

BRICKLAYERS UNION NO. 1 OF  
KENTUCKY  
PENSION TRUST FUND

PENSION PLAN RESTATED  
EFFECTIVE  
May 22, 2025

# **BRICKLAYERS UNION NO.1 OF KENTUCKY**

## **PENSION TRUST FUND - PENSION PLAN**

PREFACE .....	1
PREAMBLE .....	1
ARTICLE I - DEFINITIONS.....	2
Section 1.01 - Accrued Benefit.....	2
Section 1.02 - Actuarial Equivalent.....	2
Section 1.03 - Association .....	3
Section 1.04 - Beneficiary.....	3
Section 1.05 – Break-in-Service .....	3
Section 1.06 - Collective Bargaining Agreement .....	4
Section 1.07 - Contiguous Non-Covered Service .....	4
Section 1.08 - Covered Employment.....	4
Section 1.09 - Early Retirement Age.....	4
Section 1.10 - Eligibility Computation Period .....	5
Section 1.11 - Employee.....	5
Section 1.12 - Employer .....	5
Section 1.13 - Employer Contributions .....	6
Section 1.14 - ERISA.....	6
Section 1.15 - Fiduciary.....	6
Section 1.16 - Fiscal Year.....	6
Section 1.17 - Forfeited Service.....	6
Section 1.18 - Highly Compensated Employee .....	7
Section 1.19 - Hour of Service .....	7
Section 1.20 - Named Fiduciaries.....	7
Section 1.21 - Non-Vested Employee.....	7
Section 1.22 - Normal Retirement Age .....	7
Section 1.23 - Participant .....	8
Section 1.24 - Pension Plan .....	8
Section 1.25 - Permanent and Total Disability .....	8
Section 1.26 - Plan Year.....	8
Section 1.27 - Restatement Date.....	8
Section 1.28 - Retired Employee .....	8
Section 1.29 - Retirement Benefit.....	8
Section 1.30 - Spouse or Surviving Spouse.....	9
Section 1.31 - Straight Life Annuity.....	9
Section 1.32 - Trust Agreement .....	9
Section 1.33 - Trust Fund .....	9
Section 1.34 - Trustees .....	9
Section 1.35 - Union .....	9
Section 1.36 - Vested Employee .....	9
Section 1.37 - Years of Credited Service or Service .....	9
ARTICLE II – ELIGIBILITY AND CLASSES OF BENEFITS .....	12
Section 2.01 - Classes of Benefits .....	12
Section 2.02 – Eligibility for Participation in the Plan .....	12

Section 2.03 – In-Service Distributions .....	13
ARTICLE III - NORMAL RETIREMENT BENEFITS .....	14
Section 3.01 - Eligibility for Normal Retirement Benefits .....	14
Section 3.02 - Amount of Normal Retirement Benefits .....	14
Section 3.03 - When Paid .....	15
ARTICLE IV - EARLY RETIREMENT BENEFITS .....	16
Section 4.01 - Eligibility for Early Retirement Benefits .....	16
Section 4.02 - Computation of Early Retirement Benefits .....	16
Section 4.03 - When Paid .....	16
Section 4.04 - Switching from Early to Disability Benefits .....	16
ARTICLE V - JOINT AND SURVIVOR ANNUITY REQUIREMENTS, ALTERNATIVE SETTLEMENT OPTIONS, AND DISTRIBUTION PROVISIONS .....	18
Section 5.01 - Qualified Joint and Survivor Annuity and Qualified Optional Survivor Annuity .....	18
Section 5.02 - Qualified Pre-Retirement Survivor Annuity .....	18
Section 5.03 – Definitions .....	19
Section 5.04 - Notice Requirements .....	21
Section 5.05 - Commencement of Benefits .....	22
Section 5.06 – Optional Forms of Benefit .....	23
Section 5.07 - Section 415 Limitations .....	23
ARTICLE VI - TOTAL AND PERMANENT DISABILITY BENEFITS .....	24
Section 6.01 - Eligibility for Total and Permanent Disability Benefits .....	24
Section 6.02 - Amount of Disability Benefit .....	24
Section 6.03 - Death of Disabled Participant .....	24
Section 6.04 - When Paid .....	24
Section 6.05 - Recovery of Disabled Participant .....	25
Section 6.06 - Termination of Benefits for Total And Permanent Disability .....	25
ARTICLE VII - DEFERRED VESTED BENEFITS .....	26
Section 7.01 - Preamble .....	26
Section 7.02 - Eligibility for Deferred Vested Benefits .....	26
Section 7.03 - Computation of Deferred Vested Benefits .....	26
Section 7.04 - When Paid .....	28
Section 7.05 - When Participant Returns to Work .....	28
ARTICLE VIII - DEATH BENEFITS .....	29
Section 8.01 – Eligibility for Pre-Retirement Death Benefits .....	29
Section 8.02 - Description and Amount of Pre-Retirement Death Benefits .....	29
Section 8.03 - When Pre-Retirement Death Benefits Paid .....	29
Section 8.04 - Eligibility for Post-Retirement Death Benefits .....	29
Section 8.05 - Description and Amount of Post-Retirement Death Benefits .....	29
Section 8.06 - When Post-Retirement Death Benefits Paid .....	30
Section 8.07 - Beneficiary Designation .....	30
Section 8.08 - No Beneficiary Designation .....	30
ARTICLE IX - ADMINISTRATION OF THE PLAN .....	31
Section 9.01 - Responsibility for Administration .....	31
Section 9.02 - Fiduciary Duties .....	31
Section 9.03 - Preservation of Benefits .....	32
Section 9.04 - Only Rights Specifically Granted .....	32
Section 9.05 - Benefits Not Assignable .....	32
Section 9.06 - Commencement Date for Pension Payments .....	32
Section 9.07 - Information Required .....	33
Section 9.08 - Mentally Disabled Applicant .....	33

Section 9.09 - Lump Sum Payment.....	33
Section 9.10 – Suspension of Benefits During Covered Employment.....	36
Section 9.11 – Suspension of Benefits During Non-Covered Employment .....	36
Section 9.12 – Procedures for Advance Determination on the Suspension of Benefits.....	37
Section 9.13 – Recalculation of Benefit Payments Following Return to Work.....	37
Section 9.14 – Notices .....	38
Section 9.15 – Overpayments .....	38
Section 9.16 – Missing Participants and Uncashed Checks .....	39
Section 9.17 - No Employer or Union Rights to Fund.....	39
Section 9.18 - Exclusive Benefit.....	39
ARTICLE X - BENEFIT APPLICATION, CLAIMS REVIEW, AND APPEAL PROCEDURES ....	40
Section 10.01 - Benefit Application.....	40
Section 10.02 - Claims Review.....	40
Section 10.03 - Appeal Procedures.....	40
ARTICLE XI – FUNDING OF BENEFITS.....	43
Section 11.01 - Self-Contributions.....	43
Section 11.02 - Benefits Limited Capacity of Trust Fund.....	43
Section 11.03 - Actuarial Valuations and Plan Review .....	43
Section 11.04 - Spousal Consent Requirement .....	43
Section 11.05 - Forfeitures .....	43
ARTICLE XII - AMENDMENT AND TERMINATION OF THE PENSION PLAN .....	44
Section 12.01 – Amendment .....	44
Section 12.02 - Conditions of Termination .....	44
Section 12.03 – Procedures in Event of Termination .....	45
Section 12.04 - Vesting of Event of Plan Termination.....	46
Section 12.05 - Maintenance of Benefit in Event of Plan Merger.....	46
ARTICLE XIII -TOP-HEAVY REQUIREMENTS .....	47
Section 13.01 - Top-Heavy Status .....	47
Section 13.02 - Top-Heavy Definitions.....	47
Section 13.03 - Minimum Accrued Benefit .....	50
Section 13.04 - Adjustment for Benefit Form Other Than Life Annuity at Normal Retirement Age50	
Section 13.05 - Nonforfeitability of Minimum Accrued Benefit.....	51
Section 13.06 - Minimum Vesting Schedule.....	51
Article XIV - MINIMUM DISTRIBUTION REQUIREMENTS .....	52
ARTICLE XV – EMPLOYER WITHDRAWAL LIABILITY .....	58
Section 15.01 – Complete Withdrawal Defined – Building and Construction Industry .....	58
Section 15.02 – Partial Withdrawal Defined .....	58
Section 15.03 – Calculation of Withdrawal Liability .....	59
Section 15.04 – De Minimis Reduction of Withdrawal Liability .....	61
Section 15.05 – Actuarial Assumptions.....	61
Section 15.06 – Payment of Withdrawal Liability.....	62
Section 15.07 – Resolution of Disputes.....	63
Section 15.08 – Furnishing Information to Employers.....	64
Section 15.09 – Miscellaneous.....	64
Section 15.10 – Free Look Exception.....	65
SIGNATURE PAGE.....	67

# **BRICKLAYERS UNION NO. 1 OF KENTUCKY PENSION TRUST FUND PENSION PLAN**

## **PREFACE**

WHEREAS, Article XII, Section 12.01, of the Plan Document of Bricklayers Union No. I of Kentucky Pension Trust Fund provides that the Pension Plan may be amended or restated by majority action of the Trustees: and

WHEREAS, this Pension Plan was previously amended and restated in order to comply with the requirements of the Employee Retirement Income Security Act of 1974 (“ERISA”) and all subsequent amendments and to continue to maintain this Pension Plan as a qualified Plan and Trust under Sections 401(a) and 501(a) of the United States Internal Revenue Code; and

WHEREAS, the Trustees now desire to amend and restate this Pension Plan effective May 22, 2025 in order to comply with the provisions of the qualified plan requirements of the Internal Revenue Code Section 401 and 501.

NOW THEREFORE, the Pension Plan shall be restated as follows:

## **PREAMBLE**

Effective January 1, 1967, the Trustees of the Bricklayers Local Unions No. 1 and No. 14 Pension Trust Fund adopted the Bricklayers Local Unions No. 1 and No. 14 Pension Trust Fund Pension Plan and executed a Trust Agreement to provide Retirement Benefits for covered employees. The name of the Fund was later changed to the Bricklayers Union No. 1 of Kentucky Pension Trust Fund.

The Plan was subsequently amended and restated previously and is again being amended and restated by the Trustees’ adoption of this restated Plan, as set forth herein.

The Plan and Trust are intended to meet the requirements of Sections 401(a) and 501(a) of the Internal Revenue Code of 1986, as amended, and all subsequent applicable legislation.

The provisions of this restated Plan shall apply only to any employee who terminates employment on or after January 1, 2025. The eligibility or benefit rights, if any, of a former covered employee and the eligibility or benefit rights, if any, which an employee covered by the Plan on December 31, 2024 has earned to that date shall be determined in accordance with the prior provisions of the Plan.

## ARTICLE I - DEFINITIONS

### ***Section 1.01 - Accrued Benefit***

The term “*Accrued Benefit*” shall mean the monthly benefit commencing at Normal Retirement Age that has been earned by a Participant for the Years of Service he worked for an Employer according to the benefit formula described in Section 3.02.

### ***Section 1.02 - Actuarial Equivalent***

The term “Actuarial Equivalent” shall mean a benefit having the same value as the benefit which it replaces.

- A. Except for adjusting benefit for 415 Limits or calculating lump sum values: The determination of an Actuarial Equivalent annuity shall be based upon the 1983 G.A.M. table and an interest rate of seven percent (7.0%).
- B. Adjusting Benefits for Purposes of Code Section 415 Limits:
  - 1. The determination of Actuarial Equivalents for Code Section 415(b)(2) limits for Annuity Starting Dates before January 1, 2025, shall be based upon the Plan in effect at the time of the Annuity Starting Date.
  - 2. The determination of Actuarial Equivalents for Code Section 415(b)(2) limits for Annuity Starting Dates on or after January 1, 2025, shall be based upon the following.
    - i. For the purposes of applying the benefit limitations of Code Section 415, a retirement benefit that is payable in any form other than a straight life annuity or Qualified Joint and Survivor Annuity, and that is not subject to 417(e)(3), shall be adjusted to an actuarially equivalent straight life annuity that equals the greater of the annual straight life annuity, if any, payable under the Plan at the same Annuity Starting Date and the annual amount of a straight life annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the Participant's form of benefit computed using an interest rate of five percent (5%) and the applicable mortality table under Code Section 417(e)(3). The applicable mortality table will be a mortality table, modified as appropriate by the Secretary, based on the mortality table specified for the Plan Year under subparagraph (A) of section 430(h)(3) (without regard to subparagraph (C) or (D) of such section).
    - ii. For the purposes of applying the benefit limitations of Code Section 415 to a retirement benefit that is payable in a form that is subject to 417(e)(3), such benefit shall be adjusted to an actuarially equivalent straight life annuity at the same Annuity Starting Date using the applicable mortality table and applicable interest rate as described below. The applicable mortality table will be a mortality table, modified as appropriate by the

Secretary, based on the mortality table specified for the Plan Year under subparagraph (A) of section 430(h)(3) (without regard to subparagraph (C) or (D) of such section). The applicable interest rate means the adjusted first, second and third segment rates for December prior to the Plan Year containing the Annuity Starting Date. The adjusted first, second and third segment rates are the first, second and third segment rates determined under Code Section 430(h)(2)(C) as if the Code Section 430(h)(2)(D) definition of "corporate bond yield curve" was applied by substituting the average yields for the month, as described in Code Section 430(h)(2)(D)(ii) for the average yields for the twenty-four (24) month period, as described in such Section.

C. Calculating Minimum Lump Sum Values:

1. The determination of the minimum lump sum value for Annuity Starting Dates before January 1, 2025 shall be based upon the Plan in effect at the time of the Annuity Starting Date.
2. The determination of the minimum lump sum value for Annuity Starting Dates on or after January 1, 2025 shall be based upon the applicable mortality table and applicable interest rate as described below. The applicable mortality table will be a mortality table, modified as appropriate by the Secretary, based on the mortality table specified for the Plan Year under subparagraph (A) of section 430(h)(3) (without regard to subparagraph (C) or (D) of such section). The applicable interest rate means the adjusted first, second and third segment rates for December prior to the Plan Year containing the Annuity Starting Date. The adjusted first, second and third segment rates are the first, second and third segment rates determined under Code Section 430(h)(2)(C) as if the Code Section 430(h)(2)(D) definition of "corporate bond yield curve" was applied by substituting the average yields for the month, as described in Code Section 430(h)(2)(D)(ii) for the average yields for the twenty-four (24) month period, as described in such Section.

***Section 1.03 - Association***

The term "Association" shall mean the General Contractors Association of Louisville, Inc., and the Mason Contractors Association of Louisville, Inc.

***Section 1.04 - Beneficiary***

The term "Beneficiary" shall mean a person designated by a Participant or by the terms of the Pension Plan created pursuant to the Trust Agreement who is or may become entitled to a benefit.

***Section 1.05 – Break-in-Service***

The term "Break-in-Service" shall mean a Plan Year subsequent to the Employee's employment commencement date during which no Employer Contributions are made or required to be made to the Pension Fund on behalf of the Employee. A one (1) year Break-in- Service shall occur as of the last day of the Plan Year during which the Employee does not receive at least one (1) hour of Employer Contributions to the Pension Fund on his behalf.

