

THE CLEVELAND GLASS AND GLAZING INDUSTRY
DEFINED CONTRIBUTION PENSION
PLAN AND TRUST

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THE CLEVELAND GLASS AND GLAZING INDUSTRY
DEFINED CONTRIBUTION PENSION
PLAN AND TRUST AGREEMENT

This Sixth Amended and Restated Pension Plan and Trust Agreement is made at Cleveland, Ohio, as of the 10th day of November, 2014, by and among The Cleveland Glass and Glazing Industry Pension Fund (with principal offices located in Cleveland, Ohio), which with its successors and assigns is herein called the "Pension Fund" or "Fund", the various Employers which with their successors and assigns are herein called the "Employers", who either are signators to the Collective Bargaining Agreement with Painters and Allied Trades District Council No. 6, Glaziers, Architectural Metal and Glassworkers Local Union No. 181 or are otherwise obligated to contribute to the Pension Fund, and Glaziers, Architectural Metal and Glassworkers Local Union No. 181, which with its successors and assigns is herein called the "Union", and the Joint Board of Trustees, which with its successors and assigns is herein called the "Trustee".

WITNESSETH:

WHEREAS, effective January 2, 1957, Employers, Union and Trustee established a Pension Plan and Trust which have been qualified with the Internal Revenue Service under Sections 401(a) and 501(a) of the Internal Revenue Code; and

WHEREAS Employers, Union and Trustee amended and restated said Plan effective April 1, 1976; and

WHEREAS Employers, Union and Trustee amended and restated said Amended and Restated Pension Plan and Trust effective April 1, 1987; and

WHEREAS Employers, Union and Trustee amended and restated said Second Amended and Restated Pension Plan and Trust effective April 1, 1989; and

WHEREAS Employers, Union and Trustee amended and restated said Third Amended and Restated Pension Plan and Trust effective April 1, 1997; and

WHEREAS Employers, Union and Trustee amended and restated said Fourth Amended and Restated Pension Plan effective April 1, 2002;

WHEREAS Employers, Union and Trustees now desire to amend said Fifth Amended and Restated Pension Plan and Trust effective April 1, 2014; and

WHEREAS Employers, Union and Trustee intend that such Sixth Amended and Restated Plan and Trust exist for the exclusive benefit of its participating employees, that no part of the Trust assets be used for (or diverted to) purposes other than their exclusive benefit, and that the Plan and Trust qualify under Sections 401(a) and 501(a) of the Internal Revenue Code of 1986 (as may be amended) and any other applicable Federal and State laws; and

NOW, THEREFORE, the Employers, the Union and the Trustee hereby establish the Sixth Amended and Restated Pension Plan and, with the Trustee, create this Trust upon the following terms and conditions:

ARTICLE I – DEFINITIONS

Unless the context of this Plan and Trust requires otherwise, the following words and phrases are defined as designated in this Article I:

1.01 Accrued Benefit (or Account Balance)

On any given date, the balance in the Participant's Employer Contribution Account and Participant Contribution Account (if any).

1.02 Administrator (or Plan Administrator)

The Joint Board of Trustees and any duly appointed additional or successor Administrator(s).

1.03 Age

Age at last birthday.

1.04 Agreement, Trust or Plan

The Pension Plan and Trust created by this Agreement and any amendments thereto.

1.05 Anniversary Date

The first day of each Plan Year following the Effective Date.

1.06 Annual Additions

Allocations to a Participant's Accrued Benefit from (a) Employer contributions, (b) Forfeitures and (c) a Participant's Voluntary Nondeductible Contributions (if any).

1.07 Annual Valuation Date

The last day of each Plan Year.

1.08 Beneficiary

Either: (a) the person, legal representative, fiduciary or other entity designated to receive Death Benefits hereunder by a Participant's (or an Inactive Participant's) written document most recently delivered to the Plan Administrator; or (b) in the absence of such document, the Participant's (or Inactive Participant's) surviving spouse or, if there is no surviving spouse, the Participant's (or Inactive Participant's) children in equal shares (per stirpes); or if there are no such children or their descendants, to the Participant's (or Inactive Participant's) parents (in equal shares); or if neither of the Participant's parents are living, to the Participant's (or Inactive Participant's) siblings in equal shares (per stirpes) or if there are no such siblings, the Participant's (or Inactive Participant's) estate. A Beneficiary designation by a married Participant (or Inactive Participant) is valid only if the Participant's (or Inactive Participant's) spouse consents to such designation in favor of a specific non-spouse Beneficiary and as to the form of benefit. The consent of the spouse must be in accordance with Section 9.08(C)(3) of this Plan.

1.09 Benefitting

A Participant is treated as Benefitting under the Plan for any Plan Year during which the Participant received or is deemed to receive an allocation in accordance with IRC Section 1.410(b)-3(a).

1.10 Collective Bargaining Agreement

Any Collective Bargaining Agreement existing between the Union and the Employers which provides for contributions to this Plan (and any extensions or renewals of such Collective Bargaining Agreement) or any new Collective Bargaining Agreement which provides for contributions to this Plan.

1.11 Compensation

"Compensation" means, with respect to any Participant and except as otherwise provided herein, such Participant's wages for the Plan Year (the "determination period") within the meaning of Code Section 3401(a) (for the purposes of income tax withholding at the source) but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code Section 3401(a)(2)) (wages subject to Federal income tax withholding).

For purposes of this Section, the determination of Compensation shall be made by:

- (A) including amounts which are contributed by the Employer pursuant to a salary reduction agreement and which are not includible in the gross income of the Participant under Code Sections 125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 403(b) or 457(b), and Employee contributions described in Code Section 414(h)(2) that are treated as Employer contributions. For this purpose, amounts not includible in gross income under Code Section 125 shall be deemed to include any amounts not available to a Participant in cash in lieu of group health coverage because the Participant is unable to certify that the Participant has other health coverage, provided the Employer does not request or collect information regarding the Participant's other health coverage as part of the enrollment process for the health plan.
- (B) including Military Differential Pay.
- (C) making the following adjustments for amounts that are paid after the Participant's severance from employment with the Employer. Any other payment of compensation paid after severance of employment that is not described in the following types of compensation is not Compensation.
 - (1) Compensation shall include regular pay after severance of employment if:
 - (i) The payment is regular compensation for services during the Participant's regular working hours, or compensation for services outside the Participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and

- (ii) The payment would have been paid to the Participant prior to a severance from employment if the Participant had continued in employment with the Employer; and
- (iii) The payment is made by the later of 2-1/2 months after a Participant's severance from employment with the Employer or the end of the Limitation Year that includes the date of the Participant's severance from employment with the Employer.

Compensation shall be recognized as of such Employee's effective date of participation pursuant to Section 2.01.

Compensation in excess of \$200,000 (or such other amount provided in the Code) shall be disregarded for all purposes other than for purposes of salary deferral elections. Such amount shall be adjusted for increases in the cost of living in accordance with Code Section 401(a)(17)(B), except that the dollar increase in effect on January 1 of any calendar year shall be effective for the Plan Year beginning with or within such calendar year. For any "determination period" of less than twelve (12) months, the Compensation limit shall be an amount equal to the Compensation limit for the calendar year in which the "determination period" begins multiplied by the ratio obtained by dividing the number of full months in the short "determination period" by twelve (12). A "determination period" is not less than twelve (12) months solely because a Participant's Compensation does not include Compensation paid during a determination period while the Participant was not a Participant in the Plan (or a component of the Plan).

If any Employees are excluded from the Plan (or from any component of the Plan), then Compensation for any such Employees who become eligible or cease to be eligible to participate in the Plan (or in the component of the Plan) during a Plan Year shall only include Compensation while such Employees are Eligible Employees of the Plan (or of such component of the Plan).

For purposes of this Section, if the Plan is a plan described in Code Section 413(c) or 414(f) (a plan maintained by more than one Employer), the limitation applies separately with respect to the Compensation of any Participant from each Employer maintaining the Plan.

If, in connection with the adoption of any amendment, the definition of Compensation has been modified, then, except as otherwise provided herein, for Plan Years prior to the Plan Year which includes the adoption date of such amendment, Compensation means compensation determined pursuant to the terms of the Plan then in effect.

For any Self-Employed Individual covered under this Plan, Compensation shall mean Earned Income as defined and allocated in Treas. Reg. Section 1.401(a)(17)-1(b)(6) example 5. Compensation shall include only that Compensation which is actually paid to the Participant during the determination period. Except as provided elsewhere in this Plan, the determination period shall be the Plan Year.

1.12 Contribution Period

The period during which an Employer is obligated to make contributions to the Fund.

1.13 Disability (or Disabled)

The inability to engage in any substantial and gainful activity by reason of any medically-determinable physical and/or mental impairment that can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve (12) months. The performance and degree of such impairment shall be supported by medical evidence as determined and ascertained by a Trustee—selected physician whose opinion shall be conclusive and binding for all purposes of this Plan and Trust. In the alternative to the submission of medical evidence the Trustees may find an Employee to be permanently disabled based upon a determination of disability made by the United States Social Security Administration involving the Employee. The absence of such a determination shall not preclude a finding of disability under the standard of this Section.

1.14 Earned Income

A Participant's net earnings from self-employment in the trade or business of the Employer for which personal services of the Participant are a material income-producing factor. Net earnings shall be determined without regard to items not included in gross income and the deductions allocable to such items. Net earnings shall be reduced by the contributions of the Employer to this Plan to the extent deductible under Section 404 of the Code. For Taxable Years beginning after December 31, 1989, net earnings shall be determined with regard to the deduction allowed to the Employer by Section 164(f) of the Code.

1.15 Effective Date

April 1, 2014, the date on which this Plan and Trust become effective; however, the term "Original Effective Date" shall mean January 2, 1957.

1.16 Employees

All persons who are covered under the Collective Bargaining Agreement referred to in Section 1.10 of this Agreement and who are employed by an Employer who is obligated to contribute to the Pension Fund; any employee of the Union or Pension Fund as long as such entities are Employers under this Agreement; and any other class or classes of employees who are not within the bargaining unit represented by the Union but who are employed by an Employer making contributions on their behalf provided, however, that the acceptance of such class or classes is not discriminatory and, in each case, as subject to determination by the Trustees, whose decision with respect to their acceptance or rejection shall be final.

1.17 Employers (or "Contributing Employer")

Any person, corporation or other business entity who now or hereafter is obligated under, or is a party to, the Collective Bargaining Agreement, directly or indirectly by operation of National Labor Law, with the Union and has either an obligation to contribute to the Plan or maintains operations which utilize Employees covered under the Plan; and who adopts this Plan, either directly or indirectly by operation of National labor Law, and any amendments and modifications thereof.

The term "Employers" shall also include the Painters and Allied Trades District Council No. 6, Glaziers, Architectural Metal and Glassworkers Local Union No. 181 and The Cleveland Glass and Glazing Industry Pension Fund; provided, however, that they enter into an agreement requiring them to make periodic contributions to the Pension Fund under this Agreement and that they adopt and agree

to be bound by the terms and provisions of this Agreement and any amendments and modifications thereof."

1.18 Employer Contribution Account

As defined in Section 4.01, a Participant's account(s) to which Employer contributions (under Section 3.01) and/or Forfeitures are allocated.

1.19 Fiduciary

Any person or entity deemed as such under applicable Ohio or Federal law.

1.20 Forfeitures

The portion of a former Participant's Employer Contribution Account which is not vested under Article VIII because of termination of employment other than by death, Disability or Retirement.

1.21 Highly Compensated Employee

"Highly Compensated Employee" means an Employee described in Code Section 414(q) and the Regulations thereunder, and generally means any Employee who:

- (A) was a "five percent owner" as defined in Section 1.25(b) at any time during the "determination year" or the "look-back year"; or
- (B) for the "look-back year" had "415 Compensation" from the Employer in excess of \$80,000. The \$80,000 amount is adjusted at the same time and in the same manner as under Code Section 415(d), except that the base period is the calendar quarter ending September 30, 1996.

The "determination year" means the Plan Year for which testing is being performed, and the "look back year" means the immediately preceding twelve (12) month period.

A highly compensated former Employee is based on the rules applicable to determining Highly Compensated Employee status as in effect for the "determination year," in accordance with Regulation 1.414(q)-1T, A-4 and IRS Notice 97-45 (or any superseding guidance).

In determining who is a Highly Compensated Employee, Employees who are non-resident aliens and who received no earned income (within the meaning of Code Section 911(d)(2)) from the Employer constituting United States source income within the meaning of Code Section 861(a)(3) shall not be treated as Employees. If a Nonresident Alien Employee has U.S. source income, that Employee is treated as satisfying this definition if all of such Employee's U.S. source income from the Employer is exempt from U.S. income tax under an applicable income tax treaty. Additionally, all Affiliated Employers shall be taken into account as a single employer and Leased Employees within the meaning of Code Sections 414(n)(2) and 414(o)(2) shall be considered Employees unless such Leased Employees are covered by a plan described in Code Section 414(n)(5) and are not covered in any qualified plan maintained by the Employer. The exclusion of Leased Employees for this purpose shall be applied on a uniform and consistent basis for all of the Employer's retirement plans. Highly Compensated Former Employees shall be treated as Highly Compensated Employees without regard to whether they performed services during the "determination year."

1.22 Hours of Service

"Hour of Service" means (1) each hour for which an Employee is directly or indirectly compensated or entitled to compensation by the Employer for the performance of duties (these hours will be credited to the Employee for the computation period in which the duties are performed); (2) each hour for which an Employee is directly or indirectly compensated or entitled to compensation by the Employer (irrespective of whether the employment relationship has terminated) for reasons other than performance of duties (such as vacation, holidays, sickness, jury duty, disability, lay-off, military duty or leave of absence) during the applicable computation period (these hours will be calculated and credited pursuant to Department of Labor regulation 2530.200b-2 which is incorporated herein by reference); (3) each hour for which back pay is awarded or agreed to by the Employer without regard to mitigation of damages (these hours will be credited to the Employee for the computation period or periods to which the award or agreement pertains rather than the computation period in which the award, agreement or payment is made). The same Hours of Service shall not be credited both under (1) or (2), as the case may be, and under (3).

Notwithstanding (2) above, (i) no more than 501 Hours of Service are required to be credited to an Employee on account of any single continuous period during which the Employee performs no duties (whether or not such period occurs in a single computation period); (ii) an hour for which an Employee is directly or indirectly paid, or entitled to payment, on account of a period during which no duties are performed is not required to be credited to the Employee if such payment is made or due under a plan maintained solely for the purpose of complying with applicable worker's compensation, or unemployment compensation or disability insurance laws; and (iii) Hours of Service are not required to be credited for a payment which solely reimburses an Employee for medical or medically related expenses incurred by the Employee.

For purposes of (2) above, a payment shall be deemed to be made by or due from the Employer regardless of whether such payment is made by or due from the Employer directly, or indirectly through, among others, a trust fund, or insurer, to which the Employer contributes or pays premiums and regardless of whether contributions made or due to the trust fund, insurer, or other entity are for the benefit of particular Employees or are on behalf of a group of Employees in the aggregate.

For purposes of this Section, Hours of Service will be credited for employment with other Affiliated Employers. The provisions of Department of Labor regulations 2530.200b-2(b) and (c) are incorporated herein by reference.

1.23 Inactive Participant or Former Participant

Any former Participant who is receiving Termination, Retirement or Disability Benefits pursuant to this Plan and Trust or who has any vested (non-forfeitable) rights to his Accrued Benefit.

1.24 I.R.C. or Code

The Internal Revenue Code of 1986, as may be amended, including all applicable Regulations issued thereunder.

