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PAINTING INDUSTRY PROFIT SHARING ANNUITY PLAN

(As Amended and Restated Effective January 1, 2014)

ALLOTTA | FARLEY CO., L.P.A.

2222 Centennial Road

Toledo, Ohio 43617

Phone: (419) 535-0075

Fax: (419) 535-1935

Website: www.allottafarley.com

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PAINTING INDUSTRY PROFIT SHARING ANNUITY PLAN
(As Amended and Restated Effective January 1, 2014)

This Declaration of Agreement, made as of this 15th day of December 2014, by the Board of Trustees of the Painting Industry Profit Sharing Annuity Plan (hereinafter called the "Board of Trustees" or "Trustees"):

WITNESSETH THAT:

WHEREAS, the Trustees have previously established a pension plan for the benefit of employees covered thereunder, the terms of which are set forth in a written agreement currently designated as the Painting Industry Profit Sharing Annuity Plan, which agreement was originally effective as of May 1, 1986, subsequently restated effective January 1, 2001, and thereafter amended from time to time (such original agreements, as theretofore amended or restated, being hereinafter collectively referred to as the "Predecessor Plan"); and

WHEREAS, the Predecessor Plan was most recently amended and restated effective January 1, 2009; and

WHEREAS, Article XIII, Section 13.01 of the Predecessor Plan permits amendment of said Plan by the Trustees from time to time, provided that such amendment complies with the then applicable sections of the Internal Revenue Code of 1954, as amended; and

WHEREAS, it is the desire of the Trustees to revise, amend, restate and replace the Predecessor Plan in order to include in one document all amendments thereto, including those amendments necessary to continue to maintain said Plan and Restated Trust as a qualified Plan and Trust under Sections 401(a) and 501(a) of the Internal Revenue Code of 1986, as amended.

NOW, THEREFORE, the Trustees hereby declare and agree as follows:

1. The Predecessor Plan be, and hereby is, superseded by this Agreement, which revises, amends, restates and replaces the Predecessor Plan, effective as of January 1, 2014. This restatement of the Predecessor Plan is intended to include the legal changes contained in the 2013 Cumulative List of Changes in Plan Qualification Requirements ("2013 Cumulative List") under Internal Revenue Service Notice 2013-84, reflecting legal changes under the Pension Protection Act of 2006, the U.S. Troop Readiness, Veterans' Care, Katrina Recovery and Iraq Accountability Appropriations Act of 2007, the Heroes Earnings Assistance and Relief Tax Act of 2008, the Worker, Retiree, and Employer Recovery Act of 2008, the Small Business Jobs Act of 2010, the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, the Moving Ahead for Progress in the 21st Century Act, and the American Taxpayer Relief Act of 2012. Except as otherwise provided, the provisions amended in this restatement to comply with the 2013 Cumulative List shall be effective as of the first day of the first Plan Year beginning after December 31, 2013.

2. The Trustees shall take such action as may be necessary to cause the profit sharing plan previously provided for under the Predecessor Plan to be continued in orderly fashion, without interruption or termination, in accordance with the terms and conditions set forth in this Agreement.

3. Except as specifically provided herein, or as subsequently provided by the Trustees, anything in this Agreement to the contrary notwithstanding, the rights of any employee under the Predecessor Plan who has retired or otherwise left covered employment prior to the effective date of this Agreement shall be governed exclusively by the Predecessor Plan in effect at the time the employee retired or otherwise left covered employment; however, this Plan shall operate for the limited purpose of providing for the continued retention by the Trustees of any undistributed interests of such former employees and the ultimate distribution of such interests exclusively in accordance with the terms of said Predecessor Plan and related trust agreement.

4. Except as specifically provided herein, or as subsequently provided by the Trustees, anything in this Agreement to the contrary notwithstanding, the replacement of the Predecessor Plan by this Plan shall not increase or enhance the vested interests of former employees under said Predecessor Plan or otherwise entitle such employees to any distribution thereunder. Such replacement shall similarly not result in the reversion of any assets held under the terms of the Predecessor Plan or related Trust Agreement into the possession, ownership or control of any contributing employers thereunder. The rights of any employee under the Predecessor Plan who has retired or otherwise left covered employment prior to the effective date of this Agreement shall be determined in accordance with the terms of the Predecessor Plan and related trust agreement.

ARTICLE I - NAME OF PLAN AND ITS PURPOSE

1.01 Name of Plan.

The Plan created by this indenture shall be known as the Painting Industry Profit Sharing Annuity Plan.

1.02 Purpose.

This Plan is created for the purpose of providing eligible Employees and/or their Beneficiaries with additional security upon retirement, disability or death. This Plan has been executed for the exclusive benefit of the Participants hereunder and their Beneficiaries. The Plan's assets shall be held exclusively to provide benefits to Participants and their Beneficiaries and to defray the reasonable expenses of administering the Plan. This Plan shall be interpreted in a manner consistent with this intent and with the intention of the Employer that this Plan satisfy Sections 401 and 501 of the Internal Revenue Code of 1986, as amended. In no event shall any part of the principal or income of this Plan be paid to or revert to any Employer or be used for any purpose other than for the exclusive benefit of said Employees, Participants, Pensioners, their Beneficiaries, or for proper expenses of administration of the Plan and Fund, except as provided in Section 5.02.

1.03 Collectively Bargained Multiemployer Plan.

It is intended that this Plan be a collectively bargained multiemployer plan as that term is defined in the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

1.04 Profit Sharing Plan.

It is intended that pursuant to Section 401(a)(27)(B) of the Internal Revenue Code this Plan be designated as a profit sharing plan.

ARTICLE II - DEFINITIONS

2.01 Adjustment Factor.

Adjustment Factor shall mean the cost of living adjustment factor prescribed by the Secretary of the Treasury under Section 415(d) of the Code for years beginning after December 31, 1987, as applied to such items and in such manner as the Secretary shall provide.

2.02 Affiliated Employer.

Affiliated Employer shall mean the Employer and any corporation which is a member of a controlled group of corporations (as defined in Section 414(b) of the Code) which includes the Employer; any trade or business (whether or not incorporated) which is under common control (as defined in Section 414(c) of the Code) with the Employer; any organization (whether or not incorporated) which is a member of an affiliated service group (as defined in Section 414(m) of the Code) which includes the Employer; and any other entity required to be aggregated with the Employer pursuant to regulations under Section 414(o) of the Code.

2.03 Association.

Association means the Northern Ohio Painting and Taping Contractors Association, Inc., and any successor thereof.

2.04 Beneficiary.

Beneficiary means a Participant's Spouse, unless such Spouse has consented in writing to a non-Spouse Beneficiary, such consent acknowledges the effect thereof, and is witnessed by a representative of the Plan or by a notary public. Such consent is only effective with respect to the Spouse who signs it.

In the event the Participant does not have a Spouse, or if he/she does, the Spouse consents to a non-Spouse Beneficiary (as provided herein), then the Beneficiary shall be the person designated by the Participant on a form that is on file at the Fund Administrative Office at the time of the Participant's death or by the terms of the Plan. The Beneficiary (Spouse or non-Spouse) shall be

entitled to receive benefits which may be payable upon or after the Employee's death. To the extent the rights of an Employee are stated or limited by the terms of this instrument, the Beneficiary shall be deemed bound thereby. If the Participant is not married and does not designate a Beneficiary on a form that is on file at the Fund Administrative Office at the time of the Participant's death, the Beneficiary shall be that person so designated in accordance with Section 6.09.

2.05 Board of Trustees or Trustees.

Board of Trustees or Trustees means the entity comprised of the Union Trustees and the Employer Trustees appointed pursuant to the terms of the Trust Agreement, and their successors.

2.06 Children.

Children mean a Participant's biological or legally adopted children and do not include step-children or foster children.

2.07 Code.

Code shall mean the Internal Revenue Code of 1986 and amendments thereto.

2.08 Collective Bargaining Agreement.

Collective Bargaining Agreement means any Collective Bargaining Agreement existing between an Employer and the Union which provides for contributions to the Trust Fund, as well as any extension or extensions, renewal or renewals of any such Collective Bargaining Agreement, or any new Collective Bargaining Agreement which provides for contributions to the Trust Fund.

2.09 Compensation.

Compensation means the total wages or salary, overtime, commissions, bonuses, and any other taxable remuneration earned while a Participant from the Employer and actually paid during the Limitation Year as further defined in Article X, Section 10.13(B). The annual Compensation of a Participant which may be taken into account under the Plan for any year shall not exceed \$200,000, as adjusted under Code Section 415(d). Annual compensation means compensation during the Plan Year or such other consecutive 12-month period over which compensation is otherwise determined under the Plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to Annual Compensation for the determination period that begins with or within such calendar year. If a determination period consists of fewer than twelve (12) months, the Compensation limit is an amount equal to the otherwise applicable Compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is twelve (12).

2.10 Corporate Trustee.

Corporate Trustee means the bank, trust company or other financial institution as may be designated by the Trustees to hold the property of the Trust Fund.

2.11 Covered Employment.

Covered Employment means employment under the jurisdiction of the Union for which an Employer is obligated by his Collective Bargaining Agreement with the Union or by any other separate written agreement approved by the Board of Trustees to contribute to the Fund, either individually or as a member of the Association. For the purpose of this Plan and subject to the approval of the Board of Trustees, employment as an officer or employee (not represented by a collective bargaining agent other than the Union) of the Union, the Fund Office, and the office of any welfare fund covering persons represented by the Union shall be considered Covered Employment provided contributions are made to the Fund on behalf of such persons at the same rate required of all other Employers and in accordance with applicable provisions of the Code regarding participation in a tax-qualified and tax-exempt pension plan.

2.12 Credit Account.

Credit Account means the account created and maintained for accounting purposes for each Participant by the Trustees, to which shall be credited the amount contributed by the Employer on behalf of such Employee, and earnings, losses or expenses thereon, plus any Employee contributions permitted herein.

2.13 Defined Contribution Dollar Limitation.

"Defined Contribution Dollar Limitation" shall mean the dollar amount set forth in Code Section 415(c)(1)(A), subject to cost-of-living adjustments under Code Section 415(d).

2.14 Effective Date.

The Effective Date of this amended and restated Plan is January 1, 2014. The Plan's original effective date was May 1, 1986, as thereafter last restated effective January 1, 2009.

2.15 Employee.

Employee means and includes members of a collective bargaining unit represented by the Union who are eligible to participate in and receive the benefits of the Plan in accordance with this instrument. In addition, Employee means and includes full-time, regular Employees of:

- (A) the Trustees, the Union, any apprenticeship program or any other organization affiliated with the Union which has been approved by the Board of Trustees in their sole discretion, and any apprenticeship training program provided for in a Collective Bargaining Agreement between an Employer and the Union; and

- (B) an Employer who desires to make contributions to the Plan on behalf of its Non-Bargained Employees, even though such are not working under the terms of the Collective Bargaining Agreement; and
- (C) persons employed by an Employer who are not members of a Union collective bargaining unit, but only if: (1) they are eligible as "alumni" employees pursuant to the applicable "alumni coverage" provisions of the Internal Revenue Code, and (2) the Employer executes a written Participation Agreement which binds the Employer to the terms of the Plan and applicable Rules and Regulations promulgated therein. The Trustees shall have sole and absolute discretion in determining whether or not to enter into a written Participation Agreement with any Employer with respect to coverage of its "alumni" employees; and
- (D) leased employees, which means any person (other than an employee of the recipient) who pursuant to an agreement between the recipient and any other person ("leasing organization") has performed services for the recipient (or for the recipient and related persons determined in accordance with 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 primary direction or control by the recipient. Contributions or benefits provided a leased employee by the leasing organization which are attributable to services performed for the recipient employer shall be treated as provided by the recipient employer. Notwithstanding the foregoing, if such leased employees constitute less than twenty percent of the Employer's non-highly compensated workforce within the meaning of Section 414(n)(5)(C)(ii) of the Code, the term "Employee" shall not include those leased employees covered by a Plan described in Section 414(n)(5) of the Code unless otherwise provided by the terms of the Plan other than this amendment.

An Employee shall not be ineligible to participate in the benefits of the Fund because of his participation in a labor dispute or because of his absence from work due to such labor dispute or due to his being locked out by his Employer. Employee shall also mean any Employee of the Employer maintaining the Plan or of any other Employer required to be aggregated with such Employer under sections 414(b), (c), (m) or (o) of the Code.

2.16 Employee Contributions.

Employee Contributions shall mean contributions to the Plan made by a Participant during the Plan Year. This Plan prohibits Employee Contributions.

2.17 Employer. Employer and/or Affiliated Employer means:

- A. Any individual, firm, association, partnership or corporation which is a member of the Association and/or is represented in collective bargaining by the Association and

which is bound by the Collective Bargaining Agreement with the Union and in accordance therewith agrees to contribute to the Trust Fund; and

- B. Any individual, firm, association, partnership or corporation which is not a member of nor represented in collective bargaining by the Association, but which has duly executed and/or is bound by the Collective Bargaining Agreement with the Union or is subject to any other separate written agreement approved by the Board of Trustees and in accordance therewith agrees to participate in and contribute to the Trust Fund; and
- C. The Union and any apprenticeship program or other organization affiliated with the Union, to the extent and solely to the extent, that it acts in the capacity of an Employer of its Employees on whose behalf it makes contributions to the Trust Fund in accordance with the Collective Bargaining Agreement or other written agreement; and
- D. The Board of Trustees of the Plan, to the extent and solely to the extent, that they act in the capacity of an Employer of their Employees on whose behalf they make contributions to the Fund in accordance with the Collective Bargaining Agreement or other written agreement; and
- E. An entity that establishes or maintains the Plan; and
- F. Any other organization which has adopted the Plan with the consent of such establishing employer;
- G. Any successor of such employer; and
- H. Any entity which signs a participation agreement with the Plan that is acceptable to the Board of Trustees.

The Employers, as defined herein, shall, by making payment to the Fund pursuant to the Collective Bargaining Agreement or other written agreement, be conclusively deemed to have accepted and be bound by the terms of this Plan and its Associated Agreement and Declaration of Trust.

Notwithstanding any contrary provision in this Plan, all Employers subject to the terms of this Plan shall be considered to be members of the Building and Construction Industry for the purposes of this Plan.

2.18 Employer Contribution.

Employer contribution means any payment by an Employer to the Fund.

2.19 ERISA.

ERISA means the Employee Retirement Income Security Act of 1974, as amended.

2.20 Former Participant.

Former Participant means a person whose participation in the Plan has ceased under Section 3.02, or a person (other than a Beneficiary) who is receiving a benefit from the Plan.

2.21 Fund or Trust Fund.

Fund or Trust Fund means the Painting Industry Annuity Fund and the entire assets thereof, including all funds received by the Trustees in the form of Employer contributions, together with all contracts (including dividends, interest, refunds and other sums payable to the Trust Fund on account of such contracts), all investments, all income, increments, earnings and profits therefrom, and any and all other property or funds received and held by the Trustees under this Plan and the Trust Agreement.

2.22 Geographical Jurisdiction.

The Geographical Jurisdiction of the Plan shall include the state of Ohio, and any Standard Metropolitan Statistical Area which falls in part within such state.

2.23 Hardship.

Hardship means an immediate and heavy financial need of the Employee where such Employee lacks other available resources to relieve the need.

2.24 Highly Compensated Employee.

The term "Highly Compensated Employee" includes highly compensated active Employees and highly compensated former Employees of an Employer. Whether an individual is a Highly Compensated Employee is determined separately with respect to each Employer, based solely on that individual's compensation form or status with respect to that Employer. The term "Highly Compensated Employee" means any Employee who: (1) was a 5-percent owner at any time during the year or the preceding year, or (2) for the preceding year had compensation from the Employer in excess of \$80,000 and, if the Employer so elects, was in the top-paid group for the preceding year. A highly compensated former Employee is an Employee who separated from service, or was deemed to have separated, before the determination year, performs no service for the Employer during the determination year, and was a Highly Compensated Employee either for the separation year or for any determination year ending on or after the individual reaches age fifty-five (55). The \$80,000 amount is adjusted at the same time and in the same manner as under Section 415(d), except that the base period is the calendar quarter ending September 30, 1996. For this purpose the applicable year of the Plan for which a determination is being made is called a determination year and the preceding 12-month period is called a look-back year. The determination of who is a Highly Compensated

Employee, including the determinations of the number and identity of Employees in the top-paid group, the number of Employees treated as owners, and the compensation that is considered, will be made in accordance with Code Section 414(q) and regulations thereunder.

2.25 Hours of Work.

Hours of Work means:

- A. Each hour for which an Employee is paid or entitled to payment, regardless of the rate of pay, for the performance of duties in Covered Employment during the Plan Year; and
- B. Each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to for the performance of duties in Covered Employment, to the extent that such award or agreement is intended to compensate an Employee for periods during which the Employee would have been engaged in the performance of duties in Covered Employment.

The crediting of such Hours of Work shall be on a basis consistent with Department of Labor Regulation Section 2530.200(b)-2(b) and Section 2530.200(b)-2(c), the provisions of which are hereby incorporated by reference.