It shall not be considered a Break-in-Service if the Employee is unable to maintain Service because

of an accident, illness, or service in the Armed Forces; provided that the Plan Administrator is notified of such accident, illness, or service in a form satisfactory to the Trustees. Members receiving Total and Permanent Disability Benefits under the Pension Plan cannot suffer a Break-in-Service. A Participant shall not suffer a Break-in-Service for any period of Contiguous Non-Covered Service, as hereinafter defined, on and after January 1, 1976.

For Plan Years beginning after December 31, 1984, solely for purposes of determining whether a Break-in-Service for participation and vesting purposes has occurred in a computation period, an individual who is absent from work for maternity or paternity reasons shall receive credit for the Hours of Service which would otherwise have been credited to such individual but for such absence, or in any case in which such hours cannot be determined, eight (8) Hours of Service per day of such absence. For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence: (1) by reason of the pregnancy of the individual, (2) by reason of a birth of a child of the individual, (3) by reason of the placement of a child with the individuals in connection with the adoption of such child by such individuals, or (4) for purposes of caring for such child for a period beginning immediately following such birth or placement. The Hours of Service credited under this paragraph shall be credited: (1) in the computation period in which the absence begins if the crediting is necessary to prevent a Break-in-Service in that period, or (2) in all other cases, in the following computation period. No more than five hundred one (501) hours are required to be credited to a Participant pursuant to this paragraph.

#### ***Section 1.06 - Collective Bargaining Agreement***

The term “*Collective Bargaining Agreement*” means any Collective Bargaining Agreement existing between an Employer and the Union which provides for contributions into this Trust Fund, as well as any extension or renewal thereof, any new Collective Bargaining Agreement executed in the future which provides for the payment of contributions into this Trust Fund, as well as any extension or renewal thereof.

#### ***Section 1.07 - Contiguous Non-Covered Service***

The term “*Contiguous Non-Covered Service*” shall mean Service with an Employer or Employers maintaining this Plan, which is not Covered Employment and which either immediately precedes or immediately follows Covered Employment with no intervening quit, discharge or retirement. Periods of Contiguous Non-Covered Service shall not constitute credited Service for pension credit but shall be considered solely for the purpose of determining the length of service for vesting under the Plan for all employment on and after January 1, 1976.

#### ***Section 1.08 - Covered Employment***

The term “*Covered Employment*” shall mean employment performed by an Employee for which Employer Contributions are required to be made to the Trust Fund on the Employee's behalf.

#### ***Section 1.09 - Early Retirement Age***

The term “*Early Retirement Age*” shall mean the later of age sixty-two (62) (age fifty-nine (59) for participants entering the Plan prior to January 1, 2009) or the age at which a Participant is credited with ten (10) Years of Service (including at least one (1) year of Future Service within the jurisdiction of the Fund),



if later.

### ***Section 1.10 - Eligibility Computation Period***

The term “*Eligibility Computation Period*” shall mean the period beginning on the Employee’s employment commencement date and ending on the last day of the Plan Year preceding the date the Employee becomes a Participant in the Plan.

### ***Section 1.11 - Employee***

The term “*Employee*” shall mean:

- A. all persons on whose account an Employer is, or has been required, to make contributions into the Pension Fund or is eligible for benefits as provided by the Pension Plan, including Business Representatives of the Union and any full-time employee of the Union while employed in a paid capacity by the Union or affiliate thereof.
- B. any person who was previously covered by the Pension Fund as a member of a bargaining unit, who is currently employed by an Employer as a Full-time employee, and for whom the Employer is obligated to make contributions to the Fund pursuant to a written agreement in a form and manner approved by the Trustees. These persons are considered “alumni.”
- C. any full-time non-bargaining unit employee of an Employer who executes a written agreement, in a form and manner approved by the Trustees, requiring contributions to the Pension Fund on behalf of said employees.
- D. for purposes of paragraphs (B) and (C), the term “full-time” means the employee is paid for 25 hours or more in a work week. Contributions for non-bargaining unit employees described in paragraph (B) and (C) will be made by the Employer on the basis of 40 hours per week at the highest contribution rate required for bargaining unit Employees, unless specified otherwise in the written agreement between the Employer and the Trustees.

### ***Section 1.12 - Employer***

The term “*Employer*” shall mean an Employer who is a party to this Agreement, through membership in or by being represented in collective bargaining by the Association, or otherwise, and who is bound by a Collective Bargaining Agreement with the Union providing for the establishment of a Pension Plan and Trust Fund and for the payment of contributions to such Fund.

The term “*Employer*” shall in addition mean an Employer of labor in the Building and Construction Industry who employs Employees as defined in Section 1.11, who has in force or who executes an Agreement with the Union, providing for such Employees participation in and his adoption of the Trust Agreement and Pension Plan, or who, with the consent of the Trustees, executes a form furnished by the Trustees undertaking all of the duties of an Employer participating in this Trust.

It is understood and agreed that any Employer becoming an Employer under this Agreement who is

not a member of the Association agrees to abide by all provisions, rules, and regulations set forth in any Agreement involving the Trust Estate by and between the Association and the Union whose members shall be employed by the Employer and recognizes and agrees that the Association is and shall be the Employer's representatives in connection with the Trust Estate.

### ***Section 1.13 - Employer Contributions***

The term "*Employer Contributions*" shall mean payments required to be made by Employers to the Trust Fund in accordance with applicable Collective Bargaining Agreements, or such other agreements requiring the making of such payments.

Effective February 1, 2012, twenty-five percent (25%) of the Employer Contribution rate will be "non-credited contributions."

Effective June 1, 2013, all Employer Contribution rate increases under the Rehabilitation Plan adopted May 24, 2013, as amended, will be "non-credited contributions."

The term "non-credited contributions" means Participants will not receive credit for this contribution amount when the calculation of the Plan benefit payable is performed.

### ***Section 1.14 - ERISA***

The term "*ERISA*" shall mean the Employee Retirement Income Security Act of 1974, including any amendments as may from time to time be made, and any regulations promulgated pursuant to the provisions of said Act.

### ***Section 1.15 - Fiduciary***

The term "*Fiduciary*" shall mean any person, firm or corporation having power of control, management or disposition over the funds or property of the Trust Fund.

### ***Section 1.16 - Fiscal Year***

The term "*Fiscal Year*" shall mean the twelve (12) month period beginning January 1 and ending the following December 31.

### ***Section 1.17 - Forfeited Service***

The term "*Forfeited Service*" shall mean the number of years of Service otherwise credited to an Employee that became forfeited. All Past Service, if any, and Future Service credited to a Non- Vested Employee shall be forfeited at the time such Employee suffers the greater of five (5) consecutive one (1) year Breaks-in-Service or the consecutive one (1) year Breaks in Service equal to or greater than his prior years of credited Service. A Vested Employee cannot forfeit Service under this Plan. A Participant receiving Total and Permanent Disability Benefits under this Plan cannot forfeit Service.

Once a Non-Vested Employee suffers Forfeited Service under this Plan and subsequently returns to Covered Employment, as herein defined, and wishes to participate in this Pension Plan, he shall be treated as if he were a new Employee first beginning to work for an Employer and must satisfy the requirements of Section 1.23. An Employee shall not suffer Forfeited Service for any period of

Contiguous Non-Covered Service, as hereinafter defined, on and after January 1, 1976, with an Employer or Employers maintaining this Plan.

***Section 1.18 - Highly Compensated Employee***

The term “Highly Compensated Employee” shall mean, effective for years beginning after December 31, 1996, any Employee who: (A) was a five-percent (5%) owner at any time during the year or the preceding year, or (B) for the preceding year had Compensation from the Employer in excess of eighty thousand dollars (\$80,000) and was in the top paid group for the preceding year. The eighty thousand dollars (\$80,000) amount is adjusted at the same time and in the same manner as under Section 415(d) of the Internal Revenue Code of 1986, as amended, except that the base period is the calendar quarter ending September 30, 1996.

For this purpose, the applicable year of the Plan for which a determination is being made is called a determination year and the preceding 12-month period is called a look-back year. The determination of status as a Highly Compensated former Employee is based on the rules applicable to determining Highly Compensated Employee status as in effect for that determination year, in accordance with Section 1.414(q)-1T, A-4 of the Temporary Income Tax Regulations and IRS Notice 97-45.

For purposes of this Section, the term “Compensation” means compensation within the meaning of Section 415(c)(3) of the Internal Revenue Code. The determination will be made without regard to Sections 125, 403(e)(3), 402(h), 403(b) of the Internal Revenue Code for Plan Years beginning on or after December 31, 2000.

***Section 1.19 - Hour of Service***

The term “*Hour of Service*” shall mean each hour for which a contribution to the Trust Fund is made or required to be made by a contributing Employer on behalf of an Employee.

***Section 1.20 - Named Fiduciaries***

The term “*Named Fiduciaries*” shall mean the persons, firms or corporations specifically so designated in the Trust Agreement and such persons, firms or corporations who may be so specifically designated by resolutions of the Trustees duly adopted.

***Section 1.21 - Non-Vested Employee***

The term “*Non-Vested Employee*” shall mean a Participant who has less than three (3) Years of Service.

***Section 1.22 - Normal Retirement Age***

The term “*Normal Retirement Age*” shall mean the Participant’s sixty-fifth (65th) birthday or the age at which he is credited with five (5) Years of Service if later (age sixty-one (61) or the age at which he is credited with 7 Years of Service for participants entering the plan prior to January 1, 2009). For the purpose of this definition, the five (5) Years of Service must include at least one (1) year of Future Service within the jurisdiction of the Fund. Notwithstanding the vesting schedule in Section 7.03, an Employee’s right to his or her Normal Retirement Benefit must be nonforfeitable upon the attainment of Normal Retirement Age.

***Section 1.23 - Participant***

The term “*Participant*” shall mean an Employee or former Employee of an Employer who is or may become eligible to receive a benefit from this Pension Plan. An Employee included under the provisions of the prior Plan as of the effective date of this Restated Plan shall be considered a Participant in this Restated Plan as of the date on which contributions were first made to the Trust Fund on his behalf, provided that contributions were made on or after January 1, 2025, and provided further, that any period preceding a Break-in-Service as determined under the provisions of the prior Plan shall be disregarded. An Employee who commences his employment on and after January 1, 2025, shall become a Participant as of the first day of the Plan Year following the date on which contributions were first made to the Trust Fund on his behalf. Once an Employee becomes a Participant, he shall remain a Participant until the earlier of his death or until he suffers Forfeited Service. If an individual ceases to be a Participant and later wishes to participate in this Plan, he must thereafter meet the requirements of this Section as if he were a new Employee first beginning to work for an Employer.

***Section 1.24 - Pension Plan***

The term “*Pension Plan*” or “*Plan*” shall mean the program of benefits set forth in this instrument, including any amendments or modifications thereof.

***Section 1.25 - Permanent and Total Disability***

The term “*Permanent and Total Disability*” shall mean a physical or mental condition of an Employee which would prevent such Employee from engaging in any regular occupation or employment and which will be permanent and continuous during the remainder of his life. An Employee shall be deemed to be permanently and totally disabled only if a determination has been made by the Social Security Administration of Medical Disability in connection with Old Age and Survivor Insurance Coverage.

***Section 1.26 - Plan Year***

The term “*Plan Year*” shall mean the twelve (12) month period beginning January 1 and ending the following December 31.

***Section 1.27 - Restatement Date***

The term “*Restatement Date*” shall mean May 22, 2025, the date on which the provisions of this amended and restated Pension Plan become effective and shall cover all instances in which a Participant shall retire on or after that date.

***Section 1.28 - Retired Employee***

The term “*Retired Employee*” shall mean a Participant who has qualified for and is receiving a Retirement Benefit as defined in Section 1.29.

***Section 1.29 - Retirement Benefit***

The term “*Retirement Benefit*” shall mean the Normal Retirement Benefit, Early Retirement Benefit, Joint and Survivor Benefit, or Deferred Vested Benefit.

### ***Section 1.30 - Spouse or Surviving Spouse***

The term “*Spouse or Surviving Spouse*” shall mean the Participant’s legal spouse ~~to whom he is married~~ both at the time his Retirement Benefits commence and during the complete twelve (12) month period immediately preceding the Participant’s date of death or at the time a Death Benefit is paid. A former spouse must be treated as the spouse or surviving spouse to the extent provided under a Qualified Domestic Relations Order as described in Section 414(p) of the Internal Revenue Code. A Spouse includes a same-sex spouse where the Participant and Spouse were legally married in a state (or any foreign jurisdiction having the legal authority to sanction marriages) that recognizes same-sex marriages.

### ***Section 1.31 - Straight Life Annuity***

The term “Straight Life Annuity” shall mean an Annuity payable in equal installments for the life of the Participant that terminates upon the Participant’s death.

### ***Section 1.32 - Trust Agreement***

The term “Trust Agreement” shall mean the Agreement and Declaration of Trust establishing the Bricklayers Union No. 1 of Kentucky Pension Trust Fund and that instrument as from time to time amended.

### ***Section 1.33 - Trust Fund***

The term “Trust Fund” shall mean the Bricklayers Union No. 1 of Kentucky Pension Trust Fund established under the Trust Agreement.

### ***Section 1.34 - Trustees***

The term “Trustees” shall mean the Board of Trustees established under the Trust Agreement.

### ***Section 1.35 - Union***

The term “Union” shall mean the Bricklayers and Allied Craftworkers Local 4 IN/KY or, as may be applicable, the Louisville Chapter of the Bricklayers and Allied Craftworkers Local 4 IN/KY, who have in effect with the Association or with other Employers, Pension Agreements, or Collective Bargaining Agreements providing for the establishment of the Pension Plan and Trust Fund, and for the payment of contributions to such Fund.

### ***Section 1.36 - Vested Employee***

The term “Vested Employee” shall mean a Participant who has at least three (3) Years of Service.

### ***Section 1.37 - Years of Credited Service or Service***

The terms “Years of Credited Service” or “Service” shall mean the number of years for which a Participant receives credit for employment with an Employer. Service shall be equal to the number of years of Past Service plus the number of years of Future Service as follows:

#### **A. Service prior to January 1, 1976**

Subject to the break in continuous service provision in effect prior to January 1, 1976, Service shall be granted to a Participant as follows:

##### **1. Past Service**

- i. With reference to service prior to January 1, 1967, the term “*Year of Service*” shall mean any twelve (12) month period commencing on January 1 and ending on December 31 during which an Employee was under the jurisdiction(s) of the Bricklayers Union No. 1 of Kentucky, No. 14 of New Albany, Indiana; No. 12 of Richmond, Kentucky, and/or No. 14 of Frankfort, Kentucky, and for which period he has not received, and is not receiving benefits from any state, county, municipal, federal civil service, or other private Employer Retirement Plan.
- ii. With reference to service prior to January 1, 1976, the term “*Year of Service*” shall mean any twelve (12) month period commencing on January 1 and ending on December 31, during which an Employee was under the jurisdiction of the Bricklayers Local Union No. 17 of Lexington, Kentucky and for which period he has not received, and is not receiving benefits from any state, county, municipal, federal civil service, or other private Employer Retirement Plan.
- iii. Except if any Employee is receiving Retirement Benefits from a state, county, municipal, federal civil service, or other private Employer Retirement Plan, and he has worked for an Employer as defined herein, he shall receive Years of Service only for those periods he has worked for an Employer as defined above.

2. **Future Service**

After January 1, 1967 and prior to January 1, 1976, a Participant shall earn one (1) Year of Service for each twelve (12) month period from January 1 through the following December 31, during which the Fund received contributions on his behalf.

