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FIFTEENTH AMENDMENT
TO THE
INTERNATIONAL UNION OF OPERATING ENGINEERS
LOCAL 877 ANNUITY PLAN

Restatement generally effective as of January 1, 2014

(Working copy to include 16th Amendment)

INTERNATIONAL UNION OF OPERATING ENGINEERS
LOCAL 877 ANNUITY PLAN

2014 Restatement

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Appendix A

Minimum Distribution Requirements - Section 401(a)(9) Final and Temporary Regulations

FIFTEENTH AMENDMENT

TO

INTERNATIONAL UNION OF OPERATING ENGINEERS

LOCAL 877 ANNUITY PLAN

In accordance with the provisions of Section 14.1 of the International Union of Operating Engineers Local 877 Annuity Plan, the Trustees of the International Union of Operating Engineers Local 877 Annuity Fund hereby agree that the Plan, as previously amended, shall be further amended in the form of a completely restated Plan, as follows:

ARTICLE I

Name and Effective Date

Section 1.1 Name.

This Plan shall be known as the "International Union of Operating Engineers Local 877 Annuity Plan."

Section 1.2 Effective Date.

This Plan became effective as of August 1, 1994. Thereafter, this Plan was amended numerous times, including a restatement which was generally effective January 1, 2010, with specific exceptions reflected therein. This Amendment restating the Plan shall be effective as of January 1, 2014, except as may be provided in a specific Plan provision. All matters concerning eligibility, benefits, vesting, credited service and the like, which arise with respect to periods prior to the effective dates of this Amendment shall be governed by the provisions of the Plan in effect when the Participant last worked in Covered Employment.

Section 1.3 Designation as a Profit Sharing Plan.

Effective as of the Plan's original date of adoption, August 1, 1994, this Plan is designated a Profit Sharing Plan.

Section 1.4 Electronic Media.

- (a) Any reference in the Plan to "written" or "in writing" shall be construed to include a reference to the use of electronic media, to the extent made available by the Fund Administrator and permitted by the Internal Revenue Service and the Department of Labor.

- (b) Subsection (a) shall not apply for the following purposes under the Plan:
 - (i) any spousal consent required in connection with any action taken by a Participant, including the waiver of a spousal death benefit, a qualified preretirement survivor annuity or a joint and survivor annuity, the designation of a Beneficiary other than a spouse, or an application for a loan under the Plan:

 - (ii) making or revoking a Beneficiary designation;

 - (iii) Article II;

 - (iv) the definition of "earnings" for purposes of the overall limitations on contributions;

 - (v) any notification of action taken by the Fund Administrator regarding an Application for Benefits;

 - (vi) a request for review of a denial of benefits and the submission of issues and comments in connection with such an appeal; and

- (vii) a Participant's request for a copy of the Plan or other documents relating to the establishment and operation of the Plan.

ARTICLE II

Definitions

Unless the context or subject matter otherwise requires, the following definitions shall govern in the Plan. Wherever any words or phrases are used in this Plan in the masculine they will be equally applicable in the feminine; and wherever any words or phrases are used in the singular they shall be construed as in the plural in all cases where applicable. Words and phrases defined in the Trust Agreement shall have that same meaning when used in this Plan, unless defined differently in this Plan, in which case the Plan definition will apply.

Section 2.1 Account.

"Account" means a Regular Account, a Deferral Contribution Account or a Rollover Account, as appropriate.

Section 2.2 Affiliated Group.

"Affiliated Group" means a group of corporations or other entities of which a Contributing Employer is a member, determined under Code §414, modified for purposes of Code §415 by subsection (h).

Section 2.3 Agreement and Declaration of Trust.

"Agreement and Declaration of Trust" or "Trust Agreement" means the trust agreement adopted as of August 1, 1994 and any amendments, establishing the International Union of Operating Engineers Local 877 Annuity Fund.

Section 2.4 Annuity Starting Date.

"Annuity Starting Date" means the first day of the first month for which a benefit is paid to a Participant under the Plan, provided that on that date the Participant must:

- (a) be eligible for a benefit described in Article VIII of this Plan; and
- (b) have filed a completed Application for Benefits which (i) contains the consent of the Participant and the consent of the Participant's Spouse, if the Joint and Survivor form of payment is rejected, given not more than 180 days before that date and after receipt of the information described in paragraph (c) of this Section 2.4, and (ii) has been approved by the Fund Administrator; and
- (c) subject to the exception in Section 8.4(c), have received the written explanation of benefits described in Section 8.4(b), if applicable, at least 30 days, but not more than 180 days, prior to that date.

In any event, the Annuity Starting Date shall not be later than the April 1st of the calendar year following the later of the calendar year in which the Participant: (i) attains age 70-1/2, or (ii) separates from service with the Affiliated Group.

Section 2.5 Application for Benefits.

"Application for Benefits" or "Application" means the form provided by the Trustees which shall be completed by the Participant or his Beneficiary and filed with the Trustees in advance of the Annuity Starting Date.

Section 2.6 Beneficiary.

"Beneficiary" means any individual, estate or other recipient entitled to receive death benefits payable under Articles VIII and IX hereof.

Section 2.7 Break in Service.

"Break in Service" means, at any point in time occurring on, or after, June 1, 2011, a period of three (3) consecutive months during which a Participant has failed to complete at least one (1) Hour of Service. A Break in Service shall be deemed to occur on the last day of the third consecutive calendar month without an Hour of Service.

Section 2.8 Code.

"Code" means the Internal Revenue Code of 1986, as amended.

Section 2.9 Collective Bargaining Agreement.

"Collective Bargaining Agreement" means a written agreement between a Contributing Employer and a Local Union which describes the terms and conditions of work in the jurisdiction of the Local Unions, now or hereafter in effect, including any extensions or renewals thereof, requiring Employer Contributions or permitting Deferral Contributions to the Annuity Fund pursuant to this Plan. The applicable terms and provisions of any Collective Bargaining Agreement which requires Employer Contributions or permits Deferral Contributions to the Annuity Fund pursuant to this Plan and which is accepted by the Trustees are incorporated herein by reference.

Section 2.10 Compensation.

(a) "Compensation" means wages, as defined in Code §3401(a), and other compensation received by a Participant during a Plan Year which are reported in Box 1 on IRS Form W-2 (Wage and Tax Statement) for the calendar year(s) in which such Plan Year falls. Compensation shall be determined without regard to any rules under Code §3401(a) that limit the remuneration included in wages on the basis of the nature or location of the employment or the services performed. Compensation also includes the following with respect to a Participant during a Plan Year:

(i) amounts contributed at the election of the Participant to an employee benefit plan under an arrangement described in Code §§125 or 401(k), to a

simplified employee pension under an arrangement described in Code §408(k)(6), to a qualified transportation fringe benefit plan described in Code §132(f)(4) (effective for Plan Years beginning after December 31, 1997) or for an annuity contract described in Code §403(b) (tax-sheltered annuity);

- (ii) amounts deferred under an eligible deferred compensation plan within the meaning of Code §457(b); and
- (iii) employee contributions treated as employer contributions under Code §414(h)(2) (government pick-ups).

Amounts that a Participant receives following severance from service with a Contributing Employer are not considered to be Compensation, unless the amounts are received within two and one-half months (2-1/2 months) following the Participant's severance from service and such amounts: (i) would have been payable to the Participant if employment had not terminated and are either regular compensation for services during the Participant's regular working hours, compensation for services outside of the Participant's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar compensation; or (ii) represent payments for accrued bona fide sick, vacation, or other leave, but only if the Participant would have been able to use the leave if he had continued in the employment of the Contributing Employer. In addition, any differential wage payment, as defined in Section 15.8(d), received by a Participant during a calendar year shall be treated as Compensation for purposes of Code §415(c)(3) and any regulations issued thereunder.

- (b) The Compensation of a Participant taken into account under the Plan shall not exceed \$150,000 or, for any Plan Year beginning after December 31, 2001, \$200,000, as adjusted for cost-of-living increases in accordance with Code §401(a)(17)(B). In the case of a Plan Year of less than 12 months, the dollar

limitation under this subsection shall be the amount determined by multiplying the applicable amount described in the preceding sentence by a fraction, the numerator of which is the number of months in the Plan Year and the denominator of which is 12. In the case of a Participant who commences or ceases participation in the Plan on a date other than the first or last day of the Plan Year, no adjustment shall be made to the applicable dollar limitation.

Section 2.11 Contributing Employer; Employer.

"Contributing Employer" or "Employer" means any person, firm or corporation who employs members of the Local Union or other Employees and is obligated by a Collective Bargaining Agreement or Participation Agreement to make Employer Contributions or Deferral Contributions to the Annuity Fund on behalf of such members or other Employees. The term shall also include the Local Union, the Annuity Fund and the Health Fund acting for their representatives, officers, agents or other Employees, provided that the Local Union, the Annuity Fund, and the Health Fund, as the case may be, are obligated under the terms of a Participation Agreement to make Employer Contributions or Deferral Contributions to the Annuity Fund.

For purposes of identifying Highly Compensated Employees and applying the rules on participation, vesting and statutory limits on benefits under the Plan, but not for determining Covered Employment, the term "Contributing Employer" includes the Affiliated Group of which the particular Contributing Employer is a member.

Section 2.12 Covered Employment.

"Covered Employment" means work performed on or after August 1, 1994, with a Contributing Employer in a category of work covered by a Collective Bargaining Agreement or Participation Agreement for which Employer Contributions to the Annuity Fund are required or Deferral Contributions to the Annuity Fund are permitted.

Section 2.13 Deferral Contributions.

"Deferral Contributions" means the contributions to the Annuity Fund made by a Contributing Employer on behalf of a Participant pursuant to a deferral election under Article V.

Section 2.14 Deferral Contribution Account.

"Deferral Contribution Account" means the account kept for each Participant reflecting the Participant's share of the Deferral Contributions under Article V, including net earnings or losses thereon.

Section 2.15 Disabled Participant.

"Disabled Participant" means a Participant who is unable to work at his or her regular occupation, or in any comparable employment, by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long continued and indefinite duration. A Disabled Participant may receive a distribution from the Annuity Fund if he or she meets the requirements of Section 8.1(b).

Section 2.16 Employee.

"Employee" or "Employees" means:

- (a) all persons (exclusive of self-employed persons, partners and sole proprietors) who are covered by the terms of a Collective Bargaining Agreement requiring Employer Contributions or permitting Deferral Contributions to the Annuity Fund,
- (b) all Employees of the Local Union provided that the Local Union shall be responsible for any Employer Contributions and Deferral Contributions on behalf of such Employees, pursuant to the terms of a Participation Agreement, and subject to the approval of and under such terms and conditions as prescribed by the Trustees, and
- (c) all Employees of the Annuity Fund or the Health Fund provided that the Annuity Fund and the Health Fund shall be responsible for Employer Contributions and Deferral Contributions on behalf of such Employees, pursuant to the terms of a

Participation Agreement, and subject to the approval of and under such terms and conditions as prescribed by the Trustees.

Section 2.17 Employer Contributions.

"Employer Contributions" means the monies paid or required to be paid by Contributing Employers to the Trust Fund under Article IV of this Plan on behalf of Participants in accordance with the terms of a Collective Bargaining Agreement or Participation Agreement, which agreement(s) are incorporated herein by reference, and the Trust Agreement.

Section 2.18 ERISA.

"ERISA" means the Employee Retirement Income Security Act of 1974, as it may be amended from time to time, and all regulations and rulings issued pursuant thereto.

Section 2.19 Fund Administrator.

"Fund Administrator" means the person, persons or entity, if any, retained by the Trustees, who shall have overall responsibility for the administration and management of the Fund, subject to the direction of the Trustees.

Section 2.20 Health Fund.

"Health Fund" means the Health and Welfare Trust Fund of the International Union of Operating Engineers Locals No. 877 and 70.

**** 16th Amendment (eff. 1/1/2014) (Sec. 2.21 amended)**

Section 2.21 Highly Compensated Employee.

- (a) Subject to the definitions in subsection (b), the term "Highly Compensated Employee" means an individual who:
- (i) is an Employee of a Contributing Employer that performs service for such Contributing Employer during the Determination Year, and
 - (ii) meets the criteria of (A) or (B):

- (A) the individual received Compensation from the Contributing Employer in excess of \$80,000 (as adjusted in accordance with subsection (b)(iv)) during the Look-Back Year, and, at the election of the Contributing Employer, is included in the 20% of employees who received the highest Compensation from such Contributing Employer, or
 - (B) the individual is a 5% owner of the Contributing Employer at any time during the Determination Year or the Look-Back Year.
- (b) For purposes of this Section 2.21,
- (i) the term “Determination Year” means the Plan Year for which the test is being applied, and the term “Look-Back Year” means the 12-month period immediately preceding that Plan Year.
 - (ii) In determining ownership, the constructive ownership provisions of Code §318 shall be applied by utilizing a 5% test in lieu of the 50% test set forth in subparagraph (a)(2)(C) thereof.
 - (iii) The term “Compensation” means the sum of (A) earnings as defined in Section 14.1(b), and (B) elective or salary reduction contributions by a Contributing Employer and any other member of the Affiliated Group that are not includible in the gross income of the employee under Code §§125, 402(e)(3), 402(h)(1)(B) or 403(b).
 - (iv) The dollar limit referred to in subsection (a)(ii)(A) shall be adjusted in accordance with Regulations for increases in the cost of living using the calendar quarter ending September 30, 1996, as the base period.

- (c) Whether an individual described in subsection (a) is a Highly Compensated Employee is determined separately with respect to each Contributing Employer, based solely on such individual's Compensation from, or status with respect to, that Contributing Employer. In addition, the determination of who is a Highly Compensated Employee will be made in accordance with Code §414(q) and applicable Regulations.

Section 2.22 Hours of Service.

"Hour of Service," for purposes of determining participation under Article III, means:

- (a) each hour for which an individual is directly or indirectly compensated, or entitled to be compensated, by a Contributing Employer for the performance of duties in Covered Employment, and
- (b) each hour to a maximum of 501 hours for any single continuous period, for which an individual is directly or indirectly compensated, or entitled to be compensated by a Contributing Employer (irrespective of whether the employment relationship has terminated) for reasons other than the performance of duties, due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty or leave of absence, and
- (c) each hour for which back pay, irrespective of mitigation of damages, has been awarded or agreed to by a Contributing Employer, and
- (d) effective with respect to the reemployment of an individual in accordance with the provisions of 38 U.S.C. §4312 on or after October 13, 1996, each hour of qualified military service performed by such individual.

The same Hours of Service shall not be credited under more than one of the subparagraphs above. All Hours of Service shall be computed and credited to computation periods in accordance with Sections 2530.200b-2(b) and (c) of Department of Labor regulations.

Section 2.23 Identified Fiduciary.

"Identified Fiduciary" means any business entity appointed by the Trustees under Section 7.1 which will be obligated to comply with Participant directions under the Participant Directed Investment Program, provide the information required by Article VII and Section 404(c) of ERISA, and have the overall responsibility for the administration, management and control of the Participant Directed Investment Program under Article VII. The Trustees shall enter into a written agreement with any Identified Fiduciary, which shall set forth the terms governing its appointment.

An Identified Fiduciary that has the authority to manage, acquire, or dispose of any asset of the Trust Fund, including the management of any Participant Investment Fund, shall acknowledge in writing that it is an "Investment Manager," as defined in section 2.7 of the Trust Fund, and a fiduciary, as defined in Section 3(21) of ERISA, with respect to the assets of the Trust Fund and the Plan over which it has such investment management authority.

Section 2.24 Life Annuity.

"Life Annuity" means a lifetime monthly benefit as defined in Section 8.5.

Section 2.25 Local Union.

"Local Union" or "Local Unions" means the International Union of Operating Engineers Locals 877, 877-A and 877-B of Norwood, Massachusetts and its successors and assigns and such other local affiliates of the International Union of Operating Engineers that subsequently adopt this Plan.

Section 2.26 Normal Retirement Age.

"Normal Retirement Age" means age 60.

Section 2.27 Participant.

"Participant" means any Employee who meets the requirements for participation in the Plan as set forth in Article III. A Participant shall be a married Participant under this Plan if such Participant has a Spouse.

Section 2.28 Participant Directed Investment Program.

"Participant Directed Investment Program" means the program by which Participants may direct the investment of all or a portion of their Account or Accounts, as appropriate.

Section 2.29 Participant Investment Fund.

"Participant Investment Fund" means one of the investment alternatives available for Participant directed investments under the Participant Directed Investment Program, which may include so-called "Look-Through Investment Vehicles" as defined in the regulations issued under Section 404(c) of ERISA.

Section 2.30 Participation Agreement.

"Participation Agreement" means a written agreement between the Fund and a Local Union, or the Health Fund and/or Annuity Fund as Contributing Employers, or any other entity, which sets forth the terms under which such entity is obligated to make Employer Contributions and/or Deferral Contributions to the Annuity Fund on behalf of its respective Employees.

Section 2.31 Plan.

"Plan" means the International Union of Operating Engineers Local 877 Annuity Plan as set forth in this document, together with any subsequent amendments.

Section 2.32 Plan Year.

"Plan Year" means the 12-month period commencing on each January 1st.

Section 2.33 Regular Account.

"Regular Account" means the account maintained for each Participant reflecting amounts contributed by a Contributing Employer under Article IV, including net earnings or losses thereon.

Section 2.34 Regulation.

"Regulation" means any rule or regulation promulgated under the Code by the Secretary of the Treasury or his or her delegate.

Section 2.35 Rollover Account.

"Rollover Account" means an account maintained under Article XII.

