

**BRICKLAYERS AND ALLIED CRAFTSMEN LOCAL 7 PENSION FUND**  
**APPLICATION TO THE PENSION BENEFIT GUARANTY CORPORATION**  
**FOR A PARTITION ORDER**

**EXHIBIT 5B**

**BRICKLAYERS  
AND ALLIED  
CRAFTSMEN  
LOCAL 7 PENSION  
PLAN**

Effective May 1, 2014\*

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\* Except as Otherwise Noted

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## ARTICLE I: DEFINITIONS

### 1.1 Accrued Benefit.

- (A) The term "Accrued Benefit" means the lifetime monthly benefit commencing at Normal Retirement Age which a Participant or former Participant has earned, based on such Participant's Years of Service and the benefit formula as stated in Article 3.2.

### 1.2 Active Participant.

- (A) The term "Active Participant" means a Participant who has not yet become a retired, disabled or deceased Participant, who has not yet suffered Forfeited Service, and who has accrued at least one Year of Service out of the two preceding Plan Years.

### 1.3 Actuarial Equivalent.

- (A) The term "Actuarial Equivalent" means a benefit having the same value as the benefit which it replaces.
- (B) For the purposes of determining optional forms of benefit other than single sum cashouts, the determination of an Actuarial Equivalent annuity shall be based upon the Unisex Pension 1984 (UP-84) mortality table, such table sets back 5 years for joint annuitants and Alternate Payees under Qualified Domestic Relations Orders, and an interest rate of 6 ½%.
- (C) For the determination of the amount of a single sum cashout, the applicable interest rate means the adjusted first, second, and third segment rates applied under rules similar to the rules of Code section 430 (h)(2)(C) (determined by not taking into account any adjustment under clause (iv) thereof) for the month before the date of the distribution or such other time as the Secretary may by regulations prescribe.
- (D) Applicable segment rates
- (1) The adjusted first, second, and third segment rates are the first, second, and third segment rates which would be determined under Code section 430 (h)(2)(C) (determined by not taking into account any adjustment under clause (iv) thereof) if—
- (a) Code section 430 (h)(2)(D) were applied by substituting the average yields for the month described in subparagraph (B) for the average yields for the 24-month period described in such section,
- (b) section 430 (h)(2)(G)(i)(II) were applied by substituting "section 417 (e)(3)(A)(ii)(II)" for "section 412 (b)(5)(B)(ii)(II)", and

- (c) the applicable percentage under section 430 (h)(2)(G) were determined in accordance with the following table:

Distributions in Plan Year Beginning	Applicable Percentage
2008	20 percent
2009	40 percent
2010	60 percent
2011	80 percent
2012	100 percent

- (E) Notwithstanding the foregoing, the determination of the amount of a single sum cashout paid on or after May 1, 2008 shall be based on the mortality table specified under I.R.C. §430(h)(3)(A) (without regard to the §430(h)(3)(C) substitute mortality table or the I.R.C. §430(h)(3)(D) mortality table for the disabled).

1.4 Administrative Manager.

- (A) The term "Administrative Manager" means the manager employed by the Board of Trustees in accordance with the Agreement and Declaration of Trust.

1.5 Alternate Payee.

- (A) The term "Alternate Payee" means a Participant's Spouse, former Spouse, child or other dependent who is recognized by a Domestic Relations Order as having a right to receive all, or a portion of, the benefits under this Plan, with respect to the Participant.

1.6 Beneficiary.

- (A) The term "Beneficiary" means the Spouse to whom a Participant or former Participant was married if the Participant's death occurred after August 22, 1984, unless such Spouse has consented in writing to a non-spouse Beneficiary and the consent has been witnessed by a Plan representative or by a notary public.
- (B) An unmarried Participant's "Beneficiary" means the person(s) designated by the Participant's latest written notice to the Board of Trustees prior to his/her death.
- (C) In the event no valid Beneficiary designation has been filed with the Board of Trustees at the date of an unmarried Participant's death, or if the Participant is not survived by the Beneficiary designated, the Beneficiary shall be provided for in Article 8.3.



1.7 Break in Service.

- (A) The term "Break in Service" means a Plan Year beginning on or after an Employee becomes an eligible Participant during which the Participant fails to acquire 435 Hours of Service. Hours of Service shall be recognized for maternity and paternity leaves of absence, as defined by the Plan, solely for purposes of determining whether a Break in Service has occurred. It shall not be considered a Break in Service if a Participant is unable to maintain a Year of Service because of an accident or illness or because of service in the Armed Forces, provided the Administrative Manager is notified of such circumstances on a form satisfactory to the Trustees. Provided further, effective December 12, 1994, the provisions, where appropriate, of United Services Employment and Reemployment Rights Act of 1994 shall also apply as follows:
- (1) An individual reemployed under Uniformed Services Employment and Reemployment Rights Act (USERRA) is treated under the Plan as not having incurred a Break in Service with the Employer maintaining the Plan because of the individual's period of "qualified military service", i.e., any service in the uniformed services by any individual who is entitled to reemployment rights under USERRA, IRC §414(u)(5).
  - (2) Each period of qualified military service by an individual is, upon reemployment under the Uniformed Services Employment and Reemployment Rights Act (USERRA) considered under the Plan to be service with the Employer maintaining the Plan for the purposes of:
    - (a) determining the nonforfeitability of the individual's Accrued Benefits under the Plan, and
    - (b) determining the accrual of benefits under the Plan.
- (B) In the case of an Employee who is entitled to a Vested Benefit but who has suffered a Break in Service and then returns to Covered Service with an Employer, the Employee shall participate in the Plan immediately upon returning to such Covered Service. In the case of an Employee with no Vested Benefit who sustains a Break in Service in which the number of consecutive Years in which he/she has incurred a Break in Service are less than the number of Years of Service for which he/she had received credit, the Employee shall participate immediately upon returning to Covered Service with an Employer.

1.8 Computation Period For Eligibility To Participate.

- (A) The Computation Period used to determine an Employee's eligibility to participate in the Plan shall be measured from the first day of the Employee's first payroll period, as long as the payroll period is no more than 31 days, and ending on the anniversary of the last day of such payroll period.

1.9 Contiguous Non-Covered Service.

- (A) Contiguous Non-Covered Service shall mean Non-Covered Service with the same single Employer which immediately precedes or immediately follows Covered Service where no quit, discharge, lay-off or retirement occurs between such Covered Service and Non-Covered Service.

1.10 Contributions.

- (A) The term "Contributions" means payment to the Trust Fund by an Employer as required under applicable Collective Bargaining Agreements or other written agreements.

1.11 Covered Service.

- (A) The term "Covered Service" means that Service with an Employer or Employers maintaining a Plan within a job classification or class of Employees covered under the Plan that compensation is paid for or is entitled to payment for, in accordance with the collective bargaining agreement.

1.12 Domestic Relations Order.

- (A) The term "Domestic Relations Order" means a judgment, decree or order (including approval of a property settlement agreement) that: (1) relates to the provision of child support, alimony payments or marital property rights to a Spouse, former Spouse, child or other dependent of a Participant and (2) is made pursuant to a state domestic relations law (including a community property law).

1.13 Earliest Retirement Age.

- (A) The term "Earliest Retirement Age" means the earliest date on which a Participant could elect to receive retirement benefits under the Plan.

1.14 Early Retirement Age.

- (A) The term "Early Retirement Age" means the age prior to the Participant's 62<sup>nd</sup> birthday when he/she first reaches age 55 and has been credited with 10 or more Years of Service.

1.15 Employee.

- (A) The term "Employee" means:
- (1) All Employees represented for the purpose of collective bargaining by the Union who perform more than 50% of his/her work as bargaining unit work for an Employer who is required to make contributions to the Trust Fund in

accordance with the relevant collective bargaining agreement. These Employees shall be referred to as Collectively Bargained Employees.

- (2) All Employees who are former Collectively Bargained Employees who are performing work for an Employer which is a party to a collective bargaining agreement or is/are Employees of the Union. These Employees shall be referred to as Bargaining Unit Alumni and their participation in the Plan is permitted only if the Plan does not treat Bargaining Unit Alumni more favorably than similarly situated Collectively Bargained Employees and that no more than 5% of the Participants in the Plan are Non-collectively Bargained Employees. For purposes of vesting and benefit accrual for Service earned on or after May 1, 1989, these Employees shall be considered as Non-collectively Bargained Employees.
- (3) All other Employees of the Union who are not Bargaining Unit Alumni who participate on a non-discriminatory basis and are not treated more favorably than similarly situated Collectively Bargained Employees or Bargaining Unit Alumni. These Employees shall be referred to as Non-collectively Bargained Employees.
- (4) Effective January 1, 1993, all Employees who were previously employed by Bricklayers and Allied Craftsmen Local No. 7 who as of that date became Employees of the Ohio Northern District Council of Bricklayers and Allied Craftsmen, now known as Northern Ohio Administrative District Council, as a result of the merger of Bricklayers and Allied Craftsmen Local 7 into that Council.
- (5) The term "Employee" shall not include partners or self-employed persons no matter how designated.
- (6) An Employee shall not be ineligible to participate in the benefits of the Plan because of his/her participation in a labor dispute or because of his/her absence from work due to such labor dispute or because of his/her being locked out by his/her Employer.

#### 1.16 Employer.

- (A) The term "Employer" means:
  - (1) The Akron Division of the Associated Contractors of Ohio and The Akron Mason Contractors Association, referred to individually or collectively as the "Association." Employers who are parties to collective bargaining agreement with the Union as a result of their affiliation with the Association shall be referred to as "Association Employers."

- (2) Any other individual, firm, association, partnership or corporation who is performing work at the bricklayers and masonry industry and who is bound by a collective bargaining agreement with the Union and therefore participates in and contributes to the Trust Fund. An Employer's participation shall be on terms which the Trustees, in their absolute discretion, shall determine. An Employer in this subsection shall be called an "Independent Employer."
- (3) If the Trustees provide by resolution and if not judicially determined by a court of final jurisdiction to be a violation of any law or statute, the term "Employer" may also include the Union, provided that the Union first (a) becomes contractually obligated to make contributions on behalf of its Employees; (b) signs a copy of this Agreement or in some other manner acceptable to the Trustees consents in writing to be bound by the terms of this Agreement; and (c) has been accepted for participation in the Fund by the Trustees on terms which, in their absolute discretion, the Trustees shall determine. The Employers in this subsection shall have no vote in the selection of Employer Trustees.
- (4) Employer shall also include any individual, firm, association, partnership, or corporation who has a collective bargaining agreement with the Trustees, makes contributions according to that agreement to the Trust Fund on Bargaining Unit Alumni employed by it subject to the restrictions of Section 1.15.
- (5) The Employers shall, by the making of payments to the Trust Fund pursuant to a collective bargaining agreement, be conclusively deemed to have accepted and be bound by the Agreement and Declaration of Trust.

1.17 Fiduciary.

- (A) The term "Fiduciary" means a person who:
  - (1) Exercises any discretionary authority or discretionary control respecting management of this Plan or exercises any authority or control respecting management or disposition of its assets; or
  - (2) Renders investment advice for a fee or other compensation, direct or indirect, with respect to any monies or other property of this Plan, or has any authority or responsibility to do so; or
  - (3) Has any discretionary authority or discretionary responsibility in the administration of this Plan.

1.18 Forfeited Service.

- (A) The term "Forfeited Service" means the number of Years of Service as otherwise credited to a Participant that becomes forfeited. If a Non-Vested Employee forfeits Service under this Plan and subsequently returns to employment with an Employer, he/she shall be treated as if he/she were a new Employee first beginning to work with an Employer. A Vested Employee cannot forfeit Service under this Plan.
- (B) For Plan Years prior to May 1, 1985, all Service credited to a Non-Vested Employee shall be forfeited at the time such Employee suffers consecutive 1 year Breaks In Service equal to or exceeding such credited Service.
- (C) For Plan Years commencing on or after May 1, 1985, all Service credited to a Non-Vested Employee shall be forfeited at the time such Employee suffers consecutive one year Breaks In Service equaling or exceeding the greater of 5 or the Employee's aggregate number of years of Service preceding such Break in Service.
- (D) No Plan benefits shall be based on hours worked for which Years of Service were credited that later become Forfeited Service.

1.19 Hours of Service - Hours Worked.

- (A) The Board of Trustees has adopted the use of the alternative equivalency method of "hours worked" to credit Hours of Service for Participation, Vesting, and Benefit Accrual. The term "Hours Worked" or "Hours of Service" shall mean each hour for which an Employee is paid or entitled to payment for the performance of duties for an Employer and hours for which back pay, irrespective of mitigation of damages, is awarded or agreed to by an Employer, to the extent that such award or agreement is intended to compensate an Employee for periods during which the Employee would have been engaged in the performance of duties for the Employer. For the purpose of the equivalency DOL regulations 2530.200(b)-2(b)(c) are incorporated by reference.
- (B) Each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Employer. There will be no duplication of hours. Thus, for example, an employee who receives a back pay award following a determination that he or she was paid at an unlawful rate for hours of service previously credited will not be entitled to additional credit for the same hours of service. These hours will be credited to the Employee for the computation period or periods to which the award or agreement pertains rather than the computation period in which the award, agreement or payment is made.
- (C) Each hour for which an Employee is absent from work due to Maternity/Paternity Leaves of Absence as defined in Section 1.23, for the sole purpose of determining whether a Break in Service has occurred, Hours of Service pursuant to this subparagraph shall be credited only to the extent they would have been credited but for

such absence, or if such number of Hours of Service credited pursuant to this sub-paragraph exceed the minimum number of Hours of Service needed to prevent the occurrence of a Break in Service in the Plan Year such absence begins. However, if in the Plan Year in which such absence begins, the Employee has a sufficient number of Hours of Service to prevent the occurrence of a Break in Service without regard to this sub-paragraph, the Employee shall be credited with the minimum number of Hours of Service needed to prevent the occurrence of a Break in Service during the Plan Year which immediately follows the Plan Year in which the absence begins. Notwithstanding the foregoing, no Hours of Service shall be credited under this sub-paragraph unless the Employee furnishes to the Board of Trustees such information as the Trustee may require to establish (i) that the Employee's absence from work is due to the reasons described in this section and (ii) the number of days for which there was such an absence. The provisions of this sub-paragraph shall not apply unless the Employee was in the active service of an Employer immediately prior to such absence after January 1, 1985.

- (D) Effective December 12, 1994, each hour for which an Employee is absent from work due to qualified military service in the Armed Forces of the United States, as defined in Section 1.48(E), for the sole purpose of determining whether a Break in Service has occurred. Hours of Service pursuant to this subparagraph (D) shall be credited only to the extent they would have been credited but for such absence, or if such number of Hours of Service cannot be determined, at the rate of eight Hours of Service per day of absence. In no event, however, shall the number of Hours of Service credited pursuant to this subparagraph (D) exceed the minimum number of Hours of Service needed to prevent the occurrence of a Break in Service in the Plan Year such absence begins. However, if in the Plan Year such absence begins, the Employee had earned a sufficient number of Hours of Service to prevent the occurrence of a Break in Service without regard to this subparagraph (D), the Employee shall be credited with the minimum number of Hours of Service needed to prevent the occurrence of a Break in Service during the Plan Year which immediately follows the Plan Year in which the absence begins.
- (E) Hours of Service will be credited for employment with other members of an affiliated service group (under IRS Code Section 414(m)), a controlled group of corporations (under IRS Code Section 414(b)), or a group of trades or businesses under common control (under IRS Code Section 414)(c)), of which the adopting Employer is a member, and any other entity required to be aggregated with the Employer pursuant to IRS Code Section 414(o).

#### 1.20 Inactive Participant.

- (A) The term "Inactive Participant" means a Participant who has not yet become a retired, disabled, or deceased Participant and who has not yet suffered a Forfeiture of Service, and who has not accrued at least 1 Year of Service out of the 2 preceding Plan Years.

1.21 Jurisdiction of this Fund.

- (A) The term "Jurisdiction of this Fund" shall mean the industry, trade, or craft in the geographical area over which the Union has jurisdiction.

1.22 Leased Employees

- (A) Effective January 1, 1997, the term "Leased Employee" means any person (other than an Employee of the recipient) who pursuant to an agreement between the recipient and any other person ("leasing organization") has performed Services for the recipient (or for the recipient and related persons determined in accordance with IRC Section 414(n)(6)) on a substantially full-time basis for a period of at least 1 year, and whose Services are performed under primary direction or control by the recipient. Contributions or benefits provided a Leased Employee by the leasing organization that are attributable to performed for the recipient Employer shall be treated as provided by the recipient Employer.
- (B) A Leased Employee shall not be considered an Employee of the recipient if: (A) such Employee is covered by a money purchase pension plan providing: (1) a nonintegrated Employer contribution rate of at least 10% of compensation, as defined in IRC Section 415(c)(3), but including amounts contributed pursuant to a salary reduction agreement which are excludable from the Employee's gross income under IRC Section 126, 402(c)(3), 402(h)(1)(B) or 403(b), (2) immediate participation, and (3) full and immediate vesting; and (B) Leased Employees do not constitute more than 20% of the recipient's nonhighly compensated work force.

