

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

**Restatement as of January 1, 2014**

**Bricklayers and Allied Craftworkers  
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**Table of Contents**

INTRODUCTION.....	2
Article 1 – Definitions and Construction .....	3
Article 2 – Eligibility and Participation .....	8
Article 3 – Credited Service .....	10
Article 4 – Vesting and Break in Service .....	13
Article 5 – Normal Retirement.....	14
Article 6 – Early Retirement .....	17
Article 7 – Vested Deferred Retirement.....	19
Article 8 – Disability Retirement .....	20
Article 9 – Method of Payment .....	22
Article 10 – Death Benefits.....	27
Article 11 – Suspension of Benefits.....	30
Article 12 – Claims Procedure .....	32
APPENDICES.....	34
Appendix I – Suspension Of Adjustable Benefits.....	34
Appendix II – Top-Heavy Provisions .....	35
Appendix III – Benefit Restrictions .....	42
Appendix IV – Administration Of The Plan .....	44
Appendix V – Amendment And Termination.....	46
Appendix VI – Miscellaneous.....	48
Appendix VII – Merger Of Prior Plans.....	52
Appendix VIII – Direct Rollovers.....	54
Appendix IX – Contributions.....	56

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

**INTRODUCTION**

This document shall constitute and comprise the Plan known as the Bricklayers and Allied Craftworkers Local 5 New York Retirement Fund Pension Plan (the Plan).

Effective January 1, 1959, Bricklayers, Masons and Plasterers Local Union No. 44, AFL-CIO, and employers with which it had collective bargaining agreements, entered an Agreement and Declaration of Trust which established the Bricklayers, Masons and Plasterers Local Union No. 44 Pension Fund. Pursuant thereto, the Board of Trustees established the Bricklayers, Masons and Plasterers Local Union No. 44 Pension Fund.

The Trustees have merged various plans into this Plan as specified in Appendix VII. The accrued accounts of the Participants in these former plans at the time of merger are recognized under this Plan. The Plan provisions that apply to all participants under the merged Plan are those of this Plan. However, the mergers and this restatement shall not operate to restore any lost benefits, nor enhance any accrued benefits.

The Plan is restated and amended in its entirety, and supersedes all prior Plan documents and shall read in full as in the attached January 1, 2014 restatement. No amendment or restatement of the Plan is intended to reinstate benefits lost, frozen, or forfeited under prior versions of this Plan.

This restated Plan is intended to continue to satisfy the requirements of Section 401(a) and 501(a) of the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 and subsequent legislation.

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

**Article 1 – Definitions and Construction**

Wherever used in the Plan, unless the context clearly indicates otherwise, the following words and terms will have the meanings set forth below:

**1.01 Accrued Retirement Benefit**

The normal retirement benefit that a Participant would receive under Section 5.03 at the Participant's Normal Retirement Date. In the event a Participant terminates Employment prior to his Normal Retirement Date, his accrued retirement benefit shall be equal to his retirement benefit determined as of his date of termination of Employment.

**1.02 Actuarial Equivalent**

The equality in value of the aggregate amount of pension benefits to be received under different forms of payments. Except as otherwise provided in the Plan, Actuarial Equivalent shall be determined based on the following actuarial assumptions:

(a) For lump-sum payments under this Plan

- (1) On or after January 1, 2008, the “Actuarial Present Value” of a benefit shall be determined using the “applicable interest rate” and the “applicable mortality table” consistent with IRC §417(e), based on the Stability Period and Lookback Month of the Plan immediately preceding the plan year that the lump sum occurs.

For purposes of this definition, the following terms shall apply:

- Lookback Month – the month used to determine the Applicable Interest Rate. The Lookback Month is the second full calendar month preceding the first day of the Stability Period. The Lookback Month is November (as published in December) immediately preceding the plan year that the lump sum occurs.
- Stability Period – the period for which the Applicable Interest Rate remains constant. The Stability Period is one Plan Year.

- (2) On or after January 1, 2000 and before January 1, 2008, the “Actuarial Equivalent” of a benefit shall be based on the interest rate for 30-year Treasury Securities (the “Applicable Interest Rate”) and the Mortality Table specified in Code Section 417(e)(3)(A)(ii)(I)

- (3) Prior to January 1, 2000, unless otherwise specified in the Plan, the mortality assumption shall be based on the Unisex Pension 1984 Mortality Table set forward one year and the interest rate used (as of the first day of the calendar year in which the distribution is made) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump-sum distribution on plan termination (without a Notice of Sufficiency).

(b) For purposes of computing the limitations on benefits contained in Section 415 of the Code, the “applicable mortality table” as defined in Section 417(e) of the Code and 5% interest; or

(c) For converting the normal form of benefit to all optional forms and pursuant to a Qualified Domestic Relations Order, except lump-sum payments, unless otherwise specified in the Plan, the “Actuarial Equivalent” of a benefit shall be determined using the interest rate of 7% compounded annually and the 1951 Group Annuity Mortality Table.

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

**1.03 Administrator**

The Board of Trustees shall control and manage the operation and administration of the Plan and is hereby designated the named fiduciary.

**1.04 Code**

The Internal Revenue Code of 1986, as amended from time to time, and as interpreted by applicable regulations and rulings issued thereunder.

**1.05 Collective Bargaining Agreement or Agreement**

An agreement between the Union and an Employer that requires contributions to the Fund. An Agreement shall also include a participation agreement with the Trustees requiring the Union, as an Employer, be obligated to make contributions to the Pension Fund on behalf of its Employees.

**1.06 Construction**

Except to the extent preempted by the Employee Retirement Income Security Act of 1974, the laws of the State of New York, as amended from time to time, shall govern the construction and application of the Plan. Words used in the masculine gender shall include the feminine and words in the singular shall include the plural, as appropriate. The words "hereof," "herein," "hereunder" and other similar compounds of the word "here" shall refer to the entire Plan, not to a particular Section. Any mention of "Articles," "Sections" and subdivisions thereof, unless stated specifically to the contrary, refers to Articles, Sections or subdivisions thereof in the Plan. All references to statutory Sections shall include the Section so identified, as amended from time to time, or any other statute of similar import. If any provision of the Code or the Employee Retirement Income Security Act of 1974 render any provision of this Plan unenforceable, such provision shall be of no force only to the minimum extent required by such Section.

**1.07 Designated Beneficiary**

The person named by the Participant to receive any benefits to which the Participant has a right to designate in accordance with the rules of the Plan. Such designation must be made in writing and given to the Trustees. The Participant may change his Designated Beneficiary at any time by filing another written designation with the Trustees.

**1.08 Employee**

“Employee” means

- (1) any person in the employ of an Employer who worked, or will work in a classification for which the Union acted or will act as the collective bargaining representative and for whom the Employer is obligated by his Collective Bargaining Agreement with the Union to contribute on the person’s behalf to the Pension Fund; or
- (2) Any person employed by an Employer for whom the Employer, pursuant to a written agreement with the Trustees, agrees to contribute on the person’s behalf to the Pension Fund; or
- (3) Any person employed by the Pension Fund.

A self employed individual is not permitted to be a Participant in this Plan and no credit shall be

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

earned hereunder with respect to any employment as a self employment person.

**1.09 Employer**

“Employer” means:

- (1) Any employer who is required to pay contributions to the Fund for the purposes of this Plan as the result of an agreement between such Employer and the Union, or between such Employer and the Trustees; and
- (2) The Pension Fund.

**1.10 ERISA**

The Employee Retirement Income Security Act of 1974, as from time to time amended.

**1.11 Hour of Covered Service**

“Hour of Covered Service” means each hour for which an individual is paid, or entitled to payment, for the performance of Covered Service for the Employer. The Plan shall credit an Hour of Covered Service to the Plan Year or other computation period to which a payment, agreement or award relates rather than the year or period in which the payment, agreement or award occurs.

**1.12 Hour of Eligibility Service**

The Plan shall credit an Hour of Eligibility Service with respect to each Hour of Covered Service and for each hour of Noncovered Service for which the Employer is not obligated to contribute to the Pension Fund but only for Noncovered Service when the Employee moves from Covered Service to contiguous Noncovered Service, as described at 29 C.F.R. § 2530.210, for the same Employer provided the Employer remains in continuous contractual relationship with the Union and obligated to make contributions to this Pension Fund. Such Hours of Eligibility Service shall be based upon:

- (1) Each hour for which an individual is paid, or entitled to payment, for the performance of service for the Employer;
- (2) Each hour for which an individual is paid, or entitled to payment by the Employer without the performance of service (regardless of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including Disability), jury duty, military duty, or leave of absence (pursuant to this paragraph (2), no more than 501 Hours of Service will be credited for any single continuous period, whether or not such period occurs in a single Plan Year or other computation period, and 29 C.F.R. Sections 2530.200b-2 and 3 shall govern the determination of an individual's Hours of Service); and
- (3) Each hour for which back pay, regardless of any mitigation of damages, is either awarded or agreed to by the Employer.

The same Hours of Service will not be credited pursuant to both paragraphs (1) or (2), as the case may be, and paragraph (3).

Solely to avoid a Break in Service, an individual who is absent from work for maternity or paternity reasons shall receive credit for the Hours of Service which would otherwise have been credited to such individual but for such absence. An absence from work for maternity or paternity reasons means an

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

absence due to (i) the pregnancy of the individual, (ii) the birth of a child of the individual, (iii) the placement of a child with the individual for adoption by the individual or (iv) the caring for such child immediately after birth or placement. The Plan shall credit Hours of Service pursuant to this paragraph first to the Plan Year in which the absence begins to the extent necessary to prevent a Break in Service in that Plan Year, then to the Plan Year following the Plan Year in which the absence begins. No more than 501 hours will be credited under this paragraph. If the hours which would have been credited but for an absence due to maternity or paternity reasons cannot be determined, the Plan shall credit eight Hours of Service for each day of the absence. The Plan shall not award Hours of Service pursuant to this paragraph unless the individual involved provides the Administrator such information as the Administrator reasonably requires to establish the purpose of the absence as consistent with this paragraph and to establish the number of days in the absence.

The Plan shall credit an Hour of Service to the Plan Year or other computation period to which a payment, agreement or award relates rather than the year or period in which the payment, agreement or award occurs. Except for purposes of benefit accrual pursuant to Article 6, Hours of Service shall be credited for employment with other members of an affiliated service group (under Code Section 414(m)), a controlled group of corporations (under Code Section 414(b)), a group of trades or businesses under common control (under Code Section 414(c)) of which the Employer is a member, any other entity required to be aggregated with the Employer pursuant to Code Section 414(o).

Hours of Service will also be credited for any individual considered to be an employee for purposes of this Plan under Code Section 414(n) or under Code Section 414(o).

**1.13 Noncovered Service**

Employment by an Employer at any employment which is not Covered Service.

**1.14 Pension Fund**

The assets of the Plan held in trust by a Trustee under the Agreement and Declaration of Trust adopted by the Employers and the Union effective as of January 1, 1959.

**1.15 Plan**

Bricklayers and Allied Craftworkers Local 5 New York Retirement Fund Pension Plan, as stated herein and as amended from time to time.

**1.16 Plan Year**

The twelve month period beginning January 1 and ending December 31.

**1.17 Prior Plan**

The Plan, effective January 1, 1955, as amended from time to time. Where benefits were under the terms of a plan which has been merged into the Plan, Prior Plan shall include the terms of such plan with respect to the participant's therein.

**1.18 Retirement**

The complete withdrawal from any further employment in work of the kind regularly performed by members of the Union.

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

**1.19 Spouse**

The spouse or surviving spouse of the Participant, provided that a former Spouse will be treated as a Spouse and any current spouse will not be treated as the spouse or surviving spouse to the extent provided under a qualified domestic relations order as described in Code section 414(p).

**1.20 Trustee**

The Trustees or Board of Trustees established under the Agreement and Declaration of Trust adopted by the Employers and the Union effective as of January 1, 1959.

**1.21 Union**

"Union" means Local 5 New York Bricklayers and Allied Craftworkers Union, or its successor.

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

**Article 2 – Eligibility and Participation**

**2.01 Participant**

Any individual who has satisfied the eligibility and participation requirements of the Plan as provided in this Article 2. Where appropriate, the term "Participant" also includes former Participants. On the date a Participant's Employment terminates the Participant shall be deemed a former Participant. Status as a former Participant shall continue until the date the Plan has satisfied all liabilities with respect to the former Participant.

**2.02 Eligibility**

Each Employee who was a Participant on December 31, 1988 shall continue to participate in this Plan. Each Employee who was a Participant in the Westchester Plan on December 31, 1990 shall continue to participate in this Plan as of January 1, 1991. Each Employee who was a Participant in any other Plan that may merge with this Plan after December 31, 1990 shall continue to participate in this Plan as of the date of merger. Each other Employee who is employed by an Employer who is obligated to make contributions to the Fund as a result of such Employee working in Covered Service and completes 250 Hours of Credited Service during a Plan Year will become a Participant on the first day of that Plan Year provided that is on or before January 1, 2002. If the Employee does not qualify at that time, then the employee becomes a Participant on the first day of the Plan Year provided that is on or before January 1, 2002, (including the first anniversary of his employment commencement date) in which he initially completes 250 Hours of Credited Service.