Section 2.36 Quarter.

"Quarter" means a calendar quarter; January-March, April-June, July-September and October-December.

Section 2.37 Spouse.

"Spouse" means, effective on and after June 26, 2013, any individual lawfully married in Massachusetts to a Participant under applicable Massachusetts law governing marriage (Mass. Gen. Law, Chapter 207), or any individual in a relationship with a Participant that is recognized as a marriage under such applicable Massachusetts law governing marriage. Once a person has qualified as a Spouse by virtue of a marriage recognized under applicable Massachusetts marriage law, that individual shall cease to be a Spouse on the effective date of any state or federal court judgment, decree or order that terminates or dissolves that Spouse's marriage to the Participant.

Section 2.38 Terminated Participant.

"Terminated Participant" means a Participant who has incurred a Break in Service.

Section 2.39 Trustees.

"Trustees" means the Trustees of the International Union of Operating Engineers Local 877 Annuity Fund who are appointed under the provisions of the Trust Agreement, and their duly appointed successors in trust.

Section 2.40 Trust Fund.

"Trust Fund", "Annuity Fund" or "Fund" means the International Union of Operating Engineers Local 877 Annuity Fund.

Section 2.41 Valuation Date.

"Valuation Date" means the date as of which the value of the Account (or Accounts) of a Participant, Terminated Participant or Beneficiary (including an alternate payee under a qualified domestic relations order pursuant to Section 11.7) is determined for purposes of making any type of distribution from this Plan, including loans made prior to October 1, 2013, under Article VIII, IX, X, XVIII or XX, as applicable.

ARTICLE III

Participation

Section 3.1 Participation.

- (a) Subject to subsection (b), an Employee shall become a Participant in the Plan as of the day he or she works for at least one hour in Covered Employment.
- (b) Subject to such nondiscriminatory rules and regulations as may be prescribed by the Trustees, if an entity which could otherwise qualify as a Contributing Employer becomes a Contributing Employer, any employee of such entity shall be credited with Hours of Service, for the purposes of determining his participation in the Plan under subsection (a) only, for all of his prior continuous service with such entity, although it was not then maintaining the Plan. For purposes of the previous sentence, prior continuous service shall be measured

from the date that the entity became a party to the Collective Bargaining Agreement or the Participation Agreement with the Local Union. Such prior continuous service shall not be taken into account for any other purpose of this Plan.

Section 3.2 Termination and Reinstatement of Participation.

A person shall become a Terminated Participant when he or she incurs a Break in Service. A Terminated Participant shall again become a Participant in this Plan on the day he or she again becomes an Employee by returning to work for at least one hour in Covered Employment.

ARTICLE IV

Employer Contributions

Section 4.1 Regular Accounts.

- (a) The Trustees shall establish a Regular Account in the name of each Participant, and shall credit to each such Regular Account any Employer Contributions which are made on behalf of the Participant under this Article IV.

- (b) Employer Contributions shall be made by Contributing Employers in accordance with this Article IV and the terms of the applicable Collective Bargaining Agreement or Participation Agreement. In addition, Employer Contributions shall be subject to the provisions of Article XIV (Limitations on Annual Additions).

Section 4.2 Nonforfeitability of Regular Accounts.

Each Participant shall be 100% vested in the value of the Employer Contributions properly made on his or her behalf and properly allocated to his or her Regular Account, which shall be nonforfeitable but will be subject to adjustment for earnings and losses and for allocation of expenses under Article VI.

ARTICLE V

Deferral Contributions

Section 5.1 Deferral Contributions by Contributing Employers.

Effective on and after January 1, 2001, Deferral Contributions shall be made by Contributing Employers in accordance with the terms of a Collective Bargaining Agreement or Participation Agreement and this Article V. In addition, Deferral Contributions shall be subject to the provisions of Article XIII (Limitations on Deferral Contributions) and Article XIV (Limitations on Annual Additions).

Section 5.2 Election of Deferral Contributions; Deferral Contribution Accounts.

Each Participant may elect to have a specified whole percentage of the Compensation payable to such Participant for a Plan Year contributed under the Plan as Deferral Contributions. Deferral Contributions shall be made in addition to any Employer Contributions for a Plan Year under Article IV. Deferral Contributions elected under this Section 5.2 shall be made by means of payroll deductions. A Participant's Deferral Contributions must be paid by a Contributing Employer to the Trust Fund and credited to the Participant's Deferral Contribution Account as soon as reasonably practicable, but not later than the fifteenth business day of the month following the month in which such Deferral Contributions are withheld by the Contributing Employer.

Section 5.3 Electing Payroll Deductions of Deferral Contributions.

- (a) Subject to subsection (b), effective on and after January 1, 2001, a Participant may start, modify or discontinue payroll deductions of Deferral Contributions by filing a form designated by the Fund Administrator or Identified Fiduciary which indicates, in writing, that:
 - (i) such Participant has elected to start, modify or discontinue payroll deductions of Deferral Contributions, and

- (ii) the Participant's Contributing Employer has acknowledged such election.
- (b) Notwithstanding subsection (a), a Participant shall not be permitted to make any payroll deductions of Deferral Contributions to this Plan pursuant to an election under subsection (a) if the Participant terminates service with the Contributing Employer with whom the election under subsection (a) has been made or the Participant ceases to be an Employee as defined in Section 2.16.

Section 5.4 Limitations on Deferral Contributions.

- (a) (i) Except as provided in paragraph (ii) with respect to catch-up contributions in certain Plan Years, the aggregate amount for any calendar year after 2000 of a Participant's Deferral Contributions and elective contributions under any other plan maintained by a member of the Affiliated Group, to the extent such contributions are not included in gross income for such calendar year by reason of Code §402(e)(3), shall not exceed the applicable dollar amount set forth in Code §402(g)(1)(B) and applicable Regulations, which for 2014 is: \$17,500. For calendar years beginning after 2014, the \$17,500 limit will be further adjusted by the Secretary of the Treasury for cost of living increases determined in accordance with Code §402(g)(4). Any such adjustments will be in multiples of \$500.
- (ii) All Participants who are eligible to make Deferral Contributions under this Plan and who have attained at least age fifty (50) before the close of a Plan Year which begins on or after January 1, 2002 shall be eligible to make catch-up contributions in accordance with, and subject to the limitations of, Code §414(v). Contributions made pursuant to this paragraph (ii) shall be known as "catch-up contributions" in this Plan, and they shall not be taken into account for purposes of the Plan provisions implementing the required limitations of Code §§402(g) and 415. The Plan shall not be treated as failing to satisfy the Plan provisions implementing the

requirements of Code §§401(k)(3), 401(k)(11), 401(k)(12), 410(b) or 416, as applicable, by reason of the making of such catch-up contributions.

- (b) For purposes of this Section 5.4, the term "elective contributions" means elective contributions as defined in Section 13.1(d) and the term "excess elective contributions" means elective contributions in excess of the limitation set forth in subsection (a).
- (c) If the limitation set forth in subsection (a) is exceeded for any calendar year by reason of a Participant's Deferral Contributions and elective contributions made under any other plan maintained by a member of the Affiliated Group, the Contributing Employer shall notify the Fund Administrator or Identified Fiduciary of the amount of such Participant's excess elective contributions attributable to the Plan. Such amount shall be distributed to the Participant on or before April 15 of the calendar year following the calendar year in which such elective contributions were made. The amount so distributed shall include earnings or losses on the excess elective contributions attributable to the Plan, computed under subsection (g).
- (d) If a Participant's Deferral Contributions and elective contributions made under a plan maintained by an employer other than a member of the Affiliated Group exceed the amount described in subsection (a), the Participant may notify the Fund Administrator or Identified Fiduciary of the amount of the excess elective contributions made under the Plan and each other plan maintained by a member of the Affiliated Group. Any notification under this subsection must be made no later than March 1 of the calendar year following the calendar year in which such excess elective contributions were made. Upon receipt of such notification, the Fund Administrator or Identified Fiduciary shall distribute to such Participant the portion of such excess elective contributions attributable to the Plan no later than the April 15th next following receipt of such notification. The amount so

distributed shall include earnings or losses on the excess elective contributions attributable to the Plan, computed under subsection (g).

- (e) For purposes of calculating a Participant's excess elective contributions, Deferral Contributions previously distributed under Article XIII with respect to the Participant for the Plan Year beginning with or within the calendar year in which such contributions were made shall not be taken into account. In no event shall the amount of excess elective contributions distributed under this section with respect to a calendar year exceed the amount of Deferral Contributions made to the Plan in such year.
- (f) Excess elective contributions may be distributed during the calendar year in which such contributions were made or during the following calendar year, but in no event later than April 15th of such following calendar year. If a distribution is to be made in the calendar year in which the excess elective contributions were made:
 - (i) the Participant and the Plan must designate the distribution as a distribution of excess elective contributions, and
 - (ii) the distribution must be made after the date on which the Plan received the excess elective contributions.
- (g) For Plan Years beginning on or after January 1, 2008, the excess Deferral Contributions and/or elective contributions to be distributed under subsection (c) or subsection (d) shall be determined by the Fund Administrator or the Identified Fiduciary, and shall be generally adjusted for any earnings, losses and expenses based on a reasonable method of computing the allocable earnings, losses and expenses. The method selected must be applied consistently to all Participants and used for all corrective distributions of excess Deferral Contributions and/or elective contributions under the Plan for the calendar year. For Plan Years

beginning prior to January 1, 2008, the excess Deferral Contributions and/or elective contributions to be distributed under the Plan shall be adjusted for earnings, losses and expenses pursuant to the terms of the Plan as then in effect.

Section 5.5 Distributions of Deferral Contributions.

Except as provided in Section 5.4, Article X (with respect to Hardship Withdrawals) and Article XX (with respect to In-Service Distributions), amounts attributable to Deferral Contributions under Section 5.2 shall not be distributed to a Participant until he is eligible for a distribution under Section 8.1.

Section 5.6 Nonforfeitability of Deferral Contribution Accounts.

Each Participant shall be 100% vested in the value of the Deferral Contributions properly made on his or her behalf and properly allocated to his or her Deferral Contribution Account, which shall be nonforfeitable but will be subject to adjustment for earnings and losses and for allocation of expenses under Article VI.

ARTICLE VI

Allocation of Net Earnings and Losses

Section 6.1 Net Earnings or Losses and Expenses.

- (a) Within a reasonable time after the end of each Quarter, the Trustees shall determine the amount of Net Earnings or Losses for each Regular Account, Deferral Contribution Account and Rollover Account maintained by the Trust Fund for that calendar Quarter. In addition to such Quarterly valuations, the Trustees may cause the fair value of the Fund to be determined from time to time, including daily, to the extent required to make distributions under Article VIII or under Article IX, or as they, in their sole discretion, deem appropriate. To the extent required for applicable governmental reporting purposes, or as otherwise deemed appropriate by the Trustees, they may cause to be determined the amount of Net Earnings or Losses of the Trust Fund for such Plan Year or other time

period. "Net Earnings or Losses" shall mean gross earnings for each investment option under the Plan's Participant Directed Investment Program, whether in the form of interest, dividends, realized gain or loss on sales of assets, and any increases or decreases in the market values of the investments of the Regular Accounts, Deferral Contribution Accounts, and Rollover Accounts during the Quarter as reported by the Fund's investment managers, less any investment management, investment performance measurement, and custodial fees attributable to that Quarter.

- (b) The Trustees shall at the beginning of each Plan Year estimate Expenses for the upcoming Plan Year. "Expenses" shall mean all administrative, accounting, actuarial, consulting, legal and all other expenses incurred in the operation of the Plan and Trust Fund, but excluding investment management, performance measurement, and custodial fees which shall be considered in determining Net Earnings and Losses under subparagraph (a) above. The estimated yearly Expenses shall be divided by four (4) and that amount shall be allocated as Quarterly Expenses during the course of the Plan Year. In determining the estimated Expenses, the Trustees shall be entitled to rely on such factors as they, in their sole discretion, believe to be reasonable, including the advice of the accountants servicing the Fund, and their determination shall be binding. The Trustees reserve the right, at their discretion, to recalculate the estimated Quarterly Expenses during the course of the Plan Year, when, in the opinion of the Trustees, unusual circumstances warrant a recalculation.
- (c) The Trustees shall apportion the Net Earnings or Losses of the Trust Fund and the Expenses of the Trust Fund in accordance with Section 6.2.

Section 6.2 Allocation of Expenses and Net Earnings or Losses.

- (a) The Trustees shall first allocate the Quarterly Expenses determined under Section 6.1(b) among those Accounts in existence on the last day of each Quarter. Such allocation shall be on a per capita basis, without regard to the value of the

Account. The Trustees may adopt such non-discriminatory procedures as they deem necessary to implement the allocation of Expenses.

- (b) Thereafter, the Trustees shall credit the Net Earnings or Losses for such Quarter, determined under Section 6.1(a), to each Account in existence on the last day of the Quarter.
- (c) As of the end of the Plan Year, the Trustees will determine the actual Expenses for the Fund. The excess or shortage in actual Expenses measured against estimated Expenses will be charged or credited on a per capita basis to the Accounts in existence as of the end of the Plan Year.

Section 6.3 Reports to Participants.

The Trustees or Identified Fiduciary shall, within a reasonable time after the end of each Quarter, notify each Participant and Terminated Participant (or his Beneficiary) of the total value of his Accounts as of the last day of such Quarter.

ARTICLE VII

Participant Directed Investments

Section 7.1 Establishment of Participant Directed Investment Program; Trustees' Authority.

As authorized in the Trust Agreement and in the exercise of their sole discretion, the Trustees have established a Participant Directed Investment Program, to be effective as of August 1, 1994. The Participant Directed Investment Program is intended to comply with the provisions of Section 404(c) of ERISA. The Trustees reserve the right to modify or terminate all or any part of the Participant Directed Investment Program at any time and from time to time in the exercise of their sole discretion.

The Trustees shall have the sole authority to determine the Participant Investment Funds which are available for Participant directed investments under the Plan, which shall include a

broad range of investment alternatives, as required by Section 404(c) of ERISA. The Trustees shall also have the sole authority to select the Identified Fiduciaries, if any, who will be obligated to comply with Participant directions, provide the information required by this Article VII and Section 404(c) of ERISA, and to assist in the administration of the Participant Directed Investment Program.

The Trustees and the Identified Fiduciaries may adopt from time to time such nondiscriminatory rules and procedures as they may deem necessary or appropriate to carry out the Participant Directed Investment Program, and such rules shall be binding on all Participants, Terminated Participants and Beneficiaries.

Section 7.2 Direction of Accounts.

- (a) Under such rules as may be established from time to time pursuant to Section 7.1, a Participant, Terminated Participant or Beneficiary with an Account may direct a percentage of his Account or Accounts to be invested in any of the Participant Investment Funds available under the Plan as of the later of August 1, 1994 or the date the directions are received by the Identified Fiduciary. On and after August 1, 1994, each Participant may direct the investment of any future Employer Contributions and Deferral Contributions made on his behalf to any Participant Investment Fund then available under the Plan.

- (b) A Participant, Terminated Participant or Beneficiary may change the directions given with respect to the percentage of the value of his Account or Accounts, and/or future Employer Contributions and Deferral Contributions, which is invested in any Participant Investment Fund. The frequency with which changes may be made, and the manner for making such changes, shall be set forth in such procedures as may be established by the applicable Identified Fiduciary in accordance with the regulations issued under Section 404(c) of ERISA, provided that changes may be made at least once every three months. The value of a Participant's, Terminated Participant's or Beneficiary's Account or Accounts shall

be redetermined as of the date or dates on which transfers between the Participant Investment Funds occur.

- (c) Any investment direction by a Participant, Terminated Participant or Beneficiary with respect to his Account or Accounts shall be in whole percentages and shall be in accordance with such nondiscriminatory procedures as may be established by the Identified Fiduciaries and/or the Trustees, as provided in Section 7.5, and shall become effective in accordance with such procedures.

Section 7.3 Deemed Participant Direction.

Since all Participants, Terminated Participants and Beneficiaries have the right to direct the investment of their Account or Accounts and Employer Contributions and Deferral Contributions, to the extent that any such Participant, Terminated Participant or Beneficiary does not direct the investment of any portion of his Account or Accounts or the Employer Contributions or Deferral Contributions made on his behalf, either by failing to provide investment directions or by revoking any investment directions then in effect, that person shall be deemed to have exercised independent control over his Account or Accounts and such Employer Contributions and Deferral Contributions by directing that such portion be invested in the Participant Investment Fund (or Funds) designated by the Trustees for such purpose.

Section 7.4 Investment Instructions by a Terminated Participant or Alternate Payee.

- (a) A Participant who directed the investment of his Account or Accounts and incurs a Break in Service may continue to give investment instructions with regard to his Account or Accounts after that Break in Service while a Terminated Participant.
- (b) An alternate payee designated under a qualified domestic relations order, as defined in Section 11.7, shall be entitled to give investment instructions with regard to the Account or Accounts held in the name of the alternate payee. For purposes of the rights and responsibilities described in this Article VII, an alternate payee shall be considered to be a Participant, unless the context should indicate to the contrary.

Section 7.5 Procedures.

The Trustees or Identified Fiduciary appointed by the Trustees may from time to time establish nondiscriminatory rules and procedures for the proper administration of the Participant Directed Investment Program. All such procedures shall be intended to permit the Participants, Terminated Participants and Beneficiaries to exercise independent control over the assets in their Account or Accounts to the extent provided in Section 404(c) of ERISA and the regulations issued thereunder.