B. **Service on or after January 1, 1976**

Subject to the Forfeited Service provision in effect on and after January 1, 1976, Service shall be granted to a Participant as follows:

1. **Future Service**

On and after January 1, 1976, one (1) year of Future Service shall be granted to a Participant for each Plan Year he works for an Employer at least one (1) hour for which Employer Contributions are made or required to be made to the Trust Fund on his behalf. Provided further, a Participant shall receive credit for one year of Future Service for employment with an Employer during his Eligibility Computation Period.

Service shall include any period of Contiguous Non-Covered Service, as herein defined, on and after the 1994 Restatement Date with an Employer or Employers maintaining this Plan.

Notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credits with

respect to qualified military service will be provided in accordance with Section 414(u) of the Internal Revenue Code and the Uniformed Services Employment and Re-Employment Rights Act (USERRA). The Plan shall assume funding liability for all periods of military service required to be credited under this Section of the Plan. For military service on or after January 1, 2007, the survivors of a Participant who dies while performing qualified military service (as defined in Code Section 414(u)), shall receive any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan had the Participant resumed and then terminated employment on account of death.

## ARTICLE II – ELIGIBILITY AND CLASSES OF BENEFITS

### ***Section 2.01 - Classes of Benefits***

There shall be the following Classes of Benefits payable under this Plan:

1. Normal Retirement Benefits
2. Early Retirement Benefits
3. Total and Permanent Disability Benefits
4. Deferred Vested Benefits
5. Death Benefits

No benefits of any Class shall be payable or paid under the prior restated Plan prior to January 1, 1976. Notwithstanding any other provision of the Plan, no more than one (1) Class of Benefit shall be payable at the same time.

To be entitled to any Class of Benefits under the Pension Fund, an Employee must have been employed under the jurisdiction of the Union, on or after January 1, 1967.

### ***Section 2.02 – Eligibility for Participation in the Plan***

#### **A. Provisions for Entry into Participation**

The Employee will participate on the date an Employer is required to make a contribution on his behalf.

#### **B. Eligibility Computation Periods**

For purposes of determining Years of Service and Breaks-in-Service for purposes of eligibility, the computation period is the Plan Year.

#### **C. Use of Computation Periods**

Years of Service and Breaks-in-Service will be measured on the same eligibility computation period.

#### **D. All Years of Service Counted Toward Eligibility Except after Certain Breaks-in-Service**

All Years of Service are counted toward eligibility except Forfeited Service.

#### **E. Participation upon Return to Eligible Class**

In the event a Participant is no longer a member of an eligible class of Employees and becomes ineligible to participate but has not incurred a Break-in-Service, such Employee will participate immediately upon returning to an eligible class of Employees. If such Participant incurs a Break-in-Service, eligibility will be determined under the Break-in- Service rules of the Plan.

In the event an Employee who is not a member of an eligible class of Employees



becomes a member of an eligible class, such Employee will participate immediately if such Employee has satisfied the minimum age and service requirements and would have otherwise previously become a Participant.

**F. Maximum Age Restrictions Not Permitted**

There are no maximum age restrictions of any kind in this Plan.

**G. Accrual Limitations Based Upon Age Not Permitted**

The Plan does not limit accruals based upon age.

**H. Integration with Social Security**

This Plan is not integrated with Social Security.

***Section 2.03 – In-Service Distributions***

Any provision of the Plan notwithstanding, no distribution shall be made to a Participant who is employed in any capacity by a contributing Employer at the time of distribution. In the event the Board learns that a Participant did not experience a bona-fide separation of employment or returned to work within 30 days of his or her retirement, all benefit payments will be terminated. Any benefits received will be treated as an overpayment and recovered, with interest, by any means the Board deems reasonable.

## **ARTICLE III - NORMAL RETIREMENT BENEFITS**

### ***Section 3.01 - Eligibility for Normal Retirement Benefits***

A Participant who has completely retired from employment with all Employers shall be eligible for a monthly Normal Retirement Benefit provided:

- A. That the Participant shall have reached his Normal Retirement Age.
- B. That the Participant has elected and applied for a Normal Retirement Benefit on a form prescribed by the Trustees, and the Trustees shall have approved the application.

### ***Section 3.02 - Amount of Normal Retirement Benefits***

The Normal Retirement Benefit shall be a monthly benefit equal to the sum of the Participant's Past Service Benefit, if any, and his Future Service Benefit, as follows:

#### **A. Past Service Benefit**

The Past Service Benefit for a Participant under the jurisdiction of Locals No. 1 of Louisville, No. 14 of New Albany, No. 12 of Richmond, and No. 14 of Frankfort shall be equal to \$2.00 times the number of Years of Service with which he is credited for the period January 1, 1957 to January 1, 1967. The Past Service Benefit for a Participant under the jurisdiction of Local No. 17 of Lexington shall be equal to \$2.00 times the number of Years of Service with which he is credited for the period January 1, 1966 to January 1, 1976. The maximum amount of Past Service Benefit hereunder shall be \$20.00. There shall be no Past Service Benefit if the Participant has suffered a break in continuous service under the prior provisions of the Plan or if he has suffered forfeited service under the provisions of the 1994 Restated Plan.

#### **B. Future Service Benefit**

As of January 1, 1994, the Future Service Benefit was equal to 2.75% of the Employer Contributions made or required to be made to the Fund on the Participant's behalf after January 1, 1967; as of July 1, 1994, the 2.75% changed to 3.00%; as of October 1, 1998, the 3.00% changed to 3.40%; as of July 1, 1999, the 3.40% changed to 3.50%.

For Employer Contributions made or required to be made from January 1, 2003 to December 31, 2008, the Future Service Benefit shall be equal to 2.00% of such contributions.

For Employer Contributions made or required to be made from January 1, 2009 to January 31, 2012, the Future Service Benefit shall be equal to 1.00% of such contributions.

For Employer Contributions made or required to be made on or after February 1, 2012, the Future Service Benefit shall be equal to 0.50% of such contributions.

Effective February 1, 2012, Participants will not receive credit for any non-credited Employer Contributions when the calculation of the Plan benefit payable is performed.

For purposes of this Subsection, Employer Contributions shall not include any contributions for which the associated Years of Service became Forfeited Service.

Vested Employees who terminate employment prior to the retiring date shall have their Normal Retirement Benefit calculated on the basis of this Section as it exists at the time of termination.

***Section 3.03 - When Paid***

A Participant who meets the eligibility requirements for a Normal Retirement Benefit as set forth in Section 3.01 shall have a pension commencement date on the first day of the month coinciding with or following the later of:

- A. The date on which the Participant attains Normal Retirement Age; and
- B. The date specified in the Participant's application to the Trustees for a Normal Retirement Benefit; and
- C. The date the Trustees received the Participant's application for a Normal Retirement Benefit.

Benefits shall continue monthly thereafter for the lifetime of the Participant and/or the Participant's Spouse, depending on the form of benefit elected, and subject to the provisions of Sections 9.10 and 9.11.

## **ARTICLE IV - EARLY RETIREMENT BENEFITS**

### ***Section 4.01 - Eligibility for Early Retirement Benefits***

A Participant who has completely retired from employment with all Employers shall be eligible for a monthly Early Retirement Benefit provided:

- A. That the Participant has attained Early Retirement Age.
- B. That the Participant has elected and applied for an Early Retirement Benefit on a form prescribed by the Trustees, and the Trustees shall have approved the application.

### ***Section 4.02 - Computation of Early Retirement Benefits***

For retirements before January 1, 2014, the monthly Early Retirement Benefit shall be computed in the same manner as the monthly Normal Retirement Benefit as described in Section 3.02, reduced by 1/2% per month for each month that the Early Retirement date precedes Normal Retirement Age.

Effective for all retirements on or after January 1, 2014, early retirement benefits commencing before Normal Retirement Age will be reduced using actuarially equivalent factors to reflect the number of years prior to Normal Retirement Age that benefits commence. Participants eligible for retirement on January 1, 2014 are grandfathered with early retirement reductions of 6% per year prior to Normal Retirement Age for benefits accrued as of January 1 2014, with all future accrued benefits subject to actuarial equivalent reductions.

### ***Section 4.03 - When Paid***

A Participant who meets the eligibility requirements for an Early Retirement Benefit as set forth in Section 4.01 shall have a pension commencement date on the first day of the month coinciding with or following the later of:

- A. The date on which the Participant attains Early Retirement Age; and
- B. The date specified in the Participant's application to the Trustees for Early Retirement; and
- C. The date the Trustees received the Participant's application for Early Retirement Benefits.

Benefits shall continue monthly thereafter for the lifetime of the Participant and/or the Participant's Spouse, depending on the form of benefit elected, and subject to the provisions of Sections 9.10 and 9.11.

### ***Section 4.04 - Switching from Early to Disability Benefits***

A Participant who has been receiving an Early Retirement Benefit and notifies the Fund within three (3)

years of the benefit commencement date that he has been awarded a Social Security Permanent and Total Disability Benefit as established by the Federal Social Security Act, may apply to have his Early Retirement Benefit switched to a Disability Benefit.

## **ARTICLE V - JOINT AND SURVIVOR ANNUITY REQUIREMENTS, ALTERNATIVE SETTLEMENT OPTIONS, AND DISTRIBUTION PROVISIONS**

### ***Section 5.01 - Qualified Joint and Survivor Annuity and Qualified Optional Survivor Annuity***

Unless an optional form of benefit is selected pursuant to a Qualified Election within the one hundred eighty (180) day period ending on the Annuity Starting Date, a married Participant's vested accrued benefit will be paid in the form of a Qualified Joint and Survivor Annuity and an unmarried Participant's vested accrued benefit will be paid in the form of a Straight Life Annuity as defined in Section 1.31. The Participant may elect to have such annuity distributed upon attainment of the Earliest Retirement Age under the Plan. The Straight Life Annuity shall be considered the normal form of benefit.

If the Participant and Spouse have properly waived the Qualified Joint and Survivor Annuity, the Participant may elect to receive a seventy-five percent (75%) Qualified Optional Survivor Annuity. This is an annuity payable for the life of the Participant with a seventy-five percent (75%) survivor annuity for the life of the Participant's Spouse that is the actuarial equivalent of the Straight Life Annuity for the Participant.

### ***Section 5.02 - Qualified Pre-Retirement Survivor Annuity***

- A. Unless an optional form of benefit has been selected within the Election Period pursuant to a Qualified Election, if a Participant dies after the Earliest Retirement Age, the Participant's Surviving Spouse, if any, will receive the same benefit that would be payable if the Participant had retired with an immediate Qualified Joint and Survivor Annuity on the day before the Participant's date of death.

The Surviving Spouse may elect to commence payment under such annuity within a reasonable period after the Participant's death. The actuarial value of benefits which commence later than the date on which payments would have been made to the Surviving Spouse under a Qualified Joint and Survivor Annuity in accordance with this provision shall be adjusted to reflect the delayed payment.

- B. Unless an optional form of benefit is selected within the Election Period pursuant to a Qualified Election, if a Participant dies on or before the Earliest Retirement Age, the Participant's Surviving Spouse (if any) will receive the same benefit that would be payable if the Participant had:
  - 1. separated from service on the date of death (or date of separation from service, if earlier),

2. survived to the Earliest Retirement Age,
  3. retired with an immediate Qualified Joint and Survivor Annuity at the Earliest Retirement Age; and
  4. died on the day after the Earliest Retirement Age.
- C. For purposes of Subsection B, and subject to the provisions of Section 4.01, a Surviving Spouse will begin to receive payments at the Earliest Retirement Age. Benefits commencing after the Earliest Retirement Age will be the actuarial equivalent of the benefit to which the Surviving Spouse would have been entitled if benefits had commenced at the Earliest Retirement Age under an immediate Qualified Joint and Survivor Annuity in accordance with Subsection B.

### ***Section 5.03 – Definitions***

- A. **Election Period** - The period which begins on the first day of the Plan Year in which the Participant attains age thirty-five (35) and ends on the date of the Participant's death, If a Participant separates from service prior to the first day of the Plan Year in which age thirty-five (35) is attained, with respect to benefits accrued prior to separation, the Election Period shall begin on the date of separation.
- B. **Pre-Age 35 Waiver:** A Participant who will not yet attain age thirty-five (35) as of any end of the current Plan Year may make a special Qualified Election to waive the Qualified Pre-Retirement Survivor Annuity for the period beginning on the date of such election and ending on the first day of the Plan Year in which the Participant will attain age thirty-five (35). Such election will not be valid unless the Participant receives a written explanation of the Qualified Pre-Retirement Survivor Annuity in such terms as are comparable to the explanation required under Section 5.05 hereof. Qualified Pre-Retirement Survivor Annuity coverage will be automatically reinstated as of the first day of the Plan Year in which the Participant attains age thirty-five (35). Any new waiver made on or after such date shall be subject to the full requirements of this Article.
- C. **Earliest Retirement Age:**  
The earliest date on which, under the Plan, the Participant could elect to receive retirement benefits.
- D. **Qualified Election:**  
A waiver of a Qualified Joint and Survivor Annuity or a Qualified Pre-Retirement Survivor Annuity. Any waiver of a Qualified Joint and Survivor Annuity or a Qualified Pre-Retirement Survivor Annuity shall not be effective unless:
1. the Participant's Spouse consents, in writing, to the election;
  2. the election designates a specific alternate Beneficiary as allowed in Section

8.07, including any class of Beneficiaries or any contingent Beneficiaries, which may not be changed without spousal consent (or the Spouse expressly permits designations by the Participant without any further spousal consent);

3. the Spouse's consent acknowledges the effect of the election; and
4. the Spouse's consent is witnessed by a Plan representative or Notary Public.

Additionally, a Participant's waiver of the Qualified Joint and Survivor Annuity will not be effective unless the election designates a form of benefit payment which may not be changed without spousal consent (or the Spouse expressly permits designations by the Participant without any further spousal consent). If it is established to the satisfaction of a Plan representative that such written consent may not be obtained because there is no Spouse or the Spouse cannot be located, a waiver will be deemed a Qualified Election.

Any consent by a Spouse obtained under this provision (or establishment that the consent of a Spouse may not be obtained) shall be effective only with respect to such Spouse. A consent that permits designations by the Participant without any requirement of further consent by such Spouse must acknowledge that the Spouse has the right to limit consent to a specific Beneficiary, and a specific form of benefit where applicable, and that the Spouse voluntarily elects to relinquish either or both of such rights. A revocation of a prior waiver may be made by a Participant without the consent of the Spouse at any time prior to the commencement of benefits. The number of revocations shall not be limited. No consent obtained under this provision shall be valid unless the Participant has received notice as provided in Section 5.04 below.

**E. Qualified Joint and Survivor Annuity:**

An immediate annuity for the life of the Participant with a Survivor Annuity for the life of the Spouse which is not less than fifty percent (50%) and not more than one hundred percent (100%) of the amount of the annuity which is payable during the joint lives of the Participant and the Spouse and which is the actuarial equivalent of the normal form of benefit, or, if greater, any optional form of benefit. The percentage of the Survivor Annuity under the Plan shall be fifty percent (50%).

**F. Spouse or Surviving Spouse:**

The Spouse or Surviving Spouse of the Participant, provided that a former Spouse will be treated as the Spouse or Surviving Spouse and a current Spouse will not be treated as the Spouse or Surviving Spouse to the extent provided under a Qualified Domestic Relations Order, as described in Section 414(p) of the Internal Revenue Code.