If the Board of Trustees enters into a reciprocity agreement, any money and hours transferred to the Fund under such reciprocity agreement shall be credited to the Participant's Credit Account. Any money and hours transferred from the Fund in accordance with such reciprocity agreement shall be removed from the records of the Fund and shall no longer be credited for the purpose of determining the value of the Participant's Credit Account.

2.26 Inactive Participant.

Inactive Participant shall mean any Employee or former Employee who has ceased to be a Participant and on whose behalf an account is maintained under the Plan.

2.27 Insurance Company.

Insurance Company means the insurance company or companies or any combination thereof selected as a medium for funding the Plan.

2.28 Joint and Survivor Annuity.

Joint and Survivor Annuity means an immediate annuity for the life of the Participant with a survivor annuity for the life of the Spouse which provides (1) monthly payments to the Participant for life, and (2) monthly payments for the life expectancy of the Spouse to whom the Former Participant was married at the time payments to the Former Participant commenced in an amount

equal to one-half of the amount that was being paid to the Former Participant provided the Spouse survives the Former Participant.

2.29 Limitation Year.

Limitation Year shall mean the Plan Year.

2.30 Named Fiduciary.

Named Fiduciary means the Trustees.

2.31 Normal Retirement Age.

Normal Retirement Age shall mean the date a Participant attains age fifty-five (55).

2.32 Normal Retirement Date.

Normal Retirement Date shall mean the first day of the month coincident with or next following the month in which a Participant attains age fifty-five (55).

2.33 Non-Covered Employment.

Non-covered Employment means employment for which contributions by an Employer to the Fund are not required by either the terms of a Collective Bargaining Agreement or by the terms of any other written agreement which otherwise provides for participation in the Plan.

2.34 Participant.

Participant means an Employee who meets the eligibility requirements set forth in Article III of this instrument, and who has not ceased participation pursuant thereto.

2.35 Pensioner.

Pensioner means a person (other than a Beneficiary) who is receiving retirement benefits hereunder.

2.36 Plan.

Plan means the Painting Industry Profit Sharing Annuity Plan, as amended and restated.

2.37 Plan Year.

Plan Year means a twelve (12) month period beginning January 1 and ending the following December 31, or any other twelve (12) month period established by the Trustees.

2.38 Pre-Retirement Survivor Annuity.

Pre-Retirement survivor annuity means a survivor annuity for the life of the surviving Spouse of the Participant upon death prior to the earliest retirement age of the value of the Participant's Credit Account. The annuity to be provided to the surviving Spouse of a Participant who dies before the annuity starting date shall be an annuity for the life of the surviving Spouse the actuarial equivalent of which is not less than 50 percent of the portion of the account balance of the Participant (as of the date of death) to which the Participant had a nonforfeitable right (within the meaning of Code Section 411(a)).

2.39 Qualified Domestic Relations Order.

Qualified Domestic Relations Order means such order that is determined to be a Qualified Domestic Relations Order as defined in Section 414(p) of the Code, or any domestic relations order entered before January 1, 1985, and which may include any judgment, decree or order (including approval of a property settlement agreement) which relates to the provision of Child support, alimony payments or marital property rights to a Spouse, former Spouse, Child or other dependent of a Participant or Former Participant, and which is made pursuant to a state domestic relations law (including a community property law).

2.40 Retirement or Retire.

Retirement or Retire means termination of employment (as defined by the Trustees) after attaining retirement age for any cause other than death. Termination of employment, as used herein, means the Participant does not engage in any work within the trade jurisdiction (including, but not limited to, related supervisory activities) as defined in the current Constitution of the International Union of Painters and Allied Trades and/or the applicable Collective Bargaining Agreement within the Geographical Jurisdiction of the Union, as defined in Section 2.22. The Trustees have the sole discretion to make all determinations of whether a Participant has retired.

2.41 Spouse.

"Spouse" or "spouse" means, with respect to any Participant, that person, if any, who—

- A. is recognized as legally married to the Participant by a domestic or foreign jurisdiction whose laws authorized the marriage at the time the Participant and such person entered into the marital relationship; and
- B. has not been declared legally separated from the Participant by any judicial order.

The term "Spouse" or "spouse" may include a person of the opposite or same gender as the Participant. The former spouse of a Participant shall be treated as a "Spouse" under the Plan only if and to the extent required under a Qualified Domestic Relations Order, as described in this Plan.

2.42 Temporary Absence.

Temporary Absence means the absence of a Participant because of active service in the Armed Forces of the United States of America in time of war or national emergency or because of the provisions of any compulsory service law. In the event such Employee does not return to the service of the Employer prior to the expiration of reemployment rights which are guaranteed by law, service shall be deemed to have terminated upon entry into the Armed Forces; provided, however, that if the Employee does not return to the service of the Employer as a result of death or disability sustained while in active service, then service shall be deemed to have terminated on the date the Employee sustains such death or disability.

2.43 Total and Permanent Disability.

Total and Permanent Disability means a disability caused by accident or illness which, in the sole discretion of the Board of Trustees, based upon medical evidence, has lasted or can be expected to last for a continuous period of not less than twelve (12) months and prevents such Participant from performing duties as an Employee.

A Participant will not be considered to be totally and permanently disabled if the Participant's illness is the result of: Alcoholism; Addiction to narcotics; Commission of a felony; Service in the Armed Forces of any country; or an intentionally self-inflicted injury.

Before a Participant is eligible to receive a Total and Permanent Disability Retirement Benefit, the Participant must satisfy the following conditions:

- A. The Participant must be permanently and totally disabled; and
- B. The Participant must be in Covered Employment at the time of the Participant's Total and Permanent Disability; and
- C. The Participant must be receiving disability income from Social Security.

For purposes of Item B, above, a Participant is considered to be in Covered Employment at the time of the Participant's Total and Permanent Disability if the Participant is in Covered Employment at any time during the 24 months which precedes the Participant's Total and Permanent Disability.

The Trustees have the sole discretion to make all determinations of whether a Participant qualifies for a Total and Permanent Disability Retirement Benefit. In making their decision, the Trustees may request that a physician or physicians examine the Participant at any reasonable time and place. The cost of the examination or examinations will be paid by the Plan. If the Trustees approve a Participant's application for disability benefits, the Trustees may require the disabled Participant to be examined at any time (but not more than twice a year) to determine whether the Participant continues to meet the Plan's Total and Permanent Disability requirements.

2.44 Trust Agreement.

Trust Agreement means the Agreement and Declaration of Trust of the Painting Industry Annuity Fund dated May 1, 1986, as said Trust Agreement may from time to time be amended.

2.45 Trustee.

Trustee means any natural person designated as a Trustee pursuant to the provisions of the separate Trust Agreement or his successor or successors.

2.46 Union.

Union means the International Union of Painters and Allied Trades, District Council No. 6, Cleveland, Ohio, the affiliated local unions and their successors.

2.47 Vested Participant.

Vested Participant means a person who has completed at least one (1) Hour of Work in a Plan Year and who has a balance in the Credit Account.

2.48 Miscellaneous.

The use of the masculine shall include the feminine where applicable, and the use of the singular shall include the plural where applicable. The words "and" and "or" are employed in the conjunctive and disjunctive senses, respectively, except where a contrary intention clearly appears from the context. The words "hereby," "herein," "hereof" and "hereunder" and any compounds thereof, shall be construed as referring to this Plan generally and not merely to the particular articles, sections and paragraphs in which they appear, unless otherwise required by the context.

ARTICLE III - ELIGIBILITY FOR PARTICIPATION

3.01 Time of Participation.

Each Employee on whose behalf the Employer is required to contribute to the Fund pursuant to the Collective Bargaining Agreement or other written agreement shall become a Participant as of the first day of the Plan Year in which the Employee completes one (1) Hour of Work in Covered Employment during the Plan Year.

3.02 Cessation of Participation.

A Participant shall cease participation in the Plan on the earliest of the following: when such person dies, Retires, becomes Totally and Permanently Disabled, Terminates Employment, or when the Participant no longer has a balance in the Credit Account.

3.03 Reemployed Participant.

If an Employee satisfies the participation requirements of Section 3.01, terminates Covered Employment with an Employer, and is later reemployed in Covered Employment by an Employer, the Employee will become a Participant when so reemployed, as of the first day on which the Employee completes one (1) Hour of Work in Covered Employment, notwithstanding that the Employee may have received the balance in his or her Credit Account as a result of such prior termination.

3.04 Full and Immediate Vesting.

All rights title and interest in the Credit Account balance shall be immediately and fully vested in the Participant for whom the Credit Account is established, subject to any necessary adjustments for investment losses, expenses, benefit payments under a Qualified Domestic Relations Order or as otherwise provided herein or required by law. This shall not preclude the elimination of the Credit Account in the event the value of the Credit Account at the beginning of a valuation date is such that the subtraction of expenses in accordance with the terms of the Plan reduces the Credit Account balance to zero.

ARTICLE IV - RETIREMENT DATE

4.01 Normal Retirement Date.

The Normal Retirement Date of a Participant shall be the first day of the month coincident with or next following the month in which such person attains age fifty-five (55).

4.02 Normal Retirement Age.

The Normal Retirement Age of a participant shall be the date such person attains age fifty-five (55).

ARTICLE V - CONTRIBUTION

5.01 Employer Contributions.

Contributions to the Trust Fund by an Employer shall be made pursuant to the terms of the applicable Collective Bargaining Agreement or other written participation agreement, and by the Trust Agreement.

5.02 Irrevocability of Employer Contribution.

Employer Contributions shall be irrevocable and shall be used for the purposes set forth in Section 1.02; provided, however, that if an Employer makes an Employer Contribution due to a

mistake of fact or law, as determined by the Board of Trustees, in accordance with Code Section 401(a)(2) and ERISA Section 403(c)(2)(A)(ii), such Employer Contribution may be returned within six (6) months after the Board of Trustees determines that the contribution was made by a mistake of fact or law.

The maximum amount that may be returned to the Employer in the case of a mistake of fact or law is the excess of:

- A. the amount contributed over
- B. the amount that would have been contributed had no mistake of fact or law occurred.

Earnings attributable to the excess contribution may not be returned to the Employer, but losses attributable thereto must reduce the amount to be so returned. Furthermore, if the withdrawal of the amount attributable to the mistaken contribution would cause the balance of the individual account of any Participant to be reduced to less than the balance which would have been in the account had the mistaken amount not been contributed, then the amount to be returned to the Employer must be limited so as to avoid such reduction in accordance with Internal Revenue Service Revenue Ruling 91-4.

5.03 Payments in Discharge of Obligation.

Payments by the Employer computed in accordance with the Collective Bargaining Agreement or other written agreement shall be in complete discharge of the Employer's financial obligation to the Plan. The Association, the Employers, the Union and any of their representatives shall never be liable to anyone in the event the Fund created by the contributions is insufficient to provide any or all of the benefits described herein.

5.04 Administration of Assets.

The Board of Trustees shall hold and administer the assets of the Fund as a single trust fund until the interest of each Participant, Pensioner or Beneficiary shall be fully distributed as herein provided.

5.05 Trust Fund.

All Employer contributions, together with all income, gains, accumulations and losses therefrom, shall constitute the Fund and shall be held in trust for the exclusive benefit of all Participants, Pensioners and Beneficiaries.

5.06 Limitation on Annual Additions.

Any provision in this Plan to the contrary notwithstanding, the Annual Addition to the Credit Account of a Participant in any Limitation Year may not exceed the limit set forth in Article X.

5.07 Crediting of Contribution.

The Employer contributions shall be credited to the Credit Account of each Participant on whose behalf the contributions are made. However, although Participants will receive credit for purposes of vesting, Participants will not receive monetary credit for the amount of money that the Employer did not contribute since the Fund did not receive the money. Therefore, each Participant's Credit Account will only reflect the amount of contributions made by the Employer that have been received by the Fund. Nothing contained herein shall be construed as requiring the Board of Trustees to establish a separate trust for each Participant or to physically segregate the assets of the Fund on behalf of each Participant.

5.08 Valuation of Assets/Credit Accounts.

As of each Valuation Date of the Plan, the Board of Trustees shall revalue the total accumulated assets of the Fund and shall, after providing for payment of all reasonable and necessary expenses in the application of the Trust Fund, determine the amount of each Participant's Credit Account as follows:

- (a) the amount in the Credit Account as of the previous Valuation Date, plus
- (b) the contributions actually made on behalf of the Employee since the last Valuation Date, plus
- (c) any Rollover Contributions made by the Participant, plus
- (d) any repayment of amounts previously paid out to a Participant upon a Termination of Employment as defined in Section 6.05 and/or Plan loan and repaid by the Participant since the last Valuation Date, plus
- (e) the Participant's proportionate share of any investment earnings and increase in the fair market value of the Fund since the last Valuation Date, as determined in Section 5.09, minus
- (f) any withdrawals or payments made from the Participant's account since the last Valuation Date, minus
- (h) the Participant's proportionate share of any decrease in the fair market value of the Fund since the last Valuation Date, as determined in Section 5.09.

In addition, the Board of Trustees may, in its discretion, revalue the total accumulated assets of the Fund more frequently than annually, and, in such case, shall determine the amount of each Participant's Credit Account as of such intervening Valuation Date(s). The Trustees may elect to value a bond or other evidence of indebtedness which is held by the Fund and which is not in default as to principal or interest on an amortized basis running from initial cost at purchase to the amount

payable at maturity (or in the case of a bond which is callable prior to maturity, the earliest call date). Such election shall be made in accordance with regulations issued by the Secretary of the Treasury.

5.09 Allocation of Investment Earnings and Losses.

A Participant's share of investment earnings and any increase or decrease in the fair market value of the Fund shall be based on the proportionate value of all Credit Accounts (other than accounts with segregated investments) as of the last Valuation Date. All Employer Contributions will be credited with an allocation of investment earnings and gains and losses from the actual date of deposit of each such contribution until the end of the period. Accounts with segregated investments shall receive only the income or loss on such segregated investments.

5.10 Full value of the Participant's Credit Account.

- (A) Upon the happening of any event calling for the payment of any annuity, lump-sum amount or other benefit from this Plan, the amount to be paid, subject to the specific provisions of the following Sections, shall be the full value of the Participant's Credit Account determined as of the date of the event, as follows:
 - (i) The amount of the Participant's Credit Account, as determined in Section 5.08, minus
 - (ii) payment of the Participant's proportionate share of all reasonable and necessary expenses in the application of the Trust Fund.
- (B) For the purpose of determining the full value of the Participant's Credit Account pursuant to subsection (A), the happening of the event calling for the payment of a benefit shall be the first day of the month following the month in which the event occurred, provided an application is submitted.

5.11 Termination of Accounts.

A Credit Account shall be considered terminated in the month in which payment of the full value of the Participant's Credit Account is made, or commenced if on a monthly basis.

5.12 No Right to Assets.

The fact that Credit Accounts are established and valued as of each Valuation Date shall not give any Participant or others any right, title or interest in the Fund or its assets, or in the Credit Account, except upon the terms and conditions herein provided.

5.13 Delinquencies.

The Trustees shall have the power to demand, collect and receive Employers' contributions to the Trust Fund, including the right to commence legal proceedings in the name of the Trust Fund

or in that of any assignee, in a court of competent jurisdiction to collect the amount of said unpaid contributions, including interest thereon and all costs incurred in effecting said collection, including reasonable attorneys' fees. The Trustees are hereby given the power to add to the remittance of any Employer a reasonable late charge (liquidated damages), to be fixed by the rules and regulations promulgated by them or as may be provided in the applicable Collective Bargaining Agreement, for failure to make prompt payments to the Trust Fund and are hereby given the power to collect such charge when assessed in the same manner as they are given power to collect the contributions. The Union shall, on behalf of the Trust Fund, have the right to enforce the collection thereof against the Employer in the same manner as wages directly due from the Employer to Employees.

ARTICLE VI - BENEFITS

6.01 Normal Retirement.

When a Participant reaches the Normal Retirement Date and Retires, such person shall become entitled to the full value of the Credit Account.

6.02 Late Retirement.

In the event a Participant continues his employment past the Normal Retirement Date, such person shall continue to be an active Participant in the Plan and shall not be entitled to benefits from the Credit Account until actual retirement. However, the commencement of payment of a Participant's Accrued Benefit must begin by April 1 following the later of: (a) the calendar year in which the Participant attains the age of 70 ½; or (b) the calendar year in which the Participant Retires.

6.03 Benefits on Death.

Upon the death of a Participant or Former Participant, the full value of such person's Credit Account shall be paid to the Beneficiary of such Participant or Former Participant in accordance with Sections 6.06 through 6.10.

6.04 Total and Permanent Disability Benefits.

When it is determined that a Participant is totally and permanently disabled prior to the Normal Retirement Date, the Board of Trustees shall certify such fact to the Corporate Trustee or Insurance Company (if any); and such disabled Participant shall be entitled to receive the full value of the Credit Account. For the purpose of this section, "total and permanent disability" means a disability caused by accident or illness which, in the opinion of the Board of Trustees, based upon medical evidence, has lasted or can be expected to last for a continuous period of not less than twelve (12) months and prevents such Participant from performing duties as an Employee. In administering this section, the Board of Trustees shall treat like situations in a uniform and consistent manner to the end that there shall be no discrimination between Participants.