1.23 Maternity/Paternity Leaves of Absence.

- (A) "Maternity/Paternity Leaves of Absence" means any absence from work for maternity or paternity reasons for any period by reason of the Employee's pregnancy, birth of the Employee's child, placement of a child with the Employee in connection with the adoption of such child, or any absence for the purpose of caring for such child for a period immediately following such birth or placement.

1.24 Non-Vested Employee or Participant.

- (A) The term "Non-Vested Participant shall mean a Participant who has less than 5 Years of Service.

1.25 Normal Retirement Age.

- (A) The term "Normal Retirement Age" means, for Participants who do not have at least 1 Hour of Service after May 1, 1997, the earlier of:
  - (1) the time the Participant attains at least age 62 and has been credited with 10 or more Years of Service; or

- (2) the later of:
  - (a) age 65, or
  - (b) the fifth anniversary of the time the Participant first commenced participation in the Plan.
- (B) The term "Normal Retirement Age" for Participants who do have at least 1 Hour of Service after May 1, 1997 shall be the earlier of:
  - (a) the time the Participant attains at least age 62 and has been credited with 5 or more Years of Service; or
  - (b) the later of:
    - (i) age 65, or
    - (ii) the fifth anniversary of the time the Participant first commenced participation in the Plan.

1.26 Original Plan.

- (A) The term "Original Plan" means the Plan as it was in effect prior to this Restated Plan.

1.27 Participant.

- (A) Each Employee who was a Participant in the original Plan as of May 1, 1976 and who did not suffer a Break in Service as that term was used in the original Plan as of that date shall be a Participant in the Plan as of May 1, 1976.
- (B) Each person who becomes an Employee on or after May 1, 1976 shall become a Participant on the beginning of the Plan Year following the total of 435 hours worked within the Computation Period For Eligibility or on November 1, whichever is earlier. If an Employee does not become a Participant within the first Computation Period For Eligibility, the Employee must meet the requirements of participation within subsequent twelve-month periods as if he/she were a new Employee first beginning to work for an Employer.
- (C) Once an Employee becomes a Participant, his/her eligibility for continued participation shall be measured by Service within a Plan Year beginning with the Plan Year which includes the first anniversary of the Employee's employment commencement date.
- (D) An Employee who loses his/her status as a Participant as a result of a Forfeiture of Service shall again become a Participant by meeting the requirements of this Section



within a Plan Year on the basis of work after the Plan Year during which his/her participation terminated.

1.28 Pension Plan.

- (A) The term "Pension Plan" or "Plan," means the Plan, program, method, rules and procedure for the payment of benefits from the Trust Fund, plus any amendments, which have been established and adopted by the Trustees.

1.29 Plan Year.

- (A) The term "Plan Year" means the 12 month period beginning May 1 and ending the following April 30.

1.30 Qualified Domestic Relations Order.

- (A) The term "Qualified Domestic Relations Order" means a Domestic Relations Order which creates or recognizes the existence of an Alternate Payee's right to, or assigns to an Alternate Payee the right to, receive all or a portion of the benefits payable to a Participant, specifies required information and does not alter the amount or form of Plan benefits.

1.31 Qualified Joint and Survivor Benefit.

- (A) The term "Qualified Joint and Survivor Benefit" means an annuity which commences immediately (1) for the Participant's life with a Survivor Annuity for the life of the Spouse which is not less than 50% of (and not greater than 100%) of the amount of the annuity payable during the joint lives of the Participant and the Spouse, and (2) which is the Actuarial Equivalent as defined in Section 1.3(B) of a single annuity for the life of the Participant.

1.32 Qualified Pre-Retirement Survivor Benefit.

- (A) The term "Qualified Pre-Retirement Survivor Benefit" means a Qualified Joint and 50% Survivor benefit for the life of a Participant's surviving Spouse payable in accordance with the Plan provisions stated in Article V.

1.33 Reciprocity.

- (A) For purposes of crediting service under this Plan, if the Board of Trustees enters into money-follows-the-man reciprocity agreements, such agreement shall be a part of this Plan and all hours transferred into this Plan under such agreements shall be credited as hours worked for crediting Service under this Plan. All hours transferred from this Plan in accordance with such reciprocity agreements will be removed from

the records of this Plan and no longer will be credited towards participation, vesting, eligibility and benefit accrual.

1.34 Restatement Date.

- (A) The term "Restatement Date" means May 1, 2014, the date on which the provisions of this amended and restated Pension Plan become effective, except as stated otherwise.

1.35 Retirement Benefit or Benefits.

- (A) The term Retirement Benefit or Benefits means those classes of benefits provided by the Plan as set forth in Article II.

1.36 Same Geographic Area.

- (A) The term "Same Geographic Area" means the State of Ohio and portions of those states located as a part of a Standard Metropolitan Statistical Bureau, as defined by the U.S. Census Bureau.

1.37 Same Industry.

- (A) The term "Same Industry" means the same type of business activity or activities as that engaged in by any Employer maintaining the Plan.

1.38 Same Trade of Craft.

- (A) The term "Same Trade or Craft" means a trade of craft in which an Employee was employed at any time under the Plan. "Same Trade or Craft" includes any supervisory or managerial activity which is reasonably related to the underlying skills associated with the trade or craft for which the Employee was trained or in which he/she acquired his/her work experience.

1.39 Spouse or Eligible Spouse

- (A) The term "Spouse" or "Eligible Spouse" means the Participant's legal spouse who has been married to the Participant for at least 1 year at the time a Qualified Pre-Retirement Survivor Benefit is first payable or the Participant's legal Spouse who has been married to the Participant at least 1 year at the first time the Participant commences receiving retirement benefits provided by this Plan.
- (B) Effective June 26, 2013, the term "Spouse" or "Eligible Spouse" shall include individuals married to a person of the same sex if the individuals were lawfully married under state law in a state whose laws authorize the marriage of two individuals of the same sex even if the married couple is domiciled in a state that does not recognize the validity of same-sex marriages.

- (C) The term "Spouse" or "Eligible Spouse" does not include individuals (whether of the opposite sex or the same sex) who have entered into a registered domestic partnership, civil union, or other similar formal relationship recognized under state law that is not denominated as a marriage under the laws of that state.

1.40 Terminated Vested Participant.

- (A) A "Terminated Vested Participant" means a Vested Participant who has not yet become a retired, disabled, or deceased Participant and has not accrued at least 1 Year of Service out of the 2 preceding Plan Years.

1.41 Total and Permanent Disability.

- (A) An Employee shall be considered totally and permanently disabled and therefore eligible for Total and Permanent Disability Benefits the Employee it is determined by the Social Security Administration that, prior to May 1, 2009, an Employee's physical or mental condition completely prevents the Employee from engaging in work for wage or profit within the same industry, trade or craft and, in the opinion of the medical examiner, the disability will be permanent and continuous during the remainder of his/her life. However, no Employee shall be deemed to be totally and permanently disabled for the purpose of this Pension Plan if his/her incapacity was contracted, suffered or incurred while he/she was engaged in a felonious enterprise, or resulted therefrom, or resulted from an intentionally self-inflicted injury, or from an injury, wound or disability suffered or arising out of a state of war.
- (B) There shall be no Total and Permanent Disability for any disability occurring after May 1, 2009.

1.42 Trust Agreement.

- (A) The "Trust Agreement" means the Amended and Restated Agreement and Declaration of Trust.

1.43 Trust Fund.

- (A) The term "Trust Fund" means the BRICKLAYERS AND ALLIED CRAFTSMEN LOCAL NO. 7 PENSION FUND and the Plan's assets including all funds received in the form of Employer contributions, together with all contracts (including dividends, interest, refunds and other sums payable to the Trustees on account of such contracts), all investments made and held by the Trustees, all income, increments, earnings, and profits therefrom and any and all other property or funds received and held by the Trustees by reason of their acceptance of the Trust Agreement.

1.44 Trustees.

- (A) The term "Trustees" means any natural person designated as a Trustee pursuant to the Amended Agreement and Declaration of Trust or his/her successor or successors. The Trustees, collectively, shall be the "Administrative Manager" as that term is used in the Act. The term "Employer Trustees" shall mean the Trustees selected by the Employer. The term "Union Trustees" shall mean the Trustees selected by the Union. The designation "Employer Trustee" or "Union Trustee" shall not affect or alter the duty of each Trustee appointed to act in a Fiduciary capacity.

1.45 Union.

- (A) The term "Union" means the BRICKLAYERS & ALLIED CRAFTWORKERS LOCAL NO. 7 who has in effect with the Association or with other Employers collective bargaining agreements providing for the establishment and maintenance of a pension Plan and trust fund and for the payment of contributions to such Fund.
- (B) The term "Union" shall also mean any Local Union affiliated with Bricklayers & Allied Craftworkers International Union of America, AFL-CIO, who becomes party to a collective bargaining agreement requiring contributions by Employers into this Fund and has been accepted for participation in the Fund by Bricklayers & Allied Craftworkers Local No. 7 and the Trustees on terms which, in their sole discretion, Bricklayers & Allied Craftworkers Local No. 7 and the Trustees shall determine.
- (C) The Union is affiliated with the Northern Ohio Administrative District Council of Bricklayers and Allied Craftworkers, now known as the Northern Ohio Administrative District Council of Bricklayers & Allied Craftworkers. The Union maintains its own autonomy.

1.46 Vested Participant.

- (A) The term "Vested Participant" means a Participant who has at least 5 or more years of Service. The determination of vesting service for a Participant who works between Collectively Bargaining and Non-collectively Bargained work shall be made by crediting service to vesting under which the Participant works more than 50% of the time in the Plan Year.

1.47 Vesting and Benefit Accrual Computation Period.

- (A) The vesting and benefit accrual computation period for this Plan shall be the Plan Year.

1.48 Year of Service.

- (A) The term "Year of Service" or "Service" shall mean the number of years for which a Participant receives credit on the records of the Plan. Service shall be equal to the number of Years of Past Service plus the number of Years of Future Service and shall be used for Participation, Vesting, and Eligibility for Benefits.
- (B) Service Prior to May 1, 1976. For a Participant as of the Restatement Date who had been covered under the provisions of the original Plan, the following shall be counted as Service:
  - (1) Past Service. Past Service shall be granted to an Employee who worked in the jurisdiction of the Union on and before February 1, 1968. 1 year of Past Service shall be granted to an Employee for each Plan Year that the Employee worked in the jurisdiction of the Union during the period February 1, 1948 to February 1, 1968. Any past service as otherwise granted shall be canceled upon the Employee suffering a Break in Service after February 1, 1968.
  - (2) Future Service. Future Service shall be granted to Employees after February 1, 1968. 1 year of Future Service shall be granted to an Employee for each Plan Year during which he/she receives contribution credits on the records of this Fund. Any future Continuous Service as otherwise granted to an Employee prior to his/her suffering a Break in Service shall be canceled.
- (C) Service On And After May 1, 1976. On and after May 1, 1976, one Year of Service shall be granted to an Employee who has met the requirements for initial eligibility to participate in this Plan. Subsequent Years of Service shall be earned by a Participant who has 435 hours of work within a Plan Year beginning with the Plan Year which includes the first anniversary of the Employee's employment commencement date. The total Service of the Participant shall not include any Years of Breaks in Service.
- (D) For purpose of determining a Year of Service, all Covered Service and all Contiguous Non-Covered Service with an Employer or Employers maintaining the Plan shall be taken into account provided, however, no Contiguous Non-Covered Service shall be credited to the Plan unless the Employer or Participant notifies the Administrative Manager of the hours worked by the Participant in Non-Covered Service within 90 days after the date of participation or the Plan Year, whichever is later.
- (E) Qualified Military Service.
  - (1) Effective December 12, 1994 and after, the term "Qualified Military Service" shall mean any absence from work by reason of active duty in the Armed Forces of the United States. An Employee shall be given full credit

for benefit accrual, hours of service, participation, vesting, years of credited service and years of vesting service for time periods, not to exceed 5 years, in which he/she was absent from work due to military service.

- (2) The five 5 year limitation indicated above and in this Section shall not include any service –
- (a) That is required beyond 5 years to complete an initial period of obligated service;
  - (b) During which the individual was unable to obtain orders releasing him/her from service in the uniformed services before expiration of the 5 year period, and such inability was through no fault of the individual;
  - (c) Performed as required pursuant to 10 U.S.C. 10147, under 32 U.S.C. 502(a) or 503, or to fulfill additional training requirements determined and certified in writing by the Secretary of the military department concerned to be necessary for professional development or for completion of skill training or retraining;
  - (d) Performed by a member of a uniformed service who is: (1) ordered to or retrained on active duty under sections 12301(a), 12301(g), 12302, 12304, 12305, or 688 of Title 10, United States Code, or under 14 U.S.C. 331, 332, 359, 360, 367, or 712; (2) ordered to or retrained on active duty (other than for training) under any provision of law during a war or during a national emergency declared by the President or the Congress; (3) ordered to active duty (other than for training) in support, as determined by the Secretary of the military department concerned, of an operational mission for which personnel have been ordered to active duty under 10 U.S.C. 12304; (4) ordered to active duty in support, as determined by the Secretary of the military department concerned, of a critical mission or requirement of the uniformed services, or (4) called into Federal service as a member of the National Guard under chapter 15 or under section 12406 of Title 10, United States Code.
- (3) Contributions shall be made for the above leave of absence by the Fund or as otherwise determined at the discretion of the Board of Trustees of the Fund, in compliance with 38 U.S.C. §4318, as amended, and any regulations promulgated thereunder. Said contributions shall be based upon the average hours reported monthly to the Fund over the lesser of 36 months or the period of the Participant's participation immediately prior to Military Service.

- (4) In order for an Employee to receive continuing benefits as outlined above, upon the completion of a period of service in the uniformed services, said Employee shall notify the respective Employer with advance written or verbal notice of such service. An Employee, upon the completion period of service in the uniformed services, shall notify the Employer, as referred to in such subsection below, of the Employee's intent to return to a position of employment with such Employer as follows:
- (a) In the case of a person whose period of service in the uniformed services was less than 31 days, by reporting to the Employer – (1) not later than the beginning of the first full regularly scheduled work period on the first full calendar day following the completion of the period of service and the expiration of 8 hours after a period allowing for the safe transportation of the Employee from the place of that service to the Employee's residence; or (2) as soon as possible after the expiration of the 8 hour period referred to in clause (1) above, if reporting within the period referred to in such clause is impossible or unreasonable through no fault of the person.
  - (b) In the case of an Employee who is absent from a position of employment for a period of any length for the purpose of an examination to determine the Employee's fitness to perform service in the uniformed services, by reporting in the manner and time referred to in subparagraph (a).
  - (c) In the case of an Employee whose period of service in the uniformed services was more than 30 days but less than 181 days, by submitting an application for reemployment with the Employer not later than 14 days after the completion of the period of service or if submitting such application within such period is impossible or unreasonable through no fault of the Employee, the next first full calendar day when submission of such application becomes possible.
  - (d) In the case of an Employee whose period of service in the uniformed services was for more than 180 days, by submitting an application for reemployment with the Employer not later than 90 days after the completion of the period of service.
- (5) Furthermore, in order to restore the above pension rights, the Employee must notify the Fund Office in writing, within 60 days of his/her discharge, of his/her intent to return to work.
- (6) Upon an Employee's honorable discharge from military service the Employee's eligibility status under the Plan will be restored to the status that existed when he/she entered military service, provided the Employee fulfills the notice and documentation requirements outlined above. In addition to

said notice, the Employee shall also supply the Fund Office with copies of his/her discharge papers showing the date of his/her induction or enlistment in military service and the date of his/her discharge. Failure on the part of the Employee to file such notice and documentation with the Fund Office may be deemed an indication that the Employee does not wish to restore his/her eligibility status under the Plan.

- (7) A person who is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of service in the uniformed services shall, at the end of the period that is necessary for the person to recover from such illness or injury, report to the person's Employer (in the case of a person described in subparagraph (a) or (b) of paragraph (4)) or submit an application for reemployment with such Employer (in the case of a person described in subparagraph (c) or (d) of such paragraph). Except as provided in subparagraph (8) below such period of recovery may not exceed 2 years.
- (8) Such 2 year period shall be extended by the minimum time period to accommodate the circumstances beyond such person's control which make reporting within the period specified in subparagraph (a) impossible or unreasonable.



## ARTICLE II: CLASSES OF BENEFITS

### 2.1 Classes of Benefits.

- (A) There shall be 4 Classes of Benefits payable under this Plan.
  - (1) Normal Retirement Benefits
  - (2) Early Retirement Benefits
  - (3) Total and Permanent Disability Benefits (but only for a total and permanent disability that occurred prior to May 1, 2009 as determined by the Social Security Administration)
  - (4) Death Benefits

### 2.2 Non-Duplication of Benefits.

- (A) Notwithstanding any other provisions of the Pension Plan, no Participant shall be eligible for more than one class of benefit at the same time.

