence at any time during a particular limitation year, other than the limitation year described in paragraph (2), all amounts in the suspense account must be allocated and reallocated to Participant Accounts (subject to the limits of Code Section 415) before any Employer contributions may be made to the Plan for that limitation year.
  - (4) The procedures outlined above in Section 4.6(d)(1)-(3) are effective only for limitation years beginning before July 1, 2007. The Employee Plans Compliance Resolution System (EPCRS) is the only correction method for correcting excess annual additions for limitation years beginning on or after July 1, 2007.
- (e) For limitation years beginning prior to January 1, 2000, if the Participant is or was covered under a defined benefit plan and a defined contribution plan maintained by an Employer, the sum of the Participant's defined benefit plan and defined contribution plan fractions, as set forth below, may not exceed 1.0 in any limitation year. If in any limitation year the sum of the defined benefit plan and defined contribution plan fractions will exceed 1.0, the contributions under this Plan will be reduced so that the sum of such fractions equals 1.0.
- (1) The defined benefit plan fraction for any limitation year is a fraction, the numerator of which is the sum of the Participant's projected annual benefits under all defined benefit plans (whether or not terminated) maintained by the Employer, and the denominator of which is the lesser of (A) 1.25 times the dollar limitation in effect for the limitation year under Section 415(b)(1)(A) of the Code; or (B) 1.4 times Participant's average compensation for the three consecutive years that produce the highest average.

Notwithstanding the above, if the Participant was a participant as of the first day of the first limitation year beginning after December 31, 1986 in one or more defined benefit plans maintained by an Employer which were in existence on May 6, 1986, the denominator of this fraction will not be

less than 125 percent of the sum of the annual benefits under such plans which the Participant had accrued as of the close of the last limitation year beginning before January 1, 1987, disregarding any changes in the terms and conditions of the plans after May 5, 1986. The preceding sentence applies only if the defined benefit plans individually and in the aggregate satisfied the requirements of Code Section 415 for all limitation years beginning before January 1, 1987.

- (2) The defined contribution fraction is a fraction, the numerator of which is the sum of the annual additions to the Participant's account balances under all defined contribution plans maintained by the Employer (whether or not terminated) for the current and all prior limitation years, and the denominator of which is the sum of the lesser of the following amounts determined for such year and for each prior limitation year with the Employer: (a) 1.25 times the dollar limitation in effect for the limitation year under Section 415(c)(1)(A) of the Code; or (b) 1.4 times the amount which may be taken into account for the Participant for the limitation year under Section 415(c)(1)(B) of the Code.

Notwithstanding the above, if the Participant was a participant as of the end of the first day of the limitation year beginning after December 31, 1986 in one or more defined contributions plans maintained by an Employer which were in existence on May 6, 1986, the numerator of this fraction will be adjusted if the sum of this fraction and the defined benefit fraction would otherwise exceed 1.0 under the terms of this Plan. Under the adjustment, an amount equal to the product of (a) the excess of the sum of the fractions or 1.0 times (b) the denominator of this fraction, will be permanently subtracted from the numerator of this fraction. The adjustment is calculated using the fractions as they would be computed as of the end of the last limitation year beginning before January 1, 1987, and disregarding any changes in the terms and conditions of the Plan made after May 5, 1986, but using the Code Section 415 limitation applicable to the first limitation year beginning on or after January 1, 1987. The annual addition for any limitation year beginning before January 1, 1987 will not be recomputed to treat all Employee contributions as annual additions.

- (f) For purposes of this Section, any transition rules shall apply which are either: (1) prescribed by the Secretary of the Treasury under the Tax Equity and Fiscal Responsibility Act of 1982, or (2) elected by the Trustees under Section 415(e)(6) of the Code.

This section shall be interpreted consistently with IRC 415 and its corresponding regulations, including the IRC 415 definition of compensation and any amendments and/or corresponding regulations thereto, including those made pursuant to the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act).

#### 4.08 Actual Deferral Percentage.

##### (a) General Tests

The Actual Deferral Percentage (hereinafter "ADP") for Participants who are Highly Compensated Employees for each Plan Year and the ADP for Participants who are Nonhighly Compensated Employees for the same Plan Year must satisfy one of the following tests:

- (1) the ADP for Participants who, are Highly Compensated Employees for the Plan Year shall not exceed the ADP for Participants who are Non-highly Compensated Employees for the same Plan Year multiplied by 1.25; or
- (2) the ADP for Participants who are Highly Compensated Employees for the Plan Year shall not exceed the ADP for Participants who are Non-highly Compensated Employees for the same Plan Year multiplied by 2.0, provided that the ADP for Participants who are Highly Compensated Employees does not exceed the ADP for Participants who are Non-highly Compensated Employees by more than two (2) percentage points.

Prior to January 1, 2000 (the 2000 Plan Year), the ADP test utilized by the Plan was the "prior year testing method."

##### (b) Special Rules

In determining a Participant's ADP, the following special rules shall apply:

- (1) The ADP for any Participant who is a Highly Compensated Employee for the Plan Year and who is eligible to have Elective Deferrals allocated to his or her accounts under two or more arrangements described in Code Section 401(k), that are maintained by the Employer shall be determined as if such Elective Deferrals were made under a single arrangement. If a Highly Compensated Employee participated in two or more cash or deferred arrangements that have different Plan Years, all cash or deferred arrangements ending with or within the same calendar year shall be treated as a single arrangement. Notwithstanding the foregoing, certain plans shall be treated as separate if mandatorily disaggregated under regulations under Code Section 401(k).
- (2) In the event that this Plan satisfies the requirements of Code Sections 401(k), 401(a)(4), or 410(b) only if aggregated with one or more plans, or if one or more other plans satisfy the requirements of such sections of the Code only if aggregated with this plan, then this section shall be applied by determining the ADP of employees as if all such plans were a single plan. Plans may be aggregated in order to satisfy Code Section 401(k) only if they have the same Plan Year.

- (3) For purposes of determining the ADP test, Elective Deferrals must be made before the last day of the twelve-month period immediately following the Plan Year to which contributions relate.
- (4) The Employer shall maintain records sufficient to demonstrate satisfaction of the ADP test.
- (5) The determination and treatment of the ADP amounts of any Participant shall satisfy such other requirements as may be prescribed by the Secretary of the Treasury.

(c) ADP Test Definitions

The following definitions shall apply to the ADP test:

- (1) "ADP" shall mean, for a specified group of Participants for a Plan Year, the average of the ratios (calculated separately for each Participant in such group) of (i) the amount of Employer Contributions actually paid over to the trust on behalf of such Participant for the Plan Year to (H) the Participant's Compensation for such Plan Year.

Employer Contributions, for purposes of this section, on behalf of any Participant shall mean:

- (i) any Elective Deferrals made pursuant to the Participant's deferral election (including Excess Elective Deferrals of Highly Compensated Employees, but excluding:
  - (a) Excess Elective Deferrals of Non-highly Compensated Employees that arise solely from Elective Deferrals made under the plan or plans of this employer; and
  - (b) Elective Deferrals that are taken into account in the Contribution Percentage test provided the ADP test is satisfied both with and. Without exclusion of these Elective Deferrals); and

For purposes of computing Actual Deferral Percentages, an Employee who would be a Participant but for the failure to make Elective Deferrals shall be treated as a Participant on whose behalf no Elective Deferrals are made.

- (2) "Elective Deferrals" are those contributions made under section 4.01(b).

## ARTICLE V - BENEFITS

### 5.01 Determination of Benefits Upon Retirement.

Participant who attains Normal Retirement Age and who terminates employment with an Employer within the Geographical Jurisdiction of the Union may, as of the first day of the month coincident with, or next following the date on which he attains such age and terminates such employment, receive a normal retirement distribution of his entire Credit Account balance in accordance with this Article.

### 5.02 Late Retirement

In the event a Participant continues his employment past the Normal Retirement Date, such person shall continue to be an active Participant in the Plan and shall not be entitled to benefits from the Credit Account until actual retirement. However, the commencement of payment of a Participant's Credit Account must begin by the Participant's Required Beginning Date under Section 6.11.

### 5.03 Determination of Benefits in the Event of Total and Permanent Disability

When it is determined that a Vested Participant is Totally and Permanently Disabled prior to the Normal Retirement Date, the Board of Trustees shall certify such fact to the Corporate Trustee or Insurance Company (if any), and such disabled Participant shall be entitled to receive the full value of his Credit Account.

Before a Participant is eligible to receive a Total and Permanent Disability Retirement Benefit, the Participant must satisfy the following conditions:

- (a) the Participant must be Totally and Permanently Disabled as defined in this plan; and
- (b) the Participant must be in Covered Employment at the time of the Participant's Total and Permanent Disability; and
- (c) the Participant must submit reports from at least two (2) attending physicians detailing the nature of the disability and stating in the physician's opinion that the disability incurred by the Participant has lasted or can be expected to last for a continuous period of not less than twelve (12) months and prevents such Participant from performing duties as an Employee; or the Participant must submit proof that the Participant has been awarded a disability benefit under the Social Security Act.