6.05 Other Termination of Employment.

If no Employer contributions (including those received pursuant to a reciprocity agreement) are made on behalf of a Participant or Former Participant for a period of twelve (12) consecutive months and if the Participant or Former Participant does not engage in any work within the trade jurisdiction (including, but not limited to, related supervisory activities) as defined in the current Constitution of the International Union of Painters and Allied Trades, AFL-CIO within the Geographical Jurisdiction of the Union, as that jurisdiction is defined herein and in the Collective Bargaining Agreement, and the Participant or Former Participant:

- A. has no right to any other form of benefit described in this Article VI, or
- B. has executed a written waiver of any rights he may have or claim to have pursuant to this Article VI,

he or she shall be entitled to a distribution (pursuant to Section 7.04) of the full value of his or her Credit Account.

If the value of a Former Participant's or Participant's vested account balance derived from Employer contributions exceeds \$1,000.00, and the account balance is immediately distributable, the Former Participant or Participant and the Former Participant's or Participant's Spouse (or where the Former Participant or Participant has died, or where the Former Participant's or Participant's Spouse has died, the survivor) must consent to any distribution of such account balance. The consent shall be based on provisions contained in Section 6.06(A).

6.06 Methods of Distributing Benefits.

A. Joint and Survivor Annuity and Pre-Retirement Annuity.

(1) Married Participants. A Participant or Former Participant who is married on the date the payment of benefits (other than benefits received pursuant to Section 6.05) begins shall receive benefits in the form of a Joint and Survivor Annuity. However, the Participant (or Former Participant) shall have a period of 180 days before benefit payments begin during which to waive the Joint and Survivor Annuity and to receive an optional form of benefit in accordance Subsection B of this section. Such election may be changed during the election period. The Participant or Former Participant shall make such request in writing and shall file it with the Board of Trustees at least (30) days before the distribution is to be made. No less than 30 days nor more than 180 days before the starting date of any payment of benefits under this section to the Participant (or Former Participant), the Plan Administrator shall provide the Participant (or Former Participant) with notification, in nontechnical terms, of the availability of a Joint and Survivor Annuity, and on request, with the dollar amount of the annuity payment with and without election. The written notification initially given to the Participant or Former Participant shall include a written explanation of (i) the terms and conditions of the Joint and Survivor Annuity, (ii) the Participant's (or Former Participant's) right to make, and the effect of, an election to waive the Joint and Survivor Annuity benefit, (iii) the rights of the Participant's Spouse (or Former Participant's Spouse) as to the election, and (iv) the rights to make, and the effect of, a revocation of such an election. A waiver of a qualified joint and survivor

annuity or a qualified pre-retirement survivor annuity shall not be effective unless: (a) the Participant's Spouse (or Former 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 Spousal consent (or the Spouse expressly permits designations by the Participant or Former Participant without any further Spousal consent); (c) the Spouse's consent acknowledges the effect of the action; and (d) the Spouse's consent is witnessed by a plan representative or notary public. Additionally, a Participant's (or Former 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 changed without Spousal consent (or the Spouse expressly permits designations by the Participant or Former 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.

(2) Restrictions on Spousal Consent to Waiver. Any consent by a Spouse obtained under this provision (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 designations by the Participant or Former Participant without any requirement of further consent by such Spouse must acknowledge that the Spouse has the right to limit consent to a specific beneficiary, and a specific form of benefit where applicable, and that the Spouse voluntarily elects to relinquish either or both of such rights. A revocation of a prior waiver may be made by a Participant or Former Participant without the consent of the Spouse at any time before the commencement of benefits. The number of revocations shall not be limited. No consent obtained under this provision shall be valid unless the Participant or Former Participant has received notice as provided in the first paragraph above of Section 6.06(A).

(3) Death of Married Participant before Commencement of Benefits. In the case of a Participant or Former Participant who dies before payment of benefits (other than benefits received pursuant to Section 6.05) begins and who is married at the date of death, the surviving Spouse shall receive benefits in the form of a Pre-Retirement Annuity. The surviving Spouse may direct the commencement of payments under the Qualified Pre-Retirement Survivor Annuity within a reasonable time after the Participant or Former Participant's death. However, the Participant or Former Participant may elect, subject to the consent of his or her Spouse, in accordance with the following procedures, not to receive a Pre-Retirement Survivor Annuity and receive an optional form of benefit in accordance with the provisions of subsection B of this Section. No later than the first day of the Plan Year in which the Participant or Former Participant attains the age of 32 and ending with the close of the Plan Year preceding the Plan Year in which the Participant or Former Participant attains the age of 35, a written explanation with respect to the Pre-Retirement Survivor Annuity comparable to that required for the Joint and Survivor Annuity shall be provided to the Participant or Former Participant. If an individual is not a Participant in the Plan during the time prescribed in the preceding sentence, the Participant shall be provided with the written explanation of the Pre-Retirement Survivor Annuity not later than the date he becomes a Participant in the Plan, in accordance with applicable Treasury Regulations. Beginning with the first day of the Plan Year in which the Participant attains the age of 35 and ending on the date of the Participant's death, the Participant shall have the right to election to decline the Pre-Retirement Survivor Annuity, subject to the consent of Spouse. The surviving Spouse may elect to have such annuity distributed within a reasonable period after the Participant's death.

(4) Procedures Relating to Spousal Consent. When "consent of Spouse" is required under this Section, the Spouse of the Participant or Former Participant must consent in writing to the applicable election and must acknowledge the effect of the election, and the consent and acknowledgment must be witnessed by a representative of the Plan or a notary public. The consent of the Spouse shall not be necessary if it is established to the satisfaction of the Board of Trustees that there is no Spouse, that the Spouse cannot reasonably be located, or for such other reasons as Treasury Regulations may prescribe. The consent of Spouse or reasons for not requiring such consent shall be applicable only to that Spouse and may not be revoked once benefits have begun. If a Spouse of a Participant (or Former Participant) becomes locatable or if a Participant (or Former Participant) marries or remarries, it shall be the duty of the Participant or Former Participant to bring that fact to the attention of the Board of Trustees. If the Participant or Former Participant so notifies the Board of Trustees, the Board shall then, if applicable, proceed to make available to such Spouse the consent of Spouse procedures described in this Section. Beginning with the first day of the Plan Year in which the Participant attains the age of 35 and ending on the date of the Participant's death, the Participant shall have the right to elect and to decline the Pre-Retirement Survivor Annuity at any time and any number of times, subject to the consent of Spouse.

(5) Special Rules Relating to the Written Explanation of the Qualified Joint and Survivor Annuity. The Plan may permit a Participant to elect (with any applicable spousal consent) to waive any requirement that the written explanation of the Qualified Joint and Survivor Annuity required by Code Section 417(a)(3) be provided at least 30 days before the annuity starting date (or to waive the 30-day requirement under Code Section 417(a)(7)(A)) if the distribution commences more than 7 days after such explanation is provided. The Small Business Job Protection Act of 1996 (SBJPA) codifies the provision in Regulation 1.417(e)-1T(b)(3) as Code Section 417(a)(7)(B). Furthermore, the SBJPA also enacted Code Section 417(a)(7)(A), which provides that the Plan may provide the written explanation after the annuity starting date, i.e., the Plan may have a retroactive annuity starting date, if the distribution commences at least 30 days after such written explanation was provided, subject to the same waiver of the 30-day minimum waiting period. This is intended to allow retroactive payments of benefits which are attributable to the period before the written explanation was provided. These provisions amend Code Section 417(a)(7) are effective with respect to Plan Years beginning after December 31, 1996.

B. Optional Form of Benefits.

In the event the Participant or Former Participant (and Spouse, if applicable) elect not to receive the Joint and Survivor Annuity or the Pre-Retirement Survivor Annuity, as the case may be, upon approval by the Board of Trustees, one of the following alternative forms of distribution shall be made to the Participant or Former Participant:

1. A lump sum distribution in cash or in kind, but limited to non-life annuities;
2. Substantially equal periodic installments (either monthly or annually) for a period not exceeding one of the following periods (or a combination thereof):
 - (a) Over a period not extending beyond the life expectancy of such Participant or Former Participant; or

- (b) Over a period not extending beyond the joint life and last survivor expectancy of such Participant or Former Participant and a designated Beneficiary.
- (3) a partial distribution of the Participant's Credit Account, not more frequently than once each calendar quarter, in such amount as the Participant may request before the Participant's Required Beginning Date (as defined in Section 6.07(A)).

If the Participant or Former Participant elects to receive benefits pursuant to option (1), the Plan Administrator shall notify such Participant or Former Participant that (a) the distribution will not be taxed currently to the extent transferred to another qualified pension plan or IRA, and (b) the transfer must be made within 60 days of receipt in order to qualify for this tax-free rollover treatment.

Notwithstanding the fact that the Pensioner is receiving an optional form of benefit, the Pensioner or the Pensioner's legal guardian may request that the Board of Trustees authorize accelerated payment of any amount up to the remaining balance of the Credit Account. Such request shall be in writing signed by the Pensioner or the legal guardian (as the case may be) and shall include the reason for the requested accelerated payment. The Board of Trustees, for good cause shown and upon due consideration, may authorize the accelerated payment of the requested amount up to the remaining balance of the Pensioner's Credit Account, provided, however, that in the event the Board of Trustees approves a requested amount which would reduce the balance in the Pensioner's Account to less than One Thousand Dollars (\$1,000.00), the Board of Trustees shall distribute the remaining balance in the Credit Account. Following such payment, the balance of the Pensioner's Credit Account shall be determined, and payments shall resume.

If the entire interest of a Former Participant is to be distributed in other than a lump sum or Joint and Survivor Annuity, the amount to be distributed each year must be at least an amount equal to the quotient obtained by dividing the Former Participant's entire interest by the life expectancy of the Former Participant or joint and last survivor expectancy of the Former Participant and a designated Beneficiary. (Life expectancy and joint and last survivor life expectancy shall be computed by use of the return multiples contained in the regulations to section 72 of the Code.) For purposes of this computation, a Former Participant's life expectancy may be recalculated no more frequently than annually, although the life expectancy of a non-Spouse beneficiary may not be recalculated. If the Former Participant's Spouse is not the designated beneficiary, the method of distribution selected must assure that at least 50 percent of the present value of the amount available for distribution is paid within the life expectancy of the Former Participant.

C. Involuntary Cashout of Benefits.

In the event a Participant incurs a break in service or does not work within the trade jurisdiction of the Union as that is defined in Article VI for a period of twelve (12) consecutive months, the Board of Trustees may, without the Participant's consent (and consent of the Spouse, if

applicable), pay the Participant the balance in the Participant's Credit Account if the value of the Participant's Credit Account derived from Employer contributions is \$1,000.00 or less.

Any such payment to a former Participant (or, in the case of a deceased Participant, to his surviving Spouse or other Beneficiary) shall be in complete discharge of any and all amounts otherwise payable under the Plan to or on behalf of such Participant. Notwithstanding the preceding, no such distribution that might otherwise be payable may be made after the Annuity Starting Date unless the Participant and the Participant's Spouse (or where the Participant has died, the surviving eligible Spouse) consent in writing.

If a Participant receives a distribution pursuant to this Section and the Participant resumes covered employment under the Plan, he or she shall have the right to restore his or her Employer-derived accrued benefit (including all optional forms of benefits and subsidies relating to such benefits), to the extent forfeited, upon the repayment to the Plan of the full amount of the distribution plus interest, compounded annually from the date of distribution at the actuarial assumed rate. Such repayment must be made before the five (5) years after the date on which the Participant is subsequently reemployed by the Employer. If an employee is deemed to receive a distribution pursuant to this Section, and the employee resumes employment covered under this Plan, upon the repayment of distributions and reemployment of such employee, the Employer-derived accrued benefit will be restored to the amount of such accrued benefit on the date of the deemed distribution.

In the event that the Board of Trustees pays out benefits under this Subsection (C), the Plan Administrator shall notify the Participant that (i) the distribution will not be taxed currently to the extent transferred to another qualified pension plan or IRA and (ii) the transfer must be made within 60 days of receipt in order to qualify for this tax-free rollover treatment.

6.07 Commencement of Benefits.

A. **Latest Date for Commencement of Benefits.** Unless the Participant elects otherwise, benefits shall commence no later than 60 days after the close of the Plan Year in which the latest of the following events occur:

- (1) The date such person attains the Normal Retirement Age, Retires and files an application for benefits; or
- (2) The 5th anniversary of the year in which such person commenced participation in the Plan, Retires and files an application for benefits; or
- (3) The date such person terminates service with the Employer (and any Affiliates) and files an application for benefits.

Notwithstanding the above paragraph, distributions can commence no later than the Required Beginning Date. The term "Required Beginning Date" means April 1 of the calendar year following the later of: (a) the calendar year in which the Participant attains age 70-1/2; or (b) the calendar year in which the Participant retires. However, subclause (b) shall not apply, except as provided in section 409(d), in the case of a Participant who is a 5-percent owner (as defined in section 416) with

respect to the plan year ending in the calendar year in which the Participant attains age 70 ½, or for purposes of section 408(a)(6) or (b)(3). In the case of a Participant to whom clause (b) applies who retires in a calendar year after the calendar year in which the Participant attains age 70 ½, the Participant's accrued benefit shall be actuarially increased to take into account the period after age 70 ½ in which the Participant was not receiving any benefits under the plan. For purposes of this paragraph the following shall apply: (1) the life expectancy of a Participant and the Participant's Spouse (other than in the case of a life annuity) may be redetermined but not more frequently than annually; (2) the term "designated beneficiary" means any individual designated as a Beneficiary by the Employee; (3) under regulations prescribed by the Secretary any amount paid to a Child shall be treated as if it had been paid to the surviving Spouse if such amount will become payable to the surviving Spouse upon such Child reaching majority (or other designated event permitted under regulations); and (4) any distribution required under the incidental death benefit requirements of the Code shall be treated as a distribution required under this paragraph.

If the amount of the payment required to commence such date cannot be ascertained by such date, or if it is not possible to make payment by such date because the Plan Administrator may be unable to locate the Participant after making a reasonable effort to do so, a payment retroactive to the latest date for commencement of benefits may be made no later than 60 days after the earliest date on which the amount of such payment can be ascertained under the Plan or the date on which the Participant is located, whichever is applicable. All distributions required under this Article shall be determined and made in accordance with the Proposed Regulations under Section 401(a)(9), including the minimum distribution incidental benefit requirement of Section 1.401(a)(9)-2, of the proposed regulations.

With respect to distributions under the Plan made for calendar years beginning on or after January 1, 2001, the Plan will apply the minimum distribution requirements of Section 401(a)(9) of the Internal Revenue Code in accordance with the regulations under Section 401(a)(9), final Treasury regulation sections 1.401(a)(9)-1 through 1.401(a)(9)-9, notwithstanding any provision of the Plan to the contrary. Participants who attained the age 70½ prior to January 1, 1999, have the option to commence distributions of their benefits no later than April 1 following: (a) the calendar year in which the Participant attains age 70-1/2; or (b) the calendar year in which the Participant retires.

B. Distribution Beginning Before Death. If the Participant dies after distribution of his or her interest has begun, the remaining portion of such interest will continue to be distributed at least as rapidly as under the method of distribution being used prior to the Participant's death.

C. Distribution Beginning After Death. If the Participant dies before distribution of his or her interest begins, distribution of the Participant's entire interest shall be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death except to the extent that an election is made to receive distributions in accordance with (i) or (ii) below:

- (1) If any portion of the Participant's interest is payable to a designated beneficiary, distributions may be made in substantially equal installments over the life or over a period certain not greater than the life expectancy of the designated beneficiary commencing on or before December 31 of the

calendar year immediately following the calendar year in which the Participant died; or

- (2) if the designated beneficiary is the Participant's surviving Spouse, the date distributions are required to begin in accordance with (i) above shall not be earlier than the date on which the Participant would have attained age 70 ½, and, if the Spouse dies before payments begin, subsequent distributions shall be made as if the Spouse had been the Participant.

The election under (i) or (ii) above must be made no later than the earlier of the end of the calendar year in which distribution would be required to commence under Code Section 401(a)(9)(B)(iii) and (iv) or the end of the calendar year which contains the fifth anniversary of the date of death of the Participant. The election must be irrevocable with respect to the beneficiary (and all subsequent beneficiaries) and must apply to all subsequent calendar years.

Payments will be calculated by use of the return multiples specified in section 1.72-9 of the Internal Revenue Service regulations. Life expectancy of a surviving Spouse may be recalculated annually, however, in the case of any other designated beneficiary, such life expectancy will be calculated at the time payment first commences without further recalculation.

D. Minimum Distributions Beginning Calendar Year 2003. The provisions of this Section 6.07(D) will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year. The requirements of Section 6.07(D), 6.07(E), 6.07(F), 6.07(G), 6.07(H), 6.07(I) and 6.07(J) will take precedence over any inconsistent provisions of the Plan.