### ARTICLE III: NORMAL RETIREMENT BENEFITS

#### 3.1 Eligibility for Normal Retirement Benefits.

- (A) An Active Participant who completely retires from Covered Service employment with all Employers in the jurisdiction of the Fund after attainment of Normal Retirement Age shall be eligible to receive a Normal Retirement Benefit at his/her Normal Retirement Date.

#### 3.2 Amount of Normal Retirement Benefit.

- (A) The Normal Retirement Benefit shall be a monthly benefit equal to the sum of the Participant's Past Service Benefit, if any, and his/her Future Service Benefit as follows:
  - (1) Past Service Benefit.
    - (a) The Past Service Benefit shall be determined based on Section 1.48(A)(1) countable Years of Past Service multiplied by \$1.00.
  - (2) Future Service Benefit.
    - (a) For Participants who retire prior to May 1, 1997, the Future Service Benefit shall be equal to 3.3% of the Employer Contributions made to the Trust Fund on the Participant's behalf subsequent to the later of February 1, 1968, or the date the Participant last suffered Forfeited Service, or the date the Employer becomes a Participant.
    - (b) For Active Participants who retire on or after May 1, 1997, the Future Service Benefit shall be equal to 3.85% of the Employer Contributions made to the Trust Fund on the Participant's behalf subsequent to the later of February 1, 1968, or the date the Participant last suffered Forfeited Service, or the date the Employee becomes a Participant. This Future Service Benefit only applies to Active Participants and excludes Terminated Vested Participants.
    - (c) For Active Participants who retire on or after May 1, 1998, the Future Service Benefit shall be equal to 4.05% of the Employer Contributions made to the Trust Fund on the Participant's behalf subsequent to the later of February 1, 1968, or the date the Participant last suffered Forfeited Service, or the date the Employee becomes a Participant. This Future Service Benefit only applies to Active Participants and excludes Participants.

- (d) Benefit accrual, under this Plan, is not affected by the age of the Participant.
- (e) Participants who retire after their normal retirement date will receive a monthly benefit that is the greater of the Accrued Benefit earned at the time of their retirement or the Actuarial Equivalent value, as defined in Section 1.3(B), of their Accrued Benefit earned at their Normal Retirement Age.
- (f) For Active Participants who retire on or after May 1, 1999, the Future Service Benefit shall be equal to 4.10% of the Employer Contributions made to the Trust Fund on the Participant's behalf for hours worked from February 1, 1968 through April 30, 2003 plus 3.0% of Employer Contributions made to the Trust Fund on the Participant's behalf for hours worked from May 1, 2003 through April 30, 2005 plus 1.0% of the Employer Contributions made to the Trust Fund on the Participant's behalf for hours worked from May 1, 2005 through April 30, 2006 plus 1.0% of the first \$2.00 of the Employer Contributions made to the Trust Fund on the Participant's behalf for hours worked on or after June 1, 2006.

### 3.3 Form of Benefit.

- (A) Unless the Participant elects otherwise or has no surviving Spouse, the Normal Retirement Benefit will be paid as a Qualified Joint and 50% Survivor Benefit as provided in Article V.
- (B) For a Participant who as of May 1, 2009 has not commenced receiving pension benefits, the 60 month guarantee of benefit payments has been changed to a life only benefit. This benefit is payable to a Participant over his/her lifetime.

### 3.4 Commencement of Normal Retirement Benefits.

- (A) A Participant's commencement date shall be no later than 60 days after the close of the Plan Year in which the Participant meets the eligibility requirements for Normal Retirement. A Participant who meets the eligibility requirements for Normal Retirement Benefits as set forth in Section 3.1, upon voluntary retirement and who has applied for such benefit, shall become entitled to Normal Retirement Benefits on the first day of the month following receipt of his/her application for Normal Retirement Benefit. Normal Retirement Benefits shall continue monthly thereafter until the first day of the calendar month of the Participant's death.
- (B) In the event that a Participant meets the eligibility requirements to be entitled to a Normal Retirement Benefit and has not applied for the benefits by the 60<sup>th</sup> day after the close of the Plan Year in which he/she is eligible, then the benefits shall commence immediately, unless the Participant otherwise elects in writing.

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

3.5 Calculation of Benefit for Terminated Vested Participants.

- (A) The provisions of the Plan that are in effect at the time a Participant first becomes a Terminated Vested Participant shall apply to any benefit calculation at the time the Participant becomes eligible to receive a Normal, Early, Vested or Qualified Joint and 50%, 75% or 100% Survivor Benefit.
- (B) In the event a Terminated Vested Participant subsequently returns to Covered Service, the Plan provisions in effect after the Terminated Vested Participant returns to Covered Service shall apply only to Service earned after his/her return to Covered Service and for the purpose of calculating any benefit, the Accrued Benefit earned prior to the Participant becoming a Terminated Vested Participant shall be added to the Accrued Benefit earned after his/her return to Covered Service.

## ARTICLE IV: EARLY RETIREMENT BENEFITS

### 4.1 Eligibility for Early Retirement Benefits.

- (A) An Active Participant who has completely retired from Covered Service employment with all Employers within the jurisdiction of this Fund shall be eligible for an Early Retirement Benefit at his/her Early Retirement Age, provided the Active Participant has elected and applied for an Early Retirement Benefit on a form prescribed by the Trustees and the Trustees have approved the application.

### 4.2 Amount of Early Retirement Benefits.

- (A) For Participants who retire on or after May 1, 1999, or Participants who were eligible to retire prior to May 1, 2009 the Early Retirement Benefit shall be a monthly benefit equal to the Participant's Normal Retirement Benefit as described in Article III, Section 3.2, reduced at the rate of 1/3 of 1% for each month the Participant is younger than age 62 on the commencement date of his/her Early Retirement.
- (B) For Participants who were not eligible for an Early Retirement Benefit prior to May 1, 2009 and who elected an Early Retirement Benefit on or after May 1, 2009 the Early Retirement Benefit shall be a monthly benefit equal to the Participant's Normal Retirement Benefit as described in Article III, Section 3.2 reduced at the rate of 7% per year or .583% for each month the Participant is younger than age 62 on the commencement date of his/her Early Retirement Benefit.

### 4.3 Form of Benefit.

- (A) Unless the Participant elects otherwise or has no surviving Spouse, the Early Retirement Benefit will be paid as a Joint & 50% Survivor Benefit as provided in Article V.
- (B) For a Participant who as of May 1, 2009 has not yet commenced receiving pension benefits, the 60 month guarantee of benefit payments has been changed to a life only benefit. This benefit is payable to a Participant over his/her lifetime.

### 4.4 Commencement of Early Retirement Benefits.

- (A) A Participant who meets the eligibility requirements for Early Retirement Benefits as set forth in Section 4.1, upon voluntary retirement and has applied for such benefits, shall become entitled to Early Retirement Benefits as of the first day of the month next following receipt of his/her application by the Trustees. Early Retirement Benefits shall continue monthly thereafter until the first day of the calendar month of the Participant's death.

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- (B) If a Participant separates from service before satisfying the age requirement for early retirement, but has satisfied the service requirement pursuant to the Plan document in effect at the time the Participant terminates service, the Participant will be entitled to elect an early retirement benefit upon satisfaction of such age requirement.

## ARTICLE V: FORMS OF BENEFIT & ELECTION PROCEDURE

### 5.1 Automatic Form of Retirement Benefit.

(A) The automatic form of retirement benefit under this Plan is the Qualified Joint and 50% Survivor Benefit and is payable in one of the following forms:

(1) **Qualified Joint and Survivor Benefit:** The term "Qualified Joint and Survivor Benefit" means an annuity which commences immediately

(a) for the Participant's life, with a Survivor Annuity for the Spouse's life which is not less than 50 percent and not greater than 100 percent of the amount of the annuity payable during the Participant's and Spouse's joint lives, and

(b) which is the Actuarial Equivalent, as defined in Section 1.3(B), of a single annuity for the Participant's life.

(2) **Qualified Pre-Retirement Survivor Benefits:** A Qualified Pre-Retirement Survivor Benefit is an annuity for the Participant's surviving Spouse's life. Under a Qualified Pre-Retirement Survivor Benefit, the amount of payments to the surviving Spouse shall be the same as, or the Actuarial Equivalent, as defined in Section 1.3(B), of the amount of the benefit which would have been provided under the Qualified Joint and Survivor Benefit if:

(a) in the case of a Participant who dies after attaining the Earliest Retirement Age under the Plan, the Participant had retired with an immediate Qualified Joint and Survivor Benefit on the day before his/her death.

(b) in the case of a Participant who dies on or before the Earliest Retirement Age under the Plan, the Participant had: (a) separated from Service on the date of his/her death, (b) survived to the Earliest Retirement Date, (c) retired with an immediate Qualified Joint and Survivor Benefit at his/her Earliest Retirement Age, and (d) died on the day after the date on which he/she would have attained the Earliest Retirement Age.

### 5.2 Eligibility For Qualified Joint and 50% Survivor Benefits.

(A) A Participant who has completely retired from employment with all Employers in the jurisdiction of the Fund shall be eligible for Qualified Joint and 50% Survivor Benefits if:

(1) the Participant is eligible for Normal or Early Retirement Benefits;

- (2) the Participant and his/her Spouse have been married at least one year prior to the Participant's date of retirement; and
- (3) the Participant and his/her Spouse have not waived the automatic Qualified Joint and 50% Survivor Benefit.
- (4) A Participant who satisfies the foregoing eligibility requirements for the Qualified Joint and 50% Survivor Benefits but who wishes to elect and apply for Normal or Early Retirement Benefits may do so prior to the date his/her Qualified Joint and 50% Survivor Benefits commence. After commencement of his/her Qualified Joint and 50% Survivor Benefits, his/her right to elect a Normal or Early Retirement Benefit shall cease.

### 5.3 Right of Election for the Qualified Joint and 50% Survivor Benefit

- (A) In lieu of the Qualified Joint and 50% Survivor Benefit, a Participant may elect the Normal or Early Retirement Benefit form of payment and thereby waive the Qualified Joint and 50% Survivor Benefit.
- (B) Effective May 1, 2007, in order that each Participant may have an adequate opportunity to make an election, an election period is hereby established. The election period shall begin no more than 180 days or less than 30 days prior to the Participant's commencement date. During the election period each Participant shall have the right to receive a written explanation of: (i) the terms and conditions of the Qualified Joint and Survivor Annuity and the relative value of optional forms of benefit; (ii) the Participant's right to make an election to waive the Qualified Joint and Survivor Annuity; (iii) the right of the Participant's spouse to consent to any election to waive the Qualified Joint and Survivor Annuity; (iv) the right of the Participant to revoke such election and the effect of such revocation; and (v) any other explanation required under Section 401(a)(11)(E) or 417(a)(3)(A) of the Internal Revenue Code and any lawful regulations thereunder. During the election period, each Participant shall have the right to waive the Qualified Joint and 50% Survivor Benefit and elect to receive a Normal or Early Retirement Benefit.
- (C) Effective May 1, 1997, with proper spousal consent, a Participant may elect to waive the 30 day notice requirement and elect to commence benefits under this Plan after more than 7 days after such explanation of benefits is provided to the Participant and his/her Spouse.
- (D) Any election made on or after January 1, 1985 to waive the Qualified Joint and 50% Survivor Benefit shall not take effect unless one of the following conditions is satisfied:



- (1) The Participant's Spouse consents in writing to such election, the Spouse's consent acknowledges the effect of such election, and the Spouse's consent is witnessed by a Plan representative or a notary public.
  - (2) It is established to the satisfaction of a Plan representative that the consent required under subsection (1) above may not be obtained because there is no Spouse, because the Spouse cannot be located, or because of such other circumstances as the Secretary of Treasury regulations prescribe.
- (E) Any consent by a Spouse or establishment that the consent of a Spouse may not be obtained shall be effective only with respect to such Spouse.
- (F) A Participant may revoke any election previously made, or deemed to be made, under this Article if made prior to commencement of the payment of benefits under the Plan. The number of revocations shall not be limited. An election may not be revoked after payment of benefits has commenced.
- (G) All elections and revocations shall be made on the appropriate form available from the office of the Administrative Manager of the Pension Plan and shall be effective only upon completing, signing and filing of the form with the office of the Administrative Manager.

#### 5.4 Amount of Qualified Joint and Survivor Benefit.

- (A) The Qualified Joint and 50% Survivor Benefit provides a reduced monthly income that shall be the Actuarial Equivalent, as defined in Section 1.3(B), of the Normal or Early Retirement Benefit to which the Participant is otherwise entitled. The Actuarial Equivalent reduction shall take into account the provision of Section (B).
- (B) In the event the Spouse pre-deceases the retired Participant, the amount of the retired Participant's benefit will be increased to the amount of his/her Normal or Early Retirement Benefit as though the retired Participant had not previously elected the Qualified Joint and 50% Survivor Benefit. The revised benefit amount will be effective on the first day of the month following the death of the retired Participant's Spouse and will be payable for the retired Participant's remaining lifetime.

#### 5.5 Commencement of Qualified Joint and 50% Survivor Benefits.

- (A) A Participant who meets the eligibility requirements for a Normal Retirement Benefit shall be eligible to receive the Qualified Joint and 50% Survivor Benefit no later than 60 days after the close of the Plan Year in which the Participant meets the eligibility requirements for Normal Retirement.
- (B) A Participant who meets the eligibility requirements for Early Retirement Benefits shall become eligible to receive the Qualified Joint and 50% Survivor

Benefit as of the first day of the month next following the receipt of his/her application by the Board of Trustees.

- (C) All monthly benefits under this Section will continue for the lifetime of the Participant, with the last payment to be made on the first day of the calendar month of the Participant's death. 50% of such monthly benefits shall be continued thereafter to the Spouse, with the last payment to be made on the first day of the calendar month of the Spouse's death.

5.6 Non-Applicability of Qualified Joint and 50% Survivor Benefit To Disability Benefit.

- (A) Effective January 1, 1995, for Active Participants who first become eligible to receive the Total and Permanent Disability Benefit provided in Article VI, said benefit shall be paid only in that form and as an ancillary benefit to all other benefits paid under this Plan and the provisions of this Article shall not apply to the Total and Permanent Disability Benefit.

5.7 Qualified Joint and 100% Survivor Benefit Option.

- (A) Subject to the provisions of Section 5.1 through 5.6, a Participant and his/her Spouse may elect to receive a Qualified Joint and 100% Survivor Benefit.

5.8 Qualified Joint and 75% Benefit Option.

- (A) Subject to the provisions of Section 5.1 through 5.6, a Participant and his/her spouse may elect to receive a Qualified Joint and 75% Survivor Benefit.

5.9 60 Month Guarantee

- (A) For a Participant who as of May 1, 2009 has not yet commenced receiving pension benefits, the 60 month guarantee of benefit payments is eliminated except as provided in paragraph (B).
- (B) A Participant who retires on or after May 1, 2009, subject to Section 5.3, can elect the 60 month guarantee with a monthly reduction in benefit. The reduction in the monthly benefit will depend upon the retirement age of the participant as provided in the following table:

Age	Percent Reduction	Age	Percent Reduction	Age	Percent Reduction
55	0.86%	60	1.48%	65	2.61%
56	0.96%	61	1.66%	66	2.92%
57	1.07%	62	1.86%	67	3.25%
58	1.19%	63	2.08%	68	3.61%
59	1.33%	64	2.33%	69	4.00%

## ARTICLE VI – TOTAL AND PERMANENT DISABILITY BENEFITS

### 6.1 Elimination of Disability Benefit

- (A) Effective May 1, 2009, to be eligible for Permanent Total Disability Benefit, the Participant must be disabled before May 1, 2009 as determined by the Social Security Administration. Disability benefits are eliminated for Participants who become disabled on or after May 1, 2009. For those Participants who have retired under the Total and Permanent Disability Benefit prior to May 1, 2009, the provisions of Sections 6.2 through 6.7 continue to apply.

### 6.2 Eligibility For Total and Permanent Disability Benefits.

- (A) An Active Participant who has not forfeited his/her Service shall be eligible to receive a Total and Permanent Disability Benefit provided:
  - (1) The Participant is totally and permanently disabled as defined in Section 1.41.
  - (2) The Participant has at least 10 years of Service.
  - (3) The Participant has accrued at least a total of 40 hours worked in the 2 preceding Plan Years prior to his/her disability.
  - (4) The Participant has elected and applied for a Total and Permanent Disability Benefit on a form described by the Trustees, and the Trustees have approved the application.
  - (5) Effective January 1, 1995, the Active Participant has not obtained age 57.
  - (6) The Trustees shall have the power to require any Participant claiming to be totally and permanently disabled to be examined by a physician or clinic chosen by the Trustees, or to require him to submit evidence of his/her Social Security Disability Award as, in their discretion, they deem appropriate; provided the Trustees may not require more frequent examination than once in any 12 month period.
  - (7) In the event the Participant's Total and Permanent Disability is occasioned by chronic alcoholism, his/her right to receive a monthly Total and Permanent Disability Benefit shall terminate with the 12<sup>th</sup> monthly payment. To receive any additional monthly Total and Permanent Disability Benefits, the Participant must reapply for same and submit evidence satisfactory to the Trustees that he/she has, in fact, made reasonable efforts at reasonable rehabilitation. Such re-application shall be required at the end of each twelve-month period and said evidence must be submitted with each such re-application.