To the fullest extent provided by law, neither the Trustees nor any other Identified Fiduciary shall be liable for losses on investments made in accordance with a Participant's, Terminated Participant's or Beneficiary's directions, including deemed directions pursuant to Section 7.3, or for other breaches of fiduciary duties which are the direct and necessary result thereof. No Trustee or Identified Fiduciary shall be under any duty or obligation to determine the appropriateness of any individual's investment selections, or deemed investment selection, nor shall any of them be required or permitted to render investment advice to any Participant, Terminated Participant or Beneficiary while acting as a Trustee or Identified Fiduciary of the Annuity Fund. No person or entity, whether or not an Identified Fiduciary, shall be deemed to be rendering investment advice, as defined in ERISA, merely because they are engaged in delivering the information about the Participant Directed Investment Program required by, and in the manner set forth in, Section 404(c) of ERISA or the regulations issued thereunder. Neither the Trustees nor other Identified Fiduciary shall be required to comply with any investment direction if, in their opinion, such investment might adversely affect the qualified status of the Plan or Trust Fund or would violate any applicable law.

Section 7.6 Distributions.

When an Application for Benefits is filed and approved as set forth in Article XI, all of the individual's Participant Investment Funds with respect to his or her Account or Accounts shall be liquidated and, subject to Article VI, the proceeds applied to the payment of the benefit in the manner described in Article VIII or IX, or, in the case of a direct rollover, as described in Article XII, or, in the case of an In-Service Distribution, as described in Article XX.

Section 7.7 Voting of Proxies.

The Trustees reserve the right to vote any proxies received with respect to any of the Participant Investment Funds, and shall do so in the manner that they deem to be in the best interests of the Participants, Terminated Participants and Beneficiaries and in compliance with any investment policy and guidelines of the Annuity Fund.

ARTICLE VIII

Distribution of Retirement Benefits

Section 8.1 Entitlement to Benefits.

- (a) A Participant shall be eligible for a distribution of the total value of his Account or Accounts, valued as of the next regular Valuation Date, no later than the first day of the month following the receipt of a completed Application for Benefits that has been approved by the Fund Administrator (as provided in Article XI) and any of the following occurs:
 - (i) The Participant reaches Normal Retirement Age, provided he also meets the requirements of Section 8.2;
 - (ii) The Participant is determined by the Fund Administrator to be a Disabled Participant meeting the requirements of Section 8.1(b);

- (iii) The Participant becomes a Terminated Participant, unless at that time he has returned to Covered Employment.

The Account or Accounts shall be distributed in accordance with this Article VIII.

- (b) A Disabled Participant is eligible to receive a distribution under Section 8.1(a) if he or she meets all of the following requirements:
 - (i) The Disabled Participant has been disabled continuously for a period of six consecutive calendar months before the date of a disability determination;
 - (ii) Such six-month period began while in Covered Employment or within the first thirty days immediately following a period of Covered Employment;
 - (iii) Such disability is not, directly or indirectly, the result of:
 - (A) military service (land, sea, or air), or
 - (B) engaging in a felonious criminal activity, or
 - (C) injuries sustained while legally intoxicated due to the consumption of alcohol or under the influence of a controlled substance not prescribed by a physician, or
 - (D) intentionally self-inflicted injury, or
 - (E) declared or undeclared war or any enemy action; or
 - (F) injuries suffered while not engaging in Covered Employment; and
 - (iv) The Disabled Participant worked in Covered Employment and contributions were received on his or her behalf for at least 100 hours in at least one of the two consecutive Plan Years immediately preceding the Plan Year in which the disability was incurred.

- (c) The Trustees, in making the determination as to whether a Participant is a Disabled Participant shall have the right to have physical examinations, including diagnostic tests, of the Participant made by a physician or physicians selected and paid for by the Trustees; and to make such other investigations as the Trustees deem necessary. If a Participant refuses to permit any such physical examination or test, unless the examination or test is shown to be dangerous to the Participant's life or health, the Trustees shall have the right to determine without regard to any other evidence that the Participant is not disabled.
- (d) An alternate payee shall be entitled to a distribution of the total value of his Account or Accounts, valued as of the next regular Valuation Date, at any time. For purposes of this subsection (d), an alternate payee is an individual who has been assigned all or a portion of the benefits payable to a Participant under this Plan pursuant to the terms of a qualified domestic relations order, as defined in Section 11.7(a).

Section 8.2 Retirement Necessary.

- (a) Subject to Section 8.9, distributions will only be made from the Plan if the individual terminates service in Covered Employment and as provided in subsection (b).
- (b) If, after applying for a distribution under Section 8.1(a)(i), a Participant continues to work or returns to work for 40 hours or more in any calendar month in Covered Employment in Massachusetts and any Standard Metropolitan Statistical Area (including Consolidated Metropolitan Statistical Areas and Primary Metropolitan Statistical Areas) established by the federal Office of Management and Budget that include any part of Massachusetts, he will not be considered to have terminated from service for purposes of this Section 8.2.

Section 8.3 Lump Sum Distributions.

- (a) If the total amount to which a Participant is entitled under Section 8.1 is \$5,000 or less, the Trustees shall distribute the entire amount in a lump sum. For purposes of this Section 8.3, each Account of a Participant shall be valued as of the Valuation Date. If the total value of each Account of a Participant exceeded \$5,000 at the time of any distribution under the Plan, the value of the benefit payable under this Article VIII shall be deemed to exceed \$5,000 at all times thereafter. An Application for Benefits shall be required with respect to distributions under this subsection (a).

- (b) If the value of a Participant's benefit is payable under this Section 8.3, no other optional form of payment shall be available to the Participant and the consent of his Spouse, if any, shall not be required.

- (c) In addition to the other distribution options under this Article VIII (other than a Joint and Survivor Annuity under Section 8.4 with an alternate payee's subsequent spouse in accordance with Code §414(p)(4)(A)(iii)), the Trustees may distribute the entire interest of an alternate payee, as described in Section 8.1(d), in a lump sum. In order to be entitled to a lump sum payment pursuant to this subsection (c), the alternate payee must elect this option on his Application for Benefits.

Section 8.4 Joint and Survivor Annuity.

- (a) Except as provided in Section 8.3, the total amount to which a married Participant is entitled under Section 8.1 shall be paid to him as a Joint and Survivor Annuity unless the Participant files with the Trustees, in writing, a timely rejection of the Joint and Survivor Annuity and his Spouse consents to that rejection in writing as hereinafter provided. "Joint and Survivor Annuity" means a lifetime monthly benefit for a married Participant with payments equal to one-half of the monthly amount payable to the Participant continuing to his Spouse upon his death. At the discretion of the Trustees, the Joint and Survivor Annuity may be provided by the

purchase of an annuity contract from an insurance company authorized to do business in Massachusetts.

- (b) Subject to the exception in subsection (c) of this Section 8.4, at least thirty (30), but not more than one hundred and eighty (180), days before the Participant's Annuity Starting Date, the Trustees shall provide the Participant who requests an Application for Benefits with a written explanation of the terms and conditions of the Joint and Survivor Annuity, including its practical (dollar and cents) effect on benefits and the effect of an election to take a lump sum in lieu of the Joint and Survivor Annuity in a manner that satisfies the notice requirements of Code §417 and any Regulations issued thereunder, and of the Participant's right to defer receipt of a benefit. After receiving this explanation, a Participant may reject, in writing, the Joint and Survivor Annuity during the one hundred and eighty (180) day period prior to the Annuity Starting Date. Rejection of the Joint and Survivor Annuity may be made at any time during the one hundred and eighty (180) day period. If a Participant rejects the Joint and Survivor Annuity, the Participant's Spouse must consent in writing to the rejection. The Spouse's consent must acknowledge the effect of the rejection and be witnessed by a Plan representative or a notary public. The Spouse's consent is not required if it is established to the satisfaction of the Trustees that the Participant has no Spouse, the Spouse cannot be located or the Spouse has abandoned the Participant and the Participant has a court order to that effect. If the Spouse is legally incompetent, the Spouse's legal guardian may give such consent even if the Participant is the legal guardian. The Participant may revoke the rejection of the Joint and Survivor Annuity at any time during the one hundred and eighty (180) day election period without the consent of the Spouse. If the Participant subsequently rejects the Joint and Survivor Annuity, the Spouse's subsequent written consent must be obtained.
- (c) If a Participant, after having received the written explanation of the optional forms of benefits including the Joint and Survivor Annuity as described in subsection (b), thereafter affirmatively elects any form of distribution available

under this Plan, and the Spouse consents to that form of distribution (if necessary), the Plan may make, or begin to make, the distribution elected on a date that is less than 30 days after the written explanation was provided to the Participant and his Spouse, provided that all of the following requirements are met:

- (i) The Plan provides information to the Participant clearly indicating that the Participant and the Spouse have a right to at least 30 days to consider whether to waive the Joint and Survivor Annuity and consent to a form of distribution other than a Joint and Survivor Annuity.
 - (ii) The Participant is permitted to revoke an affirmative distribution election at least until the Annuity Starting Date, or, if later, at any time prior to the expiration of the 7-day period that begins on the day after the day the affirmative distribution election and the required written spousal consent (if any) is received by the Fund Administrator.
 - (iii) The Annuity Starting Date is after the date that the explanation of the Joint and Survivor Annuity is provided to the Participant. The Annuity Starting Date may be before the date that the affirmative distribution election is made by the Participant and before the date that the distribution is permitted to commence.
 - (iv) A distribution in accordance with the affirmative election does not commence before the expiration of the 7-day period that begins on the day after the day the affirmative distribution election and the required written spousal consent (if any) is received by the Fund Administrator.
- (d) In order to be eligible for a Joint and Survivor Annuity, the Participant must be married to his Spouse on his Annuity Starting Date. The Trustees shall be entitled to rely on a written representation filed by the Participant before the Annuity

Starting Date as to his marital status. This reliance shall include the right to deny benefits to a person claiming to be the Spouse of a Participant which contradicts such representation of the Participant.

- (e) After the Annuity Starting Date, the monthly amount of a Joint and Survivor Annuity will not be changed if the Spouse is subsequently divorced from the Participant or if the Spouse predeceases the Participant.

Section 8.5 Life Annuity.

- (a) Except as provided in Section 8.3, the total amount to which an unmarried Participant is entitled under Section 8.1 shall be paid to him as a Life Annuity unless the Participant files with the Trustees in writing a timely rejection of the Life Annuity. "Life Annuity" means a lifetime monthly benefit for the Participant with no further monthly benefits payable upon his death. At the discretion of the Trustees, the Life Annuity may be provided by the purchase of an annuity contract from an insurance company authorized to do business in Massachusetts.
- (b) In order to be eligible for a Life Annuity, the Participant must be unmarried on his Annuity Starting Date. The Trustees shall be entitled to rely on a written representation filed by the Participant before his Annuity Starting Date as to his marital status. This reliance shall include the right to deny benefits to a person claiming to be the Spouse of a Participant which contradicts such representation of the Participant.

Section 8.6 Alternative Method of Distribution of Accounts.

Except as provided in Section 8.3, if a Participant is not married but rejects the Life Annuity, or is married but rejects the Joint and Survivor Annuity and his Spouse consents to that rejection, the total amount to which he is entitled under 8.1 shall be paid to him or her in a lump sum.

Section 8.7 Additional Distributions to Participants Whose Benefits Have Commenced.

Employer Contributions, Deferral Contributions, Expenses, and Net Earnings and Losses thereon, allocated to the Accounts of a Participant who has previously received or is currently receiving benefits from this Plan and who has returned to Covered Employment, shall be paid to the Participant as follows:

- (a) If the Participant has a previous Annuity Starting Date which occurred at or after Normal Retirement Age, the balance of a Participant's Account or Accounts with respect to Deferral Contributions and/or Employer Contributions, as applicable, after that Annuity Starting Date shall be paid in the benefit form selected by the Participant on that Annuity Starting Date, effective on the earlier of:
 - (i) the first day of the month following the month in which the Participant again ceases work in Covered Employment and files and Application for Benefits which is approved by the Trustees; or
 - (ii) the April 1st of the calendar year following the later of the calendar year in which the Participant: (A) attains age 70-1/2, or (B) separates from service with the Affiliated Group.

- (b) If all of the Participant's previous Annuity Starting Dates occurred prior to Normal Retirement Age, the balance of a Participant's Account or Accounts with respect to Deferral Contributions and/or Employer Contributions, as applicable, after the most recent Annuity Starting Date shall be subject to the provisions of this Article VIII and shall be paid effective on the earlier of:
 - (i) the first day of the month following the month in which the Participant reached Normal Retirement Age and ceases work in Covered Employment or becomes a Terminated Participant, whichever is earlier, and files and Application for Benefits which is approved by the Trustees; or

- (ii) the April 1st of the calendar year following the later of the calendar year in which the Participant: (A) attains age 70-1/2, or (B) separates from service with the Affiliated Group.

Section 8.8 Commencement of Retirement Benefits.

An Application for Benefits must be filed with the Trustees in accordance with Article XI before any benefits may be distributed to a Participant or Beneficiary. The amounts to which a Participant is entitled under Section 8.1 shall be paid in accordance with this Article VIII, and shall commence as of his Annuity Starting Date but in no event later than: (a) sixty (60) days after the end of the Plan Year in which the Participant files an Application for Benefits which is subsequently approved by the Fund Administrator, or (b) the April 1st of the calendar year following the later of the calendar year in which the Participant: (i) attains age 70-1/2, or (ii) separates from service with the Affiliated Group. If, for administrative reasons, actual payments begin after a Participant's Annuity Starting Date, the Participant shall be entitled to payment for all benefits due on or after his Annuity Starting Date.

Section 8.9 Required Minimum Distributions from the Plan.

- (a) Notwithstanding any provision of the Plan to the contrary, benefit payments to each Participant and each surviving Spouse will begin by the Required Beginning Date defined in (b) below, whether or not he or she applies for benefits.
- (b) A Participant or surviving Spouse's Required Beginning Date is the April 1st of the calendar year immediately following the later of the calendar year in which the Participant: (i) attains (or would have attained) age 70-1/2, (ii) separates from service with the Affiliated Group.
- (c) If a Participant fails to file a completed Application for Benefits by his or her Required Beginning Date, the Fund will establish the Participant's Required Beginning Date as the Annuity Starting Date and begin benefit payments as follows:

- (i) If the total amount to which a Participant is entitled under Section 8.1 is \$5,000 or less, as determined in accordance with Section 8.3, the benefit shall be paid in a lump sum,
- (ii) In any other case, the benefit shall be paid in the form of a Joint and Survivor Annuity calculated on the assumption that the Participant is married on the Annuity Starting Date and that the Participant is three (3) years older than the Spouse.
- (iii) The benefit payment form specified here will be irrevocable once it begins, subject to the following exceptions in the case of benefits under subparagraph (ii):
 - (A) the benefit payment form may be changed to a Life Annuity if the Participant proves that he did not have a Spouse on the Required Beginning Date, or
 - (B) the amount of the benefit payment under the Joint and Survivor Annuity will be adjusted prospectively only, effective with the first monthly benefit payment following a determination by the Trustees that the actual age difference between the Participant and Spouse is different from the foregoing assumptions.
- (iv) In the case where a surviving Spouse has delayed receipt of a Pre-retirement or Post-retirement Death Benefit under the provisions of Section 9.4 and has failed to complete an Application for Benefits by the Required Beginning Date, the balance in the Participant's Account shall be applied towards the purchase of a non-transferable annuity contract payable to the surviving Spouse providing a monthly benefit for her life commencing on the Required Beginning Date.

- (d) If Plan records show that a Participant or Beneficiary is entitled to a benefit under this Section 8.9, but that individual cannot be located after reasonable diligent efforts, the amount in any Account shall be forfeited subject to reinstatement of the benefit if a claim is made by the Participant or Beneficiary for the forfeited benefit.

Section 8.10 Section 401(a)(9) Requirements.

Subject to the requirements of Sections 2.4, 8.7(a)(ii), 8.7(b)(ii), 8.8 and 8.9, which generally provide that distributions to a Participant must commence no later than such individual's Required Beginning Date (as defined in Section 8.9(b)), all distributions required under the Plan will be made in accordance with the provisions of Code §401(a)(9) and any regulations issued thereunder, including the incidental benefit requirements of section 1.401(a)(9)-2 of the proposed and final Treasury regulations. To the extent the Plan's rules do not comply with the provisions of Code §401(a)(9) and any regulations issued thereunder or the Plan is administered in such fashion, the provisions of **Appendix A** will govern.

Section 8.11 Change of Benefit Form.

After the Annuity Starting Date, a Participant or Beneficiary shall not be entitled to change, in any way, the form or amount of the benefit option selected.

Section 8.12 Withholding Taxes.

Federal and state tax, and any other applicable taxes, will be withheld from benefit payments as required by law.

ARTICLE IX

Death Benefits

Section 9.1 Lump Sum Payment of Certain Pre-Retirement Death Benefits.

If a Participant dies before his Annuity Starting Date and:

- (a) If the value of a married Participant's Account or Accounts on his death is \$5,000 or less, as determined in accordance with Section 8.3, the Trustees shall distribute the value of such Account or Accounts in a lump sum. Payment shall be made to the Participant's surviving Spouse or, if said Spouse has consented to the naming of another Beneficiary, to the Participant's Beneficiary.
- (b) If the value of a married Participant's Account or Accounts on the date of his or her death exceeds \$5,000, as determined in accordance with Section 8.3, and the Participant had not rejected the payment of pre-retirement survivor benefits on a Joint and Survivor Annuity basis, the Trustees shall, but only with written consent of the Participant's surviving Spouse, distribute the value of such Account or Accounts in a lump sum to said Spouse.
- (c) If the Participant was not married, or was married but had filed with the Trustees a timely written rejection of the Joint and Survivor pre-retirement survivor benefit with the required consents, subject to the restrictions of Section 8.4, the Trustees shall distribute the value of such Account or Accounts in a lump sum.

