

**IRON WORKERS OF WESTERN PENNSYLVANIA  
PROFIT SHARING PLAN**

(Amended and Restated as of July 1, 2001)

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**IRON WORKERS OF WESTERN PENNSYLVANIA  
PROFIT SHARING PLAN**

(Amended and Restated as of July 1, 2001)

**PREAMBLE**

WHEREAS, effective June 1, 1976, the Ironworker Employers Association of Western Pennsylvania, Inc. and Local No. 3 of the International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO adopted the Iron Workers Local No. 3 Annuity Plan as subsequently amended, to provide Employees who are members of the Union and other Plan Participants with an opportunity to accumulate funds for their retirement and financial emergencies; and

WHEREAS, the Trustees in accordance with the right reserved to them under the provisions of the Plan, last amended and restated the Plan effective January 1, 1994 as a tax-qualified profit sharing plan (within the meaning of Code Section 401(a)(27)) and thereafter adopted various amendments thereto; and

WHEREAS, the Trustees wish to amend and restate the Plan to provide for the daily valuation of participant accounts and to comply with the current qualification requirements of the Code, including the Retirement Protection Act of 1994, the Small Business Job Protection Act of 1996, the Taxpayer Relief Act of 1997, the Internal Revenue Restructuring and Reform Act of 1998, and the Community Renewal Tax Relief Act of 2000.

NOW THEREFORE, the Trustees hereby amend the Plan in its entirety as follows, effective as of July 1, 2001, except as otherwise provided herein:

**ARTICLE I**

**DEFINITIONS**

**Section 1.01. Annuity Starting Date.**

The term "Annuity Starting Date", as used herein, means the first day of the first period for which an amount is payable, which shall be deemed for non-annuity distributions to be the date on which a Participant's Individual Accounts are distributed.

**Section 1.02. Beneficiary.**

The term "Beneficiary", as used herein, shall mean the person or persons determined in accordance with the provisions of Section 6.16 to receive payment of a Participant's Individual Accounts in the event of the Participant's death before the Annuity Starting Date and Sections 6.06 and 6.07 in the event of the Participant's death on or after the Annuity Starting Date.

### **Section 1.03. Code.**

The term "Code", as used herein, shall mean the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

### **Section 1.04. Collectively Bargained Employee.**

The term "Collectively Bargained Employee", as used herein, shall mean and include any Employee of an Employer on whose behalf Employer Contributions are required to be paid into the Fund according to a collective bargaining agreement that obligates such Contributions.

### **Section 1.05. Covered Employment.**

The term "Covered Employment", as used herein, shall mean employment with an Employer for which an Employee is directly or indirectly paid or entitled to payment by the Employer and for which the Employer is obligated to make Employer Contributions to the Fund.

### **Section 1.06. Employee.**

- (a) The term "Employee", as used herein, shall mean an individual employed as a common law employee by an Employer or by any other employer required to be aggregated with an Employer under Code Section 414(b), (c), (m) or (o).
- (b) The term "Employee", as used herein, shall also include to the extent necessary and permitted:
  - (1) a self-employed individual who is deemed to be an employee of an Employer under the provisions of Code Section 401(c); and
  - (2) a leased employee of an Employer described in paragraph (a) above, which for Plan Years beginning on and after January 1, 1997, as determined in accordance with Code Section 414(n), is any person who is not an employee of the Employer and who, pursuant to an agreement between a leasing organization and the Employer, performs services for the Employer on a substantially full-time basis for a period of at least one year under the primary control and direction of the Employer, but excluding any such person if (i) such person is covered under a money purchase pension plan maintained by the leasing organization that provides for a 10 percent nonintegrated employer contribution for each of its participants, full and immediate vesting, and immediate participation for each non-excluded employee of the leasing organization, and (ii) leased employees (determined without regard to this exclusion) do not constitute more than 20 percent of the Employer's nonhighly compensated employee workforce.

### **Section 1.07. Employer.**

The term "Employer", as used herein, shall mean any person, firm, corporation, partnership, association, trust, contractor, city, county, state or other political subdivision or agency which is, or hereafter becomes, obligated to contribute to the Plan on behalf of Employees pursuant to the terms of a collective bargaining agreement, a participation agreement, or other written instrument. The Union, the Iron Workers Welfare and Pension Plans of Western Pennsylvania,

the Iron Workers Apprenticeship Training and Journeyman Retraining Fund (Local No. 3), the Ironworkers Apprenticeship Training and Journeyman Upgrading Fund (Local Union No. 772), and this Profit Sharing Plan shall each also be considered an "Employer" provided that such Employer has a written agreement with the Trustees obligating it to make contributions to the Plan on behalf of Employees.

**Section 1.08 Employer Contributions.**

The term "Employer Contributions", as used herein, shall mean payments by Employers to the Fund in the amounts specified in a collective bargaining agreement, participation agreement or other written instrument between an Employer and the Union or the Trustees.

**Section 1.09 ERISA.**

The term "ERISA", as used herein, shall mean the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

**Section 1.10 Fund.**

The term "Fund", as used herein, means the Iron Workers of Western Pennsylvania Profit Sharing Plan and its trust estate.

**Section 1.11. Individual Account.**

The term "Individual Account", as used herein, shall mean a Participant's Pension Account or Profit Sharing Account.

**Section 1.12. Investment Fund.**

The term "Investment Fund", as used herein, shall mean each investment fund selected by the Trustees and maintained for the investment of Individual Accounts.

**Section 1.13. Non-Collectively Bargained Employee.**

The term "Non-Collectively Bargained Employee", as used herein, shall mean and include any Employee who is employed by an Employer and who is not covered by a collective bargaining agreement, but is covered by a written participation agreement or other written instrument requiring Employer Contributions on such Employee's behalf.

**Section 1.14. Normal Retirement Age.**

The term "Normal Retirement Age", as used herein, shall mean age 65.

**Section 1.15. Participant.**

The term "Participant", as used herein, shall mean an Employee who meets the requirements for participation set forth in Article II.

**Section 1.16. Pension Account.**

The term "Pension Account", as used herein, shall mean the book account maintained for each Participant pursuant to Article IV to record the Participant's interest in the Fund attributable to Employer Contributions made for Covered Employment completed prior to January 1, 1994.

**Section 1.17. Plan.**

The term "Plan", as used herein, shall mean the rules and regulations set forth herein, and all amendments hereto, adopted from time to time.

**Section 1.18. Plan Year.**

The term "Plan Year", as used herein, shall mean the calendar year.

**Section 1.19. Profit Sharing Account.**

The term "Profit Sharing Account", as used herein, shall mean the book account maintained for each Participant pursuant to Article IV to record the Participant's interest in the Fund attributable to Employer Contributions made for Covered Employment completed on and after January 1, 1994.

**Section 1.20. Qualified Joint and Survivor Annuity.**

The term "Qualified Joint and Survivor Annuity", as used herein, shall mean an immediate annuity for the life of the Participant and Spouse in which the survivor annuity for the life of the Spouse (if surviving the Participant) is 50% of the amount of the annuity payable during the joint lives of such Participant and Spouse, and which is the actuarial equivalent of a Single Life Annuity for the Participant.

**Section 1.21. Qualified Preretirement Survivor Annuity.**

The term "Qualified Preretirement Survivor Annuity", as used herein, shall mean an immediate annuity for the life of the surviving Spouse, the actuarial equivalent of which is not less than 100% of the Participant's Individual Accounts as of the date of death.

**Section 1.22. Retirement.**

The term "retires" or "retired" or "retirement", as used herein, shall mean the complete withdrawal by a Participant from any employment or self-employment which is within the geographic collective bargaining jurisdiction of the Union, and regardless of whether a collective bargaining agreement actually exists with respect to the employment or self-employment involved.

**Section 1.23. Single Life Annuity.**

The term "Single Life Annuity", as used herein, shall mean an immediate annuity for the life of the Participant, the actuarial equivalent of which is not less than 100% of the Participant's Individual Accounts.



**Section 1.24. Spouse.**

The term "Spouse", as used herein, shall mean the individual to whom a Participant is legally married under applicable state law (and a former spouse of the Participant to the extent provided by Section 6.01(f)).

**Section 1.25. Trust Agreement.**

The term "Trust Agreement", as used herein, shall mean the Agreement and Declaration of Trust entered into as of September 23, 1976 and effective June 1, 1976, establishing the Iron Workers of Western Pennsylvania Profit Sharing Fund (formerly the Iron Workers Local No. 3 Annuity Fund), as amended from time to time thereafter.

**Section 1.26. Trustees.**

The term "Trustees", as used herein, shall mean the Board of Trustees established by the Trust Agreement and the persons who at any relevant time are acting in such capacity pursuant to the provisions of the Trust Agreement.

**Section 1.27. Union.**

The term "Union", as used herein, shall mean Local Union No. 3 of the International Association of Bridge, Structural and Ornamental Iron Workers of Pittsburgh, Pennsylvania and Local Union No. 772 of the International Association of Bridge, Structural and Ornamental Iron Workers.

**ARTICLE II**

**PARTICIPATION**

**Section 2.01. Commencement of Participation.**

An Employee shall become a Participant in the Plan as of the first date upon which such Employee performs service with an Employer, and for which the Employer is obligated to make an Employer Contribution on the Employee's behalf.

**Section 2.02. Termination of Participation.**

A Participant's participation in the Plan shall terminate as of the later of:

- (a) the date upon which all amounts credited to the Participant's Individual Accounts have been distributed or are deemed to have been distributed under the provisions of the Plan or the Code; or
- (b) the date upon which the Participant's Covered Employment terminates as the result of retirement, death, disability or termination of service with an Employer as described in Article VI.

### **Section 2.03. Special Limit on Participation.**

Notwithstanding any contrary provisions, no Employee shall become a Participant, or continue as a Participant in this Plan for any Plan Year, if:

- (a) such Employee was at any time a participant in any terminated plan which was not a multiemployer plan and which is required to be aggregated with this Plan for purposes of the limitations of Article V; and
- (b) the contributions and benefits which may be provided under such other plan(s) and this Plan will exceed the limitations imposed under Article V.

## **ARTICLE III**

### **CONTRIBUTIONS**

#### **Section 3.01. Employer Contributions.**

Each Employer shall contribute to the Fund the amounts specified in the collective bargaining agreement between such Employer and the Union or in other written agreements with the Trustees as they may be renegotiated from time to time; provided, however, if such contributions are based on compensation, compensation shall be limited in the same manner as specified in Section 5.02(d). Each Employer shall forward such Employer Contributions to the Trustees at such time or times as the Trustees may prescribe, together with such information as the Trustees may require.

#### **Section 3.02. Benefit.**

Any and all contributions by an Employer to the Fund shall be irrevocable, and neither such contributions nor any income therefrom shall be used for, nor diverted to, purposes other than for the exclusive benefit of Participants or their Beneficiaries under the Plan and for the payment of reasonable expenses of administration of the Plan and the Fund as provided herein and in the Trust Agreement.

#### **Section 3.03. Participant Contributions.**

No Participant shall be required to make any contribution to the Fund. No Participant shall be permitted to make any contributions to the Fund, other than a Rollover Contribution under the provisions of Section 3.04.

#### **Section 3.04. Rollover Contributions.**

- (a) Subject to paragraph (b) below, a Participant may make a Rollover Contribution to the Fund of (all or part of) an "eligible rollover distribution," within the meaning of Code Section 402(c)(4) (and any successor thereto) that the Participant is eligible to receive from a tax-qualified multiemployer plan or from a tax-qualified single employer defined contribution plan, but excluding for this purpose, any distribution of "accumulated deductible employee contributions" within the meaning of Code Section 72(o)(5) (and any successor thereto). A Rollover Contribution shall be made only by a direct rollover

elected in accordance with the requirements of Code Section 401(a)(31) (and any successor thereto).

- (b) During the period that any reciprocal agreement is in effect with respect to the Fund, a Participant shall be permitted to make a Rollover Contribution under this Section only if the Fund is the home fund for the Participant within the meaning of the reciprocal agreement. In addition, no Participant shall be permitted to make a Rollover Contribution under this Section unless the Participant submits such information, statements and documents as the Trustees (or their designee) may require to establish to their satisfaction that the Rollover Contribution to be transferred to the Fund in a direct rollover qualifies for such treatment under the Code and this Section, which may include reasonable proof or demonstration from the plan administrator or trustee of the multiemployer or single employer plan from which the direct rollover is to be made.
- (c) Upon receipt of a Rollover Contribution, the Trustees shall credit the amount of any such Rollover Contribution to the contributing Participant's Profit Sharing Account in accordance with the provisions of Article IV, and shall invest such amount in accordance with said provisions of the Fund. The distribution of a Rollover Contribution shall be governed by the provisions of Article VI (without regard to any rights and options under the multiemployer or single employer plan from which made).