For purposes of Subsection (B) above, a Participant is considered to be in Covered Employment at the time of the Participant's Total and Permanent Disability if the

Participant is in Covered Employment at any time during the twenty-four (24) months which precedes the Participant's Total and Permanent Disability.

The Trustees have the sole discretion to make all determinations of whether a Participant qualifies for a Total and Permanent Disability Retirement Benefit. In making their decision, the Trustees may request that a physician or physicians examine the Participant at any reasonable time and place. The cost of the examination or examinations will be paid by the Plan. If the Trustees approve a Participant's application for disability benefits and the Participant receives a distribution in a form of payment other than a lump sum payment, then the Trustees may in their sole discretion require the disabled Participant to be examined at any time (but not more than twice a year) to determine whether the Participant continues to meet the Plan's Total and Permanent Disability requirements.

In the event that a Participant becomes Totally and Permanently Disabled in accordance with this section, the Participant shall be entitled to the vested portion of his Credit Account effective as of the later of

- (a) the date which is six (6) months following the date the Total and Permanent Disability was incurred; or
- (b) the expiration of payments made to the Totally and Permanently Disabled Participant from any wage continuation program maintained by the Union or the Participant's Employer.

Such benefits shall continue until the earliest of:

- (1) the date the Participant recovers from such Total and Permanent Disability prior to the Normal Retirement Age;
- (2) the Participant's death; or
- (3) the date the Credit Account has been completely exhausted.

#### 5.04 Determination of Benefits Upon Death

When a Vested Participant dies, the Qualified Surviving Spouse of such Participant shall be entitled to receive the full value of the Credit Account in accordance with the terms of this Plan, or if there is no Qualified Surviving Spouse, then to the Beneficiary of the Participant.

#### 5.05 Other Termination of Employment

A Vested Participant who:

- (a) terminates service with an Employer for reasons other than retirement or disability;

- (b) does not engage in any work within the trade jurisdiction as defined in the current Constitution of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting industry of the United States and Canada within the Geographical Jurisdiction of the Union, as defined herein, for a period of twelve (12) consecutive months or a period of twelve (12) consecutive months after a refusal of employment to perform bargaining unit work for an Employer which has a Collective Bargaining Agreement with the Union, whichever is later; and
- (c) who –
  - (1) has no right to any other form of benefit described in this Article V, or
  - (2) has executed a written waiver of any rights he may have or claim to have pursuant to this Article V.

shall be entitled to a lump sum distribution of that portion of the Credit Account which is nonforfeitable. In addition, the administrative expenses incurred in the processing of this distribution of benefits shall be charged to the individual Participant's Credit Account.

If the value of a Participant's vested account balance derived from Employer contributions exceeds:

- (a) \$5,000.00; for distributions with an Annuity Starting Date before March 28, 2005; or
- (b) \$1,000.00, for distributions with an Annuity Starting Date on or after March 28, 2005,

and the account balance is immediately distributable, the Participant and the Participant's Spouse (or if either the Participant or the Participant's Spouse has died, the survivor) must consent to any distribution of such account balance. The consent shall be based upon provisions contained in Section 6.02(a). However, if the Participant's Credit Account balance is \$20.00 or less, such amount shall be forfeited and used only to offset expenses of Plan's operation.

#### ARTICLE VI- DISTRIBUTION OF BENEFITS

##### 6.01 Application for Payments.

- (a) As a condition to payment of any benefit, an application for such benefit must be made in writing in a form and a manner prescribed by the Trustees at least thirty (30) days in advance of any payments being made. No benefits shall be paid prior to the establishment and crediting of Credit Accounts. An application may be withdrawn any time before the payment of benefits begins.

- (b) Notwithstanding anything herein to the contrary, the payment of benefits to which a Pensioner or Beneficiary is entitled shall begin no later than the first day of the month following the 90th day after the receipt by the Trustees of an application.

Even if an application is not submitted, commencement of payment of a Participant's Credit Account shall begin no later than the latest of:

- (1) the Participant's Required Beginning Date pursuant to Section 6.11; or
  - (2) as soon as practicable after the Trustees are able to locate the Participant, his heirs or his legal representative.
- (c) Retroactive Annuity payments may be made up to twenty-four (24) months preceding application if application was delayed for good cause as determined by the Trustees or if the Trustees find that the Participant or Beneficiary, as the case may be, was unable to make timely filing because of disability, incompetence or comparable extenuating circumstances.
- (d) Notwithstanding the foregoing provisions, unless a Participant elects to defer benefit payments in accordance with the provisions of this Section 6.01, under no circumstances shall any method of distribution provide for the commencement of benefit payments more than sixty (60) days after the last day of the Plan Year in which the events set forth in Section 6.11 occur.

If the amount of the payment required to commence such date cannot be ascertained by such date, or if it is not possible to make payment by such date because the Plan Administrator may be unable to locate the Participant after making a reasonable effort to do so, a payment retroactive to the latest date for commencement of benefits may be made no later than sixty (60) days after the earliest date on which the amount of such payment can be ascertained under the Plan or the date on which the Participant is located, whichever is applicable.

## 6.02 Methods of Distributing Benefits.

- (a) Qualified Joint and Survivor Annuity

The normal form of benefit for a Participant with a Qualified Surviving Spouse on his Annuity Starting Date shall be a Qualified Joint and Survivor Annuity. The normal form of benefit for a Participant who does not have a Qualified Surviving Spouse on his Annuity Starting Date shall be a Single Life Annuity.

- (b) Optional Form of Benefits

- (1) A Participant who is eligible to receive a benefit under this Plan may elect by written notice to waive the normal form of benefit and to take his

benefit in a lump sum distribution in an amount equal to 100% of the value of the Participant's Credit Account.

If the Participant elects to receive benefits in a lump sum distribution and the distribution qualifies as an eligible rollover distribution under Code Section 402(c), the Plan Administrator shall notify such Participant that: (i) the distribution will not be taxed currently to the extent transferred to another qualified pension plan or IRA and (ii) the transfer must be made within sixty (60) days of receipt in order to qualify for this tax-free rollover treatment

- (2) For distributions with an Annuity Starting Date on or after November 1, 2013, a Participant may elect-
  - (i) partial withdrawals two times per year in any amount, or
  - (ii) monthly distributions in any amount, subject to a minimum distribution of \$50,00 per month. This amount may be changed two times per year.

Notwithstanding the above partial distributions are not available if the Participant's Credit Account balance is less than \$5,000.00, in which case, the Participant shall receive a single lump sum distribution equal to his Credit Account balance.

(c) Election to Waive the Qualified Joint and Survivor Annuity

- (1) Any election to waive the Qualified Joint and Survivor Annuity must be made by the Participant in writing during the election period and be consented to by the Participant's Qualified Surviving Spouse. If the Qualified Surviving Spouse is legally incompetent to give consent, the Qualified Surviving Spouse's legal guardian, even if such guardian is the Participant, may give consent. Such election shall designate a Beneficiary (or a form of benefits) that may not be changed without spousal consent (unless the consent of the Qualified Surviving Spouse expressly permits designations by the Participant without the requirement of further consent by the Qualified Surviving Spouse). Such Qualified Surviving Spouse's consent shall be irrevocable and must acknowledge the effect of such election and be witnessed by a Plan representative or a notary public. Such consent shall not be required if it is established to the satisfaction of the Board of Trustees that the required consent cannot be obtained because there is no Qualified Surviving Spouse, the Qualified Surviving Spouse cannot be located or other circumstances that may be prescribed by IRS or DOL regulations. The election made by the Participant and consented to by his Qualified Surviving Spouse may be revoked by the Participant in writing without the consent of the Qualified Surviving Spouse at any time

during the election period. Any new election must comply with the requirements of this subsection. A former Qualified Surviving Spouse's waiver shall not be binding on a new Qualified Surviving Spouse.

- (2) The election period to waive the Qualified Joint and Survivor Annuity shall be the 180-day period ending on the Annuity Starting Date.

With regard to the election, the Board of Trustees shall provide to the Participant no less than 30 days and no more than 180 days before the Annuity Starting Date a written explanation of (1) the terms and conditions of the Qualified Joint and Survivor Annuity; (2) the Participant's right to make, and the effect of, an election to waive the Qualified Joint and Survivor Annuity; (3) the right of the Participant's Qualified Surviving Spouse to consent to any election to waive the Qualified Joint and Survivor Annuity; and (4) the right of the Participant to revoke such election and the effect of such revocation.