(1) **Precedence.** The Requirements of this article will take precedence over any inconsistent provisions of the Plan.

(2) **Requirements of Treasury Regulations Incorporated.** All distributions required under this Section 6.07 will be determined and made in accordance with the Treasury regulations under section 401(a)(9) of the Internal Revenue Code.

(3) **TEFRA Section 242(b)(2) Elections.** Notwithstanding the other provisions of this article, 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.

E. Time and Manner of Distribution. 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.

(1) **Death of Participant Before Distributions Begin.** If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

(a) If the Participant's surviving Spouse is the Participant's sole designated Beneficiary, then, except as provided elsewhere in this Plan, distributions to the surviving Spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70 $\frac{1}{2}$, if later.

(b) If the Participant's surviving Spouse is not the Participant's sole designated Beneficiary, then, except as provided in the adoption agreement, distributions to the designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(c) If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(d) If the Participant's surviving Spouse is the Participant's sole designated Beneficiary and the surviving Spouse dies after the Participant but before distributions to the surviving Spouse begin, this Section 6.07(E)(1), other than Section 6.07(E)(1)(a), will apply as if the surviving Spouse were the Participant.

For purposes of this Section 6.07(E)(1) and Section 6.07(G), unless Section 6.07(E)(1)(d) applies, distributions are considered to begin on the Participant's required beginning date. If Section 6.07(E)(1)(d) applies, distributions are considered to begin on the date distributions are required to begin to the surviving Spouse under Section 6.07(E)(1)(a). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant on or before the Participant's required beginning date (or to the Participant's surviving Spouse before the date distributions are required to begin to the surviving Spouse under Section 6.07(E)(1)(a)), the date distributions are considered to begin is the date distributions actually commence.

(2) **Forms of Distribution.** Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with Sections 6.07(F) and 6.07(G). If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Code and Treasury regulations.

F. Required Minimum Distributions During Participant's Lifetime.

(1) **Amount of Required Minimum Distribution for Each Calendar Year.** During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

(a) the quotient obtained by dividing the Participant's account balance by the distribution period in the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the

Treasury regulations, using the Participant's age as of the Participant's birthday in the distribution calendar year; or

(b) if the Participant's sole designated Beneficiary for the distribution calendar year is the Participant's Spouse, the quotient obtained by dividing the Participant's account balance by the number in the Joint and Last Survivor Table set forth in section 1.401(a)(9)-9 of the Treasury regulations, using the Participant's and Spouse's attained ages as of the Participant's and Spouse's birthdays in the distribution calendar year.

(2) **Lifetime Required Minimum Distributions Continue Through Year of Participant's Death.** Required minimum distributions will be determined under this Section 6.07(F) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

G. Required Minimum Distributions After Participant's Death.

(1) **Death On or After Date Distributions Begin.**

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

(i) 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.

(i) 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.

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

(b) **No Designated Beneficiary.** If the Participant dies on or after the date distributions begin and there is no designated Beneficiary as of September 30 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.**

(a) **Participant Survived by Designated Beneficiary.** Except as provided elsewhere in this Plan, 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 6.07(G)(1).

(b) **No Designated Beneficiary.** If the Participant dies before the date distributions begin and there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(c) **Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin.** If the Participant dies before the date distributions begin, the Participant's surviving Spouse is the Participant's sole designated beneficiary, and the surviving Spouse dies before distributions are required to begin to the surviving Spouse under Section 6.07(E)(1)(a), this Section 6.07(G)(2) will apply as if the surviving Spouse were the participant.

H. **Definitions.** For purposes of this Section 6.07, the following definitions apply:

(1) **Designated beneficiary.** The individual who is designated as the beneficiary under Section 6.09 of the Plan and is the designated beneficiary under Section 401(a)(9) of the Code and Section 1.401(a)(9)-1, Q&A-4, of the Treasury Regulations.

(2) **Distribution calendar year.** 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 6.07(E)(1). 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 31 of that distribution calendar year.

(3) **Life expectancy.** Life expectancy is computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury regulations.

(4) **Participant's Account Balance.** The 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 the 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.** The date specified in Section 6.07(A) of the Plan.

I. **Election to Apply 5-Year Rule to Distributions to Designated Beneficiaries.** If the Participant dies before distributions begin and there is a designated Beneficiary, distribution to the designated Beneficiary is not required to begin by the date specified in Section 6.07(E)(1) of the Plan, but the Participant's entire interest will be distributed to the designated Beneficiary by December 31 of the calendar year containing the fifth anniversary of the Participant's death. 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 either the Participant or the surviving Spouse begin this election will apply as if the surviving Spouse were the Participant.

J. **Election to Allow Participants or Beneficiaries to Elect 5-Year Rule.** Participants or Beneficiaries may elect on an individual basis whether the 5-year rule or the life expectancy rule in Sections 6.07(E)(1) and 6.07(G)(2) of the Plan applies to distributions after the death of a Participant who has a designated Beneficiary. The election must be made no later than the earlier of September 30 of the calendar year in which the distribution would be required to begin under Section 6.07(E)(1) of the Plan, or by September 30 of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, surviving Spouse's) death. If neither the Participant nor the Beneficiary makes an election under this paragraph, distributions will be made in accordance with Sections 6.07(E)(1) and 6.07(G)(2) of the Plan and, if applicable, the elections in Section 6.07(I) above.

K. **Special Rule for 2009 RMDs.** Notwithstanding Sections Section 6.07(D), 6.07(E), 6.07(F), 6.07(G), 6.07(H), 6.07(I), and 6.07(J) of the plan, a participant or beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of section 401(a)(9)(H) of the Code ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2009 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the participant, the joint lives (or joint life expectancy) of the participant and the participant's designated beneficiary, or for a period of at least 10 years ("Extended 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. In addition, notwithstanding Article XV of the plan, a direct rollover will be offered only for distributions that would be eligible rollover distributions without regard to section 401(a)(9)(H).

6.08 Installment Payments.

In the event benefit payments are to be made in installments pursuant to Section 6.06 hereof, the Board of Trustees shall cause such person's Credit Account to be valued as of the date determined pursuant to Section 6.10. After the application has been approved by the Board of Trustees, the Board of Trustees shall cause such installment payments to commence on the date approved by the Board of Trustees and to continue until the Credit Account is exhausted.

Pro rata earnings shall be credited to the Credit Account from which installment payments are being made in the same manner as earnings are credited to other Credit Accounts unless such Accounts are segregated for investment purposes, in which case earnings shall be credited at the rate applicable to such separate Credit Accounts.

The Board of Trustees shall keep a separate account record for every person electing installment payments which indicates (a) the original (and thereafter, Plan Year beginning) account balance, less (b) periodic payments made during the Plan Year, plus (c) pro rata earnings credited to the Credit Account, and (d) the balance in the Credit Account on the last day of the Plan Year.

Installment payments shall cease when the balance in the Credit Account is reduced to zero. The Board of Trustees may authorize, in the event of the death of a Pensioner who is receiving installment payments, that any balance in the Credit Account may be paid to the Beneficiary in a lump sum.

6.09 Payment to Survivors.

Upon becoming a Participant, the Employee shall designate, on a form provided by the Trustees, the Beneficiary. If the Employee designates as a primary Beneficiary an entity or person other than (or in addition to) the person to whom the Participant or Former Participant is married at the date of the Participant's or Former Participant's death, such designation shall not be effective unless the person to whom the Participant or Former Participant is married at the date of the Participant's or Former Participant's death has consented in writing to such designation, such Spouse's consent acknowledges the effect of such designation, and such consent is witnessed by a representative of the Plan or by a notary public. The consent of such Spouse shall be irrevocable by such Spouse in connection with the beneficiary designation with respect to which such consent is given. (To the extent the designation of a non-Spouse beneficiary is not effective, the primary beneficiary shall be the Spouse to whom the Participant or Former Participant is married at the date of the Participant's or Former Participant's death.)

Death benefits shall be paid in accordance with the terms of a valid Beneficiary designation form completed by the Participant or Former Participant and filed with the Board of Trustees.

If no valid Beneficiary designation form has been filed with the Board of Trustees at the date of the death of the Participant or Former Participant (or if a deceased Participant or Former Participant is not survived by either a primary Beneficiary or a contingent Beneficiary), the death benefit shall be paid in the following order to:

- (a) The surviving Spouse of the Participant or Former Participant, or
- (b) If no surviving Spouse, to the Participant's surviving Children in equal shares, or
- (c) The estate of the Participant or Former Participant for distribution to such persons then living who would take the personal property of the Participant or Former Participant under the statutes of descent and distribution of the state of legal domicile of the Participant or Former Participant (at the time of such person's death).

If the Beneficiary is living at the death of the Participant or Former Participant but such person dies prior to receiving the death benefit, such death benefit shall be paid to the estate of such deceased Beneficiary in one lump sum. In any case, such lump sum shall be distributed within five years after the death of the Participant or Former Participant.

To the extent provided in a Qualified Domestic Relations Order, the former Spouse of a Participant or Former Participant shall be treated as such person's Spouse.

6.10 Application for and Valuation of Benefits.

A Participant, Former Participant, or Beneficiary who is entitled to benefits shall make an application in writing to the Board of Trustees for such benefits. If the application is approved by the Board of Trustees, the Board of Trustees shall value the Credit Account as of the last day of the prior month, and shall make payment as provided herein.

ARTICLE VII - DISTRIBUTIONS

7.01 Distributions Upon Retirement.

When a Participant retires on the Normal Retirement Date or Late Retirement Date, distribution of the benefits to which the Participant is entitled shall be made in accordance with rules and regulations of the Trustees, subject to Sections 6.06 through 6.10 hereof.

7.02 Distributions Upon Disability.

In the event a Participant becomes totally and permanently disabled in accordance with Section 6.04 hereof, the Participant shall be entitled to the value of his Credit Account as of the latter of (a) the date which is six (6) months following the date the total and permanent disability was incurred; or (b) the expiration of payments made to the totally and permanently disabled Participant from any wage continuation program maintained by the Union or the Participant's Employer. Such benefits shall continue until the earliest of (a) the date the Participant recovers from said total and permanent disability prior to the Normal Retirement Age; (b) the Participant's death; or (c) the date the Credit Account has been completely exhausted. Distribution of the benefits to which the totally and permanently disabled Participant is entitled shall be made in accordance with the rules and regulations of the Trustees, subject to Sections 6.06 through 6.10 hereof.

7.03 Death Benefits.

In the event of the death of a Participant or Pensioner, distribution of the benefits to which the Beneficiary is entitled (pursuant to Section 6.03) shall be made in accordance with the rules and regulations of the Trustees, subject to Sections 6.06 through 6.10 hereof.

7.04 Termination of Employment.

In the event of the termination of employment of a Participant under the circumstances described in Section 6.05 hereof, the distribution of the full value of the Credit Account shall be made in accordance with rules and regulations of the Trustees, subject to Sections 6.06 and 6.07 hereof. In addition, the administrative expenses incurred in the processing of this distribution of benefits shall be charged to the individual Participant's Credit Account.

7.05 Effect of Payment.

Any payment to any Participant or Former Participant or to the Participant's legal representative or Beneficiary in accordance with the provisions of this Plan shall, to the extent thereof, be in full satisfaction of all claims hereunder against the Trustees, the Corporate Trustee, Insurance Company, the Association, the Employers and the Union, any of whom may require such Participant or Former Participant, legal representative or Beneficiary as a condition precedent to such payment to execute a receipt and release therefor in such form as shall be determined by the Trustees, the Corporate Trustee, Insurance Company, the Association, the Employer or the Union, as the case may be.

ARTICLE VIII - INALIENABILITY OF BENEFITS

8.01 Generally.

No Participant or Former Participant shall have any right to pledge, hypothecate, anticipate, borrow from or in any way create a lien upon any part of the Fund. Except as herein provided, distributions to Participants or Former Participants, their Beneficiaries, heirs or legal representatives, excepting minors or persons under legal disability shall be made only to them and upon their personal receipts or endorsements; and no interest in the Fund or any part thereof shall be assignable in anticipation of payment either by voluntary or involuntary act or by operation of law or be liable in any way for the debts or defaults of any Participants or Former Participants, their Beneficiaries or heirs, whether to the Employer or to others.

Benefits may be paid to individuals other than the Participant or Former Participant, their Beneficiaries or heirs or legal representatives if such payment of benefits is required by a Qualified Domestic Relations Order or decree as that is defined in Section 2.39 of this Plan. However, such order shall not be considered a Qualified Domestic Relations Order if it requires the Plan to pay benefits not provided for under the Plan.

8.02 Distribution to Minors and Persons Under Disability.

Distributions to minors or persons under legal disability may be made by the Board of Trustees either (a) to any institution maintaining the individual; and/or (b) to the individual's Spouse, Children; and/or (c) any person whom the Trustees reasonably determine is caring for the individual or otherwise providing support and maintenance; and/or to the Beneficiary's parent or legal guardian as custodian for the Beneficiary under the Ohio Transfers to Minors Act. The Board of Trustees shall have no obligation or duty to see that the funds are used or applied for the purpose(s) for which paid and any payment so made shall be a complete discharge of any and all liability under the Plan with respect to such payment.

8.03 Vesting Schedule Amendments.

If the Plan's vesting schedule is amended, or the plan is amended in any way that directly or indirectly affects the computation of the Participant's nonforfeitable percentage or if the Plan is deemed amended by an automatic change to or from a top-heavy vesting schedule, each Participant with at least three (3) years of service with the Employer 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. For participants who do not have at least one (1) Hour of Work in any plan year beginning after December 31, 1988, the preceding sentence shall be applied by substituting "five (5) years of service" for "three (3) years of service" where such language appears.

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 written notice of the amendment is issued by the Board of Trustees.

An amendment to the Plan shall be evidenced by an instrument in writing signed by authorized members of the Board of Trustees.

8.04 No Decrease in Participant's Accrued Benefit.

No amendment to the Plan shall be effective to the extent that it has the effect of decreasing a Participant's accrued benefit. Notwithstanding the preceding sentence, a Participant's account balance may be reduced to the extent permitted under Section 412(c)(8) of the Code. For purposes of this paragraph, a plan amendment which has the effect of decreasing a Participant's account balance or eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment shall be treated as reducing an accrued benefit. Furthermore, if the vesting schedule of a plan is amended, in the case of an employee who is a Participant as of the later of the date such amendment is adopted or the date it becomes effective, the nonforfeitable percentage

(determined as of such date) of such employee's right to his employer-derived accrued benefit will not be less than his percentage computed under the plan without regard to such amendment.

8.05 Disposition of Annuity Contracts.

Any annuity contracts purchased pursuant to the provisions of Article VI shall be held in the Trust Fund or shall be distributed by the Board of Trustees, as directed by the Board of Trustees. However, no annuity contract shall be so distributed until it has been endorsed to preclude its transferability.

ARTICLE IX - PROVISIONS RELATING TO LEASED EMPLOYEES

9.01 Safe-Harbor.

Notwithstanding any other provisions of the Plan, for purposes of the pension requirements of Section 414(n)(3) of the Code, the employees of the Employer shall include individuals defined as Employee in Section 2.15 of this Plan.

9.02 Participation and Accrual.

A leased employee within the meaning of Section 414(n)(2) of the Code shall become a Participant in, or accrue benefits under, the Plan based on service as a leased employee only as provided in provisions of the Plan other than this Article IX.

9.03 Effective Date.

This Article IX shall be effective for services performed after December 31, 1986.

ARTICLE X - LIMITATION ON ALLOCATIONS

10.01 Amount of Annual Additions.

If the Participant does not participate in, and has never participated in another qualified plan maintained by the Employer or a welfare benefit fund maintained by the employer (as defined in Section 419(e) of the Code), under which amounts attributable to post-retirement medical benefits are allocated to separate accounts of key employees (as defined in Section 419(A)(d)(3), or an individual medical account, as defined in Section 415(1)(2) of the Internal Revenue Code, maintained by the employer, or a simplified employee pension, as defined in Section 408(k) of the Internal Revenue Code, maintained by the employer, which provides an Annual Addition as defined in Section 10.13, the amount of Annual Additions which may be credited to the Participant's account for any Limitation Year will not exceed the lesser of the maximum permissible amount or any other limitation contained in this Plan. If the Employer contribution that would otherwise be contributed or allocated to the Participant's account would cause the Annual Additions for the Limitation Year to

exceed the maximum permissible amount, the amount contributed or allocated will be reduced so that the Annual Additions for the Limitation Year will equal the maximum permissible amount.

10.02 Participant's Estimated Compensation.

Prior to determining the Participant's actual compensation for the Limitation Year, the Employer may determine the maximum permissible amount for a Participant on the basis of a reasonable estimation of the Participant's compensation for the Limitation Year, uniformly determined for all Participants similarly situated.

10.03 Participant's Actual Compensation.

As soon as is administratively feasible after the end of the Limitation Year, the maximum permissible amount for the Limitation Year will be determined on the basis of the Participant's actual compensation for the Limitation Year.