Section 9.2 Pre-Retirement Death Benefits Under Joint and Survivor Annuity.

- (a) Except as provided in Section 9.1, upon the death of a married Participant who has not reached his or her Annuity Starting Date, the value of a Participant's Account or Accounts on the Valuation date immediately following the date an Application for Benefits is approved by the Fund Administrator, shall be applied toward the purchase of a nontransferable annuity contract payable to the Spouse for his or her life.
- (b) The Participant may elect to waive the Joint and Survivor pre-retirement survivor benefit for his Spouse and elect in lieu thereof a lump sum death benefit by filing with the Trustees a rejection of that pre-retirement survivor benefit, accompanied by the written consent of the Spouse. Until the first day of the Plan Year in which the Participant attains age 35 he or she may not designate a Beneficiary for such

lump sum death benefit other than the Spouse. As of the first day of the Plan Year in which the Participant attains age 35, he or she may, with the written consent of the Spouse, designate a Beneficiary other than the Spouse to receive a pre-retirement lump sum death benefit.

- (c) A written explanation of the terms and conditions of the Joint and Survivor pre-retirement survivor benefit shall be provided to each Participant between the first day of the Plan Year in which the Participant attains age 32 and the first day of the Plan Year in which the Participant attains age 35. If a Participant enters the Plan after the first day of the Plan Year in which he or she attains age 32, the written explanation shall be provided within three years of the first day of the Plan Year in which he or she first becomes a Participant.

Section 9.3 Post-Retirement Death Benefits.

Upon the death of a Participant who was receiving benefits in the form of a Joint and Survivor Annuity, there shall be payable to the surviving Spouse for life, a monthly benefit equal to one-half of the monthly amount which was being paid to the Participant prior to his or her death. If the Participant is not survived by a Spouse, or if the Joint and Survivor Annuity is provided through a nontransferable annuity contract, no further monthly benefit payments shall be made from this Fund.

Section 9.4 Restrictions on Benefit Payments.

- (a) The entire amount payable to a designated Beneficiary shall be paid over a period not extending beyond the life or life expectancy of the Beneficiary. Payments must commence by the December 31st of the calendar year immediately following the calendar year in which the Participant died, unless the Beneficiary is the Participant's Spouse, in which case benefit payments may be deferred by the Spouse until the December 31st of the calendar year in which the Participant would have reached age 70-1/2. If benefits are deferred and the Spouse dies before such payments commence, the benefits shall be distributed to the Spouse's

Beneficiary or, if she has no Beneficiary, to her estate within five years of the Spouse's death.

- (b) Subject to the provisions of Section 9.9, if there is no designated Beneficiary as of the September 30th of the year following the year of the Participant's death, the Participant's entire interest will be distributed to the Participant's estate by the December 31st of the calendar year containing the fifth anniversary of the Participant's Death.
- (c) There shall be no such death benefits payable upon the death of a Participant who was receiving benefits in the form of a Life Annuity.

Section 9.5 Commencement of Death Benefits.

An Application for Benefits must be filed with the Fund in accordance with Article XI and subsequently approved by the Fund Administrator before benefits may be distributed to a Beneficiary. The amount to which a Beneficiary is entitled shall be paid in accordance with this Article IX as soon as practicable after an Application for Benefits is approved by the Fund Administrator.

Section 9.6 Naming a Beneficiary.

A married Participant's Beneficiary shall be his or her Spouse unless the Spouse consents in writing to the naming of another Beneficiary. Subject to the restrictions of Section 9.2(b), at any time and from time to time, each married Participant, with the Spouse's consent, and each unmarried Participant shall have the right to designate a Beneficiary to receive the death benefits, if any, provided for in Section 9.1 and Section 9.3, and to change any such designation. Each such designation shall be made on a written form prescribed by the Trustees, signed by the Participant and filed with the Fund Administrator before the Participant's death. A Participant may not name more than one person as Beneficiary unless the Trustees consent thereto. If no designation of Beneficiary is on file with the Trustees at the time of the Participant's death, or if

for any reason such designation is deemed defective by the Trustees in their sole discretion, then the Participant's Spouse at the time of his death shall be deemed to be the Beneficiary, or, if there is no Spouse, the estate of such Participant shall be deemed to be the Beneficiary designated to receive such benefit. The consent of a non-Spouse Beneficiary shall not be required for any change of Beneficiary. For purposes of this Section 9.6, a Spouse who elects to defer receipt of payments pursuant to Section 9.4 shall have the right to designate a Beneficiary as set forth in this Section.

Section 9.7 Beneficiary Predeceases Participant.

Upon the death of the designated Beneficiary and the subsequent death of the Participant before all benefits have been paid, the value of the Participant's Account or Accounts will be paid in a lump sum to the estate of the Participant.

Section 9.8 Death of Beneficiary Before Payments Begin.

Upon the death of a Participant and the subsequent death of the designated Beneficiary before payments to the Beneficiary have commenced, the value of the Participant's Account or Accounts will be paid in a lump sum to the estate of the Beneficiary.

Section 9.9 Unclaimed Death Benefits.

If the Trustees have not received an Application for Benefits from an executor or administrator of an estate entitled to receive death benefits under this Article IX, within three months after the date of the death of the Participant, Spouse, or Beneficiary, as the case may be, and if the amount payable under the Plan at such time is less than \$5,000, such death benefit may be paid to any one or more of the following surviving relatives of the Participant: Spouse, child, mother, father, brother or sister. Any payment made in accordance with this Section 9.9 will be a complete discharge of the obligations of the Trustees or their agents to the extent of and as to such payment, and they shall have no obligations regarding the application of any payment so made.

Section 9.10 Distributions to Minors.

In the event that the provisions of this Plan or the determination of the Trustees call for any distribution or payment to be made to a minor child or children, then such distribution or payment by the Fund to such child or children shall be distributed to an account in the name of an adult, for the benefit of the minor, and subject to the jurisdiction of the Massachusetts courts or to the provisions of the Massachusetts Uniform Transfers to Minors Act. The adult shall be designated by the Participant on a form filed with the Trustees before his death or, if there is no designation, the adult shall be chosen by the Trustees from among the individuals who apply to serve that role and are otherwise involved in caring for the minor. Any payment made in accordance with this Section 9.10 shall be a complete discharge of the obligations of the Trustees or their agents to the extent of and as to such payment, and they shall have no duty or obligation to see that the distribution or payment is used or applied for the benefit of the minor.

ARTICLE X

Hardship Withdrawals

Section 10.1 Hardship Withdrawal Rules.

- (a) Subject to the limitations of subsections (b), (c) and (d), if a Participant has accumulated at least \$5,000 in his Account or Accounts, determined as of the most recent Valuation Date, upon submission of proof to the satisfaction of the Trustees of an immediate and heavy financial need, a Participant may withdraw all or a portion of the balance in his Account or Accounts provided the withdrawal is necessary to relieve any of the following hardships:
 - (i) expenses for medical care that would be deductible under Code §213(d) (determined without regard to whether the expenses exceed 7.5% of adjusted gross income) which are incurred by the Participant, the Participant's Spouse or an individual claimed as a dependent (determined under Code §152, without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) by the Participant for federal income tax purposes,

including a withdrawal that is necessary to enable any such individual to: (A) obtain medical care, or (B) subject to the applicable provisions of subsection (g), purchase and pay premiums on medical insurance or "self-payment" coverage required to be offered by group health plans under ERISA §601 *et seq.* (commonly referred to as "COBRA Continuation Coverage"); or

- (ii) payment of educational expenses, including, but not limited to tuition, related educational fees and room and board expenses, for up to the next twelve months of post-secondary education for the Participant or other individual described in paragraph (i); or
- (iii) costs, other than mortgage payments, directly related to the purchase of a principal residence for the Participant; or
- (iv) payments necessary to prevent the eviction of the Participant from his principal residence or foreclosure on the mortgage of the Participant's principal residence; or
- (v) payments for burial or funeral expenses incurred by the Participant due to the death of his parent, his Spouse or children, or an individual claimed as a dependent (determined under Code §152, without regard to subsection (d)(1)(B) thereof) by the Participant for federal income tax purposes; or
- (vi) expenses for the repair of damage to the Participant's principal residence that would qualify for the casualty deduction under Code §165 (determined without regard to whether the loss exceeds 10% of adjusted gross income).

- (b) The amount of a Hardship Withdrawal may not exceed the sum of the amount required to meet the applicable expense described in subsection (a) and any

amounts necessary to pay mandatory withholding or federal, state or local income taxes or penalties reasonably anticipated to result from the withdrawal. A Hardship Withdrawal may be made to the extent the financial need cannot be relieved from other resources that are reasonably available to the Participant. In determining the amount necessary to meet the Participant's financial need, unless it has actual knowledge to the contrary, the Trustee may rely on the Participant's written representation that the need cannot reasonably be relieved:

- (i) through reimbursement or compensation by insurance or otherwise;
- (ii) by reasonable liquidation of the Participant's assets (including assets of his Spouse and minor children) that are reasonably available to the Participant; or
- (iii) By cessation of the Participant's Deferral Contributions, if any, under the Plan; or
- (iv) by borrowing from his Deferral Contribution Account under the Plan in accordance with Article XVIII or from commercial sources on reasonable commercial terms.

For purposes of this subsection, a need cannot reasonably be relieved by one of the actions listed above if the effect would be to increase the amount of the need.

- (c)
 - (i) Income attributable to Deferral Contributions, including any catch-up contributions (as defined in Section 5.4(a)(ii)), may not be distributed on account of the Participant's hardship.
 - (ii) Effective on and after February 1, 2008, a Participant may not receive more than five (5) Hardship Withdrawals under this Article X over the course of such Participant's lifetime. Further, any Hardship Withdrawal

(or Withdrawals) received by a Participant under the Plan prior to February 1, 2008 shall be taken into account when determining the number of Hardship Withdrawals received by such Participant under this subsection (c)(ii).

- (d) If the Participant is married, the written consent of the Participant's Spouse to the Hardship Withdrawal must be obtained in accordance with the provisions of Section 8.4. For purposes of Section 8.4(b), the term "Annuity Starting Date" for a Hardship Withdrawal is the date on which the Hardship Withdrawal distribution is actually made. A Participant may not take more than one Hardship Withdrawal in any Plan Year, except that:
 - (i) distributions of the approved amount of the Hardship Withdrawal, as described in subsection (g) of this Section 10.1, shall be permitted as provided in such subsection; and
 - (ii) a Participant may receive two (2) Hardship Withdrawals in a Plan Year solely under Section 10.1(a)(i)(A) (relating to Hardship Withdrawals for expenses to obtain medical care).
- (e)
 - (i) Application for a Hardship Withdrawal must be made in writing to the Trustees and must include all necessary information to document the particular financial hardship and the amount required to be distributed to meet the need created by such hardship. Approvals for such distributions shall be made by the Trustees in accordance with uniform and nondiscriminatory standards, based on the Participant's application, accompanying documentation and other known information.
 - (ii) Upon receiving a Hardship Withdrawal, the Participant shall be suspended for six (6) months from making Deferral Contributions under this Plan, including any catch-up contributions (as defined in Section 5.4(a)(ii)), or

under any other qualified or non-qualified deferred compensation plan of the Affiliated Group.

- (f) An alternate payee under a qualified domestic relations order or "QDRO" described in Section 11.7 shall be eligible as a Participant (for purposes of this Section 10.1 only) to take a Hardship Withdrawal from the portion of the Participant's Account (or Accounts) transferred to such alternate payee. An alternate payee's rights to a Hardship Withdrawal under this subsection shall only apply to the extent the source of monies transferred pursuant to a QDRO can be ascertained by this Plan, and shall also be subject to the other rules of this Section 10.1 (including, but not limited to, the \$5,000 minimum balance in an Account (or Account(s)) requirement specified in the first paragraph of subsection (a)).

- (g) Solely with respect to a Participant's application for a Hardship Withdrawal which is necessary for an individual to obtain medical care as described in subsection (a)(i) through the purchase of medical insurance coverage or COBRA Continuation Coverage (including the payment of related insurance or COBRA Continuation Coverage premiums for the Participant or any eligible family members described in subsection (a)(i)), all of the following additional requirements apply:
 - (i) the Participant must present satisfactory evidence to the Trustees that he has exhausted all potential sources of health coverage other than medical insurance coverage or COBRA Continuation Coverage, including active coverage under the International Union of Operating Engineers Local 877 Health and Welfare Trust Fund and any coverage available through his Spouse; and
 - (ii) the Participant must represent to the Trustees that the medical insurance or COBRA Continuation Coverage sought is for medical care as described in

subsection (a)(i), that he will notify the Fund immediately if he is able to obtain any other medical coverage in the future, including active coverage under the International Union of Operating Engineers Local 877 Health and Welfare Trust Fund, whether through work or otherwise; and

- (iii) the Participant's application for a Hardship Withdrawal may include a request for all medical insurance or COBRA Continuation Coverage premiums anticipated to be charged for coverage extending for the lesser of:
 - (A) the upcoming twelve (12) month period, or
 - (B) the number of months remaining until the Participant would otherwise be eligible for a full distribution from the Plan pursuant to the provisions of Section 8.1.

The anticipated medical insurance or COBRA Continuation Coverage premiums approved by the Fund for a Hardship Withdrawal shall be the "approved amount" for purposes of this subsection (g). Further, if the Participant would otherwise be eligible to request additional Hardship Withdrawal monies under the other rules of this Section 10.1 (including, but not limited to, the limitations with respect to Deferral Contributions specified in subsection (c)(i)), then such Participant may also request that up to an additional ten percent (10%) of his Regular Account and/or Deferral Contribution Account balance be made available in such approved amount solely to cover potential increases to the medical insurance or COBRA Continuation Coverage premiums over the course of the period specified above; and

- (iv) once such a Hardship Withdrawal is approved, payments of the approved amount for such medical insurance coverage or COBRA Continuation

Coverage by the Fund to the Participant shall be made in a lump sum or in installments, depending upon the medical insurance or COBRA Continuation Coverage premium due dates, in accordance with uniform and nondiscriminatory procedures adopted by the Trustees until the approved amount is exhausted. If payments of the approved amount are made in installments, the Participant will also be required to present evidence which shows that medical insurance coverage or COBRA Continuation Coverage is in place and all payment(s) of applicable premiums have been made. In the event that the evidence provided by the Participant in the previous sentence is not acceptable to the Trustees, in their full and complete discretion, then no further payment of any remaining approved amount will be made. In addition, if the Participant obtains other medical insurance coverage from any other source before withdrawing the full approved amount, no further payment of any remaining approved amount will be made.

ARTICLE XI

Application for Benefits

Section 11.1 Filing.

An Application for Benefits must be filed with and approved by the Fund Administrator before benefits may commence. The Participant, Spouse or Beneficiary's signature on the Application for Benefits shall signify consent to the distribution of benefits.

Section 11.2 Information to be Furnished.

Every Participant or Beneficiary shall furnish to the Trustees any information or proof reasonably required to determine benefit rights. If the Trustees discover that payments from this Plan have been awarded or computed incorrectly, the Trustees shall take such corrective action as they, in their discretion, deem appropriate.

Section 11.3 Claims Filing and Appeals Procedure.

The following definitions and rules shall apply when making determinations regarding Claims under this Plan:

(a) Definitions.

- (i) "Claim" or "Claims" means a claim for benefits made by the Claimant in accordance with Section 11.3(b) and the Procedures. The term "Claim" does not include general inquiries about provisions of the Plan or requests to change the terms of the Plan.
- (ii) "Claimant" means a Participant or Beneficiary, or his authorized representative, who submits a Claim on behalf of a Participant or Beneficiary. For this purpose, an authorized representative is any individual named as such on an authorization form provided by the Plan and signed by a Participant or Beneficiary.
- (iii) "Denial" means any of the following: a denial, reduction, or termination of, or a failure to provide or make payment (in whole or in part) for, a benefit, including any such denial, reduction, termination or failure to provide or make payment that is based on a determination of a Participant's or Beneficiary's eligibility to participate in the Plan.
- (iv) "Procedures" means the reasonable claims procedures which may be established by the Plan and reflected or referred to in the Plan's summary plan description.

Unless otherwise defined, terms used in this Section 11.3 shall have the same meaning given to them in the Procedures, if any, and in section 2560.503-1(m) of the Department of Labor Regulations.

- (b) Claims for Benefits. All Claims must be filed with the Fund's administrative office on the Plan's Application for Benefits form. The form must be completed in its entirety, including all appropriate information and reports required, and must be signed by the Claimant. A Claim will be considered as "filed" when a fully and properly completed Application for Benefits is received by the Fund's administrative office. If additional information is requested, but not provided by Claimant, the Claim will be deemed to be denied.
- (c) Initial Decision on Claim.
- (i) The Trustees or their delegate shall conduct such inquiry as may be necessary to determine the validity of the Claim and shall take such steps as may be necessary to facilitate the payment of any benefits to which the Claimant may be entitled under the terms of the Plan.
- (ii) A decision on a Claim shall be made promptly, but not later than 90 days after the Fund's receipt of the Claim, unless special circumstances require an extension of time for processing, in which case a decision shall be rendered as soon as possible, but not later than 180 days after the Claim is filed. If an extension of time is required, the Claimant will be notified in writing before the expiration of the original 90-day period, and will be informed of the reason for the delay and the date by which a decision is expected.
- (d) Contents of Notice of Claim Denial. If a Claim is partially or wholly denied, the Fund will provide to the Claimant a written or electronic notice, prepared in a manner calculated to be understood by the Participant or Beneficiary. The notice of benefit Denial will set forth (i) the specific reasons for the Denial; (ii) the specific reference to pertinent Plan provisions on which the Denial is based; (iii) a description of any additional material or information necessary for the Claimant to perfect the Claim and an explanation of why such material or information is

necessary; (iv) an explanation of the Plan's Claim review procedures and the time limits applicable to such procedures; and (v) a statement of the Claimant's right to bring a lawsuit under ERISA after an adverse determination of an appeal of a Claim Denial.