6.3 Form of Benefit.

- (A) Effective January 1, 1995, for those Active Participants who first become eligible to receive a Total and Permanent Disability Benefit, that benefit shall be paid only in that form as an ancillary benefit and the provisions of Article V shall not apply.

6.4 Amount of Total and Permanent Disability Benefits.

- (A) Effective January 1, 1995, the Total and Permanent Disability Benefit shall be a monthly benefit equal to 70% of the Participant's Accrued Benefit as of the date he/she is determined to be totally and permanently disabled.

6.5 Commencement of Total and Permanent Disability Benefits.

- (A) A Participant who meets the eligibility requirements for Total and Permanent Disability Benefits shall become entitled to a Total and Permanent Disability Benefit as of the first day of the month next following receipt of an application by the Trustees. Monthly benefits will be payable to the Participant during continued eligibility for disability benefits with the last payment to be made on the first day of the calendar month of the Participant's death or the termination of the benefits under Section 6.6.

6.6 Termination of Benefits for Total and Permanent Disability.

- (A) The Employee engages in or performs work within the Brick Masonry Industry as contained in the provisions of the Collective Bargaining Agreement, or
- (B) If the Trustees determine on the basis of medical findings that the Participant has sufficiently recovered to resume a regular occupation or employment for profit or remuneration within the same industry, trade or craft, or
- (C) If the Participant refuses to undergo a medical examination requested by the Trustees; provided, however, the Participant may not be required to undergo a medical examination more often than twice a year.
- (D) Such termination of Total and Permanent Disability Benefits shall in no way prejudice such Participant from receiving other benefits as provided in this Plan.
- (E) If the Participant refuses to answer a questionnaire on a form supplied by the Trustees concerning his/her present physical condition and status. Such questionnaire shall be furnished annually to a Participant receiving Total and Permanent Disability Benefits.
- (F) Effective January 1, 1995, the Participant dies or attains age 57, whichever occurs earlier.

6.7 Re-Employment After Termination of Total and Permanent Disability Benefit.

- (A) In the event Total and Permanent Disability Benefits under this Plan are terminated, and a Participant re-retires in the future, the reinstated benefits shall be determined as follows:
- (1) Disability Benefits - The new Total and Permanent Disability Benefit shall be equal to the amount the Participant was previously receiving plus any additional Future Service Benefit earned after re-employment.
  - (2) Early Retirement - The Early Retiree who had previously received Total and Permanent Disability Benefits will have his/her benefits determined on the basis of the amount of his/her Accrued Benefit prior to his/her receiving Total and Permanent Disability Benefits, plus any additional Future Service Benefit earned after re-employment, the sum of which will be reduced by his/her Early Retirement reduction factor.
  - (3) Normal Retirement - The Normal Retirement benefit will be the amount of his/her Accrued Benefit prior to his/her receiving Total and Permanent Disability benefits, plus any additional Future Service Benefit earned after re-employment.

## ARTICLE VII – VESTING

### 7.1 Vesting Schedule:

- (A) A Vested Participant who has not attained his/her Normal or Early Retirement age shall be eligible to receive a Vested Benefit in accordance with Section 7.2 provided:
- (1) Non-Collectively Bargained Employees who retired prior to May 1, 1989 and Collectively Bargained Employees who retired prior to May 1, 1997 should refer to the Plan document in effect at the time of retirement for the applicable vesting schedule.
  - (2) Effective May 1, 1989, for a Participant who thereafter earns Service as a Non-Collectively Bargained Employee who completely retires from Covered Service employment with all Employers within the jurisdiction of this Fund and has at least 5 Years of Service since his/her date of participation and is not eligible for any other type of benefit under the Plan shall be 100% vested in his/her Accrued Benefit according to the schedule provided in 7.2(B) below and will become eligible for a Vested Benefit at such time as he/she reaches Normal Retirement Age, or if eligible based upon his/her Service at Early Retirement Age, as defined by the Plan provisions in effect at the time he/she was an Active Participant, provided he/she has completely retired from Covered Service employment with all of the Employers within the jurisdiction of this Fund; or
  - (3) Effective May 1, 1997, a Participant who earns 1 Hour of Service after that date as a Collectively Bargained Employee and becomes a Terminated Vested Participant after earning at least 5 Years of Service since his/her date of participation and is not eligible for any other type of benefit under the Plan shall be 100% vested in his/her Accrued Benefit according to the schedule provided in 7.2(B) below and will become eligible for a Vested Benefit at such time as he/she reaches Normal Retirement Age, or if eligible based upon his/her Service at Early Retirement Age, as defined by the Plan provisions in effect at the time he/she was an Active Participant, provided he/she has completely retired from Covered Service employment with all of the Employers within the jurisdiction of this Fund.

### 7.2 Calculation of Benefit for Terminated Vested Participants.

- (A) The provisions of the Plan that are in effect at the time a Participant first becomes a Terminated Vested Participant shall apply to any benefit calculation at the time the Participant becomes eligible to receive a Normal, Early, Vested or Qualified Joint and 50%, 75% or 100% Survivor Benefit.
- (B) In the event a Terminated Vested Participant subsequently returns to Covered Service, the Plan provisions in effect after the Terminated Vested Participant returns



## ARTICLE VIII: DEATH BENEFITS

### 8.1 Pre-Retirement Death Benefit

- (A) Subject to sub-paragraph (C), a Death Benefit shall be payable to the surviving Spouse of a Participant or former Participant who dies (1) after August 22, 1984, with at least 5 Years of Service, (2) on or after the earliest date on which the Participant or former Participant could have elected to receive benefits from the Plan, but (3) prior to the commencement of benefits (4) and coverage has not been waived. The amount of the Death Benefit shall be a monthly payment to the surviving Spouse for life equal to  $\frac{1}{2}$  of the amount which would have been payable to the deceased Participant or former Participant if he/she had begun to receive benefits in the form of the Qualified Joint and 50% Survivor Benefit on the date before his/her death. The payment of such benefit to the surviving Spouse shall commence as of the first day of the month next following the month in which the Participant dies, and shall be paid monthly thereafter, ceasing with the month in which the death of such Spouse occurs.
- (B) Subject to sub-paragraph (C), if the Participant had not reached the earliest date on which he/she could have elected to receive benefits from the Plan, but dies after August 22, 1984 with at least 5 Years of Service and has not waived coverage, a Death Benefit shall also be payable to the surviving Spouse. Subject to sub-paragraph (C), such Death Benefit shall be a monthly payment to the surviving Spouse for life, equal to one-half of the amount which would have been payable to the deceased Participant if he/she had separated from Service on the date of death, survived to the earliest date on which, under the Plan, he/she could have elected to receive retirement benefits, had retired with an immediate Qualified Joint and 50% Survivor Benefit at that time, and then had immediately died. The payment of such benefit to the surviving Spouse shall commence as of the earliest date on which, under the Plan, the deceased Participant could have elected to receive benefits and shall be paid monthly thereafter, ceasing with the month in which the death of such Spouse occurs.
- (C) Effective May 1, 2009, any Pre-Retirement Death Benefit that has not yet commenced and coverage has not been waived, a charge will be implemented for such coverage that entitles the surviving spouse to receive 50% of your Joint and Survivor Benefit for the rest of his/her lifetime. Such coverage may be maintained with a reduction in benefits for each month the coverage is in effect.
- (D) The reduction in a Participant's monthly benefit will depend upon the Participant's age at which he/she elect coverage and the number of months he/she chose to be covered. The following table provides the cost of the Pre-Retirement Death Benefit coverage:



Cost of Pre-Retirement Death Benefit Coverage	
Age Range	Percent Reduction in Accrued Benefit Per Month Covered Within Age Range
35-44	0.002%
45-49	0.004%
50-54	0.008%
55-59	0.017%
60-65	0.045%

- (E) Effective May 1, 2009 a Participant's monthly benefit shall be reduced to cover the cost of providing the Pre-Retirement Death Benefit for each month the benefit coverage is in effect. To elect out of the Pre-Retirement Death Benefit the Participant must follow the election waiver rules, including written spousal consent, under ERISA Section 205(c) and any applicable regulation. The Participant may reinstate the Pre-Retirement Death Benefit at any time.
- (F) Actuarial Equivalent of Death Benefit. Notwithstanding the foregoing provisions of this Article, if the Actuarial Equivalent, as defined in Section 1.3(C), of the Pre-Retirement Death Benefit does not exceed \$5,000 and the Participant's death occurred after August 22, 1984, the Actuarial Equivalent may, at the discretion of the Board of Trustees, be paid to the surviving Spouse/Beneficiary in a lump sum.
- (G) In the case of a qualified preretirement survivor annuity as described above, the plan administrator shall provide each participant within the applicable period for such participant, a written explanation of the qualified preretirement survivor annuity in such terms and in such a manner as would be comparable to the explanation provided for meeting the requirements of section 5.3(B) applicable to a qualified joint and survivor annuity.
- (H) The applicable period for a participant is whichever of the following periods ends last:
- (1) the period beginning with the first day of the plan year in which the participant attains age 32 and ending with the close of the plan year preceding the plan year in which the participant attains age 35;
  - (2) a reasonable period ending after the individual becomes a participant;
  - (3) a reasonable period ending after Paragraph (L), below, ceases to apply to the participant;
  - (4) a reasonable period ending after this article first applies to the participant.
- (I) Notwithstanding the foregoing, notice must be provided within a reasonable period ending after separation of service in case of a participant who separates from service before attaining age 35.

- (J) For purposes of the preceding paragraph, a reasonable period ending after the enumerated events described in (2), (3) and (4) is the end of the two year period beginning one year prior to the date the applicable event occurs and ending one year after that date.
- (K) In the case of a participant who separates from service before the plan year in which age 35 is attained, notice shall be provided within the two year period beginning one year prior to separation and ending one year after separation. If such a participant thereafter returns to employment with the employer, the applicable period for such participant shall be redetermined.
- (L) Notwithstanding the other requirements of this section, the respective notices prescribed by this section need not be given to a participant if (1) the plan "fully subsidizes" the costs of a qualified joint and survivor annuity or qualified preretirement survivor annuity, and (2) the plan does not allow the participant to waive the qualified joint and survivor annuity or qualified preretirement survivor annuity and does not allow a married participant to designate a nonspouse beneficiary.
  - (1) For purposes of this Paragraph (L), a plan fully subsidizes the costs of a benefit if under the plan no increase in cost or decrease in benefits to the participant may result from the participant's failure to elect another benefit. Prior to the time the plan allows the participant to waive the qualified preretirement survivor annuity, the plan may not charge the participant for the cost of such benefit by reducing the participant's benefits under the plan or by any other method.

## 8.2 Post Retirement Death Benefits.

- (A) If a Participant dies after receiving at least one monthly benefit from the Plan, the Death Benefit shall be dependent upon the form of benefit which had been received by the Participant prior to his/her death.
- (B) If the Participant was receiving one of the Qualified Joint and Survivor Benefits, the surviving Spouse to whom the deceased Participant was married upon the commencement of his/her benefits shall receive monthly benefits for life in an amount equal to the percentage of the amount which had been elected by the Participant and Surviving Spouse. Such benefits shall commence as of the first day of the month coincident with or next following the Participant's death, and shall terminate in the month in which the Spouse's death occurs. If such Spouse has predeceased the Participant, no further benefits shall be payable.
- (C) If the Participant retired prior to May 1, 2009 and was receiving a lifetime monthly benefit and his/her death occurs prior to the receipt of 60 monthly payments under the Plan, the Beneficiary shall receive the remainder of the payments, commencing as of the first day of the month following the month in which the Participant's death occurred, and payable as of the first day of each

subsequent month until 60 monthly payments have been made to the deceased Participant and to the Beneficiary in the aggregate. If the deceased Participant had received at least 60 monthly benefits as of the date of death, no Death Benefits shall be payable.

- (D) If the Participant retires on or after May 1, 2009 the death benefit shall depend upon whether or not the Participant has elected the 60 month guarantee with a monthly reduction in benefit pursuant to Section 3.3, Section 4.3 or Section 5.9.
- (E) Actuarial Equivalent of Death Benefit. Notwithstanding the foregoing provisions of this Article, if the Actuarial Equivalent, as defined in Section 1.3(C), of the Post-Retirement Death Benefit does not exceed \$5,000.00 and the death of the Participant occurred after August 22, 1984, the Actuarial Equivalent may, at the discretion of the Board of Trustees, be paid to the surviving Spouse/Beneficiary in a lump sum.

### 8.3 Failure to Designate A Beneficiary

- (A) When a Participant dies without designating a Beneficiary, the Death Benefit, if any, shall be paid to such Participant's legal Spouse, if any. If the Participant's legal Spouse shall have a pre-deceased him or has ceased to be his/her legal Spouse, the Death Benefit shall be paid to the Participant's legal child or children, in equal shares. If no legal Spouse or legal child or children are alive, the Death Benefit shall be paid to the Executor or Administrative Manager of the deceased Participant's Estate.

### 8.4 Application for Death Benefits

- (A) No Death Benefit payable under this Pension Plan shall be made to any Participant's Beneficiary(ies) unless application and claim therefore is made to the Board of Trustees within 12 months after the date of death of the Participant.
- (B) However, the Trustees may in any cases where the circumstances appear to warrant such action, liberalize the foregoing condition.

## ARTICLE IX: SUSPENSION OF BENEFITS

### 9.1 Suspension of Benefit Rules.

- (A) Retirement Benefits shall be suspended for Participants who are receiving benefits but who meet all of the conditions as set forth below in subparagraph (B).
- (B) Retirement Benefits shall be suspended if a retiree satisfies all of the following requirements.

- (1) 40 HOUR RULE:

- (a) The retiree is re-employed for 40 or more hours during any four or five-week payroll period which falls within a calendar month. Re-employment shall include self-employment.

- (2) SAME INDUSTRY:

- (a) The retiree is re-employed in the "same industry", which shall be defined as returning to work within the Brick and Masonry Industry and as in accordance with the definitions contained within the Collective Bargaining and Trust Agreement.

- (3) SAME TRADE OR CRAFT:

- (a) The retiree is re-employed in the "same trade or craft", which shall be defined as returning to work in a trade or craft in which he/she was employed at any time prior to his/her retirement under the Plan and shall include any supervisory or managerial activity that is reasonably related to the underlying skills associated with the trade or craft for which the retiree was trained or in which he/she acquired his/her work experience.

- (4) SAME GEOGRAPHIC AREA:

- (a) The retiree is re-employed in the "same geographic area", which shall be defined to cover the entire State of Ohio and portions of those states located as a part of the Standard Metropolitan Statistical Area, as defined by the U.S. Census Bureau.

### 9.2 Reinstatement of Retirement Benefits

- (A) Upon termination of re-employment which resulted in the suspension of Retirement Benefits, provided the Participant has submitted a request to the Board of Trustees for the resumption of his/her benefit on an appropriate form furnished and approved

by the Trustees, the Participant's retirement benefit shall be resumed on the first day of the calendar month following the receipt of the required notice as set forth below:

(1) NORMAL RETIREMENT BENEFIT:

- (a) If a retiree was receiving a Normal Retirement Benefit at the time of the suspension of that benefit, the reinstated benefit shall be in the amount the retiree was receiving prior to the suspension of benefit in addition to any amount realized for Service resulting from such reemployment.

(2) EARLY RETIREMENT BENEFIT:

- (a) If a Retiree was receiving an Early Retirement Benefit at the time of the suspension of that benefit, the reinstated benefit shall be in the amount the retiree was receiving prior to the suspension of the benefit, plus any amount realized for service as a result of the reemployment, reduced by the Early Retirement factor applicable to the Retiree's current age at the time of reinstatement.

- (B) Upon resumption of benefit payments, the reinstated benefit shall be the same form of benefit that was being received before the suspension plus any amount realized for service as a result of the reemployment and the new benefit amount shall be based on the Retiree's age at the time of reinstatement.
- (C) If benefit payments in any form are suspended pursuant to Article IX of the Plan for an Employee who continues in service without a separation and who does not receive a benefit payment, the recommencement of benefit payments shall be treated as a new benefit starting date.