1.25 Key Employee

"Key Employee" means an Employee as defined in Code Section 416(i) and the Regulations thereunder. Generally, any Employee or former Employee (as well as each of the Employee's or former Employee's Beneficiaries) is considered a Key Employee if the Employee's or

former Employee's, at any time during the Plan Year that contains the "determination date" (within the meaning of Section 18.02) has been included in one of the following categories:

- (A) an officer of the Employer (as that term is defined within the meaning of the Regulations under Code Section 416) having annual "415 Compensation" greater than \$130,000 (as adjusted under Code Section 416(i)(1)).
- (B) a "five percent owner" of the Employer. "Five percent owner" means any person who owns (or is considered as owning within the meaning of Code Section 318) more than five percent (5%) of the outstanding stock of the Employer or stock possessing more than five percent (5%) of the total combined voting power of all stock of the Employer or, in the case of an unincorporated business, any person who owns more than five percent (5%) of the capital or profits interest in the Employer.
- (C) a "one percent owner" of the Employer having an annual "415 Compensation" from the Employer of more than \$150,000. "One percent owner" means any person who owns (or is considered as owning within the meaning of Code Section 318) more than one percent (1%) of the outstanding stock of the Employer or stock possessing more than one percent (1%) of the total combined voting power of all stock of the Employer or, in the case of an unincorporated business, any person who owns more than one percent (1%) of the capital or profits interest in the Employer.

For purposes of this Section, the determination of "415 Compensation" shall be made by including amounts which are contributed by the Employer pursuant to a salary reduction agreement and which are not includible in the gross income of the Participant under Code Sections 125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 403(b) or 457(b), and Employee contributions described in Code Section 414(h)(2) that are treated as Employer contributions.

In determining percentage ownership hereunder, employers that would otherwise be aggregated under Code Sections 414(b), (c), (m) and (o) shall be treated as separate employers. In determining whether an individual has 415 Compensation of more than \$150,000 or \$130,000 as adjusted, 415 Compensation from each employer required to be aggregated under Code Sections 414(b), (c), (m) and (o) shall be taken into account.

"Non-Key Employee" means, for Plan Years beginning after December 31, 2001, any Employee or former Employee (and such Employee's or former Employee's Beneficiaries) who is not a Key Employee.

1.26 Leased Employee

Any person (other than an Employee of the Employer) who pursuant to an agreement between the Employer and any other person (herein called "Leasing Organization") has performed services for the Employer (or for the Employer and related persons determined in accordance with Section 414(n)(6) of the Code) on a substantially full-time basis for a period of at least one year, and such services are performed under the primary direction or control of the Employer. Contributions or benefits provided a Leased Employee by the Leasing Organization which are attributable to services performed for the Employer shall be treated as provided by the Employer.

A Leased Employee shall not be considered an Employee of the Employer if: (i) such Leased Employee is covered by a money purchase pension plan providing: (1) a non-integrated employer contribution rate of at least ten percent (10%) of such Leased Employee's compensation, as defined in Section 415(c)(3) of the Code, but including amounts contributed pursuant to a salary reduction agreement which are excludable from the Leased Employee's gross income under Section 125, Section 402(a)(8), Section 402(h) or Section 403(b) of the Code, (2) immediate participation, and (3) full and immediate vesting; and (ii) Leased Employees do not constitute more than twenty percent (20%) of the Employer's Non-Highly Compensated Employee work force.

1.27 Limitation Year

The Plan Year, unless the Trustees elect a different twelve (12) month period.

1.28 Military Differential Pay

"Military Differential Pay" means any differential wage payments made to an individual that represents an amount which, when added to the individual's military pay, approximates the amount of compensation that was paid to the individual while working for the Employer. Notwithstanding the preceding sentence, for compensation determination periods beginning after December 31, 2008, an individual receiving a differential wage payment, as defined by Code Section 3401(h)(2), is treated as an Employee of the Employer making the payment, and the differential wage payment is treated as 415 Compensation.

The Plan is not treated as failing to meet the requirements of any provision described in Code Section 414(u)(1)(C) (or corresponding Plan provisions, including, but not limited to, Plan provisions related to the ADP or ACP test) by reason of any contribution or benefit which is based on the differential wage payment. The preceding sentence applies only if all Employees of the Employer performing service in the uniformed services described in Code Section 3401(h)(2)(A) are entitled to receive differential wage payments (as defined in Code Section 3401(h)(2)) on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the Employer, to make contributions based on the payments on reasonably equivalent terms (taking into account Code Sections 410(b)(3), (4), and (5)).

The Plan Administrator operationally may determine, for purposes of the provisions described in Code Section 414(u)(1)(C), whether to take into account any Elective Deferrals (and if applicable, any matching Contributions) attributable to differential wages.

1.29 Non-Highly Compensated Employee

The term "Non-Highly Compensated Employee" means any Employee who is not a Highly Compensated Employee (as determined in Section 1.21).

1.30 Normal Retirement Age

The date the Participant attains Age 62. Early Retirement Age shall be Age 55.

1.31 Normal Retirement Date

The first day of the month coinciding with or next following the date on which the Participant reaches his Normal Retirement Age or, if later, the earliest date permitted by law.

1.32 Obligation (or "Obligate") to Contribute

An obligation to make contributions to the Fund arising under one or more collective bargaining (or related) agreements or as a duty under applicable Federal Labor Law.

1.33 One-Year Break in Service (or, simply Break in Service)

"1-Year Break in Service" means the applicable computation period during which an Employee has not completed more than 500 Hours of Service with the Employer. Further, solely for the purpose of determining whether a Participant has incurred a 1-Year Break in Service, Hours of Service shall be recognized for "authorized leaves of absence" and "maternity and paternity leaves of absence." Years of Service and 1-Year Breaks in Service shall be measured on the same computation period.

"Authorized leave of absence" means an unpaid, temporary cessation from active employment with the Employer pursuant to an established nondiscriminatory policy, whether occasioned by illness, military service, or any other reason.

A "maternity or paternity leave of absence" means an absence from work for any period by reason of the Employee's pregnancy, birth of the Employee's child, placement of a child with the Employee in connection with the adoption of such child, or any absence for the purpose of caring for such child for a period immediately following such birth or placement. For this purpose, Hours of Service shall be credited for the computation period in which the absence from work begins, only if credit therefore is necessary to prevent the Employee from incurring a 1-Year Break in Service, or, in any other case, in the immediately following computation period. The Hours of Service credited for a "maternity or paternity leave of absence" shall be those which would normally have been credited but for such absence, or, in any case in which the Administrator is unable to determine such hours normally credited, eight (8) Hours of Service per day. The total Hours of Service required to be credited for a "maternity or paternity leave of absence" shall not exceed the number of Hours of Service needed to prevent the Employee from incurring a 1-Year Break in Service.

1.34 Owner-Employee

Any individual who is a sole proprietor, or is a partner owning ten percent (10%) of either the capital or profits interest of a partnership.

1.35 Participant or Active Participant

Any Employee who meets the requirements designated in Article II of this Agreement.

1.36 Pension Fund

The terms "Pension Fund", "Fund", or "Plan" as used herein shall mean the trust estate of the Cleveland Glass and Glazing Industry Pension Fund which shall consist of all monies or sums payable to the Trustees under the terms of the current agreement as employer contributions and any other property or income received and held by the Trustees for the use, purposes and trusts set forth in this instrument.

1.37 Plan Year

A maximum twelve (12) consecutive month period commencing on April 1, and ending on March 31.

1.38 Retirement or Retire

A Participant's actual retirement from active service as an Employee with the Employer on or after his Normal Retirement Date.

1.39 Section 415 Compensation

"Section 415 Compensation" with respect to any Participant means such Participant's wages for the Plan Year within the meaning of Code Section 3401(a) (for the purposes of income tax withholding at the source) but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code Section 3401(a)(2)) plus amounts that would have been treated as wages for withholding purposes but for an election under Code Section 1.25(a), 1.32(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b), plus, for Limitation Years beginning after July 1, 2008, Military Differential Pay.

Notwithstanding the above, the determination of 415 Compensation shall be made by:

- (A) including amounts not includible in gross income under Code Section 125 shall be deemed to include any amounts not available to a Participant in cash in lieu of group health coverage because the Participant is unable to certify that the Participant has other health coverage, provided the Employer does not request or collect information regarding the Participant's other health coverage as part of the enrollment process for the health plan.
- (B) excluding Catch-Up contributions for purposes of Section 4.05.
- (C) making the following adjustments for amounts that are paid after the Participant's severance from employment with the Employer. Any other payment of compensation paid after severance of employment that is not described in the following types of compensation is not considered compensation within the meaning of Code Section 415(c)(3), even if payment is made within the time period specified above.
 - (1) 415 Compensation shall include regular pay after severance of employment if:
 - (i) The payment is regular compensation for services during the Participant's regular working hours, or compensation for services outside the Participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and
 - (ii) The payment would have been paid to the Participant prior to a severance from employment if the Participant had continued in employment with the Employer; and
 - (iii) The payment is made by the later of 2-1/2 months after a Participant's severance from employment with the Employer or

the end of the Limitation Year that includes the date of the Participant's severance from employment with the Employer.

Notwithstanding the above, amounts earned but not paid during a Limitation Year solely because of the timing of pay periods and pay dates, shall be included in 415 Compensation for the Limitation Year in which such amounts were earned provided the amounts are paid during the first few weeks of the next Limitation Year, the amounts are included on a uniform and consistent basis with respect to all similarly situated Participants, and no Compensation is included in more than one Limitation Year.

1.40 Section 414(s) Compensation

"414(s) Compensation" means any definition of compensation that satisfies the nondiscrimination requirements of Code Section 414(s) and the Regulations thereunder. The period for determining 414(s) Compensation must be either the Plan Year or the calendar year ending with or within the Plan Year. An Employer may further limit the period taken into account to that part of the Plan Year or calendar year in which an Employee was a Participant in the component of the Plan being tested. The period used to determine 414(s) Compensation must be applied uniformly to all Participants for the Plan Year.

1.41 Self-Employed Individual

An individual who is either a sole proprietor or a member of a partnership and has Earned Income from self-employment.

1.42 Taxable Year

A maximum twelve (12) consecutive month period adopted by the Employer for Federal Income Tax purposes and ending on March 31.

1.43 Trustees (or "Board")

The Joint Board of Trustees as designated in Article X. The Trustees may also be referred to as the "Plan Sponsor". For purpose of this Plan and Trust Agreement any tax-qualified retirement plan maintained pursuant to a Collective Bargaining Agreement between the Union and one or more Employers shall be considered to be maintained by the Plan Sponsor.

1.44 Union

Painters and Allied Trades District Council No. 6, Glaziers, Architectural Metal and Glassworkers Local Union No. 181.

1.45 Year of Participation

With respect to any Participant, a Plan Year which includes or is subsequent to a Participant's Entry Date during which such Participant completes at least 1,000 Hours of Service.

1.46 Year of Service

With respect to any Employee, a Plan Year during which such Employee completes at least 1,000 Hours of Service

ARTICLE II – ELIGIBILITY AND PARTICIPATION

2.01 Eligibility

Subject to Sections 2.04 and 2.05, any Employee shall be eligible to become a Participant on the date such Employee becomes covered by or within the collective bargaining unit over which the Union has bargaining rights under the current Collective Bargaining Agreement (as may be amended) between the Union and any one or more of the Employers.

2.02 Commencement of Participation

An Employee shall commence participation in this Plan on the date on which he satisfies the eligibility requirements designated in Section 2.01; provided, however, that any former Participant who satisfies the eligibility requirements designated in Section 2.01 shall commence re-participation in this Plan on such Participant's re-employment commencement date.

2.03 Notices to Employees, Participants, Inactive Participants and their Beneficiaries

Within sixty (60) days after the Anniversary Date coinciding with or next following the date an Employee becomes eligible to participate in this Plan, the Plan Administrator shall notify the Employee of his eligibility. Each Employee must correctly complete and sign all application forms and other documents containing information required by the Plan Administrator to administer this Plan and Trust.

Within the proper time periods, the Plan Administrator shall also provide all Participants, Inactive Participants and their Beneficiaries with proper notices, summaries, reports, statements, Plan descriptions and any other documents required by law.

2.04 Determination of Participation

The Board is granted the sole authority and discretion to determine finally all matters of Employee eligibility and participation.

2.05 Termination of Participation

Active participation in this Plan and Trust shall cease upon: (a) a Participant's death, Disability, Retirement, or (b) a Participant's commencing a One-Year Break in Service.

ARTICLE III – CONTRIBUTIONS

3.01 Rate of Contributions

In order to effectuate the purpose hereof, each Employer shall contribute to the Fund the amount required for that Employer by the most recent Collective Bargaining Agreement between the Union and the Employers. The rate of contribution shall be at all times governed by the aforesaid Collective Bargaining Agreement then in force and effect, together with any amendments, supplements or modifications thereto.

3.02 Effective Date of Contributions

All contributions shall be made effective as of the first day a contributing Employer is or shall be obligated by his effective Collective Bargaining Agreement to make contributions to the Pension Fund, or amendments to said Collective Bargaining Agreement to make contributions to the Pension Fund, and if no date is set forth, then on the date on which the Employer signed his agreement to make contributions to the Pension Fund, and shall continue to be paid as long as the Employers are so obligated pursuant to the Collective Bargaining Agreements with the Union, or until the Employer or Employers cease to be Employers within the meaning of this Plan and Trust as hereinafter provided.

3.03 Reports on Contributions and Mode of Payment

The Employer shall make all reports on contributions required by the Trustee on the forms prescribed by the said Trustee and all contributions shall be made payable to The Glass and Glazing Industry Pension Fund.

3.04 Default in Payment

Non-payment by an Employer of any contributions when due shall not relieve any other Employer of his obligation to make payment. In addition to any other remedies to which the parties may be entitled, an Employer in default for thirty (30) working days may be required at the discretion of the Trustees to pay such reasonable rate of interest as the Trustees may fix on the money due to the Trustees from the date when the payment was due to the date when the payment is made, together with all expenses of collection incurred by the Trustees, including reasonable attorney's fees. The Trustees may take any action necessary to enforce payment of the contributions due hereunder including, but not limited to, proceedings at law and in equity.

3.05 Refund of Contributions

Nothing in this Sixth Amended Agreement and Declaration of Trust shall prevent a contribution which is made by an Employer by a mistake of fact to be returned by the Trustee to such Employer within one (1) year after the payment of the contribution.

3.06 Production of Records

Each Employer shall promptly furnish to the Trustees, on demand, the names of its employees, their social security numbers, the compensation of each employee and such other information as the Trustees may require in connection with the administration of the Trust. The Trustees may, by their representatives, audit the pertinent payroll records and related data of the Employers at the Employers' place of business whenever such examination is deemed necessary or advisable by the Trustees in connection with the proper administration of the Trust. Each Employer shall furnish annually

to the Trustees, if requested by them, a statement showing whether (a) the company is a corporation and the names of all of its officers; (b) if not a corporation, a certificate stating that it is either a partnership with the name or the names of the individual partners or a sole proprietorship with the name of the sole proprietor. The Union will cooperate fully with the Trustees in any effort to determine the employment record of any employee whose status is in dispute, including prompt compliance with the request by the Trustees for examination of records maintained and possessed by the Union in connection with the employees.

ARTICLE IV – ACCOUNTS AND ALLOCATIONS

4.01 Plan Accounts

The Trustee shall establish and maintain the following separate Contribution Accounts:

(A) Employer Contribution Accounts:

- (1) A Regular Account for each Participant not receiving Benefits under Section 9.01(A)(2); and
- (2) A Benefit Account for any Inactive Participant, Beneficiary or other former Participant receiving Benefits under Section 9.01(A)(2).

The Trustee shall establish and maintain separate accounts for pre-Break in Service and post-Break in Service Accrued Benefits for each Participant who has Accrued Benefits both prior to and following such Break in Service.