**G. Annuity Starting Date:**

The first day of the first period for which an amount is paid as an annuity or any other form.



If benefit payments in any form are suspended pursuant to Sections 9.10 and 9.11 for an Employee who continues in service without a separation and who does not receive a benefit payment, the recommencement of benefit payments shall be treated as a new Annuity Starting Date.

**H. Vested accrued benefit:**

The value of the Participant's vested accrued benefit derived from Employer contributions. The provisions of this Article shall apply to a Participant who is vested in amounts attributable to Employer contributions at the time of death or distribution.

***Section 5.04 - Notice Requirements***

A. In the case of a Qualified Joint and Survivor Annuity, the Plan Administrator shall provide each Participant no less than thirty (30) days and no more than one hundred-eighty (180) days prior to the Annuity Starting Date a written explanation of:

1. the terms and conditions of a 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 form of benefit;
3. the rights of a Participant's Spouse;
4. the right to make, and the effect of, a revocation of a previous election to waive the Qualified Joint and Survivor Annuity, and
5. the relative values of the various optional forms of benefit under the Plan.

B. The Annuity Starting Date for a distribution in a form other than a Qualified Joint and Survivor Annuity, may be less than thirty (30) days after receipt of the written explanation described in Subsection A above, provided:

1. the Participant has been provided with information that clearly indicates that the Participant has at least thirty (30) days to consider whether to waive the Qualified Joint and Survivor Annuity and elect (with spousal consent) to a form of distribution other than a Qualified Joint and Survivor Annuity;
2. the Participant is permitted to revoke any affirmative distribution election at least until the Annuity Starting Date or, if later, at any time prior to the expiration of the seven (7) day period that begins the day after the explanation of the Qualified Joint and Survivor Annuity is provided to the Participant; and
3. the Annuity Starting Date is a date after the date that the written explanation was provided to the Participant.

- C. In the case of a Qualified Pre-Retirement Survivor Annuity, the Plan Administrator shall provide each Participant within the applicable period for such Participant, a written explanation of the Qualified Pre-Retirement Survivor Annuity in such terms and in such a manner as would be comparable to the explanation provided for meeting the requirements of Subsection A above applicable to a Qualified Joint and Survivor Annuity.

The applicable period for a Participant is whichever of the following periods ends last:

1. the period beginning with the first day of the Plan Year in which the Participant attains age thirty-two (32) and ending with the close of the Plan Year preceding the Plan Year in which the Participant attains age thirty-five (35);
2. a reasonable period ending after the individual becomes a Participant;
3. a reasonable period ending after this Article first applies to the Participant. Notwithstanding the foregoing, notice must be provided within a reasonable period ending after separation of service in case of a Participant who separates from service before attaining age thirty-five (35).

For purposes of the preceding paragraph, a reasonable period ending after the enumerated events described in (2) and (3) is the end of the two-year period beginning one (1) year prior to the date the applicable event occurs and ending one (1) year after that date. In the case of a Participant who separates from service before the Plan Year in which age thirty-five (35) is attained, notice shall be provided within the two-year period beginning one year prior to separation and ending one (1) year after separation. If such a Participant thereafter returns to employment with the Employer, the applicable period for such Participant shall be redetermined.

#### ***Section 5.05 - Commencement of Benefits***

Unless the Participant and the Participant's Spouse, if any, elect otherwise, distribution of benefits will begin no later than the sixtieth (60th) day after the latest of the close of the Plan Year in which:

- A. the Participant attains Normal Retirement Age; and
- B. occurs the tenth (10th) anniversary of the year in which the Participant commenced participation in the Plan; and
- C. the Participant terminates service with the Employer.

Notwithstanding the foregoing, the failure of a Participant and Spouse to consent to a distribution while a benefit is immediately distributable shall be deemed to be an election to defer commencement of payment of any benefit sufficient to satisfy this Section.

### ***Section 5.06 – Optional Forms of Benefit***

A Participant eligible for the Normal or Early Retirement Benefits who rejects or is not eligible for a Joint and Survivor Benefit may elect, in writing, a Five Year Certain and Life Benefit. This optional form of benefit is Actuarial Equivalent to the Straight Life Annuity as defined in Section 1.31. It provides a monthly benefit for the lifetime of the Participant. If the Participant's death occurs before the end of a period of five (5) years, the balance of the annuity payments for the certain period shall be paid to his Spouse, if any, or if none, to his Beneficiary, until the total number of benefits paid to the Participant and to his Spouse or Beneficiary equals sixty (60). If the Participant's death occurs after the end of the five (5) year period, no additional benefits will be paid to the Spouse, if any, or if none, to the Beneficiary. An election of the Five Year Certain and Life Benefit must be made by the Participant prior to the commencement of Benefits and cannot be changed after such date.

### ***Section 5.07 - Section 415 Limitations***

Effective for limitation years beginning on or after July 1, 2007, the Maximum Benefit Limitation of Code Section 415(d) and Small Benefit Exception of Code Section 415(b)(4) are incorporated herein by reference. The defined benefit dollar limit is \$160,000 per Code Section 415(b)(1)(A), and as may be adjusted thereunder. The age-adjusted dollar limit under Code Section 415(b)(2)(C) and (D) will be administered according to IRS Regulation 1.415(b)-1(a)(4) and the payment of benefits in other than a straight life annuity shall be adjusted pursuant to IRS Regulation 1.415(b)-1(c).

For purposes of this Section, the Plan adopts the safe harbor definition of "Compensation" stated in IRS Regulation 1.415(c)-2(d)(2). Compensation paid or made available during such limitation year shall include Compensation the Participant's earned income paid by the later of: (A) two and one-half (2½) months after severance from employment or (B) the end of the limitation year that includes the date of severance from employment.

The otherwise permissible annual benefits or benefit accruals for any Participant under this Plan may be further reduced to the extent necessary to prevent disqualification of the Plan. The above limitations are intended to comply with the provisions of Section 415 of the Internal Revenue Code, as amended, so that the maximum benefits provided by Plans would not exceed that maximum amounts allowed under Section 415 of the Internal Revenue Code and regulations thereunder. If there is any discrepancy between the provisions of this Section and the provisions of Section 415 of the Internal Revenue Code and regulations thereunder, such discrepancy shall be resolved in such a way as to give full effect to the provisions of Section 415 of the Internal Revenue Code and the regulations issued thereunder.

## **ARTICLE VI -TOTAL AND PERMANENT DISABILITY BENEFITS**

### ***Section 6.01 - Eligibility for Total and Permanent Disability Benefits***

A Participant who is totally and permanently disabled, in accordance with the definition of Permanent and Total Disability as set forth in Section 1.24 shall be eligible for a Total and Permanent Disability Benefit provided:

- A. That the Participant shall have had fifteen (15) years (ten (10) years prior to January I, 2014) of Service and
- B. That effective January 1, 2000, the Participant notifies the Fund within three (3) years of electing and receiving an Early Retirement Benefit that he is totally and permanently disabled and presents his Social Security Disability Award.

### ***Section 6.02 - Amount of Disability Benefit***

Prior to December 31, 2008, the monthly Total and Permanent Disability Benefit shall be equal to the Participant's Normal Retirement Benefit accrued as of the date of disability, with a minimum benefit of \$25 a month.

As of January 1, 2009, the monthly Total and Permanent Disability Benefit shall be equal to the Participant's Normal Retirement Benefit accrued as of December 31, 2008, plus 50% of the Participants Normal Retirement Benefit accrued from January 1, 2009 to the date of disability, with a minimum benefit of \$25 a month.

As of January 1, 2014, the monthly Total and Permanent Disability Benefit shall be equal to 50% of the Participant's Normal Retirement Benefit accrued as of the date of disability.

Total and Permanent Disability Benefit shall be payable only during continued total and permanent disability and until reaching Normal Retirement Age.

### ***Section 6.03 - Death of Disabled Participant***

Should a disabled Participant die prior to Normal Retirement Age, the surviving Spouse shall be entitled to receive a Pre-Retirement Death Benefit as set forth in Article VIII.

### ***Section 6.04 - When Paid***

A Participant who meets the eligibility requirements for Total and Permanent Disability Benefits, as set forth in Section 6.01, shall commence receiving Total and Permanent Disability Benefits on the first date of the calendar month coinciding with or following the later of:

- A. The date the Participant meets the eligibility requirements as set forth in Section 6.01; and
- B. The date the Trustees approve the Participant's application for Total and Permanent

Disability Benefits.

***Section 6.05 - Recovery of Disabled Participant***

In the event a disabled Participant temporarily recovers and is re-employed but subsequently retires, benefits shall resume in accordance with the rules for Normal Retirement Benefits or Early Retirement Benefits. The benefit payable upon retirement shall be calculated as if the Participant were then first retired and shall be based on his Past Service Benefit and Future Service Benefit at his latest retirement.

***Section 6.06 - Termination of Benefits for Total and Permanent Disability***

Total and Permanent Disability Benefits shall be terminated upon the happening of any of the following:

- A. The Participant reaches Normal Retirement Age at which time the Participant will begin receiving a Normal Retirement Benefit. If the Participant is married, he will begin receiving a Joint and Survivor Benefit, unless he and his Spouse elect otherwise.
- B. The Employee dies.
- C. The Participant ceases receiving Social Security Disability Benefits.

## ARTICLE VII - DEFERRED VESTED BENEFITS

### *Section 7.01 - Preamble*

A Participant who has attained his Normal Retirement Age or a Participant who has (3) three [five (5) prior to June 1, 1997] years or more of Service, shall have a vested right in his Accrued Benefit payable at Normal Retirement Age, or an actuarially reduced benefit payable at Early Retirement Age.

A Participant who terminates employment after he has seven (7) [ten (10) prior to June 1, 1997] or more years of Service shall be one hundred percent (100%) vested in his accrued benefit and, thus, will become eligible for Normal or Early Retirement Benefits at such time as he reaches Normal or Early Retirement age.

### *Section 7.02 - Eligibility for Deferred Vested Benefits*

A Participant shall be eligible to receive a Deferred Vested Benefit payable at Normal Retirement Age or an actuarially reduced amount payable at Early Retirement Age provided:

- A. The Participant has ceased to be employed by an Employer within the jurisdiction of the Fund, other than by reason of death; and
- B. The Participant shall have had, prior to his application for a Deferred Vested Benefit, at least three (3) years of Future Service.

### *Section 7.03 - Computation of Deferred Vested Benefits*

- A. The Deferred Vested Benefit shall be based on the number of completed Years of Service as specified below in the monthly amount of a percentage of the Participant's accrued Normal Retirement Benefit, as follows:

- 1. Prior to June 1, 1997, the following vesting schedule shall apply:

<u>Years of Service</u>	<u>Percent of Accrued Normal Retirement Benefit</u>
5 Years but less than 6	50%
6 Years but less than 7	60%
7 Years but less than 8	70%
8 Years but less than 9	80%
9 Years but less than 10	90%
10 or more years	100%

- 2. Effective June 1, 1997 and thereafter, the following vesting schedule shall apply:

<u>Years of Service</u>	<u>Percent of Accrued Normal Retirement Benefit</u>
3 years but less than 4	20%
4 years but less than 5	40%
5 Years but less than 6	60%
6 Years but less than 7	80%
7 or more years	100%

**B. Designation of Vesting Computation Period**

For purposes of computing an Employee's nonforfeitable right to the accrued benefit derived from Employer contributions, years of service and Breaks-in-Service shall be measured by reference to the Plan Year.

**C. Breaks-in-Service and Years of Service Must be Measured on the Same Computation Period**

For purposes of computing an Employee's right to the Employee's accrued benefit, years of service and Breaks-in-Service shall be measured on the same computation period.

**D. Rule of Parity**

In the case of a Participant who has five (5) or more consecutive (1) year Breaks-in-Service, the Participant's pre-break service will count in vesting of Employer derived accrued benefits only if either:

1. such Participant has any non-forfeitable interest in the accrued benefit attributable to Employer contributions at the time of separation from service; or
2. upon returning to service, the number of consecutive one (1) year Breaks-in-Service is less than the number of Years of Service.

**E. Amendment of Vesting Schedule**

If the Plan's vesting schedule is amended or the Plan is amended in any way that directly or indirectly affects the computation of a 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 his nonforfeitable percentage computed under the Plan without regard to such amendment or change. For Participants who do not have at least one (1) hour of service in any Plan Year beginning after December 31, 1988, the preceding sentence shall be applied by substituting "five (5) years of service" for "three (3) years of service" where such language appears. The period during which the election may be made shall commence on or after January 1, 1994.

***Section 7.04 - When Paid***

A Participant who meets the eligibility requirements for Deferred Vested Benefits as set forth in Section 7.02 shall have a pension commencement date beginning on the later of the first day of the calendar month coinciding with or following:

- A. The date on which the Participant attains Normal or Early Retirement Age; and
- B. The date specified in the Participant's application to the Trustees for Deferred Vested Benefits; and
- C. The date the Trustees receive the Participant's application for Deferred Vested Benefits.

***Section 7.05 - When Participant Returns to Work***

In the event a Participant who has applied for Deferred Vested Benefits and who has been approved for such benefits returns to employment for an Employer before benefits commence, his Deferred Vested Benefit previously computed shall become void and additional Future Service may be credited on his behalf from the date he returns to employment and Employer Contributions are again made to the Trust Fund on his behalf.



## **ARTICLE VIII - DEATH BENEFITS**

### ***Section 8.01 – Eligibility for Pre-Retirement Death Benefits***

The Spouse of a deceased Participant shall be eligible to receive a Pre-Retirement Death Benefit as set forth in Section 8.02, provided the deceased Participant would have been eligible for a Joint and Survivor Benefit had he retired on the day preceding his death or when he would have reached Earliest Retirement Age.

### ***Section 8.02 - Description and Amount of Pre-Retirement Death Benefits***

The Spouse of a deceased Participant who would have been eligible to receive a Joint and 50% Survivor Benefit, had he retired on the day before his death or after he reached Earliest Retirement Age, shall receive a monthly benefit equal to the amount the Spouse would have received had the deceased Participant made such application.

If the Spouse elects to receive this monthly benefit after the Participant's death but before he would have reached his Earliest Retirement Age, the monthly benefit will be adjusted to be actuarially equivalent to the amount the Spouse would have received under the Joint and 50% Survivor Benefit at the Participant's Earliest Retirement Age.

### ***Section 8.03 - When Pre-Retirement Death Benefits Paid***

The spouse of a deceased Participant who meets the eligibility requirements set forth in Section 8.01 shall have a pension commencement date of the first day of the calendar month after the Participant's death. If the spouse elects to begin this monthly benefit prior to when the Participant would have attained his Earliest Retirement Age, the benefit will be actuarially reduced to reflect the earlier date.

The Spouse of a deceased Participant who was receiving Total and Permanent Disability Benefits and who died prior to his Earliest Retirement Age shall be eligible for a monthly benefit equal to fifty percent (50%) of the benefits to which the Participant would have been entitled had he attained age his Earliest Retirement Age. The benefits shall not commence until the date the deceased Participant would have attained his Earliest Retirement Age. If the spouse elects to begin this monthly benefit prior to when the Participant would have attained his Earliest Retirement Age, the benefit will be actuarially reduced to reflect the earlier date.