- (3) An election to waive the Single Life Annuity must comply with the provisions of this Section as if it were an election to waive the Qualified Joint and Survivor Annuity by a Participant with a Qualified Surviving Spouse, but without the spousal consent requirement.

- (4) Any distribution to a Participant who has a benefit which exceeds \$5,000 shall require such Participant's consent. With regard to this required consent:

- (i) No consent shall be valid unless the Participant has received a general description of the material features and an explanation of the relative values of the optional forms of benefit available under the Plan that would satisfy the notice requirements of Code Section 417.

- (ii) The Participant must be informed of his right to defer receipt of the distribution. If a Participant fails to consent, it shall be deemed an election to defer the commencement of payment of any benefit. However, any election to defer the receipt of benefits shall not apply with respect to distributions which are required under Section 6.11.

- (iii) Notice of the rights specified under this paragraph shall be provided no less than 30 days and no more than 180 days before the Annuity Starting Date.

- (iv) Written consent of the Participant to the distribution must not be made before the Participant receives notice and must not be made more than 180 days before the Annuity Starting Date.

- (5) Notwithstanding anything in the Plan to the contrary, the written explanation may be provided after a Participant's Annuity Starting Date, in which case the election period set forth in Section 6.02(c)(2) shall not end before the 30<sup>th</sup> day after the date on which the written explanation is provided.
- (6) Notwithstanding anything in the Plan to the contrary, a Participant may elect (with any applicable spousal consent) to waive any requirement that the written explanation be provided at least 30 days before the Annuity Starting Date (or to waive the 30-day requirement under Section 6.02(C)(5)) if the distribution commences more than 7 days after such explanation is provided.

#### 6.03 Pre-Retirement Survivor Annuity

- (a) Unless otherwise elected as provided in this Section, if the entire interest of a Participant who is survived by a Qualified Surviving Spouse is to be distributed on account of the Participant's death, then such distribution shall be made to the Participant's Qualified Surviving Spouse in the form of a Pre-Retirement Survivor Annuity unless the Qualified Surviving Spouse requests payment in a lump sum or a rollover. Payment of such benefit must commence by the date the Participant would have attained Normal Retirement Age, unless the Qualified Surviving Spouse elects to have such annuity distributed immediately or at a later date. In the event that the entire interest of a Participant is not to be paid in the form of a Qualified Pre-Retirement Survivor Annuity on account of the Participant's death, the Participant's entire Account shall be paid to his Beneficiary in a single lump sum.
- (b) Any election to waive the Qualified Pre-Retirement Survivor Annuity before the Participant's death must be made by the Participant in writing during the election period and shall require the Qualified Surviving Spouse's irrevocable consent in the same manner provided for in Section 6.02(c)(1). Further, the Qualified Surviving Spouse's consent must acknowledge the specific nonspouse Beneficiary. Notwithstanding the foregoing, the nonspouse Beneficiary need not be acknowledged, provided the consent of the Qualified Surviving Spouse acknowledges that the Qualified Surviving Spouse has the right to limit consent only to a specific Beneficiary and that the Qualified Surviving Spouse voluntarily elects to relinquish such right.
- (c) The election period to waive the Qualified Pre-Retirement Survivor Annuity shall begin on the first day of the Plan Year in which the Participant attains the age 35 and end on the date of the Participant's death. In the event a Participant separates from service prior to the beginning of the election period, the election period shall begin on the date of such separation from service.

- (d) With regard to the election, the Trustees shall provide each Participant within the applicable period, with respect to such Participant (and consistent with Regulations), a written explanation of the Qualified Pre-Retirement Survivor Annuity containing comparable information to that required pursuant to Section 6.02(c)(4). For the purposes of this paragraph, the term "applicable period" means, with respect to a Participant, whichever of the following periods ends last:
- (1) The period beginning with the first day of the Plan Year in which the Participant attains the age 32 and ending with the close of the Plan Year preceding the Plan Year in which the Participant attains age 35;
  - (2) A reasonable period after the individual becomes a Participant;
  - (3) A reasonable period ending after the Plan no longer fully subsidizes the cost of the Qualified Pre-Retirement Survivor Annuity with respect to the Participant;
  - (4) A reasonable period ending after Code Section 401(a)(11) applies to the Participant; or
  - (5) A reasonable period after separation from service in the case of a Participant who separates before attaining age 35. For this purpose, the Trustees must provide the explanation beginning one year before the separation from service and ending one year after such separation. If such a Participant thereafter returns to employment with the Employer, the applicable period for such Participant shall be redetermined.

For purposes of applying this Section, a reasonable period ending after the enumerated events described in paragraphs (2), (3) and (4) is the end of the two year period beginning one year prior to the date the applicable event occurs and ending one year after that date.

- (e) If the present value of a Participant's interest derived from Employer contributions to be distributed on account of the Participant's death does not exceed \$5,000, the Board of Trustees shall direct the immediate distribution of such amount to the Participant's Qualified Surviving Spouse or Beneficiary, as the case may be. No distribution may be made under the preceding sentence after the Annuity Starting Date unless the Qualified Surviving Spouse or Beneficiary consents in writing. If the value exceeds \$5,000, an immediate distribution of the entire amount may be to the Qualified Surviving Spouse or Beneficiary, provided such Qualified Surviving Spouse or Beneficiary consents in writing to such distribution.

#### 6.04 Disposition of Annuity Contracts.

Any annuity contracts purchased pursuant to the provisions of Article VI shall be held in the Trust Fund or shall be distributed by the Board of Trustees, as directed by the Board of Trustees. However, no annuity contract shall be so distributed until it has been endorsed to preclude its transferability.

#### 6.05 Involuntary Cashout of Benefits

In the event a Participant incurs a break in service, becomes permanently and totally disabled pursuant to Section 6.15, or does not work within the trade jurisdiction of the Union as defined in Section 6.15 for a period of twelve (12) consecutive months, the Board of Trustees shall, without the Participant's consent (and consent of the Spouse, if applicable), pay the Participant the balance in the Participants Credit Account in a single lump sum if the present value of the Participant's Credit Account derived from Employer contributions does not exceed \$5,000.

Notwithstanding the preceding, no such distribution that might otherwise be payable may be made after the Annuity Starting Date unless the Participant and the Participant's Spouse (or where the Participant has died, the Qualified Surviving Spouse) consent in writing. Any written consent required under this paragraph must be obtained not more than 180 days before commencement of the distribution and shall be made in a manner consistent with Section 6.02(c)(1).

In the event of a distribution greater than \$1,000 under this section, 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 as a direct payment, then the plan administrator will pay the distribution in a direct rollover to an individual retirement plan designated by the plan administrator. [See IRS Notice 2005-05]

If a Participant receives a distribution pursuant to this Section and the Participant resumes covered employment under the Plan, he or she shall have the right to restore his or her Employer-derived accrued benefit (including all optional forms of benefits and subsidies relating to such benefits), to the extent forfeited, upon the repayment to the Plan of the full amount of the distribution plus interest, compounded annually from the date of distribution at the actuarial assumed rate. Such repayment must be made before the five (5) years after the earlier of the date on which the Participant is subsequently reemployed by the Employer, or the date the Participant incurs five (5) consecutive one-year Breaks in Service following the date of distribution.

In the event that the Board of Trustees pays out benefits under this Section the Plan Administrator shall notify the Participant that:

- (i) the distribution will not be taxed currently to the extent transferred to another qualified pension plan or IRA in accordance with the terms of Article XVIII, and
- (ii) the transfer must be made within sixty (60) days of receipt in order to qualify for this tax-free rollover treatment.

#### 6.06 Distribution to Minors and Persons under Disability

Distributions to minors may be made by the Board of Trustees to the Beneficiary's parent or legal guardian as custodian for the Beneficiary under the applicable Transfers to Minors Act of the minor's state of the residence. Distributions to persons under legal disability may be made by the Board of Trustees to:

- (1) any institution maintaining the individual; and/or
- (2) the individual's Spouse or children; and/or
- (3) any person whom the Trustees reasonably determine is caring for the individual or otherwise providing support and maintenance.

The Board of Trustees shall not be required to see to the application of any distributions so made to any minor or person under disability, but the receipt of the distribution by the persons set forth above shall be a full discharge to the Board of Trustees and the Plan with respect to such distribution. If any court determines that any Participant, Pensioner or Beneficiary is unable to care for his affairs because of mental or physical incapacity, any benefit due such Participant, Pensioner or Beneficiary may be paid to the legal guardian upon presentation of necessary documents substantiating the designation.

#### 6.07 Rollover Distributions.

- (a) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Article, a Distributee may elect, at the time and in the manner prescribed by the Plan administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.
- (b) "Eligible Rollover Distribution" is any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated Beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); any distribution that is hardship distribution; the portion of any distribution that is not includible in gross

income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and any other distribution(s) that is reasonably expected to total less than \$200 during a year.