After January 1, 2002 an Employee working in Covered Service who completes 400 Hours of Credited Service during a Plan Year, and who is not yet a Participant, will become a Participant on the first day of the next Plan Year provided that he survives to that date. However, he may become a Participant earlier if he completes 1,000 hours of Eligibility Service including at least 100 hours of Credited Service during a 12 consecutive month period (beginning with his first date of hire by a contributing employer or with each January 1 thereafter), and in that case he will participate on the January 1 nearest the completion of such 12-month period.

Eligibility will cease if the Employee or former Employee dies or forfeits all Credited Service pursuant to Section 3.04. Eligibility will be restored anew in accordance with this Section after sufficient reemployment, or will be restored immediately if forfeited Credited Service is restored pursuant to Section 2.03.

**2.03 Reemployment**

(a) *Prior to a Break in Service*

If a Participant terminates Employment and subsequently resumes Employment prior to his incurring a Break in Service, the rehired employee shall immediately participate in the Plan.

(b) *After a Break in Service*

If a Participant terminates Employment with Vested Status in his Accrued Retirement Benefit and subsequently resumes Employment after incurring a Break in Service, the rehired employee shall immediately participate in the Plan.

If a Participant terminates Employment without Vested Status in any portion of his Accrued

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

Retirement Benefit and resumes Employment before incurring a period of Breaks in Service equaling or exceeding the greater of (1) five consecutive years or (2) the number of Years of Eligibility Service he completed prior to the Break in Service, the rehired employee shall again become a Participant in the Plan, and have his Credited Service restored, if and when he re-qualifies pursuant to Section 2.01 above.

Notwithstanding any other provision, if a Participant terminates Employment with no vested rights in any portion of his Accrued Retirement Benefit and subsequently resumes Employment after incurring a period of Breaks in Service equaling or exceeding the greater of (1) five consecutive years or (2) the number of Years of Service he completed prior to the Break in Service, the rehired employee shall be treated as a new employee for eligibility purposes and shall participate in the Plan pursuant to Section 2.01 above. Neither the number of Years of Eligibility Service, nor his Vesting Service Credits, nor his Credited Service completed prior to his Break in Service shall include any Years of Eligibility Service, Vesting Service Credit, or Credited Service disregarded pursuant to this subsection by reason of prior Breaks in Service. Such Participant shall not receive credit for Employment prior to such break in service for any purpose.

**2.04 Participation as a Result of Merger**

The terms of this Plan shall apply to an Employee who has achieved the status of a Participant as a result of the merger of plans, as of the effective date of the merger, as described in Article 15, unless otherwise provided.

**2.05 Separation from Service Prior to Retirement Date**

- (a) An Employee who separates from work in Covered Service prior to his Retirement Date after attaining a vested status will, for Plan administrative purposes, cease to be considered as an active vested Participant under this Plan if he fails to be reported for at least 100 hours in Covered Service in each of 3 consecutive Plan Years, provided that such consecutive 3 year period occurs prior to his Retirement Date. Thereafter, he shall be treated as an "inactive vested" Participant and entitled to payment of his Vested Pension in accordance with the provisions of Section 7.02.
- (b) An "inactive vested" Participant who returns to Covered Service prior to his Retirement Date will be immediately reinstated as an active vested Participant under the Plan, and his pension at Retirement Date will be based on the sum of:
  - (1) The amount of Vested Pension to which he was entitled before his re-entry in Covered Service; plus
  - (2) The amount of pension attributable to Service Credit accrued subsequent to his re-entry in Covered Service.

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

**Article 3 – Credited Service**

**3.01 Covered Service**

Employment by an Employer in an employment category for which any Employer has agreed by virtue of a Collective Bargaining Agreement with the Union to contribute to the Pension Fund. Effective 1/1/1989, this service will include certain periods of time during which a Participant is disabled and such periods of time are included in accordance with prior Plan provisions.

**3.02 Credited Service**

The service upon which benefits are determined in accordance with Section 3.03.

**3.03 Service Credits**

An Employee shall accrue Service Credit (“Credited Service”) based on the following:

- (a) For Plan Years before January 1, 1991 an Employee shall be granted Past Service Credit and Future Service Credit in accordance with the Service Credit schedules of the Prior Plan.
- (b) For Plan Years on and after January 1, 1991 and before January 1, 2010, an Employee will accrue one seventh of a Year of Future Service Credit for each 100 Hours of Credited Service earned in a Plan Year. A Participant may be credited with more than one Year of Future Service Credit in a Plan Year, if earned. If more than one Year of Future Service Credit is earned in a Plan Year, such credit in excess of one year constitutes "Additional Service Credit." Additional Service Credits are used only in the calculation of the final retirement benefit. These are not applicable to Vesting Service or to the minimum qualifying requirements for an Early Retirement Pension or a Disability Retirement Pension.

For Plan Years starting on or January 1, 2010, an Employee will accrue one tenth of a Year of Future Service Credit for each 100 Hours of Credited Service earned in a Plan Year if he earns at least 200 such Hours. If more than one Year of Future Service Credit is earned in a Plan Year, such credit in excess of one year constitutes "Additional Service Credit" as used and defined above.

- (c) For an Employee, as defined in Section 1.08(3) credit for service before and after 1991 will be earned in accordance with the subsections (a) and (b) above, subject to a limit of one and one-half years of Future Service Credit in any one Plan Year. Effective 1/1/2002, no such limit applies.
- (d) An Employee who is prevented, by reason of injury or disease, from engaging in his customary or equivalent employment, provided such disability continues for at least 30 consecutive days will be considered "disabled."

A disability does not include an absence caused by the Participant's intoxication, use of narcotics, non-accidental self-inflicted injury, or criminal acts. The Trustees may request a physical examination of the Participant to assist them in determining eligibility for credits under this provision. Also, no credit is granted under this subsection for any period when the Participant is receiving a Disability Pension or has met the age and service requirements for a Normal Retirement Benefit. Further, effective 5/1/1997, any Disability Pension Credit allowed under this Section will not be used for the purpose of vesting nor for meeting the “100 hour” minimums

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

required in certain benefit formulas hereunder.

Until 4/30/1997 a Participant will be credited with one twenty-fourth of a Year of Future Service Credit for each 30 day period of such disability within a Plan Year. No more than two Years of Future Service Credit shall be granted to a Participant for any one period of disability (and shall be credited without regard to any one-half year minimum requirement).

Effective from 5/1/1997 Future Disability Pension Credit will be earned during disability only for each month in which the Participant is entitled to a 100% Workers Compensation award, or a New York State Disability benefit (four weeks), or is deemed totally disabled by the Social Security Administration. No more than 400 such hours will be credited to any one participant for any one Plan Year when added to any other hours of Service Credit he earns for such year. No more than 800 hours of such credit will be granted to any one participant during his lifetime.

Effective from 1/1/2000, credit during disability is allowed only if requested in writing, and the former restrictions are replaced by the following. Future Disability Pension Credit will be earned only during disability for each month in which the Participant is entitled to a 100% Workers Compensation award, or a New York State Disability benefit (four weeks), or is deemed totally disabled by the Social Security Administration. No more than 400 such hours will be credited to any one participant for any one Plan Year when added to any other hours of Service Credit he earns for such year. No more than 400 such hours will be granted to any one participant during his lifetime.

- (e) Effective 1/1/2002 if the rate of employer contributions for the Employee's work is different than the rate in the Local 5 New York Bricklayers and Allied Craftworkers area, a proportionate adjustment in the Employee's hours of Service Credit will be made for the purpose of calculating Credited Service. However, such hours will count for Eligibility Service and for Vesting Service without adjustment.
- (f) Effective 1/1/2002 if the Employee works in another pension plan's area and that plan has a reciprocal agreement with the Local Bricklayers and Allied Craftworkers 5 New York Retirement Fund Pension Plan that requires that plan to transfer contributions to this Plan, the Employee will get credit for those hours of work also.
- (g) Service Credit can be earned only for Covered Service, and will not be allowed if contributions are received by the Plan other than under a written agreement. Service Credit will be given based on contributions in accordance with the written agreement, while the agreement remains in force, even where the Employer defaults on payment of such contributions.

#### **3.04 Loss of Credited Service**

In the case of a Participant who has not achieved any Vesting Status and who has five or more consecutive one-year Breaks in Service, the Participant's Years of Eligibility Service prior to his Break in Service shall count in the vesting of his accrued benefit in accordance with Section 3.04 only if either (a) the Participant has a "vested interest" in his accrued benefit or (b) the number of consecutive one-year Breaks in Service is less than the number of Years of Service he completed prior to his Break in Service.

For purposes of this Section 3.04, the number of Years of Eligibility Service the Participant completed prior to his Break in Service shall not include any Years of Service disregarded pursuant to this Section 3.04 by reason of prior Breaks in Service or disregarded under the applicable terms of the Plan prior to this restatement.

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

A Participant whose Eligibility Service is thus disregarded shall also incur permanent loss of all Credited Service and Accrued Retirement Benefit previously earned. Immediately thereafter, he will also incur permanent loss of all Eligibility Service.

**3.05 Crediting Service for Military Service**

Notwithstanding any provision of this Plan to the contrary, effective 12/12/94, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Code

**3.06 Critical Status and Service Credit**

Notwithstanding anything in this Plan to the contrary, in the event the Plan is certified by the Plan's actuary to be in critical status within the meaning of Code Section 432 and ERISA Section 305, any Employer surcharges paid to the Plan because of such status shall not generate any additional Service Credits or be used in the calculation of any Participant's benefit amount.

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

**Article 4 – Vesting and Break in Service**

**4.01 Year(s) of Eligibility Service or Year(s) of Vesting Service (Credit)**

A Year of Eligibility Service (or Vesting Service (Credit)) means a Plan Year in which a Participant attains 700 Hours of Credited Service or 1,000 Hours of Eligibility Service. A Participant shall not be credited with more than one Year of Eligibility Service in any one Plan Year.

A Year of Eligibility (or Vesting) Service shall be granted to a Participant for each Plan Year after 1995 during which he earns at least 250 Hours of Covered Service or at least 1000 Hours of Eligibility Service.

Any Vesting Service Credits earned are subject to forfeiture under the rule set forth in Section 2.03.

**4.02 Vested Status**

A Participant is “Vested” on the earliest date that he satisfies one or more of the following:

- (1) Enters the Plan as a consequence of merger with another Plan in which he is vested; or
- (2) Attains eligibility for a Normal Retirement Pension; or
- (3) Attains eligibility for an Early Retirement Pension; or
- (4) Accrues 10 years of Vesting Service; or
- (5) Accrues 5 years of Vesting Service including at least one year after 1988 and is in a work category not represented in collective bargaining.
- (6) Accrues 5 years of Vesting Service including at least 1 hour of Vesting Service earned on or after 1/1/1999.

**4.03 Break in Service**

A Plan Year during which a Participant does not complete at least 100 Hours of Eligibility Service.

If a Break in Service occurs after the Participant is vested, his Credited Service and Vesting Service shall not be forfeited. Further, if a Participant fails to complete 100 hours of Service Credit in each of three consecutive Plan Years, or in any one Plan Year after 1999, then that portion of his Accrued Retirement Benefit (unless permanently forfeited under Section 3.04) will be “frozen”, meaning that it will not be increased even if the Participant again earns service credit in the Plan. This “frozen” portion of the Participant’s Accrued Retirement Benefit will not be eligible to be improved by any Plan amendment that becomes effective during or after the first such Plan Year unless such amendment explicitly states that “frozen” benefits are covered.

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

**Article 5 – Normal Retirement**

**5.01 Normal Retirement Age**

For each Participant, the later of his attainment of age 65, or the 5th anniversary of his becoming a Participant.

**5.02 Normal Retirement Date**

The first day of the month coincident with or next following the date on which the Employee attains his Normal Retirement Age.

**5.03 Normal Retirement Benefit**

For an Employee who accrues any Future Service Credit on or after January 1, 1989, his monthly Normal Retirement Benefit commencing on his Normal Retirement Date shall be a monthly pension calculated on the basis of:

- (a) For a Participant who last earned Service Credit after December 31, 1988 and before January 1, 1991: \$26 per month multiplied by his Service Credit.
- (b) For a Participant who last earned Service Credit after December 31, 1990 and before July 1, 1993:
  - (1) His monthly pension benefit accrued under the Prior Plan or under the Westchester Plan through December 31, 1990; plus
  - (2) \$35 per month multiplied by his Future Service Credit after December 31, 1990.
- (c) For a Participant who last earned Service Credit after June 30, 1993 and before January 1, 1996:
  - (1) 1.15 multiplied by his monthly pension benefit accrued under the Prior Plan or under the Westchester Plan through December 31, 1990; plus
  - (2) \$40 per month multiplied by his Future Service Credit after December 31, 1990.
- (d) For a Participant who last earned Service Credit after December 31, 1995 and before January 1, 1999:
  - (1) 1.15 multiplied by his monthly pension benefit accrued under the Prior Plan or under the Westchester Plan through December 31, 1990; plus
  - (2) his monthly pension accrued under the Local 29 Plan; plus
  - (3) either
    - i. \$50 per month multiplied by his Future Service Credit earned after 1990; or
    - ii. if he did not earn at least 100 hours of Future Service Credit during 1995, \$40 per month multiplied by his Future Service Credit earned after 1990 and before 1996 and \$50 per month multiplied by his Future Service Credit earned after 1995.