### **Section 3.05. Military Service.**

- (a) Absence from Covered Employment due to service in the Armed Forces of the United States shall be considered as service under the Plan to the extent required by applicable federal law, provided that the Employee or Participant is entitled to reemployment rights with respect to the Plan.
- (b) For a reemployment initiated on or after December 13, 1994, the provisions of this Section shall be interpreted and applied in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), and benefits and service credit shall be provided in accordance with Code Section 414(u) as follows:
  - (1) Employer Contributions shall be made on behalf of a Participant with reemployment rights under USERRA with respect to this Plan for the period of qualified military service at the hourly rate provided for in the collective bargaining agreement between the Employer and Union or in other written agreements with the Trustees as they may be negotiated from time to time. For this purpose, the hourly rate for such Employer Contributions shall be determined by the hourly rate in effect for the Employer who last employed the Participant before the period of qualified military service and the number of hours for which such Employer Contributions are made shall be determined by the higher of (i) the number of hours for which Employer Contributions were made during the 12 consecutive month period preceding the period of qualified military service or (ii) the annual average number of hours for which Employer Contributions were made during the 36 consecutive month period preceding the period of qualified military service, whether or not the Participant was in Covered Employment continuously during such 12-month or 36-month period. However, if said Participant's Covered Employment initially commenced within the 12 consecutive month period preceding the period of qualified military service, the

number of hours for which Employer Contributions are made for the period of qualified military service shall be determined by an estimated annual rate of hours based upon the number of hours for which Employer Contributions were made for the period beginning with such commencement of Covered Employment and ending on the date before the commencement of the period of qualified military service.

- (2) No Employer shall be liable for making the Employer Contributions required to be made to the Fund for a Participant for a period of qualified military service protected by USERRA. Instead, the cost of said Employer Contributions shall be borne by the Fund, and for this purpose, shall be treated as an administrative and operating expense of the Fund as a whole in determining the net investment yield of each Investment Fund. However, if such treatment would result in a reduction of the overall net investment yield for the Fund for the applicable valuation period of more than one percent, the Trustees shall determine the source of the funds for making such required Employer Contributions, which can include the net investment yield for that or future valuation periods or allocation to responsible Employers.

## **ARTICLE IV**

### **INDIVIDUAL ACCOUNTS**

#### **Section 4.01. Individual Accounts.**

- (a) A Pension Account shall be maintained for each Participant who was in Covered Employment prior to January 1, 1994 (when the Plan was a money purchase pension plan) to record a Participant's interest in the Fund attributable to Employer Contributions made on behalf of said Participant for said Covered Employment and to Rollover Contributions made by the Participant prior to said date.
- (b) A Profit Sharing Account shall be maintained for each Participant who is in Covered Employment on or after January 1, 1994 (when the Plan is a profit sharing plan) to record a Participant's interest in the Fund attributable to Employer Contributions made on behalf of said Participant for said Covered Employment and to Rollover Contributions made by the Participant on or after said date.
- (c) An Individual Account shall be considered terminated on the date on which all monies credited to the Individual Account have been distributed by distribution to the Participant or Beneficiary or the purchase of an annuity from an insurance company for the benefit of the Participant or Beneficiary.

#### **Section 4.02. Vesting in Individual Accounts.**

Amounts properly credited to a Participant's Individual Accounts in accordance with the terms of this Plan shall be 100% vested and nonforfeitable.

### **Section 4.03. Administration of Individual Accounts.**

- (a) Each Individual Account maintained for a Participant shall have a subaccount for each Investment Fund.
- (b) All Employer Contributions received hereunder for a Participant shall be credited to the Participant's applicable Individual Account and allocated among its subaccounts in accordance with Section 4.04. Each subaccount of each Participant's Individual Account shall also be credited with its allocable share of the net income of the Investment Fund to which it relates in accordance with Section 4.04
- (c) The balances in the subaccounts of each Participant's Individual Account shall be subject to reallocation at the direction of the Participant pursuant to Section 4.06(d).
- (d) All distributions or withdrawals made to or with respect to a Participant shall be charged against the Participant's applicable Individual Account and allocated among its subaccounts in accordance with Section 4.04. Each subaccount of each Individual Account shall also be charged with its allocable share of the net loss of the Investment Fund to which it relates in accordance with Section 4.04.

### **Section 4.04. Adjustment of Individual Accounts.**

The value of each Individual Account shall be adjusted in the following manner at the relevant time for the transaction:

- (a) The net income or loss of each Investment Fund, including unrealized gains and losses, shall be credited or charged to each subaccount participating in the Investment Fund in proportion to the ratio that the value of such subaccount bears to the value of all such subaccounts.
- (b) The Employer Contributions received hereunder for a Participant (for Covered Employment completed on and after January 1, 1994) shall be credited to the Participant's Profit Sharing Account and allocated among its subaccounts in accordance with the investment election in effect under Section 4.06(a) or (b).
- (c) A Rollover Contribution made by a Participant (on or after January 1, 1994) shall be credited to the Participant's Profit Sharing Account and allocated among its subaccounts in accordance with the investment election in effect under Section 4.06(c).
- (d) Any forfeiture of a Participant's Individual Account to be restored (under Section 6.13) shall be credited to that Account and allocated among its subaccounts in accordance with the investment election in effect under Section 4.06(a) or (b).
- (e) Any distribution or withdrawal made from a Participant's Individual Account shall be charged against that Account:
  - (1) If a Participant has more than one Individual Account and the distribution or withdrawal is less than full value of the Individual Accounts, unless the Plan otherwise specifies the Individual Account from which the distribution or withdrawal

is to be made, the distribution or withdrawal shall be made from the Pension Account and the Profit Sharing Account in that order.

- (2) To the extent such charge is less than the full value of the Individual Account and the Participant has not designated (as and when permitted under the administrative procedures of the Plan) the Investment Funds and corresponding subaccounts to which the charge is to be allocated, the charge shall be allocated among the subaccounts of the Individual Account in proportion to the balances then credited to each Investment Fund.
- (f) Any forfeiture of a Participant's Individual Account (under Section 6.13) shall be charged against that Account.
- (g) Any chargeable administrative expenses or fees related to the administration of a Participant's Individual Account shall be charged against that Account.
- (h) The amounts to be reallocated among the subaccounts of the Participant's Individual Account in accordance with his/her election under Section 4.06(d) shall be reallocated.

#### **Section 4.05. Valuation of Individual Accounts Upon Distribution.**

The amount of a Participant's Individual Accounts distributed in accordance with the provisions of Article VI shall be the sum of the following:

- (a) the then value of the Participant's Individual Accounts; plus
- (b) any Employer Contributions and Rollover Contributions received for the Participant subsequent to distribution of the Participant's Individual Accounts (which shall be distributed in accordance with the provisions of Article VI).

#### **Section 4.06. Investment of Employer Contributions and Individual Accounts.**

- (a) Upon participation in the Plan, or upon reparticipation in the Plan following the distribution of the entire prior balance of his/her Individual Accounts, a Participant shall direct that the Employer Contributions received hereunder for the Participant be invested in one or more of the Investment Funds. In the absence of an investment direction by a Participant, the Participant shall be deemed to have directed that 100 percent of such Employer Contributions be invested in the default Investment Fund(s); provided, however, to the extent deemed necessary by the Trustees, the Trustees may direct the investment of said Employer Contributions.
- (b) A Participant's investment election under paragraph (a) above for the investment of Employer Contributions shall continue in effect until changed by the Participant. Such change may be elected by a Participant at the uniform times prescribed by the Trustees for this purpose (but no less frequently than quarterly), and any elected change shall be effective only for the Employer Contributions received hereunder for the Participant from and after the effective date for such elected change (as determined under uniform procedures of the Trustees).

- (c) A Participant who makes a Rollover Contribution shall direct that the Rollover Contribution be invested in one or more of the Investment Funds.
- (d) Subject to the rules applicable to a particular Investment Fund, a Participant, or the Beneficiary of a deceased Participant, may elect to reallocate or transfer the Investment Fund subaccounts of the Participant's Individual Accounts (to be effective at a date established under uniform procedures of the Administrator). Such reallocation or transfer may be elected at the uniform times prescribed by the Trustees for this purpose (but no less frequently than quarterly). (Any such reallocation or transfer elected by the Participant, or the Beneficiary of a deceased Participant, shall apply uniformly to all of the Participant's Individual Accounts.)
- (e) All investment directions and elections under this Section shall be made by filing a written election with the Trustees (or designee) or by following such other procedures as the Trustees may uniformly prescribe.
- (f) All transaction fees and expenses incurred by reason of the investment of a Participant's Individual Account shall be charged to that Account.
- (g) The provisions in this Section are intended to comply with Section 404(c) of ERISA and shall be construed and interpreted in such manner as to give effect to this intent.

#### **Section 4.07. General Accounting Principles.**

- (a) The Trustees may establish such accounting procedures as they deem necessary or desirable for the purpose of making the allocations to Individual Accounts provided for in this Article. From time to time, the Trustees may modify such accounting procedures for the purpose of achieving equitable and nondiscriminatory allocations among the Individual Accounts of Participants in accordance with the provisions of this Article and the applicable provisions of the Code and ERISA.
- (b) The Individual Accounts provided for in this Article are established and maintained for the sole purpose of accounting for a Participant's interest in the Fund and Investment Funds, and the same shall not give any Participant or any other person any right or interest in the Fund or Investment Funds except as herein provided.
- (c) Balances standing to the credit of a subaccount participating in an Investment Fund shall represent individual interests in that Investment Fund, and no Participant or any other person shall have any right or interest in any specific asset of an Investment Fund as a result of the allocations provided for in this Article.
- (d) In no event and at no time shall the total amounts credited to all Individual Accounts, plus any amounts established for expenses and reserves at that time, exceed or be less than the fair market value of the total net assets of the Fund. If such an event should occur, then all existing Individual Accounts shall be automatically and proportionately adjusted so that the total of all Individual Accounts, plus any amounts established for expenses and reserves at that time, is equal to the fair market value of the total net assets of the Fund.

#### **Section 4.08. Limitation on Allocations.**

Amounts allocated to Participants' Individual Accounts shall be limited pursuant to Articles V.

### **ARTICLE V**

#### **LIMITATIONS ON CONTRIBUTIONS AND BENEFITS**

#### **Section 5.01. Limitations Incorporated by Reference.**

- (a) The provisions and limitations on benefits and contributions under qualified plans as contained in Code Section 415 are specifically incorporated herein by reference and are intended to override any other provisions of the Plan which may be inconsistent with such provisions and limitations (except as may be expressly stated in this Plan to the contrary).
- (b) The amount of annual additions (as defined in Code Section 415) which may be credited to a Participant's Individual Accounts for any Limitation Year shall not exceed the maximum amount permissible under Code Section 415. If Employer Contributions that would otherwise be contributed or allocated to the Participant's Individual Accounts would cause the annual additions for the Limitation Year to exceed the maximum permissible amount, the amount contributed or allocated shall be reduced so that the annual additions for the Limitation Year shall equal the maximum permissible amount. Excess amounts in the Participant's Individual Accounts shall be used to reduce Employer Contributions for the next Limitation Year (and succeeding Limitation Years as necessary) in accordance with the provisions of I.T. Reg. §1.415-6(b)(6)(ii).
- (c) For purposes of applying the limitations Code Section 415 with respect to a Participant employed by an Employer maintaining the Plan, only the benefits or contributions provided to such Participant by such Employer shall be taken into account.
- (d) If a Participant participates in another qualified defined contribution plan (other than another multiemployer plan) maintained or contributed to by an Employer, and the aggregate contributions for such Participant under this and all such other plans would exceed the limitations of Code Section 415, contributions and allocations shall be reduced to prevent violation of the Section 415 limits under such other plans; provided, however, if such other plan is terminated, the reduction shall be made under this Plan as provided in paragraph (b) above.
- (e) The Code Section 415 limitations applicable to a Participant who also participates a qualified defined benefit plan(s) (other than another multiemployer plan) maintained or contributed to by an Employer shall not apply to Limitations Years beginning on and after January 1, 2000.
- (f) For purposes of this Section, "compensation" shall mean all of an Employee's wages for the entire Limitation Year within the meaning of Code Section 3401(a) or any other payments of compensation for which the Employee is required to be furnished a written statement under Code Sections 6041(d) and 6051(a)(3), determined without regard to any rules under Code Section 3401(a) that limit the remuneration included in wages



based on the nature or location of the employment or services performed, and including for Limitation Years beginning on and after January 1, 1998, (i) elective deferrals that are not includible in gross income under Code Sections 125, 402(e)(3), 402(h), 403(b) (and any predecessors and successors thereto), (ii) compensation deferred under Code Section 457(b) deferred compensation plan, and (iii) employee pick-up contributions under Code Section 414(h) Code, and including for Limitation Years beginning on and after January 1, 2001, elective amounts that not includible in gross income under Code Section 132(f)(4) (and any predecessors and successors thereto).