9.3 Active Participants Who Work Beyond Normal Retirement Age.

- (A) The Suspension of Benefit Rules as set forth in this Article shall be applied to those Participants who continue to work after reaching the Normal Retirement Age. No retirement benefits shall be paid for such months in which the Participant is employed for 40 or more hours in the Same Industry, Same Trade or Craft and in the Same Geographic Area. Any benefits which are suspended during such months shall not be paid at any later date. If the Participant continues to work after reaching Normal Retirement Age but works less than 40 hours per month in the Same Industry, Same Trade or Craft and in the Same Geographic Area, no retirement benefits shall be paid while the Participant is employed. Upon the Participant's retirement, any benefits which were suspended and to which he/she is entitled shall be restored in accordance with the regular Plan provisions. Such provisions shall provide benefit credit for all work performed under the Plan prior to the Participant's actual date of retirement.

#### 9.4 Notification and Presumption.

- (A) The Participant shall be required to notify the Board of Trustees at such time as he/she becomes re-employed by filing a Notice of Return to Work. The Board of Trustees may act on the basis of a presumption that the Participant has exceeded the allowable hours of re-employment. The Participant's benefit shall be suspended immediately and the Participant shall be notified accordingly. The Board of Trustees shall have the right to apply the Suspension of Benefit Rules retroactively to the initiation of work by the Participant's Employer at the job site. The Board of Trustees may, in addition, request information from the Participant concerning such re-employment activity, including tax withholding statements in any given period related to the Participant's re-employment and any other reasonable information for the purpose of verification of such re-employment provided, however, no payment shall be withheld by the Plan pursuant to this Section unless the Plan notifies the Participant by personal delivery or first class mail during the first calendar month or payroll period in which the Plan withholds payments that his/her or her benefits are suspended. Such notifications shall contain a description of the specific reasons why benefit payments are being suspended, a description of the Plan provision relating to the suspension of payments, a copy of such provisions, and a statement to the effect that applicable Department of Labor regulations may be found in Section 2530.203-3 of the Code of Federal Regulations.
- (B) In addition, the notice shall inform the Employee of the Plan's procedures for affording a review of the suspension of benefits. Requests for such reviews may be considered in accordance with the claims procedure under Article XIII and during that procedure the Participant shall be given the opportunity to come forward and demonstrate the fact that he/she did not work the minimum number of hours of relevant service for the period in which his/her benefits were suspended.

#### 9.5 Advance Determination.

- (A) The Participant shall have the right to request that an advance determination be made concerning the effect of his/her re-employment on his/her retirement benefit. The Participant shall be required to submit his/her request to the Board of Trustees on an appropriate form approved and provided by the Trustees and in accordance with the procedures established by the Trustees.

#### 9.6 Resumption of Benefits.

- (A) The Participant may request resumption of benefits at such time as he/she no longer meets the conditions of re-employment, as set forth in this Article. The Participant shall submit his/her request for resumption of benefits on a form approved and provided by the Board of Trustees.

9.7 Recovery of Overpayments - Offset Rule.

- (A) In the event payments have been issued to a retiree for any period during which his/her benefit should have been suspended, the retiree shall be liable for the full amount of any overpayment(s). The manner and the amount of recovery of the overpayment(s) shall be provided to the retiree in the Suspension Notice furnished to him at such time as his/her benefit is suspended.
- (B) The Board of Trustees may delay the resumption of payment of the retiree's full retirement benefit until the earlier of the recovery of the overpayment(s) or the first day of the third calendar month (or four or five-week payroll period) after the retiree is entitled to the resumption of his/her benefit.
- (C) If the Trustees have not recovered the full amount of any overpayment by (A) above, the Trustees may deduct up to 25% of the retiree's subsequent benefit payment each month until the payment is completely recovered.

## ARTICLE X: QUALIFIED DOMESTIC RELATIONS ORDER

### 10.1 Qualified Domestic Relations Order.

- (A) A Qualified Domestic Relations Order shall include any Domestic Relations Order which creates or recognizes the existence of an Alternate Payee's right to, or assigns to an Alternate Payee the right to, receive all or a portion of the benefits payable with respect to a Participant or former Participant, which clearly specifies:
- (1) the name and the last known mailing address (if any) of the Participant or former Participant, and the name and the mailing address of each Alternate Payee covered by the Order;
  - (2) the amount or percentage of the Participant's or former Participant's benefits to be paid by the Plan to each such Alternate Payee, or the manner in which such amount or percentage is to be determined.
  - (3) the number of payments or period to which such order applies; and
  - (4) each Plan to which such order applies.
- (B) In addition, a Domestic Relations Order will be considered a Qualified Domestic Relations Order only if such order:
- (1) does not require the Plan to provide any type or form of benefit, or any option, not otherwise provided under the Plan;
  - (2) does not require the Plan to provide increased benefits (determined on the basis of actuarial value); and
  - (3) does not require the payment of benefits to an Alternate Payee which are required to be paid to another Alternate Payee under another Domestic Relations Order previously determined to be a Qualified Domestic Relations Order.
- (C) A Domestic Relations Order otherwise satisfying the provisions hereof shall be a Qualified Domestic Relations Order even though such order requires payment of benefits to be made to an Alternate Payee on or after the date the Participant or former Participant attains (or would have attained) the earliest date on which, under the Plan, the Participant or former Participant could elect to receive retirement benefits as if the Participant or former Participant had retired on the date on which such payment is to begin under such order (but taking into account the present value of any Plan subsidy for Early Retirement); and in any form in which such benefits other than in the form of a Qualified Joint and Survivor Benefit with respect to the Alternate Payee and his/her or her subsequent Spouse. The prior sentence shall



apply notwithstanding any provisions in the Plan requiring a termination of employment prior to the eligibility for the payment of benefits.

10.2 Alternate Payee.

- (A) An "Alternate Payee" shall include any Spouse, former Spouse, child or other dependent of a Participant or former Participant who is recognized by a Domestic Relations Order as having a right to receive all, or a portion of, the benefits payable under the Plan with respect to such Participant or former Participant.

10.3 Spendthrift Exception for Qualified Domestic Relations Orders.

- (A) The creation, assignment or recognition of a right to any benefit payable with respect to a Participant pursuant to a Qualified Domestic Relations Order shall not be treated as an assignment or alienation prohibited by ERISA. This exception to the Spendthrift Provisions shall apply only to Qualified Domestic Relations Orders and shall not be applicable to those which have been determined not to be a Qualified Domestic Relations Order.

10.4 Procedures for Notice and Determination by Plan Administrative Manager.

- (A) The procedures established by the Board of Trustees for the determination of the qualified status of Domestic Relations Orders and notification to the payees shall be those set forth in the Resolution to the Plan.

## ARTICLE XI: PLAN ADMINISTRATION AND BENEFIT DISTRIBUTION

### 11.1 Responsibility for Administration.

- (A) The Plan shall be administered by the Trustees, who are Fiduciaries under the Plan, in accordance with the powers granted to them by the Trust Agreement. The named Fiduciary may employ one or more persons to render advice with regard to any responsibility such Fiduciary has under the Plan. The Trustees shall make such rules and prescribe such procedures for administration of the Plan as they shall deem necessary and responsible. The decision of the Trustees in all matters pertaining to the administration of the Plan shall be final.

### 11.2 Fiduciary Duties.

- (A) A Fiduciary shall discharge his/her duties with respect to the Plan solely in the interest of the Participants and Beneficiaries for the exclusive purpose of providing benefits to Participants and Beneficiaries and defraying reasonable expenses of administering the Plan.
- (B) Fiduciaries shall discharge their duties with respect to the Plan with care, skill, prudence and diligence under the circumstances prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.
- (C) The Fiduciaries shall diversify the investments of the Plan so as to minimize the risk of large losses. The Fiduciaries shall discharge their duties in accordance with the documents and instruments governing the Plan.

### 11.3 Limitation on Rights to Benefits

- (A) No Participant, former Participant, retired Participant, Beneficiary or any person claiming by or through any such person, shall have any right, interest or title to any benefits under the Trust Agreement, the Pension Plan or the Trust Fund, except as such right, interest or title shall have been specifically granted pursuant to the terms of this Pension Plan.

### 11.4 Benefits Limited By Pension Plan.

- (A) All benefits under the Pension Plan shall be paid by the Board of Trustees or an agent under the Trustees acting on their authority. Notwithstanding any other provisions of this Plan, no benefits shall be paid except those that can be provided under the Plan unless otherwise required by law.

11.5 Assignment of Benefits.

- (A) No money, property, equity or interest of any nature whatsoever in the Trust Fund, group annuity or other contract, or any benefits or monies payable therefrom shall be subject to assignment or alienation, either voluntary or involuntary. However this provision shall not apply to the creation, assignment or recognition of a right to any benefit payable with respect to a Participant or former Participant pursuant to the provisions of the Retirement Equity Act of 1984 concerning a Qualified Domestic Relations Order.

11.6 Forfeitures.

- (A) Notwithstanding any other provisions of this Plan, any amounts that might be forfeited by a Participant or former Participant shall not be used to increase the benefits of any other remaining Participants.

11.7 Definite Benefit.

- (A) Except to the extent a Participant's benefits are suspended in accordance with Article IX, the amount of any form of benefit under the terms of this Plan will be the Actuarial Equivalent of the Participant's Accrued Benefit in the normal form commencing at Normal Retirement Age. Actuarial Equivalence will be determined as is defined in Section 1.3.

11.8 Limitation of Benefits.

- (A) The limitation of benefits as imposed by the Internal Revenue Code are set forth in Article XII.

11.9 Rollovers.

- (A) The Plan Administrative Manager shall provide a written explanation to all recipients of distributions under the Plan considered to be eligible for rollover treatment. The explanation shall include a notice that (1) the distribution shall not be currently taxed to the extent transferred to another qualified Plan or individual retirement account within 60 days after the date on which the recipient receives the distribution and (2) of the ten-year income averaging and capital gains provisions, if applicable.
- (B) Effective January 1, 1993, the following applies to distributions involving direct rollovers:
  - (1) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this part, a distributee may elect, at the time and in the manner prescribed by the Plan Administrative Manager, to have any portion of an eligible rollover distribution that is

equal to at least \$500.00 paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(2) **Eligible retirement plan:** An eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, a Roth IRA described in Section 408(A) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, or a qualified plan described in Section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity. For distributions made after December 31, 2001, for purposes of the direct rollover provisions in Section 11.9 of the Plan, an eligible retirement plan shall also mean an annuity contract described in Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving Spouse, or to a Spouse or former Spouse who is the Alternate Payee under a Qualified Domestic Relations Order, as defined in Section 414(p) of the Code. An individual who rolls over from this Plan to a Roth IRA described in Code Section 408(A) must include in gross income any portion of the conversion amount that would be includible in gross income if the amount were distributed without being rolled over. Rollovers to Roth IRA's are subject to an adjusted gross income restriction through 2009.

(3) **Distributee:** A distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving Spouse and the Employee's or former Employee's Spouse or former spouse who is the Alternate Payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the Spouse or former Spouse. For distributions after April 30, 2008, an Eligible Rollover Distribution can be made to a non-spouse Beneficiary's individual retirement account or individual retirement annuity.

(C) Effective January 1, 1993, any distribution under this Plan which is an eligible rollover distribution which is not in accordance with Section 11.9(B), shall be subject to a 20% mandatory withholding.

#### 11.10 Forfeitability of Benefits.

(A) The Plan Administrative Manager shall furnish Active Participants and to terminated Plan Participants with a Vested Benefit a statement of Accrued Benefits, including a

notice that certain benefits may be forfeitable, if the Participant's death occurs prior to a specific date, if applicable to the provisions of the Plan.

11.11 Procedures for Qualified Domestic Relations Orders.

- (A) In the event the Plan shall receive a Domestic Relations Order, the Board of Trustees shall act in accordance with any administrative procedures adopted by the Board of Trustees. Such procedures shall be furnished to the Participant and Spouse or their representatives upon request.

11.12 Incapacity.

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

11.13 Death Benefits Payable to Minors.

- (A) Any Death Benefit payable to minor children may be paid, at the discretion of the Board of Trustees, to the legally appointed guardian of the minor, or if there be no such guardian, to such adults as the Court having legal jurisdiction directs.

11.14 Information Required.

- (A) As a condition precedent to the payment of any benefit under the Plan, the Trustees shall have the right to require, on forms prescribed by the Trustees, all information which they reasonably deem necessary, including, but not limited to, records of employment, proof of dates of birth and death, and evidence of existence and no benefit dependent in any way upon information shall be payable unless and until such information so required be furnished. Such evidence shall be furnished by the Union, Employers, Participants, retired Participant and Beneficiaries, as applicable.

11.15 No Reversion to Employers.

- (A) The Employers shall have no right, title or interest in the contributions made by them to the Pension Fund and no part of the Pension Fund shall revert to the Employers.

11.16 Duplication of Benefits.

- (A) A Participant may receive a pension benefit as a Spouse of a deceased Participant.

11.17 Freezing Benefits at the Time the Individual Terminates Employment.

- (A) The pension benefit to which a Participant is entitled shall be determined by the terms in effect in the Plan at the time the Participant becomes a Terminated Vested Participant.

11.18 Gender.

- (A) The masculine gender as stated herein shall include the feminine gender, wherever applicable.

11.19 Commencement of Benefits and Method of Payment

- (A) The commencement date for pension payments shall be in accordance with the appropriate Plan provisions. A Participant's benefits shall be distributed to him not later than April 1<sup>st</sup> of the calendar year following the later of:

- (1) the calendar year in which the Participant attains age 70 ½; or
- (2) the calendar year in which the Participant ceases to be employed in covered employment where contributions are being paid to the Plan on his/her behalf.

- (a) In the case of an Employee to whom paragraph (2) applies who retires in a calendar year after the calendar year in which the Employee attains age 70 ½, the Employee's accrued benefit shall be actuarially increased to take into account the period after age 70 ½ in which the Employee was not receiving any benefits under the plan.

- (B) In the case of a Participant who is or was a 5% owner at any time during his/her participation in the Plan, such Participant shall commence his/her benefit not later than April 1<sup>st</sup> of the calendar year following the calendar year in which the Participant attains age 70 ½, regardless of whether he or she is retired.

- (C) Unless the mode of distribution is a single sum payment, distributions will be made each year in one of the following ways:

- (1) over the life of the Participant,
- (2) over the life of the Participant and a designated Beneficiary,

- (3) over a period certain not extending beyond the life expectancy of the Participant, or
  - (4) over a period certain not extending beyond the joint life and last survivor expectancy of the Participant and a designated Beneficiary.
- (D) If a distribution is considered to have commenced in accordance with the Internal Revenue Service Regulations (IRS Regulations) before the Participant's death, the remaining interest will be distributed at least as rapidly as under the method of distribution being used as of the date of the Participant's death.
- (E) If the Participant dies before the time when distribution is considered to have commenced in accordance with the IRS Regulations, it shall satisfy the following requirements: (1) any remaining portion of the Participant's interest that is not payable to a Beneficiary designated by the Participant will be distributed within five years after the Participant's death; and (2) any portion of the Participant's interest that is payable to a Beneficiary designated by the Participant will be distributed either (a) within five years after the Participant's death, or (b) over the life of the Beneficiary or over a period certain not extending beyond the life expectancy of the Beneficiary, commencing not later than the end of the calendar year following the calendar year in which the Participant died (or, if the designated Beneficiary is the Participant's surviving spouse, commencing not later than the end of the calendar year following the calendar year in which the Participant would have attained age 70 ½).
- (F) The requirements of Section 401(a)(9) of the Internal Revenue Code of 1986 are incorporated by reference. Any distribution required under the incidental death benefit requirements of Code Section 401(a)(9) shall be treated as a distribution required under Code Section 401(a)(9)(G). Distributions will be made in accordance with Code Section 401(a)(9) and Code of Federal Regulations §§ 1.401(a)(9)-2 through 1.401(a)(9)-9 as well as any other rules or regulations promulgated by the Commissioner. This paragraph, which reflects Code Section 401(a)(9), overrides any distribution options in the Plan inconsistent with Code Section 401(a)(9).

#### 11.20 Retroactive Annuity Starting Dates

- (A) To the extent payment of a pension benefit is commenced after the normal annuity starting date (i.e. the 1<sup>st</sup> day of the month following receipt of the Participant's complete retirement application) the Plan shall pay the retroactive monthly payments along with interest in an amount equivalent to the Actuarial Equivalent interest rate set forth in Section 1.3. Such payments shall be made in lump-sum form.

#### 11.21 Relative Value of Benefits.

- (A) Every optional form of benefit has an approximate equal value to the regular or normal form of payment.

#### 11.22 Consequences of Deferral

- (A) Effective May 1, 2007, notices/forms that relate to distributions will include a description of a Participant's right (if any) to defer receipt of a distribution and will describe the consequences of failing to defer receipt of the distribution pursuant to the Regulations and other guidance provided by the Treasury and/or Labor.