10.04 Disposal Of Excess Amounts.

If, pursuant to Section 10.03 or as a result of an allocation of forfeitures, there is an excess amount, the excess will be disposed of as follows:

- A. Any nondeductible voluntary employee contributions (plus attributable earnings), to the extent they would reduce the excess amount will be returned to the Participant;
- B. If, after the application of paragraph (A) an excess amount still exists, any elective deferrals (plus attributable earnings), to the extent they would reduce the excess amount, will be distributed to the participant;
- C. If, after the application of paragraph (B) an excess amount still exists, and the Participant is covered by the Plan at the end of a Limitation Year, the excess amount in the Participant's account will be used to reduce employer contributions (including any allocation of forfeitures) for such participant in the next Limitation Year, and each succeeding Limitation Year if necessary.
- D. If, after the application of paragraph (B) an excess amount still exists, and the Participant is not covered by the Plan at the end of a Limitation Year, the excess amount will be held unallocated in a suspense account. The suspense account will be applied to reduce future employer contributions for all remaining participants in the next Limitation Year, and each succeeding Limitation Year if necessary.
- E. If a suspense account is in existence at any time during a Limitation Year pursuant to this section, it will not participate in the allocation of investment gains and losses. If a suspense account is in existence at any time during a particular Limitation Year, all amounts in the suspense account must be allocated and reallocated to Participants' accounts before any Employer or Employee Contributions may be made to the Plan

for that Limitation Year. Excess amounts may not be distributed to Participants or former Participants.

10.05 Additional Defined Contribution Plans.

This section applies if, in addition to this Plan, the Participant is covered under another qualified defined contribution plan maintained by the Employer, a welfare benefit fund, as defined in Section 419(e) of the Code maintained by the Employer, or an individual medical account, as defined in Section 415(1)(2) of the Code, maintained by the Employer, or a simplified employee pension, as defined in Section 408(k) of the Internal Revenue Code, maintained by the employer, which provides an Annual Addition as defined in Section 10.13, during any Limitation Year. The Annual Additions which may be credited to a Participant's account under this Plan for any such Limitation Year will not exceed the maximum permissible amount reduced by the Annual Additions credited to a Participant's account under the other qualified defined contribution plans, welfare benefit funds, individual medical accounts, and simplified employee pensions for the same Limitation Year. If the Annual Additions with respect to the Participant under other qualified defined contribution plans, welfare benefit funds, individual medical accounts, and simplified employee pensions maintained by the Employer are less than the maximum permissible amount and the Employer contribution that would otherwise be contributed or allocated to the Participant's account under this Plan would cause the Annual Additions for the Limitation Year to exceed this limitation, the amount contributed or allocated will be reduced so that the Annual Additions under all such plans and funds for the Limitation Year will equal the maximum permissible amount. If the Annual Additions with respect to the Participant under such other qualified defined contribution plans, welfare benefit funds, individual medical accounts, and simplified employee pensions in the aggregate are equal to or greater than the maximum permissible amount, no amount will be contributed or allocated to the Participant's account under this Plan for the Limitation Year.

10.06 Employer May Estimate Compensation.

Prior to determining the Participant's actual compensation for the Limitation Year, the Employer may determine the maximum permissible amount for a Participant in the manner described in Section 10.02.

10.07 Determination Based On Actual Compensation.

As soon as is administratively feasible after the end of the Limitation Year, the maximum permissible amount for the Limitation Year will be determined on the basis of the Participant's actual compensation for the Limitation Year.

10.08 Excess Amounts From Annual Additions.

If, pursuant to Section 10.07 or as a result of the allocation of forfeitures, a Participant's Annual Additions under this Plan and such other plans would result in an excess amount for a Limitation Year, the excess amount will be deemed to consist of the Annual Additions last allocated, except that Annual Additions attributable to a simplified employee pension will be deemed to have

been allocated first, followed by Annual Additions to a welfare benefit fund or individual medical account, regardless of the actual allocation date.

10.09 Allocation Date Of Excess Amount.

If an excess amount was allocated to a Participant on an allocation date of this Plan which coincides with an allocation date of another plan, the excess amount attributed to this Plan will be the product of:

- A. The total excess amount allocated as of such date, times;
- B. The ratio of (i) Annual Additions allocated to the Participant for the Limitation Year as of such date under this Plan to (ii) the total Annual Additions allocated to the Participant for the Limitation Year as of such date under this and all other qualified defined contribution plans.

10.10 All Excess Amounts.

Any excess amount attributed to this Plan will be disposed in the manner described in Section 10.04.

10.11 Annual Additions To Master or Prototype Plans.

If the Participant is covered under another qualified defined contribution plan maintained by the Employer which is not a master or prototype plan, Annual Additions which may be credited to the Participant's account under this Plan for any Limitation Year will be limited in accordance with Sections 10.05 through 10.10 as though the other plan were a master or prototype plan unless the Employer provides other limitations in any other plan.

10.12 Additional Defined Benefit Plan.

If the Employer maintains, or at any time maintained, a qualified defined benefit plan covering any Participant in this Plan, the sum of the Participant's defined benefit plan fraction and defined contribution plan fraction will not exceed 1.0 in any Limitation Year. This Section 10.12 does not apply for Limitation Years beginning on or after January 1, 2000.

10.13 Definitions.

A. Annual Additions. The sum of the following amounts credited to a Participant's account for the Limitation Year:

- (1) Employer Contributions,
- (2) Employee Contributions,
- (3) Forfeitures, and

- (4) Amounts allocated, after March 31, 1984, to an individual medical account, as defined in Section 415(1)(2) of the Code, which is part of a pension or annuity plan maintained by the Employer are treated as Annual Additions to a defined contribution plan. Also amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after such date, which are attributable to post-retirement medical benefits, allocated to the separate account of a key employee, as defined in Section 419A(d)(3) of the Code, under a welfare benefit fund, as defined in Section 419(e) of the Code, maintained by the Employer are treated as Annual Additions to a defined contribution plan.
- (5) Allocations under a simplified employee pension.

For this purpose, any excess amount applied under Sections 10.04 or 10.10 in the Limitation Year to reduce Employer Contributions will be considered Annual Additions for such Limitation Year.

B. Compensation. For purposes of applying the limitations on Annual Additions under Article X, compensation means remuneration for the following types of services:

- (1) wages, salaries and fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer maintaining the Plan, to the extent that the amounts are includible in gross income (or to the extent such amounts would have been received and includible in gross income but for an election under Code Section 125(a), 132(f)(4), 402(e), 402(h)(1)(B), 402(k), or 457(b)), including, but not limited to, commissions paid to salespersons, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements or other expense allowances under a nonaccountable plan as described in Treasury Regulation Section 1.62-2(c); and
- (2) in the case of a self-employed individual within the meaning of Code Section 401(c)(1) and Treasury regulations promulgated under Code Section 401(c)(1), the Employee's earned income (as described in Code Section 401(c)(2) and Treasury regulations promulgated under Code Section 401(c)(2)), plus amounts deferred at the Employee's election that would be includible in gross income but for the rules of Code Section 402(e)(3), 402(h)(1)(B), 402(k), or 457(b).

For purposes of applying the limitations on Annual Additions under Article X, compensation shall not include the remuneration listed in (3) through (8) below:

- (3) contributions (other than elective contributions described in Code Section 402(e)(3), 408(k)(6), 408(p)(2)(A)(i), or 457(b)) made by the Employer

maintaining the Plan to a plan of deferred compensation (including a simplified employee pension described in Code Section 408(k) or a simple retirement account described in Code Section 408(p), and whether or not qualified) to the extent that such contributions are not includible in the Employee's gross income for the taxable year in which contributed;

- (4) any distributions from a plan of deferred compensation (whether or not qualified), regardless of whether such amounts are includible in the Employee's gross income when distributed;
- (5) amounts realized from the exercise of a non-qualified stock option, or when restricted stock (or property) held by the Employer maintaining the Plan either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;
- (6) amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option; and
- (7) other amounts that receive special tax benefits, such as premiums for group-term life insurance (but only to the extent that the premiums are not includible in the Employee's gross income and are not salary reduction amounts described in Code Section 125); and
- (8) other items of remuneration that are similar to items of remuneration listed in (3) through (7) above.

For purposes of this Section, compensation for the Limitation Year shall mean the compensation actually paid or made available to the Employee in gross income during such Limitation Year. An Employee's compensation shall be treated as paid on a date if it is actually paid on that date or it would have been paid on that date but for an election under Code Section 125, 132(f)(4), 401(k), 403(b), 408(k), 408(p)(2)(A)(i), or 457(b).

In the case of an Employee who is permanently and totally disabled (as defined in Code Section 22(e)(3)), the Employee's compensation shall be the compensation such Employee would have received for the Limitation Year if the Employee had been paid at the rate of compensation paid immediately before becoming permanently and totally disabled, if such imputed compensation is greater than the Employee's actual compensation without taking into account the Employee's imputed compensation attributable to total and permanent disability.

C. **Defined Benefit Fraction.** Defined Benefit Fraction means a fraction, the numerator of which is the sum of the Participant's projected annual benefits under all the defined benefit plans (whether or not terminated) maintained by the Employer, and the denominator of which is the lesser of 125 percent of the dollar limitation determined for the Limitation Year under Sections 415(b) and (d) of the Code or 140 percent of the highest average compensation, including any adjustments under Section 415(b) of the Code.

Notwithstanding the above, if the Participant was a Participant as of the first day of the first Limitation Year beginning after December 31, 1986, in one or more defined benefit plans maintained by the Employer which were in existence on May 6, 1986, the denominator of this fraction will not be less than 125 percent of the sum of the annual benefits under such plans which the Participant had accrued as of the close of the last Limitation Year beginning before January 1, 1987, disregarding any changes in the terms and conditions of the plan after May 5, 1986. The preceding sentence applies only if the defined benefit plans individually and in the aggregate satisfied the requirements of Section 415 for all Limitation Years beginning before January 1, 1987.

D. Defined Contribution Dollar Limitation. "Defined Contribution Dollar Limitation" shall mean the dollar amount set forth in Code Section 415(c)(1)(A), subject to cost-of-living adjustments under Code Section 415(d).

E. Defined Contribution Fraction. Defined Contribution Fraction means a fraction, the numerator of which is the sum of the Annual Additions to the Participant's account under all the defined contribution plans (whether or not terminated) maintained by the Employer for the current and all prior Limitation Years (including the Annual Additions attributable to the Participant's nondeductible Employee contributions to all defined benefit plans, whether or not terminated, maintained by the Employer, and the Annual Additions attributable to all welfare benefit funds, individual medical accounts, and simplified employee pensions maintained by the Employer), and the denominator of which is the sum of the maximum aggregate amounts for the current and all prior Limitation Years of service with the Employer (regardless of whether a defined contribution plan was maintained by the Employer). The maximum aggregate amount in any Limitation Year is the lesser of 125 percent of the dollar limitation determined under Sections 415(b) and (d) of the Code in effect under Section 415(c)(1)(A) of the Code or 35 percent of the Participant's compensation for such year.

If the Employee was a Participant as of the end of the first day of the first Limitation Year beginning after December 31, 1986, in one or more defined contribution plans maintained by the Employer which were in existence on May 6, 1986, the numerator of this fraction will be adjusted if the sum of this fraction and the defined benefit fraction would otherwise exceed 1.0 under the terms of this Plan. Under the adjustment, an amount equal to the product of (1) the excess of the sum of the fractions over 1.0 times (2) the denominator of this fraction, will be permanently subtracted from the numerator of this fraction. The adjustment is calculated using the fractions as they would be computed as of the end of the last Limitation Year beginning before January 1, 1987, and disregarding any changes in the terms and conditions of the Plan made after May 5, 1986, but using the Section 415 limitation applicable to the first Limitation Year beginning on or after January 1, 1987.

The annual addition for any Limitation Year beginning before January 1, 1987 shall not be recomputed to treat all Employee Contributions as Annual Additions.

F. Employer. For purposes of this Article, "Employer" shall mean the Employer that adopts this Plan, and all members of a controlled group of corporations (as defined in Section 414(b) of the Code as modified by section 415(h)), all commonly controlled trades or businesses (as defined in Section 414(c) as modified by Section 415(h)) or affiliated service groups (as defined in Section

414(m)) of which the adopting Employer is a part, and any other entity required to be aggregated with the Employer pursuant to regulations under Section 414(o) of the Code.

G. Excess Amount. Excess Amount means the excess of the Participant's Annual Additions for the Limitation Year over the maximum permissible amount.

H. Highest Average Compensation. Highest Average Compensation means the average compensation for the three consecutive years of service with the Employer that produces the highest average. A year of service with the Employer is the 12 consecutive month period defined in Section 2.37 of this Plan.

I. Limitation Year. Limitation Year, as defined in Section 2.29, shall mean the Plan Year as defined in Section 2.37 of this Plan. All qualified plans maintained by the employer must use the same Limitation Year. If the Limitation Year is amended to a different 12-consecutive month period, the new limitation year must begin on a date within the limitation year in which the amendment is made.

J. Master or Prototype Plan. Master or Prototype Plan means a plan the form of which is the subject of a favorable opinion letter from the Internal Revenue Service.

K. Maximum Permissible Amount. Maximum Permissible Amount means the maximum Annual Addition that may be contributed or allocated to a Participant's account under the Plan for any Limitation Year.

If a short Limitation Year is created because of an amendment changing the Limitation Year to a different 12 consecutive month period, the maximum permissible amount will not exceed the defined contribution dollar limitation multiplied by the following fraction:

$$\frac{\text{Number of months in the short Limitation Year}}{12}$$

L. Projected Annual Benefit. The Projected Annual Benefit means the annual retirement benefit (adjusted to an actuarially equivalent straight life annuity if such benefit is expressed in a form other than a straight life annuity) or qualified joint and survivor annuity) to which the Participant would be entitled under the terms of the Plan assuming:

- (1) The Participant will continue employment until normal retirement age under the Plan (or current age, if later), and
- (2) The Participant's compensation for the current Limitation Year and all other relevant factors used to determine benefits under the Plan will remain constant for all future Limitation Years.

10.14 Annual Compensation Limit.

In addition to other applicable limitations set forth in the Plan, and notwithstanding any other provision of the Plan to the contrary, for Plan years beginning on or after January 1, 1994, the annual compensation of each employee taken into account under the Plan shall not exceed the OBRA '93 annual compensation limit. The OBRA '93 annual compensation limit is \$150,000, as adjusted by the Commissioner for increases in the cost of living in accordance with section 401(a)(17)(B) of the Internal Revenue Code. The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the OBRA '93 annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

For plan years beginning on or after January 1, 1994, any reference in this plan to the limitation under section 401(a)(17) of the Code shall mean the OBRA '93 annual compensation limit set forth in this provision.

If compensation for any prior determination period is taken into account in determining an Employee's benefits accruing in the current plan year, the compensation for that prior determination period is subject to the OBRA '93 annual compensation limit in effect for that prior determination period. For this purpose, for determination periods beginning before the first day of the first plan year beginning on or after January 1, 1994, the OBRA '93 annual compensation limit is \$150,000.

The Annual Compensation of each Participant taken into account in determining allocations for any Plan Year beginning after December 31, 2001, shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with Section 401(a)(17)(B) of the Code. Annual compensation means compensation during the Plan Year or such other consecutive 12-month period over which compensation is otherwise determined under the Plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to Annual Compensation for the determination period that begins with or within such calendar year.

10.15 Changes To 415 Rules In SBJPA.

The Small Business Job Protection Act of 1996 (SBJPA) conformed the effective date of the interest rate and mortality assumptions that must be used under Code Section 415(b)(1)(A), as amended by the Retirement Protection Act of 1994 ("RPA") to calculate the defined benefit plan dollar limit to the effective date of the RPA provision relating to the calculation of lump-sum distributions (Code Section 417(e)(3)). Thus, this Plan may disregard the RPA-mandated interest rate and mortality assumptions for Code Section 415(b)(1)(A) purposes with respect to benefits accrued before the first Plan Year beginning after December 31, 1999.

The SBJPA repealed the RPA provision which required that if the benefit is payable before age 62 in a form subject to the requirements of Section 417(e)(3) (e.g., lump sum), the interest rate to be used to reduce the Section 415(b)(1)(A) dollar limit cannot be less than the greater of the rate on 30-year Treasury securities or the rate specified in the Plan. Thus, for distributions prior to age 62, regardless of the form of benefit, the interest rate to be used cannot be less than the greater of 5% or

the rate specified in the Plan. For distributions at or after age 62, the rule remains that the interest rate cannot be less than the greater of the rate on 30-year Treasury securities or the rate specified in the Plan. This change is effective as if included in the RPA.

The SBJPA amended Code Section 401(a)(5) to provide that for purposes of the general nondiscrimination rules of Code Section 401(a)(4), the Social Security retirement age as defined in Code Section 415 is a uniform retirement age and that subsidized early retirement benefits and joint and survivor annuities are not treated as not being available to employees on the same terms merely because they are based on an employee's Social Security retirement age (as defined in Code Section 415). This change applies to Plan Years beginning after December 31, 1996. See Code Section 401(a)(5)(F), as amended by P.L. 104-188, Section 1445(a).