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

- (e) For a Participant who last earned Service Credit after 1998 and before 2000:
- (1) 1.15 multiplied by his monthly pension benefit accrued under the Prior Plan or under the Westchester Plan through December 31, 1990; plus
  - (2) his monthly pension accrued under the Local 29 Plan; plus
  - (3) either
    - i. if he earned at least 100 hours of Future Service Credit during each of the 1995 and 1998 Plan Years, \$65 per month multiplied by his Future Service Credit earned after 1990; or
    - ii. if he did not earn at least 100 hours of Future Service Credit during 1995 and did not earn at least 100 hours of Future Service Credit during 1998, \$40 per month multiplied by his Future Service Credit earned after 1990 and before 1996, \$50 per month multiplied by his Future Service Credit earned after 1995 and before 1999, and \$65 per month multiplied by his Future Service Credit earned after 1998; or
    - iii. if he did not earn at least 100 hours of Future Service Credit during 1995 but did earn at least 100 hours of Future Service Credit during 1998, \$40 per month multiplied by his Future Service Credit earned after 1990 and before 1996, \$50 per month multiplied by his Future Service Credit earned after 1995 and before 1999 and \$65 per month multiplied by his Future Service Credit earned after 1998; or
    - iv. if he earned at least 100 hours of Future Service Credit during 1995, but not during 1998, \$50 per month multiplied by his Future Service Credit earned after 1990 and before 1999 and \$65 per month multiplied by his Future Service Credit earned after 1998.
- (f) For a Participant who last earned Service Credit after 1999 and who first earned Service Credit prior to June 1, 2004:
- (1) 1.15 multiplied by his monthly pension benefit accrued under the Prior Plan or under the Westchester Plan through December 31, 1990; plus
  - (2) his monthly pension accrued under the Local 29 Plan; plus
  - (3) \$75 per month multiplied by his Future Service Credit earned after 1990 but before 2010, plus
  - (4) \$50 per month multiplied by his Future Service Credit earned after 2009.
- (g) For a Participant who first earned Service Credit either on or after June 1, 2004:
- (1) \$50 per month multiplied by his Future Service Credit earned after 2003 but before 2010, plus
  - (2) \$37.50 per month multiplied by the sum of his total Future Service Credit earned between January 1, 2010 and the date on which he attains ten (10) Vesting Credits, plus
  - (3) \$50 per month multiplied by his Future Service Credit earned after the date he attains ten (10) Vesting Credits.
- (h) Effective January 1, 2012, all benefit accruals will cease and all benefits will be those accrued as of December 31, 2011.

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

Any period which is not included in determining an Employee's Years of Eligibility Service in accordance with the provisions of Section 3.03 shall not be included in determining an Employee's Credited Service.

Additionally, a Participant who first earned Service Credit prior to June 1, 2004 and has forfeited all of this Service Credit due to a non-reinstatable Break In Service prior to this date will be considered to have earned his entire period(s) of Service Credit after May 31, 2004 and will have his entire Normal Retirement Benefit calculated in accordance with this Section 5.03 of the Plan Document.

**5.04 Duplication of Benefits Prohibited**

A Participant shall not be entitled to receive more than one type or form of benefit pursuant to this Plan. For a Participant who received benefits hereunder in any form as a Participant and who again becomes a Participant, to the extent that the Credited Service upon which such benefits were based is restored, the monthly amount of his pension payments upon subsequent termination of Employment shall be reduced by the Actuarial Equivalent of benefits previously received, with interest.

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

**Article 6 – Early Retirement**

**6.01 Early Retirement Age**

The earlier of:

- (1) the date a Participant attains age 55 after achieving at least 15 years of Credited Service (counting no more than one year of credit in any Plan Year) or ten Years of Eligibility Service; and
- (2) the date on or after 10/1/1996 that a Participant attains age 62 after achieving at least 5 Years of Eligibility Service.

If a participant separates from service before satisfying the age requirement for early retirement, but has satisfied the service requirement, the participant will be entitled to elect an early retirement benefit upon satisfaction of such age requirement.

**6.02 Early Retirement Date**

The first day of any month coincident with or next following the date the Employee attains his Early Retirement Age but before the Employee attains his Normal Retirement Age in which the Employee elects to retire.

**6.03 Early Retirement Benefit (Suspended from 3/21/2013 through 5/31/2017, for those not yet in pay status, per Appendix I)**

The amount of a Participant's Early Retirement Benefit at his Early Retirement Date is his Accrued Retirement Benefit reduced by 1/4 of 1% for each month (not exceeding 60 months) that the Early Retirement Date precedes his Normal Retirement Date and reduced further by 1/2 of 1% per month for each month (if any) in excess of 60 months by which the Early Retirement Date precedes his Normal Retirement Date.

Notwithstanding the foregoing, the Early Retirement Benefit shall be subject to no reduction from the Accrued Retirement Benefit in the case of

- (1) a Participant who has attained age 62 with 25 (counting no more than one year of Credited Service in any one Plan Year) or more Years of Credited Service; or (for retirement on or after 10/1/96 and before January 1, 2010) with 5 or more Years of Eligibility Service; or
- (2) a Participant who has attained age 60 with 30 (counting no more than one year of Credited Service in any one Plan Year) or more Years of Credited Service; or
- (3) a Participant who has attained age 58 with 40 (counting no more than one year of Credited Service in any one Plan Year) or more Years of Credited Service; or (for retirement on and after 1/1/2000) with 35 (counting no more than one year of Credited Service in any one Plan Year) or more Years of Credited Service; or
- (4) For retirement on or after January 1, 2010, age 62 with 20 uncapped Years of Credited Service.

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

**Article 7 – Vested Deferred Retirement**

**7.01 Vested Deferred Retirement**

A Participant whose Employment terminates for any reason on or after the date the Participant attains a vested interest in his accrued benefit shall be entitled to a vested deferred retirement benefit. Payment of a vested deferred retirement benefit shall commence at the Participant's Normal or Early Retirement Date, as designated by the Participant in a written application form filed with the Administrator.

**7.02 Vested Deferred Retirement Benefit**

The monthly amount of a Participant's Vested Deferred Retirement benefit shall be his Accrued Retirement Benefit as provided by the Plan in effect on the date the Participant ceased Covered Service and payable upon the Participant's Normal Retirement Date or Early Retirement Date as otherwise provided in the Plan.

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

**Article 8 – Disability Retirement**

**8.01 Disability Retirement Eligibility**

An Employee is eligible for a Disability Retirement as follows:

- (a) He worked in Covered Service for at least 100 hours in one Plan Year within the three year period that consists of the Plan Year in which he has a medically certified effective date of disability and the two consecutive immediately preceding Plan Years; and
- (b) His retirement occurs on account of his incurring a Permanent and Total Disability; and
- (c) His Disability Plan is based upon his Credited Service, counting no more than one year of Credited Service in any one Plan Year as follows:
  - i. At least 15 Years of Credited Service: Disability Plan “A”
  - ii. At least ten but less than 15 Years of Credited Service: Disability Plan “B”

**8.02 Disability Retirement Date**

The earlier of

- (1) the Social Security Disability Award Date, or
- (2) the later of the first day of the month following:
  - i. the seventh month after the date of disability; or
  - ii. the date the Employee submits his application for a Disability Pension.

**8.03 Permanent and Total Disability**

An Employee shall be deemed to have incurred a Permanent and Total Disability only if the Participant is totally unable, as a result of bodily injury or disease, to engage in any further employment or gainful pursuit as demonstrated by a determination by the Social Security Administration that the Participant is entitled to a Social Security Disability Benefit in connection with his Old Age and Survivor’s Insurance Coverage. The Trustees shall determine total disability and the entitlement to a Disability Pension hereunder on the basis of such medical evidence.

**8.04 Disability Retirement Benefit (Suspended from 3/21/2013 through 5/31/2017, for those not yet in pay status, per Appendix I)**

The monthly amount of a Participant's Disability Retirement Benefit shall be his Accrued Retirement Benefit and,

- (a) If eligible for Disability Plan A, the amount of the monthly pension is determined as if the Participant were his Normal Retirement Age in the same manner as for Normal Retirement and based upon the benefit rate in effect at the starting date of the medically certified disability; or

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

- (b) If eligible for Disability Plan B, the amount of the monthly pension is determined based upon the Normal Retirement amount (based upon the benefit rate in effect at the starting date of the medically certified disability) reduced by 1 / 4 of 1% for each month that the Disability Retirement Date precedes the Participant's 65th birthdate, to a maximum reduction of 50%.

**8.05 Re-employment of Disability Pensioner**

A Disability Pensioner who is no longer totally disabled may re-enter Covered Service before his Normal Retirement Date and resume the accrual of Service Credit. Such previously disabled Employee who returns to Covered Service will be immediately reinstated as an active vested Participant under the Plan and if such return occurs before 1/1/2000 then should he have received 36 or more payments of his monthly Disability Pension, his pension at Early or Normal Retirement Date will be based on the sum of (1) and (2) below. If such return is on or after 1/1/2000 then regardless of the number of payments of his monthly Disability Pension or the amount thereof, his pension at Normal Retirement Date will be based on the sum of (1) and (2) below and if he elects an Early Retirement Date his reduced pension will be calculated there from in the usual manner in accordance with Section 6.03.

- (1) The amount of his monthly Disability Pension which he was receiving before his re-entry in Covered Service; plus
- (2) The amount of pension attributable to Service Credits accrued subsequent to his re-entry to Covered Service.

At Retirement Date, for pension payment calculation purposes, the number of Service Credits per (1) above, when added to the number of Service Credits per (2) above, will not exceed any Service Credit maximum set forth in Section 5.03. However, should the sum of the combined Service Credits at Retirement Date actually exceed the maximum limitation of Section 5.03 and there is a different amount of pension applicable to the Service Credits under: (1) and (2) above, then a priority order will be established with the Service Credits with the higher amount of pension being applied first and the Service Credits with the lower amount of pension being applied in a descending order within any such maximum limitation of Section 5.03.

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

**Article 9 – Method of Payment**

**9.01 Form of Benefits**

The monthly retirement benefit payable to a Participant under the Plan, unless the Participant elects an optional form of benefit pursuant to Section 9.03 below, shall be paid in the form of a Life Annuity during the Participant's remaining lifetime, ending with the last payment due on or before his date of death.

Notwithstanding the foregoing, the benefit of a Participant who is married on the date payment of his pension benefit is to commence shall be paid in the form of a qualified joint and survivor annuity unless the Participant elects an optional form of benefit pursuant to Section 9.03 below, or an alternative joint and survivor annuity. A "qualified joint and survivor annuity" is an immediate monthly annuity for the life of the Participant with payments continuing upon the death of the Participant for the life of his surviving spouse in an amount equal to 50% of the amount payable while the Participant was living. Optionally, the Participant may elect an alternative joint and survivor annuity with payments continuing upon the death of the Participant for the life of the surviving spouse in an amount equal to 75% of the amount payable while the Participant was living. The 50% or 75% joint and survivor annuity shall be the Actuarial Equivalent of a Life Annuity payable to the Participant at retirement or, if greater, any optional form of benefit. Payment to a surviving spouse shall be made only if the marriage lasted at least one year. If the marriage does not last for a year the Participant's pension payment shall revert to the Life Annuity form and amount.

If a Participant's spouse dies or is divorced from the Participant on or after the date payments commence to the Participant, but prior to the death of the Participant, the amount of the Participant's monthly pension, on or after January 1, 1998, shall increase to the amount he would have received if he had been receiving his pension payment without the reduction for the joint and survivor form. *(Suspended from 3/21/2013 through 5/31/2017, for those not yet in pay status, per Appendix I)* If the Participant dies before payments commence to him from the Plan, or before the first anniversary of marriage, or if only a Disability Retirement Benefit was paid, no annuity shall be payable to his surviving spouse pursuant to this Section, and the benefit payable to the spouse, if any, shall be determined under Article 10. A former spouse shall be treated as the Participant's spouse or surviving spouse to the extent provided under a qualified domestic relations order as described in Code Section 414(p).