All Contribution Accounts shall be reported on a cash basis and shall include any Employer contributions due at the end of the applicable Plan Year. Maintenance of such Accounts is for accounting purposes only and, except as otherwise provided herein, the Trustee need not physically segregate Trust assets to each Account. The establishment of and allocations to any Account shall not vest in a Participant, Inactive Participant and/or their Beneficiaries any right, title or interest in and to the Trust assets, except as otherwise stated herein.

4.02 Allocation of Employer Contributions

From all Employer Contributions made for a Plan Year and Forfeitures (if any) to be allocated under this Section 4.02 during such Plan Year, the Trustee shall allocate to the Employer Contribution Account for each Participant a portion of such contributions and Forfeitures equal to the ratio that the contributions received on behalf of such Participant for such Plan Year bears to the total contributions received by the Trustees on behalf of all Participants for such Plan Year.

Notwithstanding the foregoing, in the event that all Employer Contributions due for a given Plan Year are not received by seven (7) months after the close of such Plan Year, the Trustee shall allocate to the Employer Contribution Account for each Participant a portion of such contributions and Forfeitures equal to the ratio that the contributions made or required to be made on behalf of such Participant for such Plan Year bears to the total contributions made or required to be made on behalf of all Participants for such Plan Year.

4.03 Allocation and Determination of Forfeitures

Upon termination of employment (other than by death, Disability or Retirement), a Participant's Forfeitures (defined in Section 1.21) shall be maintained in his Employer Contribution Account until the occurrence of a Forfeitable Event; whereupon, the Account will be closed. For purposes of this Section 4.03, a Forfeitable Event shall occur at the earlier: of (a) the date on which a Participant receives a cash-out of his entire vested Accrued Benefit under the Plan in accordance with the provisions of Section 9.04; or (b) the close of the Plan Year during which the Participant incurs five (5) consecutive One-Year Breaks in Service. For purposes of this Section 4.03, a Participant who has no vested Accrued Benefits shall be deemed to receive a cash-out of his Benefits after incurring a One-Year Break in Service and his Forfeitures shall be allocated after the Participant has incurred such One-Year Break in Service. After such termination of employment and prior to closing the Account, no allocations of Employer Contributions (Section 4.02) or forfeitures (Section 4.03) shall be made to such Participant's Employer Contribution Account; provided, however, that all Employer Contributions contributed on behalf of such Participant shall be allocated to such Participant's Employer Contribution Account. After such Account is closed, the Trustee shall (a) first, allocate such Forfeitures to the extent necessary to restore any previously forfeited Accrued Benefits to any Participant who is entitled to have his Benefits restored under Section 9.04, and (b) second, allocate any remaining Forfeitures to the other Participants' Employer Contribution Accounts in accordance with Section 4.02. Such Forfeiture allocations shall be deemed made on the last day of the Plan Year during which the former Participant's Employer Contribution Account was closed.

4.04 Annual and Quarterly Allocations and Valuations

As of each Annual Valuation Date, the Trustee shall annually value each Employer Contribution Account either at the fair market value thereof or by any other reasonable valuation method which considers fair market value. Effective April 1, 2009, Valuations under this Section 4.04 shall be performed on a calendar quarterly basis on March 31, June 30, September 30, and December 31 of each Plan Year. Notwithstanding the foregoing, at the sole and exclusive discretion of the Trustee, valuations may be performed more frequently than quarterly (e.g., monthly).

- (A) Regular Accounts – Except as otherwise provided herein, the Trustee shall annually (or, at the sole and exclusive discretion of the Trustee, more frequently than annually (e.g. quarterly or monthly) value and allocate all Trust income, expenses, administrative costs, gains and losses (realized and/or unrealized) and other receipts and expenditures for each Plan Year among the Regular Accounts in the ratio that each Participant's Regular Account bears to all Participant Regular Accounts as of the most recent Valuation Date; provided, however, that all such income, expenses, administrative costs, gains and losses (realized and/or unrealized), and any other receipts and expenditures directly attributable to any current Plan Year Forfeitures and/or to unallocated Employer contributions for the current Plan Year shall be allocated among the Regular Accounts in the ratio that each Participant's share of the Employer contribution (for the current Plan Year) bears to all unallocated Employer contributions for the current Plan Year.
- (B) Benefit Accounts – The Trustee may (at the discretion of the former Participant or Beneficiary) actually segregate each Benefit Account in separate, interest-bearing accounts and such Benefit Accounts shall not thereafter share or participate in allocations of Employer contributions. The Trustee shall annually value and allocate to each Benefit Account only the income, expenses, administrative costs, gains and losses (realized and/or unrealized) and other

receipts and expenditures for each Plan Year actually attributable to such Benefit Account.

4.05 Maximum Allocations

Notwithstanding any contrary provision of this Agreement, the total Annual Additions (as defined in Section 1.06) to each Participant's Accounts for all Employer defined contribution retirement plans and trusts (which qualify under the I.R.C.) shall not exceed the lesser of: (i) \$40,000.00 (as adjusted for cost-of-living increases in accordance with IRC Section 415(d) and the Regulations thereunder); or (ii) 100% of such Participant's Compensation.

4.06 Minimum Allocations for Top-Heavy Plan

For any Plan Year in which this Plan is a Top-Heavy Plan (as determined under Article XVIII), the Employer Contributions and Forfeitures (to this Plan and all other Employer defined contribution plans) allocated on behalf of each Participant who is not a Key Employee shall not be less than the lesser of (i) three percent (3%) of such Participant's Compensation or (ii) the largest percentage of Employer Contributions and Forfeitures (to this Plan and all other Employer defined contribution plans), as a percentage of the Key Employee's Compensation, as limited by 401(a)(17), allocated on behalf of any Key Employee for that Plan Year. Notwithstanding the foregoing, if an Employee is a Participant in both this Plan and an Employer-sponsored defined benefit plan, the Employer Contributions and Forfeitures allocated on behalf of each such Participant who is not a Key Employee shall not be less than five percent (5%) of such Participant's Compensation. Further, if an Employee is a Participant in both this Plan and an Employer-sponsored defined benefit plan, the mortality table and interest rate under the defined benefit plan shall uniformly apply to this Plan.

The minimum allocation is made without regard to any Social Security contribution and shall not apply to any Participant who was not employed by the Employer on the last day of the Plan Year. The minimum allocation shall also be made to non-Key Employees who have become Participants but who subsequently fail to complete 1000 Hours of Service during the Plan Year.

4.07 Interim Valuations

If the Plan Administrator determines that any Employer Contribution Account and/or Participant Contribution Account (if any) has changed substantially in value since the most recent Quarterly Valuation Date, the Trustee shall conduct an interim valuation as of a specific date. If the difference between the new value and the immediately preceding value is significant in the Plan Administrator's sole discretion, the interim valuation shall be used. Any such interim valuation shall be made either at fair market value or by any other reasonable valuation method which considers fair market value.

4.08 Qualified Military Service

Notwithstanding any provision in this Plan to the contrary, contributions, benefits, and service shall be provided in accordance with Code Section 414(u).

ARTICLE V – NORMAL RETIREMENT BENEFITS

5.01 Retirement

Except as otherwise provided herein, a Participant shall retire from active service as an Employee with the Employer on his Normal Retirement Date.

5.02 Postponed Retirement

Notwithstanding any contrary provision herein, a Participant may elect to postpone the Participant's Retirement beyond his Normal Retirement Date. Upon such postponement, the Participant's participation hereunder shall continue upon the same terms and conditions as if he had not reached his Normal Retirement Date except that his Normal Retirement Benefit shall become completely non-forfeitable and fully vested on his Normal Retirement Age.

5.03 Normal Retirement Benefits

A Participant's Normal Retirement Benefit equals his Accrued Benefit as of his actual Retirement (on or after his Normal Retirement Date) and shall then become completely non-forfeitable and fully vested on his Normal Retirement Age.

5.04 Administration and Payment of Normal Retirement Benefits

Upon actual Retirement, a Participant's Normal Retirement Benefit shall be administered and distributed pursuant to Article IX of this Agreement.

ARTICLE VI – DEATH BENEFITS

6.01 Death Benefits

A Participant's Death Benefit equals his Accrued Benefit on the date of his death and shall then become completely non-forfeitable and fully vested.

An Inactive Participant's Death Benefit equals the undistributed portion of his Accrued Benefit on the date of his death which had previously become completely non-forfeitable and fully vested.

6.02 Administration and Payment of Death Benefits

- (A) Upon the death of a Participant before the Participant's Retirement Date or other termination of employment, all amounts credited to such Participant's Combined Account shall become fully Vested. If elected, distribution of the Participant's Combined Account shall commence not later than one (1) year after the close of the Plan Year in which such Participant's death occurs. The Administrator shall direct the Trustee, in accordance with the provisions of Sections 9.01 and 9.08, to distribute the value of the deceased Participant's accounts to the Participant's Beneficiary.
- (B) Upon the death of a Former Participant, the Administrator shall direct the Trustee, in accordance with the provisions of Sections 9.01 and 9.08, to

distribute any remaining Vested amounts credited to the accounts of a deceased Former Participant to such Former Participant's Beneficiary.

- (C) The Administrator may require such proper proof of death and such evidence of the right of any person to receive payment of the value of the account of a deceased Participant or Former Participant as the Administrator may deem desirable. The Administrator's determination of death and of the right of any person to receive payment shall be conclusive.
- (D) The Beneficiary of the death benefit payable pursuant to this Section shall be the Participant's spouse. Except, however, the Participant may designate a Beneficiary other than the spouse if:
 - (1) the spouse has waived the right to be the Participant's Beneficiary, or
 - (2) the Participant is legally separated or has been abandoned (within the meaning of local law) and the Participant has a court order to such effect (and there is no "qualified domestic relations order" as defined in Code Section 414(p) which provides otherwise), or
 - (3) the Participant has no spouse, or
 - (4) the spouse cannot be located.

In such event, the designation of a Beneficiary shall be made on a form satisfactory to the Administrator. A Participant may at any time revoke a designation of a Beneficiary or change a Beneficiary by filing written (or in such other form as permitted by the Internal Revenue Service) notice of such revocation or change with the Administrator. However, the Participant's spouse must again consent in writing (or in such other form as permitted by the Internal Revenue Service) to any change in Beneficiary unless the original consent acknowledged that the spouse had the right to limit consent only to a specific Beneficiary and that the spouse voluntarily elected to relinquish such right.

- (E) In the event no valid designation of Beneficiary exists, or if the Beneficiary is not alive at the time of the Participant's death, the death benefit will be paid in the following order of priority to:
 - (1) the Participant's surviving spouse;
 - (2) the Participant's children, including adopted children, per stirpes;
 - (3) the Participant's surviving parents in equal shares; or
 - (4) the Participant's siblings in equal shares (per stirpes); or
 - (5) the Participant's estate.

If the Beneficiary does not predecease the Participant, but dies prior to distribution of the death benefit, the death benefit will be paid to the

Beneficiary's designated Beneficiary (or if there is no designated Beneficiary, to the Beneficiary's) estate.

- (F) Notwithstanding anything in this Section to the contrary, if a Participant has designated the spouse as a Beneficiary, then a divorce decree or a legal separation that relates to such spouse shall revoke the Participant's designation of the spouse as a Beneficiary unless the decree or a qualified domestic relations order (within the meaning of Code Section 414(p)) provides otherwise.
- (G) Any consent by the Participant's spouse to waive any rights to the death benefit must be in writing (or in such other form as permitted by the Internal Revenue Service), must acknowledge the effect of such waiver, and be witnessed by a Plan representative or a notary public. Further, the spouse's consent must be irrevocable and must acknowledge the specific nonspouse Beneficiary.
- (H) In the case of a death occurring on or after January 1, 2007, if a Participant dies while performing qualified military service (as defined in Code Section 414(u)), the Participant's Beneficiary is entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the Participant had resumed employment and then terminated employment on account of death. Moreover, the Plan will credit the Participant's qualified military service as service for vesting purposes, as though the Participant had resumed employment under the Uniformed Services Employment and Reemployment Rights Act (USERRA) immediately prior to the Participant's death.

ARTICLE VII – DISABILITY BENEFITS

7.01 Disability Benefits

A Participant's Disability Benefit equals his Accrued Benefit on the date the Participant incurs a Disability (defined in Section 1.13) and shall then become completely non-forfeitable and fully vested.

7.02 Administration and Payment of Disability Benefits

After the Plan Administrator notifies the Trustee of a Participant's Disability, the Participant's Disability Benefits shall be administered and distributed pursuant to Article IX of this Agreement.

ARTICLE VIII – TERMINATION BENEFITS

8.01 Benefits Upon Termination of Employment

If a Participant's participation in this Plan terminates for any reason (other than Retirement, Death or Disability) and if such Participant is no longer an Employee, such former Participant shall be entitled to a Termination Benefit. The Termination Benefit shall equal the former Participant's Accrued Benefit multiplied by his vested (non-forfeitable) percentage as determined under the following schedule:

A Participant's Accrued Benefit under this Plan shall be 100% vested and fully non-forfeitable at all times.

8.02 Amendment of Vesting Schedule

If the Plan's vesting schedule is amended, or the Plan is amended in any way that directly or indirectly affects the computation of a Participant's nonforfeitable percentage or if the Plan is deemed amended by an automatic change to or from a Top-Heavy Plan vesting schedule, each participant with at least three (3) Years of Service under this Plan may elect, within a reasonable period after the adoption of the amendment or change, to have the nonforfeitable percentage computed under the Plan without regard to such amendment or change.

The period during which the election may be made shall commence with the date the amendment is adopted or deemed to be made and shall end on the latest of:

- (A) 60 days after the amendment is adopted;
- (B) 60 days after the amendment becomes effective; or
- (C) 60 days after the Participant is issued written notice of the amendment by the Trustees.

8.03 Administration and Payment of Termination Benefits

Upon termination of a Participant's employment, the Participant's Termination Benefits shall be administered and distributed pursuant to Article IX of this Agreement.

ARTICLE IX – DISTRIBUTION OF ACCRUED BENEFITS

9.01 Benefit Payment Options:

- (A) The Trustee shall pay the vested (non-forfeitable) portion of a Participant's Accrued Benefit in any of the following options (subject to Section 9.08) chosen by the Participant:
 - (1) In one lump-sum payment; or
 - (2) In periodic payments of substantially equal amounts for not more than twenty-five (25) years; provided, however, that the unpaid balance under this option may be segregated and placed in a Benefit Account under Section 4.04(B).
- (B) Notwithstanding the foregoing and subject to the annuity requirements of Section 9.08, if a Participant chooses a Benefit payment option other than a lump-sum payment, the Benefit payments shall not extend over a period of time exceeding the greater of:
 - (1) The life expectancy of the Participant; or

- (2) The life expectancy of the Participant and a designated Beneficiary; or
 - (3) A period certain not extending beyond the life expectancy of the Participant; or
 - (4) A period certain not extending beyond the joint and last survivor life expectancy of the Participant and a designated Beneficiary.
- (C) The computation of minimum Benefit payments shall provide that the Participant's Accrued Benefits shall be divided by the lesser of: (1) the life expectancy of the Participant or the designated Beneficiary (if any); or (2) if the designated Beneficiary is not the Participant's spouse, the applicable divisor determined from the regulations (including proposed and temporary) to Code Section 401(a)(9). The Participant's minimum Benefit payments shall commence on or before a Participant's Required Beginning Date (as defined in Section 9.03).
- (D) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Section, 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 that is equal to at least \$500.00 paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

9.02 Manner of Benefit Payments

The Trustee may make any payments of a Participant's Accrued Benefit in cash, in kind or partly in each, if no discrimination in value results therefrom.

9.03 Commencement of Benefit Payments

Subject to Sections 9.11 and 9.11A, the Trustee shall commence all Benefit payments as soon as administratively feasible after the Participant's written request (with his spouse's consent); provided, however, that distributions are not required to be made prior to the time that the Participant has incurred a One-Year Break in Service. Distributions of Benefit payments under this Plan shall be made in accordance with all regulations under Code Section 401(a)(9), including the minimum distribution incidental benefit requirements. In no event shall Benefit payments commence later than the 60th day after the close of the Plan Year during which the Participant attains his Normal Retirement Age (subject to Section 5.02).