### ***Section 8.04 - Eligibility for Post-Retirement Death Benefits***

For deaths prior to December 31, 2013, the Beneficiary of a deceased Participant shall be eligible to receive a Post-Retirement Death Benefit provided he dies after his Normal Retirement Benefits, Early Retirement Benefits have commenced.

### ***Section 8.05 - Description and Amount of Post-Retirement Death Benefits***

For deaths prior to December 31, 2013, the Beneficiary of a deceased Participant or Surviving Spouse who had received less than sixty (60) Normal Retirement Benefits, Early Retirement Benefits shall receive a continuation of the monthly payments the deceased Participant was receiving just prior to

his death until the remainder of the sixty (60) payments have been made. This benefit is payable on or around the first of the month after the request has been made. The Post-Retirement Death Benefit shall not be payable to the surviving Spouse of a deceased Participant who was receiving Joint and Survivor Benefits since that form of benefit contains its own Death Benefit.

Effective January 1, 2014, the sixty (60) payment guarantee is no longer available as a Post-Retirement Death Benefit. However, the sixty (60) payment guarantee is available as an optional form of Retirement Benefit that will be actuarially reduced to reflect the value of the sixty (60) payment guarantee.

#### ***Section 8.06 - When Post-Retirement Death Benefits Paid***

The Beneficiary of a deceased Participant who meets the eligibility requirements set forth in Section 8.04 shall have a pension commencement date as of the first day of the calendar month next following the date of the Participant's death. Payments will continue monthly thereafter until the total of monthly payments to the deceased Participant and the Beneficiary equals sixty (60), if such form of benefit option is elected.

#### ***Section 8.07 - Beneficiary Designation***

In designating a Beneficiary, no Participant shall designate anyone other than such Participant's legal Spouse or dependent child or children. For the purpose of this Article, the term "*dependent child*" shall include sons, daughters, step-sons, step-daughters or legally adopted children of the Participant at least half (1/2) of whose support was received from the deceased Participant the year preceding his death. Any designation of any person not a legal Spouse or a dependent child, or a combination of such persons, shall be null and void and of no effect and the applicable Death Benefit shall be paid as in the case when no Beneficiary is designated.

#### ***Section 8.08 - No Beneficiary Designation***

When a Participant shall die without designating a Beneficiary, the applicable Death Benefit shall be paid to such Participant's legal Spouse, if any. If the Participant's legal Spouse shall have predeceased him or has ceased to be his legal Spouse, the Death Benefit shall be paid to the Participant's dependent children, if any, in equal shares. If no legal Spouse or dependent children or child be alive, the applicable Death Benefit shall be paid to the Executor or Administrator of the Estate of the deceased.

## **ARTICLE IX - ADMINISTRATION OF THE PLAN**

### ***Section 9.01 - Responsibility for Administration***

The control, management and administration of the Pension Plan shall be in the Trustees appointed to act under the Trust Agreement who are designated as Named Fiduciaries, and who shall administer the Pension Plan in accordance with the powers granted to them by the Trust Agreement and shall have all powers necessary to carry out the provisions of the Pension Plan.

Without limiting the generality of the foregoing, the Trustees, as Named Fiduciaries, are authorized:

- A. Except as to their responsibility with respect to the control to the assets of the Trust Fund:
  - 1. To delegate specific Fiduciary responsibilities to any one or more of them.
  - 2. Upon unanimous approval of all Trustees to delegate to a person, not a Trustee, a specific Fiduciary responsibility, whose performance in regard thereto shall be periodically reviewed and evaluated by the Trustees.
- B. To determine all questions arising in the administration, interpretation, and application of the Pension Plan, including questions of eligibility of Employees, the status of the Participants and their Beneficiaries, and of any other person hereunder.

Unless otherwise provided in the Trust Agreement, determination made by Trustees as the “Named Fiduciaries” in the determination, interpretation, and application of the Pension Plan shall be binding on all persons.

### ***Section 9.02 - Fiduciary Duties***

A Fiduciary shall discharge his duties with respect to this Pension Plan solely in the interest of the Participants and Beneficiaries and for the exclusive purpose of:

- A. Providing benefits to Participants and Beneficiaries; and
- B. Defraying reasonable expenses of administering the Plan.

Fiduciaries shall discharge their duty with respect to the Plan with the care, skill, prudence, and diligence under the circumstances prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

The Fiduciaries shall diversify the investments of the Plan so as to minimize the risk of large losses. The Fiduciaries shall discharge their duties in accordance with the documents and instruments governing the Plan.

Except as aforesaid, and unless otherwise provided by law, a Fiduciary shall not be liable for any mistake of judgment or other action taken in good faith or for any loss, unless such loss results from his own willful misconduct or gross negligence, or knowingly permitting a willful misconduct or gross negligence of any other Trustee.

### ***Section 9.03 - Preservation of Benefits***

Anything to the contrary notwithstanding, including Section 12.01, a Retirement Benefit computed under this Pension Plan shall be subject to the following provisions:

**A. Minimum Benefit for Participant as of the Restatement Date**

If a Participant was eligible to receive a benefit under the prior provisions of the Plan as of the latest Restatement Date; and a benefit becomes payable under this Plan resulting from termination of employment after the latest Restatement Date; such benefit shall not be less than the benefit that would have been payable under the prior provisions of the Plan as of the latest Restatement Date.

**B. Nonforfeitability of Minimum Accrued Benefit**

The minimum accrued benefit required [to the extent required to be nonforfeitable under Section 416(b)] of the Internal Revenue Code may not be forfeited under Section 411(a)(3)(B) or 411(a)(3)(D) of the Internal Revenue Code.

**C. Reinstatement of Benefit**

If a benefit is forfeited because the Participant or Beneficiary cannot be found, such benefit will be reinstated if a claim is made by the Participant or Beneficiary.

### ***Section 9.04 - Only Rights Specifically Granted***

No Participant, former Participant, retired Participant, 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 Trust Fund, except as such right, interest or title shall have been specifically granted pursuant to the terms of said Pension Plan.

### ***Section 9.05 - Benefits Not Assignable***

No benefits or interest available hereunder will be subject to assignment or alienation, either voluntarily or involuntarily. The preceding sentence shall also apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a Participant pursuant to a Domestic Relations Order, unless such order is determined to be a Qualified Domestic Relations Order, as defined in Section 414(p) of the Internal Revenue Code.

Any provision of the Plan notwithstanding, a Qualified Domestic Relations Order may not modify the form of benefit selected by a Participant at the time of retirement and prior to the date a Qualified Domestic Relations Order is approved by the Plan.

### ***Section 9.06 - Commencement Date for Pension Payments***

Notwithstanding any other provision of the Plan, unless a later date is elected by a Participant prior to the date specified in this Section, pension payments shall commence at the earlier of the following times:

- A. As soon as administratively feasible after the date specified by the applicable Plan provision for the commencement of pension payments.
- B. The sixtieth (60th) day after the close of the Plan Year in which the Participant reaches his Normal Retirement Age or ceases to be employed by an Employer, whichever is later; provided, however, that if the amount of the payment to be made cannot be determined by the latest of said dates, a payment retroactive to such date may be made no later than sixty (60) days after the earliest date on which the amount of such payment can be ascertained.

### ***Section 9.07 - Information Required***

The Trustees shall have the right to require, as a condition precedent to the payment of any benefit under the Pension Plan, all information which they reasonably deem necessary, including records of employment, proof of dates of birth and death, evidence of existence, and no benefit dependent in any way upon such information shall be payable unless and until such information so required shall be furnished. Such evidence shall be furnished by the Union, Employers, Participants, retired Participants and Beneficiaries, as applicable.

### ***Section 9.08 - Mentally Disabled Applicant***

In the event the Trustees determine that a retired Participant or any other payee is mentally or physically unable to give a valid receipt for any benefits due him under the Pension Plan, such payment may, unless claim shall have been made therefore by a legally appointed guardian, committee, or other legal representative, be paid to any person or institution then in the judgment of the Trustees providing for the care and maintenance of such retired Participant or Payee and shall be a complete discharge of any liability of the Pension Plan or the Trustees therefore.

### ***Section 9.09 - Lump Sum Payment***

#### **A. Cash-Outs and Plan Repayment Provisions**

If an Employee terminates service, and the present value of the Employee's vested Accrued Benefit derived from Employer contributions is not greater than \$1,000, the Employee will receive a distribution of the present value of the entire vested portion of such Accrued Benefit and the nonvested portion will be treated as a forfeiture. For purposes of this Section, if the present value of an Employee's vested Accrued Benefit is zero, the Employee shall be deemed to have received a distribution of such vested Accrued Benefit.

For the purpose of the foregoing provisions, present value shall be determined in accordance with Section 1.02.

If an Employee receives a distribution pursuant to this Section and the Employee resumes covered employment under the Plan, he or she shall have the right to restore his or her Employer provided 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 rate determined for purposes of Section 411(c)(2)(C) of the Internal Revenue Code. Such repayment must be made before the earlier of five years after the first date on which the Participant is subsequently reemployed by the Employer, or the date the Participant incurs five (5) consecutive one (1) year Breaks-in-Service following the date of distribution.

If an Employee is deemed to receive a distribution pursuant to this Section, and the Employee resumes employment covered under this Plan before the date the Participant incurs five (5) consecutive one (1) year Breaks-in-Service, upon the reemployment of such Employee, the Employer provided Accrued Benefit will be restored to the amount of such Accrued Benefit on the date of the deemed distribution.

**B. Restrictions on Immediate Distributions**

If either the present value of a Participant's vested Accrued Benefit derived from Employer contributions exceeds \$1,000 or there are remaining payments to be made with respect to a particular distribution option that previously commenced, and the Accrued Benefit is immediately distributable, the Participant and the Participant's Spouse (or, where either the Participant or the Spouse has died, the survivor) must consent to any distribution of such Accrued Benefit. The Accrued Benefit must be distributed as an Annuity.

Notwithstanding the foregoing, only the Participant need consent to the commencement of a distribution in the form of a Qualified Joint and Survivor Annuity while the Accrued Benefit is immediately distributable. Neither the consent of the Participant nor the Participant's Spouse shall be required to the extent that a distribution is required to satisfy Section 401(a)(9) or Section 415 of the Internal Revenue Code.

Present value shall be determined in accordance with Section 1.03.

An Accrued Benefit is immediately distributable if any part of the Accrued Benefit could be distributed to the Participant (or Surviving Spouse) before the Participant attains (or would have attained if not deceased) the later of Normal Retirement Age or age sixty-five (65).

**C. Rollover**

This Section applies to distributions made on or after January 31, 1993. Notwithstanding any provision of the Plan that would otherwise limit a Distributee's election under this part, a Distributee may elect at the time and the manner prescribed by the Trustees to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

1. Eligible Rollover Distributions: An Eligible Rollover Distribution is any

distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include: any distribution that is one of a series of substantially equal periodic payment made for the life of the Distributee or the joint lives of the Distributee and the Distributee's designated beneficiary, or for a specified period of 10 years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; any hardship distribution described in Section 401(k)(2)(B)(i)(iv) of the Internal Revenue Code received after Dec. 31, 1998; the portion of any distribution that is not includible in gross income; and any other distributions that is expected to total less than \$200 less during a year.

2. Eligible Retirement Plan: An Eligible Retirement Plan is an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, or an annuity plan described in Section 403 (a) of the Internal Revenue Code, which accepts the Distributee's Eligible Rollover Distribution. However, in the case of an Eligible Rollover Distribution to the Surviving Spouse, an Eligible Retirement Plan is an individual retirement account for individual retirement annuity.

Effective for distributions made after December 31, 2001, an Eligible Retirement Plan shall also mean an annuity contract described in Section 403(b) of the Internal Revenue Code and an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of Eligible Retirement Plan shall also apply in the case of a distribution to a surviving Spouse, or to a Spouse or former Spouse who is the alternate payee under a Qualified Domestic Relation Order, as defined in Section 414(p) of the Internal Revenue Code.

Effective for distributions made on or after December 31, 2007, an Eligible Retirement Plan also includes a Roth IRA.

3. Distributee: A 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 414 (p) of the Internal Revenue Code are Distributees with regard to the interest of the Spouse or former Spouse. The term "Distributee" shall also include a non-spouse beneficiary of Participant or former Participant.

4. Direct Rollover: A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

#### ***Section 9.10 – Suspension of Benefits During Covered Employment***

In the event a Participant who is currently receiving Benefits from this Fund returns to work which is Covered Employment (work within the same industry and geographical area covered by the Fund for an Employer that contributes to the Fund and in the same craft in which the Participant was employed at any time under the Plan), monthly benefits shall be suspended as described below.

For retired Participants under Normal Retirement Age, benefits shall be suspended for the balance of any calendar year in which the Participant earns wages in excess of the Social Security earnings limit.

For retired Participants who have reached Normal Retirement Age, the retired Participant is allowed to work in Covered Employment until he earns wages in excess of the Social Security earnings limit. After that limit is met, benefits shall be suspended for each month in which the retired Participant works 40 or more hours in Covered Employment.

The procedures for advance determination of suspension of monthly retirement benefits shall be the same rules as set forth in Section 9.12.

Monthly benefits may be resumed in accordance with Section 9.13.

#### ***Section 9.11 – Suspension of Benefits During Non-Covered Employment***

In the event a Participant who is currently receiving Benefits from this Fund returns to work which is Non-Covered Employment (work within the same industry and geographical area covered by the Fund for an employer that does not contribute to the Fund and in the same craft in which the participant was employed at any time under the Plan or for a non-signatory Employer), monthly benefits shall be suspended as described below.

For retired Participants under Normal Retirement Age, the payment of monthly retirement benefits shall be suspended for each month in which the retired Participant works in Non-Covered Employment.

For retired Participants who have reached Normal Retirement Age, the retired Participant is allowed to work in employment which is Non-Covered Employment up to 40 hours each month. If the retired Participant works 40 or more hours in a month in employment which is Non-Covered Employment, the payment of monthly retirement benefits shall be suspended.

When the Participant re-retires or returns to work in Covered Employment, the Participant shall be entitled to have his monthly retirement benefits restated upon proper application to the Trustees. The procedures for advance determination on the suspension of monthly retirement benefits shall be the same rules as set forth in Section 9.12.



***Section 9.12 – Procedures for Advance Determination on the Suspension of Benefits***

- A. When a Participant who is currently receiving monthly benefits from the Fund contemplates a return to employment, he may request that the Plan Administrator determine in advance whether that employment would result in a suspension of benefits.
- B. The Participant making such a request must supply the following information to the Plan Administrator in writing:
  - 1. The name of the anticipated Employer;
  - 2. The trade or craft in which the Participant will be employed;
  - 3. The location of the job site;
  - 4. Whether the Participant will be employed in the construction industry;
  - 5. The date the employment is to commence;
  - 6. The approximate number of hours the Participant anticipates working in each month; and
  - 7. The approximate duration of the employment(s).
- C. The Plan Administrator will respond in writing to the Participant as soon as a determination is made, and within a period of time not to exceed the later of 30 days after the next Board of Trustees meeting or 60 days from the date of receipt of the request. That response will inform the Participant if the anticipated reemployment will result in a suspension of benefits, and, to the extent possible, the duration of the suspension, based on the information supplied by the Participant.

***Section 9.13 – Recalculation of Benefit Payments Following Return to Work***

When the Participant again retires, he shall be entitled to have his monthly benefit payments reinstated upon proper application to the Trustees. For a retired Participant who returns to work without meeting the threshold for suspension, benefits will be recalculated effective the first month of each Plan Year and payable as soon as administratively possible.