**9.02 Restrictions on Immediate Distributions**

If the present value of a Participant's vested Accrued Retirement Benefit determined exceeds (or at the time of any prior distribution exceeded) \$5,000, and the accrued benefit is immediately distributable, the Participant and the Participant's spouse (or where either the Participant or the spouse has died, the survivor) must consent to any distribution of such Accrued Retirement Benefit, except, however, that only a Participant need consent to the commencement of a distribution in the form of a qualified joint and survivor annuity. Consent shall be obtained in writing within the 90-day period (180-day period if after 1/1/2009) immediately preceding the annuity starting date. The annuity starting date is the first day of the first period for which an amount is paid as an annuity or any other form. The Administrator shall notify the Participant and the Participant's spouse of the right to defer any distribution until the Participant's Accrued Retirement Benefit is no longer immediately distributable. Such notification shall include a general description of the material features, and an explanation of the relative values of, the optional forms of benefit available under the Plan in a manner that would satisfy the notice requirements of Section 417(a)(3) of the Code and Section 1.417(a)-3 of the Income Tax Regulations. For notices given in plan years beginning after December 31, 2006, such notification shall also include a description of how much larger benefits will be if the commencement of distributions is deferred. Such notice shall also comply with the requirements of Section 9.03. Consent shall not be required (from either the Participant or the

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

Spouse) to the extent that the distribution is required to satisfy Code Sections 401(a)(9) or 415. An Accrued Retirement Benefit is "immediately distributable" if any part of the accrued benefit could be distributed to the Participant (or the Participant's surviving spouse) before the Participant attains (or would have attained if not deceased) the later of age 62 or Normal Retirement Age.

**9.03 Election to Receive Optional Benefit Form.**

A Participant may elect to receive an optional form of benefit during the period not less than 30 days nor more than 90 days (180-days if after 1/1/2009) immediately preceding the date payments commence from the Plan. Such election shall be in writing on forms approved by and filed with the Administrator and shall clearly indicate the payment option selected by the Participant. A married Participant may not elect an optional benefit form unless the Participant's spouse consents to such election. Such spousal consent shall be in writing, witnessed by a Plan representative or notary public, filed with the Administrator acknowledging the effect of the election and any beneficiary or contingent beneficiary designated under the form of benefit elected (or the consent of the spouse may expressly permit designations by the Participant without any future spousal consent). Spousal consent shall not be required if, at the time of filing such election, the Participant establishes to the satisfaction of the Administrator that the consent of the spouse could not be obtained because there is no spouse, such spouse could not be located or by reason of other circumstances as may be presented by regulations. Any consent by a spouse shall be effective only with respect to such spouse. A Participant may revoke any payment option selected during the election period by filing a subsequent written election, with spousal consent if necessary, prior to the end of the election period.

**9.04 Benefit Information**

Not less than 30 days and not more than 90 days (180 days effective 1/1/2009) prior to the date a married Participant's benefit become(s) payable, the Administrator shall furnish the Participant with information concerning the qualified joint and survivor annuity benefit form and his right to request optional benefit forms from the Plan. Such information shall contain a written explanation of:

- (1) The terms and conditions of the qualified joint and survivor annuity;
- (2) The Participant's right to elect an optional benefit form, the effect of such election and the material features and relative financial values of the optional forms of benefit;
- (3) The necessity for the Participant's spouse to consent to the election of an optional benefit form; and
- (4) The Participant's right to revoke an election of an optional benefit form and the effect of such revocation.

**9.05 Mandatory Lump Sum Payments**

If a Participant terminates Employment and incurs a Break in Service, and the Actuarial Equivalent lump sum of the Participant's entire vested accrued benefit payable under the Plan prior to the commencement of distributions is \$5,000 or less, the Administrator shall direct payment in a single lump sum as soon as administratively feasible following the Participant's termination of Employment. For purposes of this Section, if the present value of an employee's vested accrued benefit is zero, the employee shall be deemed to have received a distribution of such vested accrued benefit.

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

**9.06 Distribution Requirements**

- (a) A Participant who is eligible to receive benefits under the Plan and who makes application in accordance with the rules of the Pension Plan shall be entitled upon retirement to receive the monthly benefits provided for the remainder of his life, subject to the other provisions of this Article and of any other applicable provisions of the Plan.
- (b) Pension benefits shall be payable commencing with the month following the month in which the claimant has fulfilled all the conditions for entitlement to benefits, including the requirement of Section 12.01 for the filing of an application and notice of retirement with the Trustees. The first day of such first month is what is meant by the "Effective Date" of the pension.

A Participant may, however, elect in writing filed with the Administrator to defer payment of his benefit, provided that no such election filed on or after January 1, 1984, may postpone the commencement of benefits to a date later than April 1 following the calendar year in which the Participant attains age 70-1/2 or, if later, retires as defined in Section 9.06. The phrase "or, if later, retires" shall not apply after January 1, 1989.

- (c) Payment of benefits may begin sooner but shall begin no later than 60 days after the last of the following dates:
  - (1) The end of the Calendar Year in which the Participant attained Normal Retirement Age;
  - (2) the end of the Calendar Year in which the Participant retired;
  - (3) the date the Participant filed a claim for benefits; and
  - (4) the date the Trustees were first able to ascertain entitlement to, or the amount of, the pension.

Notwithstanding, payment of benefits shall begin no later than the April 1 of the Calendar Year following the year in which the Participant attained age 70-1/2 and shall be based on the vested benefit accrued by the Participant through the end of the Calendar Year preceding such April 1. In any event, the Administrator need not make payment before they are first able to ascertain entitlement to, or the amount of, the pension or the current mailing address of the Participant.

Payment of benefit shall include retroactive payments for any months for which a pension is due and payable. Retroactive benefit payments for a Participant whose application is filed after Normal Retirement Age shall not be due and payable for any month prior to the months following the Participant's attainment of Normal Retirement Age or, if later, January 1, 1976. For purposes of this paragraph, a pension shall not be considered due and payable for any month in which the Participant is engaged in Disqualifying Employment as defined in Section 11.02.

- (d) If a distribution from the Plan is considered to have commenced in accordance with Treasury 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.

The method of distribution from the Plan, if the Participant dies before the time when distribution is considered to have commenced in accordance with Treasury Regulations, shall satisfy the following requirements:

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

- (1) any remaining portion of the Participant's interest that is not payable to a Beneficiary designed 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
  - (i) within five years after the Participant's death, or
  - (ii) over the life of the Beneficiary over a period certain not extending beyond the life expectancy of the Beneficiary, commencing not later than the end of the calendar years 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 70½.)
  - (iii) All distributions from the Plan shall be made in accordance with the requirements of Treasury regulations under Code §401(a)(9), including the minimum distribution incidental death benefit requirements of sections 1.401(a)(9)-1 and 1.401(a)(9)-2 of the Treasury Regulations.

**9.07 Sworn Statement of Continued Retirement**

Each Pensioner receiving Retirement Benefits hereunder shall submit from time to time on request of the Trustees a sworn statement of his existence including a statement that he has obtained no new employment in any capacity in the industry as defined in the collective bargaining agreement. If such statement is not submitted within sixty days after a request is mailed to the last address of the Pensioner appearing on the records of the Trustees, all future retirement benefits will be terminated until such statement is submitted and approved by the Trustees.

**9.08 Death of a Participant**

In the event a Participant or former Participant dies prior to the date his pension payments commence, no benefits are payable to him or his beneficiaries except as provided in Article 10.

**9.09 No Duplication of Benefits**

In no event shall an Employee be eligible to receive benefits under more than one of the above of the above Sections. If the Employee is eligible for benefits under two or more Sections, he shall elect the one Section under which he wishes to apply after being furnished with a clear explanation of the benefits for which he is

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

**Article 10 – Death Benefits**

**10.01 Death Benefits for Married Participants**

- (a) Eligibility The surviving spouse or former spouse of a deceased Participant is eligible to receive a death benefit from the Plan provided that the Participant had an Accrued Retirement Benefit and was in Vested Status at the time that he died, and provided also that the couple was legally married on the testing date and provided also that the marriage lasted for at least one year.

If a normal or early retirement pension had already begun, the testing date is the date payment began, otherwise it is the date the Participant died.

- (b) Amount of Surviving Spouse Death Benefit

- (1) *Death On or Before Earliest Payment Date*

The surviving spouse death benefit payable with respect to a Participant who dies on or before the earliest date on which the Participant could have elected to receive benefits from the Plan (other than a Disability Retirement Benefit) shall be a monthly amount for the life of the surviving spouse equal to the amount which would have been payable to the spouse under normal form for married plan Participants as described in Article 9, calculated as if the Participant had:

- i. Terminated his Employment on his date of death or his actual date of termination of Employment, if earlier;
- ii. Survived to the earliest date on which he could have elected to receive benefits from the Plan;
- iii. Retired with an immediate qualified joint and survivor annuity at such earliest payment date; and
- iv. Died on the day after such earliest payment date.

- (2) *Death After Earliest Payment Date*

The surviving spouse death benefit payable with respect to a Participant who dies after the earliest date on which he could have elected to receive benefits from the Plan (other than a Disability Retirement Benefit) shall be the amount which would have been payable to the spouse under the normal form for married Participants as described in Article 9, calculated as if the Participant had begun to receive benefits in the normal form for married Participants as described in Article 9 as of the first day of the month before the Participant's date of death. Such amount shall be based on the Participant's normal retirement benefit determined as of his date of death reduced in accordance with provisions applicable to Early Retirement Benefits.

- (3) *Death After Payments Have Begun*

The surviving spouse benefit payable with respect to a Participant who dies after the commencement of payments (other than a Disability Retirement Benefit) from the Plan is determined pursuant to the elected method of payment in accordance with Article 9.

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

The surviving spouse of a Participant who dies while receiving a Disability Retirement Benefit is not eligible under this Subsection (3) but will be eligible for a pre-retirement surviving spouse pension under Subsection (1) or (2) above if legally married to the Participant for a full year through the date of death.

(c) Commencement of Preretirement Surviving Spouse Benefit

- (1) Unless the surviving spouse elects payment at a later date, the monthly preretirement surviving spouse benefit with respect to a Participant who dies on or before the earliest date on which he could have elected to receive benefits from the Plan shall be paid to the Participant's surviving spouse beginning on the first day of the month coinciding with or immediately following the earliest date the Participant would have been eligible to receive an early retirement or deferred vested benefit if he had survived.

Alternatively, the surviving spouse may elect an immediate lump sum payment in lieu of this delayed pension, provided that this election is made no later than six months after the date of the Participant's death. The immediate payment may be in the form of a single lump sum either as cash net of tax withholding or as a tax-sheltered rollover to an eligible spousal IRA, and shall be calculated using the actuarial assumptions of Section 1.02(a) to find the discounted value of the otherwise delayed pension.

Alternatively, the surviving spouse may elect an immediate pension payable for the remainder of her life in lieu of the delayed pension, provided that this election is made no later than six months after the date of the Participant's death. The immediate pension shall be calculated using the same actuarial assumptions of Section 1.02(a) as used to calculate lump sum distributions, so that its discounted value is the same as the value found in the preceding paragraph.

- (2) The monthly preretirement surviving spouse benefit payable with respect to a Participant who dies after the earliest date on which he could have elected to receive benefits from the Plan shall begin as of the first day of the calendar month next following the month during which the Participant died.

The surviving spouse may elect to delay the commencement of payments to a date not later than the date the Participant would have attained age 70-1/2, provided the benefit payable is the Actuarial Equivalent of the benefit otherwise payable under (1) or (2) above.

(d) *Form of Payment*

Subject to the requirements of Article 9, the surviving spouse shall designate the form of payment of the preretirement surviving spouse benefit pursuant to the optional benefit forms available under Article 9, on forms approved by and filed with the Administrator. If the preretirement surviving spouse benefit is no longer immediately distributable pursuant to Article 9 and the surviving spouse fails to designate the form of payment within a reasonable period of time, the Administrator shall pay such benefit in the form of a survivor annuity for the life of the surviving spouse.

If the surviving spouse is otherwise eligible for payment but for delay in making application, payment may be backdated to an effective date that is before the surviving spouse completes a proper application but on or after the first day of the month next following the Participant's death, provided that the application is completed within six months after the Participant's death.

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

The benefits described in this section 10.01 shall be payable without regard to Appendix I.

**10.02 Family Survivor and Single Sum Death Benefit. (Suspended from 3/21/2013 through 5/31/2017, for those not yet in pay status, per Appendix I)**

Upon the death of an Employee either prior to or after his Retirement who has worked an hour of Credited Service on or after January 1, 1991, who has at least five Years of Future Service Credit (counting no more than one Year of Future Service Credit in any one Plan Year) earned after 1954 for which contributions are required to the Trust and with respect to whom no other periodic payments are otherwise payable to anyone (i.e., no surviving spouse benefit under Article 9), and the receipt of the Trustees of satisfactory proof thereof, the Trustees will pay to the Designated Beneficiary a single sum equal to the excess, if any, of the sum of \$500 per whole Year of Credited Service or \$250 per one-half Year of credited Service accrued before 1980 plus Employer contributions made on his behalf after the later of 1979 or a Plan merger as a result of which he became a Participant of the Plan reduced by the total amount of all pension payments made, or due, to the participant, surviving spouse of the participant and/or Alternate Payee associated with the participant and by any optional lump sum distribution made to the participant's surviving spouse in accordance with Section 10.01(c)(1).