- (c) **Eligible Retirement Plan:** An individual retirement account under IRC §408(a), Code, an individual retirement annuity under IRC §408(b), an annuity plan under IRC §403(a), a qualified trust under IRC §401(a), a Roth IRA, an annuity under IRC §403(b), or a governmental plan under IRC §457(b), that accepts the Distributee's Eligible Rollover Distribution. For a designated nonspouse beneficiary, an Eligible Retirement Plan is an inherited IRA under IRC §408(d)(3)(C).

If any portion of an eligible rollover distribution is attributable to payments or distributions from a designated Roth Account (as defined in Code Section 402A), an Eligible Retirement Plan with respect to such portion shall include only another designated Roth account and a Roth IRA.

The definition of the term "Eligible Retirement Plan" shall also apply in the case of a distribution to a surviving Spouse, or to a Spouse or former Spouse who is the Alternate Payee under a Qualified Domestic Relation Order, as defined in Code Section 414(p). However, in the case of an Eligible Rollover Distribution to the surviving Spouse, an Eligible Retirement Plan is an individual retirement account or individual retirement annuity.

- (c) "Distributee" includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving Spouse and the Employee's or former Employee's Spouse or former Spouse who is the alternate payee under a Qualified Domestic Relations Order, as defined in Code Section 414(p), are Distributees with regard to the interest of the Spouse or former Spouse. The term "Distributee" also includes a non-Spouse Beneficiary.
- (d) "Direct Rollover" is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

#### 6.08 Distribution of Excess Contributions

- (a) **Time for Distribution of Excess Contributions**

Notwithstanding any other provision of this Plan, Excess Contributions, plus any income and minus any loss allocable thereto, shall be distributed no later than the last day of each Plan Year to Participants to whose accounts such Excess Contributions were allocated for the preceding Plan Year. If such excess amounts are distributed more than 2 months after the last day of the Plan Year in which such excess amounts arose, a ten percent (10%) excise tax shall be imposed on the Employer maintaining the Plan with respect to such amounts. Such distributions shall be made to Highly Compensated Employees on

the basis of the respective portions of the Excess Contributions attributable to each of such employees.

(b) Accounting for Excess Contributions.

Excess Contributions shall be distributed from the Participant's Elective Deferral account (and Qualified Matching Contribution account, if applicable) in proportion to the Participant's Elective Deferrals (and Qualified Matching Contributions, if applicable) to the extent used in the ADP test for the Plan Year. Excess Contributions shall be distributed from the Participant's Qualified Non-Elective Contribution account only to the extent that such Excess Contributions exceed the balance in the Participant's Elective Deferral account (and Qualified Matching Contribution account, if applicable).

6.09 Installment Payments

In the event benefit payments are to be made in installments pursuant to Section 6.02 hereof, the Trustees may segregate such funds in a separate account. In such event all earnings on such account shall be credited thereto and all expenses attributable to such account shall be charged thereto. Installment payments shall cease when the balance in the Credit Account is reduced to zero. The Board of Trustees may authorize, in the event of the death of a Pensioner who is receiving installment payments that any balance in the Credit Account may be paid to the Beneficiary in a lump sum.

6.10 In-Service Distributions.

Upon attainment of age 59½, an actively working Participant may receive a distribution of his entire account in accordance with the provisions of Article VI.

6.11 Time of Distribution

Unless a Participant elects to defer benefit payments in accordance with the provisions of Section 6.01, benefits shall commence no later than sixty (60) days after the last day of the Plan Year in which the latest of the following events occur:

- (a) the date such person attains the Normal Retirement Age; or
- (b) the tenth anniversary of the year in which such person commenced participation in the Plan; or
- (c) the date such person terminates service with the Employer.

6.12 Required Distribution

Notwithstanding any provision of the Plan to the contrary, the Account of a Participant must be distributed or commence to be distributed no later than April 1 of the calendar

year following the calendar year in which the Participant attains age 70½; provided, however, that a Participant (other than a 5% owner) who has not retired by the end of the calendar year in which he attains age 70½ may elect to delay commencement of benefit distributions until no later than April 1 of the calendar year in which the Participant retires.

#### 6.13 Minimum Distribution Requirements.

- (a) **Effective Date.** The provisions of this Section will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.
- (b) **Precedence.** The requirements of this Section will take precedence over any inconsistent provisions of the Plan.

Notwithstanding section 6.13(b) of the Plan, a participant or beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of section 401(a)(9)(H) of the Code ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2009 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the participant, the joint lives (or joint life expectancy) of the participant and the participant's designated beneficiary, or for a period of at least 10 years ("Extended 2009 RMDs"), will not receive those distributions for 2009 unless the participant or beneficiary chooses to receive such distributions. Participants and beneficiaries described in the preceding sentence will be given the opportunity to receive the distributions described in the preceding sentence. In addition, notwithstanding section 6.10 of the plan, and solely for purposes of applying the direct rollover provisions of the plan, 2009 RMDs and Extended 2009 RMDs will be treated as eligible rollover distributions.

- (c) **Requirements of Treasury Regulations Incorporated.** All distributions required under this Section will be determined and made in accordance with the Treasury regulations under Section 401(a)(9) of the Internal Revenue Code.
- (d) **TEFRA Section 242(b)(2) Elections.** Notwithstanding the other provisions of this Section, distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the plan that relate to Section 242(b)(2) of TEFRA.
- (e) **Required Beginning Date.** The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's required beginning date.
- (f) **Death of Participant Before Distributions Begin.** If the Participant dies before

distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

- (1) 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  $\frac{1}{2}$ , if later.
- (2) 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.
- (3) 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.
- (4) 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 paragraph (f), other than paragraph (f)(1), will apply as if the surviving spouse were the Participant.

For purposes of this paragraph (f) and paragraphs (j) and (k), unless paragraph (f)(4) applies, distributions are considered to begin on the Participant's required beginning date. If paragraph (f)(4) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under paragraph (f)(1). 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 paragraph (f)(1)), the date distributions are considered to begin is the date distributions actually commence.

- (g) **Forms of Distribution.** Unless the Participant's interest 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 paragraphs (h)(i)(j) and (k) below. 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 Code and the Treasury regulations.
- (h) **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:

- (1) 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
  - (2) 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.
- (i) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under paragraph (h) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.
- (j) Death On or After Distribution Begin.
- (1) 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:
    - (A) 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.
    - (B) 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.
    - (C) 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.

- (2) 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.
- (k) Death Before Date Distributions Begin.
- (1) 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 paragraph (j).
  - (2) 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.
  - (3) 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 paragraph (f)(1), this paragraph (k) will apply as if the surviving spouse were the Participant.
- (l) Designated beneficiary means the individual who is designated as the Beneficiary as defined in Article 1 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.
- (m) Distribution calendar year means 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

paragraph (f). 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.

- (n) Life expectancy means life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury regulations.
- (o) Participant's account balance means the account balance as of the last valuation 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 the 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.
- (p) Required beginning date means the date specified in Section 6.12 of the Plan.
- (q) 5-Year Rule
  - (i) Election to Apply 5-Year Rule to Distributions to Designated Beneficiaries. If the Participant dies before distributions begin and there is a designated beneficiary, distribution to the designated beneficiary is not required to begin by the date specified in Section 6.06(C)(1), but the Participant's entire interest will be distributed to the designated beneficiary by December 31 of the calendar year containing the fifth anniversary of the Participant's death. 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 either the Participant or the surviving Spouse begin this election will apply as if the surviving Spouse were the Participant.
  - (ii) Election to Allow Participants or Beneficiaries to Elect 5-Year Rule. Participants or beneficiaries may elect on an individual basis whether the 5-year rule or the life expectancy rule in Sections 6.13(f)(1) and 6.13(j)(2) applies to distributions after the death of a Participant who has a designated beneficiary. The election must be made no later than the earlier of September 30 of the calendar year in which the distribution would be required to begin under Section 6.06(C)(1), or by September 30 of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, surviving Spouse's) death. If neither the Participant nor the beneficiary makes an election under this Section H, distributions shall be

made in accordance with Sections 6.13(f)(1) and 6.13(j)(2)and, if applicable, the elections in Section 6.14(a).

#### 6.14 Distribution for Hardship Withdrawals

(a) Requests.

In the case of hardship, a Participant may apply for withdrawal of an appropriate portion of his or her Credit Account. Such request shall be made in writing to the Board of Trustees, which, in its sole and absolute discretion, shall have sole authority to authorize a hardship withdrawal pursuant to the rules set forth in this Article. Effective March 1, 2009, a Participant shall be limited to one (1) hardship withdrawal during any Plan Year, and may not request another hardship withdrawal for a twelve (12) consecutive month period after the receipt of a hardship withdrawal. A Participant may request a hardship withdrawal prior to attaining age fifty-nine and one-half (59 1/2). If the Participant receives a hardship withdrawal prior to attainment of age fifty-nine and one-half (59 1/2), the Participant may be subject to a federal income tax penalty under Code Section 72.