The SBJPA repealed the "combined plan limit" of Code Section 415(e) effective with respect to limitation years beginning after December 31, 1999. See P.L. 104-188, Section 1452(a), repealing Code Section 415(e). In a conforming change, the SBJPA also repealed Code Section 416(h), which contained special limits on top-heavy plans that were based on the Code Section 415(e) limitation. Until the repeal of the combined plan limit is effective, the SBJPA suspends the Code Section 4980A 15% excise tax on excess distributions, effective with respect to distributions received in 1997, 1998, and 1999. However, the 15% additional estate tax on excess retirement accumulations continues to apply. See P.L. 104-188, Section 1452(b), adding Code Section 4980A(g). When the repeal of Code Section 415(e) becomes effective, the only limitations that will apply to contributions to defined benefit and defined contribution plans are Code Sections 415(b)(1)(B) and 415(b)(1)(C), respectively.

10.16 Changes To The 415 Rules/Limitations on Contributions In EGTRRA.

This section shall be effective for Limitation Years beginning after December 31, 2001.

- (1). Maximum Annual Addition. Except to the extent permitted under Section 10.17 of this Article X and Section 414(v) of the Code, if applicable, the Annual Addition that may be contributed or allocated to a Participant's account under the Plan for any Limitation Year shall not exceed the lesser of:
 - (a) \$40,000, as adjusted for increases in the cost-of-living under section 415(d) of the Code, or
 - (b) 100 percent of the Participant's Compensation, within the meaning of section 415(c)(3) of the Code, for the Limitation Year.

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

10.17 EGTRRA – Catch-Up Contributions.

This section shall apply to contributions after December 31, 2001. All Employees who are eligible to make elective deferrals under this Plan and who have attained age 50 before the close of the Plan Year shall be eligible to make catch-up contributions in accordance with, and subject to the limitations of, Section 414(v) of the Code. Such catch-up contributions shall not be taken into account for purposes of the provisions of the Plan implementing the required limitations of Sections 402(g) and 415 of the Code. The Plan shall not be treated as failing to satisfy the provisions of the Plan implementing the requirements of section 401(k)(3), 401(k)(11), 401(k)(12), 410(b), or 416 of the Code, as applicable, by reason of the making of such catch-up contributions.

10.18 Changes to Rules Governing Annual Addition Limitations under Final Treasury Regulations Governing Code Section 415.

A. **Adoption and Effective Date.** The purpose of this Section is to adopt the changes required by final Treasury Regulations under Code Section 415 to the rules under Article X governing limitations on Annual Additions. These changes are effective for Limitation Years beginning on or after July 1, 2007.

B. **Precedence.** The requirements of this Section shall take precedence over any inconsistent provisions of the Plan, including any previous amendments to the Plan adopted by the Board of Trustees. However, if the Board of Trustees determines that a conflict exists between the provisions of this Section and the provisions of Code Section 415, the provisions of Code Section 415 shall supersede the provisions of this Section.

C. **Post-Severance Compensation.** For purposes of applying the limitations on Annual Additions under Article X, the definition of the term "compensation" under Sections 10.13(B), 10.15, and 14.12 shall be modified to include amounts paid to an Employee following the Employee's severance from employment with the Employer maintaining the Plan, provided that such post-severance compensation:

(1) is paid by the later of:

- (i) 2-1/2 months after the Employee's severance from employment with the Employer maintaining the Plan; or
- (ii) the end of the Limitation Year that includes the date of the Employee's severance from employment with the Employer maintaining the Plan; and

(2) would have been included in the Employee's compensation if it had been paid prior the Employee's severance from employment with the Employer maintaining the Plan.

D. **Compensation Limit.** For purposes of applying the limitations on Annual Additions under Article X, an Employee's compensation under Sections 10.13(B), 10.16, and 14.17

shall not exceed the limit on compensation under Code Section 401(a)(17), as adjusted for cost-of-living increases.

E. **Multiemployer Plan Limits.** For purposes of applying the limitations of Section 415 of the Code, benefits and contributions attributable to a participant from all of the employers maintaining the plan must be taken into account. Furthermore, in applying the limitations of Section 415 of the Code with respect to a participant, the total compensation received from the participant from all of the employers maintaining the plan is taken into account under the plan, unless the plan specifies otherwise.

ARTICLE XI - TOP-HEAVY PROVISIONS

If the Plan is or becomes top-heavy in any Plan Year, the provisions of this Article XI will supersede any conflicting provisions in the Plan.

11.01 Key Employee.

Key Employee means any employee or former employee (and the beneficiaries of such employee) who at any time during the determination period was an officer of the Employer if such individual's annual Compensation exceeds exceeds \$130,000 (as adjusted under Code Section 416(i)(1)), a five (5) percent owner of the Employer, or a one (1) percent owner of the Employer who has an annual compensation of more than One Hundred Fifty Thousand (\$150,000.00) Dollars. Annual compensation means compensation as defined in Section 415(c)(3) of the Code. The determination of who is a key employee will be made in accordance with section 416(i)(1) of the Code and the regulations thereunder.

11.02 Top-Heavy Plan.

This Plan is top-heavy if any of the following conditions exist:

A. If the top-heavy ratio for this Plan exceeds sixty (60%) percent and this Plan is not part of any required aggregation group or permissive aggregation group of plans.

B. If this Plan is a part of a required aggregation group of plans but not part of a permissive aggregation group and the top-heavy ratio for the group of plans exceeds sixty (60%) percent.

C. If this Plan is part of a required aggregation group and part of a permissive aggregation group of plans and the top-heavy ratio for the permissive aggregation group exceeds sixty (60%) percent.

11.03 Top-Heavy Ratio.

A top heavy ratio exists when the ratio of present values of accrued benefits for key employees to the present value of accrued benefits for all employees exceeds sixty percent (60%)

taking into account all distributions made during a 1-year period ending on the most recent determination date and not taking into account any accrued benefit or account balance of an individual who has not performed services for the employer during a 1-year period ending on the determination date, except that in the case of a distribution made for a reason other than severance from employment, death, or disability, this provision shall be applied by substituting a 5-year period for the 1-year period. This Plan shall be administered in accordance with Code Section 416(g)(1) and section 1.416-1, T-1, T-23 through T-32, and T-39.

11.04 Permissive Aggregation Group.

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

11.05 Required Aggregation Group.

Required Aggregation Group means: (1) Each qualified plan of the Employer in which at least one key employee participates or participated at any time during the determination period (regardless of whether the Plan has terminated), and (2) any other qualified plan of the Employer which enables a plan described in (1) to meet the requirements of Sections 401(a)(4) or 410 of the Code.

11.06 Determination Date.

For any Plan Year subsequent to the first Plan Year, the Determination Date is the last day of the preceding Plan Year. For the first Plan Year of the Plan, the Determination Date is the last day of that year.

11.07 Valuation Date.

For purposes of computing the top-heavy ratio, the valuation date shall be December 31 of each year.

11.08 Present Value.

Present value shall be based only on the interest and mortality rates specified in Section 11.09.

11.09 Establishing Present Value.

For purposes of establishing present value to compute the top-heavy ratio, any benefit shall be discounted only for mortality and interest based on the interest assumption and mortality table as established by the Fund Actuary.

11.10 Employer Contributions and Forfeitures.

In the event this Plan becomes Top Heavy, any Participant who is not a Key Employee and who is a Participant in this Plan and a Defined Benefit Plan maintained by the Employer shall receive an allocation of 5% compensation under this Plan. If the Participant who is not a Key Employee is not covered by a Defined Benefit Plan, then the allocation above shall be adjusted by substituting 3% in lieu of 5%. The minimum allocation made on behalf of non-key employees must be equal to the highest rate allocated to any key employee. If the highest rate allocated to a key employee for a year in which the Plan is top-heavy is less than 3 percent (3%), amounts contributed as a result of a salary reduction agreement must be included in determining contributions made on behalf of key employees.

The minimum allocation is determined without regard to any Social Security contribution. This minimum allocation shall be made even though, under other plan provisions, the Participant would not otherwise be entitled to receive an allocation, or would have received a lesser allocation for the year because of (i) the Participant's failure to complete 1,000 hours of service (or any equivalent provided in the Plan), or (ii) the Participant's failure to make mandatory employee contributions to the Plan, or (iii) Compensation less than a stated amount.

The Trustees may provide that the minimum benefit requirement shall be met in another plan (including another plan that consists solely of a cash or deferred arrangement which meets the requirements of Code Section 401(k)(12) and matching contributions with respect to which the requirements of Code Section 401(m)(11) are met).

11.11 Computing Minimum Allocation.

For purposes of computing the minimum allocation, compensation shall mean compensation as defined in Section 10.13(B) of the plan.

11.12 Application of Computing Minimum Allocation.

The provision in Section 11.10 above shall not apply to any Participant who was not employed by the Employer on the last day of the Plan Year.

11.13 Non-Application of Section 11.10.

The provision in Section 11.10 above shall not apply to any Participant to the extent the Participant is covered under any other plan or plans of the Employer and the Employer has provided in those plans that the minimum allocation or benefit requirement applicable to top-heavy plans will be met in the other plan or plans.

ARTICLE XII - EMPLOYEE CONTRIBUTIONS, MATCHING CONTRIBUTION AND ELECTIVE DEFERRALS

12.01 No Matching Contributions or Elective Deferrals.

The Plan shall accept no Employee Contributions after the last day of the last Plan Year beginning before December 31, 1986 and shall allocate no matching contributions within the meaning of Section 401(m)(4)(A) of the Code or elective deferrals within the meaning of Section 402(g)(3) of the Code to Participants' accounts in Plan Years beginning after December 31, 1986.

ARTICLE XIII - AMENDMENT AND TERMINATION

13.01 Amendment.

Except as permitted by law, it shall be impossible for any part of the corpus or income of the fund to be used for or diverted to purposes other than for the exclusive benefit of Participants and their Beneficiaries or to deprive any one of them of an interest in the Fund. Subject to this provision, this indenture may be amended at any time by the Trustees; and any amendment may be given such retroactive effect as the Trustees may determine, provided, however, benefits accrued under the Plan may not be reduced by amendment and provided further that such amendment shall be subject to any relevant provisions in the Collective Bargaining Agreement. An amendment to this indenture shall be evidenced by an instrument in writing executed by the Trustees.

13.02 Termination.

The Plan may be terminated at any time upon the written agreement of the Union and the Association. No contributions shall be made which are attributable to a period after the effective date of the termination. The Board of Trustees shall continue to act until the Fund has been distributed according to the provisions of the Plan and Trust Agreement. The trust shall continue until the Fund has been distributed in accordance with the terms and provisions of the Plan and Trust Agreement.

13.03 Rights of Participants.

In the event of termination or partial termination of the Plan, with or without action of the Board of Trustees, or the complete discontinuance of contributions to the Plan, the entire amounts in affected Participants' Credit Accounts shall continue to be totally nonforfeitable as of the date of such termination or partial termination.

13.04 Termination Procedures.

In the event the Board of Trustees decides to terminate the Plan and Trust and distribute the assets in accordance with Section 13.02 hereof, the Board of Trustees shall proceed as follows:

A. It shall convert all of the assets of the Trust to cash, except such assets which may be conveniently distributed in kind.

B. After providing for payment of all reasonable and necessary expenses in the application of the Trust Fund, it shall allocate asset income and appreciation (or depreciation) realized to all Credit Accounts. These amounts shall be allocated among the Credit Accounts on the basis of the account balances at the end of the annual valuation date immediately preceding the date of termination or the balances in the Plan as reflected on the books and records of the Board of Trustees, if the Board has received a contribution from an Employer between said valuation date and the date on which the Plan and Trust are terminated.

C. It shall prepare or have prepared such documents as are required to obtain from the Internal Revenue Service a ruling regarding termination of this Plan and Trust Agreement. Until such ruling is received, no distributions shall be made. Upon receipt from the Internal Revenue Service that this Plan has met the requirements of Section 401(a) of the Internal Revenue Code of 1954, as amended, that the Trust is exempt from taxation under Section 501(a) thereof and that the termination of the Plan will not adversely affect the prior qualification of the Plan nor the exempt status of the Trust, the Trustees shall proceed as provided in Subparagraph (D) below.

D. After the payment of all fees and expenses in connection therewith, it shall distribute pursuant to Section 6.06 to each Participant's Credit Account as computed in accordance with Subparagraph (B) above. This distribution shall be made in cash or in kind. Upon making this distribution, the Trustees shall obtain a release from each Participant in a form satisfactory to counsel.

13.05 Continuity.

The Plan hereby created shall continue until the funds shall have been distributed in accordance with the terms and provisions of this indenture.

13.06 Additional Rights of the Board of Trustees.

In addition to the right at any time to terminate the Plan and/or amend the Plan and Trust Agreement, the Board of Trustees shall also have the sole right at any time to merge or consolidate with, transfer the assets and liabilities of the Plan and Trust Fund to any other qualified plan and trust fund or receive the assets and liabilities of any other qualified plan and trust fund. All such actions shall be done by the Board of Trustees in their sole discretion and must be adopted in writing.

13.07 Transfers From Money Purchase Pension Plans.

This Amendment is effective January 1, 1996. Notwithstanding any provision of this plan to the contrary, to the extent that any optional form of benefit under this Plan permits a distribution prior to the employee's retirement, death, disability or severance from employment, and prior to plan termination, the optional form of benefit is not available with respect to benefits attributable to assets (including the post-transfer earnings thereon) and liabilities that are transferred, within the meaning of §414(l) of the Internal Revenue Code, to this plan from a money purchase pension plan qualified

under §401(a) of the Internal Revenue Code (other than any portion of those assets and liabilities attributable to voluntary employee contributions).

ARTICLE XIV - MISCELLANEOUS PROVISIONS

14.01 Governing Law.

This indenture shall be administered, construed and enforced in accordance with the Employee Retirement Income Security Act of 1974, as amended, and, to the extent that said Act has not preempted the laws of the State of Ohio, in accordance with the laws of the State of Ohio.

14.02 No Specific Interest.

Nothing contained in this document shall be construed to give any Participant, Former Participant, or Beneficiary any interest in any specific property of the Plan or Fund or any interest other than his right to receive payment in accordance with the provisions herein contained.

14.03 Action by Board of Trustees.

Any action by the Board of Trustees in connection with the Plan established by this indenture shall be evidenced by a resolution of the Board. Whenever, in this indenture, action in connection with the administration of the Plan is required to be taken by the Board of Trustees, such action may be taken by such member or members of the Board of Trustees as may be designated by the Board of Trustees.

14.04 Merger or Transfer of Assets.

In the event of a merger or consolidation with, or transfer of assets or liabilities to any other plan, each Participant shall receive a benefit immediately after the merger, consolidation or transfer (if the Plan had then terminated) which is at least equal to the benefit he or she would have been entitled to receive immediately before the merger, consolidation or transfer (if the Plan had then terminated).

14.05 Discretionary Action by Board of Trustees.

The Trustees have full discretion to determine eligibility for benefits and interpret plan terms and any such interpretation shall not be overturned by a court of competent jurisdiction unless such determination or interpretation is arbitrary and capricious. Any discretionary actions taken by the Board of Trustees hereunder shall be uniform in their nature and application to all persons similarly situated; and no discretionary actions shall be taken which would be discriminatory under the provisions of the Internal Revenue Code of 1954, as amended, relating to employee retirement plans and exempt trusts.

14.06 Internal Revenue Service Qualification.

The making of contributions by the Employers to the Fund are and shall be subject to obtaining the necessary approval from the Internal Revenue Service of the Plan and the deductibility of payments made by the Employers to the Fund. In the event the Plan or Trust Agreement at any time requires amendment in order for the Employers' payments to the Fund to be deductible and the Plan to be qualified under the applicable provisions of the Internal Revenue Code of 1954, as amended, the Employers and the Union shall immediately make such amendment as is necessary to accomplish such purposes. The administration of the Plan shall be such as to maintain continued qualification of the Plan under the applicable provisions of the Internal Revenue Code. The Board of Trustees shall have the right to defend the determination of the Plan and Trust as a qualified plan and exempt trust, which construction, determination and qualification is intended by the parties at its inception and thereafter.

14.07 Administration of Plan.

The general administration of the Plan and the responsibility for carrying out its provisions shall be upon the Board of Trustees in accordance with the terms of the Plan and Trust Agreement. All rules and regulations adopted by the Board of Trustees shall be binding upon all parties dealing with the Trust Fund and all persons claiming benefits hereunder. The assets of the Plan shall be conserved, invested and disbursed by the Board of Trustees pursuant to the terms of the Plan and the Trust Agreement.

14.08 Reciprocal Agreements.

The Trustees may, at any time and in their discretion, enter into a reciprocity agreement with the trustees of any other local union of the International Brotherhood of Painters and Allied Trades whereby an individual may qualify for benefits based on his or her contributions to all of such funds which enter into such reciprocity agreement(s) under the terms and conditions set forth in such agreement(s).

14.09 Participants' Rights.

Each Participant or Former Participant shall have only the rights, privileges and benefits which are provided under this document. This Plan shall not (1) create any contract of employment with any person, (2) grant any person the right to continue employment, or (3) be construed as limiting the right of an Employer to terminate a person's employment.