- (g) For purposes of applying the limitations of this Section, compensation for a Limitation Year is the compensation actually paid or includible in gross income during such Limitation Year. Notwithstanding the preceding sentence, compensation for a Participant in a defined contribution plan who is permanently and totally disabled (as defined in Code Section 22(e)(3)) shall be the compensation such Participant would have received for the Limitation Year if the Participant had been paid at the rate of compensation paid immediately before becoming permanently and totally disabled; provided, however, such imputed compensation for the disabled Participant may be taken into account only if contributions made on behalf of such Participant are nonforfeitable when made, and beginning January 1, 1997, if the Participant is a highly compensated employee within the meaning of Section 5.02(e), only if contributions are made on behalf of all such permanently and totally disabled participants.
- (h) For purposes of this Section, the term "Employer" shall mean the Employer of the Participant, and all members of a controlled group of corporations (as defined in Code Section 414(b) as modified by Section 415(h)), all commonly controlled trades or businesses (as defined in Code Section 414(c) as modified by Section 415(h)) or affiliated service groups (as defined in Code Section 414(m)) of which the Employer is a part, and any other entity required to be aggregated with the Employer pursuant to regulations under Code Section 414(o).
- (i) For purposes of this Section, the term "Limitation Year" shall mean the calendar year.

#### **Section 5.02. Special Limitation for Non-Collectively Bargained Employees.**

- (a) Notwithstanding any contrary provisions, no Participant who is both a highly compensated employee within the meaning of paragraph (e) below and a Non-Collectively Bargained Employee shall benefit under this Plan (i.e., receive an allocation of Employer Contributions or any forfeitures) in any Plan Year, unless the Employer who contributes (or is obligated to contribute) on behalf of such Participant provides satisfactory demonstration and certification to the Plan that the portion of the Plan which covers the Non-Collectively Bargained Employees (including the Participant) of such Employer satisfies, in the manner prescribed by law, the minimum coverage and general nondiscrimination provisions of Code Sections 410(b) and 401(a)(4) with respect to such Plan Year.
- (b) Solely for purposes of this Section, a Non-Collectively Bargained Employee benefiting under this Plan shall be treated as a Collectively Bargained Employee to the extent provided by I.T. Reg. §1.410(b)-6(d)(2)(ii)(A) through (D) (or any successor).

- (c) For purposes of demonstrating satisfaction with any applicable nondiscrimination requirements of the Code under this Section, an Employer who contributes to the Plan on behalf of Non-Collectively Bargained Employees may elect to use any definition of compensation that complies with the provisions of I.T. Reg. §1.414(s)-1 (or its successor) to apply such nondiscrimination requirements to the portion of the Plan that is required to be tested as a separate plan of such Employer, provided that the definition of compensation so elected by an Employer is used consistently to the extent required by I.T. Reg. §1.414(s)-1 (or its successor).
- (d) For purposes of demonstrating satisfaction with any applicable nondiscrimination requirements of the Code under this Section, the annual compensation of a Participant taken into account for any Plan Year beginning on or after January 1, 1994 shall not exceed \$150,000, with said dollar amount reduced proportionately for any Plan Year shorter than 12 months and adjusted at the time and in the manner as provided by Code Section 401(a)(17), and effective January 1, 1997, determined without regard to family aggregation. Said annual compensation limit shall be applied separately with respect to the compensation of an Employee from each Employer maintaining the Plan, rather than the total compensation from all Employers maintaining the Plan.
- (e) For purposes of this Section, effective January 1, 1997, a Participant shall be considered a highly compensated employee for a Plan Year (the "current Plan Year") if, as determined in accordance with Code Section 414(q), the Participant performs service for an Employer during the current Plan Year and either:
  - (1) is a 5-percent owner (within the meaning of Code Section 416(i)(1)(A)(iii)) at any time during the current Plan Year or preceding Plan Year; or
  - (2) had more than \$80,000 of compensation (within the meaning of Code Section 415(e)(3)) or such higher amount prescribed pursuant to Code Section 414(q)(1) from the Employer for the preceding Plan Year, and if elected by the Employer, was also within the top-paid group of the Employer (i.e., among the top 20 percent paid employees of the Employer when excluding employees under Code Section 414(q)(5)).

## **ARTICLE VI**

### **BENEFITS AND DISTRIBUTIONS**

#### **Section 6.01. Benefits in General.**

- (a) The benefits provided by this Plan shall be payable to the Participant upon the Participant's retirement, disability or termination of Covered Employment under Sections 6.02, 6.04 and 6.05, and to the Participant's Beneficiary(ies) upon the Participant's death under Section 6.03. A Participant may also receive an in-service Hardship Withdrawal under Section 6.10.
- (b) Subject to Section 6.12, a Participant or other distributee must file a proper application for benefits in the form and manner prescribed by the Trustees and the application approved by the Trustees (or their designee) before payment may commence.

Application by a Participant must be filed during the 90-day period ending on the Annuity Starting Date and shall constitute a Participant's consent to the payment of benefits. An application may be withdrawn at any time before the Annuity Starting Date, or if later for a payment of benefits subject to Code Sections 401(a)(11) and 417, the end of the 7-day period following the date the Participant is provided with the applicable information described in Section 6.06(g).

- (c) Payment of benefits shall be made as soon as reasonably practicable following the later of the date the Participant or other distributee applies for the benefit or the date the Participant or other distributee is eligible for the benefit; provided, however, notwithstanding any contrary provisions, if such Participant returns to Covered Employment before the payment of benefits is made, the Participant shall not be eligible for the payment until the Participant retires or otherwise leaves Covered Employment with eligibility for the payment of benefits.
- (d) Notwithstanding paragraph (c) above, a Participant's Annuity Starting Date shall not be any earlier than 30 days after, nor later than 90 days after, the date the Participant is provided with the applicable information described in Section 6.06(g); provided, however, a Participant's Annuity Starting Date may fall within the 30-day period following the date the Participant is provided with said information if the Participant then applies for the benefits, except that if the payment of benefits is subject to Code Sections 401(a)(11) and 417, actual distribution shall not be made within the 7-day period following the date the Participant is provided with said information.
- (e) All benefits under the Plan shall be payable by the Trustees from the Fund. With respect to an annuity form of distribution, the Trustees may provide for the same by purchase and distribution of a single premium, nontransferable annuity contract underwritten by a duly-licensed legal reserve life insurance company, which contract provides for payments in accordance with the form of payment selected or required under the terms of the Plan.
- (f) Marital status for purposes of this Plan shall be determined by and subject to the following:
  - (1) A Participant shall be considered to be married if such Participant is considered to be married under applicable state law as of the Participant's Annuity Starting Date or, if earlier, the date of the Participant's death.
  - (2) A Participant who is unmarried as of any relevant date shall nevertheless be considered as married for purposes of this Plan if such Participant has a former Spouse who is an "alternate payee" under a "qualified domestic relations order", as defined in Code Section 414(p) and ERISA Section 206(d)(3), which qualified domestic relations order creates or recognizes the existence of the former Spouse's right to receive all or a portion (but only to the extent provided in such qualified domestic relations order) of the benefits payable to the Participant under the Plan and which designates such former Spouse as a "Spouse" with respect to such benefits. Under such circumstances, to the extent provided under such qualified domestic relations order, the term "Spouse" herein shall be read to include such former Spouse, and a current Spouse shall not be treated

as the Spouse over the former Spouse who is the alternate payee under such a qualified domestic relations order.

- (3) The Trustees shall be entitled to rely on the written representation last filed by the Participant prior to the Annuity Starting Date or date of death as to the Participant's marital status. Such reliance shall include the right to deny benefits to a person claiming to be the Spouse of a Participant in contradiction to the aforementioned representation of the Participant. Any payments made in good faith pursuant to the statements contained in an application for payments shall discharge all of the obligations of the Trustees to the extent of such payments. A person claiming to be the Spouse of a Participant which relationship is not reflected in the records of the Fund, or which is denied by the Participant, is entitled to a hearing on the issue as provided in Section 7.04.

### **Section 6.02. Retirement Benefit.**

A Participant who retires or otherwise leaves Covered Employment after attaining Normal Retirement Age shall be entitled to receive a retirement benefit funded by the balance in his/her Individual Accounts, which benefit shall be distributed at the time and in the manner provided in this Article. A Participant who has attained Normal Retirement Age may be presumed to have retired or otherwise left Covered Employment for purposes of this Section under any of the following circumstances:

- (a) when the Participant has withdrawn from Covered Employment for at least 60 days; or
- (b) the Participant's receipt of a pension from the Iron Workers Pension Plan of Western Pennsylvania after having resigned from all employment with Employers; or
- (c) the Participant's receipt of a pension from another pension plan covering the Participant under the terms of a similar collective bargaining agreement within the International Association of Bridge, Structural and Ornamental Iron Workers after having resigned from all employment with Employers.

### **Section 6.03. Death Benefit.**

Upon the death of a Participant prior to the Participant's Annuity Starting Date, the balance in the deceased Participant's Individual Accounts shall be distributed as a death benefit in accordance with the provisions of this Article in full satisfaction of any and all claims for benefits from the Plan on behalf of the Participant or by or on behalf of persons (including Spouses, heirs and Beneficiaries) claiming through the Participant.

### **Section 6.04. Disability Benefit.**

- (a) A Participant who has not attained Normal Retirement Age and who leaves Covered Employment as a result of a Disability shall be entitled to receive a disability benefit funded by the balance in his/her Individual Accounts, which benefit shall be distributed at the time and in the manner provided in this Article.
- (b) For purposes of this Section, the term "Disability" shall mean a physical or mental condition of a Participant resulting from a bodily injury or disease or mental disorder

which has rendered the Participant totally disabled for a period of at least one month, and will continue indefinitely to render the Participant incapable of engaging in gainful employment as a construction worker.

- (c) The Disability of any Participant and entitlement to an award of benefits under this Section shall be determined by the Trustees in accordance with uniform principles consistently applied, upon the basis of such medical or other evidence as the Trustees deem necessary or desirable to determine the Participant's initial or continuing physical or mental condition.
- (d) The provisions of the IRON WORKERS OF WESTERN PENNSYLVANIA PROFIT SHARING PLAN Administrative Procedures Applicable to Disability Benefits attached hereto are adopted as Appendix "A" to the Plan and are deemed to be incorporated by reference into this Article for all purposes.

#### **Section 6.05. Termination Benefit.**

- (a) A Participant who leaves Covered Employment for any reason other than normal retirement at age 65 or later, death, or Disability (as determined under Section 6.04) shall be entitled to a termination benefit funded by the balance in his/her Individual Accounts, which benefit shall be distributed at the time and in the manner provided in this Article.
- (b) For purposes of determining entitlement to a termination benefit, a Participant shall be considered to have left Covered Employment under any of the following circumstances:
  - (1) at the end of six consecutive calendar months in which no Employer Contributions on the Participant's behalf have been or should have been received; or
  - (2) the Participant's receipt of a pension from the Iron Workers Pension Plan of Western Pennsylvania after having resigned from all employment with Employers; or
  - (3) the Participant's receipt of a pension from another pension plan covering the Participant under the terms of a similar collective bargaining agreement within the International Association of Bridge, Structural and Ornamental Iron Workers after having resigned from all employment with Employers, provided that the Participant is then at least 55 years of age.
- (c) Notwithstanding paragraphs (a) and (b) above, a Participant shall not be considered to have left Covered Employment if he/she is working in the geographical area or jurisdiction of the Plan as an employee, self-employed individual, partner or employer representative in the Construction Industry, which shall be deemed to include, but shall not be limited to, employment (i) as an ironworker, (ii) as any other construction worker, (iii) as a non-construction worker in the building and/or construction industry, whether residential, commercial or industrial, or (iv) in other industries where employees are covered by the Plan.