(b) Limitations.

A Participant may not apply for a hardship withdrawal prior to obtaining five (5) years of participation in the Plan and the participant has a vested interest in his or her Credit Account. A Participant may not withdraw more than fifty percent (50%) of his or her vested balance in the Credit Account on the day the distribution is made. After the amount for distribution is determined, such amount may be adjusted for tax withholding, administrative expenses, and/or penalties. Such adjustment, if made, is only an estimate of taxes and penalties. The Participant may be liable for additional taxes and penalties not withheld. The Participant may not apply for a hardship withdrawal unless the amount required to meet the need created by the financial hardship is \$1,000.00 or more. Participants are limited to only one (1) hardship withdrawal during a twelve (12) consecutive month period.

(c) Financial Hardship.

A withdrawal will be deemed by the Trustees to be on account of hardship if the withdrawal is necessary in light of immediate and heavy financial needs of the Participant. A withdrawal based upon financial hardship cannot exceed the amount reasonably necessary required to meet the immediate financial need created by the hardship and not available from other resources reasonably available to the Participant. The Participant's resources shall be deemed to include those assets of his Spouse and minor children that are reasonably available to the Participant.

(d) Determination of Financial Hardship.

The Trustees, in their sole discretion, by the unanimous vote of the then duly selected Trustees, shall make all determinations as to the existence of financial hardship and the amount required to meet the need created by the financial hardship considering all relevant facts and circumstances. The decision shall be made by the Board of Trustees in its sole and absolute discretion and on a uniform and nondiscriminatory basis.

In making their decision, the Trustees shall request that the Participant submit proof of the financial hardship and the lack of other resources available to provide for such hardship. Such proof may include, but shall not be limited to, representations by the Participant that the financial need cannot be relieved through:

- (1) reimbursement or compensation by insurance or otherwise;
- (2) reasonable liquidation of the Participant's assets, to the that extent such liquidation would not itself cause an immediate and heavy financial need; or
- (3) other distributions or nontaxable loans from other plans maintained by an employer, or by borrowing from commercial sources on reasonable commercial terms.

The Trustees' decision as to the nature and adequacy of such proof shall be final binding upon all concerned parties.

The Trustees may avoid the need to inquire into whether other financial resources are reasonably available if the distribution is not in excess of the amount of the Participant's immediate and heavy financial need (including any amounts reasonably anticipated as necessary to pay federal, state, or local taxes and penalties resulting from the distribution) and:

- (1) the Participant has obtained all distributions, other than hardship distributions, and all nontaxable loans under all plans maintained by the Employer; and
- (2) all plans maintained by the Employer provide that the Employee's Elective Deferrals and Employee Contributions will be suspended for twelve (12) months after the receipt of the Hardship distribution; and
- (3) all plans maintained by the Employer provide that an Employee may not make Elective Deferrals for the Employee's taxable year immediately following the taxable year of the hardship distribution in excess of the applicable limit under Code Section 402(g) for such taxable year, less the

amount of such Employee's pre-tax contributions for the taxable year of the hardship distribution.

(e) Hardship Withdrawals.

Hardship withdrawals may include Employer contributions under 5.01(a) plus the investment earnings thereon to the extent vested and Elective Contributions under 5.01(b) (excluding earnings thereon). Hardship withdrawals shall be subject to the Spousal consent requirements set forth in Code Sections 401(a)(11) and 417. The Participant's Spouse must consent to such withdrawal in writing, with the Spouse's signature thereto witnessed by a plan representative or a notary public.

The Trustees may, in their discretion, permit hardship withdrawals only for the following reasons:

- (i) medical expenses (within the meaning of Code Section 213(d)) incurred by the Participant, his or her Spouse, children and other dependents, to the extent that such expenses are not subject to reimbursement through insurance or other coverage; or
- (ii) effective March 1, 2009, the need to prevent the eviction of the Participant from his or her primary residence, or to prevent a foreclosure on the mortgage on that residence;

The decision of the Trustees whether to permit a hardship withdrawal shall be final, binding, and conclusive upon the Participant.

(f) Suspension of Elective Deferrals Following Hardship Distribution.

A Participant who receives a distribution of Elective Deferrals after December 31, 2001 on account of hardship shall be prohibited from making Elective Deferrals and employee contributions under this and all other plans of the Employer for six (6) months after receipt of the distribution. A Participant who receives a distribution of Elective Deferrals in calendar year 2001 on account of hardship shall be prohibited from making Elective Deferrals and employee contributions under this and all other plans of the Employer for six (6) months after receipt of the distribution or until January 1, 2002, if later.

## ARTICLE VII- SUSPENSION OF BENEFITS

### 7.01 Suspension of Benefits

"Suspension of benefits" for a month means non-entitlement to benefits for the month. This Section may only apply if the retired Participant is receiving pension benefits in the form of a Joint and Survivor Annuity or in periodic installments. If benefits were later

determined to be suspended, the overpayment shall be recoverable through deductions from future pension payments, as provided herein.

(a) Before Normal Retirement Age

The monthly benefit shall be suspended for any month in which the retired Participant is employed in disqualifying employment before he has attained Normal Retirement Age. For this purpose, "Disqualifying employment" before attainment of Normal Retirement Age is any employment with a contributing Employer or a company doing the same work as a contributing Employer or self-employment, provided that such employment is in:

- (1) the trade jurisdiction (including, but not limited to, related supervisory activities) as defined in the current Constitution of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada; and
- (2) the Geographical Jurisdiction of the Union at the time that the payment of Benefits commenced or would have commenced if the Participant had not remained in or returned to employment.

The Trustees, in their sole and absolute discretion, may:

- (i) provide for or allow a minimum number of hours of work in disqualifying employment before Normal Retirement Age that will not result in a suspension of benefits and/or
- (ii) apply to pre-Normal Retirement Age suspension of benefits such of the terms and conditions that apply to post-Normal Retirement Age suspension of benefits, consistent with United Department of Labor regulations regarding same.

The Trustees may also, for good cause, waive a period of suspension in benefits.

(b) After Normal Retirement Age

After attaining Normal Retirement Age, pension benefits in pay status shall be suspended on the first day of the month following a calendar month during which the Participant returns to employment and completes at least forty (40) Hours of Service with the Employer in:

- (1) an industry in which Employees covered by this Plan were employed and accrued benefits under this Plan as a result of such employment at the time that the payment of benefits commenced or would have commenced if the Employee had not been vested in or returned to employment; and

- (2) the trade jurisdiction (including, but not limited to, related supervisory activities) as defined in the current Constitution of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada; and
- (3) the Geographical Jurisdiction of the Union at the time that the payment of Benefits commenced or would have commenced if the Participant had not remained in or returned to employment.

Similarly, the actuarial value of benefits which commence later than normal retirement age will be computed without regard to amounts which would have been suspended under the preceding sentence as if the employee had been receiving benefits since Normal Retirement Age.

(c) Resumption of Payment

Upon re-termination of employment or in the event that the Participant attains less than forty (40) Hours of Service per month due to such employment, such Participant may apply for reinstatement of his pension benefits in such amount as the Participant was receiving prior to the suspension of his Benefits, recalculated to include additional Service earned during re-employment; provided, however, that such Benefits may be offset or deducted. Benefit payments shall resume no later than the first day of the third calendar month after the calendar month in which the employee ceases to be employed, provided that the Participant has notified the Plan Administrator that he has ceased such employment. The initial payment upon resumption shall include the payment scheduled to occur in the calendar month when payments resume and any amounts withheld during the period between the cessation of service and the resumption of payments, less amounts which are subject to offset.

Notwithstanding any contrary provision in this Plan, any deduction or offset for Benefit payments previously made to a Participant for calendar months during which such Participant completed forty (40) or more Hours of Service as defined in Section 7.01(B) above, shall not exceed, in any one month, twenty-five percent (25%) of that month's total Benefit payment; provided, however, that upon resumption of Benefit payments, the initial payment may be subject to offset without limitation.

(d) Notification

No payment shall be withheld by the Plan pursuant to this Section unless the Plan notifies the Employee by personal delivery or first class mail during the first calendar month or payroll period in which the Plan withholds payments that his or her benefits are suspended. Such notifications shall contain a description of the specific reasons why benefit payments are being suspended, a description of the Plan provision relating to the suspension of payments, a copy of such provisions,

and a statement to the effect that applicable Department of Labor regulations may be found in Department of Labor Regulation Section 2530.203-3.