In the event that the Plan is certified by the Plan's actuary to be in critical status within the meaning of Internal Revenue Code Section 432 and ERISA Section 305, the lump sum amount which would have been paid out under the above paragraph will instead be paid out over the lifetime of the named beneficiary, as defined under Section 1.02(a)(1) of the Plan, with such lump sum representing the present value of such monthly benefit.

**10.03 "HEART" Act**

To ensure compliance with the Heroes Earnings Assistance and Relief Tax ("HEART") Act, effective from January 1, 2007 the death benefits provided in this Article will also be payable following death in active military service of any Participant if such benefit would have been payable pursuant of Section 3.05 "Crediting Service for Military Service" if the Participant had returned to active service and then immediately died.

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

**Article 11 – Suspension of Benefits**

**11.01 General**

If a Pensioner enters employment in work of the kind regularly performed by members of the Union, benefits shall be suspended for the months of such employment while he is under Normal Retirement Age, or while he is in Disqualifying Employment and at or over Normal Retirement Age.

A pension shall not be suspended for any month after April 1 of the calendar year following the calendar year in which the Participant attains age 70½.

**11.02 Disqualifying Employment**

For this purpose, Disqualifying Employment is employment in the Plan Area in work of the kind regularly performed by members of the Union provided that, in respect of any month, the work is for at least 40 hours and

- in the same industry in which Employees covered by the Plan worked at the effective date of the affected Employee's Pension; and
- in the same profession, trade or craft in which the affected Employee worked at any time that was classed as Pension Credit for such Employee

**11.03 Plan Area**

The State of New York.

**11.04 Notification**

A Pensioner shall notify the Trustees in writing within 15 days after he enters upon such employment or activity. If he fails to give timely notice, the Board of Trustees may suspend his benefits for an additional period of not more than twelve months, or, if earlier, until the later of his Normal Retirement Date or his subsequent Retirement. Such suspension shall not have the effect of reducing the value of the Employee's Retirement Benefit for payment at his Normal Retirement Date, and to the extent necessary to avoid reduction, the monthly amount of the Retirement Benefit shall be adjusted so as not to deprive the Employee of the value of his Retirement Benefit as payable at his Normal Retirement Date.

**11.05 Presumption**

Subject to correction by actual evidence, the Trustees may presume that a Pensioner who works at least some time in employment in a month is in employment in work of the kind regularly performed by members of the Union in that month and until it is established that employment has ceased. In the case of a Pensioner who is at or over Normal Retirement Age the Trustees may presume that such employment is Disqualifying Employment and that the Pensioner has worked or will work at least 40 hours each month in such Employment. This presumption applies unless, within five days of the start of such employment, the Pensioner notifies the Trustees of such commencement and has not refused to cooperate with reasonable requests by the Trustees to assist them in administering the provisions of this Article.

**11.06 Resumption of Pension Payments**

Suspended benefits shall be resumed for months after the last month during which the Participant is

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

employed while under Normal Retirement Age, or employed in Disqualifying Employment, or after the applicable "penalty" period described above for failure to give notice. Payment shall begin no later than the third month after such period, provided the Participant has complied with the notification requirements.

**11.07 Amount of Benefit upon Reemployment**

If a Participant retires for a second time after a period in which his pension may or may not have been suspended, his pension shall be redetermined as though he were retiring for the first time; except that this recalculated pension shall be reduced by the monthly amount that is actuarially equivalent to any and all payments that he has received, other than overpayments described below. Provided, however, that this pension shall not be less than the amount previously payable. If payment was previously in married couple form the amount shall be actuarially adjusted using the same factor as at the earlier retirement so as to be payable in the same form except, if the spouse has died, any increase in the pension amount shall be eligible for a new election as to form of payment.

If benefit payments in any form are suspended for an employee who continues in service without a separation and who does not receive a benefit payment, the recommencement of benefit payments shall be treated as a new annuity starting date requiring a new election as to the form of payment.

**11.08 Recovery**

Overpayments attributable to payments made for any month or months for which the payments should have been suspended shall then be deducted from the benefit payments otherwise paid or payable subsequent to the period of suspension. A deduction from a monthly benefit payment shall not exceed 25% of the amount of the Pensioner's monthly benefit payment (prior to the deduction); however, the Trustees may withhold up to 100% of the first payment made upon resumption after a suspension in order to recoup such overpayment. If a Pensioner dies before recoupment of overpayments has been completed, the remaining deductions shall be made from the benefits payable to his Beneficiary subject to the 25% limitation.

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

**Article 12 – Claims Procedure**

**12.01 Application for Benefits**

Any person entitled to benefits must file a written claim with the Administrator on forms provided by the Administrator. Except in the case of a surviving spouse as specifically permitted, no payment shall commence with an effective date earlier than the month following application. Such application shall include all information and evidence the Administrator deems necessary to properly evaluate the merit of and to make any necessary determinations on a claim for benefits. Unless special circumstances exist, a Participant shall be informed of the decision on his claim within 90 days of the date all the information and evidence necessary to process the claim is received. Within such 90-day period, he shall receive a notice of the decision that explains the special circumstances requiring a delay in the decision and sets a date, no later than 180 days after all the information and evidence necessary to process his claim have been received, by which he can expect to receive a decision.

The claimant may assume that the claim has been denied and may proceed to appeal the denial if the claimant does not receive any notice from the Administrator within the 90-day period, or a notice of a delayed decision within such 90-day period.

**12.02 Notice of Denied Claim for Benefits**

If a claim for benefits is partially or wholly denied, the claimant will receive a notice that: states the specific reason or reasons for denial; refers to provisions of the Plan documents on which the denial is based; describes and explains the need for any additional material or information that the claimant must supply in order to make his claim valid; and explains the steps that must be taken to submit his claim for review.

**12.03 Review of Denied Claim**

A claimant may file a written appeal of a denied claim with the Administrator within 60 days after receiving notice that his claim has been denied, including any comments, statements or documents he may wish to provide. The claimant may review all pertinent Plan documents upon reasonable request to the Administrator. The Administrator shall, within a reasonable time after the submission of a written appeal by a claimant, entertain any oral presentation the claimant or his duly authorized representative wishes to make. Within 60 days after the later of the submission of the written appeal or the oral presentation by the claimant, the Administrator shall render a determination on the appeal of the claim in a written statement. The written decision shall contain the reason or reasons for the decision and refer to specific Plan provisions on which the decision is based. If special circumstances require a delay in the decision, the Administrator shall notify the claimant of the reasons for the delay within the 60-day period. A delayed decision shall be issued no later than 90 days after the date the Administrator receives a request for review. The determination rendered by the Administrator shall be binding upon all parties. If the appeal is denied, the written decision will be sent to both the claimant and the claimant's attorney, should he have one on his behalf.

The final decision of the Administrator with respect to their review of a claim for benefits will be final and binding upon the claimant since the Administrator has exclusive authority and discretion to determine all questions of eligibility and entitlement under the Plan.

Any legal action against the Plan may be commenced and filed only in the United States District Court for the Southern District of New York, White Plains Division. In addition, any legal action pertaining to the Trustees' denial of an appealed claim must commence within 180 days after the denial is sent.

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

**APPENDICES**

**Appendix I – Suspension of Adjustable Benefits**

Effective March 21, 2013, the benefits described in the following sections will be suspended through May 31, 2017 for those Participants not yet in pay status as of March 21, 2013:

- a. 6.03 – Early Retirement Benefit
- b. 8.04 – Disability Retirement Benefit
- c. 10.02 – Family Survivor and Single Sum Death Benefit
- d. The “Pop Feature” on Joint & Survivor benefits

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

**Appendix II – Top-Heavy Provisions**

The provisions of this Article apply only to those groups of Participants, if any, who are not excluded from the application of Code Section 416 by reason of being represented in a collective bargaining unit or employed by the employee representatives of such Participants.

The provisions of this Article apply for purposes of determining whether the Plan is a top-heavy Plan under Code Section 416 for plan years beginning after December 31, 2001, and whether the plan, when tested separately for each Employer and its employees, satisfies the minimum benefits requirements of Code Section 416(c) for such years. If the Plan is top-heavy in a plan year the provisions of this Article will supersede any conflicting provisions in the Plan for those not represented in a collective bargaining unit and not employed by the employee representatives of such Participants.

**II.01 Definitions for Top-Heavy Provisions**

As used in this Article, the following words and terms shall have the following meaning:

(a) *Accrued Benefit*

The accrued benefit in a defined benefit pension plan and the aggregate account balances in a defined contribution plan (including any simplified employee pension plan). The accrued benefit shall include:

- (1) All non-deductible employee contributions;
- (2) All distributions from the Plan made within the Plan Year, which includes the determination date and the preceding four Plan Years, provided that the term distribution shall not include a related rollover or plan-to-plan transfer, which is included in the accrued benefit in the recipient plan; and
- (3) All distributions to the Plan, except an unrelated rollover or plan-to-plan transfer made on or after January 1, 1984.

"Related" and "unrelated" rollovers or transfers and distributions shall be defined and taken into account in accordance with Code Section 416. For Plans subject to the minimum funding requirements of federal law, the aggregate account balance shall include any amounts required to be allocated to Participants' accounts to meet such minimum funding requirements, even though such amounts are not yet required to be contributed. For Plans not subject to the minimum funding requirements, the aggregate account balance shall include only amounts contributed prior to the determination date, except amounts allocated as of a date on or before the determination date must also be included in the first Plan Year (even if contributed after such determination date).

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

(b) *Determination Date*

The last day of the preceding Plan Year or, in the case of the first Plan Year, the last day of the Plan Year.

(c) *Key Employee*

Any employee or former employee, including any deceased employee, who at any time during the Plan Year that includes the Determination date is:

- (1) An officer of the Employer, within the meaning of Treasury regulation Section 1.416-1, but only if such individual's annual compensation exceeds \$130,000 (as adjusted under Code §416(i)(1) of the Code for plan years beginning after December 31, 2002); Only incorporated Employers will have officers. The maximum number of officers cannot exceed three if the Employer has 30 employees or less. If the Employer has more than 30 employees, the maximum number of officers shall equal 10% of the total employees or 50, whichever is less. If an Employer has more officers than the maximums set forth above, the individuals (up to the applicable maximum) with the highest compensation shall be considered officers for determining key employees; or
- (2) A 5% owner of the Employer; or
- (3) A 1% owner of the Employer having annual Compensation of more than \$150,000 from all employers required to be aggregated

For purposes of this subsection (c), annual compensation is defined as follows:

Compensation with respect to any Employee shall be determined in accordance with Treas. Reg. § 1.415-2(d). No Participant's Compensation for any year shall be considered to exceed \$200,000 (as adjusted annually for increases in the cost of living by the Secretary of the Treasury or his delegate) in Plan Years beginning before January 1, 1994, and to no more than \$150,000 (as adjusted annually for increases in the cost of living by the Secretary of the Treasury or his delegate) in Plan Years beginning after December 31, 1993.

This paragraph applies only through 12/31/1996. The Compensation of a Participant who, pursuant to Code Section 414(q), is a 5% owner of the Company or one of the ten most highly compensated employees of the Company shall include the Compensation of the Participant's family group. A Participant's "family group" shall be comprised of the Participant's spouse and the Participant's lineal descendants who have not attained age 19 by the close of the Plan Year. If the aggregate Compensation of the Participant's family group exceeds the applicable limitation, then (except for purposes of determining the portion of Compensation up to the integration level if this Plan provides for permitted disparity), the limitation shall be prorated among the affected individuals in proportion to each such individual's Compensation as determined under this Section prior to the application of this limitation. The Compensation considered under the Plan for each member of the family group is reduced so that the total equals the applicable limitation.

If Compensation for any prior Plan Year is taken into account in determining an employee's benefits for the current Plan Year, the Compensation for such prior Plan Year is subject to the applicable annual Compensation limit in effect for that prior Plan Year. For this purpose, for years beginning before January 1, 1990, the applicable annual compensation limit is \$200,000. If the Plan determined Compensation on a period of time that contains fewer than 12 calendar months, then the

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

annual Compensation limit is an amount equal to the annual Compensation limit for the calendar year in which the Compensation period begins multiplied by a fraction, the numerator of which is the number of full months in the period, and the denominator of which is 12.

Notwithstanding any other plan provision to the contrary, the definition of "Compensation" shall be modified as of the first day of the first plan year beginning after December 31, 2001 as follows:

(1) Increase in limit

The annual compensation of each participant taken into account in determining annual additions in any plan year beginning after December 31, 2001 shall not exceed \$200,000. Annual compensation means compensation during the plan year or such other consecutive 12-month period over which compensation is otherwise determined under the plan (the determination period). For purposes of determining additions in a plan year beginning after December 31, 2001, compensation for any prior determination period shall be limited as provided in paragraph 3 below.

(2) Cost-of-living adjustment

The \$200,000 limit on annual compensation in paragraph 1 shall be adjusted for cost-of-living increases in accordance with Section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.

(3) Compensation limit for prior determination periods

In determining additions in plan years beginning after December 31, 2001, the annual compensation limit in paragraph 1 above, for determination periods beginning before January 1, 2002, shall be \$150,000 for any determination period beginning in 1996 or earlier; \$160,000 for any determination period beginning in 1997, 1998, or 1999; and \$170,000 for any determination period beginning in 2000 or 2001.