Notwithstanding the foregoing, distribution of a Participant's Benefits under this Plan shall commence not later than such Participant's Required Beginning Date.

Notwithstanding the foregoing, although a Participant is still employed by the Employer, Benefits under the Plan may be distributed to an Alternate Payee designated in a Qualified Domestic Relations Order which has been issued in accordance with the requirements of IRC Section 414(p). The Trustee may distribute Benefits to the Alternate Payee as soon as administratively feasible after issuance of the Qualified Domestic Relations Order.

9.04 Cash Outs and Repayment of Distributions

If a Participant terminates employment with the Employer and his participation terminates pursuant to Section 2.07 and the total value of the vested portion of the Participant's Employer Contribution Account and Participant Contribution Account (if any) is not greater than \$1,000.00, the Employee will receive a distribution of the value of the entire vested portion of such Account balance and non-vested portion will be treated as a forfeiture. If an Employee would have received a distribution under the preceding sentence but for the fact that the Employee's vested Account balance exceeded \$1,000.00 when the Employee terminated service and if at a later time such Account balance is reduced such that it is not greater than \$1,000.00, the Employee will receive a distribution of such Account balance and the non-vested portion will be treated as a Forfeiture. For purposes of this Section, if the value of an Employee's vested Account balance is zero (0), the Employee shall be deemed to have received the distribution of such vested Account balance.

If a Participant terminates employment with the Employer and his participation terminates pursuant to Section 2.07 and such Participant elects (with his spouse's consent) to receive the value of the vested portion of the Participant's Employer Contribution Account and Participant Contribution Account (if any), the non-vested portion of such Account shall be treated as a Forfeiture. If the Participant elects to have distributed less than the entire vested portion of his Employer Contribution Account, the part of the non-vested portion that will be treated as a forfeiture is the total non-vested portion multiplied by a fraction, the numerator of which is the amount of the distribution and the denominator of which is the total value of the vested portion of such Employer Contribution Account.

If the value of the vested portion of the Participant's Employer Contribution Account and Participant Contribution Account (if any) exceeds \$1,000.00, the Participant and his spouse, if any, must consent to any distribution from such account balance.

If a Participant receives a distribution pursuant to this Section which is less than the value of the vested portion of the Participant's Employer Contribution Account, and the Participant resumes covered employment under this Plan, such Participant shall have the right to have the Plan or the Employer restore his Employer-derived Accrued Benefit (to the extent such Accrued Benefit was forfeited) upon repayment to the Plan of the full amount of the distribution. Such repayment must be made by the Participant before the Participant incurs five (5) consecutive One-Year Breaks in Service following the date of distribution.

9.05 Limited Forfeiture of Benefits

Notwithstanding any contrary provision herein, a Participant's vested portion of his Accrued Benefit shall be forfeited if the Trustee (after reasonable and diligent efforts) cannot locate the Participant or his Beneficiary; provided, however, that any such forfeitures shall be reinstated if a claim is subsequently made by the Participant or his Beneficiary for the forfeited Benefits.

9.06 Re-participation of Inactive Participants

If an Inactive Participant subsequently becomes an Active Participant hereunder, any installment Benefit payments to him under Section 9.01(B) (subject to Section 9.13) shall immediately cease and the Trustee shall retain, administer and/or distribute any amounts in such Participant's Benefit Account as for an Active Participant.

9.07 Benefit Claims and Review Procedures

The Plan Administrator shall have sole and exclusive authority to make all initial and final determinations regarding Benefits payable hereunder to Participants or their Beneficiaries and to adopt claims and review procedures, application forms and other documents.

If a Benefit claim is denied, the Plan Administrator shall (within 90 days after receipt of the claim) provide the claimant with written notice setting forth in a manner calculated to be understood by the claimant:

- (A) Specific reason(s) for the denial;
- (B) Specific Plan references upon which the denial is based;
- (C) A description of any additional material or information necessary to perfect the claim and an explanation of why such material or information is necessary;
- (D) An explanation of the Plan's claim review procedures; and
- (E) Any other information required by law.

Within 60 days after receipt of the denial notice, a claimant may request (in writing) an appeal of the claim denial to the Plan Administrator for a full and fair review. The claimant may also review pertinent documents and submit issues and comments in writing. Within 60 days after receipt of the written request for review, the Plan Administrator shall render a final and conclusive written decision setting forth in a manner calculated to be understood by the claimant:

- (A) Specific reason(s) for the decision;
- (B) Specific Plan references upon which the decision is based; and
- (C) Any other information required by law.

9.08 Qualified Joint and Survivor Annuity and Qualified Preretirement Survivor Annuity

The provisions of this Section 9.08 shall take precedence over any conflicting provision in this Plan. Unless otherwise specified, the provisions of this Section 9.08 shall apply to any Participant who is credited with at least one Hour of Service with the Employer on or after August 23, 1984, and other Participants provided in Section 9.08(E).

- (A) Qualified Joint and Survivor Annuity: Unless an optional form of Benefit is selected pursuant to a Qualified Election within the 90-day period ending on the Annuity Starting Date, a married Participant's vested Account Balance will be paid in the form of a Qualified Joint and Survivor Annuity and an unmarried Participant's vested Account Balance will be paid in the form of a nontransferable single straight life annuity. The Participant may elect to have such Annuity distributed upon attainment of the earliest Retirement Age under the Plan.

(B) Qualified Preretirement Survivor Annuity: Unless an optional form of Benefit has been selected within the Election Period pursuant to a Qualified Election, if a Participant dies before the Annuity Starting Date, not less than 50% of the Participant's vested Account Balance shall be applied toward the purchase of a nontransferable annuity for the life of the surviving spouse. The surviving spouse may elect to have such annuity distributed immediately or to waive such annuity and to have the benefit distributed in an alternative method of payment in accordance with Section 9.01(A).

(C) Definitions:

(i) Election Period: The period which begins on the first day of the Plan Year in which the Participant attains age 35 and ends on the date of the Participant's death. If a Participant separates from service prior to the first day of the Plan Year in which the Participant attains age 35, with respect to the Account Balance as of the date of separation, the Election Period shall begin on the date of separation. Each Participant shall be provided with an explanation of the Qualified Pre-Retirement Survivor Annuity within the Applicable Period as designated under IRC Section 417(a)(3)(B), as may be amended. "Applicable Period" means, with respect to a Participant, whichever of the following ends last:

- (a) The period beginning with the first day of the Plan Year in which the Participant attains age 32 and ending with the close of the Plan Year preceding the Plan Year in which the Participant attains age 35; or
- (b) A reasonable period of time after the individual becomes a Participant; or
- (c) A reasonable period ending after the Qualified Pre-Retirement Survivor Annuity benefit ceases to be fully subsidized by the Plan on behalf of a Participant; or
- (d) A reasonable period ending after the requirements of IRC Section 401(a)(11) applies to the Participant; or
- (e) A reasonable period after separation from service in the case of a Participant who separates before attaining age 35.

(ii) Earliest Retirement Age: The earliest date on which the Participant could elect to receive Retirement Benefits.

(iii) Qualified Election: A waiver of a Qualified Joint and Survivor Annuity or a Qualified Preretirement Survivor Annuity. Any waiver of a Qualified Joint and Survivor Annuity or a Qualified Retirement Survivor Annuity shall not be effective unless: (a) the Participant's Spouse consents in writing to the election; (b) the election designates a specific Beneficiary, including any class of beneficiaries or any contingent beneficiaries, which may not be changed without Spouse consent (or the Spouse expressly permits designations by the Participant without any

further Spouse consent); (c) the Spouse's consent acknowledges the effect of the election; and (d) the Spouse's consent is witnessed by a Plan representative or notary public. Additionally, a Participant's waiver of the Qualified Joint and Survivor Annuity shall not be effective unless the election designates a form of benefit payment which may not be charged without Spousal consent (or the Spouse expressly permits designation by the Participant without any further Spousal consent). If it is established to the satisfaction of a Plan representative that there is no Spouse or that the Spouse cannot be located, a waiver will be deemed a qualified election.

Any consent by a Spouse obtained under this provisions (or establishment that the consent of a Spouse may not be obtained) shall be effective only with respect to such Spouse. A consent that permits designation by the Participant without any requirement of further consents by such Spouse must acknowledge that the Spouse have the right to limit consent to a specific Beneficiary, and a specific form of benefit where applicable, in that the Spouse voluntarily elects to relinquish either or both of such rights. Revocation of a prior waiver may be made by a Participant without the consent of the Spouse at any time before the commencement of benefits. The number of revocations shall not be limited. The consent contained under this provision shall be valid unless the Participant has received notice as provided in (D) below.

- (iv) Qualified Joint and Survivor Annuity: An annuity for the life of the Participant with a survivor annuity for the life of the spouse which is not less than fifty percent (50%) nor more than one hundred percent (100%) of the amount of the annuity payable during the joint lives of the Participant and the spouse and which is the amount of Benefit which can be purchased with the Participant's vested Account Balance.
- (v) Spouse (surviving spouse): The spouse or surviving spouse of the Participant, provided that the Participant and the spouse or surviving spouse were married for a period of one (1) year and that a former spouse will be treated as the spouse or surviving spouse to the extent provided under a qualified domestic relations order issued in accordance with Section 414(p) of the Code.
- (vi) Pre-Age Thirty-Five Election and Renewal: A Participant who will not attain Age 35 prior to the end of a Plan Year may make a special election to waive a Qualified Pre-Retirement Survivor Annuity. The waiver must be in writing and must be consented to by the Participant's spouse. The waiver shall be effective for the period beginning on the date of such election and ending on the first day of the Plan Year in which the Participant attains Age 35. This pre-Age thirty-five (35) waiver shall not be valid unless the Participant receives the written explanation required in Section 9.08(D) below. Qualified Preretirement Survivor Annuity coverage shall be automatically reinstated as of the first day of the Plan Year in which the Participant attains Age 35. In the subsequent waiver election in a Plan Year in which the Participant has attained Age 35 shall

comply with the provisions of this Section 9.08 without regard to this Section 9.08(C)(vi).

- (vii) Annuity Starting Date: In accordance with Section 417(f)(2) of the Code, the first day of the first period for which Accrued Benefits are paid as an annuity or, in the case of Benefits not payable in the form of an annuity, the first day upon which all events have occurred which entitle the Participant to such Benefit. If the Benefit payment is a deferred annuity, the Annuity Starting Date shall be the date for which the annuity payments are to commence, not the date the deferred annuity is elected nor the date the deferred annuity contract is distributed.

(D) Notice Requirements:

- (i) In the case of a Qualified Joint and Survivor Annuity, the Plan Administrator shall provide each Participant with a notification of the Qualified Joint and Survivor Annuity. Such notification shall contain a written explanation of: (a) the terms and conditions of the Qualified Joint and Survivor Annuity; (b) the Participant's right to make and the effect of an election to waive the Qualified Joint and Survivor Annuity form of Benefit; (c) the rights of a Participant's spouse; and (d) the right to make, and the effect of, a revocation of a previous election to waive the Qualified Joint and Survivor Annuity.
- (ii) In the case of a Qualified Preretirement Survivor Annuity, the Plan Administrator shall provide each Participant, within the period beginning on the first day of the Plan Year in which the Participant attains Age 32 and ending with the close of the Plan Year in which the Participant attains Age 35, a written explanation of the Qualified Preretirement Survivor Annuity in such terms and in such manner as would be comparable to the explanation provided for meeting the requirements of Section 9.08(D)(i) applicable to a Qualified Joint and Survivor Annuity.

If a Participant enters the Plan after the first day of the Plan Year in which the Participant attained Age 32, the Plan Administrator shall provide notice no later than the end of the three-year period beginning with the first day of the first plan year for which the individual is a Participant. Requirements of this subsection shall also be given to the applicable Participants within (a) a reasonable period ending after I.R.C. Section 401(a)(11) applies to the Participant and (b) a reasonable period after separation from service in the case of a Participant who separates from service after attaining Age 35.

(E) Transitional Rules:

- (i) Any living Participant not receiving Benefits on August 23, 1984, who would otherwise not receive the Benefits prescribed under this Section 9.08 must be given the opportunity to elect to have the prior provisions of this Section apply if such Participant is credited with at least one Hour of Service under this Plan or a predecessor plan in a Plan Year

beginning on or after January 1, 1976 and such Participant had at least ten Years of Service when he or she separated from service.

- (ii) Any living Participant not receiving Benefits on August 23, 1984, who was credited with at least One Hour of Service under this Plan or a predecessor plan on or after September 2, 1974, and who is not otherwise credited with any service in a Plan Year beginning on or after January 1, 1976, must be given the opportunity to have his or her Benefits paid in accordance with Section 9.08(E)(iv) below.
- (iii) The respective opportunities to elect (as described in (i) and (ii) above) must be afforded to the appropriate Participants during the period commencing on August 23, 1984, and ending on the date Benefits would otherwise commence to said Participants.
- (iv) Any Participant who has elected pursuant to Section 9.08(E)(iii) above and any Participant who does not elect under Section 9.08(E)(i) or who meets the requirements of Section 9.08(E)(i) except that such Participant does not have at least ten Years of Service when he separates from service, shall have his Benefits distributed in accordance with the provisions of this Section. If Benefits in the form of a life annuity become payable to a married Participant who: (1) begins to receive payments under the Plan on or after Normal Retirement Age; or (2) dies on or after Normal Retirement Age while still working for the Employer; or (3) separates from service on or after attaining Normal Retirement Age and after satisfying the eligibility requirements for the payment of Benefits under the Plan and thereafter dies before beginning to receive such Benefits; then such Benefits will be received under this Plan in the form a Qualified Joint and Survivor Annuity, unless the Participant has elected otherwise during the Election Period. The Election Period must begin at least six (6) months before the Participant attains Qualified Early Retirement Age and end not more than 90 days before the commencement of Benefits. Any election hereunder must be in writing and may be changed by the Participant at any time.

9.09 Manner of Benefit Distribution

Any Benefits payable under this Plan shall be provided by direct payments from the Fund, payments by an insurance company pursuant to a group annuity contract issued to the Trustees, or through the purchase by the Trustees of a single-premium nontransferable annuity contract from an insurance company.

9.10 Restrictions on Forms of Benefit Payment

Notwithstanding any contrary provision in this Agreement, no Optional Form of Benefit Payment may be elected which would provide payments over a period of time exceeding the greater of the life expectancy of the Participant or the time period permitted under the Regulations to Code Section 401(a)(9).

9.11 Suspension of Payments (on or after Normal Retirement Age)

- (A) With respect to a Participant or Former Participant who has attained Normal Retirement Age, a Participant's Benefit Payments shall be suspended, upon proper notification of the Participant, on the first day of the month following a calendar month during which such Participant returns to employment and, in such month (or during a four or five week payroll period ending in a calendar month), completes forty (40) or more Hours of Service in:
 - (1) an industry in which Employees covered by this Plan were employed and accrued Benefits under this Plan as a result of such employment at the time that the payment of Benefit commenced or would have commenced if the Employee had not remained in or returned to employment; and
 - (2) a trade or craft (including, but not limited to, related supervisory activities) in which the Participant was employed at any time under this Plan; and
 - (3) the geographic area covered by this Plan at the time that the payment of Benefits commenced or would have commenced if the Participant had not remained in or return to employment.
- (B) Notwithstanding any contrary provision in this Plan, any deduction or offset for Benefit payments previously made to a Participant for calendar months during which such Participant completed forty (40) or more Hours of Service as defined above, shall not exceed, in any one month, twenty-five percent (25%) of that month's total Benefit payment; provided, however, that upon resumption of Benefit payments, the Initial Payment (as defined in this Section 9.11) may be subject to offset without limitation.
- (C) Upon re-termination of employment meeting the above-stated criteria (or in the event that the Participant attains less than forty [40] Hours of Service per month due to such employment), such Participant may apply (in a manner prescribed by the Plan Administrator) for reinstatement of his Benefit Payments in such amount as the Participant was receiving prior to the suspension of his Benefits; provided, however, that such Benefits may be offset or deducted as stated above. Benefit payments shall resume no later than the first day of the third calendar month after the calendar month in which the Participant ceases to be employed at employment meeting the above-stated criteria, provided that the Participant has notified the Plan Administrator (in a manner prescribed by the Plan Administrator) that he has ceased such employment. The Initial Payment upon resumption shall include the payment scheduled to occur in the calendar month when payments resume and any amounts withheld during the period between the cessation of employment and the resumption of payments, less any amounts which are subject to offset.
- (D) Notwithstanding any contrary provision herein, the suspension of payments provision in this Section 9.11 shall not apply to any Participant or Former Participant who has attained Age 70-1/2.