(e) Appeal of Claim Denial.

- (i) If a Claimant has received a Denial of his Application for Benefits, he may appeal by filing with the Trustees a written request for review. Such request must be made to the Fund's administrative office within 60 days following the receipt of the Denial, and such request must include all facts and/or arguments that are known, or that should be known, by the Claimant. In connection with any timely request for review, the Claimant may receive, upon request and free of charge, reasonable access to (at the Fund's administrative office during regular business hours) and copies of all documents and records relevant to the Claim and submit written comments, documents, records and other information relating to the Claim.
- (ii) All requests for review of a Denial that are made on a timely basis will be given a full and fair review, with consideration given to all comments, documents, records and other information that relate to the Application for Benefits which are received by the Fund's administrative office on a timely basis.
- (iii) Comments, documents, records or other information relating to an Application for Benefits received by the Fund Administrator after a Claimant has exhausted all levels of review under the Plan, or after the expiration of the time period for filing a request for review, will not be considered and will not serve to support a new Application for Benefits or establish a new Claim under the Plan.

- (iv) If a written request for review is not received by the Trustees within 60 days following the Claimant's receipt of a written denial, the right to an appeal shall be lost.

- (f) Decisions on Appeals. The Fund's Trustees shall decide all appeals, provided that they may choose to delegate the authority to review and decide on any appeal or request for review. A decision on an appeal of a Claim Denial shall be made no later than the date of the meeting of the Trustees which immediately follows the Fund's receipt of a request for review, unless the request for review is filed within 30 days preceding the date of such meeting. In such case, a decision may be made no later than the date of the second meeting following the Fund's receipt of the request for review. If special circumstances require an extension of time for processing the request, a decision will be rendered as soon as possible but not later than the third meeting of the Trustees after the receipt of a request for review. If an extension for processing is required, the Trustees will send a written notice of the extension to the Claimant before the extension begins. The decision on an appeal of a Claim Denial shall be provided in writing or electronically, written in a manner calculated to be understood by the Claimant, and shall include: (i) the specific reasons for the decision; (ii) specific references to the pertinent Plan provisions on which the decision is based; (iii) a statement that the Claimant may receive, upon request and free of charge, reasonable access to and copies of all documents and records relevant to the Claim; and (iv) a statement of the Claimant's right to bring a lawsuit under ERISA.

- (g) Standards. The Fund's Trustees, or any delegate, in the exercise of their discretion in making benefit determinations, will apply the terms of the Plan and any applicable guidelines, rules and schedules, as may be adopted by the Trustees from time to time, and will periodically verify that benefit determinations are made in accordance with such documents, and where appropriate, applied consistently with respect to similarly situated Claimants. A Claimant whose

Claim has been denied pursuant to Section 11.3(f) shall not have the right to any further review or appeal in the absence of newly discovered evidence supporting such further review or appeal.

As described further in Section 15.3, the Fund's Trustees, or their delegate, shall have the full authority and discretion to determine any and all questions or controversies arising in connection with this Plan or its operation, including, but not limited to, any interpretation of the Plan's provisions. In the event a Claim for benefits has been denied, no lawsuit or other action against the Plan, its Trustees, the Fund's administrative personnel, or any delegate may be commenced until the completion of the review procedures set forth in this Section 11.3. The decision on appeal shall be final and binding upon all persons (including their heirs or estates) dealing with the Plan or claiming any benefit hereunder, except to the extent such decision may be determined to be arbitrary and capricious by a court having jurisdiction over such matter.

Section 11.4 Mental or Physical Incapacity.

In the event it is determined by the Trustees that any Participant or Beneficiary is unable to care for his affairs because of physical or mental incapacity, the Trustees or their agents or employees may pay any benefits due such Participant or Beneficiary to the legal guardian or conservator, to any person appointed to receive such benefits under a valid power of attorney or to any relative by blood or marriage, to be used and applied for the benefit of such Participant or Beneficiary. Payment by the Trustees to such legal representative, attorney or relative shall discharge the Trustees from all liability to such Participant or Beneficiary or anyone representing them or their interests, and the Trustees shall have no duty or obligation to see that the funds are used or applied for the benefit of such Participant or Beneficiary.

Section 11.5 No Assignment of Benefits.

- (a) Except as provided in subsection (b) and Section 11.7, or as may otherwise be permitted by ERISA and the Code and approved by the Trustees, no Participant, Spouse or Beneficiary (hereinafter for purposes of this Section 11.5, an "Eligible

Individual") entitled to any benefits under this Plan shall have the right to assign, alienate, transfer, encumber, pledge, mortgage, hypothecate, anticipate or impair in any manner his legal or beneficial interest in the assets of the Fund, or benefits of this Plan. Neither the Trust Fund nor any of the assets thereof, shall be liable for the debts of any Eligible Individual entitled to any benefits under this Plan, nor subject to attachment or process in any court, action or proceeding.

- (b) Subsection (a) shall not apply to any offset of an Eligible Individual's benefits against an amount that such Eligible Individual is ordered or required to pay the Plan with respect to a judgment, order, or decree issued, or a settlement entered into, in accordance with Code §401(a)(13)(C) and (D). In a case in which the survivor annuity requirements of Code §401(a)(11) apply with respect to distributions from the Plan to an Eligible Individual, an offset described in the previous sentence is permitted provided that one of the following has occurred:
- (i) the Eligible Individual's Spouse has consented in writing to such offset and such consent is witnessed by a notary public or representative of the Plan (or it is established to the satisfaction of a Plan representative that such consent may not be obtained by reason of circumstances described in Code Section 417(a)(2)(B)), or an election to waive the right of the Eligible Individual's Spouse to either a qualified joint and survivor annuity or a qualified pre-retirement survivor annuity is in effect in accordance with the requirements of Code Section 417(a),
 - (ii) the Eligible Individual's Spouse is ordered or required in such judgment, order, decree or settlement to pay an amount to the Plan in connection with a violation of fiduciary duties, or
 - (iii) in such judgment, order, decree or settlement, the Eligible Individual's Spouse retains the right to receive the survivor annuity under a qualified joint and survivor annuity provided pursuant to Code §401(a)(11)(A)(i)

and under a qualified pre-retirement survivor annuity provided pursuant to Code §401(a)(11)(A)(ii), determined in accordance with Code §401(a)(13)(D).

Section 11.6 Spendthrift Trust; No Right to Assets.

The Trust Fund is intended to qualify as a spendthrift trust under Massachusetts law. No person other than the Trustees of the Trust Fund shall have any right, title or interest in any of the income or property of any funds received or held by or for the account of the Trust Fund, and no person shall have any right to benefits provided by the Plan except as expressly provided herein.

All property and assets of the Trust Fund are "plan assets" as that term is defined and used in ERISA. Notwithstanding the establishment of Accounts in the name of a Participant and the vesting rules of the Plan, no Participant, Spouse, Beneficiary or other person shall be deemed to have a legal or equitable right or interest in the Fund, except to the extent that such individuals may have the right to direct the investment of their Account or Accounts in accordance with ERISA §404(c), until an Application for Benefits has been approved by the Trustees.

Section 11.7 Qualified Domestic Relations Orders.

- (a) The requirements of Section 11.5 and 11.6 shall not apply to a qualified domestic relations order. The Trustees shall abide by the terms of any qualified domestic relations order. A "qualified domestic relations order" means any judgment, decree, or order (including approval of a property settlement agreement) which creates or recognizes the existence of an alternate payee's right to receive all or a portion of the benefits payable to a Participant hereunder pursuant to a state's domestic relations law relating to the provision of child support, alimony payments, or marital property rights to a Spouse, former Spouse, child, or other dependent of the Participant, provided that the order specifically states:
 - (i) The name and last known mailing address of the Participant and of each alternate payee covered by the order, and

- (ii) The amount or percentage of the Participant's benefits to be paid by the Plan to each alternate payee or the manner in which the amount or percentage is to be determined, and
 - (iii) The number of payments or the period to which the order applies, and
 - (iv) The name of each plan to which the order applies.
- (b) A qualified domestic relations order may not:
- (i) permit payments in a form other than a form provided under the Plan, or
 - (ii) require the Plan to provide benefits greater than the actuarial value of the Participant's benefits provided under the Plan, or
 - (iii) require payments of benefits to an alternate payee if payments are being made to another payee under a prior qualified domestic relations order.
- (c) The Plan shall establish reasonable written procedures for determining the qualified status of domestic relations orders and to administer distributions made under a qualified domestic relations order.
- (d) The Trustees shall promptly notify the Participant and any named alternate payee of the receipt of a domestic relations order and the Plan procedures used for determining whether the order is a qualified domestic relations order.
- (e) The Trustees shall, within a reasonable period following receipt of a domestic relations order, determine whether the order is qualified and notify the Participant and each alternate payee of its determination.

- (f) During the period beginning when the domestic relations order is received and ending with the earlier of the date of determination of its qualified status or the expiration of 18 months, the Trustees shall separately account for amounts which would be payable during such period to the alternate payee if the domestic relations order is determined to be qualified.
- (g) If, within 18 months of receipt of the domestic relations order by the Trustees, the order is determined to be qualified, the Trustees shall pay any segregated amounts, with any interest earned thereon, to the alternate payee pursuant to the terms of such order. If, within 18 months of receipt, the order is determined not to be qualified, or the order's status is unresolved, the Trustees shall pay any segregated amounts, with any interest earned thereon, to the person or persons who would be entitled to such amounts if no order had been received.
- (h) A determination that a domestic relations order is qualified which is made later than 18 months after the receipt of the order shall operate prospectively only.
- (i) Distributions made pursuant to this Section 11.7 shall completely discharge the Plan and the Trustees of all obligations with respect to the Participant and each alternate payee to the extent of any distributions made.
- (j) To the extent authorized by a qualified domestic relations order and the terms of the Plan, a distribution under the Plan may be made to an alternate payee before the Participant whose benefits are subject to such order attains his earliest retirement age (as defined in Code §414(p)(4)(B)).

ARTICLE XII

Rollovers and Transfers

Section 12.1 Definitions.

(a) "Direct Rollover" means:

- (i) in the case of an Eligible Rollover Distribution under the Plan, a payment to one or more Eligible Retirement Plans specified by the Participant or Spouse, or
- (ii) in the case of an Eligible Rollover Distribution under a qualified plan described in Code §401(a) or §403(a), including after-tax employee contributions, an annuity contract described in Code §403(b), excluding after-tax contributions, an eligible plan under Code §457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state, a payment made by such plan or contract to the Fund.

(b) "Eligible Retirement Plan" means:

- (i) an individual retirement account described in Code §408(a),
- (ii) an individual retirement annuity described in Code §408(b),
- (iii) an annuity plan described in Code §403(a),
- (iv) a qualified trust described in Code §401(a) that accepts Eligible Rollover Distributions,
- (v) an annuity contract described in Code §403(b), or

- (vi) an eligible plan under Code §457 which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state that accepts Eligible Rollover Distributions and which agrees to separately account for the amounts transferred.

The definition of an "Eligible Retirement Plan" in this subsection (b) shall also apply in the case of a distribution to a Participant's surviving Spouse, or to the Participant's or former Participant's Spouse or former Spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 11.7.

- (c) "Eligible Rollover Distribution" means any distribution under the Plan, or, in the case of a payment described in Section 12.1(a)(ii), under another eligible plan or contract, of all or any portion of the balance to the credit of a Participant, Spouse or, subject to the terms and conditions of Section 12.6(a)(ii), Non-Spouse Beneficiary, except that an Eligible Rollover Distribution does not include:

- (i) one or more distributions to be made during the Participant's or Spouse's taxable year which in the aggregate are reasonably expected to be less than \$200;
- (ii) any distribution that is one of a series of substantially equal periodic payments (made not less frequently than annually) made for the life or life expectancy of the Participant or Spouse or the joint lives (or joint life expectancies) of the Participant or Spouse and his or her designated Beneficiary; or
- (iii) any distribution made over a specified period of ten years or more; or
- (iv) the portion of any distribution that is required to be made under Code §401(a)(9); or

- (v) any portion of any distribution that is not includible in gross income for federal income tax purposes; or
- (vi) the portion of any distribution that is a hardship distribution.

For purposes of this Section 12.1(c), a portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Code §408(a) or (b), or to a qualified defined contribution plan described in Code §401(a) or §403(a) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

- (d) "Spouse" includes, for the purposes of this Article XII only, a Participant's surviving Spouse and a former Spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 11.7.

Section 12.2 Acceptance of Certain Contributions.

- (a) Effective on and after January 1, 2001, under such rules and procedures as the Trustees, may establish, a Participant may contribute the following amounts to the Plan:
 - (i) All or a portion of the money or property distributed before 1993 from another qualified plan in a lump sum distribution (within the meaning of Code §402(e)(4)(A) as then in effect, determined without reference to subparagraphs (B) and (H) of Code §402(e)(4)) which has become payable to a participant in such plan:

- (A) after attaining age 59-1/2;
 - (B) as a result of separation from service as a common-law employee of the employer maintaining such plan; or
 - (C) after becoming disabled, provided that the individual was self-employed with respect to such employer;
- (ii) All or a portion of the money or property distributed before 1993 from another qualified plan on account of the termination of such plan, or in the case of a profit sharing or stock bonus plan, a complete discontinuance of contributions under such plan;
 - (iii) All or a portion of the money or property distributed after 2001 in an Eligible Rollover Distribution, as defined in Section 12.1(c);
 - (iv) All or a portion of the money or property received as a total distribution from an individual retirement account or an individual retirement annuity which contains only amounts described in paragraph (i) or (ii);
 - (v) All or a portion of the money or property received as a distribution from an individual retirement account or annuity described in Code §408(a) or (b) that is eligible to be rolled over and would otherwise be included in gross income pursuant to Code §408(d)(3)(A)(ii).
- (b) Contributions made under subsection (a) may not include amounts received from a qualified retirement plan in a distribution attributable to the death of an individual with respect to whom the employee is the beneficiary. The amount of any contribution under subsection (a) which includes proceeds from the sale of property received in a plan distribution may not be greater than the fair market value of the property at the time of sale. Contributions made under subsection (a)

must be received by the Fund on or before the 60th day after the day on which the individual received the distribution. To the extent that contributions made under subsection (a) include amounts contributed by the employee on an after-tax basis, this Plan shall separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

Section 12.3 Acceptance of Direct Rollovers.

Effective on and after January 1, 2001, under such rules and procedures as the Trustees may establish, any Participant may make a Direct Rollover to this Plan of an Eligible Rollover Distribution, other than amounts included in such distribution that are attributable to the death of an individual with respect to whom the Participant is a beneficiary.

Section 12.4 Conditions of Accepting Certain Contributions and Direct Rollovers.

- (a) Before accepting any rollover contribution or Direct Rollover, the Fund Administrator or Identified Fiduciary shall determine to its satisfaction that such contribution or rollover does not contain amounts from sources other than those permitted by Section 12.2 or 12.3.
- (b) No rollover contribution under Section 12.2 or Direct Rollover under Section 12.3 shall be accepted from any plan subject to the requirements of Code §401(a)(11) and 417 (or subject to such provisions with respect to the individual on whose behalf such rollover contribution or Direct Rollover is made) unless such individual shall have provided, in such manner as the Fund Administrator or Identified Fiduciary shall specify, proof that his or her Spouse has consented to the distribution described in Section 12.2 or 12.3.

Section 12.5 Rollover Accounts; Nonforfeitability.

- (a) Amounts contributed under Section 12.2 or 12.3 shall be held in a Rollover Account which shall be invested and distributed in accordance with the provisions of this Plan applicable to Regular Accounts.

- (b) Each Participant shall be 100% vested in the value of his or her Rollover Account, which shall be nonforfeitable but will be subject to adjustment for earnings and losses and for allocation of expenses under Article VI.

Section 12.6 Rollovers from the Plan; Required Information.

- (a)
 - (i) In the case of a distribution or withdrawal made under the Plan, notwithstanding any other provision of the Plan, a Participant or Spouse may elect, in accordance with procedures established by the Fund Administrator or Identified Fiduciary, that all or a portion of an Eligible Rollover Distribution to be made to him or her shall instead be distributed in a Direct Rollover. If a portion but not all of an Eligible Rollover Distribution is to be distributed in a Direct Rollover, such portion may not be less than \$500. In the case of an Eligible Rollover Distribution not exceeding \$500, any Direct Rollover must consist of the entire amount of the Eligible Rollover Distribution.
 - (ii) Effective with respect to qualifying distributions made after December 31, 2009, a Beneficiary who is not the surviving Spouse of a deceased Participant (hereinafter a "Non-Spouse Beneficiary") may elect, at the time and in the manner prescribed by the Fund Administrator or Identified Fiduciary, to have any portion of a qualifying distribution paid directly to an individual retirement plan specified by the Non-Spouse Beneficiary in a direct trustee-to-trustee transfer. For purposes of the previous sentence, the term "qualifying distribution" means all or the portion of a distribution under Article IX (as to death benefits) of this Plan which would satisfy all of the requirements to be an Eligible Rollover Distribution (as defined in Section 12.1(c)) other than the requirement that such distribution be made to the Participant or the Participant's Spouse, and the term "individual retirement plan" shall mean either an individual retirement account described in Code §408(a) or an individual retirement annuity described in

Code §408(b) (other than an endowment contract) which is established for the purpose of receiving the distribution on behalf of the Non-Spouse Beneficiary. Any direct trust-to-trustee transfer pursuant to this paragraph (a)(ii) shall, in accordance with Code §402(c)(11)(A), be treated as an Eligible Rollover Distribution for purposes of Section 12.1(c) of this Plan and Code §402(c).