The determination of who is a Key Employee will be made in accordance with Section 416(i)(1) of the Code and the regulations thereunder.

(d) *Non-Key Employee*

Any employee or former employee, including such employee's beneficiary, who is not a key employee or a former key employee.

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

(e) *Permissive Aggregation Group*

The required aggregation group of plans plus any other plan or plans of the Employer which, when considered as a group with the required aggregation group, would continue to satisfy the requirements of sections 401(a)(4) and 410 of the Code.

(f) *Present Value*

The accrued benefit in a defined contribution plan and the present value of the accrued benefit in a defined benefit plan, using the interest and mortality rates used to prepare the latest actuarial valuation and using an assumed benefit commencement date occurring at Normal Retirement Age or attained age if later.

(g) *Required Aggregation Group*

- (1) Each qualified plan of the Employer in which at least one key employee participates or participated at any time during the plan year containing the determination date or any of the four preceding plan years (regardless of whether the plan has terminated), and
- (2) Any other qualified plan of the employer which enables a plan described in (1) to meet the requirements of sections 401(a)(4) or 410 of the Internal Revenue Code.

(h) *Top-Heavy Plan*

For Plan Years commencing on or after January 1, 1984, this Plan is top heavy if any of the following conditions exist:

- (1) The top-heavy ratio exceeds 60% and this Plan is not part of any required aggregation group or permissive aggregation group of plans;
- (2) If this Plan is part of a required aggregation group of plans but not part of a permissive aggregation group and the top-heavy ratio for the group of plans exceeds 60%;
- (3) If this Plan is part of a required aggregation group of plans and the top-heavy ratio for the permissive aggregation group exceeds 60%.

(i) *Top-Heavy Ratio*

- (1) If the Employer maintains one or more defined benefit plans and the Employer has not maintained any defined contribution plans (including any simplified employee pension plan as defined in Section 408(k) of the Code) which during the five-year period ending on the determination date(s) has or has had account balances, the top-heavy ratio for this Plan alone or for the required or permissive aggregation group as appropriate is a fraction, the numerator of which is the sum of the present values of accrued benefits of all key employees as of the determination date(s) (including any part of any accrued benefit distributed in the one year period ending on the determination date(s)) (5-year period ending on the determination date in the case of a distribution made for a reason other than severance from employment, death or disability), and the denominator of which is the sum of the present value of all accrued benefits (including any part of any accrued benefits distributed in the one year period ending on the determination date(s)) (5-year period ending on the determination date in the case of a distribution made for a reason other than severance from employment, death or disability), determined in accordance with Code Section 416 and the

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

regulations thereunder.

- (2) If the Employer maintains one or more defined benefit plans and the Employer maintains or has maintained one or more defined contribution plans (including any simplified employee pension plan) which during the five-year period ending on the determination date(s) has or has had any account balances, the top-heavy ratio for any required or permissive aggregation group as appropriate is a fraction, the numerator of which is the sum of the present value of accrued benefits under the aggregate defined benefit plan or plans for all key employees, determined in accordance with (1) above, and the sum of account balances under the aggregated defined contribution plan or plans for all key employees as of the determination date(s), and the denominator of which is the sum of the present values of accrued benefits under the aggregated defined benefit plan or plans, determined in accordance with (1) above, for all participants as of the determination date(s), all determined in accordance with Code Section 416 and the regulations thereunder. The account balances under a defined contribution plan in both the numerator and denominator of the top-heavy ratio are adjusted for any distribution of an account balance made in the one year period ending on the determination date (5-year period ending on the determination date in the case of a distribution made for a reason other than severance from employment, death or disability).
- (3) For purposes of (1) and (2) above, the value of account balances and the present value of accrued benefits will be determined as of the most recent valuation date that falls within or ends with the 12-month period ending on the determination date, except as provided in Code Section 416 and the regulations thereunder for the first and second plan years of a defined benefit plan.

The account balances and accrued benefits of a Participant (A) who is not a key employee but who was a key employee in a prior year, or (B) who has not been credited with at least one hour of service with any Employer maintaining the Plan at any time during the one year period ending on the determination date will be disregarded. The calculation of the top-heavy ratio, and the extent to which distributions, rollovers, and transfers are taken into account will be made in accordance with Code Section 416 and the regulations thereunder. Deductible employee contributions will not be taken into account for purposes of computing the top-heavy ratio. When aggregating plans, the value of account balances and accrued benefits will be calculated with reference to the determination dates that fall within the same calendar year.

The accrued benefit of a participant other than a key employee shall be determined under (a) the method, if any, that uniformly applies for accrual purposes under all defined benefit plans maintained by the employer, or (b) if there is no such method, as if such benefit accrued not more rapidly than the slowest accrual rate permitted under the fractional rule of section 411(b)(1)(C) of the Code.

## **II.02 Top-Heavy Plan Requirements**

The Administrator, on each determination date, shall determine whether the Plan is a top-heavy plan. For any year in which the Plan is top-heavy the provisions of this Article will supersede any conflicting provision of the Plan and the following requirements shall be met:

- (a) The vesting requirements of Appendix II.03; and
- (b) The minimum accrued benefit requirements of Appendix II.04.

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

**II.03 Top-Heavy Vesting Requirements**

- (a) In lieu of the vesting requirements of Section 4.02, a Participant's vested interest during any top-heavy Plan Year shall be a percentage of the Participant's accrued benefit determined pursuant to the following table:

<u>Years of Service</u>	<u>Vested Interest</u>
Less than 2	0%
2	20%
3	40%
4	60%
5	100%

- (b) If the Plan changes to non-top-heavy status in any subsequent year, each Participant's vested interest shall thereafter (during non-top-heavy years) be determined pursuant to Section 4.02, except that a Participant's vested percentage shall not be reduced. Any Participant who has at least 3 years of service at the time the plan becomes non-top-heavy may elect to continue under the top-heavy vesting schedule. The "election period" shall commence on the first day of the Plan Year in which the Plan reverts to non-top-heavy status, and shall end 60 days after the latest of:

- (1) The date the election period commences; or
- (2) The date the Participant receives written notice that the Plan is no longer top-heavy.

- (c) The minimum vesting schedule under this Section shall apply to all benefits within the meaning of Code Section 411(a)(7) except those attributable to employee contributions, including benefits accrued before the effective date of Code Section 416 and benefits accrued before the Plan became top-heavy. This Section shall not apply to the accrued benefit of any employee who does not have an Hour of Service after the Plan has initially become top-heavy and such employee's vested accrued benefit attributable to Employer contributions will be determined without regard to this Section.

**II.04 Top-Heavy Minimum Accrued Benefit**

- (a) Notwithstanding any other provision of this Plan except subsections (c), (d) and (e) and (f) below, for any Plan Year in which this Plan is top-heavy, each Participant who is not a key employee and has completed 1,000 Hours of Service will accrue a benefit (to be provided solely by Employer contributions and expressed as a life annuity commencing at Normal Retirement Age) of not less than 2% of his highest average compensation for the 5 consecutive years for which the Participant had the highest compensation (or the entire period of service, if less than five years. The aggregate compensation for the years during such five-year period in which the participant was credited with a year of service will be divided by the number of such years in order to determine average annual compensation. The minimum accrual is determined without regard to any social security contribution. The minimum accrual applies even though under other Plan provisions the Participant would not otherwise be entitled to receive an accrual, or would have received a lesser accrual for the year because (i) the non-key employee fails to make mandatory contributions to the Plan, (ii) the non-key employee's compensation is less than a stated amount, (iii) the non-key employee is not employed on the last day of the accrual computation period, or (iv) the Plan is integrated with social security. All accruals of Employer derived benefit, whether or not attributable to years for which the Plan is top heavy, may be used in computing whether the minimum accrual requirements of this Section are satisfied.

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

- (b) For purposes of computing the minimum accrued benefit, compensation shall include all compensation, as that term is defined in Appendix II.01(c) of the Plan for Code Section 415 purposes as limited by Code Section 401(a)(17); provided, however, compensation shall not include compensation paid in any Plan Year after the Plan Year in which the Plan was last top-heavy.
- (c) No additional benefit accruals shall be provided pursuant to subsection (a) above to the extent that the total accruals on behalf of the Participant attributable to Employer contributions will provide a benefit expressed as a life annuity commencing at Normal Retirement Age that equals or exceeds 20% of the Participant's highest average compensation for the 5 consecutive years for which the Participant had the highest compensation.
- (d) No accrual shall be provided pursuant to (a) above for a year in which the Plan does not benefit any key employee or former key employee.
- (e) All accruals of employer-derived benefits, whether or not attributable to years for which the plan is top-heavy, may be used in computing whether the minimum accrual requirements are satisfied.
- (f) The provision in (a) above shall not apply to any participant to the extent the participant is covered under any other plan or plans of the Employer which provide that the minimum allocation or benefit requirement applicable to top-heavy plans will be met in such other plan or plans.
- (g) The minimum accrued benefit required (to the extent required to be nonforfeitable under Code Section 416(b)) may not be suspended or forfeited under Code Section 411(a)(3)(B) or (D).
- (h) If the form of benefit is other than a single life annuity, the employee must receive an amount that is the Actuarial Equivalent of the minimum single life annuity benefit. If the benefit commences at a date other than at Normal Retirement Age, the employee must receive at least an amount that is the Actuarial Equivalent of the minimum single life annuity benefit commencing at Normal Retirement Age.

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

**Appendix III – Benefit Restrictions**

**III.01 Restriction in Maximum Amount of Benefit**

Anything herein to the contrary notwithstanding, the annual pension benefit or other form of benefit payable hereunder shall not exceed the maximum amount permitted under Section 415 of the Code, as amended from time to time, the provisions of which are expressly incorporated herein by reference. Moreover, in the event Code Section 416 should be applicable to any participating group herein, no benefit exceeding the amounts permitted for any "top-heavy" group shall be provided under this Plan.

**III.02 Restrictions in Event of Termination**

(a) The restrictions in this subsection (a) apply before January 1, 2009.

In the event the Plan is partially or completely terminated or an accumulated funding deficiency occurs within the first ten Plan Years following its inception or the first ten Plan Years subsequent to amendments increasing benefits, the following restrictions shall apply to a Participant who, on the date of the Plan's inception or on the date of any amendment increasing benefits, was one of the 25 highest-paid Employees of an Employer ("restricted Participant") and whose then anticipated annual Normal Pension exceeds \$1,500. The restrictions applied to such restricted Participants shall apply only to that amount of his anticipated annual Normal Pension which exceeds \$1,500 ("restricted benefit"). Benefits payable under Article VIII shall not be restricted benefits.

While the early termination restrictions are operative, no restricted Participant may receive a restricted benefit larger than one which can be purchased with the greater of:

- (1) \$20,000; or
- (2) 20% of the first \$50,000 of the Participant's annual compensation multiplied by the number of years between the date on which the ten-year period described above began and the date the restrictions became operative.

During the ten-year period described above, no restricted Participant may receive a restricted benefit in an optional form providing payments at a more rapid rate than would be provided in the form of a Monthly Income for Life.

In the event that the Participant's benefit hereunder is payable in a form other than that of a Monthly Income for Life commencing at his Normal Retirement Date, the foregoing limitations shall be adjusted according to regulations prescribed by the Internal Revenue Service.

(b) The restrictions in this subsection (b) apply on and after January 1, 2009.

In the event of plan termination, the benefit of any highly compensated active or former employee is limited to a benefit that is nondiscriminatory under Code section 401(a)(4).

Benefits distributed to any of the 25 most highly compensated active and highly compensated former employees with the greatest compensation in the current or any prior year are restricted such that the annual payments are no greater than an amount equal to the payment that would be made on behalf of the employee under a straight life annuity that is the actuarial equivalent of the sum of the employee's accrued benefit, the employee's other benefits under the plan (other than a social security supplement, within the

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

meaning of section 1.411(a)7(c)(4)(ii) of the Income Tax Regulations), and the amount the employee is entitled to receive under a social security supplement.

The preceding paragraph shall not apply if: (1) after payment of the benefit to an employee described in the preceding paragraph, the value of plan assets equals or exceeds 110% of the value of current liabilities, as defined in section 412(1)(7) of the Code, (2) the value of the benefits for an employee described above is less than 1% of the value of current liabilities before distribution, or (3) the value of the benefits payable under the plan to an employee described above does not exceed \$5,000.

For purposes of this section, benefit includes loans in excess of the amount set forth in section 72(p)(2)(A) of the Code, any periodic income, any withdrawal values payable to a living employee, and any death benefits not provided for by insurance on the employee's life.

An employee's otherwise restricted benefit may be distributed in full to the affected employee if prior to receipt of the restricted amount, the employee enters into a written agreement with the plan administrator to secure repayment to the plan of the restricted amount. The restricted amount is the excess of the amounts distributed to the employee (accumulated with reasonable interest) over the amounts that could have been distributed to the employee under the straight life annuity described in section 10.02(b) of the plan (accumulated with reasonable interest). The employee may secure repayment of the restricted amount upon distribution by: (1) entering into an agreement for promptly depositing in escrow with an acceptable depository property having a fair market value equal to at least 125 percent of the restricted amount, (2) providing a bank letter of credit in an amount equal to at least 100 percent of the restricted amount, or (3) posting a bond equal to at least 100 percent of the restricted amount. If the employee elects to post bond, the bond will be furnished by an insurance company, bonding company or other surety for federal bonds.