In addition, the notice shall inform the Employee of the Plan's procedures for affording a review of the suspension of benefits. Requests for such reviews may be considered in accordance with the claims procedure adopted by the Plan pursuant to Section 503 of ERISA and applicable regulations.

(e) Amount Suspended

- (1) Qualified Joint and Survivor Life Annuity. In the case of benefits payable in a Qualified Joint and Survivor Annuity, an amount equal to the portion of a monthly benefit payment derived from Employer contributions.
- (2) Other Benefit Forms. In the case of a benefit payable in a form other than the form described in (1) above, an amount of the Employer-derived portion of benefit payments for a calendar month in which the Employee is employed in service, equal to the lesser of
  - (i) the amount of benefits which would have been payable to the Employee if he had been receiving monthly benefits under the Plan since actual retirement based on a single life annuity commencing at actual retirement age; or
  - (ii) the actual amount paid or scheduled to be paid to the Employee for such month.

Payments which are scheduled to be paid less frequently than monthly may be converted to monthly payments for purposes of the above sentence.

(f) Waiver of Suspension

The Trustees may, upon their own motion or on request of a retired Employee, waive suspension of benefits subject to such limitations as the Trustees in their sole and absolute discretion may determine, including any limitations based on the retired Employee's previous record of benefit suspensions or noncompliance with reporting requirements under this Article.

(g) Cessation of Suspension upon Attainment of Age 70 1/2

Pension benefits of a Participant may not be suspended for the months starting on and after the first day of April following the calendar year in which the Participant attains age 70%.

(h) Non-Application to Top Heavy Rules

This Section does not apply to the minimum benefit to which the Participant is entitled under the Top-Heavy rules of Article XIII.

#### ARTICLE VIII - INALIENABILITY OF BENEFITS

No Participant shall have any right to pledge, hypothecate, anticipate, borrow from or in any way create a lien upon any part of the Fund. Except as herein provided, distributions to Participants, their Beneficiaries, heirs or legal representatives, excepting minors or persons under legal disability shall be made only to them and upon their personal receipts or endorsements; and no interest in the Fund or any part thereof shall be assignable in anticipation of payment either by voluntary or involuntary act or by operation of law or be liable in any way for the debts or defaults of any Participants, their Beneficiaries or heirs, whether to the Employer or to others.

Benefits may be paid to individuals other than the Participant, their Beneficiaries or heirs or legal representatives if such payment of benefits is required by a Qualified Domestic Relations Order or decree as defined in Section 2.32 and 414(p) of the Code.. However, such order shall not be considered a Qualified Domestic Relations Order if it requires the Plan to pay benefits not provided for under the Plan.

#### ARTICLE IX- INVESTMENTS

The Plan is intended to constitute a plan described in section 404(c) of the ERISA, and title 29 of the Code of Federal Regulations, Sec. 2550.440c-1. This means each Participant is control of, and solely responsible for the investment of his Account. No Trustee or Plan representative or agent is empowered to advise the Participant as to the manner in which his contribution should be invested. The fact that a particular investment option is available is not to be construed as a recommendation of that investment for a Participant Account.

If a Participant does not make an election as to how the Fund should invest the assets of his or her Account, contributions received on a Participant's behalf are directed automatically to a Qualified Default Investment Alternative (QDIA) under Department of Labor Regulations. Notices regarding the Fund QDIA are provided as required by law.

The Trustees reserve the right to eliminate, change, and Investment Options at any time. The trustees are under no obligation to offer any particular Investment Option, or to effectuate a Participant's selection of an Investment Option

#### ARTICLE X - AMENDMENTS

##### 10.01 Right to Amend

The Trustees have the right to amend this Plan pursuant to authority granted by the Trust.

#### 10.02 Amendment.

Except as permitted by law, it shall be impossible for any part of the corpus or income of the fund to be used for or diverted to purposes other than for the exclusive benefit of Participants and their Beneficiaries or to deprive any one of them of an interest in the Fund. Subject to this provision, this indenture may be amended at any time by the consent of the Trustees; and any amendment may be given such retroactive effect as the Trustees may determine, provided, however, benefits accrued under the Plan may not be reduced by amendment and provided further that such amendment shall be subject to any relevant provisions in the Collective Bargaining Agreement. An amendment to this indenture shall be evidenced by an instrument in writing executed by the Trustees.

#### 10.03 Vesting Schedule Amendments

If the Plan's vesting schedule is amended, or the Plan is amended in any way that directly or indirectly affects the computation of the Participant's nonforfeitable percentage or if the Plan is deemed amended by an automatic change to or from a top-heavy vesting schedule, each Participant with at least three (3) Years of Service with the Employer may elect, within a reasonable period after the adoption of the amendment or change, to have the nonforfeitable percentage computed under the Plan without regard to such amendment or change.

The period during which the election may be made shall commence with the date the amendment is adopted or deemed to be made and shall end on the latest of:

- (a) sixty (60) days after the amendment is adopted;
- (b) sixty (60) days after the amendment becomes effective; or
- (c) sixty (60) days after written notice of the amendment is issued by the Board of Trustees.

An amendment to the Plan shall be evidenced by an instrument in writing signed by authorized members of the Board of Trustees.

#### 10.04 No Decrease in Participant's Accrued Benefit

No amendment to the Plan shall be effective to the extent that it has the effect of decreasing a Participant's accrued benefit. Notwithstanding the preceding sentence, a Participant's account balance may be reduced to the extent permitted under Code Section 412(c)(8). Except as otherwise permitted by the Code, an amendment to the Plan which has the effect of decreasing a Participant's account balance or eliminating an optional form of benefit with respect to benefits attributable to service before the amendment shall be treated as reducing an accrued benefit.

## ARTICLE XI – TERMINATION OF PLAN

### 11.01 Termination.

In the event that the obligation of all Employers to make contributions shall terminate, the Trustees shall apply the Fund for the purposes specified in Article IV, Sections 6 and 8, of the Trust Agreement, and, upon disbursement of the entire Fund, the Plan shall terminate. However, in lieu of the distribution set forth above, upon the written request of the Union and approval of a majority of the Trustees, the Trustees shall, after all obligations of the Fund have been set aside, turn over any surplus monies and property in the Fund to any qualified retirement trust fund that may be created by and between the Union and the Employers through collective bargaining agreements [is this permissible?].

### 11.02 Rights of Participants.

In the event of termination or partial termination of the Plan, with or without action of the Board of Trustees, or the complete discontinuance of contributions to the Plan, the entire amounts in affected Participants' Credit Accounts shall be nonforfeitable in the Participants and the vesting provisions of Section 5.05 shall no longer be applicable.

### 11.03 Termination Procedures.

In the event the Board of Trustees decides to terminate the Plan and Trust and distribute the assets in accordance with Section 11.01, the Board of Trustees shall proceed as follows:

- (a) It shall convert all of the assets of the Trust to cash, except such assets which may be conveniently distributed in kind.
- (b) After providing for payment of all reasonable and necessary expenses in the application of the Trust Fund, it shall allocate asset income and appreciation (or depreciation) realized to all Credit Accounts. These amounts shall be allocated among the Credit Accounts on the basis of the account balances at the end of the annual Valuation Date immediately preceding the date of termination, or the balances in the Plan as reflected on the books and records of the Board of Trustees, if the Board has received a contribution from an Employer between said Valuation Date and the date on which the Plan and Trust are terminated.
- (c) It shall prepare or have prepared such documents as are required to obtain from the Internal Revenue Service a ruling regarding termination of this Plan and Trust Agreement. Until such ruling is received, no distributions shall be made; provided, however, that distributions must still be made timely pursuant to Section 6.15 to satisfy the requirements of Code Sections 401(a)(9) and 401(a)(14). Upon receipt from the Internal Revenue Service that this Plan has met the requirements of Code Section 401(a) that the Trust is exempt from taxation

under Code Section 501(a) and that the termination of the Plan will not adversely affect the prior qualification of the Plan nor the exempt status of the Trust, the Trustees shall proceed as provided in Subsection (D) below.

- (d) After the payment of all fees and expenses in connection therewith, it shall distribute each Participant's Credit Account, as computed in accordance with Subsection (B) above, pursuant to Section 6.02. This distribution shall be made in cash or in kind. Upon making this distribution, the Trustees shall obtain a release from each Participant in a form satisfactory to counsel.

#### 11.04 Continuity

The Plan hereby created shall continue until the funds shall have been distributed in accordance with the terms and provisions of this indenture.

#### 11.05 Additional Rights of the Board of Trustees.

In addition to the right at any time to terminate the Plan and/or amend the Plan and Trust Agreement, the Board of Trustees shall also have the sole right at any time to merge or consolidate with, transfer the assets and liabilities of the Plan and Trust Fund to any other qualified plan and trust fund or receive the assets and liabilities of any other qualified plan and trust fund. All such actions shall be done by the Board of Trustees in their sole discretion and must be adopted in writing.