- (b) (i) Not less than 30 days before the Annuity Starting Date of a Participant or Spouse who is entitled to receive an Eligible Rollover Distribution, the Fund Administrator or Identified Fiduciary shall, in accordance with Code §402(f), provide the Participant or Spouse with a written explanation of the rules governing rollovers (including the right to make a Direct Rollover under subsection (a)), the special tax treatment available to lump sum distributions and the mandatory federal income tax withholding on any Eligible Rollover Distribution for which no election is made under subsection (a). No later than the date on which the information required by this paragraph is provided to a Participant or Spouse, the Fund Administrator or Identified Fiduciary shall notify the Participant or Spouse that he or she is entitled to consider, for a period of at least 30 days following receipt of such information, whether or not to make an election under subsection (a).
- (ii) Notwithstanding paragraph (i) but subject to Section 8.4(c), a Direct Rollover or distribution may be made less than 30 days after the Participant or Spouse receives the information required by paragraph (i), if the Participant or Spouse affirmatively elects to make a Direct Rollover or receive a distribution under subsection (a).

Section 12.7 Withholding.

Any portion of an Eligible Rollover Distribution that is not distributed in a Direct Rollover under Section 12.6(a) is ordinarily subject to mandatory federal income tax withholding.

Section 12.8 Rollovers to Roth IRAs.

An Eligible Rollover Distribution distributed under the Plan may be rolled over to a Roth IRA, as such term is defined in Code §408A, subject to all of the applicable provisions of the Code pertaining to such rollovers, including, but not limited to, Code §408A(c)(6), (d) and (e).

ARTICLE XIII

Limitations on Deferral Contributions

Section 13.1 Definitions.

For purposes of this Article XIII, the following terms shall have the meanings set forth below:

- (a)
 - (i) "Actual deferral ratio" means a fraction, the numerator of which is a Participant's Deferral Contributions and the denominator of which is the Participant's compensation for the Plan Year. An actual deferral ratio shall be determined separately for each Participant for each Plan Year. Such ratio shall be expressed as a percentage and shall be calculated to the nearest one-hundredth of a percent.
 - (ii) In addition to amounts described in paragraph (i), the actual deferral ratio of a Highly Compensated Employee shall include elective contributions made on behalf of such individual under all qualified retirement plans maintained by a member of the Affiliated Group (to the extent such contributions have not been corrected in accordance with Section 1.401(k)-2(b) of the Regulations). Effective January 1, 2006, if a Highly

Compensated Employee participates in this Plan and any other plan maintained by a member of the Affiliated Group which permits elective contributions, all elective contributions during the Plan Year under such plans shall be aggregated (determined using only the compensation paid during the plan year of the plan being tested, and utilizing the compensation definition for the plan being tested). If this Plan and one or more other qualified plans are treated as a single plan for purposes of satisfying Code §410(b), Deferral Contributions and elective contributions under all such other plans shall be aggregated to determine an actual deferral ratio for each Participant in this Plan and each such other plan, and such actual deferral ratios shall be used to determine the actual deferral percentages for this Plan.

- (iii) In the case of a Highly Compensated Employee, Deferral Contributions in excess of the limitation set forth in Section 5.4(a) shall be included in the numerator of the fraction described in paragraph (i), whether or not distributed under Section 5.4. In the case of a Participant other than a Highly Compensated Employee, contributions in excess of such limitation shall not be included in such numerator to the extent made under a plan or plans maintained by a member of the Affiliated Group.

(b)

- (i) "Actual deferral percentage" means the average of all actual deferral ratios determined separately for all Participants in the group of Highly Compensated Employees and in the group consisting of all other Participants, including in the case of each such group participants in other plans who are required to be taken into account by reason of the last sentence of subsection (a)(ii). For purposes of calculating actual deferral percentages under this subsection, the term "Participant" or "participant" shall include an individual who is an eligible employee under any plan taken into account in such calculation.

- (ii) For purposes of paragraph (i), the following shall apply: (A) if the employees of two or more employers that are not members of the same Affiliated Group participate in the Plan, the eligible employees included in the group of Highly Compensated Employees and in the group consisting of all other Participants shall be determined separately for each such Affiliated Group and, in the case of any employer that is not a member of an Affiliated Group, separately for such employer, and (B) an actual deferral percentage shall be determined for each such separate group of eligible employees.

- (c) "Compensation" means, for purposes of determining a Participant's actual deferral ratio, the Participant's earnings as defined in Section 14.1(b) received from any Contributing Employer during the Plan Year while a Participant in the Plan, except that there shall be included amounts contributed to an employee benefit plan under an arrangement described in Code §§125 or 401(k) and such earnings shall be limited in the same manner as in subsection (b) of the definition of Compensation in Section 2.10. In the case of an eligible employee who is not a Participant, such definition shall be applied by substituting "an eligible employee" for "a Participant" wherever the latter appears.

- (d) "Elective contributions" means Deferral Contributions made under Article V (other than Deferral Contributions distributed under Section 5.4) and any other contributions made by a member of the Affiliated Group as a result of a Participant's election pursuant to an arrangement under which the Participant may elect to have the employer contribute an amount to a qualified retirement plan or to receive an amount in cash or in the form of some other taxable benefit.

- (e) "Eligible employee" means an employee who is eligible to have elective contributions made on his or her behalf under any qualified retirement plan maintained by a member of the Affiliated Group, including an employee who is

suspended from participation in, or ineligible by reason of Code §415 to receive additional annual additions under, any such plan.

- (f) "Excess contribution" means the amount of contributions made during a Plan Year on behalf of a Highly Compensated Employee in excess of the amount of contributions permitted with respect to such individual taking into account any reduction in the actual deferral ratio required by Section 13.4(b).

Section 13.2 Actual Deferral Percentage Tests.

- (a) The actual deferral percentages described in Section 13.1(b) must satisfy one of the following tests for each Plan Year:
 - (i) The actual deferral percentage of Participants who are Highly Compensated Employees for the Plan Year does not exceed the actual deferral percentage of all other Participants for the Plan Year multiplied by 1.25; or
 - (ii) The actual deferral percentage of Participants who are Highly Compensated Employees for the Plan Year does not exceed twice the actual deferral percentage of all other Participants for the Plan Year and the actual deferral percentage of Participants who are Highly Compensated Employees for the Plan Year is not more than two percentage points higher than the actual deferral percentage of all other Participants for the Plan Year.
- (b) Effective on and after January 1, 2006, the Fund Administrator or Identified Fiduciary shall utilize the current year testing method. For purposes of this subsection (b), the "current year testing method" means the tests described in Section 13.2(a) where the Fund Administrator or Identified Fiduciary uses the current year data for determining the actual deferral percentage both for

Participants who are Highly Compensated Employees and for Participants who are non-Highly Compensated Employees.

- (c) In accordance with Article XIX, the Trustees may amend the Plan to change the actual deferral percentage testing method from the current year testing method, as defined in subsection (b), to the prior year testing method in those situations in which such a change is permitted in Section 1.401(k)-2(c) of the Regulations. For purposes of this subsection (c), the "prior year testing method" means the tests described in Section 13.2(a) modified so that the Fund Administrator or Identified Fiduciary compares the current year's actual deferral percentage for Highly Compensated Employees to the prior year's actual deferral percentage for Participants who are non-Highly Compensated Employees.

Section 13.3 Calculation of Actual Deferral Percentage Tests.

- (a) The Fund Administrator shall determine the actual deferral percentages for each Plan Year. If required, the Fund Administrator shall reduce the actual deferral percentages of the Highly Compensated Employees under subsection (b) to comply with Section 13.2. Excess contributions created by the reduction required by subsection (b), together with the earnings or losses thereon computed under subsection (c), shall be disposed of in the manner set forth in Section 13.4.
- (b) If the actual deferral percentage of the Highly Compensated Employees exceeds the limits set forth in Section 13.2, the Fund Administrator shall reduce such actual deferral percentage to the extent necessary to comply with Section 13.2. Such reduction shall be effected by reducing the actual deferral ratio of each Highly Compensated Employee, beginning with the Highly Compensated Employee with the largest contributions, and continuing in descending order, until the actual deferral percentage complies with Section 13.2.
- (c) The Fund Administrator or Identified Fiduciary shall determine the net earnings or losses attributable to an excess contribution for the Plan Year in which such

contribution was made in accordance with Section 5.4(g), and substituting the term "excess contributions" wherever the term "excess elective contributions" appears.

Section 13.4 Distribution of Excess Contributions.

- (a)
 - (i) An excess contribution determined under Section 13.3(b) shall be distributed to the Participant on whose behalf such contribution was made, after the end of the Plan Year in which such excess contribution was made but no later than the end of the Plan Year following such Plan Year. The amount so distributed shall include earnings or losses on such excess contribution, computed under Section 13.3(c).
 - (ii) The amount of an excess contribution to be distributed under this subsection for a Plan Year with respect to any Participant shall be reduced by any excess elective contributions previously distributed to such Participant under Section 5.4 for the calendar year ending with or within such Plan Year.
- (b) In the case of a Participant whose actual deferral ratio has been determined by taking into account contributions made to another qualified retirement plan, the amount to be distributed under subsection (a) by this Plan for any Plan Year shall be coordinated with such other plans, but shall not exceed the amount of contributions made on behalf of such Participant to this Plan for such Plan Year.

ARTICLE XIV

Limitations on Annual Additions

Section 14.1 Definitions.

For purposes of this Section, the following definitions shall apply:

- (a) "annual additions" means, for each limitation year, the sum of the contributions made on behalf of a Participant by any Employer and all members of the Affiliated Group to this Plan and any qualified defined contribution retirement plan which is not a multiemployer plan, any forfeitures allocated to the Participant under any such plan, any voluntary contributions made by the Participant to any such plan and any contribution made by an Employer and all members of the Affiliated Group to an individual medical account, as defined in Code §415(l)(2), established for the Participant under any pension or annuity plan, and, in the case of an individual who is or was at any time a key employee as defined in Section 17.2(a), any contribution made by an Employer and all members of the Affiliated Group paid or accrued to a separate account in a funded welfare benefit plan, as defined in Code §419(e), established for the purpose of providing post-retirement medical benefits. The term "annual additions" shall not include any Deferral Contributions distributed under Section 5.4, any catch-up contributions under Code §414(v) (including any catch-up contributions under this Plan), any investment earnings allocable to a Participant, any rollover contributions described in Article XII (including any amounts received by a trustee of a plan of the Affiliated Group in a direct transfer from another qualified plan), amounts recontributed to any qualified plan under Code §411(a)(7) or payments of principal and interest on any loan made to a Participant.

- (b) "earnings" means wages, as defined in Code §3401(a), and other compensation received by a Participant during the limitation year which are reportable in Box 1 on IRS Form W-2 (Wage and Tax Statement) for the calendar year in which such

limitation year falls. Earnings shall be determined without regard to any rules under Code §3401(a) that limit the remuneration included in wages on the basis of the nature or location of the employment or the services performed. With respect to limitation years beginning after 1997, earnings shall include elective contributions made on behalf of a Participant that are not includible in gross income under Code §§402(e)(3), 402(h) or 403(b), any elective employer contributions under a qualified salary reduction arrangement described in Code §408(p)(2)(A)(i), any amounts which are contributed or deferred at the election of a Participant under a qualified transportation fringe benefit plan described in Code §132(f)(4), and any amounts which are contributed or deferred at the election of the Participant and which are not includible in the gross income of the Participant by reason of Code §125 or 457.

- (c) "excess amount" means the amount allocated or credited to a Participant in excess of the limits applicable under Section 14.2 or 14.3.
- (d) "limitation year" means the Plan Year.
- (e) "minimum accrued benefit" means a Participant's accrued benefit under a defined benefit retirement plan which is not a multiemployer plan and which is maintained by an Employer or any member of the Affiliated Group in which he is a participant, determined as of the end of the last limitation year beginning before the amendments made by Section 1106(i) of the Tax Reform Act of 1986 are effective, computed without regard to any changes in the provisions of the plan after May 5, 1986, nor to any cost of living adjustments which occurred after such date.
- (f) "projected annual retirement benefit" means the annual benefit to which a Participant would be entitled under the provisions of any defined benefit retirement plan which is not a multiemployer plan and which is maintained by an Employer or any member of the Affiliated Group in which he is a participant,

based on the assumptions that he continues employment until his normal retirement age, that his earnings continue at the same rate in effect in the limitation year under consideration until his normal retirement age, and that all other relevant factors used to determine benefits under the plan as of the current limitation year remain constant for all future limitation years.

- (g) "social security retirement age" means a Participant's retirement age under Section 216(l) of the Social Security Act determined without regard to the age increase factor under that Section as if the early retirement age under paragraph (2) thereof were 62.

**** 16th Amendment (eff. 1/1/2014) (Sec. 14.2 amended)**

Section 14.2 Defined Contribution Plans.

The maximum annual addition that may be contributed or allocated to a Participant's Account or Accounts for a limitation year under this Plan and any other qualified defined contribution retirement plan which is not a multiemployer plan and which is maintained by any Employer or any member of the Affiliated Group, shall not exceed the lesser of:

- (a) \$40,000, as adjusted for increases in the cost-of-living under Code §415(d), or
- (b) 100% of the Participant's Compensation, as defined in Section 2.10 of the Plan, for the limitation year.

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

Section 14.3 Defined Contribution and Defined Benefit Plans.

The repeal of the combined Code §415(e) limitation shall apply for limitation years beginning after December 31, 1999, and the provisions of this Section 14.3 shall not apply to any individual who is credited with an Hour of Service on or after the first day of the first limitation

year beginning after December 31, 1999. In the event that the provisions of this Section 14.3 apply to a Participant, the following terms shall govern:

(a) In the case of a Participant who is covered at any time under a qualified defined benefit retirement plan which is not a multiemployer plan and which is maintained by an Employer or any member of the Affiliated Group, the sum of the defined contribution fraction as described in subsection (b) and the defined benefit fraction as described in subsection (c) shall not exceed 1.0:

(b)

(i) The defined contribution fraction is a fraction:

(A) the numerator of which is the sum of the annual additions for the current and all prior limitation years, determined with respect to each such year under the rules governing the crediting of annual additions for such year and computed as of the end of such year:

(1) credited to the Participant under this Plan and any other qualified defined contribution retirement plan which is not a multiemployer plan and which is maintained by an Employer or any member of the Affiliated Group, whether or not terminated,

(2) attributable to nondeductible employee contributions to any defined benefit retirement plan which is not a multiemployer plan and which is maintained by an Employer or any member of the Affiliated Group, whether or not terminated,

- (3) attributable to any welfare benefit plan, as defined in Code §419(e), which is maintained by an Employer or any member of the Affiliated Group, and
 - (4) attributable to any individual medical account, as defined in Code §415(l)(2), which is maintained by an Employer or any member of the Affiliated Group; and
 - (B) the denominator of which is the sum of the lesser of the following amounts, computed for each limitation year as of the end of such year and including limitation years when he was not a Participant as a result of ineligibility to participate or because the Employer did not maintain a defined contribution plan:
 - (1) 125% of the defined contribution dollar limitation in effect for such limitation year; or
 - (2) 35% of the Participant's earnings for the limitation year.
- (ii) In the case of an individual who was a participant as of the end of the first day of the first limitation year beginning after 1986 in any qualified defined contribution retirement plan (which was not a multiemployer plan) of the Employer or any member of the Affiliated Group that was in effect on May 6, 1986, if the sum of the fraction described in this subsection (b) and the fraction described in subsection (c) would otherwise exceed 1.0, the numerator of the fraction described in this paragraph shall be adjusted by permanently subtracting therefrom an amount equal to the product of (A) the excess of the sum of such fractions over 1.0 and (B) the denominator of the fraction described in this subsection. For purposes of the adjustment described in the preceding sentence, the applicable fractions shall be computed as of the end of the last limitation year

beginning before 1987, but using the limitation under Code §415 applicable to the first limitation year beginning after 1986, and without regard to any change made after May 5, 1986, in the provisions of the plans taken into account under this paragraph.

(c)

(i) Subject to paragraph (ii), the defined benefit fraction is a fraction:

(A) the numerator of which is the sum of the Participant's projected annual retirement benefit under any qualified defined benefit retirement plan which is not a multiemployer plan and which is maintained by the Employer or by any member of the Affiliated Group, whether or not terminated, determined as of the end of the limitation year);

(B) the denominator of which is the lesser of:

(1) 125% of \$90,000 (or, in the case of benefits commencing before or after the social security retirement age, the actuarial equivalent of such amount), adjusted under Section 14.4(a), or

(2) 140% of the Participant's average earnings for the highest three consecutive limitation years, as adjusted under Section 14.4(b).