## **Section 6.06. Form of Payment for Participants.**

- (a) The normal form for the distribution of a Participant's Individual Accounts under Sections 6.02, 6.04 and 6.05 shall be:
  - (1) for a Participant married on the Annuity Starting Date, a Qualified Joint and Survivor Annuity; and
  - (2) for a Participant not married on the Annuity Starting Date, a Single Life Annuity.
- (b) The optional forms for such distribution of a Participant's Individual Accounts shall be:
  - (1) a lump sum payment of the entire balance of the Individual Accounts;
  - (2) payment in fixed monthly installments over a period not extending beyond the Participant's life expectancy;
  - (3) an initial lump sum payment of at least \$1,000, with the remaining balance of the Participant's Individual Accounts paid in fixed monthly installments over a period not extending beyond the Participant's life expectancy; provided, however, that a Participant may not elect this form of distribution if, after the initial lump sum payment, the remaining balance to be paid in installments would be \$5,000 or less; and
  - (4) until the first calendar year for which a distribution is required under Code Section 401(a)(9) (as set forth in Section 6.12), a partial lump sum payment in the amount specified by the Participant, but not less than \$1,000 and made not more frequently than once every three months.
- (c) During the 90-day period ending on the Annuity Starting Date, or if later for a payment of benefits subject to Code Sections 401(a)(11) and 417, the end of the 7-day period following the date the Participant is provided with the applicable information described in Section 6.06(g), a Participant may waive the normal form of distribution described in paragraph (a) above and elect an optional form of distribution described in paragraph (b) above by filing a written waiver and election with the Trustees in the manner prescribed by the Trustees. In the case of the partial lump sum payment, said waiver and election shall apply only to the amount specified by the Participant. Said waiver and election may be made and revoked in writing at any time and any number of times during said period, but may not be made or revoked thereafter.
- (d) No waiver of the normal form of distribution and election of an optional form of distribution made under paragraph (c) above by a Participant who has a Spouse on his/her Annuity Starting Date and for whom the Qualified Joint and Survivor Annuity is the normal form of distribution shall be effective unless said election specifies the optional form of distribution and, if applicable, designates a specific Beneficiary under the optional form and either:
  - (1) the Participant's Spouse consents in writing to said waiver and election during the period specified in paragraph (c) above for said waiver and election and the

Spouse's consent acknowledges the effect of said waiver and election and is witnessed by a notary public; or

- (2) it is established to the satisfaction of the Trustees that (i) there is no Spouse, (ii) the Spouse cannot be located, (iii) such other conditions exist as may be prescribed by regulations issued by the Secretary of the Treasury, or (iv) except as otherwise provided in a qualified domestic relations order, the Participant is legally separated, or has been abandoned (within the meaning of local law) and the Participant has a court order of abandonment.
- (e) Spousal consent under paragraph (d) above shall be effective only with respect to the Spouse granting said consent or with whom said spousal consent is otherwise established and shall be irrevocable by the Spouse with respect to said waiver and election.
- (f) If the Participant designates a trust as Beneficiary, the Spouse need only consent to the designation of the trust as Beneficiary and need not consent to the designation of trust beneficiaries or to any change in trust beneficiaries.
- (g) To the extent and in the manner required by the Code, no less than 30 days before and no more 90 days before a Participant's Annuity Starting Date, but subject to the Participant's waiver of the 30-day period in accordance with Section 6.01(d), the Trustees shall provide the Participant with (i) a general description of the material features of the normal and optional forms of distribution and the relative values of each, (ii) an explanation of the Participant's right to elect each form of distribution and the spousal consent requirements for such election, (iii) a notice of the Participant's right to defer the payment of benefits, and (iv) the right to a period of at least 30 days to consider this information.

#### **Section 6.07. Payment of Monthly Installments to Participants.**

- (a) If the Participant elects the fixed monthly installment form of distribution (with or without an initial lump sum payment), the installments shall be paid to the Participant until the entire balance of his/her Individual Accounts has been distributed.
- (b) In a written election filed with the Trustees in the manner prescribed by the Trustees, the Participant may at any time elect to change the amount of the monthly installments payable under the fixed monthly installment form of distribution (which includes the right to elect to receive the remaining balance of the Individual Accounts in a lump sum payment). However, if the Participant is married, and if the Spouse to whom the Participant is married is the same Spouse who consented to the Participant's election of the fixed monthly installment form of distribution, the Participant's election to change the amount of the fixed monthly installments shall not be effective unless (i) his/her Spouse consents to the election in the manner prescribed by this Section or (ii) his/her Spouse previously executed in the manner prescribed by this Section a general spousal consent that permits the Participant to change the amount of the fixed monthly installments without further spousal consent and which acknowledges that the Spouse voluntarily relinquished the right to limit spousal consent to a specific amount of fixed monthly installments.

- (c) If the Participant dies after payment of the fixed monthly installments begins, but before the distribution of the entire balance of his/her Individual Accounts, said fixed monthly installments shall be distributed at the same rate to the Beneficiary designated by the Participant for this purpose until the entire balance has been distributed; provided, however, in a written election filed with the Trustees in the manner prescribed by the Trustees, said Beneficiary may elect at any time to receive the balance of the Individual Accounts in a lump sum payment.
- (d) In a written designation filed with the Trustees in the manner prescribed by the Trustees, the Participant may at any time change the Beneficiary he/she has designated for purposes of the fixed monthly installment form of distribution. However, if the Participant is married, and if the Spouse to whom the Participant is married is the same Spouse who consented to the Participant's designation of a Beneficiary for purposes of the fixed monthly installment form of distribution, the designation of a Beneficiary other than his/her Spouse shall not be effective unless either (i) his/her Spouse consents to the designation in the manner prescribed by this Section or (ii) his/her Spouse previously executed in the manner prescribed by this Section a general spousal consent that permits the Participant to change the Beneficiary without further spousal consent and which acknowledges that the Spouse voluntarily relinquished the right to limit spousal consent to a specific Beneficiary.
- (e) If the entire balance of the Individual Accounts has not been distributed at the death of a beneficiary receiving fixed monthly installments after the Participant's death, the monthly installments shall be distributed at the same rate to a successor beneficiary designated by the beneficiary receiving the monthly installments; provided, however, in a written election filed with the Trustees in the manner prescribed by the Trustees, said successor beneficiary may elect at any time to receive the balance of the Individual Accounts in a lump sum payment. If no successor beneficiary has been designated or is surviving, the balance of the Individual Accounts shall be distributed in a lump sum payment to the estate of the beneficiary receiving the monthly installments.

**Section 6.08. Form of Payment for Beneficiaries.**

- (a) The forms for distribution of a Participant's Individual Accounts to a Beneficiary under Section 6.03 shall be:
  - (1) a lump sum payment of the entire balance of the Individual Accounts;
  - (2) payment in fixed monthly installments over a period not extending beyond the Beneficiary's life expectancy;
  - (3) an initial lump sum payment of at least \$1,000, with the remaining balance of the Individual Accounts paid in fixed monthly installments over a period not extending beyond the Beneficiary's life expectancy; provided, however, that a Beneficiary may not elect this form of distribution if, after the initial lump sum payment, the remaining balance to be paid in installments would be \$5,000 or less;
  - (4) until the first calendar year for which a distribution is required under Code Section 401(a)(9) (as set forth in Section 6.12), a partial lump sum payment in



the amount specified by the Beneficiary, but not less than \$1,000 and made not more frequently than once every three months; and

- (5) if the Spouse of the Participant on the date of the Participant's death, the Qualified Preretirement Survivor Annuity.
- (b) Subject to paragraph (d) below, the normal form for distribution of Individual Accounts to a Beneficiary shall be a lump sum payment of the entire balance of the Participant's Individual Accounts.
  - (c) The form for distribution of Individual Accounts shall be elected by the Beneficiary in a written election filed with the Trustees in the manner prescribed by the Trustees.
  - (d) Notwithstanding any contrary provisions, if the Participant has a Spouse on the date of his or her death for which a distribution is to be made under Section 6.03, the distribution shall be made in the form of a Qualified Preretirement Survivor Annuity unless:
    - (1) the Participant waives the Qualified Preretirement Survivor Annuity by designating, in accordance with Section 6.16, a primary Beneficiary who is not his or her Spouse to receive the distribution that would have otherwise been payable to the Spouse; or
    - (2) the Spouse elects after the Participant's death to have the distribution made in a different form of distribution.

#### **Section 6.09. Payment of Monthly Installments to Beneficiaries.**

- (a) If a Beneficiary elects the fixed monthly installment form of distribution (with or without an initial lump sum payment), the installments shall be paid to the Beneficiary until the entire balance of the Participant's Individual Accounts has been distributed.
- (b) In a written election filed with the Trustees in the manner prescribed by the Trustees, the Beneficiary may at any time elect to change the amount of the monthly installments payable under the fixed monthly installment form of distribution (which includes the right to elect to receive the remaining balance of the Participant's Individual Accounts in a lump sum payment).
- (c) If the Beneficiary dies after payment of the fixed monthly installments begins, but before the distribution of the entire balance of the Participant's Individual Accounts, said fixed monthly installments shall be distributed at the same rate to a successor beneficiary designated by the Beneficiary receiving the monthly installments; provided, however, in a written election filed with the Trustees in the manner prescribed by the Trustees, said successor beneficiary may elect at any time to receive the balance of the Individual Accounts in a lump sum payment. If no successor beneficiary has been designated or is surviving, the balance of the Individual Accounts shall be paid in a lump sum payment to the estate of the Beneficiary receiving the monthly installments.

## **Section 6.10. In-Service Hardship Withdrawals.**

- (a) The Trustees, in accordance with a uniform, non-discriminatory policy, shall, in accordance with the provisions of this Section, permit any Participant to make a hardship withdrawal of all or a portion of the amount credited to his/her Profit Sharing Account to relieve a demonstrated, immediate and heavy financial need of the Participant, the Participant's Spouse, or the Participant's dependents.
- (b) Immediate and heavy financial need shall be limited to:
  - (1) Unreimbursed out-of-pocket expenses incurred or necessary for medical care (described in Code Section 213(d)) of the Participant, the Participant's Spouse, or any dependents of the Participant (as defined in Code Section 152).
  - (2) Purchase (excluding mortgage payments) of a principal residence for the Participant.
  - (3) Payment of tuition and related educational fees for primary, secondary, post-secondary and special education for the Participant or the Participant's Spouse, children or dependents (as defined in Code Section 152).
  - (4) The need to prevent the eviction of the Participant from his/her principal residence or foreclosure on the mortgage on the Participant's principal residence.
  - (5) Payment of normal funeral expenses for the Participant's Spouse, parents, or children, including cremation, burial plot or crypt, casket or vault, opening and closing of burial plot or crypt, and up to \$1,000 for a monument.
- (c) No withdrawal shall be permitted of any amount which is not necessary to satisfy an immediate and heavy financial need described in paragraph (b) above. Such withdrawal shall be deemed necessary only if:
  - (1) the amount to be withdrawn is not in excess of the amount of the immediate and heavy financial need claimed by the Participant (including amounts necessary to pay any federal, state or local income taxes, excise taxes or penalties reasonably anticipated to result from the withdrawal); and
  - (2) the need cannot be met from other resources reasonably available to the Participant.
- (d) A Participant's application for a hardship withdrawal shall be made in writing on a form furnished by the Trustees for such purpose. The Participant's request shall include his/her written statement describing the immediate and heavy financial need, together with his/her representation that such need cannot be met from other resources reasonably available to the Participant.
- (e) The Trustees, acting by majority decision, shall determine the existence of a bona fide immediate and heavy financial need and the necessity of a withdrawal from the Participant's Profit Sharing Account to meet such need. The Trustees may, in the

exercise of their reasonable discretion, require the Participant to present any additional evidence which they deem necessary or desirable to permit them to make the determination described in this paragraph. The Trustees may rely on the Participant's written representation (unless the Trustees have actual knowledge to the contrary) that the need cannot reasonably be relieved from other sources.

- (f) A hardship withdrawal shall be treated as a distribution subject to all of the provisions of this Article, except that the only optional form of distribution shall be a lump sum payment.

#### **Section 6.11. De Minimis Benefits.**

Notwithstanding any contrary provisions, if the balance of a Participant's Individual Accounts does not exceed \$5,000 when the Participant or other distributee applies for distribution or when distribution is required under Section 6.12, the Individual Accounts shall be distributed to the Participant or other distributee only in a lump sum payment of their entire value.

#### **Section 6.12. Required Distributions.**

- (a) The requirements of this Section, other than paragraph (c) below, shall be interpreted in a manner consistent with Code Section 401(a)(9) (and the proposed regulations thereunder, including § 1.401(a)(9)-2, as the same may be finalized and amended from time to time) and shall supersede all inconsistent provisions in the Plan.
- (b) For purposes of this Section, the following terms shall have the meaning given to them in this paragraph:
  - (1) "Calendar Distribution Year" shall mean a calendar year for which a minimum distribution is required under Code Section 401(a)(9).
  - (2) "Designated Beneficiary" shall mean the Participant's designated beneficiary determined under Code Section 401(a)(9).
  - (3) "Distribution Value" shall mean for each Calendar Distribution Year, the balance of the Individual Accounts on the last day of the preceding calendar year; provided, however, said amount for the second Calendar Distribution Year shall be reduced by any required distribution for the first Calendar Distribution Year that is distributed in the second Calendar Distribution Year on or before the Required Beginning Date.
  - (4) "Required Beginning Date" shall mean April 1 of the calendar year following the calendar year in which the Participant attains age 70½; provided, however:
    - (A) if the Participant attained age 70½ before January 1, 1990 (January 1, 1988 if a Non-Collectively Bargained Employee) and was not and is not a 5-percent owner within the meaning of Code Section 416(i) at any time during the Plan Year which begins after December 31, 1979 and which ends with or within the calendar year in which the Participant attained age 66½ or at any time during any subsequent Plan Year, then the Required Beginning Date shall mean the April 1 of the calendar year following the

later of (i) the calendar year in which the Participant attains age 70½ or (ii) the calendar year in which the Participant retires; and