9.11A Suspension of Payments (prior to Normal Retirement Age)

- (A) With respect to a Participant or Former Participant who has not attained Normal Retirement Age, a Participant's Benefit Payments shall not commence or shall be suspended if such Payments have already commenced if Participant is employed in:
- (1) an industry in which Employees covered by the Plan were employed and accrued Benefits under this Plan as a result of such Employment at the time that the payment of Benefits commenced or would have commenced if the Employee had not remained in or returned to employment; and
 - (2) a trade or craft (including, but not limited to, related supervisory activities) in which the Participant was employed at any time under this Plan; and
 - (3) the geographic area covered by Painters and Allied Trades District Council No. 6.
- (B) Upon termination or re-termination of employment meeting the above-stated criteria, such Participant may apply for reinstatement of his Benefit Payments. Benefit Payments shall commence or resume no later than the first day of the twelfth (12th) calendar month after the calendar month in which the Participant ceases to be employed at employment meeting the above-stated criteria, provided that the Participant has notified the Plan Administrator (in a manner prescribed by the Plan Administrator) that he has ceased such employment.

9.12 Qualified Domestic Relations Order

A Qualified Domestic Relations Order ("QDRO") shall be determined in accordance with the following provisions:

- (A) Specific Requirements of QDRO: A Qualified Domestic Relations Order shall specifically state all of the following in order to be deemed a QDRO: (1) the name and last known mailing address (if any) of the Participant and of each alternate payee covered by the order. However, if the QDRO does not specify the current mailing address of the alternate payee, but the Plan Administrator has independent knowledge of that address, the QDRO will still be valid; (2) the dollar amount or percentage of the Participant's benefit to be paid by the Plan to each alternate payee, or the manner in which the amount or percentage will be determined; (c) the number of payments or period for which the order applies; and (4) the specific plan (by name) to which the order applies. The order shall not be deemed a QDRO if it requires the Plan to provide any type or form of benefit, or any option not already provided for in the Plan, or increased benefits, or benefits in excess of the Participant's vested rights, or payment of benefits to

an alternate payee which are required to be paid to another alternate payee under another QDRO.

- (B) Administrator Must Seek Opinion of Counsel: Promptly upon receipt of a domestic relations order which may or may not be "Qualified", the Plan Administrator shall notify the Participant and any alternate payee(s) named in the order of such receipt, and include a copy of this Section 9.12. The Plan Administrator shall then forward the order to the Plan's legal counsel or to Trustee's legal counsel for an opinion as to whether or not the order is in fact "Qualified" as defined in Section 414(p) of the Internal Revenue Code. Within a reasonable time after receipt of the order, not to exceed 60 days, the Plan's legal counsel or Trustee's legal counsel shall make a determination as to its "Qualified" status and so inform the Plan Administrator who shall promptly notify the Participant and any alternate payee(s) in writing of the determination.
- (C) Disputed Orders: If the "Qualified" status of the order is in question, there will be a delay in any payout to any payee including the Participant, until the status is resolved. In such event, the Plan Administrator shall segregate the amount that would have been payable to the alternate payee(s) if the order had been deemed a QDRO. If the order is not Qualified, or the status is not resolved (for example, it has been sent back to the Court for clarification or modification) within 18 months beginning with the date the first payment would have to be made under the order, the Plan Administrator shall pay the segregated amounts plus interest to the person(s) who would have been entitled to the benefits had there been no order. If a determination as to the Qualified status of the order is made after the 18-month period, then the order shall only be applied on a prospective basis. If the order is determined to be a QDRO, the Participant and alternate payee(s) shall again be notified promptly after such determination. Once an order is deemed a QDRO, the Plan Administrator shall pay to the alternate payee(s) all the amounts due under the QDRO, including segregated amounts plus interest which may have accrued during a dispute as to the order's qualification.
- (D) Qualified Domestic Relations Order Distribution. All rights and benefits, including elections, provided to a Participant in this Plan shall be subject to the rights afforded to any alternate payee under a QDRO. Furthermore, a distribution to an alternate payee shall be permitted if such distribution is authorized by a QDRO, even if the affected Participant has not separated from service and has not reached the "earliest retirement age" under the Plan. For the purposes of this Section, "alternate payee," "qualified domestic relations order" and "earliest retirement age" shall have the meaning set forth under Code Section 414(p).
- (E) Effective on and after April 6, 2007, a domestic relations order that otherwise satisfies the requirements for a qualified domestic relations order ("QDRO") will not fail to be a QDRO: (i) solely because the order is issued after, or revises, another domestic relations order or QDRO; or (ii) solely because of the time at which the order is issued, including issuance after the Participant's death. A domestic relations order described in this paragraph is subject to the same requirements and protections that apply to QDROs.

- (F) QDRO Processing Fees and Costs. In accordance with Department of Labor Field Advice Bulletin (FAB) 2003-3, legal fees and other expenses associated with the review and processing of a QDRO shall be deducted from the account of the Participant and the benefits of the Alternate Payee under such QDRO. Such fees shall be split evenly between the Participant and Alternate Payee and shall not exceed a total of \$750.00 for a given QDRO.

9.13 Required Minimum Distribution:

(A) General Rules

- (1) Effective Date. The provisions of this Section will apply for purposes of determining required minimum distributions for calendar years beginning with the 2002 calendar year.
- (2) Precedence. The requirements of this Section will take precedence over any inconsistent provisions of the Plan.
- (3) Requirements of Treasury Regulations Incorporated. All distributions required under this Section will be determined and made in accordance with the Regulations under Code Section 401(a)(9).
- (4) TEFRA Section 242(b)(2) Elections. Notwithstanding the other provisions of this Section and the Plan, distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the Plan that relate to Section 242(b)(2) of TEFRA.

(B) Time and Manner of Distribution

- (1) Required Beginning Date. The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's required beginning date.
- (2) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
 - (i) If the Participant's surviving spouse is the Participant's sole designated beneficiary, then, except as otherwise provided herein, distributions to the surviving spouse will begin by December 31st of the calendar year immediately following the calendar year in which the Participant died, or by December 31st of the calendar year in which the Participant would have attained age 70 1/2, if later.
 - (ii) If the Participant's surviving spouse is not the Participant's sole designated beneficiary, then, except as provided in Section 9.13(B)(3) below, distributions to the designated beneficiary will begin by December 31st of the calendar year

immediately following the calendar year in which the Participant died.

- (iii) If there is no designated beneficiary as of September 30th of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31st of the calendar year containing the fifth anniversary of the Participant's death.
- (iv) If the Participant's surviving spouse is the Participant's sole designated beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Section 9.13(B)(2), other than Section 9.13(B)(2)(i), will apply as if the surviving spouse were the Participant.

For purposes of this Section 9.13(B)(2) and Section 9.13(B)(3) unless Section 9.13(B)(2)(iv) applies, distributions are considered to begin on the Participant's required beginning date. If Section 9.13(B)(2)(iv) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 9.13(B)(2)(i).

- (3) Forms of Distribution. Unless the Participant's interest is distributed in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with Sections 9.13(E) and 9.13(D).

(C) Required minimum distributions during Participant's lifetime

- (1) Amount of Required Minimum Distribution For Each Distribution Calendar Year. During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:
 - (i) the quotient obtained by dividing the Participant's account balance by the distribution period in the Uniform Lifetime Table set forth in Regulation Section 1.401(a)(9)-9, Q&A-2, using the Participant's age as of the Participant's birthday in the distribution calendar year; or
 - (ii) if the Participant's sole designated beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's account balance by the number in the Joint and Last Survivor Table set forth in Regulation Section 1.401(a)(9)-9, Q&A-3, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.
- (2) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under this Section 9.13(C) beginning with the first distribution calendar

year and up to and including the distribution calendar year that includes the Participant's date of death.

(D) Required minimum distributions after Participant's death

(1) Death On or After Date Distributions Begin.

- (i) Participant Survived by designated beneficiary. If the Participant dies on or after the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated beneficiary, determined as follows:

(a) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(b) If the Participant's surviving spouse is the Participant's sole designated beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

(c) If the Participant's surviving spouse is not the Participant's sole designated beneficiary, the designated beneficiary's remaining life expectancy is calculated using the age of the beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

- (ii) No designated beneficiary. If the Participant dies on or after the date distributions begin and there is no designated beneficiary as of September 30th of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(2) Death Before Date Distributions Begin.

- (i) Participant Survived by designated beneficiary. Except as provided in Section 9.13(B)(3), if the Participant dies before the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the remaining life expectancy of the Participant's designated beneficiary, determined as provided in Section 9.13(D)(1).
- (ii) No designated beneficiary. If the Participant dies before the date distributions begin and there is no designated beneficiary as of September 30th of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31st of the calendar year containing the fifth anniversary of the Participant's death.
- (iii) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Section 9.13(B)(2)(i), this Section 9.13(D)(2) will apply as if the surviving spouse were the Participant.

(E) Definitions. For purposes of this Section, the following definitions apply:

- (1) "Designated beneficiary" means the individual who is designated as the Beneficiary under the Plan and is the designated beneficiary under Code Section 401(a)(9) and Regulation Section 1.401(a)(9)-1, Q&A-4.
- (2) "Distribution calendar year" means a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's "Required beginning date." For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under Section 9.13(B). The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's "Required beginning date." The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's "Required beginning date" occurs, will be made on or before December 31st of that distribution calendar year.
- (3) "Life expectancy" means the life expectancy as computed by use of the Single Life Table in Regulation Section 1.401(a)(9)-9.

- (4) "Participant's account balance" means the Participant's account balance as of the last valuation date in the calendar year immediately preceding the "Distribution calendar year" (valuation calendar year) increased by the amount of any contributions made and allocated or Forfeitures allocated to the account balance as of the dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the "Distribution calendar year" if distributed or transferred in the valuation calendar year.
 - (5) "Required beginning date" means, with respect to any Participant, April 1st of the calendar year following the later of the calendar year in which the Participant attains age 70 1/2 or the calendar year in which the Participant retires, except that benefit distributions to a "5-percent owner" must commence by April 1st of the calendar year following the calendar year in which the Participant attains age 70 1/2.
 - (6) "5-percent owner" means a Participant who is a 5-percent owner as defined in Code Section 416 at any time during the Plan Year ending with or within the calendar year in which such owner attains age 70 1/2. Once distributions have begun to a 5-percent owner under this Section they must continue to be distributed, even if the Participant ceases to be a 5-percent owner in a subsequent year.
- (F) 2009 Transition Rules.

Notwithstanding the provisions of the Plan relating to required minimum distributions under Code Section 401(a)(9), a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code Section 401(a)(9)(II) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are equal to the 2009 RMDs will not receive those distributions for 2009 unless the Participant or Beneficiary chooses to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to receive the distributions described in the preceding sentence.

9.14 Distribution for Minor or Incompetent Individual

In the event a distribution is to be made to a minor or incompetent individual, then the Administrator may direct that such distribution be paid to the court appointed legal guardian or any other person authorized under state law to receive such distribution, or if none, then in the case of a minor individual, to a parent of such individual, or to the custodian for such individual under the Uniform Gift to Minors Act or Gift to Minors Act, if such is permitted by the laws of the state in which said individual resides. Such a payment to the guardian, custodian or parent of a minor or incompetent individual shall fully discharge the Trustee (or Insurer), Employer, and Plan from further liability on account thereof.

9.15 Location of Participant or Beneficiary Unknown

In the event that all, or any portion, of the distribution payable to a Participant or Beneficiary hereunder shall, at the later of the Participant's attainment of age 62 or Normal Retirement Age, remain unpaid solely by reason of the inability of the Administrator, after sending a registered letter, return receipt requested, to the last known address, and after further diligent effort, to ascertain the whereabouts of such Participant or Beneficiary, the amount so distributable may either, at the discretion of the Administrator, be treated as a Forfeiture or paid directly to an individual retirement account described in Code Section 408(a) or individual retirement annuity described in Code Section 408(b) pursuant to the Plan. However, the foregoing shall also apply prior to the later of a Participant's attainment of age 62 or Normal Retirement Age if, pursuant to the terms of the Plan, a mandatory distribution may be made to the Participant without the Participant's consent and the amount of such distribution is not more than \$1,000. In the event a Participant or Beneficiary is located subsequent to a Forfeiture, such benefit shall be restored, first from Forfeitures, if any, and then from an additional Employer contribution if necessary. However, regardless of the preceding, a benefit which is lost by reason of escheat under applicable state law is not treated as a Forfeiture for purposes of this Section nor as an impermissible forfeiture under the Code.

9.16 Direct Rollover

(a) This Section applies to distributions made on or after January 1, 2002. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a "distributee's" election under this Section, a "distributee" may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an "eligible rollover distribution" that is equal to at least \$500.00 paid directly to an "eligible retirement plan" specified by the "distributee" in a "direct rollover".

(b) For purposes of this Section the following definitions shall apply:

(1) An "eligible rollover distribution" means any distribution described in Code Section 402(c)(4) and generally includes 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 (10) years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); the portion of any other distribution(s) that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and any other distribution reasonably expected to total less than \$200.00 during a year. Any amount that is distributed on account of hardship shall not be an eligible rollover distribution and the "distributee" may not elect to have any portion of such a distribution paid directly to an "eligible retirement plan".

Notwithstanding the above, a portion of a distribution shall not fail to be an "eligible rollover distribution" merely because the portion consists of after-tax Employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Code Section 408(a) or (b), or to a qualified defined

contribution plan described in Code Section 401(a) or 403(a) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(2) An "eligible retirement plan" is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b) (other than an endowment contract), a qualified trust (an employees' trust) described in Code Section 401(a) which is exempt from tax under Code Section 501(a) and which agrees to separately account for amounts transferred into such plan from this Plan, an annuity plan described in Code Section 403(a), an eligible deferred compensation plan described in Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality thereof which agrees to separately account for amounts transferred into such plan from this Plan, and an annuity contract described in Code Section 403(b) 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. 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 Code Section 414(p).

In addition, a Participant may elect to directly roll over an "eligible rollover distribution" to a Roth IRA described in Code Section 408A(b).

(3) A "distributee" includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p), are "distributees" with regard to the interest of the spouse or former spouse.

For distributions after December 31, 2006, a non-spouse beneficiary who is a "designated beneficiary" under Code Section 401(a)(9)(E) and the Regulations thereunder, by a direct trustee-to-trustee transfer ("direct rollover"), may roll over all or any portion of his or her distribution to an individual retirement account the beneficiary establishes for purposes of receiving the distribution. In order to be able to roll over the distribution, the distribution otherwise must be an "eligible rollover distribution." If the Participant's named beneficiary is a trust, the Plan may make a direct rollover to an individual retirement account on behalf of the trust, provided the trust satisfies the requirements to be a designated beneficiary within the meaning of Code Section 401(a)(9)(E). A nonspouse beneficiary may not roll over an amount which is a required minimum distribution, as determined under applicable Regulations and other Revenue Service guidance. If the Participant dies before his or her required beginning date and the nonspouse Beneficiary rolls over to an IRA the maximum amount eligible for rollover, the beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to Regulations Section 1.401(a)(9)-3, A-4(c), in determining the required minimum distributions from the IRA that receives the non-spouse beneficiary's distribution.