14.10 Benefits and Fund Expenses.

All benefits to be provided by the Plan will be funded through the Trust Fund established under the Trust Agreement entered into by and between the Union, the Association and the Board of Trustees. All contributions by the Employers will be deposited into the Trust Fund. The assets of the Trust Fund shall be used to provide benefits under the Plan and to pay any and all expenses or costs which are incurred in connection with, or which arise out of the operation of, the Plan and Trust Fund, including, without limitation, legal, actuarial, educational, accounting and administrative

expenses, fiduciary or other insurance premiums, any and all taxes which may be assessed against the Fund, and any expenses, costs, assessments or levies resulting from the prosecution, defense or settlement of any claims involving the Plan and Trust Fund, to the extent permitted under ERISA.

14.11 Claims Against Fund.

All parties to the Plan or claiming any interest hereunder shall perform any and all acts and execute any and all documents and papers which are necessary or desirable for carrying out the Plan or any of its provisions. Any Participant or Beneficiary or other person who claims the right to any payment under the Plan shall be entitled to look only to the Fund for such payment; and no liability or obligation for the payment of benefits or any other claims under or arising out of the Plan shall be imposed upon the Trustees, Union, Association, Employers, or their officers or employees, except as may be provided under ERISA or other applicable federal law.

14.12 Trustees as Named Fiduciaries.

To the extent that the Trustees function as fiduciaries with respect to the Plan and Fund, they shall be deemed to be named fiduciaries, as that term is used in Section 402 of ERISA; and except as otherwise limited by Section 405(c) of ERISA, they shall have full authority to allocate responsibilities among themselves and to designate others to perform their responsibilities; provided, however, that to the extent that specific responsibilities are assigned by or under this provision of the Plan to different fiduciaries, no fiduciary shall be liable for errors or omissions involving another fiduciary's individually assigned area of responsibility.

14.13 Limitation on Liability.

The Trustees, Union, Association, Employers, and each of their respective directors, officers, employees and/or members shall be free from liability, joint or several, for personal acts, omissions, and conduct, and for the acts, omissions and conduct of duly constituted agents, in the administration of the Plan, except to the extent that the effects and consequences of such personal acts, omissions or conduct shall result from willful misconduct; provided, however, that this provision shall not operate to relieve any of the aforementioned from any responsibility or liability for any responsibility, obligation, or duty under part 4 of Subtitle B of Title 1 of ERISA.

14.14 Military Service.

(A) 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 or pursuant to the Plan's Rules and Regulations provided said Rules and Regulations are not inconsistent with Section 414(u) of the Internal Revenue Code.

(B) In the event the Plan provides for loans to Participants, loan repayments will be suspended under this Plan as permitted under Section 414(u)(4) of the Internal Revenue Code.

(C) In the event a Participant dies or becomes disabled while performing qualified military service, the Participant will be treated as if the Participant resumed employment in accordance with his or her reemployment rights under Section 414(u) of the Internal Revenue Code and Chapter 43 of Title 38 of the United States Code on the day preceding death or disability and terminated employment on the actual date of death or disability in accordance with Section 414(u)(9) of the Internal Revenue Code.

14.15 Minimum Participation Rules No Longer Applicable To Defined Contribution Plans.

Effective for Plan Years after December 31, 1996, only defined benefit plans are subject to the Minimum Participation Rules under Code Section 401(a)(26). For Plan Years prior to December 31, 1996, except to the extent provided in the regulations, the Minimum Participation Rules under Code Section 401(a)(26) shall not apply to employees of the Plan who are covered by collective bargaining agreements.

14.16 Repeal Of The Family Aggregation Rules.

Effective for Plan Years after December 31, 1996, the family aggregation rules in Code Section 414(q)(6) are repealed. However, for purposes of determining average earnings in a defined benefit plan for 1997 and applying the \$150,000 limit on compensation under Code Section 401(a)(17), the compensation earned in 1996 and earlier years are still subject to the family aggregation rules in Code Section 414(q)(6).

14.17 Amendments To Definition Of Compensation.

Effective January 1, 1998, the Plan adopt and incorporates the amendments to the definition of compensation by the Small Business Job Protection Act of 1996 (SBJPA) set forth in Code Section 415(c)(3)(D), which defines participant compensation as including any elective deferral made under Code Section 401(k) plans, Code Section 403(b) plans, Code Section 125 cafeteria plans, and Code Section 457 plans. The Plan further elects and adopts the amendments to the SBJPA in Code Section 414(s) which allow employers to elect not to include deferral amounts in compensation, and the amendments in the SBJPA to the rules for highly compensated employees in Code Section 414(q) which require the use of the Code Section 415(c)(3) definition of compensation.

14.18 Alumni Coverage.

(A) Any Employer who has agreed to contribute to the Plan on behalf of employees in the bargaining unit as defined in an agreement between an Employer and the Union and/or is an Employer as that term is defined in Article II, Section 2.17 of the Plan document, may contribute on behalf of each and every Non-Bargained Employee who meets the following conditions:

- (i) the employee is a Vested Participant as defined in the Plan document and, during the current plan year or a prior plan year, the employee's total hours of service for that year with any and all Employers were performed in a

collective bargaining unit represented by the Union ("Alumni Coverage");
and

- (ii) the employee is not included in another unit of employees covered by a collective bargaining agreement with a labor union, if retirement benefits were the subject of good faith bargaining between such Employer and the labor union.

(B) For any Alumni Coverage permitted under Subsection (A), each Employer must:

- (i) execute a written Participation Agreement as required by the Trustees which binds the Employer to the terms of the Plan and any applicable Rules and Regulations promulgated therein and, thereby, specifies the detailed basis upon which the contributions are to be made to the Plan; and
- (ii) specify in its written Participation Agreement that such Employer is electing coverage of its "alumni" employees; and
- (iii) certify in a manner acceptable to the Trustees that it is, in fact, covering all of its "alumni" employees, except those that may be excluded under Subsection (A)(ii) above; and
- (iv) execute such documents as may be required by the Internal Revenue Service, or reasonably required by the Trustees, to enable the Plan to secure a determination letter of federal tax exemption or to support its tax exemption and/or qualified plan status.

(C) The total number of "alumni" employees participating in the Plan shall never exceed five percent (5%) of the total number of Employee Participants.

(D) In administering the "Alumni Coverage" provided in this Section, the Trustees shall not permit any coverage inclusions or exclusions which would contravene the non-discrimination requirements of the Code and Federal Tax Law. The Trustees are authorized to take any and all steps as outlined herein and otherwise to ensure compliance with such Federal Tax Law requirements, including requiring an Employer to retroactively include in its coverage one or more of its eligible "alumni" employees and make contributions on behalf of such employee(s) in accordance with the terms of this Section, and such authority is expressly recognized by all Employers which hereby agree to be bound by such actions.

14.19 Non-Bargained Employee.

A "Non-Bargained Employee" means a person who is employed by an Employer and who is not covered by a Collective Bargaining Agreement, but is covered by another written agreement requiring Employer contributions on his or her behalf.

14.20 Nondiscrimination, Coverage and Participation.

(A) Effective June 1, 1989, participation in the Plan by Non-Bargained Employees shall be in compliance with Section 401(a)(4) (nondiscrimination rules), 410(b) (coverage rules), and 401(a)(26) (minimum participation rules) of the Internal Revenue Code, Section 410(a)(26) applies during any Plan Year in which there are less than 50 Participants, including Participants covered by a Collective Bargaining Agreement.

(B) In administering the "Alumni Coverage" provided in this Article, the Trustees shall not permit any coverage inclusions or exclusions which would contravene the non-discrimination requirements of the Code and Federal Tax Law. The Trustees are authorized to take any and all steps as outlined herein and otherwise to ensure compliance with such Federal Tax Law requirements, including requiring an Employer to retroactively include in its coverage one or more of its eligible "alumni" employees and make contributions on behalf of such employee(s) in accordance with the terms of this Article, and such authority is expressly recognized by all Employers which hereby agree to be bound by such actions.

14.21 Non-Reversion to Employers.

In no event shall the Employers directly or indirectly receive any benefits from the Fund or receive any refund of Employer Contributions made by them to the Fund (except, pursuant to Section 5.02, in the case of a mistake of fact or law that has been validated by the Board of Trustees).

14.22 Severability.

In the event that any provision, section or subsection of this Plan shall be determined by decision, act or regulation of a duly constituted body or authority to be in any respect invalid, that shall not nullify any of the other provisions, sections or subsections of the Plan.

14.23 Statute of Limitations.

The procedures for filing a claim for benefits under the Plan shall be set forth in the Plan's Summary Plan Description. No legal action regarding or relating to a claim for benefits under the Plan may be commenced or filed against the Board of Trustees or the Plan more than two (2) years after the mailing of a final decision of the Board of Trustees on appeal of a denial of a claim for benefits under the Plan.

14.24 Official Plan Records.

A claimant for benefits under the Plan may submit whatever records and evidence he or she believes are appropriate in support of his or her claim for benefits. However, the Trustees shall rely upon the records of the Plan ("Official Plan Records") in determining the claimant's eligibility for benefits. In the event of a discrepancy between the Official Plan Records and the records or other evidence supporting the claim asserted by a claimant, the Trustees shall rely upon the Official Plan Records unless shown to their satisfaction that the additional or other records/evidence submitted are

valid and that the Trustees should rely upon those records/evidence. The burden of proving a claim for benefits which differs from the Official Plan Records shall be upon the claimant.

14.25 Trustees Right to Recover Benefit Payments.

The Trustees shall have the right to recover any benefit payments made in reliance on any willful, false or fraudulent statement, information or proof submitted by an applicant for benefits. The Trustees shall also have the right to recover or adjust any benefit payment made in error, including, but not limited to, an overpayment attributable to the following:

- (A) a mathematical or system error;
- (B) a mistake or deficiency in the Plan's service or contribution records;
- (C) an error in the personal information supplied by a Participant or Beneficiary;
- (D) a mistake of law or a mistake of fact; or
- (E) a determination by the Plan Administrator that because of a mistake or miscalculation by the Plan Administrator, the benefit to which the Participant or Beneficiary is entitled under the Plan's terms is different from the amount that the Participant or Beneficiary is receiving.

The Plan shall take appropriate action to collect any benefit overpayment that a Participant or Beneficiary has received, plus appropriate interest, because of dishonesty or error. Upon receipt of any overpayment due to dishonesty or error, the participant or beneficiary receiving such overpayment shall be deemed to hold such overpayment in constructive trust for the benefit of the Plan. A "constructive trust" shall mean a trust in which any amount, compensation and/or money a participant or beneficiary receives in excess as to what is provided for in this Plan shall be deemed to be held for the Plan's exclusive benefit and not commingled with other funds. Any such Constructive Trust shall be subject to an equitable lien by the Plan and any other equitable remedies available to the Plan under ERISA Section 502(a)(3) for the purpose of preserving the Plan's right to restitution for benefits overpaid.

In lieu of collecting the overpayment and appropriate interest from the Participant or Beneficiary, the Plan may offset the overpayment plus interest against future benefits that are due and owing to the Participant or Beneficiary under the Plan's terms. Any such offset shall be applied in accordance with the requirements of the Internal Revenue Service's Employee Plan Compliance Resolution System. A constructive trust shall be deemed to be placed on all benefit overpayments distributed to the Participant or Beneficiary and any interest associated with such overpayments.

ARTICLE XV - ROLLOVER DISTRIBUTION

15.01 Rollover Distribution.

This Article applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Article, a Distributee may elect, at the time and in the manner prescribed by the Plan administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

15.02 Definitions.

(A) "Eligible Rollover Distribution" is any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated Beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; any hardship distribution described in Section 401(k)(2)(B)(i)(iv) received after December 31, 1998; the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and any other distribution(s) that is reasonably expected to total less than \$200 during a year. 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 408(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.

(B) "Eligible Retirement Plan" is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, or a qualified trust described in Section 401(a) of the Code, that accepts the Distributee's Eligible Rollover Distribution. However, in the case of an Eligible Rollover Distribution to the surviving Spouse, an Eligible Retirement Plan is an individual retirement account or individual retirement annuity.

(C) "Distributee" includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving Spouse and the Employee's or former Employee's Spouse or former Spouse who is the alternate payee under a Qualified Domestic Relations Order, as defined in Section 414(p) of the Code, are Distributees with regard to the interest of the Spouse or former Spouse.

(D) "Direct rollover" is a payment by the Plan to the eligible retirement plan specified by the Distributee.

15.03 EGTRRA Changes to Direct Rollovers.

(A) Effective date. This section shall apply to distributions made after December 31, 2001.

(B) Modification of definition of eligible retirement plan. For purposes of the direct rollover provisions in Article XV of the Plan, an eligible retirement plan shall also mean an annuity contract described in Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving Spouse, or to a Spouse or former Spouse who is the Alternate Payee under a Qualified Domestic Relation Order, as defined in Section 414(p) of the Code.

(C) Modification of definition of eligible rollover distribution to exclude hardship distributions. For purposes of the direct rollover provisions in Article XV of the Plan, 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.

15.04 Changes to Direct Rollovers Effective Under Pension Protection Act of 2006.

The following sections shall apply to distributions to a non-Spouse Beneficiary on or after January 1, 2008:

(A) Modification of Definition of Eligible Retirement Plan. Effective for distributions to non-Spouse Beneficiary on or after January 1, 2008, an Eligible Retirement Plan shall mean:

(1) an individual retirement account described in Section 408(a) of the Internal Revenue Code; or

(2) an individual retirement annuity described in Section 408(b) of the Internal Revenue Code (other than an endowment contract).

(B) Modification of Definition of Distributee. Effective for distributions on or after January 1, 2008, a Distributee shall also include a Participant's non-Spouse Beneficiary.

ARTICLE XVI – BENEFIT APPLICATION, ELECTION AND APPEAL PROCEDURES

16.01 Application for Benefits.

It shall be the responsibility of each Participant, Beneficiary or other person claiming benefits through or on behalf of such Participant (any such person being hereinafter referred to in this Article as a "Claimant"), to make written application to the Trustees, on such forms and in such manner as the Trustees shall prescribe, for any and all benefits to which such Claimant may become entitled

under the Plan. Unless and until a Claimant makes proper application in accordance with the rules and procedures established by the Trustees he or she shall have no right to receive benefit payments under the Plan. The Claimant shall notify the Trustees or the office of the Administrator of the Pension Trustees or the office of the Administrator of the Pension Plan of his desire to apply for Plan Benefits. The office of the Administrator of the Pension Plan will send the Claimant all proper application forms within thirty (30) days after receipt of the request to apply for benefits.

The Claimant shall furnish, at the request of the Trustees, any information or proof reasonably required to determine his or her Benefit rights. Any misrepresentation or error by the Claimant, Plan Administrator or Trustees which results in benefit payments to which the Claimant is not entitled (in whole or in part) will constitute grounds for the recovery of such benefit payments made in reliance thereon. The Trustees may recover such benefit payments by retention or withholding of future benefit payments or portions thereof, subject to any applicable limitations imposed under the Code or ERISA and/or ruling or regulations promulgated thereunder.

Unless otherwise set forth in this Plan document, distribution of benefits in any manner to a Participant or a surviving Spouse must commence no later than the first day of April following the calendar year in which the later of termination of employment or age 70 ½ occurs.

16.02 Election of Retirement Benefits.

Subject to the Spouse's consent requirements contained herein, all necessary questions concerning the applicant's election of any particular Benefit under the Plan shall be explained and a written explanation shall be provided to the applicant explaining the terms and conditions and effects of an election not to receive the Qualified Joint and 50% Survivor Annuity Benefit.

16.03 Notification of Approval or Non-Approval of Application.

(A) Within ninety (90) days after receiving the completed application forms together with receiving all supplemental documents and information necessary for proper determination thereon, the Claimant shall be notified in writing that his or her application has been approved or has been disapproved in whole or in part. In the event further time is required for a decision, the Claimant will be notified with an explanation of why more time is necessary, and in that case, a decision will be made on the application within one hundred eighty (180) days after receipt of the completed application.

- (1) In the event of approval, the notice to the Claimant shall include the amount and duration of the benefits granted and all restrictions, conditions and limitations on the receipt of benefits, if any.
- (2) In the event of non-approval in whole or in part, notice to the Claimant shall state the reasons for rejecting the application and indicate those portions of the Plan or rules and regulations which the Claimant failed to meet.
- (3) In the event of non-approval in whole or in part, based upon failure of the Claimant to supply all material and information necessary to perfect the

application, the notice to the Claimant shall describe any additional material information necessary and an explanation why the material and other information is necessary.

- (4) Any non-approval shall be accompanied by an explanation of the Appeals Procedure. The decision shall be final and binding upon the Claimant unless that decision is appealed as hereinafter set forth.

(B) The Claimant or his or her authorized representative may appeal the decision of the Trustees by written notice received by the Trustees within sixty (60) days of the mailing of the notice specified in (A). The written notice need only state the Claimant's name, address and the fact that he or she is appealing from the decision of the Trustees, giving the date of the decision appealed from.