- (B) if the Participant attained age 70½ before January 1, 1990 (January 1, 1988 if a Non-Collectively Bargained Employee) and was or is a 5-percent owner within the meaning of Code Section 416(i) at any time during the Plan Year which begins after December 31, 1979 and which ends with or within the calendar year in which the Participant attained age 66½ or at any time during any subsequent Plan Year, then the Required Beginning Date shall mean the April 1 of the calendar year following the later of (i) the calendar year in which the Participant attains 70½ or (ii) the earlier of the calendar year in the Participant retires or the calendar year in which ends such Plan Year in which the Participant becomes said 5-percent owner.
- (c) Distribution of Individual Accounts to a Participant entitled to the same shall, as required by Code Section 401(a)(14), be made or commence no later than the 60th day after the latest of the close of the Plan Year in which (i) the Participant attains Normal Retirement Age, (ii) occurs the 10th anniversary of the year in which the Participant commenced participation in the Plan, or (iii) the Participant terminates Covered Employment; provided, however, subject to paragraph (d) below, (i) such Participant may elect a later date of distribution, and (ii) such Participant's failure to file an application for benefits shall be deemed to be such an election of a later date of distribution.
- (d) Notwithstanding any contrary provisions, distribution of a Participant's Individual Accounts shall, as required by Code Section 401(a)(9), be made or commence to the Participant no later than his Required Beginning Date in accordance with the following, regardless of whether he is then in Covered Employment:
  - (1) If a Participant's Individual Accounts are to be distributed in a Qualified Joint and Survivor Annuity or Single Life Annuity, payments to the Participant under either said Annuity shall begin on or before the Participant's Required Beginning Date.
  - (2) If a Participant's Individual Accounts are to be distributed in a lump sum payment, the distribution shall be made to the Participant on or before the Participant's Required Beginning Date.
  - (3) If a Participant's Individual Accounts are to be distributed in monthly installments, the minimum amount required to be made under this Section to the Participant for each Calendar Distribution Year shall be distributed on or before December 31 of the Calendar Distribution Year, except that the minimum amount required for the first Calendar Distribution Year may be distributed on or before the Participant's Required Beginning Date.
- (e) If a Participant's Individual Accounts are distributed in the monthly installment form of distribution, the period over which the monthly installments are paid shall not extend beyond the Participant's life expectancy or the joint life expectancy of the Participant and the Designated Beneficiary, and the minimum amount distributed to the Participant for each Calendar Distribution Year shall not be less than the quotient of the Distribution Value for the Calendar Distribution Year divided by the applicable life expectancy determined:

- (1) for a Participant without a Designated Beneficiary, by the life expectancy of the Participant calculated using the expected return multiples in Table V of I.T. Reg. § 1.72-9 (or successor thereto) without recalculation; and
  - (2) for a Participant with a Designated Beneficiary, by the joint life expectancy of the Participant and the Designated Beneficiary calculated using the expected return multiples in Table VI of I.T. Reg. § 1.72-9 (or successor thereto) without recalculation (and, as required, using the Designated Beneficiary with the shortest life expectancy if more than one).
- (f) Unless the Participant's sole Designated Beneficiary is the Participant's Spouse, the minimum amount distributed to the Participant each Calendar Distribution Year under the monthly installment form of distribution shall not be less than the quotient of the Distribution Value for the Calendar Distribution Year divided by the divisor set forth in the table at Q&A-4 of Proposed Internal Revenue Service Regulation § 1.401(a)(9)-2 (or successor thereto).
- (g) If a Participant's Individual Accounts are distributed by the purchase of an annuity contract, the only forms of payment thereunder shall be the Qualified Joint and Survivor Annuity or Single Life Annuity, and payments thereunder shall be made no less frequently than annually and shall be nonincreasing (or shall increase only as permitted by Code Section 401(a)(9)).
- (h) If a Participant dies before the Required Beginning Date, distribution of the Participant's Individual Accounts shall be made as follows:
- (1) If there is no Designated Beneficiary, the entire balance of the Participant's Individual Accounts shall be distributed no later than December 31 of the calendar year in which falls the fifth anniversary of the Participant's death.
  - (2) If there is a Designated Beneficiary who is not the Participant's Spouse, the entire balance of the Participant's Individual Accounts shall be distributed no later than December 31 of the calendar year in which falls the fifth anniversary of the Participant's death, provided, however, if the Designated Beneficiary elects to have distribution made in monthly installments no later than December 31 of the calendar year immediately following the calendar year in which the Participant dies, then distribution of the Individual Accounts shall be made over a period that does not exceed such Beneficiary's lifetime and shall begin no later than that December 31.
  - (3) If there is a Designated Beneficiary who is the Participant's Spouse, distribution of the Participant's Individual Accounts shall be made over a period that does not exceed such Beneficiary's lifetime and shall begin no later than the later of (i) December 31 of the calendar year immediately following the calendar year in which the Participant dies or (ii) December 31 of the calendar year in which the Participant would have attained age 70½.
- (i) If distribution is made to a Designated Beneficiary in the monthly installment form of distribution on account of the Participant's death before the Required Beginning Date, the

amount distributed to such Beneficiary for the first calendar year for which distribution is required by this Section shall not be less than the quotient of the Distribution Value for that calendar year divided by the life expectancy of such Beneficiary as determined by the expected return multiples in Table V of Internal Revenue Service Regulation § 1.72-9 (or successor thereto) and by the Beneficiary's attained age in that calendar year, and the amount distributed in each subsequent calendar year shall not be less than the quotient of the Distribution Value for each such subsequent calendar year divided by said life expectancy reduced by one for each calendar year which has elapsed since such first calendar year for which distribution is required by this Section.

- (j) If the Designated Beneficiary is the Participant's Spouse, and if the Spouse dies after the Participant but before distribution of the Participant's Individual Accounts to the Spouse is required to begin under this Section, this Section shall apply to the Spouse as if the Spouse were a participant without a spouse.
- (k) Distribution of the balance of a Participant's Individual Accounts on account of his death occurring after his Required Beginning Date while receiving monthly installments shall be made at least as rapidly as the installment rate and method theretofore used for distribution of the Participant's Individual Accounts (which shall not preclude the Beneficiary's election to receive the balance of the Individual Accounts in a lump sum payment).
- (l) If a Participant dies after payment has commenced to the Participant under an annuity contract, then regardless of whether the death occurs before or after the Required Beginning Date, any payments made under the annuity contract thereafter shall be made at least as rapidly as the payments theretofore made.
- (m) If a Participant who is definitely located fails to file a completed application for benefits on a timely basis, the Participant's Individual Accounts shall be distributed by the Required Beginning Date, as follows:
  - (1) If the balance of the Participant's Individual Accounts does not exceed \$5,000, in a lump sum payment.
  - (2) In any other case, in the form of a Qualified Joint and Survivor Annuity calculated on the assumption that the Participant is married and that the husband is 3 years older than the wife. Said benefit payment form shall be irrevocable once payments begin, with the exception that such form may later be changed to a Single Life Annuity if the Participant proves that he or she was not married on the Required Beginning Date. Also, the amounts of current or future benefit payments under said benefit form shall be adjusted based on the actual ages of the Participant and Spouse if such actual ages are known by the Trustees or otherwise proven to be different from the foregoing assumptions.
  - (3) Federal, state and local income tax, and any other applicable taxes, shall be withheld from the benefit payments as required by law.

### **Section 6.13. Forfeiture/Reinstatement.**

Benefit payments that are not paid to or claimed by a Participant or a Beneficiary properly entitled to the same shall be forfeited, subject to reinstatement if such Participant or Beneficiary later demonstrates his or her entitlement to the benefits. Any said forfeitures shall generally be used to pay for the administrative expenses of the Plan, and any said reinstatement shall generally be treated as an administrative expense.

### **Section 6.14. Incapacity.**

In the event of incapacity, in lieu of any disbursements directly to any distributee, the Trustees may make distributions to the parent, guardian or other person or persons charged with the care of such distributee.

### **Section 6.15. Suspension of Periodic Benefits Before Normal Retirement Age.**

- (a) In the event that a Participant who has retired or left Covered Employment is employed in Disqualifying Employment after his/her Annuity Starting Date and before his/her attainment of Normal Retirement Age, all periodic benefit payments, except those being provided through an individual annuity purchased from a life insurance company, shall be suspended as of the month in which the Participant commences Disqualifying Employment. Benefit payments suspended under this paragraph shall resume commencing with the month following the later of the month in which the Participant's most recent period of Disqualifying Employment terminates or the month in which the Participant provides written notice to the Trustees of such fact. Notwithstanding the foregoing, no benefits shall be suspended as the result of a Participant's Disqualifying Employment after the Participant's attainment of Normal Retirement Age.
- (b) A Participant in receipt of periodic benefit payments who commences employment before his/her attainment of Normal Retirement Age that may be Disqualifying Employment shall give the Trustees written notice of such fact no later than 15 days after the commencement of such employment. In the event that such Participant twice fails to properly notify the Trustees of potential Disqualifying Employment following the initial payment of periodic benefits, his/her suspension of periodic benefits shall continue until the expiration of an additional six months following termination of such Participant's most recent period of Disqualifying Employment, or, if earlier, until such Participant attains Normal Retirement Age. Repeated (three or more) failures by such Participant to notify the Trustees of potential Disqualifying Employment, as required, shall result in a suspension of benefit payments to such retired Participant until the Participant attains Normal Retirement Age, notwithstanding an earlier termination of Disqualifying Employment.
- (c) Resumed benefit payments shall be adjusted to reflect Individual Account increases and/or shorter payment schedules. Except with respect to an individual annuity purchased from an insurance company, the Participant shall be provided with a new election of the form of distribution for the resumed benefit payments.
- (d) Periodic benefits being provided under an individual annuity purchased from an insurance company shall be suspended and resumed in accordance with the terms of such annuity contract governing reemployment and suspension of benefits, if any.

## Section 6.16. Beneficiary Designations.

- (a) Each Participant may designate a Beneficiary and/or contingent Beneficiary of the Participant's own choosing to receive death benefits payable as the result of the Participant's death prior to the Annuity Starting Date. Any Participant may prospectively, at any relevant time, revoke such designation of a Beneficiary or contingent Beneficiary or change a Beneficiary or contingent Beneficiary. Any such designation, revocation or change shall be made in writing filed with the Trustees in the manner and form prescribed by the Trustees. For a married Participant, any such designation, revocation or change shall be subject to the applicable spousal consent requirements of paragraphs (d) through (i) below.
- (b) A Participant may designate more than one Beneficiary and designate the percentage each is to receive:
  - (1) If the Participant does not designate the percentage each Beneficiary is to receive, the Beneficiaries shall share equally in the distribution.
  - (2) If the Participant designates the percentage each Beneficiary is to receive, and a Beneficiary does not survive the Participant, the deceased Beneficiary's share shall be allocated among the surviving Beneficiaries in proportion to the percentages designated by the Participant for the surviving Beneficiaries.
- (c) A Participant may designate more than one contingent Beneficiary and designate the percentage each is to receive:
  - (1) If the Participant does not designate the percentage each contingent Beneficiary is to receive, the contingent Beneficiaries shall share equally in the distribution.
  - (2) If the Participant designates the percentage each contingent Beneficiary is to receive, and a contingent Beneficiary does not survive the Participant, the deceased contingent Beneficiary's share shall be allocated among the surviving contingent Beneficiaries in proportion to the percentages designated by the Participant for the surviving contingent Beneficiaries.
- (d) Notwithstanding paragraph (a) above, the sole primary Beneficiary of a married Participant shall be the Spouse (with distribution made in the form of Qualified Preretirement Survivor Annuity), unless the Participant designates a primary Beneficiary other than his/her Spouse (which shall waive the Qualified Preretirement Survivor Annuity) and either:
  - (1) the Participant's Spouse consents in writing to said designation and the Spouse's consent acknowledges the effect of said designation and is witnessed by a notary public; or
  - (2) it is established to the satisfaction of the Trustees that (i) there is no Spouse, (ii) the Spouse cannot be located, (iii) such other conditions exist as may be prescribed by regulations issued by the Secretary of the Treasury, or (iv) except as otherwise provided in a qualified domestic relations order, the Participant is



legally separated, or has been abandoned (within the meaning of local law) and the Participant has a court order of abandonment.

- (e) Spousal consent to the designation under paragraph (d) above shall be effective only with respect to such Spouse granting said consent or with whom said spousal consent is otherwise established and shall be irrevocable by the Spouse with respect to said designation.
- (f) A Participant who designates, with his/her Spouse's consent, a Beneficiary other than his/her Spouse can not thereafter change said Beneficiary designation unless:
  - (1) the change is to designate the Spouse as the sole primary Beneficiary (which shall revoke the waiver of the Qualified Preretirement Survivor Annuity);
  - (2) the Spouse consents to such change in the manner prescribed by paragraph (d) above; or
  - (3) the Spouse previously executed in the manner prescribed by paragraph (d) above a general spousal consent that permits the Participant to make such change without further spousal consent and which acknowledges that the Spouse voluntarily relinquished the right to limit spousal consent to a specific Beneficiary.
- (g) If a Participant designates, with his/her Spouse's consent, a primary Beneficiary other than his/her Spouse before the first day of the Plan Year in which he/she attains age 35, said designation shall automatically be revoked as of the first day of said Plan Year (at which time the Participant's Spouse shall again be the sole primary Beneficiary under the Qualified Preretirement Survivor Annuity, unless the Participant again designates a primary Beneficiary other than his/her Spouse in accordance with the spousal consent requirements of paragraph (d) above).
- (h) If a Participant designates a trust as Beneficiary, the Spouse need only consent to the designation of the trust as Beneficiary and need not consent to the designation of trust beneficiaries or to any change in trust beneficiaries.
- (i) To the extent, in the manner, and at the time required by the Code and ERISA, the Trustees shall provide Participants with a general explanation of the above spousal consent and benefit requirements.
- (j) If there is no Beneficiary (including contingent Beneficiary) designated by the Participant or surviving at the Participant's death, the Participant shall be deemed to have designated as Beneficiary the first of the following who survive the Participant: (i) Spouse; (ii) children; (iii) parents; (iv) brothers and sisters; (v) estate of decedent. If more than one person qualifies as a member of a class of Beneficiaries specified in the preceding sentence, distributions shall be made in equal share to all members of such class who survive the deceased Participant and who are known to the Trustees at the time of distribution.
- (k) In the case of benefits provided under an individual annuity purchased from an insurance company, the provisions for beneficiary designations shall conform to those

contained in the annuity contract purchased to provide the benefits selected by the Participant or other distributee.