(4) A "direct rollover" is a payment by the Plan to the "eligible retirement plan" specified by the "distributee."

(c) **Participant Notice.** A Participant entitled to an eligible rollover distribution must receive a written explanation of his/her right to a direct rollover, the tax consequences of not making a direct rollover, and, if applicable, any available special income tax elections. The notice must be provided within the same thirty (30) to one hundred eighty (180) (ninety (90) for Plan Years beginning before January 1, 2007) day timeframe applicable to the Participant consent notice. The direct rollover notice must be provided to all Participants, unless the total amount the Participant will receive as a distribution during the calendar year is expected to be less than \$200.00.

9.17 Corrective Distributions

Nothing in this Article shall preclude the Administrator from making a distribution to a Participant to the extent such distribution is made to correct a qualification defect in accordance with the correction procedures under the IRS' Employee Plans Compliance Resolution System or any other voluntary compliance programs.

ARTICLE X – FUND AND PLAN ADMINISTRATION

10.01 Establishment of Fund

As hereby created The Cleveland Glass and Glazing Industry Pension Fund shall comprise the entire assets derived from Employer contributions made to or for the account of this Fund under Collective Bargaining Agreements, together with any and all investments made and held by the Trustees, or moneys received by the Trustees as contributions or as income from investments made and held by the Trustees of otherwise, and any other money or property, received and/or held by the Trustees for the uses, purposes and trust set forth in this Fifth Amended and Restated Pension Plan and Trust. The Fund hereby created shall be administered from and shall have its principal place of business in Cuyahoga County, Ohio.

10.02 General Purpose

The Fund shall be a Trust Fund and shall be used for the exclusive purpose of providing Pension Benefits for Participants and their eligible dependents and Beneficiaries as determined by the Trustees, and shall further provide the means for defraying reasonable expenses of the Trustees and the operation and administration of the Fund, administering and operating the Plan in accordance with this Fifth Amended and Restated Pension Plan and Trust Agreement and the requirements of the Employee Retirement Income Security Act of 1974 (as amended and hereinafter referred to as "ERISA"). It is intended that this Pension Plan and Trust be a multi-employer plan as the term is defined in Section 3 (37) ERISA.

10.03 Union and Employer Trustees

The operation and administration of the Pension Fund shall be the joint responsibility of the Trustees appointed by the Employers and the Trustees appointed by the Union who shall be the named fiduciaries under the Plan. The number of Trustees may vary from time to time but in no event shall there be less than two (2) or more than four (4) Trustees appointed by the Employers, and such number of Trustees appointed by the Union shall be equal to the number of Employer Trustees. The

Trustees shall determine the procedure and basis for naming additional Trustees and the removal or replacement of existing Trustees in accordance with the provisions of this Plan and Trust. It is the intention hereof that the Fund shall be administered by an equal number of Employer Trustees and Union Trustees.

- (A) The term "Employer Trustees" as used herein shall mean the Trustees appointed by the Employers who are parties to this Agreement.
- (B) The term "Union Trustees" as used herein shall mean the Trustees appointed by the Union. All Union Trustees shall be members of Painters and Allied Trades District Council No. 6, Glaziers, Architectural Metal and Glassworkers Local No. 181.
- (C) The term "Trustees" as used herein shall mean the Employer Trustees and the Union Trustees collectively, and shall include their successors or their alternates when acting as Trustees.

10.04 Acceptance of Trusteeship

The Trustees shall immediately meet and sign this Fifth Amended and Restated Plan and Trust Agreement which establishes the Pension Fund. The Trustees, by affixing their signatures at the end of this Plan and Trust Agreement, agree to accept the trusteeship and act in their capacities strictly in accordance with the provisions of this Plan and Trust Agreement.

10.05 Term of Trustees

Each Trustee shall continue to serve as such until his death, incapacity, resignation, or removal, as herein provided. The Employers may remove any Employer Trustee by delivering to said Trustee and to each of the remaining Trustees and the Union a copy of appropriate action taken by the Employers. The Union likewise may remove any Union Trustee by delivering to said Trustee and to each of the remaining Trustees a copy of appropriate action taken by the Union. Any removal shall state the date it is to take effect.

10.06 Vacancies

If for any reason a Trustee cannot serve, or resigns, or is removed before the expiration of the term for which he is appointed, a successor shall be appointed in the same manner as the Trustee to whose office he is succeeding. In the event that the successor is not appointed as herein provided within ten (10) days from the creation of such vacancy, then in such case the remaining Employer Trustees or Union Trustees, as the case may be, by affirmative vote of those present at any duly-convened meeting, may elect a successor to hold office, but only until such time as the appointment has been duly-made by the Employers or the Union, as the case may be. The remaining Employer Trustees shall elect a successor Employer Trustee and the remaining Union Trustees shall elect a successor Union Trustee under this Section 10.06.

During the period of any vacancy or vacancies thus created in the office of Trustee, the power of the remaining Trustees, acting in the manner herein provided, shall not be impaired in administering the affairs of the Fund, pending the filling of such vacancy or vacancies.

10.07 Form of Notification

In case any Trustee shall be removed, replaced or succeeded; (A) a certificate in writing by the Secretary of the Union shall be sufficient evidence of action taken by the Union, (B) a certificate in writing by a majority of the Principal Officers or individuals of each Employer shall be sufficient evidence of action taken by such Employers.

10.08 Successor Trustees

Any Successor Trustee shall immediately upon his designation as Successor Trustee and his acceptance in writing filed with the Trustees become vested with all the property, rights, powers and duties of a Trustee hereunder with like effect as if originally named as a Trustee and all the Trustees then in office and all other necessary persons shall be notified immediately. No Successor Trustee shall in any way be responsible for anything done or committed in the administration of the trust prior to the date he became a Trustee or subsequent to the time his Trusteeship is terminated.

10.09 Reciprocal Agreements

The Trustees are empowered to enter into reciprocal agreement(s) with other defined contribution or defined benefit pension funds and trusts if such an agreement is deemed in the best interest of the Employees. Pursuant to such a reciprocal agreement, the Trustees may authorize the transfer of contributions and receipt of contributions and/or funds and/or credit for benefits and such other actions as are necessary to carry out the terms of such a reciprocal agreement. To the extent that said contributions are transferred to another plan, the Trustees shall be relieved of the obligations to transfer said contributions into this Plan. Once a transfer of contributions from this Plan is made pursuant to a reciprocal agreement, the Trustees shall not be liable to the Employee or his beneficiaries for the amount of the transfer. To the extent that funds or benefits are received, the Trustees are authorized to add said amounts to the account of the Employee, subject to the limitations in Section 4.05.

ARTICLE XI – POWERS, DUTIES AND OBLIGATIONS OF TRUSTEES

11.01 Property and Assistance

The Trustees are authorized and empowered to lease or purchase such premises, materials, supplies and equipment, and to hire, employ, and/or retain such legal counsel, investment counsel, administrative, accounting, actuarial, consulting, clerical and other assistants or employees as in their discretion they may find necessary or appropriate in the performance of their duties, and to delegate to any agents or employees such duties as they consider appropriate, and to pay the costs thereof out of the Fund.

Additionally, the Trustees may employ or contract for the services of an individual, individuals, firm or corporation, to be known as "Administrative Manager", who shall, under the direction of the Trustees or under the direction of any appropriate committee of the Trustees, administer the office or offices of the Fund and of the Trustees, coordinate and administer the accounting, bookkeeping and clerical services, prepare (in cooperation, where appropriate, with the Fund's legal counsel, consultant, and/or auditor) all reports and other documents to be prepared, filed or disseminated by or on behalf of the Fund in accordance with law, assist in the collection of contributions required to be paid to the Fund by Employers, and perform such other duties and furnish such other services as may be assigned, delegated, or directed or as may be contracted by and on behalf of the Trustees. If appointed,

the Administrative Manager shall be the custodian on behalf of the Trustees of all documents and other records of the Trustees and Fund.

11.02 Construction of Agreement

The Trustees shall have the power to construe the provisions of this Plan and Trust Agreement, and any construction adopted by the Trustees in good faith shall be binding upon the Union, the Employers, and covered Employees and their eligible dependents, families, beneficiaries, and/or legal representatives. Nonetheless, the Trustees shall establish a claims procedure, and in the event of a disagreement between the Trustees and an Employee or other beneficiary over the payment of a claim, the Trustees shall observe and be bound by the resolution of the dispute under the established claims procedure.

11.03 General Powers

The Trustees are hereby empowered, in addition to other such powers as set forth herein or conferred by law:

- (A) To establish and administer a Pension Plan on behalf of the Employees consistent with a prudent funding policy and method which shall be established and observed by the Trustees in accordance with ERISA;
- (B) To contract for or provide Pension Benefits including Agreements with a legal reserve life insurance company for carrying out the terms of this Plan and Trust Agreement for the administration of the Trust Fund and to do all acts as they, in their discretion, may deem necessary or advisable;
- (C) To enter into any and all contracts and agreements for carrying out the terms of this Plan and Trust Agreement and for the administration of the Fund and to do all acts as they, in their discretion, may deem necessary and advisable;
- (D) To compromise, settle, arbitrate, and release claims or demands in favor of or against the Fund or the Trustees on such Terms and conditions as the Trustees may deem advisable;
- (E) To establish and accumulate as part of the Fund a reserve which, in the opinion of the Trustees is sufficient to carry out the purposes of the Fund;
- (F) To pay out of the Fund any taxes or other governmental obligations levied or assessed under existing or future laws upon or in respect to the Fund or any money, property, or securities forming a part thereof;
- (G) To make appropriate allocations of common administrative expenses and disbursements shared or to be shared by this Fund and other Trust Funds in which the Union participates;
- (H) To receive contributions or payments from any source whatsoever to the extent permitted by law;
- (I) To invest and reinvest the Fund assets in any type of investments and to take any and all action with respect to holding, buying, selling or maintaining such

investments as they, in their sole discretion, may deem appropriate, subject to the requirement of ERISA;

- (J) To appoint a bank or banks or trust company or trust companies whose capital and surplus is not less than \$50,000,000.00 to be designated as "Corporate Trustee" or as "Corporate Agent", and to enter into and execute a Trust or Custodial Agreement or Agreements with such bank or banks or trust company or trust companies, to provide for the investment and reinvestment and/or custodianship of assets of the Fund, with such other provisions incorporated therein as may be deemed desirable in the Trustees' sole discretion for the proper management of the Fund and without limit with respect to the powers which the Trustees may grant to such Corporate Trustee or Corporate Agent in such agreement to the extent permitted by law;
- (K) To attend and otherwise participate in educational conferences and related functions and to authorize and approve such attendance by other parties in interest;
- (L) To do all acts, whether or not expressly authorized herein, which the Trustees may deem necessary to proper for the protection of the assets of the Fund;
- (M) To do all acts, whether or not expressly authorized herein, which the Trustees may deem necessary to accomplish the general objective of enabling the Trustees to provide benefits in the most efficient and economical manner;
- (N) To do all acts which may be necessary to comply with any of the requirements of ERISA or any other applicable federal or state law;
- (O) Noting that Benefits under this Plan will be paid only if the Trustees decide in their discretion that the applicant is entitled to them, determine (in the Trustees' sole and exclusive discretion, conclusively and finally) and pay all Benefits hereunder to the proper persons in accordance with this Agreement; and, whenever such Benefits are payable to any individual who (in the Trustees' sole discretion) is under any legal, mental and/or physical disability or is incapacitated in any way and thereby unable to manage his financial affairs, to make the Benefit payments to such person or his legal representative or for the benefit of the person in such manner as the Trustees determine; and
- (P) Consistent with applicable law to allocate fiduciary responsibilities among the Trustees and to designate persons other than Trustees to carry out fiduciary responsibilities by the adoption of a resolution designating the persons who shall carry out such fiduciary responsibilities. The power to allocate fiduciary responsibility shall not apply to the allocation of the responsibility to manage the assets of the Plan other than the power to appoint an investment manager or managers.
- (Q) To cause any part or all of the assets of the Plan to be invested as part of the collective investment funds maintained by a bank. The assets of the Plan so invested may be commingled with the funds of other trusts, to the extent allowed by law. The assets of the Plan so invested shall be subject to all of the provisions of the declaration(s) of trust creating said collective investment

fund(s), as amended (or shall be) incorporated by reference into and made a part of this Plan and Trust Agreement.

Notwithstanding the foregoing or any other contrary provision of this Agreement, no Board powers, rights or authorities shall be exercised or exercisable if the effects thereof constitute "prohibited transactions" under applicable provisions of the I.R.C. or ERISA.

11.04 Investment Managers

The Trustees shall have exclusive authority and discretion to manage and control the assets of the Fund in accordance with this Plan and Trust and applicable law, except to the extent that such authority to manage, acquire or dispose of the assets of the Fund is delegated to one or more Investment Managers. Therefore, the Trustees are hereby empowered to appoint an Investment Manager or Managers to manage, acquire, invest and reinvest or dispose of any assets of the Fund pursuant to ERISA Section 402(c). Such an Investment Manager may or may not be designated a "Corporate Trustee" or "Corporate Agent". An "Investment Manager" is any fiduciary who has been designated by the Trustees to manage, acquire or dispose of any assets of the Fund; and who (1) is registered as an Investment Advisor under the Investment Advisors Act of 1940, (2) is a bank as defined in that Act, or (3) is an insurance company qualified to perform services under the laws of more than one state; and who has acknowledged in writing that he is fiduciary with respect to the Fund. The fees and expenses of such Investment Manager shall be paid out of the Fund.

11.05 Compensation

No Trustee shall receive any compensation out of the Fund for the services rendered by him as Trustee, but this shall not be construed to prohibit reimbursement for reasonable and necessary expenses properly and actually incurred by any Trustee or party in interest in the performance of his duties hereunder. Notwithstanding the foregoing, any compensation or payments to the Trustees, Union or other parties in interest authorized prior to the inception date of ERISA in accordance with resolutions of the Board of Trustees and the contract with the Board of Trustees shall continue in accordance with the provisions contemplated for these transactions under ERISA.

11.06 Limitation of Liability

The Trustees are hereby empowered to do all acts, whether or not expressly authorized herein, which the Trustees may deem necessary to accomplish the general objectives of maintaining the Fund and Benefit Plan solely in the interests of the Employees and their eligible dependents for the exclusive purpose of providing Benefits to Employees and their eligible dependents, and defraying reasonable expenses of administering the Fund. Such actions shall be taken with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. Such actions shall include the diversification of the investments of the Fund so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so, and all such actions shall be in accordance with the documents and instruments governing the Fund insofar as such documents and instruments are consistent with applicable law.

If an Investment Manager or Managers has been appointed in accordance with the terms of this Amended Agreement and Declaration of Trust, no Trustee shall be liable for the acts or omissions of such Investment Manager or Managers or under an obligation to invest or otherwise manage any asset of the Plan which is subject to the management of such Investment Manager.

11.07 Personal Liability and Costs of Defense

To the extent permitted by law, the Trustees and each individual Trustee shall not be liable for any error or judgment or for any loss arising out of any act or omission in the execution of their duties so long as they act in good faith and without gross negligence; nor shall any Trustee, in the absence of his own willful misconduct, or bad faith, be personally liable for the acts or omissions (whether performed at the request of the Trustees or not) or any Trustee, or of any agent, accountant, or attorney selected or appointed by or acting for the Trustees. Furthermore, to the extent permitted by law, the costs and expenses of any legal actions brought by and/or against the Trustees or any of them (including counsel fees) shall be paid by the Fund, except matters as to which it shall be adjudged in such action that the Trustees misconduct was willful or in bad faith.