#### 11.06 Transfers From Money Purchase Pension Plans.

Notwithstanding any provision of this Plan to the contrary, to the extent that any optional form of benefit under this Plan permits a distribution prior to the employee's retirement, death, disability or severance from employment, and prior to the Plan's termination, the optional form of benefit is not available with respect to benefits attributable to assets (including the post-transfer earnings thereon) and liabilities that are transferred, within the meaning of Code Section 414(1), to this Plan from a money purchase pension plan qualified under Code Section 401(a) (other than any portion of those assets and liabilities attributable to voluntary employee contributions).

#### 11.07 Merger or Transfer of Assets.

In the event of a merger or consolidation with, or transfer of assets or liabilities to any other plan, each Participant shall receive a benefit immediately after the merger, consolidation or transfer (if the Plan had then terminated) which is at least equal to the benefit he or she would have been entitled to receive immediately before the merger, consolidation or transfer (if the Plan had then terminated).

## ARTICLE XII - MISCELLANEOUS PROVISIONS

### 12.01 Reciprocal Agreements.

The Trustees may, at any time and in their sole and absolute discretion, enter into a reciprocity agreement with the trustees of any other tax-qualified pension plans. Reciprocated money received by the Fund under any such agreement, whether from a defined benefit or defined contribution fund, shall be allocated pursuant to policies and procedures adopted by the Trustees.

### 12.02 Severability.

In the event that any provision, section or subsection of this Plan shall be determined by decision, act or regulation of a duly constituted body or authority to be in any respect invalid, that shall not nullify any of the other provisions, sections or subsections of the Plan.

### 12.03 Non-Reversion to Employers.

In no event shall the Employers directly or indirectly receive any benefits from the Trust Fund or receive any refund of Employer Contributions made by them to the Trust Fund (except, pursuant to Section 4.02; in the case of a mistake of fact or law that has been validated by the Board of Trustees).

### 12.04 Qualified Domestic Relations Order.

After a favorable determination is made that a proposed Domestic Relations Order is a Qualified Domestic Relations Order ("QDRO") as provided for under the QDRO Procedures as may be adopted and amended by the Trustees from time to time within their sole discretion, the benefits assigned to the Alternate Payee shall be segregated into the Alternate Payee's separate Credit Account. The Alternate Payee shall have no right to a distribution of benefits from the Alternate Payee's Credit Account until after the Participant has reached the "earliest retirement age" or at such other time the Participant would be eligible for a distribution of benefits as permitted by Plan provisions, or under the Code and ERISA and their regulations. However, an Alternate Payee shall have the right to an immediate distribution of their assigned benefits if such immediate distribution is provided for in the QDRO. Benefits payable to an Alternate Payee receiving a distribution of benefits pursuant to this Section, [or to an Alternate Payee's Beneficiary, if applicable], shall be made only in the form of a lump sum. The Plan Administrator shall notify such Alternate Payee (or Beneficiary, if applicable) that:

- (1) the distribution will not be taxed currently to the extent transferred to another qualified pension plan or IRA, and

- (2) the transfer must be made within sixty (60) days of receipt in order to qualify for this tax-free rollover treatment.

#### ARTICLE XIII – FINANCING OF THE PLAN

##### 13.01 Contributions to the Fund

Pursuant to certain duly executed Collective Bargaining Agreements, a Trust Agreement has been executed by the Trustees, the Union and the Association, under the terms of which a Fund has been established to receive and hold Contributions payable by the Employers under the Plan interest and other income and from which they are to be paid the benefits provided under the Plan, and the expenses of operation of the Plan.

##### 13.02 Funding and Payment of Benefits

The amount of Employer Contributions shall be determined by the terms of the Collective Bargaining Agreement between the Employer and the Union and shall not be less than or exceed the limits prescribed by law.

##### 13.03 Contributions Irrevocable

The Employers shall have no right, title or interest in the Contributions made to the Fund and no part of the Fund shall revert to the Employers.

##### 13.04 Rights Limited To Those Rights Granted By Plan

No Participant, Vested Former Participant, Retiree, Beneficiary, or any person claiming by or through any such person, shall have any right, interest or title to any benefits under the Trust Agreement, the Plan, or the Fund, except as such right, interest or title shall have been specifically granted pursuant to the terms of the Plan or Fund.

#### ARTICLE XIV — INTERNAL REVENUE SERVICE APPROVAL

The making of contributions by the Employers to the Fund are and shall be subject to obtaining the necessary approval from the Internal Revenue Service of the Plan and the deductibility of payments made by the Employers to the Fund. In the event the Plan or Trust Agreement at any time requires amendment in order for the Employers' payments to the Fund to be deductible and the Plan to be qualified under the applicable provisions of the Code, the Employers and the Union shall immediately make such amendment as is necessary to accomplish such purposes. The administration of the Plan shall be such as to maintain continued qualification of the Plan under the applicable provisions of the Code. The Board of Trustees shall have the right to defend the determination of the Plan and Trust as a qualified plan and exempt trust, which construction, determination and qualification is intended by the parties at its inception and thereafter.

## ARTICLE XV - NON-BARGAINED EMPLOYEES

### 15.01 Employer.

For purposes of identifying Highly Compensated Employees and applying the rules on participation, vesting and statutory limits on benefits under the Plan for such Employees, but not for determining covered service, the term "Employer" includes all members of an affiliated service group with the Employer within the meaning of Code Section 414(m) and other businesses aggregated with the Employer under Code Section 414(o).

For this purpose, an "Employer" also includes all corporations, trades or businesses under common control with the Employer within the meaning of Code Section 414(b) and (c).

For all other purposes, the term "Employer" shall have the meaning stated at Article I.

### 15.02 Non-Bargained Employee.

A "Non-Bargained Employee" means a person who is employed by an Employer and who is not covered by a Collective Bargaining Agreement, but is covered by a written Participation Agreement requiring Employer Contributions on his or her behalf.

### 15.03 Highly Compensated Employee.

A "Highly Compensated Employee" means a person as defined in Section 2.20.

### 15.04 Alumni Coverage.

(a) Any Employer which has agreed to contribute to the Plan on behalf of Employees in the bargaining unit as defined in an agreement between an Employer and the Union and/or is an Employer may contribute on behalf of each and every Non-Bargained Employee who meets the following conditions:

- (1) the Employee is a Vested Participant and, during the current Plan Year or a prior Plan Year, at least one-half (1/2) of the Employee's total Hours of Work for that Plan Year with any and all Employers were performed in a collective bargaining unit represented by the Union ("Alumni Coverage"); and
- (2) the Employee is not included in another unit of Employees covered by a collective bargaining agreement with a labor union, if retirement benefits were the subject of good faith bargaining between such Employer and the labor union.

(b) For any Alumni Coverage permitted under Subsection (A), each Employer must:

- (1) execute a written Participation Agreement as required by the Trustees which binds the Employer to the terms of the Plan and any applicable rules and regulations promulgated therein and, thereby, specifies the detailed basis upon which the contributions are to be made to the Plan; and
  - (2) specify in its written Participation Agreement that such Employer is electing coverage of its "alumni" Employees;
  - (3) certify in a manner acceptable to the Trustees that it is, in fact, covering all of its "alumni" Employees, except those that may be excluded under Subsection (A)(2) above; and
  - (4) execute such documents as may be required by the Internal Revenue Service, or reasonably required by the Trustees, to enable the Plan to secure a determination letter of federal tax exemption or to support its tax exemption and/or qualified plan status.
- (c) The total number of "alumni" Employees participating in the Plan shall never exceed five percent (5%) of the total number of Employee Participants.

#### 15.05 Nondiscrimination, Coverage and Participation.

- (a) Participation in the Plan by Non-Bargained Employees shall be in compliance with Code Sections 401(a)(4) (nondiscrimination rules), 410(b) (coverage rules), and 401(a)(26) (minimum participation rules). Code Section 410(a)(26) applies during any Plan Year in which there are fewer than fifty (50) Participants, including Participants covered by a Collective Bargaining Agreement.
- (b) In administering the "Alumni Coverage" provided in this Article, the Trustees shall not permit any coverage inclusions or exclusions which would contravene the nondiscrimination requirements of the Code and federal tax law. The Trustees are authorized to take any and all steps as outlined herein and otherwise to ensure compliance with such legal requirements, including requiring an Employer to retroactively include in its coverage one or more of its eligible "alumni" Employees and make contributions on behalf of such Employee(s) in accordance with the terms of this Article. Such authority is expressly recognized by all Employers, and the Employers hereby agree to be bound by the Trustees' actions.