(ii) If a Participant was a participant as of the end of the first day of the first limitation year beginning after 1986 in any qualified defined benefit retirement plan (which was not a multiemployer plan) of the Employer or any member of the Affiliated Group that was in effect on May 6, 1986, the

denominator of the defined benefit fraction shall not be less than 125% of such Participant's minimum accrued benefit.

Section 14.4 Adjustments.

- (a) The dollar amount referred to in Section 14.3(c)(i)(B)(1) hereof shall be adjusted after December 31, 1987 in accordance with Regulations for increases in the cost of living using the last calendar quarter of 1986 as the base period.

**** 16th Amendment (eff. 1/1/2014) (Sec. 14.4(b) amended)**

- (b) A Participant who has terminated employment with the Employer shall have the amount of his average compensation described in Section 14.3(c)(i)(B)(2) adjusted annually by multiplying that amount by a fraction with the numerator equal to the adjusted dollar limitation set forth in Section 14.2 for the limitation year in which this adjustment is being made and the denominator equal to the adjusted dollar limitation in effect for the limitation year in which he terminated employment.
- (c) If an Employer or any member of the Affiliated Group maintains a qualified defined benefit retirement plan which provides for any post-retirement ancillary benefits (other than a qualified joint and survivor annuity with the Participant's Spouse), the denominator referred to in Section 14.3(c) shall be adjusted in accordance with Regulations.

Section 14.5 Excess Amounts.

If an amount is allocated or credited to any Participant in excess of the limits allowable under Section 14.2 for any limitation year commencing on or after July 1, 2007, then the Plan shall correct such excess in accordance with the Employee Plans Compliance Resolution System (EPCRS) as set forth in Revenue Procedure 2008-50 or any subsequent guidance, including, but not limited to, the preamble of the Treasury regulations issued under Code §415.

ARTICLE XV

Miscellaneous

****16th Amendment (eff. 1/1/2014) (Sec. 15.1 amended)**

Section 15.1 Non-Reversion of Assets.

In no event shall any of the corpus or assets of the Trust Fund revert to the Contributing Employers or be subject to any claims of any kind or nature by the Contributing Employers, except for the return of contributions to Contributing Employers in accordance with Code §401(a)(2) (which generally permit certain returns within six (6) months) and under the policies established by the Trustees pursuant to the Trust Agreement.

Section 15.2 Limitation of Liability.

- (a) Nothing in this Plan shall be construed to impose any obligation to contribute beyond the obligation of the Employer to make Employer Contributions, and to withhold and transmit Deferral Contributions, as stipulated in its Collective Bargaining Agreement or Participation Agreement.

- (b) There shall be no liability upon the Trustees, individually or collectively, to provide the benefits established by this Plan, if the Trust Fund or any specific Account or Accounts do or does not have assets to make such payments.

Section 15.3 Decisions by the Trustees.

Subject to the requirements of the law, the Trustees or, where Trustee responsibility has been delegated to others, such other persons shall be the sole judges of the standard of proof required in any case and the application, construction and interpretation of this Plan, and decisions of the Trustees or their delegates shall be final and binding. Wherever in the Plan the Trustees are given discretionary powers, the Trustees shall exercise such powers in a uniform and nondiscriminatory manner.

All questions or controversies of whatsoever character arising in any manner or between any parties or persons in connection with this Plan or its operation, whether as to any claim for benefits, as to the construction of the language of this Plan or any rules and regulations adopted by the Trustees, or as to any writing, decision, instrument or account in connection with the operation of the Plan or otherwise, shall be submitted to the Trustees or their delegates for decision, and the Trustees or their delegates, shall have the full authority and discretion to determine all such questions or controversies. Further, benefits will be paid under this Plan only if the Trustees or their delegates decide in their discretion that the applicant is entitled to them. In the event a claim for benefits has been denied, no lawsuit or other action against the Fund or its Trustees may be filed until the matter has been submitted for review under the review procedures set forth in Section 11.3.

Any decision by the Trustees or their delegate under this Plan shall be binding upon all persons (including their heirs and/or estates) dealing with the Plan or claiming any benefit hereunder, except to the extent that such decision may be determined to be arbitrary or capricious by a court having jurisdiction over such matter.

Section 15.4 Restriction on Transfer of Plan Assets.

In the event this Plan merges or consolidates with another plan or there is a transfer of assets and liabilities from one trust to another, each Participant shall, if this Plan terminated immediately after the merger, consolidation or transfer, be entitled to a benefit at least equivalent to the benefit he would have been entitled to receive if this Plan had terminated immediately prior to the date of such merger, consolidation or transfer. No merger, consolidation or transfer of assets will result in the reduction or elimination of any Code §411(d)(6) protected benefit.

Section 15.5 Titles and Headings Not to Control.

The titles and headings of this Plan have been inserted for convenience of reference only and shall be ignored in any construction of the provisions of the Plan.

Section 15.6 Governing Law.

This Plan shall be construed according to the laws of the Commonwealth of Massachusetts, except to the extent that a specific Plan provision provides otherwise or such laws are superseded by federal law.

Section 15.7 Non-Collectively Bargained Employees.

With respect to Employees of the Health Fund, the Annuity Fund and the Local Union who participate in this Plan, the Health Fund, the Annuity Fund and the Local Union shall be required to provide benefits for such Employees in compliance with the coverage rules of Code §410(b), the nondiscrimination rules of Code §401(a)(4) and the top heavy rules of Code §416. All Participation Agreements shall require benefit accruals in compliance with these Code sections and the Employers may be required to provide such information as the Trustees shall deem reasonably necessary for the Plan to monitor compliance with, and to file such reports as may be required by government agencies regarding, Code §§410(b), 401(a)(4), 416 and/or other applicable sections of the Code.

Section 15.8 Compliance with USERRA and the Heroes Earnings and Assistance Relief Tax Act of 2008 (HEART Act).

- (a) Notwithstanding any other provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Code §414(u).
- (b) In accordance with Code §401(a)(37), the following provisions of this subsection (b) shall be effective with respect to deaths occurring after December 31, 2006:
 - (i) In the case of a Participant who dies while performing qualified military service, the Beneficiary of such Participant shall be entitled to any additional death benefits (other than Employer Contributions relating to the period of qualified military service) that would have been payable under the Plan if the Participant had resumed work in Covered

Employment on the day preceding the Participant's death and then terminated such employment on the actual date of death.

- (ii) For purposes of this subsection (b), the term "additional death benefits" includes any accelerated vesting, ancillary life insurance benefits, and other survivor's benefits which may be provided under the Plan that are contingent on a Participant working in Covered Employment on the date of death. Further, the period of time that the deceased Participant spent in qualified military service shall be taken into account for purposes of vesting under this Plan.
 - (iii) Nothing in this subsection (b) shall be construed as requiring that Employer Contributions be imputed for the period of an individual's qualified military service for purposes of determining death benefits that are based on a deceased Participant's vested Account balance under the Plan.
- (c) If applicable with respect to a specific Contributing Employer, the requirements of this subsection (c) shall be effective with respect to remuneration paid by such Contributing Employer after December 31, 2008:
- (i) If a Contributing Employer provides a differential wage payment to a Participant who is performing qualified military service, the Participant shall be treated as an Employee of the Contributing Employer and the differential wage payment shall be treated as Compensation paid by the Contributing Employer for purposes of the Plan. In addition, the Plan shall not be treated as failing to meet the requirements of any provision described in paragraph (ii) by reason of any Employer Contributions which are based on the differential wage payment.

(ii) Employer Contributions based on a differential wage payment described in paragraph (i) shall not cause the Plan to fail to meet the nondiscrimination requirements of Code §§401(a)(4), 401(a)(26), 401(k)(3), 401(k)(11), 401(k)(12), 401(m), 403(b)(12), 408(k)(3), 408(k)(6), 408(p), 410(b) or 416, as applicable, by reason of the making of (or the right to make) such Employer Contributions, if all employees of the Contributing Employer or any other member of the Affiliated Group (as defined in Section 2.2) that are performing service in the uniformed services are:

(A) entitled to receive differential wage payments on reasonably equivalent terms; and

(B) if eligible to participate in a retirement plan maintained by such Contributing Employer, entitled to contributions based on the differential wage payments on reasonably equivalent terms.

For purposes of applying this paragraph (ii), the provisions of Code §§410(b)(3), (4) and (5) shall apply.

(d) For purposes of this Section 15.8, the term "differential wage payment" shall have the same meaning as contained in Code §3401(h)(2), the term "qualified military service" shall have the same meaning as contained in Code §414(u)(5), and the term "uniformed services" shall have the same meaning as contained in chapter 43 of title 38 of the United States Code.

Section 15.9 Plan Interpretation for Purposes of Compliance with the *United States v. Windsor* Decision

In all instances on and after June 26, 2013, this Plan shall be interpreted so that it complies with the decision of the United States Supreme Court in the case of *United States v. Windsor*, 133 S. Ct. 2675 (2013) and subsequent guidance provided with respect to such

decision, including Internal Revenue Service Revenue Ruling 2013-17 and Notice 2014-19. For example, any masculine references in this Plan (such as "he" and "his") shall be deemed to include feminine references (such as "she" and "hers") and vice versa.

**** 16th Amendment (eff. 1/1/2014) (new Sec. 15.10 added)**

Section 15.10 Compliance with Code §401(a)(35) as to Publically Traded Employer Securities.

The diversification requirements set forth under Code §401(a)(35) are inapplicable because the Plan shall not invest in publically traded securities of any Employer who adopts the Plan within the meaning of Code §401(a)(35) and any Regulations issued thereunder.

ARTICLE XVI

Termination

Section 16.1 Right to Terminate.

The Trustees shall have the right to discontinue or terminate this Plan, in whole or in part, at any time. The rights of all affected Participants and Beneficiaries to the value of the amounts credited to the Participants' Accounts to the date of termination, partial termination or discontinuance shall be nonforfeitable.

Section 16.2 Continuation of Trust Fund.

In the event of a partial termination or termination, the Trustees may continue the Trust Fund until all assets are distributed in accordance with the provisions of the Plan, or terminate the Trust Fund and distribute the assets as provided in the Trust Agreement.

ARTICLE XVII

Top Heavy Plan Provisions

Section 17.1 Top Heavy Rules.

- (a) If this Plan is Top Heavy as determined for any Employer in any Plan Year, the Plan shall receive from that Employer a minimum contribution of three percent (3%) of compensation for each Non-Key Employee who is a Participant employed by that Employer on the last day of the Plan Year, except that if the contribution rate for the Key Employee of that Employer with the highest contribution rate is less than three percent (3%), the minimum contribution for Non-Key Employees shall equal the highest contribution rate received by a Key Employee of that Employer. The contribution rate is the sum of the Employer contributions for a Participant for the Plan Year, divided by his Compensation for the Plan Year. Deferral Contributions on behalf of Key Employees shall be taken into account for purposes of determining the highest contribution rate received by a Key Employee as described in this Section 17.1(a), but Deferral Contributions on behalf of Non-Key Employees shall not be taken into account for purposes of satisfying the minimum contribution requirement of this Section 17.1(a). To determine the contribution rate, the Trustees shall consider all qualified defined contribution plans maintained by an Employer in which the Employee is a participant. Notwithstanding the preceding provisions of this Section 17.1, if a defined benefit plan maintained by the Employer which benefits a Key Employee depends on this Plan to satisfy the anti-discrimination rules of Code §401(a)(4) or the coverage rules of Code §410 (or another plan benefiting the Key Employee so depends on such defined benefit plan), the minimum contribution for a Non-Key Employee is three percent (3%) of his Compensation regardless of the contribution rate in this Plan for the Key Employees.
- (b) If the Plan as tested for any Employer is determined to be Top Heavy, and the contribution rate for the Plan Year with respect to any Non-Key Employee

described in paragraph (a) is less than the minimum contribution, that Employee's Employer will increase the contribution for that Employee so that it at least equals the minimum contribution. The Trustees shall allocate the additional contribution to the Regular Account of the Non-Key Employee for whom the Employer makes the contribution.

- (c) (i) The Plan is Top Heavy for a Plan Year, as to any Employer, if the top heavy ratio as of the Determination Date exceeds sixty percent (60%). The top heavy ratio is a fraction, the numerator of which is the sum of the present value of the individual Accounts of all Key Employees as of the Determination Date, the Employer Contributions and Deferral Contributions due as of the Determination Date, and distributions made within the five (5) year period preceding the Determination Date, and the denominator of which is a similar sum determined for all Participants. The Trustees shall calculate the top heavy ratio without regard to any Non-Key Employee who was formerly a Key Employee. The Trustees shall calculate the top heavy ratio, including the extent to which it must take into account distributions, rollovers and transfers, in accordance with Code §416 and applicable Regulations.

- (ii) If an Employer maintains other qualified plans (including a simplified employee pension), this Plan is top heavy only if it is part of the Required Aggregation Group, and the top heavy ratio for both the Required Aggregation Group and the Permissive Aggregation Group exceeds sixty percent (60%). The Trustees shall calculate the top heavy ratio in the same manner as required by the first paragraph of this Section, taking into account all plans within the aggregation group. The Trustees shall calculate the present value of individual Accounts and the other amounts the Trustees must take into account under defined benefit plans or simplified employee pensions included within the group in accordance with the terms of those plans, Code §416 and applicable Regulations. The

Trustees shall calculate the top heavy ratio with reference to the Determination Dates that fall within the same calendar year.

- (iii) If a Non-Key Employee participates in two or more Top Heavy defined benefit or defined contribution plans of an Employer, the minimum contribution requirement of subsection (a) may be satisfied by combining the contributions provided under such plans. A Non-Key Employee who in any Plan Year participates in one or more top heavy defined contribution or defined benefit plans of an Employer shall receive in lieu of the amount required by subsection (a) a benefit accrued under the defined benefit plan or plans equal to the defined benefit minimum as determined under Code §416(c)(1) offset by Employer contributions under the defined contribution plan or plans.

- (d) If the requirements of paragraph (c) are not satisfied, the dollar limitations described in Section 14.3(b)(i) and 14.3(c)(i) shall not be multiplied by 125% but shall be multiplied by 100%. This paragraph (d) shall not apply if:
 - (i) The Plan would satisfy paragraph (a) if four percent (4%) was substituted for three percent (3%) in that paragraph; and
 - (ii) The top heavy ratio does not exceed ninety percent (90%).

Section 17.2 Definitions.

For purposes of this Article XVII:

- (a) "Key Employee" means an Employee or former Employee (and his Beneficiaries) who, at any time during the Plan Year containing the Determination Date or during any of the four Plan Years preceding the Determination Date, is:
 - (i) an officer of an Employer (as that term is defined in the Regulations under Code §416) having annual compensation exceeding 50 percent of the

amount in effect under Code §415(b)(i)(A) for any Plan Year as adjusted under Code §415(d).

- (ii) one of the ten Employees owning (or considered as owning within the meaning of Code §318) the largest interest in an Employer required to be aggregated under Code §414(b), (c) or (m), with compensation from that Employer in excess of the limitation in effect under Code §415(c)(1)(A).
- (iii) a "five percent owner" of an Employer.
- (iv) a "one percent owner" of an Employer having annual Code §415 Compensation from that Employer of more than \$150,000 for the Plan Year.

(b) "Non-Key Employee" means an Employee who is not a Key Employee.

**** 16th Amendment (eff. 1/1/2014) (Sec. 17.2(c) amended)**

(c) "Code §415 Compensation" shall mean Compensation, as defined in Section 2.10 of the Plan, for the limitation year.

(d) "Required Aggregation Group" means:

- (i) Each qualified plan of an Employer in which at least one (1) Key Employee participates; and
- (ii) Any other qualified plan of an Employer which enables a plan described in (i) to meet the requirements of Code §410(b).

(e) "Permissive Aggregation Group" means the Required Aggregation Group plus any other qualified plans maintained by an Employer, but only if such group would satisfy, in the aggregate, the requirements of Code §410(b). The Trustees

shall determine which plan to take into account in determining the Permissive Aggregation Group.

- (f) "Determination Date" for any Plan Year is the last day of the preceding Plan Year or, in the case of the first Plan Year of the Plan, the last day of that Plan Year.

Section 17.3 Modification of Top-Heavy Rules under the Economic Growth and Tax Relief Reconciliation Act.

- (a) Effective for Plan Years beginning after December 31, 2001, this Section 17.3 shall supercede the provisions of Article XVII that are inconsistent with this Section 17.3.
- (b) The term "Key Employee" shall mean any Employee or former Employee (including any deceased Employee) who, at any time during the Plan Year that includes the Determination Date, was an officer of an Employer having annual Code §415 Compensation greater than \$130,000 (as adjusted under Code §416(i)(1) for Plan Years beginning after December 31, 2002), a 5% owner of an Employer, or a 1% owner of an Employer having annual Code §415 Compensation of more than \$150,000. The determination of who is a Key Employee will be made in accordance with Code §416(i)(1), applicable Regulations issued by the Secretary of the Treasury, and other guidance of general applicability issued thereunder.
- (c) This subsection (c) shall apply for purposes of determining the present value of accrued benefits and the amounts of account balances of Employees as of the Determination Date.
 - (i) The present values of accrued benefits and the amounts of account balances of an Employee as of the Determination Date shall be increased by the distributions made with respect to the Employee under the Plan and any plan aggregated with the Plan under Code §416(g)(2) during the 1-

year period ending on the Determination Date. The preceding sentence shall also apply to distributions under a terminated plan which, had it not been terminated, would have been aggregated with the Plan under Code §416(g)(2)(A)(i). In the case of a distribution made for a reason other than severance from employment, death or disability, this provision shall be applied by substituting "5-year period" for "1-year period."