The Trustees, to the extent permitted by law, shall be fully protected in acting upon any instrument, certificate, or paper believed by them to be genuine and to be signed or presented by the proper person or persons and shall be under no duty to make any investigation or inquire as to any statement contained in any such writing, but may accept the same as conclusive evidence of the trust and accuracy of the statements therein contained.

The Trustees may appoint attorneys to serve as legal counsel and also such actuaries and accountants as they may from time to time find necessary. To the extent permitted by law, the Trustees shall be fully protected with respect to any action taken or suffered by them in good faith reliance upon the advice of such attorney, accountant or actuary and all action so taken or suffered shall be conclusive upon each of them and upon all participants of the Fund.

11.08 Books of Account

The Trustee shall keep true and accurate books of account and records of all their transactions, which shall be audited annually, or more often at the discretion of the Trustees, by an independent certified public accountant selected by the Trustees. The Trustees, or such persons as they may properly designate, shall be responsible for maintaining records sufficient to comply with all requirements of ERISA and for the filing of all reports with the Labor Department and the Treasury Department which may be required under ERISA or the regulations issued thereunder, including the Plan description reports specified by ERISA Section 101(b).

11.09 Execution of Documents

The Trustees may authorize a Trustee or an Employer Trustee and a Union Trustee or any joint group equally composed of Employer and Union Trustees to jointly execute any notice or other instrument in writing, and all persons, partnerships, corporations, or associations may rely thereupon that such notice or instrument has been duly authorized and is binding on the Trust and the Trustees.

11.10 Deposit and Withdrawal of Funds

All money received by the Trustees hereunder shall be deposited by them in such bank or banks as the Trustees may designate for that purpose, and all withdrawals of money from such an account or accounts shall be made only checks signed by the Trustees or by such other person authorized in writing by the Trustees to sign such checks. Except as herein provided, no check shall be valid unless signed by two (2) persons of whom one (1) shall be an Employer Trustee and one (1) a Union Trustee.

The Employer Trustees shall designate in writing the name or names of any Employer Trustee who may sign checks in the above manner, and the Union Trustees shall likewise designate in writing the name or names of any Union Trustee who may sign check in the above manner.

The Trustees may, in their discretion, designate and authorize an Employee or the Administrative Manager to sign checks upon such separate and specific bank account or bank accounts as the Trustees may designate and establish for that purpose.

11.11 Surety Bonds

Every fiduciary under the Fund and every person who handles funds or other property of the Fund shall be bonded by a duly authorized surety company in an amount fixed at the beginning of each fiscal year of the Fund, which amount shall not be less than ten percent (10%) of the funds handled. In no event shall such bond be less than \$1,000.00 or more than \$500,000.00 or such higher amount as may be prescribed by the Secretary of Labor. No bond shall be required by any corporation exempt from such bonding requirement pursuant to ERISA Section 412(a)(2). This Section shall be construed and interpreted in accordance with ERISA Section 412 and the cost of the premium of the bonds shall be paid out of the Fund.

11.12 Liability Insurance

In accordance with Federal law, the Trustees may purchase and pay from the Fund assets insurance for the Trustees, any other Fiduciary and/or this Fund to cover liability or losses occurring by reason of the actions or omissions of any Trustee or other Fiduciary, if such insurance permits recourse by the insurer against such Trustee or other Fiduciary for any breach of a Fiduciary obligation. Additionally, in their discretion, the Employees or Union may purchase such insurance (with or without recourse) for the Trustees, and/or any other Fiduciary.

ARTICLE XII – PLAN OF BENEFITS

12.01 Benefits

The Trustees shall have full authority to determine all questions of nature, amount and duration of Benefits to be provided, but all Benefits provided must always be within the current financial limits of the Fund and, furthermore, must be consistent with prudent funding policy and method which the Trustees shall establish and at all times observe. The Plan adopted by the Trustees shall not be amended to reduce or vary Benefits if such amendment would be prohibited under any provisions of ERISA or would cause the Fund to fail to comply with any requirement of ERISA.

12.02 Eligibility Requirements for Benefits

The Trustees shall have full authority to determine eligibility requirements for Benefits and to adopt rules and regulations setting forth same which shall be binding on the Employees and their dependents.

12.03 Method of Providing Benefits

The Benefits shall be provided and maintained by such means as the Trustees shall, in their sole discretion, determine, and such Benefits, at the discretion of the Trustees, may be provided by contracts and/or agreements with a legal reserve life insurance company.

12.04 Written Plan of Benefits

The detailed basis on which payment of benefits is to be made pursuant to this Plan and Trust Agreement specified in writing by appropriate action of the Trustees, subject, however, to such changes or modifications by the Trustees from time to time as they, in their discretion, may determine. All such changes or modifications shall similarly be specified in writing by appropriate resolutions of the Trustees.

12.05 Qualification with Internal Revenue Service

The Pension Plan and Trust adopted by the Trustees shall be such as will qualify for approval by the Internal Revenue Service, U.S. Treasury Department, and will continue as a qualified plan, so as to insure that the Employer Contributions to the Pension Fund are proper deductions for income tax purposes. The Trustees are authorized to make whatever applications are necessary or advisable with the Internal Revenue Service to receive and maintain approval of the Pension Plan.

12.06 Limit of Party in Interest's Liability

The financial liability of any Employer shall in no event exceed the obligation to make Contributions as set forth in its applicable Collective Bargaining Agreement or to comply with the provisions of ERISA and other Federal laws including, but not limited to, the I.R.C. Neither the Union nor any Employer shall be liable in any respect for any of the actions, obligations and/or omissions of the Trustees, it being understood that each of the Trustees appointed acts as a representative in a statutory sense only and not as the agent of any person, firm, corporation, partnership, or any organization.

ARTICLE XIII – MEETING AND DECISION OF TRUSTEES

13.01 Chairman and Secretary of Trustees

The Trustees shall meet as promptly as possible after the execution of this Pension Plan and Trust Agreement and elect a Chairman and a Secretary from among the Trustees. The terms of such officers shall commence on the date of their election and continue to the end of the calendar year or until his or their successors have been elected. At no time shall both offices be held by Employer Trustees or by Union Trustees. If the Trustees cannot agree, then the Chairman shall be selected from among the Employer Trustees in even-numbered years and the Secretary shall be selected from among the Union Trustees and in the odd-numbered years, the Chairman shall be selected from among the Union Trustees and the Secretary from among the Employer Trustees. The officers shall be entitled to vote in the same manner as other members of the Board of Trustees.

13.02 Meetings of Trustees

Meetings of the Trustees shall be held from time to time as required, but not less than one (1) time annually or at such place or places as may be designated by the Chairman. Notwithstanding any other provision respecting the calling of meetings of Trustees, a meeting may be called at any time by the Chairman or by the Secretary or at the request of any two (2) Trustees upon five (5) days written notice to the Trustees, unless such notice requirement is waived by agreement of all Trustees at such place or places as may be designated by the Chairman. The Trustees shall adopt reasonable rules and regulations appropriate for the conduct of meetings. The Chairman shall preside at all meetings of the Board unless absent therefrom, and shall have such additional duties and powers as the Board may from

time to time delegate to him. The Secretary shall keep minutes of all meetings, which need not be verbatim, but which shall be open for inspection at all times to any of the Trustees, and shall preside at meetings in the absence of the Chairman. He shall also have such additional duties and powers as the Board may from time to time delegate to him.

13.03 Action by Trustees Without Meeting

Action by the Trustees may also be taken by such Trustees in writing without a meeting; provided, however, that in such case there shall be unanimous written concurrence by all of the Trustees.

13.04 Quorum

In all meetings of the Trustees, two (2) Trustees shall constitute a quorum for the transaction of business, providing there is at least one (1) Employer Trustee or alternate present at the meeting and at least one (1) Union Trustee or alternate present at the meeting, and at the meetings, the Employer Trustees and the Union Trustees shall have equal voting strength. The vote of any absent Employer Trustee shall be cast by the other Employer Trustee or Trustees present; and the vote of any absent Union Trustee shall be cast by the other Union Trustee or Trustees present with the same force and effect as if such absent Trustee were present. Any Trustee present in person or by proxy at a regular or special meeting or adjournment thereof shall constitute a part of the voting strength of either the Employer Trustees or the Union Trustees, irrespective of whether a Trustee or his proxy abstains from voting on any particular issue called to a vote.

13.05 Majority Vote of Trustees

All action by the Trustees shall be by majority vote. (Such majority vote shall be determined by a majority of the votes cast by the Trustees, it being specifically intended that should a Trustee abstain from voting, a majority of the votes cast by the Trustees not abstaining shall carry the passage of any resolution.) Such majority vote shall govern not only this Article, but any portion of this Plan and Trust Agreement which refers to action by the trustees. In the event any matter presented for decision cannot be decided because of a tie vote, the matter shall remain in status quo pending arbitration as set forth in Article hereof.

13.06 Presence of Officers at Meetings

In the absence of the Chairman, the Secretary shall act as Chairman and shall appoint another Trustee from the group of Trustees to which the absent Chairman belongs to act as Secretary for the meeting. In the absence of the Secretary, the Chairman shall appoint another Trustee from the group of Trustees to which the absent Secretary belongs to act as Secretary for the meeting. In the absence of both the Chairman and the Secretary, pro-tem appointments shall be made by the Trustees present.

13.07 Minutes of Meetings

Copies of all minutes required by Section 13.02 shall be sent to all Trustees within a reasonable time after each meeting of the Trustees.

13.08 Appointment of Impartial Trustee

The Trustees may select a person to act as Impartial Trustee who shall accept this Agreement and Declaration of Trust in writing before engaging in the performance of his duties as Trustee. His term shall be for the period designated by the Trustees, and he shall hold office until his

successor shall have been selected and accepted. Upon request, the Impartial Trustee may attend meetings of the Trustees, but shall not vote except in case of deadlock by the Trustees. In the event that the Trustees shall be unable to appoint an Impartial Trustee, or in the event that the designated Impartial Trustee is unable to act, and a deadlock develops between the Union and the Employer Trustees, an Impartial Umpire to decide such dispute shall, on petition of one Union Trustee and one Employer Trustee, be appointed by the Chief Judge of the United States District Court for the Northern District of Ohio as provided by law.

ARTICLE XIV – ARBITRATION

14.01 Application of this Article

In the event the Trustees cannot decide any matter or resolve any dispute because of a tie vote or in the event decisions cannot be made because of the lack of a quorum at two (2) successive meetings of the Trustees, then and in either of such events the Trustees shall attempt to select an impartial arbitrator to hear and determine the matter, issue or dispute.

14.02 Impartial Arbitrator

If the Trustees cannot agree on an impartial arbitrator within five (5) days, the impartial arbitrator shall be selected from a list of arbitrators to be furnished by the Federal Mediation and Conciliation Service. Any Trustee may request the Director of such Service to furnish the list of arbitrators.

If the Trustees are unable to agree on an impartial arbitrator from the list submitted by the Service within seventy-two (72) hours after receipt of such list, the Director of the Service shall designate an arbitrator upon request of any Trustee. In all instances, the Federal Mediation and Conciliation Service shall be advised of the nature of the dispute and shall be requested to furnish a list of arbitrators or to designate an arbitrator qualified and competent by training and experience to decide the particular issue involved.

In the event the Director of the Service fails to make an appointment, it shall be made by the Presiding Judge of the Federal District Court for the Northern District of Ohio, Eastern Division.

14.03 Awards

The decision or award of the arbitrator shall be in writing and shall be final and binding on all parties and persons concerned and shall be made within ten (10) regular working days after the impartial arbitrator receives all the evidence. The scope of any such arbitration shall be limited to the provisions of this Pension Plan and Trust Agreement. The arbitrator shall have no jurisdiction or authority to change or modify the provisions of this Agreement or to decide any issues arising out of or the interpretation of any Collective Bargaining Agreement and such arbitrator shall have no authority to modify or change any provision in such Collective Bargaining Agreement.

14.04 Expenses of Arbitration

The cost and expense incidental to any arbitration proceeding, including the fee, if any, of the impartial arbitrator, shall be a proper charge against the Fund and the Trustees are authorized and directed to pay such charges.

ARTICLE XV – AMENDMENT TO THE TRUST AGREEMENT

15.01 Amendment by Trustees

This Fifth Amended and Restated Pension Plan and Trust Agreement may be amended in any and all respects from time to time by the Trustees, provided that each amendment shall be duly executed in writing by the Trustees and annexed hereto. As to any amendment, the Trustees, in their sole discretion, shall have full power to fix the effective date thereof.

15.02 Limitation on Right to Amendment

No amendment may be adopted which will alter the basic principles of this Plan and Trust Agreement, be in conflict with the collective Bargaining Agreements with the Union, be contrary to the laws governing trust funds of this nature, except as otherwise herein provided, or be contrary to any agreements entered into by the Trustees.

15.03 Notification of Amendment

Whenever an amendment is adopted in accordance with this Article, a copy thereof shall be distributed to all Trustees, and the Trustees shall so notify any other necessary parties and shall execute any instrument or instruments necessary in connection therewith.

ARTICLE XVI – TERMINATION OF TRUST

16.01 By the Trustees

This Fifth Amended and Restated Plan and Trust Agreement may be terminated by an instrument in writing and executed by all of the Trustees when there is no longer in force and effect a Collective Bargaining Agreement between any Employer and the Union requiring contributions to the Fund.

16.02 By the Parties

This Fifth Amended and Restated Plan and Trust Agreement may be terminated by an instrument in writing duly executed by the Employers and the Union.

16.03 Procedure on Termination

In the event of the termination of this Fifth Amended and Restated Plan and Trust Agreement, the Trustees shall apply the assets of the Fund to pay or to provide for the payment of any and all obligations of the Fund and shall distribute and apply any remaining surplus in accordance with the provisions of ERISA and the provisions of this Plan; provided, however, that no part of the corpus or income of said Fund shall be used for or diverted to purposes other than for the exclusive benefit of the Employees and their eligible dependents or Beneficiaries, or the administrative expenses of the Fund, or for other payments in accordance with the provisions of this Agreement. Under no circumstances shall any portion of the corpus or income of the Fund, directly or indirectly, revert or accrue to the benefit of any Employer, or the Union.

16.04 Allocation of Plan Assets Upon Termination

Upon termination of this Plan, the Board shall allocate Plan assets (available to provide Benefits) among the Participants, former Participants, and Beneficiaries in accordance with their Accrued Benefits under the Plan.

After allocating Plan assets as aforesaid, the Board shall determine whether to liquidate and distribute immediately such allocated Plan Benefits or to distribute the allocated Plan Benefits pursuant to and upon occurrence of the circumstances and contingencies described in this Agreement, as if no such termination had occurred. Notwithstanding any contrary provision of this Agreement, the Board shall make no distribution of such allocated Plan assets until all applicable requirements of ERISA and other laws have been (or are being) fully satisfied and all distributions shall be subject to the provisions of Section 9.08 of this Plan.

Upon any full or partial termination of this Plan, the Accrued Benefits (as of the date of such full or partial termination) of each Participant, former Participant and/or their Beneficiaries shall, to the extent funded as of the date of such full or partial termination, become fully and completely vested (non-forfeitable).

16.05 Merger, Consolidation or Transfer of Assets or Liabilities

In the case of any Plan merger, consolidation with, or transfer of assets or liabilities to any other qualified plan, each Participant of this Plan shall (if the Plan had then terminated) receive an Accrued Benefit immediately after the merger, consolidation or transfer which is equal to or greater than the Accrued Benefit such Participant would have been entitled to receive immediately before the merger, consolidation or transfer (if this Plan had then terminated).