(C) Prior to a determination on the appeal, the Claimant or his authorized representative may have an opportunity to review necessary and pertinent documents upon which the denial in whole or in part is based and may submit written issues and comments pertinent to the appeal.

(D) The Trustees shall consider the appeal of the Claimant no later than its next regularly scheduled meeting, which immediately follows the receipt of the notice of appeal unless such notice was filed within thirty (30) days prior to the next regularly scheduled meeting, then the Board of Trustees may consider the appeal at the second meeting following the receipt of the notice of appeal. If special circumstances require an extension of time for processing, then the Board of Trustees may consider the appeal no later than the third meeting following the receipt of the notice of appeal.

(E) After consideration of the appeal as above, the Board of Trustees shall advise the Claimant of its decision in writing within sixty (60) days following the meeting at which the appeal was considered. The decision of the Board of Trustees shall set forth specific reasons for their conclusions and shall be written in a manner calculated to be understood by the Claimant and shall make references to the pertinent Plan provisions upon which the decision is based. The Trustees shall have full authority to interpret the provisions of this Plan and it is within the sole discretion of the Trustees to determine if a Claimant is entitled to receive a benefit and the amount of the benefit. The decision shall be final and binding upon the Claimant unless appealed as herein provided.

(F) The Hearing. A full Hearing before the Board of Trustees shall be held when:

- (1) The Board of Trustees determine, prior to making a decision on an appeal, that a Hearing is necessary. In such event, the Trustees shall notify the Claimant of the date, time and place set for a full Hearing on the Claimant's appeal by regular mail addressed to the Claimant as shown on the notice of appeal; or
- (2) The Claimant within sixty (60) days after receipt of the Board of Trustees' decision on appeal, by written notice received by the Trustees, requests a full Hearing before the Board of Trustees. The written notice needs to state only the Claimant's name, address, and the fact that he or she is requesting full

Hearing before the Board of Trustees, giving the date of the decision of the Board of Trustees.

- (3) In no case shall the date for the Hearing set forth in 1 or 2 be set for a time longer than the third regular meeting of the Board of Trustees following the receipt of the notice of appeal.
- (4) A full written report shall be kept of the proceedings of the Hearing.
 - (a) In conducting the hearing, the Board of Trustees shall not be bound by the usual common law or statutory rules of evidence.
 - (b) The Claimant or his attorney shall have the right to review the written record of the Hearing, make a copy thereof, and file objections thereto.
 - (c) There shall be copies made of all documents and records introduced at the Hearing, attached to the record of the Hearing and made a part thereof.
 - (d) All information upon which the Trustees based their original decision shall be disclosed to the Claimant at the Hearing.
 - (e) In the event that additional evidence is introduced by the Trustees which was not made available to the Claimant prior to the Hearing, the Claimant shall be granted a continuance of so much time as he desires, not to exceed thirty (30) days.
 - (f) The Claimant shall be afforded the opportunity of presenting any evidence on his behalf. If the applicant offers new evidence, the Hearing may be adjourned for a period of not more than thirty (30) days so the Trustees may, if they wish, investigate the accuracy of the Claimant's new evidence or determine whether additional evidence should be introduced.
 - (g) After consideration of the appeal, the Trustees shall advise the Claimant of its decision in writing within thirty (30) days following the Hearing at which the appeal was considered. The decision of the Trustees shall set forth specific reasons for their conclusions, shall be written in a manner calculated to be understood by the Claimant and shall make reference to the pertinent Plan provisions upon which the decision is based. The Trustees shall have full authority to interpret the provisions of this Plan and it is within the sole discretion of the Trustees to determine if a Claimant is entitled to receive a benefit and the amount of the benefit. This decision shall be final and binding upon the Claimant.

(G) The waiver of any of the requirements set forth above shall apply to that specific case only and shall not constitute a general waiver with respect to future cases.

(H) Should any provision of this Section be held to be unlawful, or unlawful as to any person or instance, such determination shall not adversely affect any other provision herein or the application of such provisions to any other person or circumstances.

ARTICLE XVII - HARDSHIP WITHDRAWALS

17.01 Requests.

In the case of hardship, a Participant may apply for withdrawal of an appropriate portion of his or her Credit Account. Such request shall be in writing to the Board of Trustees who, pursuant to the rules set forth below, in its sole and absolute discretion have sole authority to authorize a hardship withdrawal. A Participant may request a hardship withdrawal prior to attaining age fifty-nine and one-half (59 ½). If the Participant has not attained age fifty-nine and one-half (59 ½), the Participant may be subject to a federal income tax penalty. In addition, the administrative expenses incurred in the processing of the hardship withdrawal may be charged to the individual Participant's Credit Account.

17.02 Financial Hardship.

A withdrawal will be deemed by the Trustees to be on account of hardship if the withdrawal is necessary in light of immediate and heavy financial needs of the Participant. A withdrawal based upon financial hardship cannot exceed the amount reasonably necessary required to meet the immediate financial need created by the hardship and not available from other resources reasonably available to the Participant. The Participant's resources shall be deemed to include those assets of his or her Spouse and minor Children that are reasonably available to the Participant.

17.03 Determination of Financial Hardship.

The Trustees in their and absolute sole discretion, by the majority vote of the then duly selected Trustees, shall make all determinations as to the existence of financial hardship and the amount required to meet the need created by the financial hardship considering all relevant facts and circumstances. The decision shall be made by the Board of Trustees in its sole and absolute discretion and on a uniform and nondiscriminatory basis.

In making their decision, the Trustees shall request the Participant submit proof of the financial hardship and the lack of other resources available to provide for such hardship, which may include but not be limited to, representations by the Participant that the financial need cannot be relieved through (i) reimbursement or compensation by insurance or otherwise; (ii) reasonable liquidation of the Participant's assets, to the extent such liquidation would not itself cause an immediate and heavy financial need; (iii) other distributions or nontaxable loans from other plans maintained by an employer, or (iv) by borrowing from commercial sources on reasonable

commercial terms. The Trustees' decision as to the nature and adequacy of such proof shall be final and binding upon all concerned parties.

The Trustees may avoid the need to inquire into whether other financial resources are reasonably available if the distribution is not in excess of the amount of the immediate and heavy financial need of the Participant (including any amounts reasonably anticipated as necessary to pay federal, state, or local taxes and penalties resulting from the distribution) and:

- (A) the Participant has obtained all distributions, other than hardship distributions, and all nontaxable loans under all plans maintained by the Employer, and
- (B) all plans maintained by the Employer provide that the Employee's Elective Deferrals and Employee Contributions will be suspended for twelve (12) months after the receipt of the Hardship distribution, and
- (C) all plans maintained by the Employer provide that an Employee may not make Elective Deferrals for the employee's taxable year immediately following the taxable year of the hardship distribution in excess of the applicable limit under Code Section 402(g) for such taxable year, less the amount of such Employee's pre-tax contributions for the taxable year of the hardship distribution.

17.04 Hardship Withdrawals.

Hardship withdrawals may include Employer contributions plus the investment earnings thereon to the extent vested. The Trustees may, in their discretion, permit hardship withdrawals, with respect to only the following:

(A) The loss of income and inability to pay expenses as a result of a Workers' Compensation injury. The Participant must provide proof that he or she has been unable work for a minimum of two (2) weeks as a result of an injury for which a Workers' Compensation claim has been filed. The Participant must provide proof to the Administrative Manager that a claim has been filed with Workers' Compensation and provide a copy of the claim with a claim number to the Administrative Manager. The Trustees' decision as to the nature and adequacy of such proof shall be final and binding upon all concerned parties. A Participant may not withdraw more than two thousand five hundred dollars (\$2,500.00) of his or her vested interest for each separate Workers' Compensation claim. The decision of the Trustees whether to permit a hardship withdrawal shall be final and binding and conclusive upon the Participant; or

(B) The purchase of any dwelling unit which, within a reasonable time, is to be used (determined at the time the hardship withdrawal is made) as the Participant's principal residence. A Participant is limited to receiving this type of hardship withdrawal only once per his or her lifetime, and the amount of the hardship withdrawal may not exceed (50%) of the Participant's vested Credit Account balance; or

(C) The need to prevent the eviction of the Participant from the Participant's primary residence or the foreclosure on the mortgage of the Participant's primary residence. The amount of

the hardship withdrawal may not exceed the amount of the immediate and heavy financial need of the Participant (including any amounts reasonably anticipated as necessary to pay federal, state, or local taxes and penalties resulting from the distribution); or

(D) Payment of tuition and room and board expenses for up to the next twelve (12) months of post-secondary education for the Participant or the Participant's Spouse, Children, or dependents. A Participant may not receive more than two (2) such hardship withdrawals during a Plan Year. To receive this type of hardship withdrawal, the Participant must provide proof of enrollment to the Administrative Manager. The Trustees' decision as to the nature and adequacy of such proof shall be final and binding upon all concerned parties. The amount of the hardship withdrawal may not exceed (50%) of the Participant's vested Credit Account balance, up to a maximum hardship withdrawal of \$5,000.00 (including any amounts reasonably anticipated as necessary to pay federal, state, or local taxes and penalties resulting from the distribution); or

(E) Any other immediate and heavy financial needs of the Participant as determined by the Trustees, in their sole discretion. A Participant receiving this type of hardship withdrawal shall not be eligible to receive another hardship withdrawal under this Section 17.04(E) until two (2) years have elapsed after the date of the hardship withdrawal. In addition, in order to qualify for a hardship withdrawal under this Section 17.04(E), a Participant must first attend financial counseling at Recovery Resources or the current approved Employee Assistance Provider approved by the Board of Trustees and obtain a certificate of attendance for such financial counseling from Recovery Resources or the current approved provider. Furthermore, the amount of the hardship withdrawal may not exceed fifty percent (50%) of the Participant's vested Credit Account balance, up to a maximum hardship withdrawal of \$5,000.00 in a Plan Year (including any amounts reasonably anticipated as necessary to pay federal, state, or local taxes and penalties resulting from the distribution).

ARTICLE XVIII - PARTICIPANT DIRECTED INVESTMENTS

18.01 Participant Investment Direction.

A Participant may direct the investment of his or her Credit Account among alternative Investment Options established as a part of the overall Plan. Unless otherwise determined by the Trustees, such Investment Options shall be restricted to diversified investment grade asset class funds offered by the Trustees. In this connection, a Participant's right to direct the investment of his or her Credit Account shall apply only to the selection of his or her desired investment alternative from among the Plan's designated Investment Options. The following procedures shall apply to the administration of investment options:

(a) The Participant may elect to transfer all or part of their Vested Credit Account balance from one alternative investment fund to another by using the information provided to the Participant about his or her investment options.

(b) If a Participant has not made a timely election of an investment option to which his or her Credit Account balance shall be invested, the balance of the Credit Account shall be invested in a

Qualified Default Investment Alternative (hereinafter "QDIA"). If the Participant is invested in a QDIA, any material provided to the plan relating to the investment in the QDIA (such as account statements, prospectuses, and proxy voting material) will be passed on to the Participant or Beneficiary.

(c) At least thirty (30) days prior to the date the Plan first invests a Participant's Credit Account in a QDIA, and prior to December 31st of each year thereafter, the Participant will receive notice of his or her right to designate how contributions and earnings will be invested, including an explanation of the circumstances under which assets in the Participant's Credit Account may be invested in a QDIA. The notice shall also describe the QDIA including a description of the investment objectives, risk and return characteristics and fees or expenses attendant to the QDIA. The notice shall also describe the Participant's right to direct assets invested in a QDIA to any other applicable investment alternative and explain where the Participant may obtain investment information concerning the other investment alternatives under the plan.

(d) The Participant may elect to transfer all of his or her Vested Account Balance from one available investment option to another (including from the QDIA to another investment option) by using an Internet online information system or automated voice response system. Any change to a Participant's Credit Account made from a QDIA to another investment option will be without financial penalty during the first ninety (90) days during which the Participant's Credit Account is invested in a QDIA. Any other changes made to the investment options may, but are not required to, include financial penalties otherwise applicable to a Participant who expressly elected to invest in the QDIA. Changes to a Participant's investment alternative may be made at least once per Election Quarter throughout the plan year.

(e) The Administrative Manager and/or Custodian shall be responsible for crediting the Participant's Vested Contributions to the investment option selected by the Participant.

(f) Except as otherwise provided in the Plan, neither the Trustees, nor any fiduciary of the Plan shall be liable to the Participant or his or her Beneficiaries for any loss resulting from action taken at the direction of or on behalf of the Participant.

For purposes of this Plan, the term "Qualified Default Investment Alternative" or "QDIA" shall mean an investment alternative that meets the following conditions:

1. The investment alternative uses one of the following types of investment products:
 - (a) an investment fund product or model portfolio with a mix of equity and fixed income exposures based on age, target retirement date, or life expectancy, including, for example, a life-cycle or targeted-retirement-date fund; or
 - (b) an investment fund product or model portfolio with a mix of equity and fixed income exposures consistent with a target level of risk

appropriate for the participants of the Plan as a whole, including, for example, a balanced fund; or

- (c) an investment management service with respect to which an investment manager allocates the assets of a Credit Account based on the Participant's age, target retirement date, or life expectancy, and which becomes more conservative with increasing age, including, for example, a professionally managed account;
 - (d) an investment product or fund designed to preserve principal and provide a reasonable rate of return, whether or not such return is guaranteed, consistent with liquidity and that seeks to maintain, over the term of the investment, the dollar value that is equal to the amount invested in the product and is offered by a State or federally regulated financial institution; however, such investment product or fund shall qualify as a QDIA only for the period of time that is one hundred twenty (120) days after the date of the Participant's first elective contribution. After that 120-day period, any investment in a investment product or fund under this subsection 1(d) shall fail to qualify as a QDIA.
 - (e) an investment product or fund designed to guarantee principal and a rate of return gradually consistent with that earned on intermediate investment grade bonds, while providing liquidity for withdrawals by participants and beneficiaries, including transfers to other investment alternatives; however, such investment product or fund shall qualify as a QDIA only if (i) there are no fees or surrender charges imposed in connection with withdrawals initiated by a participant or beneficiary; and (ii) the principal and rates of return are guaranteed by a State or federally regulated financial institution; and (iii) the investment product or fund was invested in prior to December 24, 2007.
2. The investment alternative is managed by the Investment Manager;
 3. The investment alternative applies generally accepted investment theories and is diversified so as to minimize the risk of large losses;
 4. The investment alternative does not hold or permit the acquisition of Employer securities unless either (1) the Employer securities are held or acquired by a registered investment company or certain similar pooled investment vehicles, and (2) the Employer securities are acquired as a matching contribution from the employer or at the direction of the participant or beneficiary before management by an investment management service.

5. The investment alternative does not impose financial penalties or otherwise restrict your ability to transfer an investment from the QDIA to any other investment alternative available under the plan within the first ninety (90) days during which you are invested in the QDIA.

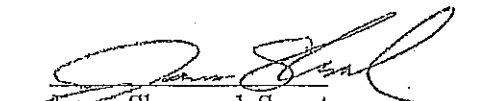
For purposes of this Plan, the term "Investment Option" means an asset allocation fund using one or more designated diversified investment grade asset classes having various risk and return characteristics appropriate for the Participant created by recommendation of the Investment Manager and approved by the Trustees. "Investment Option" may also include units or group or collective trusts established to permit the pooling of funds of separate pension and profit sharing trusts, provided the Internal Revenue Service has ruled such group trust to be qualified under Internal Revenue Code Section 401(a) and exempt under Internal Revenue Code Section 501(a) (of the applicable corresponding provision of any other Revenue Act) or in units in any other common, collective, commingled trust fund heretofore or hereafter established and maintained by the Investment Manager and Custodian. As long as the Investment Manager and Custodian holds any such units, the instrument establishing such common trust fund (including all amendments thereto) shall be deemed to have been adopted and made part of this Plan and such other investments as the Board of Trustees shall direct to the Investment Manager and Custodian to invest Plan assets or hold as an Investment Fund for the Investment of Plan assets pursuant to Participant direction.

For purposes of this Plan, the term "Election Quarter" is one (1) of four (4) three-month periods in a calendar year during which a Vested Employee/Participant may elect or transfer all his/her Vested Account Balance into one Investment Option.

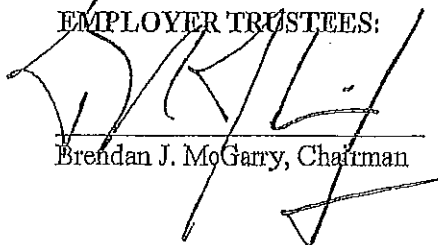
The Trustees reserve the right to eliminate, change and add investment options at any time. The Trustees are under no obligation to offer any particular investment option, or to effectuate a selection by a Participant.

IN WITNESS WHEREOF, this instrument has been executed by the Board of Trustees of the Painting Industry Profit Sharing Annuity Plan this 15th day of December 2014.

ON BEHALF OF
UNION TRUSTEES:


James Sherwood, Secretary

ON BEHALF OF
EMPLOYER TRUSTEES:


Brendan J. McGarry, Chairman