The escrow arrangement may provide that an employee may withdraw amounts in excess of 125 percent of the restricted amount. If the market value of the property in an escrow account falls below 110 percent of the remaining restricted amount, the employee must deposit additional property to bring the value of the property held by the depository up to 125 percent of the restricted amount. The escrow arrangement may provide that employee may have the right to receive any income from the property placed in escrow, subject to the employee's obligation to deposit additional property, as set forth in the preceding sentence.

A surety or bank may release any liability on a bond or letter of credit in excess of 100 percent of the restricted amount. If the plan administrator certifies to the depository, surety or bank that the employee (or the employee's estate) is no longer obligated to repay any restricted amount, a depository may redeliver to the employee any property held under an escrow agreement, and a surety or bank may release any liability on an employee's bond or letter of credit.

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

**Appendix IV – Administration of the Plan**

**IV.01 Administration of the Plan**

The general administration of the Pension Plan and the responsibility for carrying out its provisions shall be placed in the Board of Trustees in accordance with the terms of the Pension Plan and the Trust Agreement. The Board of Trustees shall be the administrator of the Plan within the meaning of Section 3(16) of ERISA.

It shall be the policy of the Trustees that the Plan always meet the minimum funding standards of ERISA and the Code; provided, however, that in the event the Plan is certified by the Plan's actuary to be in critical status within the meaning of the Code section 432 and ERISA Section 305, the Plan shall comply with the applicable requirements of Code section 432 and ERISA Section 305, and the Plan shall not be required to meet the minimum funding standards of the Code or ERISA other than as modified pursuant to the referenced Sections.

**IV.02 Determination by Trustees Binding**

The Trustees or, where Trustee responsibility has been delegated to others, such delegates shall have complete authority to determine the standard of proof required in any case and to apply and interpret this Plan. The decisions of the Trustees or their delegates shall be final and binding.

All questions or controversies, of whatsoever character, arising in any manner or between any parties or persons in connection with this Plan or its operation, whether as to any claim for benefits, or as to the construction of language or meaning of this Plan or rules and regulations adopted by the Trustees, or as to any writing, decision, instrument or account in connection with the operation of the Plan or otherwise, shall be submitted to the Trustees or, where Trustee responsibility has been delegated to others, to such delegates for decision. The decision of the Trustees or their delegates shall be binding upon all persons dealing with the Plan or claiming any benefit hereunder, except to the extent that such decision may be determined to be arbitrary or capricious by a court having jurisdiction over such matter.

To the fullest extent permitted by law, the Trustees shall have discretionary authority to construe and apply the terms and provisions of the Plan, and to determine the eligibility for benefits and other rights of any individual under the Plan. Decisions of the Trustees may not be overruled absent a finding that such decision was arbitrary or capricious, or an abuse of discretion.

**IV.03 Management of Funds**

The assets of the Plan shall be conserved, invested and disbursed by the Trustees pursuant to the terms of the Pension Plan and the Trust Agreement.

**IV.04 Standard of Proof**

Every application for retirement, disability or death shall be made at the discretion of the Trustees. The Trustees shall be the sole judges of the standard of proof required in any case.

**IV.05 Actuarial Valuations and Plan Review**

This Retirement Plan has been adopted by the Board of Trustees on the basis of an actuarial estimate which has established (to the extent possible) that the income and accruals of the Pension Fund will be

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

fully sufficient to support this Plan on a permanent basis. However, it is recognized as possible that in the future the income and/or the liabilities of the Pension Fund may be substantially different from those previously anticipated. The Board of Trustees shall have prepared annual actuarial valuations of the Pension Fund. Upon the basis of all of the circumstances the Board of Trustees may from time to time amend the Plan, including any increase or decrease in benefit amounts. However, no amendment shall in any way reduce the benefits payable to a Pensioner.

**IV.06 Unauthorized Representations**

The Fund shall not be bound by the representations of any person, other than the Trustees, regarding participation in and eligibility for benefits under this Plan, status of Employees or Employers or any other matter relating to the Plan or Fund.

**IV.07 Payment of Benefits under Legal Disability**

In case any benefit payments hereunder become payable to a person not adjudicated incompetent, but, by reason of mental or physical disability, in the opinion of the Trustees, is unable to administer properly such payments, then such payments may be paid out by the Trustees for the benefit of such person in such of the following ways as they think best, and the Trustees shall have no obligation or duty to see what the Funds are used or applied for the purpose or purposes for which paid:

- (a) directly to any such person
- (b) to the legally appointed guardian or conservator of such person
- (c) to any spouse, parent, brother or sister of such person for his welfare, support and maintenance by the Trustees using such payments directly for the support, maintenance and welfare of any person.

**IV.08 Inability to Locate Pensioner**

If any Pensioner fails to inform the Trustees in writing sent by registered mail of a change of address and the Trustees are unable to communicate with the Pensioner at the address last recorded by the Trustees and a letter sent by registered mail to such Pensioner is returned, any payments due on the Pensioners' account shall be held without interest until he makes claim therefor or, if earlier, until any such payment escheat to any state.

**IV.09 Reinstatement of Benefit**

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

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

**Appendix V – Amendment and Termination**

**V.01 Amendment of the Retirement Plan**

- (a) The Trustee shall have the right, at any time, and from time to time, without the consent of any Employer, Employee, beneficiary or other interested party:
  - (1) To amend this Pension Plan, both prospectively and retroactively, in such manner as it may deem necessary or advisable in order to qualify the Pension Plan and Pension Fund under, or to satisfy any provision of, any law, regulation, ruling or order now or hereafter existing, including, but not limited to, Sections 401(a) and 501(a) of the Code and/or any provision of ERISA; and
  - (2) To amend this Pension Plan, both prospectively and retroactively, in any other manner, provided, however, that no such amendment shall forfeit or diminish the non-forfeitable and vested interest of any Employee in the Pension Fund, including a change in the actuarial basis for determining optional or early retirement benefits, or the elimination or reduction of an early retirement benefit or retirement-type subsidy, (except as may now or hereafter be permitted under applicable provisions of the Code and ERISA), nor shall any amendment be made which shall permit any part of the Pension Fund to be used for or diverted to purposes other than for the exclusive benefit of Employees or their beneficiaries.
- (b) Any such amendment shall comply with the applicable Sections of the Code and ERISA, the contract Articles creating the Fund, and the purposes set forth in the Trust Agreement and be adopted by a written, executed agreement or resolution of the Trustees, and shall be binding upon all Employers, Employees, beneficiaries and other interested parties.
- (c) Notwithstanding anything in this Appendix V.01 to the contrary, in the event that an amendment to the Retirement Plan is adopted changing the eligibility requirements for a Deferred Vested Benefit under Section 5.03 of each Employee with at least five (5) Quarters of Credited Service or Eligibility Service shall then be permitted to elect to have the nonforfeitable percentage of his benefit computed without regard to such amendment. In order to be effective, any such election must be made in writing and filed with the Board of Trustees not later than sixty (60) days following the latest of: (i) the date the amendment was adopted, (ii) the date the amendment became effective, or (iii) written notice of the amendment was issued to the Employee. Any amendment to the Retirement Plan which directly or indirectly affects the computation of an Employee's Vested Deferred Benefit shall be considered a change in the Retirement Plan's eligibility requirements for a Vested Deferred Benefit under Section 7.02.
- (d) Notwithstanding anything in this Plan to the contrary, in the event the Plan is certified by the Plan's actuary to be in endangered or critical status, within the meaning of the Code Section 432 and ERISA Section 305, all benefits provided and accrued under the Plan shall be subject to the requirements of such Sections, whether or not the Trustees have formally amended the Plan at such time.

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

**V.02 Termination**

(a) *Rights of Trustees*

It is the intent of the Trustees to continue this Retirement Plan in full force and effect. However, in order to safeguard against any unforeseen contingencies, the right to completely or partially discontinue or terminate the Retirement Plan is reserved to the Trustees. In the event of the complete or partial discontinuance or termination of the Retirement Plan, the rights of all affected Employees to benefits accrued to the date thereof shall become fully vested and be nonforfeitable to the extent then funded and/or guaranteed by the Pension Benefit Guaranty Corporation. No affected Employee shall have any recourse toward satisfaction of *his* fully vested and nonforfeitable benefit from other than Pension Fund assets or the Pension Benefit Guaranty Corporation.

(b) *Priorities of Allocation*

In the event of the Plan's termination the assets then remaining in the Pension Fund after providing for any administrative expenses, shall be allocated, to the extent sufficient, for the purpose of paying benefits (based on Credited Service to the date of termination of the Plan) to the Pensioners and Employees (or their beneficiaries) in accordance with Section 4044 (except Subsection (b)(6) thereof) of ERISA, notwithstanding any contrary provision in the Trust Agreement. In the event assets remain in the Pension Fund following such allocation, the remaining assets shall be used to increase all allocated amounts proportionately so as to allocate all remaining assets.

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

**Appendix VI – Miscellaneous**

**VI.01 Jurisdiction, Construction and Validity**

The Trust Agreement and the Pension Plan are created and accepted in the State of New York. All questions pertaining to the validity or construction of the Trust Agreement and the Pension Plan and the accounts and transactions of the parties shall be determined in accordance with the laws of the State of New York. Should any provision contained in the Trust Agreement or the Retirement Plan or in any collective bargaining agreement pursuant to which the Trust Agreement is created be held unlawful, such provision shall be of no force and effect, and the Trust Agreement, the Retirement Plan or any collective bargaining agreement shall be treated as if such portion had not been contained herein.

**VI.02 Named Fiduciaries**

- (a) The “Named Fiduciary” of the Plan, who will have authority to control and manage the operation and administration of the Plan is, collectively, the Board of Trustees.
  
- (b) The Board of Trustees is responsible for interpreting the Plan and making determinations under the Plan. In order to carry out their responsibility, and notwithstanding any other provision of the Plan, the Board of Trustees shall have exclusive authority and full discretion to determine whether an individual is eligible for any benefits under the Plan.; to determine the amount of benefits, if any, an individual is entitled to from the Plan; to determine or find facts that are relevant to any claim for benefits from the Plan; to interpret all of the Plan’s provisions; to interpret all of the provisions of the Plan’s Summary Plan Description; to interpret the provisions of the Trust Agreement governing the operation of the Plan; to interpret all of the provisions of any other document or instrument involving or having impact upon the Plan; and to interpret all of the terms used in the Plan, the Summary Plan Description and in all of the previously mentioned agreements, documents and instruments.

All such interpretations and determinations made by the Trustees, or their designee pursuant to this Appendix VI.02 shall be final and binding upon any individual claiming benefits under the Plan and upon all Employees, all Employers, the Union, and any party who has executed any agreements with the Trustees; will be given deference in all courts of law, to the greatest extent allowable by applicable law; and will not be overturned or set aside by any court of law unless the court finds that the Trustees, or their designee, abused their discretion in making such determination or rendering such interpretation.

**VI.03 Exclusive Benefits**

All contributions by the Employers will be deposited into the Trust Fund. The assets of the Trust Fund shall be used exclusively to provide benefits under the Plan and to pay any and all expenses or costs which are incurred in connection with or which arise out of the operation of, the Plan and Pension Fund, including, without limitation, legal, actuarial, educational, accounting and administrative expenses, fiduciary or other premiums, any and all taxes which may be assessed against the Fund, any expenses, costs, assessments or levies resulting from the prosecution, defense or settlement of any claims involving the Plan or Trust Fund, and all premiums required to be paid to the Pension Benefit Guaranty Corporation under Section 4006-07 of ERISA. It shall be, and is hereby made, impossible upon the termination of the Plan or pursuant to any amendment of the Plan or otherwise, at any time for all or any part of the Trust Fund to be used for or diverted to any purpose other than the exclusive benefit of Employees or their beneficiaries; provided, however, nothing herein shall preclude payment from the Trust Fund of costs and

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

expenses incurred in connection with, or arising out of the operation of, the Plan and Trust Fund.

**VI.04 IRS Approval**

This Plan is and shall be subject to obtaining the necessary approval from the Internal Revenue Service of the Plan and the deductibility of contributions to the Fund. In the event the Plan or Trust Agreement at any time requires amendment in order for the contributions to the Fund to be deductible and the Plan to be qualified under the applicable provisions of the Code, then the Board of Trustees shall immediately make such amendment as is necessary to accomplish such purposes. The administration of the Plan shall be such as to maintain continued qualification on the Plan under the applicable provisions of the Code.