#### 11.23 Trustee Discretionary Authority

- (A) The decisions of the Board of Trustees in all matters pertaining to the administration of the Plan shall be final. The Board of Trustees, as the administrator of the Plan, shall have complete control of the administration of the Plan, subject to the provisions hereof, with all powers necessary to enable it to properly carry out its duties in that respect. Not in limitation, but in amplification of the foregoing, the Board shall have full authority and discretion to construe, interpret and apply all provisions of the Plan and to determine all questions that may rise hereunder, including all questions relating to the eligibility of Participants to participate in the Plan, the amount of any benefit to which any Participant, Beneficiary, spouse, or contingent annuitant may become entitled hereunder and to determine all appeals subsequent to any determination upon application for benefits. Specifically, the Board shall have full and complete authority and discretion to make any determinations or findings of fact regarding any claims and appeals of any benefit determinations. Its decision upon all matters within the scope of its authority shall be final.

#### 11.24 HEART Act Provisions

- (A) Differential Wage Payment
  - (1) Effective May 1, 2009, (i) an individual receiving a differential wage payment shall be treated as an employee of the employer making the payment; (ii) the differential wage payment shall be treated as compensation; and (iii) the plan shall not be treated as failing to meet the requirements of any provision described in Code Section 414(u)(1)(C) by reason of any contribution or benefit which is based on the differential wage payment.
  - (2) This provision shall be applicable only if all employees of an employer are entitled to receive differential wage payments on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the



employer, and are so permitted by the plan, to make contributions based on the payments on reasonably equivalent terms.

- (3) Differential Wage Payment shall mean any payment which (i) is made by an employer to an individual with respect to any period during which the individual is performing service in the uniformed services, as defined in chapter 43 of title 38, United States Code, while on active duty for a period of more than 30 days, and (ii) represents all or a portion of the wages the individual would have received from the employer if the individual were performing service for the employer.

(B) Special Rule for Distributions

- (1) Effective May 1, 2009, for purposes of Code Sections 401(k)(2)(B)(i)(I), 403(b)(7)(A)(ii), 403(b)(11)(A), or 457(d)(1)(A)(ii), an individual shall be treated as having been severed from employment during any period the individual is performing service in the uniformed services described in Code Section 3401(h)(2)(A).

(C) Death Benefits

- (1) With respect to deaths and disabilities occurring on or after January 1, 2007, in the case of a participant who dies while performing qualified military service, as defined in Code Section 414(u), the survivors of the participant are entitled to any additional benefits, other than benefit accruals relating to the period of qualified military service, provided under the plan had the participant resumed and then terminated employment on account of death.

## ARTICLE XII: LIMITATION OF BENEFITS

### 12.1 Compensation

(A) For purposes of the maximum benefit limitations of Code Section 415, "Compensation" includes:

(1) An Employee's wages, salaries, fees for professional services, and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with an Employer, to the extent that the amounts are includible in gross income (or to the extent amounts would have been received and includible in gross income but for an election under Code sections 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b)). These amounts include, but are not limited to, commissions paid to salespersons, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements or other expense allowances under a non-accountable plan as described in Regulation section 1.62-2(c).

(2) In the case of an Employee who is an Employee within the meaning of Code section 401(c)(1) and regulations promulgated under Code section 401(c)(1), the Employee's earned income (as described in Code section 401(c)(2) and regulations promulgated under Code section 401(c)(2)), plus amounts deferred at the election of the employee that would be includible in gross income but for the rules of Code sections 402(e)(3), 402(h)(1)(B), 402(k), or 457(b).

(B) "Compensation" does not include:

(1) Contributions (other than elective contributions described in Code sections 402(e)(3), 408(k)(6), 408(p)(2)(A)(i), or 457(b)) made by the Employer to a plan of deferred compensation (including a simplified employee pension described in Code section 408(k) or a simple retirement account described in Code section 408(p), and whether or not qualified) to the extent that the contributions are not includible in the gross income of the Employee for the taxable year in which contributed. In addition, any distributions from a plan of deferred compensation (whether or not qualified) are not considered as compensation for Code section 415 purposes, regardless of whether such amounts are includible in the gross income of the Employee when distributed.

(2) Amounts realized from the exercise of a non-statutory option (which is an option other than a statutory option as defined in Regulation section 1.421-1(b)), or when restricted stock or other property held by an Employee either becomes freely transferable or is no longer subject to a substantial

risk of forfeiture (see Code section 83 and regulations promulgated under Code section 83).

- (3) Amounts realized from the sale, exchange, or other disposition of stock acquired under a statutory stock option (as defined in Regulation section 1.421-1(b)).
- (4) Other amounts that receive special tax benefits, such as premiums for group-term life insurance (but only to the extent that the premiums are not includible in the gross income of the Employee and are not salary reduction amounts that are described in Code section 125).
- (5) Other items of remuneration that are similar to any of the items listed in paragraphs (B)(1) through (B)(4) of this section.

#### 12.2 Maximum Benefit Limitation.

- (A) The limits imposed by Code Section 415 are incorporated by reference. There may be no accruals or benefit distributions in excess of the Code Section 415 limitations. No annual benefit exceeding the Code Section 415(b) limitation will be accrued or payable in any optional form of benefit payable under the Plan, including the normal form of benefit. Employer discretion is also precluded.
- (B) Annual adjustments to the Code Section 415 limitations made pursuant to Code Section 415(d) are incorporated by reference.
- (C) The combination and/or aggregation of plans as provided in Code Section 415(f)(1) and 415(g) shall not apply to this Plan in determining the limitations under Code Section 415(b) inasmuch as this Plan is a multi-employer plan as defined in Code Section 414(f).

### ARTICLE XIII: BENEFIT PROCEDURES

#### 13.1 Application for Retirement Benefits, Vested Benefits and Death Benefits

- (A) All applications for benefits under this Plan, whether on account of retirement, vesting or death, and all elections and designations made by Participants and Beneficiaries under this Plan shall be made in writing to the Board of Trustees in the form and manner prescribed by the Trustees.
- (B) The Trustees shall have the right to require submission of all necessary information before any benefit is paid, including records of employment, proofs of date of birth, marriage and death. No benefit dependent in any way upon such information shall be payable unless and until the required information has been furnished. Upon receipt of such information, the Trustees shall determine the eligibility of the applicant for such benefit, and shall notify the applicant of their determination and the amount of any benefit payable.
- (C) Timely Submission of Applications for Benefits.
  - (1) Participants, Beneficiaries and surviving Spouses shall be able to apply for benefits under the Plan at any time after the date of 2 years preceding the date such applicant would first become eligible for the benefit, or as otherwise specifically set forth in this Plan.

#### 13.2 Election of Benefits.

- (A) All necessary questions concerning the applicant's election of any particular benefit under the Plan shall be explained and a written explanation shall be provided to the applicant of the terms and conditions of the election.
- (B) Effective May 1, 2007, not more than 180 days or less than 30 days prior to the Participant's benefit commencement date under a Qualified Joint and Survivor Benefit, the Plan's Administrative Manager shall deliver to such person (either by first-class mail or personally) a written explanation of the terms, conditions and effects of the Qualified Joint and Survivor Benefit. However, the Board of Trustees need not only comply with more than one request made by a particular person.
- (C) Notice Exemption.
  - (1) The Plan shall not be required to provide notice of the right to waive the Qualified Joint and Survivor Benefit, or the Qualified Pre-Retirement Survivor Benefit if the Plan fully subsidizes the cost of the benefit. The Plan shall be considered to fully subsidize the cost of the benefit only if the failure to waive the benefit by a Plan Participant or Beneficiary does not result in either (a) a decrease in any Plan benefits with respect to the Participant, or (b) increased Plan contributions by the Participant.

### 13.3 Notification of Approval or Non-approval of Application.

- (A) The Board of Trustees shall make all determinations regarding the validity of the claim. Upon any partial or total adverse benefit determination, the Fund shall deliver or mail a Notice of Denial to the Claimant within 90 days of the filing of the claim, except in the case of a disability retirement benefit claim. In the case of a claim for disability retirement benefits, the Administrative Manager shall notify the Claimant of the Plan's adverse benefit determination within a reasonable period of time, but not later than 45 days after receipt of the claim by the Plan. This 45 day period may be extended by the Plan for up to 30 days, provided that the Administrative Manager both determines that such an extension is necessary due to matters beyond the control of the Plan and notifies the Claimant, prior to the expiration of the initial 45-day period, of the circumstances requiring the extension of time and the date by which the Plan expects to render a decision. If, prior to the end of the first 30-day extension period, the Administrative Manager determines that, due to matters beyond the control of the Plan, a decision cannot be rendered within that extension period, the period for making the determination may be extended for up to an additional 30 days, provided that the Administrative Manager notifies the Claimant, prior to the expiration of the first 30-day extension period, of the circumstances requiring the extension and the date as of which the Plan expects to render a decision. In the case of any extension under this paragraph, the notice of extension shall specifically explain the standards on which entitlement to a benefit is based, the unresolved issues that prevent a decision on the claim, and the additional information needed to resolve those issues, and the Claimant shall be afforded at least 45 days within which to provide the specified information.
- (B) The period of time within which a benefit determination is required to be made will begin at the time the claim is filed in accordance with the reasonable procedures of the Plan, without regard to whether all information necessary to make a benefit determination accompanies the filing. If additional information is necessary to make a benefit determination, the period of time for making the benefit determination shall be tolled from the date the notification for additional information is requested until the Claimant responds to the request for additional information.
- (C) The notice shall be written in a manner calculated to be understood by the Claimant, and shall contain:
- (1) the specific reason or reasons for the adverse determination;
  - (2) specific reference to pertinent plan provisions on which the determination was based;

- (3) a description of any additional material or information necessary for the Claimant to perfect his/her claim and an explanation of why such material or information is necessary;
  - (4) a description of the plan's review procedures and the time limits applicable to such procedures, including a statement of the Claimant's right to bring a civil action under Section 502(a) of ERISA following an adverse benefit determination on review;
  - (5) in the case of an adverse benefit determination by the Plan regarding disability retirement benefits,
    - (a) If an internal rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination, either the specific rule, guideline, protocol, or other similar criterion; or a statement that such a rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination and that a copy of such rule, guideline, protocol, or other criterion will be provided free of charge to the Claimant upon request; or
    - (b) If the adverse benefit determination is based on a medical necessity or experimental treatment or similar exclusion or limit, either an explanation of the scientific or clinical judgment for the determination, applying the terms of the Plan to the Claimant's medical circumstances, or a statement that such explanation will be provided free to the Claimant upon request.
- (D) Except in the case of a disability retirement benefit claim, the Claimant or his/her authorized representative may appeal the decision of the Fund by written notice received by the Board of Trustees within 60 days of the mailing of the notice of an adverse benefit determination. In the case of a disability retirement benefit claim the Claimant may appeal the decision within 180 days of the mailing of the notice of an adverse benefit determination. The written notice only needs to state the Claimant's name, address, and the fact that the Claimant is appealing from the decision of the Board of Trustees, giving the date of the decision appealed from. The appeal shall be addressed as follows:

Bricklayers & Allied Craftsmen Local No. 7 Pension Fund  
c/o BeneSys, Inc.  
33 Fitch Blvd.  
Austintown, Ohio 44515

- (E) The Plan shall
- (1) provide Claimants the opportunity to submit written comments, documents, records, and other information relating to the claim for benefits;
  - (2) provide that a Claimant shall be provided, upon request and free of charge, reasonable access to, and copies of, all documents, records and other information relevant to his/her claim for benefits; and
  - (3) provide for a review that takes into account all comments, documents, records, and other information submitted by the Claimant relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination.
- (F) In the case of a disability retirement benefit claim, the Plan shall:
- (1) provide for a review that does not afford deference to the initial adverse benefit determination and that is conducted by an appropriate named fiduciary of the Plan who is neither the individual who made the adverse benefit determination that is the subject of the appeal, nor the subordinate of such individual;
  - (2) provide that, in deciding any appeal of an adverse benefit determination that is based in whole or in part on a medical judgment, including determinations with regard to whether a particular treatment, drug, or other item is experimental, investigational, or not medically necessary or appropriate, the appropriate named fiduciary shall consult with a health care professional who has appropriate training experience in the field of medicine involved in the medical judgment;
  - (3) provide for the identification of medical or vocational experts whose advice was obtained on behalf of the Plan in connection with a Claimant's adverse benefit determination, without regard to whether the advice was relied upon in making the benefit determination; and
  - (4) provide that the health care professional engaged for purposes of a consultation under paragraph (F)(2) of this Section shall be an individual who is neither an individual who was consulted in connection with the adverse benefit determination that is the subject of the appeal, nor the subordinate of any such individual.
- (G) Prior to a determination on the appeal, the Claimant or his/her authorized representative may have an opportunity to review necessary and pertinent documents upon which the denial in whole or in part is based and may submit written issues and comments pertinent to the appeal.

- (H) Except in the case of a disability retirement benefit claim, the Board of Trustees shall consider the Claimant's appeal of an adverse benefit determination no later than its regular quarterly meeting which immediately follows the receipt of the notice of appeal, unless such notice was filed within 30 days preceding the date of such meeting. If the notice of appeal was received within 30 days prior to the next regular quarterly meeting, the Board of Trustees may consider the appeal at the second regular quarterly meeting following the receipt of the notice of appeal. In the case of a disability retirement benefit claim the Board of Trustees shall consider such an appeal within 45 days following receipt of the appeal.
- (I) If special circumstances exist regarding a benefit claim, the Board of Trustees may take an extension of time, to the next regularly scheduled meeting, to review the claim, provided that the Claimant or his/her representative are given a notice describing the special circumstances prior to the expiration of the original review period.
- (J) After consideration of the appeal as above, the Board of Trustees shall advise the Claimant or his/her representative of its decision, in writing, within 5 days following the meeting at which the appeal was considered. The decision of the Board of Trustees shall set forth specific reasons for their conclusions and shall be written in a manner calculated to be understood by the Claimant and shall make references to the pertinent Plan provision(s) upon which the decision is based. The decision shall be final and binding upon the Claimant unless further appealed as provided in Section (K) below. Notification of an adverse benefit determination, upon appeal, shall contain:
- (1) the specific reason or reasons for the adverse benefit determination;
  - (2) reference to specific Plan provisions on which the determination is based;
  - (3) a statement that the Claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records and other information relevant to his/her claim for benefits;
  - (4) a description of the Plan's procedures regarding a hearing before the Board of Trustees and the time limits applicable to such procedures, including a statement of the Claimant's right to bring civil action under ERISA Section 502(a) following an adverse benefit determination from the Board of Trustees; and
  - (5) the following statement "You and your plan may have other voluntary alternative dispute resolution options, such as mediation. One way to find out what may be available is to contact your local U.S. Department of Labor Office and your state insurance regulatory agency."



(K) A full hearing before the Board of Trustees shall be held when:

- (1) The Board of Trustees determines, prior to making a decision on appeal, that a hearing is necessary. In such event, the Board of Trustees shall notify the Claimant or his/her representative of the date, time, and place set for a full hearing on the Claimant's appeal by regular mail addressed to the Claimant as shown on the notice of appeal.
- (2) The Claimant or his/her representative requests a full hearing before the Board of Trustees by written notice within 15 days after receipt of the Board of Trustees' decision on appeal. The written notice needs to state only the Claimant's name, address, and the fact that you are requesting a full hearing before the Board of Trustees, giving the date of the decision of the Board of Trustees.
- (3) In no case shall the date for the hearing set forth in (K)(1) or (K)(2), be set for a time later than the third regular meeting of the Board of Trustees following the receipt of the original notice of appeal. If a hearing is held under section (K)(1), the Claimant is shall not be entitled to a hearing under (K)(2).

The Hearing:

- (4) A full written report shall be kept of the proceedings of the hearing.
  - (a) In conducting the hearing, the Board of Trustees shall not be bound by the usual common law or statutory rules of evidence.
  - (b) The Claimant or his/her attorney shall have the right to review the written record of the hearing, make a copy of it and file objections to it.
  - (c) There shall be copies made of all documents and records introduced at the hearing, attached to the record of the hearing, and made a part of it.
  - (d) All information upon which the Board of Trustees based its original decision shall be disclosed to the Claimant or his/her representative at the hearing.
  - (e) In the event that additional evidence is introduced by the Board of Trustees which was not made available to the Claimant prior to the hearing, the Claimant shall be granted a continuance of as much time as the Claimant desires, not to exceed 30 days.

- (f) The Claimant shall be afforded the opportunity of presenting any evidence in his/her behalf. If you offer new evidence, the hearing may be adjourned for a period of not more than 30 days so the Board of Trustees may, if they wish, investigate the accuracy of the Claimant's new evidence or determine whether additional evidence should be introduced.
  
- (L) After consideration of the appeal after a hearing, the Board of Trustees shall advise the Claimant or his/her representative of its decision in writing within 5 days following the hearing at which the appeal was considered. The decision of the Board of Trustees shall set forth specific reasons for their conclusion, shall be written in a manner calculated to be understood by the Claimant and shall make reference to the pertinent Plan provisions upon which the decision is based. This decision shall be final and binding upon the Claimant.
  