The amount of reinstated benefit shall be recalculated to include any additional accruals earned in employment subsequent to initial retirement. Benefits shall be payable in the same form as his initial retirement benefit. No benefit increases or adjustments effective after initial retirement shall be payable, except to the extent expressly directed by other Plan provisions.

Any benefit payments which should have been suspended due to the return to work or earnings in excess of the prescribed amounts, but which were not suspended will be recovered from the reinstated benefits at

the rate of 25% per month.

#### ***Section 9.14 – Notices***

Upon commencement of pension payments, the Trustees shall notify the Participant of the Plan rules governing Suspension of Benefits, including identifying the industries and areas covered by the Plan.

Participants shall notify the Plan in writing within 21 days after starting any work of any type that is or may be disqualifying employment under the provision of the Plan and without regard to the hours of such work. If the Fund should discover that a retired Participant has become employed and the Participant has not notified the Plan Administrator of his return to employment, the Trustees may assume that the Participant has earned wages in excess of the Social Security earnings limit and/or has worked 40 or more hours in Covered Employment, as applicable. The burden for disproving these assumptions shall then rest with the Participant.

The Trustees shall inform all retired Participants at least once every 12 months of the reemployment notification requirements and the presumption set forth in this Section 9.14.

#### ***Section 9.15 – Overpayments***

No Participant or Beneficiary shall be entitled to receive a benefit in excess of that which is provided for by the terms of the Plan. In the event a Participant or Beneficiary is overpaid by the Plan, the Board of Trustees shall determine whether to recoup the overpayment and, if so, the amount to be recouped. If the Trustees determine that the overpayment will be recouped, the Trustees shall next determine whether the Participant or Beneficiary is culpable. Culpable conduct may include, but is not limited to, misrepresentation or omission of fact by the Participant or Beneficiary.

- A. If the Trustees determine that the Participant or Beneficiary is not culpable, the Board of Trustees may recoup the overpayment through an actuarial reduction of future benefit payments, the offset of future benefit payments, a repayment agreement, or any other procedure deemed reasonable and appropriate by the Board of Trustees. No interest or fees shall be recouped. Recoupment may not be sought if the first overpayment occurred more than 3 years before the Participant or Beneficiary is first notified in writing of the error.

Recoupment by the reduction or offset of future benefits shall be subject to the following limitations:

- 1. No more than 10 percent of the total overpayment shall be recouped in a calendar year; and,
- 2. The Participant or Beneficiary's benefit shall not be reduced to below 90 percent of the benefit which would otherwise be payable.

An agreement for recoupment by one or more installment payments shall not require total payments in a calendar year which exceed the sum of the reductions that would be permitted under the foregoing limitations.

- B. In the event an overpayment is made to a Participant or Beneficiary who is culpable, the overpayment may be recouped through an actuarial reduction of future benefit payments, the offset of future benefit payments, a repayment agreement, or any other procedure deemed reasonable and appropriate by the Board of Trustees, without limitation.

Any Participant or Beneficiary, upon being notified of the reduction or offset, shall have the right and obligation to appeal the decision to the Board of Trustees prior to commencing any other legal or administrative action. Under no circumstances will an overpayment become or be considered a vested benefit.

***Section 9.16 – Missing Participants and Uncashed Checks***

If a mailed benefit check is returned as undeliverable by the postal service from the most recent mailing address provided by the Participant or Beneficiary, the Trustees may stop payment of the Participant or Beneficiary's benefit, retroactive to the earliest un-negotiated benefit check. The Administrator shall use reasonable measures to identify a possible new mailing address for the Participant or Beneficiary. If a possible new mailing address is located, the Administrator shall mail a request to confirm that: the Participant or Beneficiary remains living; that the Participant or Beneficiary receives mail at the address; and that the Participant is able to receive and negotiate benefit checks or to receive electronic deposits. If a possible new mailing address cannot be found despite a reasonable search, the Participant or Beneficiary's benefit shall remain stopped.

If a Participant or Beneficiary's benefit check is not negotiated within 90 days of mailing, and the mailing was not returned undeliverable by the postal service, the Trustees may stop future payment of the Participant or Beneficiary's benefit. The Trustees shall mail a notice of the stoppage to the Participant or Beneficiary and informing them of the right to submit a written request for resumption of benefits.

If, following benefits being stopped in accordance with one of the above procedures, the Participant or Beneficiary requests in writing that benefits be resumed, any benefit payments withheld will be repaid to the Participant or Beneficiary and the payment of future benefits will resume. Notwithstanding any provision of this Plan to the contrary, if, prior to the death of the Participant or Beneficiary, the Trustees have not received a written request for resumption of benefits, then the benefit payments withheld are forfeited.

***Section 9.17 - No Employer or Union Rights to Fund***

The Employers and the Union shall have no right, title, or interest in the contributions made by them to the Pension Fund and no part of the Fund shall revert to any Employer or the Union.

***Section 9.18 - Exclusive Benefit***

The corpus or income of the Trust or custodial account may not be diverted to or used for other than the exclusive benefit of the Participants or their Beneficiaries.

## **ARTICLE X - BENEFIT APPLICATION, CLAIMS REVIEW, AND APPEAL PROCEDURES**

### ***Section 10.01 - Benefit Application***

In order to receive a benefit, a Participant or Beneficiary shall make written application to the Trustees for such benefit on a form prescribed by the Trustees, not more than twelve (12) months preceding the date such Participant or Beneficiary would first become eligible for their requested benefit. Every claimant for benefits shall furnish, at the request of the Trustees, any information or proof reasonably required to determine his benefit rights. If a claimant makes a willfully false statement material to an application for benefits or furnishes fraudulent information or proof material to his or her claim, benefits not Vested under this Plan (as defined in Section 7.03) may be denied, suspended, or discontinued. The Trustees shall have the right to recover any benefit payments made in reliance on any willfully false or fraudulent statement, information, or proof submitted by a Participant or Beneficiary.

### ***Section 10.02 - Claims Review***

- A. Timing of Notice of Decision. Unless special circumstances exist, a claimant will be notified in writing of the Trustees decision on his or her claim for benefits within ninety (90) days of the claim being submitted. If the Plan Administrator determines that an extension of time is needed, written notice of the extension shall be furnished to the claimant prior to the termination of the initial 90-day period. The extension shall not exceed ninety (90) days from the end of the 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. Content of Notice. If a claim for benefits is denied, in whole or in part, the claimant will receive a written notification that will include the following information:
  - 1. The specific reason(s) for the denial:
  - 2. Specific references to pertinent Plan provision(s) on which the denial is based;
  - 3. A description of any additional information necessary as well as an explanation of why such information is necessary; and
  - 4. A description of the Plan's review procedures and the time limits applicable to such procedures, including a statement of the claimant's right to bring a civil action under Section 502(a) of ERISA following an adverse benefit determination on review.

### ***Section 10.03 - Appeal Procedures***

- A. A claimant may file a written appeal of an adverse benefit decision within sixty

(60) days after the claimant receives notification of the determination.

- B. The claimant shall have the opportunity to submit written comments, documents, records and other information relating to the claim for benefits.
- C. The claimant shall be provided, 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.
- D. The review on appeal shall take into account all comments, documents, records, and other information submitted by the claimant relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination.
- E. A claimant has the right to request a hearing before the Board of Trustees. If a claimant requests a hearing, the claimant will be notified of the date, time, and place of the hearing. At the hearing, the claimant is entitled to appear in person, be represented by legal counsel (at the claimant's own expense), and present any additional information not previously submitted relating to the matter being appealed. A claimant's failure to request a hearing is considered a waiver of that right. Similarly, if a claimant requests a hearing before the Trustees and neither the claimant nor the claimant's authorized representative appear at the appeals hearing, the Trustees will consider the appeal based upon the written information submitted. A claimant is limited to one personal or written appeal per denied claim.
- F. The Trustees shall make a benefit determination no later than the date of the meeting of the Trustees that immediately follows the Plan's receipt of a request for review, unless the request for review is filed within thirty (30) days preceding the date of such meeting. In such case, a benefit determination may be made by no later than the date of the second (2<sup>nd</sup>) meeting following the Plan's receipt of the request for review. If special circumstances (such as the need to hold a hearing) require a further extension of time for processing, a benefit determination shall be rendered not later than the third (3<sup>rd</sup>) meeting of the Trustees following the Plan's receipt of the request for review. If such an extension of time for review is required because of special circumstances, the Plan Administrator 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 Plan Administrator shall notify the claimant of the benefit determination as soon as possible, but not later than five (5) days after the benefit determination is made.
- G. The Plan Administrator shall provide a claimant with written notification of the Plan's benefit determination on review. In the case of an adverse benefit determination, 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 benefit 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; and

4. A statement of the claimant's right to bring an action under Section 502(a) of ERISA.
- H. In the event of a discrepancy between the records maintained by the Plan and claims asserted by a Participant, Beneficiary, or any other person or entity, the Trustees shall rely upon the records established and maintained by the Plan unless shown to their satisfaction, of which they shall have sole discretion, that said records shall be modified. The burden of proving a claim for benefits which differs from the records established and maintained by the Plan shall be upon the Participant, Beneficiary, or any other person or entity.
- I. The Trustees, in the exercise of their discretion, shall be the sole judges of all benefit determinations and all appeals, including without limitation the interpretation and application of any and all terms of the Plan, the Trust Agreement, the law, regulations, evidence, and determination of facts, standard of proof and procedures. All decisions of the Trustees shall be final and binding upon all parties, persons, Participants, and beneficiaries, except to the extent that such decisions are determined to be arbitrary or capricious by a court having jurisdiction over such matters.
- J. Any rights of claimant to bring a civil action under ERISA may only be done after the claimant has exhausted all of the Plan's appeal procedures. No such legal action maybe commenced or maintained to recover benefits under the Plan more than twelve (12) months after the final review and appeal decision is made by the Trustees. A Participant or Beneficiary shall only bring an action in connection with the Plan in the United States District Court for the Western District of Kentucky.

## **ARTICLE XI – FUNDING OF BENEFITS**

### ***Section 11.01 - Self-Contributions***

Contributions by an Employee shall not be permitted under the Pension Plan. Contributions by an individual proprietor or partner on himself shall not be permitted under this Pension Plan.

### ***Section 11.02 - Benefits Limited Capacity of Trust Fund***

Anything in the Pension Plan to the contrary notwithstanding, no benefit shall be payable except those which can be provided from the Trust Fund in accordance with the provisions of the Pension Plan, and no person shall have any claim for benefits against the Union, any Employer, or the Trustees.

### ***Section 11.03 - Actuarial Valuations and Plan Review***

These rules and the benefits provided for thereby have been adopted by the Board of Trustees on the basis of an actuarial estimate which has established to the extent possible that the income and accruals of the Trust Fund will be fully sufficient to support this Benefit Plan on a permanent basis. However, it is recognized that in the future, the income and/or liabilities of the Trust Fund may be substantially different from those previously anticipated. The Board of Trustees shall have prepared at least as often as required by law, an actuarial re-evaluation of the Trust Fund. Upon the basis of all the facts and circumstances, the Board of Trustees may from time to time amend these rules and regulations and the benefits provided for thereby including any increase or decrease in benefit amounts.

### ***Section 11.04 - Spousal Consent Requirement***

An election by the Participant not to take a Qualified Joint and Survivor Benefit or a Qualified Survivor Benefit is effective only if the Participant's Spouse consents to it in writing, it is witnessed by a Notary Public, and the Spouse's consent acknowledges the effect of the election. Spousal consent is not required, however, if the Participant establishes to the satisfaction of the Plan Trustees that the consent required by the Spouse may not be obtained because there is no Spouse or the Spouse cannot be located.

### ***Section 11.05 – Forfeitures***

Notwithstanding any other provisions of this Plan, any amounts that might be forfeited by terminating Employees shall not be used to increase the Retirement Benefit of the remaining Participants.

## **ARTICLE XII - AMENDMENT AND TERMINATION OF THE PENSION PLAN**

### ***Section 12.01 – Amendment***

The Trustees may by majority action amend or modify this Pension Plan at any time without the consent of any Participant. However, no Amendment shall retroactively decrease the benefits accrued to a Participant unless such amendment is permitted or required by law. No such amendment shall increase the duties or responsibilities of the Trustees, without their written consent, alter the basic provision of the Plan, or be in conflict with the contribution terms of any Collective Bargaining Agreement.

No amendment to the Plan (including a change in the actuarial basis for determining optional or Early Retirement Benefits) 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 accrued benefit may be reduced to the extent permitted under Section 412(c)(8) of the Internal Revenue Code. For purposes of this paragraph, a Plan Amendment that has the effect of (1) eliminating or reducing an Early Retirement Benefit or a retirement-type subsidy, or (2) eliminating an optional form of benefit with respect to benefits attributable to service before the amendment shall be treated as reducing accrued benefits. In the case of a retirement-type subsidy, the preceding sentence shall apply only with respect to a Participant who satisfies (either before or after the amendment) the pre-amendment conditions for the subsidy. In general, a retirement-type subsidy is a subsidy that continues after retirement but does not include a Qualified Disability Benefit, a Medical Benefit, a Social Security Supplement or a Death Benefit (including Life Insurance). Furthermore, if the vesting schedule of a Plan is amended, in the case of an Employee who is a Participant as of the later of the date such amendment is adopted or the date it becomes effective, the nonforfeitable percentage (determined as of such date) of such Employee's Employer provided accrued benefit will not be less than the percentage computed under the Plan without regard to such amendment.

Notwithstanding any other Section of the Plan, if the Plan is certified to be in Endangered or Critical status, as those terms are used in Section 432 of the Internal Revenue Service, the Plan will be administered according to the requirements of Section 432 of the Internal Revenue Service.

### ***Section 12.02 - Conditions of Termination***

This Pension Plan shall cease and terminate upon the happening of any one or more of the following events:

- A. By amendment, in the event the Pension Plan shall be, in the opinion of the Trustees, inadequate to carry out the intent and purpose of the Agreement and Declaration of Trust creating the Pension Plan, or to meet the payments due or to become due under the agreement to persons already drawing benefits.
- B. In the event there are no individuals living who can qualify for benefits hereunder.



- C. In the event of termination by action of the Union and the Employers.
- D. Upon action taken by the Pension Benefit Guaranty Corporation pursuant to provisions of Section 4042(a) of ERISA.
- E. If every contributing Employer withdraws from the Plan or the obligations of all Employers to contribute to the Plan end.

### ***Section 12.03 – Procedures in Event of Termination***

In the event of termination, the Trustees shall:

- A. Make provision out of the Trust Fund for the payment of any and all obligations of the Plan and Trust, including expenses incurred up to the date of termination of the Plan and the expenses incidental to such termination; and
- B. Arrange for a final audit and report of their transactions and accounts, for the purpose of termination of their Trusteeship; and
- C. Give any notice and prepare and file any report which may be required by law; and
- D. Distribute the remaining assets among Participants and Beneficiaries of the Plan in the following order:
  - 1. First, in the case of benefits payable as a Retirement Benefit:
    - i. In the case of the benefit of a Participant or Beneficiary which was in pay status as of the beginning of the three (3) year period ending on the termination date of the Plan, to each such benefit based on the provisions of the Plan (as in effect during the five (5) year period ending on such date) under which such benefit would be the least. The lowest benefit in pay status during the three (3) year period shall be considered the pension in pay status for such period.
    - ii. In the case of a Participant's or Beneficiary's benefit which would have been in pay status as of the beginning of the three (3) year period ending on the termination date of the Plan if the Participant had retired at the beginning of the three (3) year period and if his benefits had commenced (in the normal form of an annuity under the Plan) as of the beginning of such period, to each such benefit based on the provisions of the Plan (as in effect during the five (5) year period ending on such date) under which such benefit would be the least. The lowest benefit in pay status during a three (3) year period shall be considered the benefit in pay status for such period.
  - 2. Second, benefits guaranteed by the Pension Benefit Guaranty Corporation, if any, but determined without regard to benefits guaranteed to the Participant (or Beneficiary) under any other plan (reduced by any amount payable under Subsection D(1) above.