**VI.05 Liability of Trustees**

The Board of Trustees shall be free from liability, joint or several, for personal acts, omissions, and conduct, and for acts, omissions and conduct of duly constituted agents in the administration of this Plan, except to the extent that the effects and consequences of such personal acts, omissions or conduct shall result from willful misconduct; provided, however, that this Section shall not operate to relieve the Board of Trustees from any responsibility or liability for any responsibility, obligation, or duty under Part 4 of Subtitle B of Title 1 of ERISA.

**VI.06 Merger or Consolidation of Plan or Transfer of Assets**

A merger or consolidation of the Plan with another plan, or a transfer of the assets of this Fund to another plan's fund, shall not take place unless the benefit that would be received by each participant, hereunder, from the Plan, if it were terminated immediately after such merger, consolidation or transfer, is at least equal to the Accrued Benefit the participant would have received if the Plan terminated immediately before such merger, consolidation or transfer.

**VI.07 Improvement to Pensioners**

Effective January 1, 2000, the Trustees resolve to pay each pensioner who retired prior to 1999, and is still receiving a pension check on 1/1/2000, a one-time check, as soon as practical after 1/1/2000, equal to the pensioner's regular monthly payment. As an additional improvement, effective January 1, 2000, for any pensioner or the surviving spouse of such pensioner who retired prior to January 1, 1999, an increase will be granted in his/her monthly pension benefit equal to one-half of one percent (0.5%) per month for each year such pensioner's effective year of pension precedes 1999.

Effective 1/1/1999, for each monthly pension that became effective before 1/1/1999, there shall be a permanent increase in the amount of monthly pension that would otherwise be scheduled for payment. The amount of the monthly increase shall be .0065 of such otherwise monthly pension multiplied by the number of years that the effective date of the pension preceded 1997. Such number of years shall be calculated by subtracting the calendar year containing the effective date of pension from 1997. However, if most of the amount of such pension resulted from pension service earned under a pension plan that has merged with this Plan after 1983, the increase will be calculated using 1996 as the year to be subtracted from.

The Trustees resolved to pay each pensioner who retired prior to 1995, and is still receiving a pension check on 5/1/1995, a one-time check, as soon as practicable after 5/1/1995, equal to the pensioner's regular monthly payment.

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

**VI.08 Protection against Creditors**

To the end of making it impossible for Employees or Pensioners covered by the Plan improvidently to imperil the provisions made for their support and welfare by directly or indirectly anticipating, pledging, or disposing of their pension payments hereunder, it is hereby expressly stipulated that no Employee or Pensioner hereunder shall have the right to assign, alienate, transfer, sell, hypothecate, mortgage, encumber, pledge, commute, or anticipate any pension payments, and that such payments shall not in any way be subject to any legal process to levy execution upon or attachment or garnishment proceeding against the same for the payments of any claim against an Employee or Pensioner nor shall such payments be subject to the jurisdiction of any bankruptcy court of insolvency proceedings by operation of law or otherwise except for the provisions contained in Code Section 414(p) and the regulations thereunder.

The provisions of the prior paragraph shall not apply to any liabilities of a Participant to the Plan pursuant to a judgment or settlement described in Code Section 401(a)(13)(C) due to: (1) the Participant being convicted of committing a crime involving the Plan, (2) a civil judgment (or consent order or decree) being entered by a court in an action brought in connection with a violation of ERISA's fiduciary duty rules, or (3) a settlement agreement between the Secretary of Labor and the participant in connection with a violation of ERISA's fiduciary rules. The court order establishing such liability must require that the participant's benefit be applied to satisfy the liability.

No Participant may receive a loan from assets of the Plan.

No benefit or interest available hereunder will be subject to assignment or alienation, either voluntarily or involuntarily. The preceding sentence shall also apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order, unless such order is determined to be a qualified domestic relations order, as defined in section 414(p) of the Internal Revenue Code, or any domestic relations order entered before January 1, 1985.

In the event of any conflict between the terms of this Plan and the terms of any insurance contract issued hereunder, the Plan provisions shall control.

**VI.09 Loss of Benefits**

A vested Participant generally has a nonforfeitable right to the Accrued Benefit associated with his accumulated Pension Credit. The following exceptions apply to the extent permitted under applicable law.

Such benefit may be forfeited in one or more of the following circumstances: upon death; or upon an employer's withdrawal from the plan; or benefits accrued as a result of service with the participant's employer before the employer was required to contribute to the plan may not be payable if the employer ceases contributions to the plan; or if the Plan is in reorganization benefits may be reduced; or if the Plan is insolvent benefit payments may be suspended; or if the Plan is terminated benefit payments may be reduced or suspended.

If an employer completely withdraws from the Plan, a participant's years of service with the employer completed after withdrawal will not be taken as Vesting Service Credit. Similarly, after an employer's partial withdrawal involving the decertification of the collective bargaining representative, a participant's years of service with that employer completed after such partial withdrawal will not be taken as Vesting Service Credit. If the Plan terminates then for purposes of termination insurance an employee's years of service completed after the date of termination will not be taken as Vesting Service Credit.

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

**Appendix VII – Merger of Prior Plans**

**VII.01 Prior Mergers**

Effective July 1, 1976, the Bricklayers Local 14 Pension Plan was merged with this Plan and the Bricklayers Local 14 Pension Fund was merged with this Fund.

Effective July 1, 1986, the Bricklayers Local 68 Pension Plan was merged with this Plan and the Bricklayers Local 68 Pension Fund was merged with this Fund.

Effective January 1, 1991, the Westchester Bricklayers District Council Pension Plan was merged with this Plan and the Westchester Bricklayers District Council Pension Fund was merged with this Fund.

Effective May 1, 1997, the Bricklayers and Allied Craftworkers Local 29 Pension Plan was merged with this Plan and the Bricklayers and Allied Craftworkers Local 29 Pension Fund was merged with this Fund.

**VII.02 Participation**

Each Participant in Bricklayers Local 14 Pension Plan, Bricklayers Local 68 Pension Plan, Westchester Bricklayers District Council Pension Plan, and the Bricklayers and Allied Craftworkers Local 29 Pension Plan on the effective date of merger will be considered a Participant in this Plan on such date.

**VII.03 Credited Service and Vesting Service**

The Credited Service and Vesting Service that each Participant referred to in Section 15.02 had in Bricklayers Local 14 Pension Plan, Bricklayers Local 68 Pension Plan, Westchester Bricklayers District Council Pension Plan, and the Bricklayers and Allied Craftworkers Local 29 Pension Plan on the effective date of merger will be considered Credited Service and Vesting Service under this Plan on such date.

Each Participant in the Bricklayers Local 14 Pension Plan, Bricklayers Local 68 Pension Plan, Westchester Bricklayers District Council Pension Plan, and the Bricklayers and Allied Craftworkers Local 29 Pension Plan who were vested (partially or fully) according to the terms of their participation in the Prior Plans shall be considered vested (partially or fully) under this Plan.

**VII.04 Accrued Benefit**

Effective as of the applicable merger date, each participant from the Bricklayers Local 14 Pension Plan, Bricklayers Local 68 Pension Plan, Westchester Bricklayers District Council Pension Plan, and the Bricklayers and Allied Craftworkers Local 29 Pension Plan, having satisfied the requirements for an accrued benefit under the Prior Plans shall retain the benefit accrual calculation for such periods under the Prior Plans, for such portion of benefit earned prior to the applicable merger date. Benefit accrual earned after the applicable merger dates shall be using the benefit accrual under this Plan.

**VII.05 Loss of Service from Prior Plans**

Any pension or vesting service that was permanently lost under prior provisions of the Prior Plans shall not be restored as a result of the merger(s). Any “frozen” benefit that was obtained from any of the Prior Plans shall not increase nor will any benefit already being received prior to the merger through the Prior Plans shall not be increased as a result of the merger.

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

**VII.06 Prior Plan Provisions**

The provisions that apply to a Pensioner whose effective date of pension was under Prior Plan provisions, or to a separated vested participant whose break in service took place under Prior Plan provisions, shall be those in place at the time of retirement, or the break in service, under pertinent Prior Plan provisions. Further, the pensions being paid from the Prior Plans on the applicable effective date of the merger will be considered a vested pension benefit under this Plan and will continue to be paid by this Plan.

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

**Appendix VIII – Direct Rollovers**

**VIII.01 Direct Rollovers**

This Appendix applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this Appendix, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

Effective on and after January 1, 2002 if a rollover distribution would be less than \$500 a distributee may not make the election described in the preceding sentence to rollover a portion of an eligible rollover distribution.

**VIII.02 Definitions**

(1) *Eligible Rollover Distribution*

Any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

Effective for distributions made after December 31, 2001, for purposes of the direct rollover provisions of the plan, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be paid only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Code, that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(2) *Eligible Retirement Plan*

An individual retirement account 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 trust 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. Effective 1/1/2008 in the case of a designated beneficiary who was not the Participant's spouse an eligible retirement plan is an individual retirement account provided that this is established to receive a direct rollover on behalf such nonspouse designated beneficiary, and provided that transmittal is by a trustee-to-trustee transfer, and provided that no part of money transferred is a required minimum distribution.

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

Effective for distributions made after December 31, 2001, for purposes of the direct rollover provisions 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 or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in Section 414(p) of the Code.

Effective after 2007, an eligible retirement plan shall also mean a ROTH IRA.

(3) *Distributee*

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. Effective 1/1/2007 a distributee is also a surviving designated beneficiary. In the case of a nonspouse beneficiary the direct rollover may be made only to an individual retirement account or annuity described in Code §408(a) or §408(b) ("IRA") that is established on behalf of the designated beneficiary and that will be treated as an inherited IRA pursuant to the provisions of Code §402(c)(11). Also, in this case, the determination of any required minimum distribution under Code §401(a)(9) that is ineligible for rollover shall be made in accordance with IRS Notice 2007-7, Q&A 17 and 18

(4) *Direct Rollover*

A payment by the plan to the eligible retirement plan specified by the distributee.

**VIII.03 Mandatory Distributions**

In the event of a mandatory distribution greater than \$1,000 made on or after March 28, 2005, in accordance with the provisions of section 9.05 of the Plan, if the participant does not elect to have such distribution paid directly to an eligible retirement plan specified by the participant in a direct rollover or to receive the distribution directly, then the plan administrator will pay the distribution in a direct rollover to an individual retirement plan designated by the plan administrator. For purposes of determining whether a mandatory distribution is greater than \$1,000, the portion of the participant's distribution attributable to any rollover contribution is included.

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

**Appendix IX – Contributions**

**IX.01 Contributions**

Contributions shall be paid to the Pension Fund in accordance with the collective bargaining agreements, the rules adopted by the Trustees and as required by law. Any Employer accepted as an Employer shall also execute such Participation Agreement as reasonably required by the Trustees setting forth the basis for the contributions to the Pension Fund.

**IX.02 Irrevocability of Contributions**

Any and all contributions made by the Employer shall be irrevocable and shall be transferred to the Trustees and held as provided in this Plan and the Pension Fund to be used in accordance with the provisions of this Plan in providing the benefits and paying the expenses of the Plan. Neither such contributions nor the corpus of the trust or custodial account nor any income therefrom shall be used for or diverted to purposes other than the exclusive benefit of the Employees or Pensioners or their beneficiaries and for the payment of administration expenses of the Plan.

**IX.03 Limitation of Liability for Benefits**

The pension benefits of the Plan shall be only such as can be provided by the assets of the Pension Fund and there shall be no liability or obligation on the part of any Employer to make any further contributions to the Trustees in event of termination of the Plan. No liability for the payment of any benefits under the Plan shall be imposed upon any Employer, the Union or the Trustees. The foregoing shall be subject to any provision of ERISA to the contrary.

**IX.04 Termination or Modification of Obligation to Contribute**

The financing of benefits provided by the Plan is based on the continued contribution of Employers, as required by the collective bargaining agreement with the Union. If a Union and an Employer should enter into a collective bargaining agreement requiring contributions to the Fund, and then fail to renew such agreement, or enter into an agreement which does not require the continuation of contributions to the Fund, or requires a lesser rate of contributions, the Trustees have the authority to take such action as is necessary with respect to all of the Employees of all of the Employers in that Union jurisdiction including but not limited to the following in order to maintain the Fund on a sound actuarial basis:

- (a) The Trustees shall have the right to terminate the Employers status as Employers and to terminate or reduce any pension benefits to former Employees of the Employer if the total amount contributed by said Employer is less than the actuarially determined value of the pension benefits approved for former Employees of such Employer; and/or
- (b) The Trustees shall have the right to adjust or cancel the credit of any Employees or former Employees, or modify the condition for entitlement to any benefits, in order to maintain an actuarially sound relationship between the contributions made on account of such Employees or former Employees and any benefits accrued by them.

However, any cancellation of Credited Service shall not apply to any periods of employment (or any benefits attributable thereto) for which the Employer contributed.

**Bricklayers and Allied Craftworkers  
Local 5 New York Retirement Fund  
Pension Plan**

IN WITNESS WHEREOF, the parties hereto affix their signature effective as of the 10 day of December, 2014.

**UNION TRUSTEES**

**EMPLOYER TRUSTEES**

By: 

By: 

By: 

By: 

By: \_\_\_\_\_

By: \_\_\_\_\_