#### **Section 6.17. Successor Beneficiary Designations.**

- (a) A Beneficiary of a deceased Participant may designate a successor Beneficiary and/or contingent Beneficiary to receive any distributions provided for under the Plan upon the death of the originally designated Beneficiary, and may prospectively revoke or change such designation at any time. Any such designation, revocation or change shall be made in a writing filed with the Trustees in the manner and form prescribed by the Trustees.
- (b) A Beneficiary of a deceased Participant may designate more than one primary or contingent successor beneficiaries in the same manner and to the same effect as specified in Section 6.16 with respect to a Participant's designation of a Beneficiary.
- (c) If no successor beneficiary has been designated or is surviving, the successor beneficiary shall be estate of the originally designated Beneficiary.
- (d) A successor beneficiary shall not be taken into account for purposes of the distributions required by Code Section 401(a)(9) except to the extent provided with respect to the death of a Participant's Spouse before distribution to the Spouse begins.

#### **Section 6.18. Direct Transfer of Eligible Rollover Distributions.**

- (a) A Distributee who receives a distribution from the Plan which is an Eligible Rollover Distribution may elect to transfer said distribution to an Eligible Rollover Plan specified by the Distributee in a Direct Rollover.
- (b) Notwithstanding any contrary provisions of this Section (except as otherwise required by Code Section 401(a)(31), (i) a Direct Rollover can be elected for part of an Eligible Rollover Distribution only if the amount so elected is at least \$500, (ii) only one Eligible Rollover Plan may be designated for a Direct Rollover, (iii) a Direct Rollover election made with respect to one payment in a series of payments shall apply to all subsequent payments until another election is made by the Distributee, and (iv) no Direct Rollover election is required to be provided for an Eligible Rollover Distribution of less than \$200 (when aggregated with all other Eligible Rollover Distributions for the taxable year).
- (c) For purposes of this Section, the following terms shall have the meaning given to them in this paragraph.
  - (1) "Direct Rollover" shall mean a payment by the Plan to the eligible retirement plan specified by the Distributee.
  - (2) "Distributee" shall mean (i) an employee or former employee and (ii) the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is an alternative payee under a qualified domestic relations order, as defined in Code Section 414(p), with respect to the interest of the spouse or former spouse.

- (3) "Eligible Rollover Plan" shall mean an individual retirement account described in Code Section 408(b), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), or a qualified trust described in Code Section 401(a); provided, however, for an Eligible Rollover Distribution to a spouse, eligible retirement plan means an individual retirement account or individual retirement annuity.
  - (4) "Eligible Rollover Distribution" shall mean any distribution of all or any portion of the balance to the credit of the Distributee under the Plan, but excluding (as applicable) (i) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life or life expectancy of the Distributee and the Distributee's designated beneficiary or for a specified period of ten years or more, (ii) any distribution to the extent such distribution is required under Code Section 401(a)(9), and (iii) the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).
- (d) Said election and Direct Rollover shall be made in accordance with procedures prescribed by the Trustees in conformance with Code Section 401(a)(31).

#### **Section 6.19. Transition Rules.**

- (a) Any living Participant not receiving benefits on August 23, 1984 who would otherwise not be covered by the qualified preretirement survivor annuity provisions of Code Sections 401(a)(11) and 417 shall be given the opportunity to elect to have such provisions apply if such Participant was credited with service in Covered Employment in a Plan Year beginning on or after January 1, 1976, and such Participant had at least 10 years of service in Covered Employment when he or she terminated Covered Employment.
- (b) Any living Participant not receiving benefits on August 23, 1984, who was credited with service in Covered Employment under this Plan or a predecessor plan on or after September 2, 1974, and who is not otherwise credited with any service in a Plan Year beginning on or after January 1, 1976 shall be given the opportunity to have his or her benefits paid in accordance with the provisions of Code Section 401(a)(11) as in effect on August 22, 1984.

## **ARTICLE VII**

### **PLAN ADMINISTRATION**

#### **Section 7.01. Plan Administrator.**

The Plan shall be administered and operated by the Trustees. The Trustees shall have all powers necessary to carry out the provisions of the Plan. The Trustees shall serve without compensation for services as such, but the Fund shall pay or reimburse them for all expenses reasonably incurred and shall indemnify them against all loss, liability and expense occasioned by any act or failure to act, except for any such act or failure to act which is due to willful misconduct, fraud, or lack of good faith. Questions concerning any action to be taken by the

Trustees pursuant to this Plan shall be decided by vote of the majority of the Trustees present at the meeting.

### **Section 7.02. Powers and Duties.**

- (a) The Trustees shall have the obligation, exclusive right and absolute discretion to interpret and apply all terms of the Plan, and may correct any defect, supply any omission or reconcile any inconsistency or ambiguity in such manner as they deem advisable. They shall have full authority and absolute discretion to make all factual and/or legal determinations concerning eligibility and status of Employees and Participants, the right of any person(s) to benefits and all other rights hereunder, and all other matters concerning Plan administration, operation and interpretation. All determinations and actions of the Trustees with respect to any matter relating to the Plan shall be final, conclusive and binding upon all persons. It is intended that any and all factual and/or legal constructions, interpretations, conclusions and determinations adopted by the Trustees in good faith are to be accorded deference upon judicial or other review. Any powers to be exercised by the Trustees shall be exercised in a nondiscriminatory manner, and they shall apply uniform administrative rules of general application in order to afford similar treatment to persons in similar circumstances.
  
- (b) By way of example and not by way of limitation, the Trustees shall have the following specific powers and duties:
  - (1) To make rules and regulations for the administration and operation of the Plan which are not inconsistent with the terms and provisions of this document.
  - (2) To establish procedures for the processing of all claims for benefits, including the promulgation of appropriate forms necessary for the application for benefits.
  - (3) To determine all questions relating to the eligibility of Participants to receive benefits, and to determine the service upon which the benefits of each Participant shall be based.
  - (4) To make all determinations and computations concerning the benefits, credits and debits to which any Participant, Spouse or other Beneficiary may be entitled under the Plan.
  - (5) To determine whether a Participant is disabled or continues to be disabled for the purpose of Section 6.04.
  - (6) From time to time to select, employ and compensate such pension consultants, accountants, attorneys and other agents and employees as they may deem necessary or advisable for the proper and efficient administration of the Plan and the Fund.

### **Section 7.03. Statements and Annual Reports.**

The Trustees shall furnish each Participant at least annually with a statement of the balance of his/her Individual Accounts as of a recent date, reflecting all allocations of Employer Contributions, gains and losses and expenses, etc. Unless objection shall be made in writing to

the Trustees within 30 days by a Participant or by the Union, the information contained in the statements shall be deemed correct.

#### **Section 7.04. Claims, Appeals and Review Procedure.**

- (a) Claims for benefits under the Plan shall be filed in accordance with the procedures established by the Trustees and on forms available from the Trustees upon request. A claim for benefits shall be decided within a reasonable period of time following the Plan's receipt of the claim, but not later than 90 days after receipt, or 45 days after receipt if a claim for a Disability Benefit filed on or after January 1, 2002.
- (b) If special circumstances require, the initial 90-day period to consider a claim other than a Disability Benefit claim filed on or after January 1, 2002 may be extended for up to an additional 90 days. For a Disability Benefit claim filed on or after January 1, 2002, the initial 45-day period to consider such claim may be initially extended for up to an additional 30 days and then for up to an additional 30 days after the initial extension if, in each case, the extension is necessary due to matters outside the control for the Plan. Written (or electronic) notice of an extension shall be provided to the claimant before the end of the applicable prior period. For a claim filed on or after January 1, 2002, such notice shall indicate the circumstances requiring the extension and the date by which the Plan expects to decide the claim. If the extension is for a Disability Benefit claim filed on or after January 1, 2002, the notice of the extension shall also explain (i) the standards on which entitlement to the benefit is based, (ii) the unresolved issues that prevent a decision on the claim, and (iii) any additional information needed to resolve said issues.
- (c) If the reason for extending a period to decide a Disability Benefit claim filed on or after January 1, 2002 is due to the claimant's failure to submit information necessary to decide the claim, the claimant shall be so notified and shall be provided with at least a 45-day period to provide the material or information. In such case, the period to decide said claim shall be tolled until the date the claimant responds to the request for additional information.
- (d) In the event a claim for benefits is wholly or partially denied:
  - (1) Written (or electronic) notice of the denial shall be provided to the claimant by the date established by paragraphs (a), (b) and (c) above to decide the claim.
  - (2) The denial notice shall set forth (i) the specific reasons for the denial, (ii) specific references to the pertinent provisions of the Plan, (iii) a description of any additional material or information necessary for the claimant to perfect the claim and an explanation why it is necessary, (iv) an explanation of the procedures for review of the denied claim, including the applicable time limits, and (v) for a claim filed on or after January 1, 2002, a statement of the claimant's right to bring a civil action under ERISA following an adverse determination upon review.
  - (3) For a Disability Benefit claim filed on or after January 1, 2002, the denial notice shall also include (i) any internal rule, guideline, protocol or other similar criterion relied on for the denial, or a statement that it was relied on and a copy will be provided free of charge upon the claimant's request and (ii) if the denial was based on a medical necessity or experimental treatment or similar exclusion or

limit, an explanation of the scientific or clinical judgement for the denial, applying the plan terms to the claimant's medical circumstances, or a statement that such explanation will be provided free of charge upon the claimant's request.

- (e) A claimant may appeal a denial of a claim to the Trustees for review as follows:
- (1) The appeal must be made in writing and received by the Administration Office no later than 60 days after the date the claimant received the written notice of denial, or 180 days of said date for a Disability Benefit claim filed on or after January 1, 2002.
  - (2) The claimant shall be entitled to review all relevant documents and to receive copies free of charge.
  - (3) The claimant shall be entitled to submit written comments, documents, records and other information related to the claim, and have the same taken into account in the review whether or not previously submitted or considered.
  - (4) For the review of a Disability Benefit Claim filed on or after January 1, 2002:
    - (A) The review shall not afford any deference to the initial benefit determination, and it shall not be made by the individual who made the initial benefit determination (if other than by the Trustees) or by a subordinate of that individual.
    - (B) If the initial benefit determination was based on a medical judgment, the determination shall be made after consultation with a health care professional who has appropriate training and experience in the relevant field of medicine. Said health care professional shall not be an individual who was consulted with respect to the initial benefit determination or a subordinate of that individual.
    - (C) It shall provide for the identification of medical or vocational experts whose advice was obtained on behalf of the plan in connection with an adverse benefit determination, without regard to whether the advice was relied on in making the determination.
- (f) For so long as the Trustees hold regularly scheduled meetings at least quarterly, the Trustees' decision on review of an appeal of a claim shall be made no later than the date of the first meeting of the Trustees that follows the Plan's receipt of the request for review. However, if the request for review is received within the 30 days preceding the date of such meeting, the decision on review shall be made no later than the date of the second meeting of the Trustees that follows 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, the decision on review shall be made no later than the third meeting of the Trustees that follows the Plan's receipt of the request for review. A written (or electronic) notice of such extension shall be provided to the claimant before the commencement of any such extension, which for a claim filed on or after January 1, 2002, shall indicate the circumstances requiring the extension and the date by which the Trustees expect to decide the request for review. Written (or electronic) notice of the

Trustees' decision on review shall be provided to the claimant within five days of the meeting at which the decision is made.