3. Third, to all other non-forfeitable benefits under the Plan.
4. Fourth, to all other benefits under the Plan.

***Section 12.04 - Vesting of Event of Plan Termination***

In the event of the termination or partial termination of this Plan, the rights of all affected Employees to benefits accrued to the date of such termination or partial termination (to the extent funded to such date) shall be nonforfeitable.

***Section 12.05 - Maintenance of Benefit in Event of Plan Merger***

In the event of a merger or consolidation with, or transfer of assets or liabilities to, any other Plan, each Participant will receive a benefit immediately after such merger (if the Plan then terminated) which is at least equal to the benefit the Participant was entitled to immediately before such merger (if the Plan had terminated).

## **ARTICLE XIII -TOP-HEAVY REQUIREMENTS**

### ***Section 13.01 - Top-Heavy Status***

If the Plan is or becomes top-heavy in any Plan Year beginning after December 31, 1983, the provisions of this Article XIII will supersede any conflicting provisions in the Plan.

### ***Section 13.02 - Top-Heavy Definitions***

#### **A. Key Employee:**

Key Employee means any employee or former employee (including any deceased employee) who at any time during the Plan Year that includes the determination date was an officer of the employer having Annual Compensation greater than \$130,000 (as adjusted under Section 416(i)(1) of the Code for Plan Years beginning after December 31, 2002), a 5-percent owner of the employer, or a 1-percent owner of the employer having Annual Compensation of more than \$150,000. For this purpose, Annual Compensation means compensation within the meaning of section 415(c)(3) of the Code. Annual Compensation also includes amounts contributed by the Employer pursuant to a salary reduction agreement which are excludable from the Employee's gross income under Sections 125, 402(e)(3), 402(h)(1)(B) or 403(b) of the Internal Revenue Code. The determination period is the Plan Year containing the Determination Date and the four (4) preceding Plan Years. The determination of who is a Key Employee will be made in accordance with section 416(i)(1) of the Code and the applicable regulations and other guidance of general applicability issued thereunder.

#### **B. Top-Heavy Plan:**

For any Plan Year beginning after December 31, 1983, this Plan is Top-heavy if any of the following conditions exists:

1. If the top-heavy ratio for this Plan exceeds sixty percent (60%) and this Plan is not part of any Required Aggregation Group or Permissive Aggregation Group of plans.
2. If this Plan is a part of a Required Aggregation Group of plans but not part of a Permissive Aggregation Group and the Top-heavy Ratio for the group of plans exceeds sixty percent (60%).
3. If this Plan is a part of a Required Aggregation Group and part of a Permissive Aggregation Group of plans and the Top-heavy Ratio for the Permissive Aggregation Group exceeds sixty percent (60%).

#### **C. Top-Heavy Ratio:**

1. If the Employer maintains one or more defined benefit plans and the Employer has not maintained any defined contribution plan (including any simplified employee pension as defined in Section 408(k) of the Internal

Revenue Code) which during the 5-year period ending on the Determination Date(s) has or has had account balances, the Top-heavy Ratio for this Plan alone or for the Required or Permissive Aggregation Group as appropriate is a fraction, the numerator of which is the sum of the present value of accrued benefits of all Key Employees as of the Determination Date(s) (including any part of any Accrued Benefit distributed in the 5-year period ending on the Determination Date(s)), and the denominator of which is the sum of the Present Value of Accrued Benefits (including any period ending on the Determination Date(s)), determined in accordance with Section 416 of the Internal Revenue Code and the Regulations thereunder.

2. If the Employer maintains one or more defined benefit plans and the Employer maintains or has maintained one or more defined contribution plans (including any simplified employee pension) which during the 5-year period ending on the Determination Date(s) has or has had any account balances, the Top-heavy Ratio for any Required or Permissive Aggregation Group as appropriate is a fraction, the numerator of which is the sum of the Present Value of Accrued Benefits under the aggregated defined benefit plan or plans for all Key Employees, determined in accordance with (1) above, and the sum of account balances under the aggregated defined contribution plan or plans for all Key Employees as of the Determination Date(s), and the denominator of which is the sum of the Present Value of Accrued Benefits under the defined benefit plan or plans for all Participants, determined in accordance with (i) above, and the account balances under the aggregated defined contribution plan or plans for all Participants as of the Determination Date(s), all determined in accordance with Section 416 of the Internal Revenue Code and the Regulations thereunder. The account balances under a defined contribution in both the numerator and denominator of the Top-heavy Ratio are increased for any distribution of an account balance made in the five-year period ending on the Determination Date.
3. For purposes of 1. and 2. above the value of account balances and the Present Value of Accrued Benefits will be determined as of the most recent Valuation Date that falls within or ends with the 12-month period ending on the Determination Date, except as provided in Section 416 of the Internal Revenue Code and the Regulations thereunder for the first and second Plan Years of a defined benefit plan. The account balances and Accrued Benefits of a Participant who is not a Key Employee but who was a Key Employee in a prior year or who has not been credited with at least one (1) Hour of Service with any Employer maintaining the plan at any time during the 5-year period ending on the Determination Date will be disregarded. The calculation of the Top-heavy Ratio, and the extent to which distributions, rollovers, and transfers are taken into account will be made in accordance with Section 416 of the Internal Revenue Code and the Regulations thereunder. Deductible Employee contributions will not be taken into account for purposes of computing the Top-heavy Ratio. When aggregating plans the value of account balances and Accrued Benefits will be calculated with reference to the Determination Dates that fall within the same calendar year.

The Accrued Benefit of a Participant other than a Key Employee shall be determined under

(a) the method, if any, that uniformly applies for accrual purposes under all defined benefit plans maintained by the Employer, or (b) if there is no such method, as if such benefit accrued not more rapidly than the slowest accrual rate permitted under the fractional rule of Section 411(b)(1)(C) of the Internal Revenue Code.

**D. Permissive Aggregation Group:**

The Required Aggregation Group of plans plus any other plan or plans of the Employer which, when considered as a group with the Required Aggregation Group, would continue to satisfy the requirements of Sections 401 (a)(4) and 410 of the Internal Revenue Code.

**E. Required Aggregation Group:**

1. Each qualified plan of the Employer in which at least one Keys Employee participates or participated at any time during the Determination Period (regardless of whether the plan has terminated), and
2. Any other qualified plan of the Employer which enables a plan described in 1. to meet the requirements of Section 401(a)(4) or 410 of the Internal Revenue Code.

**F. Determination Date:**

For any Plan Year subsequent to the first Plan Year, the last day of the preceding Plan Year. For the first Plan Year of the Plan, the last day of that year.

**G. Valuation Date:**

December 31 which is the date as of which account balances or Accrued Benefits are valued for purposes of calculating the Top-heavy Ratio.

**H. Present Value:**

Present Value shall be based only on the interest and mortality rates specified in Section 1.03. The present values of accrued benefits and the amounts of account balances of an Employee as of the Determination Date shall be increased by the distributions made with respect to the Employee under the Plan and any plan aggregated with the Plan under section 416(g)(2) of the Code during the 1-year period ending on the Determination Date. The preceding sentence shall also apply to distributions under a terminated plan which, had it not been terminated, would have been aggregated with the Plan under section 416(g)(2)(A)(i) of the Code. In the case of a distribution made for a reason other than separation from service, death, or disability, this provision shall be applied by substituting "5-year period" for "1-year period".

The accrued benefits of any individual who has not performed services for the employer during the 1-year period ending on the determination date shall not be taken into account.

### ***Section 13.03 - Minimum Accrued Benefit***

- A. Notwithstanding any other provisions in this Plan except (C), (D) and (E) below, each Participant who is not a Key Employee and has completed one thousand (1,000) Hours of Service will accrue a benefit (to be provided solely by Employer Contributions and expressed as a life annuity commencing at Normal Retirement Age) of not less than two percent (2%) of his or her highest Average Compensation for the five (5) consecutive years for which the Participant had the highest Compensation. The aggregate Compensation for the years during such five-year period in which the Participant was credited with a Year of Service will be divided by the number of such years in order to determine Average Annual Compensation. The minimum accrual is determined without regard to any Social Security contribution. The minimum accrual applies even though under other Plan provisions the Participant would not otherwise be entitled to receive an accrual, or would have received a lesser accrual for the year because (i) the Non-Key Employee fails to make mandatory contributions to the Plan, (ii) the Non-Key Employee's Compensation is less than a stated amount, (iii) the Non-Key Employee is not employed on the last day of the accrual computation period, or (iv) the Plan is integrated with Social Security.
- B. For purposes of computing the minimum accrued benefit. Compensation shall mean compensation as defined in Section 415(c)(3) of the Internal Revenue Code and Section 1.415-2(d) of the Treasury Regulations, as limited by Section 401(a)(17) of the Internal Revenue Code.
- C. No additional benefit accruals shall be provided pursuant to (A) above to the extent that the total accruals on behalf of the Participant attributable to Employer Contributions will provide a benefit expressed as a life annuity commencing at Normal Retirement Age that equals or exceeds twenty percent (20%) of the Participant's highest Average Compensation for the five consecutive years for which the Participant had the highest Compensation.
- D. The provision in (A) above shall not apply to any Participant to the extent the Participant is covered under any other plan or plans of the Employer and the Employer has provided herein that the minimum allocation or benefit requirement applicable to Top-heavy Plans will be met in the other plan or plans.
- E. All accruals of employer-derived benefits, whether or not attributable to years for which the Plan is Top-heavy, may be used in computing whether the minimum accrual requirements of paragraph (C) above are satisfied.
- F. For purposes of satisfying the minimum benefit requirements of section 416(c)(1) of the Code and the Plan, in determining years of service with the employer, any service with the employer shall be disregarded to the extent that such service occurs during a Plan Year when the Plan Benefits (within the meaning of section 410(b) of the Code) no Key Employee or former Key Employee.

### ***Section 13.04 - Adjustment for Benefit Form Other Than Life Annuity at Normal Retirement Age***

If the form of benefit is other than a Straight Life Annuity, the Employee must receive an amount that

is the Actuarial Equivalent of the minimum Straight Life Annuity benefit, If the benefit commences at a date other than at Normal Retirement Age, the Employee must receive at least an amount that is the Actuarial Equivalent of the minimum Straight Life Annuity benefit commencing at Normal Retirement Age.

***Section 13.05 - Nonforfeitability of Minimum Accrued Benefit***

The minimum Accrued Benefit required (to the extent required to be nonforfeitable under Section 461(b) of the Internal Revenue Code) may not be forfeited under Section 411(a)(3)(B) or 411(a)(3)(D) of the Internal Revenue Code.

***Section 13.06 - Minimum Vesting Schedule***

- A. For any Plan Year in which this Plan is Top-heavy, the following minimum vesting schedule will automatically apply to the Plan:

Percent of Accrued Years of Service	Normal Retirement Benefit
2 Years but less than 3	20%
3 Years but less than 4	40%
4 Years but less than 5	60%
5 years but less than 6	80%
6 or more years	100%

- B. The minimum vesting schedule provided in (A) above applies to all benefits within the meaning of Section 411(a)(7) of the Internal Revenue Code except those attributable to Employee Contributions, including benefits accrued before the effective date of Section 416 of the Internal Revenue Code and benefits accrued before the Plan became Top-heavy. Further, no decrease in a Participant's nonforfeitable percentage may occur in the event the Plan's status as Top-heavy changes for any Plan Year. However, this Section does not apply to the Accrued Benefit of any Employee who does not have an Hour of Service after the Plan has initially become Top-heavy and such Employee's Accrued Benefit attributable to Employer Contributions and Forfeitures will be determined without regard to this Section.

## **Article XIV - MINIMUM DISTRIBUTION REQUIREMENTS**

The following rules govern required minimum distributions:

### **A. General Rules**

#### **1. Effective Date.**

The provisions of this article will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.

#### **2. Precedence.**

The requirements of this article will take precedence over any inconsistent provisions of the Plan.

#### **3. Requirements of Treasury Regulations Incorporated.**

All distributions required under this Section will be determined and made in accordance with the Treasury regulations under Code Section 401(a)(9), as amended by the SECURE Act and SECURE Act 2.0.

#### **4. TEFRA Section 242(b)(2) Elections.**

Notwithstanding the other provisions of this Section, other than subsection A.4., 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.

### **B. Time and Manner of Distribution.**

#### **1. 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. The Administrator may commence benefit payment for any Participant who has not applied for a benefit prior to their Required Beginning Date. If necessary, such as when the Participant cannot be located, the Administrator may remit the full amount of the monthly benefit to the Internal Revenue Service as federal income tax withholding.

#### **2. Death of Participant Before Distributions Begin.**

- i. If the Participant's surviving Spouse is the Participant's sole designated Beneficiary, then, distributions to the surviving Spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age the Applicable Age, if later.



- ii. If the Participant's surviving Spouse is not the Participant's sole designated Beneficiary, then, distributions to the designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
- iii. If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- iv. If the Participant's surviving Spouse is the Participant's sole designated Beneficiary and the surviving Spouse dies after the Participant but before distributions to the surviving Spouse begin, this subsection B(2), other than subsection B(2)(ii), will apply as if the surviving Spouse were the Participant.

For purposes of this subsection B(2) and section E, distributions are considered to begin on the Participant's Required Beginning Date (or, if subsection B(2)(iv) applies, the date distributions are required to begin to the surviving Spouse under subsection B(2)(iv). If annuity payments 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 subsection B(2)(i), the date distributions are considered to begin is the date distributions actually commence.

3. Form 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 subsections C, D and E of this Section. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of section 401(a)(9) of the Internal Revenue Code and the Treasury regulations. Any part of the Participant's interest which is in the form of an individual account described in section 414(k) of the Internal Revenue Code will be distributed in a manner satisfying the requirements of section 401(a)(9) of the Internal Revenue Code and the Treasury regulations that apply to individual accounts.

C. Determination of Amount to be Distributed Each Year.

1. General Annuity Requirements.

If the Participant's interest is paid in the form of annuity distributions under the Plan, payments under the annuity will satisfy the following requirements:

- i. the annuity distributions will be paid in periodic payments made at intervals not longer than one (1) year;

- ii. the distribution period will be over a life (or lives) or over a period certain not longer than the period described in subsections D or E;
- iii. once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted;
- iv. payments will either be nonincreasing or increase only as follows:
  - a. by an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of ail items and issued by the Bureau of Labor Statistics;
  - b. to the extent of the reduction in the amount of the Participant's payments to provide for a survivor benefit upon death, but only if the Beneficiary whose life was being used to determine the distribution period described in subsection D dies or is no longer the Participant's Beneficiary pursuant to a Qualified Domestic Relations Order within the meaning of section 414(p);
  - c. to provide cash refunds of employee contributions upon the Participant's death; or
  - d. to pay increased benefits that result from a Plan amendment.