- (M) Effective June 6, 2014, no legal action regarding an applicant's benefit may be commenced or filed against the Board of Trustees or the Plan more than 1 year after the mailing of the Board of Trustees' decision on appeal as specified in 13.3(J) or (L), whichever is later.

## ARTICLE XIV: FUNDING OF BENEFITS

### 14.1 Source of Contributions.

- (A) Contributions to the Pension Fund shall be made only by Employers on behalf of Participants. Neither contributions by a Participant nor contributions by an Employer on his/her own behalf shall be permitted under this Plan.

### 14.2 No Reversion to Employers.

- (A) Participating Employers shall have no right, title or interest in contributions made by them to the Pension Fund, and no part of the Pension Fund shall revert to the Employers.

### 14.3 Investment and Funding Policy.

- (A) An investment policy shall be established that has as its goal the maintenance of sufficient liquidity to assure the timely payments of benefits and the selection of investments, which will produce a long-term rate of return assumed by the Actuary in making his/her determination of funding requirements. The Board of Trustees may appoint an Investment Manager(s) to provide investment counsel.

### 14.4 Actuarial Valuations and Plan Review.

- (A) The rules, regulations, and the benefits provided under the Plan have been adopted by the Board of Trustees on the basis of actuarial estimates which have been established to the extent sufficient to support the Plan on a permanent basis. However, it is recognized that in the future, the income and/or liabilities of the Pension Fund may be substantially different than those previously anticipated. The Board of Trustees shall have prepared at least annually an actuarial valuation of the Pension Fund. Upon the basis of all facts and circumstances, the Board of Trustees may from time to time amend these rules, regulations and benefits provided for thereby, including any increase or decrease in benefit amounts. No such decrease may operate to reduce any vested benefits.

### 14.5 PPA Required Valuations

- (A) Effective May 1, 2008, pursuant to the Pension Protection Act of 2006 ("PPA"), this Plan will undergo a full actuarial evaluation each Plan Year. If the Plan is in Endangered Status, as defined by the PPA, the Plan will follow the PPA procedures for adopting a Funding Improvement Plan, as defined by the PPA. If the Plan is in Critical Status, as defined by the PPA, the Plan will follow the PPA procedures for adopting a Rehabilitation Plan, as defined by the PPA.

## ARTICLE XV: TOP-HEAVY PROVISIONS

### 15.1 Top Heavy Provisions

(A) This Section shall apply for purposes of determining whether the Plan is a top-heavy plan under Section 416(g) of the Code for Plan Years beginning after December 31, 2001, and whether the Plan satisfies the minimum benefits requirements of Section 416(c) of the Code for such years.

(1) Key Employee.

(a) Key Employee means any Employee or Former Employee (including any deceased Employee) who at any time during the Plan Year that includes the determination date was an officer of the Employer having annual Compensation greater than \$130,000.00 (as adjusted under Section 416(i)(1) of the Code for Plan Years beginning after December 31, 2002), a 5% owner of the Employer, or a 1% owner of the Employer having annual Compensation of more than \$150,000.00. For this purpose, annual Compensation means Compensation as defined in Section 12.1. The determination of who is a Key Employee will be made in accordance with Section 416(i)(1) of the Code and the applicable regulations and other guidance of general applicability issued thereunder.

(2) Determination of present values and amounts.

(a) Distributions during year ending on the determination date

(i) The present values of the amounts of account balances of an Employee as of the determination date shall be increased by the distributions made with respect to the Employee under the Plan and any Plan aggregated with the Plan under Section 416(g)(2) of the Code during the 1 year period ending on the determination date. The preceding sentence shall also apply to distributions under a terminated plan which, had it not been terminated, would have been aggregated with the Plan under Section 416(g)(2)(A)(i) of the Code. In the case of a distribution made for a reason other than severance from service, death, or disability, this provision shall be applied by substituting "5 year period" for "1 year period".

(b) Employees not performing services during year ending on the determination date.

(i) The accrued benefits and accounts of any individual who has not performed services for the Employer during the 1 year period ending on the determination date shall not be taken into account.

(3) Minimum Benefits.

(a) For purposes of satisfying the minimum benefit requirements of Section 416(c)(1) of the Code and the Plan, in determining years of service with the Employer, any service with the Employer shall be disregarded to the extent that such service occurs during a Plan Year when the Plan benefits (within the meaning of Section 410(b) of the Code) no key employee or former key employee.

## ARTICLE XVI: AMENDMENT AND TERMINATION OF PLAN

### 16.1 Plan Amendments.

- (A) Any amendment to this Plan may be made retroactively by the majority action of the Board of Trustees present and voting in order to bring this Plan in compliance with ERISA and any subsequent amendments. It is the desire of the Trustees to maintain this Plan as a qualified Plan and Trust under Sections 401(d) and 501(a) of the United States Internal Revenue Code of 1954, as amended by ERISA and to the extent it is necessary to maintain said qualification the Trustees may amend this Plan retroactively.
- (B) The Trustees who are present and voting may amend this Plan by majority action as evidenced by an instrument in writing executed by the Trustees provided, however:
  - (1) No amendment shall deprive any Participant, retired Participant, former Participant or any Beneficiary of any vested rights to which he/she is entitled under this Plan;
  - (2) No amendment shall provide for the use of the Trust Fund for any purpose other than for the benefit of the Participants and their beneficiaries; and
  - (3) No amendment shall cause any funds contributed to this Plan or any assets of the trust fund to revert to or be made available to an Employer.
  - (4) No amendment shall be effective to the extent that it has the effect of decreasing the Participant's Accrued Benefit.

### 16.2 Termination or Discontinuance of the Plan.

- (A) The Plan and Trust can be terminated or discontinued by the Trustees upon the happening of any one or more of the following events:
  - (1) In the event the Trust Fund shall, in the opinion of the Trustees, be inadequate to carry out the intent and purpose of the Trust Agreement, or be inadequate to meet the payments due or to become due under the Trust Agreement and under the Plan of Benefits to Participants and Beneficiaries already drawing benefits; or
  - (2) In the event there are no individuals living who can qualify as Employees hereunder; or
  - (3) When there is no longer in effect a collective bargaining agreement requiring Employers to contribute to the Fund.
  - (4) In the event of termination by action of the Union and the Employers; or

- (5) In the event of termination as may be otherwise provided by law.

### 16.3 Procedures In Event of Termination or Discontinuance.

- (A) In the event of termination, the Trustees shall:
  - (1) Make provision out of the Trust Fund for the payment of any and all obligations of the Plan and Trust, including expenses incurred up to the date of termination of the Plan and the expenses incidental to such termination; and
  - (2) Arrange for a final audit and report of their transactions and accounts for the purpose of termination of their Trusteeship; and
  - (3) Give any notice and prepare and file any reports which may be required by law; and
  - (4) After payment of the expenses as set forth in Section (1) above the remaining assets shall be allocated among Participants and Beneficiaries in a manner approved by the Board and in accordance with applicable law.

### 16.4 Missing Participants.

- (A) In case of a Plan covered by Title IV of the Employee Retirement Income Security Act of 1974, a trust forming part of such Plan shall not be treated as failing to constitute a qualified Trust under this section merely because the Plan of which such Trust is a part, upon its termination, transfers benefits of missing Participants to the Pension Benefit Guaranty Corporation in accordance with Section 4050 of such Act.

### 16.5 Vesting on Termination.

- (A) Notwithstanding anything to the contrary contained in this Article and for the sole purpose of complying with the provisions of Section 411(d)(3) of the Internal Revenue Code, in the event of termination or partial termination of this Plan, the interests in this Plan, of all Participants affected by such termination or partial termination shall be fully vested and nonforfeitable to the extent funded as of the date of such termination or partial termination and that the provisions of the foregoing Sections of this Article do not comply fully with said Section 411(d)(3) without the application of this paragraph. For purposes of this Section, no event shall be deemed to be a "partial termination" unless: (A) the Trustees have so designated such event in a writing delivered to the Participating Employers; or (B) such event has been finally and expressly determined to be a partial termination within the meaning of Section 411(d) of the Internal Revenue Code of 1954, as amended, in an administrative or judicial proceeding to which both the Trustee and the Commissioner of Internal Revenue or his/her delegate were parties.

16.6 Merger or Consolidation of the Plan.

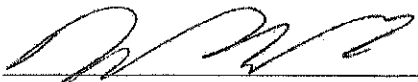
- (A) In the case of any merger or consolidation of this Plan, or to the Pension Fund with, or transfer of the assets or liabilities of the Plan and/or Pension Fund to, any other plan, the terms of such merger, consolidation, or transfer shall be such that each Participant would receive (in the event of termination of the Plan, or its successor immediately thereafter) a benefit which is no less than he/she would have received in the event of termination of this Plan immediately before such merger, consolidation or transfer, merger, consolidation or transfer.

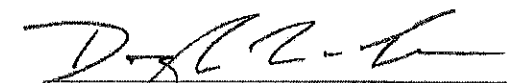


**SIGNATURE PAGE**

IN WITNESS WHEREOF, this Amended and Restated Plan has been executed by the Trustees on this 19<sup>th</sup> day of December, 2014.

**MANAGEMENT TRUSTEES**

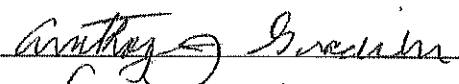
  
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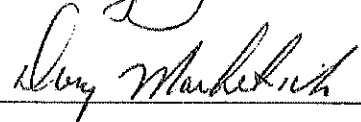
  
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**UNION TRUSTEES**

  
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**AMENDMENT NO. 1 TO THE  
BRICKLAYERS AND ALLIED CRAFTSMEN LOCAL NO. 7  
PENSION PLAN**

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WHEREAS, this Plan was amended and restated effective May 1, 2014; and

WHEREAS, Article XVII, Section 16.1 permits the Trustees to amend or modify this Plan at any time by majority vote, retroactively if necessary, to meet the qualification and exemption requirements of the Code or to meet any of the requirements of the Act or corresponding provisions of any subsequent or amendatory federal legislation which is applicable; and

WHEREAS, the Trustees desire to amend the Plan pursuant to an IRS Information Request dated July 17, 2015.

NOW THEREFORE, the Board of Trustees has declared and agreed that the Plan shall be amended as follows:

**A. Effective May 1, 2014, Section 1.10 shall be amended to state as follows:**

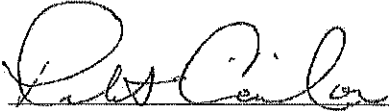
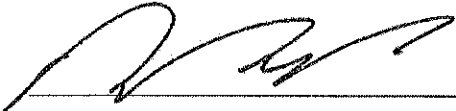
1.10 Contributions

- (A) The term "Contributions" means payment to the Trust Fund by an Employer as required under applicable Collective Bargaining Agreements or other written agreements. The relevant portions of the Collective Bargaining Agreement are attached and incorporated by reference as Addendum 1.

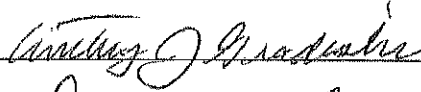
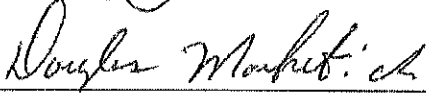
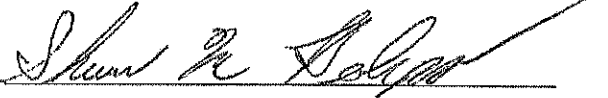
B. Except as herein expressly amended or modified herein, all of the terms and provisions of the PLAN are hereby affirmed.

IN WITNESS WHEREOF, this Amendment No. 1 has been executed by the Trustees on this 25<sup>th</sup> day of September, 2015.

**MANAGEMENT TRUSTEES**

  
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**UNION TRUSTEES**

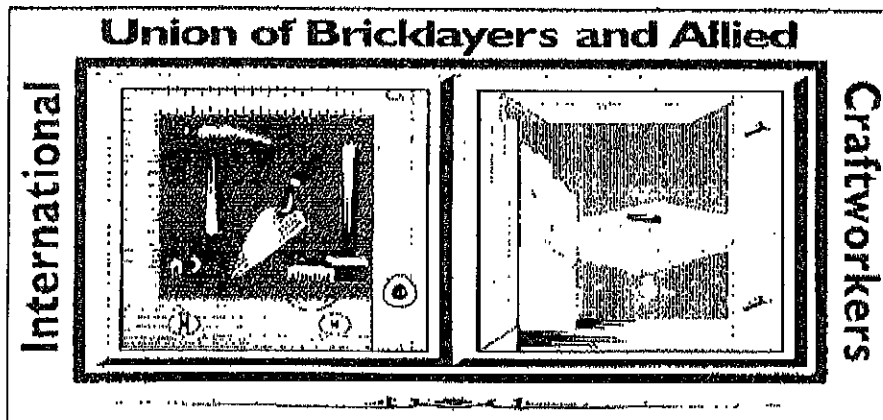
  
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# ADDENDUM 1

# **Bricklayers and Allied Craftworkers' Agreement 2011 – 2014**

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**OHIO ADMINISTRATIVE  
DISTRICT COUNCIL – LOCAL # 7  
AKRON, OHIO**



**International Union of  
Bricklayers & Allied Craftworkers  
Of America, AFL – CIO**

**AND  
THE ASSOCIATION OF UNION MASON CONTRACTORS**

**AKRON, OHIO**

**ARTICLE IV  
Wage Rates/Fringe Benefits, Dues, Other Contributions and Deductions  
Hourly Deductions / Effective Dates**

Section A: Wages and fringe benefits of the Bricklayers, effective June 1, 2011.

<u>Hourly Rate</u>	<u>Health Fund</u>	<u>Local Pension</u>	<u>Int'l Pension</u>	<u>Apprentice Fund</u>	<u>I.M.I.</u>
\$28.26	+\$6.14	+\$2.00	+\$0.80	+\$0.20	\$ .42
		\$3.61 (LPR)	+\$0.12 (IPF PPA)		
		\$5.61	\$0.92		
<u>Savings Program</u>	<u>B.T.C.</u>	<u>AUMC</u>	<u>Union Dues</u>	<u>Gross Wage</u>	
-\$1.50	-\$0.02	+\$0.05	-\$1.51	\$41.60	

Effective June 1, 2012 \$0.75 per hour increase  
 Effective June 1, 2013 \$0.75 per hour increase

Section B: Residential rate of wages and fringe benefits of the Bricklayers, effective June 1, 2011.

<u>Hourly Rate</u>	<u>Health Fund</u>	<u>Local Pension</u>	<u>Int'l Pension</u>	<u>Apprentice Fund</u>	<u>I.M.I.</u>	<u>AUMC</u>
\$25.43	+\$6.14	+\$5.61	+\$0.92	+\$0.20	+\$ .42	+\$ .05
<u>Savings Program</u>	<u>B.T.C.</u>	<u>Union Dues</u>	<u>Gross Wage</u>			
-\$1.50	-\$0.02	-\$1.41	\$38.77			

Effective June 1, 2012 \$0.75 per hour increase  
 Effective June 1, 2013 \$0.75 per hour increase

(I) Residential Scope of Work: The scope of work covered by the residential rate will include all units built primarily for single-family residence not to exceed two stories in style, but does not include any residential unit or project covered by the Davis-Bacon Act.

Section C: The rate of the Sewer Bricklayers will be fifty cents (\$.50) per hour above the Building Bricklayers' rate. Men working from cable or rope hung scaffold shall receive fifty cents (\$.50) per hour above the Building Bricklayers' rate. This provision does not apply to the "Patent Scaffold Company" type scaffold hung from steel out-rigger beams.

**Section B: Health Fund**

The contribution to the Ohio Bricklayers Health & Welfare Fund shall be a total of \$6.14 for each hour or portion thereof for which a covered employee receives pay. The payments required above shall be made to the Ohio Bricklayers Health & Welfare Fund which was established under an Agreement and Declaration of Trust, dated June 17, 1977.

**Section C: Local Pension**

The contribution to the Bricklayers and Allied Craftworkers No. 7, Pension Fund shall be a total of Five dollars and sixty one cents (\$5.61) for each hour or portion thereof, for which a covered employee received pay. Two dollars (\$2.00) per hour is allocated to pension and Three dollars and sixty one cents (\$3.61) is allocated to pension recovery. The payments required above shall be made to the Bricklayers and Allied Craftworkers Local No. 7, Pension Fund, which was established under an Agreement and Declaration of Trust, dated February 1, 1968.

**Section D: International Pension Fund (IPF)**

(a) The contribution to the Bricklayers and Trowel Trades International Pension Fund (IPF) shall be a total of eighty cents (\$.80) (IPF) for each hour or portion thereof and twelve cents (0.12) (PPA), for which covered employee receives pay.