- (g) If the Trustees do not hold regularly scheduled meetings at least quarterly, the Trustees' decision on review shall be made and written (or electronic) notice of the Trustees' decision provided to the claimant within a reasonable period of time following the Plan's receipt of the request for review, but not later than 60 days after receipt, or 45 days after receipt if a claim for a Disability Benefit filed on or after January 1, 2002. If special circumstances (such as the need to hold a hearing) require, said initial 60-day period and 45-day period may be extended by an additional 60 days and 45 days, respectively. A written (or electronic) notice of such extension shall be provided to the claimant before the commencement of any such extension, which for a claim filed on or after January 1, 2002, shall indicate the circumstances requiring the extension and the date by which the Trustees expect to decide the request for review.
- (h) If the decision on the review of an appeal of a claim is adverse:
  - (1) The notice of the decision shall set forth (i) the specific reasons for the decision, (ii) specific references to the pertinent provisions of the Plan, (iii) a statement that the claimant is entitled to review all relevant documents and to receive copies free of charge, and (iv) for a claim filed on or after January 1, 2002, a statement of the claimant's right to bring a civil action under ERISA.
  - (2) For a Disability Benefit claim filed on or after January 1, 2002, the notice of decision shall also include (i) any internal rule, guideline, protocol or other similar criterion relied on for the decision, or a statement that it was relied on and a copy will be provided free of charge upon the claimant's request and (ii) if the decision was based on a medical necessity or experimental treatment or similar exclusion or limit, an explanation of the scientific or clinical judgement for the decision, applying the plan terms to the claimant's medical circumstances, or a statement that such explanation will be provided free of charge upon the claimant's request.
- (i) At the claimant's expense, a duly authorized representative of a claimant may act on behalf of the claimant in filing a claim for benefits or requesting a review of any denial thereof. The Trustees may establish reasonable procedures for determining whether an individual has been duly authorized to act on behalf of a claimant.

#### **Section 7.05. Information and Proof.**

Every Participant and Beneficiary shall furnish, at the request of the Trustees, any evidence reasonably required for the administration of the Plan or for the determination of any matter that the Trustees may legitimately have before them. The Trustees shall be the sole judge of the standard of evidence required in any case and shall determine all questions arising in the course of Plan administration, including but not limited to the entitlement of a Participant, Spouse or Beneficiary to a benefit payment. The Trustees may require such proof of death and such evidence of the right of any person to receive payment of vested accrued benefits of a deceased Participant, as the Trustees deem advisable. The Trustees' determination of death and the right of any person to receive payment shall be conclusive. Failure to furnish evidence on a timely basis, and in good faith, shall be sufficient reason for the denial of immediate payments to a Participant, Spouse or Beneficiary, or for the temporary suspension or

discontinuance of payments to such persons. The falsity of any statement material to an application or the furnishing of fraudulent information or proof shall be sufficient reason for the denial, suspension or discontinuance of payments under this Plan and in any such case, the Trustees shall have the right to recover any determinable loss resulting from reliance thereon.

#### **Section 7.06. Arbitration.**

In the event that the Employer Trustees and the Union Trustees deadlock on the interpretation of any of the provisions or terms of this Plan or on any matter or matters relative to the administration of this Plan, the two groups of Trustees may appoint a mutually agreed upon impartial umpire to decide such dispute, or the Federal Mediation and Conciliation Service may appoint an impartial umpire to decide such dispute upon the written request of either Trustee group. If, for any reason, the Federal Mediation and Conciliation Service does not appoint an impartial umpire within a reasonable time after such request is made, either Trustee group may petition the District Court for the Western District of Pennsylvania for the appointment of an impartial umpire to decide such dispute. The decision of such impartial umpire shall be final and binding. The cost of the umpire's services shall be paid by the Fund. All other expenses of arbitration shall be paid by the party or parties incurring them and not by the Fund.

### **ARTICLE VIII**

#### **AMENDMENT, TERMINATION AND MERGER**

##### **Section 8.01. Amendment.**

- (a) Subject to the provisions hereinafter set forth, the Trustees may, by duly adopted resolution, at any time and from time to time modify or amend, in whole or in part, any or all the provisions of the Plan.
- (b) No amendment to the Plan shall decrease a Participant's Individual Account. To the extent required by Code Section 411(d)(6), no amendment shall eliminate an optional form of benefit for benefits which accrued prior to the date of the amendment.
- (c) No modification or amendment shall make it possible for any part of the Fund to be used for, or diverted to purposes other than for the exclusive benefit of the Participants and Beneficiaries, or for the payment of the expenses of administration of the Plan.
- (d) Any modification or amendment of the Plan may be made which the Trustees deem necessary or appropriate to make the Plan conform to the requirements of any valid law or governmental regulation now or hereafter enacted or promulgated, or to qualify the Plan and the Trust as exempt under existing or future federal, state or local income tax laws and regulations.
- (e) If any amendment directly or indirectly changes the vesting provisions of the Plan, any Participant credited with three or more years of Covered Employment (whether or not consecutive) may irrevocably elect to have his/her vested percentage computed under the vesting provisions in effect prior to the amendment. Such election may be made during a period beginning no later than the date of the Plan amendment is adopted, and ending 60 days after the latest of:



- (1) the day the Plan amendment is adopted; or
- (2) the effective date of the Plan amendment; or
- (3) the date of issuance of written notice of the Plan amendment to the Participant.

**Section 8.02. Merger, Consolidation or Transfer of Assets.**

This Plan shall not be merged or consolidated with, nor shall any assets or liabilities be transferred to, any other Plan unless the benefits payable to each Participant if the Plan were terminated immediately after such action would be equal to or greater than the benefits to which such Participant would have been entitled if this Plan had been terminated immediately before such action.

**Section 8.03. Right to Terminate; Allocation of Assets Upon Termination.**

The Trustees shall have the right to discontinue or terminate the Plan in whole or in part. In the event of complete termination of the Plan, the assets then remaining, after providing for the expenses of the Plan and for any payments from Individual Accounts theretofore approved, shall be distributed among the Participants. Each Participant shall receive that part of the total remaining assets in the same ratio as the amount of his/her Individual Accounts bears to the aggregate amount of the Individual Accounts of all Participants. No part of the assets shall be returned to any Employer or inure to the benefit of any Employer or the Union. A reasonable effort shall be made to contact every Participant. Those who cannot be located, or those for whom no claim is made for payment of Individual Accounts within 90 days following the sending of notice by registered mail to the last known address, shall (except to the extent provided otherwise by law) have the amount in their Individual Accounts as of the date of termination placed in a federally insured savings account. The names of these individuals for whom an account is established shall be available for reference with the Union. An attempt shall also be made to contact the Spouse or the designated Beneficiary in an attempt to locate the Participant.

**ARTICLE IX**

**MISCELLANEOUS**

**Section 9.01. Rights Against Board.**

Neither the establishment of the Plan nor the modification thereof, nor the creation of any fund, trust or account, nor the payment of any benefits shall be construed as giving any Participant or any person any legal or equitable right against the Trustees, unless such rights shall be specifically provided for in the Trust or the Plan or conferred by affirmative action of the Trustees.

**Section 9.02. Spendthrift Provisions.**

- (a) As and to the extent required by the Code and ERISA, benefits and interests in the Plan and the Fund shall not be subject in any matter to alienation, sale, transfer, assignment,

pledge, attachment or encumbrance of any kind. Any attempt to alienate, sell, transfer, assign, pledge, or otherwise encumber any such benefit, whether presently or thereafter payable, shall be void. No benefit nor the Fund shall in any manner be liable for or subject to the debts or liabilities of any Participant or Beneficiary.

- (b) Notwithstanding paragraph (a) above, all or a part of a Participant's Individual Accounts may be segregated and/or distributed to an alternate payee to the extent required and in the manner provided for under Code Section 414(p) and ERISA Section 206(d)(3) with respect to a "qualified domestic relations order" as said term is defined in Code Section 414(p) and ERISA Section 206(d)(3). Any said distribution may be made prior to the Participant's "earliest retirement age" as said term is defined in Code Section 414(p) and ERISA Section 206(d)(3), and the Participant's Individual Accounts shall be appropriately adjusted for any said segregation and/or distribution.
- (c) The Trustees shall establish such procedures pursuant to Code Section 414(p) and ERISA Section 206(d)(3) as they deem necessary or desirable to determine the qualified status of domestic relations orders and to administer distributions under a qualified domestic relations orders, including procedures relating to:
  - (1) a Participant's eligibility to receive a distribution or withdrawal from his Individual Accounts during the period the Trustees are determining whether a domestic relations order with respect to the Participant's Individual Accounts is a qualified domestic relations order and/or during the period after the Trustees have been notified that a qualified domestic relations order is being sought with respect to the Participant's Individual Accounts; and
  - (2) the administration, investment and distribution of segregated accounts established for alternate payees pursuant to qualified domestic relations orders
- (d) Notwithstanding paragraph (a) above, all or part of a Participant's Individuals Accounts may be offset against an amount that the Participant is ordered to pay to the Plan under a judgment, order, decree or settlement described in Code Section 401(a)(13)(C) issued or entered into on or after August 5, 1997.

### **Section 9.03. Incorporation of Trust Agreement.**

The Trust Agreement as the same may be amended from time to time is hereby deemed to be part of the Plan with like effect as if specifically inserted herein.

### **Section 9.04. Costs.**

All costs of administering the Plan, including compensation to the accountants, actuaries, legal counsel and other agents for the Fund or the Trustees, shall be paid from the Fund and no responsibility or liability therefor shall be asserted against any Employer, the Union or the Trustees.

### **Section 9.05. Separability.**

The Articles and Sections of this Plan shall be deemed separable so that the invalidity of any portion hereof shall not affect the validity of the remainder. It is understood that each Section of

this Plan under the several subheads, stands alone and no combination of Sections can be used to produce a result not contemplated by the Plan.

**Section 9.06. Applicable Law.**

All questions pertaining to the validity or construction of the Plan or the Trust Agreement, and all of the acts and transactions of the Trustees, shall be determined in accordance with applicable federal law and to the extent not preempted by federal law, the laws of the Commonwealth of Pennsylvania.

**Section 9.07. Gender and Number.**

Wherever any words are used in the masculine gender, they shall be construed as though they were also used in the feminine and neuter genders, and vice versa, in all cases where they would so apply, and wherever any words are used in the singular form they shall be construed as though they were also used in the plural form, and vice versa, in all cases where they would so apply.

**Section 9.08. Legal Actions.**

- (a) Except as may be specifically provided for by law, in any action or proceeding involving the Fund, or any property constituting part or all thereof, or the administration thereof, the Trustees shall be the only necessary parties and no Employees or former Employees of any Employer nor any Participants or their Spouses or Beneficiaries or any other person having or claiming to have an interest in the Fund or under the Plan shall be entitled to any notice of process.
- (b) Except as may be specifically provided for by law, any final judgment which is not appealed or appealable that may be entered in any such action or proceeding shall be binding and conclusive on the Employers, the Union and the Trustees, and on all persons having or claiming to have any interest in the Fund or under the Plan.

**Section 9.09. Reciprocal Arrangements.**

- (a) The Trustees are authorized to enter into reciprocity agreements with the Boards of Trustees of other profit sharing or annuity funds which provide retirement benefits for employees represented for the purpose of collective bargaining by one or more local unions or district councils affiliated with the International Association of Bridge, Structural and Ornamental Iron Workers. The terms and conditions of such reciprocity agreements may be substantially identical to the terms and conditions contained in the form of Reciprocity Agreement attached hereto as Appendix "B". The Trustees shall have the power and authority to modify any or all of the terms of any such reciprocity agreement whenever they deem the same to be necessary or appropriate, consistent with existing legal obligations of the Plan.
- (b) In addition to the authority contained in paragraph (a) above, the Trustees adopt and shall be bound by the provisions of the Iron Workers International Reciprocal Annuity Agreement for Iron Workers Annuity Funds (the "International Reciprocal Annuity Agreement") from and after the Effective Date specified in such International Reciprocal Annuity Agreement, a copy of which is attached hereto as Appendix "C". Pursuant to

the terms of such International Reciprocal Annuity Agreement, the provisions of Exhibit "A" thereto are incorporated into the Plan by this reference, and shall constitute Article X of the Plan.

- (c) The provisions of this Section shall be operative in addition to the rollover provisions of Section 3.04.

**Section 9.10. Effective Date.**

This Plan as amended and restated shall be effective on and after July 1, 2001, except as otherwise provided herein.

IN WITNESS WHEREOF, the Trustees have affixed their signatures as of this 22<sup>nd</sup> day of February, 2002.

\_\_\_\_\_  
William C. Ligetti, Jr.  
Employer Trustee

\_\_\_\_\_  
Lawrence A. Collins  
Union Trustee

\_\_\_\_\_  
Rubbie A. Greenewald  
Employer Trustee

\_\_\_\_\_  
Henry F. Foley  
Union Trustee

\_\_\_\_\_  
Roger D. Irwin  
Employer Trustee

\_\_\_\_\_  
Patrick McGurk  
Union Trustee

\_\_\_\_\_  
Frank Altavilla  
Employer Trustee

\_\_\_\_\_  
Robert P. Allen  
Union Trustee

IRON WORKERS OF WESTERN PENNSYLVANIA  
PROFIT SHARING PLAN

Administrative Procedures Applicable  
to Disability Benefits

IRON WORKERS OF WESTERN PENNSYLVANIA  
PROFIT SHARING PLAN

Administrative Procedures Applicable  
to Disability Benefits

This Administrative Procedures Statement outlines the Profit Sharing Plan requirements for Disability Benefits and establishes the administrative procedures for the use of medical evaluations to determine a Disability Benefit Recipient's initial and continuing entitlement to a Disability Benefit Award. This Statement also sets forth the administrative procedures to be followed in the case of a Disability Benefit Recipient who returns to work in Covered Employment as the result of a recovery from the Disability which originally resulted in the award of a Disability Benefit.