### ARTICLE XVI- CLAIMS AND APPEAL PROCEDURE

#### 16.01 Claims Against Fund.

All parties to the Plan or claiming any interest hereunder shall perform any and all acts and execute any and all documents and papers which are necessary or desirable for carrying out the Plan or any of its provisions. Any Participant or Beneficiary or other person who claims the right to any payment under the Plan shall be entitled to look only

to the Fund for such payment; and no liability or obligation for the payment of benefits or any other claims under or arising out of the Plan shall be imposed upon the Trustees, Union, Association, Employers, or their officers or employees, except as may be provided under ERISA or other applicable federal law.

## 16.02 Timing and Notification of Benefit Determination

### (a) Retirement Benefits

Claims for benefits under the Plan may be filed in writing with the Trustees. Written notice of the disposition of a claim shall be furnished to the claimant within 90 days after the application is filed.

This period may be extended by the Fund for up to 90 days, if special circumstances require an extension of the time for processing the claim. In such case, written notice of the extension shall be furnished to the claimant prior to the termination of the initial 90 day period. In no event shall such extension exceed 90 days from the end of such initial period. The extension notice shall indicate the special circumstances requiring an extension of time and the date by which the plan expects to render the benefit determination.

### (b) Disability Benefits

In the case of a claim for disability benefits, the Fund Office shall notify the claimant, in accordance with this Section of the Fund's adverse benefit determination within a reasonable period of time, but not later than 45 days after receipt of the claim by the Fund Office.

This period may be extended by the Fund for up to 30 days, provided that the Fund Office both determines that such an extension is necessary due to matters beyond the control of the Fund and notifies the claimant, prior to the expiration of the initial 45-day period, of the circumstances requiring the extension of time and the date by which the plan expects to render a decision. If, prior to the end of the first 30-day extension period, the Fund Office determines that, due to matters beyond the control of the Fund, a decision cannot be rendered within that extension period, the period for making the determination may be extended for up to an additional 30 days, provided that the Fund Office notifies the claimant, prior to the expiration of the first 30-day extension period, of the circumstances requiring the extension and the date as of which the plan expects to render a decision. In the case of any extension under this provision, the notice of extension shall specifically explain the standards on which entitlement to a benefit is based, the unresolved issues that prevent a decision on the claim, and the additional information needed to resolve those issues, and the claimant shall be afforded at least 45 days within which to provide the specified information.

### 16.03 Manner and Content of Notification of Benefit Determination

The Fund Office shall provide a claimant with written or electronic notification of any adverse benefit determination (i.e. denial of claim). The notification shall set forth, in a manner calculated to be understood by the claimant –

- (a) The specific reason or reasons for the adverse determination;
- (b) Reference to the specific plan provisions on which the determination is based;
- (c) A description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary;
- (d) A description of the Fund'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 ERISA following an adverse benefit determination on review; and
- (e) If the denial is of a request for disability benefits and an internal rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination, either the specific rule, guideline, protocol, or other similar criterion or a statement that such a rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination and that a copy of such rule, guideline, protocol, or other criterion will be provided free of charge to the claimant upon request.

### 16.04 Appeal of Adverse Benefit Determination

- (a) Appeals must be forwarded to and received by the Fund Office within 60 days (180 days for appeals involving disability benefits) following receipt of a notification of an adverse benefit determination (i.e. denial of claim). As part of any such appeal, a claimant may submit written comments, documents, records, and other information relating to the claim for benefits.
- (b) A claimant, free of charge and upon request, shall be provided reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits.
- (c) Upon appeal, the Trustees will review all comments, documents, records, and other information submitted by the claimant relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination.
- (d) If the appeal is a denial of disability benefits:

- (1) A review on appeal will not afford deference to the initial denial and an individual who made the initial denial, or a subordinate of such individual will not decide an appeal.
- (2) In deciding an appeal of a benefit based on medical judgment, the fiduciary deciding the appeal shall consult with a health care professional who has appropriate training in the field of medicine involved (and who was not involved in reviewing the initial claim);
- (3) A plan must provide for the identification of any medical or vocational experts whose advice was obtained by the plan in connection with the initial denial, regardless of whether the advice was relied upon.

#### 16.05 Trustees Decision on Appeal

##### (a) Timing of Decision

The Trustees shall make a benefit determination on appeal no later than the date of the board meeting that immediately follows the Fund Office's receipt of an appeal, unless the appeal is filed within 30 days preceding the date of such meeting. In such case, the benefit determination may be made no later than the date of the second board meeting following the Fund Office's receipt of the request for review.

If special circumstances require a further extension of time for processing, a benefit determination shall be rendered not later than the third board meeting following the Fund Office's receipt of the request for review. If such an extension of time for review is required because of special circumstances, the Fund Office shall provide the claimant with written notice of the extension, describing the special circumstances and the date as of which the benefit determination will be made, prior to the commencement of the extension. The Fund Office shall notify the claimant of its decision on appeal but not later than 5 days after the benefit determination is made.

##### (b) Manner and Content of Notification of Trustees Notice of Decision on Appeal

The Fund Office shall provide a claimant with written or electronic notification of any adverse benefit determination on review. The notification shall set forth, in a manner calculated to be understood by the claimant –

- (1) The specific reason or reasons for the adverse determination;
- (2) Reference to the specific plan provisions on which the determination is based;

- (3) A statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits;
- (4) A statement of the claimant's right to bring a civil action under section 502(a) of ERISA; and
- (5) If the appeal is a denial of disability benefits and an internal rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination, either the specific rule, guideline, protocol, or other similar criterion; or a statement that such a rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination and that a copy of such rule, guideline, protocol, or other criterion will be provided free of charge to the claimant upon request.
- (6) If the appeal is a denial of disability benefits, the following statement: "You and your plan may have other voluntary alternative dispute resolution options, such as mediation. One way to find out what may be available is to contact your local U.S. Department of Labor Office and your State insurance regulatory agency."

#### 16.06 Discretion of Trustees

The Trustees have full discretionary authority to determine eligibility for benefits, interpret plan documents, and determine the amount of benefits due. Their decision, if not in conflict with any applicable law or government regulation, shall be final and conclusive.

#### 16.07 Timely Submission of Appeals

All appeals must be timely submitted. A participant or dependent who does not timely submit an appeal waives his/her right to have the benefit denial further reviewed by the Fund or in a court of law.

#### 16.08 Limitation of Actions

No action may be brought to recover benefits allegedly due under the terms of the Plan more than 180 days following the Notice of Decision on Appeal.

### ARTICLE XVIII- RIGHT TO RECOVER OVERPAYMENTS

The Fund has the right to recover from any Participant, Pensioner, Spouse, Surviving Spouse, Beneficiary or other payee any amounts paid by the Fund which were not properly owing under the terms of the Plan, whether such amounts were paid by mistake, fraud, or any other reason. The Fund has the right to pursue the payee (including the Participant/Pensioner and his/her Spouse jointly and severally), for the full amount due and owing under this provision. At the

Fund's sole option, it may enforce this provision by offsetting future benefits until the amount owed has been recovered.

IN WITNESS WHEREOF, the Trustees have executed this Plan on this 20 day of January 2015, effective 1/1/2015.

Union Trustees

*Robert A. Passaro*  
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Employer Trustees

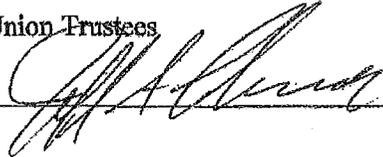
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Fund's sole option, it may enforce this provision by offsetting future benefits until the amount owed has been recovered.

IN WITNESS WHEREOF, the Trustees have executed this Plan on this 20 day of January 2015, effective 1/1/2015.

Union Trustees

  
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Employer Trustees

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Fund's sole option, it may enforce this provision by offsetting future benefits until the amount owed has been recovered.

IN WITNESS WHEREOF, the Trustees have executed this Plan on this 20 day of January 2015, effective 1/1/2015.

Union Trustees

*James R. [Signature]*  
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Employer Trustees

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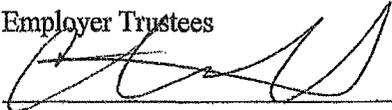
Fund's sole option, it may enforce this provision by offsetting future benefits until the amount owed has been recovered.

IN WITNESS WHEREOF, the Trustees have executed this Plan on this 20<sup>th</sup> day of JANUARY 2015, effective 1/1/2015.

Union Trustees

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Employer Trustees

  
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Fund's sole option, it may enforce this provision by offsetting future benefits until the amount owed has been recovered.

IN WITNESS WHEREOF, the Trustees have executed this Plan on this 20 day of January 2015, effective 1/1/2015.

Union Trustees

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Employer Trustees

*Thomas I. Scare*

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Fund's sole option, it may enforce this provision by offsetting future benefits until the amount owed has been recovered.

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Union Trustees

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Employer Trustees

  
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