- (ii) The accrued benefits and accounts of any individual who has not performed services for an Employer during the 1-year period ending on the Determination Date shall not be taken into account.

- (d) Employer matching contributions made to another qualified defined contribution plans shall be taken into account for purposes of satisfying the minimum contribution requirements of Code §416(c)(2) and the Plan. Employer matching contributions that are used to satisfy the minimum contribution requirements shall be treated as matching contributions for purposes of the actual contribution percentage test and other requirements of Code §401(m).

ARTICLE XVIII

Plan Loans (No New Loans On or After October 1, 2013)

Section 18.1 Eligibility for Loans.

- (a) (i) No new loans on or after October 1, 2013. No new loans will be granted on or after October 1, 2013. Loans granted before October 1, 2013 will remain in effect and must be repaid in accordance with their terms and the terms of this Article XVIII.

- (ii) Loans granted prior to October 1, 2013. A Participant who meets the requirements of either subparagraph (A) or (B) may apply, prior to

October 1, 2013, in writing to the Loan Administrator for a loan from his Deferral Contribution Account:

- (A) for Plan Years beginning on or after January 1, 2001, but prior to January 1, 2004, he is a Participant who had a Deferral Contribution Account balance of at least \$2,000 and has not been in default on any loan from the Fund at any time after December 31, 2000; or
- (B) for Plan Years beginning on or after January 1, 2004, he is a Participant who is not a Highly Compensated Employee (as defined in Section 2.21), he has a Deferral Contribution Account balance of at least \$5,000, and has not been in default on any loan from the Fund at any time after December 31, 2000.

Further, the Trustees may make loans to eligible Participants upon the terms and conditions set forth in this Article XVIII and in accordance with such nondiscriminatory administrative rules as they may adopt from time to time.

- (b) The aggregate amount of the outstanding loan to a Participant who is otherwise eligible may not exceed the lesser of:
 - (i) \$50,000, reduced by the excess (if any) of the highest outstanding balance of loans to him from the Plan during the one year period ending on the day before the date on which such loan is made over the outstanding balance of his loans from the Plan on the date such loan is made; or
 - (ii) 50% of the amount in such Deferral Contribution Account.

- (c) Notwithstanding any other provision of this Article XVIII, no loan shall be made in an amount less than \$1,000, a Participant may only have one loan outstanding at any time, and a Participant may only have one loan granted pursuant to Section 18.2(a) in any twelve (12) consecutive month period.

Section 18.2 Terms; Security.

With respect to any loan under the Plan made prior to October 1, 2013, the following provisions are applicable:

- (a) The Loan Administrator shall have sole discretion to grant or deny loans in accordance with established policies and to determine the conditions under which loans are made, provided that, in acting on loan applications, the Loan Administrator shall treat all Participants in similar circumstances alike. A new loan shall not be made to a Participant who is, or who was at any time on or after January 1, 2001, in default on a loan from the Fund.
- (b) Each loan will be evidenced by a promissory note, signed by the Participant (and co-signed by his Spouse if the Spouse is to own the residence for which a loan is being made), which is payable to the order of the International Union Of Operating Engineers Local 877 Annuity Fund. The note shall provide for periodic (but no less frequent than quarterly) principal payments over a period not to exceed 5 years, provided that if loans are permitted for the purchase of a Participant's principal residence, such note shall provide for periodic payments over a reasonable period of time which is not in excess of 30 years. Payments of principal shall be credited directly to the Participant's Deferral Contribution Account.
- (c) On each loan granted on or after January 1, 2001, interest shall be payable periodically (but no less frequent than quarterly) on the unpaid balance at a commercially reasonable rate, provided that at no time shall such rate exceed the maximum rate allowable under applicable law. Payments of interest shall be credited directly to the Participant's Deferral Contribution Account.

- (d) The proceeds of a loan shall be deducted from the Participant Investment Funds comprising the Participant's Deferral Contribution Account on a pro rata basis. Repayments of principal and interest on the loan shall be allocated among the Participant Investment Funds elected by the Participant in the same manner as Deferral Contributions are allocated for that Participant. Further, repayments of principal and interest on the loan shall be made by way of payroll deductions of amounts otherwise payable to the Participant from the Participant's Employer, and such amounts shall be transmitted to the Fund in accordance with applicable law, regulations, and any nondiscriminatory procedures established by the Loan Administrator. To the extent an Employer does not, or cannot, arrange for such payroll deductions, or if the Participant is not employed by any Employer, the Participant must make alternative arrangements for the repayment of principal and interest on the loan which are acceptable to the Loan Administrator.
- (e) The Note will provide for acceleration of the entire loan balance upon default by the Participant in payment of the principal or interest installments when due or upon the occurrence of other specified events. Any expenses whatsoever, including attorneys' fees, incurred by the Fund due to the default by a Participant shall be charged directly to the Participant's Deferral Contribution Account at the time they are incurred.
- (f) A loan may be secured by up to 50% of the Participant's interest in his Deferral Contribution Account under this Plan and/or may be secured by such other security as the Trustees deem appropriate. The Participant's Deferral Contribution Account shall be marked to note the loan and any additional security therefor. In the case of a loan to a Participant who is married on the date the loan is made, the Participant's Spouse must consent in writing to the use of the Participant's interest in the Deferral Contribution Account as security for the loan (hereinafter "Spousal Consent"). The Spousal Consent must acknowledge the effect of the use of the Deferral Contribution Account as security and must be witnessed by a Plan

representative or a notary public. This Spousal Consent must be submitted to the Fund Administrator or Loan Administrator not more than 180 days and not less than 30 days prior to the date the proceeds of the loan are distributed, except that the loan may be distributed less than 30 days after the Spousal Consent is received providing all of the following requirements are met:

- (i) The Fund or Loan Administrator provides information to the Spouse clearly indicating that the Spouse has a right to at least 30 days to consider whether to consent to the use of the Participant's Deferral Contribution Account balance as security for the loan.
- (ii) The Spouse is permitted to revoke the Spousal Consent at least until the proceeds of the loan are distributed, or, if later, at any time prior to the expiration of the 7-day period that begins on the day after the day the Spousal Consent is received by the Loan Administrator or Fund Administrator.
- (iii) The proceeds of the loan are not distributed before the expiration of the 7-day period that begins on the day after the day the Spousal Consent is received by the Loan Administrator or Fund Administrator.

Upon default, the Trustees shall have the right to apply the Participant's Deferral Contribution Account to the repayment of the accrued but unpaid interest and principal remaining on the loan and the Trustees shall also have the right to enforce their security interest in any other collateral. The Participant shall be liable for any deficiency.

- (g) The Note shall comply with applicable disclosure laws and regulations.

- (h) Except as provided by rules adopted by the Trustees, no distributions of a Participant's Deferral Contribution Account shall be made to him or his Beneficiary while a loan is outstanding.
- (i) For purposes of this Article XVIII, the term "Loan Administrator" means any person, persons, or business entity appointed by the Trustees which has the overall responsibility for the administration and control of the Fund's loan program under this Article XVIII.

Section 18.3 Availability of Loans in the Future.

The Trustees may determine to reinstitute loans from the Fund at any future time in their full and complete discretion.

ARTICLE XIX

Amendments

Section 19.1 Amendment.

This Plan may be amended at any time by the majority vote of all the Trustees then serving, voting in accordance with the rules of the Trust Agreement. However, no amendment may decrease the benefits accrued by any Participant, except as necessary to establish or maintain the qualification of the Plan or the Trust Fund under the Code and to maintain compliance of the Plan with the requirements of ERISA.

ARTICLE XX

In-Service Distributions

Section 20.1 Eligibility for In-Service Distributions.

- (a) Subject to the other provisions of this Article XX, a Participant who has not incurred a Break in Service may request an In-Service Distribution of all of the

amounts in any of his Accounts if he has attained at least age 59-½. A Participant shall not be entitled to take an In-Service Distribution of less than the total value of all of his Accounts.

- (b) In-Service Distributions to an eligible Participant may only be made once in a lifetime.

Section 20.2 Payment of an In-Service Distribution.

- (a) An In-Service Distribution, representing the payment of the total value of each of the eligible Participant's Accounts, shall only be made in the form of a lump sum. An Application for Benefits must be filed in accordance with Section 11.1. Further, except as provided in Section 8.3, if an eligible Participant is married, Spousal Consent (as described in Section 8.4(b)) to such lump sum In-Service Distribution must be obtained in accordance with the provisions of Section 8.4(b) and (c).
- (b) In-Service Distributions are subject to the requirements of Section 12.6 (regarding Rollovers). In addition, the Trustees may establish reasonable procedures to effectuate this Section 20.2.
- (c) No amount withdrawn under this Article XX may be recontributed to the Plan.

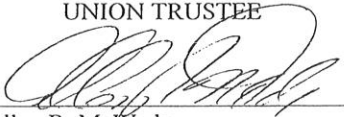
Section 20.3 Taxes.

Amounts withdrawn under this Article XX shall be subject to applicable income taxes.

SIGNATURE ONLY OF RESTATEMENT/FIFTEENTH
AMENDMENT TO THE INTERNATIONAL UNION OF
OPERATING ENGINEERS LOCAL 877 ANNUITY PLAN

IN WITNESS WHEREOF, the undersigned Trustees have executed this Plan on
September 9, 2014.

UNION TRUSTEE



Allen R. McWade

EMPLOYER TRUSTEE

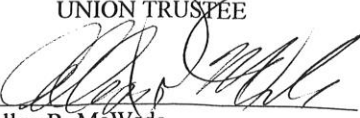


Anthony D. Pisano

SIGNATURE ONLY OF SIXTEENTH AMENDMENT TO
THE INTERNATIONAL UNION OF OPERATING
ENGINEERS LOCAL 877 ANNUITY PLAN

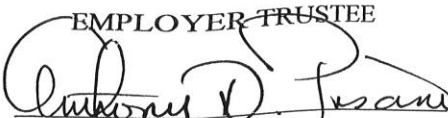
IN WITNESS WHEREOF, the undersigned Trustees have executed this Sixteenth
Amendment on this 1st day of September, 2015.

UNION TRUSTEE



Allen R. McWade

EMPLOYER TRUSTEE



Anthony D. Pisano

Appendix A

Minimum Distribution Requirements - Section 401(a)(9) Final and Temporary Regulations

Section A General Rules.

- A.1. Effective Date. The provisions of this **Appendix A** will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.
- A.2. Precedence. The requirements of this **Appendix A** will apply only to the extent the terms of the Plan do not otherwise comply with the requirements of Code §401(a)(9) and any regulations issued thereunder or the Plan is administered in such fashion.
- A.3. Requirements of Treasury Regulations Incorporated. All distributions required under this **Appendix A** will be determined and made in accordance with the Treasury regulations under Code §401(a)(9).

Section B Time and Manner of Distribution.

- B.1. Required Beginning Date. The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's required beginning date, as defined in Section E.5.
- B.2. Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
 - (a) If the Participant's surviving Spouse is the Participant's sole designated beneficiary, then, except as provided in Section F, distributions to the surviving Spouse will begin by the December 31st of the calendar year immediately following the calendar year in which the Participant died, or by the December 31st of the calendar year in which the Participant would have attained age 70-½, if later.
 - (b) If the Participant's surviving Spouse is not the Participant's sole designated beneficiary, then, except as provided in Section F, distributions to the designated beneficiary will begin by the December 31st of the calendar year immediately following the calendar year in which the Participant died.
 - (c) If there is no designated beneficiary as of the September 30th of the year following the year of the Participant's death, the Participant's entire

interest will be distributed by the December 31st of the calendar year containing the fifth anniversary of the Participant's death.

- (d) If the Participant's surviving Spouse is the Participant's sole designated beneficiary and the surviving Spouse dies after the Participant but before distributions to the surviving Spouse begin, this Section B.2, other than Section B.2(a), will apply as if the surviving Spouse were the Participant.

For purposes of this Section B.2 and Section D, unless Section B.2(d) applies, distributions are considered to begin on the Participant's required beginning date. If Section B.2(d) applies, distributions are considered to begin on the date distributions are required to begin to the surviving Spouse under Section B.2(a). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's required beginning date (or to the Participant's surviving Spouse before the date distributions are required to begin to the surviving Spouse under Section B.2(a)), the date distributions are considered to begin is the date distributions actually commence.

- B.3. Forms of Distribution. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with Sections C and D of this **Appendix A**. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code §401(a)(9) and the Treasury regulations.

Section C Required Minimum Distributions During Participant's Lifetime.

- C.1. Amount of Required Minimum Distribution For Each Distribution Calendar Year. During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:
 - (a) the quotient obtained by dividing the Participant's Account balance by the distribution period in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's age as of the Participant's birthday in the distribution calendar year; or
 - (b) if the Participant's sole designated beneficiary for the distribution calendar year is the Participant's Spouse, the quotient obtained by dividing the Participant's Account balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's and Spouse's attained ages as of the Participant's and Spouse's birthdays in the distribution calendar year.

- C.2. Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under this Section C beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

Section D Required Minimum Distributions After Participant's Death.

D.1. Death On or After Date Distributions Begin.

- (a) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated beneficiary, determined as follows:
- (1) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
 - (2) If the Participant's surviving Spouse is the Participant's sole designated beneficiary, the remaining life expectancy of the surviving Spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving Spouse's age as of the Spouse's birthday in that year. For distribution calendar years after the year of the surviving Spouse's death, the remaining life expectancy of the surviving Spouse is calculated using the age of the surviving Spouse as of the Spouse's birthday in the calendar year of the Spouse's death, reduced by one for each subsequent calendar year.
 - (3) If the Participant's surviving Spouse is not the Participant's sole designated beneficiary, the designated beneficiary's remaining life expectancy is calculated using the age of the beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.
- (b) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no designated beneficiary as of the September 30th of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account balance by the Participant's remaining

life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

D.2. Death Before Date Distributions Begin.

- (a) Participant Survived by Designated Beneficiary. Except as provided in Section F, if the Participant dies before the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account balance by the remaining life expectancy of the Participant's designated beneficiary, determined as provided in Section D.1.
- (b) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no designated beneficiary as of the September 30th of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by the December 31st of the calendar year containing the fifth anniversary of the Participant's death.
- (c) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving Spouse is the Participant's sole designated beneficiary, and the surviving Spouse dies before distributions are required to begin to the surviving Spouse under Section B.2(a), this Section D.2 will apply as if the surviving Spouse were the Participant.

Section E Definitions. For purposes of this **Appendix A**, the following definitions shall apply:

- E.1. "Designated beneficiary" means the individual or entity that is designated as the Beneficiary of a Participant under Section 9.6 of the Plan and, therefore, is the designated beneficiary under Code §401(a)(9) and Section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.
- E.2. "Distribution calendar year" means a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under Section B.2. The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution

calendar year in which the Participant's required beginning date occurs, will be made on or before the December 31st of that distribution calendar year.

- E.3. "Life expectancy" means the life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury regulations.
- E.4. "Participant's Account balance" means the Account balance of a Participant as of the last Valuation Date in the calendar year immediately preceding the distribution calendar year (the 'valuation calendar year') increased by the amount of any contributions made and allocated or forfeitures allocated to such Account balance as of dates in the valuation calendar year after the Valuation Date and decreased by any distributions made in the valuation calendar year after the Valuation Date. The Participant's Account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.
- E.5. "Required beginning date" has the same meaning as the term "Required Beginning Date" as specified in Section 8.9(b) of the Plan.

Section F Special Elections.

- F.1. Election to Allow Participants or Beneficiaries to Elect 5-Year Rule. A Participant or designated beneficiary may elect on an individual basis whether the 5-year rule or the life expectancy rule in Sections B.2 and D.2 of this **Appendix A** applies to distributions after the death of a Participant who has a designated beneficiary. The election must be made no later than the earlier of the September 30th of the calendar year in which distribution would be required to begin under Section B.2 of this **Appendix A**, or by the September 30th of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, surviving Spouse's) death. If neither the Participant nor designated beneficiary makes an election under this Section F.1, distributions will be made in accordance with Sections B.2 and D.2 of this **Appendix A**.
- F.2. Election to Allow Designated Beneficiary Receiving Distributions Under 5-Year Rule to Elect Life Expectancy Distributions. A designated beneficiary who is receiving payments under the 5-year rule may make a new election to receive payments under the life expectancy rule until December 31, 2003, provided that all amounts that would have been required to be distributed under the life expectancy rule for all distribution calendar years before 2004 are distributed by the earlier of December 31, 2003 or the end of the 5-year period.

Section G Compliance with the Worker, Retiree, and Employer Recovery Act of 2008.

- G.1. Notwithstanding Sections C and D of this **Appendix A** (governing Required Minimum Distributions During Participant's Lifetime and Required Minimum

Distributions After Participant's Death, respectively), a Participant or designated beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code §401(a)(9)(H) (hereinafter referred to as "2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are:

- (a) equal to the 2009 RMDs, or
- (b) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's designated beneficiary, or for a period of at least ten years (all hereinafter referred to as "Extended 2009 RMDs"),

will not receive those distributions for 2009 unless the Participant or designated beneficiary, as applicable, elects in writing to receive such distributions. Such Participants and designated beneficiaries will be given the opportunity to elect in writing to receive the distributions described in the preceding sentence.

- G.2. Further, with respect to the operation of Article XII (governing "Rollovers and Transfers") for 2009 and notwithstanding any provision of Article XII to the contrary, both 2009 RMDs and Extended 2009 RMDs, as defined in Section G.1., above, will also be treated as Eligible Rollover Distributions (as defined in Section 12.1(c)) in 2009 for purposes of any Direct Rollover (as defined in Section 12.1(a)).