Eligibility

A Participant is entitled to be considered for a Disability Benefit if he/she:

1. Becomes "Disabled" prior to age 65; and
2. Has a balance in his/her Individual Accounts under the Profit Sharing Plan.

"Disability" Defined

As used in the Profit Sharing Plan, the term "Disability" means a physical or mental condition of a Participant resulting from a bodily injury or disease or mental disorder which has rendered the Participant totally disabled for a period of at least one (1) month, and will continue indefinitely to render the Participant incapable of engaging in gainful employment as a construction worker.

Disability Benefit Awards

To receive a Disability Benefit Award, a physically or mentally disabled Participant must:

1. Make a proper application to the Plan Office for an award upon such form(s) as the Plan Office shall provide for such purpose;
2. Present evidence satisfactory to the Trustees to establish that the Participant meets the eligibility requirements for a Disability Benefit Award;
3. Present medical evidence satisfactory to the Trustees which establishes that the Participant's medical condition and prognosis meets the definition of Disability;
4. Demonstrate that he/she is continually under the care of a legally qualified physician for the physical or mental condition for which Disability is claimed;

5. Submit to such medical examination(s) and/or complete rehabilitative evaluation(s) by physicians, and at appropriate facilities retained by the Trustees as the Trustees may require; and
6. Demonstrate that he/she has been disabled for at least one month.

The Trustees will make the determination of the claiming Participant's Disability and entitlement to a Disability Benefit Award based upon the medical and other evidence presented to them or of which they otherwise may have knowledge. The Plan Office shall promptly and in writing notify the claiming Participant of the Trustees' decision to admit or deny the claim for a Disability Benefit Award. In the event of a denial of a claim for a Disability Benefit Award, the Participant will be entitled to the appeal rights described in Section 7.04 of the Profit Sharing Plan.

#### Commencement of Disability Benefits

Upon a finding of Disability as described above and the grant of a Disability Benefit Award by the Trustees, payment of benefits will begin as soon as practicable after the grant of a Disability Benefit Award in accordance with all of the applicable provisions of Article VI of the Profit Sharing Plan.

#### Continuation of Disability Benefits

Any periodic payments of Disability Benefits pursuant to a Disability Benefit Award will continue until such benefits are suspended or terminated as described below.

#### Termination of Disability Benefits

A Disability Benefit Recipient's periodic disability benefit payments and/or Disability Benefit Award will terminate or be terminated by the Trustees upon the occurrence of any of the following events:

1. A determination by the Trustees based upon medical and/or other evidence of which they have knowledge that the Disability Benefit Recipient's physical or mental condition prior to age 65 no longer continues to meet the criteria for Disability which supported the initial Disability Benefit Award;
2. In the case of a Disability Benefit Recipient who returns to Covered Employment, a determination by the Trustees based upon medical and/or other evidence of which they have knowledge that the Disability Benefit Recipient is not disabled from employment as a construction worker;
3. The Disability Benefit Recipient's continuing or repeated failure or refusal to undergo any medical examination or rehabilitative evaluation ordered by the Trustees to determine the continuing nature of the Disability Benefit Recipient's Disability;

4. The Disability Benefit Recipient's continuing or repeated failure or refusal to provide the Trustees with proof of continuing Disability;
5. The Disability Benefit Recipient's continuing or repeated failure to provide the Trustees with such medical forms as the Trustees may request; or
6. The Disability Benefit Recipient's continuing or repeated failure or refusal to provide the Trustees with proof of continuing care by a legally qualified physician who examines the Disability Benefit Recipient and renders a medical evaluation and prognosis to the Trustees.

#### Suspension of Benefits Upon Reemployment of a Disability Benefit Recipient

The Trustees shall suspend periodic disability benefit payments to a Disability Benefit Recipient who returns to work in Covered Employment. Upon such Disability Benefit Recipient's subsequent termination of Covered Employment, his/her disability benefit payments will be resumed if the Trustees determine, based upon medical and/or other evidence of which they have knowledge, that the Disability Benefit Recipient is at such time disabled from work in the construction industry, and as long as no other event requiring a termination of disability benefit payments or the Disability Benefit Award has occurred.

#### Insured Periodic Benefits

In any case where periodic Disability Benefits are provided through an annuity or other insurance product purchased from a legally licensed insurance company, suspension or termination of Disability Benefits as the result of reemployment or recovery shall be governed by the contractual terms of such annuity or other insurance product.

\* \* \* \* \*



## RECIPROCITY AGREEMENT

Made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between or among the signatory plans named on the signature page(s) of this Agreement.

## WITNESSETH:

WHEREAS, the Trustees of the signatory plans, which are "employee pension benefit plans" as defined in Section 3(2) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), acting under separate plans and trust agreements, are authorized and empowered to grant to and administer annuity or profit sharing benefits for Employees who are or have been represented in collective bargaining by those local Iron Workers unions which sponsor such respective employee pension benefit plans; and

WHEREAS, such represented Employees are or may be working in the jurisdiction of several different annuity or profit sharing plans during their lifetimes; and

WHEREAS, the signatory plans recognize that such Employees should have the opportunity to have Employer Contributions made in other jurisdictions remitted to the Employees' home plans, and wish to provide Employees with such an option.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, and intending to be legally bound, the parties hereto agree as follows.

Section 1. The signatory plans intend and agree that this Agreement shall constitute a reciprocal arrangement for the transfer of Employer Contributions and Employee annuity or profit sharing account balances between plans.

Section 2. For purposes of this Agreement, the following terms shall have the following meanings:

- (a) Employee - Any individual working within the Jurisdiction of the Local Plan and being entitled to Employer Contributions made on his/her behalf that are paid in accordance with the Collective Bargaining Agreement for the Jurisdiction in which such Employee is working;
- (b) Employer - A sole proprietorship, partnership, corporation, joint venture, governmental body or other entity which either has a Collective Bargaining Agreement with the local Iron Workers union in whose Jurisdiction the Employee is working, or an international agreement with the International Association of Bridge, Structural and Ornamental Iron Workers, AFC-CIO, or is liable to pay annuity or profit sharing benefits under the law or other written agreement;
- (c) Employer Contributions - Those monies paid by an Employer under the terms of a Collective Bargaining Agreement of the Jurisdiction in which the Employee is working, for the purpose of providing annuity or profit sharing benefits;

- (d) Collective Bargaining Agreement - A negotiated working agreement between the local Iron Workers union and an Employer within the Jurisdiction in which the Employee is working;
- (e) Jurisdiction - The geographical area designated by the Collective Bargaining Agreement between the local Iron Workers union and an Employer;
- (f) Local Plan - The annuity or profit sharing plan for the Jurisdiction or Jurisdictions in which the Employee is working;
- (g) Home Plan - The annuity or profit sharing plan in the geographical area where the Employee wishes to establish or is maintaining eligibility for annuity or profit sharing plan benefits.

Section 3. An Employee who is working or who has worked within the Jurisdiction of a Local Plan shall have the right to have undistributed annuity or profit sharing plan contributions made by Employers to the Local Plan on behalf of such Employee (as well as other amounts credited to the Employee under the Local Plan) transferred from the Local Plan to the Employee's Home Plan.

Section 4. No contributions or account credits shall be transferred between plans unless the Employee shall have authorized such transfer in writing on cards or forms to be provided by the Local Plan. Such written authorization by the electing Employee shall also contain a general release of the Local Plan for all claims and liabilities for benefits attributable to Employer Contributions and other account credits properly transferred by the Local Plan under the provisions of this Agreement, which release shall be binding on and effective against the Employee and his or her heirs, personal representatives and assigns. Such written authorization(s) to transfer contributions shall be delivered by the Employee to the Local Plan within 60 days after the commencement of an Employee's employment within the jurisdiction of the Local Plan, or thereafter, whenever an Employee wishes to authorize a transfer of Employer Contributions and account credits to the Employee's Home Plan. The failure of an Employee to authorize a transfer of Employer Contributions and/or account credits will be deemed to be an election by the Employee to decline a transfer of Employer Contributions and account credits from the Local Plan to the Home Plan, and shall further be deemed to be an election to waive any future claim for benefits from the Home Plan which may have otherwise accrued under the Home Plan as the result of the Employee's employment in the Jurisdiction of the Local Plan.

Section 5. Employer Contributions collected by the Local Plan for a prior electing Employee shall be remitted to the Employee's Home Plan within 60 days of the end of the calendar month in which such Employer Contributions are received by the Local Plan, together with a report stating the Employee's name, social security number, month(s) of employment, hours worked or paid in any given month, the name of the contributing Employer and the amount of the Employer Contribution(s) collected for the hours worked or paid. Employer Contributions and other account credits held by the Local Plan for a subsequently electing Employee shall be remitted to the Employee's Home Plan within 60 days after receipt of a proper written authorization from the Employee by the Local Plan.

Section 6. The Local Plan shall be obligated to undertake its normal and reasonable measures to collect the full amount of delinquent Employer Contributions on behalf of an electing Employee and the Home Plan. The Local Plan shall be liable and accountable to the Home

Plan only for contributions actually collected on behalf of the electing Employee. Nothing herein shall be construed as prohibiting the Local Plan from entering into settlement agreements with delinquent Employers or abandoning collection efforts when such measures are judged by the Trustees of the Local Plan to be prudent in the circumstances and are consistent with the Local Plan's normal collection practices. The Home Plan shall have no obligation to undertake collection efforts against delinquent Employers within the Jurisdiction of the Local Plan.

Section 7. The Home Plan shall be solely responsible for providing plan benefits attributable to an Employee's employment in the Jurisdiction of the Local Plan and for which Employer Contributions and account credits have been transferred by the Local Plan to the Home Plan. Matters of eligibility, crediting of service and benefits shall be determined by application of the provisions, practices and procedures of the Home Plan. The Home Plan shall indemnify and save the Local Plan harmless from any claims and liabilities (including related expenses incurred) which may be asserted against the Local Plan with respect to benefits for which Employer Contributions and account credits are properly transferred by the Local Plan under the provisions of this Agreement.

Section 8. Each signatory plan represents, warrants and covenants to the other signatory plan(s) that such plan has been, is, and will be established, maintained and operated in accordance with ERISA. Each signatory plan represents, warrants and covenants to the other signatory plan(s) that such plan is and will remain a qualified plan under the provisions of Section 401(a) of the Internal Revenue Code of 1986 (the "Code"), and that any related trust is and will remain entitled to the exemption provided by Section 501(a) of the Code. Any signatory plan which is in breach of any of the foregoing representations, warranties or covenants shall indemnify and save harmless the other signatory plan(s), jointly and severally, from any and all claims, liabilities and adverse consequences (including related expenses incurred) arising in connection with or as a result of such breach.

Section 9. Except as expressly provided to the contrary in this Agreement, the signatory plans hereby waive any administrative or other fees or charges incurred in transferring Employer Contributions and account credits, in making reports and in otherwise complying with the provisions of this Agreement.

Section 10. In the event a dispute arises between signatory plans concerning the interpretation, application or performance of this Agreement, the signatory plans involved shall meet and attempt in good faith to resolve their differences. If after 90 days from the date the dispute was first raised no mutually satisfactory resolution is reached, either plan involved in the dispute may notify the other plan in writing of its desire to arbitrate the dispute. If the plans involved cannot agree upon an arbitrator within 30 days of the mailing of such notice, either plan may submit the dispute to arbitration under the applicable rules of the American Arbitration Association. The decision or determination of any arbitrator(s) shall be final and binding upon the plans involved in the dispute, and shall be enforceable by any court with competent jurisdiction. The costs of arbitration shall be borne equally by the plans which are parties to the dispute.

Section 11. The reciprocity provisions of this Agreement shall apply to employment performed and to Employer Contributions and account credits received prior to the date of this Agreement unless the signatory plans expressly agree otherwise in writing.

Section 12. A signatory plan may elect to withdraw and terminate its participation in this Agreement upon at least one (1) year's advance written notice sent by certified mail to the

Trustees of the other plan(s) with which the withdrawing plan maintains reciprocity hereunder. Each plan affected by a withdrawal and termination shall remit all collections, credits and reports due to its reciprocal partner plan(s) prior to the effective date of withdrawal and termination. A termination of a signatory plan will automatically terminate the reciprocal arrangement(s) between the terminated plan and its reciprocal partner(s). The affected signatory plans will act promptly to settle accounts and reports between or among them.

Section 13. This Agreement constitutes the entire agreement of the signatory plans relating to the subject matter hereof. Any amendments, modifications, additions or waivers of the terms of this Agreement must be in writing and must be duly executed by the Trustees of the signatory plans so affected.

IN WITNESS WHEREOF, each of the undersigned plans, by the signatures of its duly authorized Trustees, hereby becomes a party to this Agreement and agrees to be bound by the terms and provisions hereof, effective as of the date first above written.

Signatory Plans:

IRON WORKERS OF  
WESTERN PENNSYLVANIA  
PROFIT SHARING PLAN

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By \_\_\_\_\_  
Employee Trustee

By \_\_\_\_\_  
Employee Trustee

By \_\_\_\_\_  
Employer Trustee

By \_\_\_\_\_  
Employer Trustee