2. **Amount Required to be Distributed by Required Beginning Date.**  
 The amount that must be distributed on or before the Participant's Required Beginning Date (or, if the Participant dies before distributions begin, the date distributions are required to begin under subsection B(2)(i) or (ii)) is the payment that is required for one (1) payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the Participant's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Participant's Required Beginning Date.

3. **Additional Accruals After First Distribution Calendar Year.**  
 Any additional benefits accruing to the Participant in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

D. **Requirements For Annuity Distributions That Commence During Participant's Lifetime.**

1. **Joint Life Annuities Where the Beneficiary Is Not the Participant's Spouse.**  
If the Participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the Participant and a non-Spouse Beneficiary, annuity payments to be made on or after the Participant's Required Beginning Date to the designated Beneficiary after the Participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the Participant using the table set forth in Q&A-2 of section 1.401(a)(9)-6T of the Treasury regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the Participant and a non-Spouse Beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated Beneficiary after the expiration of the period certain.
2. **Period Certain Annuities.**  
Unless the Participant's Spouse is the sole designated Beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the Participant's lifetime may not exceed the applicable distribution period for the Participant under the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury regulations for the calendar year that contains the Annuity Starting Date. If the Annuity Starting Date precedes the year in which the Participant reaches age seventy (70), the applicable distribution period for the Participant is the distribution period for age seventy (70) under the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury regulations plus the excess of seventy (70) over the age of the Participant as of the Participant's birthday in the year that contains the Annuity Starting Date. If the Participant's Spouse is the Participant's sole designated Beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the Participant's applicable distribution period, as determined under this subsection D(2), or the joint life and last survivor expectancy of the Participant and the Participant's Spouse as determined under 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 calendar year that contains the Annuity Starting Date.

E. **Requirements For Minimum Distributions Where Participant Dies Before Date Distributions Begin.**

1. **Participant Survived by Designated Beneficiary.**  
If the Participant dies before the date distribution of his or her interest begins and there is a designated Beneficiary, the Participant's entire interest will be distributed, beginning no later than the time described in subsection B(2)(i) or (ii), over the life of the designated Beneficiary or over a period certain not exceeding:
  - i. unless the Annuity Starting Date is before the first distribution calendar year, the life expectancy of the designated Beneficiary determined using the Beneficiary's age as of the Beneficiary's birthday in the calendar year immediately following the calendar year of the

Participant's death; or

- ii. if the Annuity Starting Date is before the first distribution calendar year, the life expectancy of the designated Beneficiary determined using the Beneficiary's age as of the Beneficiary's birthday in the calendar year that contains the Annuity Starting Date.

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 Begin.

If the Participant dies before the date distribution of his or her interest begins, the Participant's surviving Spouse is the Participant's sole designated Beneficiary, and the surviving Spouse dies before distributions to the surviving Spouse begin, this subsection E. will apply as if the surviving Spouse were the Participant, except that the time by which distributions must begin will be determined without regard to subsection B(2)(i).

F. Definitions.

- 1. Designated Beneficiary. The individual who is designated as the Beneficiary under 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.
- 2. Distribution Calendar Year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to subsection B(2).
- 3. Life Expectancy. Life expectancy as computed by use of the Single Life Table 111 section 1.401(a)(9)-9 of the Treasury regulations.
- 4. Required Beginning Date. As set forth in Code Section 401(a)(9)(C) and applicable regulations, for a Participant who is not a 5% owner of a contributing Employer, the Required Beginning Date is April 1 following the calendar year in which the later occurs: (1) the Participant attains the Applicable Age; or (2) the Participant retires. For a 5% owner, the Required Beginning Date is April 1 of the calendar year in which the Participant attains the Applicable Age, regardless of whether the Participant has retired.
- 5. Applicable Age. The Applicable Age means:
  - i. For periods prior to January 1, 2020, age 70½;

- ii. For the period January 1, 2020 through December 31, 2022, age 72;
- iii. For the period January 1, 2023 through December 31, 2032; age 73;
- iv. For periods on and after January 1, 2033, age 75.

## **ARTICLE XV – EMPLOYER WITHDRAWAL LIABILITY**

### ***Section 15.01 – Complete Withdrawal Defined – Building and Construction Industry***

A complete withdrawal occurs if an Employer ceases to have an obligation to contribute to the Plan, and the Employer continues to perform work in the jurisdiction of the Collective Bargaining Agreement of the type for which contributions were previously required, or resumes such work within five (5) years after the date or which the obligation to contribute to the Plan ceased, and does not renew the obligation at the time of such resumption.

- A. For this purpose, an Employer’s obligation to contribute is not considered to have ceased solely because:
  - 1. the Employer is not, at the particular time, engaged in activity for which it has a contractual obligation to contribute,
  - 2. the Employer ceases to exist by reason of (i) a change in corporate structure described in section 4069(b) of ERISA or (ii) a change to an unincorporated form of business enterprise, provided (in either case) the change causes no interruption in Employer contributions or obligation to contribute to the Plan, or
  - 3. the Employer suspends contributions during a labor dispute involving its Employees.
- B. The date of a complete withdrawal is the date the Employer’s obligation to contribute cease.

### ***Section 15.02 – Partial Withdrawal Defined***

- A. Under the construction industry exception, a partial withdrawal occurs only if the employer’s obligation to contribute under the plan is continued for no more than an insubstantial portion of the potentially covered work that the employer performs within the craft and area jurisdiction of the collective bargaining agreement. A partial withdrawal therefore occurs only when the employer has substantially shifted its work mix in the jurisdiction so that only an insubstantial part of such work in the jurisdiction is covered. The Plan, using the insubstantial standard, deems that a partial withdrawal occurs on the last day of the Plan Year in which the Employer’s work mix within the craft and area jurisdiction of a collective bargaining agreement under which the Employer is obligated to contribute to the Plan changes, with the result being a 70% contribution decline. An overall reduction in all work does not trigger a partial withdrawal for construction industry employers
  - 1. A partial withdrawal shall be determined on the basis of the Employer’s work mix within a period of three consecutive Plan Years (“Test Period”) compared to its work mix within the five Plan Years (“Base Period”) preceding the Test Period. A partial withdrawal shall be deemed to have occurred if the hours of work on the basis of which the Employer has been obligated to contribute to the Plan are, for each of the three years in the Test Period, less than 30 percent of what they had

been, on average, in the two Base Period years in which such hours had been highest.

- B. A partial withdrawal may also occur, in some cases, on the last day of the Plan Year if, for such Plan Year, there is a partial cessation of the employer's contribution obligation. There is a partial cessation of the employer's contribution obligation for the plan year if, during such year:
1. The employer permanently ceases to have an obligation to contribute under one or more but fewer than all collective bargaining agreements under which the employer has been obligated to contribute under the plan but continues to perform work in the jurisdiction of the collective bargaining agreement of the type for which contributions were previously required or transfers such work to another location or to an entity or entities owned or controlled by the employer, or
  2. An employer permanently ceases to have an obligation to contribute under the Plan with respect to work performed at one or more but fewer than all of its facilities but continues to perform work at the facility of the type for which the obligation to contribute ceased.

### ***Section 15.03 – Calculation of Withdrawal Liability***

An Employer's withdrawal liability shall be equal to the sum of (A), (B), and (C) below, but shall be subject to (D).

- A. Withdrawal liability for Plan Years ending after September 25, 1980. This amount is equal to the sum of the Employer's withdrawal liability for each of the Plan Years ending after September 25, 1980 and before the Plan Year of withdrawal. The Employer's withdrawal liability for any Plan Year shall be equal to (1) reduced by (2) and multiplied by (3) below.
1. **The change in unfunded Vested benefits for the given Plan Year.** The change in unfunded Vested benefits is equal to the unfunded Vested benefits as of the end of the given Plan Year, less the sum of (i) and (ii) below.
    - i. The unfunded Vested benefits on the last day of the last Plan Year ending before September 26, 1980, reduced by 5 percent for each Plan Year ending after September 25, 1980 and before the given Plan Year.
    - ii. The sum of the changes in the unfunded vested benefits for each Plan Year ending after September 25, 1980 and ending before the given Plan Year.
  2. Five percent for each Plan Year ending after the given Plan Year and before the Plan Year of withdrawal.
  3. A fraction, the numerator of which is the total amount required to be contributed under the Plan by the Employer for the last five Plan Years ending with the given Plan Year, and the denominator of which is the total amount contributed under the Plan by all Employers for the five Plan Years ending with the given Plan Year, reduced by contributions made in such years by Employers who withdrew from the Plan during such years.

However, notwithstanding the provisions of (A)(3), contributions of all Employers that permanently cease to have an obligation to contribute to the Plan or permanently cease covered operations before the end of the period of Plan Years used to determine the fractions for allocating unfunded vested benefits (and contributions of all Employers that withdrew from the Plan prior to September 26, 1980) shall be excluded from the denominators of the fractions.

B. The Employer's withdrawal liability for Plan Years ending before September 26, 1980. The Employer's pre-September 26, 1980 withdrawal liability shall be equal to (1) reduced by (2), and multiplied by (3) below.

1. The unfunded vested benefits on the last day of the last Plan Year ending before September 26, 1980.
2. Five percent for each Plan Year ending after September 25, 1980 and before the Plan Year of withdrawal.
3. A fraction, the numerator of which is the total amount required to be contributed under the Plan by the Employer for the last five Plan Years ending before September 26, 1980, and the denominator of which is the total contributions for the same five Plan Years made by all Employers that:
  - i. were required to contribute for the first Plan Year ending on or after September 25, 1980 and
  - ii. had not withdrawn from the Plan before September 26, 1980.

C. The Employer's withdrawal liability for reallocated unfunded vested benefits. This amount is equal to the sum of the Employer's withdrawal liability for reallocated unfunded vested benefits for each Plan Year ending before the Plan Year in which the Employer withdraws from the Plan. The Employer's withdrawal liability for reallocated unfunded vested benefits for any Plan Year shall be equal to (1) reduced by (2) and multiplied by (3) below.

1. **The reallocated unfunded vested benefits for the given Plan Year.** The reallocated unfunded vested benefits are equal to the sum of the following amounts that the Trustees determine in that year:
  - i. to be uncollectible from an Employer because of bankruptcy or similar proceedings;
  - ii. will not be assessed because of the de minimis rules, the sale of assets rules, the 20-year payment cap, or the dollar limitations on liability; and
  - iii. to be uncollectible or unassessable for other reasons that are not inconsistent with regulations issued by the Pension Benefit Guaranty Corporation ("PBGC").
2. Five percent of the reallocated unfunded vested benefits for each Plan Year ending after the given Plan Year and before the Plan Year of withdrawal.
3. A fraction, the numerator of which is the total amount required to be contributed under the Plan by the Employer for the last five Plan Years ending with the given



Plan Year, and the denominator of which is the total amount contributed under the Plan by all Employers for the five Plan Years ending with the given Plan Year, reduced by contributions made in such years by Employers who withdrew from the Plan during such years.

However, notwithstanding the provisions of (C)(3), contributions of all Employers that permanently cease to have an obligation to contribute to the Plan or permanently cease covered operations before the end of the period of Plan Years used to determine the fractions for allocating unfunded vested benefits (and contributions of all Employers that withdrew from the Plan prior to September 26, 1980) shall be excluded from the denominators of the fractions.

D. Liability for a Partial Withdrawal. The Employer's liability for a partial withdrawal shall be the amount determined pursuant to (A) – (C) above, multiplied by one minus the following fraction:

1. the numerator is the total hours for which the Employer was obligated to contribute for the Plan Year following the Test Period of the partial withdrawal, and
2. the denominator is the average of the annual total hours for which the Employer was obligated to contribute for each year in the five Plan Years prior to the Plan Year of the partial withdrawal.

If there is a partial withdrawal as defined in (a) of Section II (Partial Withdrawal Defined), the Plan Year of the partial withdrawal is the last day of the first Plan Year in the Test Period.

If there is a partial withdrawal as defined in (b) of Section II (Partial Withdrawal Defined), the Plan Year of the partial withdrawal is the Plan Year in which the employer permanently ceases to have an obligation to contribute under one or more but fewer than all collective bargaining agreements.

#### ***Section 15.04 – De Minimis Reduction of Withdrawal Liability***

The unfunded vested benefits allocable to an Employer who withdraws from the Plan shall be reduced (but not below zero) by the lesser of (A) or (B), reduced by (C) below.

- A.  $\frac{3}{4}$  of 1 percent of the Plan's unfunded vested benefits (determined as of the end of the Plan Year ending before the date of withdrawal).
- B. \$50,000.
- C. Any amount by which the unfunded vested benefits allocable to the Employer exceeds \$100,000.

The de minimis reduction does not apply in the event of a withdrawal of all or substantially all Employers that contribute to the Plan, as more fully described in section 4209(c) of ERISA.

#### ***Section 15.05 – Actuarial Assumptions***

Withdrawal liability shall be determined based on the actuarial assumptions and methods that are used in the employer withdrawal liability report prepared by the actuary for the Plan for the Plan Year in which the withdrawal occurred. The Plan uses market value of assets in calculating employer withdrawal liability.

***Section 15.06 – Payment of Withdrawal Liability***

The unfunded vested benefits allocable to an Employer that withdraws from the Plan shall be paid as follows:

- A. The amount of payment shall be calculated as follows:
  - 1. Except as provided in (2) and (4) below, and in (C) and (D) below, an Employer shall pay the amount determined under Section III (Calculation of Withdrawal Liability), reduced according to the provisions of Section IV (De Minimis Reduction of Actuarial Liability) and appropriately adjusted for partial withdrawal according to the provisions of ERISA. The Employer will make level annual payments in an amount determined under (3) below. The level annual payments will be paid over a period of years required to amortize the amount payable by the Employer. The amortization period will be calculated as if the first payment were made on the first day of the Plan Year following the Plan Year in which withdrawal occurs and as if each subsequent payment were made on the first day of each subsequent Plan Year. The amortization period shall be based on the interest rate used for the actuarial valuation of the Plan for the Plan Year in which the withdrawal occurred.
  - 2. If the amortization period described in (1) above exceeds 20 years, the liability of the Employer shall be limited to the first 20 annual payments determined in (3) below.
  - 3. Except as provided in (5) below, the amount of each annual payment shall be the product of (i) and (ii) below:
    - i. The average annual number of contribution hours for the three consecutive Plan Years, during the 10 consecutive Plan Years ending before the Plan Year in which withdrawal occurs, in which the number of contribution hours for which the Employer has an obligation to contribute to the Plan is highest, and
    - ii. The highest contribution rate at which the Employer had an obligation to contribute to the Plan during the 10 Plan Years ending with the Plan Year in which the withdrawal occurs.
  - 4. In the event of withdrawal of all or substantially all Employers that contribute to the Plan, (2) above shall not apply, and total unfunded vested benefits shall be allocated among all such Employers according to regulations issued by the PBGC.
  - 5. In the event of a partial withdrawal, the amount of annual payment will be adjusted according to the provisions of ERISA.
- B. Withdrawal liability shall be payable in equal monthly installments. Payment of withdrawal liability shall begin on the first day of the month that begins at least 10 days after the date of notice of, and demand for, payment is sent to the Employer, notwithstanding the pendency of any review, arbitration or other proceedings.