16.06 Notification of Termination

Upon termination of the Fund in accordance with this Article, the Trustees shall forthwith notify the Union and each Employer and also all other necessary parties; and the Trustees shall continue as Trustees for the purpose of winding up the affairs of the Trust.

ARTICLE XVII – MISCELLANEOUS PROVISIONS

17.01 Termination of Individual Employers

An Employer shall cease to be an Employer within the meaning of this Fifth Amended and Restated Pension Plan and Trust when it is no longer obligated pursuant to a Collective Bargaining Agreement with the Union to make contributions to the Pension Fund, or as determined by the Trustees when it is delinquent in its contributions or reports to the Pension Fund. In the event that an Employer ceases to be an Employer within the meaning of this Plan and Trust when it is no longer obligated to a Collective Bargaining Agreement with the Union to make contributions to the Pension Fund, the Employer shall, however, continue to make contributions to the Pension Fund until the date that the Collective Bargaining Agreement would have expired in its normal course.

17.02 Uniform Services Employment and Reemployment Act of 1994

Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Internal Revenue Code.

17.03 Limitation of Rights

Neither the establishment of this Plan and Trust nor the payment of any Benefits hereunder shall be construed to give:

- (A) The Union, any Employee, Participant, Inactive Participant and/or their Beneficiaries or any other person or entity a legal or equitable right against the Trustees or any Fiduciary except as specifically stated in this Agreement; or
- (B) Any Employee, Participant, Inactive Participant and/or their Beneficiaries or any other person the right to be employed by the Employer.

17.04 Non-Discrimination

All provisions of this Agreement shall be applied to each Participant, Inactive Participant and/or their Beneficiaries in a uniform and non-discriminatory manner. This Agreement is instituted for the exclusive benefit of Participants, Inactive Participants and/or their Beneficiaries and must be so interpreted. The Union, the Employers and the Trustees intend that this Plan initially and continuously satisfy all applicable I.R.C. provisions and any other Federal and Ohio laws relating to employees' retirement plans and trusts.

17.05 Non-Alienation

- (A) Subject to the exceptions provided below, and as otherwise permitted by the Code and Act, no benefit which shall be payable out of the Trust Fund to any person (including a Participant or the Participant's Beneficiary) shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, or charge the same shall be void; and no such benefit shall in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any such person, nor shall it be subject to attachment or legal process for or against such person, and the same shall not be recognized by the Trustee, except to such extent as may be required by law.
- (B) Subsection (A) shall not apply to a "qualified domestic relations order" defined in Code Section 414(p), and those other domestic relations orders permitted to be so treated by the Administrator under the provisions of the Retirement Equity Act of 1984. The Administrator shall establish a written procedure to determine the qualified status of domestic relations orders and to administer distributions under such qualified orders. Further, to the extent provided under a "qualified domestic relations order," a former spouse of a Participant shall be treated as the spouse or surviving spouse for all purposes under the Plan.
- (C) Subsection (A) shall not apply to an offset to a Participant's accrued benefit against an amount that the Participant is ordered or required to pay the Plan with

respect to a judgment, order, or decree issued, or a settlement entered into, on or after August 5, 1997, in accordance with Code Sections 401(a)(13)(C) and (D).

Notwithstanding the foregoing, the provisions of this Section 17.05 shall not apply with respect to the creation, assignment, or recognition of a right to any benefit payable with respect to a Participant pursuant to a Qualified Domestic Relations Order issued in accordance with the provisions of Code Section 414(p).

17.06 Place of Business

The place of business of the Pension Fund shall be in Cleveland, Ohio or at any other place from time to time will be so designated by the Trustees.

17.07 Situs

This Plan and Trust Agreement is accepted by the Trustees in the City of Cleveland, State of Ohio, and such place shall be deemed the situs of the Trust Fund created hereunder. All questions pertaining to validity, construction, and administration shall be determined in accordance with the laws of the State of Ohio.

17.08 Construction of Terms

Wherever any words are used in this Plan and Trust Agreement in the masculine gender, they shall be construed as though they were also used in the feminine or neuter gender in all situations where they would so apply, and wherever any words are used in this Plan and Trust Agreement in the singular form, they shall be construed as though they were also used in the plural form in all situations where they would so apply, and wherever any words are used in this Plan and Trust Agreement in the plural form, they shall be construed as though they were also used in the singular form in all situations where they would so apply.

17.09 Certification of Trustees' Actions

The Chairman and Secretary may execute any certificate or document jointly on behalf of the Trustees and such execution shall be deemed execution by all the Trustees. All persons having dealings with the Fund or with the Trustees shall be fully protected in reliance placed on such duly executed document.

17.10 Severability

Should any provision in this Fifth Amended and Restated Pension Plan and Trust Agreement or rules and regulations adopted hereunder, or in any Collective Bargaining Agreement be deemed or held to be unlawful or invalid for any reason, any such fact shall not adversely affect the provisions herein and therein contained unless such illegality shall make impossible or impractical the functioning of the Plan and Trust, and in such case, the appropriate parties shall immediately adopt a new provision to take the place of the illegal or invalid provision.

17.11 Expenses of the Trustees

All expenses of the Trustees incurred in the performance of their duties may be chargeable to the Pension Fund at the discretion of the Trustees. All other expenses incurred pursuant to Article XI hereof shall be paid by the Pension Fund.

17.12 Electronic Media

The Administrator may use telephonic or electronic media to satisfy any notice requirements required by this Plan, to the extent permissible under regulations (or other generally applicable guidance). In addition, a Participant's consent to an immediate distribution may be provided through telephonic or electronic means, to the extent permissible under regulations (or other generally applicable guidance). The Administrator also may use telephonic or electronic media to conduct plan transactions such as enrolling participants; making (and changing) deferral elections, electing (and changing) investment allocations, applying for Plan loans, and other transactions, to the extent permissible under regulations (or other generally applicable guidance).

17.13 Plan Correction

The Administrator in conjunction with the Employer may undertake such correction of Plan errors as the Administrator deems necessary, including correction to preserve tax qualification of the Plan under Code Section 401(a) or to correct a fiduciary breach under the Act. Without limiting the Administrator's authority under the prior sentence, the Administrator, as it determines to be reasonable and appropriate, may undertake correction of Plan document, operational, demographic and employer eligibility failures under a method described in the Plan or under the IRS Employee Plans Compliance Resolution System ("EPCRS") or any successor program to EPCRS. The Administrator, as it determines to be reasonable and appropriate, also may undertake or assist the appropriate fiduciary or plan official in undertaking correction of a fiduciary breach, including correction under the DOL Voluntary Fiduciary Correction Program ("VFC") or any successor program to VFC.

17.14 Definition of Marriage and Spouse (IRS Revenue Ruling 2013-17 effective September 17, 2013)

- (A) "Marriage and Spouse" Include Same-Sex Marriage. The term "spouse" (and "husband" or "wife") includes an individual married to a person of the same sex if the individuals are lawfully married under state law. The term "marriage" includes same-sex marriage.
- (B) Place of Celebration Controls. A marriage of same-sex individuals that was validly entered into in a state or country which state's or country's laws authorize the marriage of two individuals of the same sex is recognized as a marriage even if the married couple is domiciled in a state that does not recognize the validity of same sex marriage.
- (C) Domestic Partnership Not Recognized. The terms "spouse", "husband", "wife", or "marriage" do not include individuals (whether of the same sex or the opposite sex) who have entered into a registered domestic partnership, civil union, or other similar formal relationship under state law that is not denominated as a marriage under the laws of that state.

ARTICLE XVIII – TOP HEAVY

18.01 Top Heavy Plan Requirements

For any Top Heavy Plan Year, the Plan shall provide the special vesting requirements of Code Section 416(b) pursuant to Section 8.01 of the Plan and the special minimum allocation requirements of Code Section 416(c) pursuant to Section 4.02 of the Plan.

Notwithstanding the above, the Top Heavy Plan Year requirements of this Article and Code Section 416 shall not apply in any Plan Year in which the Plan consists solely of a cash or deferred arrangement which meets the requirements of Code Section 401(k)(12) and matching contributions meet the requirements of Code Section 401(m)(11).

18.02 Determination of Top Heavy Status

- (A) This Plan shall be a Top Heavy Plan for any Plan Year in which, as of the "determination date," (1) the Present Value of Accrued Benefits of Key Employees and (2) the sum of the Aggregate Accounts of Key Employees under this Plan and all plans of an Aggregation Group, exceeds sixty percent (60%) of the Present Value of Accrued Benefits and the Aggregate Accounts of all Key and Non-Key Employees under this Plan and all plans of an Aggregation Group.

If any Participant is a Non-Key Employee for any Plan Year, but such Participant was a Key Employee for any prior Plan Year, such Participant's Present Value of Accrued Benefit and/or Aggregate Account balance shall not be taken into account for purposes of determining whether this Plan is a Top Heavy Plan (or whether any Aggregation Group which includes this Plan is a Top Heavy Group). In addition, if a Participant or Former Participant has not performed any services for any Employer maintaining the Plan at any time during the one-year period ending on the "determination date," any accrued benefit for such Participant or Former Participant shall not be taken into account for the purposes of determining whether this Plan is a Top Heavy Plan.

- (B) Aggregate Account: A Participant's Aggregate Account as of the "determination date" is the sum of:
- (1) the Participant's Combined Account balance as of the most recent valuation occurring within a twelve (12) month period ending on the "determination date." However, with respect to Employees not performing services for the Employer during the year ending on the "determination date," the Participant's Combined Account balance as of the most recent valuation occurring within a twelve (12) month period ending on the "determination date" shall not be taken into account for purposes of this Section.
 - (2) an adjustment for any contributions due as of the "determination date." Such adjustment shall be the amount of any contributions actually made after the Valuation Date but due on or before the "determination date," except for the first Plan Year when such adjustment shall also reflect the amount of any contributions made after the "determination date" that are allocated as of a date in that first Plan Year.

- (3) any Plan distributions made within the Plan Year that includes the "determination date" or, with respect to distributions made for a reason other than severance from employment, disability or death, within the five (5) preceding Plan Years. The preceding sentence shall also apply to distributions under a terminated plan which, had it not been terminated, would have been aggregated with the Plan under Code Section 416(g)(2)(A)(i). In the case of distributions made after the Valuation Date and prior to the "determination date," such distributions are not included as distributions for top heavy purposes to the extent that such distributions are already included in the Participant's Aggregate Account balance as of the Valuation Date.
 - (4) any Employee contributions, whether voluntary or mandatory. However, amounts attributable to tax deductible qualified voluntary employee contributions shall not be considered to be a part of the Participant's Aggregate Account balance.
 - (5) with respect to unrelated rollovers and plan-to-plan transfers (ones which are both initiated by the Employee and made from a plan maintained by one employer to a plan maintained by another employer), if this Plan provides the rollovers or plan-to-plan transfers, it shall always consider such rollovers or plan-to-plan transfers as a distribution for the purposes of this Section. If this Plan is the plan accepting such rollovers or plan-to-plan transfers, it shall not consider such rollovers or plan-to-plan transfers as part of the Participant's Aggregate Account balance.
 - (6) with respect to related rollovers and plan-to-plan transfers (ones either not initiated by the Employee or made to a plan maintained by the same employer), if this Plan provides the rollover or plan-to-plan transfer, it shall not be counted as a distribution for purposes of this Section. If this Plan is the plan accepting such rollover or plan-to-plan transfer, it shall consider such rollover or plan-to-plan transfer as part of the Participant's Aggregate Account balance, irrespective of the date on which such rollover or plan-to-plan transfer is accepted.
 - (7) For the purposes of determining whether two employers are to be treated as the same employer in (5) and (6) above, all employers aggregated under Code Section 414(b), (c), (m) and (o) are treated as the same employer.
- (C) "Aggregation Group" means either a Required Aggregation Group or a Permissive Aggregation Group as hereinafter determined.
- (1) Required Aggregation Group: In determining a Required Aggregation Group hereunder, each plan of the Employer in which a Key Employee is a participant in the Plan Year containing the Determination Date or any of the four preceding Plan Years, and each other plan of the Employer which enables any plan in which a Key Employee participates to meet the requirements of Code Sections 401(a)(4) or 410, will be

required to be aggregated. Such group shall be known as a Required Aggregation Group.

In the case of a Required Aggregation Group, each plan in the group will be considered a Top Heavy Plan if the Required Aggregation Group is a Top Heavy Group. No plan in the Required Aggregation Group will be considered a Top Heavy Plan if the Required Aggregation Group is not a Top Heavy Group.

- (2) Permissive Aggregation Group: The Employer may also include any other plan not required to be included in the Required Aggregation Group, provided the resulting group, taken as a whole, would continue to satisfy the provisions of Code Sections 401(a)(4) and 410. Such group shall be known as a Permissive Aggregation Group.

In the case of a Permissive Aggregation Group, only a plan that is part of the Required Aggregation Group will be considered a Top Heavy Plan if the Permissive Aggregation Group is a Top Heavy Group. No plan in the Permissive Aggregation Group will be considered a Top Heavy Plan if the Permissive Aggregation Group is not a Top Heavy Group.

- (3) Only those plans of the Employer in which the Determination Dates fall within the same calendar year shall be aggregated in order to determine whether such plans are Top Heavy Plans.
- (4) An Aggregation Group shall include any terminated plan of the Employer if it was maintained within the last five (5) years ending on the Determination Date.

- (D) "Determination date" means (a) the last day of the preceding Plan Year, or (b) in the case of the first Plan Year, the last day of such Plan Year.

- (E) Present Value of Accrued Benefit: In the case of a defined benefit plan, the Present Value of Accrued Benefit for a Participant other than a Key Employee, shall be as determined using the single accrual method used for all plans of the Employer and Affiliated Employers, or if no such single method exists, using a method which results in benefits accruing not more rapidly than the slowest accrual rate permitted under Code Section 411(b)(1)(C). The determination of the Present Value of Accrued Benefit shall 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.

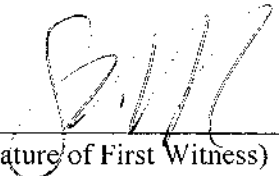
- (F) "Top Heavy Group" means an Aggregation Group in which, as of the Determination Date, the sum of:

- (1) the Present Value of Accrued Benefits of Key Employees under all defined benefit plans included in the group, and

- (2) the Aggregate Accounts of Key Employees under all defined contribution plans included in the group, exceeds sixty percent (60%) of a similar sum determined for all Participants.

IN WITNESS WHEREOF, the Employer has caused this Agreement to be executed by its authorized Officer and the Trustee has affixed Trustee's signature as of the day and year first above written.


In the presence of:


(Signature of First Witness)

(Signature of Second Witness)

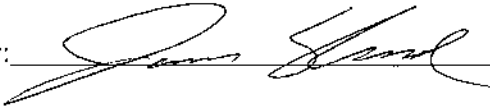

(Signature of First Witness)

(Signature of Second Witness)

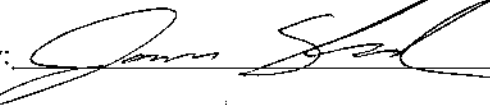

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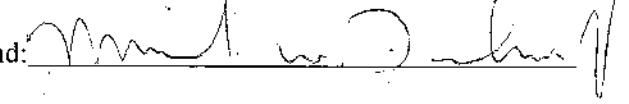
(Signature of Second Witness)

PAINTERS AND ALLIED TRADES DISTRICT
COUNCIL NO. 6, GLAZIERS, ARCHITECTURAL
METAL AND GLASSWORKERS LOCAL
UNION NO. 181

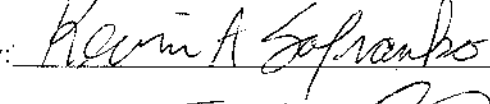
By: 

UNION TRUSTEES:

By: 

And: 

EMPLOYER TRUSTEES:

By: 

And: 