(b) The payments required above shall be made to the Bricklayers and Trowel Trades International Pension Fund (IPF), which was established under an Agreement and Declaration of Trust, dated 1 July 1972.

**Section E: Association of Union Mason Contractors (A.U.M.C.)**

There shall be a five cents (\$.05) contribution for each hour worked to the A.U.M.C. for drug and alcohol testing costs remitted once each month as per instructions on the multi-reporting form. Proposed that the Contractors be responsible for the printing of the Collective Bargaining Agreements to all affected parties.

**Section F: Vacation/Savings Fund**

One dollar and fifty cents (\$1.50) shall be deducted from the employee's wages for each hour worked and remitted as instructed on the multi-employer reporting form.

**Section G: Apprenticeship Fund**

Effective June 1, 2009 through May 31<sup>st</sup> 2011 the hourly contribution shall be twenty cents (\$0.20) per each straight time hour.

**Section H: International Masonry Institute (IMI)**

The contribution to the International Masonry Institute shall be Forty two cents (\$0.42) for each hour or portion thereof for which a covered employee receives pay. The employer's total contribution for each hour or portion thereof for which an employee receives pay shall be allocated as follows:

1. The payments required above shall be made to the International Masonry Institute, which was established under an Agreement and Declaration of Trust, March 14, 1981, as the successor trust to the predecessor International Masonry Institute (Established under an Agreement and Declaration of Trust, July 22, 1970) and the predecessor International Masonry Apprenticeship Trust, November 6, 1974.

**AMENDMENT NO. 2 TO THE  
BRICKLAYERS AND ALLIED CRAFTSMEN LOCAL NO. 7  
PENSION PLAN**

---

WHEREAS, this Plan was amended and restated effective May 1, 2014; and

WHEREAS, Article XVII, Section 16.1 permits the Trustees to amend or modify this Plan at any time by majority vote, retroactively if necessary, to meet the qualification and exemption requirements of the Code or to meet any of the requirements of the Act or corresponding provisions of any subsequent or amendatory federal legislation which is applicable; and

WHEREAS, the Trustees desire to amend the Plan pursuant to the Multiemployer Pension Reform Act of 2014.

NOW THEREFORE, the Board of Trustees has declared and agreed that the Plan shall be amended as follows:

**A. Effective August 1, 2016, Section 11.25 shall be added to state as follows:**

11.25 Multiemployer Pension Reform Act of 2014

- (A) If the Plan qualifies pursuant to the Multiemployer Pension Reform Act of 2014 ("MPRA"), the Plan may pursue reductions in vested benefits, but only to the extent and in accord with the procedures set forth in MPRA.

**B. Effective August 1, 2016, Section 14.4 shall be amended to state as follows:**

14.4 Actuarial Valuations and Plan Review.

- (A) The rules, regulations, and the benefits provided under the Plan have been adopted by the Board of Trustees on the basis of actuarial estimates which have been established to the extent sufficient to support the Plan on a permanent basis. However, it is recognized that in the future, the income and/or liabilities of the Pension Fund may be substantially different than those previously anticipated. The Board of Trustees shall have prepared at least annually an actuarial valuation of the Pension Fund. Upon the basis of all facts and circumstances, the Board of Trustees may from time to time amend these rules, regulations and benefits provided for thereby, including any increase or decrease in benefit amounts. No such decrease may operate to reduce any vested benefits unless permitted pursuant to MPRA.



**C. Effective August 1, 2016, Section 16.1 shall be amended to state as follows:**

**16.1 Plan Amendments.**



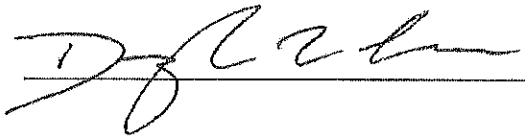
- (A) Any amendment to this Plan may be made retroactively by the majority action of the Board of Trustees present and voting in order to bring this Plan in compliance with ERISA and any subsequent amendments. It is the desire of the Trustees to maintain this Plan as a qualified Plan and Trust under Sections 401(d) and 501(a) of the United States Internal Revenue Code of 1954, as amended by ERISA and to the extent it is necessary to maintain said qualification the Trustees may amend this Plan retroactively.
- (B) The Trustees who are present and voting may amend this Plan by majority action as evidenced by an instrument in writing executed by the Trustees provided, however:
  - (1) No amendment shall deprive any Participant, retired Participant, former Participant or any Beneficiary of any vested rights to which he/she is entitled under this Plan unless permitted pursuant to MPRA;
  - (2) No amendment shall provide for the use of the Trust Fund for any purpose other than for the benefit of the Participants and their beneficiaries; and
  - (3) No amendment shall cause any funds contributed to this Plan or any assets of the trust fund to revert to or be made available to an Employer.
  - (4) No amendment shall be effective to the extent that it has the effect of decreasing the Participant's Accrued Benefit unless permitted pursuant to MPRA.

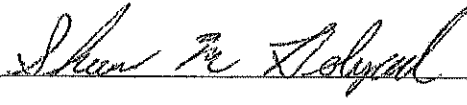
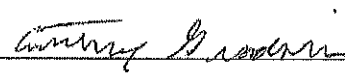
D. Except as herein expressly amended or modified herein, all of the terms and provisions of the PLAN are hereby affirmed.

IN WITNESS WHEREOF, this Amendment No. 2 has been executed by the Trustees on this 9<sup>th</sup> day of December, 2016.

**MANAGEMENT TRUSTEES**

**UNION TRUSTEES**

  
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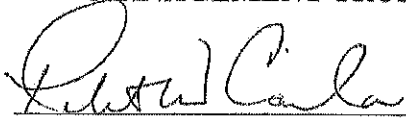
  
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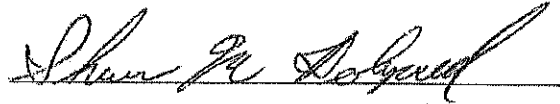
B. Except as herein expressly amended or modified herein, all of the terms and provisions of the PLAN are hereby affirmed.

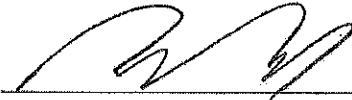
IN WITNESS WHEREOF, this Amendment No. 3 has been executed by the Trustees on this 16<sup>th</sup> day of March, 2018.

MANAGEMENT TRUSTEES

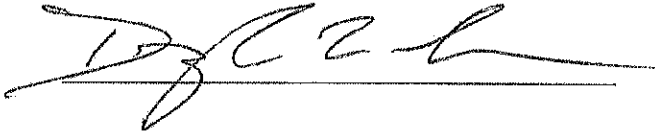
UNION TRUSTEES

  
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**AMENDMENT NO. 3 TO THE  
BRICKLAYERS AND ALLIED CRAFTSMEN LOCAL NO. 7  
PENSION PLAN**

---

WHEREAS, this Plan was amended and restated effective May 1, 2014; and

WHEREAS, Article XVII, Section 16.1 permits the Trustees to amend or modify this Plan at any time by majority vote, retroactively if necessary, to meet the qualification and exemption requirements of the Code or to meet any of the requirements of the Act or corresponding provisions of any subsequent or amendatory federal legislation which is applicable; and

WHEREAS, the Trustees desire to amend the Plan regarding benefit applications and the Plan's Claims & Appeals Procedure.

NOW THEREFORE, the Board of Trustees has declared and agreed that the Plan shall be amended as follows:

**A. Effective April 1, 2018, Section 13.3 shall be amended to read as follows:**

**13.3 Claims and Appeals Procedure**

- (A) A Participant, Beneficiary or their authorized representative may file with the Fund's Custodian or the Fund office a claim for benefits under the Plan. The claim shall be in writing, stating the basis of the claim, and authorizing the Fund's Custodian to conduct all necessary investigations into the claim.
- (B) If a claim is wholly or partially denied, the plan administrator shall notify the claimant, in accordance with paragraph (C) of this section, of the plan's adverse benefit determination within a reasonable period of time, but not later than 90 days after receipt of the claim by the plan, unless the plan administrator determines that special circumstances require an extension of time for processing the claim. If the plan administrator determines that an extension of time for processing is required, written notice of the extension shall be furnished to the claimant prior to the termination of the initial 90-day period. In no event shall such extension exceed a period of 90 days from the end of such initial period. The extension notice shall indicate the special circumstances requiring an extension of time and the date by which the plan expects to render the benefit determination.
- (C) Manner and content of notification of benefit determination.
  - (1) The plan administrator shall provide a claimant with written or electronic notification of any adverse benefit determination. Any electronic notification shall comply with the standards imposed by 29 CFR 2520.104b-1(c)(1)(i), (ii), and (iv). The notification shall set forth, in a manner calculated to be understood by the claimant –

- (B) Was submitted, considered, or generated in the course of making the benefit determination, without regard to whether such document, record, or other information was relied upon in making the benefit determination;
  - (C) Demonstrates compliance with the administrative processes and safeguards required pursuant to paragraph (C)(2) of this section in making the benefit determination.
- (e) Any review shall take into account all comments, documents, records, and other information submitted by the claimant relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination.
- (E) Timing of notification of benefit determination on review
- (1) In general.
    - (a) This Plan's Board of Trustees meets at least quarterly. The Plan's Board of Trustees or designated committee shall make a benefit determination no later than the date of the meeting of the committee or board that immediately follows the plan'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 benefit determination may be made by no later than the date of the second meeting following the plan's receipt of the request for review. If special circumstances (such as the need to hold a hearing, if the plan's procedures provide for a hearing) require a further extension of time for processing, a benefit determination shall be rendered not later than the third meeting of the committee or board following the plan's receipt of the request for review. If such an extension of time for review is required because of special circumstances, the plan administrator shall provide the claimant with written notice of the extension, describing the special circumstances and the date as of which the benefit determination will be made, prior to the commencement of the extension. The plan administrator shall notify the claimant, in accordance with paragraph (F) of this section, of the benefit determination as soon as possible, but not later than 5 days after the benefit determination is made.
  - (2) Calculating time periods. For purposes of paragraph (E) of this section, the period of time within which a benefit determination on review is required to be made shall begin at the time an appeal is filed in accordance with the reasonable procedures of a plan, without regard to whether all the information necessary to make a benefit determination on review

accompanies the filing. In the event that a period of time is extended as permitted pursuant to paragraph (E)(1)(a) of this section due to a claimant's failure to submit information necessary to decide a claim, the period for making the benefit determination on review shall be tolled from the date on which the notification of the extension is sent to the claimant until the date on which the claimant responds to the request for additional information.

- (3) Furnishing documents. In the case of an adverse benefit determination on review, the plan administrator shall provide such access to, and copies of, documents, records, and other information described in paragraph (F)(1)(c) of this section as is appropriate.
  - (4) The Board's decision on review shall be final and binding.
- (F) Manner and content of notification of benefit determination on review.
- (1) The plan administrator shall provide a claimant with written or electronic notification of a plan's benefit determination on review. Any electronic notification shall comply with the standards imposed by 29 CFR 2520.104b-1(c)(1)(i), (ii), and (iv). In the case of an adverse benefit determination, the notification shall set forth, in a manner calculated to be understood by the claimant --
    - (a) The specific reason or reasons for the adverse determination;
    - (b) Reference to the specific plan provisions on which the benefit determination is based;
    - (c) A statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits;
      - (i) A document, record, or other information shall be considered "relevant" to a claimant's claim if such document, record, or other information:
        - (A) Was relied upon in making the benefit determination;
        - (B) Was submitted, considered, or generated in the course of making the benefit determination, without regard to whether such document, record, or other information was relied upon in making the benefit determination;
        - (C) Demonstrates compliance with the administrative processes and safeguards required pursuant to

paragraph (C)(2) of this section in making the benefit determination.

- (d) A statement of the claimant's right to bring an action under section 502(a) of the Act; and
  - (e) The limitation imposed by Section 13.3(G).
- (G) Effective June 6, 2014, no legal action regarding an applicant's benefit may be commenced or filed against the Board of Trustees or the Plan more than 1 year after the mailing of the Board of Trustees' decision on appeal as specified in Section 13.3(E).

**AMENDMENT NO. 4 TO THE  
BRICKLAYERS AND ALLIED CRAFTSMEN LOCAL NO. 7  
PENSION PLAN**

---

WHEREAS, this Plan was amended and restated effective May 1, 2014; and

WHEREAS, Article XVII, Section 16.1 permits the Trustees to amend or modify this Plan at any time by majority vote, retroactively if necessary, to meet the qualification and exemption requirements of the Code or to meet any of the requirements of the Act or corresponding provisions of any subsequent or amendatory federal legislation which is applicable; and

WHEREAS, the Trustees desire to amend the Plan regarding forum selection.

NOW THEREFORE, the Board of Trustees has declared and agreed that the Plan shall be amended as follows:

**A. Effective January 1, 2019, Section 13.3(H) shall be added to read as follows:**

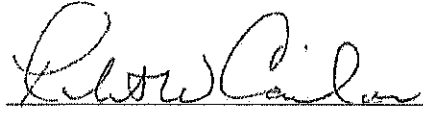
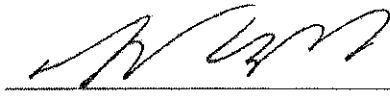
(H) Effective for any suit brought in Court against this Plan or this Plan's Board of Trustees on or after January 1, 2019, such suit must be filed in the United States District Court for the Northern District of Ohio. If such matter is not pre-empted or is subject to the exclusive jurisdiction of the state, the suit must be brought in Summit County Common Pleas Court in Akron, Ohio.



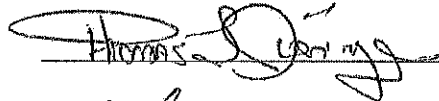
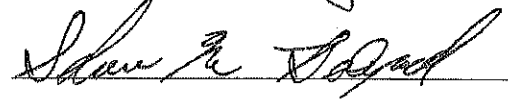
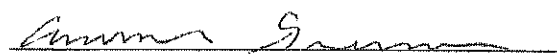
B. Except as herein expressly amended or modified herein, all of the terms and provisions of the PLAN are hereby affirmed.

IN WITNESS WHEREOF, this Amendment No. 4 has been executed by the Trustees on this 14<sup>th</sup> day of December, 2018.

**MANAGEMENT TRUSTEES**

  
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**UNION TRUSTEES**

  
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**AMENDMENT NO. 5 TO THE  
BRICKLAYERS AND ALLIED CRAFTSMEN LOCAL NO. 7  
PENSION PLAN**

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WHEREAS, this Plan was amended and restated effective May 1, 2014; and

WHEREAS, Article XVII, Section 16.1 permits the Trustees to amend or modify this Plan at any time by majority vote, retroactively if necessary, to meet the qualification and exemption requirements of the Code or to meet any of the requirements of the Act or corresponding provisions of any subsequent or amendatory federal legislation which is applicable; and

WHEREAS, the Trustees desire to amend the Plan's benefit formula.

NOW THEREFORE, the Board of Trustees has declared and agreed that the Plan shall be amended as follows:

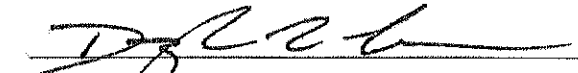
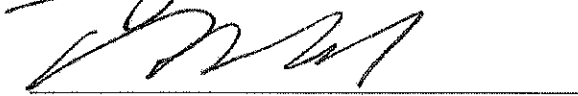
**A. Effective May 1, 2016, Section 3.2(A)(2)(f) shall be amended to read as follows:**

- (f) For Active Participants who retire on or after May 1, 1999, the Future Service Benefit shall be equal to 4.10% of the Employer Contributions made to the Trust Fund on the Participant's behalf for hours worked from February 1, 1968 through April 30, 2003 plus 3.0% of Employer Contributions made to the Trust Fund on the Participant's behalf for hours worked from May 1, 2003 through April 30, 2005 plus 1.0% of the Employer Contributions made to the Trust Fund on the Participant's behalf for hours worked from May 1, 2005 through May 31, 2006 plus 1.0% of the first \$2.00 of the Employer Contributions made to the Trust Fund on the Participant's behalf for hours worked from June 1, 2006 through April 30, 2016, plus 0.3% of the first \$6.66 of the Employer Contributions made to the Trust Fund on the Participant's behalf for hours worked on or after May 1, 2016 plus 1.0% of the Employer Contributions in excess of \$6.66 made to the Trust Fund on the Participant's behalf on or after May 1, 2016.


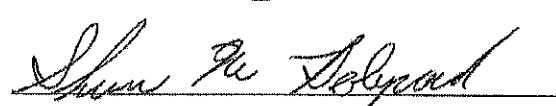

B. Except as herein expressly amended or modified herein, all of the terms and provisions of the PLAN are hereby affirmed.

IN WITNESS WHEREOF, this Amendment No. 5 has been executed by the Trustees on this 21<sup>st</sup> day of June, 2019.

**MANAGEMENT TRUSTEES**

  
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**UNION TRUSTEES**

  
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